

# PROPOSED RULEMAKING

## DEPARTMENT OF HEALTH

[28 PA. CODE CHS. 1101, 1103, 1105, 1107  
AND 1113]

### WIC Program

#### A. Introduction

The Department of Health (Department) proposes to amend Chapters 1101, 1103, 1105, 1107 and 1113, to read as set forth in Annex A. Those regulations govern the authorization and management of stores participating in the Special Supplemental Nutrition Program for Women, Infants and Children (WIC Program) and the procedures for administrative appeals of WIC applicants and participants, and local agencies and stores.

#### B. Purpose of the Proposed Amendments

The majority of the proposed changes to the Department's regulations are necessitated by recent amendments to the Federal regulations governing the WIC Program found in 7 CFR 246. The Federal amendments adopted on March 18, 1999, mandate uniform sanctions for the most serious violations of WIC Program regulations by grocery stores authorized to participate in the WIC Program. The purpose of these changes, as explained in the preamble to the Federal amendments, is to curb vendor related fraud and abuse in the WIC Program and to promote coordination between the WIC Program and the Food Stamp Program in the disqualification of stores which violate either WIC Program or Food Stamp Program rules. In accordance with the mandates of the United States Department of Agriculture, Food and Nutrition Services (USDA-FNS), which provides 100% of the funds for the operation of the WIC Program in this Commonwealth, the Department must implement these mandatory changes no later than May 17, 2000.

The Department has engaged in a thorough review of the existing State regulations under the Governor's Executive Order 1996-1. The Department has held public meetings for the purpose of soliciting comments from those affected by the State regulations. Notices of these public meetings were published at 29 Pa.B. 4695 (September 4, 1999) and 29 Pa.B. 5452 (October 16, 1999), sent to approximately 1,400 grocery stores in this Commonwealth and their trade associations, posted in WIC clinics and sent to other interested coalitions, such as the Pennsylvania Hunger Action Center. In addition to those changes required as a result of the Federal amendments, the Department has proposed revisions to the State regulations as a result of discussions held during those public meetings.

The State regulations are a part of the State Plan of Operations required to be submitted to the USDA-FNS under 7 CFR 246.4 (relating to state plan). Therefore, in addition to the Commonwealth's statutory requirements for amending regulations, the Department must submit any changes to the State regulations to the USDA-FNS for approval following the Commonwealth's proposed rule-making process and prior to submitting them in final form. 7 CFR 246.4(c).

#### C. Summary of Amendments.

##### § 1101.2 Definitions.

The Department proposes to include the definition of "premises" as that area within the building housing the

store. The WIC Program has proposed to change the requirements for the location of the minimum inventory that a WIC authorized store shall maintain. Previously, a vendor was required to have available on the sales floor at all times, the minimum inventory requirement of WIC allowable foods in § 1103.5 (relating to minimum inventory). The Department has proposed to change this requirement to permit the store to meet the requirement if the inventory is maintained on the premises, not just on the sales floor. Therefore, if a store does not have the minimum inventory available for sale to a WIC customer on the sales floor, but would easily be able to provide the allowable foods immediately from the stockroom on the premises, the minimum inventory requirements would be satisfied. The Department proposes to substitute the term "premises" for "sales floor" in certain regulations to ensure that the stock, although not on the sales floor, is immediately and readily accessible to the WIC participants to ensure accessibility to prescribed foods and prevent the loss of supplemental food benefits or inconvenience for the participant. The definition of "sales floor" remains in this section to define the areas that WIC Program officials will survey WIC allowable foods for staledating requirements. The reviews will encompass the sales floor and will exclude areas not accessible to the general public.

The Department proposes to redefine the term "store slot" so that a store slot is assigned based upon the density of participant population in a county and the actual number of participants in a county. This will make the definition consistent with the proposed change to § 1103.3 (relating to the authorization of store slots) regarding the method of assigning the number of store slots to a particular area. The Department proposes to assign store slots based upon actual WIC participant density per county instead of expected participant population per trade area. The density of the participants per square mile will determine which tier the Department will use to allocate the number of store slots. The actual number of participants in the county will determine how many store slots will be assigned to the county based upon the criteria of the particular tier the participant population density falls under. The proposed change in this definition reflects the change in the method of assigning store slots.

##### § 1103.1. Certification and recertification reviews.

The Federal amendments require the Department to take into consideration the issue of "participant access" in making decisions relative to the authorization and participation of stores in the WIC Program. In current State regulations, the term "participant hardship" is used. To be consistent with terminology used in the Federal regulations governing the WIC Program, the Department proposes to change the term "participant hardship" in subsection (a) to "inadequate participant access." This substitution is proposed throughout the remaining State regulations.

The Department proposes to clarify the store slot criterion employed in the certification and recertification review process by referencing, in subsection (b), § 1103.4(a)(12) and (b). These provisions provide that, not only must a store slot be available in a particular trade area, there must be a sufficient number of WIC participants shopping in a 1-mile radius to demonstrate a need to authorize the applying store within 1 mile of another WIC authorized store. The term "sufficient participant

shopping” is defined in § 1103.4(a)(13). This criterion ensures that there is an appropriate geographic distribution of stores throughout the trade area where there is a demonstrated need based upon participant shopping.

Subsection (b)(6), as currently written, states that the purpose of the onsite review is to determine if the store meets all selection and limitation criteria in § 1103.4(a) and (b). The local agency conducts the review to determine if the store meets the selection criteria; the limitation criteria is only used when the Department must limit, based upon the regulations, the number of WIC authorized stores in a trade area. The Department proposes deleting language to make the provisions consistent with the actual procedure being used.

Subsection (c) pertains to the durations of a certification or recertification. The Department proposes to change the length of time for notification of the expiration of WIC certification from 15 days to 30 days for a store failing to apply for recertification. It also proposes to increase from 15 days to 30 days the advance notice required for termination of authorization for cause by either the Department or the store.

Subsection (g) pertains to the eligibility of a store that participates in the WIC Program if it has been denied certification or recertification. The Department proposes to add the word “effective” before the word “date” to clarify that the 6-month period which a store denied certification or recertification must wait before being considered eligible to reapply for participation in the WIC Program runs from the date the denial decision becomes enforceable.

#### *§ 1103.2. Probationary certification.*

The citations in subsection (b)(1) and (2) are corrected to reflect the change in numbering due to proposed changes to the regulations affecting the citations of the provisions that are referenced.

#### *§ 1103.3. Authorization of store slots.*

The Department proposes to change the method for allocating store slots. Previously, the Department used a two tier method based upon expected WIC participant in a particular area. This method recognized a difference between Philadelphia and the rest of this Commonwealth due to population density of the area. Less stores were authorized in the Philadelphia area because of the density of the population and the proximity of the population to the stores. However, as a result of discussions during the public meetings and a thorough review by the Department of the allocation of store slots, the Department proposes to change the method for allocating store slots to a three-tier method, rather than a two-tier method, based upon the density of WIC participant population per county. This method recognizes the differences in rural and urban areas throughout this Commonwealth, not just Philadelphia, and would have the effect of more evenly distributing store slots allocations to areas which may need additional stores to participate. The density of the participants per square mile will determine which tier the Department will use to allocate the number of store slots. The actual number of participants in the county will determine how many store slots will be assigned to the county based upon the criteria of the particular tier the participant population density falls under.

In addition to a more even geographic distribution of stores, it is anticipated that an additional 200 stores may be authorized to participate in the WIC Program. The reallocation, however, will not cause the loss of authorization to a store currently authorized.

The Department proposes to reallocate store slots annually to take into consideration shift in WIC participation to ensure that an adequate number of stores are authorized in areas where they are needed.

#### *§ 1103.4. Selection and limitation criteria; authorization process.*

The Department proposes to replace the term “sales floor” with “premises” in subsection (a)(5). As noted earlier, the Department proposes to change the requirements for the location of the minimum inventory that a WIC authorized store must maintain. Current regulations require a vendor to have available on the sales floor, at all times, the minimum inventory requirement of WIC allowable foods set forth in § 1103.5. The purpose of this was to ensure that the foods prescribed to a WIC participant were readily available for purchase on the sales floor. The Department established this requirement because of the concern that many participants would not ask if additional quantities of foods were available in the stock room if the foods were not available on the sales floor. As a result, the participants would not purchase the prescribed foods because they believed those foods were unavailable.

At public hearings, grocery store owners and managers disagreed. They noted that many times patrons do ask if foods are not available on the sales floor. The owners and managers felt that the requirement to have minimum inventory available at all times on the sales floor was not only burdensome, but impracticable, and that many times sufficient inventory is available in stockrooms to meet the needs of the participants.

As a result of discussions with store owners, the Department proposes to change this criterion to permit the store to meet the requirement if the inventory is maintained on the premises, not just on the sales floor. Therefore, if a store does not have the minimum inventory available for sale to a WIC customer on the sales floor, but would easily be able to provide the allowable foods immediately from the stockroom on the premises, the minimum inventory requirements would be met.

In subsection (a)(6)(i)(F) the Department proposes to change the word “cans” to “containers” for the single strength juice requirement in Food Prescription One. This change would permit a participant to purchase single strength juice in a variety of 46 ounce containers.

In subsection (a)(6)(ii) the Department proposes to change the requirements of Food Prescription Two from 24 13-ounce cans of concentrated contract brand milk or soy based infant formula to 31 13-ounce cans of concentrated contract brand milk or soy based infant formula. The reason for this proposed change is that the most prescribed infant formula food package prescribed to WIC participants no longer contains 24 cans, but rather contains 31 cans of concentrated formula.

The Department has proposed to add subsection (a)(13). The Department proposes to move the standard that a store may not be located within 1 mile of another WIC authorized store within the trade area unless there is sufficient participant shopping from a limitation criteria set forth under subsection (b)(2), to a selection criteria. The reason for this move is that the criterion used a method for selecting stores, rather than limiting stores. In addition, the Department has added language which sets forth three different tiers for determining what is “sufficient participant shopping” for the purpose of assigning store slots for which stores may be selected to fill.

*§ 1103.5. Minimum inventory.*

The Department proposes to substitute “premises” for “sales floor” in subsection (a) to accommodate the proposed change for the requisite location of minimum inventory requirements, as discussed earlier.

In subsection (b)(5)(i) the Department proposes to change the minimum inventory requirements of single strength juice from three varieties with a total of nine 46 ounce cans to three varieties with a total of nine 46 ounce containers. The change in the word “cans” to “containers” would allow the WIC participant to purchase juice in any 46 ounce form of container, and not restrict the purchase to only cans.

In subsection (b)(5)(ii) the Department proposes to change the word “concentrate” following the word “frozen” to reflect the appropriate terminology. In addition, the Department has added shelf stable concentrated juice as a choice for inventory requirements. This reflects the new available form of juice (shelf stable concentrate) which meets the nutritional requirements set forth in the Federal regulations governing the WIC Program.

*§ 1103.6. Waiting list.*

The Department proposes the addition of subsection (a)(4) to permit the Department to place a store on a waiting list, notwithstanding that a store slot is open, if there is not sufficient participant shopping within a 1 mile area to support an additional store. This facilitates an appropriate geographic distribution of stores. It also may work to the advantage of the store by not requiring that the store wait 6 months before it is eligible to reapply for authorization. It will allow the store to immediately be considered if there is an increase in participation to warrant authorization of an additional store or if a store slot becomes open due to other circumstances, such as a store closing or being disqualified from the program.

*§ 1103.7. Participant hardship.*

The Department proposes to change the title of this section from “Participant hardship” to “Inadequate participant access” to be consistent with the Federal regulatory language.

Throughout this section the term “participant hardship” has been changed to “inadequate participant access.”

The Department proposes to add subsection (b) to clarify that inadequate participant access may also be considered, in limited circumstances, when there is a change of ownership of a WIC authorized store.

The Department proposes to revise the inadequate participant access criteria in subsection (c) to correlate differences in urban versus rural population density. In densely populated areas there should be greater accessibility to stores. Therefore, the Department proposes that the more densely populated an area the less distance between stores needs to be shown to establish inadequate participant access when a core number of participants would need to travel that distance if a store is removed from the WIC Program. The Department proposes to switch paragraphs (3) and (4) so that the two paragraphs pertaining to travel distances for ten or more participants are numbered consecutively.

*§ 1105.1. Training.*

In subsection (b)(5) the Department proposes to change the citation mentioned in the paragraph from § 1107.1 to 1107.1a(d)(16) to accommodate a proposed change in the location of the regulatory provision containing the relevant subject matter.

*§ 1105.2. Overcharge recovery system.*

In subsection (h) the Department proposes to change a citation mentioned in the paragraph to reflect a proposed change in the location of the regulatory provision containing the relevant subject matter.

*§ 1105.3 Terms and conditions of participation.*

In subsection (a) the Department again proposes to change the citation used in the regulation.

In subsection (a)(4) the Department proposes the addition of the words “on the premises,” which correlates to the proposed change the Department has made elsewhere to allow a store to maintain minimum inventory on the premises instead of on the sales floor exclusively.

*§ 1105.4. Change of ownership of a WIC authorized store.*

In subsection (c) the Department proposes to change the term “participant hardship” to “inadequate participant access.”

*§ 1105.6. Monitoring of WIC authorized stores.*

In subsection (c)(1)(vi) the Department proposes to insert the words “imposition of” in front of the word “sanctions” to correct the title of § 1107.1. The change is necessitated as a result of the proposed changes in this rulemaking.

*Chapter 1107. Sanctions.*

The majority of the proposed changes resulting from the mandatory Federal regulatory changes are in §§ 1107.1—1107.2 (relating to imposition of sanctions; disqualifications; and civil money penalties). Because there were so many changes necessitated as a result of the Federal changes, the Department proposes to delete the prior text of §§ 1107.1 and 1107.2 completely. The proposed new text of these sections contain some of the material previously contained in the sections, as well as the changes proposed to meet the Federal regulatory requirements.

*§ 1107.1. Sanctions.*

The Department proposes to change the title of this section from “Sanctions” to “Imposition of sanctions.” This title would be more descriptive of the text contained in the section. The proposed text of this section would describe the circumstances under which the Department will impose different types of sanctions, and whether the Department will offer civil money penalties in lieu of disqualifications.

This section identifies when the Department will impose a sanction, and when a sanction is not appealable. The requirements in this section are consistent with Federal regulatory requirements in 7 CFR 246.12(f)(2)(xviii). In particular, the Federal changes published on March 18, 1999, specifically make nonappealable both the Department’s determination of inadequate participant access and the disqualification of a store from the WIC Program as a result of a disqualification of the store from the Food Stamp Program. Although § 1113.1 (relating to right to appeal) sets forth the types of decisions that are appealable, and the text of that section is consistent with the proposed text of this section, the language was included here to ensure clarity that some issues decisions are nonappealable.

The Federal regulatory changes in 7 CFR 246.12(f)(2)(ix) and (k)(1)(ix) provide that the Department may impose a civil money penalty against a store disqualified from the Food Stamp Program in lieu of a WIC Program disqualification if it determines that inadequate

participant access would result. The proposed text of subsection (b) explains this option.

The proposed text of subsection (c) would permit the Department to impose a civil money penalty in lieu of a Federally prescribed disqualification in § 1107.1a(b)—(d) (relating to disqualifications) if the Department determines that the disqualification would result in inadequate participant access. This is an option permitted under 7 CFR 246.12(f)(2)(xx). The Department has chosen to exercise this option to ensure that there is adequate access to supplemental foods for WIC participants.

This proposed text of subsection (d) provides notice to WIC authorized stores that disqualification from the WIC Program may result in disqualification from the Food Stamp Program and will not be subject to administrative or judicial review under the Food Stamp Program. The proposed text is identical to that contained in 7 CFR 246.12(f)(2)(xxii).

The proposed text of subsections (e), (f) and (g) currently appear in § 1107.1(b), (c) and (d), and is consistent with 7 CFR 246.12(k)(10). These subsection designations would change as part of the proposed revision and reorganization of this section.

#### *§ 1107.1a. Disqualifications.*

The Department proposes the addition of this new section to identify the Federally mandated disqualifications published in the *Federal Register* on March 18, 1999. Prior to these changes, the Federal regulations permitted the State agency operating the WIC Program to determine the type and level of sanction based upon the nature and severity of the program violation, provided that the disqualification did not exceed 3 years. The Federal regulations now require not only specific sanctions for certain program violations, but also permanent disqualification of a store which is convicted in trafficking in food instruments (defined as WIC check under State regulations) or selling firearms, ammunition, explosives or controlled substances in exchange for food instruments under 7 CFR 246.12(f)(2)(xx). The proposed text of subsection (a) recognizes this requirement. The Department proposes to set forth the other Federally mandated sanctions in subsections (b)—(d)(1).

The new Federal regulatory requirements, however, permit the State agency to impose sanctions in addition to those Federally mandated. This requirement recognizes that State programs subject to the Federal regulations operate differently and provide the State agency the ability to require compliance with individual State program requirements. The Federal regulations do set limits on these disqualifications, however, in that a sanction not mandated by Federal regulation may not exceed 1 year in duration.

The 1-year disqualification proposed in subsection (d), for the conduct listed in subsection (d)(2)—(16) is based upon the Department's assessment of punitive measures it needs to impose to effectively operate the WIC Program. These disqualifications are currently in the State regulations. As a result of the changes to the Federal regulations, the disqualification period proposed for some of these violations would be significantly less than authorized in current regulation.

This proposed text of subsections (e)—(i) is required under 7 CFR 246.12(k)(1)(v), (vi), (xii), (vii) and (viii), respectively.

The text of subsection (j) is currently in § 1107.1(i). The proposed language, which states that a disqualification

imposed as a result of this subsection may not exceed 1 year, recognizes the Federally mandated limits upon which a state may impose a sanction not specifically set forth in the Federal regulations. The proposed text would reference subsections different than those now referenced in § 1107.1(i) to be consistent with the reorganization that is being proposed.

The text of subsection (k) is currently contained in § 1107.1(j). The Department proposes to change the time period for providing advance notice of disqualification from 15 days to 30 days.

The text of subsection (l) is currently in § 1107.1(k).  
*§ 1107.2. Civil money penalties.*

Prior to the changes in the Federal regulations published on March 18, 1999, there were no specific requirements relating to the imposition of civil money penalties in lieu of disqualification. The Department had chosen to use civil money penalties in lieu of disqualification of WIC authorized stores when the disqualification would result in participant hardship (what is now called inadequate participant access). The purpose of this was to further the purpose of the WIC Program in ensuring participant access to supplemental food benefits, while enabling the Department to impose some sanctions for an authorized store's failure to comply with WIC Program requirements.

Federal regulations now specifically set forth when civil money penalties may be used in lieu of disqualifications and the formula which must be used for calculating the civil money penalty. The Department proposes to replace the current text of this section with the proposed new provisions due to the magnitude of the proposed revisions. The proposed text does contain, however, some of the requirements previously set forth.

In subsection (a) the first sentence of the proposed text of this paragraph is identical to that contained under current subsection (a). The second sentence, noting that the Department will not offer a civil money penalty in lieu of Federally mandated disqualifications for third or subsequent violations, is required under 7 CFR 246.12(k)(1)(vi).

The proposed text of subsection (b)(1) sets forth the formula for calculating civil money penalties for those Federally mandated disqualifications enumerated in proposed § 1107.1a(b)—(d)(1). The formula for calculating civil money penalties for these disqualifications may be found in 7 CFR 246.12(k)(1)(x).

In subsection (b)(2) the Department proposes to prescribe the formula for calculating civil money penalties for violations enumerated in proposed § 1107.1a(d)(2)—(16). The Department is permitted, under 7 CFR 246.12(k)(2), to impose civil money penalties in lieu of disqualifications which are not specifically in the Federal regulations. The Department proposes to exercise this option in lieu of imposing the disqualifications under § 1107.1a(d)(2)—(16), which are the disqualifications that are not Federally mandated. There is no formula mandated by the new Federal requirements for these type of disqualifications. The Department proposes to use the same formula it currently uses for calculating civil money penalties. This formula is identical to that in proposed § 1107.2(b)(1) and 7 CFR 246.12(k)(xx), with one exception. The Department proposes to use 5% of the average monthly sales, and not 10% of the average monthly sales, multiplied by the period of disqualification, to calculate the civil money penalty.

The proposed text of subsection (c) sets forth the limitations imposed under 7 CFR 246.12(k)(1)(x) and (2)(i).

The proposed text of subsection (d) currently appears in subsection (c).

The proposed text of subsection (e) is required under 7 CFR 246.12(k)(6).

The proposed text of subsections (b) and (g) currently appear in subsections (e) and (f).

#### *§ 1113.1. Right to appeal.*

The Department proposes to revise and reorganize this section into five subsections. The Department proposes to add the language "during the period of authorization" following the words "adverse action" in proposed subsection (a). This would clarify that the expiration of an authorization to participate in the WIC Program as a result of denial of a recertification application is not an adverse action which will be postponed until a time as an adjudication and order is issued by the hearing examiner.

The Department proposes to add subsection (b) to set forth specific actions which are not subject to appeal. In addition to the expiration of a WIC authorization, this paragraph recognizes the two additional actions not subject to appeal under the recent amendment of the Federal regulations.

#### *§ 1113.2. Appeal procedures.*

The Department proposes the addition of language to this section to clarify that only when an adverse action is appealable, will the Department provide notice to the store of its right to an administrative appeal.

#### *D. Fiscal Impact*

The WIC Program is 100% Federally funded. No State dollars are involved in the operation of the WIC Program. The proposed regulatory changes to § 1103.3 (relating to authorization of store slots) which would change the method of allocating store slots based upon WIC population density has the potential for increasing by approximately 200 the number of stores authorized to participate in the WIC Program. As a result, the Department anticipates an increase of approximately \$96,000 annually in store related monitoring costs.

#### *E. Paperwork Requirements*

The proposed amendments will not increase paperwork for the Department, WIC Program participants or those grocery stores voluntarily participating in the WIC Program.

#### *F. Effective Date/Sunset Date*

The effective date of the amendments will be May 17, 2000. These regulations will be monitored continually and will be updated as required by changes in Federal statute or Federal regulations governing the WIC Program. Therefore, no sunset date has been set.

#### *G. Statutory Authority*

The WIC Program was authorized through an amendment to the Child Nutrition Act of 1966 (42 U.S.C.A. § 1786). Congress authorized the USDA-FNS to contract with and make funds available to States to administer the program. In the Commonwealth, the WIC Program receives 100% of its funding from the USDA-FNS.

There are no State statutes governing the operation or administration of the WIC Program. The Women's, Infants' and Children's Nutrition Improvement Act (62 P. S. §§ 2951—2955) which authorizes additional State fund-

ing for the expansion of the WIC Program. The Commonwealth, however, has not provided funding for the expansion of the program since State Fiscal Year 1996.

The existing State regulations were developed and published at 29 Pa.B. 3841 (July 24, 1999), following the decision of the Commonwealth Court decision in *Giant Food Stores, Inc. v. Commonwealth of Pennsylvania, Department of Health*, 713 A.2d 177(1998). The Court held that the Department was required to promulgate regulations governing the selection and management of grocery stores to participate in the WIC Program. The State regulations added Part VIII (relating to supplemental nutrition program for women, infants and children (WIC Program)). The regulations also deleted §§ 8.41—8.74, the Department's then existing regulations pertaining to the WIC Program's administrative appeals.

The proposed amendments contained herein are submitted under the Department's general power and duty to protect the health of the people of the Commonwealth (71 P. S. § 532), and under the *Giant* decision.

#### *H. Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 9, 2000, the Department submitted a copy of the proposed rulemaking, to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare. In addition to submitting the proposed rulemaking, 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 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 which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulations, by the Department, the General Assembly and the Governor, of objections raised.

#### *I. Contact Person*

Interested persons are invited to submit all comments, suggestions or objection regarding the proposed amendments to Greg Landis, Chief, Grants and Retail Store Management Unit, WIC Program, Room 604, Health and Welfare Building, Harrisburg, PA 17109, (717) 783-1289, within 30 days after publication of this notice in the *Pennsylvania Bulletin*. Persons with a disability may also submit comments, suggestions or objections regarding the proposed amendments to Greg Landis in alternative formats, such as by audio tape, braille or by using TDD: (717) 783-6514. Persons with a disability who require an alternative format of this document (that is, large print, audio tape, braille), should contact Greg Landis so that he may make necessary arrangements.

ROBERT S. ZIMMERMAN, Jr.,  
*Secretary*

**Fiscal Note:** 10-161. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 28. HEALTH AND SAFETY

PART VIII. SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN (WIC PROGRAM)

CHAPTER 1101. GENERAL PROVISIONS

§ 1101.2. Definitions.

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

\* \* \* \* \*

**Premises**—The sales floor and storage areas within the building housing the WIC authorized store.

\* \* \* \* \*

**Store slot**—A slot established by the Department for a WIC authorized store in a particular geographic area. The number of store slots the Department authorizes for a geographic area assigned to a local agency is based on the [ **expected** ] density of participant population [ **of that area** ] in the county and the actual number of participants in the county.

\* \* \* \* \*

CHAPTER 1103. AUTHORIZATION OF STORES

§ 1103.1. Certification and recertification reviews.

(a) *Qualifying for certification or recertification.* To be certified or recertified as a WIC authorized store, a store shall meet the selection criteria in § 1103.4(a) (relating to selection and limitation criteria; authorization process) at the time of the onsite review. If the number of applicants satisfying the selection criteria exceeds the number of stores the Department permits to participate in the WIC Program in a trade area under the limitation criteria in § 1103.4(b), the Department will determine which store to certify or recertify under the process in § 1103.4(c). The Department will exempt a store from satisfying the selection and limitation criteria only if there is a finding of [ **participant hardship** ] **inadequate participant access**, as set forth in § 1103.7 (relating to [ **participant hardship** ] **inadequate participant access**).

(b) *Certification or recertification review process.* The certification or recertification review process is as follows:

\* \* \* \* \*

(2) The local agency shall determine if a store slot is available [ **in the trade area in which the store seeking certification or recertification is located** ] in accordance with § 1103.4(a)(13) and (b) (relating to selection and limitation criteria; authorization process).

\* \* \* \* \*

(6) The local agency shall schedule an onsite review of the store for the purpose of determining if the store meets the selection [ **and limitation** ] criteria [ **set forth** ] in § 1103.4(a) [ **and (b)** ]. The local agency will notify the store of the approximate date of the review.

\* \* \* \* \*

(c) *Duration of certification or recertification.* The certification or recertification of a store shall remain in effect until the store is disqualified, changes ownership, withdraws from the WIC Program, its application for recertifi-

cation is denied or its certification expires if it fails to apply for recertification. The Department will provide [ **15** ] **30** days written notice to the store prior to expiration of WIC [ **authorization** ] **certification** for any store failing to apply for recertification. Either the Department or the WIC authorized store may terminate the [ **authorization** ] **certification** for cause after providing at least [ **15** ] **30** days advance written notice.

\* \* \* \* \*

(e) *Moratorium on applications.* The Department will not accept applications, or schedule or conduct certification reviews in a trade area 90 days or less prior to the scheduled start date of the contemporaneous certification/recertification reviews in that trade area. The Department will grant an exception to this moratorium only if the Department finds that there would be [ **participant hardship** ] **inadequate participant access**, as set forth in § 1103.7, if it does not consider the application. A store granted certification under this exception shall be exempt from the contemporaneous certification/recertification review if it has been certified for less than 60 days prior to the date the contemporaneous reviews begin in the trade area.

\* \* \* \* \*

(g) *Eligibility for stores denied certification or recertification.* A store which has been denied certification or recertification shall wait 6 months from the **effective** date of the Department's decision to reapply, except a store denied certification or recertification under § 1103.4(c)(2) will be placed on a waiting list and will be considered immediately for certification if a store slot becomes open.

§ 1103.2. Probationary certification.

(a) *Criteria for probationary certification.* If during the certification or recertification review, the store fails to meet one or more of the qualifications in § 1103.4(a) and (b) (relating to selection and limitation criteria; authorization process), the Department may grant probationary certification to the store for a period not to exceed 6 months when either of the following applies:

(1) [ **Participant hardship** ] **Inadequate participant access** would occur if the store is not certified or recertified.

\* \* \* \* \*

(b) *Probationary certification reviews.*

(1) If a store receives probationary certification, except in situations of [ **participant hardship** ] **inadequate participant access** identified in [ § 1103.7(b)(8) (relating to participant hardship) ] § 1103.7(c)(8) (relating to inadequate participant access), the Department will conduct an unannounced onsite review during the probationary certification period to determine if regular status should be granted to the store. The Department may rescind probationary certification and deny the store's application to serve as a WIC authorized store if the store fails to meet one or more of the selection criteria during this review.

(2) If a store receives probationary certification due to [ **participant hardship** ] **inadequate participant access** as identified in [ § 1103.7(b)(8) ] § 1107.3(c)(8) the Department will conduct a certification review of the store and any other stores on the waiting list within the store's trade area. The Department may rescind proba-

tionary certification and deny the store's application to serve as a WIC authorized store if the store fails to meet one or more of the selection or limitation criteria during this review.

(c) *Extension of probationary certification.* If the store fails the review conducted during the probationary certification period, and [ **participant hardship** ] **inadequate participant access** exists as determined by the Department, the Department may extend probationary certification for an additional 3 months during which time at least one representative of the store who is responsible for training store personnel on the WIC Program shall attend corrective training.

\* \* \* \* \*

**§ 1103.3. Authorization of store slots.**

[ **The Department will assign one store slot for every 160 participants anticipated by the Department to participate in the WIC Program, except in Philadelphia, where the Department will assign one store slot for every 260 participants anticipated by the Department to participate in the WIC Program.** ]

(a) *Assignment of store slots.* The Department will assign store slots based upon WIC participant density according to the following:

(1) In counties with WIC participant density greater than 100 participants per square mile, the Department will assign one store slot for every 175 WIC participants.

(2) In counties with WIC participant density of 25 to 100 participants per square mile, the Department will assign one store slot for every 150 WIC participants.

(3) In counties with WIC participant density less than 25 participants per square mile, the Department will assign one store slot for every 125 WIC participants.

(b) *Yearly allocation of store slots.* By October 1 of each year, the Department will evaluate WIC participant population to determine store slot allocations per county for each Federal Fiscal Year.

**§ 1103.4. Selection and limitation criteria; authorization process.**

(a) *Selection criteria.* The Department will use the following selection criteria to identify stores that meet the operational criteria to serve as a WIC authorized store:

\* \* \* \* \*

(2) A store shall serve or reasonably expect to serve at least 25 participants per month.

(i) The Department will provide a store seeking certification which has not been certified previously, an 8-month period to determine if the store is serving 25 participants. The Department may disqualify a store for a period of no less than 6 months in accordance with § 1107.1(i) (relating to **imposition of sanctions**) if it is not serving 25 participants at the end of the 8-month period.

\* \* \* \* \*

(5) The store shall have available on the [ **sales floor** ] **premises** at all times the minimum inventory requirements in § 1103.5 (relating to minimum inventory) of allowable foods.

(6) The store shall have shelf prices less than the maximum allowable cost established by the Department for Food Prescription One and Food Prescription Two. The highest price of each allowable food available at the store, regardless of brand, shall be recorded to determine if the store's prices are within the maximum allowable prices established by the Department. The Department will publish in the *Pennsylvania Bulletin*, no later than September 15 of each year, the maximum allowable prices for Food Prescription One and Food Prescription Two. Revisions to the maximum allowable prices will be published in the same manner. Food Prescription One and Food Prescription Two are as follows:

(i) Food Prescription One consists of the following:

\* \* \* \* \*

(F) Four 11.5 to 12 ounce containers of frozen concentrated juice or four 46 ounce [ **cans** ] **containers** of single strength juice.

\* \* \* \* \*

(ii) Food Prescription Two consists of: [ **24** ] **Thirty-one** 13 ounce cans of concentrated contract brand milk or soy based infant formula.

\* \* \* \* \*

(10) The store may not be currently disqualified from participation in the Food Stamp Program [ **or have had a sanction imposed by the USDA-FNS for Food Stamp Program violations within 2 years prior to the application to participate in the WIC Program** ].

\* \* \* \* \*

(13) The store may not be located within 1 mile of another WIC authorized store within the same trade area unless the Department determines that there is sufficient WIC participant shopping within the 1 mile area to support an additional WIC authorized store or stores. For the purpose of this paragraph, to support the authorization of each additional WIC authorized store within the 1 mile radius, sufficient WIC participant shopping shall be determined by the following:

(i) For counties with WIC participant density greater than 100 participants per square mile, there shall be at least 175 WIC participants shopping within the 1 mile of the applying store for each store slot authorized.

(ii) For counties with WIC participant density of 25 to 100 participants per square mile, there shall be at least 150 WIC participants shopping within the 1 mile of the applying store for each store slot authorized.

(iii) For counties with WIC participant density less than 25 participants per square mile, there shall be at least 125 WIC participants shopping within the 1 mile of the applying store for each store slot authorized.

(b) *Limitation criteria.* [ **The Department will use the following criteria to limit the number of WIC authorized stores in a trade area:**

(1) ] A store slot shall be available in the trade area in which the store is located.

[ (2) **The store may not be located within 1 mile of another WIC authorized store unless the Department determines that there is sufficient WIC par-**

participant shopping within the 1 mile area to support an additional WIC authorized store. For the purpose of this section, in order to support the authorization of each additional WIC authorized store within the 1-mile radius, sufficient WIC participant shopping shall mean that the Department has documentation that at least 160 WIC participants per store slot authorized are currently making WIC purchases within the 1-mile radius, except in Philadelphia where sufficient WIC participant shopping shall mean that the Department has documentation that at least 260 participants per store slot authorized are currently making WIC purchases within the 1-mile radius. ]

\* \* \* \* \*

§ 1103.5. Minimum inventory.

(a) A store shall have available on the [ sales floor ] premises at the time of the certification or recertification onsite review, and maintain at all times thereafter while participating as a WIC authorized store, minimum inventory requirements of allowable foods.

(b) Minimum inventory requirements of allowable foods are as follows:

\* \* \* \* \*

(5) Juices.

(i) [ Canned, three ] Three varieties with a total of nine 46 ounce [ cans ] containers.

(ii) Frozen concentrated or shelf stable concentrated, two varieties with a total of nine 11.5 to 12 ounce containers.

\* \* \* \* \*

§ 1103.6. Waiting list.

(a) Placement of stores on the waiting list. The Department will place on a waiting list eligible stores as follows:

\* \* \* \* \*

(4) When a store slot is open and the store seeking certification is located within 1 mile of a WIC authorized store, if the Department determines that there is not sufficient WIC participant shopping within the 1 mile area to support an additional WIC authorized store.

\* \* \* \* \*

§ 1103.7. [ Participant hardship ] Inadequate participant access.

(a) The Department will consider whether there is [ participant hardship ] inadequate participant access when considering whether to place a store on probation, rather than deny [ certification or ] recertification, for failure to meet selection and limitation criteria in § 1103.4(a) and (b) (relating to selection and limitation criteria; authorization process) during [ certification and ] recertification reviews [ or change of ownership reviews ].

(b) The Department may also consider whether there is inadequate participant access when deciding whether to place on probation a store undergoing a change of ownership under § 1105.4(b) and (c) (relating to change of ownership of a WIC authorized store).

(c) [ Participant hardship ] Inadequate participant access is any of the following:

(1) Ten or more participants whose specific nationality, ethnicity or religious dietary needs can not be served properly by another WIC authorized store located [ within 3 miles of the store, except in Philadelphia, where the distance of 1 mile to the next closest WIC authorized store will be used for the determination. ] in accordance with one of the following:

(i) Less than 3 miles of the store for counties with WIC participant density less than 25 participants per square mile.

(ii) Less than 2 miles of the store for counties with WIC participant density of 25 to 100 participants per square mile.

(iii) Less than 1 mile of the store for counties with WIC participant density greater than 100 participants per square mile.

(2) Ten or more participants will be required to travel [ 3 or more miles to the next closest WIC authorized store, except in Philadelphia, where the distance of 1 mile to the next closest WIC authorized store will be used for the determination. ] according to one of the following:

(i) Three or more miles to the next closest WIC authorized store for counties with WIC participant density less than 25 participants per square mile.

(ii) Two or more miles to the next closest WIC authorized store for counties with WIC participant density of 25 to 100 participants per square mile.

(iii) One or more miles to the next closest WIC authorized store for counties with WIC participant density greater than 100 participants per square mile.

(3) [ Ten or more people are affected by physical barriers or conditions which make normal travel to another WIC authorized store impractical.

(4) ] A participant has a physical disability that cannot be accommodated by another WIC authorized store [ within 3 miles, except in Philadelphia, where the distance of 1 mile to the next closest WIC authorized store will be used for the determination. ] in accordance with one of the following:

(i) Within 3 miles of the store for counties with WIC participant density less than 25 participants per square mile.

(ii) Within 2 miles of the store for counties with WIC participant density of 25 to 100 participants per square mile.

(iii) Within 1 mile of the store for counties with WIC participant density greater than 100 participants per square mile.

(4) Ten or more participants are affected by physical barriers or conditions which make normal travel to another WIC authorized store impractical.

\* \* \* \* \*

CHAPTER 1105. REQUIREMENTS OF WIC AUTHORIZED STORES

§ 1105.1. Training.

\* \* \* \* \*



(b) *Annual training.* The Department will provide for WIC authorized stores annual training which is designed to prevent WIC Program errors and abuses and to improve WIC Program services. The following apply to annual training:

\* \* \* \* \*

(5) Failure to have at least one representative attend training shall result in the Department imposing sanctions against the WIC authorized store as in [ § 1107.1 (relating to sanctions) ] § 1107.1a(d)(16) (relating to disqualifications).

\* \* \* \* \*

§ 1105.2. **Overcharge recovery system.**

\* \* \* \* \*

(h) *Sanctions.* The Department will impose a sanction against a WIC authorized store under [ § 1107.1 (relating to sanctions) ] § 1107.1a(d)(14) (relating to disqualifications) if the store fails to pay overcharges due within the time required under subsections (f) and (g).

\* \* \* \* \*

§ 1105.3. **Terms and conditions of participation.**

(a) *General terms and conditions.* A WIC authorized store shall adhere to this subsection. Failure to do so shall result in the imposition of sanctions as set forth in [ § 1107.1 (relating to sanctions) ] § 1107.1a (relating to disqualifications). A WIC authorized store shall:

\* \* \* \* \*

(4) Maintain the minimum inventory of allowable foods on the premises.

\* \* \* \* \*

(14) Provide Federal, State, Department and local agency representatives who are involved in monitoring the store's compliance with statutes and regulations governing the WIC Program, access to all WIC checks accepted by the store and on its premises at the time of an onsite review.

\* \* \* \* \*

§ 1105.4. **Change of ownership of a WIC authorized store.**

\* \* \* \* \*

(c) When a change of ownership occurs and [ participant hardship ] inadequate participant access as defined in [ § 1103.7 (relating to participant hardship) ] § 1103.7(c)(8) (relating to inadequate participant access) would result, the store under the new ownership may receive probationary certification for a period not to exceed 6 months if the State conducts an immediate onsite visit followed by a complete certification visit at the store. Until the immediate onsite visit is conducted, the new owner may not accept WIC checks. As soon as possible within the 6 month probationary period or during the next recertification process, whichever occurs first, the store under the new ownership shall compete with stores on the waiting list in the trade area for the store slot.

\* \* \* \* \*

§ 1105.6. **Monitoring of WIC authorized stores.**

\* \* \* \* \*

(b) *High risk reviews.* The Department will monitor all high risk stores. The Department will use either compliance investigations or inventory audits as methods to monitor high risk stores. The Department also may conduct compliance buys and inventory audits on stores that have not been identified as high risk stores.

(1) *Compliance investigations.* The following standards [ shall ] apply:

\* \* \* \* \*

(vi) The Department will disqualify the store if three compliance buys detect violations of statutes or regulations governing the store's participation in the WIC Program. The Department will determine the term of disqualification by the violation found during the compliance investigation, in accordance with § 1107.1 (relating to imposition of sanctions). If multiple violations are found during the compliance investigation, the Department will disqualify the store for the term corresponding to the most serious violation.

\* \* \* \* \*

CHAPTER 1107. SANCTIONS

§ 1107.1. [ Sanctions ] Imposition of sanctions.

(a) [ The Department will impose a sanction against a store based upon the severity and nature of the violation of the statute or regulation governing the store's participation in the WIC Program.

(b) In addition to imposing a sanction against a WIC authorized store that commits fraud or abuse of the WIC Program, the Department may prosecute or make a referral for prosecution of the WIC authorized store to a criminal prosecution agency for prosecution under applicable Federal, State or local laws.

(c) A WIC authorized store that has a sanction imposed against it by the Department for accepting a WIC check for items other than those specified on the WIC check shall also reimburse the Department for moneys received for the purchase of the items with the WIC check.

(d) The Department may impose a sanction against a WIC authorized store for failing to remit any amount demanded due to violations of statutes or regulations governing its participation in the WIC Program within the time frame in § 1105.2(f) and (g) (relating to overcharge recovery system) or the notice given by the Department under § 1105.6(f) (relating to monitoring of WIC authorized stores).

(e) Upon receiving notification that a WIC authorized store has been disqualified from another USDA-FNS program, such as the USDA Food Stamp Program, the Department will disqualify the WIC authorized store for an equivalent period of up to 3 years.

(f) The Department may disqualify from participation in the WIC Program a WIC authorized store if the store incurs a civil money penalty in lieu of disqualification from another USDA-FNS program, such as the USDA Food Stamp Program. If the Department finds that participant hardship would result from the disqualification of the store from the WIC Program, the Department may, at its option, offer the store the option of paying a civil money penalty in lieu of disqualification.

(g) The Department will notify the USDA-FNS of a store's disqualification from the WIC Program. Disqualification from the WIC Program may result in the store's disqualification from the USDA Food Stamp Program.

(h) *Specific sanctions.* The Department will determine the type and level of sanction to be imposed against a WIC authorized store for a violation of a statute or regulation governing the store's participation in the WIC Program.

(1) *Class A abuses.* The Department will disqualify a WIC authorized store from participation in the WIC Program for 1 year for the following violations:

(i) Redeeming a WIC check for an item that is in a food category authorized by the WIC Program but is not an allowable food or is not specified on the WIC check.

(ii) Having stale-dated allowable food on the sales floor.

(iii) Failing to maintain minimum inventory requirements of an allowable food.

(iv) Failing to request the participant's WIC identification card prior to accepting a WIC check.

(v) Accepting a WIC check made payable to another store without prior written approval from the Department.

(vi) Failing to maintain a clean and sanitary store.

(vii) Failing to properly store and refrigerate allowable foods.

(viii) Closure of the store by a city, local or county health department.

(ix) Charging or demanding that a participant pay for an allowable food with the participant's own money or with another WIC check for purchases made with a WIC check.

(x) Securing the signature of the participant, endorser or proxy prior to completing the "Pay Exactly" box on the WIC check.

(xi) Overcharging the WIC Program by charging sales tax or allowing the purchase with a WIC check of more of an allowable food than authorized on the WIC check.

(xii) Having or charging prices which exceed the current maximum allowable costs established by the Department and published in the *Pennsylvania Bulletin* for either Food Prescription One or Food Prescription Two set forth in § 1103.4(a)(6)(i) and (ii) (relating to selection and limitation criteria; authorization process).

(2) *Class B abuses.* The Department will disqualify a WIC authorized store from participation in the WIC Program for 2 years for the following violations:

(i) Redeeming a WIC check for food that is not in a food category authorized to be purchased with a WIC check.

(ii) Charging the WIC Program more for an allowable food than a customer who is not a participant is charged for the same item.

(iii) Charging the WIC Program more than the current price for an allowable food.

(iv) Giving monetary change to an authorized individual who tenders a WIC check.

(v) Failing to remit payment for an overcharge within the specified time frame.

(vi) Charging the WIC Program for an allowable food which was not purchased with a WIC check.

(vii) A repeated Class A violation.

(3) *Class C abuses.* The Department will disqualify a WIC authorized store from participation in the WIC Program for 3 years for the following violations:

(i) Accepting a WIC check for cash, credit or a nonfood item.

(ii) Physically altering or changing on the face of a WIC check the store name, food type or quantity, participant information, date or printed dollar amount.

(iii) Redeeming WIC checks for the sale of an amount of an allowable food over a period of time which exceeds the WIC authorized store's documented inventory for the same allowable food for the same period of time.

(iv) A repeated Class B violation.

(i) For a violation of a statute or regulation governing the store's participation in the WIC Program which is not specifically classified as a Class A, Class B or Class C sanction as provided for in subsection (h), the Department will determine the appropriate type and level of sanction to be imposed upon the store based upon the nature and severity of the violation.

(j) The Department will provide a WIC authorized store at least a 15 day advance notice of the effective date of any disqualifications and an opportunity to appeal the disqualification in accordance with § 1113.1 (relating to right to appeal).

(k) A store which has been disqualified from the WIC Program may apply for certification following expiration of the disqualification period. If the store chooses to apply for certification after expiration of the disqualification, the Department will not consider the prior disqualification from the WIC Program when determining eligibility, and the store will be considered in accordance with § 1103.4 if a store slot is available, or placed on a waiting list in accordance with § 1103.6 (relating to waiting list) if no store slot is available. ]

The Department may disqualify a store or impose a civil money penalty in lieu of disqualification for reasons of program abuse. The Department will not provide the store with prior warning that violations were occurring before imposing these sanctions. The store may appeal a Department decision pertaining to disqualification, denial of application to participate or other adverse actions that affect participation during the agreement performance period in accordance with § 1113.1 (relating to right to appeal). Expiration of an agreement with a store, disqualification of a store as a result of disqualification from the Food Stamp Program, and the Department's determination regarding participant access are not subject to review.

(b) The Department will disqualify a store which has been disqualified from the Food Stamp Program unless the Department determines that the disqualification of the store would result in inadequate participant access under § 1103.7 (relating to inadequate participant access). If the Department determines that disqualification of the store would result in inadequate participant access under § 1103.7, the Department will give the store the option of paying a civil money penalty in lieu of WIC disqualification.

(c) The Department will disqualify a store for WIC Program violations in § 1107.1a (relating to disqualifications) unless the Department determines that disqualification of the store under § 1107.1a(b)—(d) would result in inadequate participant access. In that case, the Department will give the store the option of paying a civil money penalty in lieu of disqualification. The Department will not impose a civil money penalty in lieu of disqualification for third or subsequent sanctions for violations.

(d) Disqualification from the WIC Program may result in disqualification as a retailer in the Food Stamp Program. The disqualification may not be subject to administrative or judicial review under the Food Stamp Program.

(e) In addition to imposing a sanction against a WIC authorized store that commits fraud or abuse of the WIC Program, the Department may prosecute or make a referral for prosecution of the WIC authorized store to a criminal prosecution agency for prosecution under applicable Federal, State, or local laws.

(f) A WIC authorized store that has a sanction imposed against it by the Department for accepting a WIC check for items other than those specified on the WIC check shall also reimburse the Department for monies received for the purchase of these items with the WIC check.

(g) The Department may impose a sanction against a WIC authorized store for failing to remit any amount demanded due to violations of statutes or regulations governing its participation in the WIC Program within the time frame in § 1105.2(f) and (g) (relating to reimbursement of overcharges) or the notice given by the Department under § 1105.6(f) (relating to monitoring of WIC authorized stores).

#### § 1107.1a. Disqualifications.

(a) *Permanent disqualification.* The Department will permanently disqualify a WIC authorized store convicted of trafficking in WIC checks or selling firearms, ammunition, explosives or controlled substances (as defined in section 102 of the Controlled Substances Act (21 U.S.C.A. § 802)) in exchange for WIC checks. The Department will not compensate the store for revenues lost as a result of the violation.

(b) *Six-year disqualification.* The Department will disqualify a WIC authorized store for 6 years for either of the following:

(i) One incidence of buying or selling WIC checks for cash (trafficking).

(ii) One incidence of selling firearms, ammunition, explosives or controlled substances as defined in section 102 of the Controlled Substances Act, in exchange for WIC checks.

(c) *Three-year disqualification.* The Department will disqualify a WIC authorized store for 3 years for any of the following violations:

(1) One incidence of the sale of alcohol or alcoholic beverages or tobacco products in exchange for WIC checks.

(2) A pattern of claiming reimbursement for the sale of an amount of a specific allowable food which exceeds the store's documented inventory of that specific allowable food item for a specific period of time. A pattern may be established during a single inventory audit encompassing a 2-month period when a WIC authorized store's records indicate that the WIC authorized store's redemptions for a specific allowable food exceed the WIC authorized store's documented inventory for that allowable food.

(3) Two or more incidences of charging participants more for an allowable food than non-WIC customers or charging participants more than the current shelf price.

(4) Two or more incidences of receiving, transacting or redeeming WIC checks outside of authorized channels, including the use of an unauthorized store or an unauthorized person, or both.

(5) Two or more incidences of charging for allowable food not received by the participant.

(6) Two or more incidences of providing credit or nonfood items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives or controlled substances as defined in section 102 of the Controlled Substances Act, in exchange for WIC checks.

(d) *One-year disqualification.* The Department will disqualify a WIC authorized store for 1 year for any of the following violations:

(1) Two or more incidences of providing unauthorized food items in exchange for WIC checks, including charging for allowable food provided in excess of those listed on the WIC check.

(2) Having stale-dated allowable food on the sales floor.

(3) Failing to maintain minimum inventory requirements of an allowable food.

(4) Failing to request the participant's WIC identification card prior to accepting a WIC check.

(5) Accepting a WIC check made payable to another store without prior written approval from the Department.

(6) Failing to maintain a clean and sanitary store.

(7) Failing to properly store and refrigerate allowable foods.

(8) Closure of the store by a city, local or county health department.

(9) Charging or demanding that a participant pay for an allowable food with the participant's own money or with another WIC check for purchases made with a WIC check.

(10) Securing the signature of the participant, endorser or proxy prior to completing the "Pay Exactly" box on the WIC check.

(11) Overcharging the WIC Program by charging sales tax.

(12) Having or charging prices which exceed the current maximum allowable costs established by the Department and published in the *Pennsylvania Bulletin* for either Food Prescription One or Food Prescription Two set forth in § 1103.4(a)(6)(i) and (ii) (relating to selection and limitation criteria; authorization process).

(13) Giving monetary change to an authorized individual who tenders a WIC check.

(14) Failing to remit payment for an overcharge within the specified time frame.

(15) Physically altering or changing on the face of a WIC check the store name, food type or quantity, participant information, date or printed dollar amount.

(16) Failing to have at least one representative of the store attend required training.

(e) *Second mandatory sanction.* When a WIC authorized store, which previously has been assessed a sanction for any of the violations in subsections (b)—(d), receives another sanction for any of these violations, the Department will double the second sanction. The Department will double civil money penalties up to the limits allowed under § 1107.3(c) (relating to civil money penalties).

(f) *Third or subsequent mandatory sanction.* When a WIC authorized store, which previously has been assessed 2 or more sanctions for any of the violations listed in subsections (b)—(d), receives another sanction for any of these violations, the Department will double the third sanction and all subsequent sanctions. The Department will not impose civil money penalties in lieu of disqualification for third or subsequent sanctions for violations in subsections (b)—(d).

(g) *Multiple violations during a single investigation.* When during the course of a single investigation the Department determines a WIC authorized store has committed multiple violations, the Department will disqualify the WIC authorized store for the period corresponding to the most serious violation. However, the Department will include all violations in the notice of disqualification action.

(h) *Disqualification based on a Food Stamp Program disqualification.* The Department will disqualify a WIC authorized store which has been disqualified from the Food Stamp Program. The disqualification shall be for the same length of time as the Food Stamp Program disqualification, but may begin at a later date than the Food Stamp Program disqualification. Under 7 CFR 246.12(k)(1)(vii) and § 1113.1(b)(3) (relating to right to appeal), the disqualification will not be subject to administrative or judicial review under the WIC Program.

(i) *Voluntary withdrawal or nonrenewal of agreement.* The Department will not accept voluntary withdrawal of the WIC authorized store from the WIC Program as an alternative to disqualification for the violations in subsections (a)—(d), but will

enter the disqualification on the record. The Department will not permit the store to use nonrenewal of a store agreement as an alternative to disqualification.

(j) *Other violations.* For any violation of a statute or regulation governing the store's participation in the WIC Program which is not specifically classified in subsections (a)—(d), the Department will determine the appropriate type and level of sanction to be imposed upon the store based upon the nature and severity of the violation. A disqualification imposed under this subsection will not exceed 1 year.

(k) *Advance notice.* The Department will provide a WIC authorized store at least 30 days advance notice of the effective date of any disqualifications and, if appropriate, an opportunity to appeal the disqualification under § 1113.1 (relating to right to appeal).

(l) *Certification following expiration of disqualification period.* A store that has been disqualified from the WIC Program may apply for certification following expiration of the disqualification period. If the store chooses to apply for certification after expiration of the disqualification, the Department will not consider the prior disqualification from the WIC Program when determining eligibility. The store will be considered in accordance with § 1103.4 (relating to selection and limitation criteria; authorization process) if a store slot is available, or placed on a waiting list in accordance with § 1103.6 (relating to waiting list) if no store slot is available.

§ 1107.2. Civil money penalties.

(a) [ *Option available in lieu of a disqualification.* The Department may offer to a store the option of paying a civil money penalty in lieu of a denial of recertification or a disqualification required under § 1107.1 (relating to sanctions), only if the Department finds participant hardship as set forth in § 1103.7 (relating to participant hardship).

(b) *Calculation of civil money penalty.* The Department will calculate the civil money penalty the store shall pay by multiplying 5% of the average monthly total value of WIC checks redeemed for the most recent 6-month period by the number of months the store would be disqualified under § 1107.1. For stores which are denied recertification for which this option is available, the Department will multiply 5% of the average monthly total value of WIC checks for the most recent 6-month period by 6 months to determine the civil money penalty to be paid. If 6 months of information relating to the monthly value of WIC checks redeemed is not available, the Department will calculate the monthly average based upon the number of months for which information is available.

(c) *Written agreement.* If the Department offers and the store agrees to pay a civil money penalty in lieu of disqualification, the Department and store shall set forth the terms of the agreement in writing. The terms may include a probationary period during which the Department may conduct monitoring to ensure action has been taken by the store to correct problems. The agreement shall be effective upon the signature of the Director of the Division of WIC or the Director's designee.

(d) *Payment of the civil money penalty.* The store shall pay the civil money no later than 30 days from the effective date of the agreement, as set forth in subsection (c). Failure of the store to pay the civil money penalty when due shall be grounds for the Department to rescind the agreement and shall result in reinstatement of the disqualification.

(e) *Continued compliance with regulations.* A store which pays a civil money penalty is required to continue to comply with regulations governing the store's participation in the WIC Program. If the store commits additional violations of the regulations governing the store's participation in the WIC Program, the Department will consider the violations for which the store paid the civil money penalty in determining the type and magnitude of sanction to be imposed against the store.

(f) *Outstanding financial liabilities.* Payment of the civil money penalty, unless specifically provided for in a written agreement between the Department and the store, does not relieve the store of any other past or future financial liability incurred by the store by reason of its participation in the WIC Program. This includes, by way of example, payment of outstanding overcharges or payments owed the Department for the unauthorized sale of foods. ]

*Option available in lieu of a disqualification.* The Department may offer to a store the option of paying a civil money penalty in lieu of a denial of recertification or a disqualification required under § 1107.1 (relating to imposition of sanctions), only if the Department finds inadequate participant access as set forth in § 1103.7 (relating to inadequate participant access). The Department will not provide this option for third or subsequent violations set forth in § 1107.1a(b)—(d) (relating to disqualifications).

(b) *Calculation of civil money penalty.*

(1) For civil money penalties in lieu of disqualifications under § 1107.1a(b), (c) and (d)(1), the Department will calculate the civil money penalty for each violation identified by multiplying 10% of the average monthly total value of WIC checks redeemed for the most recent 6-month period by the number of months the store would be disqualified under § 1107.1. For stores that are denied recertification, and for which this option is available, the Department will multiply 10% of the average monthly total value of WIC checks for the most recent 6-month period by 6 months to determine the civil money penalty to be paid. If 6 months of information relating to the monthly value of WIC checks redeemed is not available, the Department will calculate the monthly average based upon the number of months for which information is available.

(2) For disqualifications identified in § 1107.1a(d)(2)—(15), the Department will calculate the civil money penalty for each violation identified the store shall pay by multiplying 5% of the average monthly total value of WIC checks redeemed for the most recent 6-month period by the number of months the store would be disqualified under § 1107.1. For stores which are denied recertification for which this option is available, the Department will multiply 5% of the average monthly total value

of WIC checks for the most recent 6-month period by 6 months to determine the civil money penalty to be paid. If 6 months of information relating to the monthly value of WIC checks redeemed is not available, the Department will calculate the monthly average based upon the number of months for which information is available.

(c) *Limitation of penalties.* The amount of the civil money penalty will not exceed \$10,000 for each violation. When during the course of a single investigation, the Department determines a store has committed multiple violations, the Department will impose a civil money penalty for each violation. The total amount of civil money penalties imposed for violations investigated as part of a single investigation will not exceed \$40,000.

(d) *Written agreement.* If the Department offers and the store agrees to pay a civil money penalty in lieu of disqualification, the Department and store shall set forth the terms of the agreement in writing. The terms may include a probationary period during which the Department may conduct monitoring to ensure action has been taken by the store to correct problems. The agreement will be effective when it is signed by the Director of the Division of WIC or the Director's designee.

(e) *Payment of the civil money penalty.* If a WIC authorized store does not pay, only partially pays, or fails to timely pay a civil money penalty assessed in lieu of disqualification, the Department will disqualify the WIC authorized store for the length of the disqualification corresponding to the violation for which the civil money penalty was assessed. If a civil money penalty is assessed for more than one violation, the Department will impose the disqualification for the period corresponding to the most serious violation. The Department may permit payment of civil money penalties by installments.

(f) *Outstanding financial liabilities.* Payment of the civil money penalty, unless specifically provided for in a written agreement between the Department and the store, does not relieve the store of any other past or future financial liability incurred by the store by reason of its participation in the WIC Program. This includes, by way of example, payment to the Department of outstanding overcharges for the unauthorized sale of foods.

#### CHAPTER 1113. LOCAL AGENCY AND STORE APPEALS

##### § 1113.1. Right to appeal.

(a) A store or local agency adversely affected by a Division of WIC action has the right to appeal. The right of appeal shall be granted when a local agency's or store's application to participate in the WIC Program is denied; or during the course of an agreement or period of authorization, when a local agency or store is disqualified; or when any other adverse action during the period of authorization which affects participation is taken against the store or local agency by the Division of WIC. [The expiration of a WIC authorization is not subject to appeal.]

(b) The following actions are not subject to appeal:

(1) The expiration of a WIC authorization.

(2) The Division of WIC's determination regarding inadequate participant access.

**(3) Disqualification of a store as a result of disqualification from the Food Stamp Program.**

(c) The appeal process is designed to secure and protect the interest of both the store or local agency and the Division of WIC and to ensure equitable treatment for all involved. **[The adverse action shall be postponed until the hearing examiner issues an adjudication and order.]**

**(d) Except for permanent disqualifications assessed under § 1107.1a(a) (relating to disqualifications), the Department may take adverse action against a store after 30 days advance notification.**

**(e) In the case of a disqualification of a local agency, the Department will provide at least 60 days advance notice.**

**§ 1113.2. Appeal procedures.**

(a) *Notification.* At the time the Division of WIC **denies an application of a store, or disqualifies a WIC authorized store or** takes an adverse action against a local agency or store **during a period in which the local agency or store is authorized,** the Division of WIC will notify the local agency or store of its right to an administrative appeal.

\* \* \* \* \*

[Pa.B. Doc. No. 00-287. Filed for public inspection February 18, 2000, 9:00 a.m.]

## INSURANCE DEPARTMENT

[31 PA. CODE CH. 86]

### Premium and Retirement Deposit Funds

The Insurance Department (Department) proposes to amend Chapter 86 (relating to premium and retirement deposit funds), to read as set forth in Annex A. This chapter is being proposed under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412) and sections 202 and 354 of The Insurance Company Law of 1921 (40 P. S. §§ 382 and 477b).

#### *Purpose*

The purpose of the amendments to Chapter 86 is to update the chapter so that it recognizes and makes provisions for the life insurance and annuity products which are currently being sold in this Commonwealth. When the chapter was adopted, life insurance policies and annuity contracts generally provided only for the payment of fixed premium amounts. In the current Commonwealth marketplace, both fixed premium and flexible premium policies and contracts are marketed and sold.

The proposed amendments to Chapter 86 establish a distinction between fixed premium policies and contracts, and flexible premium policies and contracts. The amendments provide for deposit limits that are applicable to monies held in premium deposit funds and retirement deposit funds of both fixed premium and flexible premium life insurance policies and annuity contracts.

#### *Explanation of Regulatory Requirements*

The following is a description of the changes contained in the proposed rulemaking.

Section 86.3 (relating to limit on amounts) provides for limits on the amount of money that a company or fraternal benefit society may hold under a premium deposit fund or retirement deposit fund for a life insurance policy or annuity contract. The proposed rulemaking amends this section to provide for diversity in treatment of fixed premium policies and contracts, and flexible premium policies and contracts. Further, this section, as amended, would establish the applicable deposit limits under fixed premium and flexible premium policies and contracts.

Section 86.4 (relating to interest rates) is being modified to make the section more understandable.

Minor editorial changes were made to § 86.9 (relating to deferment of and charges against withdrawal).

#### *External Comments*

In developing the proposed rulemaking, comments were solicited from the Insurance Federation of Pennsylvania, Inc. Comments from this organization were taken into consideration in preparing the proposed amendments to Chapter 86.

#### *Affected Parties*

This proposed rulemaking will apply to life insurance companies and fraternal benefit societies marketing life insurance policies and annuity contracts in this Commonwealth.

#### *Fiscal Impact*

##### *State Government*

There is anticipated to be no increase in cost to the Department resulting from the recognition within the modified chapter of flexible premium life insurance and annuity products. The establishment of limits for each type of premium payment contract should not substantially increase compliance monitoring by the Department.

##### *General Public*

There will be no adverse fiscal impact on consumers who purchase life insurance policies and annuity contracts and place money in the premium deposit funds or retirement deposit funds of the policies or contracts.

##### *Political Subdivisions*

The proposed rulemaking will have no fiscal impact on political subdivisions.

##### *Private Sector*

It is anticipated that the proposed rulemaking will have a fiscal impact on insurance companies and fraternal benefit societies to the extent that there will be, in contrast to prior practice, a clear limit on the amount of money that may be held by insurers under a premium deposit fund of a flexible premium life insurance policy. The Department believes it unlikely that this new limit will result in insurers collecting substantially less money in connection with life insurance policies.

#### *Paperwork*

The adoption of this proposed rulemaking will not impose additional paperwork on the Department or the insurance industry. Although the rulemaking imposes additional deposit limits on premium deposit funds and retirement deposit funds, it does not impose additional requirements resulting in additional paperwork.

*Effectiveness/Sunset Date*

The proposed rulemaking will become effective upon final adoption and publication in the *Pennsylvania Bulletin*. No sunset date has been assigned.

*Contact Person*

Questions or comments concerning this proposed rulemaking may be addressed in writing to Peter J. Salvatore, Regulatory Coordinator, 1326 Strawberry Square, Harrisburg, PA 17120, within 30 days of the publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Questions or comments may also be E-mailed to psalvato@ins.state.pa.us or faxed to (717) 772-1969 or (717) 705-3873.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 9, 2000, the Department submitted a copy of this proposed rulemaking 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 proposed rulemaking, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the agency in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of that material is available to the public upon request.

If IRRC has objections to any portion of the proposed rulemaking, it will notify the agency within 10 days after 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 specifies detailed procedures for the agency, the Governor and the General Assembly to review these objections before publication of the final-form regulations.

M. DIANE KOKEN,  
*Insurance Commissioner*

**Fiscal Note:** 11-188. No fiscal impact; (8) recommends adoption.

**Annex A****TITLE 31. INSURANCE****PART VI. LIFE INSURANCE****CHAPTER 86. PREMIUM AND RETIREMENT DEPOSIT FUNDS****§ 86.2. Purpose.**

**[In transacting business, life insurance companies and fraternal benefit societies have been permitted, for the convenience of policyholders and contractholders, to accept funds for paying premiums or considerations falling due in the future. In recent years there has been increasing use of the deposits to provide a fund for purposes other than prepayment of premiums or considerations, the overuse of which may result in misuse of the underwriting powers authorized to life insurance companies. To prevent further overuse of these accounts, the Insurance Department requires stock and mutual life companies and fraternal benefit societies to accept deposits under an individual life insurance policy or an individual annuity contract only under the conditions and limitations set forth in this chapter.] In transacting business, life insurance companies and fraternal benefit societies, for the convenience of policyholders and contractholders, accept funds for paying premiums or consider-**

**ations falling due in the future. This chapter allows life insurance companies and fraternal benefit societies to accept deposits under an individual life insurance policy or an individual annuity contract only under the conditions and limitations set forth in this chapter. When this chapter was adopted, life insurance policies and annuity contracts generally provided for the payment of fixed premium amounts. Therefore, the chapter was designed to apply to fixed premium policies and contracts. In the current Pennsylvania marketplace, both fixed premium and flexible premium policies and contracts are marketed and sold and this chapter recognizes a distinction between fixed premium policies and contracts, and flexible premium policies and contracts and establishes deposit limits which are applicable to monies held in premium deposit funds and retirement funds of both types of premium payment policies and contracts.**

**§ 86.3. Limit on fund amounts.**

(a) The maximum amount which may be held by the insurer for payment of future premiums, according to provisions in a **fixed premium life insurance policy, contract, rider or endorsement**, is the present value of gross premiums payable in the future, discounted at the interest rate or rates guaranteed in the **policy, contract, rider or endorsement**.

(b) **The maximum amount which may be held by the insurer for payment of future premiums, according to provisions in a flexible premium life insurance policy, contract, rider or endorsement, is the present value of the premium payments necessary to maintain the policy or contract in force to the maturity date, based on guaranteed charges and credits.**

(c) The maximum amount which may be held by the insurer for payment of future annuity considerations, according to provisions in **[ policy, ] a fixed premium annuity contract, rider or endorsement**, is the present value of gross considerations payable in the future **under the annuity contract, rider or endorsement**, discounted at the interest rate or rates guaranteed.

**[ (c) ] (d)** The maximum amount which may be held by the insurer in a retirement deposit fund, established according to provisions in **[ policy, ] a fixed premium life insurance policy or fixed premium annuity contract, rider or endorsement**, is the sum of the gross premiums or gross considerations payable under the base life insurance policy or base annuity contract.

(e) **The amount which may be held by the insurer in a retirement deposit fund, established according to provisions in a flexible premium life insurance policy, contract, rider or endorsement, is not subject to any maximum or other limit. The amounts held in a retirement deposit fund are subject to the requirements and provisions of section 410A of The Insurance Company Law of 1921 (40 P. S. § 510.1).**

(f) **The amount which may be held by the insurer in a premium deposit fund or a retirement deposit fund, established according to provisions in a flexible premium annuity contract, rider or endorsement, is not subject to any maximum or other limit. The amounts held in a retirement deposit fund are subject to section 410C of The Insurance Company Law of 1921 (40 P. S. § 510b) relating to standard nonforfeiture law for individual deferred annuities.**

#### § 86.4. Interest rates.

The interest rate or rates guaranteed to be paid on the amount held in a premium deposit fund or a retirement deposit fund shall be clearly stated in the policy, contract, rider or endorsement. [The language] Language which tends to invite misrepresentation[, for example, at least 6%, ] is prohibited.

#### § 86.10. Projection of results and report of fund balance.

If sales promotion literature illustrates the projected results of the retirement deposit fund, the guaranteed interest rate or rates shall be used [irrespective] regardless of whether or not projected results are also shown on the basis of the rate currently being paid or some lesser rate. The insurer shall furnish each owner of a retirement deposit fund with a written report on the accumulated balance of the fund at least once a year.

[Pa.B. Doc. No. 00-288. Filed for public inspection February 18, 2000, 9:00 a.m.]

## STATE BOARD OF ACCOUNTANCY

[49 PA. CODE CH. 11]

### Continuing Education Program Sponsors

The State Board of Accountancy (Board) proposes to amend Chapter 11, to read as set forth in Annex A, by revising §§ 11.1, 11.4, 11.64, 11.65, 11.71 and 11.72; by adding §§ 11.69a and 11.71a, and by deleting § 11.70.

#### *Background and Overview*

The Board's proposal would revise the current regulatory scheme for approving sponsors of continuing education programs for certified public accountants and public accountants. Since the adoption of the current program sponsor regulations in 1979, the Board has granted approval to approximately 2,000 program sponsors. However, the Board has been unable to effectively monitor program sponsors' compliance with continuing education requirements, in part because of budgetary and staffing constraints and in part because of deficiencies in the program sponsor regulations themselves. These problems were identified in the April 1993 Legislative Budget and Finance Committee's (LBFC) Performance Audit of the Board's operations, which included a recommendation that the Board initiate improvements in the way it regulates program sponsors.

Because the Board lacks complete, up-to-date information about the educational offerings of its program sponsors, the amendments would require all previously approved program sponsors to apply for and obtain reapproval to maintain their eligibility to offer continuing education programs after December 31, 2000, and to biennially renew their approval thereafter. The amendments also would strengthen the procedures for initial program sponsor approval and withdrawal of approval; make program sponsors responsible for the development of continuing education programs as well as their presentation; provide for comprehensive offsite reviews (audits) of selected program sponsors to ensure compliance with continuing education standards; establish fees for initial program sponsor approval and renewal of approval; and

exempt program sponsors registered with the National Association of State Boards of Accountancy (NASBA) from having to meet approval requirements.

#### *Description of Amendments*

##### *§ 11.1 (Definitions)*

Section 11.1 defines "program developer" as "[a] party who has assumed the responsibility for compilation of material to be presented in a continuing education program and for the instructional design of the program," and "program sponsor" as "[a] party who has assumed responsibility for presenting continuing education programs. The term designates a party who is not necessarily a program developer." Because the Board's proposal would make the program sponsor responsible for developing as well as presenting a continuing education program, the amendments would delete the definition of program developer and the second sentence of the definition of program sponsor.

##### *§ 11.4 (Fees)*

Section 11.4 lists the schedule of fees charged by the Board. There are currently no fees charged to program sponsors. The amendments would add fees of \$145 for initial program sponsor approval and \$120 for biennial renewal of program sponsor approval. The fees would defray the costs incurred by the Board in reviewing and processing applications for approval and renewal of approval and in performing offsite reviews of continuing education programs of selected program sponsors to ensure continued compliance with the Board's regulations. The assessment of fees relating to the approval of program sponsors was a recommendation of LBFC's Performance Audit.

##### *§ 11.64 (Sources of continuing education credit)*

Section 11.64 sets forth the various sources of continuing education credit (such as, National accounting organizations, colleges, universities, in-house programs) for licensees. The amendments would make clear that, effective January 1, 2001, continuing education credit will be awarded only for those program sponsors that are approved under the new § 11.69a (relating to approval of program sponsors).

##### *§ 11.65 (Criteria for continuing education programs)*

Section 11.65(a) prescribes the general criteria for continuing education programs. Subsection (b) sets forth the current procedures by which the Board approves program sponsors, while subsection (c) provides for biennial renewal of program sponsor approval. The amendments would revise and relocate the procedures for program sponsor approval and renewal of approval to § 11.69a.

##### *§ 11.69a (Approval of program sponsors)*

Section 11.69a would establish revised procedures for Board approval of program sponsors. Subsection (a) would require parties desiring to offer continuing education programs after December 31, 2000, to comply with this section; the approval of the approximately 2,000 Board-approved program sponsors would expire December 31, 2000. The Board estimates that at least one-half of the approved program sponsors are no longer offering continuing education programs to licensees and, therefore, would not seek reapproval.

In accordance with a recommendation of the LBFC's Performance Audit, subsection (b) would exempt from the approval process those program sponsors that are members of the NASBA's National Registry of Continuing



Professional Education Sponsors. The NASBA-registered program sponsors, which would be accorded deemed approved status by the Board, are already subject to strict approval requirements, including onsite reviews, to be eligible for NASBA-registration. There are currently about 35 NASBA-registered program sponsors in this Commonwealth.

Subsection (c) would require applications for program sponsor approval to include detailed information including titles, subject matter, and credit hours of programs offered; names, titles, and degrees of instructors; dates, locations and schedules of programs; program outlines and objectives; instruction and evaluation methods; admission requirements; and attendance certification methods. This information would enable the Board to make more informed assessments of the qualifications and credentials of prospective program sponsors. The Board anticipates that those currently approved program sponsors that apply for re-approval will have the required information readily available (much of it being updated versions of materials submitted to the Board at the time of original approval); as a consequence, currently approved program sponsors should not experience delays in having their applications for reapproval timely processed by the Board.

Subsection (d) would require statements made on applications for approval to be true and correct to the best of the applicants' knowledge.

Subsection (e) would require applications for approval to be reviewed by the Board's Continuing Education Committee, which would make recommendations to the Board for approval or disapproval. The Board would provide disapproved applicants with written notification of the reasons for disapproval; disapproved applicants could submit revised applications that address the Board's concerns. Individual Board members would not be permitted to review or vote on applications in which they have vested interests. These procedures would help to ensure that the Board's decisions on applications are thorough, fair and consistent.

Subsection (f) would provide for program sponsor approval numbers to be issued to approved program sponsors.

Subsection (g) would require program sponsors, excepting those registered with the NASBA, to renew their approval by January 1 of each even-numbered year, beginning with January 1, 2004. The biennial approval period would coincide with licensees' continuing education reporting period (that is, January 1 of an even-numbered year through December 31 of an odd-numbered year). Consistent with a recommendation of the LBFC's Performance Audit, program sponsors would have to include on their biennial renewal applications a listing of all current and planned program offerings, so that the Board may verify the relevancy of program subject matter to the public accounting profession. However, as with the biennial renewal of licenses of certified public accountants and public accountants, the biennial renewal of approval of program sponsors is not intended to be a fresh evaluation of the program sponsors' qualifications and credentials.

#### *§ 11.70 (Responsibilities of program developers)*

Section 11.70 sets forth the responsibilities of program developers in the areas of competency to engage in program development; determination of the level of program difficulty; recommendations for education and experience prerequisites; and periodic updating of program

materials. Program developers are not subject to Board approval under the current regulations. The amendments would relocate the contents of this section to § 11.71 (relating to responsibilities of program sponsors).

#### *§ 11.71 (Responsibilities of program sponsors)*

Section 11.71 prescribes the responsibilities of program sponsors in the areas of disclosures to prospective participants, selection and evaluation of instructors, limitations on program enrollments, adequacy of facilities, program evaluation, retention of records, certificates of completion and promotional materials. The amendments would add to the responsibilities of program sponsors those responsibilities currently applicable to program developers under § 11.70. Program developers are not subject to Board approval under the current regulations. The Board believes that it would be able to more effectively regulate the quality of continuing education programs if program sponsors were accountable for both the development and presentation of continuing education programs. The amendments would not prevent program sponsors that lack expertise in program development from contracting with other parties for assistance in complying with program development requirements.

#### *§ 11.71a (Offsite reviews of program sponsors)*

Section 11.71a would make program sponsors subject to offsite reviews of their continuing education programs to ensure compliance with Board regulations. The reviews would involve indepth audits of the program materials, documents and records of selected program sponsors. The Board anticipates that about 20% of approved program sponsors would be subject to offsite reviews during each approval period.

This new section would give the Board more authority to monitor the quality of continuing education programs than is permitted under current regulations, and would provide a level of scrutiny that is not feasible under the initial approval and biennial renewal of approval procedures.

#### *§ 11.72 (Program sponsor's failure to comply with continuing education requirements)*

Section 11.72 provides that the Board may suspend the approval of program sponsors for noncompliance with the requirements of §§ 11.65 and 11.71. The amendments would enlarge the Board's authority in this area by specifying the following grounds for withdrawal of program sponsor approval: acquiring the Board's approval by misrepresentation; failing to comply with the requirements of §§ 11.65, 11.69a or 11.71; refusing to provide information requested by the Board an offsite review; and holding out as an approved program sponsor prior to being issued a program sponsor approval number. The amendments also would provide that proceedings to withdraw program sponsor approval must be taken subject to the notice and hearing requirements of the Administrative Agency Law, 2 Pa.C.S. §§ 501—508 (relating to practice and procedure of Commonwealth agencies).

#### *Statutory Authority*

Section 3(10) of the CPA Law (63 P.S. § 9.3(10)) empowers the Board to promulgate regulations relating to continuing education, including the qualifications of program sponsors. Section 6 of the CPA Law (63 P.S. § 9.6), empowers the Board to fix fees by regulation.

#### *Fiscal Impact and Paperwork Requirements*

The amendments would require program sponsors, effective January 1, 2001, to pay fees of \$145 for initial

approval and \$120 for biennial renewal of approval. The Board estimates that about 1,000 currently approved program sponsors may seek to become approved under the Board's new regulatory format. The amendments would require the Board to incur costs in conducting onsite and offsite reviews of selected program sponsors. These costs would be defrayed by the fees for initial approval and biennial renewal of approval. The amendments would not have a fiscal impact on the Commonwealth's other agencies or its political subdivisions.

The amendments would require program sponsors, particularly those selected for offsite reviews, to provide detailed documentation to the Board regarding their continuing education programs. The amendments would require the Board to revise the forms that it currently uses for program sponsor approval. The amendments would not create new paperwork requirements for the Commonwealth's other agencies, the Commonwealth's political subdivisions, or other segments of the private sector.

*Compliance with Executive Order 1996-1*

In accordance with Executive Order 1996-1 (relating to regulatory review and promulgation), the Board, in developing the proposed amendments, solicited comments from the Pennsylvania Institute of Certified Public Accountants and the Pennsylvania Society of Public Accountants, the major professional associations representing the public accounting profession in this Commonwealth and two of its largest continuing education sponsors. The Board also published a notice in the *Pennsylvania Bulletin* seeking comments from other currently approved program sponsors as well as prospective program sponsors.

*Regulatory Review*

On February 7, 2000, as required by section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted copies of this notice of proposed rulemaking to the Independent Regulatory Review Commission (IRRC), the Senate Standing Committee on Consumer Protection and Professional Licensure, and the House Standing Committee on Professional Licensure. The Board also provided IRRC and the Committees with copies of a regulatory analysis form and a fee report form prepared in compliance with Executive Order 1996-1. Copies of these forms are available to the public upon request.

If IRRC has objections to any portion of the proposed amendments, it will notify the Board within 10 days following the close of the Committees' review period, specifying the regulatory review criteria that have not been met. The Regulatory Review Act sets forth procedures that permit IRRC, the General Assembly and the Governor to review any objections prior to final adoption of the amendments.

*Public Comment*

The Board invites interested persons to submit written comments, suggestions or objections regarding the amendments to Steven Wennberg, Esq., State Board of Accountancy, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this notice of proposed rulemaking in the *Pennsylvania Bulletin*.

THOMAS J. BAUMGARTNER, CPA,  
*Chairperson*

**Fiscal Note:** 16A-555. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

**PART I. DEPARTMENT OF STATE**

**Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

**CHAPTER 11. STATE BOARD OF ACCOUNTANCY  
GENERAL PROVISIONS**

**§ 11.1. Definitions.**

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

\* \* \* \* \*

**[ Program developer—A party who has assumed the responsibility for the compilation of material to be presented in a continuing education program and for the instructional design of the program. ]**

*Program sponsor*—A party who has assumed the responsibility for presenting continuing education programs. **[ The term designates a party who is not necessarily a program developer. ]**

\* \* \* \* \*

**§ 11.4. Fees.**

(a) Following is the schedule of fees charged by the Board:

\* \* \* \* \*

**Initial application for program sponsor ... \$ 145**

**Biennial renewal for program sponsor .... \$ 120**

\* \* \* \* \*

**CONTINUING PROFESSIONAL EDUCATION**

**§ 11.64. Sources of continuing education credit.**

The following continuing education programs will be given 1 credit hour of continuing education credit for each 50-minutes of participation if they are in the subject areas in § 11.63 (relating to continuing education subject areas) **and, beginning May 1, 2000, they are offered by approved program sponsors under § 11.69a (relating to approval of program sponsors).**

\* \* \* \* \*

**§ 11.65. Criteria for continuing education programs.**

**[ (a) In order to ]** To qualify as a continuing education program, a program shall:

\* \* \* \* \*

(2) Be at least 1 credit hour **[ , 50-minute period, ]** in length.

\* \* \* \* \*

**[ (b) A continuing education program may receive prior approval as a continuing education programs and be assigned a designated number of continuing education credits by the Board if the program sponsor provides, in writing and on a form provided by the Board, information required by the Board to document the elements of subsection (a), and, in addition thereto, avers that it will:**

(1) Maintain and retain accurate records of attendance for a 5-year period.

(2) Retain a written outline for course materials for a 5-year period.

(3) Comply with the requirements of § 11.71 (relating to responsibilities of program sponsors).

(c) Prior approval for a continuing education program and the continuing education credit shall be renewed biennially and at such other times as the program is to be substantially altered. Applications for pre-approval of continuing education programs shall be submitted by the program sponsor at least 30 days prior to the date the continuing education program is to be offered. ]

§ 11.69a. Approval of program sponsor.

(a) *Initial approval.* Except as provided in subsection (b), an individual or entity desiring to offer a program for continuing education credit under this chapter shall apply to the Board for approval as a program sponsor. The approval of previously approved program sponsors will expire December 31, 2000. Previously approved program sponsors desiring to offer continuing education programs after December 31, 2000, shall comply with this section.

(b) *Exemption from approval.* An individual or entity that is a member in good standing of the National Association of State Boards of Accountancy's National Registry of Continuing Professional Education Sponsors is deemed an approved program sponsor and is not required to submit an application for approval to the Board.

(c) *Contents of application for initial approval.* An application for approval shall contain the following information:

- (1) The name and address of the sponsor.
- (2) The title and source of continuing education credit as specified in § 11.64 (relating to sources of continuing education credit).
- (3) The dates and locations of programs.
- (4) The faculty names, titles and degrees.
- (5) The program schedules (that is, title of subject, lecturer, time allotted, excluding breaks and lunches).
- (6) The total number of credit hours requested for each program.
- (7) The attendance certification method.
- (8) The program objectives.
- (9) The admission requirements.
- (10) The program outlines.
- (11) The instruction and evaluation methods.

(d) *Sworn statements.* Statements made in an application shall be sworn to be true and correct to the best of the applicant's knowledge.

(e) *Board review of application for initial approval.* An application will be reviewed by the Board's Continuing Education Committee, which will make recommendations to the Board for approval or disapproval. If an application is disap-

proved, the Board will provide the applicant with written notification of its reasons for disapproval. An applicant may submit a revised application to address the Board's concerns. A Board member will not review or vote upon an application in which he has a vested interest.

(f) *Approval number.* Upon approval by the Board, an applicant will be assigned a program sponsor number.

(g) *Biennial renewal of approval.* An approved program sponsor shall renew its approval by January 1 of each even-numbered year, beginning with January 1, 2004. A renewal application shall list the program sponsor's planned program offerings for the upcoming renewal period.

§ 11.70. [ Responsibilities of program developers ]  
(Reserved).

[ (a) *Program level of difficulty.* Program developers shall specify the level of knowledge to be imparted under the program. Such levels of knowledge may be expressed in a variety of ways, all of which should be informative to potential participants and sponsors. As an illustration, a program may be described as having the objective of imparting technical knowledge at such levels as basic, intermediate, advanced or overview, which might be defined as follows:

(1) A basic level program teaches fundamental principles or skills to participants having no prior exposure to the subject area.

(2) An intermediate level program builds on a basic level program in order to relate fundamental principles or skills to practical situations and extend them to a broader range of applications.

(3) An advanced level program teaches participants to deal with complex situations.

(4) An overview program enables participants to develop perspective as to how a subject area relates to the broader aspects of accounting or brings participants up-to-date on new developments in the subject area.

(b) *Recommendation of education and experience prerequisites.* Program developers shall clearly identify what prerequisites are suggested for enrollment. If no prerequisite is necessary, a statement to this effect should be made. Prerequisites should be specified in precise language so potential program participants can readily ascertain whether the program would be beneficial to them or whether the program is above or below their level of knowledge or skill.

(c) *Development of the program.* Programs shall be developed by individuals qualified in the subject matter and in instructional design. This subsection is not intended to require any individual program developer be both technically competent and competent in instructional design. Its purpose is to ensure that both types of competency are represented in the program's development. Mastery of the technical knowledge or skill in instructional design may be demonstrated by appropriate experience or educational credentials.

(d) *Program review.* The program developer shall review the course materials periodically to ensure that they are accurate and consistent with currently accepted standards relating to the program's subject matter. Between these reviews, errata sheets should be issued when appropriate, and obsolete material should be deleted; however, between the time a new pronouncement is issued and the issuance of errata sheets or removal of obsolete materials, the instructor is responsible for informing participants of changes. If, for example, a new accounting standard is issued, a program will not be considered current unless the ramifications of the new standard have been incorporated into the materials or the instructor appropriately informs the participants of the new standard. ]

§ 11.71. Responsibilities of program [ sponsors ] sponsor.

In addition to [ other responsibilities imposed on program sponsors ] meeting the requirements in § 11.69a (relating to approval of program sponsor), [ they ] a program sponsor shall comply with the following:

(1) *Program level of difficulty.* A program sponsor shall specify the level of knowledge to be imparted under the program. The levels of knowledge may be expressed in a variety of ways, all of which should be informative to potential participants. As an illustration, a program may be described as having the objective of imparting technical knowledge at levels such as basic, intermediate, advanced or overview, which might be defined as follows:

(i) A basic level program teaches fundamental principles or skills to participants having no prior exposure to the subject area.

(ii) An intermediate level program builds on a basic level program to relate fundamental principles or skills to practical situations and extend them to a broader range of applications.

(iii) An advanced level program teaches participants to deal with complex situations.

(iv) An overview program enables participants to develop perspective as to how a subject area relates to the broader aspects of accounting or brings participants up-to-date on new developments in the subject area.

(2) *Recommendation of education and experience prerequisites.* A program sponsor shall clearly identify what prerequisites are suggested for enrollment. If no prerequisite is necessary, a statement to this effect should be made. Prerequisites should be specified in precise language so potential participants can readily ascertain whether the program would be beneficial to them or whether the program is above or below their level of knowledge or skill.

(3) *Development of the program.* A program sponsor shall ensure that programs are developed by individuals qualified in the subject matter and in instructional design. This subsection is not intended to require that any individual program sponsor be both technically competent and competent in instructional design. Its purpose is to en-

sure that both types of competency are represented in the program's development, whether one or more persons are involved in that development. Mastery of the technical knowledge or skill in instructional design may be demonstrated by appropriate experience or educational credentials.

(4) *Program review.* A program sponsor shall review the course materials periodically to ensure that they are accurate and consistent with currently accepted standards relating to the program's subject matter. Between these reviews, errata sheets should be issued when appropriate, and obsolete material should be deleted. Between the time a new pronouncement is issued and the issuance of errata sheets or removal of obsolete materials, the instructor is responsible for informing participants of changes. If, for example, a new accounting standard is issued, a program will not be considered current unless the ramifications of the new standard have been incorporated into the materials or the instructor appropriately informs the participants of the new standard.

[ (1) ](5) *Disclosure of prospective participants.* [ Program sponsors ] A program sponsor shall disclose in advance to prospective participants the objectives, prerequisites, experience level, content, required advanced preparation, teaching method and number of continuing education credits involved in the program.

[ (2) ](6) *Selection and review of instructors.* [ The ] A program sponsor [ has the obligation for selecting ] shall select and [ assigning ] assign qualified instructors for the continuing education program. Although it is expected that instructors will be selected with great care, [ sponsors ] a program sponsor should evaluate the performance of the instructors at the conclusion of each program to determine their suitability for continuing to serve as instructors in the future.

[ (3) ](7) *Number of participants and adequacy of physical facilities.* [ It is the responsibility of the ] A program sponsor [ to assure ] shall ensure that the number of participants and the physical facilities are consistent with the teaching methods to be utilized. Because the learning environment is affected by the number of participants and by the quality of the physical facilities, [ sponsors have ] a program sponsor has an obligation to pay serious attention to both of these factors. The maximum number of participants for a case-oriented discussion program, for example, should be considerably less than for a lecture program. The seating arrangement is also very important. For discussion presentation, learning is enhanced as seating is arranged so that participants can easily see and converse with each other. If small group sessions are an integral part of the program format, appropriate facilities should be made available to encourage communication with a small group.

[ (4) ](8) *Program evaluation.* [ Program ] A program sponsor shall provide a program evaluation [ shall be ] in accordance with the following:

(i) [ The sponsor shall provide some means of program evaluation. ] Evaluations shall be solicited from both the participants and instructors. The objective of evaluations is to encourage [ sponsors ] the program

**sponsor** to strive for increased program effectiveness. Programs should be evaluated to determine whether:

\* \* \* \* \*

(ii) Evaluations **[ might ] may** take the form of pre-tests for advanced preparation, post-tests for effectiveness of the program, questionnaires completed at the end of the program or later, oral feedback to the instructor or sponsor, and so forth. Instructors should be informed of their performance, and **[ sponsors ] the program sponsor** should systematically review the evaluation process to **[ insure ] ensure** its effectiveness.

**[ (5) ](9) Attendance records. [ Maintain ] A program sponsor shall maintain** and retain accurate records of attendance for a 5-year period.

**[ (6) ](10) Course materials. [ Retain ] A program sponsor shall retain** a written outline of course materials for a 5-year period.

**[ (7) ](11) Certificate of completion. [ Provide ] A program sponsor shall provide** participants with a certificate of completion evidencing satisfactory completion and attendance of the program.

**[ (8) ](12) Promotional materials. [ Identify ] A program sponsor shall identify** the subject area—see § 11.63 (relating to continuing education subject areas)—of the program in the promotional materials.

**§ 11.71a. Offsite review of program sponsor.**

**A program sponsor shall be subject to an offsite review of its continuing education programs to ensure compliance with the requirements of this chapter. The review will involve an in-depth audit of all course materials, documents and records maintained by the program sponsor under this chapter.**

**§ 11.72. [ Sponsor’s failure to comply with continuing education requirements ] Withdrawal of approval of program sponsor.**

**[ Failure of the sponsor to comply with the requirements of §§ 11.65 and 11.71 (relating to criteria for continuing education programs; and responsibilities of program sponsors) may result in the suspension of the preapproved status for programs offered by the sponsor. ] The Board, following notice and hearing under 2 Pa.C.S. §§ 501—508 (relating to practice and procedure of Commonwealth agencies), may withdraw the approval of a program sponsor that the Board finds guilty of:**

- (1) Having acquired the Board’s approval by misrepresentation.**
- (2) Failing to comply with § 11.65, 11.69a or 11.71 (relating to criteria for continuing education programs; approval of program sponsor; and responsibilities of program sponsor).**
- (3) Refusing to provide information requested by the Board pursuant to an offsite review under § 11.71a.**
- (4) Indicating in any manner that it has been approved as a program sponsor prior to a program sponsor number having been issued to it.**

[Pa.B. Doc. No. 00-289. Filed for public inspection February 18, 2000, 9:00 a.m.]

# PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 62]

[L-00000147]

## Reporting Requirements for Quality of Gas Service Benchmarks and Standards

The Pennsylvania Public Utility Commission (Commission) on January 12, 2000, adopted a proposed rulemaking order establishing uniform measures and standard data reporting requirements for natural gas distribution companies (NGDCs). The contact persons are M.J. (Holly) Frymoyer, Bureau of Consumer Services (technical), (717) 783-1628, and Rhonda Daviston, Law Bureau (legal) (717) 787-6166.

### Executive Summary

On June 22, 1999, Governor Tom Ridge signed into law 66 Pa.C.S. Chapter 22 (relating to Natural Gas Choice and Competition Act) (act). Section 2206(a) of the act (relating to consumer protections and customer service) requires that customer services shall, at a minimum, be maintained at the same level of quality under retail competition as in existence on June 22, 1999. The purpose of this proposed rulemaking is to establish uniform measures and reporting requirements to allow the Commission to monitor the level of the NGDCs’ customer service performance. Using the statistics collected under this rulemaking, the Commission will annually prepare a summary report on the customer service performance of the covered NGDCs. The reports will be public information.

Public Meeting held  
January 12, 2000

*Commissioners Present:* John M. Quain, Chairperson; Robert K. Bloom, Vice-Chairperson; Nora Mead Brownell; Aaron Wilson, Jr.; and Terrance J. Fitzpatrick

### Proposed Rulemaking Order

#### By the Commission:

On June 22, 1999, Governor Tom Ridge signed into law the act. The act revised the Public Utility Code, 66 Pa.C.S. § 101 et seq. by inter alia, adding Chapter 22, relating to restructuring of the natural gas utility industry. Under section 2206(a) of the act, customer services shall, at a minimum, be maintained at the same level of quality under retail competition. The act is clear that customer service for retail gas customers is, at a minimum, to be maintained at the same level of quality under retail competition as in existence on June 22, 1999. The Commission is the agency charged with implementing the act.

The proposed regulations set forth uniform measures and standard data reporting requirements for various components of NGDC’s customer service performance and establish effective dates for the reporting requirements. Thus the elements addressed by this rulemaking are presented to allow the Commission to ensure that the customer service of Pennsylvania’s NGDCs remains at an adequate level. The reporting requirements will provide the Commission with the necessary measurement data to monitor the performance of the NGDCs. As a result of the data produced, the Commission will be aware of and able to investigate deterioration in company performance and

direct remedial action on the part of the company. After the Commission receives adequate measurement data from the NGDCs, it will embark on a separate proceeding to establish performance benchmarks and standards for the NGDCs.

This proposed rulemaking addresses various components of customer service including telephone access, billing frequency, meter reading, timely response to customer disputes, the proper response to customer disputes and payment arrangement requests, compliance with customer service rules and regulations, and serving customers in a prompt, courteous and satisfactory manner. These components are interrelated and are important aspects of NGDC customer service. In addition, we believe that these components are fair indicators of the quality of an NGDC's service to customers. Finally, the proposed reporting requirements correspond to the Chapter 54, Subchapter F (relating to reporting requirements for quality of service benchmarks and standards) that pertain to the electric distribution companies.

The proposed rulemaking includes three measures of telephone access to a company: the percent of calls answered at each NGDC's call center in 30 seconds, the average busy-out rate for each call center and the call abandonment rate for each call center. These three measures are designed to give a total picture of telephone access to the company. It has been our experience that many utilities already use these measures to monitor customer access to their company's call centers. Many have this information available daily and use it for their own analysis and work plans. We note that in the electric industry, with a few minor adjustments, the major EDCs have been able to provide the Commission with these statistics.

The other measures presented in the proposed requirements are directly related to Chapter 56 (relating to standards and billing practices for residential utility service), and should not require further data collection by the NGDCs. The use of available data should serve to alleviate concerns that the NGDCs may have about the reporting requirements causing financial burdens. We propose that the NGDCs report to the Commission the number of customer disputes, as defined in § 56.2 (relating to definitions), for which the NGDC did not render a utility report within 30 days of the filing of the dispute as required by § 56.151(5) (relating to general rule). Since § 56.202 (relating to record maintenance) requires utilities to preserve records of all customer disputes and complaints, this information should be available. We believe this statistic is preferable to a simple tally of the total number of customer complaints because it will indicate instances in which the NGDC has not complied with the customer service regulations by not responding promptly to a customer's complaint. A complaint or dispute filed with a company is not necessarily a negative indicator of service quality. However, a company's timely response to a complaint is an important measure of customer service quality.

Similarly, to measure metering performance, we propose that the NGDCs report information under § 56.12(4)(ii) and (iii) and (5)(i) (relating to meter reading). We believe that these regulations represent the minimal criteria of meter reading performance. Again, the use of reporting related to Chapter 56 mitigates any additional financial burdens on the NGDCs. The Commission's experience is that lack of meter readings generates a large number of complaints from residential customers and thus we propose including this as a measure of

customer service quality. The Chapter 56 regulations require one company or customer-supplied reading within a 6-month period and an actual (company) reading at least once every 12 months. We believe that these minimum requirements should be met and therefore have included them in the reporting requirements.

To measure the quality of an NGDC's interactions with its customers, we propose a transaction survey of customers who have had recent dealings with that company. Each NGDC would survey a sample of customers who have had an interaction with one of its representatives. We are proposing that each NGDC use the same survey questionnaire and sampling methodology in order to produce uniform results for each company. The survey would contain questions to measure the promptness by which the NGDC responded to the customer's request and the NGDC's timeliness of the response or visit. The surveys are also to include questions to measure satisfaction with the company's handling of the interaction.

We invite comments on how we can best achieve uniformity among the NGDCs regarding the transaction survey. The electric distribution companies formed a working group that was very successful at working out the details of the transaction surveys in a collaborative fashion. We would propose a similar working group for the gas companies. We would also appreciate comments regarding the mail survey that we propose for the NGDCs with fewer than 100,000 residential accounts.

Finally, we propose measuring the complaint handling performance of the largest NGDCs by using justified consumer complaint rate, justified payment arrangement request rate, the number of informally verified infractions and infraction rate. Under § 56.211, the Bureau of Consumer Services (BCS) has established procedures for handling consumer disputes and payment arrangement requests as well as rules for determining on a case-by-case basis whether or not a customer is "justified" in coming to the Commission. "Justified" informal consumer complaints and payment arrangement requests are those cases in which, in the judgment of the BCS, the company did not comply with Commission regulations, reports, Secretarial Letters, tariffs or guidelines prior to BCS intervention. For the past number of years, the BCS has calculated and reported these rates in its annual report; thus the NGDCs are familiar with them and what they represent.

Regarding infractions and the infraction rate, the Commission has procedures to ensure that NGDCs and other public utilities conform to the standards of conduct for residential service established by statute and regulation. Through informal consumer complaints and payment arrangement requests the Commission is able to identify, document and notify utilities of instances where the utilities have violated a particular section of the regulations. The BCS tallies the number of informally verified infractions and reports them annually to the Commission. Beginning in 1997, the BCS has also calculated an infraction rate that compares a utility's number of infractions with its number of residential customers. We believe that an NGDC's commitment to compliance with rules and regulations is an important indicator of good service quality to customers. Thus, we have proposed that the BCS report the number of infractions and the infraction rate as measures of NGDC customer performance.

The Commission reserves the right to waive the requirements of these regulations upon petition by an affected party under § 5.43 (relating to petitions for issuance, amendment, waiver or repeal of regulations).

Accordingly, under section 501 of the code (relating to general powers), and the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1201 et seq.) and regulations promulgated thereunder in 1 Pa. Code §§ 7.1—7.4, we propose to amend our regulations by adding §§ 62.31—62.37 and, we shall institute a rulemaking proceeding to accomplish the objective described in the body of this order. *Therefore,*

*It Is Ordered That:*

1. A rulemaking docket shall be opened to consider the regulations set forth in Annex A.
2. The Secretary shall submit a copy of this order and Annex A to the Office of Attorney General for review as to form and legality.
3. The Secretary shall submit a copy of this order and Annex A to the Governor's Budget Office for review of fiscal impact.
4. The Secretary shall submit this proposed rulemaking order and Annex A for review by the designated standing committees of both Houses of the General Assembly, and for review and comments by the Independent Regulatory Review Commission.
5. The Secretary shall certify this order and Annex A and deposit them with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
6. A copy of this proposed rulemaking order and any accompanying statements of the Commissioners be served upon all jurisdictional gas companies, the Office of Consumer Advocate, the Office of Small Business Advocate and all parties to this proceeding.
7. Within 30 days of this order's publication in the *Pennsylvania Bulletin*, an original and 15 copies of any comments concerning this order and Annex A should be submitted to the Pennsylvania Public Utility Commission, Attention: Secretary, P. O. Box 3265, Harrisburg, PA 17105-3265.

*By the Commission*

JAMES J. MCNULTY,  
*Secretary*

**Fiscal Note:** 57-213. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 52. PUBLIC UTILITIES**

**PART I. PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Subpart C. FIXED SERVICE UTILITIES**

**CHAPTER 62. NATURAL GAS SUPPLY CUSTOMER CHOICE**

**Subchapter B. REPORTING REQUIREMENTS FOR QUALITY OF SERVICE BENCHMARKS AND STANDARDS**

Sec.	Purpose.
62.31.	Definitions.
62.32.	Reporting requirements.
62.33.	Customer surveys.
62.34.	NGDCs with fewer than 100,000 residential accounts.
62.35.	Informal complaints to the BCS.
62.36.	Public information.
62.37.	

**§ 62.31. Purpose.**

This subchapter establishes a means by which the Commission can develop uniform measurement and reporting to assure that the customer services of the

NGDCs are maintained, at a minimum, at the same level of quality under retail competition. This subchapter sets forth uniform measurements and reporting requirements for monitoring the level of the NGDCs' customer service performance. This subchapter also establishes the effective dates of the reporting requirements.

**§ 62.32. Definitions.**

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

*BCS*—The Bureau of Consumer Services of the Commission.

*Busy-out rate*—The number of calls to an NGDC's call center or business office that received a busy signal divided by the number of calls that were received.

*Call center*—A centralized facility established by a utility for transactions concerning installation and repair of service, billing and other inquiries between residential and small commercial customers and NGDC representatives, but not including special purpose call centers established to respond to service emergencies and operating for a temporary period of time.

*Call abandonment rate*—The number of calls to an NGDC's call center or business office that were abandoned divided by the total number of calls received at the NGDC's telephone call center or business office.

*Customer*—A retail gas customer as defined in 66 Pa.C.S. § 2202 (relating to definitions).

*Informal consumer complaint*—An appeal by a consumer to the BCS about a utility's proposed resolution of a dispute related to billing, service delivery, repairs and all other issues not related to requests for payment arrangements.

*Informally verified infraction*—An apparent misapplication of Commission regulations as determined by the BCS through its examination of information obtained as part of its review of informal consumer complaints and payment arrangement requests.

(i) The informal verification process implemented by the BCS notifies a utility of the information which forms the basis of an alleged infraction, affords the utility the opportunity to affirm or deny the accuracy of the information and concludes with a BCS determination regarding the alleged infraction.

(ii) An informally verified infraction is not equivalent to a formal violation under 66 Pa.C.S. § 3301 (relating to civil penalties for violations) unless otherwise determined through applicable Commission procedures.

*Infraction*—A misapplication of a Commission regulation, particularly the standards and billing practices for residential service.

*Infraction rate*—The number of informally verified infractions per 1,000 residential customers.

*Justified informal consumer complaint*—A complaint where the BCS has determined that an NGDC did not follow Commission procedures or regulations.

*Justified informal consumer complaint rate*—The number of justified informal, residential consumer complaints per 1,000 residential customers.

*Justified payment arrangement request*—A payment arrangement request when an NGDC did not follow Commission negotiation procedures or regulations.

*Justified payment arrangement request rate*—The number of justified payment arrangement requests from residential customers per 1,000 residential customers.

*Payment arrangement request*—A customer request for payment terms to the BCS.

*Small business customer*—A person, sole proprietorship, partnership, corporation, association or other business whose annual gas consumption does not exceed 300 mcfs.

*Transaction survey*—

(i) A survey targeted toward individuals that have had a recent interaction with an NGDC.

(ii) An interaction could include:

- (A) Filing a complaint.
- (B) Inquiring or disputing a bill.
- (C) Seeking to have a repair completed.
- (D) Applying for service.
- (E) Requesting service installation.
- (F) Reporting a safety concern.
- (G) Reporting a reliability or other service problem.
- (H) Arranging an appointment for a premise visit.

**§ 62.33. Reporting requirements.**

(a) *Report deadlines.*

(1) Unless otherwise specified in this subchapter, each covered NGDC shall file its first report with the Commission on or before August 1, 2001. The August report shall contain data, reported by month, from the first 6 months of the calendar year, as well as a 6-month cumulative average.

(2) Each NGDC shall file its second report on or before February 1, 2002. The February report shall contain data, reported by month, from the second 6 months of the year as well as a 6-month cumulative average and a 12-month cumulative average for the preceding calendar year.

(3) Thereafter, the NGDCs shall file reports annually with the Secretary of the Commission on or before February 1.

(4) Each report shall contain data, reported by month, as well as a 12-month cumulative average for the preceding calendar year.

(5) Each report shall include the name and telephone number of the utility contact person responsible for the report.

(b) *Recordkeeping.* Each NGDC shall take measures necessary and keep sufficient records to report the following data to the Commission:

(1) *Telephone access.*

(i) The percentage of calls answered at each NGDC's call center within 30 seconds with the NGDC representative ready to render assistance and to accept information necessary to process the call. An acknowledgment that the customer or applicant is waiting on the line does not constitute an answer.

(ii) The average busy-out rate for each call center. If the NGDC reports data for more than one call center, the NGDC should also provide the combined busy-out rate for the NGDC as a whole.

(iii) The call abandonment rate for each call center. If the NGDC reports data for more than one call center, the

NGDC should also provide the combined call abandonment rate for the NGDC as a whole.

(2) *Billing.*

(i) The number and percent of residential bills that the NGDC failed to render once every billing period to residential ratepayers under § 56.11 (relating to billing frequency).

(ii) The number and percent of bills that the NGDC failed to render once every billing period to small business customers.

(3) *Meter reading.*

(i) The number and percent of residential meters for which the company has failed to obtain an actual or ratepayer supplied reading within the past 6 months to verify the accuracy of estimated readings under § 56.12(4)(ii) (relating to meter reading; estimated billing; ratepayer readings).

(ii) The number and percent of residential meters for which the company has failed to obtain an actual meter reading within the past 12 months to verify the accuracy of the readings, either estimated or ratepayer read under § 56.12(4)(iii).

(iii) The number and percent of residential remote meters for which it has failed to obtain an actual meter reading at least once every 5 years to verify the accuracy of the remote reading device under § 56.12(5)(i).

(4) *Response to disputes.* The actual number of disputes as described in Chapter 56, Subchapter F (relating to disputes; termination disputes; informal and formal complaints) for which the company did not provide a response to the complaining party within 30 days of the initiation of the dispute under § 56.151(5) (relating to general rule).

(c) *Comparison.* Each NGDC report to the Commission shall contain an analysis and comparison of the quality of service data in each performance area during the most recent report period with its previous service quality in these areas.

**§ 62.34. Customer surveys.**

Each NGDC shall report to the Commission the results of telephone transaction surveys of customers who have had interactions with the NGDC.

(1) *Purpose.* The purpose of the transaction surveys is to assess the customer perception regarding the most recent interaction with the NGDC. Survey questions shall measure access to the utility, employee courtesy, employee knowledge, promptness of NGDC response or visit, timeliness of the NGDC response or visit and satisfaction with the handling of the interaction.

(2) *Questions.* The transaction survey questions shall specifically address the circumstances that generated the most recent transaction. Interaction categories shall include the following:

- (i) Credit/collection.
- (ii) Billing.
- (iii) Reliability and safety.
- (iv) Service installation and application.
- (v) Service disconnection.
- (vi) Other similar interactions.

(3) *Uniform data.* The NGDCs shall carry out the transaction survey process using instruments and procedures that provide the Commission with uniform data



that can be used to directly compare customer service performance among NGDCs in this Commonwealth.

(4) *Timely response.* A customer or consumer being surveyed shall be contacted within 30 days of the date that the interaction with the NGDC took place.

(5) *Sampling plan.* The sampling plan shall be designed so that the results are statistically valid within plus or minus 5 percentage points.

(6) *Commission approval.* The survey instrumentation, as well as procedures for case selection, sampling, conducting the survey, analyzing results and reporting to the Commission shall be subject to the review and approval of the Commission.

(7) *Timetable.*

(i) The first report on survey results shall be submitted to the Commission on or before October 1, 2002. The October report shall contain survey results, reported by month, from the first 6 months of the calendar year.

(ii) The second report shall be submitted on or before April 1, 2003. The April report shall contain results, reported by month, from the second 6 months of the previous year as well as cumulative 12-month results.

(iii) Thereafter, the NGDC shall submit survey results annually, on or before April 1.

(iv) Each annual report shall contain results reported by month as well as cumulative 12-month results.

**§ 62.35. NGDCs with fewer than 100,000 residential accounts.**

Beginning September 1, 2002, each NGDC with less than 100,000 accounts shall report to the Commission the following information in lieu of §§ 62.33 and 62.34 (relating to reporting requirements; and customer surveys):

(1) The results of a mail survey of a sample of the NGDC customers who have had interactions with one or more representatives of the NGDC.

(2) The mail survey shall address the circumstances that generated the customer/company transaction.

(3) Each NGDC shall use the same mail survey questionnaire which shall be approved by the BCS. The mail survey questions shall measure customer perceptions regarding:

- (i) Access to the utility.
- (ii) Employee courtesy.
- (iii) Employee knowledge.
- (iv) Promptness and timeliness of the utility representative response.
- (v) Satisfaction with the NGDC representative's handling of the interaction.

(4) The mail survey questionnaire shall be mailed to a customer within 30 days of the date that the transaction took place.

(5) The first report on survey results shall be submitted to the Commission on or before September 1, 2002. The September report shall contain survey results from the first 6 months of the calendar year.

(6) The second report shall be submitted on or before March 1, 2003 and shall contain survey results from the second 6 months of the calendar year.

(7) Thereafter, the NGDC shall submit survey results annually, on or before March 1.

**§ 62.36. Informal complaints to the BCS.**

(a) The BCS will review and analyze residential informal consumer complaints and payment arrangement requests filed with the Commission and will report the justified consumer complaint rate and the justified payment arrangement request rate for each NGDC with more than 100,000 residential accounts to the Commission on an annual basis.

(b) The BCS will report to the Commission the number of informally verified infractions of applicable statutes and regulations relating to the treatment of residential accounts by each NGDC with more than 100,000 residential accounts. The BCS will calculate and report to the Commission an "infraction rate" for each NGDC with more than 100,000 residential accounts.

**§ 62.37. Public information.**

The Commission will annually produce a summary report on the customer service performance of each covered NGDC using the statistics collected as a result of these reporting requirements. The reports will be public information. The Commission will provide the reports to any interested party and post the reports on the Commission's Internet website.

[Pa.B. Doc. No. 00-290. Filed for public inspection February 18, 2000, 9:00 a.m.]

**[52 PA. CODE CH. 62]**

[L-00000146]

**Reporting Requirements for Universal Service and Energy Conservation Programs**

The Pennsylvania Public Utility Commission (Commission) on January 12, 2000, adopted a proposed rule-making order establishing standard reporting requirements for universal service and energy conservation programs for natural gas distribution companies (NGDCs). The contact persons are Janice K. Hummel, Bureau of Consumer Services (technical), (717) 783-9088, and Kathryn G. Sophy, Law Bureau (legal) (717) 772-8839.

Accordingly, under section 501 of the Public Utility Code (relating to general powers), and the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1201 et seq.) and regulations promulgated thereunder in 1 Pa. Code §§ 7.1—7.4, we propose to amend our regulations by adding §§ 62.1—62.8 to read as set forth in Annex A; *Therefore,*

*Executive Summary*

On June 22, 1999, Governor Tom Ridge signed into law 66 Pa.C.S. Chapter 22 (relating to Natural Gas Choice and Competition Act) (act). The act revised the Public Utility Code, 66 Pa.C.S. § 101 et seq., by, inter alia, adding Chapter 22, relating to restructuring of the natural gas utility industry. The act is clear that NGDCs are to continue, at a minimum, the protections, policies and services that now assist customers who are low-income to afford natural gas service. Section 2203(8) of the act (relating to standards for restructuring of natural gas utility industry) requires the Commission to ensure that universal service and energy conservation policies, activities and services are appropriately funded and available in each natural gas distribution service territory.

The purpose of this rulemaking is to establish standard reporting requirements for universal service and energy conservation programs. The data collected as a result of the reporting requirements will assist the Commission in ensuring that universal service and energy conservation programs are appropriately funded and available in each NGDC's service territory. The reporting requirements will also ensure that the data is reported uniformly and consistently.

The regulations establish that the NGDCs will report the following information to the Commission: 1) annual reports on residential low-income collections and universal service and energy conservation programs; 2) plans every 3 years for universal service and energy conservation programs; and 3) every 6 years an independent third-party evaluation that measures the degree to which an NGDC's universal service and energy conservation programs are working to provide affordable utility service at reasonable rates.

*Commissioners Present:* John M. Quain, Chairperson; Robert K. Bloom, Vice-Chairperson; Nora Mead Brownell; Aaron Wilson, Jr.; and Terrance J. Fitzpatrick

Public Meeting held  
January 12, 2000

### Proposed Rulemaking Order

*By the Commission:*

On June 22, 1999, Governor Tom Ridge signed into law the act. The act revised the Public Utility Code, 66 Pa.C.S. § 101 et seq., by inter alia, adding Chapter 22, relating to restructuring of the natural gas utility industry. The Commission is the agency charged with implementing the act.

The act is clear that NGDCs are to continue, at a minimum, the protections, policies and services that now assist customers who are low-income to afford natural gas service. Section 2203(8) of the act requires the Commission to ensure that universal service and energy conservation policies, activities and services are appropriately funded and available in each natural gas distribution service territory.

The purpose of this proposed rulemaking is to establish standard reporting requirements for universal service and energy conservation programs. The data collected as a result of the reporting requirements will assist the Commission in monitoring the progress of the NGDCs in achieving universal service in their service territories. The reporting requirements will also ensure that the data is reported uniformly and consistently. The proposed reporting requirements are set forth in Annex A.

Information from NGDCs about universal service programs and low-income customers is more critical now so the Commission can determine if universal service and energy conservation programs comply with the act. The act requires that programs be appropriately funded and available to low-income customers. The Commission is not insensitive to the problems that NGDCs will encounter in gathering and reporting the data required as a result of these proposed regulations. The NGDCs currently provide much of the program related data we are requesting in these proposed regulations. However, NGDCs report the data at various times throughout the year in different reports. These proposed regulations will establish a uniform and standard reporting format and time schedule. The reporting requirements of these proposed regulations will replace certain program related reports, such as hardship fund and CARES reports, that the NGDCs provide to the Commission.

These proposed regulations introduce new collection reporting requirements that identify costs specifically associated with low-income customers. The Commission acknowledges that the NGDCs will need time to make programming changes to collect this data. Therefore, the Commission proposes that each NGDC should be able to report complete data to the Commission no later than April 1, 2003. For the purposes of low-income collections reporting the Commission requests information on confirmed low-income groups, confirmed low-income accounts are those accounts where the NGDC has obtained information that would reasonably place the customer in a low-income designation. Examples of this information are receipt of Low-Income Home Energy Assistance Program (LIHEAP) grants, income source noted as TANF or General Assistance on an application for service; or the customer's self-report of income in conjunction with establishing a payment arrangement or application for a utility low-income program.

We are also interested in comments regarding the reporting format for the NGDCs. We believe that all reporting should be uniform and by electronic submission and would appreciate comments in this regard.

The Commission reserves the right to waive the requirements of these proposed regulations upon petition by an affected party under § 5.43 (relating to petitions for issuance, amendment, waiver or repeal of regulations).

*It Is Ordered That:*

1. A Rulemaking Docket shall be opened to consider regulations set forth in Annex A.
2. The Secretary shall submit a copy of this order and Annex A to the Office of Attorney General for review as to form and legality.
3. The Secretary shall submit a copy of this order and Annex A to the Governor's Budget Office for review of fiscal impact.
4. The Secretary shall submit this order and Annex A for review by the designated standing committees of both Houses of the General Assembly, and for formal review and comments by the Independent Regulatory Review Commission.
5. The Secretary shall certify this order and Annex A and deposit them with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
6. A copy of this final proposed rulemaking order and any accompanying statements of the Commissioners be served upon all jurisdictional natural gas companies, the Office of Consumer Advocate, the Office of Small Business Advocate and the Natural Gas Competition Legislative Stakeholders.
7. Within 45 days of this order's publication in the *Pennsylvania Bulletin*, an original and 15 copies of any comments concerning this order and Annex A should be submitted to the Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265.

*By the Commission*

JAMES J. MCNULTY,  
*Secretary*

**Fiscal Note:** 57-212. No fiscal impact; (8) recommends adoption.

**APPENDIX**

Universal service and Energy Conservation Programs

	<i>Due Date</i>	
<i>NGDC</i>	<i>Plan</i>	<i>Evaluation</i>
Columbia	6/1/2002	8/1/2004
Peoples	6/1/2002	8/1/2004
PECO	2/28/2003	10/31/2008
Equitable	6/1/2003	8/1/2005
PG Energy	6/1/2003	8/1/2005
UGI	6/1/2004	8/1/2006
NFG	6/1/2004	8/1/2006

**Annex A**

**TITLE 52. PUBLIC UTILITIES**

**PART I. PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Subpart C. FIXED UTILITIES**

**CHAPTER 62. NATURAL GAS SUPPLY CUSTOMER CHOICE**

**Subchapter A. UNIVERSAL SERVICE AND ENERGY CONSERVATION REPORTING REQUIREMENTS**

- Sec.
- 62.1. Statement of purpose and policy.
- 62.2. Definitions.
- 62.3. Universal service and energy conservation program goals.
- 62.4. Universal service and energy conservation plans.
- 62.5. Annual residential collection and universal service and energy conservation program reporting requirements.
- 62.6. Evaluation reporting requirements.
- 62.7. NGDCs with less than 100,000 residential accounts.
- 62.8. Public information.

**§ 62.1. Statement of purpose and policy.**

The requirements of 66 Pa.C.S. § 2203(8) (relating to standards for restructuring of natural gas utility industry) mandate that the Commission ensure universal service and energy conservation policies, activities and services for residential natural gas customers are appropriately funded and available in each NGDC territory. This subchapter requires covered NGDCs to establish uniform reporting requirements for universal service and energy conservation policies, programs and protections and to report this information to the Commission.

**§ 62.2. Definitions.**

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

*CAP—Customer Assistance Program*—An alternative collection method that provides payment assistance to low-income, payment troubled utility customers. CAP participants agree to make regular monthly payments that may be for an amount that is less than the current bill in exchange for continued provision of natural gas utility services.

*CAP benefits*—The average CAP bill, average CAP credits and average arrearage forgiveness.

*CARES*—A program that provides a cost-effective service that helps selected, payment-troubled customers maximize their ability to pay utility bills. A CARES program provides a casework approach to help customers secure energy assistance funds and other needed services.

*CARES benefits*—The number and kinds of referrals to CARES.

*Classification of accounts*—Accounts are classified by the following categories: all residential accounts and confirmed low-income residential accounts.

*Collection operating expenses*—Expenses directly associated with collection of payments due for residential accounts.

*Confirmed low-income residential account*—Accounts where the NGDC has obtained information that would reasonably place the customer in a low-income designation.

*Direct dollars*—Dollars which are applied to a CARES customer's natural gas utility account, including all sources of energy assistance applied to utility bills such as LIHEAP, hardship fund grants and local agencies' grants.

*Energy assistance benefits*—The total number and dollar amount of LIHEAP grants, hardship grants and local agencies' grants.

*Hardship fund*—A fund that provides cash assistance to utility customers to help them pay their utility bills.

*Hardship fund benefits*—The total number and dollar amount of cash benefits or bill credits.

*Impact evaluation*—An evaluation that focuses on the degree to which a program achieves the continuation of utility service to program participants at a reasonable cost level and otherwise meets program goals.

*LIURP—Low-income Usage Reduction Program*—An energy usage reduction program that helps low-income customers to conserve energy and reduce residential energy bills.

*Low-income customer*—A residential utility customer whose household income is at or below 150% of the Federal poverty guidelines.

*NGDC—Natural gas distribution company*—The public utility providing facilities and related services for the jurisdictional distribution of natural gas to retail customers.

*Outreach referral contacts*—The address and telephone number that a customer would call or write to apply for the hardship fund. Contact information should be specific to each county in the NGDC's service territory, if applicable.

*Payment rate*—The total number of full monthly payments received from CAP participants in a given period divided by the total number of monthly bills issued to CAP participants.

*Payment troubled*—A household that has failed to maintain one or more payment arrangements in a 1-year period.

*Residential account in arrears*—A residential account that is at least 30 days overdue. This classification includes all customer accounts which have payment arrangements.

*Successful payment arrangements*—A payment arrangement in which the agreed upon number of payments have been made in full in the preceding 12 months.

*Universal service and energy conservation*—Policies, practices and services that help residential low-income retail gas customers and other residential retail gas customers experiencing temporary emergencies, as defined by the Commission, to maintain natural gas supply and distribution services. The term includes retail gas customer assistance programs, termination of service

protections and consumer protection policies and services that help residential low-income customers and other residential customers experiencing temporary emergencies to reduce or manage energy consumption in a cost-effective manner, such as the low-income usage reduction programs and consumer education.

**§ 62.3. Universal service and energy conservation program goals.**

(a) The Commission will determine if the NGDC meets the goals of universal service and energy conservation programs.

(b) The general goals of universal service and energy conservation programs include the following:

(1) To protect consumers' health and safety by helping low-income customers maintain natural gas service.

(2) To provide for affordable natural gas service by making available payment assistance to low-income customers.

(3) To help low-income customers conserve energy and reduce residential utility bills.

(4) To ensure universal service and energy conservation programs are operated in a cost-effective and efficient manner.

**§ 62.4. Universal service and energy conservation plans.**

(a) *Plan submission.*

(1) Each NGDC shall submit to the Commission for approval an updated universal service and energy conservation plan every 3 years beginning February 28, 2001, on a staggered schedule.

(2) The plan should cover the next 3-calendar years.

(3) The plan should state how it differs from the previously approved plan.

(4) The plan should include revisions based on analysis of program experiences and evaluations.

(5) If the Commission rejects the plan, the NGDC shall submit a revised plan pursuant to the order rejecting or directing modification of the plan as previously filed. If the order rejecting the plan does not state a timeline, the NGDC shall file its revised plan within 45 days of the entry of the order.

(6) The Commission will act on the plans within 90 days of the NGDC filing date.

(b) *Plan contents.* The components of universal service and energy conservation may include the following: CAP, LIURP, CARES, Hardship Funds and other programs, policies and protections. For each component of universal service and energy conservation, the plan shall include the following:

(1) The program description.

(2) The eligibility criteria.

(3) The projected needs assessment.

(4) The projected enrollment levels.

(5) The program budget.

(6) The plans to use community-based organizations.

(7) The organizational structure of staff responsible for universal service programs.

(8) An explanation of any differences between the NGDC's approved plan and the implementation of that plan. The NGDC should include a plan to address those differences.

**§ 62.5. Annual residential collection and universal service and energy conservation program reporting requirements.**

(a) Each NGDC shall report annually to the Commission on the degree to which universal service and energy conservation programs within its service territory are available and appropriately funded. Annual NGDC reports shall contain information on programs and collections for the prior calendar year. Unless otherwise stated, the report shall be due April 1 each year, beginning April 1, 2003. When noted, the data shall be reported by classification of accounts. Each NGDC's report shall contain the following information:

(1) *Collection reporting.* Collection reporting shall be categorized as follows:

(i) The total number of payment arrangements and the total number of successful payment arrangements. To ensure that successful payment arrangements are not overstated, NGDCs should report on the calendar year prior to the reporting year.

(ii) Annual collection operating expenses by classification of accounts. Collection operating expenses include administrative expenses associated with termination activity, negotiating payment arrangements, budget counseling, investigation and resolving informal and formal complaints associated with payment arrangements, securing and maintaining deposits, tracking delinquent accounts, collection agencies' expenses, litigation expenses other than Commission related, dunning expenses and winter survey expenses.

(iii) The total dollar amount of the gross residential write-offs and total dollar amount of the net residential write-offs, by classification of accounts.

(iv) The total number of residential customers by month for the 12 months covered by the report, by classification of accounts.

(v) The total number of residential revenues by month for the 12 months covered by the report, by classification of accounts.

(vi) The total number of residential accounts in arrears and on payment agreements by month for the 12 months covered by the report, by classification of accounts.

(vii) The total number of residential accounts in arrears and not on payment agreements by month for the 12 months covered by the report, by classification of accounts.

(viii) The total dollar amount of residential accounts in arrears and on payment agreements by month for the 12 months covered by the report, by classification of accounts.

(ix) The total dollar amount of residential accounts in arrears and not on payment agreements by month for the 12 months covered by the report, by classification of accounts.

(x) The total number of residential customers who are payment troubled by month for the 12 months covered by the report, by classification of accounts.

(xi) The total number of terminations completed by month for the 12 months covered by the report, by classification of accounts.

(xii) The total number of reconnections by month for the 12 months covered by the report, by classification of accounts.

(xiii) The total number of low-income households. NGDCs may estimate this number using census data or other information the NGDC finds appropriate.

(2) *Program reporting.* Program reporting shall be categorized as follows:

(i) For each universal service and energy conservation component, program data shall include information on the following:

(A) Program costs.

(B) Program recipient demographics, including the number of family members under 18 years of age and 62 years of age or older, family size, income, and source of income.

(C) Participation levels by month for the 12 months covered by the report.

(ii) Additional program data for individual universal service and energy conservation components shall include the following information:

(A) *LIURP Reporting requirements.* As established in § 58.15 (relating to program evaluation).

(I) *LIURP reporting data.* Due by April 30.

(II) *Actual production and spending data.* Actual production and spending data for the recently completed program year and projections for the current year shall be due annually by April 1.

(B) *CAP.*

(I) Energy assistance benefits.

(II) Average CAP bills.

(III) Payment rate.

(IV) CAP benefits.

(V) Total cash payments by CAP customers.

(VI) Number of full, on-time payments.

(VII) Percentage of CAP bill paid by customer.

(C) *CARES.*

(I) Energy assistance benefits.

(II) Direct dollars applied to CARES accounts.

(III) CARES benefits.

(D) *Hardship funds.*

(I) Ratepayer contributions.

(II) Special contributions.

(III) Utility contributions.

(IV) Outreach contacts.

(V) Hardship fund benefits.

#### § 62.6. Evaluation reporting requirements.

(a) Each NGDC shall have an independent third-party conduct an impact evaluation of its universal service and energy conservation programs and provide a report of findings and recommendations to the Commission and NGDC.

(b) The first impact evaluation will be due beginning August 1, 2004, on a staggered schedule. Subsequent evaluation reports shall be presented to the NGDC and the Commission at no more than 6 year intervals.

(c) To ensure an independent evaluation, neither the NGDC nor the Commission shall exercise control over content or recommendations contained in the independent evaluation report. The NGDCs may provide the Commission with a companion report that expresses where they agree or disagree with independent evaluation report content or recommendations.

(d) An independent third-party evaluator shall conduct the impact evaluation.

#### § 62.7. NGDCs with less than 100,000 residential accounts.

(a) Beginning June 1, 2003, each NGDC with less than 100,000 accounts shall report to the Commission every 3 years the following information in lieu of the requirements in §§ 54.74—54.76 (relating to universal service and energy plans; annual residential collection and universal service and energy conservation program reporting requirements; and evaluation reporting requirements):

(1) The universal service and energy conservation plan.

(2) Expenses associated with low-income customers.

(3) A description of the universal service and energy conservation services provided to low-income residential customers.

(4) Number of services or benefits provided to low-income residential customers.

(5) Dollar amount of services or benefits provided to low-income residential customers.

#### § 62.8. Public information.

The Commission will annually produce a summary report on the universal service performance of each NGDC using the statistics collected as a result of these reporting requirements. The reports will be public information. The Commission will provide the reports to any interested party and post the reports on the Commission's Internet website.

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