PROPOSED RULEMAKING

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CHS. 137, 137a AND 137b]

Preferential Assessment of Farmland and Forest Land Under the Clean and Green Act

The Department of Agriculture (Department) proposes to establish regulations for implementing the Pennsylvania Farmland and Forest Land Assessment Act of 1974 (72 P. S. §§ 5490.1—5490.13), commonly referred to as the Clean and Green Act (act).

In summary, the act allows owners of agricultural, agricultural reserve or forest reserve land to apply for preferential assessment of their land. If the application is approved, the land receives an assessment based upon its use value, rather than its market value.

The Department offers the proposed amendments to replace outdated provisions, incorporate provisions that reflect various issues which have arisen under the act, provide examples to guide the regulated community and address the revisions to the act accomplished by the act of December 21, 1998 (P. L. 1225, No. 156) (Act 156). The proposed amendments will delete current regulations in Chapter 137 (relating to preferential assessment of farmland and forest land) and the current statement of policy in Chapter 137a (relating to Clean and Green Act—statement of policy), and replace these chapters with a single chapter, Chapter 137b (relating to preferential assessment of farmland and forest land under the Clean and Green Act).

Authority

The amendments are proposed under authority of section 11 of the act (72 P. S. § 5490.11), which requires the Department promulgate regulations necessary to promote the efficient, uniform, Statewide administration of that statute. In addition, section 12 of Act 156 (72 P. S. § 5490.4a note) amended the act to allow the Department to implement the interim regulations which are currently in Chapter 137a without proceeding through the regulatory promulgation process ordinarily required by law. It also required the Department to replace this statement of policy with formal regulations by April 30, 2001.

Need for the Proposed Amendments

There is an immediate need for the proposed amendments. As stated, Act 156 requires the Department to replace the current statement of policy with formal regulations by April 30, 2001. In addition, the proposed amendments will replace current outdated and inadequate regulations and help bring about uniform interpretation and application of the act throughout this Commonwealth.

In summary, the Department is satisfied there is a need for the proposed amendments, and that they are otherwise consistent with Executive Order 1996-1, "Regulatory Review and Promulgation."

Summary of the Proposed Amendments

As stated, the proposed amendments will replace outdated regulatory provisions, incorporate provisions to resolve questions that have arisen under the act, provide examples to guide the regulated community and address the revisions to that act accomplished by Act 156. The proposed amendments will delete current regulations in Chapter 137 and the current statement of policy in Chapter 137a and replace these chapters.

The Department solicited comments from affected parties as it drafted the proposed amendments. Among those offering comments were the Pennsylvania Farm Bureau, legislative staff, private individuals and county assessors or county officials from Bradford, Clinton, Dauphin, Lancaster, Lehigh, Mifflin, Montgomery, Northampton, Sullivan and Union Counties. Although there were disagreements among commentators, and between commentators and the Department, numerous suggestions offered by these commentators have either been incorporated into the proposed amendments or have helped shape this document.

A summary of some of the more significant provisions of the proposed amendments follows.

Proposed § 137b.2 (relating to definitions) consolidates definitions found in the act, Chapter 137 and Act 156. It also adds several new terms, such as "enrolled land" and "ineligible land."

Proposed § 137b.11 (relating to general) provides an explanation of what constitutes agricultural land, agricultural reserve land and forest reserve land—the three types of land eligible for preferential assessment under the act. It also clarifies the circumstances under which land may be enrolled to receive a preferential tax assessment. This section emphasizes that "farmstead land" is to be included in the eligible land, and that ineligible land may be included in an application for preferential assessment, but may not be preferentially assessed. The section contains a number of examples to help illustrate its provisions.

Proposed § 137b.41 (relating to application forms and procedures) describes the general procedure by which a landowner may apply for preferential assessment under the act. It also addresses the types of proof which a county assessor might reasonably require of a landowner to demonstrate that land is in an eligible use, with particular emphasis on the types of documentation that can establish "agricultural use" or "forest reserve."

Proposed § 137b.42 (relating to deadline for submission of applications) describes the application window for persons seeking preferential assessment of their land under the act. A landowner who applies for preferential assessment by June 1 of a particular year, and whose application is subsequently approved, will begin to receive the preferential assessment as of the commencement of the tax year of each taxing body in the following calendar year.

Proposed § 137b.46 (relating to fees of the county board for assessment appeals) describes the fees which may be charged by a county board for assessment appeals for processing or amending applications for preferential assessment. Subsection (b) lists the circumstances where an application should be amended without charge.

Proposed § 137b.51 (relating to assessment procedures) describes the assessment process. In summary, the Department will provide a county assessor with use values for various land use categories and land use subcategories. The county assessor will use these values—or county-assessor-generated use values that are lower than those provided by the Department—in determining a

"total use value" for a tract of enrolled land. This total use value is used in calculating the preferential assessment for the enrolled land. To provide a meaningful basis for comparing county-assessor-generated use values to those generated by the Department, this section requires that a county assessor generate use values for the same land use subcategories with respect to which the Department generates its use values.

Proposed § 137b.52 (relating to duration of preferential assessment) describes various circumstances that would alter or end preferential assessment of enrolled land. It also clarifies that the payment of roll-back taxes with respect to some portion of a tract of enrolled land does not automatically trigger the removal of the entire tract from preferential assessment. Subsection (d) sets forth a number of examples to illustrate this point. Subsection (e) lists some of the circumstances under which a county should terminate the preferential assessment of a tract of enrolled land.

Proposed § 137b.53 (relating to calculation and recalculation of preferential assessment) requires a county assessor to recalculate the preferential assessment of currently-enrolled land if farmstead land on the currently-enrolled land is not also preferentially assessed, or if the current assessment was calculated with use values that are higher than those provided by the Department. Also, if a county conducts a county-wide reassessment, it shall recalculate the preferential assessment of all enrolled land. This section does not limit a landowner's right to seek recalculation of the preferential assessment.

Proposed § 137b.62 (relating to enrolled "agricultural use" land of less than 10 contiguous acres) contains a description of the types of evidence that will suffice to demonstrate that a particular tract of less-than-10 acres of "agricultural use" land generates at least $2,000 in income from agricultural production each year.

Proposed § 137b.63 (relating to notice of change of application) requires an owner of enrolled land to provide a county assessor at least 30 days' advance written notice of a change in use of the land to something other than agricultural, agricultural reserve or forest reserve, or if there is a change in ownership of the enrolled land, or if there is a division or conveyance of the land.

Proposed § 137b.64 (relating to agricultural reserve land to be open to the public) attempts to clarify the requirement of section 2 of the act (72 P. S. § 5490.2) that "agricultural reserve" land be ". . . used for outdoor recreation of the enjoyment of scenic or natural beauty and open to the public for this use, without charge or fee, on a nondiscriminatory basis." The section allows a landowner to place reasonable restrictions on the uses to which the enrolled land may be put, and affords county assessors the option to establish procedures by which to identify the specific uses to which enrolled land may be put and disseminate that information to the public.

Proposed § 137b.71 (relating to death of an owner of enrolled land) provides that a "Class A" beneficiary who inherits enrolled land is not liable for roll-back taxes if the tract the beneficiary inherits does not meet the minimum requirements for preferential assessment. If the beneficiary subsequently changes the character or use of the land so that it no longer meets the minimum requirements for preferential assessment, though, preferential assessment shall cease and roll-back taxes shall be due.

Proposed § 137b.72 (relating to direct commercial sales of agriculturally related products and activities; rural enterprises incidental to the operational unit) allows for up to 2 acres of enrolled land to be used for activities related to agriculture and supportive of agricultural production on the remaining enrolled land. Preferential assessment would end on this up-to-2-acre tract, and roll-back taxes would also be due with respect to that tract.

Proposed § 137b.73 (relating to wireless or cellular telecommunications facilities) allows for a small portion of enrolled land to be leased for the erection and operation of a cellular communications tower. Preferential assessment ends with respect to the leased tract and roll-back taxes are due with respect to that leased tract, as well.

Proposed § 137b.74 (relating to option to accept or forgive roll-back taxes in certain instances) affords a county assessor the option to waive roll-back taxes with respect to certain enrolled land that is transferred to specific charitable organizations for charitable purposes.

Proposed §§ 137b.75 and 137b.76 (relating to transfer of enrolled land for use as a cemetery; and transfer of enrolled land or transfer of an easement or right-of-way across enrolled land for use as a trail) address situations where transfers of enrolled land to specific entities for specific uses are allowed without triggering liability for roll-back taxes or ending preferential assessment of that portion of the enrolled land that is not transferred.

Proposed § 137b.81 (relating to general) addresses the situations in which a landowner may be liable for roll-back taxes with respect to enrolled land. In general, a change in use of enrolled land to something other than agricultural use, agricultural reserve or forest reserve triggers liability for roll-back taxes.

Proposed §§ 137b.82—137b.84 (relating to split-off tract; split-off that complies with section 6(a.1)(1)(i) of the act; and split-off that does not comply with section 6(a.1)(1)(i) of the act) address "split-offs" of enrolled land, and differentiate between split-offs that occur in accordance with the criteria in section 6(a.1)(1)(i) of the act and those that do not. The former triggers liability for roll-back taxes on the split-off tract only, while the latter triggers liability for roll-back taxes on the entire tract of enrolled land.

Proposed § 137b.89 (relating to calculation of roll-back taxes) provides a formula by which a county assessor can calculate the roll-back tax amount, plus simple interest thereon at the rate of 6% per annum.

Proposed § 137b.93 (relating to disposition of interest on roll-back taxes) describes requirements imposed by section 8(b.1) of Act 156 (72 P. S. § 5490.8(b.1)) with respect to the disposition of interest on roll-back taxes. Prior to Act 156, this interest belonged to the various affected taxing authorities. Act 156 requires this interest be provided to the county agricultural land preservation board for use under the Agricultural Area Security Law (3 P. S. §§ 901—915), which pertains to the purchase of agricultural conservation easements. If the county does not have such a board, the county assessor is to coordinate with the Department to arrange the transfer of the interest to the Agricultural Conservation Easement Purchase Fund, to be used in the Statewide agricultural conservation easement purchase effort.

Proposed §§ 137b.101—137b.112 (relating to duties of a county assessor) provide an overview of the various responsibilities of a county assessor under the act. These duties involve recordkeeping, recording approved applications, updating records on an annual basis, determining

total use values, notifying landowners of changes in status, enforcement, evidence gathering and assessment of roll-back taxes.

Proposed § 137b.131 (relating to civil penalties) restates the penalty provisions in section 5.2 of the act (72 P. S. § 5490.5b). That provision allows for the imposition of a $100 civil penalty against a landowner who violates any provision of the act or its attendant regulations.

Persons Likely to be Affected

The proposed amendments promote the efficient, uniform, Statewide administration of the act. They update and supplant outdated and inadequate regulations in Chapter 137, supplant the statement of policy in Chapter 137a and implement changes to the act accomplished by Act 156. Although a number of persons and entities are likely to be impacted by the subject matter of this proposed rulemaking, the provisions of the act, rather than the provisions of the proposed regulations, drive these impacts.

Owners of agricultural, agricultural reserve and forest reserve land meeting the minimum requirements for preferential assessment set forth in the act will be affected by the proposed amendments. The use values prescribed by the act are likely to decrease taxes for these owners of enrolled land, or maintain these taxes at a comparatively lower level than those imposed upon owners of land that is not enrolled under the act to receive preferential assessment.

Taxpayers who do not own agricultural, agricultural reserve and forest reserve land meeting the minimum requirements for preferential assessment in the act will be impacted by the proposed amendments, in that they are the likely entity to be called upon to makeup any tax revenue shortfalls caused by a decrease in the taxes of those persons described in the preceding paragraph.

County governments will be affected by the proposed amendments, in that there is likely to be expense involved in recalculating preferential assessments as required under the act. There may also be costs involved as owners of currently-enrolled land seek recalculation of the preferential assessments of their land. In addition, the amendment to the act accomplished by Act 156 may result in tax revenue shortfalls where collections from agricultural, agricultural reserve and forest reserve lands are lower than anticipated.

Fiscal Impact

Commonwealth

The proposed amendments will have no appreciable fiscal impact upon the Commonwealth.

Political Subdivisions

The proposed amendments will impose costs upon county governments. As stated previously, counties are likely to incur expenses in recalculating preferential assessments as required under the act. There may also be costs involved as owners of currently-enrolled land seek recalculation of the preferential assessments of their land. In addition, the amendment to the act accomplished by Act 156 may result in tax revenue shortfalls when collections from agricultural, agricultural reserve and forest reserve lands are lower than anticipated.

Private Sector

If the act (as amended by Act 156) results in a county receiving less tax revenue than anticipated from agricultural, agricultural reserve and forest reserve lands, other taxpayers from the private sector (that is, owners of lands that are not in agricultural use, agricultural reserve or forest reserve) may ultimately be called upon to make up this tax revenue shortfall.

General Public

If the act (as amended by Act 156) results in a county receiving less tax revenue than anticipated from agricultural, agricultural reserve and forest reserve lands, other taxpayers (that is, owners of lands that are not in agricultural use, agricultural reserve or forest reserve) may ultimately be called upon to make up this tax revenue shortfall.

Paperwork Requirements

The proposed amendments will not result in an appreciable increase in the paperwork handled by the Department.

Regulatory Review

The Department submitted a copy of the proposed amendments to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Standing Committees on Agriculture and Rural Affairs on August 21, 2000, in accordance with section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)). The Department also provided IRRC and the Committees 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 an objection to any portion of the proposed amendments, it must 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 sets forth detailed procedures for review of these objections by the Department, the General Assembly and the Governor prior to the publication of the proposed amendments.

Public Comment Period

The Department invites public comment with respect to the proposed amendments. Written comments should be directed to the contact person. The public comment period with respect to the proposed amendments shall expire after 30 days from publication of the proposed amendments in the *Pennsylvania Bulletin*.

Annotated Copies Available

The Department will e-mail interested persons a copy of an annotated, unofficial version of the proposed amendments. The extensive annotations reference statutory authority for various provisions of the proposed amendments, cite related provisions from the current regulations in Chapters 137 and 137a, and summarize comments received by the Department in the preliminary drafting process for the proposed amendments. Requests for E-mail copies of the annotated, unofficial version of the proposed amendments should be directed to the contact person identified in this Preamble.

Contact Person

Further information is available by contacting the Department of Agriculture, Bureau of Farmland Protection, 2301 North Cameron Street, Harrisburg, PA 17110-9408, Attention: Raymond C. Pickering, (717) 783-3167.

Sunset/Expiration Date

Although no sunset or expiration date is set for the regulations, the Department would review their efficacy on an ongoing basis.

Effective Date

The proposed amendments will take effect upon the date of final adoption.

SAMUEL E. HAYES, Jr.,
Secretary

Fiscal Note: 2-133. No fiscal impact; (8) recommends adoption.

(*Editor's Note*: As part of this proposed rulemaking, the Department is proposing to delete the text of Chapters 137 and 137a, which appear at 7 Pa. Code pages 137-1—137-35, serial pages (257043)—(257077) and pages 137a-1—137a-27, serial pages (257079)—(257105). The following chapter is new and is printed in regular type to enhance readability.)

Annex A

TITLE 7. AGRICULTURE

PART V-C. FARMLAND AND FOREST LAND

CHAPTER 137b. PREFERENTIAL ASSESSMENT OF FARMLAND AND FOREST LAND UNDER THE CLEAN AND GREEN ACT

GENERAL PROVISIONS

§ 137b.1. Purpose.

(a) This chapter establishes procedures necessary for the uniform Statewide implementation of the act. The act provides for land devoted to agricultural use, agricultural reserve use or forest reserve use to be assessed at the value it has for that use rather than at fair market value. The intent of the act is to encourage the keeping of land in one of these uses.

(b) The benefit to an owner of enrolled land is an assurance that the enrolled land will not be assessed at the same rate as land that is not enrolled land. In almost all cases, an owner of enrolled land will see a reduction in his property assessment compared to land assessed or valued at its fair market value. The difference between assessments of enrolled land and land that is not enrolled land will be most noticeable when a county is reassessed. The intent of the act is to protect the owner of enrolled land from being forced to go out of agriculture, or sell part of the land to pay taxes.

§ 137b.2. Definitions.

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

Act—The Pennsylvania Farmland and Forest Land Assessment Act of 1974 (72 P. S. §§ 5490.1—5490.13), commonly referred to as the Clean and Green Act.

Agricultural commodity—Any of the following:

(i) Agricultural, apicultural, aquacultural, horticultural, floricultural, silvicultural, viticultural and dairy products.

(ii) Pasture.

(iii) Livestock and the products thereof.

(iv) Ranch-raised furbearing animals and the products thereof.

(v) Poultry and the products of poultry.

(vi) Products commonly raised or produced on farms which are intended for human consumption or are transported or intended to be transported in commerce.

(vii) Processed or manufactured products of products commonly raised or produced on farms which are intended for human consumption or are transported or intended to be transported in commerce.

Agricultural reserve—

(i) Noncommercial open space lands used for outdoor recreation or the enjoyment of scenic or natural beauty and open to the public for that use, without charge or fee, on a nondiscriminatory basis.

(ii) The term includes any farmstead land on the tract.

Agricultural use—Land which is used for the purpose of producing an agricultural commodity or is devoted to and meets the requirements and qualifications for payments or other compensation under a soil conservation program under an agreement with an agency of the Federal government.

(i) The term includes any farmstead land on the tract.

(ii) The term includes a woodlot.

(iii) The term includes land which is rented to another person and used for the purpose of producing an agricultural commodity.

Assessment ratio or *county's established predetermined ratio*—The ratio established by a taxing body that determines on what portion of the assessed value the millage rate is to be levied, as prescribed by assessment law.

Capitalization rate—The percentage rate used to convert income to value, as determined by the most recent 5-year rolling average of 15-year fixed loan interest rates offered to landowners by the Federal Agricultural Mortgage Corporation or other similar Federal agricultural lending institution, adjusted to include the landowner's risk of investment and the effective tax rate.

Class A beneficiaries for inheritance tax purposes—The following relations to a decedent: grandfather, grandmother, father, mother, husband, wife, lineal descendants, wife, widow, husband or widower of a child. Lineal descendants include all children of the natural parents and their descendants, whether or not they have been adopted by others, adopted descendants and their descendants and stepdescendants.

Contiguous tract—

(i) All portions of one operational unit as described in the deed or deeds, whether or not the portions are divided by streams, public roads or bridges and whether or not the portions are described as multiple tax parcels, tracts, purparts or other property identifiers.

(ii) The term includes supportive lands, such as unpaved field access roads, drainage areas, border strips, hedgerows, submerged lands, marshes, ponds and streams.

Contributory value of farm building—The value of the farm building as an allocated portion of the total fair market value assigned to the tract, irrespective of replacement cost of the building.

(i) The preferred method of calculating the contributory value of a farm building shall be a method based upon fair market comparison and the extraction of the value of the farm building from the total fair market value of the parcel.

(ii) Alternate methods of calculating this value may be used when the contributory value of a farm building using the preferred approach would not accurately reflect this contributory value.

County—The county assessor, the county board of assessment or other county entity responsible to perform or administer a specific function under the act.

Curtilage—The land surrounding a residential structure and farm building used for a yard, driveway, onlot sewage system or access to any building on the tract.

Department—The Department of Agriculture of the Commonwealth.

Enrolled land—Land eligible for a preferential assessment under an approved application for preferential assessment filed in accordance with the act.

Fair market value—The price as of the valuation date for the highest and best use of the property which a willing and informed seller who is not obligated to sell would accept for the property, and which a willing and informed buyer who is under no obligation to buy would pay for the property.

Farm building—A structure utilized to store, maintain or house farm implements, agricultural commodities or crops, livestock and livestock products, as defined in the Agricultural Area Security Law (3 P. S. §§ 901—915).

Farmstead land—Any curtilage and land situated under a residence, farm building or other building which supports a residence, including a residential garage or workshop.

Forest reserve—Land, 10 acres or more, stocked by forest trees of any size and capable of producing timber or other wood products.

(i) The term includes farmstead land on the tract.

(ii) The term includes land which is rented to another person and used for the purpose of producing timber or other wood products.

Income approach—The method of valuation which uses a capitalization rate to convert annual net income to an estimate of present value. Present value is equal to the net annual return to land divided by the capitalization rate.

Ineligible land—Land which is not used for any of the three eligible uses (agricultural use, agricultural reserve or forest reserve) and therefore cannot receive use value assessment.

Land use category—Agricultural use, agricultural reserve or forest reserve.

Land use subcategory—A category of land in agricultural use, agricultural reserve or forest reserve, established by the Department and assigned a particular use value in accordance with sections 3 and 4.1 of the act (72 P. S. §§ 5490.3 and 5490.4a). A land use subcategory may be based upon soil type, forest type, soil group or any other recognized subcategorization of agricultural or forest land.

Net return to land—Annual net income per acre after operating expenses are subtracted from gross income. The calculation of operating expenses does not include interest or principal payments.

Normal assessment—The total fair market value of buildings and ineligible land, as of the base year of assessment, on a tract multiplied by the assessment ratio.

Outdoor recreation—Passive recreational use of land that does not entail the erection of permanent structures, grading of the land, the disturbance or removal of topsoil or any change to the land which would render it incapable of being immediately converted to agricultural use.

(i) The term includes hiking, hunting, horseback riding and similar passive recreational uses of the land.

(ii) The term does not include the use of land for baseball, soccer fields, football fields, golf courses or similar uses.

Pasture—Land, other than land enrolled in the USDA Conservation Reserve Program, used primarily for the growing of grasses and legumes for consumption by livestock.

Person—A corporation, partnership, limited liability company, business trust, other association, government entity (other than the Commonwealth), estate, trust, foundation or natural person.

Preferential assessment—The total use value of land qualifying for assessment under the act.

Roll-back tax—The amount equal to the difference between the taxes paid or payable on the basis of the valuation and the taxes that would have been paid or payable had that land not been valued, assessed and taxed as other land in the taxing district in the current tax year, the year of change, and in 6 of the previous tax years or the number of years of preferential assessment up to 7.

Rural enterprise incidental to the operational unit—A commercial enterprise or venture that is conducted within 2 acres or less of enrolled land and, when conducted, does not permanently impede or otherwise interfere with the production of an agricultural commodity on that portion of the enrolled land that is not subject to roll-back taxes under section 8(d) of the act (72 P. S. § 5490.8(d)) as a result of that commercial enterprise or venture.

Separation—A division, by conveyance or other action of the owner, of enrolled land into two or more tracts of land, the use of which continues to be agricultural use, agricultural reserve or forest reserve and all tracts so formed meet the requirements of section 3 of the act.

Split-off—A division, by conveyance or other action of the owner, of enrolled land into two or more tracts of land, the use of which on one or more of the tracts does not meet the requirements of section 3 of the act.

Tract—

(i) A lot, piece or parcel of land.

(ii) The term does not refer to any precise dimension of land.

Transfer—A conveyance of all of the contiguous enrolled land described in a single application for preferential assessment under the act. When a single application for preferential assessment includes noncontiguous land, the conveyance of the entirety of any contiguous land described in that application is also a transfer.

USDA—The United States Department of Agriculture.

USDA-ERS—The United States Department of Agriculture-Economic Research Service.

USDA-NRCS—The United States Department of Agriculture-Natural Resources Conservation Service.

Woodlot—An area of less than 10 acres, stocked by trees of any size and contiguous to or part of land in agricultural use or agricultural reserve.

§ 137b.3. Responsibilities of the Department.

(a) *General.* The Department's responsibilities are to provide the use values described in section 4.1 of the act (72 P. S. § 5490.4a) and provide the forms and regulations necessary to promote the efficient, uniform Statewide administration of the act.

(b) *Information gathering.* The Department will collect information from county assessors for each calendar year to insure that the act and this chapter are being implemented fairly and uniformly throughout this Commonwealth. This information will be collected through a survey form to be provided to county assessors by the Department no later than December 15 each year, and which county assessors shall complete and submit to the Department by January 31 of the following year.

§ 137b.4. Contacting the Department.

For purposes of this chapter, communications to the Department shall be directed to the following address:

Pennsylvania Department of Agriculture
Bureau of Farmland Protection
2301 North Cameron Street
Harrisburg, PA 17110-9408
Telephone: (717) 783-3167
Facsimile: (717) 772-8798

ELIGIBLE LAND

§ 137b.11. General.

Three types of land are eligible for preferential assessment under the act.

(1) Land in agricultural use.

(2) Land in agricultural reserve.

(3) Land in forest reserve.

§ 137b.12. Agricultural use.

Land that is in agricultural use is eligible for preferential assessment under the act if it has been in agricultural production for at least 3 years preceding the application for preferential assessment, and is one of the following:

(1) Comprised of 10 or more contiguous acres (including any farmstead land and woodlot).

(2) Has an anticipated yearly gross agricultural production income of at least $2,000 from the production of an agricultural commodity.

§ 137b.13. Agricultural reserve.

Land that is in agricultural reserve is eligible for preferential assessment under the act if at least 60% of the land is in USDA-NRCS land capability classifications I through VI, excluding water areas and wetland areas, and the land is comprised of 10 or more contiguous acres (including any farmstead land).

§ 137b.14. Forest reserve.

Land that is in forest reserve is eligible for preferential assessment under the act if it is presently stocked with trees so that it is capable of producing annual growth of 25 cubic feet per-acre, and the land is comprised of 10 or more contiguous acres (including any farmstead land).

§ 137b.15. Inclusion of farmstead land.

(a) Farmstead land is an integral part of land in agricultural use, agricultural reserve or forest reserve. In considering whether land is in agricultural use, agricultural reserve or forest reserve, a county shall include any portion of that land that is farmstead land.

(b) Farmstead land shall be considered to be land that qualifies for preferential assessment under the act and this chapter.

§ 137b.16. Residence not required.

A county may not require that an applicant for preferential assessment under the act be a resident of the county or reside on the land with respect to which preferential assessment is sought.

§ 137b.17. Common ownership required.

A landowner seeking preferential assessment under the act shall be the owner of every tract of land listed on the application.

Example 1: Husband and wife are joint owners of two contiguous 100-acre tracts of farmland. They have common ownership of both tracts and may include these tracts in a single application for preferential assessment.

Example 2: Husband and wife are joint owners of a 100-acre tract of farmland. Husband and son are joint owners of a contiguous 100-acre tract of farmland. These two tracts may not be combined in a single application for preferential assessment.

§ 137b.18. County-imposed eligibility requirements.

A county assessor may not impose eligibility requirements or conditions other than those prescribed in section 3 of the act (72 P. S. § 5490.3).

Example: A county may not require an owner of contiguous—but separately deeded—tracts of land to consolidate the tracts in a single deed or require any alteration of existing deeds as a condition of eligibility for preferential assessment.

§ 137b.19. Multiple tracts on a single application.

A landowner seeking preferential assessment under the act may include more than one tract in a single application for preferential assessment, regardless of whether the tracts on the application have separate deeds, are identified by separate tax parcel numbers or are otherwise distinct from each other.

(1) *Contiguous tracts.*

(i) A landowner seeking preferential assessment under the act may include in the application individual contiguous tracts that would not—if considered individually—qualify for preferential assessment.

(ii) If two or more tracts on a single application for preferential assessment are contiguous, the entire contiguous area shall meet the use and minimum size requirements for eligibility.

(2) *Noncontiguous tracts.* If any tract on a single application for preferential assessment is not contiguous to another tract described on that application, that individual tract shall—by itself—meet the use and minimum size requirements for eligibility.

§ 137b.20. Inclusion of all contiguous land described in the deed to the tract with respect to which enrollment is sought.

A landowner may not apply for preferential assessment for less than the entire contiguous portion of land described in the deed applicable to a tract with respect to which preferential assessment is sought.

Example 1: A landowner owns a single, 100-acre tract of farmland described in a single deed, and wishes to apply for preferential assessment under the act. The application may not be for less than the entire 100 acres.

Example 2: A landowner owns 150 acres of farmland described in a single deed, and wishes to apply for preferential assessment under the act. The deed to this land describes three separate tracts: two contiguous 50-acre tracts and a noncontiguous 50-acre tract. The landowner's options are as follows:

(1) Enroll the contiguous 50-acre tracts.

(2) Enroll the noncontiguous 50-acre tract.

(3) Enroll both the contiguous 50-acre tracts and the noncontiguous 50-acre tract.

The landowner does not have the option to enroll only one of the contiguous 50-acre tracts.

§ 137b.21. Exclusion of noncontiguous tract described in a single deed.

If two or more tracts of land are described in a single deed, a landowner seeking preferential assessment under the act may exclude from the application for preferential assessment any separately-described tract that is not contiguous to the tracts for which preferential assessment is sought.

Example: A landowner owns 150 acres of farmland described in a single deed, and wishes to apply for preferential assessment under the act. The deed to this land describes three separate tracts: two contiguous 50-acre tracts and a noncontiguous 50-acre tract. The landowner has the option to seek to enroll the noncontiguous 50-acre tract.

§ 137b.22. Landowner may include or exclude from the application tracts described in separate deeds.

If the landowner seeking preferential assessment under the act owns contiguous tracts that are described in separate deeds, the landowner may include or exclude any of the contiguous tracts from the application for preferential assessment.

§ 137b.23. Land adjoining preferentially assessed land with common ownership is eligible.

(a) *General.* A tract of land in agricultural use, agricultural reserve or forest reserve shall receive a preferential assessment under the act regardless of whether the tract meets the 10-contiguous-acres minimum acreage requirement or the $2,000-per-year minimum anticipated gross

income requirement, or both, established in section 3 of the act (72 P. S. § 5490.3) if the following occur:

(1) The landowner owns both the tract for which preferential assessment is sought and a contiguous tract of enrolled land.

(2) The landowner files an amended application for preferential assessment, describing both the tract for which preferential assessment is sought and the contiguous tract of enrolled land. The amended application shall be in accordance with the act and this chapter.

(b) *Roll-back taxes.* A violation of the provisions of preferential assessment on a tract added under subsection (a) shall trigger liability for roll-back taxes, plus interest, on that tract and all other contiguous tracts identified in the amended application.

§ 137b.24. Ineligible land may appear on an application, although it cannot receive preferential assessment.

A landowner seeking preferential assessment under the act shall include ineligible land on the application if the ineligible land is part of a larger contiguous tract of eligible land, and the use of the land which causes it to be ineligible exists at the time the application is filed. Although this ineligible land may not receive preferential assessment, the applicant shall specify the boundaries and acreage of the ineligible land. The ultimate determination of whether land is eligible or ineligible shall be made by the county assessor.

Example: A landowner owns a 100-acre tract of land, 90 acres of which is productive farmland and 10 acres of which is occupied by an auto salvage yard. If the landowner seeks preferential assessment of the 90 acres of farmland, the application shall describe the entire 100-acre tract and the county will not require the 10-acre tract be surveyed-out or deeded as a prerequisite to the application being considered. If preferential assessment is granted, it will apply to the 90 acres of farmland. The 10-acre tract would continue to be assigned its fair market value and assessed accordingly.

§ 137b.25. Multiple land use categories on a single application.

An applicant for preferential assessment under the act may include land in more than one land use category in the application. A county assessor shall allow the applicant to submit an application that designates those portions of the tract to be assessed under each of the different land use categories.

Example: A landowner owns 100 acres of land. The landowner may submit an application that designates 75 acres in agricultural use, 13 acres in agricultural reserve and 12 acres in forest reserve, if the acreage identified by the landowner for the particular land use category meets the minimum criteria in section 3 of the act (72 P. S. § 5490.3) for that land use category.

§ 137b.26. Land located in more than one tax district.

If land for which preferential assessment is sought lies in more than one taxing district, the county's determination as to whether the land meets applicable minimum acreage requirements for eligible land shall be made on the basis of the total contiguous acreage—without regard to the boundaries of the taxing districts in which the land is located.

Example 1: A landowner has a 100-acre tract of farmland—94 acres of which lies in Township A and 6 acres of which lies in Township B. The landowner files an application seeking preferential assessment of this land. The fact that the tract lies in two separate townships shall be immaterial to the determination of whether the 100-acre tract meets the requirements for preferential assessment under the act.

Example 2: A landowner has a 100-acre tract of farmland—94 acres of which lies in County A and 6 acres of which lies in County B. The landowner files an application in each county, seeking preferential assessment of that portion of the 100-acre tract lying within the respective counties. The fact that the tract lies in two separate counties shall be immaterial to the determination of whether the land described in the application meets the requirements for preferential assessment under the act.

§ 137b.27. Assessment of ineligible land.

Land and buildings that are included in an application for preferential assessment under the act but are ineligible for preferential assessment shall be appraised at fair market value and shall be assessed accordingly.

APPLICATION PROCESS

§ 137b.41. Application forms and procedures.

(a) *Standardized application form required.* A county shall require a landowner seeking to apply for preferential assessment under the act to make that application on a current "Clean and Green Valuation Application" form—a uniform preferential assessment application form developed by the Department. The Department will provide an initial supply of these forms to a county upon request. The county assessor shall maintain an adequate supply of these forms.

(b) *Application form and worksheets.* A landowner seeking to apply for preferential assessment under the act shall complete a Clean and Green Valuation Application. The county assessor shall complete the appropriate sections of the current "Clean and Green Valuation Worksheet" form for each category of eligible land described in the application. The Department will provide an initial supply of these forms to a county upon request.

(c) *Obtaining an application and reviewing this chapter.* A landowner seeking preferential assessment under the act may obtain an application form and required worksheets from the county board of assessment office. A county assessor shall retain a copy of this chapter at the county board of assessment office, and shall make this copy available for inspection by any applicant or prospective applicant.

(d) *Required language.* An application for preferential assessment shall contain the following statement:

The applicant for preferential assessment hereby agrees, if the application is approved for preferential assessment, to submit 30 days notice to the county assessor of a proposed change in use of the land, a change in ownership of a portion of the land or of any type of division or conveyance of the land. The applicant for preferential assessment hereby acknowledges that, if the application is approved for preferential assessment, roll-back taxes under the act in 72 P. S. § 5490.5a may be due for a change in use of the land, a change in ownership of a portion of the land, or any type of division or conveyance of the land.

(e) *Additional information.* A county assessor may require an applicant to provide additional information or documentation necessary to substantiate that the land is eligible for preferential assessment. A county assessor requiring additional information shall notify the applicant in writing and shall clearly state in the notice the reasons why the application or other information or documentation submitted by the applicant is insufficient to substantiate eligibility, and shall identify the particular information the county assessor requests to substantiate eligibility.

(f) *Signature of all landowners required.* An application for preferential assessment may not be accepted by a county if it does not bear the notarized signature of all of the owners of the land described in the application.

§ 137b.42. Deadline for submission of applications.

(a) *General.* A landowner seeking preferential assessment under the act shall apply to the county by June 1. If the application is approved by the county assessor, preferential assessment shall be effective as of the commencement of the tax year of each taxing body commencing in the calendar year immediately following the application deadline.

Example 1: A landowner applies for preferential assessment on or before June 1, 2001. The application is subsequently approved. Preferential assessment shall be effective as of the commencement of the tax year for each taxing body in calendar year 2002.

Example 2: A landowner applies for preferential assessment on or after June 2, 2001, but not later than June 1, 2002. The application is subsequently approved. The application deadline is June 1, 2002. Preferential assessment shall be effective as of the commencement of the tax year for each taxing body in calendar year 2003.

(b) *Exception: years in which a county implements countywide reassessment.* In those years when a county implements a countywide reassessment, or a countywide reassessment of enrolled land, the application deadline shall be extended to either a date 30 days after the final order of the county board for assessment appeals or by October 15 of the same year, whichever date is sooner. This deadline is applicable regardless of whether judicial review of the order is sought.

§ 137b.43. Applications where subject land is located in more than one county.

If a landowner seeks to enroll a tract of land for preferential assessment under the act, and the tract is located in more than one county, the landowner shall file the application with the county assessor in the county to which the landowner pays property taxes.

§ 137b.44. County processing of applications.

A county shall accept and process in a timely manner all complete and accurate applications for preferential assessment so that, if the application is accepted, preferential assessment is effective as of the tax year of each taxing body commencing in the calendar year immediately following the application deadline.

Example 1: An application for preferential assessment is filed on or before June 1, 2001. The county must review and process the application so that—if the application is approved—preferential assessment can take effect as of the commencement of the tax year of each taxing body commencing in 2002 (the calendar year immediately following the application deadline).

Example 2: An application for preferential assessment is filed at some point from June 2, 2001 through June 1, 2002. The county must review and process the application so that—if the application is approved—preferential assessment can take effect as of the commencement of the tax year of each taxing body commencing in 2003 (the calendar year immediately following the application deadline).

§ 137b.45. Notice of qualification for preferential assessment.

A county assessor shall provide an applicant for preferential assessment under the act with written notification of whether the land described in that application qualifies for that preferential assessment or fails to meet the qualifications for preferential assessment.

§ 137b.46. Fees of the county board for assessment appeals.

(a) *Application processing fee.* A county board for assessment appeals may impose a fee of no more than $50 for processing an application for preferential assessment under the act, or for processing changes other than those described in subsection (b). This fee may be charged regardless of whether the application is ultimately approved or rejected. This fee is exclusive of any fee which may be charged by the recorder of deeds for recording the application.

(b) *Circumstances under which initial application shall be amended without charge.* A county board for assessment appeals may not charge a fee for amending an initial application for preferential assessment to reflect changes resulting from one or more of the following:

(1) Split-off.

(2) Separation.

(3) Transfer or change of ownership.

PREFERENTIAL ASSESSMENT

§ 137b.51. Assessment procedures.

(a) *Use values and land use subcategories to be provided by the Department.* The Department will determine the land use subcategories and provide county assessors use values for each land use subcategory. The Department will provide these land use subcategories and use values to each county assessor by May 1 of each year.

(b) *Determining use values and land use subcategories.*

(1) *Agricultural use and agricultural reserve.* In calculating appropriate county-specific agricultural use values and agricultural reserve use values, and land use subcategories, the Department will consult with the Department of Agricultural Economics and Rural Sociology of the College of Agricultural Sciences at the Pennsylvania State University, the Pennsylvania Agricultural Statistics Service, USDA-ERS, USDA-NRCS and other sources the Department deems appropriate. In determining county-specific agricultural use and agricultural reserve use values, the Department will use the income approach for asset valuation.

(2) *Forest reserve.* In calculating appropriate county-specific forest reserve use values and land use subcategories, the Department will consult with the Bureau of Forestry of the Department of Conservation and Natural Resources.

(c) *County assessor to determine total use value.*

(1) For each application for preferential assessment, the county assessor shall establish a total use value for land in agricultural use and agricultural reserve, including farmstead land, by considering available evidence of the capability of the land for its particular use utilizing the USDA-NRCS Agricultural Land Capability Classification system and other information available from USDA-ERS, the Pennsylvania State University and the Pennsylvania Agricultural Statistics Service. Contributory value of farm buildings, as calculated in accordance with § 137b.54 (relating to calculating the contributory value of farm buildings), shall be used.

(2) For each application for preferential assessment, the county assessor shall establish a total use value for land in forest reserve, including farmstead land, by considering available evidence of capability of the land for its particular use. Contributory value of farm buildings, as calculated in accordance with § 137b.54 shall be used.

(d) *Determining preferential assessment.* The preferential assessment of land is determined by multiplying the number of acres in each land use subcategory by the use value for that particular land use subcategory, and then adding these products. The Department will establish land use subcategories as part of the procedure to establish use values.

(e) *Option of county assessors to establish and use lower use values.* A county assessor may establish use values for land use subcategories that are less than the use values established by the Department for those same land use subcategories. A county assessor may use these lower use values in determining preferential assessments under the act. Regardless of whether the county assessor applies use values established by the Department or lower use values established by the county assessor, the county assessor shall apply the use values uniformly when calculating or recalculating preferential assessments, and shall apply these use values to the same land use subcategories as established by the Department. Calculation and recalculation of preferential assessments shall be made in accordance with § 137b.53 (relating to calculation and recalculation of preferential assessment). A county assessor may not, under any circumstances, establish or apply use values that are higher than those use values established by the Department.

(f) *Option of county assessors to select between county-established use values and use values provided by the Department.* When a county assessor has established use values for the three land use categories (agricultural use, agricultural reserve and forest reserve), and the use values for some—but not all—of these land use categories are lower than those provided by the Department, the county assessor has the option to apply the lower use value with respect to each individual land use category, without regard to whether it was provided by the Department or established by the county assessor.

§ 137b.52. Duration of preferential assessment.

(a) *General.* Enrolled land shall remain under preferential assessment for as long as it continues to meet the minimum qualifications for preferential assessment. Land that is in agricultural use, agricultural reserve or forest reserve shall remain under preferential assessment even if its use changes to either of the other two uses.

Example: A landowner owns a 100-acre tract of enrolled land, consisting of 85 acres in agricultural use and 15 acres in forest reserve. If the landowner later amends his application to one in which 60 acres are in agricultural use, 30 acres are in agricultural reserve and 10 acres are in forest reserve, the entire 100-acre tract continues to receive preferential assessment (although different use values and land use subcategories may apply in recalculating the preferential assessment).

(b) *No termination of preferential assessment without change of use.* An owner of enrolled land may not unilaterally terminate or waive the preferential assessment of enrolled land. Preferential assessment terminates as of the change of use of the land to something other than agricultural use, agricultural reserve or forest reserve. It is this event—the change of use of the enrolled land to something other than agricultural use, agricultural reserve or forest reserve—that terminates preferential assessment and triggers liability for roll-back taxes and interest. Although an owner of enrolled land may not unilaterally terminate or waive the preferential assessment of enrolled land, the landowner may minimize roll-back tax liability by voluntarily paying taxes in the amount the landowner would be obligated to pay if the land not preferentially assessed.

Example 1: An owner of 60 acres of enrolled land no longer wishes to have the enrolled land receive a preferential assessment under the act. The landowner writes the county assessor and notifies the county assessor of this desire. The landowner does not change the use of the land from one of the land use categories. The preferential assessment of the land shall continue.

Example 2: Same facts as Example 1, except the landowner changes the use of the 60 aces of enrolled land to something other than agricultural use, agricultural reserve or forest reserve, and the change of use occurs on July 1. Preferential assessment ends as of that change of use, and roll-back taxes and interest are due as of the date of the change of use.

Example 3: Same facts as Example 1, except that the landowner began to receive preferential assessment in the 1998 tax year. Beginning with the 2000 tax year and each tax year thereafter, the landowner elects to voluntarily pay—and the county assessor agrees to accept—property taxes on the basis of the enrolled land's fair market assessed value, rather than the enrolled land's preferential assessment value. On September 1, 2004, the landowner changes the use of all of the land to something other than agricultural use, agricultural reserve or forest reserve. Preferential assessment ends as of the change of use, and the landowner is liable for the payment of roll-back taxes. Assuming the landowner paid all of the taxes due for tax years 2000, 2001, 2002, 2003 and 2004 based upon the normal assessed value of the enrolled land, the landowner would only be liable for roll-back taxes and interest for tax years 1998 and 1999—the only tax years of the 7-year period for roll-back tax liability in which the landowner paid taxes based upon preferential assessment, rather than the enrolled land's normal assessed value.

Example 4: Same facts as Example 3, except that on September 1, 2007, the landowner changes the use of all of the land to something other than agricultural use, agricultural reserve or forest reserve. Preferential assessment ends as of the change of use, and the landowner is liable for the payment of roll-back taxes. Since the landowner had been voluntarily paying taxes on the basis of the normal assessed value of the enrolled land for longer than the 7-year period for

roll-back tax liability, though, the landowner's roll-back tax liability would be zero.

(c) *Split-offs, separations, transfers and other events.* Split-offs, separations and transfers under the act or this chapter will not result in termination of preferential assessment on the land which is retained by the landowner and which continues to meet the requirements of section 3 of the act (72 P. S. § 5490.3). In addition, the following events will not result in termination of preferential assessment on that portion of enrolled land which continues to meet the requirements of section 3 of the act:

(1) The lease of a portion of the enrolled land to be used for a wireless or cellular communication tower in accordance with section 6(b.1) of the act (72 P. S. § 5490.6(b.1)) and § 137b.73 (relating to wireless or cellular telecommunications facilities).

(2) The change of use of a portion of the enrolled land to another land use category (agricultural use, agricultural reserve or forest reserve).

(3) Condemnation of a portion of the land.

(4) The sale or donation of a portion of the enrolled land to any of the entities described in section 8(b)(1)—(7) of the act (72 P. S. § 5490.8(b)(1)—(7)), for the purposes described in that section, and § 137b.74 (relating to option to accept or forgive roll-back taxes in certain instances).

(5) The use of up to 2 acres of the enrolled land for direct commercial sales of agriculturally related products or for a rural enterprise incidental to the operational unit, in accordance with section 8(d) of the act and § 137b.72 (relating to direct commercial sales of agriculturally related products and activities; rural enterprises incidental to the operational unit).

(6) The conveyance of a portion of the enrolled land to a nonprofit corporation for use as a cemetery, in accordance with section 8(e) of the act and § 137b.75 (relating to transfer of enrolled land for use as a cemetery).

(7) The conveyance of a portion of the enrolled land to a nonprofit corporation for use as a trail, in accordance with section 8(e) of the act and § 137b.76 (relating to transfer of enrolled land or transfer of an easement or right-of-way across enrolled land for use as a trail).

(8) The distribution, upon the death of the owner of the enrolled land, of the enrolled land among the beneficiaries designated as Class A for inheritance tax purposes, in accordance with section 6(d) of the act and § 137b.71 (relating to death of an owner of enrolled land).

(d) *Payment of roll-back taxes does not affect preferential assessment of remaining land.* The payment of roll-back taxes and interest under the act and this chapter may not result in termination of preferential assessment on the remainder of the land covered by preferential assessment.

Example 1: A landowner owns a 100-acre tract of enrolled land, which is in agricultural use. The landowner splits off a tract of no more than 2 acres and that 2-acre tract is used for a residential dwelling as described in section 6(a.1)(1)(i) of the act and meets the other criteria in that paragraph. Although the 2-acre tract is no longer entitled to receive preferential assessment, the 98-acre tract shall continue to receive preferential assessment. Also, roll-back taxes would be due with respect to the 2-acre tract.

Example 2: Landowner A owns a 100-acre tract of enrolled land, which is in agricultural use. Landowner A splits off a 2-acre tract and sells it to Landowner B, with the understanding that Landowner B will use the land for a residential dwelling permitted under section 6(a.1)(1)(i) of the act. Roll-back taxes are due with respect to the 2-acre tract. Landowner B does not erect the permitted residential dwelling, but converts the 2-acre tract to commercial use. Landowner B owes roll-back taxes with respect to the entire 100-acre tract (under section 6(a.1) of the act). Landowner A has no liability for any of the roll-back taxes which were triggered and are owed by Landowner B as a result of the conversion of the 2-acre tract to commercial use. If the 98-acre tract owned by Landowner A continues in agricultural use, agricultural reserve or forest reserve, and continues to meet the requirements of section 3 of the act, it shall continue to receive preferential assessment.

Example 3: Landowner A owns a 100-acre tract of enrolled land, which is in agricultural use. Landowner A separates the land into a 50-acre tract and two 25-acre tracts, and sells a 25-acre tract to Landowner B. All 100 acres continue in agricultural use and continue to meet the requirements of section 2 of the act. No roll-back taxes are due. The entire 100-acre tract shall continue to receive preferential assessment.

Example 4: Same facts as Example 3, except that within 7 years of the separation, Landowner B changes the use of his 25-acre tract to something other than agricultural use, agricultural reserve or forest reserve. Landowner B shall pay roll-back taxes with respect to the entire 100-acre tract (under section 6(a.2) of the act). If the 75 acres owned by Landowner A continues in agricultural use, agricultural reserve or forest reserve, and continues to meet the requirements of section 2 of the act, it shall continue to receive preferential assessment under the act.

Example 5: Same facts as Example 3, except that more than 7 years after the date of separation, Landowner B changes the use of his 25-acre tract to something other than agricultural use, agricultural reserve or forest reserve. Landowner B shall pay roll-back taxes on his 25-acre tract (under section 6(a.2) of the act). If the 75 acres owned by Landowner A continues in agricultural use, agricultural reserve or forest reserve, and continues to meet the requirements of section 3 of the act, it shall continue to receive preferential assessment under the act.

(e) *Termination of preferential assessment by county.* The maximum area with respect to which a county may terminate preferential assessment may not exceed:

(1) In the case of a split-off that is not a condemnation and that meets the maximum size, use and aggregate acreage requirements in section 6(a.1)(1)(i) of the act, the land so split-off.

(2) In the case of a split-off that is not a condemnation and that does not meet the maximum size, use and aggregate acreage requirements in section 6(a.1)(1)(i) of the act, all contiguous land enrolled under the application for preferential assessment.

(3) In the case when the owner of enrolled land changes the use of the land so that it no longer meets the requirements in section 3 of the act, all contiguous land enrolled under the application for preferential assessment.

(4) In the case when the owner of enrolled land leases a portion of that land for wireless or cellular telecommunications in accordance with section 6(b.1) of the act and § 137b.74, the land so leased.

(5) In the case of condemnation, the land so condemned.

(6) In the case when enrolled land is sold or donated to an entity described in section 8(b)(1)—(7) of the act in accordance with the requirements in those paragraphs, the land so sold or conveyed.

(7) In the case when not more than 2 acres of enrolled land is used for direct commercial sales of agriculturally related products and activities or for rural enterprises incidental to the operational unit, in accordance with section 8(d) of the act and § 137b.72, the land so used for those purposes.

(8) In the case when a portion of enrolled land is conveyed to a nonprofit corporation for use as a cemetery in accordance with section 8(e) of the act and § 137b.75, the land so transferred.

(9) In the case when a portion of the enrolled land is conveyed to a nonprofit corporation for use as a trail in accordance with section 8(e) of the act and § 137b.76, the land so transferred.

(10) In the case when enrolled land is distributed upon the death of the landowner among the beneficiaries designated as Class A for inheritance tax purposes in accordance with section 6(d) of the act and § 137b.71 the portion that fails to meet the requirements for preferential assessment in section 3 of the act.

(f) *Termination of preferential assessment on erroneously-enrolled land.* If a county assessor erroneously allows the enrollment of land that did not, at the time of enrollment, meet the minimum qualifications for preferential assessment, the county assessor shall, in accordance with section 3(d)(2) of the act provide the landowner written notice that preferential assessment is to be terminated. The notice shall state the reasons for termination and afford the landowner the opportunity for a hearing. If the use of the land was not an eligible use at the time it was enrolled, and preferential assessment is terminated for that reason, no roll-back taxes shall be due from the landowner as a result.

(g) *Transfer does not trigger roll-back taxes.* The transfer of all of the enrolled land described in a single application for preferential assessment to a new owner without a change to an ineligible use does not trigger the imposition of roll-back taxes. When the enrolled land consists of several noncontiguous tracts enrolled under a single application for preferential assessment, the transfer of all of the contiguous acreage within such a noncontiguous tract will not trigger the imposition of roll-back taxes.

§ 137b.53. Calculation and recalculation of preferential assessment.

(a) *New values each year.* As described in § 137b.51 (relating to assessment procedures), the Department will determine the land use subcategories and provide a county use values for each land use subcategory. The Department will provide these land use subcategories and use values to each county assessor by May 1 of each year.

(b) *Option of county assessor in calculation of preferential assessment.* A county assessor shall calculate the preferential assessment of enrolled land using one of the following methods:

(1) Calculate the preferential assessment of all of the enrolled land in the county each year.

(2) Establish a base year for preferential assessment of enrolled land in the county, and use this base year in calculating the preferential assessment of enrolled land in the county.

(c) *Required recalculation of preferential assessment if current assessment is based upon use values higher than those provided by the Department.* A county assessor shall calculate the preferential assessment of all enrolled land in the county using either the current use values and land use subcategories provided by the Department or lower use values established by the county assessor.

Example 1: All of the enrolled land in a particular county receives a preferential assessment under the act that is calculated with use values that are lower than the use values provided by the Department. The county has the option of either continuing to assess all enrolled land using its lower use values or recalculating the preferential assessment of all enrolled land using the use values provided by the Department.

Example 2: All of the enrolled land in a particular county receives a preferential assessment under the act that is calculated with use values that are higher than the use values provided by the Department. The county shall recalculate the preferential assessment of all enrolled land using either the use values provided by the Department or lower use values determined by the county assessor.

(d) *Required recalculation of preferential assessment if farmstead land has not been preferentially assessed as agricultural use, agricultural reserve or forest reserve.* A county assessor shall recalculate the preferential assessment on any tract of enrolled land which contains farmstead land if the earlier calculation did not value and assess the farmstead land as agricultural use, agricultural reserve or forest reserve. This recalculation shall be accomplished in accordance with § 137b.51.

Example: In calculating the preferential assessment of enrolled land, a county has assessed farmstead land at its fair market value, rather than as part of the land that is in agricultural use, agricultural reserve or forest reserve. The county shall recalculate these assessments so that the farmstead land receives preferential assessment, rather than assessment based on fair market value.

(e) *Required recalculation of preferential assessment if contributory value of farm buildings has not been used in determining preferential assessment of land in agricultural use, agricultural reserve or forest reserve.* A county assessor shall recalculate the preferential assessment on any tract of enrolled land if the earlier calculation did not consider the contributory value of any farm buildings on that land. This recalculation shall be accomplished in accordance with § 137b.51.

(f) *Required recalculation of preferential assessment in countywide reassessment.* If a county undertakes a countywide reassessment, or a countywide reassessment of enrolled land, the county assessor shall recalculate the preferential assessment of all of the enrolled land in the county, using either the current use values and land use subcategories provided by the Department, or lower use values established by the county assessor and land use subcategories provided by the Department.

(g) *Land enrolled prior to June 2, 1998.* A county assessor is not obligated under the act or this chapter to

recalculate the preferential assessment of land that is the subject of applications for preferential assessment filed on or before June 1, 1998, unless recalculation is required under subsection (c), (d), (e) or (f).

§ 137b.54. Calculating the contributory value of farm buildings.

A county assessor shall be responsible to calculate the contributory value of farm buildings on enrolled land.

OBLIGATIONS OF THE OWNER OF ENROLLED LAND

§ 137b.61. Transfer of enrolled land.

When enrolled land is transferred to a new owner, the new owner shall file an amendment to the original application for the purposes of providing the county assessor with current information and to sign the acknowledgments required under section 4(c) of the act (72 P. S. § 5490.4(c)).

§ 137b.62. Enrolled "agricultural use" land of less than 10 contiguous acres.

(a) *Demonstration of anticipated yearly gross income from agricultural production.* If a landowner has a contiguous tract of less than 10 acres of enrolled agricultural use land, the county assessor may require the landowner to demonstrate each year that the anticipated yearly gross income from the production of agricultural commodities on the enrolled land is at least $2,000. A landowner may not be required to demonstrate more than once per year that the enrolled land has sufficient anticipated yearly gross income from the production of agricultural commodities to continue to receive preferential assessment. A county assessor requiring additional information shall notify the landowner in writing and shall clearly state in the notice the reasons why the information or documentation submitted by the landowner fails to demonstrate sufficiency of income, and shall identify the particular information the county assessor requests to demonstrate sufficiency of income.

(b) *Annual requirement; circumstances beyond the landowner's control.* The $2,000 anticipated annual gross income requirement referenced in this section shall be met each year, unless circumstances beyond the landowner's control are the cause of the requirement not being met.

(c) *Examples.*

Example 1: A landowner owns 9 acres of enrolled land. The land contains a 9-acre orchard, and is enrolled as agricultural use land. Although the landowner reasonably anticipated production well above the $2,000 minimum production requirement in a particular year, and represented that to the county assessor, a drought, hailstorm or blight causes the orchard's production to drop below $2,000 that year. Preferential assessment of the orchard shall continue.

Example 2: A landowner owns 9 acres of enrolled land. The land contains a 9-acre orchard, and is enrolled as agricultural use land. A plant disease destroys the fruit trees. Although the landowner replants the orchard, it will take several years for gross income from agricultural production from that orchard to meet the $2,000 requirement. Preferential assessment of the orchard shall continue.

Example 3: A landowner owns 8 acres of enrolled land. The tract generates over $2,000 in gross annual income from swine production. The landowner sells the swine herd and does not begin another agricultural production operation on the land. The land is no longer in agricultural use. The landowner's failure to continue the land in an agricultural use capable of producing income constitutes a change to an ineligible use. The landowner is liable for roll-back taxes and interest, and preferential assessment shall terminate.

§ 137b.63. Notice of change of application.

(a) *Landowner's responsibility to provide advance notice of changes.* An owner of enrolled land shall provide the county assessor of the county in which the land is located at least 30 days' advance written notice of any of the following:

(1) A change in use of the enrolled land to some use other than agricultural use, agricultural reserve or forest reserve.

(2) A change in ownership with respect to the enrolled land or any portion of the land.

(3) Any type of division, conveyance, transfer, separation or split-off of the enrolled land.

(b) *Contents of notice.* The notice described in subsection (a) shall include the following information:

(1) The name and address of any person to whom the land is being conveyed, granted or donated.

(2) The date of the proposed transfer, separation or split-off.

(3) The amount of land to be transferred, separated or split-off.

(4) The present use of the land to be transferred, separated or split-off.

(5) The date of the original application for preferential assessment under the act.

(6) A description of previous transfers, separations or split-offs of that enrolled land from the date of preferential assessment, of which the landowner is aware.

(7) The intended use to which the land will be put when transferred, separated or split-off, if known.

(8) The tax parcel number.

(c) *Landowner's duty to notify.* As stated in § 137b.41(d) (relating to application forms and procedures), a person applying for preferential assessment of land under the act shall acknowledge on the application form the obligation described in subsection (a).

§ 137b.64. Agricultural reserve land to be open to the public.

(a) *General.* An owner of enrolled land that is enrolled as agricultural reserve land shall allow the land to be open to the public for outdoor recreation or the enjoyment of scenic or natural beauty without charge or fee, on a nondiscriminatory basis. Enrolled land that is in agricultural use or forest reserve is excluded from this requirement.

(b) *Actual use by public not required.* Enrolled land that is enrolled as agricultural reserve land need not actually be used by the public for the purposes described in subsection (a) to continue to receive a preferential assessment. It shall, however, be available for use for those purposes.

(c) *Reasonable restrictions on use allowed.* A landowner may place reasonable restrictions on public access to enrolled land that is enrolled as agricultural reserve land. These restrictions might include limiting access to the

land to pedestrians only, prohibiting hunting or the carrying or discharge of firearms on the land, prohibiting entry where damage to the land might result or where hazardous conditions exist, or other reasonable restrictions.

(d) *Entry upon the agricultural reserve land.* A person shall, whenever possible, notify the landowner before entering upon enrolled land that is enrolled as agricultural reserve land. The landowner may deny entry when damage to the property might result. The landowner can prohibit entry to areas of the agricultural reserve land upon prior notification to the county assessor of the existence of a hazardous condition on that land. The landowner's reasons to deny entry to the land shall be based upon fact and acceptable to the county assessor.

(e) *County assessor's discretion.* A county assessor may establish reasonable guidelines by which an owner of enrolled agricultural reserve land may identify the conditions under which the land shall be open to the public for outdoor recreation or the enjoyment of scenic or natural beauty, and by which the county assessor may maintain an up-to-date summary of the locations of agricultural reserve land within the county and the public uses to which these agricultural reserve lands may be put. A county assessor may disseminate this information to the public.

IMPACT OF SPECIFIC EVENTS OR USES ON PREFERENTIAL ASSESSMENT

§ 137b.71. Death of an owner of enrolled land.

(a) *Inheriting a tract that does not meet minimum requirements for preferential assessment.* Upon the death of an owner of enrolled land, if any of the enrolled land that is divided among the beneficiaries designated as Class A for inheritance tax purposes no longer meets the minimum qualifications for preferential assessment, preferential assessment shall terminate with respect to the portion of the enrolled land that no longer meets the minimum requirements for preferential assessment, and no roll-back tax may be charged on any of the land that no longer meets the requirements for preferential assessment.

Example: Landowner A owns 100 acres of enrolled land, which is in agricultural use. Landowner A dies, and the land is divided among several Class A beneficiaries, as follows: Landowner B-75 acres. Landowner C-2 acres. Landowner D-23 acres. The tracts owned by Landowners B and D continue in agricultural use. The 2-acre tract owned by Landowner C no longer meets the size or income requirements in section 3 of the act (72 P. S. § 5490.3). Under these facts, preferential assessment of the 2-acre tract ends. Landowner C does not owe roll-back taxes with respect to this tract. Landowners B and D continue to receive preferential assessment.

(b) *Inheriting a tract that meets the minimum requirements for preferential assessment.* If a person designated a Class A beneficiary inherits a tract that meets the minimum requirements for preferential assessment, and the tract continues in agricultural use, agricultural reserve or forest reserve, preferential assessment shall continue. If a person designated a Class A beneficiary inherits a tract that meets the minimum requirements for preferential assessment, and subsequently changes the use of that tract so that it does not qualify for preferential assessment, that beneficiary shall owe roll-back taxes with respect to the portion of the enrolled land he inherited, but no roll-back taxes are due with respect to any other portion of the enrolled land inherited by another beneficiary.

Example 1: Landowner A owns 100 acres of enrolled land, which is in agricultural use. Landowner A dies, and Landowners B and C each inherit a 50-acre tract, as Class A beneficiaries. The tracts owned by Landowners B and C continue in agricultural use. Preferential assessment continues.

Example 2: Same facts as Example 1, except Landowner B converts the 50-acre tract of agricultural land to industrial use. Landowner B owes roll-back taxes with respect to the 50-acre tract. Landowner A does not owe roll-back taxes. Preferential assessment continues with respect to Landowner A's tract.

§ 137b.72. Direct commercial sales of agriculturally related products and activities; rural enterprises incidental to the operational unit.

(a) *General.* An owner of enrolled land may apply up to 2 acres of enrolled land toward direct commercial sales of agriculturally related products and activities, or toward a rural enterprise incidental to the operational unit, without subjecting the entirety of the enrolled land to roll-back taxes, if both of the following apply to the commercial activity or rural enterprise:

(1) The commercial enterprise does not permanently impede or otherwise interfere with the production of an agricultural commodity on that portion of the enrolled land which is not subject to roll-back taxes under section 8(d)(2) of the act (72 P. S. § 5490.8(d)(2)).

(2) The commercial activity is owned and operated by the landowner or persons who are Class A beneficiaries of the landowner for inheritance tax purposes, or by a legal entity owned or controlled by the landowner or persons who are Class A beneficiaries of the landowner for inheritance tax purposes.

(b) *Roll-back taxes and status of preferential assessment.* If a tract of 2-acres-or-less of enrolled land is used for direct commercial sales of agriculturally related products and activities, or toward a rural enterprise incidental to the operational unit, the 2-acre-or-less tract shall be subject to roll-back taxes, and preferential assessment of that 2-acre-or-less tract shall end. The remainder of the enrolled land shall continue under preferential assessment as long as that remainder continues to meet the requirements for eligibility in section 3 of the act (72 P. S. § 5490.3).

(c) *Inventory by county assessor to determine ownership of goods.* A county assessor may inventory the goods sold at the business to assure that they are owned by the landowner or persons who are class A beneficiaries of the landowner for inheritance tax purposes, or by a legal entity owned or controlled by the landowner or persons who are Class A beneficiaries of the landowner for inheritance tax purposes, and that the goods meet the requirements of this section.

§ 137b.73. Wireless or cellular telecommunications facilities.

(a) *Permitted use.* A landowner may lease a tract of enrolled land to be used for wireless or cellular telecommunications, if the following conditions are satisfied:

(1) The tract so leased does not exceed 1/2 acre.

(2) The tract does not have more than one communication tower located upon it.

(3) The tract is accessible.

(4) The tract is neither conveyed nor subdivided. A lease may not be considered a subdivision.

(b) *Roll-back taxes imposed with respect to leased land.* A county assessor shall assess and impose roll-back taxes upon the tract of land leased by an owner of enrolled land for wireless or cellular telecommunications purposes.

(c) *Preferential assessment ends and fair market value assessment commences with respect to leased land.* A county assessor shall assess land leased in accordance with subsection (a) based upon its fair market value.

(d) *Preferential assessment continues on unleased land.* The lease of enrolled land in accordance with subsection (a) does not invalidate the preferential assessment of the remaining enrolled land that is not so leased, and that enrolled land shall continue to receive a preferential assessment, if it continues to meet the minimum requirements for eligibility in section 3 of the act (72 P. S. § 5490.3).

(e) *Wireless services other than wireless telecommunications.* Wireless services other than wireless telecommunications may be conducted on land leased in accordance with subsection (a) if the wireless services share a tower with a wireless telecommunications provider.

(f) *Responsibility for obtaining required permits.* The wireless or cellular telecommunications provider shall be solely responsible for obtaining required permits in connection with any construction on a tract of land which it leases for telecommunications purposes under subsection (a).

(g) *Responsibility of municipality for issuing required permits.* A municipality may not deny a permit necessary for wireless or cellular communications use for any reason other than the applicant's failure to strictly comply with permit application procedures.

§ 137b.74. Option to accept or forgive roll-back taxes in certain instances.

(a) *Option to accept or forgive principal on roll-back taxes.* The taxing body of the taxing district within which a tract of enrolled land is located may accept or forgive roll-back taxes with respect to that portion of the enrolled land that is granted or donated to any one of the following:

(1) A school district.

(2) A municipality.

(3) A county.

(4) A volunteer fire company.

(5) A volunteer ambulance service.

(6) A religious organization, if the religious organization uses the land only for construction or regular use as a church, synagogue or other place of worship, including meeting facilities, parking facilities, housing facilities and other facilities which further the religious purposes of the organization.

(7) A not-for-profit corporation that qualifies as tax-exempt under section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C.A. § 501(c)(3)), if prior to accepting ownership of the land, the corporation enters into an agreement with the municipality wherein the subject land is located guaranteeing that the land will be used exclusively for recreational purposes, all of which shall be available to the general public free of charge. If the corporation changes the use of all or a portion of the land or charges admission or any other fee for the use or enjoyment of the facilities, the corporation shall immediately become liable for all roll-back taxes and accrued interest previously forgiven.

(b) *No option to forgive interest on roll-back taxes.* The taxing body of the taxing district within which a tract of enrolled land is located may not forgive interest due on roll-back taxes with respect to that portion of the enrolled land that is granted or donated to any one of the entities or for any of the uses described in subsection (a)(1)—(7). That interest shall be distributed in accordance with section 8(b.1) of the act (72 P. S. § 5490.8(b.1)).

§ 137b.75. Transfer of enrolled land for use as a cemetery.

(a) *Transfers.* If an owner of enrolled land sells, donates or otherwise transfers any portion of the enrolled land to a nonprofit corporation for use as a cemetery, and at least 10 acres of the remainder of the enrolled land remain in agricultural use, agricultural reserve or forest reserve after the transfer, no violation of preferential assessment will be deemed to have occurred and roll-back taxes may not be assessed with respect to either the transferred portion of the enrolled land or the remainder of the enrolled land.

Example: A landowner owns 50 acres of enrolled land. The land is in agricultural use. The landowner sells 20 acres of the enrolled land to a nonprofit corporation for use as a cemetery. The remaining 30-acre tract continues in agricultural use. Under these facts, no roll-back taxes are due with respect to either tract. The 30-acre tract continues to receive preferential assessment. The 20-acre tract receives an assessment based on fair market value.

(b) *Exception.* If a nonprofit corporation acquires enrolled land as described in subsection (a), and subsequently changes the use of the land to some use other than as a cemetery or transfers the land for use other than as a cemetery, or uses the land for something other than agricultural use, agricultural reserve or forest reserve, the nonprofit corporation shall be required to pay roll-back taxes on that land.

Example: Same facts as the example under subsection (a), but 2 years after it acquired the 20-acre tract, the nonprofit corporation changes the use to something other than cemetery use, agricultural use, agricultural reserve or forest reserve. The nonprofit corporation owes roll-back taxes with respect to the 20-acre tract. The owner of the 30-acre tract is not liable for the payment of any roll-back taxes triggered by the nonprofit corporation's change of use.

§ 137b.76. Transfer of enrolled land or transfer of an easement or right-of-way across enrolled land for use as a trail.

(a) *Transfers.* If an owner of enrolled land sells, donates or otherwise transfers any portion of the enrolled land, or transfers an easement or right-of-way with respect to any portion of the enrolled land, no violation of preferential assessment will be deemed to have occurred and roll-back taxes may not be assessed with respect to either the transferred portion of the enrolled land or the remainder of the enrolled land if all of the following occur:

(1) The land is transferred to a nonprofit corporation.

(2) The transferred land is used as an unpaved trail for nonmotorized passive recreational use. Walking, jogging, running, roller skating, in-line skating, pedacycling, horseback riding and the use of animal-drawn vehicles

are examples of passive recreational use, as are all other forms of man-powered or animal-powered conveyance.

(3) The transferred land does not exceed 20 feet in width.

(4) The transferred land is available to the public for use without charge.

(5) At least 10 acres of the remainder of the enrolled land remain in agricultural use, agricultural reserve or forest reserve.

Example: A landowner owns 50 acres of enrolled land. The land is in agricultural use. The landowner conveys a 20-foot-wide pathway across the land to a nonprofit corporation for use as a trail, and otherwise complies with paragraphs (1)—(5) and section 8(e) of the act (72 P. S. § 5490.8(e)). Under these facts, no roll-back taxes are due with respect to either tract. The trail receives an assessment based upon fair market value. The remainder of the landowner's 50-acre tract continues to receive a preferential assessment.

(b) *Exception.* If a nonprofit corporation acquires enrolled land or an easement or right of way with respect to enrolled land as described in subsection (a), and the use of the land is subsequently changed to a use other than the use described in subsection (a)(1)—(5) or section 8(e) of the act, the nonprofit corporation shall be required to pay roll-back taxes on that land. The land is no longer entitled to preferential assessment.

Example: A landowner owns 50 acres of enrolled land. The land is in agricultural use. The landowner conveys a 15-foot-wide pathway across the land to a nonprofit corporation for use as a trail. The conveyance is for a use described in subsection (a)(1)—(5) or section 8(e) of the act. The nonprofit corporation subsequently changes the use of the trail to a motorcycle trail, a snowmobile trail or some other use not allowed under subsection (a)(1)—(5) or section 8(e) of the act. Under these facts, roll-back taxes are due with respect to the 15-foot-wide tract. The remainder of the 50-acre tract continues to receive a preferential assessment. The owner of the remainder continuing to receive preferential assessment is not liable for any roll-back taxes triggered by the nonprofit corporation's change of use.

LIABILITY FOR ROLL-BACK TAXES

§ 137b.81. General.

If an owner of enrolled land changes the use of the land to something other than agricultural use, agricultural reserve or forest reserve or changes the use of the enrolled land so that it otherwise fails to meet the requirements of section 3 of the act (72 P. S. § 5490.3), or uses the land for something other than agricultural use, agricultural reserve or forest reserve, that landowner shall be responsible for the payment of roll-back taxes. The owner of enrolled land may not be liable for any roll-back tax triggered as a result of a change to an ineligible use by the owner of a split-off tract.

§ 137b.82. Split-off tract.

When a split-off tract meets the following criteria, which are set forth in section 6(a.1)(1) of the act (72 P. S. § 5490.6(a.1)(1)), roll-back taxes are only due with respect to the split-off tract, and are not due with respect to the remainder:

(1) The tract split off does not exceed 2 acres annually, except that a maximum of the minimum residential lot size requirement annually may be split off if the property is situated in a local government unit which requires a minimum lot size of 2-3 acres.

(2) The tract is used for agricultural use, agricultural reserve or forest reserve or for the construction of a residential dwelling to be occupied by the person to whom the land is conveyed.

(3) The total tract split off does not exceed the lesser of 10 acres or 10% of the entire tract of enrolled land.

§ 137b.83. Split-off that complies with section 6(a.1)(1)(i) of the act.

If enrolled land undergoes split-off and the tract that is split-off meets the size, use and aggregate acreage requirements in section 6(a.1)(1)(i) of the act (72 P. S. § 5490.6(a.1)(1)(i)), the landowner who conducted the split-off shall owe roll-back taxes with respect to the split-off tract. The preferential assessment of that split-off tract shall be terminated. If the remainder of the enrolled land is in agricultural use, agricultural reserve or forest reserve, and continues to meet the requirements of section 3 of the act (72 P. S. § 5490.3), no roll-back taxes are due with respect to that remainder, and preferential assessment shall continue with respect to that tract.

Example: Landowner owns 50 acres of enrolled land. Landowner splits off 2 acres for a residential dwelling, in compliance with section 6(a.1)(1)(i) of the act. The landowner owes roll-back taxes on the 2-acre tract, and the preferential assessment of that tract shall be terminated. The remaining 48-acre tract would continue to receive a preferential assessment, assuming it remains in agricultural use, agricultural reserve or forest reserve and otherwise continues to meet the requirements of section 3 of the act (72 P. S. § 5490.3).

§ 137b.84. Split-off that does not comply with section 6(a.1)(1)(i) of the act.

If enrolled land undergoes split off and the tract that is split-off does not meet the size, use and aggregate acreage requirements in section 6(a.1)(1)(i) of the act (72 P. S. § 5490.6(a.1)(1)(i)), the landowner who conducted the split-off shall owe roll-back taxes with respect to all of the enrolled land.

Example 1: Landowner owns 50 acres of enrolled land. Landowner splits off 4 acres in a single year. This split-off would not meet the size requirements in section 6(a.1)(1)(i) of the act. The landowner owes roll-back taxes on the entire 50-acre tract. The 4-acre tract no longer receives preferential assessment. If the 46-acre tract remains in agricultural use, agricultural reserve or forest reserve and continues to meet the requirements of section 3 of the act, preferential assessment would continue with respect to that tract.

Example 2: Landowner owns 50 acres of enrolled land. Landowner splits off 2-acre tracts in 3 different years. The aggregate amount of land split-off (6 acres) exceeds the 10% cap in section 6(c.1)(1)(i) of the act. Under these facts, the aggregate total of split-off land could not exceed 5 acres. The landowner owes roll-back taxes on the entire 50-acre tract. The three 2-acre tracts no longer receive preferential assessment. If the remaining 44-acre tract remains in agricultural use, agricultural reserve or forest reserve and continues to meet the requirements of section 3 of the act, preferential assessment would continue with respect to that 44-acre tract.

§ 137b.85. Split-off occurring through condemnation.

If any portion of a tract of enrolled land is condemned, the condemnation may not trigger liability for roll-back taxes on either the condemned portion of the enrolled land or the remainder. If the condemned portion or the remainder of the enrolled land remains in agricultural use, agricultural reserve or forest reserve, and meets the criteria in section 3 of the act (72 P. S. § 5490.3), preferential assessment shall continue with respect to that condemned portion or remainder.

§ 137b.86. Split-off occurring through voluntary sale in lieu of condemnation.

If any portion of a tract of enrolled land is—in lieu of requiring the condemnation process to proceed—voluntarily sold by a landowner to an entity that possesses the lawful authority to acquire that portion through condemnation, the transfer may not trigger liability for roll-back taxes on either the split-off portion of the enrolled land or the remainder. If the split-off portion or the remainder of the enrolled land remains in agricultural use, agricultural reserve or forest reserve, and meets the criteria in section 3 of the act (72 P. S. § 5490.3), preferential assessment shall continue with respect to that split-off portion or remainder.

§ 137b.87. Change in use of separated land occurring within 7 years of separation.

If enrolled land undergoes separation, and one of the tracts created through separation is converted to other than agricultural use, agricultural reserve or forest reserve within 7 years of the date of the separation, or is converted so that it no longer meets the requirements of section 3 of the act (72 P. S. § 5490.3), the owner of the ineligible tract owes roll-back taxes with respect to all of the enrolled land. The ineligible tract may no longer receive preferential assessment under the act. The remaining enrolled land shall continue to receive a preferential assessment.

Example: Landowner A owns 100 acres of enrolled land, which is in agricultural use. Landowner A sells Landowner B a 50-acre portion of this enrolled land. Both 50-acre tracts continue in agricultural use, and preferential assessment continues with respect to both tracts. Six years after the original 100-acre tract of enrolled land was separated, Landowner B converts his 50-acre tract to industrial use. Landowner B owes roll-back taxes with respect to the entire 100-acre tract. Landowner A's 50-acre tract continues to receive preferential assessment, and the preferential assessment of Landowner B's 50-acre tract ends.

§ 137b.88. Change in use of separated land occurring 7 years or more after separation.

If enrolled land undergoes separation, and one of the tracts created through separation is converted to other than agricultural use, agricultural reserve or forest reserve 7 years or more after the date of the separation, the owner of the separated tract owes roll-back taxes with respect to that separated tract, but does not owe roll-back taxes with respect to the remainder of the enrolled land. The separated tract may no longer receive preferential assessment under the act. The remaining enrolled land shall continue to receive a preferential assessment.

Example: Landowner A owns 100 acres of enrolled land, which is in agricultural use. Landowner A sells Landowner B a 50-acre portion of this enrolled land. Both 50-acre tracts continue in agricultural use, and preferential assessment continues with respect to both tracts. Eight years after the original 100-acre tract of enrolled land was separated, Landowner B converts his 50-acre tract to industrial use. Landowner B owes roll-back taxes with respect to the 50-acre tract which he has converted to ineligible use. Landowner A's 50-acre tract continues to receive preferential assessment, and the preferential assessment of Landowner B's 50-acre tract ends.

§ 137b.89. Calculation of roll-back taxes.

A county assessor shall calculate roll-back taxes using the following formula:

(1) If preferential assessment has been in effect for 7 tax years or more, calculate the difference between preferential assessment and normal assessment in the current tax year, and in each of the 6 tax years immediately preceding the current tax year. If preferential assessment has been in effect for less than 7 tax years, calculate the difference between preferential assessment and normal assessment in the current tax year, and in each of the tax years in which the enrolled land was preferentially assessed.

(2) With respect to each of these sums, multiply that sum by the corresponding factor, which reflects simple interest at the rate of 6% per annum from that particular tax year to the present:

Year	*Factor*
Current Tax Year	1.00
1 Tax Year Prior	1.06
2 Tax Years Prior	1.12
3 Tax Years Prior	1.18
4 Tax Years Prior	1.24
5 Tax Years Prior	1.30
6 Tax Years Prior	1.36

(3) Add the individual products obtained under Step (2). The sum equals total roll-back taxes, including simple interest at 6% per annum on each year's roll-back taxes.

Example 1: Landowner's liability for roll-back taxes is triggered on July 1, 7 or more tax years after preferential assessment began. The county assessor calculates the difference between the preferential assessment and normal assessment in the current tax year and in each of the 6 tax years preceding the current tax year, in accordance with this section. The county assessor determines the appropriate sum to be $2,000 in each full year, and prorates this sum with respect to the current tax year.

Year	*Amount Multiplied by Factor*
Current Tax Year	$1,000 x 1.00 = $1,000
1 Tax Year Prior	$2,000 x 1.06 = $2,120
2 Tax Years Prior	$2,000 x 1.12 = $2,240
3 Tax Years Prior	$2,000 x 1.18 = $2,360
4 Tax Years Prior	$2,000 x 1.24 = $2,480
5 Tax Years Prior	$2,000 x 1.30 = $2,600
6 Tax Years Prior	$2,000 x 1.36 = $2,720
TOTAL ROLL-BACK TAXES, WITH INTEREST:	$15,520

Example 2: Landowner's liability for roll-back taxes is triggered on July 1, less than 7 tax years after preferential assessment began. The county assessor calculates the difference between the preferential assessment and normal assessment in the current tax year and each of the tax years since preferential assessment began, in accordance with this section. The county assessor determines the appropriate sum

to be $2,000 in each of these years. The county assessor would calculate roll-back taxes and interest in accordance with the chart set forth in Example 1, calculating for only those tax years in which preferential assessment occurred.

§ 137b.90. Due date for roll-back taxes.

If roll-back taxes are owed, they are due on the day of the change in use or other event triggering liability for those roll-back taxes.

§ 137b.91. Liens for nonpayment of roll-back taxes.

The county can refer a claim for unpaid roll-back taxes and interest to the county's Tax Claim Bureau, and take other actions necessary to cause a lien to be placed on the land for the value of the roll-back taxes and interest and other administrative and local court costs. The lien can be collected in the same manner as other lien-debts on real estate.

§ 137b.92. Time period within which roll-back taxes are to be calculated and notice mailed.

(a) *General.* A county assessor shall calculate the roll-back taxes, and mail notice of these roll-back taxes to the affected landowner, within 5 days of learning of a change in status triggering liability for roll-back taxes. The county assessor shall also mail a copy of the notice to the other taxing bodies of the district in which the land is located.

(b) *Notice of change of application.* If a county assessor receives a "notice of change of application" described in § 137b.63 (relating to notice of change of application), and that notice triggers liability for roll-back taxes, the 5-day period described in subsection (a) shall commence as of receipt of that notice.

§ 137b.93. Disposition of interest on roll-back taxes.

(a) *"Eligible county" explained.* A county is an "eligible county" under the Agricultural Area Security Law (3 P. S. §§ 901—915), and for purposes of this chapter, if it has an agricultural conservation easement purchase program that has been approved by the State Agricultural Land Preservation Board in accordance with that statute.

(b) *Disposition in an eligible county.*

(1) *County treasurer.* If a county is an eligible county, the county treasurer shall make proper distribution of the interest portion of the roll-back taxes it collects to the county commissioners or the county comptroller, as the case may be. The county commissioners or comptroller shall designate all of this interest for use by the county agricultural land preservation board. This interest shall be in addition to other local money appropriated by the eligible county for the purchase of agricultural conservation easements under section 14.1(h) of the Agricultural Area Security Law (3 P. S. § 914.1(h)).

(2) *County agricultural land preservation board.* A county agricultural land preservation board that receives interest on roll-back taxes in accordance with paragraph (1) shall segregate that money in a special roll-back account. Notwithstanding any other provisions of the Agricultural Area Security Law, the eligible county board under the Agricultural Area Security Law shall, in its discretion and in accordance with its approved county agricultural conservation easement purchase program, give priority to the purchase of agricultural conservation easements from agricultural security areas located within the municipality in which the land subject to the roll-back tax is located.

(c) *Disposition in a county that is not an eligible county.* If a county is not an eligible county, the county treasurer shall forward the interest portion of the roll-back taxes it collects to the Agricultural Conservation Easement Purchase Fund. The county treasurer shall coordinate with the Department's Bureau of Farmland Protection, at the address in § 137b.4 (relating to contacting the Department) to accomplish this transfer.

DUTIES OF COUNTY ASSESSORS

§ 137b.101. General.

A county assessor shall perform all the duties prescribed by the act and this chapter. The county assessor has the major responsibility for administration of the act.

§ 137b.102. Recordkeeping.

A county assessor shall indicate on assessment rolls and any other appropriate records the base year fair market value, the use value, the normal assessment and the preferential assessment of all tracts of enrolled land. A county assessor shall indicate on property record cards as much of the information in this section it deems appropriate for the performance of its duties under the act and this chapter.

§ 137b.103. Recording approved applications.

A county assessor shall record any approved application in the office of the recorder of deeds in the county where the land is preferentially assessed.

§ 137b.104. Determining total use value.

A county assessor shall determine the total use value for all enrolled land. The contributory value of farm buildings shall be used in determining the total use value.

§ 137b.105. Annual update of records.

A county assessor shall, at least on an annual basis, update property record cards, assessment rolls and any other appropriate records to reflect all changes in the fair market value, the use value, the normal assessment and the preferential assessment of all tracts of enrolled land. This subsection does not require that a county assessor recalculate the preferential assessment of all enrolled land each year, but instead requires the county assessor to maintain reasonably current records reflecting any changes in preferential assessment.

§ 137b.106. Notification of change in preferential assessment status.

A county assessor shall provide the owner of enrolled land and the taxing bodies of the district in which the land is situated with written notice of an approval, termination or change with respect to the preferential assessment status. This written notice shall apprise the landowner and the taxing body of the right to appeal the action in accordance with section 9 of the act (72 P. S. § 490.9). The written notice shall be mailed within 5 days of the change of status. If the written notice terminates or changes preferential assessment status it shall set forth the reasons for the change or termination.

§ 137b.107. Notification of change in factors affecting total assessment.

A county assessor shall provide the owner of enrolled land and the taxing bodies of the district in which the land is situated with written notice of any change in the base year fair market value, the normal assessment, the use value or the preferential assessment. This written notice shall apprise the landowner and the taxing body of the right to appeal the action in accordance with section 9

of the act (72 P. S. § 5490.9). The written notice shall be mailed within 5 days of the change.

§ 137b.108. Adjusting records to reflect split-off, separation or transfer.

A county assessor shall adjust an approved and recorded application for preferential assessment under the act to reflect a change when an owner of enrolled land changes enrollment status as a result of a split-off, separation, transfer or change of ownership. These changes may include those actions described in § 137b.52 (relating to duration of preferential assessment). A county assessor may require the preparation, execution and filing of a new application for preferential assessment (without charging the landowner an application fee) to accomplish such an adjustment.

§ 137b.109. Enforcement and evidence gathering.

The evidentiary burden shall be on a county assessor to produce evidence demonstrating that a split-off tract is actively being used in a manner which is inconsistent with residential use, agricultural use, agricultural reserve or forest reserve.

§ 137b.110. Assessment of roll-back taxes.

A county assessor shall calculate, assess and file claims with the county's Tax Claim Bureau for roll-back taxes owed under the act.

§ 137b.111. Record of tax millage.

A county assessor shall maintain a permanent record of the tax millage levied by each of the taxing authorities in the county for each tax year.

§ 137b.112. Submission of information to the Department.

A county assessor will compile and submit the information required by the Department under § 137b.3(b) (relating to responsibilities of the Department).

RECORDER OF DEEDS

§ 137b.121. Duty to record.

A recorder of deeds shall record approved applications for preferential assessment in a preferential assessment docket, and record changes of land use triggering the imposition of roll-back taxes.

§ 137b.122. Fees of the recorder of deeds.

A recorder of deeds may charge a landowner whose application for preferential assessment is approved a fee for filing the approved application in a preferential assessment docket. This fee may also be charged with respect to the filing of an amendment to a previously-approved application. A recording fee may not be charged unless the application or amendment has been approved by the county board for assessment appeals. The maximum fee for recording approved preferential assessment applications and amendments thereto shall be in accordance with laws relating to the imposition of fees by recorders of deeds.

MISCELLANEOUS

§ 137b.131. Civil penalties.

(a) *General.* A county board for assessment appeals may assess a civil penalty of not more than $100 against a person for each violation of the act or this chapter.

(b) *Written notice of civil penalty.* A county board for assessment appeals shall assess a civil penalty against a person by providing that person written notice of the penalty. This notice shall be served by certified mail or personal service. The notice shall set forth the following:

(1) A description of the nature of the violation and of the amount of the civil penalty.

(2) A statement that the person against whom the civil penalty is being assessed may appeal the penalty by delivering written notice of the appeal to the county board for assessment appeals within 10 calendar days of receipt of the written notice of penalty.

(c) *Appeal hearing.* If timely notification of the intent to contest the civil penalty is given, the person contesting the civil penalty shall be provided with a hearing in accordance with 2 Pa.C.S. Chapter 5, Subchapter B and Chapter 7, Subchapter B (relating to local agency law).

(d) *Final civil penalty.* If, within 10 days from the receipt of the notification described in subsection (b), the person against whom the civil penalty is assessed fails to notify the county board for assessment appeals of intent to contest the assessed penalty, the civil penalty shall become final.

§ 137b.132. Distributing taxes and interest.

The county treasurer or tax claim bureau shall be responsible for the proper distribution of the taxes to the proper taxing authority (that is, political subdivision) and the proper distribution of interest in accordance with § 137b.93 (relating to disposition of interest on roll-back taxes).

§ 137b.133. Appealing a decision of the county assessor.

A landowner whose land is the subject of an application for preferential assessment under the act, or a political subdivision affected by the preferential assessment of that land may appeal a decision of the county assessor regarding the application and the method used to determine preferential assessments under the act. The landowner shall first appeal to the county board of assessment. After this board has made a decision, the landowner then has a right to appeal to the court of common pleas.

[Pa.B. Doc. No. 00-1501. Filed for public inspection September 1, 2000, 9:00 a.m.]

DEPARTMENT OF HEALTH

[28 PA. CODE CH. 23]
School Immunization

The Department of Health (Department), with the approval of the State Advisory Health Board (Board), proposes to amend § 23.83 (relating to immunization requirements). The proposed amendment is set forth in Annex A.

A. *Purpose of the Proposed Amendment*

The proposed amendment sets out immunization requirements that children seeking to enter and attend school in this Commonwealth must meet. The proposed amendment is based upon recommendations of the Advisory Committee on Immunization Practices (ACIP), an advisory committee of the Federal Centers for Disease Control and Prevention (CDC). The proposed amendment would reverse the order of subsections and add explanatory language to the current regulation for the sake of

clarity, add new requirements for chickenpox (varicella) immunity, and expand requirements for hepatitis B immunization. The Department is proposing this amendment to ensure that the school environment, known to be an ideal setting for the transmission of communicable diseases, particularly when children are susceptible due to lack of immunity, is made more safe. Hepatitis B and chickenpox, as well as the already listed diseases, carry the risk of serious morbidity, lifelong disability and death.

Children attending schools are known to be a group at high risk for contracting communicable and potentially dangerous diseases. Requiring immunity before a child enters school in first grade or kindergarten, or before the child is permitted to attend a school in the Commonwealth, protects that child before the child enters an environment which readily lends itself to the transmission of disease.

Ensuring that children are appropriately immunized carries with it advantages for the public as a whole, including other high-risk populations, as well as for the child. Vaccinated children who will not contract these diseases will not miss school and suffer discomfort from contracting hepatitis B or chickenpox. In addition, their parents will not be required to take time off from their jobs to care for a sick child, or pay medical bills related to their illness. There is less chance of other persons contacting a highly infectious disease if children are vaccinated. If outbreaks of highly communicable diseases are prevented by immunizations before they occur, public health officials and physicians need not treat or contain an outbreak, and public funds need not be spent on disease intervention activities.

B. *Requirements of the Proposed Amendment*

Section 23.83. Immunization requirements.

In conjunction with the substantive amendment of this section, the Department is proposing to make minor changes for the purposes of clarity. The Department proposes to reverse the current order of subsections (a) and (b) so that the list of immunizations now required for school entry would appear in subsection (a) and come before the list of immunizations currently required for school attendance, which would now appear in subsection (b). This would place the immunization requirements in appropriate chronological order.

The current regulation relating to religious exemptions remains in effect, and is not affected by this proposed amendment.

Subsection (a). Required for entry.

This subsection is substantially the same as current subsection (b), with some changes. Subsection (a) would clarify that the vaccinations required for children attending school in this Commonwealth are also required for children entering school for the first time. It would remain substantially the same, therefore, with three main additions. Subsection (a) would include the german measles (rubella) vaccination and the mumps vaccination as immunizations required for school entry. This is already the practice, but the Department believes it is necessary to specifically include german measles (rubella) and mumps in subsection (a).

Subsection (a) would also allow hepatitis B immunity to be proven by seriological evidence of antibody to hepatitis B. This requirement would acknowledge that some children may have developed immunity to hepatitis B. Allowing proof of immunity by laboratory testing will avoid unnecessary vaccination for those children.

Further, subsections (a) and (b) currently recommend the combined DTP immunization for the purposes of immunizing against diphtheria and pertussis, and the combined MMRII vaccine for the purposes of immunizing against measles, mumps and german measles (rubella). The Department is proposing not to retain this language in subsection (a), as it is a recommendation, and not a regulatory standard. The Department does believe that the combined MMRII vaccine should be recommended for children under the age of 7 years. The Department would, however, recommend the combined DTaP vaccine in place of the combined DTP vaccine. DTaP is a newer and improved vaccine. Although the risk for side effects with either vaccine is minimal when weighed against the benefits of immunization, DTaP is associated with fewer side effects than DTP, and reduces the risk of convulsions and high fever.

The Department is also proposing to add chickenpox (varicella) immunity to the list of requirements for entry in kindergarten or first grade. In lieu of this vaccination, subsection (a)(8) would permit a parent, guardian or physician to provide a written statement of history of chickenpox immunity, or would permit the child's history of immunity to be proved by laboratory testing.

Chickenpox is a highly contagious disease that may result in discomfort, severe illness and death to the child. The disease may cause absence from school, which could have a deleterious effect on the child's school career. A child's illness from chickenpox can result in a parent or guardian expending money to treat an otherwise preventable disease, as well as causing worry and absence from work to care for the child. There is also the possibility of an outbreak of the disease in a susceptible population, for example, nonimmunized school-age children, multiplying the effect throughout the community. The May 28, 1999, *Morbidity and Mortality Weekly Report (MMWR)*, a publication of the CDC, reported that chickenpox (varicella) incidence is highest among children aged 1—6 years. Therefore, implementing immunity requirements for school entry will have a great effect on reducing the incidence of disease. The CDC noted in a 1997 study that for every dollar spent for chickenpox (varicella) vaccine, $5.40 is saved in indirect health benefit costs (work lost) and direct medical costs. Requiring chickenpox (varicella) immunity will therefore save money for both the Commonwealth and the public.

The Department, with the approval of the Board, has determined that it is more effective for the prevention and control of the spread of disease, and in the interests of the children of this Commonwealth, as well as other susceptible populations, to require immunization for this disease. Both the American Academy of Pediatrics and the ACIP recommend that this vaccination be given. The Department, with the approval of the Board, has chosen to follow that recommendation.

Subsection (b). Required for attendance.

This subsection is substantially the same as current subsection (a). The Department is proposing some changes to this subsection as well as repositioning it. Subsection (b) would make clear that a child in school in this Commonwealth who has not received immunizations as listed in subsection (a), for whatever reason, would be required to receive the immunizations listed in subsection (b) as a condition of continued attendance.

As in proposed subsection (a), the Department is proposing to add language permitting laboratory proof of hepatitis B in lieu of a vaccination. The Department is

also proposing not to retain language recommending the use of the combined DTP vaccine and the combined MMRII vaccine.

Subsection (c). Required for entry into the seventh grade.

This subsection is new. The Department is proposing to delete the current text of subsection (c) as unnecessary. Subsection (c) currently requires that two doses of the measles (rubeola) immunization be an all-grades requirement beginning in the school year 2000—2001. The requirement for this immunization would be included in subsections (a) and (b).

Subsection (c), as amended, would require that three properly spaced doses of the hepatitis B vaccine be given upon entry into the seventh grade or, in a nongraded system, at the time a child is 12 years of age if the child did not previously receive the immunization. Hepatitis B is also a serious and highly contagious disease. Section 3 of the Newborn Child Testing Act (35 P. S. § 623) requires vaccination for the disease at school entry. Section 2 of that law (35 P. S. § 622) also requires the Department to implement a program of hepatitis B prevention through immunization of children. The MMWR for November 22, 1996, reported that in the United States, most persons with hepatitis B contracted the virus as young adults or adolescents. In that November MMWR, ACIP recommended that adolescents at 11 and 12 years of age, who have not been previously vaccinated for the virus, should be vaccinated against hepatitis B. Based on this recommendation, the Department, with the approval of the Board, is proposing to expand its regulation to require the hepatitis B vaccination in the seventh grade, or, in an ungraded class, in the year in which the child is 12 years of age, as part of its hepatitis B prevention program.

Subsection (c) would also require that the chickenpox (varicella) vaccination be given to children in the seventh grade, or, in an ungraded class, in the year in which the child is 12 years of age, if the child has not already acquired immunity. This proposal is based upon ACIP recommendations, and has the approval of the Board. Subsection (c)(2)(i) and (ii) would set out proper dosages for different age groups. As in subsection (a)(8)(i), subsection (c)(2)(iii) would accept a history of chickenpox immunity proved by laboratory testing, or would allow a parent, guardian or physician to provide a statement of history of chickenpox disease, in lieu of the immunization. Subsection (c)(2)(iii) would also permit an emancipated child to provide this statement.

C. *Affected Persons*

This proposed amendment would affect children entering school for the first time in kindergarten or first grade in this Commonwealth, and those children attending school in this Commonwealth who have not yet been vaccinated for hepatitis B or chickenpox (varicella). The proposed amendment would also affect their parents or guardians. The proposed amendment would also affect school districts and their employes, since school districts are required to ensure that children attending school have the appropriate vaccinations. To the extent that physicians would be requested by parents and guardians to provide vaccination histories or other proof of vaccination, physicians would also be affected tangentially.

D. *Cost and Paperwork Estimate*

Cost

Commonwealth

The Commonwealth would incur some costs for the purchase and administration of the additional vaccines. The savings, however, in terms of the amount of funds that would not be needed to coordinate disease outbreak investigations and control measures, would outweigh the additional program and vaccine costs.

Local Government

There would be no additional cost to local governments. Local governments should see some cost savings from the prevention of disease outbreaks, since local governments do bear some of the cost of disease outbreak investigations and control measures.

Regulated Community

Families whose children's vaccinations are covered by their insurance plans (public or private) under State law should not see any out-of-pocket cost for the vaccinations. Families whose insurance plans do not cover these vaccinations, or who do not have insurance, will need to seek other assistance to pay for vaccinations, or pay out-of-pocket. In general, there is other assistance provided for vaccinations from the Department, if no third-party payer is available. The Department provides vaccinations either free of charge, or charges a fee based on a sliding fee scale according to the family's income. The savings in prevention of childhood illness would outweigh the minimal cost of the vaccine.

School districts already have mechanisms in place for determining whether or not children have been appropriately immunized, and taking action based on that determination. This proposed amendment would add two additional immunizations to review, which should not add to the current cost of ensuring immunizations are up to date. Again, the savings in prevention of an outbreak of a childhood illness in a school district should outweigh the minimal cost in staff time to review two additional immunizations.

General Public

The general public should not see an increase in cost.

Paperwork Estimates

Commonwealth and the Regulated Community

There would be minimal additional paperwork requirements for the Commonwealth and the regulated community. The requirement that school districts report the number of immunizations is already in place. The proposed amendment would merely add two additional immunization requirements to the current list of required immunizations.

Although physicians could be requested by a parent or guardian to provide an immunization history for varicella, the Department would not be mandating that physicians provide an immunization history. The proposed amendment merely states that the Department would accept this history in lieu of the actual vaccination requirement.

Parents and guardians would need to present information relating to varicella immunity when children enter school for the first time in this Commonwealth in kindergarten or the first grade. Parents, guardians and emancipated children would need to present information relating to hepatitis B immunity when entering the seventh grade.

Local Government

There is no additional paperwork requirement for local government.

General Public

There is no additional paperwork requirement for the general public.

E. *Statutory Authority*

The Department obtains its authority to promulgate regulations relating to immunizations in schools from several sources. Generally, the Disease Prevention and Control Law (35 P. S. §§ 521.1—521.21) (act) provides the Board with the authority to issue rules and regulations on a variety of issues relating to communicable and noncommunicable diseases, including what control measures are to be taken with respect to which diseases, provisions for the enforcement of control measures, requirements concerning immunization and vaccination of persons and animals, and requirements for the prevention and control of disease in public and private schools. Section 16(b) of the act (35 P. S. § 521.16(b)) gives the Secretary of Health (Secretary) the authority to review existing regulations and make recommendations to the Board for changes the Secretary considers to be desirable.

The Department also finds general authority for the promulgation of its regulations in section 2102(g) of The Administrative Code of 1929 (71 P. S. § 532(g)), which gives the Department this general authority. Section 2111(b) of The Administrative Code of 1929 (71 P. S. § 541(b)) provides the Board with additional authority to promulgate regulations deemed by the Board to be necessary for the prevention of disease, and for the protection of the lives and the health of the people of this Commonwealth. That section further provides that the regulations of the Board shall become the regulations of the Department.

The Department's specific authority for promulgating regulations relating to school immunizations is found in The Administrative Code of 1929 and in the Public School Code of 1949 (24 P. S. §§ 1-101). Section 2111(c.1) of The Administrative Code of 1929 (71 P. S. § 541(c.1)) provides the Board with the authority to make and revise a list of communicable diseases against which children are required to be immunized as a condition of attendance at any public, private or parochial school, including kindergarten. The section requires the Secretary to promulgate the list, along with any rules and regulations necessary to insure the immunizations are timely, effective and properly verified.

Section 1303a of the Public School Code of 1949 (24 P. S. § 13-1303a) provides that the Board will make and review a list of diseases against which children must be immunized, as the Secretary may direct, before being admitted to school for the first time. The section provides that the school directors, superintendents, principals or other persons in charge of any public, private, parochial or other school including kindergarten, shall ascertain whether the immunization has occurred, and certificates of immunization will be issued in accordance with rules and regulations promulgated by the Secretary with the sanction and advice of the Board.

The Hepatitis Prevention Act (35 P. S. §§ 630.1—630.3) provides the Department with authority to implement a program for the prevention of hepatitis B through immunization of children consistent with ACIP's recommendations. (See 35 P. S. § 630.2).

F. *Effectiveness/Sunset Dates*

The proposed amendment will become effective upon final publication in the *Pennsylvania Bulletin*. No sunset date has been established. The Department will continually review and monitor the effectiveness of this regulation.

G. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 23, 2000, the Department submitted a copy of this proposed amendment to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Health and Human Services Committee and the Senate Public Health and Welfare Committee. In addition to submitting the proposed amendment, the Department has provided IRRC and the Committees with a copy of a 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.

If IRRC has objections to any portion of the proposed amendment, 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 regulation by the Department, the General Assembly and the Governor, of objections raised.

H. *Contact Person*

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed amendment to Alice Gray, Director, Division of Immunization, Department of Health, P. O. Box 90, Harrisburg, PA 17108, (717) 787-5681, within 30 days after publication of this notice in the *Pennsylvania Bulletin*. Persons with a disability who wish to submit comments, suggestions or objections regarding the proposed amendment may do so by using V/TT (717) 783-6514 for speech or hearing impaired persons or the Pennsylvania AT&T Relay Service at (800) 654-5984[TT]. Persons who require an alternative format of this document may contact Ms. Gray so that necessary arrangements may be made.

ROBERT S. ZIMMERMAN, Jr.,
Secretary

Fiscal Note: 10-162. No fiscal impact; (8) recommends adoption. Funding for the childhood immunization program comes from the Federal government in the form of a grant. Funding is available to serve children receiving publicly funded vaccines from the Department of Health. The Department of Public Welfare through its Medical Assistance program is currently providing coverage for immunizations established by the Advisory Committee on Immunization Practices which include the Hepatitis B and chicken pox vaccinations.

Annex A

TITLE 28. HEALTH AND SAFETY

PART III. PREVENTION OF DISEASES

CHAPTER 23. SCHOOL HEALTH

Subchapter C. IMMUNIZATION

§ 23.83. Immunization requirements.

(a) **[** ***Required for attendance.*** **The following immunizations are required as a condition of attendance at school in this Commonwealth.**

(1) ***Diphtheria.*** **Three or more properly spaced doses of diphtheria toxoid, which may be administered as a single antigen vaccine, in combination**

with tetanus toxoid or in combination with tetanus toxoid and pertussis vaccine. The Department recommends the combined DTP vaccine for children under 7 years of age.

(2) *Tetanus.* Three or more properly spaced doses of tetanus toxoid, which may be administered as a single antigen vaccine, in combination with diphtheria toxoid or in combination with diphtheria toxoid and pertussis vaccine. The Department recommends the combined DTP vaccine for children under 7 years of age.

(3) *Poliomyelitis.* Three or more properly spaced doses of either oral polio vaccine or enhanced inactivated polio vaccine, but if a child received any doses of inactivated polio vaccine prior to 1988, a fourth dose of inactivated polio vaccine is required.

(4) *Measles (rubeola).* One dose of live attenuated measles vaccine administered at 12 months of age or older or a history of measles immunity proved by serological evidence showing antibody to measles determined by the hemagglutination inhibition test or a comparable test. Measles vaccine may be administered as a single antigen vaccine. The Department recommends the combined MMRII vaccine.

(5) *German measles (rubella).* One dose of live attenuated rubella vaccine administered at 12 months of age or older or a history of rubella immunity proved by serological evidence showing antibody to rubella determined by the hemagglutination inhibition test or a comparable test. Rubella vaccine may be administered as a single antigen vaccine. The Department recommends the combined MMRII vaccine.

(6) *Mumps.* One dose of attenuated mumps vaccine administered at 12 months of age or older or a physician diagnosis of mumps disease indicated by a written record signed by the physician or the physician's designee. Mumps vaccine may be administered as a single antigen vaccine. The Department recommends the combined MMRII vaccine.] *Required for entry.* The following immunizations are required for entry into school for the first time at the kindergarten or first grade level, at a public, private or parochial school in this Commonwealth, including special education and home education programs.

(1) *Hepatitis B.* Three properly-spaced doses of hepatitis B vaccine or a history of hepatitis B immunity proved by laboratory testing.

(2) *Diphtheria.* Four or more properly-spaced doses of diphtheria toxoid, which may be administered as a single antigen vaccine, in combination with tetanus toxoid or in combination with tetanus toxoid and pertussis vaccine. One dose shall be administered on or after the 4th birthday.

(3) *Tetanus.* Four or more properly-spaced doses of tetanus toxoid, which may be administered as a single antigen vaccine, in combination with diphtheria toxoid or in combination with diphtheria toxoid and pertussis vaccine. One dose shall be administered on or after the 4th birthday.

(4) *Poliomyelitis.* Three or more properly-spaced doses of a combination of oral polio vaccine or enhanced inactivated polio vaccine.

(5) *Measles (rubeola).* Two properly-spaced doses of live attenuated measles vaccine, the first dose administered at 12 months of age or older, or a history of measles immunity proved by serological evidence showing antibody to measles as determined by the hemagglutination inhibition test or a comparable test. Each dose of measles vaccine may be administered as a single antigen vaccine.

(6) *German measles (rubella).* One dose of live attenuated rubella vaccine, administered at 12 months of age or older or a history of rubella immunity proved by serological evidence showing antibody to rubella determined by the hemagglutination inhibition test or a comparable test. Rubella vaccine may be administered as a single antigen vaccine.

(7) *Mumps.* One dose of live attenuated mumps vaccine, administered at 12 months of age or older or a physician diagnosis of mumps disease indicated by a written record signed by the physician or the physician's designee. Mumps vaccine may be administered as a single antigen vaccine.

(8) *Chickenpox (varicella).* One of the following:

(i) One dose of varicella vaccine, administered at 12 months of age or older.

(ii) A history of chickenpox immunity proved by laboratory testing or a written statement of history of chickenpox disease from a parent, guardian or physician.

(b) [*Required for entry.* The following immunizations are required for entry into school for the first time at the kindergarten or first grade level, at any public, private or parochial school, including special education and home education programs.

(1) *Hepatitis B.* Three properly-spaced doses of hepatitis B vaccine.

(2) *Diphtheria.* Four or more properly-spaced doses of diphtheria toxoid, which may be administered as a single antigen vaccine, in combination with tetanus toxoid or in combination with tetanus toxoid and pertussis vaccine. The Department recommends the combined DTP vaccine. One dose shall be administered on or after the 4th birthday.

(3) *Tetanus.* Four or more properly-spaced doses of tetanus toxoid, which may be administered as a single antigen vaccine, in combination with diphtheria toxoid or in combination with diphtheria toxoid and pertussis vaccine. The Department recommends the combined DTP vaccine. One dose shall be administered on or after the 4th birthday.

(4) *Poliomyelitis.* Three or more properly-spaced doses of any combination of oral polio vaccine or enhanced inactivated polio vaccine.

(5) *Measles (rubeola).* Two properly-spaced doses of live attenuated measles vaccine, the first dose administered at 12 months of age or older, or a history of measles immunity proved by serological evidence showing antibody to measles as determined by the hemagglutination inhibition test or a comparable test. Each dose of measles vaccine may be administered as a single antigen vaccine. The Department recommends the combined MMRII vaccine.] *Required for attendance.* The following immunizations are required as a condition of attendance at school in this Commonwealth if the child

has not received the immunizations required for school entry listed in subsection (a):

(1) *Diphtheria*. Three or more properly spaced doses of diphtheria toxoid, which may be administered as a single antigen vaccine, in combination with tetanus toxoid or in combination with tetanus toxoid and pertussis vaccine.

(2) *Tetanus*. Three or more properly spaced doses of tetanus toxoid, which may be administered as a single antigen vaccine, in combination with diphtheria toxoid or in combination with diphtheria toxoid and pertussis vaccine.

(3) *Poliomyelitis*. Three or more properly spaced doses of either oral polio vaccine or enhanced inactivated polio vaccine, but if a child received any doses of inactivated polio vaccine administered prior to 1988, a fourth dose of inactivated polio vaccine is required.

(4) *Measles (rubeola)*. Two properly spaced doses of live attenuated measles vaccine, administered at 12 months of age or older or a history of measles immunity proved by serological evidence showing antibody to measles determined by the hemagglutination inhibition test or a comparable test. Each dose of measles vaccine may be administered as a single antigen vaccine.

(5) *German measles (rubella)*. One dose of live attenuated rubella vaccine, administered at 12 months of age or older or a history of rubella immunity proved by serological evidence showing antibody to rubella determined by the hemagglutination inhibition test or any comparable test. Rubella vaccine may be administered as a single antigen vaccine.

(6) *Mumps*. One dose of live attenuated mumps vaccine, administered at 12 months of age or older or a physician diagnosis of mumps disease indicated by a written record signed by the physician or the physician's designee. Mumps vaccine may be administered as a single antigen vaccine.

(c) **[*Required for the school year 2000/2001*. The following immunization shall be an all-grades requirement at the beginning of the 2000/2001 school year (August/September 2000) for attendance at school in this Commonwealth:**

***Measles (rubeola)*. Two properly-spaced doses of attenuated measles vaccine, the first dose administered at 12 months of age or older, or a history of measles immunity, proved by serological evidence showing antibody to measles as determined by the hemagglutination inhibition test or a comparable test. Each dose of measles vaccine may be administered as single antigen. The Department recommends the combined MMRII vaccine.] *Required for entry into 7th grade*. In addition to the immunizations listed in subsection (b), the following immunizations are required at any public, private, parochial or vocational school in this Commonwealth, including special education and home education programs, as a condition of entry for students entering the seventh grade; or, in an ungraded class, for students in the school year that the student is 12 years of age:**

(1) *Hepatitis B*. Three properly-spaced doses of hepatitis B vaccine or a history of hepatitis B immunity proved by laboratory testing.

(2) *Chickenpox (varicella)*. One of the following:

(i) One dose of varicella vaccine, administered at 12 months of age or older.

(ii) Two properly-spaced doses of varicella vaccine for children 13 years of age and older.

(iii) A history of chickenpox immunity proved by laboratory testing, or a written statement of history of chickenpox disease from the parent, guardian, emancipated child or physician.

[Pa.B. Doc. No. 00-1502. Filed for public inspection September 1, 2000, 9:00 a.m.]

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 109]

Disinfectants and Disinfection Byproducts

The Environmental Quality Board (Board) proposes to amend Chapter 109 (relating to safe drinking water). The proposed amendments will establish maximum residual disinfectant levels (MRDLs) and monitoring requirements for free chlorine, combined chlorine and chlorine dioxide. Maximum contaminant levels (MCLs) and monitoring requirements will be established for five haloacetic acids, chlorite and bromate. The MCL for total trihalomethanes will be lowered. The proposed amendments will also establish prefiltration treatment techniques for public water systems that use conventional filtration to reduce source water total organic carbon (TOC), which serves as a precursor to disinfection byproducts.

The proposal was adopted by the Board at its meeting of July 18, 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 Jeffrey A. Gordon, Acting Chief, Division of Drinking Water Management, P. O. Box 8467, Rachel Carson State Office Building, Harrisburg, PA 17105-8467, (717) 772-4018 or Pamela Bishop, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposal is available electronically through the Department of Environmental Protection's (Department) web site (http://www.dep.state.pa.us).

C. *Statutory Authority*

The proposed rulemaking is being made under the authority of section 4 of the Pennsylvania Safe Drinking Water Act (35 P. S. § 721.4), which grants the Board the authority to adopt rules and regulations governing the provision of drinking water to the public, and sections 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 510-7 and 510-20).

D. *Background and Purpose*

The public health benefits of disinfection are significant and well-recognized. However, these very disinfection practices pose health risks of their own. Although disinfectants such as chlorine, hypochlorites and chlorine dioxide are effective in controlling many harmful microorganisms, they react with organic and inorganic matter in the water to form disinfection byproducts (DBPs), which pose health risks at certain levels.

The first DBPs discovered in public drinking water were halogenated methanes in 1974. As a result, the United States Environmental Protection Agency (EPA) promulgated an MCL for the composite sum of four individual DBP species: chloroform, bromodichloromethane, dibromochloromethane and bromoform. This composite sum was termed "Total Trihalomethanes" (TTHMs) and had an MCL of 0.1 mg/L which was applied only to community water systems serving at least 10,000 people. This MCL is currently in effect today.

Since the discovery of TTHMs in drinking water in 1974, other DBPs have been identified and studied for their health effects. Many of these studies have shown DBPs to be carcinogenic or to cause reproductive or developmental effects, or both, in laboratory animals. Studies have also shown that high levels of the disinfectants themselves may cause health problems over long periods of time, including damage to both the blood and the kidneys. While many of these studies have been conducted at high doses, the weight of the evidence indicates that DBPs present a potential public health problem that must be addressed.

In 1992, the EPA initiated a rulemaking process to address public health concerns associated with disinfectants, DBPs and microbial pathogens. As part of this rulemaking process, the EPA established a Regulatory Negotiation (Reg/Neg) Committee which included representatives of state and local health and regulatory agencies, public water systems, elected officials, consumer groups and environmental groups.

The EPA's most significant concern in developing regulations for disinfectants and DBPs was the need to ensure that adequate treatment be maintained for controlling risks from microbial pathogens. One of the major goals addressed in the rulemaking process was to develop an approach that would reduce the level of exposure from disinfectants and DBPs without undermining the control of microbial pathogens. The intention was to ensure that drinking water is microbiologically safe at the limits set for disinfectants and DBPs and that these chemicals do not pose an unacceptable health risk at these limits. Thus, the Reg/Neg Committee also considered a range of microbial issues and agreed that the EPA should also propose a companion microbial rule, the *Interim Enhanced Surface Water Treatment Rule* (IESWTR).

Following months of intensive discussions and technical analysis, the Reg/Neg Committee recommended the development of three sets of rules: a two-stage rule to address disinfectants and DBPs (D/DBPs), the IESWTR and an *Information Collection Rule* (ICR). The approach used in developing these proposals considered the constraints of simultaneously treating water to control microbial contaminants, disinfectants and DBPs. The Reg/Neg Committee agreed that the schedule for the IESWTR should be linked to the schedule of the first stage of the D/DBP rule to assure simultaneous compliance and a balanced risk-risk based implementation. The Reg/Neg Committee also agreed that additional information on health risk, occurrence, treatment technologies and analytical methods needed to be developed to better understand the risk-risk tradeoff, and how to accomplish an overall reduction in health risks to both pathogens and D/DBPs. Finally, the Reg/Neg Committee agreed that to develop a reasonable set of rules and to understand more fully the limitations of the current *Surface Water Treatment Rule*, additional field data were critical. Thus, a key component of the regulation negotiation agreement was the promulgation of the ICR.

The *Federal Disinfectants and Disinfection Byproducts Rule* (D/DBPR) (40 CFR Parts 9, 141 and 142), which was promulgated on December 16, 1998, was developed based on the outcome of this rulemaking process, as well as a wide range of technical comments from stakeholders and members of the public. The D/DBPR is intended to regulate treatment practices at public water systems to eliminate or minimize disinfectant levels and disinfection byproducts that may cause harmful health effects. The D/DBPR is applicable to all community and nontransient noncommunity water systems that use a chemical disinfectant or oxidant, as well as to all transient noncommunity water systems that use chlorine dioxide. The D/DBPR will establish MRDLs for free chlorine, combined chlorine and chlorine dioxide. MCLs will also be established for five haloacetic acids, chlorite and bromate. The current MCL for TTHMs will be lowered from 0.1 mg/L to 0.08 mg/L and will be applied to all community and nontransient noncommunity water systems, regardless of the population that is served. The D/DBPR will also regulate prefiltration treatment techniques for public water systems that use conventional filtration to reduce source water TOC, which serves as a precursor to disinfection byproducts.

On April 14, 2000, the EPA proposed corrective amendments to both the D/DBPR and IESWTR. These corrective amendments are minor in nature (for example, change in compliance date from December 17, 2001, to January 1, 2002) and are, as of the date of this writing, still in the proposed stage of rulemaking. For the purposes of this proposed rulemaking, the Department assumes that all of the proposed Federal corrective amendments will ultimately be adopted as final amendments. When the final Federal corrective amendments are promulgated, those final changes will be taken into consideration in connection with final adoption of this proposed rulemaking.

Other Federal rules will be promulgated in the future as a follow-up to both the D/DBPR and the IESWTR. These rules will be the *Stage 2 D/DBPR, Long Term 1 Enhanced Surface Water Treatment Rule* (LT1), *Long Term 2 Enhanced Surface Water Treatment Rule* (LT2) and *Filter Backwash Rule* (FBR). The LT1 and FBR rules are expected in 2001. The LT2 and Stage 2 D/DBPR rules are expected in 2002.

The Board proposes to incorporate both the Federal D/DBPR and the proposed Federal corrective amendments into Chapter 109. The rulemaking is necessary for the Commonwealth to retain primacy under the Federal Safe Drinking Water Act. See 35 P. S. §§ 721.2(a)(3) and 721.5(a) and 42 U.S.C.A. § 300g-2a.

The draft proposed amendments were submitted for review to the Water Resources Advisory Committee (WRAC) on February 9, 2000. Comments were received from the WRAC on March 21, 2000.

The WRAC adopted a comment from the Philadelphia Water Department (PWD) concerning the treatment techniques for DBP precursors found in 40 CFR 141.135

(relating to treatment technique for control of disinfection byproduct (DBP) precursors). The PWD was concerned that, during months when the "alternate" criteria of 40 CFR 141.135(c)(2) were met, the monthly "compliance" factors as per the same section would not be used in the compliance calculation defined in 40 CFR 141.135(c)(1).

The reason for this concern was that the PWD was not aware that 40 CFR 141.135(c) was referenced in § 109.202(g)(1). By not noting this reference, the PWD assumed that the quarterly compliance calculation of the running annual average in § 109.202(g)(2)(ii) was the same procedure applicable to systems doing enhanced coagulation or softening under 40 CFR 141.135(c). This procedure, however, makes no use of the monthly "compliance" factors that are specified in 40 CFR 141.135(c)(2). Hence, the PWD became concerned that the perceived omission of monthly "compliance" factors could cause more violations (under 40 CFR 141.135(c)(2) for systems doing enhanced coagulation or softening) than would be incurred with the use of the monthly "compliance" factors. This issue was later discussed with the PWD and clarified to the PWD's satisfaction. Accordingly, there is no change to the proposed amendments.

The draft proposed amendments were submitted to the Small Water Systems Technical Assistance Center Advisory Board (TAC) for review and discussion on March 23, 2000. Comments were received from the TAC on April 19, 2000. The TAC had no specific comments that would change the proposed amendments.

E. *Summary of Regulatory Requirements*

The proposed amendments reflect, and are no more stringent than, both the new Federal D/DBPR requirements and the proposed Federal corrective amendments. In addition to the following proposed amendments described, numerous sections have been amended to add MRDL references.

1. *§ 109.1. Definitions.*

This section was amended to add the following EPA definitions: enhanced coagulation, enhanced softening, Groundwater Under the Direct Influence of Surface Water (GUDI), haloacetic acids (HAA5), maximum residual disinfectant level (MRDL), SUVA, total organic carbon (TOC) amd TTHM. The definitions of surface water and National Primary Drinking Water Regulations were also amended. These amendments reflect the new definitions of the Federal D/DBPR found in 40 CFR 141.2.

2. *§ 109.202(a)(3). Primary MCLs.*

This new paragraph was added to incorporate the EPA's new requirements for obtaining an extension for compliance with the disinfection byproducts MCLs. This amendment reflects the Federal requirement found in 40 CFR 141.64(b)(2) (relating to maximum contaminant levels for disinfection byproducts).

3. *§ 109.202(f). MRDLs.*

This new subsection was added to incorporate the EPA's new MRDLs by reference. This amendment reflects the Federal requirement found in 40 CFR 141.65 (relating to maximum residual disinfectant levels).

4. *§ 109.202(g). Treatment technique requirements for disinfection byproduct precursors.*

This new subsection was added to incorporate the EPA's new total organic carbon removal requirements. This amendment reflects the Federal requirement found in 40 CFR 141.135.

5. *§ 109.301(8)(vi). Monitoring requirements for public water systems that obtain finished water from another public water system.*

This new subparagraph was added to incorporate the EPA's requirement that the Federal D/DBPR be applied to all consecutive community and nontransient noncommunity water systems that serve water that contains a chemical disinfectant or oxidant. This amendment reflects the Federal requirement found in 40 CFR 141.130(a)(1) (relating to general requirements).

6. *§ 109.301(12). Monitoring requirements for disinfection byproducts and disinfection byproduct precursors.*

This new paragraph was added to incorporate the EPA's new monitoring requirements for disinfection byproducts and total organic carbon. This amendment reflects the Federal requirements found in 40 CFR 141.132(a), (b) and (d) (relating to monitoring requirements).

7. *§ 109.301(13). Monitoring requirements for disinfectant residuals.*

This new paragraph was added to incorporate the EPA's new monitoring requirements for disinfectant residuals. This amendment reflects the Federal requirement found in 40 CFR 141.132(c).

8. *§ 109.401. General public notification requirements.*

This section was amended to add the EPA's acute violations for chlorine dioxide. This amendment reflects the Federal requirement found in 40 CFR 141.133(c)(2)(i) (relating to compliance requirements).

9. *§ 109.403(d). Description and content of notice.*

This new subsection was added to incorporate the EPA's new public notification requirements for total trihalomethanes. This amendment reflects the Federal requirement found in 40 CFR 141.154(e) (relating to required additional health information).

10. *§ 109.701(a)(8). Reporting requirements for disinfectant residuals.*

This new paragraph was added to incorporate the EPA's new disinfectant reporting requirements. This amendment reflects the Federal requirement found in 40 CFR 141.134(c) (relating to reporting and recordkeeping requirements).

11. *§ 109.701(a)(9). Reporting requirements for disinfection byproducts.*

This new paragraph was added to incorporate the EPA's new disinfection byproduct reporting requirements. This amendment reflects the Federal requirement found in 40 CFR 141.134(b).

12. *§ 109.701(a)(10). Reporting requirements for disinfection byproduct precursors.*

This new paragraph was added to incorporate the EPA's new reporting requirements for total organic carbon. This amendment reflects the Federal requirement found in 40 CFR 141.134(d).

13. *§ 109.701(e). Monitoring plans for disinfectants, disinfection byproducts and disinfection byproduct precursors.*

This new subsection was added to incorporate the EPA's new requirements for monitoring plans pertaining to disinfectants, disinfection byproducts and total organic carbon. This amendment reflects the Federal requirement found in 40 CFR 141.132(f).

14. *§ 109.704(c). Operator certification.*

This new subsection was added to incorporate the EPA's new requirements for nontransient noncommunity operator qualifications. Specifically, this subsection requires that nontransient noncommunity water systems that provide water that contains a chemical disinfectant must be operated by qualified operators. This subsection closely parallels current language in § 109.1107(c)(2) in that it will provide for a 3-year phase-in period for having a qualified operator, establishes certification under the Sewage Treatment Plant and Waterworks Operators' Certification Act (63 P. S. §§ 1001—1015) as the criteria for being qualified, and establishes a minimum certification level of disinfection only, according to § 303.2 (relating to waterworks operators certificates). This amendment reflects the Federal requirement found in 40 CFR 141.130(c).

15. *§ 109.710(c). Disinfectant residual in the distribution system.*

This new subsection was added to incorporate the EPA's new conditions for obtaining a temporary exemption from compliance with both the chlorine and chloramines MRDLs. This amendment reflects the Federal requirement found in 40 CFR 141.130(d).

16. *§ 109.805. Certification procedure.*

This section was amended to update the EPA references in subsection (b) and to incorporate the EPA's new annual proficiency testing requirement for certified drinking water laboratories. This amendment reflects the Federal requirement found in 40 CFR 141.131(b)(2) (relating to analytical requirements).

17. *§ 109.1003(a)(1)(viii). Monitoring requirements.*

This new subparagraph was added to incorporate the EPA's new bromate monitoring requirements for bottled water systems. This amendment reflects the Federal requirement found in 40 CFR 141.132(b)(3).

F. *Benefits, Costs and Compliance*

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

Benefits

The public health benefits of disinfection practices are significant and well-recognized. Disinfection, however, poses its own health risks. The proposed amendments will implement standards that will either minimize or eliminate harmful disinfectant levels and disinfection byproducts in public water systems.

The proposed amendments will affect 2,565 public water systems that serve a total population of over 10.4 million Pennsylvanians. These 10.4 million people will benefit from a reduction in health risks associated with disinfection practices, such as bladder cancer and kidney damage.

The EPA has estimated that the Nation may realize a total annual benefit of up to $4 billion as a result of avoiding up to 2,232 cases of bladder cancer per year. In this Commonwealth, this translates into a total annual benefit of up to $175 million in avoiding up to 98 cases of bladder cancer per year.

Compliance Costs

The EPA has estimated that a total annual cost of almost $684 million will be borne by the regulated community, Nationwide, as a result of this rule. It is estimated that water systems in this Commonwealth will bear over $23 million of this total annual cost.

The $23 million estimate will include up-front capital costs associated with process modifications. These process modifications may involve the dose or type of disinfectant chemical, the process locations of disinfectant addition, technologies or treatment techniques that reduce source water TOC, technologies or treatment techniques that remove DBPs and new source development activities.

The $23 million estimate also includes ongoing costs associated with operations and maintenance. These costs will include maintenance activities of any new technologies or sources that are installed because of this rule. These costs will also include the routine compliance expenses of monitoring, reporting and recordkeeping.

Compliance Assistance Plan

The Safe Drinking Water Program utilizes the Commonwealth's PENNVEST Program to offer financial assistance to eligible public water systems. This assistance is in the form of a low-interest loan, with some augmenting grant funds for hardship cases. Eligibility is based upon factors such as public health impact, compliance necessity and project/operational affordability.

The Safe Drinking Water Program has established a network of regional and central office training staff that is responsive to identifiable training needs. The target audience in need of training may be either program staff or the regulated community.

In addition to this network of training staff, the Bureau of Water Supply Management has a division dedicated to providing both training and outreach support services to public water system operators. The Department's Internet site also contains the *Drinking Water & Wastewater Treatment System Operator Information Center* Internet site, which provides a bulletin board of timely, useful information for treatment plant operators.

Paperwork Requirements

The proposed amendments will require that water systems comply with two to four new contaminant standards, as well as with one to three new disinfectant residual standards. To comply with these standards, the water system will need to monitor and report these contaminants and disinfectant residuals. Water systems which treat with conventional filtration will also need to monitor and report total organic carbon, both in the source water and in the treated water.

It is anticipated that this additional monitoring and reporting will be easily facilitated by the addition of one or two new data reporting forms and that little additional paperwork will be necessary.

G. *Sunset Review*

These regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

H. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Department submitted a copy of the proposed amendments to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the Senate and House 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 which have not been met by that portion of the proposed amendments to which an objection is made. The Regulatory Review Act specifies detailed procedures for review by the Department, the Governor and the General Assembly of objections raised prior to final publication of the amendments.

I. *Public Comments*

Written Comments—Interested persons are invited to submit comments, suggestions or objection regarding the proposed amendments 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 17105-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by October 2, 2000 (within 30 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 October 2, 2000 (within 30 days of 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 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 October 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.

JAMES M. SEIF,
Chairperson

Fiscal Note: (1) General Fund; (2) Implementing Year 2000-01 is $585,000; (3) 1st Succeeding Year 2001-02 is $585,000; 2nd Succeeding Year 2002-03 is $585,000; 3rd Succeeding Year 2003-04 is $585,000; 4th Succeeding Year 2004-05 is $585,000; 5th Succeeding Year 2005-06 is $585,000;

	Environmental Program Management	*Environmental Protection Operations*
(4) Fiscal Year 1999-00	$40,200,000	$71,402,000
Fiscal Year 1998-99	$33,123,000	$70,083,000
Fiscal Year 1997-98	$31,139,000	$64,093,000;

(7) Environmental Program Management/Environmental Protection Operation; (8) recommends adoption. The costs will be covered from these two appropriations. An estimated 85% of the costs should be reimbursed by the Federal government.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE II. WATER RESOURCES

CHAPTER 109. SAFE DRINKING WATER

Subchapter A. GENERAL PROVISIONS

§ 109.1. Definitions.

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

* * * * *

***Enhanced coagulation*—The addition of sufficient coagulant for improved removal of disinfection byproduct precursors by conventional filtration treatment.**

***Enhanced softening*—The improved removal of disinfection byproduct precursors by precipitative softening.**

* * * * *

***GUDI—Groundwater Under the Direct Influence of Surface Water*—Any water beneath the surface of the ground with the presence of insects or other macroorganisms, algae, organic debris or large diameter pathogens such as *Giardia lamblia* and *Cryptosporidium*, or significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity or pH which closely correlate to climatological or surface water conditions. The term does not include finished water.**

***HAA5—Haloacetic acids (five)*—The sum of the concentrations in milligrams per liter of the haloacetic compounds (monochloroacetic acid, dichloroacetic acid, trichloroacetic acid, monobromoacetic acid and dibromoacetic acid), rounded to two significant figures after addition.**

* * * * *

***MRDL—Maximum Residual Disinfectant Level*—The maximum permissible level of a disinfectant added for water treatment that may not be exceeded at the consumer's tap without an unacceptable possibility of adverse health effects.**

* * * * *

National Primary Drinking Water Regulations—Primary drinking water regulations and implementation regulations promulgated by the Administrator under the Federal act at 40 CFR **[141.1—141.42 and 142.1—142.55] Parts 141 and 142 (relating to National Primary Drinking Water Regulations; and National Primary Drinking Water Regulations Implementation)**. The term includes interim, revised and final regulations.

* * * * *

***SUVA—Specific Ultraviolet Absorption at 254 Nanometers (NM)*—An indicator of the humic content of water. It is a calculated parameter obtained by dividing a sample's ultraviolet absorption at a wavelength of 254 nm (UV_{254}) (in m^{-1}) by its concentration of dissolved organic carbon (DOC) (in mg/L).**

* * * * *

Surface water—Water open to the atmosphere or subject to surface runoff **[, or water directly influenced by surface water, which may include springs, infiltration galleries, cribs or wells]**. The term does not include finished water. **[Water is directly influenced by surface water when the aquifer is configured to allow the passage of pathogenic protozoans, subjecting the source to contamination by the protozoans. Direct influence may be determined on a case-by-case basis and may be determined by one or both of the following:**

(i) Significant and relatively rapid shifts in water characteristics, such as turbidity, temperature, conductivity or pH (which may also change in groundwater but at a much slower rate) which closely correlate to climatologic or surface water conditions.

(ii) The presence of insects or other macroorganisms, algae, organic debris or large-diameter protozoans such as Giardia lamblia.]

* * * * *

***TOC—Total Organic Carbon*—The total organic carbon in mg/L measured using heat, oxygen, ultraviolet irradiation, chemical oxidants or combinations of these oxidants that convert organic carbon to carbon dioxide, rounded to two significant figures.**

***TTHM*—Total trihalomethanes.**

* * * * *

Subchapter B. MCLS**, MRDLS** OR TREATMENT TECHNIQUE REQUIREMENTS

§ 109.202. State MCLs**, MRDLs** and treatment technique requirements.

(a) *Primary MCLs.*

* * * * *

(3) A public water system that is installing granular activated carbon or membrane technology to comply with the MCL for TTHMs, HAA5, chlorite (where applicable) or bromate (where applicable) may apply to the Department for an extension of up to 24 months past the applicable compliance date specified in the Federal regulations. but not beyond December 31, 2003. In granting the extension, the Department will set a schedule for compliance and may specify any interim measures that the Department deems necessary. Failure to meet the schedule or interim treatment requirements constitutes a violation of National Primary Drinking Water Regulations.

* * * * *

(f) *MRDLs.*

(1) A public water system shall supply drinking water that complies with the MRDLs adopted by the EQB under the act.

(2) This subchapter incorporates by reference the primary MRDLs in the National Primary Drinking Water Regulations, in 40 CFR Part 141, Subpart G (relating to maximum contaminant levels and maximum residual disinfectant levels) as state MRDLs, under the authority of section 4 of the act (35 P. S. § 721.4), unless other MRDLs are established by regulations of the Department. The primary MRDLs which are incorporated by reference are effective on the date established by the Federal regulations.

(g) *Treatment technique requirements for disinfection byproduct precursors.*

(1) A public water system that uses either surface water or GUDI sources and that uses conventional filtration treatment shall provide adequate treatment to reliably control disinfection byproduct precursors in the source water. Enhanced coagulation and enhanced softening are deemed by the Department to be treatment techniques for the control of disinfection byproduct precursors in drinking water treatment and distribution systems. This subchapter incorporates by reference the treatment technique in 40 CFR 141.135 (relating to treatment technique for control of disinfection byproduct (DBP) precursors). Coagulants approved by the Department are deemed to be acceptable for the purpose of this treatment technique. This treatment technique is effective on the date established by the Federal regulations.

(2) The following requirements apply:

(i) Systems that use either surface water or GUDI sources and that use conventional filtration treatment shall operate with enhanced coagulation or enhanced softening to achieve the TOC percent removal levels specified in 40 CFR 141.135 unless the system meets at least one of the alternative compliance criteria listed in subparagraph (ii) or (iii).

(ii) Systems that use either surface water or GUDI sources that use conventional filtration treatment may use the alternative compliance criteria in clauses (A)—(F) to comply with this subsection in lieu of complying with subparagraph (i).

(A) The system's source water TOC level, measured in accordance with Subchapter C (relating to monitoring requirements), is less than 2.0 mg/L, calculated quarterly as a running annual average.

(B) The system's treated water TOC level, measured in accordance with Subchapter C, is less than 2.0 mg/L, calculated quarterly as a running annual average.

(C) The system's source water TOC level, measured in accordance with Subchapter C, is less than 4.0 mg/L, calculated quarterly as a running annual average; the source water alkalinity, measured in accordance with Subchapter C, is greater than 60 mg/L (as $CaCO_3$), calculated quarterly as a running annual average; and either the TTHM and HAA5 running annual averages are no greater than 0.040 mg/L and 0.030 mg/L, respectively, or prior to the effective date for compliance in subsection (a)(3), the system has made a clear and irrevocable financial commitment not later than the effective date for compliance to use technologies that will limit the levels of TTHMs and HAA5 to no more than 0.040 mg/L and 0.030 mg/L, respectively. Systems shall summit evidence of a clear and irrevocable financial commitment. In addition to a schedule containing milestones and periodic progress reports for installation and operation of appropriate technologies, to the Department for approval not later than the effective date for compliance. These technologies shall be installed and operating by June 30, 2005. Failure to install and operate these technologies by the date in the approved schedule

will constitute a violation of the National Primary Drinking Water Regulations.

(D) The TTHM and HAA5 running annual averages are no greater than 0.040 mg/L and 0.030 mg/L, respectively, and the system uses only chlorine for primary disinfection and maintenance of a residual in the distribution system.

(E) The system's source water SUVA, prior to any treatment and measured monthly in accordance with Subchapter C, is no greater than 2.0 L/mg-m, calculated quarterly as a running annual average.

(F) The system's finished water SUVA, measured monthly in accordance with Subchapter C, is less than or equal to 2.0 L/mg-m, calculated quarterly as a running annual average.

(iii) Systems practicing enhanced softening that cannot achieve the TOC removals required by subparagraph (i) may use the alternative compliance criteria in clauses (A) and (B) in lieu of complying with subparagraph (i).

(A) Softening that results in lowering the treated water alkalinity to less than 60 mg/L (as $CaCO_3$), measured monthly in accordance with Subchapter C and calculated quarterly as a running annual average.

(B) Softening that results in removing at least 10 mg/L of magnesium hardness (as $CaCO_3$), measured monthly and calculated quarterly as an annual running average.

§ 109.203. Unregulated contaminants.

The Department may by order establish **[a] an** MCL or treatment technique requirement on a case-by-case basis for a public water system in which an unregulated contaminant creates a health risk to the users of the public water system. An unregulated contaminant is one for which no MCL or treatment technique requirement has been established under § 109.202 (relating to State MCLs**, MRDLs** and treatment technique requirements).

Subchapter C. MONITORING REQUIREMENTS

§ 109.301. General monitoring requirements.

The monitoring **[and analytical]** requirements**[, including approved sampling procedures and analytical techniques,]** established by the EPA under the National Primary Drinking Water Regulations, 40 CFR Part 141 (relating to national primary drinking water regulations), as of December 8, 1984, are incorporated by reference. Public water suppliers shall monitor for compliance with MCLs **and MRDLs** in accordance with the requirements established in the National Primary Drinking Water Regulations, except as otherwise established by this chapter unless increased monitoring is required by the Department under § 109.302 (relating to special monitoring requirements). Alternative monitoring requirements may be established by the Department and may be implemented in lieu of monitoring requirements for a particular National Primary Drinking Water Regulation if the alternative monitoring requirements are in conformance with the Federal act and regulations. The monitoring requirements shall be applied as follows:

* * * * *

(2) *Performance monitoring for unfiltered surface water.* A public water supplier using unfiltered surface water sources shall conduct the following source water and performance monitoring requirements on an interim basis until filtration is provided, unless increased monitoring is required by the Department under § 109.302:

(i) Except as provided under subparagraphs (ii) and (iii), a public water supplier:

* * * * *

(D) Shall continuously monitor the residual disinfectant concentration required under § 109.202(c)(1)(iii) (relating to State MCLs, **MRDLs** and treatment technique requirements) of the water being supplied to the distribution system and record the lowest value for each day. If a public water system's continuous monitoring equipment fails, the public water supplier may, upon notification of the Department under § 109.402, substitute grab sampling every 4 hours in lieu of continuous monitoring. Grab sampling may not be substituted for continuous monitoring for longer than 5 days after the equipment fails.

* * * * *

(3) *Monitoring requirements for coliforms.* Public water systems shall determine the presence or absence of total coliforms for each routine or check sample; and, the presence or absence of fecal coliforms or E. coli for a total coliform positive sample in accordance with analytical techniques approved by the Department under § 109.304 (relating to analytical requirements). A system may forego fecal coliform or E. coli testing on a total coliform-positive sample if the system assumes that any total coliform-positive sample is also fecal coliform-positive. A system which chooses to forego fecal coliform or E. coli testing shall, under § 109.402(1), notify the Department within 1 hour of when the system is first notified of the total coliform-positive sample result.

(i) *Frequency.* Public water systems shall collect samples at regular time intervals throughout the monitoring period as specified in the system distribution sample siting plan under § 109.303(a)(2) (relating to sampling requirements). Systems which use groundwater and serve 4,900 persons or fewer, may collect all required samples on a single day if they are from different sampling sites in the distribution system.

* * * * *

(C) A public water system that uses a surface water source and does not practice filtration in compliance with Subchapter B (relating to MCLs**, MRDLs** or treatment technique requirements) shall collect at least one total coliform sample at the entry point, or an equivalent location as determined by the Department, to the distribution system within 24 hours of each day that the turbidity level in the source water, measured as specified in paragraph (2)(i)(B), exceeds 1.0 NTU. The Department may extend this 24-hour collection limit to a maximum of 72 hours if the system adequately demonstrates a logistical problem outside the system's control in having the sample analyzed within 30 hours of collection. A logistical problem outside the system's control may include a source water turbidity result exceeding 1.0 NTU over a holiday or weekend in which the services of a Department certified laboratory are not available within the prescribed sample holding time. These sample results shall be included in determining compliance with the MCL for total coliforms established under § 109.202(a)(2).

* * * * *

(8) *Monitoring requirements for public water systems that obtain finished water from another public water system.*

(i) Consecutive water suppliers shall monitor for compliance with the MCL for microbiological contaminants at the frequency established by the EPA and incorporated by reference into this chapter.

(ii) Community consecutive water suppliers shall:

(A) Monitor for compliance with the MCL for total trihalomethanes (TTHMs) **[at the frequency established by the EPA and incorporated by reference into this chapter] established under 40 CFR 141.12 (relating to maximum contaminant levels for total trihalomethanes) in accordance with the requirements of 40 CFR 141.30 (relating to total trimalomethanes sampling, analytical and other requirements)** if the system does one of the following:

* * * * *

(vi) Community water systems and nontransient noncommunity water systems that provide finished water that contains a chemical disinfectant or oxidant shall comply with the monitoring requirements for disinfection byproducts and disinfectant residuals in paragraphs (12)(i)—(iii) and (13).

* * * * *

(10) *Additional monitoring.* The Department may by written notice require a public water supplier to conduct monitoring for compliance with MCLs **or MRDLs** during a specific portion of a monitoring period, if necessary to ensure compliance with the monitoring or reporting requirements in this chapter.

* * * * *

(12) *Monitoring requirements for disinfection byproducts and disinfection byproduct precursors.* Community water systems and nontransient noncommunity water systems that use a chemical disinfectant or oxidant, or provide finished water that contains a chemical disinfectant or oxidant, shall monitor for disinfection byproducts. Systems that use either surface water or GUDI sources and that serve at least 10,000 persons shall begin monitoring by January 1, 2002. Systems that use either surface water or GUDI sources and that serve fewer than 10,000 persons, or systems that use groundwater sources, shall begin monitoring by January 1, 2004. Systems monitoring for disinfection byproducts and disinfection byproduct precursors shall take all samples during normal operating conditions. Systems monitoring for disinfection byproducts and disinfection byproduct precursors may use only data collected under this chapter to qualify for reduced monitoring. Compliance with the MCLs and monitoring requirements for TTHMs, HAA5, chlorite (where applicable) and bromate (where applicable) shall be determined in accordance with 40 CFR 141.132 and 141.133 (relating to monitoring requirements; and compliance requirements) which are incorporated herein by reference.

(i) *TTHMs and HAA5.*

(A) *Routine monitoring.*

(I) Systems that use either surface water or GUDI sources shall monitor as follows:

(-a-) Systems serving at least 10,000 persons shall take at least four samples per month per treatment plant. At least 25% of all samples collected each quarter shall be collected at locations representing maximum residence time, with the remainder of the samples representing locations of at least average residence time.

(-b-) Systems serving from 500 to 9,999 persons shall take at least one sample per quarter per treatment plant. The sample shall be taken at a location that represents a maximum residence time.

(-c-) Systems serving fewer than 500 persons shall take at least one sample per year per treatment plant during the month of warmest water temperature. The sample shall be taken at a location that represents a maximum residence time. If the sample, or average of all samples, exceeds either a TTHM or HAA5 MCL, then the system shall take at least one sample per quarter per treatment plant. The sample shall be taken at a location that represents a maximum residence time. The system may reduce the sampling frequency back to one sample per year per treatment plant in accordance with the reduced monitoring criteria of clause (B).

(-d-) If a system samples more frequently than the minimum required in items (-a-)—(-c-), at least 25% of all samples collected each quarter shall be collected at locations representing maximum residence time, with the remainder of the samples representing locations of at least average residence time.

(II) Systems that use groundwater sources shall monitor as follows:

(-a-) Systems serving at least 10,000 persons shall take at least one sample per quarter per treatment plant. Multiple wells drawing water from a single aquifer may be considered as a single treatment plant. The sample shall be taken at a location that represents a maximum residence time.

(-b-) Systems serving fewer than 10,000 persons shall take at least one sample per year per treatment plant during the month of warmest water temperature. Multiple wells drawing water from a single aquifer may be considered as a single treatment plant. The sample shall be taken at a location that represents a maximum residence time. If the sample, or average of all samples, exceeds either a TTHM or HAA5 MCL, the system shall take at least one sample per quarter per treatment plant. The sample shall be taken at a location that represents a maximum residence time. The system may reduce the sampling frequency back to one sample per year per treatment plant in accordance with the reduced monitoring criteria of clause (B).

(-c-) If a system samples more frequently than the minimum required, at least 25% of all samples collected each quarter shall be collected at locations representing maximum residence time, with the remainder of the samples representing locations of at least average residence time.

(B) *Reduced monitoring.* Systems that have monitored for TTHMs and HAA5 for at least 1 year may reduce monitoring according to this clause. Systems that use either surface water or GUDI sources shall monitor source water TOC monthly for at least 1 year prior to qualifying for reduced monitoring. The Department retains the right to require a system that meets the requirements of this clause to resume routine monitoring.

(I) Systems that use either surface water or GUDI sources and that have a source water annual TOC

average that is no greater than 4.0 mg/L and an annual TTHM average that is no greater than 0.040 mg/L and an annual HAA5 average that is no greater than 0.030 mg/L may reduce monitoring according to items (-a-)—(-c-). Systems that qualify for reduced monitoring may remain on reduced monitoring provided that the annual TTHM average is no greater than 0.060 mg/L and the annual HAA5 average is no greater than 0.045 mg/L. Systems that exceed these levels shall resume routine monitoring as prescribed in clause (A) in the quarter immediately following the quarter in which the system exceeds 0.060 mg/L for TTHMs or 0.045 mg/L for HAA5.

(-a-) Systems serving at least 10,000 persons may reduce monitoring to one sample per quarter per treatment plant. The sample shall be taken at a location that represents a maximum residence time. Systems on reduced monitoring are not required to monitor source water TOC.

(-b-) Systems serving from 500 to 9,999 persons may reduce monitoring to one sample per year per treatment plant. The sample shall be taken during the month of warmest water temperature and at a location that represents a maximum residence time. Systems on reduced monitoring are not required to monitor source water TOC.

(-c-) Systems serving fewer than 500 persons and that are on increased monitoring as prescribed by clause (A) may reduce monitoring to one sample per year per treatment plant. The sample shall be taken during the month of warmest water temperature and at a location that represents a maximum residence time. Systems on reduced monitoring are not required to monitor source water TOC.

(II) Systems that use groundwater sources may reduce monitoring according to the following:

(-a-) Systems serving at least 10,000 persons may reduce monitoring to one sample per year per treatment plant if the annual TTHM average is no greater than 0.040 mg/L and the annual HAA5 average is no greater than 0.030 mg/L. The sample shall be taken during the month of warmest water temperature and at a location that represents a maximum residence time. Systems that qualify for reduced monitoring may remain on reduced monitoring provided that the annual TTHM average is no greater than 0.060 mg/L and the annual HAA5 average is no greater than 0.045 mg/L. Systems that exceed these levels shall resume routine monitoring as prescribed in clause (A) in the quarter immediately following the quarter in which the system exceeds 0.060 mg/L for TTHMs or 0.045 mg/L for HAA5.

(-b-) Systems serving fewer than 10,000 persons may reduce monitoring to one sample per 3-year cycle per treatment plant if the annual TTHM average is no greater than 0.040 mg/L and the annual HAA5 average is no greater than 0.030 mg/L for 2 consecutive years or the annual TTHM average is no greater than 0.020 mg/L and the annual HAA5 average is no greater than 0.015 mg/L for 1 year. The sample shall be taken during the month of warmest water temperature within the 3-year cycle beginning on January 1 following the quarter in which the system qualifies for reduced monitoring. The sample shall be taken at a location that represents a maximum residence time. Systems that qualify for reduced monitoring may remain on reduced monitoring provided that the annual TTHM average is no greater than 0.080 mg/L and the annual HAA5 average is no greater than 0.060 mg/L. Systems that exceed these levels shall resume routine monitoring as prescribed in clause (A) in the quarter immediately following the quarter in which the system exceeds 0.080 mg/L for TTHMs or 0.060 mg/L for HAA5.

(ii) *Chlorite.* Community water systems and nontransient noncommunity water systems that use chlorine dioxide for disinfection or oxidation, or provide finished water that contains chlorine dioxide, shall monitor for chlorite.

(A) *Routine monitoring.*

(I) *Daily monitoring.* Systems shall take daily samples at the entrance to the distribution system. Systems that must conduct additional monitoring in accordance with clause (B) shall continue to take routine daily samples at the entrance to the distribution system.

(II) *Monthly monitoring.* Systems shall take a three-sample set each month in the distribution system. The system shall take one sample at each of the following locations: as close to the first customer as possible; at a location representing an average residence time; and at a location representing a maximum residence time. Systems that must conduct additional monitoring in accordance with subclause (III) may use the results of the additional monitoring to meet the monthly monitoring requirements of this subclause.

(III) *Additional monitoring.* If a daily sample at the entrance to the distribution system exceeds the chlorite MCL, the system shall take three samples in the distribution system on the following day. The system shall take one sample at each of the following locations: as close to the first customer as possible, at a location representing an average residence time and at a location representing a maximum residence time.

(B) *Reduced monitoring.* Chlorite monitoring in the distribution system required by clause (A)(II) may be reduced to one three-sample set per quarter after 1 year of monitoring where no individual chlorite sample taken in the distribution system under clause (A)(II) has exceeded the chlorite MCL and the system has not been required to conduct additional monitoring under clause (A)(III). The system may remain on the reduced monitoring schedule until either any of the three individual chlorite samples taken quarterly in the distribution system exceeds the chlorite MCL or the system is required to conduct additional monitoring under clause (A)(III), at which time the system shall revert to routine monitoring as prescribed by clause (A).

(iii) *Bromate.* Community water systems and nontransient noncommunity water systems that use ozone for disinfection or oxidation, or provide finished water that contains ozone, shall monitor for bromate.

(A) *Routine monitoring.* Systems shall take one sample per month for each treatment plant that uses ozone. Systems shall take the monthly sample

at the entrance to the distribution system while the ozonation system is operating under normal conditions.

(B) *Reduced monitoring.* Systems required to analyze for bromate may reduce monitoring from monthly to quarterly provided that the system demonstrates that the average source water bromide concentration is less than 0.05 mg/L based upon representative monthly bromide measurements for 1 year. Systems on reduced monitoring shall continue to take monthly samples for source water bromide. Systems may remain on reduced bromate monitoring until the running annual average source water bromide concentration, computed quarterly, is equal to or greater than 0.05 mg/L based upon representative monthly measurements, at which time the system shall revert to routine monitoring as prescribed by clause (A).

(iv) *Disinfection byproduct precursors.* Systems that use either surface water or GUDI sources and that use conventional filtration shall monitor for disinfection byproduct precursors.

(A) *Routine monitoring.* Systems shall take monthly samples of the source water alkalinity, the source water TOC and the combined filter effluent TOC for each treatment plant that uses conventional filtration. The three samples shall be taken concurrently and at a time that is representative of both normal operating conditions and influent water quality.

(B) *Reduced monitoring.* Systems with an average treated water TOC of less than 2.0 mg/L for 2 consecutive years, or less than 1.0 mg/L for 1 year, may reduce monitoring for source water alkalinity, source water TOC and combined filter effluent TOC from monthly to quarterly for each applicable treatment plant. The system shall revert to routine monitoring as prescribed by clause (A) in the month following the quarter when the annual average treated water TOC is not less than 2.0 mg/L.

(C) *Early monitoring.* Systems may begin monitoring to determine whether the TOC removal requirements of 40 CFR 141.135(b)(1) (relating to enhanced coagulation and enhanced softening performance requirements) can be met 12 months prior to the compliance date for the system. This monitoring is not required and failure to monitor during this period is not a violation. However, any system that does not monitor during this period, and then determines in the first 12 months after the compliance date that it is not able to meet the requirements of 40 CFR 141.135(b)(1) and must therefore apply for alternate minimum TOC removal requirements under 40 CFR 141.135(b)(4) is not eligible for retroactive approval of the alternate minimum TOC removal requirements and is in violation. Systems may apply for alternate minimum TOC removal requirements any time after the compliance date.

(13) *Monitoring requirements for disinfectant residuals.* Community water systems and nontransient noncommunity water systems that use a chemical disinfectant or oxidant, or provide finished water that contains a chemical disinfectant or oxidant, shall monitor for disinfectant residuals. Transient noncommunity water systems that use chlorine dioxide as either a disinfectant or oxidant shall monitor for chlorine dioxide disinfectant residual. Systems that use either surface water or GUDI sources and that serve at least 10,000 persons shall begin monitoring by January 1, 2002. Systems that use either surface water or GUDI sources and that serve fewer than 10,000 persons, or systems that use groundwater sources, shall begin monitoring by January 1, 2004. Systems monitoring for disinfectant residuals shall take all samples during normal operating conditions. Compliance with the MRDLs and monitoring requirements for chlorine, chloramines and chlorine dioxide (where applicable) shall be determined in accordance with 40 CFR 141.132 and 141.133 (relating to monitoring requirements; and compliance requirements) which are incorporated herein by reference.

(i) *Chlorine and chloramines.* Systems shall measure the residual disinfectant level at the same points in the distribution system and at the same time that total coliforms are samples, as specified in paragraph (3). Systems that used either surface water or GUDI sources may use the results of residual disinfectant concentration sampling conducted under paragraph (1) or (2) in lieu of taking separate samples.

(ii) *Chlorine dioxide.*

(A) *Routine monitoring.* Systems shall take one sample per day at the entrance to the distribution system. For any daily sample that exceeds the MRDL, the system shall conduct additional monitoring as specified in clause (B) in addition to the sample required at the entrance to the distribution system. Compliance shall be based on consecutive daily samples collected by the system under this clause.

(B) *Additional monitoring.* If a daily sample at the entrance to the distribution system exceeds the chlorine dioxide MRDL, the system shall take three samples in the distribution system on the following day. If chlorine dioxide or chloramines are used to maintain a disinfectant residual in the distribution system, or if chlorine is used to maintain a disinfectant residual in the distribution system and there are no disinfectant addition points after the entrance to the distribution system, the system shall take three samples as close to the first customer as possible, at intervals of at least 6 hours. If chlorine is used to maintain a disinfectant residual in the distribution system and there are one or more disinfection addition points after the entrance to the distribution system, the system shall take one sample at each of the following locations: as close to the first customer as possible, at a location representing an average residence time, and at a location representing a maximum residence time.

§ 109.302. Special monitoring requirements.

(a) The Department may require a public water supplier to conduct monitoring in addition to that required by § 109.301 (relating to general monitoring requirements) if the Department has reason to believe the public water system is not in compliance with the MCL**, MRDL** or treatment technique requirement for the contaminant.

* * * * *

§ 109.303. Sampling requirements.

(a) The samples taken to determine a public water system's compliance with MCLs **or MRDLs** or to deter-

mine compliance with monitoring requirements shall be taken at the locations identified in §§ 109.301 and 109.302 (relating to general monitoring requirements; and special monitoring requirements), or as follows:

* * * * *

§ 109.304. Analytical requirements.

(a) Sampling**[, monitoring]** and analysis shall be performed in accordance with analytical techniques adopted by the EPA under the Federal act or methods approved by the Department.

(b) An alternate analytical technique may be employed with the written approval of the Department and the concurrence of the Administrator. An alternate technique will be accepted only if it is substantially equivalent to the prescribed test in both precision and accuracy as it relates to the determination of compliance with MCLs **or MRDLs** or treatment technique requirements. The use of the alternate analytical technique may not decrease the frequency of monitoring required by this subchapter.

Subchapter D. PUBLIC NOTIFICATION

§ 109.401. General public notification requirements.

For the purposes of this section, the term "acute violation" means a violation of the MCL for a contaminant or another condition that may pose an acute risk to human health. Acute violations include, but are not limited to: the MCL for nitrate or nitrite is exceeded, the turbidity performance level which is required to be measured to determine compliance with § 109.202(c) (relating to State MCLs**, MRDLs** and treatment technique requirements) or the turbidity level at an unfiltered surface water source exceeds 5 NTU, the MCL for total coliforms is exceeded due to the presence of fecal coliforms or E. coli in the water distribution system**, the MRDL for chlorine dioxide is exceeded in the distribution system 1 day after an MRDL exceedance at the entry point, failure to monitor in the distribution system one day after a chlorine dioxide MRDL exceedance at the entry point,** and the occurrence of a waterborne disease outbreak.

(1) The public water supplier shall give public notification in accordance with this section when one of the following occurs:

(i) The public water system is not in compliance with the applicable primary MCLs**, MRDLs** or treatment technique requirements in Subchapter B (relating to MCLs**, MRDLs** or treatment technique requirements).

* * * * *

(2) A community water supplier, except for violations involving POE devices, required to provide public notification shall, at a minimum, provide public notification in a form approved by the Department as follows:

* * * * *

(iii) In addition to the publication of the notice in accordance with **[the provisions of]** paragraph (2)(i)**,** the water supplier, except one required to post or hand deliver the notice under paragraph (2)(i)(A) or (B) shall furnish a copy of the notice to the radio and television stations serving the area after the supplier learns of an acute violation or another primary MCL **or MRDL** violation under paragraph (1)(i) in accordance with the following schedule:

* * * * *

(B) Within 7 days of a violation of another primary MCL **or MRDL**.

* * * * *

§ 109.402. Emergency public notification.

In addition to the requirements of § 109.401 (relating to general public notification requirements), the Department may require public notice by providing a water supply warning to be given if conditions in a public water system present an imminent hazard to the public health.

(1) A public water supplier who knows that a primary MCL **or MRDL** has been exceeded or a treatment technique performance standard has been violated or has reason to believe that circumstances exist which may adversely affect the quality of drinking water, including, but not limited to, source contamination, spills, accidents, natural disasters or breakdowns in treatment, shall report the circumstance to the Department within 1 hour of discovery of the problem.

* * * * *

§ 109.403. Description and content of notice.

(a) Notice given under this subchapter shall be written in a manner reasonably designed to fully inform the users of the system.

* * * * *

(2) The notice shall disclose material facts regarding the subject including the nature of the problem and, when appropriate, a clear statement that an MCL**, an MRDL** or a treatment technique requirement has been violated and the preventive measures that should be taken by the public.

* * * * *

(d) Community water systems serving at least 10,000 persons that detect TTHM above 0.080 mg/L, but below the MCL in 40 CFR 141.12 (relating to maximum contaminant levels for total trihalomethanes), as an annual average, monitored and calculated under 40 CFR 141.30 (relating to total trihalomethanes sampling, analytical and other requirements), shall include health effects language prescribed by paragraph (73) of Appendix C to 40 CFR Subpart O (relating to consumer confidence reports).

Subchapter E. PERMIT REQUIREMENTS

§ 109.503. Public water system construction permits.

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(c) *Permit fees.*

* * * * *

(3) Applications for permits or major permit amendments submitted to satisfy the requirements of Subchapter B (relating to MCLs**, MRDLs** or treatment technique requirements) for removal of VOCs and SOCs through the construction of treatment facilities designed to achieve greater removal of contaminants than would be achieved by conventional filtration shall be accompanied by a fee of $2,500.

* * * * *

§ 109.505. Requirements for noncommunity water systems.

A noncommunity water system shall obtain a construction permit under § 109.503 (relating to public water system construction permits) and an operation permit

under § 109.504 (relating to public water system operation permits), unless the noncommunity water system satisfies paragraph (1) or (2). The Department retains the right to require a noncommunity water system that meets the requirements of paragraph (1) or (2) to obtain a construction and an operation permit, if, in the judgment of the Department, the noncommunity water system cannot be adequately regulated through standardized specifications and conditions. A noncommunity water system which is released from the obligation to obtain a construction and an operation permit shall comply with the other requirements of this chapter, including design, construction and operation requirements described in Subchapters F and G (relating to design and construction standards; and system management responsibilities).

* * * * *

(2) A noncommunity water system not covered under paragraph (1) is not required to obtain a construction and an operation permit if it satisfies the following specifications and conditions:

(i) The sources of supply for the system are groundwater sources requiring treatment no greater than disinfection to provide water of a quality that meets the primary MCLs established under Subchapter B (relating to MCLs**, MRDLs** or treatment technique requirements).

* * * * *

§ 109.506. Emergency permits.

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(b) State and Federal agencies conducting emergency response bulk water hauling operations are not required to obtain a permit under this subchapter, if a Department approved source is utilized and adequate monitoring is conducted to assure compliance with the microbiological MCL specified in § 109.202 (relating to State MCLs**, MRDLs** and treatment technique requirements).

* * * * *

§ 109.507. Permits for innovative technology.

The Department may consider proposals for innovative water treatment processes, methods or equipment and may issue an innovative technology construction or operation permit if the applicant demonstrates to the Department's satisfaction that the proposal will provide drinking water that complies with Subchapter B (relating to MCLs**, MRDLs** or treatment technique requirements). Applications for innovative technology construction permits shall satisfy the requirements of § 109.503 (relating to public water system construction permits). The Department may condition innovative technology operation permits on duration, additional monitoring, reporting or other requirements as it deems necessary to protect the public health. The Department may revoke an innovative technology construction or operation permit if it finds the public water system is not complying with drinking water standards or the terms or conditions of the permit or if there is a significant change in the source water quality which could affect the reliability and operability of the treatment facility. Authorization for construction, operation or modifications obtained under an innovative technology permit will not extend beyond the expiration date of the permit.

Subchapter F. DESIGN AND CONSTRUCTION STANDARDS

§ 109.602. Acceptable design.

(a) A public water system shall be designed to provide an adequate and reliable quantity and quality of water to the public. The design shall ensure that the system will, upon completion, be capable of providing water that complies with the primary and secondary MCLs**, MRDLs** and treatment techniques established in Subchapter B (relating to MCLs**, MRDLs** or treatment technique requirements) except as further provided in this section.

* * * * *

§ 109.605. Minimum treatment design standards.

The level of treatment required for raw water depends upon the characteristics of the raw water, the nature of the public water system and the likelihood of contamination. The following minimum treatment design standards apply to new facilities and major changes to existing facilities:

(1) For surface water sources, the minimum treatment design standard for filtration technologies is a 99% removal of Giardia cysts and a 99% removal of viruses. The determination of the appropriate filtration technology to be used shall be based on the following:

* * * * *

(ii) Direct filtration, slow sand filtration and diatomaceous earth filtration may be permitted if studies, including pilot studies where appropriate, approved by the Department are conducted and demonstrate, through achievement of the turbidity performance standards specified in § 109.202(c)(1)(i) (relating to State MCLs**, MRDLs** and treatment technique requirements), that the minimum treatment design standard can be achieved consistently, reliably and practically under appropriate design and operating conditions.

* * * * *

§ 109.611. Disinfection.

Disinfection facilities shall be designed to provide the dosage rate and contact time prior to the first customer sufficient to provide a quality of water that complies with the microbiological MCL **and the appropriate MRDL**, specified in § 109.202 (relating to State MCLs, **MRDLs** and treatment technique requirements).

§ 109.612. POE devices.

* * * * *

(c) A public water supplier using POE devices as a means of treatment shall install a POE device on the service line to customers, except for customers who are provided with water that meets the requirements of Subchapter B (relating to MCLs**, MRDLs** or treatment technique requirements) without the use of a POE device.

* * * * *

Subchapter G. SYSTEM MANAGEMENT RESPONSIBILITIES

§ 109.701. Reporting and recordkeeping.

(a) *Reporting requirements for public water systems.* Public water systems shall comply with the following requirements:

* * * * *

(2) *Monthly reporting requirements for performance monitoring.*

* * * * *

(ii) The test results of performance monitoring required under § 109.301(2) for public water suppliers using unfiltered surface water sources shall include the following, at a minimum:

* * * * *

(B) For performance monitoring of the residual disinfectant concentration of the water being supplied to the distribution system:

(I) The date, time and lowest value each day the concentration is less than the residual disinfectant concentration required under § 109.202(c)(1)(iii) (relating to State MCLs**, MRDLs** and treatment technique requirements).

* * * * *

(8) *Reporting requirements for disinfectant residuals.* Public water systems shall report MRDL monitoring data as follows:

(i) For systems monitoring for chlorine dioxide under § 109.301(13), the dates, results and locations of the samples that were taken during the previous month.

(ii) For systems monitoring for either chlorine or chloramines under § 109.301(13):

(A) The monthly arithmetic average of all samples taken in each month for the last 12 months.

(B) The arithmetic average of all monthly averages for the last 12 months.

(9) *Reporting requirements for disinfection byproducts.*

(i) Systems monitoring for TTHMs and HAA5 under § 109.301(12) shall report the following:

(A) Systems monitoring on a quarterly or more frequent basis shall report the following:

(I) The number of samples taken during the last quarter.

(II) The date, location and result of each sample taken during the last quarter.

(III) The arithmetic average of all samples taken in the last quarter.

(IV) The annual arithmetic average of the quarterly arithmetic averages for the last 4 quarters.

(V) Whether the annual arithmetic avearge exceeds the MCL for either TTHMs or HAA5.

(B) Systems monitoring less than quarterly but no less than annually shall report the following:

(I) The number of samples taken during the last year.

(II) The date, location and result of each sample taken during the last monitoring period.

(III) The arithmetic average of all samples taken in the last year.

(IV) Whether the annual arithmetic average exceeds the MCL for either TTHMs or HAA5.

(C) Systems monitoring less than annually shall report the following:

(I) The date, location and result of the last sample taken.

(II) Whether the sample exceeds the MCL for either TTHMs or HAA5.

(ii) Systems monitoring for chlorite under § 109.301(12) shall report the following:

(A) The number of entry point samples taken each month for the last 3 months.

(B) The date, location and result of each entry point and distribution sample taken during the last quarter.

(C) The arithmetic average of each three-sample set of distribution samples taken in each month in the reporting period.

(D) Whether the monthly arithmetic average exceeds the MCL.

(iii) Systems monitoring for bromate under § 109.301(12) shall report the following:

(A) The number of samples taken during the last quarter.

(B) The date, location and result of each sample taken during the last quarter.

(C) The arithmetic average of the monthly arithmetic averages of all samples taken in the last year.

(D) Whether the annual arithmetic average exceeds the MCL.

(10) *Reporting requirements for disinfection byproduct precursors.* Systems monitoring for TOC under § 109.301(12) shall report in accordance with 40 CFR 141.134(d) (relating to reporting and recordkeeping requirements for disinfection byproduct precursors and enhanced coagulation or enhanced softening).

* * * * *

(d) *Record maintenance.* The public water supplier shall retain on the premises of the public water system or at a convenient location near the premises the following:

* * * * *

(3) Records of action taken by the public water supplier to correct violations of MCLs**, MRDLs** or treatment technique requirements, which shall be kept for at least 3 years after the last action taken with respect to the particular violation involved.

* * * * *

(e) *Monitoring plans for disinfectants, disinfection byproducts and disinfection byproduct precursors.* Systems required to monitor for disinfection byproducts or disinfection byproduct precursors under § 109.301(12) or disinfectant residuals under § 109.301(13) shall develop and implement a monitoring plan. The system shall maintain the plan and make it available for inspection by the Department and the general public no later than 30 days following the applicable compliance dates. All systems that use either surface water or GUDI sources shall submit a copy of the monitoring plan to the Department no later than the date of the first report required under this subchapter. The Department may also require the plan to be submitted by any other system, regardless of size or source water type. After review, the Department may require changes in any of the plan components.

(1) The plan shall include the following components:

(i) Specific locations and schedules for collecting samples for any parameters included in § 109.301 (12) or (13).

(ii) How the system will calculate compliance with the MCLs, MRDLs and treatment techniques.

(iii) If approved for monitoring as a consecutive system, or if providing water to a consecutive system, the sampling plan shall reflect the entire distribution system.

(iv) Systems may consider multiple wells drawing water from a single aquifer as one treatment plant for determining the minimum number of TTHM and HAA5 samples required under § 109.301(12)(i).

(2) The system shall notify the Department of subsequent revisions to an approved monitoring plan for approval as they occur. Revisions to an approved monitoring plan shall be submitted in written form to the Department within 30 days of notifying the Department of the revisions.

§ 109.704. Operator certification.

* * * * *

(c) Beginning _____(*Editor's Note*: The blank refers to a date 3 years from the effective date of the adoption of this proposal), nontransient noncommunity water systems that provide water that contains a chemical disinfectant shall be operated by qualified personnel certified under the Sewage Treatment Plant and Waterworks Operators' Certification Act (63 P. S. §§ 1001—1015). The minimum certification to operate these facilities shall be a certificate to operate plants with disinfection only, under § 303.2 (relating to waterworks operators certificates).

§ 109.710. Disinfectant residual in the distribution system.

(a) A disinfectant residual acceptable to the Department shall be maintained throughout the distribution system of the community water system sufficient to assure compliance with the microbiological MCLs and the treatment technique requirements specified in § 109.202 (relating to State MCLs**, MRDLs** and treatment technique requirements). The Department will determine the acceptable residual of the disinfectant considering factors such as type and form of disinfectant, temperature and pH of the water, and other characteristics of the water system.

* * * * *

(c) Public water systems may increase residual chlorine or chloramine, but not chlorine dioxide, disinfectant levels in the distribution system to a level that exceeds the MRDL for that disinfectant and for a time necessary to protect public health or to address specific microbiological contamination problems caused by circumstances such as, but not limited to, distribution line breaks, storm runoff events, source water contamination events or cross-connection events.

Subchapter H. LABORATORY CERTIFICATION

§ 109.801. Certification requirement.

A laboratory shall be certified under this subchapter to perform analyses acceptable to the Department for the purposes of ascertaining drinking water quality and demonstrating compliance with monitoring requirements established in Subchapter C (relating to monitoring requirements).

* * * * *

(3) A parameter of drinking water quality for which no MCL**, MRDL** or monitoring requirement of general applicability has been established may be part of a certification subcategory.

§ 109.805. Certification procedure.

* * * * *

(b) [For certification areas other than microbiology, the laboratory shall successfully complete at least one set of performance evaluation samples required by the Department for the parameters in the category for which certification is sought. Acceptable tolerances of analyses of performance evaluation samples shall be as stated by the EPA in 40 CFR 141.23(k)(5), 141.24(f)(17) and (h)(19) (relating to inorganic chemical sampling and analytical requirements; and organic chemicals other than total trihalomethanes, sampling and analytical requirements). For microbiology certification, the laboratory shall successfully complete a set of performance evaluation samples as required by the Department to show proficiency.] The laboratory shall successfully complete at least one set of proficiency test samples required by the Department for the parameters in the category for which certification is sought. Acceptable tolerances of analyses of proficiency test evaluation samples shall be as stated by the EPA in 40 CFR Part 141 (relating to National Primary Drinking Water Regulations) or the "National Standards for Water Proficiency Testing, Criteria Document." For parameters not included in either document the acceptance limits shall be those established by the Department.

* * * * *

(e) In addition to terms and conditions in the certification issued to a laboratory, the certified laboratory shall fulfill the following requirements to maintain certification:

* * * * *

(3) The laboratory shall successfully complete at least one set of proficiency test samples required by the Department at least once every 12 months.

§ 109.810. Reporting and notification requirements.

* * * * *

(b) A laboratory certified under this subchapter shall whenever an MCL**, MRDL** or a treatment technique performance requirement under § 109.202 (relating to State MCLs**, MRDLs** and treatment technique requirements) is violated, or a sample result requires the collection of check samples under § 109.301 (relating to general monitoring requirements):

* * * * *

Subchapter I. VARIANCES AND EXEMPTIONS ISSUED BY THE DEPARTMENT

§ 109.901. Requirements for a variance.

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(b) The Department may grant one or more variances to a public water system from a treatment technique requirement upon a finding that the public water supplier applying for the variance has demonstrated that, because of the nature of the raw water source of the system the treatment technique is not necessary to protect the health of the persons served by the system. The treatment technique requirements established under § 109.202(c)

(relating to State MCLs, **MRDLs** and treatment techniques requirements) and treatment technique requirements established under § 109.1102(b) (relating to action levels and treatment technique requirements) are not eligible for a variance.

§ 109.903. Requirements for an exemption.

* * * * *

(b) The treatment technique requirements established under § 109.202(c) (relating to State MCLs**, MRDLs** and treatment technique requirements) and treatment technique requirements established under § 109.1102(b) (relating to action levels and treatment technique requirements) are not eligible for an exemption.

Subchapter J. BOTTLED WATER AND VENDED WATER SYSTEMS, RETAIL WATER FACILITIES AND BULK WATER HAULING SYSTEMS

§ 109.1002. MCLs**, MRDLs** or treatment techniques.

(a) Bottled water and vended water systems, retail water facilities and bulk water hauling systems shall supply drinking water that complies with the MCLs**, MRDLs** and treatment technique requirements under §§ 109.202 and 109.203 (relating to State MCLs**, MRDLs** and treatment technique requirements; and unregulated contaminants). Bottled water systems, vended water systems, retail water facilities and bulk water hauling systems shall provide continuous disinfection for groundwater sources. Water for bottling labeled as mineral water, under § 109.1007 (relating to labeling requirements for bottled water systems, vended water systems and retail water facilities) shall comply with the MCLs except that mineral water may exceed the MCL for total dissolved solids.

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§ 109.1003. Monitoring requirements.

(a) *General monitoring requirements.* Bottled water and vended water systems, retail water facilities and bulk water hauling systems shall monitor for compliance with the MCLs **and MRDLs** in accordance with § 109.301 (relating to general monitoring requirements) and shall comply with § 109.302 (relating to special monitoring requirements). The monitoring requirements shall be applied as follows, except that systems which have installed treatment to comply with a primary MCL shall conduct quarterly operational monitoring for the contaminant which the facility is designed to remove:

(1) Bottled water systems, retail water facilities and bulk water hauling systems, for each entry point shall:

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(viii) Monitor monthly for bromate, if the system uses ozone for disinfection or oxidation.

(A) Systems shall take one sample per month for each entry point that uses ozone while the ozonation system is operating under normal conditions.

(B) Systems may reduce monitoring for bromate from monthly to quarterly if the system demonstrates that the average source water bromide concentration is less than 0.05 mg/L based upon representative monthly bromide measurements for 1 year. Systems on reduced monitoring shall continue monthly source water bromide monitoring. If the running annual average source water bromide concentration, computed quarterly, is equal to or exceeds 0.05 mg/L, the system shall revert to routine monitoring as prescribed by clause (A).

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(c) *Sampling requirements.*

(1) For bottled water and vended water systems, retail water facilities and bulk water hauling systems, samples taken to determine compliance with MCLs, **MRDLs and** monitoring requirements, including special monitoring requirements for unregulated contaminants, and treatment techniques shall be taken from each entry point.

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(d) *Repeat monitoring for microbiological contaminants.*

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(3) If a check sample is total coliform-positive, the system shall be deemed to have violated the MCL for total coliforms established under § 109.1002 (relating to MCLs, **MRDLs** or treatment techniques).

§ 109.1004. Public notification.

(a) *General public notification requirements.* A bottled water, vended water, retail water or bulk water supplier shall give public notification in accordance with this section. In addition, a bulk water supplier shall give public notification in accordance with §§ 109.401(a) and 109.406(b) (relating to general public notification requirements; and public notice requirements for unregulated contaminants).

(1) A bottled water, vended water, retail water or bulk water supplier who knows that a primary MCL **or an MRDL** has been exceeded or treatment technique performance standard has been violated or has reason to believe that circumstances exist which may adversely affect the quality of drinking water, including, but not limited**[,]** to, source contamination, spills, accidents, natural disasters or breakdowns in treatment, shall report the circumstances to the Department within 1 hour of discovery of the problem.

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(b) *Description and content of notice.* Notice given under this section shall be written in a manner reasonably designed to fully inform the users of the system. When appropriate or as designated by the Department, additional notice in a foreign language shall be given.

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(2) The notice shall disclose material facts regarding the subject, including the nature of the problem and, when appropriate, a clear statement that an MCL **or MRDL** has been violated and preventive measures that should be taken by the public.

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§ 109.1005. Permit requirements.

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(e) *Permit applications.* An application for a public water system permit for a bottled water or vended water system, retail water facility or bulk water hauling system shall be submitted in writing on forms provided by the Department and shall be accompanied by plans, specifications, engineer's report, water quality analyses and other data, information or documentation reasonably necessary to enable the Department to determine compliance with the act and this chapter. The Department will make available to the applicant the *Public Water Supply Manual,* available from the Bureau of Water Supply Management, Post Office Box 8467, Harrisburg, Pennsylvania 17105-8467 which contains acceptable design standards and technical guidance. Water quality analyses

shall be conducted by a laboratory certified under this chapter. An application for a public water system permit for a bottled water or vended water system, retail water facility or bulk water hauling system shall include:

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(7) In addition to the information required under paragraphs (1)—(6), an application for a bottled water system permit shall include:

(i) An analysis of the quality of the manufactured water for each bottled water product. The analysis shall include data for each primary and secondary contaminant under § 109.1002 (relating to MCLs**, MRDLs** or treatment techniques).

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§ 109.1006. Design and construction standards.

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(b) *Acceptable design*. Bottled water and vended water systems, retail water facilities and bulk water hauling systems shall be designed to provide an adequate quality of water to the public. The design shall ensure that the system will, upon completion, be capable of providing water that complies with the primary and secondary MCLs**, MRDLs** and treatment techniques established in § 109.1002 (relating to MCLs**, MRDLs** or treatment techniques). The Department may approve control techniques, such as nonremoval processes, which abate the problems associated with a secondary contaminant, and achieve the objective of the secondary MCL.

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§ 109.1009. System operational requirements.

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(c) *Disinfectant residual requirements*. A disinfectant residual acceptable to the Department shall be maintained at the entry point of the bottled water or vended water system, retail water facility or bulk water hauling system sufficient to assure compliance with the microbiological MCL specified in § 109.1002 (relating to MCLs**, MRDLs** or treatment techniques). The Department will determine the acceptable residual of the disinfectant considering **[such]** factors **such** as type and form of disinfectant, temperature and pH of the water, and other characteristics of the water system.

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Subchapter K. LEAD AND COPPER

§ 109.1105. Permit requirements.

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(b) *Construction permits and permit amendments*. The water supplier shall submit an application for a public water system construction permit for a newly-created system or an amended construction permit for a currently-permitted system for corrosion control treatment facilities by the applicable deadline established in § 109.1102(b)(2) (relating to action levels and treatment technique requirements), unless the system complies with paragraph (1) or (2) or otherwise qualifies for a minor permit amendment under § 109.503(b) (relating to public water system construction permits). The permit application shall comply with § 109.503 and contain the applicable information specified therein. The application shall include recommended water quality parameter performance requirements for optimal corrosion control treatment as specified in § 109.1102(b)(5) and other data, information or documentation necessary to enable the Department to consider the application for a permit for construction of the facilities.

(1) *Community water system minor permit amendments*. The community water supplier may submit a written request for an amended construction permit to the Department if the system satisfies the conditions under subparagraphs (i)—(iv). A request for an amended construction permit under this paragraph shall describe the proposed change in sufficient detail to allow the Department to adequately evaluate the proposal.

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(iii) Except for corrosion control treatment, the sources require treatment no greater than disinfection to provide water of a quality that meets the MCLs and treatment technique requirements established under Subchapter B (relating to MCLs**, MRDLs** or treatment technique requirements).

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(2) *Nontransient noncommunity water system permits*. The nontransient noncommunity water supplier is not required to obtain a construction permit or permit amendment under subsection (b) if the system satisfies the following specifications and conditions:

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(iii) Except for corrosion control treatment, the sources require treatment no greater than disinfection to provide water of a quality that meets the MCLs and treatment technique requirements established under Subchapter B.

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[Pa.B. Doc. No. 00-1503. Filed for public inspection September 1, 2000, 9:00 a.m.]

[25 PA. CODE CH. 109]
Interim Enhanced Surface Water Treatment

The Environmental Quality Board (Board) proposes to amend Chapter 109 (relating to safe drinking water). The proposed amendments pertain to filtration systems that serve at least 10,000 people and that use either surface water sources or groundwater sources that are under the direct influence of surface water (GUDI). The proposed amendments establish: 2-log (99%) *Cryptosporidium* removal requirements; strengthened combined filter effluent turbidity performance standards and individual filter turbidity provisions; and disinfection benchmark provisions to assure continued levels of microbial protection while facilities take the necessary steps to comply with new disinfection byproduct standards. Also, the proposed amendments include *Cryptosporidium* in the definition of "GUDI."

The proposal was adopted by the Board at its meeting of July 18, 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 Jeffrey A. Gordon, Acting Chief, Division of Drinking Water Management, P. O. Box 8467, Rachel Carson State Office Building, Harrisburg, PA 17105-8467, (717) 772-4018 or Pamela Bishop, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposal is available electronically through the Department of Environmental Protection's (Department) Web site (http://www.dep.state.pa.us).

C. *Statutory Authority*

The proposed rulemaking is being made under the authority of section 4 of the Pennsylvania Safe Drinking Water Act (act) (35 P. S. § 721.4), which grants the Board the authority to adopt rules and regulations governing the provision of drinking water to the public, and sections 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 510-7 and 510-20).

D. *Background and Purpose*

The Board promulgated the Filter Rule in March of 1989 to address the rising number of waterborne disease outbreaks in this Commonwealth. The rule required public water systems with surface water sources to filter and disinfect, cover finished water reservoirs, perform treatment performance and water quality compliance monitoring and provide public notification of violations. The rule also established design and performance standards for the filtration and disinfection treatment techniques intended to protect against the adverse health effects of exposure to *Giardia lamblia*, viruses and legionella, as well as many other pathogenic organisms. The United States Environmental Protection Agency (EPA) also promulgated the *Federal Surface Water Treatment Rule* (SWTR) in 1989.

The Federal SWTR did not specifically address the protozoan *Cryptosporidium parvum*. In terms of occurrence, *Cryptosporidium* is common in the environment. Most surface water sources contain, or are vulnerable to, *Cryptosporidium* contamination at one time or another. Since some people are carriers, *Cryptosporidium* may enter the water by means of treated or untreated sewage. Other sources of *Cryptosporidium* contamination are those animals that live in or near water. Livestock are notorious carriers of *Cryptosporidium*. Runoff from watersheds allows transport of this pathogen into water bodies used as sources for drinking water treatment plants. Complicating this matter is *Cryptosporidium*'s resistance to standard disinfection practices.

In humans, *Cryptosporidium* may cause a severe gastrointestinal infection, termed cryptosporidiosis, that can last several weeks. It may cause the death of individuals who have a weaker immune system due to age, cancer treatment, AIDS and antirejection organ replacement drugs. In 1993, *Cryptosporidium* caused over 400,000 people in Milwaukee to experience serious intestinal illness. More than 4,000 were hospitalized and at least 50 deaths were attributed to the *Cryptosporidium* outbreak. There has also been cryptosporidiosis outbreaks in Nevada, Oregon, and Georgia over the past several years.

The *Federal Interim Enhanced Surface Water Treatment Rule* (IESWTR) was promulgated on December 16, 1998, by EPA. This rule is intended to improve the control of microbial pathogens, specifically the protozoan *Cryptosporidium parvum*, in drinking water. The IESWTR applies to public water systems serving 10,000 or more people and which use surface water or groundwater under GUDI. Key provisions established include: a Maximum Contaminant Level Goal (MCLG) of zero for *Cryptosporidium*; 2-log *Cryptosporidium* removal requirements for systems that filter; strengthened combined, and individual, filter effluent turbidity performance standards; disinfection benchmark provisions to assure continued levels of microbial protection while facilities take the necessary steps to comply with new disinfection byproduct standards; inclusion of *Cryptosporidium* in the definition of "GUDI"; and sanitary surveys for all surface water systems regardless of size. Published concurrently with the IESWTR is the Disinfectants and Disinfection Byproducts Rule (D/DBPR). The D/DBPR is intended to regulate disinfection practices at public water systems to eliminate or minimize disinfection byproducts that may cause harmful health effects.

On April 14, 2000, the EPA proposed corrective amendments to both the IESWTR and D/DBPR. These corrective amendments are minor in nature (such as, change in compliance date from December 17, 2001 to January 1, 2002) and are, presently still in the proposed stage of rulemaking. For the purposes of this proposed rulemaking, the Department assumes that all of the proposed Federal corrective amendments will ultimately be adopted as final amendments. When the final Federal corrective amendments are promulgated, those final changes will be taken into consideration in connection with final adoption of this proposed rulemaking.

Other Federal rules expected to be promulgated in the future as follow-up to both the IESWTR and the D/DBPR are: the *Long Term 1 (LT1)* and the *Long Term 2 (LT2) Enhanced Surface Water Treatment Rules, Stage 2 Disinfectants and Disinfection Byproducts Rule*, and the *Filter Backwash Rule (FBR)*. The LT1 will apply to public water systems using surface water or GUDI sources and that serve less than 10,000. The LT1 and the FBR are expected in 2001. The LT2 and Stage 2 D/DBP Rule are expected in 2002.

The Board is proposing to incorporate the provisions of both the Federal IESWTR and the proposed Federal corrective amendments into the Pennsylvania Safe Drinking Water Regulations. The rulemaking is necessary for the Commonwealth to retain primacy under the Federal Safe Drinking Water Act. (See 35 P. S. §§ 721.2(a)(3) and 721.5(a) and 42 U.S.C.A. § 300g-2a.) The proposed amendments will provide additional protection against disease-causing organisms (pathogens) in drinking water. The proposed amendments would focus primarily on treatment requirements for the waterborne pathogens of *Giardia, Cryptosporidium* and viruses. With the exception of sanitary surveys, the proposed amendments would apply to all public water systems that use surface water or GUDI sources and that serve at least 10,000 people. Among the features of the rule would be a change in the definition of "surface water" and the addition of the new "GUDI" definition, and new or additional requirements for control of *Giardia, Cryptosporidium* and viruses. Ultimately, the proposed amendments will decrease the likelihood of endemic illness from *Cryptosporidium*, thus reducing health care costs. In addition, the filtration provisions of the rule are expected to increase the level of protection from other pathogens (such as, *Giardia lamblia* or other waterborne bacterial or viral pathogens).

The draft proposed amendments were submitted for review to the Water Resources Advisory Committee

(WRAC) on February 9, 2000. Comments were received from the WRAC on March 21, 2000. The draft proposed amendments were submitted to the Small Water Systems Technical Assistance Center Advisory Board (TAC) for review and discussion on March 23, 2000. Comments were received from the TAC on April 19, 2000.

Advisory Committees' Recommendations

The Department presented three issues to WRAC and TAC. These issues, and the Committees' responses, are as follows:

1. Should the Department seek third-party assistance on Comprehensive Performance Evaluations (CPEs)?

WRAC believes that utilities should have the option of obtaining third-party services to conduct CPEs. Accordingly, the Department should have oversight of all third-party purveyors to ensure proper and consistent CPE procedures.

TAC Board feels that CPEs should be performed by the Department. TAC feels that the Department has the expertise and that CPEs are an issue of regulatory oversight. TAC also feels that this interaction with the Department would further strengthen the partnership/assistance relationships that have already been cultivated between the Department and the regulated community.

With both WRAC and TAC suggesting opposing opinions on this issue, the Department proceeded to make the final decision. The Department decided to exclude third parties from providing CPEs. In making its decision, the Department felt strongly that most of the water systems affected by this rule are well-positioned for compliance with the rule's provisions. Consequently, the Department believes that the number of required CPEs will be too few for third parties to develop and maintain sufficient expertise to perform this service at a reasonable cost.

2. Should the IESWTR be extended to systems serving fewer than 10,000 people?

Both WRAC and TAC committees believe that the rule should not be extended to smaller systems until so required by Federal regulations. TAC recommended that small systems now need to recognize that this rule will eventually be applied to them. The Department should notify small systems of this requirement as soon as possible. A dissenting member of the TAC Board, however, felt that if this action would provide greater protection to public health, and if the majority of systems are already complying with these requirements, then the IESWTR should be put in place for everyone.

The proposed amendments reflect the WRAC and TAC's recommendation.

3. Should the Department express the filtered water turbidity standard as 1 NTU, as done by the EPA, or as 1.0 NTU?

Both committees believe that the Department should not add the additional decimal place since this would be more stringent than the Federal regulations. Both committees recommended to keep the filtered water turbidity limit at 1 NTU since we are already reducing the limit from 2.0 NTU. The vote on this recommendation was not unanimous for the TAC Board for the same reasons stated in paragraph (2).

The proposed amendments reflect WRAC and TAC's recommendation.

E. *Summary of Regulatory Requirements*

The proposed amendments reflect, and are no more stringent than, both the new Federal IESWTR requirements and the proposed Federal corrective amendments.

1. *§ 109.1. Definitions.*

This section was amended to add the following EPA definitions: "CPE—Comprehensive Performance Evaluation," "disinfection profile," "filter profile" and "GUDI—groundwater under the direct influence of surface water." The current definitions of "National Primary Drinking Water Regulations" and "surface water" were also amended. The current language in Chapter 109 included GUDI in the definition of "surface water." Since the EPA's new GUDI definition was added, the "surface water" definition was amended to delete GUDI inclusion. These amendments reflect the new definitions found in 40 CFR 141.2.

2. *§ 109.202(c)(1). Treatment technique requirements for pathogenic bacteria, viruses and protozoan cysts.*

This paragraph includes the requirement for 99% removal of *Cryptosporidium* for systems serving 10,000 or more people. This amendment reflects the Federal requirement in 40 CFR 141.73 (relating to filtration).

3. *§ 109.202(c)(1)(i)(A)(III). Conventional or direct filtration.*

This new subclause was added to incorporate the EPA's revised turbidity performance standards for conventional and direct filtration systems serving 10,000 or more people. This amendment reflects the Federal requirement in 40 CFR 141.173(a)(1) (relating to filtration).

4. *§ 109.202(c)(1)(i)(C). Other filtration technologies.*

This clause was amended to clarify the Department's discretionary authority with respect to turbidity standards. It may be necessary to require a more stringent turbidity standard to ensure that the proposed standard of 99% *Cryptosporidium* oocyst removal is achieved under § 109.202(c)(1). The effect of this amendment will be no more stringent than the current requirement in § 109.202(c)(1)(i)(C).

5. *§ 109.204. Disinfection profiling and benchmarking.*

This new section was added to incorporate the EPA's new disinfection profiling and benchmarking requirements for systems using surface water or GUDI sources and serving 10,000 or more people. The amendment reflects the Federal requirement in 40 CFR 141.172 (relating to disinfection profiling and benchmarking). The amendment will require public water systems required to conduct disinfection profiling to submit the disinfection profiling data and the benchmark data to the Department by June 1, 2001, in a format acceptable to the Department.

6. *§ 109.205. Filter profile, filter self-assessment and comprehensive performance evaluations.*

This new section was added to incorporate the EPA's new individual filter evaluation requirements. This amendment reflects the Federal requirements in 40 CFR 141.175.

7. *§ 109.301(1)(iv). Performance monitoring for filtration and disinfection.*

This new subparagraph was added to incorporate the EPA's individual filter continuous monitoring requirements for systems using surface water or GUDI sources and serving 10,000 or more people. This subparagraph also includes the EPA's requirements for turbidimeter

calibration and continuous monitor failure procedures. This amendment reflects the Federal requirements in 40 CFR 141.174(a) and (b) (relating to filtration sampling requirements).

8. *§ 109.605(1). Minimum treatment design standards.*

This paragraph was amended to incorporate the requirement of 99% removal of *Cryptosporidium* oocysts for systems using surface water and GUDI sources and serving 10,000 or more people. This amendment reflects the Federal requirements in 40 CFR 141.173(b).

9. *§ 109.701(a)(2)(i)(A). Monthly reporting requirements for performance monitoring.*

This clause was amended to incorporate the EPA's new monthly turbidity reporting requirements for systems using surface water or GUDI sources and serving 10,000 or more people. This amendment reflects the Federal requirements in 40 CFR 141.175.

10. *§ 109.701(a)(2)(i)(B). Monthly reporting requirements for performance monitoring.*

This clause was amended to incorporate the EPA's new monthly residual disinfectant reporting requirements for systems using surface water or GUDI sources and serving 10,000 or more people. This amendment reflects the Federal requirements in 40 CFR 141.175.

11. *§ 109.701(e). Reporting requirements for public water systems required to perform individual filter monitoring under § 109.301(1)(iv).*

This new subsection was added to incorporate the EPA's new reporting requirements for systems conducting individual filter monitoring. This amendment reflects the new Federal requirements found in 40 CFR 141.175.

12. *§ 109.701(f). Alternative individual filter turbidity exceedance levels.*

This new subsection was added to incorporate the EPA's alternative turbidity criteria for systems practicing lime softening. This amendment reflects the new Federal requirements found in 40 CFR 141.175.

13. *§ 109.703(b)(5). Facilities operation.*

This paragraph was amended to require conventional or direct filtration facilities without individual filter bed turbidity monitoring capabilities to conduct annual filter bed evaluations. This amendment reflects the Federal requirements in 40 CFR 141.174.

14. *§ 109.714. Filter profile, filter self-assessment and comprehensive performance evaluations.*

This new section was added to incorporate the EPA's new reporting requirements for individual filter evaluations. This amendment reflects the Federal requirements in 40 CFR 141.175.

F. *Benefits, Costs and Compliance*

Executive Order 1996-1 requires a cost/benefit analysis of the proposed amendments.

Benefits

The implementation of the proposed amendments will significantly reduce the level of *Cryptosporidium* in finished drinking water supplies through improvements in filtration. The rule will also reduce the likelihood of the occurrence of outbreaks of cryptosporidiosis by providing a larger margin of safety against the outbreaks for some systems. In addition, the filtration provisions of the rule are expected to increase the level of protection from other pathogens (for example, *Giardia lamblia* or other waterborne bacterial or viral pathogens).

Compliance Costs

Approximately 120 public water systems will be affected by these proposed amendments. These systems will incur increased costs as a result of improved turbidity treatment and disinfection benchmark monitoring. The customers of these affected water systems may experience higher water rates as a result of these increased costs. The actual increase in water rates will depend on a number of factors, including population served and the filtration technology utilized. According to the EPA studies conducted Nationally, 92% of the households affected by this proposed rulemaking will incur less than a cost of $1 per month. Seven percent of the affected households will face an increase in cost of $1 to $5 per month. The highest increase in cost will be approximately $8 per month and will be faced by approximately 23,000 households Nationally.

The assumptions and structure of the EPA analysis tend to overestimate the highest costs. To incur these higher costs, a system would have to implement all, or almost all, of the treatment activities. These systems, however, might seek less costly alternatives, such as connecting into a larger regional water system.

The estimated total annual cost that will be borne by the regulated community in this Commonwealth will be about $10.3 million. Many filtration plants evaluated in this Commonwealth currently meet the IESWTR turbidity requirements and, possibly, may not incur additional expense for improved turbidity removal. The benefits that may result from this proposed rulemaking in this Commonwealth may range from $20 to $100 million per year using a valuation of $2,000 in health damages avoided per cryptosporidiosis illness prevented.

Compliance Assistance Plan

The Safe Drinking Water Program utilizes the Commonwealth's PENNVEST Program to offer financial assistance to eligible public water systems. This assistance is in the form of a low-interest loan, with some augmenting grant funds for hardship cases. Eligibility is based upon factors such as public health impact, compliance necessity and project/operational affordability.

The Safe Drinking Water Program has established a network of regional and central office training staff that is responsive to identifiable training needs. The target audience in need of training may be either program staff or the regulated community.

In addition to this network of training staff, the Bureau of Water Supply Management has a division dedicated to providing both training and outreach support services to public water system operators. The Department's Internet site also contains the *Drinking Water & Wastewater Treatment System Operator Information Center* Internet site, which provides a bulletin board of timely, useful information for treatment plant operators.

Paperwork Requirements

The proposed amendments will require public water systems to monitor and report individual filter turbidity. It is anticipated that this additional monitoring and reporting will be easily facilitated by the addition of one or two new data reporting forms and that little additional paperwork will be necessary.

G. *Sunset Review*

These regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

H. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Department submitted a copy of the proposed amendments to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the Senate and House 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 which have not been met by that portion of the proposed amendments to which an objection is made. The Regulatory Review Act specifies detailed procedures for review by the Department, the Governor and the General Assembly of objections raised prior to final publication of the amendments.

I. *Public Comments*

Written Comments—Interested persons are invited to submit comments, suggestions or objections regarding the proposed amendments 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 17105-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by October 2, 2000 (within 30 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 October 2, 2000 (within 30 days of 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 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 October 2, 2000. A subject heading of the proposal and a return name and address must be included in each transmission. If an acknowledgement of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

JAMES M. SEIF,
Chairperson

Fiscal Note: 7-358. (1) General Fund; (2) Implementing Year 2000-01 is $1,352,000; (3) 1st Succeeding Year 2001-02 is $1,352,000; 2nd Succeeding Year 2002-03 is $1,352,000; 3rd Succeeding Year 2003-04 is $1,352,000; 4th Succeeding Year 2004-05 is $1,352,000; 5th Succeeding Year 2005-06 is $1,352,000;

	Environmental Program Management	*Environmental Protection Operations*
(4) Fiscal Year 1999-00	$40,200,000	$71,402,000
Fiscal Year 1998-99	$33,123,000	$70,083,000
Fiscal Year 1997-98	$31,139,000	$64,093,000

(7) Environmental Program Management and Environmental Protection Operations; (8) recommends adoption. The costs will be covered from these two appropriations. An estimated 85% of the costs should be reimbursed by the Federal government.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

DEPARTMENT OF ENVIRONMENTAL PROTECTION

CHAPTER 109. SAFE DRINKING WATER

Subchapter A. GENERAL PROVISIONS

§ 109.1. Definitions.

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

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***CPE—Comprehensive Performance Evaluation*—A thorough review and analysis of a treatment plant's performance-based capabilities and associated administrative, operation and maintenance practices.**

(i) The CPE is conducted to identify factors that may be adversely impacting a plant's capability to achieve compliance and emphasizes approaches that can be implemented without significant capital improvements.

(ii) The CPE shall consist of at least the following components:

(A) Assessment of plant performance.

(B) Evaluation of major unit processes.

(C) Identification and prioritization of performance limiting factors.

(D) Assessment of the applicability of comprehensive technical assistance.

(E) Preparation of a CPE report.

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***Disinfection profile*—The summary of daily *Giardia lamblia* inactivation through the treatment plant as determined through procedures and measurement methods established by the EPA.**

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***Filter profile*—A graphical representation of individual filter performance, based on continuous turbidity measurements or total particle counts versus time for an entire filter run, from startup to backwash inclusively, that includes an assessment of filter performance while another filter is being backwashed.**

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GUDI—Groundwater Under the Direct Influence of Surface Water—

(i) Any water beneath the surface of the ground with the presence of insects or other macroorganisms, algae, organic debris or large diameter pathogens such as *Giardia lamblia* and *Cryptosporidium*, or significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity or pH which closely correlate to climatological or surface water conditions. The term does not include finished water.

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National Primary Drinking Water Regulations—Primary drinking water regulations and implementation regulations promulgated by the Administrator under the Federal act **[at] in** 40 CFR **[141.1—141.42 and 142.1—142.55] Parts 141 and 142 (relating to National Primary Drinking Water Regulations; and National Primary Drinking Water Regulations Implementation).** The term includes interim, revised and final regulations.

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Surface water—Water open to the atmosphere or subject to surface runoff**[, or water directly influenced by surface water, which may include springs, infiltration galleries, cribs or wells]**. The term does not include finished water. **[Water is directly influenced by surface water when the aquifer is configured to allow the passage of pathogenic protozoans, subjecting the source to contamination by the protozoans. Direct influence may be determined on a case-by-case basis and may be determined by one or both of the following:**

(i) Significant and relatively rapid shifts in water characteristics, such as turbidity, temperature, conductivity or pH (which may also change in groundwater but at a much slower rate) which closely correlate to climatologic or surface water conditions.

(ii) The presence of insects or other macroorganisms, algae, organic debris or large-diameter protozoans such as Giardia lamblia.]

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Subchapter B. MCLS OR TREATMENT TECHNIQUE REQUIREMENTS

§ 109.202. State MCLs and treatment technique requirements.

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(c) *Treatment technique requirements for pathogenic bacteria, viruses and protozoan cysts.* A public water system shall provide adequate treatment to reliably protect users from the adverse health effects of microbiological contaminants, including pathogenic bacteria, viruses and protozoan cysts. The number and type of treatment barriers and the efficacy of treatment provided shall be commensurate with the type, degree and likelihood of contamination in the source water.

(1) A public water supplier shall provide, as a minimum, continuous filtration and disinfection for surface water **and GUDI** sources. The treatment technique shall provide at least 99.9% removal and inactivation of Giardia lamblia cysts, and at least 99.99% removal and inactivation of enteric viruses. **Beginning January 1, 2002, public water suppliers serving 10,000 or more people shall provide at least 99% removal of cryptosporidium oocysts.** The Department, depending on source water quality conditions, may require additional treatment as necessary to meet the requirements of this chapter and to protect the public health.

(i) The filtration process shall meet the following performance requirements:

(A) *Conventional or direct filtration.*

* * * * *

(III) Beginning January 1, 2002, for public water systems serving 10,000 or more persons, the filtered water turbidity shall meet the following criteria:

(-a-) Be less than or equal to 0.3 NTU in at least 95% of the measurements taken each month under § 109.301(1).

(-b-) Be less than or equal to 1 NTU at all times, measured under § 109.301(1).

* * * * *

(C) *Other filtration technologies.* The same performance criteria as those given for conventional filtration and direct filtration in clause (A) shall be achieved **unless the Department specifies more stringent performance criteria.**

* * * * *

(vi) For a source including springs, infiltration galleries, cribs or wells permitted for use by the Department prior to May 16, 1992, and determined by the Department to be **[directly influenced by surface water] a GUDI source**, the public water supplier shall:

* * * * *

(B) Provide continuous filtration and disinfection in accordance with this paragraph within 48 months after the Department determines the source of supply is **[directly influenced by surface water] a GUDI source.**

(C) Submit to the Department for approval a feasibility study within 1 year after the Department determines the source of supply is **[directly influenced by surface water] a GUDI source.** The feasibility study shall specify the means by which the supplier shall, within the deadline established in clause (B), meet the requirements of this paragraph and shall otherwise comply with paragraph (1)(iv)(A).

* * * * *

§ 109.204. Disinfection profiling and benchmarking.

The disinfection profiling and benchmarking requirements, established by the EPA under the National Primary Drinking Water Regulations in 40 CFR 141.172 (relating to disinfection profiling and benchmarking) are incorporated by reference except as otherwise established by this chapter. The public water supplier shall conduct disinfection profiling in accordance with the procedures and methods in the most current edition of the *Disinfection Profiling and Benchmarking Guidance Manual* published by the EPA. The public water supplier required to conduct disinfection profiling shall submit the disinfection profiling data and the benchmark data to the Department by June 1, 2001, in a format acceptable to the Department.

§ 109.205. Filter profile, filter self-assessment and comprehensive performance evaluations.

Public water systems are required to perform or conduct a filter profile, filter self-assessment or comprehensive performance evaluation if any individual filter monitoring conducted under § 109.301(1)(iv) (relating to general monitoring requirements) demonstrates that one or more of the following conditions exist:

(1) A public water system shall produce a filter profile within 7 days of an individual filter turbidity exceedance (unless the reason for the exceedance can be determined) if any individual filter has a measured turbidity level greater than 1.0 NTU in two consecutive measurements taken 15 minutes apart; or, if any individual filter has a measured turbidity level greater than 0.5 NTU in two consecutive measurements taken 15 minutes apart at the end of the first 4 hours of continuous filter operation after the filter has been backwashed or otherwise taken offline.

(2) A public water system shall conduct a filter self-assessment within 14 days of an individual filter turbidity exceedance if any individual filter has a measured turbidity level greater than 1.0 NTU in two consecutive measurements taken 15 minutes apart at any time in each of 3 consecutive months.

(3) A public water system shall arrange for a comprehensive performance evaluation to be conducted by the Department within 30 days of any individual filter having a measured turbidity level greater than 2.0 NTU in 2 consecutive measurements taken 15 minutes apart at any time in each of 2 consecutive months. The comprehensive performance evaluation shall be completed within 90 days following the individual filter turbidity exceedance.

Subchapter C. MONITORING REQUIREMENTS

§ 109.301. General monitoring requirements.

The monitoring and analytical requirements, including approved sampling procedures and analytical techniques, established by the EPA under the National Primary Drinking Water Regulations, 40 CFR Part 141 (relating to national primary drinking water regulations), as of December 8, 1984, are incorporated by reference. Public water suppliers shall monitor for compliance with MCLs in accordance with the requirements established in the National Primary Drinking Water Regulations, except as otherwise established by this chapter unless increased monitoring is required by the Department under § 109.302 (relating to special monitoring requirements). Alternative monitoring requirements may be established by the Department and may be implemented in lieu of monitoring requirements for a particular National Primary Drinking Water Regulation if the alternative monitoring requirements are in conformance with the Federal act and regulations. The monitoring requirements shall be applied as follows:

(1) *Performance monitoring for filtration and disinfection.* A public water supplier providing filtration and disinfection of surface water **or GUDI** sources shall**[, beginning July 1, 1990,]** conduct the performance monitoring requirements established by the EPA under the National Primary Drinking Water Regulations, unless increased monitoring is required by the Department under § 109.302.

(i) Except as provided under subparagraphs (ii) and (iii), a public water supplier:

(A) Shall determine **and record** the turbidity level of representative samples of the system's filtered water at least once every 4 hours that the system is in operation, except as provided in clause (B).

(B) May substitute continuous turbidity monitoring **and recording** for grab sample monitoring **and manual recording** if it validates the continuous measurement for accuracy on a regular basis using a **[protocol approved] procedure specified** by the **[Department] manufacturer**. For systems using slow sand filtration or filtration treatment other than conventional filtration, direct filtration or diatomaceous earth filtration, the Department may reduce sampling frequency to once per day.

(C) Shall continuously monitor **and record** the residual disinfectant concentration of the water being supplied to the distribution system and record both the lowest value for each day and the number of periods each day when the value is less than .2 mg/l for more than 4 hours. If a public water system's continuous monitoring **or recording** equipment fails, the public water supplier may, upon notification of the Department under § 109.402 (relating to emergency public notification), substitute grab sampling **or manual recording** every 4 hours in lieu of continuous monitoring. Grab sampling **or manual recording** may not be substituted for continuous monitoring **or recording** for longer than 5 days after the equipment fails.

(D) Shall measure **and record** the residual disinfectant concentration at representative points in the distribution system no less frequently than the frequency required for total coliform sampling for compliance with the MCL for microbiological contaminants.

* * * * *

(iv) A public water supplier providing conventional filtration treatment or direct filtration and serving 10,000 or more people and using surface water or GUDI sources shall, beginning January 1, 2002, conduct continuous monitoring of turbidity for each individual filter using an approved method under the EPA regulation in 40 CFR 141.74(a) (relating to analytical and monitoring requirements) and record the results every 15 minutes.

(A) The water supplier shall calibrate turbidimeters using the procedure specified by the manufacturer.

(B) If there is failure in the continuous turbidity monitoring equipment, the system shall conduct grab sampling every 4 hours in lieu of continuous monitoring.

(C) A public water supplier has a maximum of 5 days following the failure of the equipment to repair or replace the equipment.

(2) *Performance monitoring for unfiltered surface water **and GUDI**.* A public water supplier using unfiltered surface water **or GUDI** sources shall conduct the following source water and performance monitoring requirements on an interim basis until filtration is provided, unless increased monitoring is required by the Department under § 109.302:

* * * * *

Subchapter F. DESIGN AND CONSTRUCTION STANDARDS

§ 109.605. Minimum treatment design standards.

The level of treatment required for raw water depends upon the characteristics of the raw water, the nature of the public water system and the likelihood of contamination. The following minimum treatment design standards apply to new facilities and major changes to existing facilities:

(1) For surface water **and GUDI** sources, the minimum treatment design standard for filtration technologies is a 99% removal of Giardia cysts, **a 99% removal of cryptosporidium oocysts** and a 99% removal of viruses. The determination of the appropriate filtration technology to be used shall be based on the following:

* * * * *

(2) For surface water **and GUDI** sources, the minimum treatment design standard for disinfection technologies utilized prior to the first user of the system is a total of 99.9% inactivation of Giardia cysts and a 99.99% inactivation of viruses. Total treatment system disinfection capability will be credited toward this design standard. The CT factors and measurement methods established by the EPA are the criteria to be used in determining compliance with this minimum treatment design standard.

Subchapter G. SYSTEM MANAGEMENT RESPONSIBILITIES

§ 109.701. Reporting and recordkeeping.

(a) *Reporting requirements for public water systems.* Public water systems shall comply with the following requirements:

* * * * *

(2) *Monthly reporting requirements for performance monitoring.*

(i) The test results of performance monitoring required under § 109.301(1) (relating to general monitoring requirements) for public water suppliers providing filtration and disinfection of surface water **or GUDI** sources shall include the following at a minimum:

(A) For turbidity performance monitoring:

* * * * *

(II) The number of **filtered water turbidity** measurements taken each month.

(III) The number of **filtered water turbidity** measurements that **are less than or** equal **[or exceed] to** .5 NTU for conventional, direct or other filtration technologies, or 1.0 NTU for slow sand or diatomaceous earth filtration technologies.

(IV) The date, time and values of **any filtered water turbidity** measurements exceeding 2.0 NTU.

(V) In lieu of clause (A)(III) and (IV), beginning January 1, 2002, for public water systems that serve 10,000 or more people and use conventional or direct filtration:

(-a-) The number of filtered water turbidity measurements that are less than or equal to 0.3 NTU.

(-b-) The date, time and values of any filtered water turbidity measurements that exceed 1 NTU for systems using conventional or direct filtration or that exceed the maximum level set under § 109.202(c)(1)(i)(A)(III) (relating to State MCLs and treatment technique requirements).

(B) For performance monitoring of the residual disinfectant concentration of the water being supplied to the distribution system:

* * * * *

(III) The date, time and highest value each day the concentration is greater than the residual disinfectant concentration required under § 109.202(c)(1)(ii).

(IV) If the concentration does not rise above that required under § 109.202(c)(1)(ii), the date, time and highest value measured that month.

* * * * *

(ii) The test results of performance monitoring required under § 109.301(2) for public water suppliers using unfiltered surface water **or GUDI** sources shall include the following, at a minimum:

* * * * *

(e) *Reporting requirements for public water systems required to perform individual filter monitoring under § 109.301(1)(iv).*

(1) Public water systems providing filtration and disinfection of surface water sources shall report individual filter turbidity results if individual filter turbidity measurements demonstrate that one or more of the following conditions exist:

(i) An individual filter has a measured turbidity level greater than 1.0 NTU in two consecutive measurements taken 15 minutes apart.

(ii) An individual filter has a measured turbidity level of greater than 0.5 NTU in two consecutive measurements taken 15 minutes apart at the end of the first 4 hours of continuous filter operation after the filter has been backwashed or otherwise taken offline.

(iii) An individual filter has a measured turbidity level greater than 1.0 NTU in two consecutive measurements taken 15 minutes apart at any time in each of 3-consecutive months.

(iv) An individual filter has a measured turbidity level greater than 2.0 NTU in two consecutive measurements taken 15 minutes apart at any time in each of 2-consecutive months.

(2) Individual filter turbidity monitoring reported as required under paragraph (1) shall include the following at a minimum:

(i) Filter number.

(ii) Turbidity measurements.

(iii) The dates on which the exceedance occurred.

(iv) If an individual filter demonstrates a condition under paragraph (1)(i) or (ii), the date on which a filter profile was produced or the date on which the reason for a turbidity exceedance was determined.

(v) If an individual filter demonstrates a condition under paragraph (1)(iii), the date on which a filter self-assessment was conducted.

(vi) If an individual filter demonstrates a condition under paragraph (1)(iv), the date on which a comprehensive performance evaluation was conducted.

(f) *Alternative individual filter turbidity exceedance levels*. Public water systems using lime softening may apply to the Department for alternative individual filter turbidity exceedance levels if they demonstrate that the higher individual filter turbidity levels are due to lime carryover and not to degraded filter performance.

§ 109.703. Facilities operation.

* * * * *

(b) For surface water **or GUDI** sources, a public water supplier using filtration shall comply with the following requirements:

* * * * *

(5) **[In lieu of individual filter bed turbidity monitoring] Except for public water systems covered under § 109.301(1)(iv) (relating to general monitoring)**, a system with conventional or direct filtration facilities permitted prior to March 25, 1989, without **[those] individual filter bed turbidity monitoring** capabilities shall conduct an annual filter bed evaluation program, acceptable to the Department, which includes an evaluation of filter media, valves, surface sweep and sampling of filter turbidities over one entire filter run; and shall submit to the Department, with the Annual Water Supply Report, a study that demonstrates that the water supplier's filter-to-waste or alternate approved operating procedures are meeting the operating conditions under paragraph (1) or (4).

§ 109.710. Disinfectant residual in the distribution system.

* * * * *

(b) A public water system that uses surface water **or GUDI** sources or obtains finished water from another permitted public water system using surface water **or GUDI** sources shall comply with the following requirements:

* * * * *

§ 109.714. Filter profile, filter self-assessment and comprehensive performance evaluations.

Public water systems required to perform individual filter monitoring under § 109.301(1)(iv) (relating to general monitoring requirements) shall notify the Department if individual filter turbidity measurements demonstrate that one or more of the following conditions exist:

(1) If an individual filter demonstrates a condition under § 109.701(e)(1)(i) or (ii) (relating to reporting and recordkeeping), the Department shall be notified within 24 hours of the turbidity level exceedance that a filter profile will be produced within 7 days of the turbidity level exceedance, unless the system notifies the Department of the reason for the exceedance.

(2) If an individual filter demonstrates a condition under § 109.701(e)(1)(iii), the Department shall be notified within 24 hours of the turbidity level exceedance that a self-assessment of the filter will be conducted within 14 days of the turbidity level exceedance. A filter self-assessment shall consist of at least the following components:

(i) Assessment of filter performance.

(ii) Development of a filter profile.

(iii) Identification and prioritization of factors limiting filter performance.

(iv) Assessment of the applicability of corrections.

(v) Preparation of a filter self-assessment report.

(3) If an individual filter demonstrates a condition under § 109.701(e)(1)(iv), the Department shall be notified within 24 hours of the turbidity level exceedance that a comprehensive performance evaluation will need to be conducted by the Department within 30 days following the turbidity level exceedance.

[Pa.B. Doc. No. 00-1504. Filed for public inspection September 1, 2000, 9:00 a.m.]

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 51]

Civil Penalty Forfeiture Process

The Fish and Boat Commission (Commission) proposes to adopt Chapter 51, Subchapter K (relating to civil penalty forfeiture process). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The proposed regulations relate to the forfeiture of civil penalties for failure to comply with section 3510 of the code (relating to marking of dams).

A. *Effective Date*

The proposed regulations, if approved on final rulemaking, will go into effect upon publication of an order adopting the regulations in the *Pennsylvania Bulletin*.

B. *Contact Person*

For further information on the proposed regulations, contact Laurie E. Shepler, Assistant Counsel, (717) 657-4546, P. O. Box 67000, Harrisburg, PA 17106-7000. This proposal is available electronically through the Commission's Web site (http://www.fish.state.pa.us).

C. *Statutory Authority*

The proposed regulations are published under the statutory authority of section 3510 of the code.

D. *Purpose and Background*

The act of June 18, 1998 (P. L. 702, No. 91) effective January 1, 1999, amended the code by adding section 3510. This section applies to owners of existing run-of-the-river dams and permittees for the construction or installation of new run-of-the-river dams. Specifically, it requires the owners of dams identified by the Department of Environmental Protection (DEP) as meeting the statutory definition of a "run-of-the-river" dam to mark the areas above and below the dams and on the banks immediately adjacent to the dams with signs and buoys. The design and content of these signs and buoys was determined by the Commission after consultation with DEP. The signs are intended to warn the swimming, fishing and boating public of the hazards posed by the dam.

E. *Summary of Proposal*

Section 3510 of the code provides that any person who fails to comply with the marking requirements shall forfeit and pay a civil penalty of not less than $500 nor more than $5,000. This section further provides that any person who fails to comply with the maintenance requirements shall forfeit and pay a civil penalty of not less than $250 nor more than $5,000. To recover civil penalties, the Commission must have an administrative process for forfeiture of civil penalties in place. Accordingly, the Commission proposes the new regulations as set forth in Annex A.

F. *Paperwork*

The proposed regulations will not increase paperwork and will create no new paperwork requirements.

G. *Fiscal Impact*

The proposed regulations will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed regulations will impose no new costs on the private sector or the general public.

H. *Public Comments*

Interested persons are invited to submit written comments, objections or suggestions about the proposed regulations to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000, within 30 days after publication of this notice in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically at "regulations@fish.state.pa.us." A subject heading of the proposal and a return name and address must be included in each transmission. In addition, all electronic comments must be contained in the text of the transmission, not in an attachment. If an acknowledgment ofelectronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

PETER A. COLANGELO,
Executive Director

Fiscal Note: 48A-108. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 51. ADMINISTRATIVE PROVISIONS

Subchapter K. CIVIL PENALTY FORFEITURE PROCESS

Sec.

§ 51.101. General.

(a) Under section 3510(h) of the code (relating to marking of dams), a person failing to comply with section 3510(a) or (b) of the code shall forfeit a civil penalty of not less than $500 nor more than $5,000.

(b) Under section 3510(h) of the code, a person failing to comply with section 3510(c) of the code shall forfeit a civil penalty of not less than $250 nor more than $5,000.

(c) The civil penalties described in subsections (a) and (b) may be recovered by civil suit or process in the name of the Commonwealth. The purpose of this subchapter is to describe the administrative process for forfeiture of civil penalties under the code.

§ 51.102. Initiation of process.

(a) The administrative process to effect the forfeiture of a civil penalty under section 3510(h) of the code may be initiated by any person authorized to enforce the code and any employe of the Commission or the Department of Environmental Protection authorized by the Executive Director to initiate the process.

(b) A person authorized to initiate the process under subsection (a) shall do so by completing a report on a form approved by the Executive Director. The report, to be executed under penalty of law, will, at a minimum, describe:

(1) The name of the owner or permittee of the dam.

(2) The location of the dam, including county and township or other political subdivision.

(3) The dates the dam was inspected.

(4) The nature of the noncompliance.

§ 51.103. Compliance notification.

(a) Prior to serving an order to show cause for civil penalty under section 3510 of the code, the Executive Director or a designee will send the owner or permittee of the dam in question a written compliance notification that will describe the nature of the alleged noncompliance with section 3510 of the code.

(b) The compliance notification shall give the owner or permittee of the dam not less than 15 nor more than 30 days to demonstrate to the satisfaction of the Executive Director or a designee that the owner or permittee has brought the dam into compliance with section 3510 of the code or face forfeiture of civil penalties.

§ 51.104. Order to show cause for forfeiture of civil penalty.

(a) If the owner or permittee fails to demonstrate compliance after the notification described in § 51.103 (relating to compliance notification), the Executive Director or a designee will serve on the owner or permittee of the dam an order to show cause for forfeiture of civil penalty in a form approved by the Executive Director or designee. Service will be by registered or certified mail, or by personal service. If the mail is tendered at the address in the permit, or at an address where the owner or permittee is located, and delivery is refused, or mail is not collected, the requirements of this section shall be deemed to have been complied with upon tender.

(b) The owner or permittee who has been served with an order to show cause in accordance with subsection (a) has 30 days to file an answer to the order to show cause. If no answer is submitted, the failure to submit a timely answer will operate as a waiver and the proposed forfeiture of civil penalty will become a final forfeiture upon the expiration of the 30-day period unless the Executive Director or a designee determines to hold a hearing on the proposed forfeiture under the procedures in § 51.107 (relating to hearings).

§ 51.105. Amount of proposed civil penalty forfeiture.

(a) *Amount.* The amount of the proposed civil penalty forfeiture will be set forth in the order to show cause for civil penalty forfeiture. In determining the amount of the proposed forfeiture, the Executive Director or a designee will consider:

(1) *Health and safety of public.* The hazards posed to the health or safety of the public. The minimum proposed civil penalty forfeiture will be $2,500 if the Executive Director or a designee determines, based on the uses of the waters, that the unmarked dam poses substantial danger to the angling, boating and wading public.

(2) *Negligence, recklessness or intentional failure.* Whether the violation was caused by a negligent, reckless or intentional failure to comply. A civil penalty of at least $500 should be proposed in cases of negligent failure to comply. A civil penalty of at least $2,000 should be proposed where there is probable cause to believe that the lack of compliance was based on reckless misconduct. A civil penalty of at least $3,000 should be proposed when there is probable cause to believe that the lack of compliance was based on wilful or intentional misconduct.

(3) *Speed of compliance.* A credit will be given of up to $1,000 based on the attempt of the owner or permittee to achieve rapid compliance after the owner or permittee knew or should have known of the violation. The credit will be available to offset only civil penalties assessed for the specific violation at issue.

(4) *Cost to the Commonwealth.* In proposing the amount of a civil penalty forfeiture, the costs to the Commonwealth will be considered. The costs may include:

(i) Administrative costs.

(ii) Costs of inspection.

(iii) Costs of preventive or restorative measures taken by the Commission or the Department of Environmental Protection to prevent or lessen the threat of damage to persons or property.

(5) *Savings to the dam owner/permittee.* If the owner or permittee of the dam who fails to comply gains economic benefit as a result of the noncompliance, the proposed civil penalty may include an amount equal to the savings up to the statutory maximum for each violation.

(6) *History of previous violations.* In determining a proposed civil penalty for a violation, the Executive Director or a designee will consider previous noncompliance with the requirements of section 3510 of the code (relating to marking of dams) for which the same owner or permittee has been found to have been responsible in a prior adjudicated proceeding, agreement, consent order or decree that became final within the previous 3-year period. The penalty otherwise assessable for noncompliance shall be increased by a factor of 25% for each previous violation. The total increase in assessment based on the history of the previous violation will not exceed $1,000.

(i) A previous instance of noncompliance will not be counted if it is the subject of pending administrative or judicial review, or if the time to request the review or to appeal the administrative or judicial decision determining the previous violation has not expired.

(ii) Each previous instance of noncompliance will be counted without regard to whether it led to a civil penalty assessment.

(b) *Maximum penalty.* If consideration of the factors described in this section yields a penalty in excess of the statutory maximum, the maximum civil penalty will be proposed for that violation.

(c) *Revision of proposed civil penalty.* The Executive Director, upon his own initiative or upon written request received within 15 days of issuance of an order to show cause, may revise a proposed civil penalty calculated in accordance with the dollar limits in subsection (a). If the Executive Director revises the civil penalty, the Department of Environmental Protection will use the general criteria in subsection (a) to determine the appropriate civil penalty. When the Executive Director has elected to revise a civil penalty, he will give a written explanation of the basis for the revised civil penalty to the dam owner or permittee to whom the order to show cause was issued.

§ 51.106. Procedure in lieu of hearing.

(a) When for any reason a hearing is not held with regard to forfeiture, the entire written file on the case shall be submitted to the Commission, which will review the matter and make a final determination as to its disposition. The action of the Commission is considered the final agency action.

(b) Subsection (a) supersedes 1 Pa. Code § 35.226 (relating to final orders).

§ 51.107. Hearings.

(a) If an owner or permittee of a dam requests a hearing, or the Executive Director or a designee determines a hearing is appropriate, the Executive Director will appoint a presiding officer to conduct the hearing on behalf of the Commission. This subsection supersedes 1 Pa. Code § 35.185 (relating to designation of presiding officers).

(b) Hearings will be conducted at the Harrisburg office of the Commission or at another location the presiding officer or Executive Director may designate. Dam owners or permittees will be given at least 10 days written notice of the date and time of the hearing.

(c) The burden of proof to justify the proposed forfeiture will be on the Commission to prove by a preponderance of the evidence that the proposed action is justified by the facts and circumstances.

(d) The presiding officer will permit either oral argument at the conclusion of the hearing or the filing of written briefs, but not both, except in cases of extraordinary complexity when the presiding officer finds, upon motion of the parties or his own motion, that the ends of justice require allowance of both. When briefs are to be filed, the procedures of 1 Pa. Code §§ 35.191—35.193 (relating to proceedings in which briefs are to be filed; content and form of briefs; and filing and service of briefs) will be followed. This subsection supersedes 1 Pa. Code § 35.204 (relating to oral argument before presiding officer).

§ 51.108. Report of the presiding officer.

(a) After the hearing is closed, the transcript prepared, and briefs, if any, received, the presiding officer will prepare a proposed report, the contents of which shall be in substantial compliance with 1 Pa. Code § 35.205 (relating to contents of proposed reports).

(b) A copy of the proposed report shall be served on the owner or permittee of the dam, the Commission staff and other parties of record who shall thereafter have 30 days to file exceptions to the report together with any brief on exceptions. Briefs opposing exceptions may be filed in

accordance with 1 Pa. Code § 35.211 (relating to procedure to except to proposed report).

(c) If no timely exceptions to the proposed report are filed, the proposed report will be considered the final administrative adjudication of the Commission.

(d) If exceptions to the proposed report are filed, the proposed report, together with the entire record, the briefs, the exceptions, and briefs on and opposing exceptions will be subject to review by the Commission under § 51.109 (relating to final administrative action).

§ 51.109. Final administrative action.

(a) When exceptions are filed to the proposed report or which are disposed of under § 51.106 (relating to procedure in lieu of hearing), the members of the Commission will review the case file, together with other matters of record and filings in the proceedings. At a public meeting convened under 65 Pa.C.S. Chapter 7 (relating to the Sunshine Act), the Commission will consider the matter. Unless ordered by the Commission, oral argument will not be permitted at the public meeting nor will the respondent be permitted to reargue or retry matters that were raised or could have been raised before the presiding officer. The Commission will vote to approve or disapprove a proposed report or, in cases under § 51.106, to issue an order as appropriate.

(b) The action by the Commission will be considered the final administrative adjudication with respect to the forfeiture of civil penalties. The dam owner or permittee will be notified in writing of the final action. The final order will be considered officially entered on the date it is mailed or otherwise served, whichever comes first.

(c) If, after the entry of a final order, the dam owner or permittee files a timely petition for review or judicial appeal of the adjudication, the owner or permittee may apply in writing to the Executive Director for a stay of the effective date of the order. The filing of a petition for review or judicial appeal does not operate as an automatic stay. The Executive Director may grant a stay for good cause shown.

[Pa.B. Doc. No. 00-1505. Filed for public inspection September 1, 2000, 9:00 a.m.]

GAME COMMISSION

[58 PA. CODE CHS. 139 AND 141]

Bear Season; Ammunition for Flintlocks

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) at its June 21, 2000, meeting proposed the following amendments:

Amend § 139.4 (relating to seasons and bag limits for the license year) to give the Executive Director the authority to extend the bear season when there has been an underharvest of bear.

Amend § 141.43 (relating to deer) to expand the types of ammunition lawful for use in the flintlock muzzleloader season.

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

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

This proposal was made public at the June 21, 2000, meeting of the Commission, and comments on this proposal can be sent to the Executive Director of the Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, until October 6, 2000.

Proposed Amendment to § 139.4

1. *Introduction*

To more effectively manage the wildlife resources of this Commonwealth, the Commission at its June 21, 2000, meeting proposed changing § 139.4 to give the Executive Director authority to extend the bear season, if there is an underharvest of bear. This change is proposed under sections 322(c)(1) and 2102(b)(1) of the code (relating to powers and duties of commission; and regulations).

2. *Purpose and Authority*

The bear population in this Commonwealth has increased dramatically in recent years. This has resulted in an increased number of incidents involving nuisance bears. To minimize these incidents, it is essential to meet bear harvest goals for the season.

Section 322(c) of the code specifically empowers the Commission to "... fix seasons ... and daily, season and possession limits for any species of game or wildlife." Section 2102(b) of the code mandates that the Commission promulgate regulations relating to seasons and bag limits. The proposed change would add a footnote to the bear season authorizing the Executive Director to extend the bear season by order, from 1 to 4 days where it appears that there has been an underharvest of bear.

3. *Regulatory Requirements*

The proposal would expand possible hunting opportunities within limitations.

4. *Persons Affected*

Those wishing to hunt bear and having the required license would be affected by the proposed change.

5. *Cost and Paperwork Requirements*

There will be no additional cost or paperwork resulting from the proposed change.

6. *Effective Dates*

The effective dates are July 1, 2000 to June 30, 2001.

Proposed Amendment to § 141.43

1. *Introduction*

To more effectively manage the wildlife resources of this Commonwealth, the Commission at its June 21, 2000, meeting proposed changing § 141.43 to allow the use of any and all single projectile ammunition during the muzzleloading deer season. This proposal was made under section 2102(d) of the code.

2. *Purpose and Authority*

The Commission is mandated by section 2102(d) of the code to promulgate regulations "... stipulating ... the type of firearms and ammunition, which may be used." The change is proposed under this authority.

There has been a great deal of confusion with regard to what ammunition may be used during the muzzleloading deer season. The proposed change should end this confusion and simplify what ammunition can be used.

3. *Regulatory Requirements*

The proposed change will expand the types of ammunition that can be lawfully used and relax regulatory requirements.

4. *Persons Affected*

Those wishing to hunt deer during the special muzzleloading seasons will be affected by the proposed change.

5. *Cost and Paperwork Requirements*

The proposed change should not result in additional cost or paperwork.

6. *Effective Date*

The proposed change will be effective on final publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

Contact Person

For further information on the proposed changes contact David Overcash, Acting Director, Bureau of Law Enforcement, (717) 783-6526, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

VERNON R. ROSS,
Executive Director

Fiscal Note: 48-124. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 139. SEASONS AND BAG LIMITS

§ 139.4. Seasons and bag limits for the license year.

2000-2001 OPEN HUNTING AND FURTAKING SEASONS, DAILY LIMIT, FIELD POSSESSION LIMIT AND SEASON LIMIT
OPEN SEASON INCLUDES FIRST AND LAST DATES LISTED

* * * * *

Species	*First Day*	*Last Day*	*Daily Limit*	*Season Limit*
		BEAR		
Bear, any age	Nov. 20	Nov. 22[*****]	1	1

* * * * *

[*****] The Executive Director is hereby authorized to extend, by order, in accordance with § 139.3, this season either Statewide or on a designated area basis when it appears, after polling the Bureau of Wildlife Management, the Commissioners and regional directors, that there has been an underharvest of bear. The extension may be from 1 to 4 days and may be concurrent with the Statewide antlered deer firearms season. The extension shall be between the first and third Saturday (inclusive) immediately following the regular bear season.

CHAPTER 141. HUNTING AND TRAPPING

Subchapter C. BIG GAME

§ 141.43. Deer.

* * * * *

(b) *Muzzleloading season.* Firearms lawful for use are original muzzleloading single-barrel guns manufactured prior to 1800, or a similar reproduction of an original muzzleloading single-barrel gun which:

* * * * *

(2) **[Propels a single spherical lead ball with a cloth patch or a maxi-ball or mini-ball] Propels single-projectile ammunition.**

* * * * *

[Pa.B. Doc. No. 00-1506. Filed for public inspection September 1, 2000, 9:00 a.m.]

INSURANCE DEPARTMENT

[31 PA. CODE CHS. 89 AND 89a]

Policies and Forms; General Filing Requirements and General Contents of Forms

The Insurance Department (Department) proposes to amend Chapter 89 (relating to general filing requirements and general contents of forms), and adopt Chapter 89a (relating to approval for life insurance, accident and health insurance and property and casualty insurance filing and form) to read as set forth in Annex A. This rulemaking is proposed under the authority contained in sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); sections 510—514 of The Insurance Company Law of 1921 (40 P. S. §§ 510—514), and section 3(a) of the Accident and Health Filing Reform Act (40 P. S. § 3803(a)).

Purpose

Chapter 89 was adopted in 1969. This chapter was intended to provide filing and content requirements for life and accident and health insurance forms to insurers doing business in this Commonwealth. These requirements are necessary to assure the consistent and complete filing of forms by insurers.

The Department is proposing to establish Chapter 89a to improve readability. These new sections of Chapter 89a set forth the requirements for the content and filing of life insurance and annuities, accident and health insurance and property and casualty insurance form filings. In addition, requirements for annuities and property and casualty insurance and provisions to allow for filings by means of the Internet or electronically were also incorporated in Chapter 89a. This will ensure the consistent application of filing requirements across all product lines filed with the Department. The Department is also revising these regulations to respond to changes in the insurance marketplace.

Explanation of Regulatory Requirements

Section 89.3 (relating to filing requirements) is being proposed for deletion. Portions of 89.3 will be incorporated in new § 89a.3 (relating to filing requirement).

Section 89.4 (relating to general filing procedures) is being proposed for deletion. Portions of 89.4 will be incorporated into new § 89a.4 (relating to general filing procedure).

Section 89.5 (relating to letter of submission) is being proposed for deletion. Portions of 89.5 will be incorporated into new § 89a.5 (relating to letter of submission).

Section 89.11 (relating to general contents of forms) is being proposed for deletion. Portions of 89.11 will be incorporated into new § 89a.6 (relating to general contents of forms).

Section 89.17 (relating to replacement of forms) is being proposed for deletion because it is not necessary for companies to inform the Department that a form or filing is obsolete or no longer being issued.

Section 89.21 (relating to general) is being proposed for deletion because tentative approval of filings is no longer necessary. Parts of § 89.21 are being incorporated into new § 89a.4 (relating to general filing procedure).

Section 89.22 (relating to changes in forms) is being proposed for deletion because the section is obsolete and no longer applicable to the review of form filings by the Department.

Section 89.23 (relating to documents shall be complete) is being proposed for deletion.

Section 89a.1 (relating to definitions) sets forth the definitions to be utilized in the chapter. Two definitions have been added to the subsection, which were not in § 89.1 to bring the regulations up-to-date with current market conditions and activities. "Filer" has been added to clarify the entity submitting forms to the Department. "Prominent type" has been added for clarification of certain form content requirements.

Section 89a.2 (relating to purpose) establishes the purpose of the chapter.

Section 89a.3 (relating to form filings) is being proposed to include annuities and property and casualty insurance forms to the requirements of the chapter as well as previous language contained in § 89.3. Section 89a.3(b) contains language that was previously found in § 89.4(c).

Section 89a.4 (relating to general filing procedure) includes the requirements found previously in § 89.4 and establishes the specific filing procedures and requirements that need to be followed. Section 89a.4(a) now allows for the filing of forms by means of the Internet and other electronic mediums and sets forth the specific filing requirements for this method of filing forms.

Section 89a.5 (relating to letter of submission) includes the requirements found previously in § 89.5 and establishes the specific filing procedures and requirements being used by the Department for letter of submissions.

Section 89a.6 (relating to general contents of forms) includes the requirements found previously in §§ 89.11 and 89.17 and establishes the specific form contents and requirements necessary for review by the Department. Section 89a.6 also has a readability section added. This section is being added because the readability issue is a consumer protection.

Affected Parties

Insurance companies transacting business in this Commonwealth who must follow the Department's form and content requirements of form filings will be affected by the proposed rulemaking.

Fiscal Impact

State Government

The proposal will not have an impact on Department costs associated with monitoring industry compliance because this does not represent a major change from current policy.

General Public

The proposal is not expected to have any cost impact on premiums paid by consumers for insurance policies.

Political Subdivisions

The proposal has no impact on costs to political subdivisions.

Private Sector

The proposal will not have any major impact on private sector costs because this does not represent a major change from current policy.

Paperwork

This proposal imposes no additional paperwork requirements on the Department and modifies the paperwork requirements imposed on the insurance industry.

Effectiveness/Sunset Date

The proposal will become effective upon final adoption and publication in the *Pennsylvania Bulletin* as final rulemaking. No sunset date has been assigned.

Contact Person

Questions or comments regarding the proposed rulemaking may be addressed in writing to Peter J. Salvatore, Regulatory Coordinator, Pennsylvania Insurance Department, 1326 Strawberry Square, Harrisburg, PA 17120, within 30 days following the publication of this notice in the *Pennsylvania Bulletin*. Questions and comments may also be e-mailed to psalvato@ins.state.pa.us or faxed to (717) 772-1969.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 23, 2000, the Department submitted a copy of this proposal to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Banking and Insurance Committee and the House Insurance Committee. In addition to the submitted proposal, 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 that material is available to the public upon request.

If IRRC has any objections to any portion of the proposed rulemaking, 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 that portion. The

Regulatory Review Act (71 P. S. §§ 745.1—745.14) specifies detailed procedures for the agency, the Governor and the General Assembly to review these objections before final publication of the regulations.

M. DIANE KOKEN,
Insurance Commissioner

Fiscal Note: 11-184. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 31. INSURANCE

PART IV. LIFE INSURANCE

CHAPTER 89. APPROVAL OF LIFE, ACCIDENT AND HEALTH INSURANCE

Subchapter A. REQUIREMENTS FOR ALL POLICIES AND FORMS

GENERAL PROVISIONS

§ 89.1. Definitions.

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

* * * * *

Advertisement—**[Printed or audio visual material used in newspapers, magazines, on radio or television, billboards or similar displays; descriptive literature or sales items, including but not limited to, circulars, leaflets, booklets, depictions, illustrations and form letters; prepared sales talks, presentations or material for use by agents or brokers and representations made by an agent or broker in connection therewith.] As defined in § 51.1 (relating to definitions).**

* * * * *

§ 89.3. **[Filing requirement] (Reserved).**

[(a) Policies, contracts, certificates, endorsements, riders, applications and related forms for life, accident and health insurance shall, prior to their use in this Commonwealth, be submitted to and formally approved by the Department for filing or approval, unless specifically excepted under section 354 of the act (40 P. S. § 477(b)).

(b) The filing letter accompanying a document which deviates from the guidelines in this chapter shall call attention to the deviation and explain how it meets the applicable requirements of the insurance laws of the Commonwealth.

(c) The submission of the documents shall be directed to the Director, Bureau of Regulation of Rates and Policies, Insurance Department, Harrisburg, Pennsylvania 17120.]

§ 89.4. **[General filing procedure] (Reserved).**

[(a) *Number of copies.* Policies and related forms being submitted for either tentative or formal approval shall be submitted in duplicate. One copy will be retained by the Department in its files and the other copy will be returned to the insurer with the action taken by the Department noted thereon.

(b) *By whom submitted.* Submissions should be made by the home office of the company, association, exchange or society rather than by local representatives, bureaus, company, associations or conferences, except if other arrangements have been specially made with and agreed to by the Department. Correspondence from the Department relating thereto and approvals or disapprovals of the submissions will be mailed to the home office of the company, association, exchange or society.

(c) *Out-of-State delivery.* Where other jurisdictions require prior review by the Department, a single copy of each form (in duplicate for a group accident and health form) which is to be issued by a domestic insurer for delivery only outside of this Commonwealth, or to be used with policies or contracts delivered outside of this Commonwealth, may be filed with the Department.

(d) *Tentative approval.* In order that a form may be given due consideration and defects therein pointed out and corrected before it is printed for formal submission, an insurer may submit printer's proofs of the form in two copies for tentative approval. If other than printer's proofs are submitted, the copies shall be clearly legible. Typewritten copies or copies prepared by a legible duplicating process may be submitted for documents to be used in connection only with single cases or when their use will be too infrequent to justify other preparation.]

§ 89.5. **[Letter of submission] (Reserved).**

[The letter of submission shall be in duplicate, signed by a representative of the company authorized to submit forms for filing or approval, and shall contain at least all of the following information:

(1) The identifying form number of each form submitted. If the form is for a document other than a policy or contract, the form number of the policy or contract form or forms with which it will be used shall be indicated or, if for more general use, the type or group of the forms shall be described.

(2) A brief statement of the coverage provided. If the form is a policy or contract submitted for approval, there shall be a statement appropriately identifying the specific type of coverage provided.

(3) If the form contains provisions, conditions or concepts which depart from those generally used by the industry and which could be construed as uncommon or unusual, there shall be a statement to this effect which will point out the specific purpose and use of the form, provision, condition or concept.

(4) If the form is a new one, not replacing an existing form, a statement to that effect.

(5) If the form is intended to supersede another approved or filed form, the form number of the approved or filed form which is to be superseded, the approval date of the form superseded and a statement of the material changes made. If the previous form has not yet been formally acted upon by the Department, the form number and submission date shall be given.

(6) If the form being filed for formal approval has previously been submitted for preliminary review, a reference to the previous submission and a statement setting out either that the formal filing agrees precisely with the previous submission, or the specific changes made in the form since the time of preliminary review.

(7) If a form is intended to replace a very recently approved form because of an error found in the approved form, the insurer shall, if the approved form has not been issued, return the approved form with a statement in the submission letter that the form has not been issued. The insurer may, under these circumstances, use the same form number on the submitted corrected form. If, however, the form has been issued, the insurer shall place a new form number on the corrected form and need not return the previously approved form.

(8) A statement as to whether the form has been approved or authorized for use by the insurance department of the state of domicile of the insurer or that the form is not to be used in such state. If approval or authorization for use was sought but not granted, the reason for the action should be stated. This paragraph does not apply to group insurance.]

PREPARATION OF FORMS

§ 89.11. **[General contents of forms] (Reserved).**

[(a) *Title and address.* A policy form shall recite the full corporate or legal title of the company, association, exchange or society. The official home office address (city and state or province) shall appear on the face, on the back or on the specifications page. If administrative offices are maintained elsewhere, the other addresses may also be shown. For filing purposes, other forms filed should be identified with the name of the company by rubber stamp or other appropriate means.

(b) *Form number.* A form shall be designated by a suitable form number which may consist of numbers or letters, or both, and which shall appear in the lower left corner of the first page. The form number should be adequate to distinguish the form in question from others used by the insurer without reference to edition or printing date. The fact that various benefits are included in the policy by rider need not be reflected in the policy form number.

(c) *Hypothetical data.* Blank spaces of each policy form, except an application, shall be filled in and completed with hypothetical data to indicate the purpose and use of the form. In individual life insurance cases, it is suggested that forms be filled in as of age 35, except for forms to be used to insure juveniles, in which case the use of age 10 is suggested.

(d) *Description of policy.* A brief description of the nature of the policy shall be printed at the top or bottom of the first page of the policy and on the filing back, if any, or on the specifications page (where window-type policies or policies in booklet form are used). In the case of policies in booklet form, the plastic cover, if bulky, need not be filed. A statement shall be included in the brief description indicating whether the policy is participating or nonparticipating.]

§ 89.17. **[Replacement of forms] (Reserved).**

[(a) A new filing which replaces a form previously approved shall state the form number of the form or forms to be replaced in each case.

(b) If an approved form or filing becomes obsolete and is no longer being issued, the insurer shall so inform the Department.]

§ 89.18. Miscellaneous requirements.

(a) **[Marketing procedures. If a form is submitted involving a method of marketing which departs from the direct agent approach or which employs a new concept, a complete explanation of the marketing procedures shall be provided, if requested by the Department.**

(b) *Countersignature of agent.* In submitting forms to the Department, consideration should be given to sections 501 and 610 of the act (40 P. S. §§ 631 and 730), which provide for the countersignature of an authorized resident agent for insurers not incorporated or organized under the laws of the Commonwealth but authorized to transact business herein. It shall be necessary to provide in the forms, when required by law, for the countersignature of the authorized resident agent or to explain its omission fully.

(c)] ***

[(d)] (b) ***

FORMAL APPROVAL

§ 89.21. **[General] (Reserved).**

[(a) Policy forms may be submitted for formal approval either after or without tentative approval.

(b) Policy forms submitted for formal approval should be submitted in the form intended for actual issue, generally, in printed form. If a policy form will not be printed, as in cases of single or infrequent use, it is important that the form, when reproduced, be clear and legible and in reasonably permanent form considering its probable period of use.]

§ 89.22. **[Changes in forms] (Reserved).**

[The Department may not consider for formal approval a form which has been modified by typewritten, ink or other insertions or deletions. The changes should be made by printed, multigraph or rubber stamp endorsement properly executed by an authorized representative of the company.]

§ 89.23. **[Documents shall be complete] (Reserved).**

[The Department is concerned with complete policies, endorsements, certificates, applications and related forms. If amendatory pages are submitted, the pages shall be properly executed as such. Otherwise, the complete revised form including the amendments shall be submitted with distinguishing form number.]

(*Editor's Note*: The following text is proposed to be added and is being printed in regular type to enhance readability.)

CHAPTER 89a. APPROVAL FOR LIFE INSURANCE, ACCIDENT AND HEALTH INSURANCE AND PROPERTY AND CASUALTY INSURANCE FILING AND FORM

GENERAL FILING PROVISIONS

PREPARATION OF FORMS

GENERAL FILING PROVISIONS

§ 89a.1. Definitions.

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

Department—The Insurance Department of the Commonwealth.

Filer—A person or entity submitting insurance or annuity forms to the Department.

Prominent type—Font or formatting techniques which differentiate selected text from other text. The term includes, for example, capital letters, contrasting color and underscoring.

§ 89a.2. Purpose.

This chapter provides the criteria for insurers to use in preparing specific form filings for Department review. Additionally, the chapter provides requirements for the general content of forms.

§ 89a.3. Form filings.

(a) *Submission of forms.* Policies, contracts, certificates, endorsements, riders, applications and related forms for life insurance and annuities, accident and health insurance, and property and casualty insurance, intended to be issued in this Commonwealth, shall be submitted to the Department in accordance with the following:

(1) Forms for life insurance and annuities issued by insurance companies shall be submitted for prior approval in accordance with section 354 of The Insurance Company Law of 1921 (40 P. S. § 477b), unless specifically excepted under section 354 of The Insurance Company Law of 1921. Forms for life insurance and annuities issued by fraternal benefit societies shall be submitted for prior approval in accordance with section 404(f) of the Fraternal Benefit Societies Code (40 P. S. § 1142-404(f)), unless specifically excepted under section 354 of The Insurance Company Law of 1921.

(2) Forms for accident and health insurance shall be filed in accordance with section 3 of the Accident and Health Filing Reform Act (40 P. S. § 3803).

(3) Forms for property and casualty insurance shall be submitted for prior approval in accordance with section 354 of The Insurance Company Law of 1921 unless specifically excepted under section 354 of The Insurance Company Law of 1921.

(b) *Out-of-State delivery.* When other jurisdictions require prior approval or filing by the Department of forms to be issued in those jurisdictions by domestic Pennsylvania insurers, the insurers may submit the forms to the Department for approval or filing for issuance outside of this Commonwealth only.

§ 89a.4. General filing procedure.

(a) *Number of copies.*

(1) Forms intended to be issued in this Commonwealth shall be submitted in duplicate for hard copy filings. Filers submitting forms by means of the Internet or other electronic medium shall submit one electronic copy. One copy of each form may be retained by the Department.

(2) One copy of a form intended to be issued only outside this Commonwealth shall be submitted.

(b) *Clearly legible forms.* Forms intended to be issued in this Commonwealth shall be submitted in clearly legible form.

(c) *Filing fee.* A submission of forms shall include any filing fee as required by section 212 of The Insurance Department Act of 1921 (40 P. S. § 50).

(d) *Self-addressed stamped return envelope.* A hard copy submission of forms shall include a self-addressed envelope bearing enough postage to permit the return to the filer of the duplicate copies of the forms or submission letter, or both.

(e) *Separate submissions.* Forms for each line of insurance, life and annuities, accident and health, and property and casualty, shall be submitted separately to their respective bureaus within the Department: the Bureau of Life Insurance, the Bureau of Accident and Health Insurance, and the Bureau of Property and Casualty Insurance.

(f) *By whom submitted.* A submission of forms shall be made by the home office or an administrative office of the insurer, or by an attorney at law representing the insurer, unless the following applies:

(1) The submission includes, or is preceded by, a document from the insurer specifically authorizing the filer to make the submission on the insurer's behalf.

(2) The submission is made by a rating organization, licensed in this Commonwealth, on behalf of its members and subscriber companies.

§ 89a.5. Letter of submission.

The letter of submission shall be in duplicate for hard copy filings, shall clearly identify the insurer whose name appears on the forms, and shall be sent to the appropriate bureau director in the Office of Rate and Policy Regulation under the requirements of § 89a.4(e) (relating to general filing procedure). Only one copy of the letter of submission is necessary for Internet or other electronic submissions. The letter shall contain at least all of the following information for each form submitted:

(1) The identifying form number. Additionally, if the form is other than a policy, contract or certificate, the form number of the policy, contract or certificate with which it will be used, and the date approved by or filed with the Department, or if not approved or filed, the date last submitted to the Department, or if for more general use, the type or group of the forms shall be described. If the form is a group certificate, the form number of the group master policy with which it will be used, and the date the group master policy was approved by or filed with the Department, or if not approved or filed, the date last submitted to the Department, or if the certificate is for general use, the types of group master policies with which it will be used.

(2) A designation of the general type of form submitted; for example, policy, contract, certificate, rider, endorsement, amendment, agreement, application, insert page or other general type.

(3) A brief statement of the specific type of insurance or annuity benefit coverage provided by the form. If the form does not provide insurance or annuity benefit coverage, a brief statement of the specific purpose of the form.

(4) If the form contains any provision, condition, feature or concept that departs from those generally used by the industry and that could be construed as new, innovative, uncommon or unusual, a statement to this effect and an explanation of the specific purpose of the provision, condition, feature or concept.

(5) An explanation of the marketing method, if the method of marketing of the form departs from the direct sales approach or employs a new concept.

(6) If the form is a new one, not replacing an existing form, a statement to that effect.

(7) If the form is intended to replace another form, the form number of the form to be replaced, the date that the form was approved by or filed with the Department, and a statement of the changes made to the form to be replaced.

(8) For group insurance policy forms, a brief description of the type of entity to which the group policy will be issued; for example, discretionary group, association, out-of-State trust.

(9) The amount of the filing fee included with the submission or the amount that will be billed to the insurer.

PREPARATION OF FORMS

§ 89a.6. General contents of forms.

(a) *Name and address.* Each form shall state the full corporate or legal name of the company, association, exchange or society. However, the name need appear for filing purposes only on a rider, endorsement, amendment, agreement or insert page. If added for filing purposes only, the name may be added by any legible means. If more than one insurer is using an application, a multicompany application providing for the designation of the applicable insurer and available coverages, if applicable, may be used. A policy, contract or fraternal certificate shall state a current address for the insurer, consisting of at least a city and state or province.

(b) *Form number.* Each form shall contain a form number consisting of numbers, letters, or both. The form number shall be adequate to distinguish the form from all others used by the insurer. The form number may be the same as that of a form to be replaced. However, if the form to be replaced was approved by or filed with the Department, it may not have been issued in this Commonwealth and shall be withdrawn from any issuance in this Commonwealth.

(c) *Description or caption.* Each form, except an insert page, shall contain a brief description or descriptive caption. This brief description or descriptive caption shall appear in prominent type on the first or cover page of the form, or, in the case of a policy, contract or certificate, on the specifications page if the brief description or descriptive caption is visible without opening the form. The brief description or descriptive caption shall contain at least the following information:

(1) A designation of the general type of the form, that is, policy, contract, certificate, rider, endorsement, amendment, agreement, application or other general type.

(2) A designation of the specific type of insurance or annuity coverage provided, or if the form does not provide insurance or annuity coverage, a designation of the purpose of the form.

(3) If the form is a policy, contract or certificate, an indication of whether the form is participating or nonparticipating.

(d) *Required statement.* A rider, endorsement, amendment or agreement designated by another term in its brief description or descriptive caption shall state that it is "attached to and made part of the (policy, contract or certificate)," as appropriate.

(e) *Hypothetical data.* The blank spaces of each form, except an application, shall be filled in with hypothetical data to indicate the purpose of the form. This data shall be realistic and consistent with the other contents of the form.

(f) *Readability.* A form:

(1) Shall be written in simple words and with sentences as short as possible. The words and sentences should convey meanings clearly and directly. Words should be used in their commonly understood senses.

(2) Shall contain a definition or explanation of terminology that would not be ordinarily understood by a person of average intelligence.

(3) May not contain inconsistent or contradictory language or provisions.

(4) That provides insurance coverage, shall accurately and completely explain the coverage and conditions of coverage.

[Pa.B. Doc. No. 00-1507. Filed for public inspection September 1, 2000, 9:00 a.m.]

STATE BOARD OF EDUCATION

[22 PA. CODE CHS. 14 AND 342]

Special Education Services and Programs

The State Board of Education (Board) proposes to amend Chapter 14 (relating to special education services and programs) and delete Chapter 342 (standards relating to special education services and programs) to read as set forth in Annex A, under the authority of the Public School Code of 1949 (24 P. S. §§ 1-101—27-2702-B).

This proposed rulemaking establishes procedures for the identification of students who are disabled and in need of special education services and programs and set forth requirements and procedures for the delivery of those services and programs.

Purpose

The proposed revisions to Chapter 14 are designed to align the chapter with the Federal Individuals with Disabilities Education Act (IDEA) (20 U.S.C.A. §§ 1400—1419), as amended June 4, 1997, and related Federal regulations, and applicable provisions of Pennsylvania statute and court decisions.

The Board determined that many areas in the Federal rules are sufficiently detailed to provide for effective implementation and, therefore, are proposed to be incorporated by reference.

Additional language is found in this proposal where: 1) Federal rules require greater detail for implementation; 2) court decisions applicable to the Commonwealth

require regulations; and 3) the current practice in special education in this Commonwealth requires provisions in the regulations.

Proposed Chapter 14 includes provisions currently in Chapter 342 necessary for the implementation of special education programs and services. As a result, Chapter 342 is proposed for deletion.

This rulemaking on Chapter 14 will become a part of the eligibility grant application to the United States Department of Education under IDEA ensuring the provision of a free appropriate public education to students and children with disabilities. Copies of the eligibility grant application will be made available to the public through the Department of Education.

In separate rulemaking, the Board has proposed removing provisions for special education for gifted students from current Chapters 14 and 342 and establishing them in a separate new Chapter 16 (special education for gifted students). Those regulations are proceeding in the final-form phase of the regulatory review process and will be published shortly.

Requirements of the Proposal

The proposed revisions to Chapter 14 adopt terminology, establish the purpose, specify timelines for development and implementation of Individualized Education Program (IEP) plans, maintain requirements regarding extended school year services, require behavior support in addition to the Federal requirements and govern facilities in which special education is to be delivered. Major elements of the proposed rules include:

Alignment with Applicable Statutes—Proposed revisions to Chapter 14 affirm the Board's intent that children with disabilities be provided quality special education services and programs consistent with Federal and Commonwealth statute. The proposal defines terms as they apply to children with disabilities and the responsibilities of schools to provide a free appropriate public education for these students. See §§ 14.102 and 14.103 (relating to purpose; and terminology related to Federal regulations). To accomplish this, all sections of current Chapter 14 are proposed for deletion with the proposed text beginning at § 14.101 (relating to definitions).

School District and Intermediate Unit Plans—Section 14.104 (relating to educational plans) delegates decisions regarding the format, content and timeline for submission of school district and intermediate unit plans to the Secretary. Submission of school district plans is consistent with the submission of strategic planning as required under Chapter 4 (relating to academic standards and assessment). Intermediate units' submission of special education plans is consistent with Federal regulatory duties and with the provision of services to preschool children served under Early Intervention Service System Act (11 P. S. §§ 875-101—875-503).

Child Find and Screening—Proposed revisions to Chapter 14 identify the responsibilities of school districts to find students who may need special services and programs as prescribed by IDEA for school aged children. Proposed § 14.121 (relating to child find) retains duties to provide public notice on a periodic basis to ensure that parents and others are able to assist in this effort. The requirement to screen students who are thought to be disabled is retained in the revisions. See § 14.122 (relating to screening). The proposal provides options to school districts in carrying out the child find responsibility through the use of instructional support teams or other procedures designed locally. See § 14.122.

Evaluation and Reevaluation—Proposed § 14.123 (relating to evaluation) retains the current total number of school days for completing the evaluation process, but eliminate intermediate timelines. In addition, proposed § 14.123 and § 14.124 (relating to reevaluation) require that evaluations and reevaluations of students include a certified school psychologist, when appropriate, to reflect Federal requirements and remove the current requirement that school psychologists participate in all evaluations regardless of student needs. Consistent with Federal regulations, 34 CFR 300.536 (relating to reevaluations), this proposal requires reevaluation every 3 years or sooner if requested by a parent or local education agency. See § 14.124. The current requirement for reevaluation is every 2 years. A 2-year reevaluation timeline for students who are mentally retarded and protected by the *PARC v. Commonwealth* Consent Decree (334 F. Supp. 1257 (E.D. Pa. 1971) and 343 F. Supp. 279 (E.D. Pa. 1972)) is retained in § 14.124.

Review of Evaluation Report—General timelines for IEP meetings are required in the Federal rules. Proposed § 14.131 (relating to IEP) retains the current provision for parents to receive a copy of the evaluation report 10 days prior to the IEP team meeting. The 10-day review period may be waived by the parent.

Educational Placement—Under Federal regulations, educational placement for students with disabilities must be determined on a child-by-child basis. Proposed revisions to Chapter 14 retain the application of caseload maximums from Chapter 342 which limit the number of students assigned to any special education teacher. See § 14.142 (relating to caseload for special education). Class-size limitations—the number of students in a class at any one time—are proposed for deletion. In proposed § 14.141, school districts are permitted to develop caseloads other than those found in § 14.142 upon Department approval. The Department's intervention is required if the district developed caseload is determined to be inadequate by specified indicators in § 14.141. Changes in caseloads for speech therapy in this proposal are designed to clarify current confusion in their implementation in § 14.142.

Disciplinary Placements—Revisions to Chapter 14 rules retain the number of days a student with disabilities may be suspended in a school year, the number of consecutive days of suspension constituting a change in placement and the additional protections of students identified as mentally retarded as required by the *PARC v. Commonwealth* Consent Decree. See § 14.143 (relating to disciplinary placements).

Early Intervention—Revisions to Chapter 14 retain rules governing early intervention child find, public awareness and screening. To reflect current practice in the field, the frequency for reevaluation of early intervention children in these proposed rules is changed from once every year to once every 2 years or sooner if requested by a parent or local education agency. See § 14.153 (relating to evaluation). Proposed § 14.154 requires the IEP to be reviewed annually rather than semiannually to reflect practice in the field. The right of parents to request IEP meetings more frequently is retained. Proposed §§ 14.156—14.158 (relating to system of quality assurance; exit criteria; and data collection and confidentiality) address the additional responsibilities for the early intervention system of quality assurance of services, exit criteria and data collection and confidentiality required by the Early Intervention Service System Act.

Levels of Due Process—Current requirements for prehearing conferences, due process hearings and appeals are retained. Sections 14.161 and 14.162 (relating to prehearing conferences; and impartial due process hearings and expedited due process hearing) include new duties with regard to expedited hearings and dissemination of electronic record of transcripts and decisions as required in Federal statute and regulation.

Representation in Due Process Hearings—Based on its review under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506), on August 8, 2000, the Office of Attorney General requested that § 14.162(i) be changed prior to publication of the proposal in the *Pennsylvania Bulletin* to make it clear that both under Federal statute and regulations and under State law, licensed attorneys only may represent parents in due process proceedings. Federal statute provides for parties to be accompanied and advised by individuals with special knowledge or training in special education but those individuals may not perform any functions that constitute the practice of law. Section 14.162(i) as proposed in Annex A clarifies the roles of legal representation and the participation of other knowledgeable persons in due process hearings

Other Provisions—These include the retention of rules governing facilities for special education currently found in Chapter 342 (see § 14.144 (relating to facilities)); the elimination of provisions for experimental programs which have not been used by the field; and the elimination of rules governing course completion, diplomas and planned courses now found in Chapter 4.

Affected Parties

Students who need or may need special education services and programs will be affected by this proposal. The proposal also will affect parents and guardians of those students by guaranteeing their participation in the process of determining services and programs that best meet the needs of their child. School districts and intermediate units will be affected through compliance with the regulations.

Cost and Paperwork Estimates

This proposal provides procedures for consistent implementation of existing Federal and Commonwealth law and regulation. Adopting these revisions to Chapter 14 may result in savings by changing the reevaluation requirement from every 2 years to every 3 years (except for students who are mentally-retarded). This change could result in an approximate annual Statewide savings of $ 4.75 million for school districts.

School districts will experience additional costs over time in complying with new Federal requirements (such as, the requirement that regular education teachers participate in IEP meetings) that might minimize the potential savings previously described. New Federal rules have created additional paperwork requirements including regarding student goals and benchmarks in the IEP, and the more frequent issuance of procedural safeguards notices related to IEP team meetings, reevaluation and in certain disciplinary situations.

Effective Date

This proposal will become effective upon final publication in the *Pennsylvania Bulletin*.

Sunset Date

The effectiveness of the regulations in Chapter 14 will be reviewed by the Board every 4 years, in accordance with the Board's policy and practice respecting all regulations promulgated by the Board. Thus, no sunset date is necessary.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 23, 2000, the Board submitted a copy of this proposal to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Committees on Education. In addition to submitting the proposal, the Board provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Board 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 proposal, it will notify the Board 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, by the Board, the General Assembly and the Governor of objections raised.

Public Comments and Contact Person

Interested persons are invited to submit written comments, suggestions or objections regarding this proposal to Peter H. Garland, Executive Director of the State Board of Education, 333 Market Street, Harrisburg, PA 17126-0333 within 30 days following publication in the *Pennsylvania Bulletin*. Persons needing additional information regarding this proposal may contact Peter H. Garland (717) 787-3787. Copies of the proposal are available by calling (717) 787-3787, the TDD at (717) 787-7367 or by accessing the State Board's website at http://www.pde.psu.edu/regs/regulations.html.

The Federal regulations to be adopted by reference may be found at http://www.ideapractices.org/lawandregs.htm or http://www.cisc.k12.pa.us/federalregister/, or by requesting a copy from Dr. Garland.

Alternative formats of the proposal (such as, braille, large print, cassette tape) are available to members of the public upon request to Dr. Garland at the telephone numbers and address previously listed. Public comment is welcomed in alternative formats, such as Braille or taped comments and telephone comments from persons with disabilities. Persons who are disabled and wish to submit comments by telephone should call Nancy Zeigler (717) 783-6134 or TDD (717) 787-7367.

In addition, public hearings on the proposal will be conducted by the Board. Hearings will begin at 9 a.m. and conclude at 4 p.m. Dates and sites are as follows:

September 15, 2000
Harrisburg Office of PA Training and Technical Assistance Network (formerly Central Instructional Support Center)
Suite 600
6340 Flank Drive
Harrisburg, PA

September 21, 2000
Philadelphia Office of PA Training and Technical Assistance Network (formerly Eastern Instructional Support Center)
Main Conference Room
200 Anderson Road
King of Prussia, PA

September 25, 2000
Hampton Banquet Hall (across from Pittsburgh Office of PA Training and Technical Assistance Network (formerly Western Instructional Support Center))
5416 Route 8
Gibsonia, PA

Persons wishing to testify at any of the hearings should contact the Board office no later than 4 p.m. on September 12, 2000, at the address and telephone numbers given in this Preamble. Testimony will be scheduled on a first-come, first serve basis.

Twenty-five copies of the oral testimony at the time of presentation are requested.

Persons unable to appear and present testimony at a hearing are encouraged to submit written comments to the Board. Written and alternative formats of comments will be afforded the same thoughtful consideration by the Board as testimony.

Persons with disabilities needing alternative means of providing public comment may make arrangements by calling Dr. Garland.

PETER H. GARLAND,
Executive Director

Fiscal Note: 6-270. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 22. EDUCATION

PART I. STATE BOARD OF EDUCATION

Subpart A. MISCELLANEOUS PROVISIONS

CHAPTER 14. SPECIAL EDUCATION SERVICES AND PROGRAMS

(*Editor's Note:* The State Board of Education is proposing to delete the current text of §§ 14.1—14.8, 14.21—14.25, 14.31—14.39, 14.41—14.45, 14.51—14.56, 14.61—14.68 and 14.71—14.74, which appear at 22 Pa. Code pages 14-4 to 14-46, serial pages (256360), (229113), (242011) to (242014), (261009) to (261012), (229119) to (229124), (242017) to (242018), (256361) to (256364), (249383) to (249384), (252451) to (252452), (256365) to (256367), (202979) to (202990), (249391) to (249392), (222351), (256369) to (256370) and (202995) to (202996). The following text is new and printed in regular type to enhance readability.)

GENERAL PROVISIONS

CHILD FIND, SCREENING AND EVALUATION

IEP

EDUCATIONAL PLACEMENT

EARLY INTERVENTION

PROCEDURAL SAFEGUARDS

GENERAL PROVISIONS

§ 14.101. Definitions.

In addition to the definitions in § 14.103 (relating to terminology related to Federal regulations), the following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Act—The Early Intervention Services System Act (11 P. S. §§ 875-101—875-503).

Agency—An intermediate unit, school district, approved private school, State-operated program or facility or other public (excluding charter schools under 24 P. S. §§ 17-1701-A—17-1732-A) or private organization providing educational services to children with disabilities or providing early intervention services.

Age of beginners—The minimum age established by the school district board of directors for admission to the district's first grade under § 11.15 (relating to admission of beginners).

Department—The Department of Education of the Commonwealth.

Developmental areas—The term includes cognitive, communicative, physical, social/emotional and self-help.

Developmental delay—A child is considered to have a developmental delay when one of the following exists:

(i) The child's score, on a developmental assessment device, on an assessment instrument which yields a score in months, indicates that the child is delayed by 25% of the child's chronological age in one or more developmental areas.

(ii) The child is delayed in one or more of the developmental areas, as documented by test performance of 1.5 standard deviations below the mean on standardized tests.

ESY—Extended school year.

Early intervention agency—An intermediate unit, school district or licensed provider which has entered into a mutually agreed upon written arrangement with the Department to provide early intervention services to eligible young children in accordance with the act.

Early intervention services—An appropriate educational program of specially designed instruction and related services to meet the needs of eligible young children and address the strengths and needs of the family to enhance the child's development. The need for the services and programs shall be in one or more of the following areas: physical, sensory, cognitive, communicative, social-emotional and self-help.

Eligible young child—A child who is less than the age of beginners and at least 3 years of age and who meets the criteria at 34 CFR 300.7 (relating to a child with a disability).

IEP—Individualized education program.

IST—Instructional support team.

MDT—Multidisciplinary team.

Mutually agreed-upon written arrangement—An agreement between the Department and an intermediate unit, school district or other public or private agency to provide early intervention services that comply with this chapter and the act.

Secretary—The Secretary of the Department.

§ 14.102. Purpose.

(a) It is the intent of the Board that children with disabilities be provided with quality special education services and programs. The purposes of this chapter are to serve the following:

(1) To adopt Federal regulations by incorporation by reference to satisfy the statutory requirements under the Individuals with Disabilities Education Act (20 U.S.C.A. §§ 1400—1419) and to ensure that:

(i) Children with disabilities have available to them a free appropriate public education which is designed to enable the student to participate fully and independently in the community, including preparation for employment or higher education.

(ii) The rights of children with disabilities and parents of these children are protected.

(2) To adopt, except as expressly otherwise provided in this chapter, the requirements of 34 CFR Part 300 (relating to assistance to states for the education of children with disabilities) as published at 64 FR 12418—12469 (March 12, 1999). The following sections are incorporated by reference.

(i) 34 CFR 300.4—300.6.

(ii) 34 CFR 300.7(a) and (c).

(iii) 34 CFR 300.8—300.24.

(iv) 34 CFR 300.26.

(v) 34 CFR 300.28 and 300.29.

(vi) 34 CFR 300.121—300.125.

(vii) 34 CFR 300.138 and 300.139.

(viii) 34 CFR 300.300.

(ix) 34 CFR 300.302—300.309.

(x) 34 CFR 300.311(b)(c).

(xi) 34 CFR 300.313.

(xii) 34 CFR 300.320 and 300.321.

(xiii) 34 CFR 300.340.

(xiv) 34 CFR 300.342—300.346.

(xv) 34 CFR 300.347 (a), (b) and (d).

(xvi) 34 CFR 300.348—300.350.

(xvii) 34 CFR 300.403.

(xviii) 34 CFR 300.450—300.462.

(xix) 34 CFR 300.500—300.515.

(xx) 34 CFR 300.519—300.529.

(xxi) 34 CFR 300.531—300.536.

(xxii) 34 CFR 300.540—300.543.

(xxiii) 34 CFR 300.550—300.553.

(xxiv) 34 CFR 300.560—300.574(a) and (b).

(xxv) 34 CFR 300.576.

(3) To specify how the Commonwealth will meet its obligations to suspected and identified children with disabilities who require special education and related services to reach their potential.

(4) To provide to the Commonwealth, through the Department, general supervision of services and programs provided under this chapter.

(b) To provide services and programs effectively, the Commonwealth will delegate operational responsibility for school aged students to its school districts to include the provision of child find duties prescribed by 34 CFR 300.125(a) (relating to child find).

§ 14.103. Terminology related to Federal regulations.

For purposes of interfacing with 34 CFR Part 300, the following term applies, unless the context clearly indicates otherwise:

Local educational agency—Where the Federal provision uses the term "local educational agency," for purposes of this chapter, the term means an intermediate unit, school district, State operated program or facility or other public organization providing educational services to children with disabilities or providing early intervention services.

§ 14.104. Educational plans.

(a) Each school district shall develop a special education plan every 3 years consistent with the 3-year review cycle of the strategic plan of the school district under § 4.13 (relating to strategic plans). The Secretary will prescribe the format, content and time for submission of the special education plan.

(b) Each school district's special education plan shall specify special education programs that operate in the district and those that are operated in the district by the intermediate units, area vocational technical schools and other agencies.

(c) Each school district's special education plan shall include procedures for the education of all students with a disability who are residents of the district including those receiving special education in approved private schools and students with a disability who are nonresidents placed in private homes or institutions in the school district under sections 1305, 1306 and 1306.2 of the Public School Code of 1949 (24 P. S. §§ 13-1305, 13-1306 and 13-1306.2).

(d) Each intermediate unit shall prepare annually and submit to the Secretary a special education plan specifying the special education services and programs to be operated by the intermediate unit. The Secretary will prescribe the format, content and time for submission of the intermediate units' plans.

(e) Each early intervention agency shall develop an early intervention special education plan every 3 years.

(f) The Department will approve plans in accordance with the following criteria:

(1) Services and programs are adequate in quantity and variety to meet the needs of students identified as children with disabilities within the school district or intermediate unit or eligible young children within the early intervention agency.

(2) The full range of services and programs under this chapter are available to children with disabilities and eligible young children.

(3) The plan meets the specifications defined in this chapter and the format, content and time for submission of the agency plans prescribed by the Secretary.

(g) Portions of the plans that do not meet the criteria for approval will be disapproved. Prior to disapproval, Department personnel will discuss disapproved portions of the plan and suggest modifications with appropriate intermediate unit or school district personnel. Portions of the plan that are not specifically disapproved will be deemed approved.

(h) When a portion of an intermediate unit, school district or early intervention plan is disapproved, the Department will issue a notice specifying the portion of the plan disapproved, and the rationale for the disapproval and the opportunity for a hearing under 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law) and 1 Pa. Code Part II (relating to the General Rules of Administrative Practice Procedure). If requested, the Department will convene a hearing within 30-calendar days after the receipt of the request. The Department will render a decision within 30-calendar days following the hearing.

CHILD FIND, SCREENING AND EVALUATION

§ 14.121. Child find.

(a) In addition to the requirements incorporated by reference in 34 CFR 300.125(a)(i) (relating to child find), each school district shall adopt and use a public outreach awareness system to locate and identify children thought to be eligible for special education within the school district's jurisdiction.

(b) Each school district shall conduct awareness activities to inform the public of its early intervention and special education services and programs and the manner in which to request services and programs.

(c) Each school district shall provide annual public notification, published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the school district of child identification activities and of the procedures followed to ensure confidentiality of information pertaining to students with disabilities or eligible young children in accordance with this chapter.

§ 14.122. Screening.

(a) Each school district shall establish a system of screening to accomplish the following:

(1) Identify and provide initial screening and direct intervention for students prior to referral for a special education evaluation.

(2) Provide peer support for teachers and other staff members to assist them in working effectively with students in the general education curriculum.

(3) Conduct hearing and vision screening in accordance with section 1402 of the Public School Code of 1949 (24 P. S. § 14-1402) for the purpose of identifying students with hearing or vision difficulty so that they can be referred for assistance or recommended for evaluation for special education.

(4) Identify students who may need special education services and programs.

(b) Each school district shall implement a comprehensive screening process. School districts may implement instructional support according to Department guidelines or an alternative screening process. School districts which elect not to use instructional support for screening shall develop and implement a comprehensive screening process that meets the requirements specified in subsections (a) and (c).

(c) The screening process shall include:

(1) For students with academic concerns, an assessment of the student's functioning in the curriculum including curriculum-based and performance-based assessment.

(2) For students with behavioral concerns, a systematic observation of the student's behavior in the classroom or area in which the student is displaying difficulty.

(3) An intervention based on the results of the assessments under paragraph (1) or (2).

(4) An assessment of the student's response to the intervention.

(5) A determination as to whether the student's assessed difficulties are due to a lack of instruction or limited English proficiency.

(6) A determination as to whether the student's needs exceed the functional ability of the regular education program to maintain the student at an appropriate instructional level.

(d) If screening activities have produced little or no improvement within 60 school days after initiation, the student shall be formally referred for evaluation under § 14.123 (relating to evaluation).

(e) Screening activities do not serve as a bar to the right of a parent to request an evaluation, at any time, including prior to or during the conduct of screening activities.

§ 14.123. Evaluation.

(a) The group of qualified professionals, which reviews the evaluation materials to determine whether the child is a child with a disability under 34 CFR 300.534(a)(1) (relating to determination of eligibility), shall include a certified school psychologist when appropriate.

(b) In addition to the requirements incorporated by reference at 34 CFR 300.531—300.535, the initial evaluation shall be completed and a copy of the evaluation report presented to the parents no later than 60-school days after the agency receives written parental consent.

§ 14.124. Reevaluation.

(a) The group of qualified professionals, which reviews the evaluation materials to determine whether the child is a child with a disability under 34 CFR 300.536 (relating to reevaluation), shall include a certified school psychologist where appropriate.

(b) In addition to the requirements incorporated by reference at 34 CFR 300.536, a reevaluation report shall be provided to the parents within 60 school days from the date that the request for reevaluation was received from the parent or teacher, or from the date that a determination is made by the agency that conditions warrant a reevaluation.

(c) Students identified as mentally retarded shall be reevaluated at least once every 2 years.

IEP

§ 14.131. IEP.

(a) Notwithstanding the requirements incorporated by reference, the following provisions apply to IEPs:

(1) Copies of the comprehensive evaluation report shall be disseminated to the parents at least 10 days prior to the meeting of the IEP team. A parent may waive this 10-day rule.

(2) If a student with a disability moves from one school district in this Commonwealth to another, the new district shall implement the existing IEP to the extent possible or shall provide the services and programs specified in an interim IEP agreed to by the parents until a new IEP is developed and implemented and until the completion of due process proceedings under this chapter.

(3) If a student with a disability moves into a school district in this Commonwealth from another state, the new school district may treat the student as a new enrollee and place the student into regular education and it is not required to implement the student's existing IEP.

(4) Every student receiving special education and related services provided for in an IEP developed prior to _____ (*Editor's Note:* The blank refers to the effective date of adoption of this proposed rulemaking.) shall continue to receive the special education and related services under that IEP subject to the terms, limitations and conditions set forth in law.

(b) In addition to the requirements incorporated by reference in 34 CFR 300.29, 300.344(b) and 300.347(b) (relating to transition services; IEP team; and content of IEP), each school district shall designate persons responsible to coordinate transition activities.

§ 14.132. ESY.

This section sets forth the standards for determining whether a student with disabilities requires ESY as part of the student's program.

(1) At each IEP meeting for a student with disabilities, the school districts shall determine whether the student is eligible for ESY services and if so, make subsequent determinations about the services to be provided.

(2) In considering whether a student is eligible for ESY services, the IEP team shall consider the following factors, however, no single factor shall be considered determinative:

(i) Regression—whether the student reverts to a lower level of functioning as evidenced by a measurable decrease in skills or behaviors which occurs as a result of an interruption in educational programming.

(ii) Recoupment—whether the student has the capacity to recover the skills or behavior patterns in which regression occurred to a level demonstrated prior to the interruption of educational programming.

(iii) Whether the student's difficulties with regression and recoupment make it unlikely that the student will maintain the skills and behaviors relevant to IEP goals and objectives.

(iv) The extent to which the student has mastered and consolidated an important skill or behavior at the point when educational programming would be interrupted.

(v) The extent to which a skill or behavior is particularly crucial for the student to meet the IEP goals of self-sufficiency and independence from caretakers.

(vi) The extent to which successive interruptions in educational programming result in a student's withdrawal from the learning process.

(vii) Whether the student's disability is severe, such as autism/pervasive developmental disorder, serious emotional disturbance, severe mental retardation, degenerative impairments with mental involvement and severe multiple disabilities.

(3) Reliable sources of information regarding a student's educational needs, propensity to progress, recoupment potential and year-to-year progress may include the following:

(i) Progress on goals in consecutive IEPs.

(ii) Progress reports maintained by educators, therapists and others having direct contact with the student before and after interruptions in the education program.

(iii) Reports by parents of negative changes in adaptive behaviors or in other skill areas.

(iv) Medical or other agency reports indicating degenerative-type difficulties, which become exacerbated during breaks in educational services.

(v) Observations and opinions by educators, parents and others.

(vi) Results of tests including criterion-referenced tests, curriculum-based assessments, ecological life skills assessments and other equivalent measures.

(4) The need for ESY services will not be based on any of the following:

(i) The desire or need for day care or respite care services.

(ii) The desire or need for a summer recreation program.

(iii) The desire or need for other programs or services which, while they may provide educational benefit, are not required to ensure the provision of a free appropriate public education.

§ 14.133. Behavior support.

(a) Positive rather than negative measures shall form the basis of behavior management programs. Behavior management programs include a variety of techniques to develop and maintain skills that will enhance an individual student's or young child's opportunity for learning and self-fulfillment. The types of intervention chosen for a particular student or young child shall be the least intrusive.

(b) Not withstanding the requirements incorporated by reference in 34 CFR 300.24(b)(9)(vi), (13)(v), 300.346(a)(2)(i) and (d) and 300.520(b) and (c) (relating to related services; development, review, and revision of IEP; and authority of school personnel), with regard to a child's behavior, the following words and terms when used in this section, have the following meanings, unless the context clearly indicates otherwise:

Aversive techniques—Deliberate activities designed to establish a negative association with a specific behavior.

Behavior management—The development, change and maintenance of selected behaviors through the systematic application of behavior change techniques.

Positive techniques—Methods which utilize positive reinforcement to shape a student's behavior, ranging from the use of positive verbal statements as a reward for good behavior to specific tangible rewards.

Restraints—Devices and techniques designed and used to control acute or episodic aggressive behaviors or to control involuntary movements or lack of muscular control due to organic causes or conditions. The term includes physical and mechanical restraints.

(c) Restraints to control acute or episodic aggressive behavior may be used only when the student is acting in

a manner as to be a clear and present danger to himself, to other students or to employes, and only when less restrictive measures and techniques have proven to be or are less effective. The use of restraints to control the aggressive behavior of an individual student shall cause a meeting of the IEP team to review the current IEP for appropriateness and effectiveness. The use of restraints may not be included in the IEP for the convenience of staff, as a substitute for an educational program, or employed as punishment.

(d) Mechanical restraints, which are used to control involuntary movement or lack of muscular control of students when due to organic causes or conditions, may be employed only when specified by an IEP and as determined by a medical professional qualified to make the determination, and as agreed to by the student's parents. Mechanical restraints shall prevent a student from injuring himself or others or promote normative body positioning and physical functioning.

(e) The following aversive techniques of handling behavior are considered inappropriate and may not be used by agencies in educational programs:

(1) Corporal punishment.

(2) Punishment for a manifestation of a student's disability.

(3) Locked rooms, locked boxes or other locked structures or spaces from which the student cannot readily exit.

(4) Noxious substances.

(5) Deprivation of basic human rights, such as withholding meals, water or fresh air.

(6) Suspensions constituting a pattern under § 14.143(a) (relating to disciplinary placements).

(7) Treatment of a demeaning nature.

(8) Electric shock.

(f) Agencies have the primary responsibility for ensuring that behavior management programs are in accordance with this chapter, including the training of personnel for the use of specific procedures, methods, and techniques, and for having a written policy on the use of behavior management techniques and obtaining parent consent prior to the use of highly restraining or intrusive procedures.

(g) In accordance with their plans, agencies may convene human rights committees to oversee the use of restraining or intrusive procedures and restraints.

EDUCATIONAL PLACEMENT

§ 14.141. Educational placement.

Notwithstanding the requirements incorporated by reference with regard to educational placements:

(1) The following words and terms, when used in § 14.142 (relating to caseload for special education), have the following meanings:

Autistic support—Services for students with the disability of autism.

Blind and visually impaired support—Services for students with the disability of visual impairment, including blindness.

Deaf and hard of hearing impaired support—Services for students with the disabilities of deafness or hearing impairment.

Emotional support—Services for students with the disability of emotional disturbance.

Full-time—Special education classes provided for the entire school day, with opportunities for participation in nonacademic and extracurricular activities to the maximum extent appropriate, which may be located in or outside of a regular school.

Itinerant—Regular classroom instruction for most of the school day, with special education services and programs provided by special education personnel inside or outside of the regular class for part of the school day.

Learning support—Services for students with a disability whose primary identified need is academic learning.

Life skills support—Services for students with a disability focused primarily on the needs of students for independent living.

Multiple disabilities support—Services for students with multiple disabilities.

Part-time—Special education services and programs outside the regular classroom but in a regular school for most of the school day, with some instruction in the regular classroom for part of the school day.

Physical support—Services designed primarily to meet the needs of students with the disabilities of orthopedic or other health impairment.

Resource—Regular classroom instruction for most of the school day, with special education services and programs provided by special education personnel in a resource room for part of the school day.

Speech and language support—Services for students with the disability of speech and language impairment.

(2) Each school district shall establish caseloads for special education and submit a caseload chart to the Department for approval as part of their special education plan consistent with § 14.104 (relating to educational plans). The caseload and supporting documents submitted shall:

(i) Ensure the ability of assigned staff to provide the services required in each student's IEP.

(ii) Apply to special education classes operated in the school district.

(iii) Provide a justification for why the policy deviates from the recommended caseloads in § 14.142 (relating to caseload for special education), if applicable.

(3) The caseloads of the district operating the program or in which an intermediate unit operates a program in the district, shall be followed when a class operated in a district contains children from more than one district. Caseloads of an intermediate unit operated program when student educational placements are located in other than a school district building and which serve students from more than one school district, shall adhere to the referring district caseload chart with the lowest number of student enrollment for the class.

(4) Caseloads are not applicable to approved private schools.

(5) The Department may impose caseloads on agencies when the caseload is determined to be inadequate. The Department will consider at least the following indicators when making the determination:

(i) Graduation rates of students with a disability.

(ii) Drop-out rates of students with a disability.

(iii) Postsecondary transition of students with a disability.

(iv) Rate of grade level retentions.

(v) Statewide and district-wide assessment results as prescribed by §§ 4.51 and 4.52 (relating to State assessment system; and local assessment system).

(6) Each school district shall establish an age range for elementary school classes (grades K—6) and secondary school classes (grades 7—12) and submit to the Department an age range chart for approval as part of their special education plan consistent with § 14.104. School district age range shall:

(i) Ensure the ability of assigned staff to provide the services required in each student's IEP.

(ii) Apply to special education classes operated in the school district.

(iii) Provide a justification for any deviation in the age range from these recommended age ranges: no greater difference than 3 years in chronological age from the youngest to the oldest student in elementary school (grades K—6); no greater difference than 4 years in chronological age from the youngest to the oldest student in secondary school (grades 7—12).

§ 14.142. Caseload for special education.

This chart presents the recommended maximum caseload allowed on a single teacher's roll for each school district.

Type of Service	*Itinerant*	*Resource*	*Part-time*	*Full-time:*
Learning Support	50	20	15	12
Life Skills Support	20	20	15	12 Elementary 15 Secondary
Emotional Support	50	20	15	12
Deaf and Hearing Impaired Support	50	15	10	8
Blind or Visually Impaired Support	50	15	15	12
Speech and Language Support	65			8
Physical Support	50	15	12	12
Autistic Support	12	8	8	8
Multiple Disabilities Support	12	8	8	8

§ 14.143. Disciplinary placements.

(a) Notwithstanding the requirements incorporated by reference in 34 CFR 300.519(b) (relating to change of placement for disciplinary removals), a series of nonconsecutive removals from school occurring on more than 15 school days in a school year will be considered a pattern so as to be deemed a change in educational placement.

(b) A removal from school is a change of placement for a student who is identified with mental retardation, except if the student's actions are consistent with 34 CFR 300.520(a)(2)(i) and (ii) (relating to authority of school personnel). For this purpose the definitions in 34 CFR § 300.520(d) apply.

§ 14.144. Facilities.

The comparability and availability of facilities for students with a disability shall be consistent with the approved intermediate unit or school district plan, which shall provide, by description of policies and procedures, the following:

(1) Students with disabilities will be provided appropriate classroom space.

(2) Moving of a class shall occur only when the result will be:

(i) To bring the location for delivery of special education services and programs closer to the students' homes.

(ii) To improve the delivery of special education services and programs without reducing the degree to which the students with disabilities are educated with students without disabilities.

(iii) To respond to an emergency which threatens the students' health or safety.

(iv) To accommodate ongoing building renovations, provided that the movement of students with disabilities due to renovations will be proportional to the number of students without disabilities being moved.

(v) That the location of classes shall be maintained within a school building for at least 3 school years.

(3) Each special education class is:

(i) Maintained as close as appropriate to the ebb and flow of usual school activities.

(ii) Located where noise will not interfere with instruction.

(iii) Located only in space that is designed for purposes of instruction.

(iv) Readily accessible.

(v) Composed of at least 28 square feet per student.

EARLY INTERVENTION

§ 14.151. Purpose.

Notwithstanding the requirements incorporated by reference, with regard to early intervention services:

(1) The Department will provide for the delivery of early intervention services.

(2) The Department may provide for the delivery of some or all of these services through mutually agreed-upon written arrangements. Each mutually agreed-upon written arrangement may include memoranda of understanding under an approved plan submitted to the Department by an intermediate unit, school district or other agencies.

§ 14.152. Child find, public awareness and screening.

(a) Each early intervention agency shall adopt and use a system to locate and identify eligible young children

and young children thought to be eligible who reside within the boundary served by the early intervention agency.

(b) Each early intervention agency shall conduct awareness activities to inform the public of early intervention services and programs and the manner by which to request these services and programs.

(c) Each early intervention agency shall notify the public of child identification and the procedures followed to ensure confidentiality of information pertaining to eligible young children.

§ 14.153. Evaluation.

Notwithstanding the requirements adopted by reference:

(1) Evaluations shall be conducted by early intervention agencies for children who are thought to be eligible for early intervention and who are referred for evaluation.

(2) Evaluations shall be sufficient in scope and depth to investigate information relevant to the young child's suspected disability, including, but not limited to, physical development, cognitive and sensory development, learning problems, learning strengths and educational needs, communication development, social and emotional development, self-help skills and health considerations, as well as an assessment of the family's perceived strengths and needs which will enhance the child's development.

(3) The assessment shall include information to assist the MDT to determine whether the child has a disability and needs special education and related services and to determine the extent to which the child can be involved in the general curriculum or appropriate preschool activities.

(4) The following timeline applies to the completion of evaluations and reevaluations under this section:

(i) Initial evaluation or reevaluation shall be completed and a copy of the evaluation report presented to the parents no later than 60 days after the early intervention agency receives written parental consent.

(ii) Notwithstanding the requirements incorporated by reference in 34 CFR 300.536 (relating to reevaluation), a reevaluation report shall be provided within 60 days from the date that the request for reevaluation was received from the parent or teacher, or from the date that a determination is made that conditions warrant a reevaluation.

(iii) Reevaluations shall occur at least every 2 years.

(5) Each eligible young child shall be evaluated by an MDT, to make a determination of continued eligibility for early intervention services and to develop an evaluation report in accordance with the requirements concerning evaluation under § 14.123 (relating to evaluation), excluding the provision to include a certified school psychologist where appropriate under § 14.123(a).

§ 14.154. IEP.

(a) An IEP is a written plan for the provision of appropriate early intervention services to an eligible young child, including services to enable the family to enhance the young child's development. The IEP shall be based on and be responsive to the results of the evaluation.

(b) Notwithstanding the requirements incorporated by reference, the IEP team shall include:

(1) At least one special education teacher or special education provider.

(2) An agency representative familiar with the general education curriculum or appropriate activities for preschool children. With regard to the adoption of 34 CFR 300.344(a)(4) (relating to IEP team), the agency representative should be qualified to provide or supervise the provision of specially designed instruction to meet the needs of children with disabilities. This could include a preschool supervisor or service coordinator or designee of the early intervention agency.

(c) With parental consent, the IEP shall include a section on family services, which shall provide for appropriate services to assist the family in supporting the eligible young child's development.

(d) Notwithstanding the requirements incorporated by reference, the following timelines govern the preparation and implementation of IEPs:

(1) The IEP of each eligible young child shall be implemented as soon as possible, but no later than 14 days after the completion of the IEP.

(2) The IEP of each eligible young child shall be reviewed by the IEP team at least annually.

(e) For children who are within 1 year of transition to a program for school age students, the IEP shall contain goals and objectives which address the transition process.

(f) Progress indicators include, but are not limited to, IEP annotation, dated progress and documented parental feedback.

(g) If an eligible young child moves from one early intervention agency to another in this Commonwealth, the new early intervention agency shall implement the existing IEP to the extent possible or shall provide services and programs specified in an interim IEP agreed to by the parents until a new IEP is developed and implemented and until the completion of due process proceedings under this chapter.

(h) Every eligible young child receiving special education and related services provided for in the IEP developed prior to _____ (*Editor's Note:* The blank refers to the effective date of the adoption of this proposed rulemaking.) shall continue to receive the special education and related services under that IEP subject to the terms, limitations and conditions set forth in law.

§ 14.155. Range of services.

(a) The Department will ensure that options are available to meet the needs of children eligible for early intervention. The options may be made available directly by early intervention agencies or through contractual arrangements for services and programs of other agencies in the community, including preschools, provided these other agencies are appropriately licensed by the Department or the Department of Public Welfare.

(b) The IEP team shall review the alternatives in subsection (c) in descending order, except for the options relating to services and programs provided in the home. Services provided in the home may be the least restrictive early intervention program for an eligible young child.

(c) The IEP team shall recommend services and programs be provided in a regular class or regular preschool program unless the IEP team determines that the IEP cannot be implemented in a regular class or regular preschool program even with supplemental aids and services. The placement options include the following:

(1) A regular preschool program or class for the entire school or program day with supportive intervention, including modifications to the regular program and individualization by the preschool program or classroom teacher.

(2) A regular preschool program or class for all or most of the school or program day, with supplemental aids and services provided by early intervention personnel.

(3) Early intervention services and programs provided in a specialized setting for most or all of the program day, with noneligible young children.

(4) Early intervention services and programs provided in a specialized setting, with some programming provided in the regular preschool program or class and opportunities for participation with noneligible young children in play or other activities.

(5) Early intervention services and programs provided in the home, including services which are provided in conjunction with services provided in another setting.

(6) Early intervention services provided in a specialized early intervention program.

(7) Early intervention services and programs provided in a specialized setting, including the following:

(i) An approved private school.

(ii) A residential school, residential facility, State school or hospital or special secure setting on an individual or group basis, with parental consent.

(iii) An approved out-of-State program.

(d) The duration of early intervention services, in terms of program days and years, shall accommodate the individual needs of eligible young children. The duration of early intervention services shall be developed by each early intervention agency and shall be included in its plans under § 14.104 (relating to educational plans).

§ 14.156. System of quality assurance.

The Department will assure in accordance with section 302(b) of the act (11 P. S. § 875-302(b)) through its monitoring and technical assistance activities, a system of quality assurance, including evaluation of the developmental appropriateness, quality and effectiveness of programs; assurance of compliance with program standards; and provision of assistance to assure compliance. These requirements will apply to those programs operated by the early intervention agency directly or those providers contracted by the early intervention program. Monitoring will include onsite review of:

(1) *Developmental appropriateness.* The programs and settings for eligible young children shall include the following developmentally and age appropriate practices, and shall:

(i) Include a curriculum based on established scope and sequence of instruction.

(ii) Maximize the amount of time a child is engaged in learning experiences.

(iii) Maximize parent involvement, including activities which parents can do with the child.

(iv) Facilitate social interaction with normally developing children.

(v) Provide experiences to stimulate learning in all domains: physical, cognitive, communicative, social-emotional and self-help.

(vi) Be in an environment in which children can learn through active exploration and interaction with concrete materials, with adults and with other children.

(vii) Be in an environment organized so that children may select many of their own activities among a variety of learning areas including: dramatic play, blocks, science, math, games and puzzles, books, recordings, art and music.

(viii) Provide daily opportunities for children to use small and large muscles, to listen to stories, to see how spoken and written language are related and to express themselves creatively.

(ix) Be in an environment organized so that children may work individually or in small groups for part of the day.

(x) Provide activities and adult interactions that are responsive to individual differences in ability, interests, cultural backgrounds and linguistic styles.

(xi) Develop self-control by using positive guidance techniques, such as modeling, encouraging expected behavior, setting clear limits and redirecting the child to more acceptable activity.

(xii) Provide opportunities for children to develop social skills, such as cooperating, helping, sharing, negotiating and talking with others to solve interpersonal problems.

(2) *Caseload.* The caseloads of professional personnel shall be determined on the basis of maximums allowed and the amount of time required to fulfill the specific IEPs. The following caseloads shall be used in early intervention programs:

(i) *Supportive intervention.* In a regular preschool program in which supportive intervention is the primary method of service, the caseload range should be 10—40 children with no more than 6 eligible young children serviced in the same session.

(ii) *Specialized setting.* In early intervention programs provided in a specialized setting, the staff ratio is based on the developmental levels of the children. At least one staff member shall be a certified professional. For children functioning at:

(A) 0-18 months—1 staff member for every 3 eligible young children, with a maximum class size of nine.

(B) 18-36 months—1 staff member for every 4 eligible young children, with a maximum class size of 12.

(C) 36 months and up—one staff member for every 6 eligible young children, with a maximum class size of 18 children.

(iii) *Home based program.* In early intervention programs in which the home based program is provided to eligible young children as the only program, the ratio is 10 to 20 young children per teacher. This shall also include teachers of the visually impaired, hearing impaired, and orientation and mobility specialists.

(iv) *Early intervention program—speech and language.* In early intervention programs, the speech and language itinerant program will be provided within a caseload of 10 to 50 eligible young children enrolled per teacher.

(v) *Early intervention program—physical and occupational therapies.* In early intervention programs where physical therapy or occupational therapy, or both, is specified on the IEP, individual caseloads are determined with consideration of the type of services delivered and the time required for those services.

(3) *Documented progress indicators.* Progress indicators may include IEP annotation, dated progress reports and documented parental feedback.

§ 14.157. Exit criteria.

(a) Under section 301(1) of the act (11 P. S. § 875-301(1)), children shall be exited from early intervention based on one or more of the following criteria:

(1) The child has reached the age of beginners and is therefore no longer eligible for early intervention services authorized under the act.

(2) The child has functioned within the range of normal development for 4 months, with an IEP, and as verified by the IEP team.

(3) The parent or guardian withdrew the child from early intervention for other reasons.

(b) If the child does not meet exit criteria and the child's IEP demonstrates that the child will benefit from services which can be provided only through special education, nothing in the law or this chapter shall prevent that placement.

§ 14.158. Data collection and confidentiality.

The Department will require early intervention agencies to maintain accurate information concerning eligible young children and the types of services received, and to report that information in aggregate at predetermined dates throughout the fiscal year. The Secretary will prescribe the format, content, data items and time for submission of the required information.

PROCEDURAL SAFEGUARDS

§ 14.161. Prehearing conferences.

The purpose of the prehearing conference is to reach an amicable agreement in the best interests of the student or young child.

(1) In addition to the requirements incorporated by reference in 34 CFR 300.503—300.505 (relating to prior notice by the public agency; content of notice; procedural safeguards notice; and parental consent), the notice shall provide for a parent to request the school district to convene a prehearing conference in instances when the parent disapproves the school district's proposed action or refusal to act.

(2) When requested, the school district shall convene the prehearing conference within 10 days of receipt of the parent notice and shall be chaired by the superintendent or the superintendent's designee.

(3) If the prehearing conference results in agreement, the provisions under § 14.131 (relating to IEP) shall be applied. Within 5-calendar days of the agreement, a parent may notify the school district in writing of a decision not to approve the recommended assignment. When a parent gives notice not to approve the recommended assignment, or if the prehearing conference does not result in an agreement, the provisions under § 14.162 (relating to impartial due process hearing and expedited due process hearing) shall be applied.

(4) The parents or the school district may waive the right to a prehearing conference and immediately request an impartial due process hearing under § 14.162.

§ 14.162. Impartial due process hearing and expedited due process hearing.

(a) In addition to the requirements incorporated by reference in 34 CFR 300.504 (relating to procedural safeguard notice), with regard to a student who is mentally retarded or thought to be mentally retarded, notice when mailed shall be issued to the parent by certified mail (addressee only, return receipt requested).

(b) Parents may request an impartial due process hearing concerning the identification, evaluation, or educational placement of, or the provision of a free appropriate public education to a student who is a child with a disability or who is thought to be a child with a disability or a young child who is eligible or who is thought to be eligible, if the parents disagree with the school district's, or the early intervention agency's in the case of a young child, identification, evaluation or placement of, or the provision of a free appropriate public education to the student or young child.

(c) A school district, or the early intervention agency in the case of a young child, may request a hearing to proceed with an initial evaluation or an initial educational placement when the district, or the early intervention agency in the case of a young child, has not been able to obtain consent from the parents or in regard to a matter under subsection (b).

(d) The hearing for a child with a disability or thought to be a child with a disability shall be conducted by and held in the school district at a place reasonably convenient to the parents. A hearing for an eligible young child or thought to be eligible young child shall be conducted by the early intervention agency at a place reasonably convenient to the parents. These options shall be set forth in the notice provided for requesting a hearing.

(e) The hearing shall be an oral, personal hearing and shall be open to the public unless the parents request a closed hearing. If the hearing is open, the decision issued in the case, and only the decision, shall be available to the public. If the hearing is closed, the decision shall be treated as a record of the student or young child and may not be available to the public.

(f) The decision of the hearing officer shall include findings of fact, a discussion and conclusions of law. Although technical rules of evidence will not be followed, the decision shall be based solely upon the substantial evidence presented at the hearing.

(g) The hearing officer shall have the authority to order that additional evidence be presented.

(h) Notwithstanding the requirements incorporated by reference in 34 CFR 300.509(a)(4) (relating to hearing rights), a written transcript of the hearing shall, upon request, be made and provided to parents at no cost.

(i) Parents may be represented by legal counsel and accompanied and advised by individuals with special knowledge or training with respect to the problems of children with disabilities.

(j) A parent or parent's representative shall be given access to educational records, including any tests or reports upon which the proposed action is based.

(k) A party may prohibit the introduction of evidence at the hearing that has not been disclosed to that party at least 5-business days before the hearing.

(l) A party has the right to compel the attendance of and question witnesses who may have evidence upon which the proposed action might be based.

(m) A party has the right to present evidence and testimony, including expert medical, psychological or educational testimony.

(n) Any party to a hearing has the right to obtain written, or, at the option of the parents, electronic findings of fact and decisions.

(o) The decision of the hearing officer regarding a child with a disability or thought to be a child with a disability may be appealed to a panel of three appellate hearing officers. The panel's decision may be appealed further to a court of competent jurisdiction. In notifying the parties of its decision, the panel shall indicate the courts to which an appeal may be taken. The decision of the hearing officer regarding an eligible young child may be appealed to a court of competent jurisdiction. In notifying the parties of the decision, the hearing officer shall indicate the courts to which an appeal may be taken.

(p) The following applies to coordination services for hearings and to hearing officers and appellate hearing officers:

(1) The Secretary may contract for coordination services in support of hearings conducted by local school districts. The coordination services shall be provided on behalf of school districts and may include arrangements for stenographic services, arrangements for hearing officer services, scheduling of hearings and other functions in support of procedural consistency and the rights of the parties to hearings.

(2) If a school district chooses not to utilize the coordination services under paragraph (1), it may conduct hearings independent of the services if it has obtained the Secretary's approval of procedures that similarly provide for procedural consistency and ensure the rights of the parties. In the absence of approval, a school district which receives a request for an impartial due process hearing shall forward the request to the entity providing coordination services under paragraph (1) without delay.

(3) The Secretary will contract for the services of hearing officers for hearings related to an eligible young child or thought to be eligible young child and for appellate hearing officers for school aged students and may compensate the hearing officers and appellate hearing officers for their services. The compensation does not cause the hearing officers and appellate hearing officers to become employes of the Department.

(4) Neither a hearing officer nor an appellate hearing officer may be an employe or agent of a school entity in which the parents or student or young child resides, or of an agency which is responsible for the education or care of the student or young child. A hearing officer or appellate hearing officer shall promptly inform the parties of a personal or professional relationship the officer has or has had with any of the parties.

(q) The following timeline applies to due process hearings:

(1) A hearing shall be held within 30-calendar days after a parent's or school district's initial request for a hearing.

(2) The hearing officer's decision shall be issued within 45-calendar days after the parent's or school district's request for a hearing.

(3) The appellate hearing panel shall render a decision within 30-calendar days after a request for review and shall provide the parties a written copy of the panel's decision.

(4) A hearing officer or appellate hearing officer may grant specific extensions of time beyond the periods in paragraphd (1)—(3) at the request of either party.

(5) If an expedited hearing is conducted under 34 CFR 300.528 (relating to expedited due process hearings) the hearing officer decision shall be mailed within 45 days of the public agency's receipt of the request for the hearing without exceptions or extensions.

(r) Each school district and early intervention agency shall keep a list of the persons who serve as hearing officers. The list shall include the qualifications of each hearing officer. School districts and early intervention agencies shall provide parents with information as to the availability of the list and shall make copies of it available upon request.

PART XVI. STANDARDS

CHAPTER 342. (Reserved)

(*Editor's Note:* The State Board of Education is proposing to delete the current text of §§ 342.1—342.8, 342.21—342.25, 342.31—342.39, 342.41—342.46, 342.51—342.56, 342.61—342.68 and 342.71—342.74, 22 Pa. Code pages 342-3—342-53, serial pages (229133) to (229136), (252471) to (252472), (229139) to (229150), (256447) to (256454), (252473) to (252474), (229159) to (229162), (256455) to (256457), (229165) to (229182) and (238135).)

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