

RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

DEPARTMENT OF ENVIRONMENTAL PROTECTION
[25 PA. CODE CH. 126]

Gasoline Requirements for the Pittsburgh-Beaver Valley Area

The Department of Environmental Protection (Department) announces that effective immediately, it will suspend enforcement of the Subchapter C Gasoline Volatility Requirements of 25 Pa. Code §§ 126.301—126.303 through September 15, 2001. These requirements are applicable in the Pittsburgh-Beaver Valley Area.

The Department is suspending enforcement because of disruptions in the production and distribution of compliant fuel. Due to the lateness in the ozone season and the extremely low probability of meteorological conditions, which cause the formation of high ozone concentrations, the Department does not expect exceedances of the National Ambient Air Quality Standard for ozone.

The Department may not relieve a source of its legal obligation to comply with the gasoline volatility requirements incorporated in the Pennsylvania State Implementation Plan. These requirements remain in effect. This notice only indicates that the Department will not be actively enforcing the requirements. It does not affect the ability of citizens to bring suits to enforce the requirements.

For more information or questions concerning gasoline volatility, contact Joseph Pezze, Regional Air Quality Manager, at (412) 442-4161 or e-mail at jpezze@state.pa.us.

DAVID E. HESS,
Secretary

[Pa.B. Doc. No. 01-1636. Filed for public inspection September 7, 2001, 9:00 a.m.]

ENVIRONMENTAL QUALITY BOARD [25 PA. CODE CHS. 260a AND 269a] Host Municipalities Fund Allocation

The Environmental Quality Board (Board) by this order amends Chapters 260a and 269a (relating to hazardous waste management system: general; and siting) to address concerns raised regarding the allocation of the Host Municipalities Fund (Fund). These concerns include clarification of the definition of a "qualifying facility" and simplification of the formula used to allocate funds if there is more than one "qualifying facility" in this Commonwealth in a single year. The final-form amendments are set forth in Annex A.

This order was adopted by the Board at its meeting of June 19, 2001.

A. *Effective Date*

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

B. *Contact Persons*

For further information contact Rick Shipman, Division of Hazardous Waste, P. O. Box 8471, Rachel Carson State Office Building, Harrisburg, PA 17105-8471, (717) 787-6239; or Kurt Klappkowski, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final-form rulemaking is available electronically through the Department of Environmental Protection's (Department) website (<http://www.dep.state.pa.us>).

C. *Statutory Authority*

The final-form rulemaking is being made under the authority of sections 105, 402 and 501 of the Solid Waste Management Act (SWMA) (35 P. S. §§ 6018.105, 6018.402 and 6018.501); sections 303 and 305(e)(2) of the Hazardous Sites Cleanup Act (HSCA) (35 P. S. §§ 6020.303 and 6020.305(e)(2)); sections 5, 402 and 501 of The Clean Streams Law (35 P. S. §§ 691.5, 691.402 and 691.501); and section 1920-A of The Administrative Code of 1929 (71 P. S. §§ 510-20). Under sections 105, 402 and 501 of the SWMA, the Board has the power and duty to adopt rules and regulations concerning the storage, treatment, disposal and transportation of hazardous waste that are necessary to protect the public's health, safety, welfare and property, and the air, water and other natural resources of this Commonwealth. Sections 303 and 305(e)(2) of the HSCA grant the Board the power and duty to promulgate regulations to carry out the provisions of the HSCA and establish an allocation formula for one-time payments to host municipalities, respectively. Sections 5, 402 and 501 of The Clean Streams Law grant the Board the authority to adopt regulations that are necessary to protect the waters of this Commonwealth from pollution. Section 1920-A of The Administrative Code of 1929 grants the Board the authority to promulgate rules and regulations that are necessary for the proper work of the Department.

D. *Background of the Amendments*

The Board is amending Chapters 260a and 269a to simplify and clarify the regulations governing the allocation of the Fund. Section 305 of the HSCA establishes the Fund. The purpose of the Fund is to provide financial assistance to municipalities that host certain categories of commercial hazardous waste treatment, storage or disposal facilities. Section 305 of the HSCA contemplates two distinct types of financial assistance. The first is reimbursement to a host municipality for, among other things, the costs of training and employing host municipality inspectors and the cost for a municipality to conduct an independent review of an application for a commercial hazardous waste permit.

The second type of financial assistance is the focus of this final-form rulemaking. This assistance consists of a one-time payment to municipalities for each new or expanded commercial hazardous waste treatment or disposal facility permitted after December 18, 1988 (the effective date of the HSCA). The facility must fulfill hazardous waste treatment or disposal capacity needs as identified in the Pennsylvania Hazardous Waste Facilities Plan. Only those municipalities that host a facility that meets the definition of a "qualifying facility" are eligible for this financial assistance.

There has been some confusion and contention over the interpretation of the term "qualifying facility." The term is currently defined in § 260a.10 (relating to definitions). The Department is modifying the definition to clarify the term. The final-form rulemaking breaks the definition into new and existing facilities. The definition of new facility is intended to clarify that the facility is newly permitted and not newly regulated; that is, not an existing facility that now requires a permit because of a regulatory change or a facility that operated under interim status. The Department has consistently interpreted the one-time payment program this way since passage of the HSCA in 1988, but there has been confusion in some host communities that the issuance of a permit to a facility that operated prior to 1988 caused that facility to be a newly permitted facility. The Department believes that this interpretation is consistent with the intent of the General Assembly in creating the Fund in the HSCA.

The amended definition of qualifying facility clarifies that an existing facility may be a qualifying facility if a larger volume of hazardous waste is allowed through a permit modification. In addition, the final-form rulemaking moves the definition to Chapter 269a, since it is only used in that chapter and not generally in the hazardous waste regulations.

The final-form rulemaking modifies the allocation formula for distribution of the one-time payment to remove the Hazardous Waste Site Ranking System (HRS) established by the United States Environmental Protection Agency (EPA) in 40 CFR Part 300, Appendix A (relating to the hazard ranking system) as a factor in determining the proper allocation when there is more than one qualifying facility in a year. This will result in a less costly determination, since an HRS report is expensive to prepare. It will also result in a more appropriate determination, since the HRS is designed to rank impacts from uncontrolled releases under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and not permitted facilities, which should have control of hazardous wastes.

The Solid Waste Advisory Committee (SWAC) reviewed the final-form rulemaking at its March 8, 2001, meeting and recommended that the Board approve the final-form rulemaking as written. A listing of the members of SWAC may be obtained from the contact persons listed in section B of this Preamble.

E. Summary of Changes to the Proposed Rulemaking

Section 269a.1. Definitions.

Section 305(e)(2) of the HSCA refers to new or expanded commercial hazardous waste treatment and disposal facilities as "qualifying facilities." The final-form rulemaking adds a new clause (D) to help clearly define when a facility is considered "new" and therefore a "qualifying facility." This addition explicitly states that a facility operated under interim status prior to December 18, 1988, cannot be considered to be a "qualifying facility" unless it meets the requirements in the definition to be considered an "expanded" facility. This change clarifies that a facility operating under interim status prior to the HSCA's effective date but that later received a formal written hazardous waste permit would not be considered a "new" facility for the purposes of the Fund.

Section 269a.221. Allocation of the Fund.

The proposed rulemaking modified the allocation formula for the distribution of the one-time payment to replace the HRS established by the EPA in 40 CFR Part

300, Appendix A with a simpler, less costly and more appropriate method. Section 269a.221(d)(1) was deleted to make that change. Section 269a.221(d)(1)(i) and (ii) stated two criteria for Fund allocation that are established by section 305(e)(2)(ii)(A) and (B) of the HSCA. Because of public comment, the Department is reinserting the two criteria contained in the HSCA but deleted by the proposed rulemaking.

F. Summary of Comments and Responses on the Proposed Rulemaking

This rulemaking was published as proposed at 30 Pa.B. 4816 (September 16, 2000) with a 30-day comment period. One public comment was submitted during the public comment period. The commentator expressed concern regarding the removal of existing language in the regulations relating to the proximity of the facility to persons or natural resources that would be endangered by the escape of hazardous waste from the facility. The Independent Regulatory Review Commission (IRRC) also submitted written comments to the Department. IRRC's comments related to the deletion of the two statutory criteria mandated by section 305(e) of the HSCA. As noted in section E of this order, these criteria were contained in § 269a.221(d)(1)(i) and (ii) (the toxicity, mobility and other characteristics of hazardous waste; and the proximity of the facility to persons or natural resources which would be endangered by the escape of hazardous waste from the facility). IRRC also requested that the Board restore these criteria in the final-form rulemaking.

The Department believes that the statutory provisions control regardless of their inclusion in or deletion from § 269a.221, and that the permitting and siting requirements of the hazardous waste regulations provide additional oversight for these concerns. In the interest of completeness and clarity, however, these criteria have been reinserted as § 269a.221(d)(1) and (2) and will be administered taking into account the permitting and siting information when required.

G. Benefits, Costs and Compliance

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

Benefits

The final-form rulemaking will clarify the eligibility requirements for a host municipality to receive a one-time payment from the Fund. This will reduce confusion and contention over the eligibility issue. In addition, it will modify the allocation formula on the distribution of the one-time payment to replace EPA's HRS, with a simpler, less costly and more appropriate method.

Compliance Costs

The final-form rulemaking is not expected to impose any additional costs on the regulated community, nor will it result in increased costs of implementation for the Commonwealth or local governments.

Compliance Assistance Plan

Because of the limited applicability of this final-form rulemaking, the Department will be able to specifically target compliance assistance and outreach efforts regarding one-time payments under the Fund.

Paperwork Requirements

There will be no additional paperwork requirements as a result of the final-form rulemaking.

H. *Sunset Review*

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

I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 5, 2000, the Department submitted a copy of the notice of proposed rulemaking, published at 30 Pa.B. 4816, to IRRC and the Chairpersons of the House and Senate Environmental Resources and Energy Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing this final-form rulemaking, the Department has considered all comments from IRRC, the Committees and the public.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), on July 17, 2001, this final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on July 26, 2001, and approved the final-form rulemaking.

J. *Findings*

The Board 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 regulations promulgated thereunder, 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) This final-form rulemaking does not enlarge the purpose of the proposal published at 30 Pa.B. 4816.

(4) This final-form rulemaking is necessary and appropriate for administration and enforcement of the authorizing acts identified in section C of this order.

K. *Order*

The Board, acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 25 Pa. Code Chapters 260a and 269a, are amended by amending §§ 260a.10, 269a.1 and 269a.221 to read as set forth in Annex A.

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

(c) The Chairperson of the Board shall submit this order and Annex A to IRRC and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.

(d) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.

(e) This order shall take effect immediately.

DAVID E. HESS,
Chairperson

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 31 Pa.B. 4503 (August 11, 2001).)

Fiscal Note: Fiscal Note 7-354 remains valid for the final adoption of the subject regulations.

Annex A

**TITLE 25. ENVIRONMENTAL PROTECTION
PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION**

Subpart D. ENVIRONMENTAL HEALTH AND SAFETY

ARTICLE VII. HAZARDOUS WASTE MANAGEMENT

CHAPTER 260a. HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

Subchapter B. DEFINITIONS

§ 260a.10. Definitions.

A term defined in this section replaces the definition of the term in 40 CFR 260.10, or, in situations for which no term exists in 40 CFR 260.10, the term shall be defined in accordance with this section. The substitution of terms in § 260a.3 (relating to terminology and citations related to Federal regulations) does not apply to the incorporated definition of "EPA region," "State," "United States," "Administrator" and "Regional Administrator."

Act—The Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003).

Disposal—The incineration, deposition, injection, dumping, spilling, leaking or placing of solid waste into or on the land or water in a manner that the solid waste or a constituent of the solid waste enters the environment, is emitted into the air or is discharged to the waters of this Commonwealth.

Existing tank system or existing component—The Federal definition for "existing tank system or existing component" in 40 CFR 260.10 is incorporated by reference except that the date referenced is January 16, 1993, instead of July 14, 1986.

Facility—The land, structures and other appurtenances or improvements where municipal or residual waste disposal or processing is permitted or takes place, or where hazardous waste is treated, stored or disposed.

Fund—The Host Municipalities Fund.

Hazardous Sites Cleanup Act—The Hazardous Sites Cleanup Act (35 P. S. §§ 6020.101—6020.1305).

Hazardous Sites Cleanup Fund—The fund established by section 901 of the Hazardous Sites Cleanup Act (35 P. S. § 6020.901).

Host municipality—A municipality, other than a county, where a qualifying facility is located, either in whole or in part, within its established corporate boundaries.

Management or hazardous waste management—The entire process, or a part thereof, of storage, collection, transportation, processing, treatment and disposal of solid wastes by a person engaging in the process. The term "hazardous waste management" refers to management of hazardous waste.

New hazardous waste management facility or new facility—The Federal definition for "new hazardous waste management facility or new facility" in 40 CFR 260.10 is incorporated by reference except that the date referenced is November 19, 1980, instead of October 21, 1976.

New tank system or new tank component—The Federal definition for “new tank system or new tank component” in 40 CFR 260.10 is incorporated by reference except that the date referenced is January 16, 1993, instead of July 14, 1986.

Pennsylvania hazardous waste facilities plan—A plan required by sections 104(14) and 105(f) of the act (35 P. S. §§ 6018.104(14) and 6018.105(f)) and adopted by the EQB which identifies current and future hazardous waste treatment and disposal facilities necessary for the proper management of hazardous waste in this Commonwealth.

Person—An individual, partnership, corporation, association, institution, cooperative enterprise, municipal authority, Federal government or agency, State institution and agency (including, but not limited to, the Department of General Services and the State Public School Buildings Authority), or other legal entity which is recognized by law as the subject of rights and duties. In any provision of the act prescribing a fine, imprisonment or penalty, or a combination of the foregoing, the term includes the officers and directors of a corporation or other legal entity having officers and directors.

RCRA—The Federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C.A. §§ 6901—6986).

Registered professional engineer or professional engineer—An engineer registered to practice engineering in this Commonwealth.

Registered professional geologist or professional geologist—A geologist registered to practice geology in this Commonwealth.

Responsible official—For corporations, a corporate officer; for limited partnerships, a general partner; for all other partnerships, a partner; for a sole proprietorship, the proprietor; for a municipal, state or Federal authority or agency, an executive officer or ranking elected official responsible for compliance of the hazardous waste activities and facilities of the authority or agency with all applicable rules and regulations.

Source reduction—The reduction or elimination of the quantity or toxicity of hazardous waste generated. Source reduction may be achieved through changes within the production process, including process modifications, feedstock substitutions, improvements in feedstock purity, shipping and packing modifications, housekeeping and management practices, increases in the efficiency of machinery and recycling within a process. The term does not include dewatering, compaction, reclamation, treatment, or the use or reuse of waste.

State manifest document number—The state abbreviation, the letter and the unique number assigned to the manifest, usually preprinted on the form, for recording and reporting purposes.

Storage—The containment of a waste on a temporary basis that does not constitute disposal of the waste. It will be presumed that the containment of waste in excess of 1 year constitutes disposal. This presumption can be overcome by clear and convincing evidence to the contrary.

Transportation—The offsite removal of solid waste at any time after generation.

CHAPTER 269a. SITING

Subchapter A. SITING HAZARDOUS WASTE TREATMENT AND DISPOSAL FACILITIES

GENERAL PROVISIONS

§ 269a.1. Definitions.

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

Active water supply—A water supply in use prior to both the receipt of a permit application and the establishment of a public participation program for a hazardous waste management facility.

Facility site—All contiguous land owned or under the control of an owner or operator of a hazardous waste facility and identified in a permit or permit application.

Qualifying facility—Is one of the following:

(i) A new commercial hazardous waste treatment or disposal facility, which did not exist as a solid waste or recycling facility prior to December 18, 1988, that:

(A) Has been issued a written permit after December 18, 1988.

(B) Fulfills the hazardous waste treatment or disposal capacity needs identified in the Pennsylvania hazardous waste facilities plan.

(C) Accepts hazardous waste under the conditions of the permit.

(D) Did not operate under 40 CFR Part 270 Subpart G (relating to interim status), as incorporated by reference in § 270a.1 (relating to incorporation by reference, scope and applicability), prior to the issuance of the written permit.

(ii) An existing permitted commercial hazardous waste treatment or disposal facility which was permitted before December 18, 1988, that:

(A) Has been issued a written permit modification to expand the facility after December 18, 1988.

(B) Fulfills the hazardous waste treatment or disposal capacity needs identified in the hazardous waste facilities plan.

(C) Accepts a larger volume of hazardous waste than was authorized in the permit prior to modification to expand the facility.

Wetland—An area inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, including swamps, marshes, bogs and similar areas. The term includes, but is not limited to, wetland areas listed in the State Water Plan, the United States Forest Service Wetlands Inventory of Pennsylvania, the Pennsylvania Coastal Zone Management Plan, the United States Fish and Wildlife National Wetland Inventory and wetland areas designated by a river basin commission.

(b) All other words and terms not defined in this subchapter have the meanings ascribed to them in § 260a.10 (relating to definitions).

Subchapter C. HOST MUNICIPALITY FUND ALLOCATION

ALLOCATION

§ 269a.221. Allocation of the Fund.

(a) The Department will identify qualifying facilities at the end of each calendar year. A municipality will become

eligible for payment in the first calendar year that a qualifying facility is permitted and operating. Host municipalities are not required to submit an application or request to be eligible.

(b) A host municipality shall be eligible for a one time payment from the Fund if a qualifying facility is identified by the Department in whole, or in part, within the host municipality's corporate boundaries, and moneys remain in the Fund after requests for reimbursement under section 305(d)(1) of the act (35 P. S. § 6020.305(d)(1)) have been satisfied for the calendar year.

(c) When only one qualifying facility is identified, the host municipality shall receive the balance of the fund for that year, subject to subsection (b).

(d) When more than one qualifying facility is identified, the Department will allocate the available moneys using the following criteria:

(1) The toxicity, mobility and other characteristics of the hazardous waste.

(2) The proximity of the facility to persons or natural resources which would be endangered by the escape of the hazardous waste from the facility.

(3) The total weight or volume of hazardous waste, whichever the Department determines is most readily calculated and most appropriate, treated or disposed of annually at the facility shall be calculated as a percentage of the total amount of hazardous waste treated or disposed of annually within this Commonwealth.

(4) The total weight or volume of hazardous waste, whichever the Department determines is most readily calculated and most appropriate, generated in this Commonwealth, shall be calculated as a percentage of the hazardous waste treated or disposed of annually at the facility.

(5) The Department may require executed contracts or the facility's first year of manifest data from the owner or operator to determine the information required by this section.

(6) If the total facility is not designated as needed by the Pennsylvania Hazardous Waste Facilities Plan, the percentage of the facility meeting the needs of the Pennsylvania Hazardous Waste Facilities Plan will be estimated by the Department.

(7) Numerical values shall be derived based on the factors in paragraphs (1)—(4). Those values shall be added together to obtain a score for each qualifying facility.

(8) The scores will then be compared and a pro rata share of the available Fund moneys will be allocated to each host municipality based on these scores.

(9) If a qualifying facility is located in more than one host municipality, the allocation for that facility shall be distributed among the municipalities based on the percentage of the permitted facility within each municipality.

[Pa.B. Doc. No. 01-1637. Filed for public inspection September 7, 2001, 9:00 a.m.]

Title 31—INSURANCE

INSURANCE DEPARTMENT

[31 PA. CODE CH. 67b]

Assigned Risk Plan—Mandatory Offer to Write Nonsurcharged Private Passenger Nonfleet Risk

The Insurance Department (Department) hereby adds Chapter 67b (relating to mandatory offer to write nonsurcharged private passenger nonfleet risks) to read as set forth in Annex A.

Statutory Authority

These final-omitted regulations are adopted under 75 Pa.C.S. § 1741 (relating to establishment) and sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412).

Purpose

Chapter 67b is being promulgated to establish the terms and conditions under which the Pennsylvania Assigned Risk Plan (Plan) must give notice to insureds in the Plan that they are eligible for a mandatory offer of coverage in the voluntary market from their assigned carrier. Formerly, this notice was offered under Assigned Risk Plan Rule 12 of the current Assigned Risk Plan Manual, Rule 14A in previous Assigned Risk Plan Manuals, otherwise known as the take-out rule. The take-out rule has been in effect for over 20 years. On May 22, 2001, the Commonwealth Court held in *Professional Insurance Agents Association, et al. v. Koken*, docket number 714 M.D. 1999, that the take-out rule was invalid without authorizing regulations by the Department. The purpose of these final-omitted regulations is to promulgate the take-out rule as a regulation in compliance with the order of the Commonwealth Court.

Notice of proposed rulemaking is omitted under section 204(3) of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204(3)), known as the Commonwealth Documents Law (CDL), which provides that notice of proposed rulemaking may be omitted when the agency, for good cause, finds that the notice procedures found in sections 201 and 202 of the CDL (45 P. S. §§ 1201 and 1202) are impracticable, unnecessary or contrary to the public interest. The Department believes that the notice procedures are impracticable and contrary to the public interest because the Commonwealth Court's order places the status of take-out in this Commonwealth into doubt. Consumers who would otherwise have been eligible to exit the Plan under the take-out rule will no longer receive notice of their options to leave the Plan and assigned carriers will no longer be required to offer those consumers guaranteed voluntary market coverage. The Department believes that immediate emergency action is necessary to safeguard the interests of consumers eligible to exit the Plan under the take-out rule.

Affected Parties

The final-omitted regulations apply to the Plan and to all insurance companies who write motor vehicle insurance in this Commonwealth.

Fiscal Impact

State Government

There will be no increase in cost to the Department due to the adoption of Chapter 67b.

General Public

There will be no fiscal impact to the public.

Political Subdivisions

The final-omitted regulations will not impose additional costs on political subdivisions.

Private Sector

The final-omitted regulations will not impose additional costs on insurance companies doing the business of motor vehicle insurance in this Commonwealth.

Paperwork

The adoption of the final-omitted regulation will not impose additional paperwork on the Department or the insurance industry.

Effectiveness/Sunset Date

This final-omitted regulations become effective upon publication in the *Pennsylvania Bulletin*. No sunset date has been assigned.

Contact Person

Any questions regarding these final-omitted regulations should be directed to Peter J. Salvatore, Regulatory Coordinator, Special Projects Office, 1326 Strawberry Square, Harrisburg, PA 17120, (717) 787-4429. In addition, questions may be e-mailed to psalvatore@state.pa.us or faxed to (717) 772-1969.

Regulatory Review

Under section 5.1(c) of the Regulatory Review Act (71 P. S. § 745.5a(c)), on July 18, 2001, the Department submitted a copy of the final-omitted regulations to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Insurance and the Senate Committee on Banking and Insurance. 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 August 7, 2001, the final-omitted regulations were deemed approved by the Senate and House Committees. Under section 5.1(e) of the Regulatory Review Act, on August 9, 2001, IRRC met and approved the final-omitted regulation.

Findings

The Commissioner finds that:

(1) There is good cause to forego public notice of the intention to add Chapter 67b because the invalidation of the take-out rule by the Commonwealth Court's order in *Professional Insurance Agents Association, et al. v. Koken*, docket number 714 M.D. 1999, has placed the status of take-out into doubt, depriving consumers who would otherwise be eligible to exit the Plan of notice of their options and reducing those options by no longer requiring that consumers be offered voluntary market coverage by their assigned carriers. The Department believes that immediate emergency action is necessary to safeguard the interests of consumers eligible to exit the Plan under the take-out rule.

(2) The adoption of these final-omitted regulations in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statutes.

Order

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

(1) The regulations of the Department, 31 Pa. Code, are amended by adding §§ 67b.1—67b.7, to read as set forth in Annex A.

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

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

(4) The final-omitted regulations adopted by this order shall take effect upon final publication in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,
Insurance Commissioner

Fiscal Note: 11-207. No fiscal impact; (8) recommends adoption.

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 31 Pa.B. 4705 (August 25, 2001).)

Annex A**TITLE 31. INSURANCE****PART II. AUTOMOBILE INSURANCE****CHAPTER 67b. MANDATORY OFFER TO WRITE
NONSURCHARGED PRIVATE PASSENGER
NONFLEET RISKS**

Sec.	
67b.1.	Definitions.
67b.2.	Eligibility.
67b.3.	Take-out notice.
67b.4.	Notification.
67b.5.	Company obligations.
67b.6.	Right of insured to reapply to Plan.
67b.7.	Failure to comply.

§ 67b.1. Definitions.

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

Assigned Risk Plan—As defined in section 7 of the Motor Vehicle Financial Responsibility Law (75 Pa.C.S. § 1702).

Commissioner—The Insurance Commissioner of the Commonwealth.

Department—The Insurance Department of the Commonwealth.

Governing committee—The governing body that administers the Plan.

Nonfleet—Four or fewer motor vehicles of any type.

Plan—Assigned Risk Plan.

Producer—An agent or broker, certified or licensed, by the Department to conduct business and certified by the Plan.

Producer of record—The agent or broker, certified or licensed, by the Department to conduct business, certified by the Plan and whose signature appears on the application for insurance.

Risk—Refers to private passenger nonfleet vehicles.

Take-out—An offer from the assigned company to write voluntary market coverage for a private passenger nonfleet automobile risk insured by the Plan.

Take-out notice—A notice from the assigned company offering voluntary market coverage to a private passenger nonfleet automobile risk insured by the Plan.

§ 67b.2. Eligibility.

A private passenger nonfleet automobile risk is eligible for take-out if during the 3 successive years prior to the expiration of the policy, the named insured and any other person who usually operates the automobile meet the following requirements:

(1) Have been licensed to operate an automobile for at least 2 years.

(2) Have not been involved in accidents or convictions for which points are required to be assessed in accordance with the rules of the Plan.

§ 67b.3. Take-out notice.

(a) The assigned company shall mail a take-out notice to all eligible private passenger nonfleet automobile risks.

(b) The take-out notice must offer to write the same coverages afforded by the Plan policy the assigned company is offering to replace for 1 year.

(c) An insured accepting take-out from the assigned company is not required to select the kinds and amounts of coverage specified in the take-out notice, but may select other kinds and amounts. However, the kinds and amounts of coverage selected by the insured shall be sufficient to maintain financial responsibility under 75 Pa.C.S. § 1702 (relating to definitions).

(d) The take-out notice shall inform the insured that acceptance of take-out is not mandatory, and that the insured may shop for coverage in the voluntary market or remain in the Plan under § 67b.6 (relating to right of insured to reapply to Plan).

§ 67b.4. Notification.

The assigned company shall mail a take-out notice to each insured eligible for take-out and the producer of record at least 45 days, but no more than 60 days, prior to the expiration of the Plan policy to be replaced. The take-out notice shall contain a provisional premium quotation for the voluntary market coverage being offered. If the assigned company complies with this section and the insured accepts take-out, the Plan shall give credit to the assigned company, at the expiration date of the Plan policy, for writing a voluntary market policy for risk previously insured by the Plan.

§ 67b.5. Company obligations.

(a) If the insured does not accept take-out and obtains replacement coverage in the voluntary market from another company, the assigned company shall have no further obligation to the insured or the producer of record, except that the assigned company shall issue a notice of termination of the Plan policy which is required by the rules of the Plan.

(b) If the insured accepts take-out, the assigned company shall be required to issue voluntary market coverage for 1 year.

(c) Thereafter, the company issuing the policy shall be obligated to renew coverage from year to year, unless the company is permitted to nonrenew the coverage under the act of June 17, 1998 (P.L. 484, No. 68) (40 P.S. §§ 991.2001—991.2013).

§ 67b.6. Right of insured to reapply to Plan.

This chapter will not render the insured ineligible for coverage in the Plan. The insured may, at the insured's

option, continue the insured's policy with the assigned company as a Plan risk or, if the 3-year assignment period has expired, the insured may reapply to the Plan for assignment to another company.

§ 67b.7. Failure to comply.

If the governing committee finds that a company, without good cause, is not complying with this chapter, it shall notify the Commissioner.

[Pa.B. Doc. No. 01-1638. Filed for public inspection September 7, 2001, 9:00 a.m.]

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 93]

Registration and Numbering of Boats

The Fish and Boat Commission (Commission) by this order amends Chapter 93 (relating to boat registration and numbering). The Commission is publishing this amendment under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The amendment relates to boat registration issuing agents.

A. Effective Date

The amendment will go into effect upon publication of this order in the *Pennsylvania Bulletin*.

B. Contact Person

For further information on the amendment, contact Laurie E. Shepler, Assistant Counsel, (717) 705-7815, P. O. Box 67000, Harrisburg, PA 17106-7000. This final-form rulemaking is available electronically through the Commission's website (<http://www.fish.state.pa.us>).

C. Statutory Authority

The amendment is published under the statutory authority of section 5304(d.1) of the code (relating to issuing agents, rules and regulations).

D. Purpose and Background

The amendment is designed to update, modify and improve the Commission's regulations pertaining to boat registration issuing agents. The specific purpose of the amendment is described in more detail under the summary of changes.

E. Summary of Changes

The Commission issues a *Handbook for Boat Registration Issuing Agents* that is distributed at the beginning of each calendar year. This handbook details procedures to be followed in the performance of an agency's responsibilities and is based on the code, the Commission's regulations and experience gained from registering boats over the years. The handbook also contains operational suggestions and highlights penalties that can be imposed for noncompliance with the code and the regulations. Section 93.13 (relating to issuing agents) previously addressed certain aspects of an issuing agency, including eligibility, minimum sales requirements and the treatment of nonpublic boat registration information. However, a considerable portion of the Commission's requirements for issuing agents as detailed in the handbook had not been adopted as regulations.

To update and clarify the requirements for issuing agents that are regulatory in nature, the Commission

adopted new boat registration issuing agent regulations as proposed. The amendment to § 93.13 addresses the establishment of a nonrefundable \$100 fee for new issuing agents; training requirements for new and existing agents; requirements for the minimum number of registrations issued; recordkeeping and operational requirements; reporting requirements; and provisions for the recall of agencies. Except for the fee and training requirements, most of these provisions mirror those in guidelines that have been in effect for several years. Similar regulations adopted by the Commission at the January 1997 meeting regarding fishing license issuing agents have achieved the intended objectives.

F. Paperwork

The amendment will slightly increase paperwork in terms of creating and reproducing training materials. The amendment will create few new paperwork requirements because most of the amendment mirrors guidelines already in place. To the extent that there are any new reporting requirements, the increase in paperwork will be minimal.

G. Fiscal Impact

The amendment will have a modest fiscal impact on the Commonwealth in that new and existing agents will be required to attend training offered by the Commission. The Commission expects to incur an increase in program costs associated with the publication and reproduction of training materials and with employee travel to locations outside the Harrisburg area. The amendment generally will not have an adverse fiscal impact on the Commonwealth's political subdivisions, except for county treasurers who serve as issuing agents. As described previously, the amendment will impose a one-time, nonrefundable fee of \$100 on new issuing agents only. The Commission anticipates that it will receive applications from less than 30 new issuing agents each year. New and existing agents also will incur costs associated with traveling to attend mandatory training. Although county treasurers will incur travel costs, section 5304(d.1) of the code exempts them from paying any administrative fee established by the Commission. Costs incurred by county treasurers therefore will be nominal. The amendment will impose no new costs on the general public.

H. Public Involvement

A notice of proposed rulemaking was published at 31 Pa.B. 1377 (March 10, 2001). In addition, Commission staff sent copies of the proposal to current boat registration issuing agents for their comments and suggestions.

The Commission received four public comments and one question concerning the proposed amendment. All four comments expressed concern over the provision that requires agents to issue at least 25 temporary boat registrations during the calendar year in order to maintain their agency. This is not a new requirement, however. Moreover, the prior regulations and the amendment

to § 93.13 both provide that if the Executive Director determines that a sufficient number of agents is not available in an area reasonably to address the needs of the boating public, the Executive Director may appoint additional agents from other interested individuals or reduce the number of temporary boat registrations that existing agents are required to issue during the year.

Two of the comments also expressed concern over the training requirements. One, who described his agency as a "sideline agency," is concerned that training will be offered only during the week when he is working at his full-time job. He suggested that the training be in written form and mailed to the agents, and the agents in turn could take a test and return it to the Commission by mail for evaluation. The other comment expressing concern over the training requirements requested that the Commission offer training in all areas of the State. Copies of all public comments have been provided to the Commissioners.

Findings

The Commission finds that:

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

(2) A public comment period was provided, and the comments that were received were considered.

(3) The adoption of the amendment of the Commission in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statutes.

Order

The Commission, acting under the authorizing statutes, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 93, are amended by amending § 93.13 to read as set forth in 31 Pa.B. 1377.

(b) The Executive Director will submit this order and 31 Pa.B. 1377 to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director shall certify this order and 31 Pa.B. 1377 and deposit them with the Legislative Reference Bureau as required by law.

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

PETER A. COLANGELO,
Executive Director

Fiscal Note: 48A-112 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 01-1639. Filed for public inspection September 7, 2001, 9:00 a.m.]