

RULES AND REGULATIONS

Title 4—ADMINISTRATION

PENNSYLVANIA EMERGENCY MANAGEMENT AGENCY

[4 PA. CODE CH. 118]

Reductions of Major Water Uses

The Pennsylvania Emergency Management Agency (PEMA) under the authority contained in section 7313 of the Emergency Management Services Code, 35 Pa.C.S. § 7313 (relating to power to adopt regulations) amends Chapters 118, 119, and 120 (relating to reductions of major water use in a Commonwealth Drought Emergency Area; prohibition of nonessential water uses in a Commonwealth Drought Emergency Area; and local water rationing plans). The amendments to Chapter 118 will make them applicable Statewide, rather than just in the Delaware River Basin. The amendments to Chapter 119 include changes to the definition section and to the list of exceptions to the nonessential water use bans. The provisions of Chapter 119a are eliminated and incorporated into Chapter 119. The amendments to Chapter 120 are primarily procedural. Overall, the amendments will move the Commonwealth toward full-time drought preparedness and management. Implementation of actual emergency provisions of the regulations, including the nonessential water use bans, will only be effective during a declared drought emergency and within the declared emergency area. PEMA adopts these final-form regulations to read as set forth in Annex A. These final-form regulations were previously published as proposed rulemaking at 30 Pa.B. 5735 (November 4, 2000).

A. Effective Date

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

B. Background and Purpose

The drought experience of 1998-99 offered insight into many ways in which the drought emergency regulations found in Chapters 118—120 have become outdated with the passage of nearly 20 years since they were initially written and nearly 10 years since they were last revised. Technology and social trends have advanced in ways that earlier drafters of the regulations could not have envisioned. As an example, irrigation practices have advanced with new technologies, and it may now be more efficient to irrigate in many cases with automated irrigation systems than to water with a hand-held hose.

Overall, the Commonwealth's experience has also shown the potential for more efficient ways to manage water use during drought emergencies. Experience has shown, for example, that a permanent Commonwealth Drought Coordinator, with authority to approve drought plans prior to a drought, rather than during an emergency, would enable PEMA to focus more closely on drought emergency operations, and at the same time would provide for more meaningful reductions in and more efficient use of available water resources.

The amendments will move the Commonwealth toward full-time drought preparedness and management. Implementation of actual emergency provisions of the regulations, including the nonessential water use bans, will only be effective during a declared drought emergency and within the declared emergency area, as is presently the

case. However, the revised regulations will be effective at all times, rather than only during declared drought emergencies. They will also be effective Statewide, rather than only in the declared emergency area. This will enable the designation of a permanent Commonwealth Drought Coordinator within the Department of Environmental Protection (DEP). The revised regulations will authorize the Commonwealth Drought Coordinator to receive and approve drought management plans on an ongoing basis from water users across the Commonwealth, thus allowing more opportunity to provide education and technical assistance to water users to guide them in the development of their individual drought plans. It will also allow more time for the Commonwealth Drought Coordinator and DEP staff to adequately review plans and to approve them prior to an actual emergency. This is in concert with new provisions in the regulations that require certain classes of water users, such as golf courses, to operate according to an approved water use plan during an emergency.

Drafts of the proposed rulemaking were made available at informational meetings held during April 2000 in Harrisburg, Bethlehem and Pittsburgh. Notices of the meetings and availability of the draft regulations also were published in newspapers of general circulation across the Commonwealth and in the *Pennsylvania Bulletin* with a public comment period that ended April 30, 2000. The public comments received were taken into consideration in the drafting of these final-form drought regulations.

C. Comments

Written comments, suggestions and changes were solicited within a 30-day period after the proposed rulemakings were published in the *Pennsylvania Bulletin*. Comments were received from Representative Russell H. Fairchild, the Philadelphia Suburban Water Company, Reliant Energy Company, the Pennsylvania Landscape and Nursery Association, Carpenter Specialty Alloys, Penreco and the Pennsylvania State University.

Following the close of the public comment period, PEMA received comments from the Independent Regulatory Review Commission (IRRC). The regulations contained in Annex A are responsive to the comments and suggestions received from the commentators and IRRC. For ease of reference, PEMA will address the comments in the order in which the regulatory sections appear in the three different regulatory chapters.

Chapter 118. Reductions Of Major Water Use in a Commonwealth Drought Emergency Area

Section 118.1. Definitions.

Comment: The definition of "Commonwealth Drought Coordinator" should be consistent with the definition of the same term in §§ 119.1 and 120.1 (relating to definitions).

Response: The definition of "Commonwealth Drought Coordinator" has been revised to be consistent in all three sections of the chapters.

Comment: The definition of "consumptive water use" appears to contain a typographical error by including the word "or" in the definition.

Response: The word "or" following the word "used" has been deleted.

Comment: The definition of “designated drought emergency area” should be applied to specific water supplies impacted by a drought and not generically applied to a general region, such as a county. Some water suppliers are impacted significantly by a drought while others are not.

Response: The Governor has historically declared drought emergencies on a county-wide basis. This declaration process has worked very well over the past 20 years for the management of drought emergencies in this Commonwealth. As a result, neither PEMA nor DEP believe there is a need to change this drought declaration process.

Comment: The definition of “public water supply agency” references a statutory standard of “. . . 15 service connections . . .” but §§ 118.2 and 118.4(a)(1) relax the standard to “50 or more connections.” What is the basis for the relaxation? Second, the “50 or more customer connections” standard should be included in the definition of a public water supply agency.

Response: The definitions in Chapters 118, 119 and 120 are consistent. Because the definition needs to be consistent in all three chapters, it is essential that the Chapter 118 definition not be changed to achieve a mere internal consistency within that one chapter. Furthermore, this definition was included in the regulations at the request of the public water supply industry. The “50 or more customer connections” standard has been used by the DEP for the past 20 years because systems with fewer than 50 customer connections generally have operations that are not conducive to the type of drought contingency planning required by these regulations. For these reasons, no changes have been made to this definition.

Section 118.2. Purpose.

Comment: In the last sentence of this section, the phrase “directs by directing” appears to be incorrect.

Response: The words “by directing” have been deleted.

Section 118.4. Contingency plans.

Comment: Subsection (b)(6) requires a plan of action, including “public notice.” Examples of public notice should be included in the regulation.

Response: The subsection has been revised to read “public notice such as newspaper, radio or television notice.”

Comment: Subsection (b)(7) references § 120.9(d). Should it reference 120.9(e)?

Response: The subsection is revised to read “§ 120.9(e).”

Comment: A commentator disagreed with PEMA’s plan to carve out generic special water rationing exemptions for the food and pharmaceutical industries.

Response: The commentator has misconstrued the intent of § 118.4(b). No exemptions are carved out in this section for the food and pharmaceutical industries. Instead, the regulations stipulate that these industries shall be considered by public water supply agencies when they prepare their drought contingency plans. Therefore, no revision is needed for this subsection.

Comment: Subsection (b)(7)(i), as well as § 118.6(a)(1) refer to the “relative impact of water use reductions.” How is this going to be measured?

Response: The word “relative” has been deleted from this subsection because no measurement of the impact of water use reductions will be required.

Comment: Subsection (b)(7)(i)(C), as well as § 118.6(a)(2)(iii) use the phrase “essential public utility services,” which should be defined.

Response: The phrase “essential public utility services” has been replaced with “delivery of electric generation services.”

Section 118.5 Contingency plans—self supplied commercial and industrial users.

Comment: Subsection (a)(1) indicates that a facility shall “develop and adopt” a drought contingency plan. It may be interpreted that “adopt” means to implement. The words “and adopt” should be stricken.

Response: The commentator has misinterpreted the meaning of “adopt.” This subsection only requires that the plan be adopted by some official corporate action before it is submitted to the Commonwealth Drought Coordinator for review. A plan that has been prepared by staff but not formally adopted by a corporation’s managers is not an officially approved and recognized planning document of the corporation.

Comment: In subsection (a)(3), the phrase “a reasonable time” is used. The regulation should specify a time frame or detail the criteria upon which a “reasonable time” will be determined.

Response: The language has been changed to “within the time frame specified in the request.”

Comment: Add a paragraph to § 118.5 that allows the Commonwealth Drought Coordinator to allow continued water withdrawal by those water users that directly impact public health.

Response: Section 118.5 merely requires self-supplied commercial and industrial water users to submit a drought contingency plan to the Commonwealth Drought Coordinator when their water use exceeds 500,000 gallons per day. Because every drought contingency plan must identify actions that a facility can take to achieve a phased reduction of its normal water withdrawal ranging from 5% to 50%, the Commonwealth Drought Coordinator can certainly consider such factors as the facility’s operational impact (such as, electric generation) upon the public’s health and welfare in determining the actual percentage of water use reduction that the facility would have to implement during a drought emergency. Therefore, because the plans provide the Commonwealth Drought Coordinator with a great deal of flexibility in determining the degree of water use reductions, there is no need to identify or establish special exceptions for any particular type of facility in the regulations.

Comment: Section 118.5 should not require contingency plans if a facility can demonstrate that it returns all or a vast majority of the water it withdraws to the water body from which the water was withdrawn.

Response: The purpose of the drought contingency plans is to enable industrial and commercial operations to anticipate measures they could take if they were required to implement water use reductions. Those reductions could be forced upon a facility by its particular water resource conditions, absent any action taken by the Commonwealth Drought Coordinator. For this reason, all self-supplied commercial and industrial water users need to develop a drought contingency plan that can be implemented in response to a wide range of drought conditions or factors. A facility cannot be automatically exempted from the requirements of this subsection simply because it does not consume all of the water that it takes from the environment. Instead, a facility can petition for

either a partial or total exemption from this requirement under § 118.8 (relating to procedures for exemptions or variance from water use reductions by self-supplied industrial or commercial water users).

Comment: Water use reduction plans that are developed by businesses should include the ability to use site-specific hydrogeological data to determine if rationing is necessary.

Response: The regulations clearly permit an industrial water user or business to use its unique hydrogeological conditions at the site of the facility in developing and implementing its drought contingency plan.

Section 118.6. Implementation of reductions by self-supplied industrial and commercial water users.

Comment: This section contains the only provision to consider public health and safety and essential public utility services. It may be more efficient to consider those factors when crafting the drought contingency plans, not when implementing them. Even thinking about a 50% reduction in withdrawals by electric generating facilities is impractical and should not be an issue before the Commonwealth Drought Coordinator during an emergency.

Response: The purpose of the plans is to enable industrial and commercial operations to anticipate measures they could take if they were required to implement reductions. Those reductions could be forced upon them by water resource conditions, absent any action by the Commonwealth Drought Coordinator. The Commonwealth Drought Coordinator will only be making decisions about industrial or commercial reductions after drought conditions have become so extreme as to warrant mandatory water use reductions. Only at the time of the actual drought emergency will the Commonwealth Drought Coordinator be able to consider such factors as the public health and safety in determining the various levels of reductions and the types of industry and commerce to be impacted by his decision. For this reason, electric generating facilities need to develop drought contingency plans in the same manner as other facilities.

Comment: The Commonwealth Drought Coordinator should consider a company's water recycling efforts when making a water rationing decision concerning that company.

Response: Subsection (a)(2) does this.

Section 118.7. Penalties and enforcement.

Comment: IRRC recommended that this section be moved to the end of the chapter.

Response: This section has been moved to the end of the chapter.

Section 118.8. Procedure for exemptions or variances from water use reductions by self-supplied industrial or commercial water users.

Comment: Subsection (c)(3) uses the phrase "a reasonable time," which should be specified or the phrase should be deleted.

Response: The phrase has been deleted.

Comment: Subsection (c)(3) refers to "other appropriate Commonwealth agencies." Those agencies should be specified in the regulations.

Response: We disagree. The appropriate Commonwealth agency or agencies to be consulted will depend upon the circumstances or nature of the water use reductions. It is not appropriate to predetermine which Commonwealth

agencies may need to be consulted in the decisionmaking process. Those decisions must be made at the time of the actual drought emergency.

Comment: Subsection (c)(4) uses the phrase "when possible." What circumstances would prevent the Commonwealth Drought Coordinator from meeting the 7- or 1-day time frames specified?

Response: It is not possible to anticipate all such circumstances. However, circumstances beyond the control of the Commonwealth Drought Coordinator such as illness or hospitalization, unavailability of staff support, telecommunications failures or other types of administrative problems could impact upon the 7- or 1-day time frames.

Comment: Subsection (c)(7) states that PEMA will provide the applicant with an opportunity for a hearing and may appoint an administrative law judge of the Pennsylvania Public Utility Commission (PUC) as hearing examiner. Within what time frame will the hearing be provided, and under what circumstances will PEMA appoint a PUC administrative law judge?

Response: An appeal hearing will be held not later than 7 business days after PEMA has received the appeal request from the water user. It is anticipated that PUC administrative law judges will be used for all of the appeal hearings.

Comment: Subsection (c)(9) should specify the time frame within which PEMA will issue a final decision on the appeal.

Response: PEMA will notify the applicant of its final decision within 2 business days after it has received a written recommendation from the hearing examiner (PUC administrative law judge).

Section 118.9. County drought management task force.

Comment: The right bracket is missing at the end of the deleted text in this section.

Response: This was a typographical error in the proposed rulemaking.

Comment: Subsection (a)(2) could be interpreted to require all officials in each county to serve on their county task forces. This should be clarified.

Response: A new sentence has been added to the subsection which states that each county may determine the number and composition of representatives from the various identified groups that will sit on the county task force.

Comment: Subsection (a)(3) should specify the required time frames for submission of the county task force reports to the Commonwealth Drought Coordinator.

Response: A new sentence has been added to the subsection which states that the county commissioners shall submit a report either monthly or within a shorter time frame as determined by the Commonwealth Drought Coordinator.

Chapter 119. Prohibition Of Nonessential Water Uses in a Commonwealth Drought Emergency Area.

Section 119.1 Definitions.

Comment: The definition of "Commonwealth Drought Coordinator" should be consistent with the definition of the same term in §§ 118.1 and 120.1.

Response: The definition of "Commonwealth Drought Coordinator" has been revised to be consistent in all three sections.

Comment: Under the definition of “athletic field,” what does the term “racing” refer to?

Response: Any type of racing such as automobile or horse racing.

Comment: A definition of “professional landscaper” should be added to this section.

Response: We do not believe that these regulations provide the proper authority for PEMA to establish a professional status for landscapers. As a result, PEMA will not attempt to regulate which persons or businesses may engage in landscaping activities in this Commonwealth.

Section 119.4 Prohibition of nonessential water uses.

Comment: The last sentence of the opening paragraph neither narrows the nonessential water use restrictions, nor clarifies the exceptions. Therefore, the sentence should be deleted.

Response: We disagree. The sentence clarifies the fact that using water under one of the exceptions does not allow the same water to be used for consequential uses. For example, watering shrubs does not allow overspray or runoff to water any surrounding grass. Therefore, a method of watering shrubs must be used that does not result in the watering of grass as a consequence.

Comment: Paragraph (2)(iv)(F) is not related to plan approvals and should be included as a separate paragraph (2)(v), and subsequent paragraphs should be re-numbered.

Response: We agree. The paragraphs have been revised as suggested.

Comment: Paragraph (3)(ii) allows the watering of landscaped areas, trees and shrubs between 5 p.m. and 9 a.m. Water bags, used to water trees, are installed and left in place for several days and would therefore not meet the time-of-day restriction. Has PEMA considered exempting the use of water bags from the time-of-day restriction?

Response: No exemption is required because water bags are an irrigation method that conforms with this paragraph. It is our understanding that water bags empty within 1 to 2 hours after being filled, so they should be filled between 5 p.m. and approximately 7 a.m. to ensure that they are applying water only during the times prescribed in the regulations.

Comment: In paragraph (4), the regulation establishes a time frame for plan approval of “no earlier than 3 years prior to the month of use during an emergency.” How was the 3-year time frame determined?

Response: DEP’s water use managers considered the typical time frame for changing irrigation practices at golf courses and the effort required to update and obtain the Commonwealth Drought Coordinator’s approval of a water use plan. Based upon these factors, the water use managers determined that 3 years was a reasonable time to insure an up-to-date plan without unduly burdening the golf course industry.

Comment: Paragraphs (2)(iv)(D) and (4)(iv) require meter records to be available to representatives of the local law enforcement authority or the Commonwealth Drought Coordinator. It is not clear who is to make the records available.

Response: These regulatory sections have been revised to state that the golf course operator must make the records available.

Comment: Paragraph (4)(vi) allows the watering of heat-sensitive grasses with a hand-held hose with an automatic-shutoff nozzle. Has PEMA considered allowing automated systems if they are timed and supervised?

Response: A primary purpose of the golf course revisions was to eliminate the use of automated systems for daytime syringing of heat-sensitive grasses. The golf course industry advised us that by allowing them to use a specified water allotment during the prescribed hours, such a practice would virtually eliminate the need for further syringing of heat-sensitive grasses.

Comment: Paragraphs (5)(i)—(iv) list exceptions to prohibitions on washing paved surfaces. The regulations should clearly state whether paved surfaces can be washed to meet a permit or other regulatory requirement.

Response: A new subsection has been added to this paragraph which states that water may be used at a minimum rate necessary to comply with a permit or other regulatory requirement.

Comment: Paragraph (7)(i) establishes the same day for citizens with an even or no street address to wash cars. Why have the even and no street addresses been combined?

Response: Because about half of the “no street addresses” would be “even addresses” if they had an address. This means that only the other half of the “no street addresses” will be true additions on the Wednesday car wash day. Since most of these addresses are rural addresses and are less likely to be customers of public water supply systems, there should not be any undue burden to the water supply systems resulting from this combination of even or no street addresses.

Comment: Paragraph (7)(ii) allows commercial car washes to operate. This should be limited to those car washes that recycle water.

Response: Information obtained in prior droughts revealed that most commercial car washes do recycle water. These operations involve people’s livelihoods and one of the primary purposes of these regulations is to protect the welfare and livelihoods of the citizens of this Commonwealth during a drought emergency. Eliminating the exception for those car washes that do not recycle water would simply set the stage for those business owners to request water use variances because of extraordinary hardship to their livelihood. For this reason, the exception will not be limited to only those car washes that recycle water.

Comment: Paragraph (7)(vi) allows professional mobile wash businesses to wash commercial, government or other vehicles as part of normal business practices. Why should government be treated any better than the average citizen?

Response: Government vehicles require periodic washing the same as commercial and other vehicles. For this reason, the phrase “commercial, government or other” has been deleted from the paragraph.

Comment: Paragraph (7)(v)(B) revises the day that car dealers without a street address may wash cars so that they will be allowed to wash on the same day as dealers with an even street address. Why have they been combined?

Response: To provide equal treatment for all commercial car dealers located in the same area.

Section 119.6 Procedure for exemptions or variances from the prohibition of nonessential uses of water.

Comment: The section should clearly state that an exemption applies only until the expiration of the drought emergency and does not apply to future drought emergencies.

Response: PEMA agrees. The section has been revised to state that the water use variance or exemption will expire with the termination of the drought emergency proclamation, unless otherwise specified in the variance or exemption.

Comment: Subsection (b) does not appear to recognize large water supply systems or those with many different sources. Under this subsection, what criteria will be used to determine "the ability of law enforcement agencies locally or throughout the drought emergency area to enforce these or other emergency regulations?"

Response: This subsection was added to the regulations with large water systems in mind because the large systems generally have adequate water sources. However, those large systems also may have service areas so expansive and disjointed that enforcement of the non-essential water use regulations may or may not apply on opposite sides of streets or from one housing development to the next. These situations make enforcement activities difficult for local law enforcement agencies. As a result, law enforcement agencies will be advised to consider the totality and continuity of the public water supply agency's service areas within municipalities or the county. PEMA, DEP and the county emergency management agencies will coordinate law enforcement activities through the operation of the county drought task forces.

Comment: Under subsection (c), what factors will PEMA consider to determine "other personal or economic loss which is substantially more severe than the sacrifices borne by other water users"?

Response: This is the existing language in the regulation and does not represent a change. During past droughts, the Commonwealth Drought Coordinator has considered all of the personal, business or other factors presented by the party seeking the variance or exemption. This process has worked well and neither PEMA nor DEP wants to establish any further criteria in this subsection that might hinder or adversely impact the ability of the Commonwealth Drought Coordinator to deal with the volume of variance or exemption requests received during a drought emergency.

Comment: Subsection (d)(5) states, "When possible . . ." the drought coordinator will provide a decision within certain time frames. What circumstances would prevent the Commonwealth Drought Coordinator from rendering a decision within these time frames?

Response: Circumstances beyond the control of the Commonwealth Drought Coordinator such as illness or hospitalization, unavailability of staff support, telecommunications failures or other types of administrative problems could impact upon the 7- or 1- day time frames.

Chapter 120. Local Water Rationing Plans

Section 120.1 Definitions.

Comment: The definition of "Commonwealth Drought Coordinator" should be consistent with the definition of the same term in §§ 118.1 and 119.1.

Response: The definition of "Commonwealth Drought Coordinator" has been changed to be consistent in all three sections.

Section 120.2 Purpose.

Comment: Chapter 120 applies primarily to water supply agencies and to governing bodies of local governments. This leaves open the possibility that water suppliers and local governments may independently develop and try to implement inconsistent local water rationing plans. No local plan should be developed or implemented that is inconsistent with an approved plan developed by a water supplier.

Response: No local water rationing plan can be approved or implemented without the approval of the Commonwealth Drought Coordinator. It is the Commonwealth Drought Coordinator's responsibility to ensure that all local water rationing plans meet the same planning standards and requirements. Furthermore, a local government would only seek approval for a water rationing plan for an area that is directly served by the municipality. This review process will ensure that all local government water rationing plans are consistent with each other.

Section 120.5 Implementation of plans.

Comment: Subsection (a)(2) references two guidance documents relating to water rationing and states that public water supply agencies "are encouraged to" contact the DEP for assistance in developing a plan. Regulations establish binding norms of general applicability and future effect. The provisions in this paragraph are not mandates. Therefore, paragraph (2) should be deleted.

Response: PEMA disagrees. Regulations may reference guidance documents that are helpful to the regulated community. For this reason, the subsection has been revised to read, "may contact the Department . . ." We believe it is important to provide this source of guidance to the water users. However, we do not want to mandate that they contact the Department if they are capable of developing their plans without further guidance.

Comment: Subsection (d)(1) requires notice in "at least one newspaper serving the area covered by the plan." To insure adequate coverage, the regulation should require the notice to be published in a newspaper of general circulation for the area covered by the plan. Additionally, should the notice also include where the public can review a copy of the plan or how the public can obtain a copy as required by paragraphs (3) and (4)?

Response: We agree with this comment and have revised the subsection accordingly.

Section 120.8 Service interruptions.

Comment: It may not be practical for a water supplier to operate curb stops or install flow restrictors on single user services. Are the provisions of this section intended to apply to individual service connections or to larger portions of a water system?

Response: It is generally intended to apply to "all or part of" the water supply service area, as stated in subsection (b)(1), although the public water supplier is authorized to implement service interruptions as it "deems appropriate."

Section 120.11 Enforcement by political subdivision ordinance.

Comment: Subsection (a)(1), as published in the *Pennsylvania Bulletin*, repeats the phrase "plan has been." This typographical error should be corrected.

Response: The correction has been made.

Section 120.14 Repeal of a plan.

Comment: The title of this section references a "repeal." However, the text of this section references both repeal and amendment. The title should be revised accordingly.

Response: The title to this section has been changed to read "Repeal or amendment of a plan."

Section 120.15 Notification of termination.

Comment: This section should require notices to be published in a newspaper "of general circulation" for the area covered by the plan.

Response: The suggested revision has been made.

*Benefits, Costs and Compliance**Benefits*

These final-form regulations will benefit the public by protecting water resources during a declared drought emergency and will prevent water supply shortages by curtailing nonessential water use. The procedures will be streamlined for adoption of drought contingency plans and local water rationing plans.

The exact fiscal impact of the amendments cannot be calculated. For most affected persons or businesses, the impact will be positive in terms of reducing possible economic hardship. Paperwork will be reduced by the amendments to Chapter 119 by reducing the number of variance applications prepared by individuals, business and industry. Additionally, DEP and PEMA will not have to process as many applications.

The benefits of the amendments in conserving a natural resource are impossible to quantify. Reductions in water use, although inconvenient to many users, will serve to extend available supplies, thus insuring that water is available for public health and safety needs and economic productivity. The availability of existing supplies will be extended by reducing the daily withdrawal of water from sources, providing an opportunity for replenishment over time should there be adequate precipitation. Extending supplies also provides an opportunity for water suppliers to develop alternative sources.

Savings will generally accrue to all the regulated community, to the extent that property and employment is protected by the revisions. These savings will occur in the form of reduced damage to or loss of grass or landscape materials. The revisions have been designed to better protect property, health and employment. Jobs in the golf, landscape/nursery, mobile washing, and food processing and vending industries will be better protected. Athlete safety will be enhanced on athletic fields. Actual or estimated values for these savings, which will only accrue during an actual declared drought emergency, are not available.

Savings may likewise accrue to local governments or school districts, to the extent that they own or maintain athletic fields, golf courses and landscape/nursery materials. Health, safety and employment will be better protected for them also.

Savings will accrue to DEP through reduced time required for processing requests for variances from the nonessential water use bans. The revisions are designed to resolve most of the problems in the current regulations that lead to requests for variances. In the 1999 drought, nearly 250 variance requests were processed, requiring approximately 1 man-hour each.

Compliance Costs

In general, the revisions will not result in additional costs to the regulated community. Exceptions may include

golf course and sand-based athletic field owners. In both of these cases, the revisions will require metering of irrigation water used during drought emergencies, and in the case of golf courses, metering of 5 prior years' irrigation water use will also be required. Meter installation costs for athletic fields should be less than \$250. For golf courses, meter installation should be in the \$700-1,500 range, depending upon the size and type of meters required. Meter reading costs for athletic fields should be minimal. For golf courses, meter reading on a daily basis by grounds keepers should not impose any significant additional costs. Automatic recorders may be installed, if desired, to avoid the need for manual daily reading.

Because the revisions are designed to make the regulations clearer, and many of the compliance problems experienced with the current regulations are being addressed in the revisions, costs to local enforcement agencies should be reduced. Local governments may experience additional costs associated with municipally-owned athletic fields or golf courses, as described above.

The primary cost to DEP will be in staff time to review and approve irrigation plans submitted by approximately 800 golf courses and 50 sand-based athletic fields. Approximately 0.5 to 2.5 hours per plan may be required for review and approval. This represents a one-time resource commitment of up to 2,000 man-hours. Semiautomation of the process may reduce this requirement significantly, perhaps to as little as 250-500 man-hours.

Compliance Assistance Plan

The DEP provides guidance, sample plans and technical assistance to public water suppliers for developing drought contingency plans, water rationing plans and water conservation plans and programs. Similar materials will be developed for industrial/commercial water users to aid them in the development of drought contingency plans.

Web-based, self-instructional application forms will be developed for submitting golf course and athletic field drought operations plans, and technical assistance will be provided as appropriate.

Paperwork Requirements

Owners of golf courses and sand-based athletic fields will be required to submit a drought operations plan for approval by the Commonwealth Drought Coordinator, prior to irrigation of the facilities within a declared drought emergency area. The final-form regulations will allow submittal and approval of those plans prior to the declaration of an emergency, at the option and advantage of the owner.

During declared drought emergencies only, owners of golf courses and sand-based athletic fields within the declared emergency area will be required to report irrigation usage to the Commonwealth Drought Coordinator, on a monthly basis. Owners of golf courses should also record usage for a 5-year period prior to a drought emergency; this information will be included in their application for approval of a drought operations plan.

Owners of public water supply systems and large self-supplied industrial or commercial water users whose sources or service areas are located within a declared emergency area may be required by the Governor or the Commonwealth Drought Coordinator to submit drought contingency plans, during the declared emergency. The regulations provide for the submittal and approval of the plans prior to an emergency, again at the option and advantage of the owner.

Sunset Review

PEMA will review these regulations on an annual basis to determine whether the regulations effectively fulfill the goals for which they were intended.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 24, 2000, a copy of the proposed rulemaking, published at 30 Pa.B. 5735 was submitted to IRRC and the Chairpersons of the Senate State Government Committee and the House Veterans Affairs and Emergency Preparedness Committee for review and comment.

In compliance with section 5(c) of the Regulatory Review Act, PEMA also provided IRRC and the Committees with copies of the comments received from the public. In preparing these final-form regulations, PEMA has considered the comments received from IRRC, the Committees and the public.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), these final-form regulations were deemed approved by the House and Senate Committees on June 20, 2001. IRRC met on June 21, 2001 and approved the amendments in accordance with section 5.1(e) of the Regulatory Review Act.

Contact Person

Questions regarding these final-form regulations may be directed to Mark Goodwin, Chief Counsel, Pennsylvania Emergency Management Agency, 2605 Interstate Drive, Harrisburg, PA 17110-9364.

Findings

PEMA finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder in 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) These regulations are necessary and appropriate for the administration of 35 Pa.C.S. §§ 7101—7707 (relating to the Emergency Management Services Code) (code).

Order

PEMA, acting under the authority of the code, orders that:

(a) The regulations of PEMA, 4 Pa. Code Chapters 118—120, are amended by amending §§ 118.1—118.10, 119.1, 119.3, 119.4—119.6, 120.1—120.9, 120.11 and 120.13—120.15; and by deleting §§ 118.7, 119.7, 119a.1—119a.5 and 120.10 to read as set forth in Annex A. (*Editor's Note:* The Annexes for Chapters 119, 119a and 120 appear at 31 Pa.B. 3529 and 3534, respectively.)

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

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

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

DAVID L. SMITH,
Director

Fiscal Note: Fiscal Note 30-55 remains valid for the final adoption of the subject regulations.

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 31 Pa.B. 3646 (July 7, 2001).)

Annex A**TITLE 4. ADMINISTRATION****PART V. EMERGENCY MANAGEMENT AGENCY****CHAPTER 118. REDUCTIONS OF MAJOR WATER USE IN A COMMONWEALTH DROUGHT EMERGENCY AREA****§ 118.1. Definitions.**

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

Commonwealth Drought Coordinator—An officer of the Department appointed by the Secretary of the Department to carry out responsibilities established in the Pennsylvania Drought Contingency Plan to coordinate Commonwealth planning, preparedness and response action to a drought or water shortage emergency.

Consumptive water—Water that in the process of being used or evaporated, transpired or incorporated into a product.

Department—The Department of Environmental Protection of the Commonwealth.

Designated drought emergency area—The area of this Commonwealth described in the Governor's proclamation or executive order declaring a state of drought or water shortage emergency.

PEMA—The Pennsylvania Emergency Management Agency.

Public water supply agency—A "community water system" as that term is defined in section 3 of the Pennsylvania Safe Drinking Water Act (35 P. S. § 721.3).

Water user—

(i) An individual, partnership, association, company, corporation, municipality, municipal authority, political subdivision or an agency of Federal, State, county or municipal government.

(ii) The term includes the officers, employees and agents of a partnership, association, company, corporation, municipality, municipal authority, political subdivision or an agency of Federal, State, county or municipal government.

§ 118.2. Purpose.

This chapter provides for the preparation and implementation of contingency plans by public water supply agencies providing service to 50 or more customer connections, and by major commercial and industrial water users, to reduce water use in response to a state of drought or water shortage emergency within specified areas of this Commonwealth. The objective of this chapter is to conserve water, to balance demand with limited available supplies and to assure that sufficient water is available to serve essential health, safety and economic needs. This chapter is intended to implement the Pennsylvania Drought Contingency Plan, and a Governor's

proclamation of drought emergency or order issued during an emergency by the Commonwealth Drought Coordinator that directs the preparation of contingency plans and implementation of water use reductions.

§ 118.3. Scope.

This chapter applies to all water uses within this Commonwealth.

§ 118.4. Contingency plans—public water supply agencies.

(a) *Preparation and submission.*

(1) Within the time frame specified in the Governor's proclamation of drought emergency or order issued during an emergency by the Commonwealth Drought Coordinator, each public water supply agency which provides service to 50 or more customer connections and which has either a source of water or a service area within the designated drought emergency area shall develop, adopt and submit a drought contingency plan meeting the requirements set forth in this section.

(2) Each public water supply agency shall submit three copies of the drought contingency plan to the Commonwealth Drought Coordinator, for distribution to PEMA, the Department and other interested Commonwealth agencies, including the Pennsylvania Public Utility Commission if applicable. Each public water supply agency shall submit a copy of the drought contingency plan to the counties in which the public water supply agency serves water.

(3) If a public water supply agency has previously prepared and submitted to the Commonwealth Drought Coordinator a drought contingency plan containing the information required by this section and the plan was approved by the Commonwealth Drought Coordinator, or a designee, not more than 3 years prior to the Governor's proclamation of drought emergency, the plan may be deemed to satisfy the requirements of this section; however, the public water supply agency may affirm, modify or amend the plan as it deems appropriate, through submittal of a modified or amended plan to the Commonwealth Drought Coordinator for approval.

(b) *Contents.* Drought contingency plans for public water supply agencies shall, at a minimum, contain the following:

(1) The name, address and telephone number of the public water supply agency, and the names of officers or other persons responsible for directing operations during a drought emergency.

(2) A description of the ground and surface water sources utilized by the system, including all interconnections, and the locations and yields of the sources.

(3) Data indicating the monthly average and peak day rates of withdrawal from each source for each calendar month during the previous calendar year, or most recent 12-month period for which the data is available.

(4) Data indicating the monthly average and peak day rates of water use in the system for each calendar month during the previous calendar year, or the most recent 12-month period for which data is available.

(5) A description of criteria to be used by the agency in identifying the onset of water shortage problems in the system.

(6) A plan of actions which will be taken by the public water supply agency to respond to drought or water shortage conditions, including public notice such as news-

paper, radio or television notice, a water conservation program, development of emergency supplies, and rationing. The plan shall provide for actions to be taken to achieve a phased reduction of total system withdrawal and use.

(7) A procedure for the granting of variances or exemptions to the provisions of a plan to address extraordinary hardships which may exist as a result of a plan, including a provision for appeal as specified in § 120.9(e) (relating to excess use charges). For purposes of this section, "extraordinary hardship" means a permanent damage to property, including perishable raw or processed products, or other personal or economic loss which is substantially more severe than the sacrifices borne by other water users subject to a public water supply agency's drought contingency plan. The procedure shall include, when appropriate, consideration of:

(i) Impact of water use reductions upon:

(A) Public health and safety, including pharmaceutical processes.

(B) Food and raw fiber production, including protection of perishable raw or processed products.

(C) Delivery of electric generation services.

(D) The maintenance of employment.

(ii) The measures and efforts previously undertaken to conserve water or to provide for water storage and releases, and the ability of users to implement additional conservation measures.

(c) *Implementation of contingency plans by public water supply agencies.* Each public water supply agency which has either a source of water or a service area within the designated drought emergency area shall implement its approved drought contingency plan during the effective period of the Governor's proclamation of drought emergency.

§ 118.5. Contingency plans—self supplied commercial and industrial water users.

(a) *Preparation and submission.*

(1) Within the time frame specified in the Governor's proclamation of drought emergency or order issued during an emergency by the Commonwealth Drought Coordinator, the owner or operator of a commercial or industrial facility which withdraws ground or surface water within the designated drought emergency area in excess of an average of 100,000 gallons per day in any 30-day period shall develop and adopt, and have available for inspection at the facility, a drought contingency plan under this section.

(2) Within the time frame specified in the Governor's proclamation of drought emergency or order issued during an emergency by the Commonwealth Drought Coordinator, the owner or operator of a commercial or industrial facility which withdraws ground or surface water within the designated drought emergency area in excess of an average of 500,000 gallons per day in any 30-day period shall develop, adopt and submit a drought contingency plan to the Commonwealth Drought Coordinator.

(3) During the effective period of the Governor's proclamation of drought emergency, the Commonwealth Drought Coordinator may order the owner or operator of any commercial or industrial facility not included in paragraph (2) whose source of water is located within the designated drought emergency area, to develop, adopt and

submit a drought contingency plan to the Commonwealth Drought Coordinator within the time frame specified in the order.

(b) *Contents.* Drought contingency plans for self-supplied commercial and industrial facilities shall, at a minimum, contain the following:

(1) The name, address and telephone number of the owner or operator of the facility and officers or other persons responsible for directing actions undertaken under the drought contingency plan.

(2) A description of the ground and surface water sources utilized by the facility, including interconnections with public water supply agencies, and the locations and yields of those sources.

(3) A description of the processes utilizing water at the facility.

(4) Data regarding the monthly average and peak day rate of total withdrawal and use and the monthly average and peak day rate of consumptive water use, at the facility, during the previous calendar year or most recent 12-month period for which the data is available.

(5) A description of the method, location and rates of waste water disposal from the facility.

(6) A description of measures previously undertaken to conserve water at the facility or to provide for water storage and releases, and potential measures which could be implemented to reduce water use under emergency conditions. The descriptions should include information regarding the impacts of the measures on the production, employment and economics of the facility, including consideration for protection of perishable raw or processed products.

(7) A plan of actions which can be undertaken at the facility in response to drought or water shortage conditions to achieve a phased reduction of total withdrawal and use by amounts of 5%, 15%, 25%, 35% and 50% of the rates of water withdrawal and use existing during nondrought periods.

§ 118.6. Implementation of reductions by self-supplied industrial and commercial water users.

(a) As necessary to respond to drought or water shortage conditions, during the effective period of the Governor's proclamation of drought emergency, the Commonwealth Drought Coordinator may order equitable reductions of water withdrawal and use by self-supplied industrial and commercial facilities within the designated drought emergency area. In determining the amount of equitable reductions, the Commonwealth Drought Coordinator will consider the following, in priority order:

- (1) The relative impact of water use reductions upon:
 - (i) Public health and safety, including pharmaceutical processes.
 - (ii) Food and raw fiber production, including protection of perishable raw or processed products.
 - (iii) Delivery of electric generation services.
 - (iv) Maintenance of employment.

(2) The measures and efforts previously undertaken by self-supplied industrial and commercial facilities to conserve water or to provide for water storage and releases, and the ability of users to implement additional conservation measures.

(b) Each owner or operator of each self-supplied commercial or industrial facility shall implement, under the

contingency plans required under § 118.5 (relating to contingency plans—self supplied commercial and industrial users) measures that are necessary to achieve the withdrawal and use reductions ordered by the Commonwealth Drought Coordinator.

(c) Notice of orders issued by the Commonwealth Drought Coordinator to implement reductions will be provided to affected users by notice published in the *Pennsylvania Bulletin* and in newspapers of general circulation in the affected area and by service of the notice by mail or other means within 48 hours of issuance of the order.

§ 118.7. (Reserved).

§ 118.8. Procedure for exemptions or variance from water use reductions by self-supplied industrial or commercial water users.

(a) If compliance with water use reductions ordered under this chapter would result in extraordinary hardship upon a self-supplied industrial or commercial water user, the water user may apply for an exemption or variance.

(b) For purposes of this section, extraordinary hardship means a permanent damage to property, including perishable raw or processed product, or other personal or economic loss which is substantially more severe than the sacrifices borne by other water users subject to this chapter.

(c) A self-supplied industrial or commercial water user who believes he suffers an extraordinary hardship and desires to be wholly or partially exempt from the reductions ordered under this chapter may apply for an exemption or variance under the following procedures:

(1) The applicant shall submit a written request with full documentation supporting the need for the requested relief to:

Commonwealth Drought Coordinator
c/o Department of Environmental Protection
P. O. Box 8555
Harrisburg, Pennsylvania 17105-8555

(2) The application shall contain information specifying:

(i) The nature of the hardship claimed, and reason for the requested exemption or variance.

(ii) The efforts taken by the applicant to conserve water and the extent to which water use may be reduced by the applicant without extraordinary hardship.

(3) The Commonwealth Drought Coordinator or a designee will review the application in consultation with other appropriate Commonwealth agencies, and may request the applicant to provide additional information as necessary to review the application.

(4) The Commonwealth Drought Coordinator or a designee is authorized to render a decision regarding applications received for exemption or variance. The Commonwealth Drought Coordinator or a designee will provide the applicant notice in writing of the decision and the reasons for the decision. When possible, the Commonwealth Drought Coordinator or a designee will provide a written decision within 7-working days, or if perishable products are involved, within 1-working day of submission of an application or will request additional information as necessary to review the application. When appropriate, the Commonwealth Drought Coordinator may issue a Statewide exemption or variance to similarly situated water users. A notice of the decision will be

published in the *Pennsylvania Bulletin*. Unless appealed under this section, the decision of the Commonwealth Drought Coordinator or a designee shall be considered a final action on the application.

(5) A person aggrieved by a decision of the Commonwealth Drought Coordinator or a designee may, within 30 days of written notice of the decision or publication of notice of the decision in the *Pennsylvania Bulletin*, appeal the decision to PEMA.

(6) An appeal from an initial decision of the Commonwealth Drought Coordinator or a designee will not act as an automatic supersedeas, but, upon cause shown and when the circumstances require it, PEMA will have the power to grant a supersedeas.

(7) When an initial decision is appealed, PEMA will provide the applicant with an opportunity for a hearing not later than 7-business days after PEMA has received the appeal request. PEMA may appoint a hearing examiner who may be an administrative law judge of the Pennsylvania Public Utility Commission. Hearings may be held telephonically.

(8) The hearing examiner will provide the record of the hearing, if any, and a recommendation to PEMA for review and adoption.

(9) PEMA will notify the applicant in writing of its final decision and the reasons for the decision regarding the appeal within 2-business days after PEMA has received a written recommendation from the hearing examiner.

(d) An exemption or variance will be granted only to the extent necessary to relieve extraordinary hardship and will require and be conditioned upon compliance with all reasonable conservation measures required by this chapter or the variance or exemption.

(e) An exemption or variance may be modified or rescinded by the Commonwealth Drought Coordinator if public health, safety and welfare require further reduction in water use.

(f) An exemption or variance granted to a water user for a specific property, purpose or person is not transferable to another property, purpose or person without prior written approval from the Commonwealth Drought Coordinator.

§ 118.9. County drought management task force.

(a) Within the time frame specified in the Governor's proclamation of drought emergency, the county commissioners of all counties located within the designated drought emergency area shall establish a drought management task force within their county.

(1) The county task force shall coordinate and monitor all drought reporting and water conservation measures undertaken within their county as necessary to ensure the provision of safe and reliable drinking water sources.

(2) The county task forces shall be comprised of county emergency management officials, public water supply agency representatives, elected officials, health officials, fire officials, law enforcement officials, affected business and industry representatives, and other interested parties. Each county may determine the number and composition of representatives from each group that will sit on the task force.

(3) The county commissioners will coordinate, and report to the Commonwealth Drought Coordinator on county task force activities to include, but not limited to, public information, planning, water system vulnerabili-

ties, enforcement coordination, fire protection and other areas of public concern. The report shall be submitted either monthly or within a shorter time frame as determined by the Commonwealth Drought Coordinator.

(b) For the duration of the drought emergency, each county drought management task force shall prepare and submit to the Commonwealth Drought Coordinator a monthly report describing the severity and impact of drought conditions. The report is due the first day of each month and shall describe the drought impact on the public, business and industry and the agriculture community. The report will identify steps taken to implement water conservation and public education.

(c) The county drought management task force meetings shall be open to the public and shall comply with state public meeting sunshine requirements.

§ 118.10. Penalties and enforcement.

A person who violates this chapter, fails to carry out duties and responsibilities imposed by this chapter, or impedes or interferes with actions undertaken or ordered under this chapter shall be subject to the penalties under 35 Pa.C.S. § 7707. Violation of any provision of this chapter is a summary offense enforceable by proper law enforcement authorities or private citizens in accordance with Pa.R. Crim.P. Nos. 400—471 and 1000—1013 (relating to summary cases; and rules of criminal procedure for the Municipal Court of Philadelphia).

[Pa.B. Doc. No. 01-1213. Filed for public inspection July 6, 2001, 9:00 a.m.]

[4 PA.CODE CH. 119]

Prohibition of Nonessential Water Uses in a Commonwealth Drought Emergency Area

(Editor's Note: For the Preamble which applies to this document see 31 Pa.B. 3520 (July 7, 2001). For the text of the order of the Independent Regulatory Review Commission relating to this document, see 31 Pa.B. 3646 (July 7, 2001).)

Fiscal Note: Fiscal Note 30-56 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 4. ADMINISTRATION

PART V. EMERGENCY MANAGEMENT AGENCY

CHAPTER 119. PROHIBITION OF NONESSENTIAL WATER USES IN A COMMONWEALTH DROUGHT EMERGENCY AREA

§ 119.1. Definitions.

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

Any water—Water from any source including publicly or privately owned surface or groundwater sources such as springs, wells, streams, or ponds, including fresh water, brackish water, wastewater and water collected directly from precipitation in rain barrels, cisterns or similar containers.

Arboretum—A place where trees, shrubs and plants are cultivated for scientific and educational purposes.

Athletic field—A surface used for organized professional or amateur sports, including racing, contained within

marked boundary lines or barriers. The term does not include foul, out-of-bounds or out-of-play areas.

Beneficial use—Use of any water that is necessary to serve essential health, safety and economic needs, including the maintenance of human, animal and plant life.

Brackish water—Water containing more than 1,000 parts per million of dissolved salts.

Commonwealth Drought Coordinator—An officer of the Department appointed by the Secretary of the Department, to carry out responsibilities established in the Pennsylvania Drought Contingency Plan to coordinate Commonwealth planning, preparedness and response action to a drought or water shortage emergency.

Department—The Department of Environmental Protection of the Commonwealth.

Designated drought emergency area—The area of this Commonwealth described in the Governor's proclamation or executive order declaring a state of drought or water shortage emergency.

Effective conservation—Use of water at the minimum rate necessary for the intended purpose, in a manner that does not result in the use of water for purposes that are prohibited by this chapter and in a manner that does not allow application or runoff of water onto areas that are prohibited by this chapter.

Fresh water—Water withdrawn from a surface water or groundwater source, or from a public water supply system, located within this Commonwealth other than wastewater or brackish water. The term does not include water collected directly from precipitation in rain barrels, cisterns or similar containers.

Irrigation contractor—A person who is engaged in the business of design, installation or repair of irrigation equipment as a source of income.

Mobile equipment—A public, private or commercial automobile, truck, bus, trailer, cart, wagon, railroad car, camper, boat or other type of similar equipment.

Newly seeded or sodded grass area—A grass area from which all growth was removed or tilled under and to which new seed or sod was applied within the previous 12 months.

Nurseries—Facilities which are used to grow or keep plants, trees, shrubs, vines, bulbs, cuttings, grafts, flowering annual plants, aquatic plants, seeds, turf, grass, sod or tubers for propagation, distribution or sale.

PEMA—The Pennsylvania Emergency Management Agency.

Paved surfaces—Any surface, such as streets, roads, sidewalks, driveways, garages, parking areas, tennis courts, decks and patios, which has been covered with concrete, asphalt, tile, wood or other similar materials, but not including walls or vertical surfaces of buildings.

Professional landscaper—A person who is engaged in the business of installing or maintaining landscape materials as a full-time job.

Public water supply agency—A "community water system" as that term is defined in section 3 of the Pennsylvania Safe Drinking Water Act (35 P. S. § 721.3).

Sand-based athletic field—An athletic field with a man-made root zone that contains a minimum of 60% of sand, by weight, in the top 4 to 12 inches of the root zone.

Waste water—Water which has been previously used for industrial, municipal, domestic or other purpose, and has not been returned to a surface water or groundwater source.

Water user—

(i) An individual, partnership, association, company, corporation, municipality, municipal authority, political subdivision or an agency of Federal, State, county or municipal government.

(ii) The term includes the officers, employees and agents of a partnership, association, company, corporation, municipality, municipal authority, political subdivision or an agency of Federal, State, county or municipal government.

§ 119.3. Scope.

This chapter applies to all water uses within this Commonwealth.

§ 119.4. Prohibition of nonessential water uses.

Whenever the Governor declares by proclamation or executive order a state of drought or water shortage emergency in an area of this Commonwealth, the following water uses shall be deemed nonessential and are prohibited within areas that have been declared to be in a state of drought or water shortage emergency, including within any public water supply agency's service area for which a source of water is located within the designated drought emergency area. Nothing in paragraphs (1)—(4) allows a prohibited use of water as either a direct or indirect effect of the exceptions contained therein.

(1) The use of any water for watering of grass, except:

(i) Water may be applied to grass areas approved prior to or during the emergency as part of a sewage or storm water treatment system utilizing spray irrigation which system was approved in a permit issued by the Department prior to the drought emergency proclamation.

(ii) Water may be used to establish and maintain newly seeded and sodded grass areas when applied between the hours of 5 p.m. and 9 a.m. by means of a bucket, can or hand held hose equipped with an automatic shut-off nozzle, or when applied between the hours of 7 p.m. and 11 p.m. by any other means designed and operated to assure effective conservation.

(iii) Water may be applied by a professional landscaper to establish and maintain newly seeded and sodded grass areas during working hours by any means designed and operated to assure effective conservation.

(iv) Water may be used by professional landscapers or irrigation contractors for the purpose of testing newly installed or repaired irrigation equipment for a period not to exceed 15 minutes per irrigation zone.

(v) Water may be applied for the purpose of grub control one time during the effective period of the Governor's proclamation of drought emergency.

(vi) Water may be used, in a manner that ensures effective conservation, to implement revegetation following earthmoving, where revegetation is required under an erosion and sedimentation control plan adopted under state law or regulation. Revegetation use shall comply with applicable best conservation management practices for revegetation prescribed by the Department and county conservation districts.

(2) The use of any water for watering athletic fields, except:

(i) Water may be applied to athletic field grass areas approved prior to or during the emergency as part of a sewage or stormwater treatment system utilizing spray irrigation, which system was approved in a permit issued by the Department prior to the drought emergency proclamation.

(ii) Water may be applied to maintain grass tennis courts, by means of a bucket, can or hand-held hose equipped with an automatic shutoff nozzle or by means of an irrigation system that is designed and operated to restrict the timing or total volume of water, when applied between the hours of 5 p.m. and 9 a.m. in a manner that ensures effective conservation.

(iii) Water may be applied to athletic field grass areas, other than sand-based athletic field grass areas, by a means and in a manner that ensures effective conservation, between 5 p.m. and 9 a.m. during 1 night per calendar week, beginning 2 weeks prior to use of the athletic field for practice, regular season play or other organized use and continuing through the end of the same practice or regular season or other organized use, in accordance with a schedule that has been submitted, at least 7 days prior to implementation, to the Commonwealth Drought Coordinator, the local law enforcement agency and, if applicable, to the public water supply agency from which the water is obtained.

(iv) Water may be applied to sand-based athletic field grass areas in accordance with a plan approved by the Commonwealth Drought Coordinator. Approval of the plan shall be in accordance with the following:

(A) The quantities of water applied shall be measured by means of a volumetric meter, and reports of weekly total water use shall be submitted electronically to the Commonwealth Drought Coordinator on a monthly basis during the emergency, in a form acceptable to the Commonwealth Drought Coordinator.

(B) Water may be applied at an average daily rate that does not exceed 54,300 gallons per acre per week.

(C) Water shall be applied by a means and in a manner that ensures effective conservation.

(D) All meters and meter records shall be made available by the athletic field operator for inspection by representatives of the local law enforcement agency or of the Commonwealth Drought Coordinator, at all times.

(E) A copy of the approved plan shall be submitted to the local law enforcement agency and, if applicable, to the public water supply agency from which the water is obtained, prior to implementation.

(F) Noncompliance by the water user with any term or condition of the approved plan shall cause the plan to be void, and any further use of water under this exception shall be prohibited.

(V) Water may be applied to establish and maintain newly seeded or sodded grass areas by means and in a manner that ensures effective conservation.

(VI) Water may be applied to athletic field nongrass areas to control dust during an athletic event, by means and in a manner that ensures effective conservation, if dust control is necessary to protect health or safety.

(VII) Water may be used by professional landscapers or irrigation contractors for the purpose of testing newly installed or repaired irrigation equipment for a period not to exceed 15 minutes per irrigation zone.

(3) The use of fresh water for irrigation and watering of outdoor gardens, landscaped areas, trees, shrubs and other outdoor plants except that fresh water may be:

(i) Used for irrigation for the production of food and fiber, and the maintenance of livestock and poultry.

(ii) Applied by means of a bucket, can, hand-held hose equipped with an automatic shut-off nozzle, or an irrigation system that is designed and operated to restrict the timing or total volume of water and to restrict the application to specific plantings and that ensures effective conservation, when applied between the hours of 5 p.m. and 9 a.m. Sources of water, other than fresh water, shall be used to the extent available.

(iii) Used by nurseries to maintain stock, by a means that ensures effective conservation, only to the extent that sources of water other than fresh water adequate to supply needs are not available or feasible to use.

(iv) Used by public gardens of National, State or regional significance, or arboretums to preserve specimens, by a means that ensures effective conservation, only to the extent that sources of water other than fresh water adequate to supply needs are not available or feasible to use.

(v) Used by a professional landscaper or irrigation contractor during working hours, by a means that ensures effective conservation.

(vi) Used, in a manner that ensures effective conservation, to implement revegetation following earthmoving, where revegetation is required under an approved erosion and sedimentation control plan adopted under state law or regulation, to the extent that sources of water, other than fresh water, adequate to supply needs are not available or feasible to use. Revegetation use shall comply with applicable best conservation management practices for revegetation prescribed by the Department and county conservation districts.

(4) The use of any water for watering any portion of golf courses, except water may be applied to greens, tees and fairways in accordance with a plan submitted by the golf course operator and approved by the Commonwealth Drought Coordinator no earlier than 3 years prior to the month of use during an emergency. Approval of the plan shall be in accordance with the following:

(i) The quantities of water applied shall be measured by means of a volumetric meter, and reports of daily total water use shall be submitted electronically to the Commonwealth Drought Coordinator on a monthly basis during the emergency, in a form acceptable to the Commonwealth Drought Coordinator.

(ii) Water may be applied at an average daily rate that does not exceed 70% of the calendar month basis quantity. The basis quantity shall be determined for each calendar month, as follows:

(A) Metered water use for the same calendar month, for each of the 5 years previous to submittal of the plan to the Commonwealth Drought Coordinator, shall be averaged, after deducting all water that was used for purposes other than irrigation of greens, tees and fairways.

(B) To the extent that metered data is not available for any year prior to July 7, 2002, or the date of installation of the current irrigation system, whichever is later, an application rate of 41,000 gallons per week per acre of greens, tees and fairways currently irrigated may be used in lieu of metered data.

(C) The basis quantity may not be less than 30,000 gallons per week per acre nor more than 54,000 gallons per week per acre.

(iii) Except as provided in subparagraphs (vi) and (vii), water shall be applied between the hours of 5 p.m. and 10 a.m.

(iv) Meters and meter records shall be made available by the golf course operator for inspection by representatives of the local law enforcement agency or of the Commonwealth Drought Coordinator, at all times.

(v) A copy of the approved plan shall be submitted to the local law enforcement agency and, if applicable, to the public water supply agency from which the water is obtained, prior to implementation.

(vi) Water may be applied between the hours of 10 a.m. and 5 p.m. with a hand-held hose equipped with an automatic shutoff nozzle, to syringe heat-sensitive grasses on tees, greens and fairways, in a manner that ensures effective conservation and so that water is applied to no grass area for a period exceeding 15 minutes in any 1 day.

(vii) Water may be used by professional landscapers or irrigation contractors during regular work hours for the purpose of testing newly installed or repaired irrigation equipment for a period not to exceed 15 minutes per irrigation zone.

(viii) Noncompliance by the water user with any term or condition of the approved plan shall cause the plan to be void, and any further use of water under this exception shall be prohibited.

(5) The use of any water for washing paved surfaces, except water may be used:

(i) For prewashing in preparation for recoating and sealing.

(ii) At the minimum rate necessary for the maintenance of tennis courts composed of clay or similar materials, by means of a bucket, can or hand-held hose equipped with an automatic shutoff nozzle.

(iii) At the minimum rate necessary for sanitation of the premises of raw or processed food, pharmaceutical or vaccine processing, storage or vending establishments, including restaurants and grocery stores.

(iv) At the minimum rate necessary for the sanitation of the premises of waste handling, storage and disposal facilities.

(v) At the minimum rate necessary to comply with permit conditions or other regulatory requirements.

(6) The use of any water for ornamental purposes, including fountains, artificial waterfalls and reflecting pools, except:

(i) Fountains or waterfalls may be operated to perform the primary and necessary aeration function for a pond that supports fish life.

(ii) Water may be used to top off ornamental water gardens or fish ponds to the minimum extent necessary to maintain fish and aquatic life.

(7) The use of any water for washing or cleaning of mobile equipment except that:

(i) An individual may wash personally owned or leased vehicles by buckets and may use a hand-held hose equipped with an automatic shutoff nozzle to prerinse and rinse (total spray period not to exceed 2 minutes), in accordance with the following schedule:

(A) Odd street addresses on first and third Saturdays of the month.

(B) Even or no street addresses on the second and fourth Saturdays of the month.

(ii) Water may be used by commercial car washes at the minimum rate necessary to ensure an effective wash.

(iii) Water may be used for cleaning of construction, emergency, public transportation or government vehicles if necessary to preserve the proper functioning and safe operation of the vehicle.

(iv) Water may be used for cleaning and sanitizing equipment used for hauling or vending raw or processed food, pharmaceuticals or vaccines for human or livestock use, or for handling waste products.

(v) Water may be used for the cleaning of new and used cars which are part of a dealer's sales inventory in accordance with the following restrictions:

(A) A vehicle may be washed in preparation for sale at the time the vehicle is received from the manufacturer or prior owner.

(B) A vehicle shall be washed no more than once every 7 days, to be determined as follows:

(I) Odd street addresses on Tuesdays.

(II) Even or no street addresses on Wednesdays.

(C) A vehicle may be washed following sale immediately prior to delivery to the purchaser.

(D) A vehicle may be washed only by a means designed and operated to assure effective conservation of water or in accordance with the procedures, excluding schedule, described in subparagraph (i).

(vi) Water may be used by professional mobile wash businesses, at the minimum rate necessary, for the washing of vehicles as part of normal business practices.

(vii) A nonprofit service organization or club may wash vehicles in conjunction with a fundraising activity in accordance with the procedures described in subparagraph (i), without restriction as to schedule.

(8) The serving of water in restaurants, clubs or eating places, unless specifically requested by the individual.

(9) The use of any water to fill and top off swimming pools, except that water may be used to fill and top off:

(i) Public swimming pools and residential swimming pools serving 25 or more dwelling units, if the pools have filtration equipment allowing for continued use and recycling of water over the swimming season.

(ii) Swimming pools operated by health care facilities used in relation to patient care and rehabilitation.

(iii) Other pools only if approved by the public water supply agency from which the water is withdrawn. If water is obtained from other sources, permission from the owner of the source is required.

(10) The use of water from a fire hydrant—including sprinkler caps—for any purpose, except for the following permissible uses:

(i) Firefighting.

(ii) Testing of fire fighting apparatus or conducting water flow tests for fire insurance classification or reclassification, if approved by the public water supply agency from which the water is obtained.

(iii) Flushing sewers, water mains or hydrants when needed to protect public health and safety, if approved by the public water supply agency from which the water is obtained.

(iv) The watering of urban gardens in the city of Philadelphia after obtaining a Water Department and Licenses and Inspection permit.

(v) The filling of tank trucks at designated facilities with the approval of the public water supply agency from which the water is obtained, or if the city of Philadelphia, after obtaining a Water Department and Licenses and Inspection permit.

(vi) Recreational use of sprinkler caps in the city of Philadelphia, under the recreational fire hydrant program at authorized locations and at times supervised by the city police, fire, recreation and park facilities.

(11) The use of any water that is not for a beneficial use.

§ 119.5. Penalties and enforcement.

A water user who violates this chapter, fails to implement the duties and responsibilities imposed by this chapter or impedes or interferes with actions undertaken or ordered under this chapter, shall be subject to the penalties provided under 35 Pa.C.S. § 7707 (relating to penalties). Violation of a provision of this chapter is a summary offense enforceable by proper law enforcement authorities or private citizens under Pa.R.Crim.P. Nos. 400—462 and 1000—1013 (relating to procedures in summary cases; and rules of criminal procedure for the Philadelphia Municipal Court). In the city of Philadelphia, this chapter shall be enforced by the Departments of Water, Police, and Licenses and Inspection.

§ 119.6. Procedure for exemptions or variance from the prohibition of nonessential uses of water.

(a) If compliance with the prohibition of nonessential use of water would result in extraordinary hardship upon a water user, the water user may apply for an exemption or variance, which would expire with the termination of the drought emergency proclamation, unless otherwise specified in the exemption or variance.

(b) If a public water supply agency can demonstrate that compliance with the prohibition of nonessential use of water is unnecessary due to adequate water supply and it is following a drought contingency plan approved by the Commonwealth Drought Coordinator in accordance with § 118.4 (relating to contingency plans—public water supply agencies), the public water supply agency may apply for an exemption throughout all or portions of its service area. In reviewing the applications, the Commonwealth Drought Coordinator shall give primary consideration to any impacts that approval of the application may have on the overall resources of the watershed or river basin and on the ability of law enforcement agencies locally or throughout the designated drought emergency area to enforce these or other emergency regulations. This consideration alone may be cause for denial.

(c) For purposes of this section, extraordinary hardship means a permanent damage to property, including perishable raw or processed product, or other personal or economic loss which is substantially more severe than the sacrifices borne by other water users subject to the prohibition of nonessential use of water.

(d) A water user or public water supply agency may apply for an exemption or variance under the following procedures:

(1) The water user or public water supply agency shall submit a written application with full documentation supporting the need for the requested relief to:

Commonwealth Drought Coordinator
c/o Department of Environmental Protection
Post Office Box 8555
Harrisburg, Pennsylvania 17105-8555

(2) The application from a water user shall contain information specifying:

(i) The nature of the hardship claimed and the reason for the requested exemption or variance.

(ii) The efforts taken by the water user to conserve water and the extent to which water use may be reduced by the applicant without extraordinary hardship.

(3) The application from a public water supply agency shall contain information specifying:

(i) The nature of the hardship claimed and the reason for the requested exemption or variance.

(ii) The adequacy of the supply.

(iii) Evidence of compliance with an approved drought contingency plan.

(4) The Commonwealth Drought Coordinator or a designee will review the application in consultation with other appropriate Commonwealth agencies, and may request the applicant to provide within a reasonable time additional information as necessary to review the application.

(5) The Commonwealth Drought Coordinator, or a designee, is authorized to render a decision regarding applications received for exemption or variance. The Commonwealth Drought Coordinator or a designee will provide applicant notice in writing of the decision and the reasons for the decision. When possible, the Commonwealth Drought Coordinator or a designee will provide a written decision within 7 working days, or if perishable products are involved, within 1 working day, of submission of an application or will request additional information as necessary to review the application. When appropriate, the Commonwealth Drought Coordinator may issue a Statewide exemption or variance to similarly situated water users. A notice of the decision will be published in the *Pennsylvania Bulletin*. Unless appealed under this section, the decision of the Commonwealth Drought Coordinator or a designee shall be considered a final action on the application.

(6) A person aggrieved by a decision of the Commonwealth Drought Coordinator or a designee may, within 30 days of written notice of the decision or publication of notice of the decision in the *Pennsylvania Bulletin*, appeal the decision to PEMA.

(7) An appeal from an initial decision of the Commonwealth Drought Coordinator or a designee will not act as an automatic supersedeas, but, upon cause shown and when the circumstances require it, PEMA will have the power to grant a supersedeas.

(8) When an initial decision is appealed, PEMA will provide the applicant with an opportunity for a hearing not later than 7 business days after PEMA has received the appeal request. PEMA may appoint a hearing examiner, who may be an administrative law judge of the Pennsylvania Public Utility Commission. Hearings may be held telephonically.

(9) The hearing examiner will provide the record of the hearing, if any, and a recommendation to PEMA for review and adoption.

(10) PEMA, will notify the applicant in writing of its final decision and the reasons for the decision regarding the appeal within 2 business days after PEMA has received a written recommendation from the hearing examiner.

(e) An exemption or variance will only be granted to an applicant to the extent necessary to relieve extraordinary hardship and will be conditioned upon compliance with all reasonable conservation measures required by this chapter or the variance or exemption.

(f) An exemption or variance may be modified or rescinded by the Commonwealth Drought Coordinator if public health, safety and welfare require further reduction in water use.

(g) An exemption or variance granted to a water user for a specific property, purpose or person is not transferable to another property, purpose or water user without prior written approval from the Commonwealth Drought Coordinator.

§ 119.7. (Reserved).

[Pa.B. Doc. No. 01-1214. Filed for public inspection July 6, 2001, 9:00 a.m.]

[4 PA. CODE CH. 119a]

Philadelphia Drought Water Emergency Plan

(Editor's Note: For the Preamble which applies to this document, see 31 Pa.B. 3520 (July 7, 2001). For the text of the order of the Regulatory Review Commission relating to this document, see 31 Pa.B. 3646 (July 7, 2001).)

Fiscal Note: Fiscal Note 30-57 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 4. ADMINISTRATION

PART V. EMERGENCY MANAGEMENT

CHAPTER 119a. (Reserved)

§§ 119a.1—119a.5. (Reserved).

[Pa.B. Doc. No. 01-1215. Filed for public inspection July 6, 2001, 9:00 a.m.]

[4 PA. CODE CH. 120]

Local Water Rationing Plans

(Editor's Note: For the Preamble which applies to this document, see 31 Pa.B. 3520 (July 7, 2001). For the text of the order of the Independent Regulatory Review Commission relating to this document, see 31 Pa.B. 3646 (July 7, 2001).)

Fiscal Note: Fiscal Note 30-58 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 4. ADMINISTRATION

PART V. EMERGENCY MANAGEMENT AGENCY

CHAPTER 120. LOCAL WATER RATIONING PLANS

§ 120.1. Definitions.

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

Applicant—The governing body of a political subdivision or a public water supply agency which experiences a local water shortage in the service area covered by its plan.

Commonwealth Drought Coordinator—An officer of the Department appointed by the Secretary of the Department, to carry out responsibilities established in the Pennsylvania Drought Contingency Plan to coordinate Commonwealth planning, preparedness and response action to a drought or water shortage emergency.

Department—The Department of Environmental Protection.

Designated drought emergency area—The area of this Commonwealth described in the Governor's proclamation or executive order declaring a state of drought or water shortage emergency.

Emergency service area—The service area covered by a plan.

Nonresidential water customer—A water customer who is not a residential water customer. The term includes commercial, industrial, institutional and public users, including educational facilities, hotels, motels and restaurants. The term does not include hospitals or health care facilities.

PEMA—The Pennsylvania Emergency Management Agency.

Person—

(i) An individual, partnership, association, company, corporation, municipality, municipal authority, political subdivision or an agency of Federal or State governments.

(ii) The term includes the officers, employees and agents of a partnership, association, company, corporation, municipality, municipal authority, political subdivision or an agency of Federal or State government.

Plan—local water rationing plan—A drought response plan for the equitable allocation of limited water supplies, submitted by a public water supply agency or the governing body of a political subdivision and approved by the Commonwealth Drought Coordinator.

Political subdivision—A county, city, borough, incorporated town or township.

Public water supply agency—A "community water system" as that term is defined in section 3 of the Pennsylvania Safe Drinking Water Act (35 P. S. § 721.3).

Residential water customer—A water customer who receives water service for a single- or multifamily dwelling unit. The term does not include educational institutions, hotels, motels or similar commercial establishments.

Service area—The geographical area serviced by a public water supply agency.

Service interruption—The temporary suspension of water supply or reduction of water pressure below that required for adequate supply to a water customer or to a water supply system or portion thereof.

Water allotment—The maximum quantity of water allowed for each water customer over an applicable period as established by a plan.

Water customer—A person who is connected to and receives water service from a public water supply agency. The term includes both residential and nonresidential water customers as defined in this section.

Water rationing provisions—Provisions of a plan which require specific reductions in the amount of water used by water consumers, either on the basis of a percentage reduction or gallonage allotment. The term does not include prohibitions or restrictions of nonessential uses.

§ 120.2. Purpose.

This chapter establishes procedures for the Commonwealth Drought Coordinator to review and approve plans by public water supply agencies or political subdivisions in response to a state of drought or water shortage emergency that has been declared by the Governor within specified areas of this Commonwealth.

§ 120.3. Objective of a plan.

The objective of a plan is to balance the daily demands placed upon a public water supply agency with the requirement to maintain a sufficient water supply to meet the long term needs that may be placed upon the public water supply agency during a period of water shortage or drought emergency. In particular, the water conservation measures of a plan are intended to:

- (1) Avoid the depletion of a water supply to ensure that adequate water supplies are available to protect the health and safety of all water customers.
- (2) Provide for the equitable distribution of water during the emergency.

§ 120.4. Responsibility to monitor local water supply and implement water conservation measures.

(a) Each public water supply agency or governing body of each political subdivision which has a source of water or a service area within an area affected by drought conditions or a local water shortage shall monitor the level of its water supply and estimate the availability of future water supply sources, the rate of present and anticipated water usage and the effectiveness of water conservation measures being implemented by them.

(b) Each public water supply agency or governing body of each political subdivision which has a source of water or a service area within an area affected by drought conditions or a local water shortage shall take prompt action to implement water conservation measures. These measures may include:

- (1) Asking water customers to voluntarily conserve water.
- (2) Implementing the development or activation of alternate sources of supplies.
- (3) Implementing specific bans on nonessential uses of water.
- (4) Implementing a plan as provided in §§ 120.5 and 120.6 (relating to implementation of plans; and implementation of further water usage reductions).

§ 120.5. Implementation of plans.

(a) *Plan.*

(1) Each public water supply agency or governing body of a political subdivision is authorized to develop a plan. A plan shall contain provisions to:

- (i) Prohibit nonessential water use, if the restrictions do not conflict with Chapter 119 (relating to prohibition of nonessential water uses in a Commonwealth drought emergency area).
- (ii) Establish equitable water rationing provisions for residential, nonresidential and other water users together with appropriate implementing procedures.

(iii) Provide for granting of variances or exemptions to the provisions of a plan to address extraordinary hardships which may exist as a result of a plan.

(2) "Guidelines for the Development of a Local Water Rationing Plan" and a "Model Local Water Rationing Plan" may be obtained from the Department. Public water supply agencies may contact the Department's Bureau of Watershed Management, Post Office Box 8555, Harrisburg, Pennsylvania 17105-8555, (717) 772-4048, for assistance in developing a system-specific plan.

(b) *Review and approval by Commonwealth Drought Coordinator:* The Commonwealth Drought Coordinator will review local water rationing plans submitted for review and approval in accordance with the following procedures:

(1) The public water supply agency or governing body of the affected political subdivision shall apply in writing to the Commonwealth Drought Coordinator for approval of its plan. The written request for approval shall include the following elements:

- (i) A plan as approved by the public water supply agency or governing body of the affected political subdivision.
- (ii) A statement describing the existence and severity of the water shortage.
- (iii) An express request for approval of the plan by the Commonwealth Drought Coordinator.
- (iv) The signature of an authorized representative of the public water supply agency or governing body of the affected political subdivision.

(2) If the plan includes a service area which is not included in a currently effective Governor's proclamation, the following procedures will be followed:

(i) The Commonwealth Drought Coordinator will determine whether or not the request, together with other available information, establishes the existence of a water shortage emergency that will require the Governor to issue a proclamation declaring a state of local drought or water shortage emergency for the affected area, and will make a recommendation to PEMA.

(ii) If PEMA concurs in the existence of a local water shortage emergency, PEMA will submit to the Governor a proposed proclamation to declare a state of local drought or water shortage emergency for the affected area described in the proclamation.

(iii) After the Governor signs the proclamation, PEMA will notify the Commonwealth Drought Coordinator that the plan may be approved and put into effect.

(3) Any plan that covers emergency service areas already included in a currently effective Governor's proclamation will go into effect upon its approval by the Commonwealth Drought Coordinator.

(c) *Mandatory implementation of plans.*

(1) After the Governor has issued a proclamation declaring a state of local drought or water shortage emergency for an area of this Commonwealth, the Commonwealth Drought Coordinator may direct a public water supply agency or governing body of a political subdivision that is located within or has a source of water within the designated drought emergency area to prepare and submit a plan to the Commonwealth Drought Coordinator for review and approval.

(2) The public water supply agency or governing body of a political subdivision shall submit its plan to the

Commonwealth Drought Coordinator, in accordance with the procedures described in subsection (b), within 10-calendar days after receiving written notification from the Commonwealth Drought Coordinator that the adoption and implementation of a plan by that public water supply agency or political subdivision is necessary to deal with the circumstances of the drought or water shortage emergency.

(d) *Approval of a plan.* Upon approval by the Commonwealth Drought Coordinator of a plan submitted under subsection (b) or (c), the Commonwealth Drought Coordinator will:

(1) Require the applicant to issue a notice to at least one newspaper of general circulation in the area covered by the plan, which will advise residential and nonresidential water customers or other persons doing business in the emergency service area of the approval of the plan and its effective date and where the public can review or obtain a copy of the plan.

(2) Transmit to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, a written notice which states the approval of the plan by the Commonwealth Drought Coordinator and its effective date.

(3) Require the applicant to post a copy of the plan in at least one public building; for example, a library, or a city, town or municipal building within the emergency service area for the review of the water customers affected by the implementation of the plan.

(4) Require the applicant to make copies of the plan available to the water customers affected by the implementation of the plan, upon request, either electronically or in hard copy.

(e) *Constructive notice.* The actions described in subsection (d) constitute constructive notice under 45 Pa.C.S. § 904 (relating to constructive notice) to all residential and nonresidential water customers or other persons doing business within the emergency service area for the purpose of enforcing the plan adopted and approved by the Commonwealth Drought Coordinator.

§ 120.6. Implementation of further water usage reductions.

(a) If a public water supply agency or governing body of an affected political subdivision determines that it is necessary to further decrease the water usage of its residential, nonresidential or other water customers, it may request the Commonwealth Drought Coordinator to consider and approve revisions or amendments, or both, to its plan in accordance with the procedure in § 120.5(b) (relating to implementation of plans).

(b) The Commonwealth Drought Coordinator may approve the requested revisions or amendments, or both, to the plan.

(c) Constructive notice of approved revisions or amendments, or both, to a plan will be provided in accordance with the notification procedures described in § 120.5(d).

§ 120.7. Enforcement of plans.

(a) The public water supply agency or governing body of a political subdivision shall have primary responsibility for monitoring the compliance of residential, nonresidential and other water customers with its plan.

(b) The public water supply agency or governing body of a political subdivision shall institute procedures to monitor closely water supplies and current water usage to determine if water reductions are being attained consist-

ent with the water conservation figures established in its plan. A public water supply agency or governing body of a political subdivision shall regularly advise the water customers of the effects of the water rationing program.

(c) Each public water supply agency or governing body of a political subdivision is authorized to alter meter reading schedules to assure compliance with its plan.

(d) Proper law enforcement authorities and private citizens have additional enforcement responsibilities and rights as specified in § 120.12 (relating to penalties).

(e) A political subdivision may enforce its plan by adopting an ordinance in accordance with § 120.11(a) and (b) (relating to enforcement by political subdivision ordinance).

§ 120.8. Service interruptions.

(a) A plan shall include provisions for the implementation of temporary service interruptions. This action would be necessary to achieve water use reductions to prevent a public water supply agency from depleting its water supply to the point that vital service demands, such as public health and safety, firefighting and health care facilities, cannot be met.

(b) The following governs the implementation of service interruptions:

(1) To effectuate compliance with a plan, the public water supply agency is authorized and required to plan and implement service interruptions to all or part of its water supply system, as the public water supply agency deems appropriate, when one or more of the following conditions are determined by the public water supply agency to exist as to its water supply system:

(i) The specific reduction in systemwide water usage has not been achieved.

(ii) The specified reduction in systemwide water usage has been achieved, but has failed to have a significant impact in extending limited water supplies.

(iii) Service interruptions are necessary to further extend limited or dwindling water supplies.

(2) If the public water supply agency determines that service interruptions are necessary, the public water supply agency shall notify its water customers through the public media, such as newspapers, radio, telephone and television, serving the water customers in its service area at least 1 day prior to the service interruptions, that a planned service interruption is to be imposed. In addition, the public water supply agency shall notify the local coordinator of emergency management; PEMA; the Commonwealth Drought Coordinator; the regional office of the Department of Environmental Protection; and the Pennsylvania Public Utility Commission, Bureau of Fixed Utility Services, if the public water supply agency is subject to the jurisdiction of the Pennsylvania Public Utility Commission. The notice shall:

(i) State the days when the planned service interruptions will occur.

(ii) State the time when the planned service interruptions will commence and the time the interruptions will cease.

(iii) State whether the planned service interruptions are to be imposed on the entire system or a part thereof. If only part of the system will experience planned service interruptions, identify the geographical boundaries within which the planned service interruptions will occur.

(iv) Advise the customers within the area affected by planned service interruptions how to treat water received from the system for human consumption during the period of planned service interruptions and for additional time as necessary until full pressure is restored to the system.

(3) If the public water supply agency imposes planned service interruptions as authorized and required by a plan, it shall provide for the continued delivery of water to health care facilities within the service area affected by the interruptions, by means of adequate, alternative delivery measures that may be necessary.

(4) If the public water supply agency implements temporary service interruptions, it shall provide, by any means possible, for the continued delivery of the water, as may be necessary, for the proper operation of sewage collection, treatment and disposal systems and facilities.

§ 120.9. Excess use charges.

(a) *Excess use charges.*

(1) Excess use charges are a positive means of securing compliance with a plan. If a public water supply agency elects to include excess use charges in a plan, the maximum excess use charge authorized to be imposed is as follows:

First 2,000 gallons or portion thereof	5 times the actual rate charged for water
Each 1,000 gallons or portion thereof thereafter	10 times the actual rate charged for water

(2) Excess use charges may only be assessed against meter customers and shall be based upon actual meter readings.

(b) *Water allotments.* A residential or nonresidential water customer who exceeds the water allotments established by the plan shall be subject to an excess use charge. Public water supply agencies in the emergency service area are authorized to collect an excess-use charge based on the amount by which a water customer's use exceeds the water allotment established in the plan. The charges will be specified in the plan.

(c) *Disposition of excess use charges.* Moneys collected by public water supply agencies through excess use charges may not be accounted for as income to the public water supply agency, but shall be placed in a reserve account. The disposition of funds placed in the reserve account shall be governed as follows:

(1) Funds collected by a public utility or a municipal corporation rendering services beyond its corporate limits shall be used to offset drought related costs as directed by orders and procedures adopted by the Pennsylvania Public Utility Commission.

(2) Funds collected by any public water supply agency not covered in paragraph (1) shall be used to offset drought-related costs.

(d) *Additional penalties.* In addition to the excess use charge, noncompliance with the plan may result in the following:

(1) For the first excess use, the public water supply agency will warn the water customer that its water use may be discontinued if the water customer continues its noncompliance practices.

(2) For the second excess use, the public water supply agency may interrupt or shut off service to the water customer for a period not to exceed 48 hours per incident. As an alternative, the public water supply may install a

flow restriction in the water customer's service line for the duration of the water shortage emergency. The cost incurred by the public water supply agency to interrupt or shut off and reinstate service, or to install and remove a flow restriction, shall be assessed to the water customer by the public water supply agency.

(e) *Appeal of decision or action.* A water customer aggrieved by a decision or action taken by a public water supply agency under the authority of this section may proceed in accordance with the following:

(1) Each public water supply agency shall adopt procedures which provide an opportunity for the water customer to rebut the finding of a violation or to present evidence of circumstances beyond the water customer's control which resulted in the violation. Each public water supply agency shall keep a record of the evidence presented by the water customer concerning the disputed violations and shall provide the water customer with a written notice of its final decision and action in the case.

(2) A water customer aggrieved by the final decision or action of a water supply agency may file an appeal with the Pennsylvania Public Utility Commission, if the water supply agency is regulated by the Public Utility Commission, and in all other instances with the Court of Common Pleas in the county where the water service is provided, in accordance with 2 Pa.C.S. §§ 551—555 and 751—754 (relating to the Local Agency Law).

§ 120.10. (Reserved).

§ 120.11. Enforcement by political subdivision ordinance.

(a) A political subdivision may adopt an ordinance to enforce the various provisions of a plan within the jurisdictional boundaries of the political subdivision, if the following actions precede the adoption of the ordinance:

(1) The plan has been submitted to the Commonwealth Drought Coordinator in accordance with § 120.5 (relating to implementation of plans).

(2) The Governor has issued a proclamation declaring a state of local drought and water shortage emergency for an area of the Commonwealth that includes the political subdivision.

(3) The Commonwealth Drought Coordinator has approved the plan and constructive notice of the plan as described in § 120.5(d) has been provided to residential and nonresidential water customers or other persons doing business within the emergency service area of the plan.

(b) After the actions in subsection (a) have occurred, a political subdivision may adopt and publish an ordinance in accordance with its applicable county, city, borough or township code. The purpose of the ordinance shall be to implement the plan within the jurisdictional boundaries of the political subdivision. The ordinance may include, adopt, incorporate or otherwise enact one or more sections, provisions or portions of the approved plan.

(c) Any person who violates a local water rationing/conservation ordinance adopted by a political subdivision, in accordance with the procedures specified in subsections (a) and (b), shall be subject to the fines and penalties that apply to violations of that ordinance as prescribed in the county, city, borough or township code under which the ordinance was adopted.

§ 120.13. Additional water conservation and protection policies.

Nothing in a plan or this chapter limits or affects the power or authority of a political subdivision to adopt or enforce ordinances, rules, restrictions and orders for water conservation and protection of essential supplies, provided that the ordinances, rules, restrictions and orders do not conflict this chapter and Chapters 118 and 119 (relating to reductions of major water use in a Commonwealth drought emergency area; and prohibition of nonessential water uses in a Commonwealth drought emergency area), and river basin commission orders or plans.

§ 120.14. Repeal or amendment of a plan.

A plan may be amended or repealed only by action of the Commonwealth Drought Coordinator upon the written request of the public water supply agency or governing body of a political subdivision that developed and submitted the plan. A request for amendment or repeal of a plan shall document the conditions justifying the amendment or repeal, be signed by an authorized representative of the applicant and be submitted to the Commonwealth Drought Coordinator for approval.

§ 120.15. Notification of termination.

Upon approval of the repeal of a plan in accordance with § 120.14 (relating to repeal or amendment of a plan), the Commonwealth Drought Coordinator will require the applicant to issue a notice to at least one newspaper of general circulation in the area covered by the plan, which will advise residential and nonresidential water customers or other persons doing business in the emergency service area of the repeal of the plan and its effective date. The Commonwealth Drought Coordinator will also transmit to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, a written notice which states that the plan has been repealed by the Commonwealth Drought Coordinator and its effective date.

[Pa.B. Doc. No. 01-1216. Filed for public inspection July 6, 2001, 9:00 a.m.]

Title 55—PUBLIC WELFARE

DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CHS. 255, 275 AND 501]

Restitution; Appeal and Fair Hearing and Administrative Disqualification Hearings; Food Stamp Discretionary Provisions

The Department of Public Welfare (Department), by this order, amends Chapters 255, 275 and 501 (relating to restitution; appeal and fair hearing and administrative disqualification hearings; and food stamp discretionary provisions) as set forth in Annex A under the authority of sections 201(2) and 403(b) of the Public Welfare Code (code) (62 P. S. §§ 201(2) and 403(b)). Section 201(2) of the code provides that the Department has the authority to promulgate amendments, with approval of the Governor, as may be necessary to render the Commonwealth eligible for Federal funds or other assistance. Section 403(b) of the code provides that the Department establish rules, regulations and standards consistent with the law, as to eligibility for assistance and as to its nature and extent. Section 403(b) of the code also provides that,

whenever possible, except for residency requirements for General Assistance (GA), the Department establish rules, regulations and standards for GA consistent with those established for Aid to Families with Dependent Children (AFDC), which has been replaced by Temporary Assistance for Needy Families (TANF). The rules, regulations and standards established for GA will not provide for assistance greater than that provided for AFDC (now TANF). In addition, section 402(a)(6) of the Social Security Act (42 U.S.C.A. § 602(a)(6)) requires the Commonwealth to certify that it has established and is enforcing standards and procedures to guard against fraud and abuse. These amendments affect the TANF and GA Cash Assistance Programs and the Food Stamp Program.

Notice of proposed rulemaking is omitted in accordance with section 204(1)(iv) and (3) of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204(1)(iv) and (3)) referred to as the Commonwealth Documents Law (CDL) because a ruling in a Federal case announced the legal interpretation of the Federal statute which provides the authority for these amendments and the amendments relate to Commonwealth grants and benefits. The Department finds that notice of proposed rulemaking is contrary to the public interest as the amendments benefit persons who have been determined to be disqualified but who are now eligible for benefits. Notice of proposed rulemaking would delay benefits to those who are the intended beneficiaries of the Court ruling and the regulation. A Notice of Rule Change (NORC) was published at 26 Pa.B. 5659 (November 16, 1996) which invited public comment. The Department received no public comments.

Purpose

The purpose of these amendments is to incorporate into Chapters 255, 275 and 501 new Federal agency directives concerning the implementation of cash assistance and food stamp disqualification penalties for individuals who are not eligible for program benefits at the time the disqualification is determined.

Background

Under regulations in effect prior to the NORC, the Department postponed implementing the disqualification penalty if the individual to be disqualified was not eligible for benefits under the program in which the intentional program violation occurred. Instead, the disqualification was imposed when the individual reapplied for and was determined eligible for the benefits.

The United States Department of Agriculture requires these amendments to achieve compliance with the ruling of the United States Court of Appeals for the Ninth Circuit in *Garcia v. Concannon & Espy*, 67 F.3d 256 (9th Cir. 1995). In *Garcia*, the Court held that the policy of postponing the implementation of a food stamp disqualification penalty until such time as the individual was eligible for Food Stamp Program benefits violated section 6(b)(1) of the Food Stamp Act of 1977 (7 U.S.C.A. § 1515(b)(1)). The United States Department of Health and Human Services, Administration for Children and Families, required the same amendments for the AFDC Program. The Department extended the amendments to the GA Program because the Department, whenever possible, except for residency requirements for GA, will establish rules, regulations and standards for GA consistent with those established for AFDC (now TANF). The rules, regulations and standards established for GA will not provide for assistance greater than that provided for AFDC (now TANF). As a result, an individual found to have committed an intentional program violation or who

agrees to the disqualification penalty and who is not currently eligible for program benefits will be subject to immediate disqualification. These amendments do not affect the 45 days allowed for the imposition of a disqualification penalty for individuals who are eligible for program benefits.

Since issuance of the NORC, however, the TANF program has replaced the former AFDC program. The Federal mandate requiring the rules in AFDC to mirror food stamp disqualification penalties have been rescinded. See 62 Fed. Reg. 64301. Under Federal Welfare Reform, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104-193), the Commonwealth is required to certify that it has established and is enforcing standards and procedures to guard against fraud and abuse. See 42 U.S.C.A. § 602(a)(6). The Department announced in its implementation of the TANF program NORC published at 27 Pa.B. 1093 (July 17, 1993) and the TANF State Plan published at 27 Pa.B. 342 (January 18, 1997) that it would continue AFDC rules for the most part, except as noted in the NORC for TANF. The Department has decided to continue to treat the imposition of TANF/GA and Food Stamp disqualification penalties in the same manner.

Any disqualification penalties pended prior to the NORC were considered served if the time elapsed from the decision date was greater than or equal to the length of the disqualification period. If the time elapsed from the decision date was less than the length of the disqualification period, the individual was considered disqualified until the time elapsed was equal to the length of the disqualification period. The Department updated its Disqualified Recipient System to indicate that individuals served the disqualification penalty as long as the time elapsed from the decision date was equal to the disqualification period. Since all pended disqualifications have been served, there is no need to regulate this provision of the Federal agency directives.

Need for Amendments

These amendments are needed to implement intentional program violation disqualification directives as specified in United States Department of Agriculture Administrative Notice 4-96, relating to Food Stamps and United States Department of Health and Human Services, Administration for Children and Families Action Transmittal No. ACF-AT-96-1, relating to AFDC. Although the AFDC Program has been replaced by the TANF Program, Federal law still requires the Commonwealth to administer a fraud and abuse program under 42 U.S.C.A. § 602(a)(6). The AFDC rules have been continued under TANF, except as noted in the TANF NORC published at 27 Pa.B. 1092 (February 28, 1997). The policy directives were implemented under a NORC published at 26 Pa.B. 5659 (November 16, 1996), retroactively effective to February 2, 1996, for the Food Stamp Program and March 4, 1996, for the TANF and GA cash assistance programs.

Summary of Regulations

Chapter 255

The amendment to § 255.1 (relating to restitution and disqualification policy) clarifies that there is a difference in the dates on which disqualification is implemented if an individual is eligible for cash assistance benefits under the program in which the intentional program violation occurred, or if the individual is not eligible for benefits at the time of disqualification. The amendment also changes the date on which the disqualification is imposed when the individual is not eligible for benefits at the time of

disqualification, to the date of a court or administrative order, the signing of a consent agreement or the waiver of an administrative disqualification hearing.

Chapter 275

The amendment to § 275.32 (relating to filing of an intentional program violation) changes the notice given when an intentional program violation is found. The amendment clarifies that if an individual is not eligible for benefits at the time of the violation, the notice will indicate an immediate implementation of the penalty.

Chapter 501

The amendment to § 501.13 (relating to intentional program violation disqualification) clarifies that there is a difference in the dates on which disqualification is implemented if an individual is eligible for food stamp benefits, or if the individual is not eligible for benefits at the time of disqualification. The amendment also changes the date on which the disqualification is imposed when the individual is not eligible for food stamp benefits at the time of disqualification, to the date of a court or administrative order. The amendments also make the same clarification as applied to disqualification when an administrative disqualification hearing is waived.

Affected Individuals and Organizations

These amendments will affect all applicants and former and current recipients of the TANF and GA Cash Assistance Programs and the Food Stamp Program.

Accomplishments/Benefits

Adoption of these amendments will codify the program changes mandated by *Garcia* as well as with United States Department of Agriculture Administrative Notice 4-96, 42 U.S.C.A. § 602(a)(6), the TANF State Plan (27 Pa.B. 342) and the TANF NORC (27 Pa.B. 1092).

Fiscal Impact

Public Sector: These amendments impose no costs on the public sector.

Private Sector: These amendments impose no costs on the private sector.

General Public: These amendments impose no costs on the general public.

Paperwork Requirements

These amendments will not change existing reporting or paperwork requirements.

Cross References

These amendments do not affect any other laws or regulations.

Effective Date

These amendments will take effect upon publication in the *Pennsylvania Bulletin* as final-form rulemaking retroactively to February 1, 1996, for the Food Stamp Program regulations and March 4, 1996, for the TANF and GA Cash Assistance Program regulations, as set forth in the NORC published at 26 Pa.B. 5659.

Sunset Date

There is no sunset date. The amendments apply to an ongoing program. The Department will evaluate the effectiveness of these regulations on an ongoing basis.

Public Comments

Although these amendments are being adopted without prior notice, interested persons are invited to submit written comments within 30 days from the date of the

publication for consideration by the Department as to whether these amendments should be revised. The comments should be sent to the Department of Public Welfare, Edward J. Zogby, Acting Director, Bureau of Policy, Room 431 Health and Welfare Building, Harrisburg, PA 17120, (717) 787-4081.

Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

Regulatory Review Act

Under section 5.1(c) of the Regulatory Review Act (71 P. S. § 745.5a(c)) on April 25, 2001, the Department submitted a copy of these final-omitted regulations 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. On the same date, the final-omitted regulations were submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506).

Under section 5.1(d) of the Regulatory Review Act, on May 15, 2001, these final-omitted regulations were deemed approved by the House or Senate Committees. Under section 5.1(e) of the Regulatory Review Act, on May 17, 2001, IRRC met and approved the final-omitted regulations.

Findings

The Department finds that:

(1) Public notice of intention to amend the administrative regulations amended by this order is omitted in accordance with section 204(1)(iv) and (3) of the CDL because a ruling in a Federal case announced the legal interpretation of the Federal statute which provides the authority for these regulations and the regulations relate to Commonwealth grants and benefits.

(2) The adoption of these amendments in the manner provided in this order is necessary and appropriate for the administration and enforcement of the code.

Order

The Department acting under the code orders that:

(a) The regulations of the Department, 55 Pa. Code Chapters 255, 275 and 501, are amended by amending §§ 255.1, 275.32 and 501.13 to read as set forth in Annex A.

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

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

(d) This order shall take effect upon publication in the *Pennsylvania Bulletin* and apply retroactively to February 1, 1996, for the Food Stamp Program and retroactively to March 4, 1996, for the TANF and GA Cash Assistance Programs.

FEATHER O. HOUSTON,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 31 Pa.B. 2855 (June 2, 2001).)

Fiscal Note: 14-448. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 55. PUBLIC WELFARE

PART II. PUBLIC ASSISTANCE MANUAL

Subpart G. RESTITUTION AND REIMBURSEMENT

CHAPTER 255. RESTITUTION

GENERAL PROVISIONS

§ 255.1. Restitution and disqualification policy.

(a) This chapter applies to AFDC, GA and SBP, except as modified in subsections (c)—(e) and in Chapter 451 (relating to State Blind Pension) and MA. This chapter does not apply to overpayments resulting from the forged endorsement of assistance checks. Recovery of overpayments is described in § 231.24(c) (relating to procedures).

(b) The general restitution policy of the Department will be as follows:

(1) The course of action of the Department in respect to overpayments will be directly related to the cause or reason underlying the client's receipt of assistance for which the client was not eligible. When the overpayment appears due to fraud, the Public Welfare Code (62 P. S. §§ 101—1412) will set the course of action to be taken.

(2) The decision as to whether or not fraud is suspected will be an administrative decision which will place on the Department the responsibility of distinguishing between overpayments due to fraud, and those due to error. To carry out this responsibility, the Department has developed certain objective criteria which will be used in deciding the appropriate action for an overpayment.

(3) Assistance regulations, including this chapter, are aimed at reducing and preventing the incidence of overpayment. Accomplishment of this objective will depend to a large extent on the degree to which the respective responsibilities of the client and the worker are understood and developed. These responsibilities are given in detail in other sections of this title but essential elements are repeated here because of their importance.

(4) A person applying for or receiving assistance has an obligation to report his resources and changes in circumstances. An adult applicant and recipient will be responsible for reporting these facts as they apply to him and to other persons in his assistance unit.

(5) The worker will have an obligation to explain eligibility requirements in terms that fit the situation of the client. The worker will be responsible for being alert to the possibility of resources or changes in the circumstances of the client and for setting up with the client definite and specific reporting requirements appropriate to the situation. The plan for reporting will be entered in the case record.

(c) In addition to being subject to other civil or criminal penalties, an AFDC or GA recipient who has been found by a Federal or State court or by the Department, following an administrative disqualification hearing—as described in Chapter 275 (relating to appeal and fair hearing and administrative disqualification hearings)—to have committed an intentional program violation shall be disqualified from receiving Cash Assistance for 6 months for the first offense, 12 months for the second offense and permanently for the third offense. The Department will not take the disqualified individual's needs into account when determining the budget group's need for and amount of assistance. The Department will consider available to the budget group countable income and resources of the disqualified individual.

(d) The Department will provide an applicant for GA and AFDC, at the time of application or reapplication for aid, with written notice of the penalties for intentional program violation which are provided in subsection (c).

(e) The Department will provide current recipients of GA and AFDC with a one-time written notice of the penalties which are provided for in subsection (c) prior to imposition of disqualification.

(f) If the individual is eligible for benefits under the program in which the intentional program violation occurred, the Department will impose the disqualification within 45 days of the date of the finding of the court, administrative disqualification hearing final order or signing of a consent agreement or waiver of administrative disqualification hearing as set forth in Chapter 275, Subchapter B (relating to administrative disqualification hearings). If the individual, who is found to have committed an intentional program violation or who signs a consent agreement or waiver of administrative disqualification hearing is not eligible for benefits under the assistance program in which the intentional program violation occurred, the Department will impose the disqualification effective on the date of the finding of the court, administrative disqualification hearing final order or signing of a consent agreement or waiver of administrative disqualification hearing. Once the Department imposes the disqualification, the disqualification period shall continue uninterrupted.

Subpart H. APPEAL AND FAIR HEARING

CHAPTER 275. APPEAL AND FAIR HEARING AND ADMINISTRATIVE DISQUALIFICATION HEARINGS

Subchapter B. ADMINISTRATIVE DISQUALIFICATION HEARINGS

HEARING RESULTS

§ 275.32. Finding of an intentional program violation.

(a) If the hearing officer finds that the individual committed an intentional program violation, the Department will notify the individual before disqualification. The notice will include:

- (1) The period of disqualification.
- (2) The date disqualification will take effect.
- (3) The benefit amount the budget group/household will receive during the disqualification period.
- (4) The statement that, if the individual is not eligible for benefits in the program in which the intentional program violation occurred, the Department will impose the disqualification effective on the date of the administrative disqualification hearing final order.

(b) The Department will notify the remaining budget group/ household, if any, of the benefit/allotment they will receive during the disqualification period.

(c) The Office of Inspector General will send a demand letter for payment of the claim. The letter will include:

- (1) The amount owed.
- (2) The reason for the claim.
- (3) The offset that reduces the claim.
- (4) The payment options.

(d) The Office of Inspector General will recover the claim pursuant to the procedures in §§ 255.4 and 501.1 (relating to procedures; and general provisions).

Subpart L. FOOD STAMP PROGRAM

CHAPTER 501. FOOD STAMP DISCRETIONARY PROVISIONS

§ 501.13. Intentional program violation disqualification.

(a) *Determination of an intentional program violation.*

(1) *Disqualification hearings—7 CFR 273.16(a) and (e).* The Office of Hearings and Appeals is responsible for conducting administrative disqualification hearings for individuals alleged to have committed an intentional program violation as set forth in § 275.11(a) (relating to general policy).

(2) *Court referrals—7 CFR 273.16(g).* The Office of Inspector General will refer appropriate cases to law enforcement authorities for prosecution. An individual suspected of committing one or more acts of intentional program violations will be referred by the Office of Inspector General for prosecution.

(3) *Imposing the disqualification—7 CFR 273.16(e) and (g).* The Department will impose the disqualification against the individual eligible for food stamp benefits within 45 days of the date of the finding of the court or administrative disqualification hearing final order. If the individual, who is found to have committed an intentional program violation is not eligible for food stamp benefits, the Department will impose the disqualification effective on the date of the finding of the court or administrative disqualification hearing final order. Once the Department imposes the disqualification, the disqualification period shall continue uninterrupted.

(b) *Disqualification without a hearing or prosecution by a court.*

(1) *Waived hearings—7 CFR 273.16(f).* The procedures to allow the individual to waive an administrative disqualification hearing are set forth in § 275.41 (relating to waiver of administrative disqualification hearing). If the individual is eligible for food stamp benefits, the period of disqualification will begin within 45 days of the date the individual signed the waiver. If the individual is not eligible for food stamp benefits, the Department will impose the disqualification effective on the date the individual signed the waiver. Once the Department imposes the disqualification, the disqualification period shall continue uninterrupted.

(2) *Deferred adjudication—7 CFR 273.16(h).* The Department will establish procedures to allow accused individuals to sign disqualification consent agreements for cases of deferred adjudication. The Office of Inspector General may use this method for cases in which a determination of guilt is not obtained from a court due to the accused individual having met the terms of a court order or which are not prosecuted due to the accused individual having met the terms of an agreement with the prosecutor. Disqualification consent agreements in cases referred for prosecution will conform with the following requirements:

(i) *Notification.* Advance written notification will be provided to the household member stating the consequences of consenting to disqualification as part of the deferred adjudication. The advance notification will include, at a minimum:

(A) A statement for the accused individual to sign that indicates the accused individual understands the consequences of consenting to disqualification. The head of the

household shall also sign the consent agreement if the accused individual is not the head of the household.

(B) A consent to disqualification will result in disqualification and a reduction in benefits for the period of disqualification, even though the accused individual was not found guilty of civil or criminal misrepresentation or fraud.

(C) Disqualification penalties for intentional program violation under the Food Stamp Program which could be imposed are 6-month disqualification for the first violation, 12-month disqualification for the second violation and permanent disqualification for the third violation.

(D) A statement that the remaining household member, if any, will be held responsible for repayment of the resulting claim as a result of meeting the terms of the agreement with the prosecutor or the court order.

(ii) *Household member consent to disqualification.* If the household member suspected of an intentional pro-

gram violation signs the disqualification consent agreement, the household member shall be disqualified in accordance with the disqualification period specified in 7 CFR 273.16(b) (relating to disqualification for intentional program violation), unless contrary to the order. The period of disqualification shall begin against the household member eligible for food stamp benefits within 45 days of the date the household member signed the disqualification consent agreement. If the household member is not eligible for food stamp benefits, the Department will impose the disqualification effective on the date the individual signed the disqualification consent agreement. Once the Department imposes the disqualification, the disqualification period shall continue uninterrupted.

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