

# PROPOSED RULEMAKING

## ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 207]

### Noncoal Underground Mines and Other Excavations

The Environmental Quality Board (Board) proposes to amend Chapter 207 (relating to noncoal mines). The proposed amendments will delete the current regulations addressing the use of explosives at noncoal mines and add regulations addressing safety at underground noncoal mines and mined-out underground noncoal mines housing other businesses. This proposal was adopted by the Board at its meeting of October 16, 2001.

#### A. *Effective Date*

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

#### B. *Contact Persons*

For further information contact Paul Hummel, Chief, Anthracite and Industrial Minerals Mine Safety Division, Bureau of Deep Mine Safety, 5 West Laurel Blvd., Pottsville, PA 17901, (570) 621-3139; or Marc A. Roda, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Information regarding submitting comments on this proposal appears in Section I of this Preamble. Persons with a disability may use the AT&T Relay service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposal is available electronically through the Department of Environmental Protection's (Department) website (<http://www.dep.state.pa.us>).

#### C. *Statutory Authority*

The proposed rulemaking is being made under the authority of sections 2(f) and 12 of the act of May 18, 1937 (P. L. 654, No. 174) (43 P. S. §§ 25-2(f) and 25-12) (act), and Reorganization Plan No. 2 of 1975 (71 P. S. § 751-22). Section 2(f) of the act requires inter alia all pits, quarries and mines other than coal mines to be operated and conducted to provide adequate protection to workers. This proposed rulemaking is also authorized by sections 1917-A and 1920-A(b) of The Administrative Code of 1929 (71 P. S. §§ 510-17 and 510-20(b)), which authorize the Board to adopt regulations to prevent the occurrence of a nuisance and to formulate, adopt and promulgate regulations necessary for the Department to perform its work.

#### D. *Background and Purpose*

The purpose of this proposed rulemaking is to revise Chapter 207 by deleting and reserving the existing regulations and by adding regulations addressing safety at noncoal underground mines. The provisions to be deleted are outdated regulations addressing the use of explosives at noncoal mines. The use of explosives at noncoal surface mines is completely addressed by regulations found in Chapters 77 and 211 (relating to noncoal mining; and storage, handling and use of explosives). The proposed amendments address safety in underground noncoal mines (including the use of explosives) and in mined-out underground noncoal mines used to house

other businesses. The proposed amendments will modernize, clarify and recodify regulations within the Department's authority to enforce.

Since 1975, the Department has regulated noncoal mines and mined-out noncoal underground mines used for other businesses to ensure the safety of persons at these facilities. The authority and duty to maintain these programs is established by section 2(f) of the act (concerning safety at pits, quarries, underground mines other than coal mines, trenches and similar operations). To carry out these programs, the Department has been using the regulations found in 34 Pa. Code Chapter 33 (relating to mines and other excavations) promulgated by the Department of Labor and Industry (L&I). L&I was the agency responsible for enforcing section 2(f) of the act prior to 1975.

The proposed amendments do not recodify the L&I regulations addressing safety in active noncoal underground mines. The L&I regulations are out-of-date and redundant in light of more recent Federal regulations. As an alternative, the Board proposes to incorporate by reference the United States Department of Labor, Mine Safety and Health Administration's (MSHA) regulations addressing safety in metal and nonmetal underground mines. Currently, noncoal underground mines in this Commonwealth must comply with both the MSHA and the Department's regulations. By using the MSHA regulations, rather than maintaining two sets of standards, safety at noncoal underground mines will be enhanced and there will be a reduction in the operator's regulatory obligations. The MSHA regulations provide a fairly complete regulatory scheme. However, there are three issues not addressed by the MSHA regulations, which are included in this proposed rulemaking.

First, a person working as a mine foreman will be responsible for ensuring that the day-to-day operation of the mine is performed in a manner which protects worker safety and complies with the regulations. Also, the foreman must demonstrate the competency to meet this obligation by obtaining a certificate of qualification from the Department. Making the foreman responsible for safety and compliance with the regulations recodifies requirements in the L&I regulations. Requiring the mine foreman to obtain a certificate of qualification merely codifies current practice. Similar requirements are applicable to foremen for underground coal mines.

Second, the proposed amendments will continue the current requirement that surface explosive storage magazines must be licensed in accordance with the requirements of Chapter 211. The risks associated with storing explosives are significant enough to warrant retaining this minimal licensing requirement.

Finally, due to the ultra-hazardous nature of storing, using and handling explosives, the proposed amendments will retain the requirement that the person responsible for the blasting activity be licensed by the Department.

The proposed amendments will recodify the L&I regulations addressing safety in mined-out noncoal underground mines used to house an ongoing business. Most of the changes from the L&I regulations are for clarity and simplicity, not for the purpose of changing substantive standards.

The proposed amendments do not separately address safety while constructing storage caverns. In the Depart-

ment's experience, safety for persons either constructing or working in storage caverns is better addressed by the proposed amendments addressing noncoal underground mines and mined-out noncoal underground mines used to house other businesses.

This proposed rulemaking will affect 13 underground noncoal mining operations employing approximately 350 persons and 17 mined-out underground noncoal mines housing other businesses that employ approximately 700 persons.

The Department discussed the proposed amendments with the underground industrial mineral mining roundtable. This group, which is open to representatives from the underground industrial mineral mining industry, reviewed in detail the proposed amendments for underground noncoal mines. This group is in favor of incorporating by reference the MSHA regulations rather than promulgating a separate, potentially conflicting, set of requirements.

#### E. Summary of Regulatory Requirements

##### 1. Subchapter A (relating to general).

Subchapter A sets forth the chapter's general requirements. Section 207.101 (relating to scope) defines the applicability of the chapter to underground noncoal mines and mined-out underground noncoal mines used to house other businesses. Section 207.102 (relating to definitions) defines terms applicable to more than one subchapter. These terms are "developed facility," "mined-out," "noncoal underground mine" and "person." A developed facility is a portion of a mined-out noncoal underground mine being or to be used as part of a business. This proposed definition combines the original L&I definitions for "developed facility" and "undeveloped facility." The proposed amendment has been made for simplicity and clarity. "Mined-out" is still defined as those portions of an underground noncoal mine where mining is completed for any reason. A noncoal underground mine is defined broadly to include both the underground workings and the related surface support facilities. This definition is based on the MSHA definition for an underground mine. The MSHA definition was used to ensure that the regulations applicable to noncoal underground mines will have the same scope as the MSHA regulations for metal and nonmetal mines. Finally, "person" is defined broadly to include natural persons and legal entities.

Section 207.103 (relating to responsible party) makes the entity that owns or operates the facility responsible for ensuring that the facility is in compliance with the regulations. This is a change from the L&I regulations (see 34 Pa. Code § 33.162(b) (relating to scope)) which also makes the employee responsible for complying with the implementing regulations.

Finally the Department's administrative enforcement authority is spelled out in § 207.104 (relating to enforcement). The Department has the authority to issue orders to ensure compliance with section 2(f) of the act, the authorizing legislation, as well as these implementing regulations. In addition, the Department can revoke any certificates of qualification or approvals issued under these implementing regulations. This regulation is authorized by and clarifies the Department's inherent authority to issue compliance orders to enforce section 2(f) of the act. See *Department of Environmental Resources v. Butler County Mushroom Farm*, 454 A.2d 1 (Pa. 1982).

##### 2. Subchapter B (relating to noncoal underground mines).

Subchapter B applies to noncoal underground mines in this Commonwealth. Section 207.202 (relating to definitions) defines MSHA as the United States Department of Labor, Mine Safety and Health Administration. Also, the L&I definition for "magazine" is retained. A magazine is a structure used for storing explosives.

Section 207.211(a) (relating to safety requirements) incorporates by reference the MSHA safety and health standards in 30 CFR Part 57 (relating to Safety and Health Standards—underground metal and nonmetal mines). Future changes to the MSHA regulations will be immediately incorporated by reference. Subsection (b) incorporates by reference mine-specific alternative safety or health standards accepted by MSHA. Subsection (c) requires the owner or operator of a noncoal underground mine to submit to the Department a copy of the materials submitted to MSHA. The Department will utilize the applicable MSHA policies and guidance materials to ensure that the Department's interpretation of these incorporated MSHA regulations is consistent with MSHA's interpretation.

Section 207.211(d) requires that surface explosives magazines at noncoal underground mines must be licensed in accordance with Chapter 211. This cross reference to the Department's blasting regulations is not a new requirement. The Department's blasting regulations have always required the licensing of surface explosives magazines, including surface magazines at coal and noncoal underground mines. In the Department's experience, the risks associated with storing explosives are significant enough to warrant retaining this minimal licensing requirement. The license will ensure that the explosives magazine is sited, constructed and maintained in accordance with the applicable regulations. This licensing requirement will not impose on noncoal mine operators' substantive requirements different from those established by the MSHA regulations. The MSHA regulations cross-reference the United States Department of the Treasury, Bureau of Alcohol, Tobacco and Fire Arms regulations for storing explosives. The Board has amended Chapter 211 to incorporate by reference the same Federal regulations. See 31 Pa.B. 3751 (July 14, 2001).

Section 207.212 (relating to employment of foreman) retains the L&I requirement that the mine operator shall employ a mine foreman who will be responsible for ensuring the safety of underground workers and for ensuring that the mining operation complies with the Commonwealth's mine safety laws and regulations. The proposed amendments will now require the mine foreman to possess a certificate of qualification from the Department. Sections 207.213—207.215 describe the duties of the foreman, the certificate of qualification application requirements and the standards for issuing certificates of qualification. To obtain the certificate of qualification, the applicant must demonstrate, by means of a written examination, the ability to ensure the safety of the underground employees. Under § 207.216 (relating to examining committee), this examination will be prepared and scored by a committee consisting of a mine foreman and a Department representative.

Requiring noncoal underground mines to employ a foreman who is responsible for the underground employees' safety, compliance with the mining laws and who must possess a certificate of qualification from the Department is consistent with requirements applicable to

coal underground mine foremen. See section 201 of the Pennsylvania Anthracite Coal Mine Act (52 P. S. § 70-201) and section 206 of the Pennsylvania Bituminous Coal Mine Act (52 P. S. § 701-206).

Requiring the mine foreman to possess a certificate of qualification codifies current practice. Noncoal underground mines employ a mine foreman who has the day-to-day responsibility for the underground mine's operation. A critical part of this responsibility is ensuring compliance with applicable State and Federal laws and regulations. As a service to the mining industry, the Department has maintained a voluntary program for certifying the competency of persons to be mine foremen. Noncoal underground mines employ as mine foremen persons possessing a Department certificate of qualification.

Finally, proposed § 207.217 (relating to blasting activity) retains the requirement that the storage, handling and use of explosives be supervised by a person licensed as a blaster by the Department. The use of explosives is an ultra-hazardous activity. Given the potential risk of injury to persons and damage to property, it is essential that the Department continues to ensure the competency of persons who are responsible for explosives.

### 3. Subchapter C (relating to mined-out areas).

This subchapter specifies the standards for protecting the health and safety of persons working in mined-out noncoal underground mines used to house other businesses. The following summary identifies those few instances where there is a substantive change from the L&I regulations.

Section 207.302 (relating to definitions) retains the L&I definitions for "outside air" and "pure air." Outside air is air from aboveground. Pure air is air containing at least 19.5% oxygen, no more than .5% carbon dioxide and no harmful levels of other gases or particulates.

Under § 207.303 (relating to approvals), persons are only allowed to work in portions of developed facilities approved by the Department. Also, the developed facility must be constructed and maintained in accordance with the requirements of this subchapter.

Sections 207.311—207.319 are performance specifications. Section 207.311 (relating to roof areas) requires that normal roof control measures be employed in a developed facility. Section 207.312 (relating to lighting) requires the developed facility to be equipped with permanent and emergency lighting systems. In determining the adequacy of emergency and permanent lighting systems, the Department will utilize the analogous MSHA standards for lighting systems in underground metal and nonmetal mines. Section 207.313 (relating to entrances and exits) requires each area of the developed facility to be connected to the surface by two passageways. Section 207.314 (relating to ventilation) requires the developed facility to be ventilated with an adequate quantity of outside air. At a minimum, an adequate amount of pure air is 20 cubic feet per person per second. If necessary, mechanical ventilation methods (that is, fans) shall be used. These mechanical means of ventilation must be approved by the Department. Section 207.315 (relating to closing underground sections) requires that noncombustible material shall be used to permanently seal off or enclose any portion of a developed facility.

Section 207.316 (relating to inspections) specifies the owner's/operator's obligation to inspect a developed facility. Ceilings, roof supports, walls, entrances and doorways shall be inspected monthly. Emergency and personal

lighting systems shall be inspected biweekly. The ventilation system shall be inspected weekly. All discovered defects shall be corrected. Section 207.317 (relating to record of inspection) requires a log recording the results of the inspection and subsequent corrective actions. Orders issued by the Department to correct a condition shall be added to the log.

Section 207.318 (relating to storage of flammable liquids) prohibits storing more than 5 gallons of flammable liquid in a developed facility, unless otherwise approved by the Department. The flammable liquid is to be stored in a safety container. It is the Board's opinion that safety containers approved by MSHA for storing flammable liquids in underground metal and nonmetal mines are acceptable under this section. Unlike the L&I regulations, the Department is expressly authorized to allow flammable liquids to be stored in something other than a safety container. The proposed regulation addresses those storage caverns used to store vehicles. In this instance, gasoline is left in the vehicles' tanks.

Section 207.319 (relating to check-in/check-out system) requires the owner/operator of a developed facility to maintain a check-in/check-out system for tracking who is in the developed facility. The L&I regulations did not require a check-in/check-out system. Nonetheless, this is not a new requirement. The proposed regulation merely codifies what the Department established through case-by-case adjudication in 1980. See *Butler County Mushroom Farms, Id.* In *Butler County Mushroom Farms*, the Supreme Court upheld the Department's authority under section 2(f) of the act to require mushroom farms, which are located in mined-out noncoal underground mines, to establish a check-in/check-out system.

### F. Benefits, Costs and Compliance

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

#### *Benefits*

The benefits, albeit unquantifiable, are those that result from having regulations modernized, clarified and simplified. For persons working at these facilities, the benefit will be fewer accidents and injuries. This will result because the safety standards contained in the regulations will be more effectively implemented. The greatest impact will be on the 350 workers at underground noncoal mines where the proposed regulations will eliminate duplicative and out-of-date requirements. For the regulated community, the benefit will be greater certainty in implementing the regulations. The operators will no longer be confronted with having to implement two different sets of standards.

#### *Compliance Costs*

The compliance costs for the underground noncoal mine operators should be reduced. Replacing the L&I regulations with the MSHA regulations eliminates duplicative reporting requirements. Under this proposal the operator only has to submit to the Department a copy of the materials required by MSHA. There will be no change in the compliance costs faced by mined-out underground mines housing other businesses. The proposal does not affect either substantive or reporting requirements.

#### *Compliance Assistance*

The Department is not planning to initiate a new compliance assistance program to assist with the implementation of this proposal. This proposal is not imposing new requirements; they either incorporate by reference

existing Federal requirements or recodifies existing L&I requirements. The Department will continue its practice of meeting with owner/operators of noncoal underground mines and developed facilities to ensure compliance with these regulations.

*Paperwork Requirements*

The paperwork requirements applicable to the noncoal underground mining industry will be reduced. The duplicative paperwork requirements established by the L&I regulations are being eliminated. The operator will only have to maintain the MSHA record or submit to the Department a copy of the materials submitted to MSHA. For mined-out noncoal underground mines housing other businesses, there is no change in the existing minimal paperwork requirements.

G. *Sunset Review*

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

H. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on November 27, 2001, the Department submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the Senate and House Environmental Resources and Energy Committees. In addition to submitting the proposed rulemaking, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

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

I. *Public Comments*

*Written Comments*—Interested persons are invited to submit comments, suggestions or objections regarding the proposed rulemaking to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 15th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by February 6, 2002. Interested persons may also submit a summary of the comments to the Board. The summary may not exceed one page in length and must also be received by February 6, 2002. The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final-form regulations will be considered.

*Electronic Comments*—Comments may be submitted electronically to the Board at RegComments@state.pa.us and must also be received by the Board by February 6, 2002. A subject heading of the proposal and a return name and address must be included in each transmission.

DAVID E. HESS,  
Chairperson

**Fiscal Note:** 7-357. No fiscal impact; (8) recommends adoption.

*Editor's Note:* As part of this proposal, the Board is proposing to delete the existing text of Chapter 207, which currently appears at *Pennsylvania Code* pages 207-1 through 207-12, serial numbers (234645) to (234656). The following text is new and is printed in regular type to enhance readability.)

**Annex A**

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

**Subpart D. ENVIRONMENTAL HEALTH AND SAFETY**

**ARTICLE IV. OCCUPATIONAL HEALTH AND SAFETY**

**CHAPTER 207. NONCOAL UNDERGROUND MINES**

**Subch.**

- A. GENERAL
- B. NONCOAL UNDERGROUND MINES
- C. MINED-OUT AREAS

**Subchapter A. GENERAL**

- |                |                    |
|----------------|--------------------|
| Sec.           |                    |
| 207.1.         | (Reserved).        |
| 207.2.         | (Reserved).        |
| 207.11—207.22. | (Reserved).        |
| 207.31—207.46. | (Reserved).        |
| 207.101.       | Scope.             |
| 207.102.       | Definitions.       |
| 207.103.       | Responsible party. |
| 207.104.       | Enforcement.       |

**§ 207.1. (Reserved).**

**§ 207.2. (Reserved).**

**§§ 207.11—207.22. (Reserved).**

**§§ 207.31—207.46. (Reserved).**

**§ 207.101. Scope.**

This chapter applies to underground noncoal mines and mined-out underground noncoal mines used to house other businesses in this Commonwealth. The purpose of this chapter is for the protection of life, the promotion of health and safety and the prevention of accidents.

**§ 207.102. Definitions.**

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

*Developed facility*—The portion of a mined-out underground noncoal mine developed or being developed for storage, manufacturing or other activities requiring a person to enter the mined-out area. The term includes all roads and means of entering and leaving the mined-out area of the underground noncoal mine.

*Mined-out*—A portion of the noncoal underground mine where no further mining is planned.

*Noncoal underground mine—*

(i) Lands, excavations, underground passageways, shafts, slopes, tunnels and workings, structures, facilities, equipment, machines, tools, or other property including impoundments, retention dams, and tailings ponds, on the surface or underground, used in, or to be used in, or resulting from, the work of extracting metals or minerals other than coal from their natural deposits in nonliquid form, or if in liquid form, with workers underground, or used in, or to be used in, the milling of the metals or minerals, or the work of preparing metals or minerals other than coal, and includes custom preparation facilities.

(ii) Private ways and roads appurtenant to the areas set forth in subparagraph (i).

*Person*—A natural person, partnership, association or corporation or any agency, instrumentality or entity of Federal or State government. When used in any clause prescribing and imposing a penalty, or imposing a fine or imprisonment, or both, the term "person" does not exclude the members of an association and the directors, officers or agents of a corporation.

**§ 207.103. Responsible party.**

The person who is the owner or operator of a noncoal underground mine or developed facility shall ensure that the noncoal underground mine or developed facility is constructed and operated in accordance with this chapter. A subcontractor who conducts all or part of the operation shall be jointly and severally responsible with the owner or operator.

**§ 207.104. Enforcement.**

(a) The Department has the authority to issue orders necessary to ensure compliance with the requirements of section 2(f) of the act of May 18, 1937 (P. L. 654, No. 174) (43 P. S. § 25-2(f)), known as the General Safety Law, and this chapter. This authority includes orders:

- (1) Revoking, or suspending a certificate of qualification to be a foreman.
- (2) Ceasing or suspending the operation of a noncoal underground mine or developed facility.
- (3) Requiring the abatement of an unsafe condition or practice.

(b) Except for orders abating a condition that is an imminent hazard or ceasing, in whole or in part, the operation of a noncoal underground mine or developed facility due to the existence of an imminent hazard, the Department will not issue an order abating a condition or correcting a violation of this chapter until the owner or operator has had an opportunity to meet with the Department to discuss the matter and the owner or operator has had a reasonable opportunity to abate the condition or correct the violation.

**Subchapter B. NONCOAL UNDERGROUND MINES****GENERAL**

- Sec.  
207.201. Applicability.  
207.202. Definitions.

**PERFORMANCE STANDARDS**

- 207.211. Safety requirements.  
207.212. Employment of foreman.  
207.213. Duties of foreman.  
207.214. Certificate of qualification application requirements.  
207.215. Standards for issuing certificates of qualification.  
207.216. Examining committee.  
207.217. Blasting activity.

**GENERAL****§ 207.201. Applicability.**

This subchapter applies to the development, construction and operation of noncoal underground mines in this Commonwealth.

**§ 207.202. Definitions.**

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

*MSHA*—The United States Department of Labor, Mine Safety and Health Administration, its employees and its officers.

*Magazine*—A structure used for the storage of explosives.

**PERFORMANCE STANDARDS****§ 207.211. Safety requirements.**

(a) The provisions of 30 CFR Part 57 (relating to Safety and Health Standards—Underground Metal and Non-metal Mines) are incorporated herein by reference.

(b) Alternative safety and health standards for underground metal and nonmetal mines, established by MSHA under section 101(c) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C.A. § 811(c)) and 30 CFR Part 44 (relating to Rules of Practice for Petitions for Modification of Mandatory Safety Standards), are incorporated herein by reference.

(c) The provisions of 30 CFR Part 57 requiring the submission of a map, plan, notification, report, program description or other materials to MSHA are amended to require the same submission to the Department. A copy of any other material requested by MSHA under 30 CFR Part 57 shall be submitted to the Department.

(d) An owner or operator of a noncoal underground mine maintaining a magazine located on the surface shall comply with the magazine licensing requirements of Chapter 211 (relating to storage, handling and use of explosives).

**§ 207.212. Employment of foreman.**

The owner or operator of an underground noncoal mine shall employ a foreman who possesses the Department's certificate of qualification to be a foreman.

**§ 207.213. Duties of foreman.**

The foreman shall have full charge of the inside portions of the noncoal underground mine and the persons employed therein. The foreman's duty shall be to ensure compliance with the requirements of the Commonwealth's mine safety laws and the regulations promulgated thereunder, as well as to secure and promote the health and safety of persons employed in the noncoal underground mine.

**§ 207.214. Certificate of qualification application requirements.**

To be eligible to apply for a certificate of qualification, the individual shall:

- (1) Be at least 21 years of age.
- (2) Have at least 2 years of practical experience as a noncoal underground miner or have 1 year of practical experience as a noncoal underground miner and either possess a Bachelor of Science Degree in mining engineering, be a certified official under the Pennsylvania Anthracite Coal Mine Act (52 P. S. §§ 70-101—70-145) or the Pennsylvania Bituminous Coal Mine Act (52 P. S. §§ 701-

101—701-706) or possess an acceptable certificate of qualification issued by another state.

**§ 207.215. Standards for issuing certificates of qualification.**

(a) The Department will only issue certificates of qualification to be a foreman to applicants who have demonstrated the ability to ensure the safety of persons and the inside portions of a noncoal underground mine under their supervision. Applicants make this demonstration by correctly answering at least 80% of the Department's written examination covering applicable mine safety laws and regulations of the Commonwealth.

(b) The Department may refuse to issue to an applicant a certificate of qualification when the applicant has demonstrated an inability or unwillingness to comply with the mine safety laws and regulations of the Commonwealth or the mine safety laws or regulations administered by MSHA.

**§ 207.216. Examining committee.**

(a) The Department will appoint a committee consisting of a noncoal underground mine foreman and a representative of the Department to prepare the initial draft of the examination to be given to applicants for the mine foreman's certificate of qualification. A bank of questions will be developed by the committee. The Department will assemble the examination from this bank of questions.

(b) This committee shall review and score the results of the examinations given to applicants for the foreman's certificate of qualification. These results will be transmitted to the Department for issuance of the certificate.

**§ 207.217. Blasting activity.**

The storage, handling and use of explosives at a noncoal underground mine shall be under the supervision and control of a person licensed as a blaster under Chapter 210 (relating to use of explosives).

**Subchapter C. MINED-OUT AREAS**

**GENERAL PROVISIONS**

- Sec. 207.301. Applicability.
- 207.302. Definitions.
- 207.303. Approvals.

**SPECIFICATIONS**

- 207.311. Roof areas.
- 207.312. Lighting.
- 207.313. Entrances and exits.
- 207.314. Ventilation.
- 207.315. Closing underground sections.
- 207.316. Inspections.
- 207.317. Record of inspection.
- 207.318. Storage of flammable liquids.
- 207.319. Check in/check-out system.

**GENERAL PROVISIONS**

**§ 207.301. Applicability.**

This subchapter applies to the use of mined-out underground noncoal mines in this Commonwealth. The activities covered by this subchapter include storage, manufacturing or other activities requiring a person to enter the mined-out area.

**§ 207.302. Definitions.**

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

*Outside air*—Air moving through the mined-out passageways after entering them through the main or accessory portals by mechanical or natural forces.

*Pure air*—Air containing not less than 19.5% oxygen, not more than 0.5% carbon dioxide and no harmful quantities of other noxious or poisonous gases, dust, soot or particulates.

**§ 207.303. Approvals.**

A person may not operate a business in a mined-out area unless that mined-out area is part of a developed facility, which has been approved by the Department and is constructed and operated in accordance with this subchapter.

**SPECIFICATIONS**

**§ 207.311. Roof areas.**

The owner or operator of a developed facility shall ensure that the developed facility's roof shall be scaled, bolted or otherwise supported.

**§ 207.312. Lighting.**

(a) *Permanent.* The owner or operator of a developed facility shall ensure that a permanent lighting system is installed in the developed facility to provide adequate lighting for the activities to be conducted in the developed facility.

(b) *Emergency.* The owner or operator of a developed facility shall ensure that a person is not allowed to work in a developed facility unless either an emergency lighting system meeting the requirements of the Department has been installed in that area or each worker is provided with an approved personal lamp.

**§ 207.313. Entrances and exits.**

The owner or operator of a developed facility shall ensure that two separate passages, connecting each area of the developed facility to the surface, shall be provided for personnel use and shall be maintained in a safe, passable condition at all times.

**§ 207.314. Ventilation.**

(a) *General requirement.* The owner or operator of a developed facility shall ensure that an adequate supply of pure air is provided and maintained in the developed facility as provided in subsection (b). If the Department or the operator determines it is necessary to install mechanical means of ventilation, these mechanical means for providing pure air shall be approved by the Department before the mechanical ventilation system is operated.

(b) *Quantity of air.* A minimum of 20 cubic feet of outside air shall be supplied to every occupied or enclosed space in a developed area, per minute, per person present in that area.

**§ 207.315. Closing underground sections.**

If it becomes necessary to permanently close or enclose a section or portion of the developed facility, the owner or operator of the developed facility shall ensure that non-combustible material is used to permanently close or enclose that section or portion of the developed facility.

**§ 207.316. Inspections.**

The owner or operator of a developed facility shall ensure that inspections are made at the following times, and defective conditions that are discovered shall be corrected:

(1) *Monthly*. The ceiling, pier and walls shall be inspected monthly for new cracks. The entrances, shafts, slopes, drifts and roadways leading to them, and the doors or gates shall be inspected monthly to insure they are in safe, usable condition.

(2) *Biweekly*. Emergency lighting systems and approved personal lamps shall be tested biweekly to assure they are in operating condition. Charge, fluid, terminals and visual conditions of batteries shall be checked.

(3) *Weekly*. The ventilating system shall be inspected weekly to ensure that motors and controls are in operating condition.

**§ 207.317. Record of inspection.**

The owner or operator of the developed facility shall ensure that logs containing the findings of inspections and the repairs and corrective action taken are maintained and kept on file at the developed facility's office. These logs shall be available for inspection by the Department at any time during working hours. The log shall be dated and signed by a person designated by the owner or operator to be responsible for the day-to-day operation of the developed facility. Corrections or orders required by the Department representative shall be in writing and shall become a part of the log.

**§ 207.318. Storage of flammable liquids.**

(a) The owner or operator of the developed facility shall ensure that flammable liquids are stored in a safety container unless otherwise approved by the Department.

(b) The owner or operator of a developed facility shall ensure that flammable liquids in excess of 5 gallons are not stored in the developed facility unless otherwise approved by the Department.

**§ 207.319. Check in/check-out system.**

The owner or operator of the developed facility shall ensure that there is a check-in/check-out system, which will inform personnel on the surface of the mine as to who is currently in the developed facility.

[Pa.B. Doc. No. 01-2180. Filed for public inspection December 7, 2001, 9:00 a.m.]

[25 PA. CODE CH. 93]

**Stream Redesignations (Class A Wild Trout Waters)**

The Environmental Quality Board (Board) proposes to amend Chapter 93 (relating to water quality standards) to read as set forth in Annex A.

This order was adopted by the Board at its meeting of October 16, 2001.

**A. Effective Date**

These proposed amendments will be effective upon publication in the *Pennsylvania Bulletin* as a final-form rulemaking.

**B. Contact Persons**

For further information, contact Edward R. Brezina, Chief, Division of Water Quality Assessment and Standards, Bureau of Water Supply and Wastewater Management, 10th Floor, Rachel Carson State Office Building, P. O. Box 8467, 400 Market Street, Harrisburg, PA 17105-8467, (717) 787-9637; or Michelle Moses, Assistant Counsel, Bureau of Regulatory Counsel, 9th Floor, Rachel

Carson State Office Building, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposal is available electronically through the Department of Environmental Protection's (Department) website (<http://www.dep.state.pa.us>).

**C. Statutory and Regulatory Authority**

The proposed amendments are made under the authority of the following acts: sections 5(b)(1) and 402 of The Clean Streams Law (35 P. S. §§ 691.5(b)(1) and 691.402) and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20), which grant to the Board the authority to develop and adopt rules and regulations to implement the provisions of The Clean Streams Law. In addition, the Federal regulation in 40 CFR 131.32 (relating to Pennsylvania) sets forth certain requirements for portions of the Commonwealth's antidegradation program.

**D. Background of the Amendments**

The Commonwealth's Water Quality Standards, which are set forth in part in Chapter 93, implement sections 5 and 402 of The Clean Streams Law and section 303 of the Federal Clean Water Act (33 U.S.C.A. § 1313). Water quality standards are in-stream water quality goals that are implemented by imposing specific regulatory requirements (such as treatment requirements and effluent limits) on individual sources of pollution.

The Department considers candidates for High Quality (HQ) or Exceptional Value (EV) Waters designation in its ongoing review of water quality standards. In general, HQ and EV waters must be maintained at their existing quality. The Department may identify candidates during routine waterbody investigations. Requests for consideration may also be initiated by other agencies, such as the Fish and Boat Commission (FBC). In addition, organizations, businesses or individuals may submit a rulemaking petition to the Board.

These streams were evaluated in response to a submittal from the FBC under § 93.4b (relating to qualifying as High Quality or Exceptional Value waters). Section 93.4b(a)(2)(ii) is the Class A wild trout stream qualifier. It states that a surface water that has been designated a Class A wild trout stream by the FBC following public notice and comment qualifies for HQ designation. The FBC published notice and requested comments on the Class A designation of these streams at 29 Pa.B. 4624 (August 28, 1999) and 29 Pa.B. 4831 (September 11, 1999). The FBC Commissioners approved these waters on September 27, 1999, and this action was announced at 29 Pa.B. 6202 (December 4, 1999).

Department staff conducted an independent review of the trout biomass data in the fisheries management reports for these streams. This review was conducted to ensure that the Class A criteria were met.

Copies of the FBC fisheries management reports for these waterbodies are available from Edward R. Brezina whose address and telephone number are listed in Section B of this Preamble.

While preparing Annex A, the Department became aware of two streams that are not listed in Chapter 93. They are Fallentimber Run, a tributary to Clearfield Creek (Drainage List L) and Hungry Run, a tributary to Kishacoquillas Creek (Drainage List N). These streams have been included in Annex A as additions to the appropriate drainage list and have been given the same

use designation as the other listed tributaries in the reach into which they flow. In addition, an error was found in the listing of a tributary to Pohopoco Creek (Drainage List D). The drainage list indicated that Dot-ters Creek is a tributary to Pohopoco Creek, when it is actually a tributary to Middle Creek, which then flows into Pohopoco Creek. Annex A correctly lists Middle Creek as tributary to Pohopoco Creek.

#### E. *Benefits, Costs and Compliance*

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

1. *Benefits*—Overall, the citizens of this Commonwealth will benefit from these recommended changes because they will reflect the appropriate designated use and maintain the most appropriate degree of protection for each stream in accordance with the existing use of the stream.

2. *Compliance Costs*—Generally, the changes should have no fiscal impact on, or create additional compliance costs for, the Commonwealth or its political subdivisions. The streams are already protected at their existing use, and therefore the designated use changes will have no impact on treatment requirements. No costs will be imposed directly upon local governments by this recommendation. Political subdivisions that add a new sewage treatment plant or expand an existing plant in these basins may experience changes in costs as noted in the discussion of impacts on the private sector in this Preamble.

Persons conducting or proposing activities or projects that result in new or expanded discharges to streams must comply with the regulatory requirements relating to designated and existing uses. These persons could be adversely affected if they expand a discharge or add a new discharge point since they may need to provide a higher level of treatment to meet the designated and existing uses of the stream. These increased costs may take the form of higher engineering, construction or operating costs for wastewater treatment facilities. Treatment costs are site-specific and depend upon the size of the discharge in relation to the size of the stream and many other factors. It is therefore not possible to precisely predict the actual change in costs.

3. *Compliance Assistance Plan*—The proposed amendments have been developed as part of an established program that has been implemented by the Department since the early 1980s. The revisions are consistent with and based on existing Department regulations. The revisions extend additional protection to selected waterbodies that exhibit exceptional water quality and are consistent with antidegradation requirements established by the Federal Clean Water Act and The Clean Streams Law. Surface waters in this Commonwealth are afforded a minimum level of protection through compliance with the water quality standards, which prevent pollution and protect existing water uses.

The proposed amendments will be implemented through the National Pollutant Discharge Elimination System (NPDES) permitting program since the stream use designation is a major basis for determining allowable stream discharge effluent limitations. These permit conditions are established to assure water quality criteria are achieved and designated and existing uses are protected. New and expanded dischargers with water quality based effluent limitations are required to provide effluent treatment according to the water quality criteria associated with existing uses and revised designated water uses.

4. *Paperwork Requirements*—The proposed amendments should have no direct paperwork impact on the Commonwealth, local governments and political subdivisions or the private sector. These proposed amendments are based on existing Department regulations and simply mirror the existing use protection that is already in place for these streams. There may be some indirect paperwork requirements for new or expanding dischargers to streams upgraded to HQ. For example, NPDES general permits are not currently available for new or expanded discharges to these streams. Thus an individual permit, and its associated paperwork, would be required. Additionally, paperwork associated with demonstrating social and economic justification, and the nonfeasibility of nondischarge alternatives, may be required for new or expanded discharges to certain HQ Waters.

#### F. *Pollution Prevention*

The antidegradation program is a major pollution prevention tool because its objective is to prevent degradation by maintaining and protecting existing water quality and existing uses. Although the antidegradation program does not prohibit new or expanded wastewater discharges, nondischarge alternatives are encouraged, and required when environmentally sound and cost effective. Nondischarge alternatives, when implemented, remove impacts to surface water and reduce the overall level of pollution to the environment by remediation of the effluent through the soil.

#### G. *Sunset Review*

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

#### H. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on November 27, 2001, the Department submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the Senate and House Environmental Resources and Energy Committees. In addition to submitting the proposed rulemaking, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

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

#### I. *Public Comments*

*Written Comments*—Interested persons are invited to submit comments, suggestions or objections regarding the proposed amendments to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 15th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted.



The Board must receive comments by January 22, 2002. Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by January 22, 2002. The one page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the proposed amendments will be considered. If sufficient interest is generated as a result of this publication, a public hearing will be scheduled at an appropriate location to receive additional comments.

*Electronic Comments*—Comments may be submitted electronically to the Board at RegComments@state.pa.us. A subject heading of the proposal and return name and address must be included in each transmission. The

Board must also receive comments submitted electronically by January 22, 2002.

DAVID E. HESS,  
*Chairperson*

**Fiscal Note:** 7-366. No fiscal impact; (8) recommends adoption.

**Annex A**  
**TITLE 25. ENVIRONMENTAL PROTECTION**  
**PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
**Subpart C. PROTECTION OF NATURAL RESOURCES**  
**ARTICLE II. WATER RESOURCES**  
**CHAPTER 93. WATER QUALITY STANDARDS**  
**§ 93.9d. Drainage List D.**

**Delaware River Basin in Pennsylvania**

***Lehigh River***

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
	* * * * *			
3—Pohopoco Creek	Basin, Source to [ <b>Dotters Creek</b> ] <b>SR 3016 Bridge at Merwinsburg</b>	[ <b>Carbon</b> ] <b>Monroe</b>	CWF	None
<b>3—Pohopoco Creek</b>	<b>Main Stem, SR 3016 Bridge to SR 0209 Bridge at Kresgeville</b>	<b>Monroe</b>	<b>HQ-CWF</b>	<b>None</b>
<b>4—Unnamed Tributaries to Pohopoco Creek</b>	<b>Basins, SR 3016 Bridge to SR 0209 Bridge at Kresgeville</b>	<b>Monroe</b>	<b>CWF</b>	<b>None</b>
<b>4—Sugar Hollow Creek</b>	<b>Basin</b>	<b>Monroe</b>	<b>CWF</b>	<b>None</b>
<b>4—Weir Creek</b>	<b>Basin</b>	<b>Monroe</b>	<b>CWF</b>	<b>None</b>
[ <b>4—Dotters Creek</b>	<b>Basin</b>	<b>Carbon</b>	<b>HQ-CWF</b>	<b>None ]</b>
<b>4—Middle Creek</b>	<b>Basin, Source to T-444 Bridge</b>	<b>Monroe</b>	<b>CWF</b>	<b>None</b>
<b>4—Middle Creek</b>	<b>Basin, T-444 Bridge to Mouth</b>	<b>Monroe</b>	<b>HQ-CWF</b>	<b>None</b>
3—Pohopoco Creek	Basin, [ <b>Dotters</b> ] <b>Middle Creek</b> to Wild Creek	Carbon	CWF	None
	* * * * *			
3—Saucon Creek	Basin, <b>Source to Black River</b>	Northampton	CWF	None
<b>4—Black River</b>	<b>Basin</b>	<b>Northampton</b>	<b>CWF</b>	<b>None</b>
<b>3—Saucon Creek</b>	<b>Main Stem, Black River to SR 412 Bridge</b>	<b>Northampton</b>	<b>HQ-CWF</b>	<b>None</b>
<b>4—Unnamed Tributaries to Saucon Creek</b>	<b>Basins, Black Creek to SR 412 Bridge</b>	<b>Northampton</b>	<b>CWF</b>	<b>None</b>
<b>3—Saucon Creek</b>	<b>Basin, SR 412 Bridge to Mouth</b>	<b>Northampton</b>	<b>CWF</b>	<b>None</b>
3—Nancy Run	Basin, <b>Source to SR 3007 Bridge</b>	Northampton	CWF, MF	None
<b>3—Nancy Run</b>	<b>Basin, SR 3007 Bridge to Mouth</b>	<b>Northampton</b>	<b>HQ-CWF, MF</b>	<b>None</b>
	* * * * *			

§ 93.9f. Drainage List F.

**Delaware River Basin in Pennsylvania**  
*Schuylkill River*

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
	* * * * *			
2—Schuylkill River	Main Stem, Source to Little Schuylkill River	Schuylkill	CWF	None
	* * * * *			
3—Bear Creek	Basin, <b>Source to UNT 02300 at River Mile 7.6</b>	Schuylkill	[ CWF ] HQ-CWF	None
4—Unnamed Tributary 02300 to Bear Creek	Basin	Schuylkill	CWF	None
3—Bear Creek	Basin, <b>UNT 02300 to Mouth</b>	Schuylkill	CWF	None
	* * * * *			
3—Little Schuylkill River	Basin, Still Creek to Owl Creek	Schuylkill	CWF	None
4—Owl Creek	Basin [ , source to Lower Tamaqua Dam ]	Schuylkill	HQ-CWF	None
[ 4—Owl Creek	Basin, <b>Lower Tamaqua Dam to Mouth</b>	Schuylkill	CWF	None ]
3—Little Schuylkill River	Basin, Owl Creek to [ <b>Rattling</b> ] Cold Run	Schuylkill	CWF	None
4—Cold Run	Basin, <b>Source to Beaver Creek</b>	Schuylkill	HQ-CWF	None
5—Beaver Creek	Basin, <b>Source to Church Lane at River Mile 1.5</b>	Schuylkill	HQ-CWF	None
5—Beaver Creek	Basin, <b>River Mile 1.5 to Mouth</b>	Schuylkill	CWF	None
4—Cold Run	Basin, <b>Beaver Creek to Mouth</b>	Schuylkill	CWF	None
3—Little Schuylkill River	Basin, <b>Cold Run to UNT 02206 at River Mile 4.3</b>	Schuylkill	CWF	None
4—Unnamed Tributary 02206 to Little Schuylkill River	Basin	Schuylkill	HQ-CWF	None
3—Little Schuylkill River	Basin, <b>UNT 02206 to Rattling Run</b>	Schuylkill	CWF	None
	* * * * *			
3—Maiden Creek	Main Stem, Pine Creek to Moselem Creek	Berks	TSF	None
	* * * * *			
4—Furnace Creek	Basin, <b>Source to River Mile 3.0</b>	Berks	[ TSF ] HQ-CWF	None
4—Furnace Creek	Basin, <b>River Mile 3.0 to Mouth</b>	Berks	TSF	None
	* * * * *			
3—Wyomissing Creek	Basin, <b>Source to Inlet of Pond at Reading Public Museum</b>	Berks	[ CWF ] HQ-CWF	None
3—Wyomissing Creek	Basin, <b>Inlet of Pond at Reading Public Museum to Mouth</b>	Berks	CWF	None
	* * * * *			
3—Perkiomen Creek	Basin, Source to [ <b>LR 06119 ( ) SR 1010 ( )</b> ] Bridge at Hereford	Berks	[ CWF ] HQ-CWF	None
3—Perkiomen Creek	Main Stem, [ <b>LR 06119</b> ] <b>SR 1010</b> Bridge to Green Lane Reservoir Dam	Montgomery	TSF	None
	* * * * *			

## § 93.9h. Drainage List H.

## Susquehanna River Basin in Pennsylvania

*Tioga River*

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
	* * * *	*		
3—Cowanesque River	Main Stem, North Fork to PA-NY State Border	Tioga	WWF	None
	* * * *	*		
4—Jemison Creek	Basin, <b>Source to T-559 Bridge at Azelta</b>	Tioga	[ WWF ] HQ-CWF	None
<b>4—Jemison Creek</b>	<b>Basin, T-559 Bridge to Mouth</b>	<b>Tioga</b>	<b>WWF</b>	<b>None</b>
	* * * *	*		

## § 93.9j. Drainage List J.

## Susquehanna River Basin in Pennsylvania

*Lackawanna River*

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
	* * * *	*		
2—Lackawanna River	Main Stem, Confluence East and West Branches to [ <b>Rush Brook</b> ] <b>SR 0347 Bridge at Dickson City</b>	Lackawanna	[ TSF ] HQ-CWF	None
3—Unnamed Tributaries to Lackawanna River	Basins, Confluence of East and West Branches to [ <b>Rush Brook</b> ] <b>SR 0347 Bridge at Dickson City</b>	Susquehanna-Wayne-Lackawanna	CWF	None
	* * * *	*		
[ 2—Lackawanna River	<b>Main Stem, Rush Brook to Mouth</b>	<b>Luzerne</b>	<b>WWF</b>	<b>None</b>
3—Unnamed Tributaries to Lackawanna River	<b>Basins, Rush Brook to Mouth</b>	<b>Lackawanna</b>	<b>CWF</b>	<b>None ]</b>
	* * * *	*		
3—Hull Creek	Basin	Lackawanna	CWF	None
2—Lackawanna River	<b>Main Stem, SR 0347 Bridge to Mouth</b>	<b>Luzerne</b>	<b>CWF</b>	<b>None</b>
3—Unnamed Tributaries to Lackawanna River	<b>Basins, SR 0347 Bridge to Mouth</b>	<b>Luzerne</b>	<b>CWF</b>	<b>None</b>
3—Eddy Creek	Basin	Lackawanna	WWF	None
	* * * *	*		

## § 93.9k. Drainage List K.

## Susquehanna River Basin in Pennsylvania

*Susquehanna River*

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
	* * * *	*		
2—Solomon Creek	Basin, <b>Source to Pine Creek</b>	Luzerne	[ CWF ] HQ-CWF	None
3—Pine Creek	<b>Basin</b>	<b>Luzerne</b>	<b>CWF</b>	<b>None</b>
2—Solomon Creek	<b>Basin, Pine Creek to Mouth</b>	<b>Luzerne</b>	<b>CWF</b>	<b>None</b>
	* * * *	*		
2—Tenmile Run	Basin, <b>Source to UNT 28081 at River Mile 2.49</b>	Columbia	[ CWF ] HQ-CWF	None

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
<b>3—Unnamed Tributary 28081 to Tenmile Run</b>	<b>Basin</b>	<b>Columbia</b>	<b>CWF</b>	<b>None</b>
<b>2—Tenmile Run</b>	<b>Basin, UNT 28081 to Mouth</b>	<b>Columbia</b>	<b>CWF</b>	<b>None</b>
	* * * *	*		
2—Catawissa Creek	Main Stem, Source to Rattling Run	<b>[ Luzerne ] Schuylkill</b>	CWF	None
	* * * *	*		
3—Rattling Run	Basin	Schuylkill	<b>[ CWF ] HQ-CWF</b>	None
	* * * *	*		
3—Little Catawissa Creek	Basin, Source to T431	Schuylkill	HQ-CWF	None
3—Little Catawissa Creek	Basin, T431 to <b>[ Mouth ] Trexler Run</b>	Schuylkill	CWF	None
<b>4—Trexler Run</b>	<b>Basin</b>	<b>Schuylkill</b>	<b>HQ-CWF</b>	<b>None</b>
<b>3—Little Catawissa Creek</b>	<b>Basin, Trexler Run to Mouth</b>	<b>Schuylkill</b>	<b>CWF</b>	<b>None</b>
3—Tomhicken Creek	Basin, <b>Source to Little Crooked Run</b>	Schuylkill	CWF	None
<b>4—Little Crooked Run</b>	<b>Basin</b>	<b>Schuylkill</b>	<b>HQ-CWF</b>	<b>None</b>
<b>3—Tomhicken Creek</b>	<b>Basin, Little Crooked Run to Raccoon Creek</b>	<b>Schuylkill</b>	<b>CWF</b>	<b>None</b>
<b>4—Raccoon Creek</b>	<b>Basin</b>	<b>Schuylkill</b>	<b>HQ-CWF</b>	<b>None</b>
<b>3—Tomhicken Creek</b>	<b>Basin, Raccoon Creek to Mouth</b>	<b>Schuylkill</b>	<b>CWF</b>	<b>None</b>
3—Crooked Run	Basin	Schuylkill	<b>[ CWF ] HQ-CWF</b>	None
	* * * *	*		
3—Klingermans Run	Basin	Columbia	<b>[ CWF ] HQ-CWF</b>	None
	* * * *	*		
3—Fisher Run	Basin	Columbia	<b>[ CWF ] HQ-CWF</b>	None
	* * * *	*		
3—Furnace Run	Basin	Columbia	<b>[ CWF ] HQ-CWF</b>	None
	* * * *	*		

§ 93.9l. Drainage List L.

**Susquehanna River Basin in Pennsylvania**

***West Branch Susquehanna River***

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
	* * * *	*		
3—Clearfield Creek	Main Stem	Clearfield	WWF	None
	* * * *	*		
4—Sandy Run	Basin	Cambria	<b>[ CWF ] HQ-CWF</b>	None
4—Powell Run	Basin	Cambria	CWF	None
<b>4—Fallentimber Run</b>	<b>Basin</b>	<b>Cambria</b>	<b>CWF</b>	<b>None</b>
4—Beaverdam Run	Basin	Cambria	CWF	None

## PROPOSED RULEMAKING

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
3—Moshannon Creek	<b>[ Main Stem ] Basin, Source to Roup Run</b>	Clearfield-Centre	<b>[ TSF ] HQ-CWF</b>	None
4—Unnamed Tributaries to Moshannon Creek	<b>Basins, Roup Run to Mouth</b>	Clearfield-Centre	CWF	None
<b>[ 4—Wilson Run</b>	<b>Basin</b>	<b>Clearfield</b>	<b>CWF</b>	<b>None ]</b>
4—Laurel Run	<b>Basin, Source to Simeling Run</b>	Clearfield	CWF	None
5—Simeling Run	<b>Basin</b>	<b>Clearfield</b>	<b>HQ-CWF</b>	<b>None</b>
4—Laurel Run	<b>Basin, Simeling Run to Mouth</b>	<b>Clearfield</b>	<b>CWF</b>	<b>None</b>
4—Bennett Branch Sinnemahoning Creek	Main Stem, Mill Run to Confluence with Driftwood Branch	Cameron	WWF	None
5—Trout Run	<b>Basin, Source to Spring Run</b>	Elk	CWF	None
6—Spring Run	<b>Basin</b>	<b>Elk</b>	<b>HQ-CWF</b>	<b>None</b>
5—Trout Run	<b>Basin, Spring Run to Mouth</b>	<b>Elk</b>	<b>CWF</b>	<b>None</b>
5—Dents Run	Basin	Elk	<b>[ CWF ] HQ-CWF</b>	None
5—Miller Run	Basin	Cameron	<b>[ CWF ] HQ-CWF</b>	None
4—Driftwood Branch Sinnemahoning Creek	<b>[ Main Stem, Source to Confluence with Bennett Branch ] Basin, Source to Elk Fork</b>	Cameron	<b>[ TSF ] HQ-CWF</b>	None
<b>[ 5—Unnamed Tributaries to Driftwood Branch Sinnemahoning Creek</b>	<b>Basins, Source to Confluence with Bennett Branch</b>	<b>Elk-Cameron</b>	<b>HQ-CWF</b>	<b>None</b>
5—Devils Hole	<b>Basin</b>	<b>Elk</b>	<b>HQ-CWF</b>	<b>None</b>
5—Billy Buck Run	<b>Basin</b>	<b>Elk</b>	<b>HQ-CWF</b>	<b>None</b>
5—Cherry Run	<b>Basin</b>	<b>Elk</b>	<b>HQ-CWF</b>	<b>None</b>
5—Windfall Run	<b>Basin</b>	<b>Elk</b>	<b>HQ-CWF</b>	<b>None</b>
5—Robinson Run	<b>Basin</b>	<b>Cameron</b>	<b>HQ-CWF</b>	<b>None</b>
5—Indian Camp Run	<b>Basin</b>	<b>Cameron</b>	<b>HQ-CWF</b>	<b>None ]</b>
5—Elk Fork	Basin, Nichols Run to Mouth	Cameron	HQ-CWF	None
4—Driftwood Branch Sinnemahoning Creek	<b>Main Stem, Elk Fork to Confluence with Bennett Branch</b>	<b>Cameron</b>	<b>TSF</b>	<b>None</b>
5—Unnamed Tributaries to Driftwood Branch Sinnemahoning Creek	<b>Basins, Elk Fork to Confluence with Bennett Branch</b>	<b>Cameron</b>	<b>HQ-CWF</b>	<b>None</b>
3—Kettle Creek	Basin, Alvin Bush Dam to <b>[ Mouth ] Twomile Run</b>	Clinton	TSF	None

PROPOSED RULEMAKING

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<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
<b>4—Twomile Run</b>	<b>Basin, Source to Middle Branch Twomile Run</b>	<b>Clinton</b>	<b>HQ-CWF</b>	<b>None</b>
<b>5—Middle Branch Twomile Run</b>	<b>Basin</b>	<b>Clinton</b>	<b>TSF</b>	<b>None</b>
<b>4—Twomile Run</b>	<b>Basin, Middle Branch to Mouth</b>	<b>Clinton</b>	<b>TSF</b>	<b>None</b>
<b>3—Kettle Creek</b>	<b>Basin, Twomile Run to Mouth</b>	<b>Clinton</b>	<b>TSF</b>	<b>None</b>
	* * * *			
3—Bald Eagle Creek	Main Stem, Laurel Run to Nittany Creek	Centre	TSF	None
	* * * *			
4—Wallace Run	Basin, Unnamed Tributary at Gum Stump to Mouth	Centre	<b>[ CWF ] HQ-CWF</b>	None
	* * * *			
4—Spring Creek	Main Stem, Source to PA 550 Bridge	Centre	HQ-CWF	None
	* * * *			
5—Slab Cabin Run	Basin, PA 26 at RM 9.0 to <b>[ Mouth ] UNT 23037</b>	Centre	CWF	None
<b>6—Unnamed Tributary 23037 (locally Thompson Run)</b>	<b>Basin</b>	<b>Centre</b>	<b>HQ-CWF</b>	<b>None</b>
<b>5—Slab Cabin Run</b>	<b>Basin, UNT 23037 to Mouth</b>	<b>Centre</b>	<b>CWF</b>	<b>None</b>
4—Spring Creek	Main Stem, PA 550 Bridge to Mouth	Centre	<b>[ CWF ] HQ-CWF</b>	None
	* * * *			
5—Logan Branch	Basin, <b>Source to T-371 Bridge</b>	Centre	CWF	None
<b>5—Logan Branch</b>	<b>Main Stem, T-371 Bridge to Mouth to Mouth</b>	<b>Centre</b>	<b>HQ-CWF</b>	<b>None</b>
<b>6—Unnamed Tributaries to Logan Branch</b>	<b>Basins, T-371 Bridge to Mouth</b>	<b>Centre</b>	<b>CWF</b>	<b>None</b>
	* * * *			
4—Nittany Creek	Basin, <b>Source to I-80</b>	Centre	CWF	None
<b>4—Nittany Creek</b>	<b>Basin, I-80 to Mouth</b>	<b>Centre</b>	<b>HQ-CWF</b>	<b>None</b>
	* * * *			
3—Henry Run	Basin	Clinton	<b>[ CWF ] HQ-CWF</b>	None
	* * * *			
3—Pine Creek	Main Stem, South Branch Pine Creek to Marsh Creek	Tioga	EV	None
	* * * *			
4—Marsh Creek	Main Stem, Source to Straight Run	Tioga	WWF	None
	* * * *			
5—Baldwin Run	Basin	Tioga	<b>[ CWF ] HQ-CWF</b>	None
	* * * *			
5—Canada Run	Basin	Tioga	<b>[ CWF ] HQ-CWF</b>	None
	* * * *			
5—Blockhouse Creek	Basin, Source to <b>[ Confluence with Texas Creek ] Flicks Run</b>	Lycoming	CWF	None

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
<b>6—Flicks Run</b>	<b>Basin</b>	<b>Lycoming</b>	<b>HQ-CWF</b>	<b>None</b>
<b>5—Blockhouse Creek</b>	<b>Basin, Flicks Run to Confluence with Texas Creek</b>	<b>Lycoming</b>	<b>CWF</b>	<b>None</b>
	* * * * *			
3—Aughanbaugh Run	Basin	Lycoming	<b>[ CWF ] HQ-CWF</b>	None
3—Antes Creek	<b>[ Basin</b>	<b>Lycoming</b>	<b>CWF</b>	<b>None ]</b>
<b>4—Unnamed Tributary 21134</b>	<b>Basin, Source to Rauchtown Creek</b>	<b>Lycoming</b>	<b>CWF</b>	<b>None</b>
<b>5—Rauchtown Creek</b>	<b>Basin, Source to Confluence of Rocky Run and Gottshall Run</b>	<b>Clinton</b>	<b>HQ-CWF</b>	<b>None</b>
<b>5—Rauchtown Creek</b>	<b>Basin, Confluence of Rocky Run and Gottshall Run to Mouth</b>	<b>Lycoming</b>	<b>CWF</b>	<b>None</b>
<b>4—UNT 21134</b>	<b>Basin, Rauchtown Creek to Confluence with UNT 21135</b>	<b>Lycoming</b>	<b>CWF</b>	<b>None</b>
<b>4—UNT 21135</b>	<b>Basin, Source to McMurrin Run</b>	<b>Lycoming</b>	<b>CWF</b>	<b>None</b>
<b>5—McMurrin Run</b>	<b>Basin</b>	<b>Lycoming</b>	<b>HQ-CWF</b>	<b>None</b>
<b>4—UNT 21135</b>	<b>Basin, McMurrin Run to Confluence with UNT 21134</b>	<b>Lycoming</b>	<b>CWF</b>	<b>None</b>
<b>3—Antes Creek</b>	<b>Basin, Confluence of UNT 21134 and 21135 to Morgan Valley Run</b>	<b>Lycoming</b>	<b>CWF</b>	<b>None</b>
<b>4—Morgan Valley Run</b>	<b>Basin</b>	<b>Lycoming</b>	<b>HQ-CWF</b>	<b>None</b>
<b>3—Antes Creek</b>	<b>Basin, Morgan Valley Run to Mouth</b>	<b>Lycoming</b>	<b>CWF</b>	<b>None</b>
	* * * * *			
3—Big Run	Basin	Lycoming	<b>[ CWF ] HQ-CWF</b>	None
	* * * * *			

## § 93.9n. Drainage List N.

## Susquehanna River Basin in Pennsylvania

*Juniata River*

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
	* * * * *			
3—Frankstown Branch Juniata River	Main Stem, Piney Creek to US 22 Bridge	Huntingdon	TSF	None
	* * * * *			
4—Fox Run	Basin	Blair-Huntingdon	<b>[ WWF ] HQ-CWF</b>	None
	* * * * *			
3—Kishacoquillas Creek	Basin, Source to <b>[ Tea Creek ] Frog Hollow</b>	Mifflin	CWF	None
<b>4—Frog Hollow</b>	<b>Basin</b>	<b>Mifflin</b>	<b>HQ-CWF</b>	<b>None</b>
<b>3—Kishacoquillas Creek</b>	<b>Basin, Frog Hollow to Tea Creek</b>	<b>Mifflin</b>	<b>CWF</b>	<b>None</b>
4—Tea Creek	Basin	Mifflin	HQ-CWF	None
3—Kishacoquillas Creek	Main Stem, Tea Creek to <b>[ Mouth ] Railroad Bridge between Yeagertown and Burnham</b>	Mifflin	TSF	None
4—Unnamed Tributaries to Kishacoquillas Creek	Basins, Tea Creek to <b>[ Mouth ] Yeagertown/Burnham Railroad Bridge</b>	Mifflin	TSF	None

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
4—Honey Creek	Basin	Mifflin	HQ-CWF, MF	None
<b>3—Kishacoquillas Creek</b>	<b>Main Stem, Yeagertown/Burnham Railroad Bridge to SR 2005 (Mill Road) Bridge at Mount Rock</b>	<b>Mifflin</b>	<b>HQ-CWF</b>	<b>None</b>
<b>4—Unnamed Tributaries to Kishacoquillas Creek</b>	<b>Basins, Yeagertown/Burnham Railroad Bridge to Mill Road Bridge</b>	<b>Mifflin</b>	<b>TSF</b>	<b>None</b>
4—Hungry Run	Basin	Mifflin	TSF	None
4—Buck Run	Basin	Mifflin	TSF	None
<b>3—Kishacoquillas Creek</b>	<b>Main Stem, Mill Road Bridge to Mouth</b>	<b>Mifflin</b>	<b>TSF</b>	<b>None</b>
<b>4—Unnamed Tributaries to Kishacoquillas Creek</b>	<b>Basins, Mill Road Bridge to Mouth</b>	<b>Mifflin</b>	<b>TSF</b>	<b>None</b>
	* * * * *			
3—Lost Creek	Basin, Source to [ Little Lost Creek ] SR 35 Bridge at Oakland Mills	Juniata	[ CWF ] HQ-CWF	None
[ 4—Little Lost Creek	Basin	Juniata	TSF	None
3—Lost Creek	Main Stem, Little Lost Creek to Mouth	Juniata	TSF	None
4—Unnamed Tributaries to Lost Creek	Basins, Little Lost Creek to Mouth	Juniata	TSF	None
4—Laurel Run	Basin	Juniata	TSF	None ]
3—Lost Creek	Basin, SR 35 Bridge to Little Lost Creek	Juniata	CWF	None
3—Lost Creek	Basin, Little Lost Creek to Big Run	Juniata	TSF	None
4—Big Run	Basin	Juniata	CWF	None
3—Lost Creek	Basin, Big Run to Mouth	Juniata	TSF	None
	* * * * *			

§ 93.9o. Drainage List O.

**Susquehanna River Basin in Pennsylvania**  
***Susquehanna River***

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
	* * * * *			
2—Conodoquinet Creek	Main Stem, PA 997 at Roxbury to Mouth	Franklin	WWF	None
	* * * * *			
3—Letort Spring Run	Basin, Railroad Bridge at Letort Park to [ Mouth ] T-710 (Post Road) Bridge	Cumberland	[ CWF ] HQ-CWF	None
<b>3—Letort Spring Run</b>	<b>Basin, T-710 Bridge to Mouth</b>	<b>Cumberland</b>	<b>CWF</b>	<b>None</b>
	* * * * *			
3—Trindle Spring Run	Basin, Source to Spring near the Silver Spring Meeting House	Cumberland	CWF	None
<b>3—Trindle Spring Run</b>	<b>Basin, Spring near the Silver Spring Meeting House to Mouth</b>	<b>Cumberland</b>	<b>HQ-CWF</b>	<b>None</b>



## PROPOSED RULEMAKING

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
	* * * * *			
2—Codorus Creek	Main Stem, West Branch to Oil Creek	York	[ CWF ] HQ-CWF	None
	* * * * *			
2—Conowingo Creek	[ Main Stem, Source to PA-MD State Border ] Basin, Source to SR 3005 Bridge	Lancaster	[ CWF ] HQ-CWF	None
<b>2—Conowingo Creek</b>	<b>Main Stem, SR 3005 to Mouth</b>	<b>Lancaster</b>	<b>CWF</b>	<b>None</b>
3—Unnamed Tributaries to Conowingo Creek	Basins (all sections in PA), [ Source ] SR 3005 to PA-MD State Border	Lancaster	HQ-CWF	None
	* * * * *			

## § 93.9p. Drainage List P.

## Ohio River Basin in Pennsylvania

## Allegheny River

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
	* * * * *			
3—Dwight Creek	Basin	Potter	[ CWF ] HQ-CWF	None
	* * * * *			
3—Allegheny Portage Creek	Main Stem, Source to Brown Hollow	[ McKean ] Potter	TSF	None
4—Unnamed Tributaries to Allegheny Portage Creek	Basins	Potter-McKean	CWF	None
4—Planing Mill Hollow	Basin	Potter	CWF	None
4—Brown Hollow	Basin	Potter	HQ-CWF	None
<b>3—Allegheny Portage Creek</b>	<b>Main Stem, Brown Hollow to Scaffold Lick Run</b>	<b>McKean</b>	<b>HQ-CWF</b>	<b>None</b>
4—Indian Run	Basin	McKean	CWF	None
	* * * * *			
4—Scaffold Lick Run	Basin	McKean	CWF	None
<b>3—Allegheny Portage Creek</b>	<b>Main Stem, Scaffold Lick Run to Mouth</b>	<b>McKean</b>	<b>TSF</b>	<b>None</b>
4—Cady Hollow	Basin	McKean	CWF	None
	* * * * *			
4—East Branch Tunungwant Creek	Basin, Railroad Run to T-331 Bridge	McKean	HQ-CWF	None
4—East Branch Tunungwant Creek	[ Basin ] Main Stem, T-331 Bridge to [ Minard Run ] SR 4002 Bridge	McKean	[ CWF ] HQ-CWF	None
<b>5—Unnamed Tributaries to East Branch Tunungwant Creek</b>	<b>Basins, T-331 Bridge to SR 4002</b>	<b>McKean</b>	<b>CWF</b>	<b>None</b>
<b>5—Sheppard Run</b>	<b>Basin</b>	<b>McKean</b>	<b>CWF</b>	<b>None</b>
5—Minard Run	Basin	McKean	EV	None
4—East Branch Tunungwant Creek	Basin, [ Minard Run ] SR 4002 to Confluence with West Branch	McKean	CWF	None
	* * * * *			

§ 93.9q. Drainage List Q.

**Ohio River Basin in Pennsylvania**  
***Allegheny River***

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
		* * * * *		
3—French Creek	Main Stem, PA-NY State Border to Mouth	Venango	WWF	None
		* * * * *		
4—Le Boeuf Creek	Basin, Source to Trout Run	Erie	TSF	None
5—Trout Run	Basin	Erie	<b>[ CWF ]</b> <b>HQ-CWF</b>	None
		* * * * *		
4—Sugar Creek	<b>Basin, Source to East Branch Sugar Creek (RM 17.0)</b>	<b>[ Venango ]</b> <b>Crawford</b>	CWF	None
5—East Branch Sugar Creek	<b>Basin, Source to SR 0428 Bridge</b>	<b>Crawford</b>	CWF	None
5—East Branch Sugar Creek	<b>Basin, SR 0428 Bridge to Mouth</b>	<b>Crawford</b>	<b>HQ-CWF</b>	<b>None</b>
4—Sugar Creek	<b>Basin, East Branch Sugar Creek to Mouth</b>	<b>Venango</b>	CWF	None
		* * * * *		

§ 93.9r. Drainage List R.

**Ohio River Basin in Pennsylvania**  
***Clarion River***

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
		* * * * *		
4—Little Toby Creek	Main Stem	Elk	CWF	None
		* * * * *		
5—Vineyard Run	Basin	<b>[ Jefferson ]</b> <b>Elk</b>	<b>[ CWF ]</b> <b>HQ-CWF</b>	None
		* * * * *		

§ 93.9t. Drainage List T.

**Ohio River Basin in Pennsylvania**  
***Kiskiminetas River***

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
		* * * * *		
6—Quemahoning Creek	Main Stem	Somerset	CWF	None
		* * * * *		
7—Higgins Run	<b>Basin, Source to River Mile (RM) 1.37</b>	Somerset	CWF	None
7—Higgins Run	<b>Main Stem, RM 1.37 To Mouth</b>	<b>Somerset</b>	<b>HQ-CWF</b>	<b>None</b>
8—Unnamed Tributaries to Higgins Run	<b>Basins, RM 1.37 to Mouth</b>	<b>Somerset</b>	<b>CWF</b>	<b>None</b>
		* * * * *		
6—Shade Creek	Main Stem	Somerset	CWF	None
		* * * * *		
7—Dark Shade Creek	<b>Basin, Source to Laurel Run</b>	Somerset	CWF	None

PROPOSED RULEMAKING

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
<b>8—Laurel Run</b>	<b>Basin, Source to Beaverdam Run</b>	<b>Somerset</b>	<b>CWF</b>	<b>None</b>
<b>9—Beaverdam Run</b>	<b>Basin, Source to River RM 1.93</b>	<b>Somerset</b>	<b>HQ-CWF</b>	<b>None</b>
<b>9—Beaverdam Run</b>	<b>Basin, RM 1.93 to Mouth</b>	<b>Somerset</b>	<b>CWF</b>	<b>None</b>
<b>8—Laurel Run</b>	<b>Basin, Beaverdam Run to Mouth</b>	<b>Somerset</b>	<b>CWF</b>	<b>None</b>
<b>7—Dark Shade Creek</b>	<b>Basin, Laurel Run to Mouth</b>	<b>Somerset</b>	<b>CWF</b>	<b>None</b>
	* * * * *			

§ 93.9v. Drainage List V.

Ohio River Basin in Pennsylvania

*Monongahela River*

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
	* * * * *			
4—Indian Creek	Basin, Camp Run to Champion Creek	Fayette	HQ-CWF	None
	* * * * *			
5—Laurel Run	Basin, <b>Source to Buck Run</b>	Fayette	CWF	None
<b>6—Buck Run</b>	<b>Source to River Mile (RM) 1.38</b>	<b>Fayette</b>	<b>HQ-CWF</b>	<b>None</b>
<b>6—Buck Run</b>	<b>Basin, RM 1.38 to Mouth</b>	<b>Fayette</b>	<b>CWF</b>	<b>None</b>
<b>5—Laurel Run</b>	<b>Basin, Buck Run to Mouth</b>	<b>Fayette</b>	<b>CWF</b>	<b>None</b>
	* * * * *			
5—Rasler Run	Basin	Fayette	<b>[ CWF ]</b> <b>HQ-CWF</b>	None
	* * * * *			

§ 93.9z. Drainage List Z.

Potomac River Basin in Pennsylvania

*Potomac River*

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
	* * * * *			
3—West Branch Antietam Creek	Basin, Source to <b>[ Confluence with East Branch ] SR 997 Bridge</b>	Franklin	<b>[ CWF ]</b> <b>HQ-CWF</b>	None
<b>3—West Branch Antietam Creek</b>	<b>Basin, SR 997 Bridge to Confluence with East Branch</b>	<b>Franklin</b>	<b>CWF</b>	<b>None</b>
	* * * * *			

[Pa.B. Doc. No. 01-2181. Filed for public inspection December 7, 2001, 9:00 a.m.]

# FISH AND BOAT COMMISSION

[58 PA. CODE CH. 61]

## Notice to Extend the Public Comment Period

On September 8, 2001, the Fish and Boat Commission (Commission) published a notice of proposed rulemaking at 31 Pa. B. 5106 seeking public comments regarding its proposal to reduce the daily creel limit for panfish (sunfish, yellow perch, crappies, catfish, rock bass, suckers, carp and white bass) on inland waters from 50 (combined species) to 25 (combined species). The notice of proposed rulemaking provided for a public comment period of 90 days or until December 7, 2001.

The Commission is extending the public comment period for this proposal until January 15, 2002. Interested persons are invited to submit written comments, objections or suggestions about the proposed amendment to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000. Comments submitted by facsimile will not be accepted. Comments also may be submitted electronically at ra-pfbcrgs@state.pa.us. A subject heading of the proposal and a return name and address must be included in each transmission. In addition, all electronic comments must be contained in the text of the transmission, not in an attachment. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

The Commission also will hold at least one public meeting regarding this proposal. A public meeting will be held on December 19, 2001, at 7 p.m. at the Huntingdon County Court House, Court Room No. 1. Individuals who plan to attend should use the Washington Street entrance.

PETER A. COLANGELO,  
*Executive Director*

[Pa.B. Doc. No. 01-2182. Filed for public inspection December 7, 2001, 9:00 a.m.]

# STATE BOARD OF DENTISTRY

[49 PA. CODE CH. 33]

## Administration of General Anesthesia, Deep Sedation, Conscious Sedation and Nitrous Oxide/Oxygen Analgesia

The State Board of Dentistry (Board) proposes revisions to its anesthesia regulations in Chapter 33, Subchapter E (relating to administration of general anesthesia, deep sedation, conscious sedation and nitrous oxide/oxygen analgesia) to read as set forth in Annex A.

### A. Effective Date

The amendments will be effective upon publication of final-form regulations in the *Pennsylvania Bulletin*.

### B. Statutory Authority

The Board is authorized to adopt regulations concerning anesthesia under sections 3(o) and 11.2(a) of the Dental Law (law) (63 P. S. §§ 122(o) and 130c.(a)).

### C. Background and Purpose

The proposed amendments are in response to a Commonwealth Court opinion in the matter of *Watkins v. State Board of Dentistry*, 740 A.2d 760 (Pa. Cmwlth. 1999), which vacated and remanded the decision of the State Board of Dentistry imposing an 18 month suspension on Dr. Watkins for failing to assure that his office contained "appropriate monitoring equipment."

Dr. William E. Watkins had been charged with and found by the Board to have engaged in unprofessional conduct under section 4.1(8) of the law (63 P. S. § 123.1(8)). The charge and finding of unprofessional conduct relevant to the issue resulted from his failure to have the "appropriate monitoring equipment" required by § 33.340(a)(2) (relating to duties of dentists who are unrestricted permit holders). The incident which triggered the disciplinary action involved the administration of anesthesia by another dentist to a 3-1/2 year old child in Dr. Watkins' office. The child lost all pulse during a procedure and was pronounced dead after being taken to hospital.

At the formal hearing the Commonwealth presented experts who maintained that "appropriate monitoring equipment" which should have been, but was not, in the office included a pulse oximeter, a blood pressure apparatus, a stethoscope and an EKG machine.

In appealing his disciplinary suspension to the Commonwealth Court, Dr. Watkins argued that the Board's regulation requiring "appropriate monitoring equipment" was unconstitutionally vague because it did not give notice to the practitioner of what equipment would be considered appropriate. After reviewing cases under which statutes or regulations were declared unconstitutionally vague, the court held that "the term 'appropriate monitoring equipment' is not defined in the regulation and what is 'appropriate' is subject to many different meanings." *Watkins*, 740 A.2d at 765. Again, in footnote number 8 of the decision the Court focused on the term "appropriate monitoring equipment": "Because we have decided that the term 'appropriate monitoring equipment' is too vague. . . .Id.

While the Board focused its attention primarily upon clarifying necessary monitoring equipment, it also updated and improved other anesthesia requirements, and attempted to respond to numerous legislative concerns.

The *Watkins* decision was issued by Commonwealth Court on November 8, 1999. On December 2, 1999, the first meeting of the Dental Board's Anesthesia Committee was held. This Committee was tasked with reviewing state of the art equipment, procedures and protocols for safe and effective delivery of anesthesia and analgesia in dental offices. An initial draft was prepared and presented to the Committee at its January 21, 2000, meeting. At subsequent meetings on March 9, 2000, a second draft was presented and reviewed and on March 12, 2000, a third draft was developed.

A fourth draft was completed on April 10, 2000, and on April 28, 2000, sent to 138 dental associations, schools and interested individuals for predraft comments. In response to predraft comments received, a fifth draft was prepared on May 30, 2000. Legal and Board changes resulted in a sixth draft on June 9, 2000, and a seventh draft on June 27, 2000. Further development was postponed temporarily until the Anesthesia Committee could review information concerning a new oral anesthesia and reports of child deaths due to anesthesia in another state, and consider appropriate regulation of deep sedation. As a

result, on October 12, 2000, an eighth draft was prepared and discussed by the Committee with the full Board on December 1, 2000. From those discussions, a ninth draft was prepared on December 14, 2000, and reviewed by the Committee. This draft was provided to the entire Board on January 24, 2001. Board, legal, and additional legislative suggestions comprised a tenth draft on March 9, 2001, and a 10A draft on March 22, 2001. On March 23, 2001, the Board approved draft 10B for promulgation as proposed rulemaking. On April 5, 2001, draft 10B was sent to the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee for review and comment prior to official promulgation as proposed amendments.

#### D. Description of Amendments

The revisions to Subchapter E make substantive and editorial changes to §§ 33.331—333.342.

##### § 33.331. Definitions.

The Board proposes to add a definition for deep sedation derived from the American Academy of Pediatric Dentistry's (AAPD) *Guidelines for the Elective Use of Conscious Sedation, Deep Sedation and General Anesthesia in Pediatric Dental Patients*. This was done in recognition of the fact that even though sedation is on a continuum, deep sedation is a defined stage between general anesthesia and conscious sedation. The AAPD, the American Association of Oral and Maxillofacial Surgeons (AAOMS) and the American Dental Association (ADA) all recognize distinctions between general anesthesia and deep sedation.

Deep sedation is a state of depressed consciousness accompanied by a partial loss of protective reflexes, including the ability to continually maintain an airway independently. General anesthesia is a state of unconsciousness accompanied by a partial or complete loss of protective reflexes, including the ability to continually maintain an airway independently. ADA *Guidelines for the Use of Conscious Sedation, Deep Sedation and General Anesthesia for Dentists* (emphasis added). Because of the partial loss of protective reflexes with deep sedation, and the necessity to have similar monitoring and resuscitation equipment as with general anesthesia, deep sedation was grouped with general anesthesia under the unrestricted permit. Consequently, only a licensee holding an unrestricted permit may administer general anesthesia or deep sedation.

##### § 33.332. Requirement of permit to administer general anesthesia, conscious sedation or nitrous oxide/oxygen analgesia.

This amendment would clarify that a permit is required to administer deep sedation in a dental office.

##### § 33.333. Types of permits.

This amendment would clarify that an unrestricted permit is required to administer deep sedation.

##### § 33.334. Application for permit.

This section makes permit application requirements applicable to permission to administer deep sedation.

##### § 33.335. Requirements for unrestricted permit.

This amendment would remove one of the three possible requirements that must be met for securing an unrestricted permit, specifically that of having administered general anesthesia on a regular basis in the course of dental practice for 5 years prior to January 1, 1986.

The 1985 "grandparenting" clause of section 11.2(b) of the law (63 P. S. § 130c(d)), tracked in the regulation is no longer necessary.

All permit applicants would be required to have successfully completed and maintained current certification in Advanced Cardiac Life Support (ACLS) and attest that the administration of general anesthesia, deep sedation, and conscious sedation will be conducted in conformance with the American Association of Oral and Maxillofacial Surgeons' (AAOMS) *Parameters and Pathways 2000: Clinical Practice, Guidelines for Oral and Maxillofacial Surgery, Anesthesia in Outpatient Facilities*. For administration to children age 10 and under, applicants would have to attest that the administration will be conducted in conformance with the AAPD *Guidelines for the Elective Use of Conscious Sedation, Deep Sedation and General Anesthesia in Pediatric Dental Patients*.

The dental office of an unrestricted permit holder would have to pass an inspection conducted in accordance with the AAOMS *Office Anesthesia Evaluation Manual* and the American Dental Association's (ADA) *Guidelines for the Use of Conscious Sedation, Deep Sedation and General Anesthesia for Dentists*. A reinspection would occur at least every 6 years, and the make, model and serial number of all equipment would have to be available and noted in the inspection report.

Unrestricted permit holders would have to pass a clinical evaluation as part of the office inspection conducted in accordance with the AAOMS *Office Anesthesia Evaluation Manual*.

##### § 33.336. Requirements for restricted permit I.

This section would remove one of the two possible requirements for securing a restricted permit I, specifically that of having administered conscious sedation on a regular basis in the course of dental practice for 5 years prior to January 1, 1986. As described previously, the section is no longer necessary.

Restricted permit I applicants would be required to have successfully completed and maintained current certification in ACLS and attest that the administration of conscious sedation will be conducted in accordance with the AAOMS *Parameters and Pathways 2000: Clinical Practice, Guidelines for Oral and Maxillofacial Surgery, Anesthesia in Outpatient Facilities*.

Applicants administering conscious sedation to children age 10 and under would have to attest that the administration is conducted in accordance with the AAPD *Guidelines for the Elective Use of Conscious Sedation, Deep Sedation and General Anesthesia in Pediatric Patients*.

Dental offices of restricted permit I holders would have to pass an inspection in accordance with the AAOMS *Office Anesthesia Manual* and the ADA *Guidelines for the Use of Conscious Sedation, Deep Sedation and General Anesthesia for Dentists*. Reinspection would have to be done at least every 6 years and the make, model and serial number of all equipment must be available.

Restricted permit I applicants would have to pass a clinical evaluation as part of the office inspection conducted in accordance with the AAOMS *Office Anesthesia Evaluation Manual*.

##### § 33.337. Requirements for restricted permit II.

This section would remove one of the two possible requirements that must be met for securing a restricted permit II, specifically that of having administered nitrous oxide/oxygen analgesia on a regular basis in the course of

dental practice for 5 or more years prior to January 1, 1986, for the reasons set forth previously. Also, the Board proposes to reduce the number of required hours of undergraduate or postgraduate didactic instruction and clinical experience in a conforming program from 40 to 20.

Restricted permit II holders would have to attest that they have written office procedures for administering nitrous oxide/oxygen analgesia and handling emergencies and that the equipment has been installed and calibrated according to the equipment manufacturer's guidelines and contains a failsafe system.

*§ 33.338. Expiration and renewal of permits.*

Under the proposal, renewal requirements have been amended to include proof of current certification in ACLS for unrestricted and restricted I permits, an attestation that the administration of general anesthesia, deep sedation and conscious sedation has been conducted during the preceding biennial period in accordance with the appropriate guidelines, and an attestation that equipment has been installed and calibrated according to the equipment manufacturer's guidelines and contains a failsafe system.

*§ 33.340. Duties of dentists who are unrestricted permit holders.*

This section has been amended to require that a history be taken prior to the administration of general anesthesia, deep sedation, conscious sedation or nitrous oxide/oxygen analgesia.

The equipment list for unrestricted permit holders has been amended to require suction equipment with appropriate oropharyngeal suction; age appropriate monitoring equipment, procedures and documentation conforming to the AAOMS *Office Anesthesia Evaluation Manual/AAPD Guidelines for the Elective Use of Conscious Sedation, Deep Sedation and General Anesthesia in Pediatric Dental Patients*; a pulse oximeter; an ECG; an automatic blood pressure monitoring device; an automatic external defibrillation device; results of patient history and physical evaluations; and signed patient consent.

This section was also amended to require that both the permit holder and auxiliary personnel assisting unrestricted permit holders in the administration of general anesthesia, deep sedation or conscious sedation (deletes reference to nitrous oxide/oxygen analgesia) be currently certified in ACLS.

A proposed amendment to this section would require that any general anesthesia requiring intubation be administered by the permit holder, certified registered nurse anesthetist, physician or other unrestricted permit holder to whom is delegated the duties of administration, while the dental procedures are performed by a dental licensee not involved in the anesthesia administration.

All monitoring equipment would have to be installed and calibrated according to equipment manufacturer guidelines, in proper working condition prior to administration, and used during the administration of general anesthesia.

Any equipment used for the administration of general anesthesia, deep sedation, conscious sedation or nitrous oxide/oxygen analgesia must pass an inspection through the Board's authorized agents in accordance with the AAOMS *Office Anesthesia Manual*. The make, model and serial number of all equipment must be available and noted on the inspection report

*§ 33.340a. Duties of dentists who are restricted permit I holders.*

This section would be amended to require that a history be taken and a patient be given a physical evaluation to determine his/her suitability to receive conscious sedation or nitrous oxide/oxygen analgesia.

Equipment requirements would be amended, and would conform to the new equipment requirements for an unrestricted permit. Auxillary personnel and the certified registered nurse anesthetists assisting the permit holder in the administration of conscious sedation, as well as the permit holder, must be currently certified in ACLS.

Requirements for reporting and other equipment requirements are the same as for unrestricted permit holders.

*§ 33.340b. Duties of dentists who are restricted permit II holders.*

This section is amended to require that patients be given a physical evaluation prior to the administration of nitrous oxide/oxygen analgesia.

Equipment and operating room requirements are similar to those of restrictive permit I holders, with the exception that restricted permit II holders are not required to have a recovery area, patient transport equipment, an oximeter, an ECG, an automatic blood pressure monitoring device automatic defibrillation device and results of patient history.

*§ 33.341. Duties of dentists who are not permit holders.*

This section would require that a permit may not be issued unless the dental office has been inspected and meets the appropriate equipment and facility requirements.

Anyone administering general anesthesia, deep sedation or conscious sedation must possess current certification in ACLS.

A nonpermit holding dentist would be required to verify with the permit holder that all monitoring equipment is present in the nonpermit holder's office, is properly calibrated and in proper working condition, and is being used during the administration of general anesthesia.

All equipment transported to a nonpermit holder dentist's office would have to pass an inspection through the Board's authorized agents in accordance with the AAOMS *Office Anesthesia Manual*. The make, model and serial number of all equipment must be available and noted on the inspection report.

*§ 33.342. Inspection of dental offices.*

Under the proposal, subsection (f) has been amended to provide that a permit may be subject to an immediate temporary suspension and other disciplinary action if inspection reveals that the dental office is not in compliance with equipment, facility or procedure requirements prescribed in § 33.340(a)(2) or §§ 33.340a(a)(2) or 33.340b(a)(2) (relating to duties of dentists who are restricted permit I holders; and duties of dentists who are restricted permit II holders) and the noncompliance presents an immediate and clear danger to public health and safety.

E. Compliance With Executive Order 1996-1

The Board reviewed this rulemaking and considered its purpose and likely impact upon the public and the regulated population under the directives of Executive Order 1996-1. The proposal addresses a compelling public interest as described in this Preamble and otherwise complies with Executive Order 1996-1.

F. Fiscal Impact and Paperwork Requirements

Some of the provisions of this proposed rulemaking will have a fiscal impact upon permit holders. It may be necessary to set fees for office inspections and clinical evaluations or to raise existing permit fees to cover the cost of the issuance of a permit. In addition, requirements for current certification in ACLS and some additional required monitoring equipment may entail increased costs to permit holders. At this stage, it is not possible to estimate the fiscal impact with precision; however, cost data will be available at a later date.

G. Sunset Date

The Board continuously monitors its regulations. Therefore, no sunset date has been assigned.

H. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on November 14, 2001, the Board submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee. In addition to submitting the proposed rulemaking, the Board has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Board in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

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

I. Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to Deborah B. Eskin, Counsel, State Board of Dentistry, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of the proposed rulemaking in the *Pennsylvania Bulletin*. Please reference No. 16A-4610 (Administration of General Anesthesia, Deep Sedation, Conscious Sedation and Nitrous Oxide/Oxygen Analgesia) when submitting comments.

NORBERT O. GANNON, D.D.S.  
*Chairperson*

**Fiscal Note:** 16A-4610. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 33. STATE BOARD OF DENTISTRY

Subchapter E. ADMINISTRATION OF GENERAL ANESTHESIA, DEEP SEDATION, CONSCIOUS SEDATION AND NITROUS OXIDE/OXYGEN ANALGESIA

§ 33.331. Definitions.

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

**AAOMS**—American Association of Oral and Maxillofacial Surgeons.

**AAPD**—American Academy of Pediatric Dentistry.

**ACLS**—Advanced Cardiac Life Support.

**ADA**—American Dental Association.

\* \* \* \* \*

**Deep sedation**—A controlled, pharmacologically induced state of depressed consciousness from which the patient is not easily aroused and which may be accompanied by a partial loss of protective reflexes, including the ability to maintain a patent airway independently or respond purposefully to physical stimulation or verbal command.

\* \* \* \* \*

§ 33.332. Requirement of permit to administer general anesthesia, **deep sedation**, conscious sedation or nitrous oxide/oxygen analgesia.

(a) *Permit required for administration of anesthetic modality in dental office.* [ **Effective January 9, 1990, a** ] A dentist shall possess a current permit issued by the Board under this subchapter before administering, or supervising the administration of, general anesthesia, **deep sedation**, conscious sedation or nitrous oxide/oxygen analgesia in a dental office.

(b) *Permit not required for administration of anesthetic modality in other facilities.* A dentist is not required to possess a permit under this subchapter before administering, or supervising the administration of, general anesthesia, **deep sedation**, conscious sedation or nitrous oxide/oxygen analgesia in a State- or Federally-regulated facility other than a dental office.

\* \* \* \* \*

§ 33.333. Types of permits.

The Board will issue the following permits to licensees qualified under this subchapter:

(1) *Unrestricted permit.* A permit which authorizes the holder to administer general anesthesia, **deep sedation**, conscious sedation or nitrous oxide/oxygen analgesia.

\* \* \* \* \*

§ 33.334. Application for permit.

(a) A dentist who desires to obtain a permit to administer general anesthesia, **deep sedation**, conscious sedation or nitrous oxide/oxygen analgesia shall submit an application on a form provided by the Board, pay the

permit fee prescribed in § 33.339 (relating to fees for issuance of permits) and meet the requirements for the permit applied for as prescribed in this subchapter.

\* \* \* \* \*

**§ 33.335. Requirements for unrestricted permit.**

(a) To secure an unrestricted permit, a dentist shall have done one of the following:

(1) Successfully completed at least 1 year in a post-graduate program for advanced training in anesthesiology and related academic subjects that conforms to Part II of the American Dental Association's *Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry* or subsequent edition.

(2) [ **Be certified** ] Possess current certification as a Diploma of the American Board of Oral and Maxillofacial Surgeons, a Fellow of the American Association of Oral and Maxillofacial Surgeons or a Fellow of the American Society of Dental Anesthesiology, or be eligible for examination by the American Board of Oral and Maxillofacial Surgeons.

[ (3) Administered general anesthesia on a regular basis in the course of his dental practice for at least 5 years prior to January 1, 1986, if the applicant:

(i) Is competent to administer general anesthesia.

(ii) Administers general anesthesia in a properly equipped dental office as prescribed in § 33.340(a) (2) (relating to duties of dentists who are permit holders).

(b) To determine whether the requirements of subsection (a)(3) are satisfied, the Board will require the applicant to undergo a clinical evaluation and office inspection conducted by the Board through its authorized agents. The clinical evaluation and office inspection will be conducted in accordance with the American Association of Oral and Maxillofacial Surgeons' *Office Anesthesia Evaluation Manual*.

(c) A dentist who applies for a permit under subsection (a)(3) shall do so by January 9, 1990. ]

(b) An applicant, prior to the administration of general anesthesia, deep sedation or conscious sedation, shall have successfully completed and maintained current certification in ACLS and attest that the administration of general anesthesia, deep sedation and conscious sedation will be conducted in conformance with the standards outlined in the AAOMS *Parameters and Pathways 2000: Clinical Practice, Guidelines for Oral and Maxillofacial Surgery, Anesthesia in Outpatient Facilities* or subsequent edition.

(c) If the applicant desires to administer general anesthesia, deep sedation or conscious sedation to children age 10 and under, prior to the administration of general anesthesia, deep sedation and conscious sedation will be conducted in conformance with the standards outlined in the AAPD *Guidelines for the Elective Use of Conscious Sedation, Deep Sedation and General Anesthesia in Pediatric Dental Patients* or subsequent edition.

(d) Office inspection requirements are as follows:

(1) The dental office where the applicant intends to exercise an unrestricted permit shall meet the requirements of § 33.340(a)(2) (relating to duties of dentists who are unrestricted permit holders), and the office shall pass an inspection conducted by the Board through its authorized agents in accordance with the AAOMS *Office Anesthesia Evaluation Manual* or subsequent edition and the ADA *Guidelines for the Use of Conscious Sedation, Deep Sedation and General Anesthesia for Dentists* or subsequent edition. Reinspection will take place at least every 6 years, or more frequently, as necessary. The make, model and serial number of all equipment shall be available and noted on the inspection report.

(2) As part of the office inspection, the applicant shall pass a clinical evaluation conducted by the Board through its authorized agents in accordance with the AAOMS *Office Anesthesia Evaluation Manual* or subsequent edition.

**§ 33.336. Requirements for restricted permit I.**

(a) To secure a restricted permit I, a dentist shall have [ done one of the following:

(1) Successfully ] successfully completed a course on conscious sedation comprising at least 80 hours of undergraduate or postgraduate didactic instruction and clinical experience in a program that conforms to Part I (for an undergraduate program) or Part III (for a [ post graduate ] postgraduate program) of the American Dental Association's *Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry* or subsequent edition.

[ (2) Administered conscious sedation on a regular basis in the course of his dental practice for 5 or more years prior to January 1, 1986, if the applicant:

(i) Is competent to administer conscious sedation.

(ii) Administers conscious sedation in a properly equipped dental office as prescribed in § 33.340(a) (2) (relating to duties of dentists who are permit holders).

(b) To determine whether the requirements of subsection (a)(2) are satisfied, the Board will require the applicant to undergo a clinical evaluation and office inspection conducted by the Board through its authorized agents. The clinical evaluation and office inspection will be conducted in accordance with the American Association of Oral and Maxillofacial Surgeons' *Office Anesthesia Evaluation Manual*.

(c) A dentist who applies for a permit under subsection (a)(2) shall do so by January 9, 1990. ]

(b) An applicant, prior to the administration of conscious sedation, shall have successfully completed and maintained current certification in ACLS and attest that the administration will be conducted in conformance with the standards outlined in the AAOMS *Parameters and Pathways 2000: Clinical Practice, Guidelines for Oral and Maxillofacial Surgery, Anesthesia in Outpatient Facilities* or subsequent edition.

(c) If the applicant desires to administer conscious sedation to children age 10 and under, prior



to the administration, the applicant shall attest that the administration of conscious sedation will be conducted in conformance with standards outlined in the *AAPD Guidelines for the Elective Use of Conscious Sedation, Deep Sedation and General Anesthesia in Pediatric Patients* or subsequent edition.

(d) Office inspection requirements are as follows:

(1) The dental office where the applicant intends to exercise a restricted permit I shall meet the requirements of § 33.340a(a)(2) (relating to duties of dentists who are restricted permit I holders), and the office shall pass an inspection conducted by the Board through its authorized agents in accordance with the *AAOMS Office Anesthesia Evaluation Manual or subsequent edition and the ADA Guidelines for the Use of Conscious Sedation, Deep Sedation and General Anesthesia for Dentists* or subsequent edition. Reinspection will take place at least every 6 years, or more frequently, as necessary. The make, model and serial number of all equipment shall be available and noted on the inspection report.

(2) As part of the office inspection, the applicant shall pass a clinical evaluation conducted by the Board through its authorized agents in accordance with the *AAOMS Office Anesthesia Evaluation Manual* or subsequent edition.

§ 33.337. Requirements for restricted permit II.

(a) To secure a restricted permit II, a dentist shall have [ done one of the following:

(1) **Successfully ] successfully** completed a course in nitrous oxide/oxygen analgesia comprising at least [ 40 ] 20 hours of undergraduate or postgraduate didactic instruction and clinical experience in a program that conforms to Part I (for an undergraduate program) or Part III (for a postgraduate program) of the American Dental Association's *Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry* or subsequent edition.

[ (2) **Administered nitrous oxide/oxygen analgesia on a regular basis in the course of his dental practice for 5 or more years prior to January 1, 1986, if the applicant:**

(i) **Is competent to administer nitrous oxide/oxygen analgesia. The Board will consider an applicant competent if there are no reported or discovered incidents of mortality or morbidity resulting from the applicant's administration of nitrous oxide/oxygen analgesia.**

(ii) **Administers nitrous oxide/oxygen analgesia in a properly equipped dental office as prescribed in § 33.340(a)(2) (relating to duties of dentists who are permit holders).**

(b) A dentist who applies for a permit under subsection (a)(2) shall do so by January 9, 1990. ]

(b) Applicants who administer nitrous oxide analgesia to adults or children shall attest to the following:

(1) That the applicant has written office procedures for administering nitrous oxide/oxygen analgesia and handling emergencies resulting therefrom.

(2) That the equipment for administering the nitrous oxide/oxygen analgesia has been installed and calibrated according to the equipment manufacturer's guidelines and contains a fail-safe system.

§ 33.338. Expiration and renewal of permits.

\* \* \* \* \*

(b) A dentist who desires to renew a permit shall submit [ a ] the following:

(1) A renewal application on a form provided by the Board. [ and pay the ].

(2) The permit renewal fee.

(3) **Proof of current certification in ACLS (for unrestricted permits and restricted I permits).**

(4) **An attestation, on the renewal application, as appropriate to the type of permit requested, that the administration of general anesthesia, deep sedation and conscious sedation has been conducted during the preceding biennial period for adults (if appropriate) with the standards outlined in the *AAOMS Guidelines and Parameters of Care for Oral and Maxillofacial Surgery, Anesthesia in Outpatient Facilities* or subsequent edition; and for children (if appropriate) in conformance with standards outlined in the *AAPD Guidelines for the Elective Use of Conscious Sedation, Deep Sedation and General Anesthesia for Pediatric Patients* or subsequent edition.**

(5) **An attestation, on the renewal application, that the nitrous oxide/oxygen analgesia equipment has been installed and calibrated according to the equipment manufacturer's guidelines and contains a fail-safe system.**

§ 33.340. Duties of dentists who are unrestricted permit holders.

(a) A dentist who possesses [ a ] an unrestricted permit issued under this subchapter shall ensure that:

(1) Prior to the administration of general anesthesia, **deep sedation**, conscious sedation or nitrous oxide/oxygen analgesia **a history is taken and** the patient is given a physical evaluation sufficient to determine the patient's suitability to receive general anesthesia, **deep sedation**, conscious sedation or nitrous oxide/oxygen analgesia.

(2) The dental office in which the permit holder administers general anesthesia, **deep sedation**, conscious sedation or nitrous oxide/oxygen analgesia on an outpatient basis contains the following:

\* \* \* \* \*

(iv) Suction equipment **with appropriate oropharyngeal suction.**

\* \* \* \* \*

(xii) [ **Appropriate monitoring ] Monitoring equipment, procedures and documentation to conform to the age of the patient and the *AAOMS Office Anesthesia Evaluation Manual* or subsequent edition and the *AAPD Guidelines for the Elective Use of Conscious Sedation, Deep Sedation, and General Anesthesia in Pediatric Dental Patients* or subsequent edition.**

(xiii) **Pulse oximeter.**

(xiv) **ECG.**

- (xv) Automatic blood pressure monitoring device.
- (xvi) Automatic external defibrillation device.
- (xvii) Results of patient history and physical evaluation.
- (xviii) Signed patient consent.

(3) Auxiliary personnel who assist the permit holder in the administration of general anesthesia, **deep sedation** or conscious sedation [ **or nitrous oxide/oxygen analgesia** ]:

(i) Are trained to perform the duties that the permit holder delegates to them, if the duties do not require the professional judgment and skill of the permit holder and do not involve the administration of general anesthesia, **deep sedation** or conscious sedation [ **or nitrous oxide/oxygen analgesia** ].

\* \* \* \* \*

(iv) Are currently certified in ACLS.

(4) Certified registered nurse anesthetists who are delegated the duties of administering general anesthesia, **deep sedation**, or conscious sedation [ **or nitrous oxide/oxygen analgesia** ]:

\* \* \* \* \*

(iii) Are currently certified in ACLS.

(5) He possesses a current certification [ **to administer cardiopulmonary resuscitation (CPR)** ] in ACLS.

(6) The Board receives a complete report of a death or [ **unusual** ] incident requiring medical care and resulting in physical or mental injury that directly resulted from the administration of general anesthesia, **deep sedation**, conscious sedation or nitrous oxide/oxygen analgesia by the permit holder or by a certified registered nurse anesthetist working under the supervision of the permit holder. The permit holder shall submit the report within 30 days of the death or [ **unusual** ] incident.

(7) The Board receives prior notice of the first time that a dental office of the permit holder will be used for the administration of general anesthesia, **deep sedation**, conscious sedation or nitrous oxide/oxygen analgesia.

(8) **General anesthesia requiring intubation is administered by the permit holder, certified registered nurse anesthetist, physician or other unrestricted permit holder to whom is delegated the duties of administration, while the dental procedures are performed by a dental licensee who is not involved in the administration of the general anesthesia.**

(9) **Monitoring equipment is installed and calibrated according to the equipment manufacturer's guidelines; is in proper working condition prior to the administration of general anesthesia, deep sedation, conscious sedation or nitrous oxide/oxygen analgesia; and is being used during the administration of general anesthesia.**

(10) **Equipment transported to a nonpermit holder dentist's office for the administration of general anesthesia, deep sedation, conscious sedation or nitrous oxide/oxygen analgesia by a permit holder shall pass an inspection by the Board through its authorized agents in accordance with the AAOMS *Office Anesthesia Manual* or subse-**

quent edition. The make, model and serial number of all equipment shall be available and noted on the inspection report.

\* \* \* \* \*

**§ 33.340a. Duties of dentists who are restricted permit I holders.**

(a) A dentist who possesses a restricted permit I issued under this subchapter shall ensure that:

(1) Prior to the administration of conscious sedation or nitrous oxide/oxygen analgesia, a history is taken and the patient is given a physical evaluation sufficient to determine the patient's suitability to receive conscious sedation or nitrous oxide/oxygen analgesia.

(2) The dental office in which the permit holder administers conscious sedation or nitrous oxide/oxygen analgesia on an outpatient basis contains the following:

- (i) An operating room.
- (ii) An operating table or chair.
- (iii) A lighting system.
- (iv) Suction equipment with appropriate oropharyngeal suction.
- (v) Oxygen and supplemental gas delivery systems, including primary and back-up sources and a fail-safe control mechanism.
- (vi) A sterilization area.
- (vii) A recovery area.
- (viii) A gas storage area and scavenger system.
- (ix) Emergency airway equipment and medications, including intravenous emergency equipment.
- (x) Communications equipment.
- (xi) Patient transport equipment.
- (xii) Monitoring equipment, procedures and documentation to conform to the age of the patient and the AAOMS *Office Anesthesia Evaluation Manual* or subsequent edition and the AAPD *Guidelines for the Elective Use of Conscious Sedation, Deep Sedation, and General Anesthesia in Pediatric Dental Patients* or subsequent edition.

- (xiii) Pulse oximeter.
- (xiv) ECG.
- (xv) Automatic blood pressure monitoring device.
- (xvi) Automatic external defibrillation device.
- (xvii) Results of patient history and physical evaluation.
- (xviii) Signed patient consent.

(3) Auxiliary personnel who assist the permit holder in the administration of conscious sedation:

(i) Are trained to perform the duties that the permit holder delegates to them, if the duties do not require the professional judgment and skill of the permit holder and do not involve the administration of conscious sedation.

(ii) Perform their duties under the direct on-premises supervision of the permit holder, who shall assume full responsibility for the performance of the duties.

(iii) Do not render assistance in areas that are beyond the scope of the permit holder's authority.

(iv) Are currently certified in ACLS.

(4) Certified registered nurse anesthetists to whom are delegated the duties of administering conscious sedation:

(i) Perform their duties under the direct on-premises supervision of the permit holder, who shall assume full responsibility for the performance of the duties.

(ii) Do not perform duties that are beyond the scope of the permit holder's authority.

(iii) Are currently certified in ACLS.

(5) He possesses a current certification in ACLS.

(6) The Board receives a complete report of a death or incident requiring medical care and resulting in physical or mental injury that directly resulted from the administration of conscious sedation or nitrous oxide/oxygen analgesia by the permit holder or by a certified registered nurse anesthetist working under the supervision of the permit holder. The permit holder shall submit the report within 30 days of the death or incident.

(7) The Board receives prior notice of the first time that a dental office of the permit holder will be used for the administration of conscious sedation or nitrous oxide/oxygen analgesia.

(8) Monitoring equipment is installed and calibrated according to the equipment manufacturer's guidelines, contains a fail-safe system and is in proper working condition prior to the administration of conscious sedation or nitrous oxide/oxygen analgesia.

(9) Equipment transported to a nonpermit holder dentist's office for the administration of conscious sedation or nitrous/oxide oxygen analgesia by a permit holder shall pass an inspection by the Board through its authorized agents in accordance with the requirements of the AAOMS Office Anesthesia Manual or subsequent edition. The make, model and serial number of all equipment shall be available and noted on the inspection report.

(b) A dentist's failure to comply with this section will be considered unprofessional conduct and will subject the dentist to disciplinary action under section 4.1 of the act (63 P. S. § 123.1).

§ 33.340b. Duties of dentists who are restricted permit II holders.

(a) A dentist who possesses a restricted permit II issued under this subchapter shall ensure that:

(1) Prior to the administration of nitrous oxide/oxygen analgesia a history is taken and the patient is given a physical evaluation sufficient to determine the patient's suitability to receive nitrous oxide/oxygen analgesia.

(2) The dental office in which the permit holder administers nitrous oxide/oxygen analgesia on an outpatient basis contains the following:

(i) An operating room.

(ii) An operating table or chair.

(iii) A lighting system.

(iv) Suction equipment with appropriate oropharyngeal suction.

(v) Oxygen and supplemental gas delivery systems, including primary and back-up sources and a fail-safe control mechanism.

(vi) A sterilization area.

(vii) A gas storage area and scavenger system.

(viii) Emergency airway equipment and medications, including intravenous emergency equipment.

(ix) Communications equipment.

(x) Monitoring equipment, procedures, and documentation to conform to the age of the patient and the AAOMS Office Anesthesia Evaluation Manual or subsequent edition and the AAPD *Guidelines for the Elective Use of Conscious Sedation, Deep Sedation, and General Anesthesia in Pediatric Dental Patients* or subsequent edition.

(xi) Results of patient history and physical evaluation.

(xii) Signed patient consent.

(b) A dentist's failure to comply with this section will be considered unprofessional conduct and will subject the dentist to disciplinary action under section 4.1 of the act (63 P. S. § 123.1).

§ 33.341. Duties of dentists who are not permit holders.

(a) [ Effective January 9, 1990, a ] A dentist who does not possess a permit issued under this subchapter may not allow general anesthesia, **deep sedation**, conscious sedation or nitrous oxide/oxygen analgesia to be administered on an outpatient basis in his dental office unless the following conditions are met:

(1) The Board receives prior notice of the first time that the dental office will be used for the administration of general anesthesia, **deep sedation**, conscious sedation or nitrous oxide/oxygen analgesia.

(2) The dental office **has been inspected** and meets the **appropriate** equipment and facility requirements prescribed in § 33.340(a)(2), § 33.340a(a)(2) or § 33.340b(a)(2) (relating to duties of dentists who are permit holders; **duties of dentists who are restricted permit I holders; and duties of dentists who are restricted permit II holders**) and the Board receives a written certification from the dentist to that effect.

(3) The general anesthesia, **deep sedation**, conscious sedation and nitrous oxide/oxygen analgesia, are administered by one of the following:

\* \* \* \* \*

(4) Either the dentist who performs the dental procedure or the [ **person** ] **certified registered nurse anesthetist, physician or other unrestricted permit holder** who administers the general anesthesia, **deep sedation** or conscious sedation [ **or nitrous oxide/oxygen analgesia** ] possesses a current certification [ **to administer cardiopulmonary resuscitation (CPR)** ] in ACLS.

(5) The nonpermit holder dentist verifies with the permit holder that all monitoring equipment is present in the nonpermit holder's office, is properly installed and calibrated according to the equipment manufacturer's guidelines, contains a fail-safe system and is in proper working condition prior to the

administration of general anesthesia, deep sedation, conscious sedation or nitrous oxide/oxygen analgesia, and is being used during the administration of general anesthesia.

(6) Equipment transported to a nonpermit holder dentist's office for the administration of general anesthesia, deep sedation, conscious sedation or nitrous oxide analgesia by a permit holder shall pass an inspection by the Board through its authorized agents in accordance with the requirements of the AAOMS Office Anesthesia Manual or subsequent edition. The make, model and serial numbers of all equipment shall be available and noted on the inspection report.

(b) A dentist shall submit to the Board a complete written report on a death or [unusual] an incident requiring medical care and resulting in physical or mental injury that directly resulted from the administration of general anesthesia, deep sedation, conscious sedation or nitrous oxide/oxygen analgesia in his dental office. The report shall be submitted within 30 days of the death or [unusual] an incident.

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§ 33.342. Inspection of dental offices.

(a) Routine inspections. No more than once a year during regular business hours, the Board, through its authorized agents, may conduct a routine inspection of a dental office with or without prior notice, for the purpose of determining whether the office is in compliance with the equipment and facility requirements prescribed in § 33.340(a)(2), § 33.340a(a)(2) or § 33.340b(a)(2) (relating to duties of dentists who are permit holders; duties of dentists who are restricted permit I holders; and duties of dentists who are restricted permit II holders).

(b) Special inspections. In addition to the routine inspections authorized by subsection (a), the Board, through its authorized agents, may conduct a special inspection of a dental office:

(1) Upon a death or injury related to the administration of general anesthesia, deep sedation, conscious sedation or nitrous oxide/oxygen analgesia in the office.

\* \* \* \* \*

(4) As a follow-up to a previous inspection that revealed the office's noncompliance with the equipment and facility requirements prescribed in § 33.340(a)(2), § 33.340a(a)(2) or 33.340b(a)(2).

\* \* \* \* \*

(d) Access during inspection. For purposes of a routine or special inspection, a dentist shall give the Board's authorized agents access to:

(1) Areas of the dental office where general anesthesia, deep sedation, conscious sedation or nitrous oxide/oxygen analgesia are administered.

(2) Equipment, supplies, records and documents relating to the administration of general anesthesia, deep sedation, conscious sedation or nitrous oxide/oxygen analgesia.

\* \* \* \* \*

(e) Guideline for inspection. A routine inspection, with or without prior notice, will be conducted under provisions pertaining to office facilities, and equipment and procedures in the [American Association of Oral and Maxillofacial Surgeons'] AAOMS' Office Anesthesia Evaluation Manual or subsequent edition, and the ADA Guidelines for the Use of Conscious Sedation, Deep Sedation and General Anesthesia for Dentists or subsequent edition.

(f) Inspection showing noncompliance.

(1) If a routine or special inspection reveals that a dental office is not in compliance with the equipment [and], facility or procedure requirements prescribed in § 33.340(a)(2), [the Board will give the dentist whose office was inspected] 33.340a(a)(2) or 33.340b(a)(2), written notice of the deficiencies and of the deadline for correcting the deficiencies will be given to the dentist whose office was inspected. A reinspection will take place within 30 days, and, if noncompliance is still shown, formal administrative charges may be initiated.

(2) If a routine or special inspection reveals that a dental office is not in compliance with the equipment, facility or procedure requirements prescribed in § 33.340(a)(2), § 33.340a(a)(2) or § 33.340b(a)(2), and the noncompliance presents an immediate and clear danger to the public health and safety, the permit holder's permit may be subject to an immediate temporary suspension and other disciplinary action.

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