

PENNSYLVANIA BULLETIN

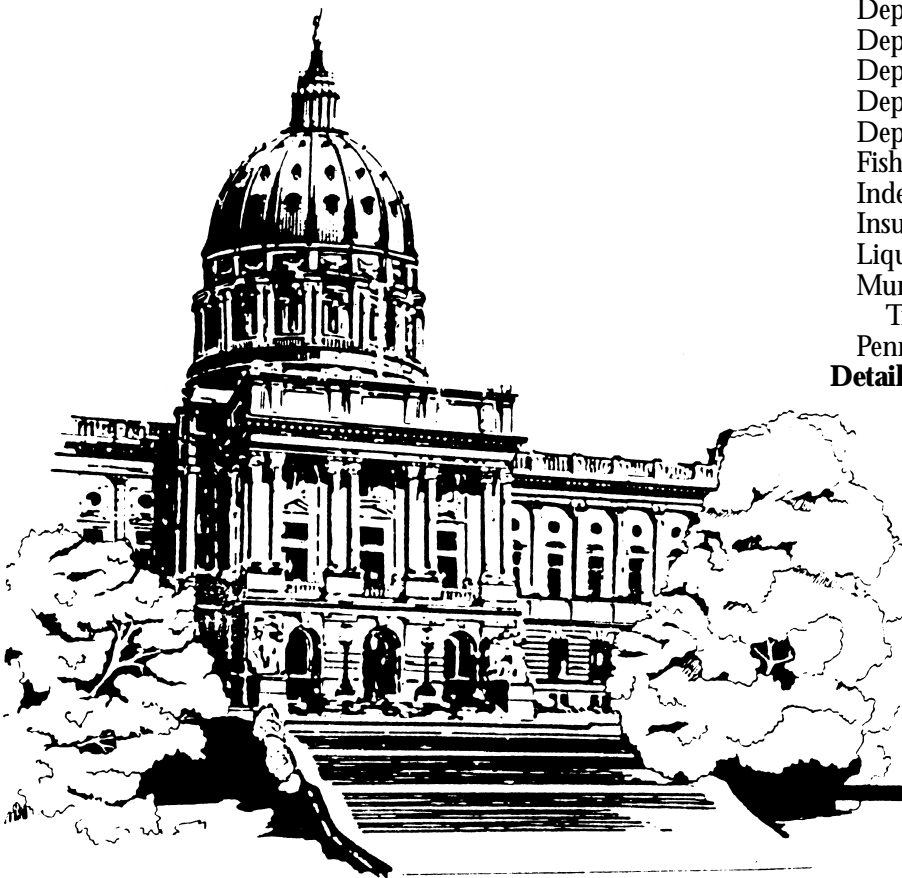
Volume 33
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Pages 6005—6196

See Part II page 6137 for the
Department of Agriculture's
Food Code Regulations

Part I

Agencies in this issue:

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The Courts
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Department of Environmental Protection
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Department of Health
Department of Labor and Industry
Department of State
Department of Transportation
Fish and Boat Commission
Independent Regulatory Review Commission
Insurance Department
Liquor Control Board
Municipal Police Officers' Education and
Training Commission
Pennsylvania Public Utility Commission
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**Latest Pennsylvania Code Reporter
(Master Transmittal Sheet):**

No. 349, December 2003

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READER'S GUIDE TO THE PENNSYLVANIA BULLETIN AND PENNSYLVANIA CODE

Pennsylvania Bulletin

The *Pennsylvania Bulletin* is the official gazette of the Commonwealth of Pennsylvania. It is published every week and includes a table of contents. A cumulative subject matter index is published quarterly.

The *Pennsylvania Bulletin* serves several purposes. First, it is the temporary supplement to the *Pennsylvania Code*, which is the official codification of agency rules and regulations and other statutorily authorized documents. Changes in the codified text, whether by adoption, amendment, repeal or emergency action must be published in the *Pennsylvania Bulletin*. Further, agencies proposing changes to the codified text do so in the *Pennsylvania Bulletin*.

Second, the *Pennsylvania Bulletin* also publishes: Governor's Executive Orders; State Contract Notices; Summaries of Enacted Statutes; Statewide and Local Court Rules; Attorney General Opinions; Motor Carrier Applications before the Public Utility Commission; Applications and Actions before the Department of Environmental Protection; Orders of the Independent Regulatory Review Commission; and other documents authorized by law.

The text of certain documents published in the *Pennsylvania Bulletin* is the only valid and enforceable text. Courts are required to take judicial notice of the *Pennsylvania Bulletin*.

Adoption, Amendment or Repeal of Regulations

Generally an agency wishing to adopt, amend or repeal regulations must first publish in the *Pennsylvania Bulletin* a Notice of Proposed Rulemaking. There are limited instances where the agency may omit the proposal step; they still must publish the adopted version.

The Notice of Proposed Rulemaking contains the full text of the change, the agency contact person, a fiscal note required by law and background for the action.

The agency then allows sufficient time for public comment before taking final action. An adopted proposal must be published in the *Pennsylvania*

Bulletin before it can take effect. If the agency wishes to adopt changes to the Notice of Proposed Rulemaking to enlarge the scope, they must re-propose.

Citation to the *Pennsylvania Bulletin*

Cite material in the *Pennsylvania Bulletin* by volume number and page number. Example: Volume 1, *Pennsylvania Bulletin*, page 801 (short form: 1 Pa.B. 801).

Pennsylvania Code

The *Pennsylvania Code* is the official codification of rules and regulations issued by Commonwealth agencies and other statutorily authorized documents. The *Pennsylvania Bulletin* is the temporary supplement to the *Pennsylvania Code*, printing changes as soon as they occur. These changes are then permanently codified by the *Pennsylvania Code Reporter*, a monthly, loose-leaf supplement.

The *Pennsylvania Code* is cited by title number and section number. Example: Title 10 *Pennsylvania Code*, § 1.1 (short form: 10 Pa.Code § 1.1).

Under the *Pennsylvania Code* codification system, each regulation is assigned a unique number by title and section. Titles roughly parallel the organization of Commonwealth government. Title 1 *Pennsylvania Code* lists every agency and its corresponding *Code* title location.

How to Find Documents

Search for your area of interest in the *Pennsylvania Code*.

The *Pennsylvania Code* contains, as Finding Aids, subject indexes for the complete *Code* and for each individual title, a list of Statutes Used As Authority for Adopting Rules and a list of annotated cases. Source Notes give you the history of the documents. To see if there have been recent changes, not yet codified, check the List of *Pennsylvania Code* Chapters Affected in the most recent issue of the *Pennsylvania Bulletin*.

The *Pennsylvania Bulletin* also publishes a quarterly List of Pennsylvania Code Sections Affected which lists the regulations in numerical order, followed by the citation to the *Pennsylvania Bulletin* in which the change occurred.

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Printing Format

Material proposed to be added to an existing rule or regulation is printed in **bold face** and material proposed to be deleted from such a rule or regulation is enclosed in brackets [] and printed in **bold face**. Asterisks indicate ellipsis of *Pennsylvania Code* text retained without change. Proposed new or additional regulations are printed in ordinary style face.

Fiscal Notes

Section 612 of The Administrative Code of 1929 (71 P. S. § 232) requires that the Office of Budget prepare a fiscal note for regulatory actions and administrative procedures of the administrative departments, boards, commissions or authorities receiving money from the State Treasury stating whether the proposed action or procedure causes a loss of revenue or an increase in the cost of programs for the Commonwealth or its political subdivisions; that the fiscal note be published in the *Pennsylvania Bulletin* at the same time as the proposed change is advertised; and that the fiscal note shall provide the following information: (1) the designation of the fund out of which the appropriation providing for expenditures under the action or procedure shall be made; (2) the probable cost for the fiscal year the program is implemented; (3) projected cost estimate of the program for each of the five succeeding fiscal years; (4) fiscal history of the program for which expenditures are to be made; (5) probable loss of revenue for the fiscal year of its implementation; (6) projected loss of revenue from the program for each of the five succeeding fiscal years; (7) line item, if any, of the General Appropriation Act or other appropriation act out of which expenditures or losses of Commonwealth funds shall occur as a result of the action or procedures; (8) recommendation, if any, of the Secretary of the Budget and the reasons therefor.

The required information is published in the foregoing order immediately following the proposed change to which it relates; the omission of an item indicates that the agency text of the fiscal note states that there is no information available with respect thereto. In items (3) and (6) information is set forth for the first through fifth fiscal years; in that order, following the year the program is implemented, which is stated. In item (4) information is set forth for the current and two immediately preceding years, in that order. In item (8) the recommendation, if any, made by the Secretary of Budget is published with the fiscal note. See 4 Pa. Code § 7.231 *et seq.* Where “no fiscal impact” is published, the statement means no additional cost or revenue loss to the Commonwealth or its local political subdivision is intended.

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List of Pa. Code Chapters Affected

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THE GENERAL ASSEMBLY

Recent Actions during the 2003 Regular Session of the General Assembly

The following is a summary of recent actions of the General Assembly during the 2003 Regular Session.

<i>Doc. No.</i>	<i>Date of Action</i>	<i>Bill Number</i>	<i>Printer's Number</i>	<i>Effective Date</i>	<i>Subject Matter</i>
2003 GENERAL ACTS ENACTED—ACT 035 through 036					
035	Nov 25	HB0106	PN0126	60 days	Engineer, Land Surveyor and Geologist Registration Law—licensing
036	Nov 25	HB0786	PN2708	60 days	Probate, Estates and Fiduciaries Code (20 Pa.C.S.)—powers of attorney

* denotes an effective date with exceptions

Effective Dates of Statutes

The effective dates specified above for laws and appropriation acts were contained in the applicable law or appropriation act. Where no date is specified or where the effective date specified is prior to the date of enactment, the effective date is 60 days after final enactment except for statutes making appropriations or affecting budgets of political subdivisions. See 1 Pa.C.S. §§ 1701—1704 (relating to effective dates of statutes).

Advance Copies of Statutes

Section 1106 of Title 1 of the *Pennsylvania Consolidated Statutes* provides that the prothonotaries of each county shall file advance copies of statutes in their offices for public inspection until the Laws of Pennsylvania are generally available. Section 2406(h) of The Administrative Code of 1929 provides that the Department of General Services shall distribute advance sheets of the Laws of Pennsylvania to each law judge of the courts, to every county and public library of this Commonwealth and to each member of the General Assembly. These copies shall be furnished without charge. The Department shall also mail one copy of each law enacted during any legislative session to any person who pays to it the sum of \$20.

Requests for annual subscriptions for advance copies of statutes should be sent to the State Bookstore—PHMC, Commonwealth Keystone Building, 400 North Street, Harrisburg, PA 17120-0053, accompanied by a check or money order in the sum of \$20, payable to the "Commonwealth of Pennsylvania."

ROBERT W. ZECH, Jr.,
Director
Legislative Reference Bureau

[Pa.B. Doc. No. 03-2350. Filed for public inspection December 12, 2003, 9:00 a.m.]

Recent Actions during the 2003 Regular Session of the General Assembly

The following is a summary of recent actions of the General Assembly during the 2003 Regular Session.

<i>Doc. No.</i>	<i>Date of Action</i>	<i>Bill Number</i>	<i>Printer's Number</i>	<i>Effective Date</i>	<i>Subject Matter</i>
2003 GENERAL ACTS ENACTED—ACT 037 through 038					
037	Nov 26	HB0888	PN2919	immediately*	State Lottery Law—omnibus amendments
038	Nov 26	SB0068	PN1223	immediately	Capital Budget Act of 2003-2004—enactment

* denotes an effective date with exceptions

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ROBERT W. ZECH, Jr.,
Director
Legislative Reference Bureau

[Pa.B. Doc. No. 03-2351. Filed for public inspection December 12, 2003, 9:00 a.m.]

Recent Actions during the 2003 Regular Session of the General Assembly

The following is a summary of recent actions of the General Assembly during the 2003 Regular Session.

<i>Doc. No.</i>	<i>Date of Action</i>	<i>Bill Number</i>	<i>Printer's Number</i>	<i>Effective Date</i>	<i>Subject Matter</i>
2003 GENERAL ACTS ENACTED—ACT 039					
039	Dec 2	HB1854	PN2415	immediately	General County Assessment Law, The—valuation of property

* denotes an effective date with exceptions

Effective Dates of Statutes

The effective dates specified above for laws and appropriation acts were contained in the applicable law or appropriation act. Where no date is specified or where the effective date specified is prior to the date of enactment, the effective date is 60 days after final enactment except for statutes making appropriations or affecting budgets of political subdivisions. See 1 Pa.C.S. §§ 1701—1704 (relating to effective dates of statutes).

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Director
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[Pa.B. Doc. No. 03-2352. Filed for public inspection December 12, 2003, 9:00 a.m.]

THE COURTS

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 1910]

Support Guidelines Review; Recommendation 67

The Domestic Relations Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend the Rules of Civil Procedure relating to domestic relations matters as follows. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

Notes and explanatory comments which appear with proposed amendments have been inserted by the committee for the convenience of those using the rules. Reports, notes and comments will not constitute part of the rules and will not be officially adopted or promulgated by the Supreme Court.

The Committee solicits comments and suggestions from all interested persons prior to submission of this proposal to the Supreme Court of Pennsylvania. Please submit written comments no later than Friday, May 7, 2004, directed to:

Patricia A. Miles, Esquire
Counsel, Domestic Relations Procedural Rules Committee
5035 Ritter Road, Suite 700
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*By the Domestic Relations
Procedural Rules Committee*

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Chair

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1910. ACTIONS FOR SUPPORT

Rule 1910.16-1. Amount of Support. Support Guidelines.

(a) *Applicability of the Support Guidelines.*

(1) Except as set forth in subdivision (2) below, the support guidelines set forth the amount of support which a spouse or parent should pay on the basis of both parties' net monthly incomes as defined in Rule 1910.16-2 and the number of persons being supported. **[The support of a spouse or child is a priority obligation so that a party is expected to meet this obligation by adjusting his or her other expenditures.]**

(2) In actions in which the plaintiff is a public body or private agency pursuant to Rule 1910.3, the amount of the order shall be calculated under the guidelines based upon each obligor's net monthly income as defined in Rule 1910.16-2, with the public or private entity's income as zero. In such cases, each parent shall be treated as a separate obligor and a parent's obligation will be based upon his or her own monthly net income without regard to the income of the other parent.

(i) The amount of basic child support owed to other children not in placement shall be deducted from each parent's net income before calculating support for the child or children in placement, including the amount of direct support the guidelines assume will be provided by the custodial parent.

Example. Mother and Father have three children and do not live in the same household. Mother has primary custody of two children and net monthly income of \$1,500 per month. Father's net monthly income is \$3,000. The parties' third child is in foster care placement. Pursuant to the schedule at Rule 1910.16-3, the basic child support amount for the two children with Mother is \$[1,235] 1,216. As Father's income is 67% of the parties' combined monthly net income, his basic support obligation to Mother is \$[827] 815 per month. The guidelines assume that Mother will provide \$[408] 401 per month in direct expenditures to the two children in her home. The agency/obligee brings an action against each parent for the support of the child in placement. Father/obligor's income will be \$[2,173] 2,185 for purposes of this calculation (\$3,000 net less \$[827] 815 in support for the children with Mother). Because the agency/obligee's income is zero, Father's support for the child in placement will be 100% of the schedule amount of basic support for one child at the \$[2,173] 2,185 income level, or \$[505] 545 per month. Mother/obligor's income will be \$[1,092] 1,099 for purposes of this calculation (\$1,500 net less \$[408] 401 in direct support to the children in her custody). Her support obligation will be 100% of the schedule amount for one child at that income level, or \$[268] 284 per month.

Example. Mother and Father have two children in placement. Father owes child support of \$500 per month for two children of a former marriage. At the same income levels as above, Father's income for determining his obligation to the children in placement would be \$2,500 (\$3,000 less \$500 support for two children of prior marriage). His obligation to the agency would be \$[842] 853 per month (100% of the schedule amount for two children at the \$2,500 per month income level). Mother's income would not be diminished as she owes no other child support. She would owe \$[521] 544 for the children in placement (100% of the schedule amount for two children at the \$1,500 income level).

(ii) If the parents reside in the same household, their respective obligations to the children who remain in the household and are not in placement shall be calculated according to the guidelines, with the parent having the higher income as the obligor, and that amount shall be deducted from the parents' net monthly incomes for purposes of calculating support for the child(ren) in placement.

Example. Mother and Father have four children, two of whom are in placement. Mother's net monthly income is \$4,000 and Father's is \$2,000. The basic support amount for the two children in the home is \$[1,532] 1,359, according to the schedule at Rule 1910.16-3. As Mother's income is 67% of the parties' combined net monthly incomes, her share would be \$[1,026] 911, and Father's 33% share would be \$[506] 448. Mother's income for purposes of calculating support for the two children in

placement would be \$[2,974] 3,089 (\$4,000 less \$[1,026] 911). She would pay 100% of the basic child support at that income level, or \$[961] 1,029, for the children in placement. Father's income would be \$[1,494] 1,552 (\$2,000 less \$[506] 448) and his obligation to the children in placement would be \$[521] 560.

(iii) In the event that the combined amount the parents are required to pay exceeds the cost of placement, the trier of fact shall deviate to reduce each parent's obligation in proportion to his or her share of the combined obligation.

Explanatory Comment—2003

New subdivision (2) is intended to clarify in particular the calculation of child support when a child is in a foster care or institutional placement and not in the custody of either parent.

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[Explanatory Comment—1998

Introduction

Federal and state law require the use of guidelines to establish child and spousal support orders. Using the guidelines promotes (1) similar treatment of persons similarly situated, (2) a more equitable distribution of the financial responsibility for raising children, (3) settlement of support matters without court involvement, and (4) more efficient hearings where they are necessary. The Pennsylvania Rules of Civil Procedure governing actions for support set forth the basic child support schedule and formula as well as the explanatory text.

A. Income Shares. The child support guidelines are based on the Income Shares Model developed by the Child Support Guidelines Project of the National Center for State Courts. The model is based on the idea that the child of separated or divorced parents should receive the same proportion of parental income that she or he would have received if the parents lived together. A number of authoritative economic studies provide estimates of the average amount of household expenditures for children in intact households. These studies show that the proportion of household spending devoted to children is directly related to the level of household income and to the number and ages of the children. The basic support amounts reflected in the child support schedule in Rule 1910.16-3 represent average marginal expenditures on children for food, housing, transportation, clothing and other miscellaneous items that are needed by children and provided by their parents, including the first \$250 of unreimbursed medical expenses incurred annually per child.

B. Statutory Considerations. The federal statute, 42 U.S.C. § 467(a), requires that the guidelines be reviewed every four years. In addition, the Pennsylvania statute, 23 Pa.C.S. § 4322, states:

“... Child and spousal support shall be awarded pursuant to a Statewide guideline as established by general rule by the Supreme Court, so that persons similarly situated shall be treated similarly. The guidelines shall be based upon the reasonable needs of the child or spouse seeking support and the ability of the obligor to provide support. In determining the reasonable needs of the child or spouse seeking support

and the ability of the obligor to provide support, the guidelines shall place primary emphasis on the net incomes and earning capacities of the parties, with allowable deviations for unusual needs, extraordinary expenses and other factors, such as the parties' assets, as warrant special attention.”

1. Reasonable Needs and Reasonable Ability to Provide Support. The guidelines make financial support of a child a primary obligation. They assume that parties with similar net incomes will have similar reasonable and necessary expenses. After the basic needs of the parents have been met, the child's needs shall receive priority. The guidelines assume that if obligor's net income is less than \$550, he or she is barely able to provide for basic personal needs. In these cases, therefore, entry of a minimal order is appropriate after considering the party's living expenses. In some cases, it may not be appropriate to order support at all.

In most cases, however, a party's living expenses are not relevant in determining his or her support obligation. Rather, as the statute requires, the obligation is based on the reasonable needs of a dependent spouse or child and the reasonable ability of the obligor to pay. For example, in setting the amount of child support, it should be of no concern to the court that one obligor chooses to live in a one-room apartment and rely solely on public transportation, while another obligor, earning the same salary, chooses to live in a five-bedroom apartment and drive a new car. Both are obligated to give priority to the needs of their children. What they choose to do with their remaining income is not relevant to a support claim.

2. Net Income. The guidelines use the net incomes of the parties, and are based on the assumption that a child's reasonable needs increase as the combined net income of the child's parents increases. Each parent is required to contribute a share of the child's reasonable needs proportional to that parent's share of the combined net incomes. The custodial parent makes these contributions entirely through direct expenditures for food, shelter, clothing, transportation and other reasonable needs. In addition to any direct expenditures on the child's behalf, the non-custodial parent makes contributions through periodic support payments.

3. Allowable Deviations. The guidelines are designed to treat similarly situated parents, spouses, and children in the same manner. However, when there are unavoidable differences, deviations must be made from the guidelines. Failure to deviate from these guidelines by considering a party's actual expenditures where there are special needs and special circumstances constitutes a misapplication of the guidelines.

C. Four-Year Review. The Family Support Act of 1988 (P. L. 100-485, 102 Stat. 2343 (1988)) requires that the child support guidelines be reviewed every four years to ensure that their application results in a determination of an appropriate child support award. With the assistance of Dr. Robert Williams, the developer of the Income Shares model, the Committee reviewed the most recent economic studies on child-related expenditures in intact households and assessed state guideline adjustments for low income, additional dependents,

shared custody, child care, medical expenses and other factors which are considered in establishing or modifying a support award. Based on this review, Rules of Civil Procedure 1910.16-1 through 1910.16-5 relating to the guidelines have been amended and new Rules 1910.16-6 and 1910.16-7 have been added as follows.

1. Reorganization of the Rules. The rules have been reorganized so that they more logically follow the sequence for calculating the overall support obligation. Since the calculation begins with the computation of the parties' net incomes, new Rule 1910.16-2 consolidates all of the income provisions that formerly appeared throughout Rule 1910.16-5. Rule 1910.16-2 is followed by Rule 1910.16-3, the basic child support schedule; Rule 1910.16-4, the formula used in conjunction with the Schedule to arrive at obligor's basic support obligation; Rule 1910.16-5, which sets forth the factors the court must consider in determining whether to deviate from the basic support obligation; and Rule 1910.16-6, which consolidates all of the provisions for additional expenses that are typically added to the basic support obligation. Rule 1910.16-7 addresses the special treatment of child support obligations in the context of multiple families.

2. Calculation of Basic Child Support. The amount of basic support was previously determined from either the grids or the chart of proportional expenditures in conjunction with the income shares formula. The grids and the chart of proportional expenditures have been eliminated. The Committee has chosen to use a basic child support schedule, which numerically reflects the amounts spent on children in intact families by combined income and number of children. The schedule appears in Rule 1910.16-3 and shall be used to find the parties' combined basic child support obligation. In turn, the obligor's share of this obligation is calculated using the income shares formula in Rule 1910.16-4.

The amounts of child support set forth in the schedule have been updated to reflect recent economic estimates of child-related spending in intact households. Pursuant to federal and state law, these estimates must be adopted to ensure that children continue to receive adequate levels of support. Since the studies now consider households of up to six children, the guidelines have been expanded from four to six children. The newer studies also consider households with combined monthly net income of up to \$12,600. Allowing for inflation, the model can be extended to combined monthly net income of up to \$15,000. The Committee has chosen to do this so that the support guidelines will apply to more cases.

3. Computed Minimum Allowance in Low-Income Cases. The amended rules incorporate a Computed Allowance Minimum (CAM) into the support guidelines so that low-income obligors retain sufficient income to meet their basic needs and to maintain the incentive to continue working so that support can be paid. The CAM is built into the schedule in Rule 1910.16-3 and adjusts the basic support obligation to prevent obligor's net income from falling below \$550 per month. Since the schedule reflects amounts of child support only, Rule 1910.16-2(e)(1)(B) provides for a similar adjustment in spou-

sal support and APL cases so that the obligor retains at least \$550 per month in these cases as well.

4. Shared Custody. Under the prior guidelines, there was no formula or procedure for deviating from the basic support guidelines when custody is shared equally or the non-custodial parent has substantial partial custody. The guidelines provided that the obligor's support obligation should be reduced only if he or she spent "an unusual amount of time with the children." Yet, there have been several decisions rejecting deviation even if the obligor spends almost 50% of the time with the children. See, e.g., *Anzalone v. Anzalone*, 449 Pa. Super. 201, 673 A.2d 377 (1996)(40% time was not "unusual"); *Dalton v. Dalton*, 409 Pa. Super. 258, 597 A.2d 1192 (1991)(43% time did not justify deviation).

It is generally agreed, however, that there should be some reduction in the support obligation in these cases to reflect the decrease in the obligee's variable expenses and the increase in obligor's fixed and variable expenses as a result of the children spending substantially more time with the obligor. As part of its four-year review of the guidelines, the Committee examined seven different methods being used by other states but found that none of them met these objectives without producing a substantial reduction in the support obligation at some income levels or income differentials for relatively small increases in custodial time. As a result, the Committee initially recommended the alternative solution of no reduction at all for time spent with the children. Based on the comments received, however, the Committee reconsidered this recommendation and ultimately selected a method which gives some recognition to the shift in child-related expenditures that occurs when the obligor spends a substantial amount of time with the children.

This method is set forth in Rule 1910.16-4(c) and has been built into the formula used to calculate the presumptively correct amount of the support obligation. While not a perfect solution to the problem of establishing support obligations in the context of substantial or shared custody, it is better than the previous void and preferable to the many offset methods developed by local courts which effectively reduced the support obligation out of proportion to the increase in custody time. Its chief advantage is that there is no sharp reduction in the obligation at the 40% threshold. It also provides statewide uniformity. The method does not, however, result in \$0 when there is equal custody and equal income. In those cases, therefore, the Rule provides for a cap to reduce the obligation so that the obligee does not receive a larger portion of the combined income than the obligor. Although this cap may in some cases result in a substantial reduction between 45-50% time, the Committee is not aware of an existing model that does not create some "cliff effect" at some level at some point in time. This model was chosen over others because the cases which involve truly equal time-sharing and equal incomes continue to represent a very small percentage of support cases.

5. Multiple Families. The Committee has chosen to retain the existing approach for establishing multiple child and spousal support obligations.

New Rule 1910.16-7 sets forth the method for calculating child support obligations so that all of the obligor's children continue to have equal access to his or her resources and no child receives priority over the other children. Since calculation of multiple spousal support obligations is essentially a function of net income, it appears in new Rule 1910.16-2 governing the general calculation of net income. The provision continues to highlight the fact that the rules do not accord the same treatment to second and later spouses as they do to children in multiple family situations. Unlike children, who have no choice about the situation into which they are born, adults have the opportunity to investigate a potential spouse before committing themselves.

6. *Child Care Expenses.* Whereas the prior rules provided for equal sharing of these expenses, Rule 1910.16-6(a) now provides for proportionate sharing based on the parties' net incomes so that these expenses are allocated in the same manner as other expenses which are typically added to the basic support obligation. The Rule also reflects the availability and limitations of the federal child care tax credit which can be claimed by the custodial parent.

7. *Health Insurance Premiums.* Under the prior rules, the portion of the cost of health insurance premiums which benefit the other party or the children was deducted from the party's net income. This provided little incentive for either party to obtain or maintain health insurance coverage for the benefit of the other family members. If the obligor was paying the premium, it reduced the basic support award only marginally. If the obligee was paying the premium, he or she received virtually no financial credit at all in terms of a higher support award.

To maximize the value for the party carrying the health insurance in most cases, new Rule 1910.16-6(b), in general, treats the cost of the premium as an additional expense subject to allocation between the parties in proportion to their net incomes. In the majority of cases, this more accurately reflects the costs of carrying such insurance and also ensures that the obligee receives some financial credit for carrying the insurance. However, in cases in which the obligee has no income or minimal income, and the obligor would otherwise bear the entire burden of paying the health insurance premiums with no other adjustment to his or her support obligation, the trier of fact may deduct part or all of the cost of the premium from the obligor's income for support purposes. The new Rule also permits allocation of the entire premium, including the party's portion of the premium, when the insurance benefits the other party or the children. This change provides further incentive for parties to obtain health insurance for the benefit of the other party and the children.

8. *Unreimbursed Medical Expenses.* There are three changes to the treatment of unreimbursed medical expenses. First, since the first \$250 per year per child of these expenses is already built into the basic child support obligation reflected in the schedule, only medical expenses which exceed this amount are subject to allocation between the parties as an additional expense to be added to the

basic support obligation. Rule 1910.16-6(c) reflects this distinction. The Committee has also chosen to draw this same distinction with respect to spousal support so that the obligee-spouse is expected to meet the first \$250 per year of his or her own unreimbursed expenses before seeking contribution from the obligor for any additional expenses.

Second, the Rule distinguishes between those expenses which are predictable and recurring and those which are not. When the expenses are predictable and recurring, the court may establish a monthly amount for those expenses and add it to the basic support obligation. This permits the monthly amount to be collected more easily through wage attachment. When the expenses are variable and unanticipated, and thus not conducive to routine wage attachment, the court may nonetheless order the defendant to pay his or her percentage share of these expenses.

Third, the definition of medical expenses is amended to include insurance co-payments, deductibles, and orthodontia and to exclude chiropractic services.]

Explanatory Comment—2004

Introduction. Pennsylvania law requires that child and spousal support be awarded pursuant to a statewide guideline. 23 Pa.C.S. § 4322(a). That statute further provides that the guideline shall be "established by general rule by the Supreme Court, so that persons similarly situated shall be treated similarly." *Id.*

Pursuant to federal law, The Family Support Act of 1988 (P.L. 100-485, 102 Stat. 2343 (1988)), 42 U.S.C. § 467(a), statewide support guidelines must "be reviewed at least once every four years to ensure that their application results in the determination of appropriate child support award amounts." Federal regulations, 45 CFR 302.56, further require that such reviews include an assessment of the most recent economic data on child-rearing costs and a review of data from case files to assure that deviations from the guidelines are limited. The Pennsylvania statute also requires a review of the support guidelines every four years. 23 Pa.C.S. § 4322(a).

The Domestic Relations Procedural Rules Committee of the Supreme Court of Pennsylvania began the mandated review process in early 2003. The committee was assisted in its work by Jane Venohr, Ph.D., an economist with Policy Studies, Inc., under contract with the Pennsylvania Department of Public Welfare. As a result of the review, the committee recommended to the Supreme Court several amendments to the statewide guidelines.

A. *Income Shares Model.* Pennsylvania's child support guidelines are based upon the Income Shares Model. That model was developed under the Child Support Guidelines Project funded by the U.S. Office of Child Support Enforcement and administered by the National Center for State Courts. The Guidelines Project Advisory Group recommended the Income Shares Model for state guidelines. At present, 33 states use the Income Shares Model as a basis for their child support guidelines.

The Income Shares Model is based upon the concept that the child of separated, divorced or

never-married parents should receive the same proportion of parental income that she or he would have received if the parents lived together. A number of authoritative economic studies provide estimates of the average amount of household expenditures for children in intact households. These studies show that the proportion of household spending devoted to children is directly related to the level of household income and to the number of the children. The basic support amounts reflected in the schedule at Pa. R.C.P. 1910.16-3 represent average marginal expenditures on children for food, housing, transportation, clothing and other miscellaneous items that are needed by children and provided by their parents, including the first \$250 of unreimbursed medical expenses incurred annually per child.

1. Economic Measures. The support schedule at Pa. R.C.P. 1910.16-3 is based upon child-rearing expenditures measured by David M. Betson, Ph.D., Professor of Economics, University of Notre Dame. Dr. Betson's measurements were developed for the U.S. Department of Health and Human Services for the explicit purpose of assisting states with the development and revision of child support guidelines. Dr. Betson's research was also used in developing the prior schedule, effective in April 1999. In 2001, Dr. Betson updated his estimates using data from the 1996-98 Consumer Expenditure Survey conducted by the U.S. Bureau of Labor Statistics. In the current schedule, those figures were converted to 2003 price levels using the Consumer Price Index.

2. Source of Data. The estimates used to develop the schedule are based upon national data. The specific sources of the data are the periodic Consumer Expenditure Surveys. Those national surveys are used because they are the most detailed available source of data on household expenditures. The depth and quality of this information is simply not available at the state level and would be prohibitively costly to gather. However, according to the 2000 Census conducted by the U.S. Census Bureau, the median Pennsylvania family income in 1999 was \$49,184, while the national median family income was \$50,046. Thus, using national data continues to be appropriate.

The U. S. Department of Agriculture's Center for Nutrition Policy and Promotion ("CNPP") also develops economic estimates for the major categories of child-rearing expenditures. Although the committee reviewed these estimates, it is not aware of any state that relies upon the CNPP estimates as a basis for its child support schedule.

B. Statutory Considerations. The Pennsylvania statute, 23 Pa.C.S. § 4322(a) provides:

Child and spousal support shall be awarded pursuant to a Statewide guideline as established by general rule by the Supreme Court, so that persons similarly situated shall be treated similarly. The guideline shall be based upon the reasonable needs of the child or spouse seeking support and the ability of the obligor to provide support. In determining the reasonable needs of the child or spouse seeking support and the ability of the obligor to provide support, the guideline shall place primary emphasis on the net incomes and earning capacities of the par-

ties, with allowable deviations for unusual needs, extraordinary expenses and other factors, such as the parties' assets, as warrant special attention. The guideline so developed shall be reviewed at least once every four years.

1. Reasonable Needs and Reasonable Ability to Provide Support. The guidelines make financial support of a child a primary obligation. They assume that parties with similar net incomes will have similar reasonable and necessary expenses. After the basic needs of the parents have been met, the child's needs shall receive priority. The guidelines assume that if the obligor's net income is at the poverty level, he or she is barely able to provide for his or her own basic needs. In those cases, therefore, the entry of a minimal order may be appropriate after considering the party's living expenses. In some cases, it may not be appropriate to enter a support order at all.

In most cases, however, a party's living expenses are not relevant in determining his or her support obligation. Rather, as the statute requires, the obligation is based upon the reasonable needs of a dependent spouse or child and the reasonable ability of the obligor to pay. For example, in setting the amount of child support, it should be of no concern to the court that one obligor chooses to live in a one-room apartment and rely solely on public transportation, while another obligor, earning the same salary, chooses to live in a five-bedroom apartment and drive a new car. Both are obligated to give priority to the needs of their children. What they choose to do with their remaining income is not relevant to a support claim.

2. Net Income. The guidelines use the net incomes of the parties and are based on the assumption that a child's reasonable needs increase as the combined net income of the child's parents increases. Each parent is required to contribute a share of the child's reasonable needs in proportion to that parent's share of the combined net incomes. The custodial parent makes these contributions entirely through direct expenditures for food, shelter, clothing, transportation and other reasonable needs. In addition to any direct expenditures during custodial periods with the child, the non-custodial parent makes contributions through periodic support payments to the custodial parent. Rule 1910.16-2(d) has been amended to clarify the provisions relating to fluctuating income and earning capacity.

3. Allowable Deviations. The guidelines are designed to treat similarly situated parents, spouses, and children in the same manner. However, when there are unavoidable differences, deviations must be made from the guidelines. Failure to deviate from these guidelines by considering a party's actual expenditures where there are special needs and special circumstances constitutes a misapplication of the guidelines.

C. Child Support Schedule. The child support schedule at Pa. R.C.P. 1910.16-3 has been amended to reflect updated economic data, as required by federal and state law, to ensure that children continue to receive adequate levels of support. At some income levels the presumptive amount of support has increased from the previous schedule, and at some income levels it has decreased. The economic data support the revised schedule. The support

amounts in the schedule have been expanded to apply to a combined net monthly income of \$20,000 and remain statistically valid.

D. Self-Support Reserve ("SSR"). The amended schedule also incorporates an increase in the "Self-Support Reserve" or "SSR" from \$550 per month to \$748 per month, the 2003 federal poverty level for one person. Formerly designated as the "Computed Allowance Minimum" or "CAM," the Self-Support Reserve, as it is termed in most other states' guidelines, is intended to assure that low-income obligors retain sufficient income to meet their own basic needs, as well as to maintain the incentive to continue employment. The SSR is built into the schedule in Rule 1910.16-3 and adjusts the basic support obligation to prevent the obligor's net income from falling below \$748 per month. Because the schedule at Rule 1910.16-3 applies to child support only, Rule 1910.16-2(e)(1)(B) provides for a similar adjustment in spousal support and alimony pendente lite cases to assure that the obligor retains a minimum of \$748 per month.

E. Shared Custody. Prior to the amendments effective in April of 1999, there was no formula or procedure for deviating from the basic support guidelines when custody was shared equally or the non-custodial parent has substantial partial custody. The former guidelines provided that the obligor's support obligation should be reduced only if he or she spent "an unusual amount of time with the children."

As part of the review process that resulted in the 1999 amendments, the committee considered the practices of several other jurisdictions and ultimately selected a method which gave some recognition to the shift in child-related expenditures that occurs when the obligor spends a substantial amount of time with the children. While recognizing that it was not a perfect solution to the problem of establishing support obligations in the context of substantial or shared custody, it was preferable to the diverse offset methods which had been developed by local courts. Its chief advantage was that it provided statewide uniformity and avoided a sharp reduction in the obligation at certain thresholds. At that time, the committee was unaware of any existing model that did not create some "cliff effect" at some level of income.

Nevertheless, there were many critics of the method and the committee listened carefully to their concerns. The committee continued to study the issue and examine other models. The committee learned that Pennsylvania's guidelines gave less credit to obligors for increased time with the children than other states. As a result, the committee recommended the adoption of a model similar to one that has been used in other states for several years.

The basic child support schedule at Pa.R.C.P. 1910.16-3 is based upon studies of expenditures on children in intact households; therefore, there is no consideration of the costs the obligor assumes when he or she exercises visitation or partial or shared custody. The amendments to Pa.R.C.P. 1910.16-4(c) assume that there will be no reduction in the basic amount of support if the obligor spends less than four days per year with the child. However, there will be incremental reductions in the

basic support obligation when the obligor is with the child four or more days per year, up to a maximum reduction of just under 50%. Because the reduction in the support obligation is in numerous increments, there is no sharp drop in the amount of support as a result of any particular custodial schedule.

Finally, in terms of calculating the obligor's custodial time, the reliance solely on overnights provided uniformity and expediency, but did not account for varying employment schedules or other reasons why a non-custodial parent may, for example, have custody of a child for fifty percent of the time, but only twenty percent of the overnights. The expanded definition of "days" for purposes of calculating custodial time is intended to achieve a more realistic determination of the time a child actually spends with each parent. The model also uses "net" rather than "gross" custodial time, excluding time that the children are in school or child care.

F. Varying Custodial Schedules. New provisions at Rule 1910.16-4(d)(4) address situations in which the parties have more than one child and the children spend different amounts of time with the obligor. For example, the parties may share custody of one child equally, but another child sees the obligor only on weekends. The rules previously did not address the calculation of support in such cases. Pursuant to the amendments, the different shared parenting adjustments will be averaged.

G. Child Care Expenses. Rule 1910.16-6(a) has been amended to provide that child care expenses incurred by both parties shall be apportioned between the parties in recognition of the fact that a non-custodial parent may also incur such expenses during his or her custodial periods with the children.

H. Other Amendments. All of the examples in the guidelines have been updated to reflect the changes to the basic child support schedule. Prior explanatory comments have been deleted or revised and incorporated into new comments.

Rule 1910.16-2. Support Guidelines. Calculation of Net Income.

The amount of support to be awarded is based in large part upon the parties' monthly net income.

(a) *Monthly Gross Income.* Monthly gross income is ordinarily based upon at least a six-month average of all of a party's income. The term "income" is defined by the support law, 23 Pa.C.S. § 4302, and includes income from any source. The statute lists many types of income including, but not limited to:

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(6) [social security] Social Security disability benefits, [social security] Social Security retirement benefits, temporary and permanent disability benefits, workers' compensation and unemployment compensation;

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(b) *Treatment of Public Assistance, SSI Benefits and Social Security Payments to a Child Due to a Parent's Disability or Retirement.*

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(2) If a child for whom support is sought is receiving [**social security**] **Social Security** retirement or disability derivative benefits as a result of a parent's age or disability, the benefits the child receives shall be added to the combined monthly net incomes of the obligor and obligee to calculate the income available for support on the vertical axis of the basic child support schedule set forth in Rule 1910.16-3. The presumptive amount of support as set forth on the schedule at the combined income of obligee, obligor and child's benefits shall then be reduced by the amount of the child's [**social security**] **Social Security** or disability derivative benefits before apportioning the remaining support obligation between the parties pursuant to Rule 1910.16-4.

Example. If the obligor has net monthly income of \$1200 per month; the obligee has net monthly income of \$800; and the child receives [**social security**] **Social Security** derivative benefits of \$300 per month as a result of either the obligor's or obligee's retirement or disability, then the total combined monthly net income is \$2,300. Using the schedule at Rule 1910.16-3 for one child, the amount of support is \$[**539**] **568** per month. From that amount, subtract the amount the child is receiving in [**social security**] **Social Security** derivative benefits (\$[**539**] **568** minus \$300 equals \$[**239**] **268**). Then, apply the formula at Rule 1910.16-4 to apportion the remaining child support amount of \$[**239**] **268** between the obligor and the obligee in proportion to their respective incomes. Obligor's \$1200 net income per month is 60% of the total of obligor's and obligee's combined net monthly income. Thus, obligor's support obligation would be 60% of \$[**239**] **268**, or \$[**143.40**] **161**, per month.

Official Note: Care must be taken to distinguish Social Security from Supplemental Security Income (SSI) benefits. Social Security benefits are income pursuant to subdivision (a) of this [**Rule**] **rule**.

(c) *Monthly Net Income.*

(1) Unless otherwise provided in these [**Rules**] **rules**, the court shall deduct only the following items from monthly gross income to arrive at net income:

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(d) *Reduced or Fluctuating Income.*

(1) *Voluntary Reduction of Income.* [**Where a**] **When either party voluntarily assumes a lower paying job, quits a job, leaves employment, changes occupations or changes employment status to pursue an education, or is fired for cause**, there generally will be no effect on the support obligation. [**A party will ordinarily not be relieved of a support obligation by voluntarily quitting work or by being fired for cause.**

Official Note: This provision applies to the establishment as well as modification of a support obligation. To the extent that *Klahold v. Kroh*, 437 Pa. Super. 150, 649 A.2d 701 (1994) implies otherwise, it is overruled.]

(2) *Involuntary Reduction of, and Fluctuations in, Income.* No adjustments in support payments will be made for normal fluctuations in earnings. However, appropriate adjustments will be made for substantial continuing involuntary decreases in income, including but not limited to the result of illness, lay-off, termina-

tion, job elimination or some other employment situation over which the party has no control.

* * * * *

(4) [**Income Potential**] **Earning Capacity.** Ordinarily, a party who [**wilfully**] **willfully** fails to obtain appropriate employment **when the opportunity is available** will be considered to have an income equal to the party's earning capacity. Age, education, training, health, work experience, earnings history and child care responsibilities are factors which shall be considered in determining earning capacity.

(e) *Net Income Affecting Application of the Child Support Guidelines.*

(1) *Low Income Cases.*

(A) When the obligor's monthly net income and corresponding number of children fall into the shaded area of the schedule set forth in Rule 1910.16-3, the basic child support obligation shall be calculated using the obligor's income only. For example, where obligor has monthly net income of \$[**750**] **850**, the presumptively correct amount of support for three children is \$[**184**] **94** per month. This amount is determined directly from the schedule in Rule 1910.16-3.

(B) In computing a basic spousal support or alimony pendente lite obligation, the presumptively correct amount of support shall not reduce the obligor's net income below \$[**550**] **748** per month. For example, if the obligor earns \$[**600**] **800** per month and the obligee earns \$300 per month, the formula in Part IV of Rule 1910.16-4 would result in a support obligation of \$[**120**] **200** per month. Since this amount leaves the obligor with only \$[**480**] **600** per month, it must be adjusted so that obligor retains at least \$[**550**] **748** per month. The presumptively correct minimum amount of spousal support, therefore, is \$[**50**] **52** per month in this case.

(C) When the obligor's monthly net income is \$[**550**] **748** or less, the court may award support only after consideration of the obligor's actual living expenses.

(2) *High Income Child Support Cases.* When the parties' combined net income exceeds \$[**15,000**] **20,000** per month, child support shall be calculated pursuant to *Melzer v. Witsberger*, 505 Pa. 462, 480 A.2d 991 (1984). The presumptive minimum amount of child support shall be the obligor's percentage share of the highest amount of support which can be derived from the schedule for the appropriate number of children and using the parties' actual combined income to determine the obligor's percentage share of this amount. The court may award an additional amount of child support based on the parties' combined income and the factors set forth in *Melzer*. The *Melzer* analysis in high income child support cases shall be applied to all of the parties' income, not just to the amount of income exceeding \$[**15,000**] **20,000** per month. In a *Melzer* analysis case, the presumptive minimum remains applicable.

For example, where the obligor and the obligee have monthly net incomes of \$17,000 and \$4,000 respectively, the presumptive minimum amount of child support for three children is calculated as follows: using the formula in Rule 1910.16-4, determine the parties' percentage shares of income based on their actual combined income—81% and 19% respectively of \$21,000. Using the schedule in Rule 1910.16-3, find the highest possible combined

child support obligation for three children—\$[3,480] 3,018. [Obligor's] The obligor's percentage share of the combined obligation is 81% of \$[3,480] 3,018, or \$[2,818] 2,445. This is the presumptive minimum amount of child support that he or she must pay for three children. Since this amount is derived from the schedule in Rule 1910.16-3, which is limited to combined household income of \$[15,000] 20,000, the court may award an additional amount of support based on the factors set forth in *Melzer*.

* * * * *

[Explanatory Comment—1998

This new Rule consolidates all of the income provisions which formerly appeared throughout Rule 1910.16-5. Subdivision (a) specifies what is gross income for purposes of calculating the support obligation. In conformity with the recently expanded definition of income under 23 Pa.C.S. § 4322, income includes bonuses, lottery winnings, income tax refunds, insurance compensation or settlements, awards or verdicts and any form of payment due and collectible regardless of source.

Subdivision (c) sets forth the exclusive list of the deductions that may be taken from gross income in arriving at a party's net income. When the cost of health insurance premiums is treated as an additional expense subject to allocation between the parties under Rule 1910.16-6, it is no longer deductible from gross income. However, part or all of the cost of health insurance premiums may be deducted from the obligor's gross income pursuant to Rule 1910.16-6(b) in cases in which the obligor is paying the premiums and the obligee has no income or minimal income. Subdivision (c) also incorporates former Rule 1910.16-5(o) relating to awards of spousal support or APL when there are multiple families. In these cases, a party's net income must be reduced further to account for his or her child support obligations as well as any pre-existing spousal support, APL or alimony obligations being paid to former spouses who are not the subject of the support action.

Subdivision (e) reflects the Computed Allowance Minimum (CAM) in low-income child support cases. When the obligor's net monthly income or earning capacity falls into the shaded area of the schedule, the basic child support obligation can be derived directly from the schedule in Rule 1910.16-3. There is no need to use the formula in Rule 1910.16-4 to calculate obligor's support obligation because the CAM keeps the amount of the obligation the same regardless of obligee's income. Obligee's income may be a relevant factor, however, in determining whether to deviate from the basic guideline obligation pursuant to Rule 1910.16-5 and in considering whether to require the obligor to contribute to any additional expenses under Rule 1910.16-6.

Since the schedule in Rule 1910.16-3 reflects child support only, subdivision (e)(1)(B) is necessary to reflect the operation of CAM in spousal support and alimony pendente lite cases. It adjusts the basic guideline obligation which would otherwise be calculated under the formula in Rule 1910.16-4 so that the obligor does not fall below \$550 per month in these cases.

When the obligor's monthly net income is less than \$550, subsection (1)(C) provides that the court

must consider the parties' actual living expenses before awarding support. The guidelines assume that at this income level the obligor is barely able to meet basic personal needs. In these cases, therefore, entry of a minimal order is appropriate. In some cases, it may not be appropriate to order support at all.

The CAM amount is only the presumptively correct amount of basic support to be awarded. If the circumstances warrant, the court may deviate from that amount under Rule 1910.16-5 and may also consider the party's contribution to the additional expenses, which are typically added to the basic amount of support under Rule 1910.16-6. If, for example, the obligor earns only \$600 per month but is living with his or her parents, or has remarried and is living with a fully-employed spouse, the court may consider an upward deviation under Rule 1910.16-5(b)(3) and/or may order the party to contribute to the additional expenses under Rule 1910.16-6. Consistent with the goals of CAM, however, the court should ensure that the overall support obligation leaves obligor with sufficient income to meet basic personal needs and to maintain the incentive to continue working so that support can be paid.

Subdivision (e) also reflects the limited application of *Melzer v. Witsberger*, 505 Pa. 462, 480 A.2d 991 (1984) to cases in which the guidelines cannot be used to establish the child support obligation because the parties' combined income exceeds \$15,000 per month. The court must establish a presumptive minimum amount of child support using the guidelines to arrive at that amount. The formula for calculating the presumptive minimum amount has been modified slightly to clarify that the parties' percentage shares should be calculated using their actual combined income rather than theoretical combined income of only \$15,000. This change eliminates many of the inequities and inconsistencies that arose under the previous formula for determining this amount. In considering whether to award an additional amount of child support, the court must use the factors set forth in *Melzer*. It would be improper to apply the formula in Rule 1910.16-4 to the amount of the parties' combined income which exceeds \$15,000 per month and award the obligor's percentage share as additional support. Additional support, if any, may be more or less than the percentage share and must be determined, therefore, in accordance with the factors set forth in *Melzer*.

Explanatory Comment—2000

This rule has been amended to reflect the fact that the chart of proportional expenditures formerly set forth at Rule 1910.16-3(b) has been rescinded. In addition, the rule and Explanatory Comment have been revised to clarify that the factors set forth in *Melzer v. Witsberger*, 505 Pa. 462, 480 A.2d 991 (1984), must be applied by considering all of the parties' combined income, not just the amount over \$15,000 per month. The presumptive minimum shall apply even if the *Melzer* analysis results in a figure lower than the presumptive minimum.]

Explanatory Comment—2004

Subdivision (a) addresses gross income for purposes of calculating the support obligation by refer-

ence to the statutory definition at 23 Pa.C.S. § 4322. Subdivision (b) provides for the treatment of public assistance, SSI benefits and Social Security derivative benefits.

Subdivision (c) sets forth the exclusive list of the deductions that may be taken from gross income in arriving at a party's net income. When the cost of health insurance premiums is treated as an additional expense subject to allocation between the parties under Rule 1910.16-6, it is not deductible from gross income. However, part or all of the cost of health insurance premiums may be deducted from the obligor's gross income pursuant to Rule 1910.16-6(b) in cases in which the obligor is paying the premiums and the obligee has no income or minimal income. Subdivision (c) relates to awards of spousal support or alimony pendente lite when there are multiple families. In these cases, a party's net income must be reduced to account for his or her child support obligations, as well as any pre-existing spousal support, alimony pendente lite or alimony obligations being paid to former spouses who are not the subject of the support action.

Subdivision (d) has been amended to clarify the distinction between voluntary and involuntary changes in income. Since the payment of support is a priority, subsection (1) reflects current case law which, for example, holds that a party's decision to forego current employment in order to further his or her education should be treated no differently than a decision to change jobs or occupations which results in a lower income. *Kersey v. Jefferson*, 791 A.2d 419 (Pa. Super. 2002); *Grimes v. Grimes*, 596 A.2d 240 (Pa. Super. 1991).

Subdivision (e) has been amended to reflect the updated schedule in Rule 1910.16-3 and the increase in the Self-Support Reserve ("SSR"), formerly referred to as the Computed Allowance Minimum ("CAM"). The schedule now applies to all cases in which the parties' combined net monthly income is \$20,000 or less. The upper income limit of the prior schedule was only \$15,000. The amount of support at each income level of the schedule also has changed, so the examples in Rule 1910.16-2 were revised to be consistent with the new support amounts.

The SSR is intended to assure that obligors with low incomes retain sufficient income to meet their basic needs and to maintain the incentive to continue employment. When the obligor's net monthly income or earning capacity falls into the shaded area of the schedule, the basic child support obligation can be derived directly from the schedule in Rule 1910.16-3. There is no need to use the formula in Rule 1910.16-4 to calculate the obligor's support obligation because the SSR keeps the amount of the obligation the same regardless of the obligee's income. The obligee's income may be a relevant factor, however, in determining whether to deviate from the basic guideline obligation pursuant to Rule 1910.16-5 and in considering whether to require the obligor to contribute to any additional expenses under Rule 1910.16-6.

Since the schedule in Rule 1910.16-3 sets forth basic child support only, subdivision (e)(1)(B) is necessary to reflect the operation of the SSR in spousal support and alimony pendente lite cases. It adjusts the basic guideline obligation, which would

otherwise be calculated under the formula in Rule 1910.16-4, so that the obligor's income does not fall below the SSR amount in these cases.

Previously, the CAM required that the obligor retain at least \$550 per month. The SSR now requires that the obligor retain income of at least \$748 per month, an amount equal to the 2003 federal poverty level for one person. When the obligor's monthly net income is less than \$748, subsection (e)(1)(C) provides that the court must consider the parties' actual living expenses before awarding support. The guidelines assume that at this income level the obligor is barely able to meet basic personal needs. In these cases, therefore, entry of a minimal order may be appropriate. In some cases, it may not be appropriate to order support at all.

The schedule at Rule 1910.16-3 sets forth the presumptive amount of basic child support to be awarded. If the circumstances warrant, the court may deviate from that amount under Rule 1910.16-5 and may also consider a party's contribution to additional expenses, which are typically added to the basic amount of support under Rule 1910.16-6. If, for example, the obligor earns only \$800 per month but is living with his or her parents, or has remarried and is living with a fully-employed spouse, the court may consider an upward deviation under Rule 1910.16-5(b)(3) and/or may order the party to contribute to the additional expenses under Rule 1910.16-6. Consistent with the goals of the SSR, however, the court should ensure that the overall support obligation leaves the obligor with sufficient income to meet basic personal needs and to maintain the incentive to continue working so that support can be paid.

Subdivision (e) also reflects the limited application of *Melzer v. Witsberger*, 505 Pa. 462, 480 A.2d 991 (1984), to cases in which the guidelines cannot be used to establish the child support obligation because the parties' combined income exceeds \$20,000 per month. The court must establish a presumptive minimum amount of child support using the guidelines to arrive at that amount. The formula for calculating the presumptive minimum amount provides that the parties' percentage shares should be calculated using their actual combined income rather than the theoretical combined income of only \$20,000. In considering whether to award an additional amount of child support, the court must apply the factors set forth in *Melzer* to all of the parties' combined income, not just the amount over \$20,000 per month. It would be improper to apply the formula in Rule 1910.16-4 to the amount of the parties' combined income which exceeds \$20,000 per month and award the obligor's percentage share as additional support. Additional support, if any, may be more or less than the percentage share and must be determined, therefore, in accordance with the factors set forth in *Melzer*. The presumptive minimum shall apply even if the *Melzer* analysis results in a lower amount.

Rule 1910.16-3. Support Guidelines. Basic Child Support Schedule.

The following schedule sets forth the amounts spent on children in intact families by combined income and number of children. Combined income is on the vertical axis of the schedule and number of children is on the

horizontal axis of the schedule. This schedule is used to find the basic child support obligation. Unless otherwise provided in these [**Rules**] rules, the obligor's share of the basic support obligation shall be computed using the formula set forth in Part I of Rule 1910.16-4.

(*Editor's Note:* As part of this proposed rulemaking, the chart in Rule 1910.16-3 is proposed to be replaced with the following chart. It currently appears in 231 Pa. Code pages 1910-20—1910-38, serial pages (285536), (251729) to (251744) and (270817) to (270818).)

Monthly Basic Child Support Schedule						
COMBINED ADJUSTED NET INCOME	ONE CHILD	TWO CHILDREN	THREE CHILDREN	FOUR CHILDREN	FIVE CHILDREN	SIX CHILDREN
0-800	50	50	50	50	50	50
850	92	93	94	95	96	97
900	137	138	140	141	143	144
950	182	184	186	188	190	192
1000	227	229	232	234	237	239
1050	271	275	278	281	284	287
1100	284	320	324	327	331	334
1150	296	366	370	374	378	382
1200	309	411	416	420	425	429
1250	322	455	462	467	472	477
1300	335	472	508	513	519	524
1350	348	490	554	560	566	572
1400	360	508	589	606	613	619
1450	373	526	610	653	660	667
1500	386	544	630	699	707	714
1550	397	560	648	723	754	762
1600	409	575	666	743	801	809
1650	421	591	684	763	839	857
1700	432	607	702	783	861	904
1750	444	623	720	803	883	952
1800	455	638	738	822	905	984
1850	467	654	756	842	927	1008
1900	479	670	773	862	949	1032
1950	490	685	790	881	969	1055
2000	501	700	807	900	990	1077
2050	512	715	824	918	1010	1099
2100	523	729	840	937	1031	1121
2150	534	744	857	955	1051	1143
2200	545	759	873	974	1071	1166
2250	557	774	890	992	1092	1188
2300	568	789	907	1011	1112	1210
2350	579	804	924	1030	1133	1233
2400	591	820	942	1051	1156	1257
2450	603	837	961	1071	1179	1282
2500	615	853	979	1092	1201	1307
2550	626	869	998	1113	1224	1332
2600	638	886	1017	1134	1247	1357
2650	650	902	1035	1154	1270	1381
2700	662	918	1054	1175	1292	1406
2750	674	935	1072	1196	1315	1431
2800	684	949	1088	1213	1335	1452
2850	694	962	1103	1230	1353	1472

<i>Monthly Basic Child Support Schedule</i>						
<i>COMBINED ADJUSTED NET INCOME</i>	<i>ONE CHILD</i>	<i>TWO CHILDREN</i>	<i>THREE CHILDREN</i>	<i>FOUR CHILDREN</i>	<i>FIVE CHILDREN</i>	<i>SIX CHILDREN</i>
2900	704	976	1118	1246	1371	1492
2950	714	989	1133	1263	1389	1511
3000	724	1003	1147	1279	1407	1531
3050	734	1016	1162	1296	1425	1551
3100	744	1029	1177	1312	1443	1570
3150	754	1043	1192	1329	1461	1590
3200	763	1054	1204	1342	1477	1607
3250	767	1059	1207	1346	1481	1611
3300	772	1063	1211	1350	1485	1616
3350	776	1068	1214	1354	1489	1620
3400	781	1072	1218	1358	1494	1625
3450	785	1077	1221	1362	1498	1630
3500	790	1081	1225	1365	1502	1634
3550	794	1086	1228	1369	1506	1639
3600	798	1090	1231	1373	1510	1643
3650	804	1096	1237	1380	1518	1651
3700	809	1103	1245	1388	1526	1661
3750	815	1110	1252	1396	1535	1670
3800	820	1117	1259	1403	1544	1680
3850	826	1123	1266	1411	1552	1689
3900	831	1130	1273	1419	1561	1699
3950	837	1137	1280	1427	1570	1708
4000	843	1144	1287	1435	1579	1717
4050	848	1151	1294	1443	1587	1727
4100	854	1158	1302	1452	1597	1738
4150	860	1165	1310	1461	1607	1748
4200	866	1173	1318	1469	1616	1759
4250	872	1180	1326	1478	1626	1769
4300	878	1187	1334	1487	1636	1780
4350	884	1194	1341	1496	1645	1790
4400	890	1202	1349	1504	1655	1800
4450	896	1209	1357	1513	1665	1811
4500	902	1216	1365	1522	1674	1821
4550	908	1224	1373	1531	1684	1832
4600	914	1231	1381	1539	1693	1842
4650	920	1238	1389	1548	1703	1853
4700	924	1243	1394	1554	1709	1860
4750	925	1245	1395	1555	1711	1861
4800	927	1246	1396	1557	1713	1863
4850	928	1248	1398	1558	1714	1865
4900	930	1249	1399	1560	1716	1867
4950	931	1251	1400	1561	1717	1869
5000	933	1253	1402	1563	1719	1870
5050	934	1254	1403	1564	1721	1872
5100	936	1256	1404	1566	1722	1874
5150	937	1257	1406	1567	1724	1876

<i>Monthly Basic Child Support Schedule</i>						
<i>COMBINED ADJUSTED NET INCOME</i>	<i>ONE CHILD</i>	<i>TWO CHILDREN</i>	<i>THREE CHILDREN</i>	<i>FOUR CHILDREN</i>	<i>FIVE CHILDREN</i>	<i>SIX CHILDREN</i>
5200	939	1259	1407	1569	1726	1877
5250	940	1261	1408	1570	1727	1879
5300	942	1262	1410	1572	1729	1881
5350	943	1264	1411	1573	1731	1883
5400	945	1265	1412	1575	1732	1885
5450	946	1267	1414	1576	1734	1886
5500	948	1268	1415	1578	1735	1888
5550	952	1273	1420	1583	1742	1895
5600	959	1283	1431	1595	1755	1909
5650	966	1292	1441	1607	1768	1923
5700	973	1302	1452	1619	1780	1937
5750	980	1312	1462	1630	1793	1951
5800	988	1321	1473	1642	1806	1965
5850	995	1331	1483	1654	1819	1979
5900	1002	1340	1494	1666	1832	1993
5950	1009	1350	1504	1677	1845	2007
6000	1016	1359	1515	1689	1858	2021
6050	1023	1369	1525	1701	1871	2035
6100	1030	1379	1536	1712	1884	2049
6150	1038	1388	1546	1724	1897	2063
6200	1045	1398	1557	1736	1909	2077
6250	1052	1407	1567	1748	1922	2092
6300	1059	1417	1578	1759	1935	2106
6350	1066	1426	1588	1771	1948	2120
6400	1072	1435	1597	1781	1959	2132
6450	1077	1441	1604	1788	1967	2140
6500	1082	1447	1610	1796	1975	2149
6550	1087	1454	1617	1803	1983	2158
6600	1092	1460	1624	1810	1991	2167
6650	1097	1466	1630	1818	1999	2175
6700	1102	1473	1637	1825	2008	2184
6750	1107	1479	1643	1832	2016	2193
6800	1112	1485	1650	1840	2024	2202
6850	1117	1491	1657	1847	2032	2211
6900	1122	1498	1663	1854	2040	2219
6950	1127	1504	1670	1862	2048	2228
7000	1132	1510	1676	1869	2056	2237
7050	1137	1517	1683	1876	2064	2246
7100	1142	1523	1690	1884	2072	2255
7150	1147	1529	1696	1891	2080	2263
7200	1152	1536	1703	1898	2088	2272
7250	1157	1542	1709	1906	2096	2281
7300	1162	1548	1716	1913	2104	2290
7350	1167	1555	1722	1921	2113	2298
7400	1172	1561	1729	1928	2121	2307
7450	1177	1567	1736	1935	2129	2316

<i>Monthly Basic Child Support Schedule</i>						
<i>COMBINED ADJUSTED NET INCOME</i>	<i>ONE CHILD</i>	<i>TWO CHILDREN</i>	<i>THREE CHILDREN</i>	<i>FOUR CHILDREN</i>	<i>FIVE CHILDREN</i>	<i>SIX CHILDREN</i>
7500	1182	1573	1742	1943	2137	2325
7550	1187	1580	1749	1950	2145	2334
7600	1192	1586	1755	1957	2153	2342
7650	1197	1592	1762	1965	2161	2351
7700	1202	1598	1768	1971	2169	2359
7750	1206	1604	1774	1978	2176	2367
7800	1210	1609	1780	1985	2183	2375
7850	1214	1615	1786	1992	2191	2384
7900	1219	1620	1792	1998	2198	2392
7950	1223	1626	1798	2005	2206	2400
8000	1227	1631	1804	2012	2213	2408
8050	1231	1637	1810	2019	2220	2416
8100	1235	1642	1816	2025	2228	2424
8150	1240	1648	1822	2032	2235	2432
8200	1244	1653	1828	2039	2243	2440
8250	1248	1659	1835	2045	2250	2448
8300	1252	1664	1841	2052	2257	2456
8350	1257	1670	1847	2059	2265	2464
8400	1261	1675	1853	2066	2272	2472
8450	1265	1681	1859	2072	2280	2480
8500	1269	1686	1865	2079	2287	2488
8550	1273	1692	1871	2086	2295	2496
8600	1278	1697	1877	2093	2302	2504
8650	1282	1703	1883	2099	2309	2513
8700	1286	1708	1889	2106	2317	2521
8750	1290	1714	1895	2113	2324	2529
8800	1295	1719	1901	2120	2332	2537
8850	1299	1725	1907	2126	2339	2545
8900	1303	1730	1913	2133	2346	2553
8950	1307	1736	1919	2140	2354	2561
9000	1311	1741	1925	2147	2361	2569
9050	1316	1747	1931	2153	2369	2577
9100	1320	1752	1937	2160	2376	2585
9150	1324	1758	1943	2167	2383	2593
9200	1328	1763	1949	2173	2391	2601
9250	1333	1769	1955	2180	2398	2609
9300	1337	1775	1961	2187	2406	2617
9350	1341	1780	1967	2194	2413	2625
9400	1345	1786	1973	2200	2420	2633
9450	1349	1791	1980	2207	2428	2642
9500	1354	1797	1986	2214	2435	2650
9550	1358	1802	1992	2221	2443	2658
9600	1362	1807	1996	2226	2449	2664
9650	1365	1811	2001	2231	2454	2670
9700	1369	1815	2005	2235	2459	2675
9750	1372	1819	2009	2240	2464	2681

<i>Monthly Basic Child Support Schedule</i>						
<i>COMBINED ADJUSTED NET INCOME</i>	<i>ONE CHILD</i>	<i>TWO CHILDREN</i>	<i>THREE CHILDREN</i>	<i>FOUR CHILDREN</i>	<i>FIVE CHILDREN</i>	<i>SIX CHILDREN</i>
9800	1376	1823	2013	2244	2469	2686
9850	1379	1827	2017	2249	2474	2692
9900	1383	1832	2021	2253	2479	2697
9950	1386	1836	2025	2258	2484	2702
10000	1390	1840	2029	2263	2489	2708
10050	1393	1844	2033	2267	2494	2713
10100	1397	1848	2037	2272	2499	2719
10150	1400	1852	2042	2276	2504	2724
10200	1404	1856	2046	2281	2509	2730
10250	1407	1860	2050	2285	2514	2735
10300	1411	1865	2054	2290	2519	2741
10350	1414	1869	2058	2295	2524	2746
10400	1418	1873	2062	2299	2529	2752
10450	1421	1877	2066	2304	2534	2757
10500	1425	1881	2070	2308	2539	2763
10550	1428	1885	2074	2313	2544	2768
10600	1432	1889	2078	2317	2549	2774
10650	1435	1894	2083	2322	2554	2779
10700	1439	1898	2087	2327	2559	2784
10750	1442	1902	2091	2331	2564	2790
10800	1446	1906	2095	2336	2569	2795
10850	1449	1910	2099	2340	2574	2801
10900	1453	1914	2103	2345	2579	2806
10950	1456	1918	2107	2349	2584	2812
11000	1460	1922	2111	2354	2589	2817
11050	1464	1927	2115	2359	2594	2823
11100	1467	1931	2119	2363	2599	2828
11150	1471	1935	2124	2368	2604	2834
11200	1474	1939	2128	2372	2610	2839
11250	1478	1943	2132	2377	2615	2845
11300	1481	1947	2136	2381	2620	2850
11350	1485	1951	2140	2386	2625	2856
11400	1488	1956	2144	2391	2630	2861
11450	1492	1960	2148	2395	2635	2866
11500	1495	1964	2152	2400	2640	2872
11550	1499	1968	2156	2404	2645	2877
11600	1502	1972	2160	2409	2650	2883
11650	1506	1976	2164	2413	2655	2888
11700	1509	1980	2169	2418	2660	2894
11750	1513	1984	2173	2423	2665	2899
11800	1516	1989	2177	2427	2670	2905
11850	1520	1993	2181	2432	2675	2910
11900	1523	1997	2185	2436	2680	2916
11950	1527	2001	2189	2441	2685	2921
12000	1530	2005	2193	2445	2690	2927
12050	1534	2009	2197	2450	2695	2932

<i>Monthly Basic Child Support Schedule</i>						
<i>COMBINED ADJUSTED NET INCOME</i>	<i>ONE CHILD</i>	<i>TWO CHILDREN</i>	<i>THREE CHILDREN</i>	<i>FOUR CHILDREN</i>	<i>FIVE CHILDREN</i>	<i>SIX CHILDREN</i>
12100	1537	2013	2201	2455	2700	2938
12150	1541	2018	2205	2459	2705	2943
12200	1544	2022	2210	2464	2710	2948
12250	1548	2026	2214	2468	2715	2954
12300	1551	2030	2218	2473	2720	2959
12350	1555	2034	2222	2477	2725	2965
12400	1558	2038	2226	2482	2730	2970
12450	1562	2042	2230	2486	2735	2976
12500	1565	2046	2234	2491	2740	2981
12550	1569	2051	2238	2496	2745	2987
12600	1572	2055	2242	2500	2750	2992
12650	1576	2059	2246	2505	2755	2998
12700	1579	2063	2251	2509	2760	3003
12750	1583	2067	2255	2514	2765	3009
12800	1586	2071	2259	2518	2770	3014
12850	1590	2075	2263	2523	2775	3020
12900	1593	2080	2267	2528	2780	3025
12950	1597	2084	2271	2532	2785	3030
13000	1600	2088	2275	2537	2790	3036
13050	1604	2092	2279	2541	2795	3041
13100	1607	2096	2283	2546	2800	3047
13150	1611	2100	2287	2550	2805	3052
13200	1614	2104	2291	2555	2811	3058
13250	1618	2108	2296	2560	2816	3063
13300	1622	2113	2300	2564	2821	3069
13350	1625	2117	2304	2569	2826	3074
13400	1629	2121	2308	2573	2831	3080
13450	1632	2125	2312	2578	2836	3085
13500	1636	2129	2316	2582	2841	3091
13550	1639	2133	2320	2587	2846	3096
13600	1643	2137	2324	2592	2851	3102
13650	1646	2142	2328	2596	2856	3107
13700	1650	2146	2332	2601	2861	3113
13750	1653	2150	2337	2605	2866	3118
13800	1657	2154	2341	2610	2871	3123
13850	1660	2158	2345	2614	2876	3129
13900	1664	2162	2349	2619	2881	3134
13950	1667	2166	2353	2624	2886	3140
14000	1671	2170	2357	2628	2891	3145
14050	1674	2175	2361	2633	2896	3151
14100	1678	2179	2365	2637	2901	3156
14150	1681	2183	2369	2642	2906	3162
14200	1685	2187	2373	2646	2911	3167
14250	1688	2191	2378	2651	2916	3173
14300	1692	2195	2382	2656	2921	3178
14350	1695	2199	2386	2660	2926	3184

<i>Monthly Basic Child Support Schedule</i>						
<i>COMBINED ADJUSTED NET INCOME</i>	<i>ONE CHILD</i>	<i>TWO CHILDREN</i>	<i>THREE CHILDREN</i>	<i>FOUR CHILDREN</i>	<i>FIVE CHILDREN</i>	<i>SIX CHILDREN</i>
14400	1699	2203	2390	2665	2931	3189
14450	1702	2208	2394	2669	2936	3195
14500	1706	2212	2398	2674	2941	3200
14550	1709	2216	2402	2678	2946	3205
14600	1713	2220	2406	2683	2951	3211
14650	1716	2224	2410	2687	2956	3216
14700	1720	2228	2414	2692	2961	3222
14750	1723	2232	2418	2697	2966	3227
14800	1727	2237	2423	2701	2971	3233
14850	1730	2241	2427	2706	2976	3238
14900	1734	2245	2431	2710	2981	3244
14950	1737	2249	2435	2715	2986	3249
15000	1741	2253	2439	2719	2991	3255
15050	1806	2319	2493	2780	3058	3327
15100	1811	2325	2498	2785	3064	3334
15150	1816	2330	2503	2791	3071	3341
15200	1821	2336	2509	2797	3077	3348
15250	1826	2342	2514	2803	3084	3355
15300	1831	2347	2519	2809	3090	3362
15350	1836	2353	2525	2815	3097	3369
15400	1841	2359	2530	2821	3103	3376
15450	1846	2364	2535	2827	3110	3383
15500	1851	2370	2541	2833	3116	3390
15550	1856	2375	2546	2839	3123	3397
15600	1861	2381	2551	2845	3129	3404
15650	1866	2387	2557	2851	3136	3411
15700	1871	2392	2562	2856	3142	3419
15750	1876	2398	2567	2862	3149	3426
15800	1881	2404	2572	2868	3155	3433
15850	1886	2409	2578	2874	3162	3440
15900	1891	2415	2583	2880	3168	3447
15950	1896	2420	2588	2886	3175	3454
16000	1901	2426	2594	2892	3181	3461
16050	1906	2432	2599	2898	3188	3468
16100	1911	2437	2604	2904	3194	3475
16150	1916	2443	2610	2910	3201	3482
16200	1921	2449	2615	2916	3207	3489
16250	1926	2454	2620	2921	3214	3496
16300	1931	2460	2625	2927	3220	3503
16350	1936	2466	2631	2933	3227	3511
16400	1941	2471	2636	2939	3233	3518
16450	1946	2477	2641	2945	3240	3525
16500	1951	2482	2647	2951	3246	3532
16550	1956	2488	2652	2957	3253	3539
16600	1961	2494	2657	2963	3259	3546
16650	1966	2499	2663	2969	3266	3553

<i>Monthly Basic Child Support Schedule</i>						
<i>COMBINED ADJUSTED NET INCOME</i>	<i>ONE CHILD</i>	<i>TWO CHILDREN</i>	<i>THREE CHILDREN</i>	<i>FOUR CHILDREN</i>	<i>FIVE CHILDREN</i>	<i>SIX CHILDREN</i>
16700	1971	2505	2668	2975	3272	3560
16750	1976	2511	2673	2981	3279	3567
16800	1981	2516	2678	2986	3285	3574
16850	1986	2522	2684	2992	3292	3581
16900	1991	2527	2689	2998	3298	3588
16950	1996	2533	2694	3004	3305	3595
17000	2001	2539	2700	3010	3311	3603
17050	2006	2544	2705	3016	3318	3610
17100	2011	2550	2710	3022	3324	3617
17150	2016	2556	2716	3028	3331	3624
17200	2021	2561	2721	3034	3337	3631
17250	2026	2567	2726	3040	3344	3638
17300	2031	2572	2731	3046	3350	3645
17350	2036	2578	2737	3052	3357	3652
17400	2041	2584	2742	3057	3363	3659
17450	2046	2589	2747	3063	3370	3666
17500	2051	2595	2753	3069	3376	3673
17550	2056	2601	2758	3075	3383	3680
17600	2061	2606	2763	3081	3389	3687
17650	2066	2612	2769	3087	3396	3694
17700	2071	2618	2774	3093	3402	3702
17750	2076	2623	2779	3099	3409	3709
17800	2081	2629	2784	3105	3415	3716
17850	2086	2634	2790	3111	3422	3723
17900	2091	2640	2795	3117	3428	3730
17950	2096	2646	2800	3122	3435	3737
18000	2101	2651	2806	3128	3441	3744
18050	2106	2657	2811	3134	3448	3751
18100	2111	2663	2816	3140	3454	3758
18150	2116	2668	2822	3146	3461	3765
18200	2121	2674	2827	3152	3467	3772
18250	2126	2679	2832	3158	3474	3779
18300	2131	2685	2838	3164	3480	3786
18350	2136	2691	2843	3170	3487	3794
18400	2141	2696	2848	3176	3493	3801
18450	2146	2702	2853	3182	3500	3808
18500	2151	2708	2859	3187	3506	3815
18550	2156	2713	2864	3193	3513	3822
18600	2161	2719	2869	3199	3519	3829
18650	2166	2725	2875	3205	3526	3836
18700	2171	2730	2880	3211	3532	3843
18750	2176	2736	2885	3217	3539	3850
18800	2181	2741	2891	3223	3545	3857
18850	2186	2747	2896	3229	3552	3864
18900	2191	2753	2901	3235	3558	3871
18950	2196	2758	2906	3241	3565	3878

<i>Monthly Basic Child Support Schedule</i>						
<i>COMBINED ADJUSTED NET INCOME</i>	<i>ONE CHILD</i>	<i>TWO CHILDREN</i>	<i>THREE CHILDREN</i>	<i>FOUR CHILDREN</i>	<i>FIVE CHILDREN</i>	<i>SIX CHILDREN</i>
19000	2201	2764	2912	3247	3571	3886
19050	2206	2770	2917	3253	3578	3893
19100	2211	2775	2922	3258	3584	3900
19150	2216	2781	2928	3264	3591	3907
19200	2221	2786	2933	3270	3597	3914
19250	2226	2792	2938	3276	3604	3921
19300	2231	2798	2944	3282	3610	3928
19350	2236	2803	2949	3288	3617	3935
19400	2241	2809	2954	3294	3623	3942
19450	2246	2815	2959	3300	3630	3949
19500	2251	2820	2965	3306	3636	3956
19550	2256	2826	2970	3312	3643	3963
19600	2261	2831	2975	3318	3649	3970
19650	2266	2837	2981	3323	3656	3977
19700	2271	2843	2986	3329	3662	3985
19750	2276	2848	2991	3335	3669	3992
19800	2281	2854	2997	3341	3675	3999
19850	2286	2860	3002	3347	3682	4006
19900	2291	2865	3007	3353	3688	4013
19950	2296	2871	3012	3359	3695	4020
20000	2301	2877	3018	3365	3701	4027

[Explanatory Comment—2000

The chart of proportional expenditures, formerly Rule 1910.16-3(b), was duplicative and is rescinded. The basic child support schedule, formerly Rule 1910.16-3(a), is now Rule 1910.16-3.]

Explanatory Comment—2004

The schedule has been amended to reflect updated economic data. See Explanatory Comment—2004 following Rule 1910.16-1.

Rule 1910.16-4. Support Guidelines. Calculation of Support Obligation. Formula.

(a) The following formula shall be used to calculate the obligor's share of the basic guideline child support, spousal support and/or alimony pendente lite obligation:

PART I. BASIC CHILD SUPPORT

$$\begin{array}{r}
 \text{10. BASIC CHILD SUPPORT OBLIGATION} \\
 \text{OBLIGOR} \\
 * * * * * \\
 \left[\frac{\text{OBLIGOR}}{\text{OBLIGEE}} \right]
 \end{array}$$

PART II. [SUBSTANTIAL or] SHARED PHYSICAL CUSTODY ADJUSTMENT, IF APPLICABLE (See subdivision (c) of this [Rule] rule)

- 13. a. [Percentage of Time Spent with Children (Divide number of overnights with obligor by 365 and multiply by 100)] Total basic child support amount (line 10) _____ [%]
- b. [Subtract 30%] Insert and multiply by appropriate adjustment percentage from Table A or Table B in subdivision (c) of this rule × _____ [%]
- c. [Obligor's Adjusted Percentage Share of the Basic Monthly Support Obligation (Subtract line 13b from line 11)] Shared Custody Adjustment _____ [%]

d. [Obligor's Adjusted Share of the Basic Monthly Support Obligation (Multiply line 13c and line 10)] Obligor's share of basic child support obligation (line 12)

e. [Further adjustment, if necessary under subdivision (c)(2) of this Rule] Less shared custody adjustment (line 13c)

f. Obligor's adjusted share of the basic child support amount.

PART III. ADDITIONAL EXPENSES (See Rule 1910.16-6)

* * * * *

15. OBLIGOR'S TOTAL MONTHLY SUPPORT OBLIGATION (Add line 12) or 13 [(d)] (f) or (e) if applicable) and line 14f)

PART IV. SPOUSAL SUPPORT OR APL With Dependent Children

* * * * *

20. Less Obligor's [Total Child Support Obligation] unadjusted monthly share of the basic child support obligation (line [15] 12)

* * * * *

(c) Substantial or Shared Physical Custody.

[(1) The support guidelines contemplate that the obligor has regular contact, including vacation time, with his or her children, and that he or she makes direct expenditures on behalf of the children. When, however, the children spend 40% or more of their time during the year with obligor, a rebuttable presumption exists that the obligor is entitled to a reduction in the basic support obligation to reflect this additional time. Except as provided in subsections (2) and (3) below, the reduction shall be calculated pursuant to the formula set forth in Part II of subdivision (a) of this Rule. For purposes of this provision, the time spent with the children shall be determined by the number of overnights they spend during the year with obligor.

Example. Where obligor and obligee have monthly net incomes of \$5,000 and \$2,300 respectively, their combined child support obligation is \$1,784 for two children. Using the income shares formula in Part I, obligor's share of this obligation is 68%, or \$1,213. If the children spend 40% of their time with the obligor, the formula in Part II applies to reduce his or her percentage share of the combined support obligation to 58%, or \$1,034. If the children spend 45% of their time with the obligor, his or her percentage share of the combined obligation is reduced to 53%, or \$945. If the children spend equal time with both parents, the obligor's percentage share is reduced to 48%, or \$856.]

(1) The Basic Child Support Schedule set forth in Rule 1910.16-3 is based upon expenditures for children in intact households and does not take into consideration the costs associated with shared custody and visitation. When the children are with the non-custodial parent, a portion of the costs normally expended for them by the custodial parent shifts to the non-custodial parent. Accordingly, when the evidence establishes that the obligor is exercising his or her shared or partial custodial rights or visitation, an adjustment shall be made to the obligor's proportional share of the total child support obligation as follows:

(A) First, determine the total amount of time the child spends with the obligor pursuant to court order, historical practice or agreement of the parents. Using the definitions below, add together each period of custodial time with the obligor within twenty-four hours to calculate the total number of days per year the child spends with the obligor. For purposes of this calculation, only the time spent in the care, custody and control of the obligor is considered. Time that the child is in school or child care is not considered.

(i) "One day" means more than 12 continuous and consecutive hours or an overnight.

(ii) "One-half day" means greater than four and up to and including 12 continuous and consecutive hours.

(iii) "One-quarter day" means up to and including four continuous and consecutive hours.

Example. The obligee is the primary custodian of the parties' two children. The obligor has partial custody of the children as follows:

Every other week from Thursday at 6 p.m. to Sunday at 8 p.m., except for the two weeks the children are on vacation with the obligee and the four weeks they are on vacation with the obligor. This totals three days every other week. Even though the children are in school for 6 hours on Friday, the obligor still has 3 overnights which each meets the definition of a day. Subtract six weeks vacation from 52 weeks in a year = 46 weeks. Divide by two to account for alternating weeks = 23 weeks. Multiply by three days per custodial period = 69 days per year.

Alternate Wednesdays from 4 p.m. to 9 p.m. Each period is more than four hours and counts as one-half day. 23 weeks x 1/2 day = 11 1/2 days per year.

Four weeks in the summer. Seven overnights per week x four weeks = 28 days per year.

Four overnights during the Christmas holiday from school = four days per year.

Alternating holidays from 10 a.m. to 8 p.m. One year: Easter, Fourth of July and Halloween. Next year: Memorial Day, Labor Day and Thanksgiving = three one-half days each year.

Total: 114 days per year and a .161 adjustment percentage from Table A.

(B) If there is no custody order or agreement between the parties as to the current or future custodial schedule, the provisions of this subdivision (c) shall not apply.

(C) After determining the total number of days that the child spends with the obligor, refer to Table A below. Select the range of number of days the child spends with the obligor and select the adjustment percentage from the adjacent column. Multiply the total basic child support obligation by the adjustment percentage in Table A. Then subtract the resulting product from the obligor's monthly share of the basic child support obligation.

TABLE A

<i>Number of Days Per Year With Obligor</i>	<i>Monthly Adjustment Percentage</i>
0 to 3	0
4 to 20	.012
21 to 38	.031
39 to 57	.050
58 to 72	.085
73 to 87	.105
88 to 115	.161
116 to 129	.195
130 to 142	.253
143 to 152	.307
153 to 162	.362
163 to 172	.422
173 to 182	.486

Example. The basic child support obligation at line 10 in the formula at Rule 1910.16-6(a) is \$500 for two children. The obligor's income is 60% of the combined incomes of the parties. Thus, the obligor's monthly share of the basic child support obligation (line 12) would be \$300 (60% of \$500). The obligor has partial custody of the children for a total of 100 days per year. In Table A, the range in this case would be 88 days to 115 days, with an adjustment percentage of .161. Multiply the total obligation by the adjustment percentage ($\$500 \times .161 = \80.50). Then subtract the result from the obligor's share of the total obligation ($\$300 - \$80.50 = \$219.50$). The obligor's share of the basic child support obligation is now \$219.50.

(D) As the number of days the child spends with the obligor approaches equal time sharing (143 days and above), certain costs usually incurred in the custodial household are assumed to be substantially or equally shared by both parents. These costs include the child's clothing, personal care items and entertainment. If this assumption is rebutted, Table B must be used to calculate the reduction in the obligor's support obligation. For example, the assumption would be rebutted if it is shown that such costs are not substantially or equally shared in each household. In Table B, locate the range of time the children spend with the obligor, and its accompanying adjustment percentage, and multiply the total child support obligation by the adjustment percentage. Subtract the result-

ing product from the obligor's proportionate share of the total child support obligation.

TABLE B

<i>Number of Days Per Year With Obligor</i>	<i>Monthly Adjustment Percentage</i>
143 to 152	.275
153 to 162	.293
163 to 172	.312
173 to 182	.331

(E) If the time spent with each parent is essentially equal, the expenses for the children are equally shared and the net monthly incomes of the parties are essentially equal, no support shall be awarded. If the parent's incomes are not equal, the total child support amount shall be divided equally between the two households and the parent with the greater income shall pay support to the other parent in an amount necessary to equalize the share of the support obligation in both households.

Example. Mother's income is \$1,400 per month and Father's income is \$2,600 per month. With a combined monthly net income of \$4,000, the basic child support amount from the schedule at Rule 1910.16-3 for their two children is \$1,144. Based upon their respective incomes, Mother's 35% share of the basic obligation would be \$400. Father's 65% share would be \$744. However, the parents share custody of their children equally. Subtract the lower amount of support from the higher amount ($\$744 \text{ less } \$400 = \$344$), and divide the balance in half ($\$344 \times 50\% = \172). The result, \$172, would be paid by Father to Mother such that each household would have \$572 of the total child support obligation of \$1,144.

(2) [Without regard to which parent initiated the support action, when the children spend equal time with both parents, the Part II formula cannot be applied unless the obligor is the parent with the higher income.] In no event shall an order be entered requiring the parent with the lower income to pay basic child support to the parent with the higher income. However, nothing in this subdivision shall prevent the entry of an order requiring the parent with less income to contribute to additional expenses pursuant to Rule 1910.16-6. Pursuant to either [party's] party initiating a support action, the trier of fact may enter an order against either party based upon the evidence presented without regard to which party initiated the action. [If application of the formula in Part II results in obligee receiving a larger share of the parties' combined income in cases in which the parties share custody equally, then the court shall adjust the support obligation so that the combined income is allocated equally between the two households.

Example. Mother and Father have monthly net incomes of \$3,000 and \$2,000 respectively. Mother has filed for support for the parties' two children with whom they share time equally. Pursuant to the Basic Child Support Schedule at Rule 1910.16-3, the support amount for two children at their parents' combined net income level is \$1,335 per month. Mother's share is 60% of that amount, or \$801. Father's share is 40%, or \$534. Application of subdivisions a. and b. of the Part II formula results in a 20% reduction in support when each parent spends 50% of the time with the children. Because the

parties share custody equally, Mother cannot be the obligee for purposes of the Part II calculation because she has the higher income of the two parents. In these circumstances, although Mother initiated the support action, she would become the obligor even if Father has not filed for support. Father cannot be an obligor in the Part II calculations nor can the amount of support Mother is obligated to pay to Father be offset by calculating Father's adjusted amount of support under Part II because a support order cannot be entered against the parent with the lesser income. Using Mother as the obligor, her adjusted percentage share of the basic support amount is 40% ($60\% - 20\% = 40\%$). Her adjusted share of the basic support amount is \$534 (40% of \$1,335). However, instead of \$534 per month, Mother's support obligation would be adjusted to \$500 per month to allocate the parties' combined income equally between the two households. This is the presumptively correct amount of basic support payable to Father under these circumstances.

Example. Where the obligor and obligee have monthly net incomes of \$3,000 and \$2,500 respectively, their combined child support obligation for two children is \$1,433. Obligor's share of this obligation is 55%, or \$788. If the children spend equal time with both parents, the formula in Part II results in a support obligation of \$501 payable to obligee. Since this amount gives obligee \$3,001 of the combined income, and leaves obligor with only \$2,499 of the combined income, the obligor's support obligation must be adjusted to \$250 to equalize the combined income between the parties' households. This is the presumptively correct amount of basic support payable to obligee under these circumstances.

(3) This subdivision shall not apply when the obligor's income falls within the shaded area of the schedule in Rule 1910.16-3 or when the obligee's income is 10% or less of the parties' combined income.]

(d) *Divided or Split Physical Custody and More than One Custodial Schedule.*

(1) When calculating a child support obligation, and one or more of the children [reside] resides with each party, the court shall offset the parties' respective child support obligations and award the net difference to the obligee as child support. For example, if the parties have three children, one of whom resides with [Husband] Father and two of whom reside with [Wife] Mother, and their net monthly incomes are \$1,500 and \$800 respectively, [Husband's] Father's child support obligation is calculated as follows. Using the formula with the schedule in Rule 1910.16-3 for two children, [Husband's] Father's support obligation for the two children living with [Wife] Mother is \$[508] 506. Using the formula with the schedule in Rule 1910.16-3 for one child, [Wife's] Mother's support obligation for the child living with [Husband] Father is \$[188] 273. Subtracting \$[188] 273 from \$[508] 506 produces a net basic support amount of \$[320] 233 payable to [Wife] Mother as child support.

(2) When calculating a combined child support and spousal or [APL] alimony pendente lite obligation, and one or more children reside with each party, the court

shall, except as set forth in subdivision (3) below, offset the obligor's spousal and child support obligation with the obligee's child support obligation and award the net difference to the obligee as spousal and child support.

(3) When one or more of the children resides with each party and the obligee's net income is 10% or less of the parties' combined net monthly income, then, in calculating the spousal support or [APL] alimony pendente lite obligation, the court shall deduct from the obligor's income both the support owed for the child or children residing with the obligee, as well as the direct support the obligor provides to the child or children living with the obligor, calculated in accordance with the guidelines as if the child or children were not living with the obligor.

(4) When one parent is the primary custodian, but the parties have two or more children who do not follow the same schedule with the non-custodial parent, calculate the total amount of time each schedule affords the obligor with the child, pursuant to subdivision (c) above, and locate the corresponding monthly adjustment percentage in Table A or Table B. If the different custodial schedules do not result in the same monthly adjustment percentage, then an average of the monthly adjustment percentages will apply.

Example. Mother is the primary custodian of the parties' two children. Father has partial custody of one child on 130 days per year, and the other 73 days per year. Mother's net monthly income is \$2,000 net per month and Father's is \$4,500 net per month. At a combined net monthly income of \$6,500, the basic child support amount for two children is \$1,447. Based upon the parties' respective incomes, Father's share is 69%, or \$998. Referring to Table A in subdivision (c) above, Father's 130 days per year with one child would result in a monthly adjustment percentage of .253 and his 73 days with the other child would result in a monthly adjustment percentage of .105. Add the monthly percentages together ($.253 + .105 = .358$) and divide by the number of children ($.358$ divided by 2 children = $.179$). Multiply the total basic child support obligation by the averaged monthly adjustment percentage ($\$1,447 \times .179 = \259). Then subtract the resulting product from Father's share of the basic child support amount ($\$998 - \$259 = \$739$). Father's share of the basic child support obligation is \$739 per month.

Example. Mother is the primary custodian of the parties' three children. Father has partial custody of the first child 120 days per year, the second child 120 days per year and the third child for only for 30 days per year. At the same incomes as in the above example, the basic child support amount for three children from the schedule at Rule 1910.16-3 is \$1,610. Father's 69% share is \$1,111 per month. Referring to Table A in subdivision (c) above, Father's 120 days per year with the first child results in a monthly adjustment percentage of .195 and the same adjustment for the second child who also spends 120 days per year with Father. The monthly adjustment percentage for the third child with whom Father spends 30 days per year is .031. Add the monthly percentage adjustments together ($.195 + .195 + .031 = .421$) and divide by the number of children ($.421$ divided by 3 children = $.140$). Multiply the total basic child support obligation by the averaged monthly adjustment percentage ($\$1,610 \times$

.140 = \$225). Then subtract the resulting product from Father's share of the basic monthly support amount (\$1,111 - \$225 = \$886). Father's support obligation is \$886 per month.

Example. Mother and Father have two children. Each parent has net monthly income of \$2,000. The parties share custody of their younger child equally, but their older child is in Father's primary custody with Mother having partial custody for a total of 63 days per year. Because the parties' incomes are the same and they share custody of the younger child equally, pursuant to Rule 1910.16-4(c)(1)(E), no support would be awarded for the younger child. At the parties' combined net income of \$4,000 per month, the basic support amount for the older child from the schedule at Rule 1910.16-3 is \$843 per month. Mother's share would be 50%, or \$422. Because Mother has partial custody of the older child for 63 days per year, the monthly adjustment percentage from Table A is .085. Multiply the total basic child support obligation by the monthly adjustment percentage (\$843 × .085 = \$72). Then subtract the resulting product from Mother's share of the basic child support obligation (\$422 - \$72 = \$350). Mother's support obligation to Father for the parties' older child is \$350 per month.

(e) *Support Obligations When Custodial Parent Owes Spousal Support.* Where children are residing with the spouse obligated to pay spousal support (custodial parent) and the other spouse (non-custodial parent) has a legal obligation to support these children, the guideline amount of spousal support shall be determined by offsetting the non-custodial parent's obligation for support of the children and the custodial parent's obligation of spousal support, and awarding the net difference to the non-custodial parent as spousal support.

The following example uses the formula to show the steps followed to determine the amount of the non-custodial parent's support obligation to the children and the effect of that obligation upon the custodial parent's spousal support obligation. The example assumes that the parties have two children and the non-custodial parent's net monthly income is \$1,000 and the custodial [parent to the non-custodial] parent's net monthly income is \$2,600. First, determine the spousal support obligation of the custodial parent to the non-custodial parent based upon their net incomes from the formula for spousal support without dependent children, i.e., \$640. Second, recompute the net income of the parties assuming the payment of the spousal support so that \$640 is deducted from the custodial parent's net income, now \$1,960, and added to the non-custodial parent's net income, now \$1,640. Third, determine the child support obligation of the non-custodial parent for two children, i.e., \$[468] 501. Fourth, determine the recomputed support obligation of the custodial parent to the non-custodial parent by subtracting the non-custodial parent's child support obligation from Step 3 (\$[468] 501) from the original support obligation determined in Step 1 (\$640). The recomputed spousal support is \$[172] 139.

(f) *Allocation. Consequences.*

(1) An order awarding both spousal and child support may be unallocated or state the amount of support allocable to the spouse and the amount allocable to each child. However, the formula provided by these rules [assume] assumes that an order will be unallocated. Therefore, if the order is to be allocated, the formula set

forth in this [Rule] rule shall be utilized to determine the amount of support allocable to the spouse. If allocation of an order utilizing the formula would be inequitable, the court shall make an appropriate [allocation] adjustment. Also, if an order is to be allocated, an adjustment shall be made to the award giving consideration to the federal income tax consequences of an allocated order as may be appropriate under the circumstances. No consideration of federal income tax consequences shall be applied if the order is unallocated or the order is for the spousal support or alimony pendente lite only.

Official Note: The 2004 amendment overrules *Diamant v. Diamant*, 816 A.2d 256 (Pa. Super. 2003), to the extent that it held that the tax savings from payments for the benefit of a spouse alone or from an unallocated order for the benefit of a spouse and child must be considered in determining the obligor's available net income for support purposes. Rule 1910.16-4(f)(1) states that the guidelines formula assumes that the order will be unallocated. The tax consequences of an order for a spouse alone or an unallocated order for the benefit of a spouse and child have already been built into the formula.

* * * * *

(4) In the event that the obligor defaults on an unallocated order, the court shall allocate the order for collection of child support pursuant to the Internal Revenue Service income tax refund intercept program or for registration and enforcement of the order in another jurisdiction under the Uniform Interstate Family Support Act, 23 Pa.C.S. § 7101 et seq. The court shall provide notice of allocation to the parties.

* * * * *

[Explanatory Comment—1998

Former Rule 1910.16-4 listed the factors for deviation from the support guidelines. Those factors now appear in Rule 1910.16-5. New Rule 1910.16-4(a) sets forth the income shares formula used to establish the support obligation and consolidates the provisions which formerly appeared in Rule 1910.16-5 relating to use of the formula in special situations. The formula itself has been revised only to conform to the new schedule in Rule 1910.16-3.

Subdivision (b) incorporates former Rule 1910.16-5(e) relating to orders for more than four children. It has been changed only to reflect the expansion of the guidelines from four to six children and the use of the schedule in lieu of the grids.

Subdivision (c) sets forth the method for calculating the presumptively correct amount of support in cases where the obligor spends a substantial amount of time with the children. The method is essentially this: when the obligor spends 40% or more time with the children, his or her percentage share of the combined basic support obligation is reduced by the percentage of time spent over and above the routine partial custody/visitation arrangement. For purposes of applying this method, the Committee has designated 30% time as the routine arrangement and 40% time as the level at which the parties' expenses begin to change significantly enough to warrant a reduction in the basic support obligation. When there is equal time sharing, subsection (2) reduces the support obligation

further so that the obligor does not pay more than what is necessary to spread the parties' combined income equally between the two households. Subsection (3) expressly excludes CAM cases from application of this rule. Since the CAM already reduces support to a minimal level, no further reduction should be given for the amount of time spent with the children.

Subdivision (d) is derived from previous Rule 1910.16-5(h) relating to divided or split custody cases. The new provision has been rewritten to update the examples in conformity with the new levels of child support reflected in the schedule. It retains the existing method for offsetting the parties' respective support obligations when one or more of the children reside with each party, but eliminates the exception which previously existed in cases where one party's income was minimal and the other party's income was significantly greater. This exception was confusing as well as erroneous in its suggestion that offsetting should not be used because it would result in less than the full guideline amount of child support being paid to the party with minimal income. To the contrary, the offset method actually works to protect against this result and therefore should be used in these cases.

Subdivision (e) incorporates the substance of former Rule 1910.16-5(j) governing spousal support obligations when the custodial parent owes spousal support. It has been rewritten for greater clarity and the examples have been updated to reflect the new levels of child support and the use of the new schedule.

Subdivision (f)(1) and (2) incorporate verbatim the provisions which formerly appeared in Rule 1910.16-5(f). The guidelines continue to presume that the order will be unallocated for tax purposes. Subsection (3) is new, however, and provides for administrative allocation of the order in two instances: 1) when the obligor defaults on the order and it becomes necessary to collect support by intercepting any income tax refunds that may be due and payable to obligor and 2) when the obligor defaults and the order must be registered in another state under the Uniform Interstate Family Support Act (UIFSA). As the note indicates, this administrative allocation is not intended to affect the tax consequences of the unallocated order.

Explanatory Comment—2000

Subdivision (3) is new and the former subdivision (3) has been renumbered as subdivision (4). The new language is intended to insure alimony tax treatment of unallocated orders pursuant to § 71 of the Internal Revenue Code. A similar change has been made to the form order at Rule 1910.27(e). New Rule 1910.19(d) provides that all spousal support and alimony pendente lite orders terminate upon the death of the payee. Termination of a charging order does not affect arrears existing at that time.

Explanatory Comment—2002

The amendments to this rule add lines in the formula to facilitate calculation of child support pursuant to Rule 1910.16-2(b)(2) when the child is receiving Social Security derivative benefits due to a parent's retirement or disability. A new line also

was added to include additional expenses authorized by Rule 1910.16-6 in cases involving spouses only.]

Explanatory Comment—2004

Rule 1910.16-4(a) sets forth the income shares formula used to establish the support obligation. Subdivision (b) provides the method for calculating support for seven or more children as the basic support schedule in Rule 1910.16-3 sets forth the presumptively correct amount of support for only up to six children.

Subdivision (c) has been substantially changed. That subdivision now sets forth the method for calculating a reduction in the basic amount of support in cases in which the obligor has partial physical custody of the child(ren) for three or more days per year. Previously, obligors received no reduction unless they had partial physical custody of the child(ren) at least 40% of the time. See Explanatory Comment 2004 following Rule 1910.16-1 for an expanded explanation of these amendments.

Subdivision (d) relates to the calculation of support in divided or split custody cases. It retains the existing method for offsetting the parties' respective support obligations when one or more of the children resides with each party. However, subdivision (d)(4) is new and addresses the calculation of support when two or more children of the parties have different custodial schedules with the obligor.

Subdivision (e) governs spousal support obligations when the custodial parent owes spousal support. It has not been amended, other than to update the example to be consistent with the new schedule at Rule 1910.16-3.

In subdivision (f), the guidelines continue to presume that the order will be unallocated for tax purposes. However, new language has been added to subsection (f)(1), and a new Note has been inserted, to clarify that an obligor's tax savings from payment of a spousal support order or an unallocated order for a spouse and child should not be considered in calculating the obligor's available net income for support purposes. Subsection (3) is intended to insure alimony tax treatment of unallocated orders pursuant to § 71 of the Internal Revenue Code. Rule 1910.19(d) provides that all spousal support and alimony pendente lite orders terminate upon the death of the payee. Termination of a charging order does not affect arrears existing at that time. Subsection (4) provides for administrative allocation of the order in two instances: 1) when the obligor defaults on the order and it becomes necessary to collect support by intercepting any income tax refunds that may be due and payable to obligor; and 2) when the obligor defaults and the order must be registered in another state under the Uniform Interstate Family Support Act (UIFSA). As the Note indicates, this administrative allocation is not intended to affect the tax consequences of the unallocated order.

Rule 1910.16-5. Support Guidelines. Deviation.

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Explanatory Comment—[1998] 2004

[As part of the overall reorganization of the support rules, the provisions which formerly ap-

peared in Rule 1910.16-5 have been moved elsewhere. New Rule 1910.16-5 incorporates former Rule 1910.16-4 setting] Rule 1910.16-5 sets forth the factors for deviation from the [**presumptively correct**] **presumptive** amount of support. Subdivision (c) and subsection (b)(8) [**was added to**] permit the court to consider the length of the marriage in **determining the amount and duration of** a spousal support or alimony pendente lite [**case**] award. The primary purpose of [**this provision**] **these provisions** is to prevent the unfairness that arises in a short-term marriage when the obligor is required to pay support over a substantially longer period of time than the parties were married and there is little or no opportunity for credit for these payments at the time of equitable distribution.

Rule 1910.16-6. Support Guidelines. Adjustments to the Basic Support Obligation.

(a) *Child care expenses.* Reasonable child care expenses paid by [**the custodial**] either parent, if necessary to maintain employment or appropriate education in pursuit of income, [**are the responsibility of both parents. These expenses**] shall be allocated between the parties in proportion to their net incomes and [**obligor's share**] added to his [**or**] and her basic support obligation. When [**the custodial**] a parent is receiving a child care subsidy through the Department of Public Welfare, the expenses to be allocated between the parties shall be the full unsubsidized cost of the child care, not just the amount actually paid by the [**custodial**] parent **receiving the subsidy**. However, if allocation of the unsubsidized amount would result in a support order that is overly burdensome to the obligor, deviation pursuant to Rule 1910.16-5 may be warranted.

Example. Mother has primary custody of the parties' two children and Father has partial custody of 130 days per year. Mother's monthly net income is \$2,000 and Father's is \$3,500. At their combined income level of \$5,500, the basic monthly child support from the schedule in Rule 1910.16-3 is \$1,268 for two children. As Father's income is 64% of the parties' combined income, his share is \$812. However, as Father has the children 130 days each year, his support obligation is reduced to \$491 (\$1,268 total basic obligation × .253 monthly adjustment percentage = \$321; Father's share of the total obligation \$812 - \$321 = \$491). Mother incurs child care expenses of \$400 per month and Father incurs \$100 of such expenses each month. The total amount of child care expenses, \$500, will be apportioned between the parties, with Father paying 64%, or \$320. As he is already paying \$100 for child care while the children are in his partial custody, he would pay the remaining \$220 to Mother for a total child support obligation of \$711 (\$491 + \$220 = \$711).

* * * * *

Official Note: A child care subsidy provided by the Department of Public Welfare should not be used to reduce the child care expenses subject to allocation between the parties to the extent that the obligor has the financial resources to contribute to the actual costs of child care. Nor is it appropriate to order the obligee to seek a child care subsidy in order to reduce the obligor's share of child care expenses if the obligor has the financial ability to contribute to those expenses. While

public policy requires that parents, rather than taxpayers, pay for their children's child care when they are able to do so, allocation of the full unsubsidized cost of child care may result in a support order that is overly burdensome to the obligor. In those circumstances, in addition to considering deviation to relieve the burden on the obligor, the trier of fact also has the discretion to determine whether or not to include in the order other adjustments under Rule 1910.16-6, such as a mortgage contribution, which are not mandatory. No adjustment to the basic support amount shall be permitted if such would cause the obligor's remaining net monthly income to fall below the [**Computed Allowance Minimum (CAM) of \$550**] **Self-Support Reserve of \$748**. Implicit in the rule requiring apportionment of the unsubsidized cost of child care is recognition of the duty of the subsidy recipient to report any additional income pursuant to Department of Public Welfare regulations so that adjustments can be made to entitlements accordingly.

* * * * *

(c) *Unreimbursed Medical Expenses.* Unreimbursed medical expenses of the obligee or the children shall be allocated between the parties in proportion to their respective net incomes. The court may direct that the obligor's share be added to his or her basic support obligation, or paid directly to the obligee or to the health care provider.

(1) For purposes of this subdivision, medical expenses are annual unreimbursed medical expenses in excess of \$250 per person. Medical expenses include insurance co-payments and deductibles and all expenses incurred for reasonably necessary medical services and supplies, including but not limited to surgical, dental and optical services, and orthodontia. Medical expenses do not include cosmetic, chiropractic, psychiatric [**or**], psychological or other services unless specifically directed in the order of court.

Official Note: While cosmetic, chiropractic, psychiatric [**and**], psychological or other expenses are not required to be apportioned between the parties, the court may apportion such expenses that it determines to be reasonable and appropriate under the circumstances.

* * * * *

(e) *Mortgage Payment.* The guidelines assume that the spouse occupying the marital residence will be solely responsible for the mortgage payment, real estate taxes, and homeowners' insurance. Similarly, the court will assume that the party occupying the marital residence will be paying the items listed unless the recommendation specifically provides otherwise. If the obligee is living in the marital residence and the mortgage payment exceeds 25% of the obligee's net income (including amounts of spousal support, [**APL**] **alimony pendente lite** and child support), the court may direct the obligor to assume up to 50% of the excess amount as part of the total support award. For purposes of this subdivision, the term "mortgage" shall include first mortgages, real estate taxes and homeowners' insurance and may include any subsequent mortgages, home equity loans and any other obligations incurred during the marriage which are secured by the marital residence.

[**Explanatory Comment—1998**

New Rule 1910.16-6 consolidates the provisions of former Rule 1910.16-5 governing the treatment of additional expenses that warrant an adjustment to the basic support obligation.

Subdivision (a) relating child care expenses substantially incorporates former subdivision (i) of Rule 1910.16-5 with two substantive changes. First, it changes the method of allocation from one of equal shares to proportionate shares based on the parties' net incomes. Second, it reflects the federal child care tax credit that is available to the custodial parent. This credit essentially reduces the total expenses subject to allocation. For tax purposes, the actual credit can range anywhere from 20 to 30 percent depending on the custodial parent's income. For support purposes, however, the Rule assumes an average tax credit of 25 percent. Although the court may always look at the actual tax rate that applies in a particular case, it will have very little impact on the overall support award.

There are two important limitations on the use of this tax credit. First, it applies only to the first \$2,400 per year (\$200 per month) for one child or \$4,800 per year (\$400 per month) for two or more children. Only child care expenses incurred up to these amounts, therefore, are reduced by 25% before allocating them between the parties. Any remaining expenses are allocated between the parties without adjustment. Second, since the tax credit may be taken only against taxes owed, it cannot be used when the custodial parent does not incur sufficient tax liability to fully realize the credit. For this reason, subsection (2) provides that no adjustment to the total child care expenses may be made if the custodial parent's gross income falls below the thresholds set forth therein. The income thresholds are based on 1997 tax rates.

Subdivision (b) reflects a major change in the treatment of health insurance premiums. Under the old rules, the cost of health insurance was deducted from the party's gross income to determine net income. Under the new Rule, this cost is now generally treated as an additional expense to be allocated between the parties in proportion to their net incomes. In addition, subsection (1) of the new Rule permits allocation of the entire premium, including the party's portion of the premium, when the insurance benefits the other party or the children. Subsection (2) provides for proration of the premium when the health insurance covers other persons who are not subject to the support action.

Subdivision (c) incorporates former Rule 1910.16-5(p) with four changes. First, since the first \$250 of medical expenses per year per child is built into the basic guideline amount in the child support schedule, only medical expenses in excess of \$250 per year per child are subject to allocation under this Rule as an additional expense to be added to the basic support obligation. Second, the Committee has chosen to draw this same line with respect to spousal support so that the obligee-spouse is expected to assume the first \$250 per year of these expenses and may seek contribution under this Rule only for unreimbursed expenses which exceed \$250 per year. The third change amends the definition of "medical expenses" to include insurance co-payments, deductibles and orthodontia and to exclude chiropractic services. The fourth change distinguishes between medical expenses which are recurring and predictable and those which are not. When the expenses are recurring and predictable, the court may establish a monthly amount for these

expenses and add it to the basic support obligation so that it is collectible through wage attachment.

Subdivision (d) governs apportionment of private school tuition, summer camp and other unusual needs not reflected in the basic guideline amounts of support. Whereas the old rule required these expenses to be borne by the parties in reasonable shares, the new Rule presumes allocation in proportion to the parties' net incomes consistent with the treatment of the other additional expenses.

Explanatory Comment—2000

Subdivision (b) has been amended to permit an alternative method for dealing with the cost of health insurance premiums in certain circumstances. In general, the cost of the premiums will be treated as an additional expense to be allocated between the parties in proportion to their net incomes. However, in cases in which the obligee has no income or minimal income, new subsection (4) authorizes the trier of fact to reduce the obligor's gross income for support purposes by some or all of the amount of the health insurance premiums. Under this subdivision (b) as originally promulgated, the entire cost of health insurance would have been borne by the obligor when the obligee had little or no income, with no resulting reduction in the amount of support he or she would otherwise be required to pay under the support guidelines. The goal of the amendment to this subdivision is to encourage and facilitate the maintenance of health insurance coverage for dependents by giving the obligor a financial incentive to maintain health insurance coverage.

Subdivision (e) has been amended to correct a drafting error in the definition of "mortgage." It always was the intention of the Committee to include in the definition the real estate taxes and homeowners' insurance referenced in the first sentence of the rule. In addition, while real estate taxes and homeowners' insurance must now be included if the trier of fact applies the provisions of this subdivision, the inclusion of second mortgages, home equity loans and other obligations secured by the marital residence is within the discretion of the trier of fact based upon the circumstances of the case.

Explanatory Comment—2003

Subdivision (b)(2) has been amended to clarify that in calculating the amount of the health care premium to be allocated between the parties, subdivision (b)(1) requires the inclusion of that portion of the health insurance premium covering the party who is paying the premium, but not the portion of the premium attributable to non-parties and children who are not the subjects of the support order.]

Explanatory Comment—2004

Rule 1910.16-6 governs the treatment of additional expenses that warrant an adjustment to the basic support obligation.

Subdivision (a) relates to child care expenses. It has been amended to require that child care expenses incurred by either party are to be allocated between the parties in proportion to their respective net incomes. Subsection (1) reflects the federal child care tax credit that is available to the custo-

dial parent. This credit essentially reduces the total expenses subject to allocation. For tax purposes, the actual credit can range anywhere from 20 to 30 percent depending on the custodial parent's income. For support purposes, however, the rule assumes an average tax credit of 25 percent. Although the court may always look at the actual tax rate that applies in a particular case, it will have very little impact on the overall support award.

There are two important limitations on the use of this tax credit. First, it applies only to the first \$2,400 per year (\$200 per month) for one child or \$4,800 per year (\$400 per month) for two or more children. Only child care expenses incurred up to these amounts, therefore, are reduced by 25% before allocating them between the parties. Any remaining expenses are allocated between the parties without adjustment. Second, since the tax credit may be taken only against taxes owed, it cannot be used when the custodial parent does not incur sufficient tax liability to fully realize the credit. For this reason, subsection (2) provides that no adjustment to the total child care expenses may be made if the custodial parent's gross income falls below the thresholds set forth therein.

Subdivision (b) addresses health insurance premiums. The cost of the premiums is generally treated as an additional expense to be allocated between the parties in proportion to their net incomes. Subsection (1) of the rule permits allocation of the entire premium, including the party's portion of the premium, when the insurance benefits the other party and/or the children. Subsection (2) clarifies that, in calculating the amount of the health care premium to be allocated between the parties, subdivision (b)(1) requires the inclusion of that portion of the health insurance premium covering the party who is paying the premium, but not the portion of the premium attributable to non-parties and children who are not the subjects of the support order. Subsection (2) provides for proration of the premium when the health insurance covers other persons who are not subject to the support action. Subdivision (b) also permits an alternative method for dealing with the cost of health insurance premiums in certain circumstances. While, in general, the cost of the premiums will be treated as an additional expense to be allocated between the parties in proportion to their net incomes, in cases in which the obligee has no income or minimal income, subsection (4) authorizes the trier of fact to reduce the obligor's gross income for support purposes by some or all of the amount of the health insurance premiums. This is to avoid the result under a prior rule in which the entire cost of health insurance would have been borne by the obligor, with no resulting reduction in the amount of support he or she would otherwise be required to pay under the support guidelines. The goal of this provision is to encourage and facilitate the maintenance of health insurance coverage for dependents by giving the obligor a financial incentive to maintain health insurance coverage.

Subdivision (c) deals with unreimbursed medical expenses. Since the first \$250 of medical expenses per year per child is built into the basic guideline amount in the child support schedule, only medical expenses in excess of \$250 per year per child are subject to allocation under this rule as an addi-

tional expense to be added to the basic support obligation. The same is true with respect to spousal support so that the obligee-spouse is expected to assume the first \$250 per year of these expenses and may seek contribution under this rule only for unreimbursed expenses which exceed \$250 per year. The definition of "medical expenses" includes insurance co-payments, deductibles and orthodontia and excludes chiropractic services.

Subdivision (d) governs apportionment of private school tuition, summer camp and other unusual needs not reflected in the basic guideline amounts of support. The rule presumes allocation in proportion to the parties' net incomes consistent with the treatment of the other additional expenses.

Subdivision (e) provides for the apportionment of mortgage expenses. It defines "mortgage" to include the real estate taxes and homeowners' insurance. While real estate taxes and homeowners' insurance must be included if the trier of fact applies the provisions of this subdivision, the inclusion of second mortgages, home equity loans and other obligations secured by the marital residence is within the discretion of the trier of fact based upon the circumstances of the case.

Rule 1910.16-7. Support Guidelines. Awards of Child Support When There are Multiple Families.

(a) When the total of the obligor's basic child support obligations equals fifty percent or less of his or her monthly net income, there will generally be no deviation from the guideline amount of support on the ground of the existence of a new family. For example, where the obligor requests a reduction of support for one child of the first marriage on the basis that there is a new child of the second intact marriage, and the relevant monthly net incomes are \$[1,500] 2,500 for the obligor, \$500 for the former spouse and \$1,300 for the current spouse, the request for a reduction will be denied because the total support obligation of \$[707] 1,142 (\$[354] 601 for the first child and \$[353] 541 for the second child) is less than half of the obligor's monthly net income.

(b) When the total of obligor's basic support obligations exceeds fifty percent of his or her monthly net income, the court may consider a proportional reduction of these obligations. Since, however, the goal of the guidelines is to treat each child equitably, in no event should either a first or later family receive preference. Nor shall the court divide the guideline amount for all of obligor's children among the households in which those children live.

Example. Obligor is sued for support of an out of wedlock child. Obligor is already paying support for two children of the first marriage, and has an intact second marriage with one child. The relevant monthly net incomes are \$1,500 for the obligor, \$1,100 for the former spouse, \$0 for the current spouse and \$1,500 for the parent of the new child. The guideline amounts for each family are \$[504] 514 for the two children of the first marriage, \$[359] 386 for the one child of the second marriage, and \$[332] 362 for the one child out of wedlock for a total support obligation of \$[1,195] 1,262. Since the total of these obligations exceeds fifty percent of the obligor's net monthly income of \$1,500 per month, the court may consider a proportional reduction of all of the orders.

Example. Obligor is sued for support of three children of a second marriage. There is already an order in effect

for two children of the first marriage. The relevant monthly net incomes are \$1,000 for **the** obligor, \$0 for the first spouse and \$500 for the second spouse. The guideline amounts for each family are \$[308] 229 for the two children of the first marriage and \$[347] 422 for the three children of the second marriage for a total support obligation of \$[655] 651. Since this total obligation leaves obligor with only \$[345] 349 on which to live, the order for the three children of the second family is too high. However, reducing the order for three children while leaving the existing order intact would give preference to the first family, contrary to the rule. Therefore, both orders must be reduced proportionally.

Example. Obligor is sued to establish orders for three children born out of wedlock. The net monthly incomes for **the** obligor and for each obligee is \$1,500. The court would determine that the guideline figure for each child is \$[322] 362 for a total obligation of \$[966] 1,086 for three children. It would be incorrect to determine the guideline amount for three children, in this case \$[664] 724, and then divide that amount among the three children.

(c) For purposes of this [Rule] rule, the [presumptively correct total] presumptive amount of the obligor's basic support [obligations] obligation is calculated using only the basic guideline amounts of support, as determined from the formula in Rule 1910.16-4, and does not include any additional expenses that may be added to these amounts pursuant to Rule 1910.16-6. In calculating the [presumptively correct total] presumptive amount of obligor's basic support [obligations] obligation, the court should ensure that obligor retains at least \$[550] 748 per month consistent with Rule 1910.16-2(e).

Example. Assume that **the** obligor is paying \$[291] 591 per month support for one child of the first marriage, plus an additional \$[50] 200 per month for child care expenses. Obligor requests a reduction in this support obligation on the basis that there is one new child of the second intact marriage. The relevant incomes are \$[1,200] 2,400 for **the** obligor and \$0 for both the former and current spouses. Obligor's request for a reduction should be denied because the total of the basic guideline obligations for both children is only \$[582] 1,182 (\$[291] 591 for each child) and this amount does not exceed 50% of the obligor's net monthly income. No reduction should be given on the basis that **the** obligor's contribution to child care expenses for the first child results in an overall support obligation of \$[632] 1,382 which exceeds 50% of the obligor's net monthly income. Thus, the [presumptively correct] presumptive amount of basic support for the two children is still \$[582] 1,182 (\$[291] 591 for each child). The court must then consider the deviation factors under Rule 1910.16-5 and the [parties's] parties' respective contributions to additional expenses under Rule 1910.16-6 in arriving at an appropriate amount of total support for each child.

Example. Assume that **the** obligor is paying \$[244] 227 per month support for one child of the first marriage. Obligor has one new child of the second intact marriage. The relevant incomes are \$1,000 for **the** obligor and \$0 for both the former and current spouses. No reduction should be given on the basis of **the** obligor's new child

because the total of the basic guideline obligations for both children is only \$[488] 454 (\$[244] 227 for each child) and this amount does not exceed 50% of the obligor's net monthly income. Since, however, this amount leaves **the** obligor with only \$[512] 546 per month, the court should proportionally reduce the support obligations so that **the** obligor retains \$[550] 748 per month. Thus, the [presumptively correct] presumptive amount of basic support for the two children is \$[450] 252 (\$[225] 126 for each child). The court must then consider the deviation factors under Rule 1910.16-5 and the parties' respective contributions to additional expenses under Rule 1910.16-6 in arriving at an appropriate amount of total support for each child.

* * * * *

Explanatory Comment—[1998] 2004

Rule 1910.16-7 has been amended to reflect the updated schedule at Rule 1910.16-3 and the increase in the Self-Support Reserve ("SSR"), formerly the CAM, to \$748 per month. This [new Rule replaces former Rule 1910.16-5(n) relating to] rule sets forth the calculation of child support obligations in the context of multiple families. [It has been rewritten for clarity and to update the examples used to illustrate the method for calculating these obligations.] Awards of spousal support in this context are [now] addressed in Rule 1910.16-2(c)(2).

In determining whether the total support obligations exceed 50% of the obligor's net income to warrant a proportionate reduction of the child support orders, subdivision (c) [has been added to clarify] clarifies that the total consists only of the basic amounts of child support, as derived from the income shares formula in Rule 1910.16-4, and does not include additional expenses that may be added to these basic amounts under Rule 1910.16-6. As the first example illustrates, no reduction should be given if the basic support obligations do not exceed 50% of the obligor's net monthly income even though his or her contribution to additional expenses may result in an overall obligation exceeding this percentage of income. As the second example illustrates, however, in low income cases it may be necessary to adjust the child support obligations proportionally even though they do not exceed 50% of the obligor's net income. This is consistent with the goals of [CAM] the SSR to ensure that **the** obligor retains sufficient income to maintain the incentive to work so that he or she can support all of the children.

Subdivision (c) also emphasizes that the initial amounts which are calculated for purposes of determining whether a proportional reduction is warranted are only [presumptively correct] presumptive amounts of child support. They are subject to upward or downward adjustment under Rules 1910.16-5 and 1910.16-6 relating to deviation and additional child-related expenses which are typically added to the basic obligation. This is intended only to emphasize that the establishment of appropriate support obligations for children of different families involves the same considerations as the establishment of a support obligation for a child or children of a single family.

[Pa.B. Doc. No. 03-2353. Filed for public inspection December 12, 2003, 9:00 a.m.]

Title 255—LOCAL COURT RULES

ERIE COUNTY

Register of Wills and Clerk of Orphans' Court Schedule of Fees and Costs; No. 3 of 2003

Order

And Now, this 21st day of November 2003, pursuant to 42 P. S. 21022.1 and 21032.1, it is hereby *Ordered, Adjudged* and *Decreed* that:

1. The fee schedule submitted by the Register of Wills and Clerk of the Orphans' Court, a copy of which follows and is incorporated herein, is hereby *Approved*.

2. A \$5.00 automation fee is established for any initiation of action or legal proceeding currently requiring a JCP/ATJ fee, including marriage licenses, which fee shall be deposited into a special Register of Wills automation fund and shall be used solely for the purpose of automation and continued automation updates of the Register of Wills and Clerk of the Orphans' Court offices.

3. This order shall become effective on January 1, 2004
By the Court

WILLIAM R. CUNNINGHAM,
President Judge

Register of Wills

Grant of Letters Testamentary/Administration:

(Based upon the Gross value of an estate**)

Less than \$50,000	\$50.00
\$50,001 to \$100,000	150.00
\$100,001 to \$500,000	200.00
\$500,001 to \$1,000,000	250.00
\$1,000,001 to \$3,000,000	1,000.00
\$3,000,001 and up	1,500.00

**Where the gross value of an estate has been underestimated on the Petition for Letters, Probate fees will be adjusted and an invoice rendered for the balance.

**Additional probate fees will be due and payable within thirty (30) days from the date of the invoice. Any balances more than thirty (30) days in arrears will be charged interest at a rate of 1% per month.

**All fees must be paid in full before any finalization/estate settlement will be accepted for filing.

**Fee includes documents subsequently filed at the same number except for the following:

Automation fee	5.00*
*to be charged on all first filings requiring JCP fee & on all marriage license applications.	
Caveat (including bond)	50.00
Citation petitions	25.00
Issuing per respondent	5.00
Claim, filing and withdrawal	15.00
Commission to take oath	20.00
Certificate of appointment from other jurisdictions	10.00
Disclaimer/Assignment of Interest	20.00

Exemplification of record, filing or issuance	20.00
Family Settlement Agreement (no acct)	50.00
Inheritance tax return	10.00
Inventory	10.00
Judicial Computer Project (JCP) fee	10.00
Non resident Inheritance Tax Appraisalment and receipts	15.00
Photocopies, each	.50
If mailed, each	1.00
Probate of will or codicil without letters	25.00
Proof of Death or Death Certificate	10.00
Short Certificates, each	5.00
Tax Certificate on Realty, issuance & filing	10.00
All other documents and pleadings not specifically listed herein will be charged at a rate comparable to this schedule for a like instrument at the sole discretion of the Register of Wills/Clerk of the Orphans' Court.	
<i>Appeals:</i>	
Notice of Appeal & appeal bond	25.00
Appeal from Register (includes certification of record to Orphans' Court)	75.00
Appeal to Appellate Court	50.00
Appeal to Superior or Supreme Court	
Prothonotary fee (State fee)	60.00

Clerk of Orphans' Court

<i>Accounts:</i>	
of Guardians, Trustees, Executors & Administrators	
Less than \$50,000	\$50.00
\$50,001 to \$100,000	150.00
\$100,001 to \$500,000	200.00
\$500,001 to \$1,000,000	250.00
\$1,000,001 to \$3,000,000	1,000.00
\$3,000,001 and up	1,500.00
Advertising of accounts	50.00
Amended Account	50.00
Amended Audit Statement	25.00
Continuance or re-advertising	25.00
Discharge of Fiduciary	25.00
Family Settlement Agreement (after an account has been filed)	25.00
<i>Adoptions:</i>	
Adoption petition	50.00
Each additional child	5.00
Adoption certificates, each	5.00
Appeal to Appellate Court	50.00
Appeal to Superior or Supreme Court	
Prothonotary fee	60.00
Automation fee	5.00*
*to be charged on all first filings requiring JCP fee & on all marriage license applications	
Confirm Consent petition	25.00

Involuntary Termination petition & citation	30.00
Judicial Computer Project (JCP) fee	10.00
Report of intent to adopt*	25.00
*Counseling fees with every intent petition	75.00
Report of Intermediary	25.00
Recording a Foreign Adoption	25.00
Release of non identifying information	75.00
Release of Identifying information	150.00
Voluntary Relinquishment petitions	25.00
<i>Estates and Trusts:</i>	
Automation fee	5.00*
*to be charged on all first filings requiring JCP fee & on all marriage license applications	
Elections to take under or against will	25.00
Family Settlement agreement (after an account has been filed)	25.00
Judicial Computer Project (JCP) fee	10.00
Initial Petition:	50.00**
Includes, but not limited to:	
Letters after 21 years	
Citation petitions	
Per respondent, additional	5.00
Petition to settle small estate	
Petition for family exemption	
Petition to sell or mortgage realty	
Presumed decedent	
Receipt and Release	
Trusts InterVivos, recording	50.00
Trust Settlement agreement	50.00
**\$50.00 initiation fee includes documents subsequently filed at the same number unless the document requires additional processing other than docketing	
<i>Guardians and Trustees:</i>	
Automation fee	5.00*
*to be charged on all first filings requiring JCP fee & on all marriage license applications	
Initial Petition	50.00**
Includes but not limited to:	
Bond or reduction of bond petition	
Citation, petition	
Emergency Guardianship petition	
Guardianship of minor petition	
Each additional minor,	\$10.00
Guardianship of Incapacitated person,	
Guardian Ad Litem, petition	
Guardianship Review Hearing, petition	

Removal or resignation of Guardian or Trustee	
Release of funds from restricted accounts	
Sale of Property or Estate Planning	
Service of Guardianship petition	
Settlement of Minor's claim, petition	
Successor Guardian or Trustee Petition	
Certificate of Guardian, each	5.00
Judicial Computer Project (JCP) fee	10.00
Subpoena	5.00
**\$50.00 initiation fee includes documents subsequently filed at the same number unless the document requires additional processing other than docketing.	
<i>Marriage:</i>	
Application and License	40.00
Appointment of Guardian for consent to Marriage	10.00
Automation fee	5.00*
*to be charged on all first filings requiring JCP fee & on all marriage license applications.	
Certified copy of marriage record	10.00
Custodial parental consent	10.00
Judicial waiver of waiting period	10.00
Military waiver	n/c
Short form Marriage certificate	5.00
<i>Miscellaneous:</i>	
Genealogical research, per estate	20.00
Certificate of Birth OR Death Record (1893—1906)	10.00
Delayed Birth Record	10.00
Certified Copy of document, per page	2.00
Photocopy of document, per page	.50
If mailed, per page	1.00
NSF check charge	25.00*
*Plus original amount (cashiers check or cash only on replacements)	
<i>Please Note:</i> All other documents and pleadings not specifically listed herein will be charged at a rate comparable to this schedule for a like instrument as determined at the sole discretion of the Register of Wills and/or Clerk of the Orphans' Court.	

[Pa.B. Doc. No. 03-2354. Filed for public inspection December 12, 2003, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Suspension

Notice is hereby given that Samuel A. Malat having been suspended from the practice of law in the State of

New Jersey for a period of three months, the Supreme Court of Pennsylvania issued an Order dated November 24, 2003 suspending Samuel A. Malat from the practice of law in this Commonwealth for a period of three months, effective December 24, 2003. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

ELAINE M. BIXLER,
*Executive Director and Secretary
The Disciplinary Board of the
Supreme Court of Pennsylvania*

[Pa.B. Doc. No. 03-2355. Filed for public inspection December 12, 2003, 9:00 a.m.]

RULES AND REGULATIONS

Title 37—LAW

MUNICIPAL POLICE OFFICERS' EDUCATION AND TRAINING COMMISSION

[37 PA. CODE CH. 203]

Administration of the Training Program

The Municipal Police Officers' Education and Training Commission (Commission) amends Chapter 203 (relating to administration of the program).

The Commission amends § 203.11(a)(5) and (8) (relating to qualifications) to include a ninth grade reading requirement and a physical fitness evaluation.

The Commission amends § 203.12(4) (relating to waiver of training) to limit a waiver candidate to three attempts at passing the Commission's certification examination. After the third failure, the candidate shall retake and pass the entire basic training course before being eligible for certification. This amendment will ensure that a waiver candidate has current training by limiting the amount of times that the certification examination can be taken.

The Commission amends § 203.33(a)(14) (relating to minimum school standards and requirements) to allow certified schools to use indoor ranges and to insure that the ranges are able to handle the required training.

The Commission also amends § 203.54 (relating to Commission cheating policy) to define and clarify the actions that will constitute cheating and to make clear that anyone found guilty of cheating will be ineligible for certification.

The purpose of the final-form rulemaking is to clarify and correct various aspects of the existing regulations.

Statutory Authority

The final-form rulemaking is authorized by 53 Pa.C.S. § 2164(1), (8) and (14) (relating to duties and powers of commission).

Effect

The final-form rulemaking will primarily affect recruits. Recruits will have to pass a physical fitness assessment and pass a ninth grade reading test before they can become eligible for training.

The final-form rulemaking will impact persons seeking waivers of training, since they will have only three opportunities to successfully pass the certification examination. After the third failure, the waiver candidate shall retake and pass the basic training course to become eligible for certification.

Both recruits and veteran police officers will be affected by the new cheating policy. The impact of the new cheating policy is to put individuals and schools on notice as to what will be considered cheating on an official Commission sponsored examination. This final-form rulemaking will allow the schools and the students to more readily detect and curb cheating and it establishes a more uniform policy.

Allowing certified schools to use indoor ranges will offer more flexibility to the schools. However, the indoor and outdoor ranges must be able to safely accommodate all of the required training.

Effective Date/Sunset Date

The final-form rulemaking will go into effect upon publication in the *Pennsylvania Bulletin*. The regulations are continually monitored and updated as needed. Therefore, no sunset date has been set.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 24, 2003, the Commission submitted a copy of the notice of proposed rulemaking, published at 33 Pa.B. 1246 (March 8, 2003), to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Judiciary Committee and Senate Law and Justice Committee for review and comment.

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

The final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5(g) of the Regulatory Review Act, the final-form rulemaking was deemed approved by IRRC effective September 11, 2003.

Contact Person

For further information on the final-form rulemaking, contact Syndi L. Guido, Policy Director, Pennsylvania State Police, 1800 Elmerton Avenue, Harrisburg, PA 17110, (717) 772-0905. Persons with a disability who require an alternative format of this document (for example, large print, audio tape or Braille) should contact Syndi L. Guido to make necessary arrangements.

Fiscal Impact

The final-form rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions and will impose no new costs on the general public or private sector.

Paperwork Requirements

The final-form rulemaking will not increase paperwork and will create no new paperwork requirements.

Findings

The Commission finds that:

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

(2) A public comment period was provided and no comments were received.

(3) The adoption of this final-form rulemaking in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statute.

Order

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

(a) The regulations of the Commission, 37 Pa. Code Chapter 203, are amended by amending §§ 203.11, 203.12, 203.33 and 203.54 to read as set forth at 33 Pa.B. 1246.

(b) The Commission will submit this order and 33 Pa.B. 1246 to the Office of General Counsel and Office of Attorney General as required by law for approval as to form and legality.

(c) The Commission shall certify this order and 33 Pa.B. 1246 and deposit them with the Legislative Reference Bureau as required by law.

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

COL. JEFFREY B. MILLER,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 33 Pa.B. 4865 (September 27, 2003).)

Fiscal Note: Fiscal Note 17-63 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 03-2356. Filed for public inspection December 12, 2003, 9:00 a.m.]

Title 52—PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 63]

[L-00990141]

Generic Competitive Safeguards

The Pennsylvania Public Utility Commission (Commission) on June 12, 2003, adopted a final-form rulemaking order which establishes competitive safeguards to assure the provision of adequate and nondiscriminatory access by incumbent local exchange carriers (ILECs) to competitive local exchange carriers (CLECs) for all services and facilities ILECs are obligated to provide CLEC carriers and to prevent cross subsidization and unfair competition. The contact persons are Carl S. Hisiro, Law Bureau (legal), (717) 783-2812 and Robert Rosenthal, Fixed Utility Services (technical), (717) 783-5242.

Executive Summary

Section 3005(b) and (g)(2) of the Public Utility Code (relating to competitive services) requires the Commission to establish regulations to prevent unfair competition, discriminatory access and the subsidization of competitive services through revenues earned from noncompetitive services. On January 29, 2002, the Commission entered a proposed rulemaking order, which solicited comments from jurisdictional telecommunication utilities and other interested parties regarding proposed generic competitive safeguards mandated by 66 Pa.C.S. Chapter 30 (relating to alternative form of regulation of telecommunications services).

This final-form rulemaking establishes competitive safeguards in furtherance of 66 Pa.C.S. Chapter 30's mandate to encourage and promote competition in the provision of telecommunications products and services throughout this Commonwealth. The competitive safeguards prevent discriminatory access for all services and facilities ILECs are obligated to provide competitive carriers, prevent the unlawful cross subsidization for

competitive services from noncompetitive services by ILECs and prevent all local exchange carriers from engaging in unfair competition practices.

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Commission submitted a copy of the final-form rulemaking, which was published at 32 Pa.B. 1986 (April 20, 2002) and served on April 8, 2002, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Committee on Consumer Affairs and the Senate Committee on Consumer and Professional Licensure for review and comment. In compliance with section 5(b.1) of the Regulatory Review Act, the Commission also provided IRRC and the Committees with copies of all comments received, as well as other documentation.

In preparing this final-form rulemaking, the Commission has considered all comments received from IRRC, the Committees and the public.

This final-form rulemaking was deemed approved by the House and Senate Committees on October 9, 2003, and was approved by IRRC on October 23, 2003, under section 5(c) of the Regulatory Review Act.

Public Meeting
June 12, 2003

Commissioners Present: Terrance J. Fitzpatrick, Chairperson; Robert K. Bloom, Vice Chairperson; Aaron Wilson, Jr.; Glen R. Thomas; Kim Pizzigrilli

Rulemaking Re Generic Competitive Safeguards Under 66 Pa.C.S. §§ 3005(b) and 3005(g)(2); L-00990141

Final Rulemaking Order

By the Commission:

On January 29, 2002, the Commission entered an order proposing to adopt a general Code of Conduct, applicable to all local exchange carriers ("LECs"), in order to prevent unfair competition and ensure nondiscriminatory access to an incumbent local exchange carrier's ("ILEC") services and facilities by competitors as mandated by Chapter 30 of the Public Utility Code and other applicable law. The proposed regulations also would require ILECs with more than one million access lines to maintain a functionally separate wholesale organization for providing certain services to competitive local exchange carriers ("CLECs").

The January 29, 2002 Order was published April 20, 2002, at 32 Pa.B. 1986. On or about May 20, 2002, the Commission received written comments from Verizon Pennsylvania Inc. ("Verizon-PA") and Verizon North Inc. (hereinafter referred to collectively as "Verizon"); Office of Consumer Advocate ("OCA"); the Pennsylvania Telephone Association ("PTA"); AT&T Communications of Pennsylvania LLC, CoreCom/ATX, Inc., and the Competitive Telecommunications Association (hereinafter referred to collectively as "AT&T"); Sprint Communications Company, L. P. and The United Telephone Company of Pennsylvania (hereinafter referred to collectively as "Sprint"); XO Pennsylvania, Inc. ("XO"); Full Service Network ("Full Service"); and Representative Frank Tulli, Jr. ("Rep. Tulli"). In addition, late-filed comments were received on May 22, 2002, from Curry Communications, Inc. ("Curry").

On or about June 4, 2002, the Commission received reply comments from Verizon; AT&T; PTA; Sprint; Office of Small Business Advocate ("OSBA"); MCI WorldCom Network Services, Inc. ("MCI"); Pennsylvania Cable & Telecommunications Association ("PCTA"); and Senator Vincent J. Fumo, Democratic Committee on Appropriations ("Sen. Fumo"). In addition, reply comments were

filed on June 24, 2002, by Representatives Dennis M. O'Brien, Chairman, House Consumer Affairs Committee, and Joseph Preston, Jr., House Consumer Affairs Committee (hereinafter referred to collectively as "House Committee"). On July 3, 2002, the Commission received comments from the Independent Regulatory Review Commission ("IRRC").

This Final Rulemaking Order discusses the comments and reply comments received and sets forth, in Annex A, final amendments to the Commission's regulations for a telecommunications utilities' Code of Conduct.

General Comments

PTA raises the issue that no party has requested a code of conduct applicable to all ILECs in Pennsylvania, and argues that the Commission should not be quick to impose the types of restrictions found in the Code of Conduct without some type of evidentiary finding that these restrictions are necessary. PTA Comments at 1-4. Further, PTA objects to the specific provisions of the Code of Conduct that apply only to ILECs, arguing that the Code should treat all competitors equally. *Id.* at 3.

Whether or not any party has requested a code of conduct applicable to all ILECs ignores the fact that the General Assembly, in enacting Chapter 30 of the Public Utility Code, 66 Pa.C.S. §§ 3001—3009, has mandated that regulations be established by the Commission to prevent unfair competition, discriminatory access, and the subsidization of competitive services through revenues earned from noncompetitive services. That is precisely what we have done in developing the Code of Conduct regulation. As to the second concern raised by PTA, we have already addressed this issue in our Proposed Rulemaking Order at 15-16 when we rejected a similar plea by Verizon-PA that any regulation should be equally imposed on all local exchange carriers ("LECs") and not just ILECs pursuant to the doctrine of regulatory parity. PTA has not presented any arguments on this issue that make us believe we have to reconsider our position as expressed in our earlier order.

OCA submits that throughout the competitive safeguards, the specific provisions use either "may" or "shall" when stating the requirements of each section. OCA offers that the final regulation should use "shall" instead of "may" as the word "shall" is more mandatory in nature. We note that the word "may" is always used before the word "not" throughout the competitive safeguards. This change was made by the Legislative Reference Bureau before the proposed regulation was published in the *Pennsylvania Bulletin* to be consistent with their rule that "may" is used whenever expressing a directive in the negative, and the word "shall" is used whenever the directive is expressed in the affirmative. The regulation's use of the words "shall" and "may" are consistent with this directive from the Legislative Reference Bureau, and, therefore, no change is necessary.

The other general comment we wish to address is one made by both Sen. Fumo and Rep. Tulli that the Code of Conduct adopted in the Global Order entered September 30, 1999, at P-00991648 and P-00991649, is superior to the Code of Conduct adopted in the present proceeding and should be adopted in place of the Code of Conduct proposed herein. Rep. Tulli Comments at 2-3; Sen. Fumo Reply Comments at 1-2. As we stated in our Proposed Rulemaking Order, the regulations we proposed in the instant proceeding "are modeled, in part, after similar provisions contained in the 'Code of Conduct' adopted for Verizon-PA in the Global Order. . . ." *Rulemaking Re Ge-*

neric Competitive Safeguards Under 66 Pa.C.S. §§ 3005(b) and 3005(g)(2), Dkt. No. M-00960799, at 15 (Proposed Rulemaking Order, entered January 29, 2002) (hereinafter *Proposed Rulemaking Order*). Therefore, many of the provisions are the same or very similar. On the other hand, the Global version only applied to Verizon-PA, whereas the Code of Conduct adopted herein applies to all LECs unless otherwise noted, and so by its very nature must take into account a broader range of issues than if it were directed at only Verizon-PA. In any event, as will be discussed in greater detail below, we have adopted in this Order several changes to the regulations that will bring them more into conformity with the Global version.

Moreover, the touchstone for a Code of Conduct is the market conditions that exist in the telecommunications industry. Market conditions could change that would result in the Code being revisited at a later date. We, therefore, retain our authority to make changes as appropriate to the competitive safeguards approved today to reflect these changing market conditions.

Section 63.141. Statement of purpose and policy.

Three concerns were expressed in the comments relating to this particular section of the Code of Conduct. First, in regard to Subsection (c), IRRC asks what other codes of conduct besides the Code of Conduct adopted in the Global Order for Verizon-PA are applicable to telecommunications carriers, and it suggests that these codes should be identified in this regulation. OCA, on the other hand, submits that this subsection "should be deleted or modified so that other codes of conduct applicable to any LECs are *not* replaced or superseded unless such provisions are inconsistent with the new safeguards." OCA Comments at 4 (emphasis in original). Sprint, in its reply comments, urges rejection of OCA's claim that the rulemaking should not eliminate "other existing competitive safeguards" unless inconsistent because it does not identify them. Sprint Reply Comments at 1-2. *Accord*, OSBA Reply Comments at 6 ("[f]or efficiency and to avoid confusion these regulations should supersede any code of conduct that is currently in place").

As there is only one Commission-imposed code of conduct currently in effect relating to the telecommunications industry—the one approved in the Global Order applicable only to Verizon-PA—the Commission agrees with IRRC and believes the best approach is to specifically refer to that code of conduct as being superseded so that there is no ambiguity on the issue. We continue to believe that having more than one code of conduct in effect would be confusing and make compliance and enforcement more difficult.

The other comments relating to this section come from AT&T and XO. AT&T suggests that the statement of policy portion of the regulation should recognize the inclusion of a provider-of-last-resort function ("POLR") as part of the ILEC's wholesale function, at least on a transitional basis if not a permanent basis.¹ AT&T Comments at 13-14. XO argues that the statement of policy should make the regulation expressly applicable to ILEC affiliates and subsidiaries that provide competitive and non-competitive telecommunications services. XO Comments at 4-5.

¹XO actually also addresses the POLR function but does so in the context of amending section 63.142, the definitions section (as does AT&T), by asking whether the contemplated "wholesale operating unit" should encompass any retail services that may be akin to the POLR function. As discussed in the text above, however, with the elimination of the functional separation portion of the regulation, a POLR definition becomes moot.

For the reasons discussed below, we are withdrawing from the final regulation that portion of the proposed regulation dealing with functional separation and accounting/auditing safeguards, and, therefore, comments regarding the POLR issue become moot and no further discussion is necessary. As for the statement of policy encompassing an ILEC's affiliates and subsidiaries, the definitions of both ILECs and CLECs in the instant regulation already incorporate "affiliates, subsidiaries, divisions or other corporate subunits" so it is not necessary to make XO's suggested change.

Section 63.142. Definitions.

Several of the comments address various definitions contained in the regulation. For example, OCA asserts that definitions for ILECs, CLECs, and LECs do not recognize the diverse nature of telecommunications services, including data services such as access to e-mail or the Internet, which such carriers currently provide to customers. OCA Comments at 5-6. *Accord*, OSBA Reply Comments at 6. Both Sprint and PCTA object to the expansion of these definitions to include data local exchange carriers ("DLECs"). PCTA's position is that the Federal Communications Commission ("FCC") has specifically ruled that data services are not telecommunications services. PCTA Reply Brief at 2. Sprint's reply comments also address the FCC's on-going effort to classify broadband services, and further argue that OCA's attempt to define CLECs to include DLECs is unnecessary as state jurisdictional LECs providing jurisdictional data services are already deemed CLECs, and those LECs that provide interstate data services cannot be regulated by the Commission. Sprint Reply Brief at 2-4. We agree with Sprint that there is no further need to include "data services" within the definitions of ILECs, CLECs, or LECs as those services are already included in the definition of CLECs. *Letter-Petition of BlueStar Networks, Inc. for Waiver of Certain Tariff Requirements Pertaining to Voice-grade Service*, Docket No. A-310862 (Final Order entered August 17, 2000).

IRRC suggests that the acronym "ILEC" should replace the word "incumbent" in the definition for "competitive service" to be consistent with other references to ILECs in this regulation. IRRC Comments at 1. We agree that this change should be made and have incorporated it in the final regulation.

Both PTA and Verizon submit that the second sentence of the definition for an ILEC, which makes clear that the term includes any of the ILEC's affiliates, subsidiaries, divisions or other corporate subunits that provide local exchange service, should be deleted. The PTA, in particular, contends the language is unnecessary and may create confusion in the application of the code of conduct. PTA Comments at 6. Neither party contends, however, that the same language that appears in the definition of CLECs should be removed. In any event, we disagree with this suggestion as we believe it is appropriate to include this language in both definitions. The Commission wants to deter LECs from creating new entities within their business organization for the purpose of avoiding any of the safeguards created in the Code of Conduct. As drafted, any such potential loophole is closed.

IRRC, Verizon, and Sprint each object to the definition of telecommunications services as departing from the definition used in Chapter 30 of the Public Utility Code. IRRC Comments at 1; Verizon Comments at 17; Sprint Comments at 2-3. Specifically, they complain that the proposed definition includes the words "signaling" and "data" which are not included in the statutory definition

of "telecommunications services" at 66 Pa.C.S. § 3002. We agree with this suggestion and will delete these references from the final-form regulation so that the definition is the same as what appears in Chapter 30.

IRRC and OCA also suggest that clarity would be aided if the terms "wholesale functions" and "retail services" are defined in the regulation. IRRC Comments at 1; OCA Comments at 6-8. However, these terms are used almost exclusively in section 63.143 of the proposed regulation, which as we discuss below, is being withdrawn from the final-form regulation. Therefore, these terms do not need to be defined in the final regulation.²

Verizon recommends that the definition for "market price" should be eliminated; however, it offers no rationale or explanation for this particular suggestion. No other party raised objections to this definition. We believe the definition is useful and see no reason to delete it from the final-form regulation.

Finally, on our own motion, the Commission has amended the definition of "CLECs" to make clear that it includes CLECs who have received provisional authority to operate in the state. This change closes a potential loophole that may have exempted CLECs with only provisional authority from being bound by the Code of Conduct.

Section 63.143. Accounting and audit procedures for large ILECs.

This section of the regulation was the most contentious among the parties. Generally, most comments fall into two camps: either they support the proposed procedures, often with the caveat that the Commission needs to impose full functional separation on an ILEC serving more than one million access lines, or the procedures are viewed as serving no useful purpose and would be costly to implement. Typical of the first camp were comments filed by XO, AT&T, the OCA, Full Service, and Sprint, while the second camp included comments filed by IRRC, Verizon, and the House Committee.

In regard to the type of functional separation imposed in the regulation on ILECs that serve more than one million access lines, AT&T, XO, and Full Service each argue that the Commission has taken a step backwards in its decision not to impose full functional separation on ILECs with over one million access lines. AT&T Comments at 2-5; XO Comments at 2-4; Full Service at 1-5. In making its case, AT&T argues that without full functional separation, many of the rules imposed in this section of the regulation "are internally unsound and have no practical effect or meaning." AT&T Comments at 4. Verizon in its Reply Comments states that the Commission has already rejected a wholesale/retail split of Verizon-PA's internal operations, and that to impose such a split now would be so onerous and burdensome as to equate to full structural separation. Verizon Reply Comments at 3-4. In sum, Verizon claims that imposing full functional separation would require a complete restructuring of its retail business and would duplicate resources, create inefficiencies, and add unnecessary costs to its doing business in the state. *Id.* at 22-31.

In focusing on the actual accounting rules proposed in our initial rulemaking order, IRRC, Verizon, and the House Committee each addresses the same concern—that these accounting rules will serve no useful purpose and could impose significant expenses to implement. IRRC

²For the same reason, we are withdrawing the definition of "subscription activities" from the final-form regulation as that term was only used in the proposed section 63.143, which itself is being withdrawn from the final-form regulation.

Comments at 2-3; Verizon Comments at 2-15; Verizon Reply Comments at 22-31; House Committee Comments at 1-2. As noted above, even AT&T acknowledges in its comments that these rules will have no practical effect when applied to the type of wholesale/retail structure permitted by the originally-proposed section 63.143 for ILECs with over one million access lines. The similar comments from a wide range of participants that include the state's largest ILEC and CLEC, IRRC, and legislators questioning the soundness and practical effect of the proposed accounting and auditing rules in a situation where full functional separation is no longer part of the equation, coupled with the anticipated costs to impose these rules on large ILECs, have caused the Commission to re-examine the validity of imposing such requirements in the context of this rulemaking.

When the accounting rules were first being devised, the Commission was considering full functional separation where the ILEC's retail and wholesale operations would be split into different divisions within the ILEC's corporate structure. Under this scenario, the accounting rules that were proposed in section 63.143 would have provided a workable, useful tool to ensure that the ILEC's wholesale operations were providing the same services on a non-discriminatory basis to both the ILEC's retail division and to CLECs. When the Commission's approach evolved into permitting the ILEC to create a separate wholesale unit that deals only with CLECs while at the same time allowing the ILEC's retail and wholesale operations to be part of the same business organization without splitting them into separate divisions, the continuing usefulness of the proposed accounting rules became suspect.³

Verizon recognized as much when it stated in its comments that:

... the provisions on "Accounting and audit procedures for large ILECs" ... appear ... to be carried over from the previously-rejected attempt to structurally separate Verizon PA. ... In directing preparation of these regulations, the Commission unequivocally rejected expensive reorganization requirements designed to "fix a problem that has not been shown to exist." Yet, the regulations retain ... unnecessary "accounting" requirements that could be interpreted to require the very same type of expensive system changes that the Commission found were not warranted [when it rejected structural and then full functional separation of Verizon-PA.]

Verizon Comments at 2. IRRC and the House Committee referenced the same problems in their respective comments. The purpose of the accounting rules is to ensure that the ILEC does not discriminate in its dealings with CLECs when compared to its dealings with its own retail operations. By setting up a separate wholesale organization within the ILEC that only deals with CLECs and has no interaction with the ILEC's own retail operations, however, the ability to determine whether the ILEC is discriminating against the CLECs through the use of these accounting rules is no longer possible.

Moreover, where, as here, the ILEC's retail and wholesale operations are not separated and the wholesale services purchased from the ILEC by CLECs that are needed to provide retail local service are at rates that

³In our Proposed Rulemaking Order at this docket, we went to great lengths in explaining why we believed full functional separation is unnecessary at this time. *Proposed Rulemaking Order* at 10-12. No evidence has been presented to the Commission since then that would have us reconsider this decision, and we also note for the record that no other state commission or the FCC has imposed either full functional separation or structural separation to date on any regional Bell operating company as an appropriate market power remedy in any local exchange market.

have been approved by the Commission, a discrimination charge based on rates is not legally possible.⁴ That is because where the ILEC's operations are not separated, the ILEC does not have to account for these same wholesale services at the same prices charged to CLECs. These costs are instead blended into the total cost of providing the retail service to the ILEC's customers. As such, these individual costs become both unnecessary and, at the very least, very difficult if not impossible to break out in a way that allows for a fair and reasonable comparison with the charges paid by CLECs for the same wholesale services.

In addition to the issues raised as to the usefulness of the accounting rules where full functional separation is not mandated and as to the costliness to implement these rules, the Commission is also troubled by the fact that the procedure set up in the proposed regulation basically involves a "one-size-fits-all" approach. That is to say, the regulation originally proposed has the unintended consequence of favoring the approach Verizon-PA has adopted of creating a wholesale operating unit that deals only with CLECs for any ILEC that reaches one million access lines through internal growth and/or by merger. Obviously, other ILECs may believe it is more beneficial, from a business standpoint, to create separate wholesale and retail divisions or even separate affiliates for their local service business. We, therefore, have concluded that the better approach is not to adopt accounting rules that are not useful or cost effective in every case in which they are to apply, and instead to rely on our general authority under: (1) 66 Pa.C.S. §§ 504—506 to obtain reports and inspect records of public utilities, (2) 66 Pa.C.S. § 3009(b)(1) to audit the accounting and reporting systems of ILECs and their transactions with affiliates, and (3) 66 Pa.C.S. § 516 to conduct audits, to aid in the enforcement of the Code of Conduct as finally approved herein.⁵

In summary, the proposed accounting rules only make practical sense for large ILECs that separate their retail and wholesale operations into different divisions or affiliates. In this type of situation, the proposed accounting rules could be applied to determine if the ILEC is engaged in discriminatory or unfair practices vis-à-vis how it is treating CLECs. At present, however, there are no large ILECs with over one million access lines other than Verizon; and, therefore, there is no existing large ILEC that has separated its wholesale and retail operations into different divisions or affiliates. In addition, for the reasons stated in our earlier Proposed Rulemaking Order, we are not prepared to require Verizon at this time to adopt this type of organizational structure.

After considering all the comments filed on this important issue, we are not prepared at this time to impose accounting rules that may be appropriate only in future circumstances when a large ILEC adopts a full functional separation or structural separation approach. Nor are we prepared to encourage or require, through this rulemaking, all ILECs that reach one million access lines in the future to adopt Verizon-PA's present business structure for their own wholesale and retail operations. We will remove the accounting rules, therefore, as being both unnecessary and too costly to implement when compared

⁴The potential for non-rate discrimination in provision of wholesale services by Verizon is addressed in the Commission's extensive performance metrics and remedies standards. See *Joint Petition of NEXTLINK Pennsylvania, Inc., et al.*, Dkt. No. P-00991643 (Order entered December 31, 1999), and subsequent related orders.

⁵The Commission also clearly has the ability and authority to require ILECs serving over one million access lines to provide affected competitive services through a separate corporate affiliate if the instant competitive safeguards are not sufficient in an individual case to protect against unfair competition and to ensure nondiscriminatory access to the ILEC's services and facilities. 66 Pa.C.S. § 3005(h).

with the anticipated benefits if they were put into force. We will instead rely on the enforcement of the Code of Conduct promulgated herein as the best means to protect against discriminatory and unfair competitive practices that were the subject of concern in Chapter 30 of the Public Utility Code.

Old Section 63.144. New Section 63.143. Code of Conduct.

Paragraph (1) addresses nondiscrimination and is divided into two subparts. Subparagraph (1)(i) in the proposed regulation states that "an ILEC may not give itself . . . or any CLEC any preference or advantage over any other CLEC . . . unless expressly permitted by State or Federal law."⁶ Several commentators raise issues relating to Subparagraph (1)(i). First, IRRIC, AT&T and XO each complain about the proposed exception, "unless expressly permitted by state or federal law," as ambiguous, which may lead to misinterpretation and increased litigation to resolve disputes. IRRIC Comments at 3; AT&T Comments at 21; XO Comments at 9-10. IRRIC also notes that the comparable language in the code of conduct adopted for the electric industry, this exception does not exist. See 52 Pa. Code § 54.122(1). To avoid any vagueness or confusion, IRRIC suggests that the final-form regulation should expressly reference the state and federal laws that allow an ILEC to give itself a preference or the exception should be eliminated. In making its argument, XO states that the exception should only be available if the language is further qualified to make clear that express prior approval from the Commission is necessary before any such preference is given to the ILEC's own retail operations.

After carefully considering these comments, we agree that this exception to the rule has the potential to lead to significant litigation and may ultimately result in the provision becoming unenforceable as the qualifying language will swallow the rule. Reinforcing this conclusion, we find persuasive the fact that this Commission did not include a similar exception in a nearly identical rule adopted for the electric industry as cited by IRRIC,⁷ and that the Global Code of Conduct did not contain this exception in its comparable Rule No. 1. We, therefore, will remove this language from the final regulation.

The other comment to this subparagraph is offered by Verizon, which suggests that the word "unreasonable" should be added before "preference."⁸ In making this argument, Verizon states that this change would be consistent with the general obligation under the federal Telecommunications Act at 47 U.S.C. § 251 to provide "reasonable and nondiscriminatory" services to CLECs. Verizon Comments at 15. For the same reasons we are deleting the exception language in the same subparagraph, we decline to accept this proposal. We believe adding such a qualifier would result in increased litigation to determine what is reasonable, and we note that both the Global Code of Conduct and electric code of conduct do not contain this qualifying language.

⁶On our own motion, we are changing the phrase "local exchange affiliate, division or other corporate subunit" to read "local exchange affiliate or division or other corporate subunit that performs that function" to eliminate any potential ambiguity with the original phrase as to whether it was intending to connote an obligation to create a local exchange affiliate. We want to make clear that the phrase is intended to address the function, not the corporate structure. For consistency purposes, this change will be made throughout this section whenever the original phrase is used.

⁷In the Proposed Rulemaking Order, we specifically stated that the regulations in the instant proceeding were being modeled in part from the previously-adopted electric code of conduct provisions. *Proposed Rulemaking Order* at 15 n.22.

⁸We wish to emphasize that in prohibiting an ILEC from giving itself a "preference or advantage," this language is not intended to mandate that an ILEC, for example, must provide an identical form of access to its operations support systems for both its retail operations and for CLECs. However, it may constitute a violation of this subparagraph if the Commission found that the quality of service provided to CLECs was discriminatory when compared to the quality of service an ILEC provides itself.

Subparagraph (1)(ii) addresses tying arrangements. The proposed regulation provides that "an ILEC may not condition the sale . . . of any noncompetitive service on the purchase, lease or use of any other goods or services offered by the ILEC or on a direct or indirect commitment not to deal with any CLEC." Consistent with the antitrust laws, the provision does permit such bundling where the ILEC offers, on an individual basis, the noncompetitive service offered in the bundle. Several parties offer comments to this subparagraph.

First, both IRRIC and Sprint submit that the phrase, "direct or indirect commitment" is vague and should be changed or further defined. IRRIC Comments at 3; Sprint Comments at 4. Sprint suggests that the phrase should be rewritten as a "written or oral commitment." We agree that clarity would be aided by changing this phrase but believe it would best be accomplished by modifying Sprint's suggested language to read "written or oral agreement" as it is ultimately the entering into an agreement that should be prohibited by the final regulation.

Both Sprint and PTA submit that parity dictates the second sentence should be changed so that it refers to "ILECs" instead of only "CLECs," and Sprint further suggests another sentence being added to prohibit "LECs" from conditioning the sale of "any noncompetitive service on a written or oral commitment not to deal with any other LEC." Sprint Comments at 3-5; PTA Comments at 8. As to the first suggestion, we decline to accept changing "ILECs" to "LECs" in the second sentence because tying/bundling arrangements only have an anticompetitive effect under the antitrust laws if the party imposing the tie has market power in the tying product market. As we previously recognized in our Proposed Rulemaking Order, CLECs do not have market power, and, therefore, imposing this restriction on them would not be consistent with this country's competition policy as defined by the antitrust laws.

As to Sprint's other suggestion, however, it attempts to address a loophole in the originally-proposed first sentence that only addresses such arrangements when undertaken by ILECs. We agree that this type of behavior, whether by ILECs or CLECs, to elicit agreements among competitors not to deal with other LECs is generally considered to be anticompetitive and serves no valid business purpose other than to restrain trade. We, therefore, agree that the final regulation should incorporate this proposed change offered by Sprint to close this perceived loophole in the Code of Conduct with the minor adjustment to change "commitment" to "communication" to be consistent with Sprint's suggestion for the prior sentence that we adopted above.

Both AT&T and XO also raise concerns as to whether the proposed language in this subparagraph achieves the same result as the existing Rule No. 9 in the Global Code of Conduct applicable only to Verizon-PA that provides that "[a]ny incumbent local exchange company that bundles its services must provide the same opportunity at the same terms to competitors."⁹ AT&T Comments at 22; XO Comments at 10. In an effort to address this issue more fully, AT&T suggests, in its words, "a more practical and straightforward manner that focuses directly on the potential for cross-subsidization between competitive and non-competitive services in a bundled service package." AT&T Comments at 22. Specifically, AT&T offers the following amendment to this subparagraph:

⁹The Commission also assumes that Sen. Fumo and Rep. Tulli support this change since they both advocate returning to the Global Code of Conduct.

An ILEC shall offer to CLECs for resale any bundled competitive and noncompetitive services it provides to end-users at the same price it offers such bundled services to end-users less the wholesale discount approved by the Commission and shall make the unbundled network elements associated with those services available to CLECs as may be required by applicable law.

AT&T Comments at 7-8 of Attached Redlined Version of Code of Conduct.

We agree that this additional language, with a small clarifying change, eliminates the ambiguity that existed with the original Rule No. 9 in the Global Code of Conduct while at the same time addressing the potential for cross-subsidization between competitive and noncompetitive services that is the focus of concern within section 3005(g)(2) of the Public Utility Code. We, therefore, will incorporate this language as a new Subparagraph (1)(iii) in the final regulation, which at the same time addresses the concern that the competitive safeguard contained in Rule No. 9 of the Global Code of Conduct was absent in the instant Code of Conduct.

Finally, we address briefly OCA's concern that this subparagraph should specifically provide that ILECs cannot discriminate in the provisioning of unbundled network elements to CLECs. OCA Comments at 8. We believe this issue is already addressed in Subparagraph (1)(i), which provides that an "ILEC may not give itself . . . any preferences . . . over any other CLEC in the preordering, ordering, provisioning, or repair and maintenance of any . . . network elements . . ." (Emphasis added.) We, therefore, do not believe it needs to be further addressed in Subparagraph (1)(ii), which focuses more directly on tying arrangements and refusals to deal.

Paragraph (2) is intended to proscribe certain types of employee conduct when LEC employees are dealing directly with end-user customers. The only comments offered to this paragraph came from Verizon where its suggested changes would correct what it characterized as "unintentional typos." Verizon Comments at 16. The first change would be to add the word "falsely" before "disparage" in Subparagraph (2)(i). The other change would be to add "retail" before "services" where that word is used in Subparagraph 2(ii).

In examining these suggestions, we can assure Verizon and all parties that the Commission's original language did not contain "unintentional typos" in this paragraph. Rather, we believe the language as originally articulated in the Proposed Rulemaking Order is correct, and we see no reason to adopt the suggested changes now offered by Verizon. In making this determination, we particularly wish to note that we see no added benefit to including "falsely" before "disparage" in Subparagraph 2(i). The word "disparage" itself has a negative connotation, generally meaning to belittle or to slight something, and we see little distinction in allowing a competitor to disparage another competitor's product or service as long as it is "truthful" in the words of Verizon. If what Verizon is trying to assert is that a competitor should be allowed, in appropriate circumstances, to advertise differences between its services and that of a competitor's in a truthful manner, then of course that is permitted under this regulation. What is restricted, however, is the manner in which the company accomplishes that goal. A company should be able to provide comparison information without resorting to the use of any disparaging or belittling comments gratuitously directed at its competitor to win the business of the targeted customer.

Paragraph (3) addresses corporate advertising and marketing and is divided into four subparts. Subparagraph (3)(i) prohibits LECs from engaging in "false or deceptive advertising." There were three different comments filed directed at this provision of the regulation. Both Sprint and PTA take the position that this restriction and the rest of the paragraph infringes on the First Amendment right of free speech under the United States Constitution,¹⁰ OCA suggests that the state Unfair Trade Practices and Consumer Protection Law ("UTPCPL") should be referenced in this subparagraph because it deals directly with this issue, and Verizon argues that the restriction should not be limited just to advertising. Sprint Comments at 5-6; PTA Comments at 8-9; OCA Comments at 9-11; Verizon Comments at 16.

We strongly disagree that this provision violates the First Amendment as it parallels existing federal and state laws that prohibit unfair methods of competition, including engaging in false or deceptive advertising—laws that have not been found to be in violation of the First Amendment's right to free speech. 15 U.S.C. § 45; 73 P. S. §§ 201-1—201-9.2. The general rule in commercial speech cases is that only false, deceptive or misleading advertising may be prohibited. *Bates v. State Bar*, 433 U.S. 350 (1977). Based on the United States Supreme Court holding in *Bates* and its progeny, it is clear that false or misleading advertising, if engaged in by LECs, would not enjoy any First Amendment protection. Therefore, it is entirely appropriate for the Commission to impose the type of restriction that is contained in Subparagraph 3(i).¹¹

As far as OCA's suggestion to reference the state's UTPCPL as part of the regulation, we must decline for the reasons provided by Sprint and PTA in their respective reply comments. In short, the insertion of this reference into the regulation could be interpreted as an attempt to expand the Commission's statutory authority to include bringing actions under the UTPCPL, which authority is currently within the exclusive jurisdiction of the state Attorney General's Office. We see no reason to insert this type of confusion into our regulatory process without any countervailing benefit created by taking this step.

We also decline to include Verizon's suggested change to add the phrase "or other false or deceptive statements" after "advertising" in this subparagraph. While we do not disagree with the concept raised by Verizon's language, we believe the word "advertising" is sufficiently broad to cover most, if not all, statements that a LEC would make in the context of soliciting existing or potential customers to buy its services; and, for that reason, we do not believe that the additional phrase adds anything of value to the regulation.

Finally, the other major comments to this paragraph are directed at Subparagraph (3)(iv). Verizon, Sprint, and PTA argue that "other services" is too vague and overbroad as drafted, and PTA also submits that the provision

¹⁰Another suggestion offered by Sprint in its comments is that the words "to customers" should be added after "advertising" to make it consistent with the electric industry's code of conduct at 52 Pa. Code § 54.122(3). We decline to accept this suggestion as both too limiting in scope and too ambiguous in meaning. To be effective, the provision needs to cover both actual and potential customers; therefore, the phrase adds nothing to the regulation.

¹¹Similarly, we do not believe the remaining provisions of this paragraph are in violation of the First Amendment as these provisions do not involve any prior restraints on speech and, further, consistent with *Bates*, Subparagraphs (ii) and (iii) provide an adequate remedy to the restrictions imposed by not imposing a complete ban on the making of these types of statements, but rather allowing the statement if it can be presented in a way that is not deceptive or is otherwise truthful. In such cases, the preferred remedy is not a complete prohibition but a requirement of disclaimers or explanation to ensure that the consumer is not misled. *Bates*, 433 U.S. at 384. In the present case, that test is met by the inclusion of language that allows such statements to be made if they "can be factually substantiated."

should apply to all LECs and not just ILECs and should be limited to situations where a competitive service is contingent upon taking a noncompetitive service. Verizon Comments at 16; Sprint Comments at 7; PTA Comments at 11. Verizon suggests adding the phrase, "except as allowed by the provisions of section 63.144(1)(ii) [section 63.143(1)(ii) as revised in the final regulation] or as required by technical limitations" at the end of the sentence to correct this problem. PCTA, on the other hand, disagrees with PTA's suggestion that Subparagraph (3)(iv) should be expanded to include application to all LECs as being inconsistent with the purpose and policy behind Chapter 30. PCTA Reply Comments at 2.

While we agree clarifying language would be helpful to avoid the situation where an ILEC is prohibited from telling a customer, for example, that the continuation of Caller ID is contingent upon subscribing to dial tone service, we believe the language suggested by Verizon is itself too vague by its use of the phrase "technical limitations" and too confusing in its attempt to refer back to the tie-in provision of Subparagraph (1)(ii). Instead, the final regulation includes language that addresses this problem in a clear and concise manner. As to PTA's arguments, as we have previously discussed, some types of conduct only raise competitive concerns if engaged in by a party with market power. That is the case with the competitive safeguard described in Subparagraph (3)(iv) as the proscribed conduct is akin to a tying arrangement; therefore, its applicability is limited to ILECs only. As to PTA's concern that the safeguard should be limited to situations where a competitive service is contingent upon taking a noncompetitive service, we believe the additional language added in the final regulation addresses PTA's concern and no further changes are necessary.

Paragraph (4) prohibits cross subsidization by prohibiting ILECs from using "revenues earned or expenses incurred in conjunction with noncompetitive services to subsidize or support any competitive services." This language comes right out of section 3005(g)(2) itself. No party quibbles over this first sentence of Paragraph (4). The dispute is over the next two sentences in the regulation. Three parties, Verizon, PTA, and the House Committee, each recommend that these last two sentences should be eliminated as being overbroad or unnecessary with the elimination of structural separation. Verizon Comments at 16-17; PTA Comments at 12; House Committee Comments at 2. In their place, Verizon offers a new sentence that basically states that an ILEC shall comply with all applicable laws relating to the pricing of services and the transfer of assets. Verizon Comments, Exhibit A, at 4.

AT&T and PCTA, on the other hand, support the last two sentences as drafted in the proposed regulation because they allegedly provide clear and concise standards to determine whether an ILEC has violated the cross subsidization prohibition. AT&T Comments at 22-23; PCTA Reply Comments at 4-5. See also XO Comments at 10-11 in support of the regulation as drafted. They both reject Verizon's proposed language as providing no substance to the general rule other than an allegedly ambiguous reference to complying with existing laws.

In weighing our options, the Commission believes the better approach is to adopt the language as originally proposed as it provides a clearer, more easily-applied measure for determining whether an illegal cross subsidization has occurred than simply stating that an ILEC shall comply with all applicable laws, which it must do in any event. To only adopt the first sentence would add

nothing to the prohibition contained in the statute as the exact same language already appears in section 3005(g)(2), as noted above. The real value to the regulation is in fact the additional language as it gives meaning to the cross-subsidization standard incorporated into the first sentence of Paragraph (4) by providing a clear standard by which claims of cross subsidization can be evaluated.

At the same time, the further standards in these sentences, which are designed to prohibit cross subsidization of competitive services by noncompetitive services, should not be read as requiring any ILEC to alter its corporate structure to comply with these standards. Whether cross subsidization is actually occurring will be a factual matter to be addressed at a hearing wherein the burden of proof would be on the party alleging cross subsidization.

Paragraph (5) provides competitive safeguards that address information sharing and disclosure. The only major comment offered by the parties was that the regulation needed to incorporate Rule No. 3 of the Global Code of Conduct. IRRC Comments at 3; AT&T Comments at 9; XO Comments at 11; Full Service Comments at 21; MCI Reply Comments at 3; Sen. Fumo Comments; Rep. Tulli Comments. As restated by AT&T for the purposes of this rulemaking, this rule provides that "[a]n ILEC shall simultaneously make available to any competitor any market information not in the public domain that is supplied to the ILEC's competitive local exchange affiliate, division, or other corporate sub-unit." AT&T Comments at 9 of Attached Redlined Version of Code of Conduct. AT&T also suggests that the term "market information" be defined in this provision.

After carefully weighing the substantial support for this addition to the regulation, we agree that inclusion will be of benefit and, therefore, will include the language in the final-form regulation. We will also include the definitional language for "market information" with certain clarifying changes to ensure that it only covers non-customer specific market information received by the ILEC's wholesale network organization that is then supplied to the ILEC's retail unit.¹² The only other comment of note was a suggestion by Verizon to add language to ensure that the provisions in this paragraph be construed consistently with federal law. We do not agree that this change is necessary, however, and believe that such amendments, without referencing the precise laws in question, actually make the provisions more open to interpretation.

New Paragraph (6) entitled, "Sharing of Employees and Facilities" is incorporated into the final regulation to address certain loopholes created by the removal of the accounting and audits procedures that were contained in the old section 63.143. This provision, with a few minor modifications, is the same as Rule No. 4 in the Global Code of Conduct that is currently in effect as to Verizon, and its inclusion in the final regulation was advocated by XO, AT&T, Full Service, MCI, Sen. Fumo, and Rep. Tulli in their respectively filed comments. XO Comments at 6; AT&T Comments at 18; Full Service Comments at 18-19; MCI Reply Comments at 3; Sen. Fumo Comments; Rep. Tulli Comments. Old Paragraph (6) will now become Paragraph (7) and there are no changes to this provision.

¹²If an ILEC, for example, is going to add remote terminals in certain central offices, this information should be supplied to the CLECs at the same time the ILEC's retail organization learns of the change. Order processing information obtained by the ILEC's wholesale organization from its retail organization for a specific customer, on the other hand, should not be covered by this definition.

Old Section 63.145. New Section 63.144. Remedies.

This paragraph addresses remedies available for violations of the Code of Conduct.¹³ Four parties filed comments relating to the remedies section. IRRC states that Subsection (a) should cite the specific sections of the Public Utility Code that apply, XO states that this section should incorporate remedies already provided by Chapter 30 of the Public Utility Code, AT&T suggests that Subsection (b) should be broadened to make clear that all remedies are available to an aggrieved party, and PTA submits that language should be added to make clear that the "Code of Conduct may not be construed as giving rise to any civil remedy." IRRC Comments at 3; XO Comments at 11; AT&T Comments at 23-24; PTA Comments at 13. Both AT&T and XO also suggest that the Commission will need to take a more active policing role upon the adoption of this regulation and AT&T even recommends that the Commission should reorganize itself to include an enforcement division. AT&T Comments at 24; XO Comments at 11-12.

We will address each of these issues in turn. We agree with IRRC that clarity would be added if we include the specific cite under which a party may file a complaint with the Commission, and the final regulation reflects this change. As for both XO and AT&T advocating the inclusion of language that affirms the Commission will consider all available remedies, including those provided by Chapter 30, to address violations under this regulation, we do not believe that such language is necessary.

As we stated in the Proposed Rulemaking Order, we always have the ability and authority to adopt new safeguards as the need arises, and likewise, we have the authority to impose remedies permitted by the Public Utility Code when appropriate. *Proposed Rulemaking Order* at 12. Under Chapter 30, for example, the Commission has the authority to reclassify competitive services as noncompetitive services; and, for LECs serving over one million access lines, the Commission may require that a competitive service be provided through a separate subsidiary if it finds a substantial possibility that the provision of the service on a non-separated basis will result in unfair competition. 66 Pa.C.S. §§ 3005(d) & (h). None of these potential remedies are affected by the language in the final regulation, and we see no reason why the regulation needs to be amended to expressly refer to these types of statutory provisions. These remedies exist and are available to the Commission when the right circumstances arise under any complaint filed with us or initiated by our own prosecutory staff.

As to PTA's concern that the Code of Conduct should state that it not be construed as giving rise to any civil remedy, we do not believe this change is necessary. As it now stands, many of the provisions in the Code of Conduct are akin to violations that are enforceable under other state or federal laws. For example, certain tie-in arrangements may be challenged under the federal anti-trust laws as well, and misleading advertising claims may be brought under state or federal consumer protection laws. We are reluctant to include language in the Code of Conduct that could have a potential chilling effect on the

¹³The final regulation states that a party may use the Commission's *Interim Guidelines for Abbreviated Dispute Resolution Process* or "any successor Commission alternative dispute resolution process" to adjudicate violations of the Code of Conduct. While not yet finalized, we believe, for the sake of completeness, we need to state for the record that this Commission approved a Tentative Order at its November 7, 2002 Public Meeting at Docket No. M-00021685 requesting comments on revisions to its Abbreviated Dispute Resolution Process. Any changes to our dispute resolution process arising from this other proceeding would automatically be implemented for purposes of applying the remedies provision of the Code of Conduct.

ability to bring actions under other laws that may be violated by conduct that is also proscribed by the same Code of Conduct.

Finally, we do not believe AT&T's suggestion that the Commission should create an enforcement division to handle complaints under the Code of Conduct is necessary or appropriate in a rulemaking proceeding. Such a decision, if necessary in the future, is more appropriate as an internal operations/management decision and should not be made through a regulation.

Conclusion

Accordingly, under 66 Pa.C.S. §§ 501, 1501 and 3001—3009; sections 201 and 202 of the act of July 31, 1968 (P. L. 769 No. 240) (45 P. S. §§ 1201 and 1202), and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2 and 7.5; section 204(b) of the Commonwealth Attorneys Act (71 P. S. § 732.204(b)); section 5 of the Regulatory Review Act (71 P. S. § 745.5); and section 612 of The Administrative Code of 1929 (71 P. S. § 232) we find that the regulations establishing a code of conduct for the telecommunications industry in §§ 63.141—63.144 should be approved as set forth in Annex A; *Therefore,*

It Is Ordered That:

1. The regulations of the Commission, 52 Pa. Code Chapter 63, are amended by adding §§ 63.141—63.144, to read as set forth in Annex A.
2. The Secretary shall certify this order and Annex A and deposit them with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
3. The Secretary shall submit this order and Annex A to the Office of Attorney General for approval as to legality.
4. The Secretary shall submit this order and Annex A to the Governor's Budget Office for review of fiscal impact.
5. The Secretary shall submit this order and Annex A for review by the designated standing Committees of both houses of the General Assembly, and for review and approval by IRRC.
6. A copy of this order and Annex A shall be served upon the PTA, the PCTA, all jurisdictional telecommunications utilities, the Office of Trial Staff, the OCA and the OSBA.
7. The final-form regulations embodied in Annex A shall become effective upon publication in the *Pennsylvania Bulletin*.

JAMES J. MCNULTY,
Secretary

Public Meeting
August 21, 2003

Commissioners Present: Terrance J. Fitzpatrick, Chairperson; Robert K. Bloom, Vice Chairperson; Aaron Wilson, Jr.; Glen R. Thomas, Dissenting Statement follows; Kim Pizzingrilli, Dissenting Statement follows

Rulemaking Re Generic Competitive Safeguards Under 66 Pa.C.S. §§ 3005(b) and 3005(g)(2); L-00990141

Opinion and Order

By the Commission:

Before us for consideration is the Petition of Verizon Pennsylvania Inc. and Verizon North Inc. for Clarification and Reconsideration ("Petition") relative to our Final Rulemaking Order entered June 16, 2003, in the above-captioned proceeding.

History of the Proceeding

On January 29, 2002, the Commission entered a Proposed Rulemaking Order that solicited comments from jurisdictional telecommunications utilities and other interested parties regarding proposed generic competitive safeguards mandated by Chapter 30 of the Public Utility Code and other applicable law. On June 16, 2003, after receiving comments from a number of parties and the Independent Regulatory Review Commission ("IRRC"), the Commission entered a Final Rulemaking Order in the proceeding.

The final regulations establish competitive safeguards in furtherance of Chapter 30's mandate to encourage and promote competition in the provision of telecommunications products and services throughout Pennsylvania. The competitive safeguards are intended to prevent discriminatory access to the services and facilities provided by incumbent local exchange carriers ("ILECs") to competitive local exchange carriers ("CLECs"), to prevent ILECs from unlawfully cross subsidizing competitive services from noncompetitive services, and to prevent all local exchange carriers from engaging in unfair competition practices.

*Discussion**Legal Standard*

Section 703 of the Public Utility Code ("Code"), 66 Pa.C.S. § 703, relating to rehearings and rescission and amendment of orders, establishes a party's right to seek relief following the entry of final decisions. Further, such requests for relief must be consistent with section 5.572 of our regulations, 52 Pa. Code § 5.572, relating to petitions for relief following a final decision. Consistent with section 703(g) of the Code, section 5.572 of our regulations, and judicial and administrative precedent, the standards for a petition for relief following a final decision were set forth in *Duick v. PG&W*, 56 Pa. P.U.C. 553 (December 17, 1985) ("*Duick*").

Duick held that petitions for reconsideration under section 703(g) may properly raise any matter designed to convince us that we should exercise our discretion to amend or rescind a prior order, in whole or in part. Furthermore, such petitions are likely to succeed only when they raise "new and novel arguments" not previously heard or considerations which appear to have been overlooked or not addressed by us. (*Duick*, at 559.) The Commonwealth Court in *AT&T v. Pa. PUC*, 568 A.2d 1362 (Pa. Cmwlth. Ct. 1990), further elucidated the standards for rehearing, reconsideration, revision, or rescission.

Petition for Reconsideration

By their Petition filed July 2, 2003, Verizon Pennsylvania Inc. and Verizon North Inc. (collectively "Verizon") request that this Commission clarify or reconsider certain portions of its June 16, 2003 Order adopting final competitive safeguards regulations at 52 Pa. Code §§ 63.141—144 for the telecommunications industry ("Code of Conduct").

In its Petition, Verizon raises concerns about three provisions contained in the final Code of Conduct that Verizon alleges are drafted for entities that are structurally separated, rather than for a company with a "separate wholesale unit that deals only with CLECs," as is the case with Verizon's own operations. Verizon Petition at 3. The first provision that it contests is section 63.143(5)(i), relating to preventing an ILEC from gaining a competitive advantage by withholding "market information" from

CLECs. Verizon contends that this provision, which applies to all ILECs, "was written in terms of a company that had a separate 'competitive' affiliate." *Id.* Verizon, in its Petition, suggests that the Commission has simply adopted "outdated wording from the original code" and recommends its deletion from the new Code of Conduct. *Id.* at 4. Verizon also argues that the definition of "market information" is too broad and could include highly sensitive competitive market information or marketing plans. *Id.* at 5.

The second provision that Verizon raises a concern about is section 63.143(6)(i), arguing that the provision is "outdated and confusing" and contending that the provision fails to specify "the allocation factors" or define "retail" and "wholesale" as suggested by IRRC in its original comments. *Id.* at 8-9. Verizon offers in its Petition suggested language changes to correct the alleged deficiencies.

The last provision that Verizon cites in its Petition is section 63.143(4)(i), the cross-subsidization provision, arguing that the Commission failed to remove the last two sentences of this provision as Verizon suggested in its original comments. Verizon complains that these sentences do not add clarity to the cross-subsidization provision and expresses concerns that this additional language conflicts with current federal rules on affiliate pricing. *Id.* at 10-11.

Answers to Verizon's Petition were filed within the ten-day answer period provided by 52 Pa. Code § 5.572(e) by the Office of Consumer Advocate and the Pennsylvania Cable & Telecommunications Association opposing the Petition and by the Pennsylvania Telephone Association ("PTA") and Sprint Communications Company, L.P./The United Telephone Company of Pennsylvania (collectively "Sprint") supporting the Petition. ATX Communications, Inc. (formerly Corecomm/ATX, Inc.) filed comments after the ten-day notice period in opposition to Verizon's Petition; these comments will be deemed timely filed and duly considered by this Commission.

Finally, by letter dated July 22, 2003, the House Consumer Affairs Committee ("House Committee") provided comments to IRRC regarding the final-form regulation, raising three concerns similar to those in Verizon's present Petition. On that same day, in its own letter to IRRC, the Commission advised IRRC of its intent to withdraw the Final Rulemaking Order so as to consider the issues raised in Verizon's Petition.

Resolution

In regard to what is meant by "market information" in section 63.143(5)(i), Verizon, the PTA, Sprint, and the House Committee have convinced us that we should exercise our discretion to reconsider the Final Rulemaking Order entered June 16, 2003, at this docket in order to eliminate a potential ambiguity. We also agree with Verizon, the PTA, Sprint, and the House Committee that section 63.143(6)(i) added new language to the Code of Conduct that was confusing and ambiguous, and that we should exercise our discretion to reconsider this provision as well. Finally, after careful consideration of the arguments presented, we again agree with Verizon, the PTA, Sprint, and the House Committee that the last two sentences in section 63.143(4)(i) are not necessary, and that we should exercise our discretion to reconsider this provision by eliminating the unnecessary language.

Section 63.143(5)(i)—Information Sharing

Verizon, the PTA, Sprint, and the House Committee are concerned that the definition of "market information" is

too broad and could include highly sensitive and proprietary marketing information. The final regulation does attempt to address this concern by defining "market information" as "any information relating to the characteristics of the ILEC's network which would be useful to a LEC [local exchange carrier] in acquiring customers or providing service to customers." This language is consistent with the type of network information suggested in Verizon's proposed change in its Petition.

Upon further review, we agree with Verizon that there is potential for ambiguity in the present language of our Final Rulemaking Order, and we believe Verizon's proposed language removes the potential ambiguity. We, therefore, adopt Verizon's proposed changes to clarify our intent that only network-type information not in the public domain be included within its meaning.¹⁴ We also note that Verizon did not have an opportunity to address this provision in its filed comments because the provision was added in the final version after receiving comments from IRRC which noted the absence of this competitive safeguard in the proposed-form regulation. IRRC Comments at 3.

Verizon's other contention is that section 63.143(5)(i) is written in terms of a company that has a separate competitive affiliate, which does not apply to Verizon's organizational structure. In approving the final-form regulation, the Commission added the phrase "or other corporate subunit that performs that function" as an all-encompassing catch-all so as to include ILECs, such as Verizon, that do not create separate divisions or affiliates to provide local exchange services. Without this language, the competitive safeguard would have a loophole that ILECs could use to avoid its application to them. It is the ILEC's responsibility to ensure compliance with this regulation even if it does not create a separate retail division or affiliate for its local exchange services. We, therefore, will keep this phrase in the final-form regulation.

Section 63.143(6)(i)—Sharing of Employees and Facilities

The language in section 63.143(6)(i) is intended to prevent an ILEC from using its wholesale employees and facilities to support its competitive local exchange services, a retail function. We have given careful consideration to the concerns raised by Verizon, the PTA, Sprint, and the House Committee regarding section 63.143(6)(i), and have concluded that the proposed changes offered by Verizon eliminate potentially confusing and ambiguous language contained in the Final Rulemaking Order.

The intent of this provision is to prevent an ILEC's wholesale employees from crossing over to its retail operations—to prevent inappropriate information sharing between the wholesale and retail operations. We agree with Verizon that the reference to an ILEC's "competitive local exchange affiliate or division or other corporate subunit that performs that function" could be construed to mean that an ILEC is required to create such an affiliate, division, or subunit. This problem can be avoided simply by referring to the "retail portion of the ILEC's business," which is what we do in the revised final-form regulation attached hereto as Annex A.¹⁵

¹⁴In adopting the language proposed by Verizon, however, we have deleted the use of the word "any" in several places as unnecessary and consistent with the Legislative Reference Bureau's practice of routinely eliminating the word "any" in proposed and final regulations.

¹⁵We further agree with Verizon's understanding of the term "physically separated" in the context of this rulemaking. Physical separation under this regulation should mean that there must be some form of physical separation restricting the employees' ability to have contact with each other, but that so long as there is sufficient physical separation (e.g., sound proof wall), the language would not preclude employees from being in the same building or same floor.

We also agree that the provision concerning transparent allocation of shared facilities is problematic. While a proper allocation of costs is clearly needed for the purpose of setting rates, this rulemaking is not the appropriate vehicle for addressing the issue. Further, as IRRC previously noted in its comments, this provision does not specifically identify allocation factors nor does it prescribe the criteria for determining "appropriate factors." Accordingly, we adopt a modified version of Verizon's proposed language to address the concerns expressed herein.

Section 63.143(4)(i)—Definition of Cross Subsidization

Verizon argues that the last two sentences of this section provide an unworkable definition of cross subsidization, and that the language conflicts with current federal rules of affiliate pricing. Verizon also asserts that the House Committee correctly noted that the first sentence of this section clearly states the intended prohibition. The PTA and Sprint support Verizon on this issue as well.

Upon further review of this language, we agree with Verizon, the PTA, Sprint, and the House Committee. The purpose of this provision is to prevent cross subsidization between competitive and noncompetitive services. The first sentence of this provision states this explicitly and succinctly. There is no need for the additional language which attempted to further clarify the first sentence, but, in effect, has caused further debate. Accordingly, we will modify section 63.143(4)(i) so that only the first sentence remains in the final-form regulation.

Based on our review of the instant Petition, we conclude that the Petition should be granted in part and denied in part, applying the criteria for a grant of reconsideration as set forth in *Duick; Therefore*,

It Is Ordered That:

1. The Petition of Verizon Pennsylvania Inc. and Verizon North Inc. for Clarification and Reconsideration relative to our Final Rulemaking Order entered June 16, 2003, at L-00990141 is hereby granted in part and denied in part for the reasons stated in this Order.

2. The regulations of the Commission, 52 Pa. Code Chapter 63, are amended by adding §§ 63.141—63.144 adopted at this docket by order entered June 16, 2003, to read as set forth in this order and Annex A.

3. The Secretary shall certify this order, the final rulemaking order entered June 16, 2003, at this docket, and Annex A and deposit them with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

4. The Secretary shall submit this order, the final rulemaking order entered June 16, 2003, at this docket, and Annex A to the Office of Attorney General for approval as to legality.

5. The Secretary shall submit this order, the final rulemaking order entered June 16, 2003, at this docket, and Annex A to the Governor's Budget Office for review of fiscal impact.

6. The Secretary shall submit this order, the final rulemaking order entered June 16, 2003, at this docket, and Annex A for review by the designated standing committees of both houses of the General Assembly, and for review and approval by IRRC.

7. A copy of this order and Annex A shall be served upon the PTA, the Pennsylvania Cable & Telecommunications Association, all jurisdictional telecommunications

utilities, the Office of Trial Staff, the Office of Consumer Advocate and the Office of Small Business Advocate.

8. The final-form rulemaking embodied in Annex A shall become effective upon publication in the *Pennsylvania Bulletin*.

JAMES J. MCNULTY,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 33 Pa.B. 5579 (November 8, 2003).)

Fiscal Note: Fiscal Note 57-224 remains valid for the final adoption of the subject regulations.

Dissenting Statement of Commissioner Glen R. Thomas

This matter involves a Petition of Verizon Pennsylvania Inc. (Verizon PA) and Verizon North Inc. (Verizon North) (collectively, Verizon) for Clarification and Reconsideration relative to our Final Rulemaking Order entered June 16, 2003 (Order). In its Petition, Verizon requests this Commission to clarify or reconsider three sections of our Order. Those sections are: 1) Section 63.143(5)(i) Information Sharing and disclosure; 2) Section 63.143(6)(i) Sharing of Employees and Facilities; and 3) Section 63.143(4)(i) Cross subsidization.

I agree with Staff's recommendation. It is not in the best interest of the Commonwealth, the competitive marketplace or this Commission to grant Verizon's Petition for Clarification and Reconsideration in its entirety since doing so would not be good policy or good precedent. Consequently, I must disagree with the majority on adopting Verizon's revisions for Section 63.143(6)(i), with some modification, and Section 63.143(4)(i).

Section 63.143(6)(i) Sharing of Employees and Facilities

The proposed Final Rulemaking language is:

ILEC employees or agents who are responsible for the processing of a CLEC order or service of the operating support system on behalf of a CLEC, may not be shared with the competitive local exchange affiliate or division or other corporate subunit that performs that function, and shall have offices physically separated. The competitive local exchange affiliate or division or other corporate subunit that performs that function shall have its own direct line of management, and any shared facilities shall be fully and transparently allocated between the ILEC and its competitive local exchange affiliate or division or corporate subunit that performs that function.

Verizon contends that this is new language added by the Commission and finds it confusing and ambiguous. The majority agrees and adopts a modified version of Verizon's proposal:

The ILEC's wholesale employees who are responsible for the processing of a CLEC order or service of the operating support system on behalf of a CLEC may not be shared with the retail portion of the ILEC's business, shall have offices physically separated¹⁶ from the ILEC's retail employees and shall have their own direct line of management.

The majority agrees with Verizon that the reference to an ILEC's "competitive local exchange affiliate or division or other corporate subunit that performs that function"

¹⁶The majority also agrees with Verizon's understanding of the term "physically separated" in the context of this rulemaking. Physical separation under this regulation should mean that there must be some form of physical separation restricting the employees' ability to have contact with each other, but that so long as there is sufficient physical separation (e.g. sound proof wall) the language would not preclude employees from being in the same building or same floor.

could be construed to mean that Verizon is required to create such an affiliate, division or subunit.

I disagree. In changing the language to the version proposed by the majority the Commission is being inconsistent on how the wholesale and retail portions are represented. In other portions of the regulations, the wholesale and retail portions are referred to as "the ILEC and/or the ILEC's competitive local exchange affiliate or division or other corporate subunit that performs functions on behalf of a CLEC." Moreover, Verizon PA's proposal only addresses sharing of wholesale employees who are responsible for the processing of CLEC orders or service of the operating support system on behalf of a CLEC and does not address the concept of sharing between competitive and noncompetitive enterprises within the company. Finally, the majority in adopting the revisions omits the term "agents" which was previously included in the language. It is important to include language that makes the Code of Conduct applicable to all possible scenarios including those individuals who may be hired by the company but are not employees. For these reasons, I must disagree with the majority on this revision.

Section 63.143(4)(i) Cross Subsidization

The majority agrees with Verizon in the deletion of the last two sentences of Section 63.143(4)(i) Cross subsidization. I disagree with the majority's decision.

Section 63.143(4)(i) as proposed in the final rulemaking provides:

An ILEC may not use revenues earned or expenses incurred in conjunction with noncompetitive services to subsidize or support any competitive services. An ILEC may not provide any assets, goods or services to its competitive local exchange affiliate, or division or other corporate subunit performing that performs that function at a price below the ILEC's cost, market price or tariffed rate for the goods or services, whichever, is higher. An ILEC may not purchase any assets, goods or services from its competitive affiliate or division or other corporate subunit that performs that function at a price above the market price or tariffed rate for the goods or services.

In *Duick v. PG&W*, 56 Pa. PUC 553 (1985), the Commission held that petitions for reconsideration under section 703(g) may properly raise any matter designed to convince us that we should exercise our discretion to amend or rescind a prior order, in whole or in part. Furthermore, such petitions are likely to succeed only when they raise "new and novel arguments" not previously heard or considerations which appear to have been overlooked or not addressed by us. *Id.* at 559.

Verizon's Petition simply does not meet this standard. Verizon PA has argued for the deletion of the last two sentences with proposed replacement language¹⁷ during the informal comment portion of this rulemaking¹⁸ as well as the formal comment portion at the proposed rulemaking stage. The Commission received comments to the proposed rulemaking from Verizon PA, Inc. and Verizon North, the Pennsylvania Telephone Association (PTA) as well as comments from the Chairman and a Member of the Consumer Affairs Committee. The PTA stated that the second sentence should be deleted on the

¹⁷In its response, Verizon PA suggested deleting the last two sentences of the cross subsidization section and offered the following replacement language: "An ILEC shall comply with all applicable state and federal rules governing the pricing of services and asset transfers provided between ILECs and their affiliates."

¹⁸In September 2001, the Commission distributed a copy of the draft Code of Conduct for interested parties' informal review and comment.

basis that it lacks relevance, was overly broad and there is no justification for its inclusion in the rulemaking. (PTA Comments, p.12) Verizon and the House Committee Comments regarding the second sentence state:

The second sentence speaks in terms of a "competitive local exchange affiliate, division or other corporate subunit," an necessarily confusing concept that stems from prior structural separation discussion, but that makes no sense under the functional separation adopted by the Commission. The real prohibition that the Commission intends to impose is what is clearly stated in the first sentence, that "an ILEC may not use revenues earned or expenses incurred in conjunction with noncompetitive services to subsidize or support any competitive service." The second paragraph does not address any activity that would prevent such cross subsidization. Rather, it seems to address affiliated interest issues, but it is inconsistent with the requirements of the Public Utility Code regarding affiliated interests. Section 66 Pa.C.S. § 2102(c) already addresses the limits on prices and services provided among affiliated ILEC companies. It would be highly confusing, if not impossible, to comply with two sets of affiliated interest requirements, and there is no reason to impose different requirements here. All but the first sentence of proposed section 63.144(4)(i) therefore should be eliminated.

Verizon PA and Verizon North May 20, 2002 Comments, pp. 16-17 and House Committee June 24, 2002 Letter.

The Commission has previously considered and rejected the requested edit. In our June 16, 2003 Order we stated that after consideration of the issue the better approach was to adopt the language as originally proposed as it provided a clearer, more easily-applied measure for determining whether an illegal cross subsidization has occurred rather than the alternative language proposed by Verizon. In addition, we stated that the real value to the regulation is the additional language as it gives meaning to the cross subsidization standard incorporated into the first sentence by providing a clear standard by which claims of cross subsidization can be evaluated. This Commission voted unanimously to include this provision. Consequently, Verizon has failed to raise any new and novel arguments not previously heard or to prove that the Commission overlooked or failed to address its considerations. Rather, after consideration of the arguments, the Commission disagreed with the proposed edit. It would be bad precedent to grant the petition for reconsideration when the requesting party has failed to satisfy the standard for reconsideration.

Beyond the disturbing procedural precedent set by the motion, prohibition of cross subsidization is a very important concept in providing for a viable competitive market. The legislature itself recognized the potential impact and significance of cross subsidization and enacted Chapter 30 with a provision prohibiting cross subsidization. 66 Pa.C.S.A. §§ 3005(g)(2). Section 3005(g)(2) states:

A local exchange telecommunications company may not use revenues earned or expenses incurred in conjunction with noncompetitive services to subsidize or support any competitive services. The commission shall establish regulations which must be followed by local exchange telecommunications companies for the purposes of allocating costs for accounting and rate making among telephone services in order to prevent subsidization or support for competitive services

66 Pa.C.S.A. § 3005(g)(2).

When comparing the language in our Final Rulemaking Order and in the statute, it is clear that the last two sentences in Section 63.143(4)(i) should not be deleted. The first sentence in the section is the exact language from Section 3005(g)(2) of Chapter 30, 66 Pa.C.S.A. § 3005(g)(2) and establishes that a local exchange telecommunications company may not cross subsidize. The last two sentences explain in more detail what cross subsidization means and what activity is prohibited, in accordance with the legislative directive in section 3005(g)(2) which states that "The commission shall establish regulations" applicable to LECs for the purpose of "allocating costs for accounting and ratemaking purposes to prevent cross subsidization or support for competitive services." 66 Pa.C.S.A. § 3005(g)(2). As we noted on page 21 of our Final Rulemaking Order:

To only adopt the first sentence [of subsection 63.143(4)] would add nothing to the prohibition contained in the statute as the exact same language already appears in section 3005(g)(2) . . . The real value to the regulation is in fact the additional language as it gives meaning to the cross-subsidization standard incorporated into the first sentence of Paragraph (4) by providing a clear standard by which claims of cross subsidization can be evaluated.

Rulemaking Re: Generic Competitive Safeguards Under 66 Pa.C.S.A. §§ 3005(b) and 3005(g)(2), Final Order, June 16, 2003, p.21.

This Commission has long recognized the need to ensure a level playing field in the competitive marketplace. In our *Global Order*,¹⁹ the Commission noted that some parties to the proceeding provide both retail services directly to local service customers and wholesale services to other telecommunications carriers competing for those same local service customers. Consequently, the Commission recognized the need for a "Code of Conduct" (Code). Both of the two Petitions filed by parties to the proceeding proposed a version setting forth rules to ensure fair and nondiscriminatory treatment of telecommunications carriers when they seek to purchase wholesale services from an ILEC in order to provide retail services to end-users in competition with the ILEC as part of the issue of functional/structural separation. *Global Order*, p. 215. In 1999, as part of its *Global Order*, the Commission established a Code of Conduct which included a provision that addressed the sale or the purchase of good or services, by the incumbent local exchange company to its competitive local exchange affiliate or division as well as cross subsidy. *Id.*, Appendix C, paragraph 2. Specifically, Paragraph 2 states:

No incumbent local exchange company shall provide any goods or services to its competitive local exchange affiliate or division below cost or market price, nor shall the company purchase goods or services from the competitive affiliate or division at a price above market, and not transaction between the two entities shall involve an anti-competitive cross-subsidy.

Id., Appendix C, Para. 2. Accordingly, Verizon PA has been obligated to comply with the Code of Conduct since 1999.

In the *Global Order* the Commission directed commencement of a proceeding to develop a record for the

¹⁹*Joint Petition of Nextlink Pennsylvania, Inc., et al.*, P-00991648, P-00991649, September 30, 1999 (Global Order) affirmed *Bell-Atlantic-Pennsylvania, Inc. v. Pa. PUC*, 763 A.2d 440 (Pa. Cmwlth. 2000).

Commission to implement structural separation. On April 27, 2000 we issued our Order Instituting Structural Separation Proceeding. The proceeding was assigned to the Office of Administrative Law Judge. On January 26, 2001, the Administrative Law Judge issued a Recommended Decision in which he recommended, inter alia, that Verizon be directed to commence a one year transition period to create a separate retail affiliate for retail services within thirty days of the entry of the Commission's Order.

On April 11, 2001 the Commission adopted an order in which it considered an effective and less costly means of structural separation because "full" structural separation would require implementation costs which could be substantial and that the parties convincingly argued that even with the implementation of structural separation of Verizon's wholesale and retail arms, no less regulatory oversight than that currently prevailing would be required to ensure compliance. *RE: Structural Separation of Bell Atlantic-Pennsylvania, Inc.*²⁰ *Retail and Wholesale Operations*, April 11, 2001 at pp.22-23. (*Functional Structural Separation Order*). In that Order the Commission offered Verizon the option of accepting the following proposed resolution:

"In lieu of the further litigation that would likely follow from choosing a single structural separation model, we shall present Verizon with the following options: a) accept the terms of a functional/structural separation and further conditions set forth herein, or b) accept the possibility of full structural separation of all retail and wholesale operations upon our further review and consideration of the record in this matter. Acceptance of these terms and conditions will both terminate Verizon's numerous state and federal court challenges to the *Global Order* and, *provided that all terms and conditions set forth herein are executed in good faith*, (emphasis added) should create the conditions necessary to all local telephone competition to flourish."

Id., p. 31

One of those conditions was the resumption of a competitive safeguards rulemaking to formulate a comprehensive Code of Conduct. In the *Functional Structural Separation Order* we agreed to enter the record from the structural separation proceeding into the Code of Conduct rulemaking to ensure consistency, to take official notice of the structural separation proceeding in the context of the Code of Conduct rulemaking and to reopen the Code of Conduct rulemaking. Id. at p. 34-35. We also noted that "until completion of the final rulemaking in the Competitive Safeguards Proceeding, we expect Verizon to fully comply with the interim Code of Conduct set forth in the *Global Order*." Id. at p. 35.

The *Functional Structural Separation Order* stated that Verizon PA was to notify the Commission on or before April 20, 2001 whether it would accept and be bound by the structural separation terms and conditions contained in the Order. Id. at p. 42. On April 20, 2001 Verizon PA notified the Commission that "it accepts the terms and conditions contained in the April 11 Order, based upon our understanding of that Order as written, and consistent with the requirements imposed by state and federal law." *Verizon's April 20, 2001 Letter; Re: Structural Separation of Verizon Pennsylvania Inc.'s Retail and Wholesale Operations*, Docket No. M-00001353.

²⁰On August 1, 2000, Bell Atlantic-Pennsylvania, Inc.'s corporate name was changed to Verizon Pennsylvania Inc.

One of the conditions which Verizon PA accepted in the *Global Order* Code of Conduct was language addressing cross subsidization as well as the sale and the purchase of goods or services between the incumbent local exchange carrier and affiliate or division. See, *Global Order*, Appendix C, Para. 2. Having accepted the conditions, Verizon PA should be required to abide by the agreement they made in *Functional Structural Separation Order* in lieu of full structural separation. In addition, the concept and the supporting rationale set forth above are as appropriate today as it was several years ago. Moreover, the need for clear rules to prevent cross subsidization does not evaporate if the company chooses to maintain competitive and noncompetitive enterprises within a single corporate unit.

For the reasons stated above, I respectfully dissent from the motion of the majority.

Statement of Commissioner Kim Pizzigrilli

Currently before the Commission is a Petition of Verizon Pennsylvania Inc. and Verizon North Inc. (Verizon) for Clarification and Reconsideration of our June 16, 2003 Order approving a final-form regulation to establish competitive safeguards in furtherance of Chapter 30's mandate to encourage and promote competition in the telecommunications industry in Pennsylvania. In its Petition, Verizon requests that the Commission reconsider the language of three sections of the regulations: § 63.143(5)(i), § 63.143(6)(i), and § 63.143(4)(i). Staff recommends accepting Verizon's position regarding § 63.143(5)(i) but rejects Verizon's position regarding § 63.143(6)(i) and § 63.143(4)(i).

In the final-form regulations adopted on June 16, 2003, the Commission made substantial revisions to address comments and concerns raised regarding the proposed rulemaking. Both § 63.143(5)(i) and § 63.143(6)(i) included new language in the final-form regulation and they are appropriately addressed in Verizon's petition. The third section, § 63.143(4)(i) includes similar language as originally included in the proposed rulemaking. Verizon is raising the same arguments with respect to this section as it did earlier in the process. The Commission set forth its standard for reconsidering orders in *Duick v. Pennsylvania Gas and Water Co.*, 56 Pa. P.U.C. 553, 559 (1982). Accordingly, discretion to reconsider final orders should be granted when "new and novel arguments, not previously heard, or considerations [are raised] which appear to have been overlooked or not addressed by the Commission." Id.

I agree with the staff recommendation and Verizon's petition that Section 63.143(5)(i) should be clarified. I disagree with the staff recommendation regarding Section 63.143(6)(i) regarding sharing of employees and agree with Verizon that amendments to this section are appropriate. I would adopt a modified version of Verizon's proposed language as follows:

"The ILEC's wholesale employees who are responsible for the processing of a CLEC order or service of the operating support system on behalf of a CLEC may not be shared with the retail portion of the ILEC's business, shall have offices physically separated from the ILEC's retail employees and shall have their own direct line of management."

Section 63.143(4)(i) sets forth provisions relating to cross subsidization. This language as adopted in our June 16, 2003 Order is substantially the same language as adopted in our proposed rulemaking order. Verizon's Petition for Reconsideration raises no new or novel

argument regarding this section which convince me that revisions are necessary. Therefore, I cannot support revising this section at this time in accordance with Verizon's Petition for Reconsideration.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 63. TELEPHONE SERVICE

Subchapter K. COMPETITIVE SAFEGUARDS

Sec.

- 63.141. Statement of purpose and policy.
 63.142. Definitions.
 63.143. Code of conduct.
 63.144. Remedies.

§ 63.141. Statement of purpose and policy.

(a) This subchapter establishes competitive safeguards to:

(1) Assure the provision of adequate and nondiscriminatory access by ILECs to CLECs for all services and facilities ILECs are obligated to provide CLECs under any applicable Federal or State law.

(2) Prevent the unlawful cross subsidization or support for competitive services from noncompetitive services by ILECs.

(3) Prevent ILECs from engaging in unfair competition.

(b) These competitive safeguards are intended to promote the Commonwealth's policy of establishing and maintaining an effective and vibrant competitive market for all telecommunications services.

(c) The code of conduct in § 63.143 (relating to code of conduct) supersedes and replaces the code of conduct adopted by Commission order entered September 30, 1999, at P-00991648, et al.

§ 63.142. Definitions.

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

CLEC—Competitive local exchange carrier—

(i) A telecommunications company that has been certificated or given provisional authority by the Commission as a CLEC under the Commission's procedures implementing the Telecommunications Act of 1996, the act of February 8, 1996 (Pub. L. No. 104-104, 110 Stat. 56), or under the relevant provisions in 66 Pa.C.S. § 3009(a) (relating to additional powers and duties), and its successors and assigns.

(ii) The term includes any of the CLEC's affiliates, subsidiaries, divisions or other corporate subunits that provide local exchange service.

*Competitive service—*A service or business activity offered by an ILEC or CLEC that has been classified as competitive by the Commission under the relevant provisions of 66 Pa.C.S. § 3005 (relating to competitive services).

ILEC—Incumbent local exchange carrier—

(i) A telecommunications company deemed to be an ILEC under section 101(h) of the Telecommunications Act of 1996 (47 U.S.C.A. § 251(h)), and its successors and assigns.

(ii) The term includes any of the ILEC's affiliates, subsidiaries, divisions or other corporate subunits that provide local exchange service.

*LEC—Local exchange carrier—*A local telephone company that provides telecommunications service within a specified service area. LECs encompass both ILECs and CLECs.

*Market price—*Prices set at market-determined rates.

*Noncompetitive service—*Any protected telephone service as defined in 66 Pa.C.S. § 3002 (relating to definitions), or a service that has been determined by the Commission as not a competitive service.

*Telecommunications service—*A utility service, involving the transmission of messages, which is subject to the Commission's jurisdiction.

§ 63.143. Code of conduct.

All ILECs, unless otherwise noted, shall comply with the following requirements:

(1) *Nondiscrimination.*

(i) An ILEC may not give itself, including any local exchange affiliate or division or other corporate subunit that performs that function, or any CLEC any preference or advantage over any other CLEC in the preordering, ordering, provisioning, or repair and maintenance of any goods, services, network elements (as defined under section 3(29) of the Communications Act of 1934 (47 U.S.C.A. § 153(29)), or facilities.

(ii) An ILEC may not condition the sale, lease or use of any noncompetitive service on the purchase, lease or use of any other goods or services offered by the ILEC or on a written or oral agreement not to deal with any CLEC. In addition, a LEC may not condition the sale, lease or use of any noncompetitive service on a written or oral agreement not to deal with any other LEC. Nothing in this paragraph prohibits an ILEC from bundling noncompetitive services with other noncompetitive services or with competitive services so long as the ILEC continues to offer any noncompetitive service contained in the bundle on an individual basis.

(iii) An ILEC shall offer to CLECs for resale any bundled competitive and noncompetitive services it provides to end-users at the same price it offers the bundled services to end-users less any applicable wholesale discount approved by the Commission, and shall make the unbundled network elements associated with those services available to CLECs as may be required by any applicable State or Federal law.

(2) *Employee conduct.*

(i) A LEC employee, while engaged in the installation of equipment or the rendering of services to any end-user on behalf of a competitor, may not disparage the service of the competitor or promote any service of the LEC to the end-user.

(ii) A LEC employee, while processing an order for the repair or restoration of service or engaged in the actual repair or restoration of service on behalf of a competitor, may not either directly or indirectly represent to any end-user that the repair or restoration of service would have occurred sooner if the end-user had obtained service from the LEC.

(3) *Corporate advertising and marketing.*

(i) A LEC may not engage in false or deceptive advertising with respect to the offering of any telecommunications service in this Commonwealth.

(ii) A LEC may not state or imply that the services provided by the LEC are inherently superior when purchased from the LEC unless the statement can be factually substantiated.

(iii) A LEC may not state or imply that the services rendered by a competitor may not be reliably rendered or are otherwise of a substandard nature unless the statement can be factually substantiated.

(iv) An ILEC may not state or imply that the continuation of any requested service from the ILEC is contingent upon taking other services offered by the ILEC that are not technically necessary to provide the requested service.

(4) *Cross subsidization.*

(i) An ILEC may not use revenues earned or expenses incurred in conjunction with noncompetitive services to subsidize or support any competitive services.

(5) *Information sharing and disclosure.*

(i) An ILEC shall simultaneously make available to CLECs network information not in the public domain that is used for sales purposes by the ILEC or the ILEC's competitive local exchange affiliate or division or other corporate subunit that performs that function.

(A) The term "network information" means information concerning the availability of unbundled network elements or information necessary for interconnection to the ILEC's network.

(B) Network information does not include information obtained during the processing of an order or service on behalf of the ILEC or the ILEC's competitive local exchange affiliate or division or other corporate subunit that performs that function.

(ii) An ILEC's employees, including its wholesale employees, shall use CLEC proprietary information (that is not otherwise available to the ILEC) received in the preordering, ordering, provisioning, billing, maintenance or repairing of any telecommunications services provided to the CLEC solely for the purpose of providing the services to the CLEC. ILEC employees may not disclose the CLEC proprietary information to other employees engaged in the marketing or sales of retail telecommunications services unless the CLEC provides prior written consent to the disclosure. This provision does not restrict the use of aggregated CLEC data in a manner that does not disclose proprietary information of any particular CLEC.

(iii) Subject to customer privacy or confidentiality constraints, a LEC employee may not disclose, directly or indirectly, any customer proprietary information to the LEC's affiliated or nonaffiliated entities unless authorized by the customer under § 63.135 (relating to customer information).

(6) *Sharing of employees and facilities.* The ILEC's wholesale employees who are responsible for the processing of a CLEC order or service of the operating support system on behalf of a CLEC may not be shared with the retail portion of the ILEC's business, shall have offices physically separated from the ILEC's retail employees and shall have their own direct line of management.

(7) *Adoption and dissemination.* Every LEC shall formally adopt and implement the applicable code of conduct provisions as company policy or modify its existing company policy as needed to be consistent with the applicable code of conduct provisions. Every LEC shall also disseminate the applicable code of conduct provisions to its

employees and take appropriate steps to train and instruct its employees in their content and application.

§ 63.144. Remedies.

(a) A violation of this subchapter allegedly harming a party may be adjudicated using the Commission's *Interim Guidelines for Abbreviated Dispute Resolution Process*, at Doc. Nos. P-00991648 and P-00991649, which were published at 30 Pa.B. 3808 (July 28, 2000), or any successor Commission alternative dispute resolution process, to resolve the dispute. This action, however, does not preclude or limit additional available remedies or civil action, including the filing of a complaint concerning the dispute or alleged violations with the Commission under 66 Pa.C.S. § 701 (relating to complaints) and § 5.21(a) (relating to formal complaints generally).

(b) The Commission may also, when appropriate, impose penalties under 66 Pa.C.S. § 3301 (relating to civil penalties for violations) or refer violations of the code of conduct provisions in this subchapter to the Pennsylvania Office of Attorney General, the Federal Communications Commission or the United States Department of Justice.

[Pa.B. Doc. No. 03-2357. Filed for public inspection December 12, 2003, 9:00 a.m.]

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CHS. 65, 69 AND 97]

Fishing; Boating

The Fish and Boat Commission (Commission) amends Chapters 65, 69 and 97 (relating to special fishing regulations; fishing in Lake Erie and boundary lakes; and operator provided equipment). The Commission is publishing this final-form rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). This final-form rulemaking relates to a miscellaneous special regulation at Duck Harbor Pond in Wayne County, the minimum size limit for walleye in Lake Erie and its tributaries, and fire extinguishers.

A. Effective Date

This final-form rulemaking will go into effect on January 1, 2004.

B. Contact Person

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

C. Statutory Authority

The amendment to § 65.24 (relating to miscellaneous special regulations) is published under the statutory authority of section 2307 of the code (relating to waters limited to specific purposes). The amendments to § 69.12 (relating to seasons, sizes and creel limits—Lake Erie and Lake Erie tributaries) are published under the statutory authority of section 2102 of the code (relating to rules and regulations). The amendments to § 69.33 (relating to use of trap nets) are published under the statutory authority of section 2903 of the code (relating to boat and net licenses for boundary lakes). The amendments to § 97.2

(relating to fire extinguishers) are published under the statutory authority of section 5123 of the code (relating to general boating regulations).

D. Purpose and Background

This final-form rulemaking is designed to update, modify and improve the Commission's regulations pertaining to fishing and boating. The specific purpose of this final-form rulemaking is described in more detail under the summary of changes.

E. Summary of Changes

(1) *Section 65.24.* In the mid-1990s, miscellaneous special regulations were established on 228-acre Duck Harbor Pond to enhance management for larger trout. A 14-inch minimum length limit and two trout per day creel limit were imposed to enable hatchery fingerling and adult trout to attain a larger size given suitable habitat and forage for year-round trout survival and growth. Results of sampling efforts have not given the Commission reason to continue with the more restrictive regulations. In addition, it is suspected that the more restrictive regulations have discouraged trout anglers from fishing the lake as spring stocked trout averaging 10 inches or so in length are smaller than the legal size. The Commission would like to continue stocking trout in Duck Harbor Pond but with Statewide regulations to encourage greater use at the lake. Accordingly, the Commission deleted the miscellaneous special regulation on Duck Harbor Pond as set forth in the notice of proposed rulemaking, published at 33 Pa.B. 3127 (July 5, 2003). By removing the miscellaneous special regulation, Duck Harbor Pond will be considered an approved trout water open to year-round fishing. Trout may be harvested during the regular and extended trout seasons in accordance with Statewide regulations.

(2) *Sections 69.12 and 69.33.* Under § 69.12, walleye in Lake Erie and Presque Isle Bay are currently regulated by a season (January 1 to March 15 and the first Saturday in May to December 31), a minimum length of 15 inches and a creel limit of six per day. The commercial trap net fishery is regulated by the same season in § 69.31, an annual total allowable catch (set annually) and a 15-inch minimum length limit in § 69.33.

Walleye abundance in Lake Erie has continued to decline since population levels reached historic highs in the late 1980s. The reasons for the decline are not fully known but include repeated years of poor recruitment due in part to weather patterns and temperature variations, a shift in lake productivity due to zebra mussels and increased fishing rates. Sampling by Commission biologists and fisheries managers from the other Lake Erie jurisdictions has revealed that poor to almost nonexistent year classes of walleyes have been produced during 2000 and 2002. The 1999 and 2001 year classes have been stronger and represent the future spawning stock of Lake Erie walleye. Lake-wide, the 1999 year class is the strongest since 1986. Thus, steps must be taken to protect these stronger year classes until they have the opportunity to grow and become a part of the adult spawning population.

The Lake Erie Committee (Committee), a subcommittee of the Great Lakes Fishery Commission, which includes representatives of Lake Erie's various jurisdictions, has recognized that walleye populations have dramatically declined. At its annual meeting in March 2003, the Committee held the lake-wide total allowable catch (TAC) of walleye, which includes sport and commercial harvest, at a level equal to the last 2 years. The Committee also

stated that based on current population and harvest information, a reduction in the TAC is warranted and should be expected in 2004. Additional discussion occurred at the Committee's June 2003 meeting. Jurisdictions are expected to take measures to reduce harvest of walleye with the objective of rebuilding the walleye population, restoring the directed walleye fishery and restoring catch rates of walleye.

Fishery data collected by Commission biologists indicate that an increased minimum length limit is the most appropriate method for this Commonwealth to reduce the harvest of walleye beginning in 2004. A creel limit reduction alone will not effectively conserve enough fish to meet the goals. When walleye populations are low, catch rates are down and few people catch their limit of six walleyes. On the other hand, length limits have been shown to be an effective tool in protecting specific segments of a fish population. Creel survey data collected by the Commission from 1993 to 2002 show that a 20-inch minimum length limit would protect, on average, 31% of walleyes caught from harvest, including the important 1999 and 2001 year classes. This protection should result in an increased abundance of walleyes less than 20 inches and improve the stability of future spawning stocks. There is currently one licensed commercial fisherman in this Commonwealth. The new length limit would also apply to his activities.

The Commission solicited public comments concerning the proposal and did not receive any written comments. However, one of the Commissioners received several oral comments. In response to those public comments, the Commission, on final-form rulemaking, adopted a minimum size limit of 18 inches instead of the 20 inches and reduced the creel limit from six per day to four per day during the harvest season from the first Saturday in May to March 15 of the following year. The cumulative effect of this change in 2004 will achieve a reduction in harvest comparable to that which would have been achieved by the 20-inch minimum size limit alone with the expectation that the 2001 walleye year class will be entering the fishery in 2004.

(3) *Section 97.2.* This section currently requires a fire extinguisher in all gasoline-powered boats that have the probability for entrapping gasoline vapors in closed compartments. This section is intended to reduce the incidence and severity of fires from ignition of gasoline vapors. The section tracks the Federal regulations on this subject with one exception. The Federal regulations contain examples of boat construction or situations when fire extinguishers are or are not required.

Commission staff's original concept was to present a clarifying amendment to § 97.2 to deal with situations with jon boats and similar craft with after-installed flooring in them. When the Commission's Boating Advisory Board (BAB) considered this item, it recommended that the Commission approve the publication of a notice of proposed rulemaking containing a broader amendment to require fire extinguishers on all boats with internal combustion motors. Although that proposal went beyond Federal requirements, it had the advantage of setting forth a clear line for requiring fire extinguishers. Accordingly, the Commission proposed amending § 97.2 to require fire extinguishers on all boats equipped with internal combustion motors.

When the Commission published a notice of proposed rulemaking, it sought public comments on the most restrictive proposal. The proposal had the advantage of providing a "bright line" rule that is easy to understand

and enforce. However, the proposal also had the disadvantage of requiring fire extinguishers on boats where they may not be necessary from a safety viewpoint.

When the BAB again considered this item prior to the Commission's consideration on final-form rulemaking, the BAB was equally divided regarding whether to recommend that the Commission adopt the amendments set forth in the notice of proposed rulemaking. While some BAB members advocated requiring fire extinguishers on all boats equipped with internal combustion motors for safety and enforcement reasons, others believed that this requirement was overly broad and placed an undue burden on many boaters.

As a result of the BAB's discussion, Commission staff determined that it would be useful to take another look at the Federal regulation and examine the requirements of other states. Neighboring states, New York, Maryland and New Jersey, refer to the Federal requirements for fire extinguishers. The regulations of Delaware, West Virginia and Ohio are the same as, or very similar to, the Federal rule. Although the concept of a bright line rule requiring all boats with internal combustion motors to have fire extinguishers is somewhat attractive, it appears that a broad requirement may not be necessary or prudent. Thus, on final-form rulemaking, the Commission adopted the amendments, which are based on the Federal requirements, to read as set forth in Annex A.

F. *Paperwork*

This final-form rulemaking will not increase paperwork and will create no new paperwork requirements.

G. *Fiscal Impact*

This final-form rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. This final-form rulemaking will impose no new costs on the private sector or the general public.

H. *Public Involvement*

A notice of proposed rulemaking was published at 33 Pa.B. 3127. Regarding the fire extinguisher proposal, the Commission received a total of 21 public comments—1 prior to, 18 during and 2 after the public comment period. Of the 18 received during the formal comment period, 9 supported the proposed change, 9 opposed it. Copies of all public comments were provided to the Commissioners. The Commission did not receive any written public comments concerning the other proposals.

Findings

The Commission finds that:

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

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

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

Order

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

(a) The regulations of the Commission, 58 Pa. Code Chapters 65, 69 and 97, are amended by amending § 65.24 to read as set forth at 33 Pa.B. 3127 and §§ 69.12, 69.33 and 97.2 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Deputy Executive Director will submit this order, 33 Pa.B. 3127 and Annex A to the Office of Attorney General for approval as to legality as required by law.

(c) The Deputy Executive Director shall certify this order, 33 Pa.B. 3127 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect on January 1, 2004.

DENNIS T. GUISE,
Deputy Executive Director

Fiscal Note: Fiscal Note 48A-146 remains valid for the final adoption of the subject regulations

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 69. FISHING IN LAKE ERIE AND BOUNDARY LAKES

Subchapter B. SPORT FISHING AND ANGLING

§ 69.12. Seasons, sizes and creel limits—Lake Erie and Lake Erie tributaries.

* * * * *

(f) Subject to the provisions of subsections (d) and (e), the following seasons, sizes and creel limits apply to Lake Erie, Lake Erie tributaries and Presque Isle Bay, including peninsula waters:

<i>SPECIES</i>	<i>SEASONS</i>	<i>MINIMUM SIZE</i>	<i>DAILY LIMIT</i>
	* * *	* * *	
WALLEYE	January 1 to midnight March 15 and 12:01 a.m. the first Saturday in May to December 31	18 inches	4
	* * *	* * *	

Subchapter D. COMMERCIAL FISHING, SEASONS AND NETS

§ 69.33. Use of trap nets.

* * * * *

(b) *Species.* A commercial trap net licensee may not possess or sell a fish except in compliance with the following size limits and seasons. The following size limits apply to commercial trap net licensees except that 5% of each licensee's daily catch by number per species may be undersized fish that may be lawfully sold:

<i>Species</i>	<i>Size Limit</i>	<i>Season</i>
	* * * * *	
Walleye (<i>Stizostedion vitreum</i>)	18 inches	January 1 to midnight March 15 and 12:01 a.m. the first Saturday in May to December 31. This season will close when the total allowable catch for walleye is taken.
	* * * * *	

Subpart C. BOATING

CHAPTER 97. OPERATOR PROVIDED EQUIPMENT

§ 97.2. Fire extinguishers.

(a) All motorboats shall carry at least the minimum number of Coast Guard approved hand portable fire extinguishers required for their class as specified in Appendix B, except that motorboats less than 26 feet in length, propelled by outboard motors and not carrying passengers for hire, need not carry fire extinguishers if the construction of the motorboats will not permit the entrapment of explosive or flammable gases or vapors.

(1) Fire extinguishers shall be carried on motorboats that meet one or more of the following conditions. The motorboats have:

- (i) Closed compartments under thwarts and seats where portable fuel tanks may be stored.
- (ii) Double bottoms not sealed to the hulls or that are not completely filled with flotation material.
- (iii) Closed living spaces.
- (iv) Closed stowage compartments in which combustible or flammable materials are stowed.
- (v) Permanently installed fuel tanks.

(2) The following conditions do not, in and of themselves, require that fire extinguishers be carried:

- (i) Bait wells.
- (ii) Glove compartments.
- (iii) Buoyant flotation material.
- (iv) Open slatted flooring.
- (v) Ice chests.

(b) Motorboats engaged in a race which has been officially sanctioned, as set forth in § 109.6 (relating to special marine events), or while engaged in tuning up for a race which has been officially sanctioned, need not carry the extinguisher required by this section.

(c) Fire extinguishers carried in compliance with this section shall be maintained in a usable condition and shall be charged in compliance with the specifications on the manufacturer's certification label. Gauges shall be operable and nozzles shall be free of obstruction. In prosecutions for violations of this section, there shall be a rebuttable presumption that a fire extinguisher is not usable if its gauge shows that the extinguisher is discharged.

(d) Fire extinguishers shall be installed and maintained so that they are immediately available within arms reach of the operator or passengers on the boat.

[Pa.B. Doc. No. 03-2358. Filed for public inspection December 12, 2003, 9:00 a.m.]

NOTICES

DEPARTMENT OF BANKING

Action on Applications

The Department of Banking, under the authority contained in the act of November 30, 1965 (P. L. 847, No. 356), known as the Banking Code of 1965; the act of December 14, 1967 (P. L. 746, No. 345), known as the Savings Association Code of 1967; the act of May 15, 1933 (P. L. 565, No. 111), known as the Department of Banking Code; and the act of December 19, 1990 (P. L. 834, No. 198), known as the Credit Union Code, has taken the following action on applications received for the week ending December 2, 2003.

BANKING INSTITUTIONS

Holding Company Acquisitions

<i>Date</i>	<i>Name of Corporation</i>	<i>Location</i>	<i>Action</i>
11-21-03	Community Bank System, Inc., DeWitt, NY, to acquire 100% of voting shares of Grange National Banc Corp., Tunkhannock, PA, and thereby indirectly acquire Grange National Bank, Laceyville, PA	DeWitt, NY	Effective
11-26-03	Citizens Financial Group Inc., Providence, RI, to acquire 100% of voting shares of Thistle Group Holdings, Co., Philadelphia, PA	Providence, RI	Approved

Consolidations, Mergers and Absorptions

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
11-26-03	Citizens Bank of Pennsylvania, Philadelphia, and Roxborough- Manayunk Bank, Philadelphia Surviving Institution— Citizens Bank of Pennsylvania, Philadelphia	Philadelphia	Approved

Branch Applications

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
11-24-03	Citizens & Northern Bank Wellsboro Tioga County	104 Maynard Street Williamsport Lycoming County	Authorization Rescinded

Branch Relocations

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
11-26-03	Commercial Bank of Pennsylvania Latrobe Westmoreland County	<i>To:</i> 11361 Route 30 North Huntingdon Westmoreland County <i>From:</i> 8775 Norwin Avenue North Huntingdon Westmoreland County	Filed

Branch Discontinuances

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
11-7-03	Community Banks Millersburg Dauphin County	29 East Main Street Tremont Schuylkill County	Effective

NOTICES

SAVINGS INSTITUTIONS

No activity.

CREDIT UNIONS

Consolidations, Mergers and Absorptions

<i>Date</i>	<i>Name of Credit Union</i>	<i>Location</i>	<i>Action</i>
12-1-03	Montgomery County Employees Credit Union, Norristown, and American Heritage Federal Credit Union, Philadelphia Surviving Institution— American Heritage Federal Credit Union, Philadelphia	Norristown	Effective

A. WILLIAM SCHENCK, III
Secretary

[Pa.B. Doc. No. 03-2359. Filed for public inspection December 12, 2003, 9:00 a.m.]

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Applications, Actions and Special Notices

APPLICATIONS

THE CLEAN STREAMS LAW AND THE FEDERAL CLEAN WATER ACT APPLICATIONS FOR NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES) PERMITS AND WATER QUALITY MANAGEMENT (WQM) PERMITS

This notice provides information about persons who have applied for a new, amended or renewed NPDES or WQM permit, a permit waiver for certain stormwater discharges or submitted a Notice of Intent (NOI) for coverage under a General Permit. The applications concern, but are not limited to, discharges related to industrial, animal or sewage waste, discharges to groundwater, discharges associated with municipal separate storm sewer systems (MS4), stormwater associated with construction activities or concentrated animal feeding operations (CAFOs). This notice is provided in accordance with 25 Pa. Code Chapters 91 and 92 and 40 CFR Part 122, implementing The Clean Streams Law (35 P. S. §§ 691.1—691.1001) and the Federal Clean Water Act.

<i>Location</i>	<i>Permit Authority</i>	<i>Application Type or Category</i>
Section I	NPDES	Renewals
Section II	NPDES	New or amendment
Section III	WQM	Industrial, sewage or animal waste; discharge into groundwater
Section IV	NPDES	MS4 individual permit
Section V	NPDES	MS4 permit waiver
Section VI	NPDES	Individual permit stormwater construction
Section VII	NPDES	NOI for coverage under NPDES general permits

For NPDES renewal applications in Section I, the Department of Environmental Protection (Department) has made a tentative determination to reissue these permits for 5 years subject to effluent limitations and monitoring and reporting requirements in their current permits, with appropriate and necessary updated requirements to reflect new and changed regulations and other requirements.

For applications for new NPDES permits and renewal applications with major changes in Section II, as well as applications for MS4 individual permits and individual stormwater construction permits in Sections IV and VI, the Department, based upon preliminary reviews, has made a tentative determination of proposed effluent limitations and other terms and conditions for the permit applications. These determinations are published as proposed actions for comments prior to taking final actions.

Unless indicated otherwise, the EPA Region III Administrator has waived the right to review or object to proposed NPDES permit actions under the waiver provision in 40 CFR 123.24(d).

Persons wishing to comment on an NPDES application are invited to submit a statement to the contact office noted before the application within 30 days from the date of this public notice. Persons wishing to comment on a WQM permit application are invited to submit a statement to the office noted before the application within 15 days from the date of this public notice. Comments received within the respective comment periods will be considered in the final determinations regarding the applications. Comments should include the name, address and telephone number of the writer and a concise statement to inform the Department of the exact basis of a comment and the relevant facts upon which it is based.

The Department will also accept requests for a public hearing on applications. A public hearing may be held if the responsible office considers the public response significant. If a hearing is scheduled, a notice of the hearing will be published in the *Pennsylvania Bulletin* and a newspaper of general circulation within the relevant geographical area. The Department will postpone its final determination until after any public hearings are held.

Persons with a disability who require an auxiliary aid, service, including TDD users, or other accommodations to seek additional information should contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

I. NPDES Renewal Applications

Southeast Region: Water Management Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.

<i>NPDES Permit No. (Type)</i>	<i>Facility Name and Address</i>	<i>County and Municipality</i>	<i>Stream Name (Watershed No.)</i>	<i>EPA Waived Y/N ?</i>
PA0052990	Rodney A. Mitchell 221 Valley Green Drive Coatesville, PA 19320	Chester County West Caln Township	Rock Tributary	Y

Northeast Region: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

<i>NPDES Permit No. (Type)</i>	<i>Facility Name and Address</i>	<i>County and Municipality</i>	<i>Stream Name (Watershed No.)</i>	<i>EPA Waived Y/N ?</i>
PA0042048 Sewage	Conyngham Borough Authority 90 Butler Avenue Conyngham, PA 18219	Luzerne County Sugarloaf Township	Little Nescopeck Creek 5D	Y

Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4707.

<i>NPDES Permit No. (Type)</i>	<i>Facility Name and Address</i>	<i>County and Municipality</i>	<i>Stream Name (Watershed No.)</i>	<i>EPA Waived Y/N ?</i>
PA0083496 Industrial Waste	Lancaster County Solid Waste Management Authority 1299 Harrisburg Pike Lancaster, PA 17604-4425	Lancaster County Conoy Township	Dry swale to Susquehanna River 7G	Y
PA0082481 Industrial Waste	Borough of Lewistown 70 Chestnut Street Lewistown, PA 17044-2216	Mifflin County Armagh Township	Laurel Creek 12-A	Y
PAR10P022R2	Isaac Martin 1140 Birch Road Lebanon, PA 17042	Lebanon County South Lebanon Township	Quittapahill Creek TSF	Y
PAR100348-R	K. Murphy & Company 1991 Turnpike Road Elizabethtown, PA 17022	Lancaster County West Donegal Township	UNT Conoy Creek TSF	Y
PA0082741 Industrial Waste	Elizabethtown Borough 600 S. Hanover Street Elizabethtown, PA 17022	Lancaster County Mount Joy Township	UNT Conoy Creek 7G	Y

Northcentral Region: Water Management Program Manager, 208 West Third Street, Williamsport, PA 17701.

<i>NPDES Permit No. (Type)</i>	<i>Facility Name and Address</i>	<i>County and Municipality</i>	<i>Stream Name (Watershed No.)</i>	<i>EPA Waived Y/N ?</i>
PA0110213	Michael and Louise Klemick 108 Grant Street Elysburg, PA 17824	Columbia County Cleveland Township	South Branch Roaring Creek 5E	Y
PA0021881	Westfield Borough 429 East Main Street Westfield, PA 16950	Tioga County Westfield Township	Cowanisque River 4A	Y
PA0112950 Sewerage	Sunoco, Inc. 1801 Market Street Ten Penn Center Philadelphia, PA 19103-1699	Lower Mahanoy Township Northumberland County	Fidlers Run 6-B	Y
PA0111970	Springbrook Campground Box 10A, R. R. 1 Catawissa, PA 16820	Locust Township Columbia County	Roaring Creek Fishing Creek 5C	Y

<i>NPDES Permit No. (Type)</i>	<i>Facility Name and Address</i>	<i>County and Municipality</i>	<i>Stream Name (Watershed No.)</i>	<i>EPA Waived Y/N ?</i>
PA0228052 Sewerage	Allen's True Value 759 Susquehanna Trail Watsontown, PA 17777	Delaware Township Northumberland County	Unnamed tributary to Muddy Run 10D	Y

Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

<i>NPDES Permit No. (Type)</i>	<i>Facility Name and Address</i>	<i>County and Municipality</i>	<i>Stream Name (Watershed No.)</i>	<i>EPA Waived Y/N ?</i>
PA0037923	North East Borough Water Filtration Plant 31 West Main Street North East, PA 16428	North East Township Erie County	Sixteen Mile Creek 15-SM	Y
PA0222470	Lundberg Treatment Facility Association R. D. 1 Box 114 Brockway, PA 15824	Snyder Township Jefferson County	Rattlesnake Creek 17-A	Y

II. Applications for New or Expanded Facility Permits, Renewal of Major Permits and EPA Nonwaived Permit Applications

Southeast Region: Water Management Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.

PA0027987, Sewage, **Sunoco, Inc., East Quaker Park Building**, 1001 Hector Street, 4th Floor, Conshohocken, PA 19428. This application is for renewal of an NPDES permit to discharge treated sewage from a sewage treatment plant serving the Peter J. Camiel Service Plaza in Wallace Township, **Chester County**. This is an existing discharge to an unnamed tributary to Marsh Creek.

The receiving stream is classified for HQ TSF, aquatic life, water supply and recreation.

The proposed effluent limits for Outfall 001, based on an average flow of 0.05 mgd, are as follows:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD ₅ (5-1 to 10-31)	10	20
(11-1 to 4-30)	20	40
Suspended Solids	20	40
Ammonia (as N) (5-1 to 10-31)	3.0	6.0
(11-1 to 4-30)	9.0	18.0
Phosphorus (as P) (4-1 to 10-31)	1.0	2.0
Total Residual Chlorine	0.5	1.2
Fecal Coliform	200 colonies/100 ml as a geometric average	
Dissolved Oxygen	minimum of 5.0 mg/l at all times	
pH	within limits of 6.0—9.0 standard units at all times	

Other Conditions: Conditions for future permit modification; and effective disinfection.

The EPA waiver is in effect.

PA0055298, SEW, **Henry W. Anderson**, 2472 River Road, New Hope, PA 18938. This proposed facility is in Solebury Township, **Bucks County**.

Description of Proposed Activity: Discharge of 400 gpd of treated sewage into Rabbit Run.

The receiving stream, Rabbit Run, is in the State Water Plan watershed 2D—Three Mile Run and is classified for TSF.

The proposed effluent limits for Outfall 001 are based on a design flow of 400-gpd.

<i>Parameters</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>		<i>Instantaneous Maximum (mg/l)</i>
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Average Monthly</i>	<i>Maximum Daily</i>	
CBOD ₅			25		50
Total Suspended Solids			30		60
Ammonia as N			20		40
Fecal Coliform			200#/100ml		

Parameters	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum (mg/l)
pH			Inst. Minimum 6.0 STD		9.0 STD
Total Residual Chlorine			Monitor and Report	Monitor and Report	Monitor and Report
Dissolved Oxygen			Inst. Minimum 2.0		

PA0056251, SEW, **Timothy J. Longmore**, 2518 Rickert Road, Perkasie, PA 18944. This proposed facility is in Hilltown Township, **Bucks County**.

Description of Proposed Activity: Small flow sewage discharge.

The receiving stream, unnamed tributary to Morris Run, is in the State Water Plan watershed 3E, Perkiomen and is classified for TSF, water supply and recreation. The nearest downstream public water supply intake for the Audubon Water Company is on Perkiomen Creek, approximately 19 miles below the point of discharge.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.0004 MGD.

Parameters	Average Monthly (mg/l)	Instantaneous Maximum (mg/l)
CBOD ₅ (5-1 to 10-31)	10	20
(11-1 to 4-30)	20	40
Total Suspended Solids	10	20
Ammonia as N (5-1 to 10-31)	3	6
(11-1 to 4-30)	9	18
Fecal Coliform**	200/100 ml	
Dissolved Oxygen*	3.0	
pH*	6.0 STD	9.0 STD
Total Residual Chlorine***	Monitor/Report	

* These parameters are not monitored.

** Monitored once per year.

*** Monitored once per month.

In addition to the effluent limits, the permit contains the following major special conditions: Permittee must submit annual monitoring report once per year; and dry stream discharge.

Northeast Region: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

PA0027201, Industrial, SIC Code 4911, **PPL Holtwood, LLC**, Two North Ninth Street, Allentown, PA 18101-1179. This proposed facility is in Palmyra Township, **Pike County**.

Description of Proposed Activity: Renewal of NPDES permit to discharge wastewater from the hydroelectric station.

The receiving stream, Lackawaxen River, is in the State Water Plan watershed No. 01B and is classified for HQ, TSF, migratory fish, aquatic life, water supply and recreation. The nearest downstream public water supply intake for the East Stroudsburg/Stroudsburg Borough is on the Delaware River, 70 miles below the point of discharge.

Outfalls 021—023: The outfalls are for stormwater only. There are no specific effluent limitations for this discharge.

Outfall 024: Hydraulic drainage discharge (emergency use only). There are no specific effluent limitations for this discharge.

Outfall 025: Air conditioning cooling and condensate water. There are no specific effluent limitations for this discharge.

Outfall 026: Generator cooling water—0.65 MGD.

Outfall 027: Turbine discharge—1130 MGD.

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Instantaneous Minimum	Average Daily	Maximum Daily
Dissolved Oxygen			5.0	6.0	
pH			6.0 to 9.0 standard units at all times		
Total Iron			Monitor and Report		

Outfall 028: Electrical equipment room sump pump—2.16 MGD.

Outfall 029: Boiler room sump—1.44 MGD.

PA0064327, Industrial, **B. S. Quarries, Inc.**, P. O. Box 324A-1, Montrose, PA 18801. This proposed facility is in Silver Lake Township, **Susquehanna County**.

Description of Proposed Activity: Issuance of an NPDES permit.

The receiving stream, unnamed tributary to Silver Creek, is in the State Water Plan watershed no. 4E and is classified for CWF. The nearest downstream public water supply intake for the Danville Borough Water Authority is on the Susquehanna River, over 100 miles below the point of discharge.

The proposed effluent limits for Outfall 001 based on a maximum daily flow of 0.098 MGD.

Parameter	Mass (lb/day)		Concentration (mg/l)	
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily
Total Suspended Solids				30.0
pH		6.0 to 9.0 at all times		
Oil and Grease			15.0	30.0

PAS212212, Industrial, **Premier Bluestone, Inc.**, SR 1021, P. O. Box 273, Susquehanna, PA 18847. This proposed facility is in Oakland Township, **Susquehanna County**.

Description of Proposed Activity: Application for a new NPDES permit to discharge stormwater associated with industrial activity.

The receiving stream, UNT to Drinker Creek, is in the State Water Plan watershed No. 4E and is classified for HQ, CWF. The nearest downstream public water supply intake for the Danville Borough Water Authority is on the Susquehanna River, approximately 130 miles below the point of discharge.

The proposed effluent limits for Outfall 001 are based on stormwater flows:

Parameter	Mass (lb/day)		Concentration (mg/l)	
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily
CBOD				Report
COD				Report
Oil and Grease				Report
pH				Report
TSS				Report
TKN				Report
Total Phosphorus				Report
Dissolved Iron				Report

Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4707.

PA0247324, CAFO, **Rohrer Farms, LLC and Country View Family Farms**, 762 West Lexington Road, Lititz, PA 17543. Rohrer Farms, LLC has submitted an application for an individual NPDES permit for an expanding CAFO known as Rohrer Farms, 762 West Lexington Road, Penn and Warwick Townships, **Lancaster County**.

The CAFO is situated near Lititz Run in Watershed 7-J, which is classified for WWF. The CAFO will be designed to maintain an animal population of approximately 1,636.2 AEU's consisting of 2,908 sows, 10 boars, 4,080 nursery pigs and 165,000 pullets. The animals will be housed in enclosed barns. Manure will be stored in lagoons except for the pullets which will be collected as dry solids. The total capacity of the manure storage facilities will be 3.8 million gallons. A release or discharge to waters of this Commonwealth under normal operating conditions is not expected. Normal operating conditions are defined as conditions below a 25-year, 24-hour storm event.

The Department has conducted administrative and technical reviews of the application. Based on the preliminary review and application of lawful standards and regulations, the Department has made a tentative determination to issue an NPDES permit for the operation subject to the terms and conditions and monitoring and reporting requirements specified in the permit.

The permit application and draft permit are on file at the Southcentral Regional Office of the Department. Individuals may make an appointment to review the files by calling the File Review Coordinator at (717) 705-4732.

Persons wishing to comment on the proposed permit are invited to submit written comments to the previous address within 30 days from the date of this public notice. Comments received within this 30-day period will be considered in formulating the Department's final determination regarding the application. Comments should include the name, address and telephone number of the writer and a concise statement to inform the Department of the basis of the comment and the relevant facts upon which it is based.

Following the 30-day comment period, the Water Management Program Manager will make a final determination regarding the proposed permit. Notice of this determination will be published in the *Pennsylvania Bulletin* at which time the determination may be appealed to the Environmental Hearing Board.

The EPA permit waiver provision under 40 CFR 123.24(e) does not apply to this NPDES permit.

PA0247162, Industrial Waste, SIC Code 4941, **Pennsylvania American Water Company**, 852 Wesley Drive, Mechanicsburg, PA 17055-4475. This facility is in Fairview Township, **York County**.

Description of activity: Issuance of an NPDES permit for a new discharge of treated industrial waste.

The receiving stream, unnamed tributary to Yellow Breeches Creek, is in Watershed 7-E and classified for CWF, water supply, recreation and fish consumption. The nearest downstream public water supply intake for the Pennsylvania American Water Company is on the Yellow Breeches Creek, approximately 2.22 miles downstream. The discharge is not expected to affect the water supply.

The proposed effluent limits for Outfall 001 based on a design flow of 0.3915 MGD are:

Parameter	Concentration (mg/l)		
	Average Monthly	Maximum Daily	Instantaneous Maximum
pH		from 6.0 to 9.0 inclusive	
Total Suspended Solids	30	60	75
Total Aluminum	0.50	1.0	1.25
Total Iron	1.5	3.0	3.75
Total Manganese	1.0	2.0	2.5
Total Residual Chlorine	Monitor and Report	Monitor and Report	

Individuals may make an appointment to review the Department files on this case by calling the File Review Coordinator at (717) 705-4732.

The EPA waiver is in effect.

PA0009423, Industrial Waste, SIC Code 4941, **Borough of Everett Area Municipal Authority**, 100 Mechanic Street, Everett, PA 15537-1177. This facility is in West Providence Township, **Bedford County**.

Description of activity: Renewal of an NPDES permit for an existing discharge of treated industrial waste.

The receiving stream, Johns Branch, is in Watershed 11-D and classified for WWF, water supply, recreation and fish consumption. The nearest downstream public water supply intake for the Saxton Municipal Water Authority is on the Raystown Branch Juniata River, approximately 21 miles downstream. The discharge is not expected to affect the water supply.

The proposed effluent limits for Outfall 001 based on a design flow of 0.028 MGD are:

Parameter	Concentration (mg/l)		
	Average Monthly	Maximum Daily	Instantaneous Maximum
pH		from 6.0 to 9.0 inclusive	
Total Suspended Solids	30	60	75
Total Iron	2	4	5
Total Aluminum	2.5	5	6.25
Total Manganese	1	2	2.5

Individuals may make an appointment to review the Department files on this case by calling the File Review Coordinator at (717) 705-4732.

The EPA waiver is in effect.

Southwest Region: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

PA0205036, Industrial Waste, SIC, 4953, **Mostoller Landfill, Inc.**, 7095 Glades Pike, Somerset, PA 15501. This application is for renewal of an NPDES permit to discharge treated process water and stormwater from landfill in Brothersvalley and Somerset Townships, **Somerset County**.

The following effluent limitations are proposed for discharge to the receiving waters, unnamed tributary of Kimberly Run, classified as a CWF with existing and/or potential uses for aquatic life, water supply and recreation. The first existing/proposed downstream potable water supply is the Hooversville Municipal Authority, on Stony Creek, 21 miles below the discharge point.

Outfall 001: existing discharge, design flow of 0.035 mgd.

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
Flow (mgd)	Monitor and Report	0.035			
BOD ₅	10.8	40.9	37	140	
Total Suspended Solids	7.9	25.7	27	88	
NH ₃ -N	1.43	2.92	4.9	10	

<i>Parameter</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>		<i>Instantaneous Maximum</i>
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Average Monthly</i>	<i>Maximum Daily</i>	
Fecal Coliform (5-1 to 9-30) (10-1 to 4-30)			200/100 ml 2,000/100 ml	1,000/100 ml	
a-Terpineol			0.016	0.033	
Benzoic Acid			0.071	0.12	
Oil and Grease			15		30
Antimony	0.026	0.052	0.09	0.18	
Arsenic	0.0003	0.0006	0.001	0.002	
Beryllium	0.0015	0.003	0.005	0.010	
Cadmium	0.0015	0.003	0.005	0.010	
Chromium	0.036	0.072	0.125	0.250	
Copper			0.05	0.1	
Lead	0.0015	0.003	0.005	0.010	
Nickel	0.044	0.088	0.15	0.30	
Selenium	0.012	0.024	0.04	0.08	
Silver			0.01	0.02	
Thallium	0.006	0.012	0.02	0.04	
Zinc			0.11	0.2	
Cyanide	0.006	0.012	0.02	0.04	
Barium	0.03	0.06	0.1	0.2	
Boron	Monitor and Report		Monitor and Report		
Cobalt	0.0146	0.0292	0.05	0.10	
Iron	1.02	2.04	3.5	7.0	
Manganese	0.29	0.58	1.0	2.0	
Tin	0.23	0.46	0.8	1.6	
Aluminum	0.08	0.16	0.275	0.55	
Vanadium	0.0026	0.0052	0.009	0.018	
Benzene			0.05	0.1	
Chlorobenzene			0.05	0.1	
Chloroform			0.01	0.02	
1,1 Dichloroethane			0.09	0.18	
Chloromethane			0.1	0.2	
Methylene Chloride			0.1	0.2	
Toluene			0.05	0.1	
1,2 Trans Dichloroethylene			0.03	0.06	
1,1,1 Trichloroethane			0.10	0.20	
Phenol			0.015	0.026	
Butyl benzyl phthalete			0.01	0.02	
2 Chloronaphthalene			0.01	0.02	
Diethyl phthalate			0.025	0.050	
Lindane			0.001	0.002	
4,4 DDT				Nondetectable	
Isophorone			0.05	0.10	
Acetone			0.109	0.218	
2 Butanone			0.21	0.42	
1,2,3 Trichloropropane			0.1	0.2	
Xylenes			0.01	0.02	
1-Propanol			0.550	1.10	
2-Propanol			0.540	1.08	
Tetrahydrofuran			0.025	0.050	
p-Cressol			0.014	0.025	
2-Hexanone			0.015	0.030	
4-Methyl 2-pentanone			0.015	0.030	
Dibromomethane			0.01	0.02	
Pentachlorophenol			0.02	0.04	
2,4,6 Trichlorophenol			0.02	0.04	
Carbon tetrachloride			0.02	0.04	
Dichlorobromomethane			0.02	0.04	
1,2 Dichloroethane			0.03	0.06	
1,1 Dichloroethylene			0.004	0.008	
Vinyl Chloride			0.001	0.002	
Chlordane			0.00003	0.00006	
Endrin			0.00002	0.00004	
Heptachlor			0.00001	0.00002	
Heptachlor Epoxide			Not Detectable		

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
Toxaphene			Not Detectable		
Total Dissolved Solids			Monitor and Report		
Phosphorus					Monitor and Report
NO ₂ -NO ₃					Monitor and Report
pH	not less than 6.0 nor greater than 9.0				

Outfalls 002 and 003: existing discharges.

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
Flow (mgd)	Monitor and Report				
Chemical Oxygen Demand					Monitor and Report
Oil and Grease					Monitor and Report
CBOD ₅					Monitor and Report
Total Suspended Solids					Monitor and Report
Total Dissolved Solids					Monitor and Report
Total Organic Carbon					Monitor and Report
Barium					Monitor and Report
Cadmium					Monitor and Report
Chromium					Monitor and Report
Lead					Monitor and Report
Mercury					Monitor and Report
Magnesium					Monitor and Report
Dissolved Magnesium					Monitor and Report
Selenium					Monitor and Report
Silver					Monitor and Report
NH ₃ -N					Monitor and Report
Arsenic					Monitor and Report
Cyanide					Monitor and Report
NO ₂ -NO ₃					Monitor and Report
Dissolved Iron					Monitor and Report
pH					Monitor and Report

The EPA waiver is in effect.

PA0026891-A1, Sewage, **Authority of the Borough of Charleroi**, 325-327 McKean Avenue, Charleroi, PA 15022. This application is for amendment of an NPDES permit to discharge uncontaminated stormwater from the Charleroi Borough Sewage Treatment Plant site in Charleroi Borough, **Washington County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as the Monongahela River, which are classified as a WWF with existing and/or potential uses for aquatic life, water supply and recreation.

This amendment adds Outfalls 101 and 108 to NPDES Permit PA0026891 and authorizes a discharge of uncontaminated stormwater from the sewage treatment plant site. At this time there are no specific effluent limitations

on Outfalls 101 and 108. These discharges must meet the stormwater discharges requirements in Part C of the amendment.

The EPA waiver is not in effect.

PA0028711, Sewage, **Peters Township Sanitary Authority**, 3244 Washington Road, McMurray, PA 15317-3153. This application is for renewal of an NPDES permit to discharge treated sewage from Brush Run Sewage Treatment Plant in Peters Township, **Washington County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as Brush Run, which are classified as a WWF with existing and/or potential uses for aquatic life, water supply and recreation. The first downstream potable water supply intake from this facility is the West View Municipal Authority on the Ohio River.

Outfall 001: existing discharge, design flow of 2.0 mgd.

<i>Parameter</i>	<i>Concentration (mg/l)</i>			
	<i>Average Monthly</i>	<i>Average Weekly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
CBOD ₅				
(5-1 to 10-31)	20	30		40
(11-1 to 4-30)	25	37.5		50
Suspended Solids	30	45		60
Ammonia Nitrogen				
(5-1 to 10-31)	2.0	3.0		4.0
(11-1 to 4-30)	4.5	6.8		9.0
Fecal Coliform				
(5-1 to 9-30)	200/100 ml as a geometric mean			
(10-1 to 4-30)	2,000/100ml as a geometric mean			
Total Residual Chlorine	0.05			0.16
Dissolved Oxygen	not less than 5.0 mg/l			
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is not in effect.

PA0031101, Sewage, **Fayette County Area Vocational-Technical School**, R. D. 2, Box 122A, Uniontown, PA 15401. This application is for issuance of an NPDES permit to discharge treated sewage from the Fayette County Area Vocational-Technical School STP in Georges Township, **Fayette County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as an unnamed tributary of Redstone Creek, which are classified as a WWF with existing and/or potential uses for aquatic life, water supply and recreation. The first downstream potable water supply intake from this facility is the Newell Municipal Authority.

Outfall 001: existing discharge, design flow of 0.0105 mgd.

<i>Parameter</i>	<i>Concentration (mg/l)</i>			
	<i>Average Monthly</i>	<i>Average Weekly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
CBOD ₅	10			20
Suspended Solids	25			50
Ammonia Nitrogen				
(5-1 to 10-31)	3			6
(11-1 to 4-30)	8.5			17
Fecal Coliform				
(5-1 to 9-30)	200/100 ml as a geometric mean			
(10-1 to 4-30)	2,000/100 ml as a geometric mean			
Total Residual Chlorine	0.3			0.8
Dissolved Oxygen	not less than 4.0 mg/l			
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is in effect.

PA0092517, Sewage, **Allegheny Plaza Associates I c/o Rosen Associates Management Corp.**, 33 South Service Road, Jericho, NY 11753-1006. This application is for renewal of an NPDES permit to discharge treated sewage from Allegheny Plaza Associates Sewage Treatment Plant in Allegheny Township, **Westmoreland County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as unnamed tributary of Pine Run, which are classified as a WWF with existing and/or potential uses for aquatic life, water supply and recreation. The first downstream potable water supply intake from this facility is the Freeport Water Company on the Allegheny River.

Outfall 001: existing discharge, design flow of 0.0175 mgd.

<i>Parameter</i>	<i>Concentration (mg/l)</i>			
	<i>Average Monthly</i>	<i>Average Weekly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
CBOD ₅	10			20
Suspended Solids	25			50
Ammonia Nitrogen				
(5-1 to 10-31)	3.0			6.0
(11-1 to 4-30)	9.0			18.0
Fecal Coliform				
(5-1 to 9-30)	200/100 ml as a geometric mean			
(10-1 to 4-30)	2,000/100 ml as a geometric mean			
Total Residual Chlorine	1.4			3.3
Dissolved Oxygen	not less than 3 mg/l			
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is in effect.

PA0093840, Sewage, **County of Allegheny—Department of Public Works, Parks Division**, 211 County Office Building, 542 Forbes Avenue, Pittsburgh, PA 15219-2904. This application is for renewal of an NPDES permit to discharge treated sewage from the Round Hill Park Exhibit Farm STP in Elizabeth Township, **Allegheny County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as Douglass Run, which are classified as a WWF with existing and/or potential uses for aquatic life, water supply and recreation. The first downstream potable water supply intake from this facility is the McKeesport Municipal Association.

Outfall 001: existing discharge, design flow of .0035 mgd.

<i>Parameter</i>	<i>Concentration (mg/l)</i>			
	<i>Average Monthly</i>	<i>Average Weekly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
CBOD ₅	25			50
Suspended Solids	30			60
Ammonia Nitrogen				
(5-1 to 10-31)	6.5			13.0
(11-1 to 4-30)	19.5			39.0
Fecal Coliform				
(5-1 to 9-30)	200/100 ml as a geometric mean			
(10-1 to 4-30)	7,000/100 ml as a geometric mean			
Total Residual Chlorine	1.4			3.3
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is in effect.

PA0098990, Sewage, **Joseph P. Graham**, P. O. Box 390, Rochester, PA 15074. This application is for renewal of an NPDES permit to discharge treated sewage from the Joseph P. Graham Sewage Treatment Plant in Fallston Borough, **Beaver County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as Brady Run, which are classified as a TSF with existing and/or potential uses for aquatic life, water supply and recreation. The first downstream potable water supply intake from this facility is the Arco Chemical Company B. V. Plant.

Outfall 001: existing discharge, design flow of 0.0005 mgd.

<i>Parameter</i>	<i>Concentration (mg/l)</i>			
	<i>Average Monthly</i>	<i>Average Weekly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
CBOD ₅	25			50
Suspended Solids	30			60
Fecal Coliform				
(5-1 to 9-30)	200/100 ml as a geometric mean			
(10-1 to 4-30)	20,000/100 ml as a geometric mean			
Total Residual Chlorine	Monitor and Report			
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is in effect.

PA0216151, Sewage, **Michael Apple**, 778 Executive Drive, Fallentimber, PA 16639. This application is for renewal of an NPDES permit to discharge treated sewage from Coal Country Campground STP in Reade Township, **Cambria County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as unnamed tributary of Clearfield Creek, which are classified as a CWF with existing and/or potential uses for aquatic life, water supply and recreation. The first downstream potable water supply intake from this facility is the Pennsylvania American Water Company on the West Branch Susquehanna River near Milton.

Outfall 001: existing average design flow of 0.00425 mgd, effective until the sewage treatment plant expansion is completed and operational or permit expiration, whichever occurs first.

<i>Parameter</i>	<i>Concentration (mg/l)</i>	
	<i>Average Monthly</i>	<i>Instantaneous Maximum</i>
CBOD ₅	25	50
Suspended Solids	30	60
Ammonia Nitrogen (5-1 to 10-31)	24	48
(11-1 to 4-30)	25	50
Fecal Coliform (5-1 to 9-30)	200/100 ml as a geometric mean	
(10-1 to 4-30)	18,000/100 ml as a geometric mean	
Total Residual Chlorine	1.4	3.3
pH	not less than 6.0 nor greater than 9.0	

Outfall 001: proposed average design flow of 0.0085 MGD, effective after the sewage treatment plant expansion is completed and operational.

<i>Parameter</i>	<i>Concentration (mg/l)</i>	
	<i>Average Monthly</i>	<i>Instantaneous Maximum</i>
CBOD ₅	25	50
Suspended Solids	30	60
Ammonia Nitrogen (5-1 to 10-31)	13	26
(11-1 to 4-30)	25	50
Fecal Coliform (5-1 to 9-30)	200/100 ml as a geometric mean	
(10-1 to 4-30)	10,000/100 ml as a geometric mean	
Total Residual Chlorine	1.4	3.3
pH	not less than 6.0 nor greater than 9.0	

The EPA waiver is in effect.

PA0217867, Sewage, **DeSimone Personal Care Home, Inc.**, 6383 Tuscarawas Road, Midland, PA 15059. This application is for renewal of an NPDES permit to discharge treated sewage from DeSimone Personal Care Home STP in Ohioville Borough, **Beaver County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as drainage swale tributary to unnamed tributary of Upper Dry Run, which are classified as a WWF with existing and/or potential uses for aquatic life, water supply and recreation. The first downstream potable water supply intake from this facility is the City of East Liverpool, OH on the Ohio River.

Outfall 001: existing discharge, design flow of 0.01 mgd.

<i>Parameter</i>	<i>Concentration (mg/l)</i>			
	<i>Average Monthly</i>	<i>Average Weekly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
CBOD ₅	10			20
Suspended Solids	10			20
Ammonia Nitrogen (5-1 to 10-31)	2.0			4.0
(11-1 to 4-30)	5.0			10.0
Fecal Coliform (5-1 to 9-30)	200/100 ml as a geometric mean			
(10-1 to 4-30)	2,000/100 ml as a geometric mean			
Total Residual Chlorine	0.10			0.24
Dissolved Oxygen	not less than 5.0 mg/l			
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is in effect.

III. WQM Industrial Waste and Sewerage Applications under The Clean Streams Law (35 P. S. §§ 691.1—691.1001)

Southeast Region: Water Management Program Manager; Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.

WQM Permit No. 1500428A1, Sewerage, **East Whiteland Township**, 209 Conestoga Road, Frazer, PA 19355. This proposed facility is in East Whiteland Township, **Chester County**.

Description of Proposed Action/Activity: Upgrading of existing pump station.

WQM Permit No. 4601406, Sewerage, **Lower Salford Township Authority**, P. O. Box 243, Mainland, PA 19451. This proposed facility is in Lower Salford Township, **Montgomery County**.

Description of Proposed Action/Activity: Upgrading of existing sewage treatment facility.

WQM Permit No. 1503428, Sewerage, **Greg Leeber and Tracy Sabol**, 1285 Parkersville Road, Kennett Square, PA 19348. This proposed facility is in Pennsbury Township, **Chester County**.

Description of Proposed Action/Activity: Construction and operation of a 400 gpd single resident sewage treatment plant.

WQM Permit No. 1503427, Sewerage, **Stanley Wannop and Elaine Gerwig**, 196 Springton Road, Glenmoore, PA 19343. This proposed facility is in West Brandywine Township, **Chester County**.

Description of Proposed Action/Activity: Construction and operation of a 400 gpd single resident sewage treatment plant.

WQM Permit No. 1503429, Sewerage, **Borough of Kennett Square**, 120 North Broad Street, Kennett Square, PA 17348. This proposed facility is in Kennett Square Borough, **Chester County**.

Description of Proposed Action/Activity: Construction and operation of a new sanitary sewer pump station.

WQM Permit No. 1503429, Sewerage, **London Grove Township Municipal Authority**, 372 Rosehill Road, Suite 300, West Grove, PA 19390. This proposed facility is in London Grove Township, **Chester County**.

Description of Proposed Action/Activity: Construction and operation of a sanitary sewer line and pump station.

Northeast Region: Water Management Program Manager; 2 Public Square, Wilkes-Barre, PA 18711-0790.

WQM Permit No. 6403403, **Camp Towanda, Inc.**, 4 York Court, New York, NY 10956. This proposed facility is in Lebanon Township, **Wayne County**.

Description of Proposed Action/Activity: This project consists of the installation of surface aerators in the existing wastewater treatment lagoons and a new effluent flowmeter.

WQM Permit No. 3903405, **Upper Macungie Township Authority**, 8330 Schantz Road, Breinigsville, PA 18031-1510. This proposed facility is in Upper Macungie Township, **Lehigh County**.

Description of Proposed Action/Activity: This project consists of the construction of a new ground pump station and upsize pumps and appurtenances to replace existing station.

Southcentral Region: Water Management Program Manager; 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4707.

WQM Permit No. 3603406, Sewerage, **Northwestern Lancaster County Authority**, 97 North Penryn Road, Manheim, PA 17545. This proposed facility is in Penn Township, **Lancaster County**.

Description of Proposed Action/Activity: Construction of the Cedar Hollow Pumping Station.

WQM Permit No. 6703203, Sewerage, **Pennsylvania American Water**, 852 Wesley Drive, Mechanicsburg, PA 17055-4475. This proposed facility is in Fairview Township, **York County**.

Description of Proposed Action/Activity: Construction of a raw water pumping station at the proposed West Shore Regional Water Treatment Plant, associated raw and finished interconnecting water mains will be routed between facilities.

Northcentral Region: Water Management Program Manager; 208 West Third Street, Williamsport, PA 17701.

WQM Permit No. 4902406-A1, Sewerage 4952, **Municipal Authority of Sunnyside/Overlook**, 30 South Market Street, Elysburg, PA 17824. This proposed facility is in Ralpho Township, **Northumberland County**.

Description of Proposed Action/Activity: Applicant is requesting an amendment to the Water Quality Management Part II Permit for a relocation of pump station no. 2 approximately 800 feet northwest of its previously approved location.

IV. NPDES Applications for Stormwater Discharges from MS4

Southwest Region: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Department Protocol (Y/N)</i>
PAI136129	North Strabane Township 1929 Route 519 Canonsburg, PA 15317	Washington	North Strabane Township	Y
PAI136130	Allegheny County 119 County Courthouse 436 Grant Street Pittsburgh, PA 15219	Allegheny	Allegheny County	Y
PAI136131	Union Township 3904 Finley-Elrama Road Finleyville, PA 15332	Washington	Union Township	Y

Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>	<i>Department Protocol (Y/N)</i>
PAI138306	City of Hermitage 800 Hermitage Road Hermitage, PA 16148	Mercer	City of Hermitage	Shenango River WWF Bobby Run WWF Pine Run WWF Big Run WWF McCullough Run WWF Thornton Run WWF Hogback Run WWF Unnamed tributaries to Shenango River WWF	Y

V. Applications for NPDES Waiver Stormwater Discharges from MS4

Northeast Region: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
Newton Township 1528 Newton-Ransom Blvd. Clarks Summit, PA 18411	Lackawanna	Newton Township	Gardner Creek CWF Buttermilk Falls CWF
Tatamy Borough 423 Broad Street P. O. Box 218 Tatamy, PA 18085	Northampton	Tatamy Borough	Bushkill Creek CWF-HQ

Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>	<i>Department Protocol (Y/N)</i>
PAG133701	North Annville Township R. R. 3 Annville, PA 17003	Lebanon	North Annville	Swatara Creek CWF Quittapahilla Creek TSF Killing Creek TSF	Y

Southwest Region: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Department Protocol (Y/N)</i>
PAG136326	City of Arnold 1829 Fifth Avenue Arnold, PA 15068	Westmoreland	Arnold City	Y
PAG136327	West Newton Borough 112 South Water Street West Newton, PA 15089	Westmoreland	West Newton Borough	Y
PAG136328	Derry Borough 114 East Second Avenue Derry, PA 15627	Westmoreland	Derry Borough	Y
PAG136329	City of Latrobe P. O. Box 829 Latrobe, PA 15650	Westmoreland	Latrobe City	Y
PAG136338	Lincoln Borough 45 Abe's Way Elizabeth, PA 15037	Allegheny	Lincoln Borough	Y
PAG136342	South Franklin Township 100 Municipal Road Washington, PA 15301	Washington	South Franklin Township	Y
PAG136344	North Bethlehem Township P. O. Box 105 Scenery Hill, PA 15360	Washington	North Bethlehem Township	Y
PAG136345	Conemaugh Township 1120 Tire Hill Road Johnstown, PA 15905	Somerset	Conemaugh Township	Y
PAG136346	Eastvale Borough 510 2nd Avenue Beaver Falls, PA 15010	Beaver	Eastvale Borough	Y
PAG136347	Finleyville Borough 3515 Washington Avenue Finleyville, PA 15332	Washington	Finleyville Borough	Y
PAG136349	Middle Taylor Township 504 Waterfall Drive Johnstown, PA 15906	Cambria	Middle Taylor Township	Y
PAG136350	Ellsworth Borough 23 Main Street P. O. Box 545 Ellsworth, PA 15331	Washington	Ellsworth Borough	Y

VI. NPDES Individual Permit Applications for Discharges of Stormwater Associated with Construction Activities

Southeast Region: Water Management Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI011503102	Wilkinson Builders Mackie Subdivision 1020 Broad Run Road Landenberg, PA 19350	Chester	Franklin Township	Big Elk Creek HQ-TSF-MF
PAI011503103	Ruth S. Coldiron Subdivision P. O. Box 7959 Newark, DE 19784-7959	Chester	East Nottingham Township	Little Elk Creek HQ-TSF
PAI011503104	Greenpoint Farms, Inc. Cooper Farm Development 402 Bayard Road, Suite 100 Kennett Square, PA 19348	Chester	East Nottingham Township	Little Elk Creek HQ-TSF-MF

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI011503105	R. Samuel McMichael Development P. O. Box 296 Oxford, PA 19363	Chester	Oxford Borough	Tributary Little Elk Creek HQ-TSF-MF
PAI011503106	The Benson Companies Knobb Hill a/k/a Althouse Tract P. O. Box 1610 Exton, PA 19344-1610	Chester	Tredyffrin Township	Valley Creek EV
PAI011503107	East Coventry Township Northern Service Area— Phase 1 855 Ellis Woods Road Pottstown, PA 19465	Chester	East Coventry Township	Unnamed tributary Schuylkill River HQ-TSF
PAI011503108	B. K. Campbell, Inc. Reedville Village 402 Bayard Road, Suite 100 Kennett Square, PA 19348	Chester	Lower Oxford Township	Tributary West Branch Big Elk Creek HQ
PAI012303005	Department of Transportation SR 0352, Section DPS 7000 Geerdes Boulevard King of Prussia, PA 19406	Delaware	Middletown Township	Rocky Run HQ-CWF, MF

Northeast Region: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

Lehigh County Conservation District: Lehigh Ag. Ctr., Ste. 102, 4184 Dorney Park Road, Allentown, PA 18104, (610) 391-9583.

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI023903049	Leo DeLong L & L Management Co., LLC 559 Main St., Suite 300 Bethlehem, PA 18018	Lehigh	City of Bethlehem	Monocacy Creek HQ-CWF

Pike County Conservation District: HC6, Box 6770, Hawley, PA 18428, (570) 226-8220.

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI025203015	Jeff Smith 2741 Hemlock Farms Hawley, PA 18428	Pike	Blooming Grove Township	McConnell Creek HQ-CWF
PAI025203016	Jeff Smith 2741 Hemlock Farms Hawley, PA 18428	Pike	Lackawaxen Township	UNT Shohola Creek HQ-CWF

Northampton County Conservation District: Greystone Building, Gracedale Complex, Nazareth, PA 18064-9211, (610) 746-1971.

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI024803037	David Stirk, President Faulkner Oldsmobile 298 Stoke Park Road Bethlehem, PA 18017	Northampton	Hanover Township	Monocacy Creek HQ-CWF

VII. List of NOIs for NPDES and/or Other General Permit Types

PAG-12	CAFOs
PAG-13	Stormwater Discharges from MS4

MS4 Notices of Intent Received

Northeast Region: Water Management Program Manager; 2 Public Square, Wilkes-Barre, PA 18711-0790.

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>	<i>Department Protocol (Y/N)</i>
PAG132224	Ashley Borough 10 N. Main St. Ashley, PA 18706	Luzerne	Ashley Borough	Solomans Creek CWF Sugar Notch Run CWF	Y

Southcentral Region: Water Management Program Manager; 909 Elmerton Avenue, Harrisburg, PA 17110.

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>	<i>Department Protocol (Y/N)</i>
PAG133701	North Annville Township R. R. 3 Annville, PA 17003	Lebanon	North Annville	Swatara Creek CWF Quittapahilla Creek TSF Killinger Creek TSF	Y

Southwest Region: Water Management Program Manager; 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Department Protocol (Y/N)</i>
PAG136338	Lincoln Borough 45 Abe's Way Elizabeth, PA 15037	Allegheny	Lincoln Borough	Y
PAG136339	Washington Township 1390 Fayette Avenue Belle Vernon, PA 15012	Fayette	Washington Township	Y
PAG136340	Windber Borough 1409 Somerset Avenue Windber, PA 15963	Somerset	Windber Borough	Y
PAG136341	East Taylor Township 2402 William Penn Avenue Johnstown, PA 15909	Cambria	East Taylor Township	Y
PAG136342	South Franklin Township 100 Municipal Road Washington, PA 15301	Washington	South Franklin Township	Y
PAG136343	Robinson Township 8400 Noblestown Road McDonald, PA 15026	Washington	Robinson Township	Y
PAG136344	North Bethlehem Township P. O. Box 105 Scenery Hill, PA 15360	Washington	North Bethlehem Township	Y
PAG136345	Conemaugh Township 1120 Tire Hill Road Johnstown, PA 15905	Somerset	Conemaugh Township	Y
PAG136346	Eastvale Borough 510 2nd Avenue Beaver Falls, PA 15010	Beaver	Eastvale Borough	Y
PAG136347	Finleyville Borough 3515 Washington Avenue Finleyville, PA 15332	Washington	Finleyville Borough	Y
PAG136349	Middle Taylor Township 504 Waterfall Drive Johnstown, PA 15906	Cambria	Middle Taylor Township	Y

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Department Protocol (Y/N)</i>
PAG136350	Ellsworth Borough 23 Main Street P. O. Box 545 Ellsworth, PA 15331	Washington	Ellsworth Borough	Y
PAG136351	Washington City 55 West Maiden Street Washington, PA 15301	Washington	Washington City	Y

PUBLIC WATER SUPPLY (PWS) PERMIT

Under the Pennsylvania Safe Drinking Water Act, the following parties have applied for a PWS permit to construct or substantially modify a public water system.

Persons wishing to comment on a permit application are invited to submit a statement to the office listed before the application within 30 days of this public notice. Comments received within the 30-day comment period will be considered in the formulation of the final determinations regarding the application. Comments should include the name, address and telephone number of the writer and a concise statement to inform the Department of Environmental Protection (Department) of the exact basis of a comment and the relevant facts upon which it is based. A public hearing may be held after consideration of comments received during the 30-day public comment period.

Following the comment period, the Department will make a final determination regarding the proposed permit. Notice of this final determination will be published in the *Pennsylvania Bulletin* at which time this determination may be appealed to the Environmental Hearing Board.

The permit application and any related documents are on file at the office listed before the application and are available for public review. Arrangements for inspection and copying information should be made with the office listed before the application.

Persons with a disability who require an auxiliary aid, service or other accommodations to participate during the 30-day public comment period should contact the office listed before the application. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

SAFE DRINKING WATER

Applications Received under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17)

Northwest Region: Water Supply Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

Permit No. 2703502, Public Water Supply.

Applicant	Pennsylvania Suburban Water Company
Township or Borough	Jenks Township, Forest County
Responsible Official	Jack N. Walter, P. E.
Type of Facility	PWS

Consulting Engineer	Jack N. Walter, P. E. Pennsylvania Suburban Water Company 644 North Water Avenue Sharon, PA 16146
Application Received Date	October 20, 2003
Description of Action	Addition of Well 1A to Forest County SCI Water Treatment Facility for the completion and sanitary seal of the new source of supply and piping to connect to existing treatment facility.

Northeast Region: Water Supply Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

Application No. 4803502, Public Water Supply.

Applicant	Nestle Waters North America, Inc.
Township or Borough	Washington Township, Northampton County
Responsible Official	Bruce Lauerman, Natural Resource Manager Nestle Waters North America, Inc. 405 Nestle Way Breinigsville, PA 18031
Type of Facility	Bulk Water Hauling Facility
Consulting Engineer	Edward E. Davis, P. E. WJP Engineers 1406 Laurel Boulevard Pottsville, PA 17901
Application Received Date	September 12, 2003
Description of Action	Nestle Waters North America, Inc. intends to renovate an existing bulk water loading facility, replacing the existing facility. The project will include a new pump station, two water storage tanks, 4,600 linear feet of waterline, UV light disinfection unit, a new loadout area and all controls and accessories necessary for the facility.

Permit No. 3503502, Public Water Supply.

Applicant	Pennsylvania Suburban Water Company 204 East Sunbury Street Shamokin, PA
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Township or Borough South Abington Township
 Responsible Official Richard Subasic
 Type of Facility PWS
 Consulting Engineer CET Engineering
 1240 North Mountain Road
 Harrisburg, PA
 Application Received Date October 30, 1003
 Description of Action The addition of a well source at Edgewood.

Permit No. 4003503, Public Water Supply.
 Applicant **Monroe Bottling Co.**
 526 Main Street
 Pittston, PA

Township or Borough City of Pittston
 Responsible Official Donald Rosentel
 Type of Facility Bottling Plant
 Consulting Engineer Thomas G. Puller, P. E.
 Application Received Date November 10, 2003
 Description of Action The addition of a permitted well source.

Southcentral Region: Water Supply Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

Permit No. 0603514, Public Water Supply.
 Applicant **Pennsylvania American Water Company**
 Municipality Amity Township
 County **Berks**
 Responsible Official William C. Kelvington, V. P. Operations
 800 W. Hersheypark Drive
 Hershey, PA 17033
 Type of Facility PWS
 Consulting Engineer Michael J. Daschbach, P. E.
 Entech Engineering Inc.
 4 South Fourth Street
 Reading, PA 19603

Application Received Date October 17, 2003
 Description of Action Addition of Rosecliff Pointe Well Facility to the Douglassville Water System.

Permit No. 0603516, Public Water Supply.
 Applicant **Lazy K Campgrounds Inc.**
 Municipality Colebrookdale and Washington
 County **Berks**
 Responsible Official Dawn A. Kelsch, Owner/Operator
 102 Township Line Road
 Bechtelsville, PA 19505
 Type of Facility PWS
 Consulting Engineer Joseph H. Body, P. E.
 Box 188
 Virginville, PA 19564

Application Received Date November 3, 2003
 Description of Action Application is for permitting new well no. 3.

Permit No. 0103511, Public Water Supply.
 Applicant **Hillandale Gettysburg LP**
 Municipality Tyrone Township
 County **Adams**
 Responsible Official Jim Hall, Production Manager
 370 Spicer Road
 Gettysburg, PA 17325

Type of Facility PWS
 Consulting Engineer Max E. Stoner, P. E.
 Glace Associates, Inc.
 3705 Trindle Rd.
 Camp Hill, PA 17011

Application Received Date November 5, 2003
 Description of Action Installation of a nitrate removal system.

Permit No. 0603517, Public Water Supply.
 Applicant **Colebrookdale Woods Retirement Community**

Municipality Colebrookdale Township
 County **Berks**
 Responsible Official Tim Specht, President
 P. O. Box 300
 Boyertown, PA 19512

Type of Facility PWS
 Consulting Engineer Stanley J. Endlich, P. E.
 EDM Consultants Inc.
 1101 South Broad Street
 Lansdale, PA 19446

Application Received Date November 12, 2003
 Description of Action Construction of water system to serve Colebrookdale Woods Retirement Community through interconnection with the Boyertown Water Authority.

Northcentral Region: Water Supply Management Program Manager, 208 West Third Street, Williamsport, PA 17701.

Permit No. 499050-T1, Public Water Supply.
 Applicant **Karl L. Drescher and Yvonee S. Drescher**
 46 Stacey Drive
 Barto, PA 19504

Borough Riverside Borough
 Responsible Official Ronald Butler
 Kipps Run Mobile Home Park
 500 N. Third Street
 P. O. Box 1004
 Harrisburg, PA 17108-1004

Type of Facility PWS
 Application Received Date November 20, 2003

Description of Action Transfer of a PWS Permit, Kipps Run Mobile Home Park, 500 N. Third St., P. O. Box 1004, Harrisburg, PA 17108-1004.

Permit No. Minor Amendment-T1, Public Water Supply.

Applicant **Karl L. Drescher and Yvonee S. Drescher**
46 Stacey Drive
Barto, PA 19504

Borough Riverside Borough

Responsible Official Ronald Butler
Kipps Run Mobile Home Park
500 N. Third Street
P. O. Box 1004
Harrisburg, PA 17108-1004

Type of Facility PWS

Application Received Date November 20, 2003

Description of Action Transfer of a PWS Permit, Kipps Run Mobile Home Park, 500 N. Third St., P. O. Box 1004, Harrisburg, PA 17108-1004.

Permit No. 4999501-T1, Public Water Supply.

Applicant **Karl L. Drescher and Yvonee S. Drescher**
46 Stacey Drive
Barto, PA 19504

Borough Riverside Borough

Responsible Official Ronald Butler
Kipps Run Mobile Home Park
500 N. Third Street
P. O. Box 1004
Harrisburg, PA 17108-1004

Type of Facility PWS

Application Received Date November 20, 2003

Description of Action Transfer of a PWS Permit, Kipps Run Mobile Home Park, 500 N. Third St., P. O. Box 1004, Harrisburg, PA 17108-1004.

WATER ALLOCATIONS

Applications received under the act of June 24, 1939 (P.L. 842, No. 365) (32 P.S. §§ 631—641) regarding the acquisition of rights to divert waters of this Commonwealth

Southcentral Region: Water Supply Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110-8200.

WA67-708A, Water Allocations, **West Manheim Township Water Authority, York County**. The applicant is requesting the right to purchase up to 1.25 million gallons per day, based on a 30-day average, from the Borough of Hanover Municipal Water Works. Consulting engineer: John F. Leen, IV, C S Davidson Inc. Application received November 3, 2003.

WA28-1020, Water Allocations, **Guilford Water Authority, Franklin County**. The applicant is requesting the right to purchase 10,000 gallons per day based on a 30-day average from the Franklin County General Au-

thority. Consulting engineer: Diana Young, Buchart-Horn, Inc. Application received October 31, 2003.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

UNDER ACT 2, 1995

PREAMBLE 1

Acknowledgment of Notices of Intent to Remediate Submitted under the Land Recycling and Environmental Remediation Standards Act (35 P.S. §§ 6026.101—6026.908).

Sections 302—305 of the Land Recycling and Environmental Remediation Standards Act (act) require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* an acknowledgment noting receipt of Notices of Intent to Remediate. An acknowledgment of the receipt of a Notice of Intent to Remediate is used to identify a site where a person proposes to, or has been required to, respond to a release of a regulated substance at a site. Persons intending to use the Background Standard, Statewide Health Standard, the Site-Specific Standard or who intend to remediate a site as a special industrial area must file a Notice of Intent to Remediate with the Department. A Notice of Intent to Remediate filed with the Department provides a brief description of the location of the site, a list of known or suspected contaminants at the site, the proposed remediation measures for the site and a description of the intended future use of the site. A person who demonstrates attainment of one, a combination of the cleanup standards or who receives approval of a special industrial area remediation identified under the act will be relieved of further liability for the remediation of the site for any contamination identified in reports submitted to and approved by the Department. Furthermore, the person shall not be subject to citizen suits or other contribution actions brought by responsible persons not participating in the remediation.

Under sections 304(n)(1)(ii) and 305(c)(2) of the act, there is a 30-day public and municipal comment period for sites proposed for remediation using a Site-Specific Standard, in whole or in part, and for sites remediated as a special industrial area. This period begins when a summary of the Notice of Intent to Remediate is published in a newspaper of general circulation in the area of the site. For the sites identified, proposed for remediation to a Site-Specific Standard or as a special industrial area, the municipality, within which the site is located, may request to be involved in the development of the remediation and reuse plans for the site if the request is made within 30 days of the date specified. During this comment period, the municipality may request that the person identified, as the remediator of the site, develop and implement a public involvement plan. Requests to be involved and comments should be directed to the remediator of the site.

For further information concerning the content of a Notice of Intent to Remediate, contact the environmental cleanup program manager in the Department regional office after which the notice appears. If information concerning this acknowledgment is required in an alternative form, contact the community relations coordinator at the appropriate regional office. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following Notices of Intent to Remediate:

Southeast Region: Environmental Cleanup Program Manager; Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.

PECO Energy Co., Downingtown Former Manufactured Gas Plant Site, Downingtown Borough, Chester County. Bryan Sladky, PECO Energy Co., 2301 Market St., Philadelphia, PA 19106, has submitted a revised Notice of Intent to Remediate site soil and groundwater contaminated with other organics and PAH. The applicant proposes to remediate the site to meet Site-Specific Standards. A summary of the Notice of Intent to Remediate was reported to have been published in the *Daily Local News* on October 29, 2003.

L. K. Burket & Bros. Inc., Radnor Township, Delaware County. Paul Martino, P. G., Pennoni Associates Inc., One Drexel Plaza, Suite 200, Philadelphia, PA 19104-2897, has submitted a Notice of Intent to Remediate site soil and groundwater contaminated with diesel fuel, fuel oil no. 2, inorganics, leaded gasoline, lead, MTBE, other organics, PAH, unleaded gasoline and used motor oil. The applicant proposes to remediate the site to meet Statewide Health and Site-Specific Standards. A summary of the Notice of Intent to Remediate was reported to have been published in *The Reporter* on October 31, 2003.

Metroplex, Plymouth Township, Montgomery County. William F. Schmidt, P. E., Pennoni Associates, Inc., 3001 Market St., Philadelphia, PA 19104, on behalf of Brandywine Trust, Susan Kane, 401 Plymouth Rd., Plymouth Meeting, PA 19462, has submitted a Notice of Intent to Remediate site soil and groundwater contaminated with chlorinated solvents, diesel fuel, fuel oil nos. 1, 2 and 4-6, inorganics, lead, other organics, PAH, unleaded gasoline and used motor oil. The applicant proposes to remediate the site to meet the Statewide Health Standard. A summary of the Notice of Intent to Remediate was reported to have been published in *The Times Herald* on October 31, 2003.

10 Union Avenue, Lower Merion Township, Montgomery County. Samuel J. Kucia, Environmental Consulting, Inc., 500 E. Washington St., Suite 375, Norristown, PA 19401 on behalf of Fred Weitzman, Pres., 10 Union Ave. Associates, LP and Wynewood Development Inc., 33 Rock Hill Rd., Suite 200, Bala Cynwyd, PA 19004, has submitted a Notice of Intent to Remediate site soil contaminated with fuel oil no. 2. The applicant proposes to remediate the site to meet the Statewide Health Standard. A summary of the Notice of Intent to Remediate was reported to have been published in *The Main Line Life* on November 5, 2003.

Mr. Lee's Cleaners, Upper Moreland Township, Montgomery County. Richard Sacks, P. G., ST Environmental Professionals, Inc., 1514 Harmon Rd., Harleysville, PA 19438, on behalf of Goodman Properties, Chris Anderson, 636 Old York Rd., Jenkintown, PA 19046, has submitted a revised Notice of Intent to Remediate site soil contaminated with chlorinated solvents. The applicant proposes to remediate the site to meet Statewide Health and Site-Specific Standards. A summary of the Notice of Intent to Remediate was reported to have been published in *The Intelligencer* on October 31, 2003.

Sunoco A-Plus Mini Market (DUNS No. 03363-9630), City of Philadelphia, Philadelphia County. Marco Droese, Mulry & Cresswell Environmental, Inc., 1691 Horseshoe Pike, Suite 3, Glenmoore, PA 19343 on behalf of Sunoco, Inc. (R & M), Michael Babicki, 1801

Market St., Ten Penn Center, 20th Fl., Philadelphia, PA 19103, has submitted a Notice of Intent to Remediate site groundwater contaminated with MTBE and unleaded gasoline. The applicant proposes to remediate the site to meet Statewide Health and Site-Specific Standards. A summary of the Notice of Intent to Remediate was reported to have been published in *The Port Richmond Star* on November 12, 2003.

5601 Chestnut Street Site, City of Philadelphia, Philadelphia County. Bernard Beegle, Advanced GeoServices Corp., 1055 Andrew Drive, West Chester, PA 19380, on behalf of Chesmark Associates, LP, Patrick Burns, 5004 State Rd., P. O. Box 306, Drexel Hill, PA 19026, has submitted a Notice of Intent to Remediate site soil contaminated with fuel oil no. 6 and leaded gasoline and groundwater contaminated with leaded gasoline. The applicant proposes to remediate the site to meet the Statewide Health Standard. A summary of the Notice of Intent to Remediate was reported to have been published in *The Philadelphia Inquirer* on November 7, 2003.

Southcentral Region: Environmental Cleanup Program Manager; 909 Elmerton Avenue, Harrisburg, PA 17110.

Standard Steel, Burnham Borough and Derry Township, Mifflin County. Mountain Research, LLC, 825 25th Street, Altoona, PA 16601, on behalf of Standard Steel, LLC, 500 North Walnut Street, Burnham, PA 17009, submitted a Notice of Intent to Remediate site groundwater contaminated with chlorinated solvents, inorganics, PAHs and fuel oil nos. 4-6. The applicant proposes to remediate the site to meet a combination of the requirements for the Statewide Health and Site-Specific Standards. A summary of the Notice of Intent to Remediate was reported to have been published in *The Sentinel—Lewistown* on July 30, 2003.

Plowfield Mobile Home Park, Ephrata Borough, Lancaster County. RETTEW Associates, Inc., 320 Columbia Avenue, Lancaster, PA 17603, on behalf of Frederick B. and Doris M. Plowfield, 286 South Reading Road, Ephrata, PA 17522, submitted a Notice of Intent to Remediate site soils contaminated with no. 2 fuel oil and kerosene. The applicant proposes to remediate the site to meet the Statewide Health Standards. A summary of the Notice of Intent to Remediate was reported to have been published in the *Ephrata Review* in November 2003.

Kimmel Iron and Metal Co., Inc., Manheim Township, Lancaster County. Marks Environmental, Inc., 140 Bollinger Road, Elverson, PA 19520, on behalf of the Kimmel Estate c/o Harry Yost, Esq., Appel & Yost, LLC, 33 North Duke Street, Lancaster, PA 17602 and Franklin & Marshall College, P. O. Box 3003, Lancaster, PA 17604-3003, submitted a Notice of Intent to Remediate site soils contaminated with inorganics and lead and site groundwater contaminated with chlorinated solvents. The applicant proposes to remediate the site to meet the Site-Specific Standard. A summary of the Notice of Intent to Remediate was reported to have been published in the *Lancaster Intelligencer Journal* on October 17, 2003.

Niles Associates (Partnership), Springettsbury and York Townships, York County. Richenderfer & Associates, Inc., P. O. Box 1199, Carlisle, PA 17013, on behalf of Niles Associates (Partnership), 1777 Fifth Avenue, York, PA 17403, submitted a Notice of Intent to Remediate site soils and groundwater contaminated with chlorinated solvents, diesel fuel, fuel oil no. 2, leaded gasoline, lead, MTBE, kerosene, unleaded gasoline and used motor oil.

The applicant proposes to remediate the site to meet the Background and Statewide Health Residential Standard. A summary of the Notice of Intent to Remediate was reported to have been published in the *York Dispatch* on November 12, 2003.

OPERATE WASTE PROCESSING OR DISPOSAL AREA OR SITE

Application received under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003), the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101—4000.1904) and regulations to operate solid waste processing or disposal area or site.

Southwest Region: Regional Solid Waste Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

Permit ID No. 101652. Krystal Point Ventures, 2824 North Power Road, Suite 113-278, Mesa, AZ 85215; Pitt Mining Biosolids Facility, 762 Pounds Road, Shelocta, PA 15774. An application for the reissuance of a permit for a municipal waste processing facility in Young Township, **Indiana County**. Application was received in the Regional Office on December 1, 2003.

AIR QUALITY

PLAN APPROVAL AND OPERATING PERMIT APPLICATIONS

NEW SOURCES AND MODIFICATIONS

The Department of Environmental Protection (Department) has developed an "integrated" plan approval, State Operating Permit and Title V Operating Permit program. This integrated approach is designed to make the permitting process more efficient for the Department, the regulated community and the public. This approach allows the owner or operator of a facility to complete and submit all the permitting documents relevant to its application one time, affords an opportunity for public input and provides for sequential issuance of the necessary permits.

The Department has received applications for plan approvals and/or operating permits from the following facilities.

Copies of the applications, subsequently prepared draft permits, review summaries and other support materials are available for review in the regional office identified in this notice. Persons interested in reviewing the application files should contact the appropriate regional office to schedule an appointment.

Persons wishing to receive a copy of a proposed plan approval or operating permit must indicate their interest to the Department regional office within 30 days of the date of this notice and must file protests or comments on a proposed plan approval or operating permit within 30 days of the Department providing a copy of the proposed document to that person or within 30 days of its publication in the *Pennsylvania Bulletin*, whichever comes first. Interested persons may also request that a hearing be held concerning the proposed plan approval and operating permit. Comments or protests filed with the Department regional offices must include a concise statement of the objections to the issuance of the Plan approval or operating permit and relevant facts which serve as the basis for the objections. If the Department schedules a hearing, a notice will be published in the *Pennsylvania Bulletin* at least 30 days prior the date of the hearing.

Persons with a disability who wish to comment and require an auxiliary aid, service or other accommodation to participate should contact the regional office identified before the application. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

Final plan approvals and operating permits will contain terms and conditions to ensure that the source is constructed and operating in compliance with applicable requirements in 25 Pa. Code Chapters 121—143, the Federal Clean Air Act (act) and regulations adopted under the act.

PLAN APPROVALS

Plan Approval Applications Received under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter B that may have special public interest. These applications are in review and no decision on disposition has been reached.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701; David Aldenderfer, Program Manager, (570) 327-3637.

49-311-003: The Quikrete Companies, Inc. (R. R. 9, Box 900, Latrobe, PA 15650) for construction of a dry redi-mix concrete batching and bagging plant and associated air cleaning devices (various fabric collectors) in Shamokin Township, **Northumberland County**.

47-00001A: PPL Montour LLC (2 North Ninth Street, Allentown, PA 18101) for installation of air cleaning devices (sodium bisulfite flue gas injection systems) on two bituminous coal-fired electric utility boilers units 1 and 2 at the Montour SES in Derry Township, **Montour County**.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481; Devendra Verma, New Source Review Chief, (814) 332-6940.

37-162B: Precision Plating Co., Inc. (407 Summit View Drive, New Castle, PA 16105-1431) to install two new hard chrome process tanks with associated fume scrubber exhaust system at their industrial hard chrome plating shop in Neshannock Township, **Lawrence County**.

37-003D: Essroc Cement Corp.—Bessemer Plant (East Poland Avenue, Bessemer, PA 16112) for modification of the existing pressure drop range across the collector for Source 516 in Bessemer Borough, **Lawrence County**. This is a Title V facility.

OPERATING PERMITS

Intent to Issue Title V Operating Permits under the Air Pollution Control Act and 25 Pa. Code Chapter 127, Subchapter G.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Yasmin Neidlinger, Facilities Permitting Chief, (717) 705-4702.

05-05022: Bedford Reinforced Plastics, Inc. (264 Reynoldsdale Road, Bedford, PA 1522-7401) for a Title V Operating Permit renewal to operate their fiberglass reinforced plastic pultrusion operation in East Saint Clair Township, **Bedford County**. The operations are primarily emitters of HAPs. Emissions from the other activities are below significant levels.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481; Eric Gustafson, Facilities Permitting Chief, (814) 332-6940.

42-00028: Saint Gobain Containers LLC (1 Railroad Avenue, Port Allegany, PA 16743) for reissuance of a Title V Permit to operate their glass containers manufacturing facility in Port Allegany Borough, **McKean County**. The facility's major emission sources include three natural gas fueled glass-melting furnaces, seven forming and finishing lines. The facility is a major facility due to its potential to emit NOx and SOx.

20-00123: Lord Corp.—Mechanical Products Division (124 Grant Street, Cambridge Springs, PA 16403) for a Title V Operating Permit Reissuance to operate a fabricated rubber products manufacturing facility, in the Borough of Cambridge Springs, **Crawford County**.

Intent to Issue Operating Permits under the Air Pollution Control Act and 25 Pa. Code Chapter 127, Subchapter F.

Southeast Region: Air Quality Program, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428; Edward Brown, Facilities Permitting Chief, (610) 832-6242.

15-00070: Robert S. Swanson Co. (433 South Walnut St., Kennett Square, PA 19348) for operation of their motor rewind facility in Kennett Township, **Chester County**. The permit is for a non-Title V (State-only) facility. Major sources of air emissions include a burn-off oven with an afterburner and a cold-cleaning machine. The permit will include monitoring, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Yasmin Neidlinger, Facilities Permitting Chief, (717) 705-4702.

36-03048: Hubbard Feeds, Inc. (3349 Hempland Road, Lancaster, PA 17601) for operation of their feed mill in East Hempfield Township, **Lancaster County**. The facility estimated emissions are approximately 30.5 tons per year of PM, 3.5 tons per year of NOx, 3 tons per year of CO and less than 1 ton per year each of VOC and SO₂. The facility includes a small natural gas boiler. The State-only operating permit will include emission restrictions, work practice standards and testing, monitoring, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

36-03097: PDS Paint, Inc. (717 Fountain Avenue, Lancaster, PA 17601) for operation of their spray booth and burn-off oven in the City of Lancaster, **Lancaster County**. The State-only operating permit will include monitoring, recordkeeping, reporting requirements, emission restrictions and work practice standards designed to keep the facility operating within all applicable air quality requirements.

36-03132: Carvell and Rick, Inc. (1780 Newport Road, Ephrata, PA 17522) for operation of their spray booth in West Earl Township, **Lancaster County**. Actual VOC emissions are expected to be 10.23 tons/yr. The State-only operating permit will include monitoring, recordkeeping, reporting requirements, emission restrictions and work practice standards designed to keep the facility operating within all applicable air quality requirements.

67-03017: Yorktowne Paperboard Corp. (1001 Loucks Mill Road, York, PA 17402) for operation of their

paper recycling and manufacturing facility in Spring Garden Township, **York County**. The facility's potential emissions are approximately 4 tons per year of PM, 41 tons per year of NOx, 10 tons per year of CO and 87 tons per year of SO₂. The State-only operating permit will include emission restrictions, work practice standards and testing, monitoring, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

**COAL AND NONCOAL MINING
ACTIVITY APPLICATIONS**

Applications under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. §§ 3301—3326); and The Clean Streams Law (35 P. S. §§ 691.1—691.1001); the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66); and The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21). Mining activity permits issued in response to the applications will also address the applicable permitting requirements of the following statutes: the Air Pollution Control Act (35 P. S. §§ 4001—4015); the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27); and the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003).

The following permit applications to conduct mining activities have been received by the Department of Environmental Protection (Department). A copy of the application is available for inspection at the District Mining Office indicated before an application. Where a 401 Water Quality Certification is needed for any aspect of a particular proposed mining activity, the submittal of the permit application will serve as the request for certification.

Written comments, objections or requests for informal conferences on applications may be submitted by any person or any officer or head of any Federal, State or local government agency or authority to the Department at the same address within 30 days of this publication, or within 30 days after the last publication of the applicant's newspaper advertisement, as provided by 25 Pa. Code §§ 77.121—77.123 and 86.31—86.34.

Where any of the mining activities listed will have discharges of wastewater to streams, the Department will incorporate NPDES permits into the mining activity permits issued in response to these applications. NPDES permits will contain, at a minimum, technology-based effluent limitations as identified in this notice for the respective coal and noncoal applications. In addition to the previous, more restrictive effluent limitations, restrictions on discharge volume or restrictions on the extent of mining which may occur will be incorporated into a mining activity permit, when necessary, for compliance with water quality standards (in accordance with 25 Pa. Code Chapters 93 and 95). Persons or agencies who have requested review of the NPDES permit requirements for a particular mining activity within the previously mentioned public comment period will be provided with a 30 day period to review and submit comments on those requirements.

Written comments or objections should contain the name, address and telephone number of the person submitting comments or objections; application number; and a statement of sufficient detail to inform the Department on the basis of comment or objection and relevant facts upon which it is based. Requests for an informal conference must contain the name, address and telephone

number of requestor; application number; a brief summary of the issues to be raised by the requestor at the conference; and a statement whether the requestor wishes to have the conference conducted in the locality of the proposed mining activities.

Parameter	30-Day Average	Daily Maximum	Instantaneous Maximum
Iron (total)	3.0 mg/l	6.0 mg/l	7.0 mg/l
Manganese (total)	2.0 mg/l	4.0 mg/l	5.0 mg/l
Suspended solids	35 mg/l	70 mg/l	90 mg/l
pH*		greater than 6.0; less than 9.0	
Alkalinity greater than acidity*			

* The parameter is applicable at all times.

A settleable solids instantaneous maximum limit of 0.5 ml/l applied to: (1) surface runoff (resulting from a precipitation event of less than or equal to a 10-year 24-hour event) from active mining areas, active areas disturbed by coal refuse disposal activities and mined areas backfilled and revegetated; and (2) drainage (resulting from a precipitation event of less than or equal to a 1-year 24-hour event) from coal refuse disposal piles.

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901-2454, (570) 621-3118.

13980201R. Rossi Excavating Company (9 West 15th Street, Hazleton, PA 18201), renewal of an existing coal refuse reprocessing operation in Banks Township, **Carbon County**, affecting 18.0 acres, receiving stream: none. Application received November 24, 2003.

49851603T2. Mid-Valley Coal Sales, Inc. (1380 Tioga Street, Coal Township, PA 17866), transfer of an existing coal preparation plant operation from Split Vein Coal Co., Inc. in Ralpho Township, **Northumberland County**, affecting 21.6 acres, receiving stream: none. Application received November 25, 2003.

Knox District Mining Office: White Memorial Building, P. O. Box 669, Knox, PA 16232-0669, (814) 797-1191.

10920112 and NPDES Permit No. PA0211401. State Industries, Inc. (P. O. Box 1022, Kittanning, PA 16201). Revision to an existing bituminous surface strip, auger and coal ash placement operation in Concord Township, **Butler County**, affecting 230.1 acres. Receiving streams: four unnamed tributaries to Bear Creek and Bear Creek (CWF). There are no potable surface water supply intakes within 10 miles downstream. Revision to include a postmining land use from noncommercial forestland to land occasionally cut for hay or pastureland over certain portions of the permit area. Application received November 21, 2003.

Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, (814) 472-1900.

56980103 and NPDES Permit No. PA0234699. Godin Brothers, Inc. (128 Colton Drive, Stoystown, PA 15563), permit revision to include auger mining in Jenner and Lincoln Townships, **Somerset County**, affecting 133.5 acres. Receiving streams: unnamed tributaries to Quemahoning Creek (CWF). The first downstream potable water supply intake from the point of discharge is Cambria Somerset Authority Quemahoning Surface Water Intake. Application received November 12, 2003.

17724026 and NPDES Permit No. PA0608904. E. P. Bender Coal Company, Inc. (Main and Lehmier Streets, P. O. Box 594, Carrolltown, PA 15722), permit

Coal Applications Received

Effluent Limits—The following coal mining applications that include an NPDES permit application will be subject to, at a minimum, the following technology-based effluent limitations for discharges of wastewater to streams:

renewal for reclamation only and for continued restoration of a bituminous surface and auger mine in White and Beccaria Townships, **Cambria and Clearfield Counties**, affecting 145.5 acres. Receiving streams: unnamed tributary to Witmer Run (CWF) and unnamed tributary to Beaverdam Run (CWF). There are no potable water supply intakes within 10 miles downstream. Application received November 19, 2003.

56703107 and NPDES Permit No. PA0605956. Hoffman Mining, Inc. (P. O. Box 130, 118 Runway Road, Friedens, PA 15541), permit revision for a variance for a stream crossing that involves the construction of a haulroad across Kaufman Run in Paint Township, **Somerset County**, affecting 863.0 acres. Receiving streams: unnamed tributary to Paint Creek; to Kaufman Run; to unnamed tributaries to Kaufman Run; to Stony Creek and to Shade Creek (CWF and WWF). The first downstream potable water supply intake from the point of discharge is Cambria Somerset Authority Stonycreek Surface Water Withdrawal. Application received November 19, 2003.

32980109 and NPDES Permit No. PA0234851. Amerikohl Mining, Inc. (202 Sunset Drive, Butler, PA 16001), permit renewal for reclamation only and for continued restoration of a bituminous and beneficial use of CFB flash mine in Center Township, **Indiana County**, affecting 316.0 acres. Receiving streams: three unnamed tributaries to Two Lick Creek (CWF). There are no potable water supply intakes within 10 miles downstream. Application received November 13, 2003.

Greensburg District Mining Office: Armbrust Building, R. R. 2 Box 603-C, Greensburg, PA 15601-0982, (724) 925-5500.

26030103 and NPDES Permit No. PA0250503. Amerikohl Mining, Inc. (P. O. Box 427, Acme, PA 15601-0427). Application for commencement, operation and reclamation of a bituminous surface mine in Nicholson Township, **Fayette County**, affecting 88.5 acres. Receiving streams: unnamed tributary to Cats Run and Jacobs Creek (WWF). The potable water supplies that have an intake within 10 miles downstream from the point of discharge: Masontown Water Works, Carmichaels Municipal Authority and Southwestern Pennsylvania Water Authority. Application received November 14, 2003.

26783002 and NPDES Permit No. PA0600199. T. L. Hill Coal Company (2195 Morgantown Road, Uniontown, PA 15401-9803). Renewal application for operation and reclamation of an existing bituminous surface mine in Georges Township, **Fayette County**, affecting 56.9 acres. Receiving stream: York Run (WWF). The potable water supplies intake within 10 miles down-

stream from the point of discharge is North Fayette County Municipal Authority and Mountain Water Association. Renewal application received November 20, 2003.

63980101. Twilight Industries, A Division of U. S. Natural Resources, Inc. (212 State Street, Belle Vernon, PA 15012). Application received for transfer of permit currently issued to David Breeden Enterprises, Inc., for continued operation and reclamation of a bituminous surface mining site in Somerset Township, **Washington County**, affecting 173.0 acres. Receiving streams: unnamed tributaries to North Branch of Pigeon Creek to Pigeon Creek to the Monongahela River (WWF). The first downstream potable water supply intake from the point of discharge is greater than 10 miles from the proposed site. Transfer application received November 17, 2003.

65030103 and NPDES Permit No. PA0250481. Sosko Coal Company, Inc. (R. R. 2, Box 330, Mt. Pleasant, PA 15666). Application for commencement, operation and reclamation to a bituminous surface mine in Mt. Pleasant Township, **Westmoreland County**, affect-

ing 79.9 acres. Receiving streams: Stauffer Run and unnamed tributary to Stauffer Run (WWF). There is no potable water supply intake within 10 miles from the point of discharge. Application received November 21, 2003.

03030107 and NPDES Permit No. PA0250511. Amerikohl Mining, Inc. (202 Sunset Drive, Butler, PA 16001). Application for commencement, operation and reclamation of a bituminous surface mine in Boggs Township, **Armstrong County**, affecting 138 acres. Receiving stream: North Fork of Pine Creek (CWF). There is no potable water supply intake within 10 miles from the point of discharge. Application received November 26, 2003.

Noncoal Applications Received

Effluent Limits—The following noncoal mining applications that include an NPDES permit application will be subject to, at a minimum, the following technology-based effluent limitations for discharges of wastewater to streams:

<i>Parameter</i>	<i>30-Day Average</i>	<i>Daily Maximum</i>	<i>Instantaneous Maximum</i>
Suspended solids	35 mg/l	70 mg/l	90 mg/l
pH*		greater than 6.0;	less than 9.0

* The parameter is applicable at all times.

A settleable solids instantaneous maximum of 0.5 ml/l applied to surface runoff resulting from a precipitation event. If coal will be extracted incidental to the extraction of noncoal minerals, at a minimum, the technology-based effluent limitations identified under coal applications will apply to discharges of wastewater to streams.

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901-2454, (570) 621-3118.

8175SM3A1C7 and NPDES Permit No. PA0613797. Warner Company (P. O. Box 457, Devault, PA 19432), renewal of NPDES Permit for discharge of treated mine drainage in East Whiteland and Tredyffrin Townships, **Chester County**, receiving stream: unnamed tributary to Valley Creek (EV). Application received November 21, 2003.

64022806. Ciccone Construction, Inc. (R. R. 2 Box 2455, Honesdale, PA 18431), Stage I and II bond release for a quarry operation in Wayne and Palmyra Townships, **Wayne County**, affecting 3.0 acres on property owned by Bucks Cove Rod & Gun Club, Inc. Application received November 21, 2003.

BUREAU OF ABANDONED MINE RECLAMATION

Under Act 181 of 1984, the Department of Environmental Protection (Department) gives notice of an unsolicited proposal received from Amerikohl Mining, Inc., Butler, PA to reclaim an abandoned surface mine in Saltlick Township, Fayette County. The Department intends to enter into negotiations with Amerikohl Mining, Inc. to contract for site reclamation, if funding is available.

The project, BF 489-101.1, involves reclamation of an existing AMD discharge area abandoned by Marsolino Coal & Coke, Inc., where the Department, under Mining Permit Number 3376SM14, collected bonds.

Amerikohl Mining, Inc. proposes to revegetate about 35 acres. All areas will be regraded to promote surface drainage and provide integration with surrounding unmined areas.

Interested parties should send comments to Thomas Kovalchuk, Bureau of Mining Operations, R. R. 2, Box 603C, Greensburg, PA 15601-8739 by 4 p.m. on January 9, 2004.

FEDERAL WATER POLLUTION CONTROL ACT, SECTION 401

The following permit applications, requests for Environmental Assessment approval and requests for 401 Water Quality Certification have been received by the Department of Environmental Protection (Department). Section 401 of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C.A. § 1341) requires the State to certify that the involved projects will not violate the applicable provisions of sections 301—303, 306 and 307 of the FWPCA (33 U.S.C.A. §§ 1311—1313, 1316 and 1317) as well as relevant State requirements. Persons objecting to approval of a request for certification under section 401 of the FWPCA or to the issuance of a Dam Permit, Water Obstruction and Encroachment Permit or the approval of an Environmental Assessment must submit comments, suggestions or objections within 30 days of the date of this notice, as well as questions, to the office noted before the application. Comments should contain the name, address and telephone number of the person commenting, identification of the certification request to which the comments or objections are addressed and a concise statement of comments, objections or suggestions including the relevant facts upon which they are based.

The Department may conduct a fact-finding hearing or an informal conference in response to comments if deemed necessary. Individuals will be notified, in writing, of the time and place of a scheduled hearing or conference concerning the certification request to which the comment, objection or suggestion relates. Maps, drawings and other data pertinent to the certification request are available for inspection between 8 a.m. and 4 p.m. on each working day at the office noted before the application.

Persons with a disability who wish to attend a hearing and require an auxiliary aid, service or other accommodation to participate in the proceedings should contact the specified program. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

Applications received under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27) and section 302 of the Flood Plain Management Act (32 P. S. § 679.302) and requests for certification under section 401 of the FWPCA (33 U.S.C.A. § 1341(a)).

WATER OBSTRUCTIONS AND ENCROACHMENTS

Northeast Region: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

E45-457. Arrowhead Sewer Company, Inc., HC 88, Box 305, Pocono Lake, PA 18347 in Coolbaugh Township, **Monroe County**, U. S. Army Corps of Engineers, Philadelphia District.

To place fill in 0.064 acre of PEM wetlands for the purpose of constructing a new wastewater treatment facility in Arrowhead Lakes Residential Community. The project is at the end of Lehigh Court, adjacent to the existing facility in the northwestern section of the community (Thornhurst, PA Quadrangle N: 9.0 inches; W: 11.6 inches).

Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

E36-764: David Smucker, 927 Bartville Road, Christiana, PA 17566 in Bart Township, **Lancaster County**, ACOE Baltimore District.

To maintain fill material placed within the floodway of Ball Run (TSF:MF) to construct an access roadway alongside a barn and utility building to facilitate the movement of agricultural equipment at a point approximately 800 feet east of Bells Road on the north side of Bartville Road (Gap, PA Quadrangle N: 3.1 inches; W: 3.7 inches) in Bart Township, Lancaster County.

E36-773: Glenn Good, 321 Walnut Run Road, Willow Street, PA 17584 in Strasburg Township, **Lancaster County**, ACOE Baltimore District.

To relocate approximately 380 linear feet of Walnut Run (WWF) to reduce streambank erosion and improve access to an existing dairy at a point approximately 300 feet south of the intersection of Lime Valley and Bachman Roads on the Good Farm in Strasburg Township, Lancaster County (Quarryville, PA Quadrangle N: 16.1 inches; W: 12.6 inches).

E07-377: Robert and Patricia Burke, 310 Cedar Street, Hollidaysburg, PA 16648 in Frankstown Township, **Blair County**, ACOE Baltimore District.

To place fill in 0.03 acre of PEM wetland for the purpose of constructing a single family residence on lot 4 of the Hunters Woods Development (Hollidaysburg, PA Quadrangle N: 12.7 inches; W: 1.5 inches) in Frankstown Township, Blair County. The amount of wetland impact is considered a de minimis impact of 0.03 acre and wetland mitigation is not required.

ACTIONS

THE CLEAN STREAMS LAW AND THE FEDERAL CLEAN WATER ACT FINAL ACTIONS TAKEN FOR NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES) PERMITS AND WATER QUALITY MANAGEMENT (WQM) PERMITS

The Department of Environmental Protection (Department) has taken the following actions on previously received applications for new, amended and renewed NPDES and WQM permits, applications for permit waivers and Notices of Intent (NOI) for coverage under General Permits. This notice is provided in accordance with 25 Pa. Code Chapters 91 and 92 and 40 CFR Part 122, implementing provisions of The Clean Streams Law (35 P. S. §§ 691.1—691.1001) and the Federal Clean Water Act.

<i>Location</i>	<i>Permit Authority</i>	<i>Application Type or Category</i>
Section I	NPDES	Renewals
Section II	NPDES	New or amendment
Section III	WQM	Industrial, sewage or animal wastes; discharges to groundwater
Section IV	NPDES	MS4 individual permit
Section V	NPDES	MS4 permit waiver
Section VI	NPDES	Individual permit stormwater construction
Section VII	NPDES	NOI for coverage under NPDES general permits

Sections I—VI contain actions related to industrial, animal or sewage wastes discharges, discharges to groundwater and discharges associated with municipal separate storm sewer systems (MS4), stormwater associated with construction activities and concentrated animal feeding operations (CAFOs). Section VII contains notices for parties who have submitted NOI for coverage under General NPDES Permits. The approval for coverage under these General NPDES Permits is subject to applicable effluent limitations, monitoring, reporting requirements and other conditions set forth in each general permit. The approval of coverage for land application of sewage sludge or residential septage under applicable general permit is subject to pollutant limitations, pathogen and vector attraction reduction requirements, operational standards, general requirements, management practices and other conditions set forth in the respective permit. The permits and related documents, effluent limitations, permitting requirements and other information are on file and may be inspected and arrangements made for copying at the contact office noted before the action.

Persons aggrieved by an action may appeal, under section 4 of the Environmental Hearing Board Act (35 P. S. § 7514) and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law), to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457,

(717) 787-3483. TDD users may contact the Environmental Hearing Board (Board) through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin*, unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary of the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decision law.

For individuals who wish to challenge an action, appeals must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

I. NPDES Renewal Permit Actions

Northeast Region: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

<i>NPDES Permit No. (Type)</i>	<i>Facility Name and Address</i>	<i>County and Municipality</i>	<i>Stream Name (Watershed No.)</i>	<i>EPA Waived Y/N ?</i>
PA0032999	Department of Conservation and Natural Resources Bureau of Facility Design and Construction 2808 Three Mile Run Road Perkasie, PA 18944	Carbon County Kidder Township	Hickory Run 2A	Y
PA0061689	Foster Township 1000 Wyoming Avenue P. O. Box 465 Freeland, PA 18224	Luzerne County Foster Township	Unnamed tributary to Lehigh River 2A	Y

Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4707.

<i>NPDES Permit No. (Type)</i>	<i>Facility Name and Address</i>	<i>County and Municipality</i>	<i>Stream Name (Watershed No.)</i>	<i>EPA Waived Y/N ?</i>
PA0080918	Rick Long 101 Speedwell Forge Road Lititz, PA 17543	Lancaster County Elizabeth Township	Kettle Run 7-J	Y
PA0082341	Donald J. Kline, Sr. Hopewell Borough P. O. Box 160 Hopewell, PA 16650-0160	Hopewell Borough Bedford County	Raystown Branch Juniata River 11-D	Y
PA0081141	Merle Eberly Locust Wood MHP Box 251 Morgantown, PA 19543	East Cocalico Township Lancaster County	UNT Little Cocalico Creek 7-J	Y
PA0085740	Richard Wagner Mill Creek Area Municipal Authority P. O. Box 4 Mill Creek, PA 17060	Brady Township Huntingdon County	Juniata River 12-C	Y
PA0024961	Paul Herb Oley Township One Rose Virginia Road P. O. Box 19 Oley, PA 19547	Oley Township Berks County	Manatawny Creek 3-B	Y
PA0085910	Beth Gainer 1050 Drager Road Columbia, PA 17512	Rapho Township Lancaster County	Little Chickies Creek 7-G	Y
PA0082805	Robert Droeger 2524 Ironville Pike Columbia, PA 17512	West Hempfield Township Lancaster County	Shawnee Run 7-G	Y

Northcentral Region: Water Management Program Manager, 208 West Third Street, Williamsport, PA 17701.

<i>NPDES Permit No. (Type)</i>	<i>Facility Name and Address</i>	<i>County and Municipality</i>	<i>Stream Name (Watershed No.)</i>	<i>EPA Waived Y/N ?</i>
PA0111902	Dietrich's Milk Products, LLC P. O. Box 102 Middlebury Center, PA 16935-0102	Tioga County Middlebury Township	Catlin Hollow 4A	Y
PA0208558 Sewage	The Shamokin Township Municipal Authority P. O. Box 64 Paxinos, PA 17860	Shamokin Township Northumberland County	Lick Creek 6B	Y
PA0021652 Sewerage Public	Kreamer Municipal Authority P. O. Box 220 Kreamer, PA 17833	Snyder County Middlecreek Township	Middle Creek 6A	Y

Southwest Region: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

<i>NPDES Permit No. (Type)</i>	<i>Facility Name and Address</i>	<i>County and Municipality</i>	<i>Stream Name (Watershed No.)</i>	<i>EPA Waived Y/N ?</i>
PA0034797 Sewage	United States Department of Justice Federal Bureau of Prisons Northeast Regional Office U. S. Customs House, 7th Floor Second and Chestnut Streets Philadelphia, PA 19106	Cambria County Allegheny Township	UNT of Clearfield Creek	Y
PA0092126 Sewage	Apollo Ridge School District P. O. Box 219 Spring Church, PA 15686	Indiana County Young Township	Harpers Run	Y
PA0095087 Sewage	Chippewa Township Sani. Authority 701 Constitution Boulevard Beaver Falls, PA 15010	Beaver County Chippewa Township	Bradys Run (mouth)	N
PA0098582 Sewage	Ronald W. Shearer 171 Cedar Lane P. O. Box 141 Indiana, PA 15701	Indiana County Rayne Township	McKee Run	Y
PA0110001 Sewage	Conemaugh Township Supervisors Municipal Building, Route 403 1120 Tire Hill Road Johnstown, PA 15905	Somerset County Conemaugh Township	UNT to Soap Hollow	Y
PA0110477 Sewage	Conemaugh Township Supervisors Municipal Building, Route 403 1120 Tire Hill Road Johnstown, PA 15905	Somerset County Conemaugh Township	Tributary of Soap Hollow	Y

II. New or Expanded Facility Permits, Renewal of Major Permits and EPA Nonwaived Permit Actions

Southeast Region: Water Management Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.

NPDES Permit No. PA0051438, Industrial Waste, **Westlake Plastics Company**, P. O. Box 127, Lenni, PA 19052. This proposed facility is in Chester Heights Borough, **Delaware County**.

Description of Proposed Action/Activity: Approval for the renewal to discharge into Chester Creek-3G Watershed.

NPDES Permit No. PA0024121 Amendment No. 1, Sewage, **Little Washington Wastewater Company**, 762 West Lancaster Avenue, Bryn Mawr, PA 19010. This proposed facility is in Upper Providence Township, **Delaware County**.

Description of Proposed Action/Activity: Approval for the amendment to discharge stormwater from Media STP.

Northeast Region: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

NPDES Permit No. PA-0041742, Sewage, Nazareth, PA 18064. This proposed facility is in Lower Nazareth Township, **Northampton County**.

Description of Proposed Action/Activity: Issuance of NPDES Permit.

Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4707.

NPDES Permit No. PA0070343, Sewage, **Roy Myers, The Multicare Companies, Inc.**, 227 West Lancaster Avenue, Devon, PA 19333. This proposed facility is in Tilden Township, **Berks County**.

Description of Proposed Action/Activity: Termination of permit.

NPDES Permit No. PA0247278, Sewage, **Glen I. Martin, Jr.**, 12560 Shimpstown Road, Mercersburg, PA 17236. This proposed facility is in Montgomery Township, **Franklin County**.

Description of Proposed Action/Activity: Authorization to discharge to UNT Licking Creek in Watershed 13-C.

Northcentral Region: Water Management Program Manager, 208 West Third Street, Williamsport, PA 17701.

NPDES Permit No. PA0208922, Sewage, SIC 4952, **Woodward Township Sewage and Water Authority**, R. R. 1, Box 285, Houtzdale, PA 16651-9651. The existing discharge is in Woodward Township, **Clearfield County**.

Description of Proposed Activity: Issuance of NPDES permit for Outfall 001 for Punkin Hollow Wastewater

Treatment Plant. Discharge rate has been increased from the existing 0.385 MGD to 0.76 MGD. Only mass effluent limits will change. Secondary limits still apply.

The receiving stream, Whiteside Run, is in the State Water Plan watershed 8D and is classified for CWF. The nearest downstream public water supply intake for Pennsylvania American Water Company in Milton, PA is a significant distance below the point of discharge.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.76 MGD.

Parameter	Average Monthly (mg/l)	Average Weekly (mg/l)	Instantaneous Maximum (mg/l)
CBOD ₅	25	40	50
TSS	30	45	60
Total Cl ₂ Residual	Monitor		Monitor
Fecal Coliform (5-1 to 9-30)	200/100ml as a geometric mean		
(10-1 to 4-30)	2,000/100ml as a geometric mean		
pH	6.0 to 9.0 at all times		

Southwest Region: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

NPDES Permit No. PAS216102, Industrial Waste, **St. George Crystal, Ltd.**, P. O. Box 709, Brown Avenue, Jeannette, PA 15644. This facility is in Jeannette, **Westmoreland County**.

Description of Proposed Action/Activity: Discharge of stormwater from St. George Crystal to receiving waters Brush Creek.

NPDES Permit No. PA0023701-A1, Sewage, **Midland Borough Municipal Authority**, 10th Street and Railroad Avenue, Midland, PA 15059. This facility is in Midland Borough, **Beaver County**.

Description of Proposed Action/Activity: Amended to discharge stormwater runoff to receiving waters named Ohio River.

NPDES Permit No. PA0027430-A1, Sewage, **City of Jeannette Municipal Authority**, P. O. Box 294, Penn, PA 15675-0294. This proposed facility is in City of Jeannette, **Westmoreland County**.

Description of Proposed Action/Activity: Addition of CSO outfall.

NPDES Permit No. PA0027456-A1, Sewage, **Greater Greensburg Sewage Authority**, P. O. Box 248, Greensburg, PA 15601-0248. This proposed facility is in Hempfield Township, **Westmoreland County**.

Description of Proposed Action/Activity: Add stormwater discharges in and around area of Greater Greensburg STP.

NPDES Permit No. PA0038237-A1, Sewage, **Rostraver Township Sewage Authority**, 202 Port Royal Road, Belle Vernon, PA 15012. This facility is in Rostraver Township, **Westmoreland County**.

Description of Proposed Action/Activity: Addition of discharge from stormwater outfall in and around the Sweeney-Fellsburg Water Pollution Control Plant.

III. WQM Industrial Waste and Sewerage Actions under The Clean Streams Law (35 P. S. §§ 691.1—691.1001)

Northeast Region: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

WQM Permit No. 4503405, Sewerage, **Outletter Associates**, 490 North Main Street, Pittston, PA 18640. This proposed facility is in Pocono Township, **Monroe County**.

Description of Proposed Action/Activity: Issuance of water quality management permit.

WQM Permit No. 4803403, Sewerage, **Nazareth Borough Municipal Authority**, P. O. Box A, Nazareth, PA 18064. This proposed facility is in Lower Nazareth Township, **Northampton County**.

Description of Proposed Action/Activity: Issuance of water quality management permit.

WQM Permit No. 4503408, Sewerage, **Stroud Township Sewer Authority**, 1211 North Fifth Street, Stroudsburg, PA 18360. This proposed facility is in Stroud Township, **Monroe County**.

Description of Proposed Action/Activity: Issuance of water quality management permit.

Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4707.

WQM Permit No. 3603405, Sewerage, **Lancaster Area Sewer Authority**, 130 Centerville Road, Lancaster, PA 17603. This proposed facility is in Manheim Township, **Lancaster County**.

Description of Proposed Action/Activity: Transfer of ownership of all public sewers, force mains, pump stations and appurtenances owned by any government entity of Manheim Township to the Lancaster Area Sewer Authority.

WQM Permit No. 2803406, Sewerage, **Glen I. Martin, Jr.**, 12560 Shimpstown Road, Mercersburg, PA 17236. This proposed facility is in Montgomery Township, **Franklin County**.

Description of Proposed Action/Activity: Construction of a small flow sewage treatment facility to serve two single family residences and a cabinet manufacturing shop.

WQM Permit No. 0603410, Sewerage, **Steven and Tamara Collins**, 261 Camp Strauss Road, Bethel, PA 19597. This proposed facility is in Bethel Township, **Berks County**.

Description of Proposed Action/Activity: Construction of a septic tank/sand filter wastewater treatment system for a single-family residence.

WQM Permit No. 0603409, Sewerage, **Frank Stramaglia**, 2125 Georgia Road, Temple, PA 19560. This proposed facility is in Muhlenberg Township, **Berks County**.

Description of Proposed Action/Activity: Construction of a septic tank/sand filter treatment system for a single family residence.

WQM Permit No. 0501408, Amendment 03-1, Sewerage, **Jack Decker, Broad Top Township**, P. O. Box 57, Defiance, PA 16633. This proposed facility is in Broad Top Township, **Bedford County**.

Description of Proposed Action/Activity: This is a permit amendment to add a 1,500-gallon concrete flow equalization tank and grinder pump at the Hess Trailer Park.

WQM Permit No. 3602202, Amendment 03-1, CAFO, **Ronald Kreider, Noah W. Kreider and Sons, Inc.**, 1461 Lancaster Road, Manheim, PA 17545. This proposed facility is in Penn Township, **Lancaster County**.

Description of Proposed Action/Activity: Spray irrigation of milk and beverage processing wastewater onto 14 acres of land south of the milk processing plant. Spray irrigation will involve 5 rows of spray headers, spaced at least 150 feet apart, and a total of 51 spray headers. All wastewater will be routed to three 1,500-gallon grease interceptors prior to irrigation. Wastewater and soils will be monitored routinely. Groundwater will be monitored at a minimum of four monitoring wells. Concentration limits must be met prior to application.

Northcentral Region: Water Management Program Manager, 208 West Third Street, Williamsport, PA 17701.

WQM Permit No. 1403203, Industrial Waste, 4244, **Fish and Boat Commission**, 450 Robinson Lane, Bellefonte, PA 16823. This proposed facility is in Benner Township, **Centre County**.

Description of Proposed Action/Activity: The FBC proposes to upgrade the industrial wastewater treatment system at the Pleasant Gap Fish Culture Station with the addition of high capacity disc filters, a traveling bridge sand filter and converting the existing settling lagoon into an aerated chemical/detoxification basin. The FBC is also plans to construct an aboveground sludge storage tank.

WQM Permit No. 1403404, Sewerage 4952, **Rush Township**, P. O. Box 152, Phillipsburg, PA 16866-0152. This proposed facility is in Rush Township, **Centre County**.

Description of Proposed Action/Activity: The Township is granted a Water Quality Management Part II Permit for the construction of approximately 21,300 LF of 6- and 8-inch diameter gravity sewer, 3,500 LF of 4-inch force main sewer and one pump station.

Southwest Region: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

WQM Permit No. 5601405-A1, Sewage, **Seven Springs Municipal Authority**, 290 Lagoon Lane, Champion, PA 15622. This proposed facility is in Middle Creek Township, **Somerset County**.

Description of Proposed Action/Activity: Sewer extension and pump station modifications.

Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

WQM Permit No. 2503426, Sewerage, **Rose Allsopp**, 8976 Perry Highway, Erie, PA 16509. This proposed facility is in Summit Township, **Erie County**.

Description of Proposed Action/Activity: Sewage discharge for a single residence.

IV. NPDES Stormwater Discharges from MS4 Permit Actions

V. NPDES Waiver Stormwater Discharges from MS4 Actions

Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Department Protocol (Y/N)</i>
McKean Township 9231 Edinboro Road P. O. Box 62 McKean, PA 16426	Erie	McKean Township	Y

VI. NPDES Discharges of Stormwater Associated with Construction Activities Individual Permit Actions

Northeast Region: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI023903039	Robert Fischman and Eileen Fischman 3003 W. Turner St. Allentown, PA 18104	Lehigh	Upper Macungie Township	Little Lehigh Creek HQ-CWF
PAI023903035	Allentown Teachers Credit Union 2900 Hamilton Blvd. Allentown, PA 18103	Lehigh	South Whitehall Township	Little Lehigh Creek HQ-CWF

Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI2030603001	First National Bank in Fleetwood Main and Franklin Streets Fleetwood, PA 19522	Berks	Richmond Township	Moselem Creek HQ-CWF
PAI2030603002	David and Suzette Shaak 7740 South Tropical Trail Merritt Island, FL 32952	Berks	Longswamp Township	Little Lehigh Creek HQ

Northcentral Region: Water Management Program Manager, 208 West Third Street, Williamsport, PA 17701.

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI041803003	Department of Transportation Engineering District 2-0 1924-30 Daisy St. Clearfield, PA 16830	Clinton	Lamar Township	UNT Long Run HQ-CWF

VII. Approvals to Use NPDES and/or Other General Permits

The EPA Region III Administrator has waived the right to review or object to this permit action under the waiver provision 40 CFR 123.23(d).

List of NPDES and/or Other General Permit Types

PAG-1	General Permit for Discharges from Stripper Oil Well Facilities
PAG-2	General Permit for Discharges of Stormwater Associated with Construction Activities (PAR)
PAG-3	General Permit for Discharges of Stormwater from Industrial Activities
PAG-4	General Permit for Discharges from Single Residence Sewage Treatment Plant
PAG-5	General Permit for Discharges from Gasoline Contaminated Ground Water Remediation Systems
PAG-6	General Permit for Wet Weather Overflow Discharges from Combined Sewer Systems (CSO)
PAG-7	General Permit for Beneficial Use of Exceptional Quality Sewage Sludge by Land Application
PAG-8	General Permit for Beneficial Use of Nonexceptional Quality Sewage Sludge by Land Application to Agricultural Land, Forest, a Public Contact Site or a Land Reclamation Site
PAG-8 (SSN)	Site Suitability Notice for Land Application under Approved PAG-8 General Permit Coverage
PAG-9	General Permit for Beneficial Use of Residential Septage by Land Application to Agricultural Land, Forest or a Land Reclamation Site
PAG-9 (SSN)	Site Suitability Notice for Land Application under Approved PAG-9 General Permit Coverage
PAG-10	General Permit for Discharge Resulting from Hydrostatic Testing of Tanks and Pipelines
PAG-11	(To Be Announced)
PAG-12	CAFOs
PAG-13	Stormwater Discharges from MS4

General Permit Type—PAG-2

<i>Facility Location and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office and Telephone No.</i>
West Goshen Township Chester County	PAR10G256R	William Freas Construction and Design, Inc. 211 Carter Drive West Chester, PA 19382	Goose Creek WWF, MF	Southeast Regional Office Suite 6010, Lee Park 555 North Lane Conshohocken, PA 19428 (610) 832-6000
Tredyffrin Township Chester County	PAG2001503122	John Leonard United Church of Christ at Valley Forge 1311 Glenhardie Road Wayne, PA 19087	Trout Creek WWF	Southeast Regional Office Suite 6010, Lee Park 555 North Lane Conshohocken, PA 19428 (610) 832-6000

<i>Facility Location and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office and Telephone No.</i>
Upper Oxford Township Chester County	PAG2001503123	John S. Stoltzfus Eli Stoltzfus Farmstead 826 Pumping Station Road Kirkwood, PA 17536	Rattlesnake Run TSF, MF	Southeast Regional Office Suite 6010, Lee Park 555 North Lane Conshohocken, PA 19428 (610) 832-6000
Radnor Township Delaware County	PAG2002303038	Cas Holloway 110 Gallagher Road Wayne, PA 19087	Ithan Creek Darby Creek Watershed CWF, MF	Southeast Regional Office Suite 6010, Lee Park 555 North Lane Conshohocken, PA 19428 (610) 832-6000
Upland Borough Delaware County	PAG2002303078	Delaware County Housing Authority 1955 Constitution Avenue Woodlyn, PA 19094	Chester Creek WWF, MF	Southeast Regional Office Suite 6010, Lee Park 555 North Lane Conshohocken, PA 19428 (610) 832-6000
Chadds Ford Township Delaware County	PAG2002303055	Andy Vacciale 1400 Wilmington Pike West Chester, PA 19382	Unnamed tributary Harvey's Run WWF, MF	Southeast Regional Office Suite 6010, Lee Park 555 North Lane Conshohocken, PA 19428 (610) 832-6000
Springfield Township Delaware County	PAG2002303034	SUSA Partnership, LP 175 Toyota Plaza, Suite 700 Memphis, TN 38103	Crum Creek WWF	Southeast Regional Office Suite 6010, Lee Park 555 North Lane Conshohocken, PA 19428 (610) 832-6000
Folcroft Borough Delaware County	PAG2002303073	Wawa, Inc. 260 West Baltimore Pike Wawa, PA 19063	Hermospota Creek WWF, MF	Southeast Regional Office Suite 6010, Lee Park 555 North Lane Conshohocken, PA 19428 (610) 832-6000
Haverford Township Delaware County	PAG2002303079	Stephen Monaco 1165 West Chester Pike Havertown, PA 19083	Darby Creek TSF, MF	Southeast Regional Office Suite 6010, Lee Park 555 North Lane Conshohocken, PA 19428 (610) 832-6000
Worcester Township Montgomery County	PAG2004603168	Arcadia Estates, LLC The Brawn Tract a/k/a Arcadia Estates 600 East Main Street Lansdale, PA 19446	Zacharias Creek TSF	Southeast Regional Office Suite 6010, Lee Park 555 North Lane Conshohocken, PA 19428 (610) 832-6000
Lower Salford Township Montgomery County	PAG2004603208	H and A Company Harleysville/Meadowbrook Plaza 270 Main Street Harleysville, PA 19438	West Branch Skippack Creek	Southeast Regional Office Suite 6010, Lee Park 555 North Lane Conshohocken, PA 19428 (610) 832-6000

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<i>Facility Location and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office and Telephone No.</i>
Luzerne County Jackson Township	PAR10R166R	Rolling Meadows Dev. Co. 46 Pierce St. Kingston, PA 18704	Huntsville Creek CWF	Luzerne County Conservation District (570) 674-7991
Luzerne County Dallas Township	PAG2004003011	John Halbing 20 Winding Way Dallas, PA 18612	Trout Brook CWF	Luzerne County Conservation District (570) 674-7991
Luzerne County Fairview Township	PAG2004003042	Joseph Thomas 57 N. Mountain Blvd. Mountaintop, PA 18707	Big Wapwallopen Creek CWF	Luzerne County Conservation District (570) 674-7991
Luzerne County Lehman Township	PAG2004003043	Joseph Paglianite R. R. 5, Box 105 Dallas, PA 18612	Toby's Creek CWF	Luzerne County Conservation District (570) 674-7991
Luzerne County Franklin Township	PAG2004003044	Camp Orchard Hill R. R. 3, Box 275 Dallas, PA 18612	Whitelock Creek CWF	Luzerne County Conservation District (570) 674-7991
Northampton County Palmer Township	PAG2004803040	J. B. Reilly One Saucon View Dr. Bethlehem, PA 18017	Shoeneck Creek WWF	Northampton County Conservation District (610) 746-1971
Northampton County Allen Township	PAG2004803042	Patrick Rivers 815 Fairmount Ave. Whitehall, PA 18091	Hokendauqua Creek CWF	Northampton County Conservation District (610) 746-1971
Wernersville Borough Berks County	PAG2000603052	Greth Homes P. O. Box 305 Temple, PA 19560	Hospital Creek TSF	Berks County Conservation District 1238 County Welfare Rd. P. O. Box 520 Leesport, PA 19533 (610) 372-4657, Ext. 201
Exeter Township Berks County	PAG2000603089	Donald Basile 202 Black Matt Road Douglassville, PA 19518	UNT to Schuylkill River WWF	Berks County Conservation District 1238 County Welfare Rd. P. O. Box 520 Leesport, PA 19533 (610) 372-4657, Ext. 201
Swatara Township Dauphin County	PAG2002203034	The McNaughton Co. 4400 Deerpath Rd. Harrisburg, PA 17110	Swatara Creek WWF	Dauphin County Conservation District 1451 Peters Mountain Rd. Dauphin, PA 1701 (717) 921-8100
Manheim Township Lancaster County	PAG2003603139	Manor Care Health Services 7361 Calhoun Place Suite 300 Rockville, MD 20855	Landis Run WWF	Lancaster County Conservation District 1383 Arcadia Road, Room 6 Lancaster, PA 17601 (717) 299-5361
East Earl Township Lancaster County	PAG2003603142	East Earl Township 4610 Division Hwy. East Earl, PA 17519	Cedar Creek WWF	Lancaster County Conservation District 1383 Arcadia Road, Room 6 Lancaster, PA 17601 (717) 299-5361
Millcreek Township Lebanon County	PAG2003803045	Ronald Hetrick Eastern Lebanon County School District 180 Elco Drive Myerstown, PA 17067	Mill Creek TSF	Lebanon County Conservation District 2120 Cornwall Road, Suite 5 Lebanon, PA 17042 (717) 272-3908

<i>Facility Location and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office and Telephone No.</i>
South Londonderry Township Lebanon County	PAR10P074	South Londonderry Township Municipal Authority Center and W. Market Streets P. O. Box 3 Campbelltown, PA 17010	Killinger Creek TSF	Lebanon County Conservation District 2120 Cornwall Road, Suite 5 Lebanon, PA 17042 (717) 272-3908
North Cornwall Township Lebanon County	PAR10P121	John Wengert Wengert's Dairy Inc. 2401 Walnut Street Lebanon, PA 17042	Snitz Creek TSF	Lebanon County Conservation District 2120 Cornwall Road, Suite 5 Lebanon, PA 17042 (717) 272-3908
South Lebanon Township Lebanon County	PAR10P082	AES Ironwood LLC 305 Prescott Road Lebanon, PA 17042	Tulpehocken Creek TSF	Lebanon County Conservation District 2120 Cornwall Road, Suite 5 Lebanon, PA 17042 (717) 272-3908
North Cornwall and South Lebanon Townships Lebanon City Lebanon County	PAR10P103	AES Ironwood LLC 305 Prescott Road Lebanon, PA 17042	Tulpehocken Creek TSF Quittapahilla Creek TSF	Lebanon County Conservation District 2120 Cornwall Road, Suite 5 Lebanon, PA 17042 (717) 272-3908
Wheatfield Township Perry County	PAG0050003014	Perry County Commissioners P. O. Box 37 New Bloomfield, PA 17068	Shermans Creek 5 acres	Perry Conservation District P. O. Box 3 New Bloomfield, PA 17068 (717) 582-8988, Ext. 4
Lower Windsor Township York County	PAG2006703135	Peter Alecxih, Jr. Lauxmont Holdings LLC 2372 Franklin Road Columbia, PA 17512	UNT to Susquehanna River WWF	York County Conservation District 118 Pleasant Acres Road York, PA 17402 (717) 840-7430
Lower Windsor Township York County	PAR10Y616-2	Donald Keener Lower Windsor Township 111 Walnut Valley Court Wrightsville, PA 17368	Fishing Creek TSF	York County Conservation District 118 Pleasant Acres Road York, PA 17402 (717) 840-7430
Fairview Township York County	PAG2006703134	Mike Greene Greene Haubert Ventures 4075 Market Street Camp Hill, PA 17011	Yellow Breeches CWF	York County Conservation District 118 Pleasant Acres Road York, PA 17402 (717) 840-7430
Jacobus Borough York County	PAG2006703059	Greg Hill Church Reserve LLC 214A Willow Valley Lakes Drive Willow Street, PA 17584	UNT to Lake Redman	York County Conservation District 118 Pleasant Acres Road York, PA 17402 (717) 840-7430
Newberry Township York County	PAG2006703120	James Craft 2780 York Haven Road P. O. Box 8 York Haven, PA 17370	Conewago Creek TSF	York County Conservation District 118 Pleasant Acres Road York, PA 17402 (717) 840-7430

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<i>Facility Location and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office and Telephone No.</i>
Penn Township York County	PAG2006703010	Martins Ridge Subdivision Tony Forbes Bon Ton Builders 1060 Baltimore Street Hanover, PA 17331	Plum Creek WWF	York County Conservation District 118 Pleasant Acres Road York, PA 17402 (717) 840-7430
Windsor Township Felton Borough York County	PAG2006703080	Grenloe Subdivision Harry Ramage 135 Tyler Run Toad York, PA 17403	Muddy Creek TSF	York County Conservation District 118 Pleasant Acres Road York, PA 17402 (717) 840-7430
Clearfield County Bigler Township	PAG2001703019	Moshannon Valley Area School District 4934 Green Acre Rd. Houtzdale, PA 16651	UNT Japling Run CWF	Clearfield County Conservation District 650 Leonard St. Clearfield, PA 16830 (814) 765-2629
Columbia County Hemlock Township	PAG2001903017	Clean Car Co., Inc. 1388 SR 487 Bloomsburg, PA 17815	Hemlock Creek CWF	Columbia County Conservation District 702 Sawmill Rd., Suite 204 Bloomsburg, PA 17815 (570) 784-1310
Lycoming County Wolf Township	PAG2004103012	Eugene Days 5069 Route 220 Hwy. Hughesville, PA 17737	UNT Muncy Creek WWF	Lycoming County Conservation District 542 County Farm Road, Suite 202 Montoursville, PA 17754 (570) 433-3003
Beaver County South Beaver Township	PAG2000403010	Robert Grieco 142 McKinley Road Beaver Falls, PA 15010	Existing Catch Basin to North Branch Brady Run TSF	Beaver County Conservation District (724) 774-7090
Westmoreland County North Huntingdon Township	PAG2006503048	Norwin School District 281 McMahon Dr. North Huntingdon, PA 15642	Unnamed tributary to Tinkers Run WWF	Westmoreland County Conservation District (724) 837-5271

General Permit Type—PAG-3

<i>Facility Location and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office and Telephone No.</i>
Kingston Borough Luzerne County	PAR802209	Biscontini Distribution Centers 232 Division Street Kingston, PA 18704	Toby Creek WWF	NERO Water Management Program 2 Public Square Wilkes-Barre, PA 18711-0790 (570) 826-2511

General Permit Type—PAG-4

<i>Facility Location and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office and Telephone No.</i>
Middlecreek Township Snyder County	PAG045062	Theodore Whitesel R. R. 3 Box 323 Middleburg, PA 17842	UNT Middle Creek CWF	Northcentral Regional Office Water Management Program 208 West Third Street, Suite 101 Williamsport, PA 17701 (570) 327-3666

<i>Facility Location and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office and Telephone No.</i>
Summit Township Erie County	PAG048931	Rose Allsopp 8976 Perry Highway Erie, PA 16509	Unnamed tributary to Walnut Creek	NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942

General Permit Type—PAG-10

<i>Facility Location and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office and Telephone No.</i>
Schuylkill Township and County	PAG102208	Sunoco Logistics Partners, LLC 1824 Horseshoe Pike Honey Brook, PA 19344	Little Schuylkill River	NERO Water Management 2 Public Square Wilkes-Barre, PA 18711 (570) 826-2511

General Permit Type—PAG-13

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>	<i>Department Protocol (Y/N)</i>
PAG136101	Speers Borough 300 Phillips Street Charleroi, PA 15022-1029	Washington	Speers Borough	Monongahela River WWF Maple Creek WWF UNT to the Monongahela River WWF	Y
PAG136102	Charleroi Borough 4th and Fallowfield Avenue Municipal Bldg. Room 209 Charleroi, PA 15022	Washington	Charleroi Borough	Monongahela River WWF Maple Creek WWF UNT to the Monongahela WWF	Y
PAG136105	Fallowfield Township 9 Memorial Drive Charleroi, PA 15022	Washington	Fallowfield Township	Pigeon Creek WWF Maple Creek WWF UNT to the Monongahela River WWF	Y
PAG136107	Stonycreek Township 1610 Bedford Street Johnstown, PA 15902	Cambria	Stonycreek Township	Stonycreek WWF Sams Run (tributary to Stonycreek) CWF Solomon Run (tributary to Stonycreek) CWF	Y
PAG136109	North Charleroi Borough 555 Walnut Avenue Charleroi, PA 15022	Washington	North Charleroi Borough	Monongahela River WWF UNT to the Monongahela River WWF	Y

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<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>	<i>Department Protocol (Y/N)</i>
PAG136114	Jackson Township 513 Pike Road Johnstown, PA 15909	Cambria	Jackson Township	Hinckston Run CWF	Y
PAG136119	Paint Borough 119 Hoffman Avenue Windber, PA 15963	Somerset	Paint Borough	Paint Creek CWF	Y
PAG136124	New Brighton Borough 610 Third Avenue New Brighton, PA 15066	Beaver	New Brighton Borough	Beaver River WNF Blockhouse Run WWF	Y
PAG136129	Monongahela City 449 West Main Street Monongahela, PA 15063	Washington	Monongahela City	Monongahela River WWF Pigeon Creek WWF Dry Run WWF	Y
PAG136139	Conemaugh Township 142 Janie Street Johnstown, PA 15902	Cambria	Conemaugh Township	Little Conemaugh River Stony Creek	Y
PAG136144	Vanport Township 477 State Street Beaver, PA 15009	Beaver	Vanport Township	Ohio River WWF Twomile Run WWF	Y
PAG136154	Freedom Borough 901 Third Avenue Freedom, PA 15042	Beaver	Freedom Borough	Ohio River WWF Dutchman Run WWF UNT to the Ohio River	Y
PAG136156	Pulaski Township 3401 Sunflower Road New Brighton, PA 15066	Beaver	Pulaski Township	Cemetery Road (T-542) Storm System 3-Blockhouse Run WWF 40th Avenue (T-555) Storm System UNT to 3-Blockhouse Run	Y
PAG136158	Daugherty Township 2182 Mercer Road New Brighton, PA 15066	Beaver	Daugherty Township	Stuber Road (T-542) Storm System UNT to 2-Beaver River WWF Frish Korn Road (T-571) Storm System WWF UNT to 3-Blockhouse Run Main Avenue (T-845) Storm System WWF UNT to 3-Blockhouse Run	Y

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>	<i>Department Protocol (Y/N)</i>
PAG136159	Brighton Township 1300 Brighton Road Beaver, PA 15009	Beaver	Brighton Township	Chapel Road (T-535) Storm Sewer Sys., UNT to South Branch Brady Run (tributary to 3-Brady Run), Beacom Drive (T-556) Storm Sewer Sys., UNT to 3-Brady Run, Western Avenue (T-650) Storm Sewer Sys., UNT to 2-Two Mile Run, Gypsy Glen Road (T-736) Storm Sewer Sys., UNT to 2-Two Mile Run, 2-Two Mile Run (WWF), Mudlick Hollow Road, (T-513) Storm Sewer Sys., UNT to 2-Two Mile Run, Pine Grove Road (T-432) Storm Sewer Sys., UNT to 2-Six Mile Run	Y
PAG136172	Ambridge Borough 600 Eleventh Street Ambridge, PA 15003	Beaver	Ambridge Borough	Big Sewickley Creek TSF Ohio River WWF UNT to Ohio River WWF	Y
PAG136173	Harmony Township 2501 Woodland Road Ambridge, PA 15003	Beaver	Harmony Township	Legionville Run WWF Big Sewickley Creek TSF UNT to Ohio River	Y
PAG136178	Hopewell Township Municipal Building 1700 Clark Boulevard Aliquippa, PA 15001	Beaver	Hopewell Township	Flaugherty Run Raccoon Creek Ohio River	Y
PAG136202	Cecil Township 3599 Millers Run Road Suite 101 Cecil, PA 15321	Washington	Cecil Township	Chartiers Creek WWF Brush Run WWF McPherson Creek WWF Millers Run WWF Robinson Run WWF	Y

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<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>	<i>Department Protocol (Y/N)</i>
PAG136205	South Union Township 151 Township Drive Uniontown, PA 15401	Fayette	South Union Township	Coal Lick Run WWF Redstone Creek WWF Bennington Spring Run WWF Jennings Run WWF	Y
PAG136209	Conway Borough 1208 Third Avenue Conway, PA 15027	Beaver	Conway Borough	Ohio River WWF Crows Run WWF	Y
PAG136210	Canton Township 655 Grove Avenue Washington, PA 15301	Washington	Canton Township	Chartiers Creek WWF	Y
PAG136218	Southmont Borough 148 Wonder Street Johnstown, PA 15905	Cambria	Southmont Borough	Cheney Run WWF	Y

Northeast Region: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>	<i>Department Protocol (Y/N)</i>
PAG132240	North Catasauqua Borough 1066 Fourth St. North Catasauqua, PA 18032	Northampton	North Catasauqua Borough	Lehigh River TSF Catasauqua Creek CWF	Y
PAG132213	Borough of Coopersburg 5 North Main St. Coopersburg, PA 18036	Lehigh	Borough of Coopersburg	Saucon Creek CWF	Y
PAG132216	Upper Saucon Township 5500 Camp Meeting Rd. Center Valley, PA 18034	Lehigh	Upper Saucon Township	Saucon Creek CWF	Y
PAG132237	Northampton Borough 1401 Laubach Ave. Northampton, PA 18067	Northampton	Northampton Borough Hokendauqua Creek CWF		Y
PAG132239	Lehigh Township 1069 Municipal Road Walnutport, PA 18088	Northampton	Lehigh Township	Lehigh River TSF Hokendauqua Creek CWF Bertsch Creek CWF Indian Creek CWF UNTs to Lehigh River Hokendauqua Creek Bertsch Creek Indian Creek CWF	Y
PAG132205	Taylor Borough 122 Union Street Taylor, PA 18517	Lackawanna	Taylor Borough	St. Johns Creek CWF Keyser Creek CWF Lackawanna River CWF	Y

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>	<i>Department Protocol (Y/N)</i>
PAG132206	Duryea Borough 315 Main Street Duryea, PA 18642	Luzerne	Duryea Borough	Lackawanna River WWF Mill Creek CWF	Y
PAG132229	Jenkins Township 46 1/2 Main Street Inkerman, PA 18640	Luzerne	Jenkins Township	Gardner Creek CWF Wardan Creek CWF Susquehanna River WWF	Y
PAG132236	West Easton Borough 237 Seventh Street West Easton, PA 18042	Northampton	West Easton Borough	Lehigh River WWF	Y
PAG132238	Walnutport Borough 417 Lincoln Avenue Walnutport, PA 18088	Northampton	Walnutport Borough	Lehigh Canal/Lehigh River TSF	Y
PAG132235	Allen Township 4714 Indian Trail Road Northampton, PA 18067	Northampton	Allen Township	Hokendauqua Creek CWF Dry Run CWF Catasauqua Creek CWF	Y

PUBLIC WATER SUPPLY (PWS) PERMITS

The Department of Environmental Protection has taken the following actions on applications received under the Safe Drinking Water Act for the construction, substantial modification or operation of a public water system.

Persons aggrieved by an action may appeal, under section 4 of the Environmental Hearing Board Act (35 P. S. § 7514) and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law), to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users may contact the Environmental Hearing Board (Board) through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin*, unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary of the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decision law.

For individuals who wish to challenge an action, appeals must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

SAFE DRINKING WATER

Actions taken under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17).

Northwest Region: Water Supply Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

Permit No. 4303501, Public Water Supply.

Applicant	Glen Lakes Estates Mobile Home Park
Borough or Township	Pine Township
County	Mercer
Type of Facility	PWS—Mobile Home Park
Consulting Engineer	Hickory Engineering Inc.
Permit to Construct Issued	October 24, 2003

Operations Permit issued to **Erie Water Works**, 340 West Bayfront Parkway, Erie, PA 16507, PWS ID 6250028, Summit Township, **Erie County** on September 11, 2003, for the operation of facilities approved under Construction Permit No. 2594502-MA6.

Operations Permit issued to **Erie Water Works**, 340 West Bayfront Parkway, Erie, PA 16507, PWS ID 6250028, City of Erie, **Erie County** on September 11, 2003, for the operation of facilities approved under Construction Permit No. 2789-T1-MA3.

Operations Permit issued to **Erie Water Works**, 340 West Bayfront Parkway, Erie, PA 16507, PWS ID 6250028, City of Erie, **Erie County** on September 11, 2003, for the operation of facilities approved under Construction Permit No. 8875-W-T1-MA2.

Northeast Region: Water Supply Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

Operations Permit issued to **Pennsylvania Suburban Water Company**, 762 West Lancaster Avenue, Bryn Mawr, PA 19010, PWS ID 2400135, Kingston Township, **Luzerne County** on November 10, 2003, for the operation of facilities approved under Construction Permit N/A.

Southcentral Region: Water Supply Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

Permit No. 0103510 MA, Minor Amendment, Public Water Supply.

Applicant	The Links at Gettysburg Utility Company LLC
Municipality	Mt. Joy Township
County	Adams
Type of Facility	Modifications to facilities previously approved in PWS Construction Permit No. 0102502 issued on October 11, 2002.
Consulting Engineer	Richard M. Bodner, P. E. Martin and Martin, Inc. 37 S. Main St. Chambersburg, PA 17201
Permit to Construct Issued	November 12, 2003

Permit No. 6703509 MA, Minor Amendment, Public Water Supply.

Applicant	United Water Pennsylvania
Municipality	Newberry Township
County	York
Type of Facility	Construction of a 300,000-gallon storage tank in the Grandview Acres Development.
Consulting Engineer	R. Michael Gephart, P. E. United Water Pennsylvania 4211 East Park Circle Harrisburg, PA 17111
Permit to Construct Issued	November 13, 2003

Operations Permit issued to **Specialty Design & Manufacturing Co., Inc.**, 3060923, Alsace Township, **Berks County** on November 20, 2003, for the operation of facilities approved under Construction Permit No. 0601513.

Northcentral Region: Water Supply Management Program Manager, 208 West Third Street, Williamsport, PA 17701.

Permit No. 1403501—Construction. Public Water Supply.

Applicant	Monument Water Association c/o Ernest L. Hanley, President R. R. 1, Box 353 Beech Creek, PA 16822
Township	Liberty Township
County	Centre
Type of Facility	PWS—Construction of well no. 3, transmission lines, finished water storage tank no. 1 and disinfection lines.

Consulting Engineer	Kerry A. Uhler Kerry A. Uhler & Associates 140 West High Street Bellefonte, PA 16823
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Permit to Construct	November 26, 2003
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Permit No. Minor Amendment—Construction. Public Water Supply.

Applicant	Clearfield Municipal Authority Jeffrey S. Williams, Manager 107 East Market Street Clearfield, PA 16830
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Township	Pike Township
County	Clearfield
Type of Facility	PWS—Change in primary coagulant chemical from alum to DeLPAC 2020 (polyaluminum chloride).

Consulting Engineer	Mark Glenn, P. E. Gwin, Dobson & Foreman 3121 Fairway Drive, Suite B Altoona, PA 16602-4475
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Permit to Construct	November 25, 2003
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Permit No. Minor Amendment—Operation. Public Water Supply.

Applicant	Clearfield Municipal Authority Jeffrey S. Williams, Manager 107 East Market Street Clearfield, PA 16830
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Township	Pike Township
County	Clearfield
Type of Facility	PWS—Change in primary coagulant chemical from alum to DeLPAC 2020 (polyaluminum chloride).

Consulting Engineer	Mark Glenn, P. E. Gwin, Dobson & Foreman 3121 Fairway Drive, Suite B Altoona, PA 16602-4475
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Permit to Operation	November 25, 2003
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Permit No. 1479502-T1. Public Water Supply.

Applicant	Pennsylvania American Water Company Paul A. Zielinski, Director of Water Quality 800 West Hersheypark Drive Hershey, PA 17033
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Township	Rush
County	Centre
Type of Facility	PWS—Transfer of the existing Sandy Ridge Water System.

Permit to Operation	November 25, 2003
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Permit No. 1481501-T1. Public Water Supply.

Applicant	Pennsylvania American Water Company Paul A. Zielinski, Director of Water Quality 800 West Hersheypark Drive Hershey, PA 17033
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Township	Rush
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County **Centre**
 Type of Facility PWS—Transfer of the existing
 Sandy Ridge Water System.
 Permit to Operation November 25, 2003

Permit No. Minor Amendment-T1. Public Water Supply.

Applicant **Pennsylvania American Water Company**
Paul A. Zielinski, Director of Water Quality
 800 West Hersheypark Drive
 Hershey, PA 17033

Township Rush
 County **Centre**
 Type of Facility PWS—Transfer of the existing
 Sandy Ridge Water System.
 Permit to Operation November 25, 2003

Permit No. Minor Amendment-T1. Public Water Supply.

Applicant **Pennsylvania American Water Company**
Paul A. Zielinski, Director of Water Quality
 800 West Hersheypark Drive
 Hershey, PA 17033

Township Rush
 County **Centre**
 Type of Facility PWS—Transfer of the existing
 Sandy Ridge Water System.
 Permit to Operate November 25, 2003

Permit No. 1493506-T1. Public Water Supply.

Applicant **Pennsylvania American Water Company**
Paul A. Zielinski, Director of Water Quality
 800 West Hersheypark Drive
 Hershey, PA 17033

Township Rush
 County **Centre**
 Type of Facility PWS—Transfer of the existing
 Sandy Ridge Water System.
 Permit to Operation November 25, 2003

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

UNDER ACT 2, 1995

PREAMBLE 2

The following final reports were submitted under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).

Provisions of Chapter 3 of the Land Recycling and Environmental Remediation Standards Act (act) require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* a notice of

submission of final reports. A final report is submitted to document cleanup of a release of a regulated substance at a site where one of the act's remediation standards. A final report provides a description of the site investigation to characterize the nature and extent of contaminants in environmental media, the basis for selecting the environmental media of concern, documentation supporting the selection of residential or nonresidential exposure factors, a description of the remediation performed and summaries of sampling analytical results which demonstrate that remediation has attained the cleanup standard selected.

For further information concerning a final report, contact the environmental cleanup program manager in the Department regional office after which the notice of receipt of a final report appears. If information concerning a final report is required in an alternative form, contact the community relations coordinator at the appropriate regional office. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following final reports:

Southeast Region: Environmental Cleanup Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.

Former Mrs. Paul's Kitchen Facility (Groundwater), Doylestown Borough, Bucks County. Ethan E. Prout, P. G., American Resource Consultants, Inc., P. O. Box 579, Quakertown, PA 18951, on behalf of Telford Industrial Development Authority, Pat Hunn, Esq., 119 Keystone Dr., Montgomeryville, PA 18936, has submitted a Final Report concerning remediation of site groundwater contaminated with chlorinated solvents. The report is intended to document remediation of the site to meet the Statewide Health Standards.

Brittany Square, New Britain Township, Bucks County. Christopher Orzechowski, RT Environmental Services, Inc., 215 W. Church Rd., King of Prussia, PA 19406, on behalf of Brittany Square LP, c/o Koller Kelly, LLC, 490 Norristown Rd., Suite 151, Blue Bell, PA 19422, has submitted a Remedial Investigation Report concerning the remediation of site soil and groundwater contaminated with chlorinated solvents.

Former Quaker Chemical Facility, Conshohocken Borough, Montgomery County. Christopher Orzechowski, RT Environmental Services, Inc., 215 W. Church Rd., King of Prussia, PA 19406, on behalf of Quaker Park Associates, LP, 1200 River Rd., Suite 1303, Conshohocken, PA, has submitted a Final Report concerning the remediation of site soil contaminated with PAH and site groundwater contaminated with heavy metals and VOCs. The report is intended to document remediation of the site to meet Statewide Health and Site-Specific Standards.

5601 Chestnut Street Site, City of Philadelphia, Philadelphia County. Bernard Beegle, Advanced GeoServices Corp., 1055 Andrew Drive, West Chester, PA 19380, on behalf of Chesmark Associates, LP, Patrick Burns, 5004 State Rd., P. O. Box 306, Drexel Hill, PA 19026, has submitted a Final Report concerning remediation of site soil contaminated with fuel oil no. 6 and leaded gasoline and site groundwater contaminated with leaded gasoline. The report is intended to document remediation of the site to meet the Statewide Health Standard.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

UNDER ACT 2, 1995

PREAMBLE 3

The Department has taken action on the following plans and reports under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).

Provisions of 25 Pa. Code § 250.8 and the administration of the Land Recycling and Environmental Remediation Standards Act (act) require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* a notice of its final actions on plans and reports. A final report is submitted to document cleanup of a release of a regulated substance at a site to one of the remediation standards of the act. A final report provides a description of the site investigation to characterize the nature and extent of contaminants in environmental media, the basis of selecting the environmental media of concern, documentation supporting the selection of residential or nonresidential exposure factors, a description of the remediation performed and summaries of sampling methodology and analytical results which demonstrate that the remediation has attained the cleanup standard selected. Plans and reports required by provisions of the act for compliance with selection of remediation to a Site-Specific Standard, in addition to a final report, include a remedial investigation report, risk assessment report and cleanup plan. A remedial investigation report includes conclusions from the site investigation, concentration of regulated substances in environmental media, benefits of refuse of the property and, in some circumstances, a fate and transport analysis. If required, a risk assessment report describes potential adverse effects caused by the presence of regulated substances. If required, a cleanup plan evaluates the abilities of potential remedies to achieve remedy requirements. A work plan for conducting a baseline remedial investigation is required by provisions of the act for compliance with selection of a special industrial area remediation. The baseline remedial investigation, based on the work plan, is compiled into the baseline environmental report to establish a reference point to show existing contamination, describe proposed remediation to be done and include a description of existing or potential public benefits of the use or reuse of the property. The Department may approve or disapprove plans and reports submitted. This notice provides the Department's decision and, if relevant, the basis for disapproval.

For further information concerning the plans and reports, contact the environmental cleanup program manager in the Department regional office after which the notice of the plan or report appears. If information concerning a final report is required in an alternative form, contact the community relations coordinator at the appropriate regional office. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following plans and reports:

Southeast Region: Environmental Cleanup Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.

Former ABAR Site (Groundwater), Northampton Township, Bucks County. Randy L. Shuler, ERM, 250

Phillips Blvd., Suite 280, Ewing, NJ 08618, on behalf of Dennis Duffy, Superior Group Inc., 3 Radnor Corp. Center, Suite 400, Radnor, PA 19087, has submitted a Remedial Investigation/Risk Assessment/Cleanup Plan Report concerning the remediation of site groundwater contaminated with chlorinated solvents, fuel oil no. 2, PAH and used motor oil. The report was approved by the Department on November 24, 2003.

Wycombe Railroad Station, Buckingham Township, Bucks County. Stephen W. Osborn, Merritt/Osborn, Inc., P. O. Box 299, 465 Crowell Rd., Chatham, MA 02633-0299, on behalf of Bucks County Railroad Preservation & Restoration Corp., 4613 Hughesian Dr., P. O. Box 413, Buckingham, PA, has submitted a Final Report concerning remediation of site soil contaminated with lead and heavy metals. The report demonstrated attainment of the Statewide Health Standard and was approved by the Department on November 26, 2003.

Main Street at Exton, West Whiteland Township, Chester County. Kevin J. Davis, P. E., Pennoni Associates, Inc., 3001 Market St., Philadelphia, PA 19104, has submitted a Final Report concerning remediation of site soil contaminated with heavy metals, solvents, BTEX, PHC and PAH; and groundwater contaminated with solvents, BTEX, PHC and PAH. The report demonstrated attainment of Site-Specific Standards and was approved by the Department on November 21, 2003.

Wawa, Inc. (Market No. 163), Yeadon Borough, Delaware County. Joseph W. Standen, Jr., Leggette, Brashears & Graham Inc., 426 Brandywine Parkway, West Chester, PA 19380, on behalf of Wawa Inc., 260 W. Baltimore Pike, Wawa, PA 19063, has submitted a Final Report Addendum No. 1, concerning remediation of site groundwater contaminated with BTEX. The report demonstrated attainment of the Statewide Health Standard and was approved by the Department on November 17, 2003.

Southwest Region: Environmental Cleanup Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

Greengate Mall (Former), Hempfield Township, Westmoreland County. Michael Riggins, Environmental Strategies Corporation, 300 Corporate Center Drive, Suite 200, Moon Township, PA 15108 (on behalf of Al Mers, Jr., Summix Development, 2127 Interbelt Business Center Drive, Suite 200, St. Louis, MO 63119 and Jim Henneberry, Ecosafe, Inc., 7616 Big Bend Boulevard, St. Louis, MO 63119) has submitted a Final Report concerning the remediation of site soil contaminated with lead, PAH and used motor oil. The Final Report demonstrated attainment of the Statewide Health Standard and was approved by the Department on November 27, 2003.

Sterling Packaging Corporation, City of Jeannette, Westmoreland County. David R. Perry, American Geosciences, Inc., 3925 Reed Boulevard, Suite 400, Murrysville, PA 15668-1848 (on behalf of Todd D. Brice, S & T Bank, 800 Philadelphia Street, Indiana, PA 15701 and Kenneth B. Schulman, Jeannette Packaging, LLC, 108 Main Street, Norwalk, CT 06851) has submitted Final Reports concerning remediation of the site soil and groundwater contaminated with inorganics and chlorinated solvents. The Final Reports demonstrate attainment of the Site-Specific and Statewide Health Standards and were approved by the Department on November 26, 2003.

**OPERATE WASTE PROCESSING OR DISPOSAL
AREA OR SITE**

Permit approved under the Solid Waste Management Act (35 P. S. §§ 6018.101–6018.1003), the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101–4000.1904) and regulations to operate solid waste processing or disposal area or site.

Southcentral Region: Regional Solid Waste Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

Permit No. 400683, Borough of Tyrone, 1100 Logan Avenue, Tyrone, PA 16686, Snyder Township, **Blair County**. The permit renewal is for the Borough of Tyrone WWTP Sewage Sludge Incinerator. The permit was approved by the Southcentral Regional Office on November 25, 2003.

Persons interested in reviewing the general permit may contact John Krueger, Program Manager, Waste Management Program, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4706. TDD users may contact the Department through the Pennsylvania Relay Service, (800) 654-5984.

Permit issued under the Solid Waste Management Act, the Municipal Waste Planning, Recycling and Waste Reduction Act and regulations to operate solid waste processing or disposal area or site.

Southwest Region: Regional Solid Waste Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

Permit ID No. 100419, CBF, Inc., Route 21, P. O. Box 266, McClellandtown, PA 15458. Operation of a municipal waste landfill in German Township, **Fayette County**. Permit modification to acknowledge the change of the permittee to Onyx Chestnut Valley, Inc. and the facility to Onyx Chestnut Valley Landfill. Modification issued in the Regional Office on December 2, 2003.

**MUNICIPAL AND RESIDUAL WASTE
TRANSPORTER AUTHORIZATION**

Issued applications for Municipal and Residual Waste Transporter Interim Authorization received under the Waste Transportation Safety Act (27 Pa.C.S. §§ 6201–6209) and regulations to transport municipal or residual waste.

Central Office: Bureau of Land Recycling and Waste Management, Division of Municipal and Residual Waste, P. O. Box 8472, Harrisburg, PA 17105-8472.

Nuzum Trucking Co., Inc., P. O. Box 38, Shinnston, WV 26431. Authorization No. WH2924. Effective November 18, 2003.

Triangle Refrigeration Co., 3200 Oregon Pike, Leola, PA 17640. Authorization No. WH5529. Effective November 24, 2003.

4 Aces 1 Inc., 29 Plaza 9, Suites A and B, Manalapan, NJ 07726. Authorization No. WH5533. Effective November 24, 2003.

San Joy Enterprise, 1475 Greensburg Rd., New Kensington, PA 15068. Authorization No. WH5566. Effective November 24, 2003.

Yvonne L. Johnson, 3682 Chartiers Ave., Pittsburgh, PA 15204. Authorization No. WH5567. Effective November 24, 2003.

Avery Belcher, 3273 Jasmine Ave., Akron, OH 44319. Authorization No. WH5569. Effective November 24, 2003.

Jarow Construction Co., Inc., 184 S. Livingston Ave., Livingston, NJ 07039. Authorization No. WH5570. Effective November 24, 2003.

Fred Trottie, 168 Main St., Easton, PA 18042. Authorization No. WH5571. Effective November 24, 2003.

Cutting Edge Installations, LLC, 1840 County Line Rd., Huntingdon Valley, PA 19006. Authorization No. WH5572. Effective November 24, 2003.

Sonoco Products Co., P. O. Box 4008, Williamsport, PA 17701. Authorization No. WH5575. Effective November 24, 2003.

Edwin P. Shaffer, 110 Cross St., South Fork, PA 15956. Authorization No. WH5576. Effective November 24, 2003.

Jermaine Cobb, 6340 Darlington Dr., Harrisburg, PA 17112. Authorization No. WH5577. Effective November 24, 2003.

John Angelotti, 3872 State Hwy. 198, Conneautville, PA 18406. Authorization No. WH5580. Effective November 24, 2003.

IMI & Son Trucking, P. O. Box 7133, Hackettstown, NJ 07840. Authorization No. WH5582. Effective November 24, 2003.

Julissa's Transport, Inc., 147 S. Prospect Ave., Hackensack, NJ 07601. Authorization No. WH5584. Effective November 24, 2003.

Action Plumbing, 42 N. Pine Ave., Maple Shade, NJ 08052. Authorization No. WH5585. Effective November 24, 2003.

R New Trucking, 819 Jefferson Ave., Portage, PA 15946. Authorization No. WH5586. Effective November 24, 2003.

Al Frantz Home Repair & Lawn Care, R. R. 3, Box 3362B, Stroudsburg, PA 18360. Authorization No. WH5587. Effective November 24, 2003.

Goetz Demolition Co., 649 Bingaman Rd., Orrtanna, PA 17353-9709. Authorization No. WH5588. Effective November 24, 2003.

Dennis Donayre, 34 Parkview Ave., Elmwood, NJ 07407. Authorization No. WH5589. Effective November 24, 2003.

Coop Enterprises, Inc., 53 Skunk Hill Rd., Hope Valley, RI 02832. Authorization No. WH5590. Effective November 24, 2003.

Luzerne County Road & Bridge Dept., 200 N. River St., Wilkes-Barre, PA 18711. Authorization No. WH5591. Effective November 24, 2003.

Douglas A. Garrity, P. O. Box 325, Sussex, NJ 07461. Authorization No. WH5593. Effective November 24, 2003.

Arnold Waste Disposal Inc., 215 Franklin Ave., Sea-side Heights, NJ 08751. Authorization No. WH5407. Effective November 25, 2003.

Centaurus Inc., 529 Parsonage Road, Edison, NJ 08837. Authorization No. WH5630. Effective November 25, 2003.

Feliks Bershadsky, 3311 Shore Parkway, Brooklyn, NY 11235. Authorization No. WH5631. Effective November 26, 2003.

Mate Vrtdusie, 442 Shore Dr., Oakdale, NY 11769. Authorization No. WH5632. Effective November 26, 2003.

Voluntarily terminated applications for Municipal and Residual Waste Transporter Interim Authorization received under the Waste Transportation Safety Act and regulations to transport municipal or residual waste.

Central Office: Bureau of Land Recycling and Waste Management, Division of Municipal and Residual Waste, P. O. Box 8472, Harrisburg, PA 17105-8472.

M. S. Carriers, P. O. Box 30788, 3171 Directors Row, Memphis, TN 38131. Authorization No. WH2988. Voluntarily terminated November 17, 2003.

AIR QUALITY

General Plan Approval and Operating Permit Usage Authorized under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127 to construct, modify, reactivate or operate air contamination sources and associated air cleaning devices.

Southeast Region: Air Quality Program, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428; Edward Brown, Facilities Permitting Chief, (610) 832-6242.

AQ-SE-0019: Reading Materials, Inc. (414 West Knowlton Road, Media, PA 19063) on December 1, 2003, to relocate and to operate their portable processing plant in Aston Township, **Delaware County**.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Yasmin Neidlinger, Facilities Permitting Chief, (717) 705-4702.

GP7-36-03083: Pemcor, Inc. (2100 State Road, Lancaster, PA 17601) on November 26, 2003, authorized to operate a sheetfed offset lithographic printing press under GP7 in East Hempfield Township, **Lancaster County**.

Plan Approvals Issued under the Air Pollution Control Act and regulations in 25 Pa. Code Chapter 127, Subchapter B relating to construction, modification and reactivation of air contamination sources and associated air cleaning devices.

Southeast Region: Air Quality Program, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428; Thomas McGinley, New Source Review Chief, (610) 832-6242.

46-0036I: Visteon Systems, LLC (2750 Morris Rd., Lansdale, PA 19446) on November 21, 2003, to operate a selective solder machines 12 and 13 in Worcester Township, **Montgomery County**.

46-0147: Chemalloy Co., Inc. (1301 Conshohocken Road, Conshohocken, PA 19428) on December 1, 2003, to operate ball mills and dust collectors in Plymouth Township, **Montgomery County**.

Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790; Mark Wejkszner, New Source Review Chief, (570) 826-2531.

54-310-028A: Lehig Asphalt Paving and Construction Co. (P. O. Box 549, Tamaqua, PA 18252) on November 21, 2003, to construct a VSI crusher and associated air cleaning device at their Andreas Quarry, West Penn Township, **Schuylkill County**.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Ronald Davis, New Source Review Chief, (717) 705-4702.

06-03029B: Yuasa Battery, Inc. (2900 Montrose Avenue, Reading, PA 19605) on November 25, 2003, to modify a lead/acid storage battery assembly line controlled by a fabric collector in the Borough of Laureldale, **Berks County**. The facility is subject to 40 CFR Part 60, Subpart KK—Standards of Performance for Lead-Acid Battery Manufacturing Plants.

06-05014C: Garden State Tanning Co. (16 South Franklin Street, Fleetwood, PA 19522) on November 21, 2003, to modify the no. 1 whole hide coating line by constructing a roll coater prior to the existing spray coater and oven in the Borough of Fleetwood, **Berks County**. This facility is subject to 40 CFR Part 63, Subpart TTTT—National Emission Standards for Hazardous Air Pollutants from Leather Coating.

67-03030B: Bickel's Snack Foods, Inc. (1120 Zinns Quarry Road, West Manchester, PA 17405) on November 26, 2003, to install two snack manufacturing lines controlled by fume hoods and demisters from their May and Grumbacher Roads plant in Manchester Township, **York County** to their Zinns Quarry Road plant in West Manchester Township, **York County**.

Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745; William Charlton, New Source Review Chief, (412) 442-4174.

32-00368B: TJS Mining, Inc. (R. D. 1, Box 260D, Shelocta, PA 15774) on November 21, 2003, to construct a coal screening plant at Rossmoyne No. 1 Mine in South Mahoning Township, **Indiana County**.

04-00059C: Koppel Steel Corp. (P. O. Box 750, Beaver Falls, PA 15010) on November 26, 2003, to determine the PSD and NSR applicability of emission increases resulting from previous modifications to their melt shop in Koppel Borough, **Beaver County**. This is a Title V facility.

Plan Approval Revisions Issued including Extensions, Minor Modifications and Transfers of Ownership under the Air Pollution Control Act and 25 Pa. Code §§ 127.13, 127.13a and 127.32.

Southeast Region: Air Quality Program, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428; Thomas McGinley, New Source Review Chief, (610) 832-6242.

15-0115: QVC, Inc. (1200 Wilson Drive, West Chester, PA 19380) on November 19, 2003, to operate two 12.55 mmBtu/hr gas/fuel boilers in West Goshen Township, **Chester County**.

15-0060B: SECCRA Landfill (219 West Street Road, West Grove, PA 19390) on December 1, 2003, to operate a landfill gas open flare in London Grove Township, **Chester County**.

46-322-007: Waste Management Services of PA Inc. (1425 Sell Rd., Pottstown, PA 19464) on December 8, 2003, to operate a municipal solid waste landfill in West Pottsgrove Township, **Montgomery County**.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Ronald Davis, New Source Review Chief, (717) 705-4702.

31-05011B: U. S. Silica Co. (P. O. Box 187, Berkeley Springs, WV 25411-0187) on October 25, 2001, to modify the bulk whole grain sand railroad loading and new

screen tower dust collectors at their Mapleton Depot Plant in Brady Township, **Huntingdon County**. This facility is subject to 40 CFR Part 60, Subpart OOO—Standards of Performance for Nonmetallic Mineral Processing Plants. This plan approval has been extended.

67-03028A: Dentsply International—Trubyte Division (570 West College Avenue, York, PA 17405-0872) on November 18, 2003, to construct a hard chromium electroplating unit controlled by a multistage mist eliminator in the City of York, **York County**. This facility is subject to 40 CFR Part 63, Subpart N—National Emission Standards for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks. This plan approval has been extended.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701; David Aldenderfer, Program Manager, (570) 327-3637.

17-305-046: P and N Coal Co., Inc. (240 West Mahoning Street, Punxsutawney, PA 15767) on November 19, 2003, to extend the authorization to operate a coal crushing, stockpiling and loading facility (Stiner No. 1 operation) on a temporary basis to March 18, 2004, in Goshen Township, **Clearfield County**. The plan approval has been extended.

14-00014A: Glenn O. Hawbaker, Inc. (711 East College Avenue, Bellefonte, PA 16823) on November 20, 2003, for the performance of NO_x, CO, VOCs and PM stack testing on a recycled/reprocessed oil-fired drum mix asphalt plant and associated air cleaning device (a fabric collector) to July 15, 2004, to defer the performance of NO_x, CO and VOCs stack testing on the same plant while firing no. 5 and no. 6 virgin fuel oil until 90 days after use of the respective fuels is commenced and to add a condition specifying the requirements of 25 Pa. Code § 127.13(b) in Spring Township, **Centre County**. The deadline has been extended.

55-00002A: Department of Public Welfare (Selinsgrove Center, 1000 US Highway 522, Selinsgrove, PA 17870) to extend the authorization to operate three coal-fired boilers and associated air cleaning device (a core separator) on a temporary basis to March 20, 2004, at the Selinsgrove Center in Penn Township, **Snyder County**. The plan approval has been extended.

14-313-041A: Rutgers Organics Corp. (201 Struble Road, State College, PA 16801) on November 21, 2003, to extend the authorization to operate a chemical process facility (ROC7-2000) and associated air cleaning devices (various condensers, two packed bed scrubbers and a regenerative thermal oxidizer) in College Township, **Centre County**. The plan approval has been extended.

Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745; William Charlton, New Source Review Chief, (412) 442-4174.

26-00536A: Custom Carbon Products, Inc. (2252 University Drive, Suite 500, Lemont Furnace, PA 15456-0180) on November 24, 2003, to allow the use of no. 2 fuel oil as a backup fuel at their facility in North Union Township, **Fayette County**. This is a modified plan approval.

30-00099A: Allegheny Energy Supply Co. (4350 Northern Pike, Monroeville, PA 15146-2841) on November 25, 2003, to construct a NO_x control at the Hatfield's Ferry Power Station in Monongahela Township, **Greene County**. This plan approval was extended.

Title V Operating Permits Issued under the Air Pollution Control Act and 25 Pa. Code Chapter 127, Subchapter G.

Southeast Region: Air Quality Program, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428; Edward Brown, Facilities Permitting Chief, (610) 832-6242.

09-00013: Wheelabrator Falls, Inc. (1201 New Ford Mill Road, Morrisville, PA 19067) on November 21, 2003, in Falls Township, **Bucks County**. This amendment is to finalize an appeal of the Title V Operating Permit and to address changes through a Minor Operating Permit Modification. Administrative Amendment of Title V Operating Permit issued under the Air Pollution Control Act and 25 Pa. Code § 127.462.

Operating Permits for Non-Title V Facilities Issued under the Air Pollution Control Act and 25 Pa. Code Chapter 127, Subchapter F.

Southeast Region: Air Quality Program, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428; Edward Brown, Facilities Permitting Chief, (610) 832-6242.

46-00024: McNeil Consumer and Specialty Pharmaceuticals (7050 Camp Hill Road, Fort Washington, PA 19034) on November 24, 2003, to operate a synthetic minor operating permit in Whitmarsh Township, **Montgomery County**.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Yasmin Neidlinger, Facilities Permitting Chief, (717) 705-4702.

01-05034: Trimen Industries, Inc. (1276 Red Hill Road, P. O. Box 309, New Oxford, PA 17350) on November 24, 2003, to operate a gray and ductile iron manufacturing facility in Oxford Township, **Adams County**.

22-03048: Reiff and Nestor Co. (P. O. Box 147, Lykens, PA 17048) on November 20, 2003, to operate their high-speed steel tap manufacturing facility in Lykens Borough, **Dauphin County**.

36-03056: Weaver Industries, Inc. (425 South Fourth Street, Denver, PA 17517) on November 24, 2003, to operate a graphite machining facility controlled by fabric collectors in Denver Borough, **Lancaster County**.

36-03107: Pennfield Corp. (1088 E Main Street, Mount Joy, PA 17552) on November 21, 2003, to operate a livestock feed plant in Mount Joy Borough, **Lancaster County**.

67-03007: Cooper Industries, Ltd. (3990 East Market Street, York, PA 17402) on November 25, 2003, to operate a chain manufacturing facility at their Campbell Chain Plant in Springettsbury Township, **York County**.

67-05102: Mid-Atlantic Cooperative Solutions Inc. (149 Bowman Road, York, PA 17404) on November 25, 2003, to operate their automated propane cylinder filling line at their facility in Jackson Township, **York County**.

Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745; Mark Wayner, Facilities Permitting Chief, (412) 442-4174.

65-00873: Pace Industries, Inc.—Airo Die Casting, Inc. (450 New Latrobe/Derry Road, Loyahanna, PA 15661) on November 20, 2003, to operate their main plant facility in Derry Township, **Westmoreland County**. The facility's major sources of emissions include five natural

gas fired aluminum melting furnaces, several shot blasting units, finishing operations and a wax coating spray booth.

26-00291: Uniontown Cremation Services, Inc. (542 Morgantown St., Uniontown, PA 15401) on November 24, 2003, for a State-only operating permit for a crematory in South Union Township, **Fayette County**.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481; Eric Gustafson, Facilities Permitting Chief, (814) 332-6940.

25-00969: Union Electric Steel Corp.—Erie Plant (1712 Greengarden Road, Erie, PA 16502) on November 24, 2003, Natural Minor Operating Permit issued for an electro-slag remelt operation that refines large steel ingots in the City of Erie, **Erie County**.

Operating Permit Revisions Issued including Administrative Amendments, Minor Modifications or Transfers of Ownership under the Air Pollution Control Act and 25 Pa. Code §§ 127.412, 127.450, 127.462 and 127.464.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Yasmin Neidlinger, Facilities Permitting Chief, (717) 705-4702.

07-05028: Cove Shoe Co. (107 Highland Street, Martinsburg, PA 16662) on November 20, 2003, to operate their facility in Martinsburg Borough, **Blair County**. The Title V Operating Permit was administratively amended to incorporate Plan Approval No. 07-05028A into the Title V permit. This is Revision No. 1 of the operating permit.

22-03057: Dayton Parts LLC (1300 North Cameron Street, Harrisburg, PA 17103) on November 21, 2003, to operate a steel spring manufacturing facility in the City of Harrisburg, **Dauphin County**. The State-only operating permit was amended to help clarify the tanks and related surface coating regulations found in the permit. This is Revision No. 1 of the operating permit.

ACTIONS ON COAL AND NONCOAL MINING ACTIVITY APPLICATIONS

Actions on applications under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. §§ 3301—3326); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66); and The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21). The final action on each application also constitutes action on the request for 401 Water Quality Certification and the NPDES permit application. Mining activity permits issued in response to the applications will also address the application permitting requirements of the following statutes: the Air Quality Control Act (35 P. S. §§ 4001—4015); the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27); and the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003).

Coal Permit Actions

California District Mining Office: 25 Technology Drive, California Technology Park, Coal Center, PA 15423, (724) 769-1100.

56971301. NPDES Permit No. PA0214973, GM&S Coal Corp. (P. O. Box 233, Jennerstown, PA 15547), to

revise the permit for the Geronimo Mine in Jenner Township, **Somerset County**, to add permit and subsidence control plan acres and an additional portal entry, Underground Acres Proposed 200.75, SCP Acres Proposed 200.75, no additional discharges. Permit issued November 24, 2003.

30020701. NPDES Permit No. PA0235482, Consol PA Coal Company (1800 Washington Road, Pittsburgh, PA 15241-1421), to operate the Bailey Central Mine Complex CRDA Nos. 3 and 4 in Richhill and Gray Townships, **Greene County**, new permit and NPDES discharge, Surface Acres Proposed 556.6, CRDP Support Acres Proposed 183.6, CRDP Refuse Disposal Acres Proposed 373.0, tributary to Enlow Fork (WWF). Permit issued November 25, 2003.

Knox District Mining Office: White Memorial Building, P. O. Box 669, Knox, PA 16232-0669, (814) 797-1191.

33970105 and NPDES No. PA0227447. Waroquier Coal Company (P. O. Box 128, Clearfield, PA 16830). Renewal of an existing bituminous strip operation in Washington Township, **Jefferson County**, affecting 84.0 acres. This renewal is issued for an additional 5-year term. Receiving streams: unnamed tributary to Fivemile Run and unnamed tributary to Horm Run to Mill Creek to Sandy Lick Creek to Redbank Creek to the Allegheny River. Application received July 17, 2003. Permit issued November 19, 2003.

33030103 and NPDES No. PA0242357. Ben Hal Mining Company (389 Irishtown Road, Grove City, PA 16127). Commencement, operation and restoration of a bituminous strip operation in Union Township, **Jefferson County**, affecting 11.5 acres. Receiving streams: unnamed tributary of Little Mill Creek to Little Mill Creek to Mill Creek to the Clarion River to the Allegheny River. Application received March 13, 2003. Permit issued November 21, 2003.

Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, (814) 472-1900.

32880107 and NPDES Permit No. PA0598305. Urey Coal Company (6015 Ferguson Road, Indiana, PA 15701), permit renewal for reclamation only and for continued restoration of a bituminous surface mine in Banks Township, **Indiana County**, affecting 133.3 acres. Receiving streams: unnamed tributary to Cush Creek (HQ-CWF) and unnamed tributary to South Branch Bear Run (CWF). There are no potable water supply intakes within 10 miles downstream. Application received October 24, 2003. Permits issued November 20, 2003.

32980108 and NPDES Permit No. PA0234826. Amerikohl Mining, Inc. (202 Sunset Drive, Butler, PA 16001), permit renewal for reclamation only and for continued restoration of a bituminous surface and auger mine in Center Township, **Indiana County**, affecting 149.8 acres. Receiving streams: three unnamed tributaries to Two Lick Creek (CWF). There are no potable water supply intakes within 10 miles downstream. Application received October 1, 2003. Permit issued November 20, 2003.

32980115 and NPDES Permit No. PA0234982, Amerikohl Mining, Inc. (202 Sunset Drive, Butler, PA 16001), permit renewal for reclamation only and for continued restoration of a bituminous surface, auger and coal ash beneficial use mine in Rayne Township and Ernest Borough, **Indiana County**, affecting 34.0 acres. Receiving streams: McKee Run (CWF). There are no

potable water supply intakes within 10 miles downstream. Application received November 12, 2003. Permit issued November 24, 2003.

56920111 and NPDES Permit No. PA0212245. AMFIRE Mining Company, LLC (One Energy Place, Latrobe, PA 15650), commencement, operation and restoration of a bituminous surface mine in permit renewal for reclamation only and for continued restoration of a bituminous surface, auger, coal refuse reprocessing, coal refuse disposal and coal preparation/processing facility mine in Jenner Township, **Somerset County**, affecting 80.0 acres. Receiving streams: unnamed tributary to Quemahoning Creek (CWF). The first downstream potable water supply intake from the point of discharge is Cambria Somerset Authority Quemahoning Surface Water Withdrawal. Application received September 23, 2003. Permit issued November 24, 2003.

17773075 and NPDES Permit No. PA0127949. Black Oak Development, Inc. (P. O. Box 176, Glen Campbell, PA 15742), permit renewal for reclamation only and for continued restoration of a bituminous surface mine in Banks, Bell and Burnside Townships, **Indiana and Clearfield Counties**, affecting 343.0 acres. Receiving streams: Martin Run and two unnamed tributaries to West Branch Susquehanna River to Susquehanna River (CWF). There are no potable water supply intakes within 10 miles downstream. Application received October 2, 2003. Permit issued November 24, 2003.

56703120 and NPDES Permit No. PA0607622. Jenners, Inc. (P. O. Box 171, Shelocta, PA 15774), permit revision to change the land use from cropland and forestland to wildlife habitat in Jenner Township, **Somerset County**, affecting 580.0 acres. Receiving streams: unnamed tributary to Hoffman Run to Hoffman Run; and to unnamed tributary to Quemahoning Creek and to Quemahoning Creek (CWF). The first downstream potable water supply intake from the point of discharge is Cambria Somerset Authority Quemahoning Surface Water Withdrawal. Application received October 1, 2003. Permit issued November 25, 2003.

Noncoal Permit Actions

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901-2454, (570) 621-3118.

58030826. Alfred Swanson (R. D. 2 Box 49A, Thompson, PA 18465), commencement, operation and restoration of a quarry operation in Thompson Township, **Susquehanna County** affecting 5.0 acres, receiving stream: none. Application received September 23, 2003. Permit issued November 26, 2003.

7973SM3C7 and NPDES Permit No. PA0594369. Miller Quarries, Inc. (P. O. Box 161, Warminster, PA 18974), renewal of NPDES Permit for discharge of treated mine drainage in Wrightstown Township, **Bucks County**, receiving stream: Mill Creek. Application received October 14, 2003. Renewal issued December 1, 2003.

01870301T2 and NPDES Permit No. PA0593931. Vulcan Construction Materials, LLC (P. O. Box 4239 Winston-Salem, NC 27115-4239), transfer of an existing quarry operation and renewal of NPDES Permit for discharge of treated mine drainage in Oxford, Conewago and Berwick Townships, **Adams County**, affecting 1,292.7 acres, receiving streams: North Stream, Slagle Run and Conewago Creek. Applications received January 17, 2003. Transfer and Renewal issued December 1, 2003.

Greensburg District Mining Office: Armbrust Building, R. R. 2 Box 603-C, Greensburg, PA 15601-0982, (724) 925-5500.

NPDES Permit No. PA 0202851. Kaiser Refractories (R. R. 1, Box 35, Ohiopyle, PA 15470-9616). Renewal of NPDES for a noncoal surface mine in Stewart Township, **Fayette County**, affecting 38 acres. Receiving streams: Laurel Run and an unnamed tributary to Laurel Run. Renewal application received September 19, 2003. Renewal permit issued November 20, 2003.

ACTIONS ON BLASTING ACTIVITY APPLICATIONS

Actions on applications under the Explosives Acts of 1937 and 1957 (73 P. S. §§ 151—161) and 25 Pa. Code § 211.124. Blasting activity performed as part of a coal or noncoal mining activity will be regulated by the mining permit for that coal or noncoal mining activity.

Blasting Permit Actions

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901-2454, (570) 621-3118.

48034035. Schlouch, Inc. (Excelsior Industrial Park, P. O. Box 69, Blandon, PA 19510), construction blasting at PFK Mark 3 (Bethlehem Contracting) in East Allen Township, **Northampton County** with an expiration date of December 2, 2007. Permit issued November 20, 2003.

40034036. Schlouch, Inc. (Excelsior Industrial Park, P. O. Box 69, Blandon, PA 19510), construction blasting at Sand Springs Housing in Butler Township, **Luzerne County**, with an expiration date of December 31, 2004. Permit issued November 20, 2003.

67034074. ABEL Construction Co., Inc. (3925 Columbia Avenue, Mountville, PA 17554), construction blasting at The Hunt Club/Phase 3 in York Township, **York County**, with an expiration date of June 10, 2004. Permit issued November 20, 2003.

09034028. AMROC, Inc. (7531 Chestnut Street, Zionsville, PA 18092), construction blasting for Bluestone Creek Pump Station in Warrington Township, **Bucks County**, with an expiration date of December 31, 2003. Permit issued November 21, 2003.

15034043. Explo-Craft, Inc. (P. O. Box 1332, West Chester, PA 19380), construction blasting for Philadelphia Suburban Water Company in Honeybrook Township, **Chester County**, with an expiration date of December 10, 2004. Permit issued November 21, 2003.

15034044. Allan A. Myers, Inc. (P. O. Box 98, Worcester, PA 19490), construction blasting for Quarry Ridge—Business Complex in East Whiteland Township, **Chester County**, with an expiration date of November 10, 2005. Permit issued November 21, 2003.

21034063. Hall Explosives, Inc. (2981 Elizabethtown Road, Hershey, PA 17033), construction blasting for Fallowfield Road in Hampden Township, **Cumberland County**, with an expiration date of September 6, 2004. Permit issued November 21, 2003.

21034064. Hall Explosives, Inc. (2981 Elizabethtown Road, Hershey, PA 17033), construction blasting in Silver Spring Township, **Cumberland County**, with an expiration date of March 6, 2004. Permit issued November 21, 2003.

21034065. Hall Explosives, Inc. (2981 Elizabethtown Road, Hershey, PA 17033), construction blasting in Silver Spring Township, **Cumberland County**, with an expiration date of June 6, 2004. Permit issued November 21, 2003.

28034039. Charles E. Brake, Inc. (6450 Lincoln Way West, P. O. Box 275, St. Thomas, PA 17252), construction blast for Edensville Sewer Treatment Facility in Edensville Borough and St. Thomas Township, **Franklin County**, with an expiration date of August 16, 2004. Permit issued November 21, 2003.

360340114. Keystone Blasting Service (381 Reifsnnyder Road, Lititz, PA 17543), construction blasting in Earl Township, **Lancaster County**, with an expiration date of March 10, 2004. Permit issued November 21, 2003.

360340115. ABEL Construction Co., Inc. (3925 Columbia Avenue, Mountville, PA 17554), construction blasting for Meadows of Highland in East Lampeter Township, **Lancaster County**, with an expiration date of August 16, 2004.

40034037. Hayduk Enterprises, Inc. (P. O. Box 554, Dalton, PA 18414), construction blasting in Hunlock Township, **Luzerne County**, with an expiration date of February 28, 2004. Permit issued November 21, 2003.

47034002. Franzosa Trucking Co., Inc. (1037 Peace Street, Hazleton, PA 18201) and **DC Guelich Explosives**, construction blasting for Route 642 Sewer Project in Valley Township, **Montour County**, with an expiration date of November 30, 2004. Permit issued November 21, 2003.

48034036. Labrador Construction (P. O. Box 1379, Marshalls Creek, PA 18335), construction blasting for Colts Run Development in Lower Nazareth Township, **Northampton County**, with an expiration date of April 1, 2004. Permit issued November 21, 2003.

38034028. Brubacher Excavating, Inc. (P. O. Box 528, 825 Reading Road, Bowmansville, PA 17507), construction blasting for Weaber Logging in South Annville Township, **Lebanon County**, with an expiration date of December 21, 2008. Permit issued November 25, 2003.

40034038. Mericle Construction, Inc. (100 Baltimore Drive, Wilkes-Barre, PA 18702), construction blasting for Spec. Industrial Buildings in Pittston Township, **Luzerne County**, with an expiration date of November 30, 2004. Permit issued November 25, 2003.

40034039. Mericle Construction, Inc. (100 Baltimore Drive, Wilkes-Barre, PA 18702), construction blasting for Hanover Crossings in Hanover Township, **Luzerne County**, with an expiration date of December 1, 2004. Permit issued November 25, 2003.

48034037. Labrador Construction (P. O. Box 1379, Marshalls Creek, PA 18335) and **Austin Powder Company** (559 Nor-Bath Boulevard, Northampton, PA 18067), construction blasting at Logistics Center/New Truck Terminal in Hanover Township, **Northampton County** with an expiration date of August 31, 2004. Permit issued December 1, 2003.

46034051. Brubacher Excavating, Inc. (P. O. Box 528, 825 Reading Road, Bowmansville, PA 17507), construction blasting at Heritage Hunt Project in Skippack Township, **Montgomery County**, with an expiration date of December 21, 2006. Permit issued December 1, 2003.

64034017. Explosive Services, Inc. (7 Pine Street, Bethany, PA 18431), construction blasting at WIDCO Industrial Park in Texas Township, **Wayne County**, with an expiration date of October 29, 2004. Permit issued December 1, 2003.

45034051. Explosive Services, Inc. (7 Pine Street, Bethany, PA 18431), construction blasting at Lot No. 22 Skyline Park/Section 2 in Mt. Pocono Borough, **Monroe County**, with an expiration date of October 28, 2004. Permit issued December 1, 2003.

Persons aggrieved by an action may appeal, under section 4 of the Environmental Hearing Board Act (35 P. S. § 7514) and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law), to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users may contact the Environmental Hearing Board (Board) through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin*, unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary of the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decision law.

For individuals who wish to challenge an action, appeals must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

Project Proposals Issued

Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, (814) 472-1900.

EGS No. 56005. Wells Creek Watershed Association, 1019 Pompey Hill Road, Stoystown, PA 15563. A water pollution abatement project to construct a passive abandoned mine drainage treatment system on 2.2 acres of the Betty R. Brown property 1 mile northeast of Listie on the east side of T-575 in Somerset Township, **Somerset County**. Wells Creek is the receiving stream for this Adams Station Discharge No. 6 Project Proposal. Project received September 12, 2003. Project issued November 20, 2003.

FEDERAL WATER POLLUTION CONTROL ACT SECTION 401

The Department of Environmental Protection (Department) has taken the following actions on previously received permit applications, requests for Environmental Assessment approval and requests for Water Quality Certification under section 401 of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C.A. § 1341).

Except as otherwise noted, the Department has granted 401 Water Quality Certification certifying that the construction and operation described will comply with the applicable provisions of sections 301-303, 306 and 307 of the FWPCA (33 U.S.C.A. §§ 1311—1313, 1316 and 1317) and that the construction will not violate applicable Federal and State water quality standards.

Persons aggrieved by an action may appeal, under section 4 of the Environmental Hearing Board Act (35 P. S. § 7514) and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law), to the

Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users may contact the Environmental Hearing Board (Board) through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin*, unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary of the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decision law.

For individuals who wish to challenge an action, appeals must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

Actions on applications for the following activities filed under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27), section 302 of the Flood Plain Management Act (32 P. S. § 679.302) and The Clean Streams Law (35 §§ 691.1—691.702) and Notice of Final Action for Certification under section 401 of the FWPCA (33 U.S.C.A. § 1341).

Permits, Environmental Assessments and 401 Water Quality Certifications Issued

WATER OBSTRUCTIONS AND ENCROACHMENTS

Northeast Region: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

E39-419. William C. Reiss, 430 East Main Street, Macungie, PA 18062-1713. Macungie Borough, **Lehigh County**, Army Corps of Engineers Philadelphia District.

To construct and maintain a 32-inch by 46-inch outfall pipe with a rock apron and to maintain an existing 24-inch diameter outfall pipe with a rock apron in the floodway of Swabia Creek (HQ-CWF). The project is approximately 600 feet upstream of Swabia Creek's intersection with SR 0100 (Main Street) (Allentown West, PA Quadrangle N: 2.85 inches; W: 9.05 inches) (Subbasin: 2C).

E35-366. Karf, LLC, 1000 Greenbriar Drive, Clarks Summit, PA 18411. Clarks Summit Borough, **Lackawanna County**, Army Corps of Engineers Baltimore District, Subbasin 5-A.

To construct and maintain a commercial building in approximately 1,300 square feet of the floodway of a tributary to Leggetts Creek (perennial, CWF). The project is on the northeast side of Routes 6 and 11, approximately 0.4 mile southeast of its intersection with SR 0407 (Grove Street) (Scranton, PA Quadrangle N: 20.4 inches; W: 9.7 inches). The project proposes to directly affect approximately 0.36 acre of floodway.

Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

E22-458: Lower Paxton Township, 75 South Houcks Road, Harrisburg, PA 17109 and **West Hanover Township**, 1717 Allentown Boulevard, Harrisburg, PA 17112 in

Lower Paxton and West Hanover Townships, **Dauphin County**, ACOE Baltimore District.

To: (1) place and maintain 0.60 acre of fill in wetlands associated with Beaver Creek (WWF) and its unnamed tributaries; (2) remove the Piketown Road single-span bridge over Beaver Creek and restore and stabilize the stream banks; (3) install and maintain three outfalls to Beaver Creek and its unnamed tributaries in accordance with the conditions of General Permit No. 4; and (4) excavate and regrade the old Piketown Road roadbed, all within the floodplain of Beaver Creek along the existing Piketown Road (Harrisburg East, PA Quadrangle N: 18.4 inches; W: 1.5 inches) in Lower Paxton and West Hanover Townships, Dauphin County. The permittees are required to provide a minimum of 0.60 acre of replacement wetlands.

E22-449: Central Dauphin School District, 600 Rutherford Road, Harrisburg, PA 17109 in Lower Paxton and West Hanover Townships, **Dauphin County**, ACOE Baltimore District.

To place fill 0.38 acre of wetlands and to construct and maintain four utility line crossings, temporarily impacting 0.002 acre of wetland, all adjacent to Beaver Creek (WWF), at a point near the intersection of Piketown Road and Linglestown Road for the purpose of constructing the new Central Dauphin High School complex (Harrisburg East, PA Quadrangle N: 18.4 inches; W: 1.2 inches) in Lower Paxton and West Hanover Townships, Dauphin County. The permittee is responsible for providing 0.49 acre of replacement wetlands.

E36-750: D. R. Horton, Inc., 20 Gibson Place, Freehold, NJ 07728 in East Hempfield Township, **Lancaster County**, ACOE Baltimore District.

To construct and maintain: (1) a three-span concrete arch bridge, each span having a 36.0-foot clear span and 8.0-foot rise and an in-stream length of 36 feet; (2) an 8-inch water supply line crossing; (3) an 8-inch sewage collection line and five 8-inch sewer line connections to existing collection lines; and (4) two pedestrian ford crossings all to be approximately 1,000 feet east of the intersection of SR 741 and McGovernville Road (Lancaster, PA Quadrangle N: 12.7 inches; W: 16.0 inches) in East Hempfield Township, Lancaster County.

E50-214: Penn Township Municipal Authority, 102 Municipal Building Road, Duncannon, PA 17020 in Penn Township, **Perry County**, ACOE Baltimore District.

To install and maintain: (1) 3,100 linear feet of 1.5-inch PVC sewer piping to be within the 100-year floodplain of the Susquehanna River; and (2) six crossings of unnamed tributaries to the Susquehanna River (WWF) within the Cove and Perdix Villages (Harrisburg West and Wertzville, PA Quadrangles N: 19.0 inches and 19.2 inches; W: 15.0 inches and 0.6 inch, respectively) in Penn Township, Perry County.

E22-465: Troy L. and Linda D. Page, 7733 Althea Avenue, Harrisburg, PA 17112 in West Hanover Township, **Dauphin County**, ACOE Baltimore District.

To excavate 0.01 acre of wetlands associated with an unnamed tributary to Beaver Creek (WWF) for the purpose of constructing a swimming pool at 7733 Althea Avenue (Hershey, PA Quadrangle N: 14.85 inches; W: 13.40 inches) in West Hanover Township, Dauphin County.

E44-124: Derry Township Board of Supervisors, 15 West Mill Street, P. O. Box 445, Yeagertown, PA 17099 in Derry Township, **Mifflin County**, ACOE Baltimore District.

To remove the existing structure and then to construct and maintain a new bridge with a single clear span of 30 feet on a 75-degree skew with a minimum underclearance of 3.2 feet across Hungry Run (TSF) on T-430 (North Ridge Street) (Burnham, PA Quadrangle N: 2.9 inches; W: 8.0 inches) in Burnham Borough and Derry Township, Mifflin County.

E50-216: John Adams, R. R. 2, Box 622, New Bloomfield, PA 17068 in Centre Township, **Perry County**, ACOE Baltimore District.

To install and maintain a 20-foot wide bridge with a span of 10 feet and an underclearance of 2.5 feet across the Little Juniata Creek (CWF), approximately 1,000 feet south of Route 274 (Newport, PA Quadrangle N: 5.78 inches; W: 13.2 inches) in Centre Township, Perry County.

E67-728: Dennis McWilliams, 8495 Reynolds Mill Road, Seven Valleys, PA 17360 in North Hopewell and Chanceford Townships, **York County**, ACOE Baltimore District.

To construct and maintain a 12-foot wide by 189-foot long three-pier bridge across the North Branch of Muddy Creek (CWF) downstream of the confluence of Pine Run (Stewartstown, PA Quadrangle N: 18.1 inches; W: 8.35 inches) in North Hopewell and Chanceford Townships, York County.

Northcentral Region: Water Management Program Manager, 208 West Third Street, Williamsport, PA 17701.

E14-453. Department of Transportation, Engineering District 2-0, 1924-30 Daisy Street, Clearfield, PA 16830. SR 0026 Section 134 Slab Cabin Run culvert replacement in Ferguson Township, **Centre County**, ACOE Susquehanna River Basin District (Pine Grove Mills, PA Quadrangle N: 20.8 inches; W: 0.6 inch).

To construct and maintain a total of 288 feet (two pipes) of 36-inch reinforced concrete pipe in Slab Cabin Run 0.5 mile northwest of the intersection of SR 0026 and SR 0045 along SR 0026 in Ferguson Township, Centre County. This project proposes to have a minimal impact on Slab Cabin Run (CWF). This project does not propose to impact any jurisdictional wetlands. This permit was issued under section 105.13(e) "Small Projects." This permit also includes 401 Water Quality Certification.

E17-385. City of DuBois, P. O., Box 408, DuBois, PA 15801. Interstate 80 Spill Containment Facility-Anderson Creek in Union Township, **Clearfield County**, ACOE Baltimore District (Elliot Park, PA Quadrangle N: 22.0 inches; W: 16.0 inches).

To construct, operate and maintain a spill collection and containment facility requiring encroachment and obstruction of Anderson Creek for the protection of the public water supply for the City of DuBois. The spill containment facility and its appurtenances in, along and across Anderson Creek shall be limited to six spill-boom structures, four containment ponds and a permanent single-span access bridge that are as follows:

Structure	Latitude	Longitude
Spill Boom 1	41° 06' 45.1"	78° 37' 52.2"
Spill Boom 3	41° 06' 48.7"	78° 37' 29.8"
Spill Boom 4	41° 07' 10.9"	78° 37' 01.58"
Spill Boom 5	41° 07' 29.0"	78° 36' 49.2"
Spill Boom 6	41° 07' 28.9"	78° 36' 48.9"
Southeast Pond 1	41° 07' 17.3"	78° 36' 59.3"
Southeast Pond 2	41° 07' 17.1"	78° 36' 58.4"
Northwest Pond 1	41° 07' 19.6"	78° 37' 05.5"

Structure	Latitude	Longitude
Northeast Pond 1	41° 07' 20.9"	78° 36' 58.3"
Single-Span Bridge	41° 07' 22.5"	78° 36' 57.0"

The bridge shall be constructed, operated and maintained with a minimum span of 50 feet, width of 10 feet and underclearance of 3 feet. All bridge and spill boom construction and its repair shall be conducted at stream low flow. Since Anderson Creek is a wild trout fishery, no project construction or future repair work shall be completed in or along the stream channel between October 1 and April 1 without prior written authorization from the Fish and Boat Commission. This permit does not authorize any temporary or permanent impact to wetlands and the permittee shall ensure all precautionary measures are taken to avoid any wetland impact during construction, operation and maintenance of the spill containment facilities, appurtenances and its access roads. The project is along the right-of-way of the eastbound and westbound lanes of SR 0080 at the overpass that carries SR 0080 over Anderson Creek Road. This permit also authorizes the construction, operation, maintenance and removal of temporary construction crossing of Blanchard Run, which shall be constructed with clean rock free of silt and fines. Upon completion of southeast containment ponds, the temporary crossing of Blanchard Run shall be removed, the stream bank restored to original contours and elevations and all final stabilization applied. Bridge and temporary road crossings shall be constructed during stream low flow conditions.

E17-386. Department of Transportation, Engineering District 2-0, P. O. Box 342, Clearfield, PA 16830. SR 0219, Section 229 Bridge Replacement in the City of DuBois and Sandy Township Clearfield County, ACOE Pittsburgh District (Falls Creek, PA Quadrangle N: 0.9 inch; W: 4.8 inches).

To realign 90 feet of Clear Run channel, remove two existing bridges and construct, operate and maintain a single-span concrete adjacent box beam bridge to carry SR 0219, Section 229 across Clear Run to improve public highway safety. The prestressed concrete bridge shall be constructed with a minimum normal span of 32.8 feet, underclearance of 4.4 feet and skew of 83 degrees. The realignment of Clear Run shall be limited to 70 feet upstream and 20 feet downstream of the Section 229 bridge. Realignment of the channel shall be in smooth transition between existing and proposed sections of the relocation with a minimum side slope of 2 feet horizontal to 1 foot vertical. The project is on SR 0219 approximately 1.1 mile east of SR 0830 and SR 0219 intersection. This permit does not authorize any temporary or permanent wetland impacts. This permit was issued under section 105.13(e) "Small Projects." This permit also includes 401 Water Quality Certification.

Southwest Region: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

E02-1432. Turnpike Commission, P. O. Box 67676, Harrisburg, PA 17106. Findlay Connector in Findlay Township, **Allegheny County**, Pittsburgh ACOE District. To permanently place and maintain fill in 0.82 acre of PEM wetlands for the purpose of constructing 1.20 miles of new four-lane, limited access toll road known as the Findlay Connector (SR 0576), Section 54C including construction of entrance and exit ramps at the Bald Knob Road Interchange, 0.26 mile of improvements to Burgettstown Road (SR 3078) and construction of 0.51 mile of Country Hollow Road. The project is at the intersection of Bald Knob Road (T-439) and Burgettstown

Road (Clinton, PA Quadrangle begins N: 14.7 inches; W: 7.7 inches and Ends N: 11.7 inches; W: 8.9 inches). To compensate for the wetland impacts, the applicant is proposing creation of 0.82 acre of replacement wetlands in the Raredon Run Watershed.

E65-811. Rostraver Township Commissioners, Rostraver Township Municipal Building, 201 Port Royal Road, Belle Vernon, PA 15012. Speers Run Box Culvert in Rostraver Township, **Westmoreland County**, Pittsburgh ACOE District. To remove the existing structure and to construct and maintain a 49-foot long, 20-foot wide by 7-foot high concrete box culvert with baffles and 1-foot depressed invert in Speers Run (WWF). The project includes construction of rock riprap at the structures approaches and is on Finley Road at a point approximately 0.5 mile west of SR 201 (Donora, PA Quadrangle N: 1.66 inches; W: 14.29 inches).

ENVIRONMENTAL ASSESSMENTS

Cambria District: Environmental Program Manager, 286 Industrial Pk. Rd., Ebensburg, PA 15931-4119.

EA5609-001. Department of Environmental Protection, Bureau of Abandoned Mine Reclamation, Cambria Office, 286 Industrial Park Rd., Ebensburg, PA 15931. Abandoned Mine Land Reclamation Project in Somerset Township, **Somerset County**, Pittsburgh ACOE District. The applicant (revised application) proposes to backfill an abandoned surface mine, which

includes a 1,400-foot long dangerous highwall. The project will include the backfilling of (1) 0.46 acre of PEM wetland and the removal of sediment from 210 feet of stream channel. The sediment removal will impact an additional (2) 0.04 acre of PEM wetland, (3) 0.50 acre of PEM replacement wetland will be constructed as part of the reclamation. The project will directly impact 0.50 acre of wetland. Wetland creation of 0.50 acre is proposed to compensate for wetland impacts (Somerset Quadrangle N: 1.0 inch; W: 1.6 inches).

SPECIAL NOTICES

Certification to Perform Radon-Related Activities in this Commonwealth

In the month of November 2003, the Department of Environmental Protection, under the Radon Certification Act (63 P. S. §§ 2001—2014) and regulations promulgated thereunder at 25 Pa. Code Chapter 240, has certified the following persons to perform radon-related activities in this Commonwealth. The period of certification is 2 years. For a complete list of persons currently certified to perform radon-related activities in this Commonwealth and for information as to the specific testing devices that persons certified for testing or laboratory are certified to use, contact the Bureau of Radiation Protection, Radon Division, P. O. Box 8469, Harrisburg, PA 17105-8469, (800) 23RADON.

<i>Name</i>	<i>Address</i>	<i>Type of Certification</i>
Chad Albright	3810 Broad Avenue Altoona, PA 16601	Mitigation
All Systems Inspections	P. O. Box 191 117 West Ridge Centre Hall, PA 16828	Testing
Robert Anderson Radon Protection Services	282 Longstreet Drive Gettysburg, PA 17325	Mitigation
Keith Carpenter	117 Stoneybrook Lane Johnstown, PA 15904	Mitigation
Kent Christel	P. O. Box 13661 Reading, PA 19612	Testing
Alan Cross	111 Ingleside Avenue Pennington, NJ 08534	Testing
Michael Cush	P. O. Box 273 Gilbert, PA 18331	Testing
Steve Gorman Mason Dixon Home Inspection Services, Inc.	282 Longstreet Drive Gettysburg, PA 17325	Testing
David Grammer RAdata, Inc.	27 Ironia Road, Unit 2 Flanders, NJ 07836	Laboratory
Joseph Hagarty	1513 Woodland Road West Chester, PA 19382	Testing
Donald Hart	R. R. 2, Box 46A Sunbury, PA 17801	Testing and Mitigation
Gerald Highberger	209 Paul Drive Moorestown, NJ 08057	Testing
Juan Lluna-Garces	1324 Crestmont Drive Downingtown, PA 19335	Testing and Mitigation
Mid-State Inspection Service	P. O. Box 70 Bellwood, PA 16617	Testing
Michael Miller	115 Alana Drive Saxonburg, PA 16056	Mitigation

<i>Name</i>	<i>Address</i>	<i>Type of Certification</i>
Thomas Murphy	1323 Loblolly Street Trevose, PA 19053	Testing
Stephen Notwick	27 Jasmine Road Levittown, PA 19056	Testing
Randolph Ragland, Jr.	145 Derr Drive Collegeville, PA 19426	Testing
Jeffrey Remas	103 Columbia Avenue Clarks Summit, PA 18411	Testing
Thomas Sebald	603 Maryland Avenue Erie, PA 16505	Testing
Thomas Shusko Charles Plus Company	11 Sheldon Avenue Fairchance, PA 15451	Testing
Malcolm Whipkey	1934 Overland Court Allison Park, PA 15101	Testing

[Pa.B. Doc. No. 03-2360. Filed for public inspection December 12, 2003, 9:00 a.m.]

Request for Applications for Watershed Restoration and Protection Grants through the Growing Greener Program

As part of the Department of Environmental Protection's (Department) 2004 Growing Greener Program, applications are now being accepted for watershed protection and restoration grants.

In 2004, the Department plans to invest more than \$20 million in a variety of watershed projects including: organizing watershed groups; watershed assessments and development of watershed restoration and protection plans; implementation of watershed restoration or protection projects; operation, maintenance and repair; technical assistance; education and outreach programs; reclaiming abandoned mines and oil and gas wells; and addressing acid mine drainage polluted streams.

Through the same application, applicants can apply for additional funding through the Department's source water protection and flood protection grant programs. Source water protection grants are available to water suppliers and municipalities to develop and implement local source water protection programs for the protection of community drinking water sources. Flood protection grants are for communities that operate and maintain State and Federal flood protection projects.

The deadline for submitting applications for all three grant programs to the Grants Center is March 5, 2004. Applications must be postmarked by March 5, 2004. If hand delivered to the Grants Center, the package must be received by 4:30 p.m. on March 5, 2004. Late submissions will not be considered.

To provide personalized assistance in answering questions about the Growing Greener Program, the Department is sponsoring a series of grants fairs throughout this Commonwealth. The grants fairs will provide not only valuable Growing Greener Program support, they will also provide the opportunity to explore other grant programs offered through the Department and other sources. These sessions provide an opportunity to talk one-on-one to staff involved in grants for the Growing Greener Program and other environmental related grants

programs. Grants fairs will be offered on each of the following dates, times and locations:

Tuesday, January 6, 2004
3 p.m. to 6 p.m.

Northcentral Regional Office
Goddard Room
Williamsport, Lycoming County

Wednesday, January 7, 2004
1 p.m. to 6 p.m.

Northwest Regional Office
Meadville, Crawford County

Wednesday, January 7, 2004
1 p.m. to 4 p.m.

Southeast Regional Office
Lee Park Building
Conshohocken, Montgomery County

Thursday, January 8, 2004
1 p.m. to 5 p.m.

Northeast Regional Office
Wilkes-Barre, Luzerne County

Thursday, January 8, 2004
1 p.m. to 4 p.m.

Westmoreland Conservation District
Barn
Greensburg, Westmoreland County

Thursday, January 15, 2004
1 p.m. to 4 p.m.

Southcentral Regional Office
Harrisburg, Dauphin County

To request or download an application or to obtain more information concerning the Growing Greener Program, visit the Growing Greener Program website at www.GrowingGreener.org, e-mail GrowingGreener@state.pa.us or contact the Grants Center at (877) PAGREEN or (717) 705-5400. Written correspondence should be addressed to DEP Grants Center, 15th Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8776, Harrisburg, PA 17105-8776.

KATHLEEN A. MCGINTY,
Secretary

[Pa.B. Doc. No. 03-2361. Filed for public inspection December 12, 2003, 9:00 a.m.]

DEPARTMENT OF HEALTH

Availability of Title V Funds through Mini-Grants to Support Elimination of Barriers to Community Inclusion for Children/Youth with Special Health Care Needs

The Bureau of Family Health (Bureau) is accepting mini-grant applications regarding eliminating barriers to community inclusion. Mini-grants are available to support activities that directly address physical, environmental and informational barriers allowing community organizations, businesses, places of worship and schools to be more inclusive of children with special health care needs. This pilot project is an extension of the Bureau's Building Inclusive Communities for Children/Youth with Special Health Care Needs Mini-Grant Initiative (initiative), which offers financial support for educational endeavors addressing community inclusion. Barrier Elimination Pilot Project (project) funds will be used to advance this work by financially supporting the elimination of tangible barriers to inclusion.

For purposes of this funding opportunity, "children with special health care needs" are defined as those age birth to 21 years of age who have a chronic physical, developmental, behavioral or emotional condition requiring services of a type or amount beyond that required by children generally.

The project is designed to empower communities by providing financial support for activities that either remove or significantly reduce obstacles that children and youth with special health care needs and their families confront as they seek to participate fully and productively in their communities. These include barriers to self-care, receptive/expressive communication, learning, mobility, access to service, recreation, academics, spiritual practice, volunteerism, employment and economic self-sufficiency. The ultimate goal of the project is to build social capital by assisting communities to be fully accessible and inclusive and, consequently, allow for the full integration of children with special health care needs in all aspects of community life. Project funds must be used to reimburse purchases and activities occurring prior to June 30, 2004.

Eligible applicants are public and private organizations, foundations or community-based agencies in this Commonwealth as recognized by a Federal Tax ID number. Individuals may not apply. Applicants may include, but are not limited to, day care centers and child care providers, medical/dental providers, educational providers, youth groups, community planners, places of worship/

congregations, community groups/civic clubs, entertainment/recreation/play providers, potential employers/businesses, professional associations/organizations and libraries.

Applicants may apply for funding to cover multiple purchases/activities, not to exceed \$3,000 cumulatively per grant period when combined with any funding awards received through the Bureau's initiative for the same grant period.

Eligible expenses fall within the following categories: equipment, assistive technology/communication devices, site/facility improvements, environment/curriculum and technology, as described in the application materials.

To apply for funding, a complete application must be received by the Department of Health (Department) by 4:30 p.m. on February 13, 2004. All funding decisions are contingent upon the availability of 2003 fiscal year funds and Department approval from an independent review panel. Approval will be based upon pre-established rating criteria, including:

1. The true need for elimination of the proposed barriers to advance the inclusion of young people with disabilities, as justified by the applicant.
2. The number of young people who will ultimately benefit from elimination of the barrier.
3. The likelihood that the activities proposed will be of on-going, systemic benefit to the community.
4. The reasonableness of proposed expenditures/purchases.

Applicants will be notified in writing of award status by March 1, 2004. It is anticipated that 17 awards of \$3,000 or less will be made.

To request application materials or for additional information about this initiative, contact Candace Johndrow, Media and Outreach Public Health Program Administrator, Bureau of Family Health, Division of Community Systems Development and Outreach, P. O. Box 90, Health and Welfare Building, 7th Floor East, Harrisburg, PA 17108, (717) 783-6536, fax: (717) 772-0323, cjohndrow@state.pa.us, V/TT: (717) 783-6154 for speech and/or hearing impaired persons or the Pennsylvania AT&T Relay Service, (800) 634-5984 (TT). Persons with a disability who require an application in alternative formats should contact Candace Johndrow.

CALVIN B. JOHNSON, M.D., M.P.H.,
Secretary

[Pa.B. Doc. No. 03-2362. Filed for public inspection December 12, 2003. 9:00 a.m.]

DEPARTMENT OF LABOR AND INDUSTRY

Current Prevailing Wage Act Debarments

The following contractors have been determined to have intentionally violated the Pennsylvania Prevailing Wage Act (act) (43 P. S. §§ 165-1—165-17). This notice is published for the information and convenience of public bodies subject to the act. Under section 11(e) of the act (43 P. S. § 165-11(e)), these contractors or their firms or any firms, corporations or partnerships in which these contractors or their firms have an interest, shall be awarded no contract for 3 years after the date listed.

<i>Contractor</i>	<i>Address</i>	<i>Date of Debarment</i>
HHI Rigging & Construction, Inc. (Fed. E. I. D. No. 25- 1837445), John W. Hatfield and Thomas B. Hatfield (Fed. ER I. D. No. 25-1261752)	c/o Lodovico and Associates 2211 Ardmore Boulevard Pittsburgh, PA 15221 -and- 12200 Carmine Drive North Huntingdon, PA 15642 -and- 11295 Brokers Lane North Huntingdon, PA 15642-9425	12/01/03
Architectural Woodworking a/k/a Walters Construction; Jerry W. Walters, individually; Gregory A. Walters, individually	376 Sherman Avenue Nemacolin, PA 15351 -and- P. O. Box 50 Nemacolin, PA 15351	12/01/03

STEPHEN M. SCHMERIN,
Secretary

[Pa.B. Doc. No. 03-2363. Filed for public inspection December 12, 2003, 9:00 a.m.]

DEPARTMENT OF STATE

Complaint Procedures under Section 402(a) of the Help America Vote Act of 2002 and Section 1206.2 of the Pennsylvania Election Code

Effective December 9, 2003, the General Assembly has directed the Department of State (Department) to establish within its Bureau of Commissions, Elections and Legislation (Bureau) "a procedure for the review of complaints regarding the administration of Title III of the Help America Vote Act of 2002 [HAVA] (Public Law 107-252, 42 U.S.C. § 15301 et seq." Pa. Election Code § 1206.2(a) (25 P.S. § 3046.2(a)), added by the act of December 9, 2002 (P. L. 1246, No. 150), § 11. This process is mandated by section 402(a) of HAVA, which requires States that receive funding under HAVA "to establish and maintain State-based administrative complaint procedures" as prescribed in that section. See 42 U.S.C. § 15512(a). The purpose of this notice is to announce that the Department has established within the Bureau the complaint procedure required by section 402(a) of HAVA and section 1206.2 of the Pennsylvania Election Code.

Title III of HAVA

Complaints made under these procedures must relate to the administration of Title III of HAVA, 42 U.S.C. §§ 15481-83. Before a person files a complaint under section 402(a) of HAVA and section 1206.2 of the Pennsylvania Election Code, the complainant should determine that he has a valid claim that a State or local election official or employee has violated, is violating, or is about to violate a provision of Title III of HAVA (relating to uniform and nondiscriminatory election technology and administration requirements). Alleged violations of other Federal laws or State law that do not involve Title III of HAVA are not part of the complaint procedures described by this notice.

Before filing a complaint under these procedures, a complainant should examine the provisions of Title III of HAVA. By way of summary only, the following describe the requirements of Title III of HAVA:

- By January 1, 2004, all States must have a system of provisional voting. Under section 302(a) of HAVA, if an individual declares that he is registered to vote in the jurisdiction in which he desires to vote and that he is eligible to vote in an election for Federal office, but the

name of the individual does not appear on the official list of eligible voters for the polling place or an election official asserts that the individual is not eligible to vote, the individual must be permitted to cast a provisional ballot as provided by section 302(a). 42 U.S.C. § 15482(a). Section 302(a) of HAVA also prescribes procedures under which a provisional ballot is to be cast and processed. In addition, section 302(c) of HAVA provides that any voter permitted by court order or other order to vote after the polling place is required by law to close may be allowed to vote only by provisional ballot. 42 U.S.C. § 15482(c). Section 1210(a.4) of the Pennsylvania Election Code (25 P.S. § 3050(a.4)), added by Act 150 of 2002, establishes procedures for the implementation of provisional voting in Pennsylvania.

- By January 1, 2004, all States must publicly post at the polling places on Election Day certain voting information prescribed by section 302(b) of HAVA. 42 U.S.C. § 15482(b). Pennsylvania law is consistent with section 302(b) of HAVA. See 25 P.S. §§ 3042 & 3049(a).

- By January 1, 2004, section 303(b) of HAVA requires most voters who register by mail, and who are voting for the first time in the county in an election for Federal office, to present to elections officials photo identification or other specified identification that shows the name and address of the voter. 42 U.S.C. § 15483(b). A person who does not satisfy the identification requirement may cast a provisional ballot. See 42 U.S.C. § 15483(b)(2)(B). As permitted by HAVA (see 42 U.S.C. § 15484), Pennsylvania law requiring voter identification is stricter than HAVA. Sections 1210(a) and 1210(a.1) of the Pennsylvania Election Code require all electors who appear to vote in the election district, precinct or division for the first time and desire to vote first to present to an election officer a prescribed form of photo identification or nonphoto identification that shows the name and address of the elector. See 25 P.S. §§ 3050(a) & 3050(a.1). Consistent with HAVA, those electors who do not comply with the voter identification requirement may cast a provisional ballot. See 25 P.S. § 3050(a.2).

- By January 1, 2004, section 303(b)(4) of HAVA requires mail voter registration forms to include certain information. See 42 U.S.C. § 15483(b)(4). Pennsylvania law requires that the information required by section 303(b)(4) be included on its Voter Registration Mail Application form. See 4 Pa. Code § 183.1.

- By January 1, 2006, each voting system used in an election for Federal office must meet standards specified

by section 301 of HAVA (42 U.S.C. § 15481), including accessibility for individuals with disabilities as described by section 301(a)(3) of HAVA (42 U.S.C. § 15481(a)(3)) and alternative language accessibility as provided by section 301(a)(4) of HAVA (42 U.S.C. § 15481(a)(4)).

- By January 1, 2006, all States must establish and maintain a computerized Statewide voter registration list as prescribed by section 303(a) of HAVA, 42 U.S.C. § 15483(a), including a system of computerized voter list maintenance, technological security, and minimum standards for accuracy of State voter registration records. See 42 U.S.C. §§ 15483(a)(2)—(4). Pennsylvania law requires Pennsylvania to have a Statewide computerized voter registration system, known as the Statewide Uniform Registry of Electors (SURE), in place and fully connected by January 1, 2005. See 25 Pa.C.S. § 1222.

- For applications for voter registration received on and after January 1, 2006, section 303(a)(5) of HAVA will prohibit the acceptance or processing of the application unless (i) the application includes the driver's license number of an applicant who has been issued a current and valid driver's license, or if the applicant does not have a current and valid driver's license, the last four digits of the applicant's social security number (except for an applicant who declares in his application that he has neither a current and valid driver's license nor a social security number); and (ii) elections officials determine that the number provided by the applicant is valid. 42 U.S.C. § 15483(a)(5).

- HAVA provides that the requirements established by Title III are "minimum requirements" and that States may establish election technology and administration requirements "that are more strict than the requirements established under [Title III]," so long as the State requirements are not inconsistent with any Federal requirements. 42 U.S.C. § 15484. In addition, HAVA leaves "[t]he specific choices on the methods of complying with the requirements of [Title III] to the discretion of the State." 42 U.S.C. § 15485.

HAVA Section 402(a)

Section 402(a)(2) of HAVA requires a State to establish and maintain a State-based administrative complaint procedure that meets the following requirements:

(A) The procedure shall be uniform and nondiscriminatory.

(B) Under the procedures, any person who believes that there is a violation of any provision of [T]itle III [of HAVA] (including a violation which has occurred, is occurring, or is about to occur) may file a complaint.

(C) Any complaint filed under the procedures shall be in writing and notarized, and signed and sworn by the person filing the complaint.

(D) The State may consolidate complaints filed under [§ 402(a)(2)](B).

(E) At the request of the complainant, there shall be a hearing on the record.

(F) If, under the procedures, the State determines that there is a violation of any provision of [T]itle III, the State shall provide the appropriate remedy.

(G) If, under the procedures, the State determines that there is no violation, the State shall dismiss the complaint and publish the results of the procedures.

(H) The State shall make a final determination with respect to a complaint prior to the expiration of the 90-day period which begins on the date the complaint is

filed, unless the complainant consents to a longer period for making such a determination.

(I) If the State fails to meet the deadline applicable under [§ 402(a)(2)](H), the complaint shall be resolved within 60 days under alternative dispute resolution procedures established for purposes of . . . section [402]. The record and other materials from any proceedings conducted under the complaint procedures established under . . . section [402] shall be made available for use under the alternative dispute resolution procedures.

42 U.S.C. § 15512(a)(2).

To receive requirements payments under Title II of HAVA, the Governor or his designee, in consultation and coordination with the Secretary of the Commonwealth, must file with the federal Election Assistance Commission (Commission) "a statement certifying that the State is in compliance with the requirements" prescribed by section 253(b) of HAVA. See 42 U.S.C. § 15403(a). Among the requirements imposed by section 253(b) is filing with the Commission of "a plan for the implementation of the uniform, nondiscriminatory administrative complaint procedures required under section 402" (or inclusion in the State plan filed under section 253(b)(1)), and having in place "procedures . . . for purposes of meeting the requirements" of section 402. 42 U.S.C. § 15403(b)(2). The Commonwealth has included in its HAVA State Plan a plan for the implementation of section 402 of HAVA.

PA Election Code § 1206.2

To implement section 402 of HAVA, the Legislature in December 2002 added section 1206.2 to the Pennsylvania Election Code. As noted, section 1206.2(a) requires the Department, by December 9, 2003, to establish within the Bureau "a procedure for the review of complaints regarding the administration of Title III of the Help America Vote Act of 2002." 25 P. S. § 3046.2(a). The Department of State must provide a complaint form that requires "the signature of the complainant, an affidavit and notarization and the attachment of any supporting documentation." *Id.*

In subsection (b) of section 1206.2, the Legislature has prescribed the following additional rules and procedures governing complaints made against a local or county employee or official:

(1) The Department of State shall provide the county board of elections with a copy of the complaint within three business days of receipt.

(2) The county board of elections shall have twenty days to either reach an agreement with the complainant or file a written response to the complaint.

(3) The Department of State shall provide the complainant with a copy of the response and an opportunity for an informal hearing.

(4) Where an informal hearing is requested, the county board of elections shall be given notice and the opportunity to participate.

(5) The Department of State shall issue a final determination and remedial plan if necessary no later than ninety days after the filing of the complaint. If the Department of State fails to issue the determination within ninety days, it shall provide alternative dispute resolution for the disposition of the complaint. The alternative process shall be completed within sixty days of its commencement.

25 P. S. § 3046.2(b).

For complaints made against the Department, the following procedures apply:

(1) The Department of State shall forward the complaint to the Office of General Counsel within three business days of receipt.

(2) The Department of State shall have twenty days to either reach an agreement with the complainant or file a written response to the complaint.

(3) The Office of General Counsel shall provide the complainant with a copy of the response and an opportunity for an informal hearing.

(4) Where an informal hearing is requested, the Department of State shall be given notice and an opportunity to participate.

(5) The Office of General Counsel shall issue a final determination and remedial plan if necessary no later than ninety days after the filing of the complaint. If the Office of General Counsel fails to issue the determination within ninety days, it shall provide alternative dispute resolution for the disposition of the complaint. The alternative process shall be completed within sixty days of its commencement.

25 P. S. § 3046.2(c).

Determinations made under section 1206.2 are not administrative adjudications under the Administrative Agency Law, 2 Pa.C.S. Ch. 5, subch. A, and Ch. 7, subch. A, see 25 P. S. § 3046.2(d); and determinations made by the Department under section 1206.2(b) are not subject to appellate review under 42 Pa.C.S. § 763 (relating to direct appeals from government agencies). See 25 P. S. § 3046.2(e). Rather, either party may initiate in the court of common pleas of the county where the election board is located a *de novo* appeal from a final order of the Department disposing of a complaint made against a local or county official or employee under section 1206.2. *Id.*

By contrast, determinations made by the Office of General Counsel (Office) under subsection (c)—though not adjudications under the Administrative Agency Law—are agency determinations subject to appellate review in Commonwealth Court under 42 Pa.C.S. § 763. See 25 P. S. § 3046.2(f).

Complaint form

The complaint form prescribed by the Department appears as Appendix A to this notice. Copies of the complaint forms are available at the Bureau's offices at 210 North Office Building, Harrisburg, PA 17120; by calling the Bureau at (717) 787-5280; or through e-mail request made to the Bureau at RA-BCEL@state.pa.us. The complaint form is also available through the Department's web site at www.dos.state.pa.us.

Filing and processing

The original and two copies of a complaint should be filed with the Bureau at its Harrisburg office. Upon receipt, Bureau staff will review the complaint to assure that it includes the signature of the complainant, the required affidavit with notarization, and the documentation that the complainant claims supports his complaint. If the complaint is in proper form, the Bureau will accept and log the complaint. If the complaint is deficient, the Bureau will afford the complainant the opportunity to cure the deficiency.

Within three business days of the receipt of a complaint against a local or county official or employee, the Bureau will forward a copy of the complaint to the appropriate county board of elections for appropriate action or re-

sponse. If the complaint has been made against the Department, the Bureau will forward the complaint to the Office of General Counsel within three business days of receipt.

Response and Opportunity for Informal Hearing

Within 20 days upon receipt of the complaint, the complainant and the respondent county board of elections must notify the Bureau that they have reached an agreement; or the board of elections must file a response to the complaint, providing to the Bureau an original and two copies of the response. In the case of a complaint made against the Department, the complainant and the Department within 20 days must notify the Office that they have reached an agreement; or the Department must file a response with the Office, providing to the Office an original and two copies of the response.

Upon receipt of a response from a board of elections, the Bureau will provide a copy of the board's response and invite the complainant to request an informal hearing as provided by section 1206.2(b) of the Election Code. Upon the receipt of a response by the Department to a complaint made against it, the Office will provide a copy of the Department's response and invite the complainant to request an informal hearing as provided by section 1206.2(c) of the Election Code.

Informal hearing

In the event that a complainant should request an informal hearing under section 1206.2(b) of the Election Code, the Department will notify the board of elections and invite it to participate. The Department will thereafter assign a hearing officer and proceed as provided by section 402(a)(2) of HAVA, section 1206.2(b)(5) of the Election Code, and applicable provisions of the General Rules of Administrative Practice and Procedure, 1 Pa. Code Part II.

In the event that a complainant should request an informal hearing under section 1206.2(c) of the Election Code, the Office will notify the Department and invite it to participate. The Office will thereafter assign a hearing officer and proceed as provided by section 402(a)(2) of HAVA, section 1206.2(c)(5) of the Election Code, and applicable provisions of the General Rules of Administrative Practice and Procedure, 1 Pa. Code Part II.

Disposition

The assigned hearing officer will make a final determination in the manner and in the time prescribed by sections 402(a)(2)(F)—(H) of HAVA and section 1206.2(b)(5) or section 1206.2(c)(5) of the Election Code.

Alternative Dispute Resolution

In the event that the Department or the Office should fail to issue a final determination within the time prescribed by section 1206.2(b)(5) or section 1206.2(c)(5) of the Election Code, respectively, a process of alternative dispute resolution will be afforded as directed by the General Counsel of the Commonwealth.

PEDRO A. CORTES,
Secretary of the Commonwealth

APPENDIX A

**STATEMENT OF COMPLAINT—VIOLATIONS OF TITLE III OF THE HELP AMERICA VOTE ACT OF 2002
(PUBLIC LAW 107-252, 42 U.S.C. § 15301 ET SEQ.)**

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF COMMISSIONS, ELECTIONS AND LEGISLATION
Harrisburg**

Under section 402(a)(2) of the Help America Vote Act of 2002 (HAVA) (42 U.S.C. § 15512(a)(2)) and section 1206.2(a) of the Pennsylvania Election Code (25 P. S. § 3046.2(a)), any person who believes that a violation of any provision of Title III of HAVA (42 U.S.C. §§ 15481—15501) has occurred, is occurring, or is about to occur, may file a complaint with the Department of State, Bureau of Commissions, Elections and Legislation. Complaints made against a local or county official or employee will be processed and considered by the Department of State under section 1206.2(b) of the Election Code (25 P. S. § 3046.2(b)). Complaints made against the Department of State will be processed and considered by the Commonwealth's Office of General Counsel under section 1206.2(c) of the Election Code (25 P. S. § 3046.2(c)).

In order for the Department of State or the Office of General Counsel to initiate complaint proceedings under section 402(a) of HAVA and section 1206.2 of the Election Code to consider possible violations of Title III of HAVA, a complainant must complete both sides of this complaint form. Complaints should be typewritten or clearly printed in black or blue ink. Please state the facts briefly and clearly, and be sure to submit any documents you have to support your complaint.

YOU MUST SIGN THIS FORM, COMPLETE THE PRESCRIBED AFFIDAVIT BEFORE A LICENSED NOTARY PUBLIC OR OTHER PERSONS AUTHORIZED UNDER PENNSYLVANIA LAW TO ADMINISTER OATHS, AND RETURN THE FORM, WITH TWO COPIES, TO THE DEPARTMENT OF STATE, BUREAU OF COMMISSIONS, ELECTIONS AND LEGISLATION, 210 North Office Building, Harrisburg, PA 17120.

THIS FORM MUST BE SIGNED UNDER OATH, NOTARIZED, AND FILLED OUT COMPLETELY IN ORDER TO BE PROCESSED. TO ASSURE PROMPT PROCESSING OF THE COMPLAINT, PLEASE FILE THE ORIGINAL AND TWO COPIES OF THE COMPLAINT WITH THE BUREAU OF COMMISSIONS, ELECTIONS AND LEGISLATION

TYPE OF COMPLAINT (PLEASE CHECK ONE):

- ALLEGATIONS MADE AGAINST COUNTY OR LOCAL OFFICIAL(S) OR EMPLOYEE(S)
- ALLEGATIONS MADE AGAINST THE DEPARTMENT OF STATE

A. COMPLAINT INFORMATION

LAST NAME	FIRST	MIDDLE INITIAL	
STREET ADDRESS (Number and Name)			
CITY	COUNTY	STATE	ZIP CODE
TEL. (Include Area Code) (HOME)		(WORK)	

B. COMPLAINANT'S ATTORNEY, IF ANY

LAST NAME	FIRST	MIDDLE INITIAL	
STREET ADDRESS (Number and Name)			
CITY	COUNTY	STATE	ZIP CODE
TEL. (Include Area Code)		(FIRM NAME)	

C. NAME AND ADDRESS OF WITNESS, IF ANY

LAST NAME	FIRST	MIDDLE INITIAL	
STREET ADDRESS (Number and Name)			
CITY	COUNTY	STATE	ZIP CODE
TEL. (Include Area Code)		If needed, is this witness willing to support your complaint by appearing at a hearing? <input type="checkbox"/> YES <input type="checkbox"/> NO	

D. NAME AND ADDRESS OF SECOND WITNESS, IF ANY

LAST NAME	FIRST	MIDDLE INITIAL	
STREET ADDRESS (Number and Name)			
CITY	COUNTY	STATE	ZIP CODE
TEL. (Include Area Code)		If needed, is this witness willing to support your complaint by appearing at a hearing? <input type="checkbox"/> YES <input type="checkbox"/> NO	

NOTE: If additional witnesses are available, list names, addresses, and other pertinent data in a manner similar to above on 8 1/2 x 11" paper.

INFORMATION REGARDING SUBJECT OF COMPLAINT

E. ENTITY INVOLVED (E.G., DEPARTMENT OF STATE, COUNTY BOARD OF ELECTIONS)

LAST NAME	FIRST	MIDDLE INITIAL	
STREET ADDRESS (Number and Name)			
CITY	COUNTY	STATE	ZIP CODE
TEL. (Include Area Code)	PROPRIETOR		

F. INDIVIDUAL INVOLVED, IF ANY

LAST NAME	FIRST	MIDDLE INITIAL	
STREET ADDRESS (Number and Name)			
CITY	COUNTY	STATE	ZIP CODE
TEL. (Include Area Code)	LICENSE/REGISTRATION/CERTIFICATE/COMMISSION TYPE AND NUMBER IF KNOWN		

G. DESCRIPTION OF COMPLAINT:

Please describe your complaint in detail below. Please describe the nature and circumstances of the violation(s) of Title III of the Help America Vote Act of 2002 that you allege has occurred, is occurring, or is about to occur. Please provide dates. Attach copies of documents that are related to your complaint. If you need more space, please continue on page ____ of this form and/or use additional 8 1/2 x 11" sheets of paper if necessary.

H. RESOLUTION

How would you like this complaint to be resolved?

If additional space is needed, please attach 8 1/2 x 11" sheets.

I. AFFIDAVIT OF COMPLAINANT

I, _____, having been duly sworn according to law, state under penalty of perjury that the facts stated in this Complaint are true and correct to the best of my knowledge, information and belief.

Complainant Signature

SWORN AND SUBSCRIBED BEFORE ME THIS

____ DAY OF _____, _____, at _____, Pennsylvania.

Notary Public

My commission expires _____

RETURN COMPLETED FORM, WITH TWO COPIES, TO:

Department of State
Bureau of Commissions, Elections and Legislation
210 North Office Building
Harrisburg, PA 17120
(717) 787-5280

[Pa.B. Doc. No. 03-2364. Filed for public inspection December 12, 2003, 9:00 a.m.]

DEPARTMENT OF TRANSPORTATION

Finding

Northumberland and Snyder Counties

Under section 2002(b) of The Administrative Code of 1929 (71 P. S. § 512(b)), the Secretary of Transportation makes the following written finding:

The Department of Transportation plans to construct the Central Susquehanna Valley Transportation Project between the Selinsgrove Interchange of US 11/15 in Monroe Township, Snyder County, and the PA 45 Interchange on PA 147 in West Chillisquaque Township, Northumberland County.

The project consists of the construction of a four-lane divided, limited access highway on a new alignment. The project begins at the existing Selinsgrove Bypass stub of US 11/15 and extends in a northerly direction to cross the West Branch of the Susquehanna River and terminates at the PA 45 Interchange on PA 147. The total length of the project is approximately 12.4 miles.

The proposed project would not use land from any recreation area, wildlife and/or waterfowl refuge, historic site, State forest land, State game land, wilderness area or public park.

The proposed project right-of-way will impact approximately 7.7 acres of wetlands and approximately 4.7 miles of surface water. Mitigation will be either replacement for wetlands or enhancement for streams. Wetland replacement and stream mitigation will be coordinated with the Department of Environmental Protection, Fish and Boat Commission, the United States Army Corps of Engineers and the United States Environmental Protection Agency.

The Secretary has considered the environmental, economic, social and other effects of the proposed project as enumerated in section 2002 of The Administrative Code of 1929 and has concluded that all reasonable planning was completed to avoid, minimize or mitigate for the environmental effects that are likely to result from the construction of this section of highway.

ALLEN D. BIEHLER, P. E.,
Secretary

[Pa.B. Doc. No. 03-2365. Filed for public inspection December 12, 2003, 9:00 a.m.]

INDEPENDENT REGULATORY REVIEW COMMISSION

Notice of Comments Issued

Section 5(g) of the Regulatory Review Act (71 P. S. § 745.5(g)) provides that the Independent Regulatory Review Commission (Commission) may issue comments within 30 days of the close of the public comment period. The Commission comments are based upon the criteria in section 5.2 of the Regulatory Review Act (71 P. S. § 745.5b).

The Commission has issued comments on the following proposed regulation. The agency must consider these comments in preparing the final-form regulation. The final-form regulation must be submitted within 2 years of the close of the public comment period or it will be deemed withdrawn.

<i>Reg. No.</i>	<i>Agency/Title</i>	<i>Close of the Public Comment Period</i>	<i>IRRC Comments Issued</i>
11-215	Insurance Department Standards for Safeguarding Customer Information (33 Pa.B. 4917 (October 4, 2003))	11/3/03	12/3/03

Insurance Department Regulation No. 11-215 Standards for Safeguarding Customer Information December 3, 2003

We submit for consideration the following comments that include references to the criteria in the Regulatory Review Act (71 P. S. § 745.5b) which have not been met. The Insurance Department must respond to these comments when it submits the final-form regulation. The public comment period for this regulation closed on November 3, 2003. If the final-form regulation is not delivered within 2 years of the close of the public comment period, the regulation will be deemed withdrawn.

1. Section 146c.2. Definitions.—Need; Economic impact; Reasonableness.

Customer

The Preamble states this rulemaking is based on the National Association of Insurance Commissioners Standards for Safeguarding Customer Information Model Regulation (NAIC Model Rule). The NAIC Model Rule's Preamble (Section 1.D.) and definitions (Section 2.A.) clearly state the intent of the rule is to protect both financial and health information of customers. These provisions are reflected in the proposed regulation.

Commentators believe the proposed definition of "customer" in Chapter 146c inappropriately expands the scope of the proposed regulation by including "consumers." They state this goes beyond the NAIC Model Rule, will impose costs and will take longer to implement because it will cover individuals with whom insurers have no continuing business relationship.

The proposed definition of "customer" includes "either a 'consumer' or 'customer' as defined in § 146a.2" Why did the Department expand the definition of customer to include consumer information as defined in § 146a.2? The Department should explain the need to protect consumer information, provide an estimate of the costs imposed on insurers to protect this information and explain how this can reasonably be implemented by the deadline imposed by § 146c.11.

JOHN R. MCGINLEY, Jr.,
Chairperson

[Pa.B. Doc. No. 03-2366. Filed for public inspection December 12, 2003, 9:00 a.m.]

Notice of Filing of Final Rulemakings

The Independent Regulatory Review Commission (Commission) received the following regulations on the dates indicated. To obtain the date and time of the meeting at which the Commission will consider these regulations, contact the Commission at (717) 783-5417 or visit its website at www.irrc.state.pa.us. To obtain a copy of a regulation, contact the promulgating agency.

<i>Final-Form</i> Reg. No.	<i>Agency/Title</i>	<i>Received</i>
11-218	Insurance Department Recognition of the 2001 CSO Mortality Table for Use in Determining Minimum Reserve Liabilities and Nonforfeiture Benefits	11/25/03
<i>Final-Omit</i> Reg. No.	<i>Agency/Title</i>	<i>Received</i>
15-424	Department of Revenue Match 6 Lotto	11/25/03

JOHN R. MCGINLEY, Jr.,
Chairperson

[Pa.B. Doc. No. 03-2367. Filed for public inspection December 12, 2003, 9:00 a.m.]

INSURANCE DEPARTMENT

Acquisition of a Controlling Interest

Highmark Inc., a Pennsylvania nonprofit corporation, has filed an application to acquire a controlling interest in HMO of Northeastern Pennsylvania, Inc. and First Priority Life Insurance Company, Inc. The initial filing was received on November 26, 2003, and was made under the Insurance Holding Companies Act (40 P. S. § 991.1401—991.1413). Persons wishing to comment on the grounds of public or private interest in the acquisitions of control are invited to submit a written statement to the Insurance Department (Department) within 30 days from the date of publication of this notice in the *Pennsylvania Bulletin*. Written statements must include the name, address and telephone number of the interested party, identification of the application to which the statement is addressed and a concise statement with sufficient detail and relevant facts to inform the Department of the exact basis of the statement. Written statements should be directed to Cressinda Bybee, Company

Licensing Division, Insurance Department, 1345 Strawberry Square, Harrisburg, PA 17120, fax: (717) 787-8557, cbybee@state.pa.us.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 03-2368. Filed for public inspection December 12, 2003, 9:00 a.m.]

Aetna Health, Inc.; Rate Filing

On November 24, 2003, Aetna Health, Inc. submitted a filing to increase the Individual Advantage HMO Superior and Standard plans. The proposed rate increase for the plans is 10%. The increase is expected to generate additional revenue of \$2.7 million. The increase will impact approximately 11,000 members. The proposed effective date is January 1, 2004.

This filing is available for public inspection during normal working hours at the Insurance Department's regional office in Harrisburg.

Interested parties are invited to submit written comments, suggestions or objections to James Lavery, Actuary, Insurance Department, Bureau of Accident and Health Insurance, Office of Rate and Policy Regulation, 1311 Strawberry Square, Harrisburg, PA 17120 within 30 days of publication of this notice in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 03-2369. Filed for public inspection December 12, 2003, 9:00 a.m.]

Conseco Senior Health Insurance Company; Rate Filing

Conseco Senior Health Insurance Company is requesting approval to increase the premium 25% for Long Term Care Policy Form 11001 and the associated riders. The Transport Life Insurance Company originally issued these forms. The average premium will increase from \$1,443 to \$1,754 and will affect 1,021 policyholders in this Commonwealth.

Copies of the filing are available for public inspection during normal working hours, by appointment, at the Insurance Department's regional office in Harrisburg.

Interested parties are invited to submit written comments, suggestions or objections to James Lavery, Actuary, Insurance Department, Accident and Health Bureau, Office of Rate and Policy Regulation, 1311 Strawberry

Square, Harrisburg, PA 17120 within 15 days of publication of this notice in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 03-2370. Filed for public inspection December 12, 2003, 9:00 a.m.]

Review Procedure Hearings; Cancellation or Refusal of Insurance

The following insureds have requested a hearing as authorized by the act of June 17, 1998 (P. L. 464, No. 68), in connection with the termination of the insureds' automobile policies. The hearings will be held in accordance with the requirements of the act; 1 Pa. Code Part II (relating to the General Rules of Administrative Practice and Procedure); and 31 Pa. Code §§ 56.1—56.3 (relating to Special Rules of Administrative Practice and Procedure). The administrative hearings will be held in the Insurance Department's regional offices in Harrisburg and Philadelphia, PA. Failure by an appellant to appear at a scheduled hearing may result in dismissal with prejudice.

The following hearing will be held in the Administrative Hearings Office, Capitol Associates Building, Room 200, 901 N. Seventh Street, Harrisburg, PA 17102.

Appeal of Paul A. Lundberg; file no. 03-181-11256; Continental Insurance Company; doc. no. P03-11-021; January 6, 2004, 10:30 a.m.

The following hearing will be held in the Philadelphia Regional Office, Room 1701 State Office Building, 1400 Spring Garden Street, Philadelphia, PA 19130.

Appeal of Michael Duffy; file no. 03-265-04899; Erie Insurance Exchange; doc. no. PH03-11-022; January 22, 2004, 2 p.m.

Parties may appear with or without counsel and offer relevant testimony or evidence. Each party must bring documents, photographs, drawings, claims files, witnesses, and the like, necessary to support the party's case. A party intending to offer documents or photographs into evidence shall bring enough copies for the record and for each opposing party.

In some cases, the Insurance Commissioner (Commissioner) may order that the company reimburse an insured for the higher cost of replacement insurance coverage obtained while the appeal is pending. Reimbursement is available only when the insured is successful on appeal, and may not be ordered in all instances. If an insured wishes to seek reimbursement for the higher cost of replacement insurance, the insured must produce documentation at the hearing which will allow comparison of coverages and costs between the original policy and the replacement policy.

Following the hearing and receipt of the stenographic transcript, the Commissioner will issue a written order resolving the factual issues presented at the hearing and stating what remedial action, if any, is required. The Commissioner's Order will be sent to those persons participating in the hearing or their designated representatives. The Order of the Commissioner may be subject to judicial review by the Commonwealth Court.

Persons with a disability who wish to attend an administrative hearing and require an auxiliary aid, service or other accommodation to participate in the

hearing should contact Tracey Pontius, Agency Coordinator, (717) 787-4298.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 03-2371. Filed for public inspection December 12, 2003, 9:00 a.m.]

LIQUOR CONTROL BOARD

Expiration of Leases

The following Liquor Control Board leases will expire:

Philadelphia County, Wine & Spirits Shoppe #5143, 2429 South Street, Philadelphia, PA 19146.

Lease Expiration Date: March 31, 2004

Lease retail commercial space to the Commonwealth. Proposals are invited to provide the Liquor Control Board with approximately 4,900 net useable square feet of new or existing retail commercial space within a 1/2-mile radius of the corner of 24th and South Streets in Philadelphia.

Proposals due: January 9, 2004, at 12 p.m.

Department: Liquor Control Board
Location: Real Estate Division, 8305 Ridge Avenue, Philadelphia, PA 19128
Contact: James M. Bradley, (215) 482-9671

Cumberland County, Wine & Spirits Store #2108, Summerville Plaza Shopping Ctr., 443 N. Enola Road, Enola, PA 17025.

Lease Expiration Date: March 31, 2004

Lease retail commercial space to the Commonwealth. Proposals are invited to provide the Liquor Control Board with approximately 2,500 to 2,600 net useable square feet of new or existing retail commercial space along U. S. Routes 11 and 15 between Valley Road to the north and Shady Lane to the south, Enola.

Proposals due: January 9, 2004, at 12 p.m.

Department: Liquor Control Board
Location: Real Estate Division, Brandywine Plaza, 2223 Paxton Church Road, Harrisburg, PA 17110
Contact: Charles D. Mooney, (717) 657-4228

The Liquor Control Board seeks the following new site:

Philadelphia County, Wine & Spirits Shoppe #5104.

Lease retail commercial space to the Commonwealth. Proposals are invited to provide the Liquor Control Board with approximately 8,000 net useable square feet of new or existing retail commercial space south of Chestnut Street, north of Locust Street, west of Broad Street and east of 18th Street in the City of Philadelphia.

Proposals due: January 9, 2004, at 12 p.m.

Department: Liquor Control Board
Location: Real Estate Division, 8305 Ridge Avenue, Philadelphia, PA 19128
Contact: Robert J. Jolly, (215) 482-9671

JONATHAN H. NEWMAN,
Chairperson

[Pa.B. Doc. No. 03-2372. Filed for public inspection December 12, 2003, 9:00 a.m.]

MUNICIPAL POLICE OFFICERS' EDUCATION AND TRAINING COMMISSION

2004 Mandatory In-Service Training Program

Required Course

04-201—Legal Update (3 hours)

This course will maintain the format and focus of previous Legal Update courses by addressing changes in Criminal Statutory Law, Rules of Criminal Procedure and the Vehicle Code. Pertinent case law pertaining to the previous issues will also be discussed.

Tuition per officer: \$16.25

Elective Courses

04-321—Crimes Against Children (3 hours)

Child victims are increasingly commonplace, particularly child victims of sexual related crimes. The contact the child has with law enforcement can be extremely traumatic and law enforcement's response must be appropriate to minimize the trauma and present a defensible case to the court.

This course will focus on basic child development issues, understanding a child's response to trauma, what questions to ask and not ask, how to advise the parents/caretakers of the child, the officer/investigator's role in the physical examination of the child, the role of child advocacy centers, how to prepare a child for the court process and how to win a case from the preliminary hearing through the appeal process.

This course should also have a video produced by Municipal Police Officers' Education and Training Commission (Commission) that depicts an appropriate interview with a young child. Resources will also be provided that officers/departments can copy and give to parents and children.

Tuition per officer: \$13.85

04-322—Incident Command System (3 hours)

This course will examine the essential components of the Incident Command System as it pertains to critical incidents such as acts of terrorism. Although other Commission courses have briefly mentioned Incident Command, they have not provided a formal and structured treatment of this subject. Officers will receive instruction in the operational components, necessity and benefits of functioning within a unified command structure and will be a logical follow-up to the 2003 Terrorism course.

Tuition per officer: \$13.85

04-414—Investigative Analysis (3 hours)

Each crime scene provides many clues to the identity of the responsible actor. Recognizing the nature of evidence, scene characteristics and the nature of acts taken at the crime scene, officers can begin to gather information that can assist in formulating inferences, as well as identifying and apprehending an individual.

Many criminal investigation courses focus on identifying, collecting and handling physical evidence. This course will presume that the attendee has some level of competence in these functions. This course will not

provide instruction in basic or advanced evidence collection. Rather, it will address the behavioral and evidentiary aspects regarding modus operandi, motive and "signature." By adding this focus to the traditional tasks of identifying and collecting evidence, violent crime scenes such as homicides and sexual assaults can be handled in a more effective manner.

Tuition per officer: \$13.85

00-601 FATS (6 hours)

Maximum of 16 officers per class, 3 instructors and 2 assistants.

Tuition per officer: \$90

00-602 FATS (4 hours)

Maximum of eight officers per class and one instructor.

Tuition per officer: \$35

Questions should be directed to (717) 533-5987 or (800) 342-0858, Ext. 220 or 202.

COL. JEFFREY B. MILLER,
Chairperson

[Pa.B. Doc. No. 03-2373. Filed for public inspection December 12, 2003, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Natural Gas Service

A-120007F2001. Kaylor Gas Distribution. Application of Kaylor Gas Distribution for approval of the abandonment of natural gas service to all natural gas service customers located in Sugarcreek and Brady's Bend Townships, Armstrong County.

Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities). All filings must be made with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant on or before December 29, 2003. The documents filed in support of the application are available for inspection and copying at the Office of the Secretary between 8 a.m. and 4:30 p.m., Monday through Friday, and at the applicant's business address.

Applicant: Kaylor Gas Distribution

Through: Kathleen Foley, President, P. O. Box 24, Meridian Branch, Butler, PA 16001.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 03-2374. Filed for public inspection December 12, 2003, 9:00 a.m.]

Procedural Schedule for Comment and Reply Comment on New York Public Service Commission Case No. 97-C-0139

On October 22, 2003, the New York Public Service Commission issued an Order in Case No. 97-C-0139, "Establishing Modifications To The Inter-Carrier Service Quality Guidelines and Delegating Authority" (October

Order). The October Order established metrics and standards governing consensus and disputed items governing inter-carrier issues. The Pennsylvania Public Utility Commission's (Commission) orders in the Performance Metric proceeding (PMO) at P-00991643 authorized the Commission to consider the adoption of New York metrics for use in this Commonwealth.

On November 13, 2003, the Carrier Working Group (CWG), established by the Commission's prior PMO orders, submitted a consensus recommendation on the process and timeline the CWG wants to use for submitting comments and reply comments to the Commission on whether the Commission should adopt New York metrics for use in this Commonwealth.

The Commission approves the CWG Consensus for a process and timeline for considering the October Order in this Commonwealth.

- December 19, 2003 Verizon submission of a draft to the parties reflecting Verizon's view on how to incorporate the metrics from the October Order.
- January 6, 2004 Discussion and review of Verizon's proposal at the CWG meeting.
- January 14, 2004 Formal comments filed with the Commission.
- January 30, 2004 Formal reply comments filed with the Commission.

Notice of the process and schedule will be posted on the Commission's website and will be published in the *Pennsylvania Bulletin*.

Interested persons wishing to submit a comment or reply comment shall do so consistent with this schedule. Submittals must comply with the Commission's filing requirements, be served upon the parties of record and be provided in hard copy and on a floppy disk in Word format. Comments should be filed with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265.

Questions should be directed to Louise Fink Smith, (717) 787-8866 or Joe Witmer, (717) 787-3663 in the Commission's Law Bureau.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 03-2375. Filed for public inspection December 12, 2003, 9:00 a.m.]

Rulemaking regarding Amended Electric Service Reliability Regulations for Electric Distribution Companies; Doc. No. L-00030161

Under the Energy Association of Pennsylvania's request for an extension in the deadline for initial comments to be filed in reference to a Proposed Rulemaking Order regarding Amended Electric Service Reliability Regulations for Electric Distribution Companies, at L-00030161, the deadline for initial comments is extended from December 3, 2003, to December 8, 2003. Reply comments are due on or before December 22, 2003. Original comments should be submitted to James J. McNulty, Secretary, Pennsylvania Public Utility Commission, Commonwealth Keystone Building, 400 North Street, Harrisburg, PA 17120. Also

file comments electronically to Elizabeth H. Barnes, Assistant Counsel, ebarnes@state.pa.us.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 03-2376. Filed for public inspection December 12, 2003, 9:00 a.m.]

Service of Notice of Motor Carrier Applications

The following temporary authority and/or permanent authority applications for the right to render service as a common carrier or contract carrier in this Commonwealth have been filed with the Pennsylvania Public Utility Commission. Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities). A protest shall indicate whether it applies to the temporary authority application, the permanent authority application, or both. Filings must be made with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg PA 17105-3265, with a copy served on the applicant by December 29, 2003. Documents filed in support of the applications are available for inspection and copying at the Office of the Secretary between 8 a.m. and 4:30 p.m., Monday through Friday, and at the business address of the respective applicant.

Application of the following for approval to *begin operating as common carriers for transportation of persons as described under the application.*

A-00120314. Fireman's Ambulance Corps of Uniontown, PA t/d/b/a Uniontown Fireman's Ambulance Corps (P. O. Box L, Uniontown, Fayette County, PA 15401), a corporation of the Commonwealth—persons, in paratransit service, between points in the City of Uniontown, and within an airline distance of 5 statute miles of the limits of said city, and from points in said territory, to points in Pennsylvania, and return. *Attorney:* Thomas A. Bowlen, National City Building, Two West Main Street, Suite 101, Uniontown, PA 15401.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 03-2377. Filed for public inspection December 12, 2003, 9:00 a.m.]

Service of Notice of Motor Carrier Applications

The following temporary authority and/or permanent authority applications for the right to render service as a common carrier or contract carrier in this Commonwealth have been filed with the Pennsylvania Public Utility Commission. Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities). A protest shall indicate whether it applies to the temporary authority application, the permanent authority application, or both. Filings must be made with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant by January 5, 2004. Documents filed in support of the applications are available for inspection and copying at the Office of the Secretary between 8 a.m. and 4:30 p.m., Monday through Friday, and at the business address of the respective applicant.

Application of the following for the approval of the transfer of stock as described under the application.

A-00104134, Folder 5000. Lo Ma, Inc. (1829 East Livingston Street, Allentown, Lehigh County, PA 18103), a corporation of the Commonwealth—for the approval of the transfer of 100 shares of issued and outstanding shares held by Louis Marano, Sr. to Louis Marano, Jr. *Attorney:* Richard T. Mulcahey, Jr., Two Penn Center, Suite 1400, 1500 John F. Kennedy Boulevard, Philadelphia, PA 19102-1890.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 03-2378. Filed for public inspection December 12, 2003, 9:00 a.m.]

Water and Wastewater Service

A-212285F0115 and A-230073F0008. Pennsylvania American Water Company. Application of Pennsylvania American Water Company for approval of: (1) the transfer, by sale, of public water system within the Township of East Fallowfield, Chester County; (2) the transfer of the wastewater system of the Township of East Fallowfield, Chester County, to Pennsylvania American Wa-

ter Company; and (3) the right of Pennsylvania American Water Company to begin to offer and furnish water and wastewater service to the public in additional areas of East Fallowfield, Chester County.

Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities). All filings must be made with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant on or before December 29, 2003. The documents filed in support of the application are available for inspection and copying at the Office of the Secretary between 8 a.m. and 4:30 p.m., Monday through Friday, and at the applicant's business address.

Applicants: Pennsylvania American Water Company and East Fallowfield Township

Through and By Counsel: Jeffrey A. Franklin, Esquire, Carl J. Engleman, Jr., Esquire, Ryan, Russell, Ogden and Seltzer, LLP, 1105 Berkshire Boulevard, Suite 330, Wyomissing, PA 19610-1222; and Velma A. Redmond, Esquire, 800 West Hershey Park Drive, P. O. Box 888, Hershey, PA 17033-0888.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 03-2379. Filed for public inspection December 12, 2003, 9:00 a.m.]

STATE CONTRACTS INFORMATION

DEPARTMENT OF GENERAL SERVICES

Act 266 of 1982 provides for the payment of interest penalties on certain invoices of "qualified small business concerns". The penalties apply to invoices for goods or services when payments are not made by the required payment date or within a 15 day grace period thereafter.

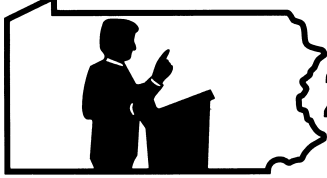
Act 1984-196 redefined a "qualified small business concern" as any independently owned and operated, for-profit business concern employing 100 or fewer employees. See 4 Pa. Code § 2.32. The business must include the following statement on every invoice submitted to the Commonwealth: "(name of business) is a qualified small business concern as defined in 4 Pa. Code 2.32."

A business is eligible for payments when the required payment is the latest of:
 The payment date specified in the contract.
 30 days after the later of the receipt of a proper invoice or receipt of goods or services.
 The net payment date stated on the business' invoice.

A 15-day grace period after the required payment date is provided to the Commonwealth by the Act.

For more information: contact: Small Business Resource Center
 PA Department of Community and Economic Development
 374 Forum Building
 Harrisburg, PA 17120
 800-280-3801 or (717) 783-5700

Reader's Guide



Legal Services & Consultation

① Service Code Identification Number

② Commodity/Supply or Contract Identification No.

B-54137. Consultant to provide three 2-day training sessions, covering the principles, concepts, and techniques of performance appraisal and standard setting with emphasis on performance and accountability, with a knowledge of State Government constraints.

Department: General Services
 Location: Harrisburg, Pa.
 Duration: 12/1/93-12/30/93
 Contact: Procurement Division
 787-0000

③ Contract Information

④ Department

⑤ Location

⑥ Duration

⑦ (For Commodities: Contact:) Vendor Services Section
 717-787-2199 or 717-787-4705

REQUIRED DATA DESCRIPTIONS

- ① Service Code Identification Number: There are currently 39 state service and contractual codes. See description of legend.
- ② Commodity/Supply or Contract Identification No.: When given, number should be referenced when inquiring of contract of Purchase Requisition. If more than one number is given, each number represents an additional contract.
- ③ Contract Information: Additional information for bid preparation may be obtained through the departmental contracting official.
- ④ Department: State Department or Agency initiating request for advertisement.
- ⑤ Location: Area where contract performance will be executed.
- ⑥ Duration: Time estimate for performance and/or execution of contract.
- ⑦ Contact: (For services) State Department or Agency where vendor inquiries are to be made.

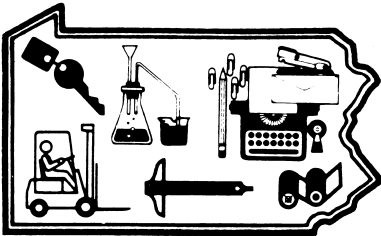
(For commodities) Vendor Services Section (717) 787-2199 or (717) 787-4705

PA TREASURY BUSINESS OUTLET—PLUG INTO IT!

The Treasury Department's Bureau of Contracts and Public Records can help you do business with state government agencies. Our efforts focus on guiding the business community through the maze of state government offices. The bureau is, by law, the central repository for all state contracts over \$5,000. Services are free except the cost of photocopying contracts or dubbing a computer diskette with a list of current contracts on the database. A free brochure explains how to take advantage of available services.

Contact: **Bureau of Contracts and Public Records**
 Pennsylvania State Treasury
 Room 201 Finance Building
 Harrisburg, PA 17120
 717-787-4586
 1-800-252-4700
 BizOutlet@patreasury.org

BARBARA HAFER,
State Treasurer

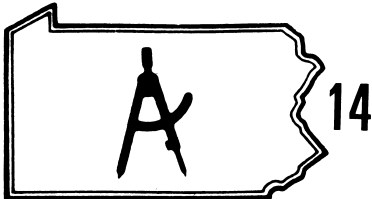


Commodities

2003-02 Digital X-Ray Senor Kit For PC 1000 Panoramic.

Department: Corrections
Location: State Correction Institution, Camp Hill, Dental Department, 2500
 Lisburn Road, Camp Hill, PA 17011
Duration: 01/04/2004 to 05/30/2004
Contact: Jeffery Wright, (717) 975-5200

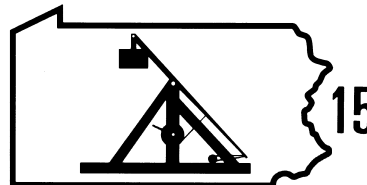
SERVICES



Engineering Services

PennDOT-ECMS The Pennsylvania Department of Transportation has established a website advertising for the retention of engineering firms. You can view these business opportunities by going to the Department of Transportation's Engineering and Construction Management System at www.dot2.state.pa.us.

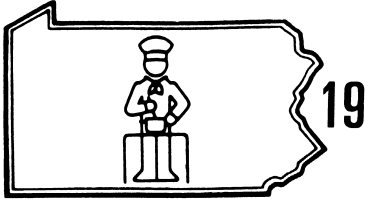
Department: Transportation
Location: Various
Contact: www.dot2.state.pa.us



Environmental Maintenance Service

OSM 14(4556)101.1 Abandoned Mine Land Reclamation Project, Casanova. The principal items of work and approximate quantities include 25,000 cubic yards of grading and 6.5 acres of seeding. This project issues on December 12, 2003, and bids will be opened on January 6, 2004 at 2 p.m. Payment in the amount of \$10.00 must be received before bid documents will be sent. This project is financed by the Federal Government under the authority given it by P.L. 95-87 dated August 3, 1977, "The Surface Mining Control and Reclamation Act of 1977," and is subject to that Law, and to the Federal Grant for this project.

Department: Environmental Protection
Location: Rush Township, Centre County, Pennsylvania
Duration: 150 calendar days after the official starting date.
Contact: Construction Contracts Section, (717) 783-7994



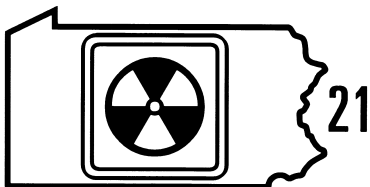
Food

#35 This bid is for fish, meat, poultry and poultry products (frozen). A copy of the bid packet is available by contacting the Purchasing Department by phone (610) 740-3428 or fax (610) 740-3424.

Department: Public Welfare
Location: Allentown State Hospital, 1600 Hanover Avenue, Allentown, PA 18109-2498
Duration: December 2003 through February 2004
Contact: Lois Kerbacher, (610) 740-3428

#36 This bid is for miscellaneous foods (frozen), miscellaneous baked goods, miscellaneous entrees, egg products and non-meat items. A copy of the bid packet is available by contacting the Purchasing Department by phone (610) 740-3428 or fax at (610) 740-3424.

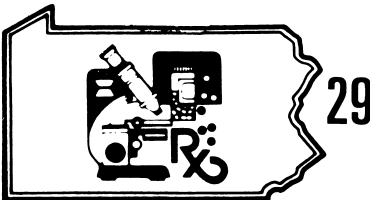
Department: Public Welfare
Location: Allentown State Hospital, 1600 Hanover Avenue, Allentown, PA 18109-2498
Duration: December 2003 through February 2004
Contact: Lois Kerbacher, (610) 740-3428



Hazardous Material Services

SPC-04-007 Vendor to furnish all labor, equipment, materials and supplies necessary for the packaging, receipt, removal, transportation, handling, storage and disposal of infectious/chemotherapeutic waste as requested by the Gino Merli Veterans Center. Detailed specifications may be obtained by contacting the purchasing office at (570) 961-4354 - phone or (570) 961-4400 - fax.

Department: Military Affairs
Location: Gino Merli Veterans Center, 401 Penn Avenue, Scranton, PA 18503-1213
Duration: July 1, 2004 through June 30, 2008
Contact: Barbara Partyka, PA-1, (570) 961-4354



Medical Services

SPC-04-003 Vendor to provide board certified epidemiologist services to the residents of the Gino Merli Veterans Center. Detailed specifications available by contacting the Purchasing office at (570) 961-4354 - phone or (570) 961-4400 - fax.

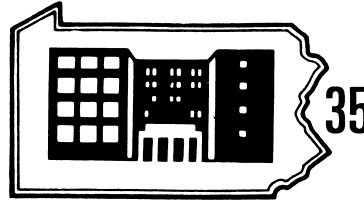
Department: Military Affairs
Location: Gino Merli Veterans Center, 401 Penn Avenue, Scranton, PA 18503-1213
Duration: July 1, 2004 through June 30, 2007 with 1 renewal option.
Contact: Barbara Partyka, PA-1, (570) 961-4354

SPC-04-002 Vendor to provide complete podiatry services to the residents of the Gino Merli Veterans Center as per detailed specification which can be obtained by contacting the Purchasing office at (570) 961-4354 - phone or (570) 961-4400 - fax.

Department: Military Affairs
Location: Gino Merli Veterans Center, 401 Penn Avenue, Scranton, PA 18503-1213
Duration: July 1, 2004 through June 30, 2007 with 1 renewal option.
Contact: Barbara Partyka, PA-1, (570) 961-4354

SPC-04-001 Vendor to supply Physician Services to the Gino Merli Veterans Center as per detailed specifications which can be obtained by contacting the Purchasing office at (570) 961-4354 - phone or (570) 961-4400 - fax.

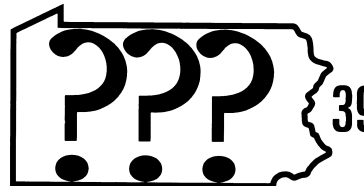
Department: Military Affairs
Location: Gino Merli Veterans Center, 401 Penn Avenue, Scranton, PA 18503-1213
Duration: July 1, 2004 through June 30, 2007, with 1 renewal option
Contact: Barbara Partyka, (570) 961-4354



Real Estate Services

030001 The Department proposes to lease a 128' x 40' metal building to the Borough of Towanda. The Borough will be utilizing the building for the storage of fire fighting equipment. The lease will be for a period of 10 to 15 years.

Department: Transportation
Location: Packer Ave., Towanda Borough
Duration: 30 days
Contact: Thomas E Ale, (570) 368-4238



Miscellaneous

CN00006220 Rental of approximately 100-120 vehicles of various types and sizes, as specified by class for a special Multi-Jurisdictional Government Law Enforcement Program.

Department: Attorney General
Location: Philadelphia-Camden HIDTA, Philadelphia, PA 19106
Duration: Two years w/one option to extend for 2 additional years - 2/29/04 through 2/28/06 w/possible 2 year extension
Contact: Jean M. Kreiser, (717) 783-2369

SPC-04-006 Vendor to provide service and repair to the MITEL SX2000 Light Telephone System and components located at the Gino Merli Veterans Center. For detailed specifications, please contact the purchasing office at (570) 961-4354 - phone or (570) 961-4400 - fax.

Department: Military Affairs
Location: Gino Merli Veterans Center, 401 Penn Avenue, Scranton, PA 18503-1213
Duration: July 1, 2004 through June 30, 2007 with 1 renewal option.
Contact: Barbara Partyka, PA-1, (570) 961-4354

GIARFP-2004 The Governor's Institutes for Educators are intended to promote continuing professional education among educators. These programs are rich in opportunities to deepen subject area knowledge and will include real-world experiences as tools that help educators make the link to the Pennsylvania Academic Standards, new classroom assessments and technology. The 2004 Request for Proposal provides intermediate units, institutions of higher education and not-for-profit entities with information that enables them to prepare and submit proposals for consideration to serve in a partnership capacity with the Pennsylvania Department of Education as a facilitator for site management for one of the Governor's Institutes for Educators.

Department: Education
Location: Various locations throughout the Commonwealth
Duration: July - August 2004
Contact: Monica Washington, (717) 783-5670

[Pa.B. Doc. No. 03-2380. Filed for public inspection December 12, 2003, 9:00 a.m.]

DESCRIPTION OF LEGEND

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| <p>1 Advertising, Public Relations, Promotional Materials</p> <p>2 Agricultural Services, Livestock, Equipment, Supplies & Repairs: Farming Equipment Rental & Repair, Crop Harvesting & Dusting, Animal Feed, etc.</p> <p>3 Auctioneer Services</p> <p>4 Audio/Video, Telecommunications Services, Equipment Rental & Repair</p> <p>5 Barber/Cosmetology Services & Equipment</p> <p>6 Cartography Services</p> <p>7 Child Care</p> <p>8 Computer Related Services & Equipment Repair: Equipment Rental/Lease, Programming, Data Entry, Payroll Services, Consulting</p> <p>9 Construction & Construction Maintenance: Buildings, Highways, Roads, Asphalt Paving, Bridges, Culverts, Welding, Resurfacing, etc.</p> <p>10 Court Reporting & Stenography Services</p> <p>11 Demolition—Structural Only</p> <p>12 Drafting & Design Services</p> <p>13 Elevator Maintenance</p> <p>14 Engineering Services & Consultation: Geologic, Civil, Mechanical, Electrical, Solar & Surveying</p> <p>15 Environmental Maintenance Services: Well Drilling, Mine Reclamation, Core & Exploratory Drilling, Stream Rehabilitation Projects and Installation Services</p> <p>16 Extermination Services</p> <p>17 Financial & Insurance Consulting & Services</p> <p>18 Firefighting Services</p> <p>19 Food</p> <p>20 Fuel Related Services, Equipment & Maintenance to Include Weighing Station Equipment, Underground & Above Storage Tanks</p> <p>21 Hazardous Material Services: Abatement, Disposal, Removal, Transportation & Consultation</p> | <p>22 Heating, Ventilation, Air Conditioning, Electrical, Plumbing, Refrigeration Services, Equipment Rental & Repair</p> <p>23 Janitorial Services & Supply Rental: Interior</p> <p>24 Laboratory Services, Maintenance & Consulting</p> <p>25 Laundry/Dry Cleaning & Linen/Uniform Rental</p> <p>26 Legal Services & Consultation</p> <p>27 Lodging/Meeting Facilities</p> <p>28 Mailing Services</p> <p>29 Medical Services, Equipment Rental and Repairs & Consultation</p> <p>30 Moving Services</p> <p>31 Personnel, Temporary</p> <p>32 Photography Services (includes aerial)</p> <p>33 Property Maintenance & Renovation—Interior & Exterior: Painting, Restoration, Carpentry Services, Snow Removal, General Landscaping (Mowing, Tree Pruning & Planting, etc.)</p> <p>34 Railroad/Airline Related Services, Equipment & Repair</p> <p>35 Real Estate Services—Appraisals & Rentals</p> <p>36 Sanitation—Non-Hazardous Removal, Disposal & Transportation (Includes Chemical Toilets)</p> <p>37 Security Services & Equipment—Armed Guards, Investigative Services & Security Systems</p> <p>38 Vehicle, Heavy Equipment & Powered Machinery Services, Maintenance, Rental, Repair & Renovation (Includes ADA Improvements)</p> <p>39 Miscellaneous: This category is intended for listing all bids, announcements not applicable to the above categories</p> |
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DONALD T. CUNNINGHAM, Jr.
Secretary

RULES AND REGULATIONS

Title 7—AGRICULTURE

DEPARTMENT OF AGRICULTURE

[7 PA CODE CHS. 31, 35, 41, 43, 45—47, 53, 55, 61, 63 AND 78—81]

Food Code

The Department of Agriculture (Department) revises 7 Pa. Code (relating to agriculture) by establishing the Food Code in Chapter 46 (relating to food code) and deleting Chapters 31, 35, 41, 43, 45, 47, 53, 55, 61, 63 and 78—81 to read as set forth in Annex A.

Statutory Authority

The Food Act (act) (31 P. S. §§ 20.1—20.18), the Public Eating and Drinking Places Law (law) (35 P. S. §§ 655.1—655.13) and section 1705(d) of The Administrative Code of 1929 (71 P. S. § 445(d)) provide the legal authority for this final-form rulemaking.

The act charges the Department with the responsibility to: (1) regulate, register and inspect “food establishments” in this Commonwealth under section 14(a) of the act (31 P. S. § 20.14(a)); (2) promulgate regulations and food safety standards necessary to the proper enforcement of the food safety requirements under section 13(a) of the act (31 P. S. § 20.13(a)); and (3) construe the statute and its attendant regulations in a manner that is as consistent with Federal statutory and regulatory authority as practicable under section 16 of the act (31 P. S. § 20.16).

The law charges the Department with responsibility to regulate, license and inspect “public eating and drinking places” in this Commonwealth under sections 2 and 6(a) of the law (35 P. S. §§ 655.2 and 655.6(a)) and to regulate the cleanliness and sanitation of these public eating and drinking places under section 9 of the law (35 P. S. § 655.9). This responsibility had originally been assigned the former Department of Environmental Resources, but was transferred to the Department by the act of December 12, 1994 (P. L. 903, No. 131).

Section 1705(d) of The Administrative Code of 1929 requires the Department to establish regulatory standards necessary to enforce food safety laws.

Purpose

This final-form rulemaking draws authority from several food safety statutes to establish a comprehensive Food Code for this Commonwealth. The primary purpose of this final-form rulemaking is to achieve the public health goal of reducing foodborne illness to the fullest extent possible.

This final-form rulemaking will bring the Commonwealth’s food safety standards into step with the current National standards for food safety set forth in the 2001 edition of the United States Public Health Service Food Code (*2001 FDA Model Food Code*). Although the proposed rulemaking was based upon the 1999 version of that same *Model Food Code*, that model code was revised during the regulatory promulgation process and supplanted by the *2001 FDA Model Food Code*. The *2001 FDA Model Food Code* is the product of a collaborative effort among the Department, the Food and Drug Administration (FDA), the Food Safety Inspection Service, the Centers for Disease Control, various State and local public health and food control agencies, food industry

representatives, academia and consumers. It represents the state-of-the-science with respect to food handling and food safety.

The standards set forth in this final-form rulemaking are also consistent with the content of many of the food safety training courses offered to food industry employees over the years. For this reason, the final-form rulemaking presents a set of standards with which a large segment of this Commonwealth’s food industry is already familiar.

Food safety science is an evolving body of knowledge. It is the Department’s intention to adopt regulatory food safety standards that reflect current recommended National standards and to revise these standards in the future as necessary to track with relevant revisions to these National standards.

Food safety considerations and procedures are essentially the same, whether the entity being regulated is a “food establishment” as described in the act or a “public eating and drinking place” as described in the law. For this reason, the final-form rulemaking merges the definitions of these two terms into a single new term—“food facility”—and establishes sanitation and food safety standards and procedures for these facilities.

Need for the Final-Form Rulemaking

The final-form rulemaking is needed to reduce foodborne illness to the fullest extent possible. This public health and safety objective is the primary reason for the final-form rulemaking.

The food safety standards set forth in the final-form rulemaking will serve the regulated community by helping to lower the number of claims and lawsuits related to foodborne illness.

Comments

Notice of proposed rulemaking was published at 32 Pa.B. 1046 (February 23, 2002) and provided for a 30-day public comment period. Comments were received from the Pennsylvania Food Merchants Association (PFMA), the Philadelphia County Health Department (PCHD), the Pennsylvania School Boards Association, Inc. (PSBA), the Chester County Health Department (CCHD), the Pennsylvania Catholic Conference (PCC), the Bucks County Health Department (BCHD) and the Independent Regulatory Review Commission (IRRC).

Comment: IRRC, the PSBA, the PCC and IRRC requested clarification regarding the jurisdiction of the Department to apply this chapter to schools. The PCC also noted that school cafeterias and private clubs (such as lodges) are not public eating and drinking places. The PCC cited 3 Pa.C.S. § 6510(d) (relating to exemptions) as an example of legislative intent to limit the regulatory reach of the Department to commercial or for-profit food establishments.

Response: The Department agrees that the definitions of “food facility” and “food facility premises” in proposed § 46.3 (relating to definitions) were too broad and has revised these definitions to clarify that school cafeterias (and other specific food facilities and food processing plants) are not included within the term and are not subject to the provisions of the final-form rulemaking. The Department has not, historically, regulated food service facilities at schools. The act of December 29, 2002 (P. L. 1421, No. 179) amended sections 1, 6(c) and 12.1 of the law (35 P. S. §§ 655.1, 655.6(c) and 655.12a) to clarify

that school cafeterias are not public eating and drinking places subject to regulation and licensure under that statute. Although the Department must provide inspections of school cafeterias and training for school cafeteria personnel in accordance with the standards applied to public eating and drinking places, school cafeterias are not otherwise subject to the provisions of that statute or this final-form rulemaking.

Comment: IRRC noted that the proposed rulemaking would repeal existing regulations that are referenced in regulations of other Commonwealth agencies and asked what steps the Department has taken to notify these agencies of the need to update their regulations. As an example, IRRC cited the Department of Environmental Protection regulation in 25 Pa. Code § 171.6 (relating to food service), which requires food services in schools to meet the regulatory standards of the Department's regulation in Chapter 78 (relating to food establishments), a chapter repealed by this final-form rulemaking.

Response: The Department has had open communication with the Departments of Education, Health, Corrections, Environmental Protection and Public Welfare with respect to the final-form rulemaking and has encouraged these agencies to update their regulations, as necessary.

Comment: IRRC and the PCC noted that the primary responsibility for issuing licenses to food facilities that are public eating and drinking places lies with county or local health authorities, rather than the Department, and expressed concern that the proposed rulemaking did not make this clear. IRRC recommended the Department consider making use of the term "licensor," which appears in the law and accurately describes entities that have authority to issue licenses.

Response: The Department has added a definition of "licensor" to § 46.3. The definition identifies non-Department entities authorized to issue public eating and drinking place licenses under the law. In addition, references to the "licensor" have been added throughout the final-form rulemaking where the subject of the issuance of licenses is addressed.

Comment: IRRC noted repeated references to the Pennsylvania Construction Code Act throughout the proposed rulemaking and recommended each reference be revised to identify the specific applicable sections of that statute.

Response: The Department has revised proposed §§ 46.821(a), 46.825(e), 46.862(b) and (d), 46.863, 46.902(b) by inserting a reference to Chapter 3 of the Pennsylvania Construction Code Act (35 P. S. §§ 7210.301—7210.304).

Comment: IRRC suggested that the definition of "adulterated" in proposed § 46.3 be edited into shorter sentences. IRRC also suggested the references to "the Federal acts" in subparagraphs (iii), (iv), (viii), (ix) and (xiv) of this definition be more specific.

Response: The Department is reluctant to edit and redraft this definition, since it is a restatement of section 8 of the act (31 P. S. § 20.8). It has added the same definition of "Federal acts" as is contained in section 2 of the act (31 P. S. § 20.2) in § 46.3.

Comment: IRRC expressed several concerns with respect to the definition of "approved" in proposed § 46.3. The commentator was concerned that the section did not specify the process for making the determination of conformity. It also offered that the phrase "principles, practices and generally recognized standards" is unclear

and suggested the definition include examples, cross references or citations to these practices or standards.

Response: The Department has added new language in § 46.1102 (relating to obtaining Department or licensor approval) describing a process by which any of the "approvals" referenced in the final-form rulemaking can be obtained. The definition of the term "approved" was derived directly from the 2001 FDA Model Food Code. There are literally thousands of types of foods and food manufacturing processes and the scientific knowledge surrounding food safety is constantly evolving. For this reason, the principles, practices and generally recognized standards are a "moving target" that will vary with food, time and knowledge. The Department believes it has gone as far as it can reasonably go in defining the term "approved." The Department also believes the regulated community is quite familiar with the fact that food safety science is an ever-evolving body of knowledge, and takes the absence of comments from the regulated community on this subject as some indication of familiarity/comfort with the defined term.

Comment: The PFMA noted that the term "critical items" is not defined within the proposed rulemaking, and requested there be "process or guidance" to clearly define this term.

Response: The term "critical items" is not used in the final-form rulemaking, so it is not defined. The Department has, historically, used the inspection process and inspection report to indicate to food facilities the critical nature of specific violations encountered in the course of the inspection. The Department intends to continue this in the future.

Comment: The CCHD commented on the use of the definition of "Department" in proposed § 46.3 and requested it be broadened in scope to include local health departments acting under authority of the act or the law.

Response: The Department has implemented this request by defining a new term—"licensor"—in § 46.3 and making appropriate references to "the Department or licensor" throughout the final-form rulemaking.

Comment: The PFMA commented on the inconsistency of the proposed definition for "foodborne disease outbreak" in § 46.3 with that found in the 2001 FDA Model Food Code.

Response: The proposed definition has been supplanted by the 2001 FDA Model Food Code definition.

Comment: IRRC requested a typographical correction to the definition of "food employee" in proposed § 46.3.

Response: The Department has made the correction.

Comment: IRRC suggested that the definition of "hazard" in proposed § 46.3 include examples of what might constitute an "unacceptable consumer health risk."

Response: The Department has modified the definition to include examples such as pathogens, pesticides, natural toxins, rodent contamination or foreign materials.

Comment: IRRC noted the use of the term "honestly presented" in several sections of the proposed rulemaking and suggested that the term be defined. IRRC recommended the Department consider language from proposed § 46.421(b)(1) (relating to accurate representation).

Response: The Department has implemented the suggestion by defining the term in § 46.3.

Comment: IRRC noted that the term "package" is defined in section 2 of the act and that § 46.3 of the

proposed rulemaking did not contain that definition but, instead, a definition of the term “packaged.” IRRC further noted that the definition of “packaged” in the proposed rulemaking is not similar to the definition of “package” in section 2 of the act. IRRC suggested the Department review the regulation and determine the most appropriate term.

Response: The Department has reviewed the use of the term “packaged” in the proposed rulemaking and intends to continue to use that term, rather than “package.” The definition of “packaged” is consistent with the *2001 FDA Model Food Code*.

Comment: The PFMA commented on the inconsistency of the proposed definition for “potentially hazardous food” with that found in the *2001 FDA Model Food Code*.

Response: The Department agrees the definitions are not identical, but the term is defined in section 2 of the act and the Department must use that statutory definition for the term.

Comment: IRRC and the CCHD noted that although the proposed rulemaking defined the term “private water system” in § 46.3, the remainder of that document made reference to a “nonpublic water supply.” The commentators requested that this be resolved by using one term or the other exclusively.

Response: The Department has implemented this request by deleting the term “private water system” and adding the term “nonpublic water supply.”

Comment: The PCHD and IRRC commented on the misspelling of the word “ingredient” in the definition of “potentially hazardous food” in proposed § 46.3

Response: The Department has corrected this error.

Comment: The CCHD noted the defined term “bed and breakfast homestead or inn” in proposed § 46.3 and did not believe the term was used anywhere else in the body of the proposed rulemaking.

Response: The term “bed and breakfast homestead or inn” is used in the definition of a “public eating and drinking place” in § 46.3, where it is identified as an exception with respect to which the regulation is not applicable. The definition itself is from section 1 of the law.

Comment: Both IRRC and the PCHD noted an error in the definition of “public eating and drinking place” in proposed § 46.3, which included dining cars and bed and breakfast homestead inns within that term.

Response: The Department has corrected this error.

Comment: IRRC commented that the definition of the term “substance” in proposed § 46.3 contained the word “substance” and noted this was inconsistent with the *Pennsylvania Code and Bulletin Style Manual*.

Response: The Department changed the word “substance” in the referenced definition to “material.”

Comment: IRRC reviewed proposed § 46.112 (relating to diseases or medical conditions that must be reported) and suggested that paragraphs (5)—(8) be rewritten to identify the persons to whom the provision applies and to “. . . more closely reflect the *1999 Federal Recommended Food Code* at Section 2-201.11.”

Response: The Department has implemented this suggestion. The phrase “food employee or food employee applicant” was added to the referenced section, making it more consistent with the *2001 FDA Model Food Code* (the successor to the 1999 version of the model code).

Comment: IRRC and the CCHD both suggested that proposed § 46.112 and proposed § 46.113(a)(2)(ii) (relating to duty to impose exclusions and restrictions) be amended to replace the phrase “*Escherichia coli* O157:H7” with “Shiga toxin-producing *E. coli*.”

Response: The term “*Eshcherichia coli* O157:H7” was replaced by “Shiga toxin-producing *Eshcherichia coli*” in §§ 46.112 and 46.113, as well as when used in other sections throughout the chapter. The replacement is consistent with the *2001 FDA Model Food Code*.

Comment: IRRC and the CCHD suggested that proposed § 46.132 (relating to duty of food employees to wash) be revised to include a requirement that employees wash their hands before donning gloves, as stated in the *2001 FDA Model Food Code*.

Response: The suggestion has been implemented in the final-form rulemaking.

Comment: IRRC and the PCHD reviewed proposed § 46.133 (relating to required washing locations) and commented on the need to define the term “utility sink” and to provide clarification regarding the allowance for utilizing the utility sink as a handwash location in small food establishments with limited space. The PCHD also suggested the section be renamed “approved hand washing locations.”

Response: A definition of “utility sink” has been added to § 46.3. As a general food safety practice, a utility sink used for disposal of mop water or other liquid waste should not be used as a handwash sink. However, § 46.1103 (relating to variances) permits variances to allow this practice (when justifiable).

Comment: IRRC suggested that the Department provide a definition of the acronym “OTC,” used in proposed § 46.134 (relating to hand sanitizers).

Response: The suggested definition has been added.

Comment: IRRC noted numerous references to other authority in proposed § 46.213 (relating to packaged food) and suggested these references be replaced by a single reference to § 46.422 (relating to labeling), which contains the same references and greater detail regarding labeling requirements. IRRC also suggested the term “Food Act” be changed to “act” throughout the final-form rulemaking.

Response: The referenced section has been revised as recommended by IRRC. With respect to the use of the term “act” or “Food Act,” the Department has deleted the definition of “act” from § 46.3 and defined “Food Act” and “Public Eating and Drinking Places Law” to clearly distinguish between the two statutes upon which the final-form rulemaking is premised.

Comment: IRRC noted references to the act in proposed §§ 46.213, 46.421 and 46.422 and suggested these references be to the specific applicable sections of the act.

Response: The reference to the act in § 46.213 has been deleted. The references to the act in §§ 46.421 and 46.422 have been made more specific.

Comment: IRRC requested that the references to the act of July 2, 1935 (P. L. 589, No. 210) (31 P. S. §§ 645—660g), known as the Milk Sanitation Law, in proposed §§ 46.217 and 46.244 (relating to milk and milk products; and receiving eggs and milk products) be revised to provide references to specific sections of that statute.

Response: The recommended revision has been made in § 46.217. The Department believes it appropriate to leave the reference to the Milk Sanitation Law in § 46.244 general, though.

Comment: IRRC commented that the reference to “the act and this chapter” in proposed § 46.219(a) (relating to molluscan shellfish) should be made more specific.

Response: The references have been clarified to reflect section 14 of the act and Subchapter C (relating to food). In addition, a reference to Chapter 49 (relating to shellfish) has also been added. The proposed rulemaking reflected the Department’s intention to rescind Chapter 49, but during the comment review process, the Department decided to leave Chapter 49 intact and pursue revisions of Chapter 49 as a separate regulatory promulgation effort.

Comment: Both the PFMA and IRRC noted the use of the term “mushroom identification expert” in proposed § 46.220 (relating to wild mushrooms) and recommended the rulemaking establish required qualifications and training for mushroom identification experts. The PFMA acknowledged an ongoing debate between “state public health agencies and the food industry” as to appropriate qualifications and training and that the 2001 FDA Model Food Code does not address this subject.

Response: The Department declines to implement this recommendation. It has revised the section to show it will not “approve” mushroom identification experts. The mushroom production industry and individuals will remain responsible for mushroom identification safety. The Department will continue to monitor this area and will consider any subsequent FDA opinions on what is relevant to qualifications of a wild mushroom expert in its determination as to whether it is necessary to regulate in this area.

Comment: IRRC reviewed proposed §§ 46.220 and 46.221 (relating to game animals) and requested that the Department explain what other regulatory agencies would have jurisdiction over food and food establishments.

Response: A definition of “other food regulatory authority” has been added to § 46.3. Food sold or used in food preparation in this Commonwealth is not always processed, manufactured or commercially prepared under the statutory authority of the Department.

Comment: IRRC noted that proposed § 46.221(b)(2)(i) contains broad references to laws governing meat and poultry and other unspecified regulatory agencies. The commentator requested the final-form rulemaking identify these laws more specifically.

Response: The Department has defined “other food regulatory agency” in § 46.3 and has used that term in the referenced subparagraph and at other appropriate places in the final-form rulemaking. It is difficult to specifically identify each agency that might have authority with respect to food in this Commonwealth. Federal agencies and the food safety authorities of other states and nations might have a role, depending upon the point of origin of the food or its ingredients.

Comment: The PFMA recommended that proposed §§ 46.241 and 46.385 (relating to receiving temperature of food; and potentially hazardous food: hot and cold holding) be revised by changing the minimum holding temperature for hot potentially hazardous foods from “60°C (140°F)” to “54°C (130°F).”

Response: The Department has implemented this recommendation. In consideration of this comment, the Department reviewed the recommendations resulting from the 2002 Conference for Food Protection to be forwarded to the FDA for inclusion in the next Model

Food Code publication. The conference forwarded a resolution to the FDA to modify the hot holding temperature from 60°C (140°F) to 58°C (135°F) and the Department has modified all references in this chapter to reflect this change.

Comment: The PCHD and IRRC requested proposed § 46.241(d) be revised to include examples of visible evidence of previous temperature abuse.

Response: The Department has added examples to the referenced subsection. These include “dehydration, ice crystals, discoloration or damaged packaging.”

Comment: The PCHD reviewed proposed § 46.242 (relating to additives) and offered that sulfiting agents may be used as an additive in a number of commercial foods. When the foods are offered to the consumer for immediate consumption there is no direct notice to the consumer of the presence of sulfites. The commentator requested that a new subparagraph be added to require that consumers be notified of the presence of sulfiting agents in food.

Response: The Department considered this comment carefully and declines to add the requested language. The Department does not have the scientific expertise to evaluate the extent of the food safety risk of sulfite in relation to any other known food allergen, such as MSG or red food coloring. The Department will continue to follow the Federal requirements as written with respect to food additives and labeling. The specific Federal regulatory references in this section will reflect any changes in the Federal standards which may occur in the future.

Comment: IRRC noted that proposed § 46.242 contained two citations to the Code of Federal Regulations (9 CFR 318.7 and 40 CFR 185) that appeared to be inaccurate.

Response: The Department has corrected these citations and checked citations elsewhere in the final-form rulemaking to ensure they are accurate.

Comment: IRRC requested that proposed § 46.243 (relating to receiving shell eggs) be revised to identify the specific applicable sections of the Egg Refrigeration Law (31 P. S. §§ 300.1—300.9) and Chapter 87 (relating to standards for grading and marketing eggs).

Response: The Department has revised the referenced section by inserting the requested reference. The reference to Chapter 87 in subsection (a) has been changed to “§ 87.41 (relating to standards)” and the same reference in subsection (c) was revised to refer to “§§ 87.51 and 87.2 (relating to receptacles; and marketing).” The reference to the Egg Refrigeration Law in subsection (b) has also been made more specific.

Comment: The CCHD commented on the provision for detention of shellfish in § 46.246 (relating to receiving shucked shellfish: packaging and identification) and suggested that detention provisions provided for in the act should be delineated in this chapter.

Response: The Department declines to implement this suggestion, as it believes that section 6 of the act (31 P. S. § 20.6) is sufficiently clear.

Comment: IRRC, the PFMA and the CCHD suggested the Department revise proposed § 46.261 (relating to preventing contamination from food employees’ hands) to more clearly describe the circumstances under which food employees may contact food with their bare hands. The PFMA offered language for this revision.

Response: The Department has implemented this suggestion in the final-form rulemaking and has used lan-

guage from the *2001 FDA Model Food Code* that is quite similar to the language proposed by the PFMA. The additional language is an adaptation of that found in the annex of the *2001 FDA Model Food Code*.

Comment: The PCHD and IRRC offered comment with respect to proposed § 46.303 (relating to linens and napkins; use limitations). The commentators noted the section did not allow for use of clean linens in retail displays of dry nonpotentially hazardous foods, such as rolls in a bakery. The commentators recommend adding the term “approved retail display” to this section to provide for the use of linens in contact with food on display.

Response: The Department has revised the referenced section to allow for linens to be in contact with nonpotentially hazardous food for the purposes of retail display, but requires that the linens and napkins be replaced upon restocking of the retail display.

Comment: IRRC suggested that the Department should clarify the safe distance between food and a source of contamination in proposed § 46.321 (relating to food storage).

Response: The Department cannot adequately define the safe distance between food and a source of contamination. The safe distance can vary widely—depending upon the circumstances. A professional evaluation with consideration of the type of contamination (such as airborne or wet), the environmental conditions (such as air currents or amount of usage) and other conditions would be necessary.

Comment: IRRC reviewed proposed § 46.345 (relating to miscellaneous sources of contamination) and expressed concern that the Department would be unable to measure or observe compliance with this provision and the regulated community would not be able to know whether it was in compliance. The commentator suggested that the Department outline procedures staff or public health officials will follow when notifying regulated facilities of a previously-unidentified source of contamination.

Response: The Department deleted § 46.345.

Comment: IRRC noted a typographical omission in the first sentence of proposed § 46.362 (relating to microwave cooking).

Response: The Department corrected the error.

Comment: The PCHD and IRRC noted that proposed § 46.385 contained no provisions regarding date marking, tracking or use of foods within a specified time frame. The PCHD requested that the Department consider adding language on this subject consistent with the *2001 FDA Model Food Code*.

Response: The Department added date marking language to § 46.385(b). The language is not directly from the *2001 FDA Model Food Code* but, instead, is a compromise found acceptable by both the Department and the PFMA, the entity representing the retail food industry.

Comment: The PFMA suggested proposed § 46.422 be revised to clarify alternative options with respect to “unpackaged foods portioned to consumer specifications.”

Response: The Department believes proposed § 46.422(c) was sufficiently specific, but has added an example.

Comment: IRRC suggested that proposed § 46.422(e)(1) be revised to include citations to the law referenced in that provision.

Response: The referenced paragraph has been deleted.

Comment: The PFMA suggested the addition of a “pizza peel” to the examples provided in § 46.521(i)(1)(i) (relating to materials in multiuse utensils and food-contact surfaces).

Response: The suggestion has been implemented.

Comment: The PFMA asked the Department to clarify § 46.591(d) (relating to warewashing machines) with respect to audible or visual alarms that indicate when the sanitizer reservoir of a warewashing machine is empty.

Response: The Department modified the subsection to use the specific language on this subject in the *2001 FDA Model Food Code*. The section now requires “. . . a visual means to verify that detergents and sanitizers are delivered or a visual or audible alarm to signal if the detergents and sanitizer are not delivered to the respective washing and sanitizing cycles.”

Comment: IRRC suggested the Department either delete the word “equipment” or add a clarifying term such as “equipment that requires cleaning by immersion” to proposed § 46.612(b) (relating to manual warewashing; sink compartment requirements).

Response: The Department has revised the referenced subsection to describe equipment and utensils that require cleaning by immersion.

Comment: IRRC suggested that the Department add examples to the “other task-specific cleaning equipment” described in proposed § 46.612(c)(3) and (4).

Response: The Department has implemented this suggestion.

Comment: The PFMA offered the opinion that proposed § 46.633 (relating to temperature measuring devices for manual warewashing) is intended for mechanical warewashing machines, rather than manual warewashing.

Response: The section is intended to address temperature measuring devices for manual warewashing. Section 46.591(c) addresses temperature measuring devices for mechanical warewashing machines.

Comment: The PCHD reviewed proposed § 46.676(b) (relating to manual warewashing equipment), permitting the use of a warewashing sink for food washing, food thawing and for washing of soiled wiping cloths and suggested that separate equipment should be provided to limit cross-contamination of foods.

Response: Section 46.676(a) was amended to prohibit the use of a warewashing sink for food preparation. The Department could ascertain no food safety hazard, however, in the washing of linens in a warewashing sink. Soiled linens would create no further food safety hazard than dirty dishes, if properly washed, rinsed and sanitized.

Comment: The PFMA suggested proposed § 46.712(d)(2)(ii) (relating to frequency of cleaning equipment food-contact surfaces and utensils) be revised to require cleaning frequency to be “monitored,” rather than “documented.”

Response: The Department declines to implement this suggestion. The required frequency for food equipment cleaning is in subsection (c). Since subsection (d)(2) describes an exception to the general cleaning frequency requirement, the Department believes it reasonable to

require an entity cleaning in accordance with the requirements of that paragraph to be able to prove compliance through documentation.

Comment: The BCHD noted that proposed § 46.801 (relating to sources of drinking water) does not prohibit cross-connections between a public and nonpublic water supply and that the section makes no mention of disinfection facilities (such as ultraviolet light treatment) or whether the facilities are required.

Response: The referenced section states that water must comply with the regulations of the Department of Environmental Protection in 25 Pa. Code Chapter 109 (relating to safe drinking water). That chapter requires back-flow prevention to protect the public water system. In the event of a cross-connection between a public and nonpublic water supply, adherence to this requirement protects the public water system. Chapter 109 of 25 Pa. Code does not require disinfection facilities in all cases, but requires them when necessary for safe drinking water and requires that these disinfection facilities be maintained and operated appropriately.

Comment: The BCHD and IIRC noted that proposed § 46.802 (relating to drinking water system flushing and disinfection) does not mention the requirement for obtaining "... check samples on a water supply prior to placing back in service after an emergency situation."

Response: The Department has revised the section by adding language requiring that the water meet the quality standards for public drinking water set forth in the regulations of the Department of Environmental Protection in 25 Pa. Code Chapter 109 before a drinking water system is placed back into service after construction, repair, modification or emergency.

Comment: IIRC reviewed proposed § 46.804 (relating to quality of water) and recommended the section include a procedure (or a cross reference or citation) for obtaining the Department's approval for a "non-drinking water supply."

Response: The Department has added § 46.1102 (relating to obtaining Department or License approval) clarifying the procedure for obtaining approval of the Department.

Comment: IIRC recommended proposed § 46.805(b) (relating to quantity and availability of water: capacity and pressure) be rewritten for clarity.

Response: The Department has implemented this recommendation.

Comment: The BCHD noted that proposed § 46.806 (relating to distribution, delivery and retention of water) does not have a provision for having a chlorine residual for emergency or alternative water supplies for food facilities.

Response: All emergency or alternative water supplies must meet the requirements in § 46.802. This section was revised to require these water supplies to comply with 25 Pa. Code Chapter 109.

Comment: IIRC noted a typographical error in proposed § 46.822(a)(2) (relating to design, construction and installation of plumbing systems).

Response: The error has been corrected in the final-form rulemaking.

Comment: The BCHD and the CCHD opined that proposed § 46.823(a)(1) (relating to numbers and capacities of plumbing facilities) does not provide for any type of handwashing facilities for the general public. The com-

mentators recommended that in public eating and drinking places or where self-service foods are available for the consumer (such as at salad bars), public health concerns should dictate that facilities should be provided for patron handwashing prior to food handling or consumption.

Response: The Department accepts the recommendation and has implemented it by adding § 46.823(a)(4).

Comment: IIRC asked for clarification of the process by which the Departmental approvals referenced in proposed § 46.823(a)(2) and (3) can be obtained.

Response: The Department has added § 46.1102, clarifying the procedure for obtaining approval of the Department.

Comment: IIRC reviewed § 46.823(b) and asked whether the Department planned to impose toilet requirements that differed from those established by the Department of Labor and Industry. If not, IIRC recommended the phrase "the Department or" be deleted from that subsection.

Response: The referenced phrase has been deleted. The Department's intention is to require a minimum of one toilet, and the subsection accomplishes this objective.

Comment: IIRC reviewed proposed §§ 46.841(1) and 46.842(f)(1) (relating to materials used in construction of water tanks and mobile food facility water tanks; and design and construction of water tanks and mobile food facility water tanks), and recommended the Department use the defined term "safe materials" instead of the term "safe."

Response: The recommendation has been implemented.

Comment: IIRC commented on the provision in proposed § 46.843(c)(2) (relating to numbers and capacities of water tanks and mobile food facility water tanks) requiring a hose connection that cannot possibly be used for another purpose.

Response: The fresh water supply of a mobile food unit must be protected from cross-contamination. Although the hose connection may be of a type commonly found, the intent is that the hose connection must be unique on each mobile unit so that it is not vulnerable to environmental contaminants, such as a sewage hose connected to the fresh water tank.

Comment: The BCHD reviewed proposed § 46.922(d) (relating to functionality of various physical facilities of a food facility) and opined that toilet room doors in shopping malls should not be mentioned in that subsection, as "most of the large malls across the State have bathroom facilities with self-closing doors."

Response: The Department feels that although most malls may have self-closing doors, the situation does not require self-closing doors to protect food safety where the toilet room does not open directly into the food facility.

Comment: The BCHD reviewed proposed § 46.922(e) and noted it makes no mention of the use of air-curtain doorways into food facilities.

Response: The provision allows for air curtains in § 46.922(e)(4)(ii).

Comment: IIRC offered several comments with respect to proposed § 46.922. It opined that proposed § 46.922(e)(3)(ii) and (iii) appears to be different ways of saying the same thing and one should be deleted. IIRC also offered that proposed § 46.922(e)(4)(iii) should give examples of "other effective means." IIRC also suggested

that proposed § 46.922(e)(4) and (5) should use consistent language concerning insects, rodents, flying insects and other pests.

Response: The Department has revised the section by combining § 46.922(e)(3)(ii) and (iii). The Department cannot provide examples of "other effective means" in § 46.922(e)(4)(iii). That subparagraph was inserted to allow for the use of devices developed in the future that perform satisfactorily to be used, although the Department is not aware of any currently-existing devices it can cite as examples. Section 46.922(e)(5) has been revised to make it consistent with § 46.922(e)(4).

Comment: The PCHD requested that proposed § 46.982(b)(1) (relating to limitations on animals) be revised to more-clearly state that animals that do not meet the exceptions set forth in that section may not be brought onto the premises of a food facility.

Response: The Department agrees the recommended change will add clarity, and has implemented it.

Comment: IRRC recommended that proposed § 46.1022(b)(3) (relating to poisonous or toxic substances: limitations on presence and use) either be deleted or revised to establish the parameters within which the Department would establish the "additional conditions" referenced in that section.

Response: The Department reworded the section to read "approved by the Department," and requirements for obtaining approval are outlined in § 46.1102.

Comment: IRRC noted that proposed § 46.1026(a)(1) (relating to pesticides) contains an inaccurate citation to the *United States Code Annotated*.

Response: This error has been corrected.

Comment: IRRC recommended that proposed § 46.1101 (relating to application for intended purpose: public health protection) be deleted, since it repeats the substance of proposed § 46.1 (relating to purpose).

Response: The Department accepts the recommendation and has deleted the proposed section.

Comment: IRRC reviewed proposed § 46.1102 (relating to access to food facilities), and suggested the word "credentials" be replaced by "identification" and that the Department provide examples of "other reasonable times" when an inspection might occur. IRRC also suggested the phrase "any other relevant statutory or regulatory authority" be deleted.

Response: The substance of proposed § 46.1102 has been moved to § 46.1101 (relating to access to food facilities) and the Department has implemented IRRC's recommendations.

Comment: The PFMA offered that proposed § 46.1121(b) (relating to facility and operating plans) seems to imply that hazard analysis critical control point (HACCP) plans would be required for facility plan reviews.

Response: The referenced section has been revised and clarifies that an HACCP plan is not required of all food facilities, just those specified under § 46.1122(a) (relating to HACCP plans).

Comment: IRRC raised several concerns with respect to proposed § 46.1121. IRRC recommended that proposed § 46.1121(b)(5) be revised to require any Department-issued request for "other information" to be in writing.

IRRC also recommended the referenced section describe how plans and specifications are to be communicated to the Department.

Response: The Department accepts the commentator's recommendation that Department-issued requests for additional information be in writing. Section 46.1121(b)(7) now requires the referenced requests for "other information" to be in writing. The Department also added a cross-reference to § 46.1142 (relating to application procedure for appropriate license or registration) in § 46.1121(a). Section 46.1142 requires an applicant (operator of a food facility) to obtain appropriate application forms from the Department or licensor. The location to which these forms are to be submitted may vary. Different licensors have different addresses and different applications received by the Department might be processed at different regional offices of the Department. The application materials will contain specific instructions regarding the application process.

Comment: The PFMA noted that the reference in proposed § 46.1122(a)(1)(ii) to § 46.345(d)(3) is incorrect.

Response: The Department agrees, and has made the correction.

Comment: The PCC reviewed proposed § 46.1142 and expressed concern that the rulemaking does not "... adequately explain the distinctions among permits, licenses or registrations." The commentator expressed concern that food facilities would be subjected to arbitrary standards.

Response: The Department has added language to the referenced section to clarify that a food facility that is a public eating and drinking place must have a license, while a food facility that is a food establishment must have a registration. These requirements are not new, but are imposed by the act and the law. The final-form rulemaking has deleted the reference to a "permit" that appeared throughout the proposed rulemaking.

Comment: The PFMA requested clarification that the use of the term "variance" in proposed § 46.1144(9) (relating to conditions or retention: responsibilities of the food facility operator) "is not intended to mean an HACCP plan would be required."

Response: The Department believes the referenced provision does not impose an HACCP plan requirement. The term "variance" is defined in § 46.3 and does not require an HACCP plan. The Department believes § 46.1122 clearly described the circumstances under which an HACCP plan is required.

Fiscal Impact

Commonwealth. The final-form rulemaking does not impose costs and has no fiscal impact on the Commonwealth. The Department currently registers and inspects food establishments under the act and issues licenses allowing the operation of public eating and drinking places under the law. It will merge the Department's regulatory functions into a single set of standards applicable to all "food facilities" in this Commonwealth.

Political Subdivisions: The final-form rulemaking does not impose costs and has no fiscal impact upon political subdivisions.

Private Sector: The final-form rulemaking might impose some initial cost on the private sector, although this cannot be readily quantified. Since the food safety standards prescribed by the final-form rulemaking reflect rather widely-known food safety concerns, the Depart-

ment expects most food facilities in operation in this Commonwealth are currently meeting these standards or would have relatively little difficulty meeting them. In addition, the final-form rulemaking is likely to result in a decrease in the number of lawsuits relating to foodborne illness originating from food facilities, with a resultant savings in costs attributable to litigation and awards of damages. These savings are not readily quantifiable.

General Public: The final-form rulemaking will enhance public health and safety. It is expected to reduce the number of cases of foodborne illness attributable to food originating from food facilities in this Commonwealth. This should result in some indeterminate cost savings to the general public.

Paperwork Requirements

The final-form rulemaking is not likely to appreciably impact upon the paperwork generated by the Department or food facilities.

Sunset Date

There is no sunset date for the final-form rulemaking. The Department will review the efficacy of the final-form rulemaking on an ongoing basis.

Contact Person

Further information is available by contacting the Sheri Dove, Department of Agriculture, Bureau of Food Safety and Laboratory Services, 2301 North Cameron Street, Harrisburg, PA 17110-9408, (717) 787-4315.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 8, 2002, the Department submitted a copy of the notice of proposed rulemaking, published at 32 Pa.B. 1046, to IRRC and the Chairpersons of the House and Senate Standing Committees on Agriculture and Rural Affairs for review and comment.

Under section 5(b.1) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on October 7, 2003, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on October 23, 2003, and approved the final-form rulemaking.

Findings

The Department finds that:

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

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

(3) The modifications that were made to this final-form rulemaking in response to comments received do not enlarge the purpose of the proposed rulemaking published at 32 Pa.B. 1046.

(4) The adoption of this final-form rulemaking in the manner provided in this order is necessary and appropriate for the administration of the authorizing statute.

Order

The Department, acting under authority of the authorizing statute, orders the following:

(a) The regulations of the Department, 7 Pa. Code Chapters 31, 35, 41, 43, 45—47, 53, 55, 61, 63, 79, 80 and 81, by adding §§ 46.1—46.3, 46.101, 46.102, 46.111—46.115, 46.131—46.137, 46.151—46.153, 46.201, 46.211—46.222, 46.241—46.251, 46.261, 46.262, 46.281—46.286, 46.301—46.307, 46.321—46.344, 46.361—46.366, 46.381—46.385, 46.401, 46.402, 46.421—46.483, 46.441, 46.461, 46.501, 46.521—46.523, 46.541—46.544, 46.561—46.563, 46.581—46.595, 46.611—46.615, 46.631—46.634, 46.651, 46.652, 46.671—46.676, 46.691—46.693, 46.711—46.719, 46.731, 46.751—46.753, 46.771—46.775, 46.801—46.806, 46.821—46.825, 46.841—46.844, 46.861—46.863, 46.881—46.886, 46.901, 46.902, 46.921, 46.922, 46.941—46.946, 46.961—46.965, 46.981, 46.982, 46.1001, 46.1002, 46.1021—46.1029, 46.1041, 46.1101—46.1103, 46.1121—46.1124 and 46.1141—46.1144; and by deleting §§ 31.1, 31.11—31.23, 31.31—31.39, 35.1—35.11, 41.1—41.4, 41.11—41.14, 41.21—41.24, 43.1—43.8, 45.1—45.7, 45.21—45.24, 45.31—45.33, 45.41—45.44, 45.51—45.54, 45.61—45.64, 45.71, 47.72, 45.81—45.87, 45.91—45.93, 47.1—47.3, 53.1—53.7, 53.11—53.19, 53.21, 53.22, 55.1—55.5, 61.1—61.7, 61.11—61.13, 61.21, 61.22, 61.31—61.34, 61.41—61.43, 61.51—61.53, 61.61—61.65, 61.71, 61.72, 63.1—63.4, 78.1—78.3, 78.11—78.14, 78.21—78.24, 78.31, 78.32, 78.41—78.43, 78.51—78.53, 78.61—78.65, 78.71—78.78, 78.91—78.97, 78.101, 78.111—78.114, 78.121, 78.122, 78.131—78.133, 78.141—78.147, 78.151—78.155, 78.161, 78.171—78.173, 78.181, 78.191, 78.192, 78.201—78.204, 78.211, 78.212, 78.221, 79.1, 80.1, 80.11—80.13, 80.21—80.23, 80.31, 80.32, 80.41—80.48, 80.51, 80.52, 80.61—80.63, 80.71, 80.72, 80.81—80.84, 81.1, 81.11, 81.12 and 81.21, to read as set forth in Annex A.

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

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

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

DENNIS C WOLFF,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 33 Pa.B. 5579 (November 8, 2002).)

Fiscal Note: Fiscal Note 2-137 remains valid for the final adoption of the subject regulation.

Annex A
TITLE 7. AGRICULTURE.
PART III. BUREAU OF FOOD SAFETY AND
LABORATORY SERVICES
Subpart A. SOLID FOODS
CHAPTER 31. (Reserved)

§ 31.1. (Reserved).
§§ 31.11—31.23. (Reserved).
§§ 31.31—31.39. (Reserved).

CHAPTER 35. (Reserved)
§§ 35.1—35.11. (Reserved).

CHAPTER 41. (Reserved)
§§ 41.1—41.4. (Reserved).
§§ 41.11—41.14. (Reserved).
§§ 41.21—41.24. (Reserved).

CHAPTER 43. (Reserved)

§§ 43.1—43.8. (Reserved).

CHAPTER 45. (Reserved)

§§ 45.1—45.7. (Reserved).

§§ 45.21—45.24. (Reserved).

§§ 45.31—45.33. (Reserved).

§§ 45.41—45.44. (Reserved).

§§ 45.51—45.54. (Reserved).

§§ 45.61—45.64. (Reserved).

§ 45.71. (Reserved).

§ 45.72. (Reserved).

§§ 45.81—45.87. (Reserved).

§§ 45.91—45.93. (Reserved).

CHAPTER 46. FOOD CODE

Subch.

A. PURPOSE AND DEFINITIONS

B. MANAGEMENT AND PERSONNEL

C. FOOD

D. EQUIPMENT, UTENSILS AND LINENS

E. WATER, PLUMBING AND WASTE

F. PHYSICAL FACILITIES

G. POISONOUS OR TOXIC MATERIALS

H. ADMINISTRATIVE PROCEDURES

Subchapter A. PURPOSE AND DEFINITIONS

Sec.

46.1. Purpose.

46.2. Scope.

46.3. Definitions.

§ 46.1. Purpose.

The purpose of this chapter is to safeguard public health and ensure that consumers are provided food that is safe, unadulterated and honestly presented.

§ 46.2. Scope.

This chapter establishes definitions; sets standards for management and personnel, food operations and equipment and facilities; and provides for food facility plan review, licensing, registration, inspection and employee restriction.

§ 46.3. Definitions.

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

Additive—A food additive or a color additive.

Adulterated—Food with respect to which one or more of the following is accurate:

(i) The food bears or contains any poisonous or deleterious substance, which may render it injurious to health. However, if the substance is not an added substance, the food will not be considered adulterated if the quantity of the substance in the food does not ordinarily render it injurious to health.

(ii) The food bears or contains any added poisonous or added deleterious substance, which is unsafe within the meaning of section 11 of the Food Act (31 P. S. § 20.11). This subparagraph does not apply to a pesticide chemical in or on a raw agricultural commodity, a food additive or a color additive.

(iii) The food is a raw agricultural commodity and bears or contains a pesticide chemical which is unsafe within the meaning of section 11 of the Food Act, except that, when a pesticide chemical has been used in or on a raw agricultural commodity with an exception granted or tolerance prescribed under section 11 of the Food Act or under any of the Federal acts and the raw agricultural commodity has been subjected to processing such as

canning, cooking, freezing, dehydrating or milling, the residue of the pesticide remaining in or on the processed food will, notwithstanding section 11 of the Food Act and this subparagraph, not be deemed unsafe if the residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of the residue in the processed food when ready to eat is not greater than the tolerance prescribed for the raw agricultural commodity.

(iv) The food bears or contains any food additive, which is unsafe within the meaning of section 11 of the Food Act or any of the Federal acts.

(v) The food consists in whole or in part of any diseased, contaminated, filthy, putrid or decomposed substance or is otherwise unfit for food.

(vi) The food has been produced, prepared, packed or held under unsanitary conditions so that it may have become contaminated with filth or may have been rendered diseased, unwholesome or injurious to health.

(vii) The food is, in whole or part, the product of a diseased animal or of an animal which has died otherwise than by slaughter.

(viii) The food is in a container composed, in whole or part, of any poisonous or deleterious substance which may render the contents injurious to health, unless the container is fabricated or manufactured with good manufacturing practices as that standard is defined and delineated by any of the Federal acts and their regulations.

(ix) The food has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption under section 11 of the Food Act or under one of the Federal acts.

(x) The food has had any valuable constituent, in whole or part, omitted or abstracted therefrom.

(xi) The food has had any substance substituted wholly or in part.

(xii) Damage or inferiority of the food is concealed in any manner.

(xiii) A substance has been added to the food and it is mixed or packed so as to increase its bulk or weight or reduce its quality or strength or make it appear better or of greater value than it is.

(xiv) The food bears or contains any color additive which is unsafe within the meaning of section 11 of the Food Act or under one of the Federal acts.

(xv) The food bears or contains eggs processed by or egg products derived from a manufacturing, processing or preparing method wherein whole eggs are broken using a centrifuge-type egg breaking machine that separates the egg's liquid interior from the shell.

Approved—Acceptable to the Department based on a determination of conformity with principles, practices and generally recognized standards proven to be scientifically sound that protect public health.

Bed and breakfast homestead or inn—A private residence which contains ten or fewer bedrooms used for providing overnight accommodations to the public, and in which breakfast is the only meal served and is included in the charge for the room.

Beverage—A liquid for drinking, including water.

Bottled drinking water—Water that is sealed in bottles, packages or other containers and offered for sale for human consumption. The term includes bottled mineral water.

CFR—The most-recently published edition or revision of the *Code of Federal Regulations*, a compilation of the general and permanent rules published in the *Federal Register* by the executive departments and agencies of the Federal government.

CIP—Cleaned in place—

(i) Cleaned in place by the circulation or flowing by mechanical means through a piping system of a detergent solution, water rinse and sanitizing solution onto or over equipment surfaces that require cleaning, such as the method used, in part, to clean and sanitize a frozen dessert machine.

(ii) The term does not include the cleaning of equipment such as band saws, slicers or mixers that are subjected to in-place manual cleaning without the use of a CIP system.

Casing—A tubular container for sausage products made of either natural or artificial (synthetic) material.

Certification number—A unique combination of letters and numbers assigned by the Department or other shellfish control authority having jurisdiction to a molluscan shellfish dealer according to the provisions of the National Shellfish Sanitation Program.

Color additive—A material which is a dye, pigment or other substance made by a process of synthesis or similar artifice or extracted, isolated or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral or other source and when added or applied to a food is capable, alone or through reaction with other substances, of imparting color thereto.

(i) The term includes black, white and intermediate grays.

(ii) The term does not include materials, which the Secretary, by regulation, determines are used, or are intended to be used, solely for a purpose other than coloring.

(iii) The term does not include any pesticide chemical, soil or plant nutrient or other agricultural chemical solely because of its effect in aiding, retarding or otherwise affecting, directly or indirectly, the growth or otherwise natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest.

Commingle—To combine shellstock harvested on different days or from different growing areas as identified on the tag or label or to combine shucked shellfish from containers with different container codes or different shucking dates.

Comminuted—A food that is reduced in size by methods including chopping, flaking, grinding or mincing. The term includes fish or meat products that are reduced in size and restructured or reformulated such as gefilte fish, gyros, ground beef and sausage; and a mixture of two or more types of meat that have been reduced in size and combined, such as sausages made from two or more meats.

Confirmed disease outbreak—A foodborne disease outbreak in which laboratory analysis of appropriate specimens identifies a causative agent and epidemiological analysis implicates the food as the source of the illness.

Consumer—A person, who is a member of the public, takes possession of food, is not functioning in the capacity of an operator of a food facility or food processing plant, and does not offer the food for resale.

Controlled atmosphere packaging—A type of reduced oxygen packaging in which the atmosphere of a package of food is modified so that until the package is opened, its composition is different from air, and continuous control is maintained, such as by using oxygen scavengers or a combination of total replacement of oxygen, nonrespiring food and impermeable packaging material.

Corrosion-resistant material—A material that maintains acceptable surface cleanability characteristics under prolonged influence of the food to be contacted, the normal use of cleaning compounds and sanitizing solutions and other conditions of the use environment.

Critical control point—A point or procedure in a specific food system where loss of control may result in an unacceptable health risk.

Critical limit—The maximum or minimum value to which a physical, biological or chemical parameter must be controlled at a critical control point to minimize the risk that the identified food safety hazard may occur.

Department—The Department of Agriculture of the Commonwealth.

Drinking water; potable water or water—Safe drinking water as defined in the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17). The term does not include water such as boiler water, mop water, rainwater, wastewater and “nondrinking” water.

Dry storage area—A room or area designated for the storage of packaged or containerized bulk food that is not potentially hazardous and dry goods such as single service items.

EPA—The United States Environmental Protection Agency.

Easily cleanable—

(i) A characteristic of a surface that:

(A) Allows effective removal of soil by normal cleaning methods.

(B) Is dependent on the material, design, construction and installation of the surface.

(C) Varies with the likelihood of the surface’s role in introducing pathogenic or toxigenic agents or other contaminants into food based on the surface’s approved placement, purpose and use.

(ii) The term includes a tiered application of the criteria that qualify the surface as easily cleanable as specified in subparagraph (i) to different situations in which varying degrees of cleanability are required, such as one of the following:

(A) The appropriateness of stainless steel for a food preparation surface as opposed to the lack of need for stainless steel to be used for floors or for tables used for consumer dining.

(B) The need for a different degree of cleanability for a utilitarian attachment or accessory in the kitchen as opposed to a decorative attachment or accessory in the consumer dining area.

Easily movable—A unit of equipment that is both of the following:

(i) Portable; mounted on casters, gliders or rollers; or provided with a mechanical means to safely tilt the unit of equipment for cleaning.

(ii) Has no utility connection, a utility connection that disconnects quickly or a flexible utility connection line of sufficient length to allow the equipment to be moved for cleaning of the equipment and adjacent area.

Egg—The shell egg of the domesticated chicken, turkey, duck, goose or guinea.

Employee—The license or registration holder, person in charge, person having supervisory or management duties, person on the payroll, family member, volunteer, person performing work under contractual agreement or other person working in a food facility.

Equipment—

(i) An article that is used in the operation of a food facility such as a freezer, grinder, hood, ice maker, meat block, mixer, oven, reach-in refrigerator, scale, sink, slicer, stove, table, temperature measuring device for ambient air, vending machine or warewashing machine.

(ii) The term does not include items used for handling or storing large quantities of packaged foods that are received from a supplier in a cased or overwrapped lot, such as hand trucks, forklifts, dollies, pallets, racks and skids.

Exclude—To prevent a person from working as a food employee or entering a food facility except for those areas open to the general public.

FDA—The United States Food and Drug Administration.

Federal acts—The Wholesome Meat Act (21 U.S.C.A. §§ 601—641), the Federal Food, Drug and Cosmetic Act (21 U.S.C. §§ 301—399), the Poultry Products Inspection Act (21 U.S.C.A. §§ 451—471), the Fair Packaging and Labeling Act (15 U.S.C.A. §§ 1451—1461), the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C.A. § 136—136y) and the Nutrition Labeling and Education Act of 1990 (21 U.S.C.A. § 343-1).

Fish—The term includes:

(i) Fresh or saltwater finfish, crustaceans, all mollusks and other forms of aquatic life (including alligator, frog, aquatic turtle, jellyfish, sea cucumber, and sea urchin and the roe of those animals), other than birds or mammals, if the animal life is intended for human consumption.

(ii) The term includes an edible human food product derived in whole or in part from fish, including fish that have been processed in any manner.

Food—An article used for food or drink by humans, including chewing gum and articles used for components of any article. The term does not include medicines and drugs.

Food Act—The Food Act (31 P. S. §§ 20.1—20.18).

Food additive—

(i) A substance, the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food, with respect to which one or more of the following is correct:

(A) The substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures to be safe under the conditions of its intended use.

(B) The substance has been used in food prior to January 1, 1958, and is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures or experience based on common use in food, to be safe under the conditions of its intended use.

(ii) The term does not include the following:

(A) A pesticide chemical in or on a raw agricultural commodity.

(B) A pesticide chemical to the extent that it is intended for use or is used in the production, storage or transportation of any raw agricultural commodity.

(C) A color additive.

(D) A substance used in accordance with a sanction or approval granted prior to the enactment of this subparagraph under a statute repealed by the Food Act, under the Poultry Products Inspection Act or under the Wholesome Meat Act.

(E) A new animal drug.

Foodborne disease outbreak—The occurrence of two or more cases of a similar illness after ingestion of a common food.

Food-contact surface—One of the following:

(i) A surface of equipment or a utensil with which food normally comes into contact.

(ii) A surface of equipment or a utensil from which food may drain, drip or splash into a food, or onto a surface normally in contact with food.

Food employee—An individual working with unpackaged food, food equipment or utensils, or food-contact surfaces.

Food establishment—

(i) A retail food store and a room, building or place or portion thereof or vehicle maintained, used or operated for the purpose of commercially storing, packaging, making, cooking, mixing, processing, bottling, baking, canning, freezing, packing or otherwise preparing or transporting or handling food.

(ii) The term includes those portions of public eating and drinking licensees which offer food for sale for off-premises consumption, except those portions of establishments operating exclusively under milk or milk products permits.

Food facility—A public eating or drinking place or a retail food establishment. The term does not include the following:

(i) A food service facility provided by or at an organized camp or campground.

(ii) A food service facility provided by or at a school.

(iii) A food service facility at an institution such as a nursing home or hospital.

(iv) Any other food service facility that is not a public eating or drinking place.

(v) Food processing plants, warehousing establishments and other food establishments that comply with the following:

(A) Are not retail food establishments.

(B) Do not provide food to the consumer either directly or indirectly (such as through the home delivery of groceries).

(C) Applicable Federal regulations.

Food facility operator—The entity that is legally responsible for the operation of the food facility, such as the owner, owner's agent or other person.

Food facility premises—The food facility, its contents and the contiguous land or property under the control of the food facility operator. If a food facility is a component of a larger operation, such as a hotel, motel, shopping mall or public campground, and that larger operation is also under the control of the food facility operator, that larger operation is part of the food facility premises to the extent it may impact the food facility, its personnel or its operations.

Food processing plant—A commercial operation that manufactures, packages, labels or stores food for human consumption and does not provide food directly to a consumer. The term does not include a food facility.

Game animal—

(i) An animal, the products of which are food, that is not classified as any of the following:

(A) Fish, as that term is defined in this chapter.

(B) Cattle, sheep, swine, goat, horse, mule or other equine, as those terms are used in 9 CFR Chapter III, Subchapter A (relating to agency organization and terminology; mandatory meat and poultry products inspection and voluntary inspection and certification).

(C) Poultry, as that term is used in 9 CFR Chapter III, Subchapter A.

(D) Ratites, such as ostriches, emus or rheas.

(ii) The term includes mammals such as reindeer, elk, deer, antelope, water buffalo, bison, rabbit, squirrel, opossum, raccoon, nutria or muskrat, and nonaquatic reptiles such as land snakes.

General use pesticide—A pesticide that is not classified by the EPA for restricted use as specified in 40 CFR 152.175 (relating to pesticides classified for restricted use).

HACCP—Hazard Analysis Critical Control Point—A system developed by the National Advisory Committee on Microbiological Criteria for Foods that identifies and monitors specific foodborne hazards that can adversely affect the safety of the food products.

HACCP plan—A written document that delineates the formal procedures for following the HACCP principles developed by the National Advisory Committee on Microbiological Criteria for Foods.

Hazard—A biological, chemical or physical property (such as the presence of pathogens, pesticides, natural toxins, rodent contamination or foreign materials) that may cause an unacceptable consumer health risk.

Hermetically sealed container—A container that is designed and intended to be secure against the entry of microorganisms and, in the case of low acid canned foods, to maintain the commercial sterility of its contents after processing.

High humidity cooking—Cooking in an oven that attains relative humidity of greater than 90% for at least 1 hour as measured in the cooking chamber or exit of the oven, or cooking in a moisture-impermeable bag that provides 100% humidity.

Highly susceptible population—A group of persons who are more likely than other people in the general population to experience foodborne disease because both of the following conditions exist:

(i) The group is comprised of immunocompromised persons, preschool-age children or older adults.

(ii) The group obtains food at a facility that provides services such as custodial care, health care, assisted living services, nutritional services or socialization services. Examples of facilities providing these services include child or adult day care centers, health care centers, assisted living facilities, hospitals, nursing homes, kidney dialysis centers and senior centers.

Honestly presented—Food offered for human consumption in a way that does not mislead or misinform the consumer, and without misrepresenting the true appearance, color or quality of the food through the use of food or color additives, colored overwraps, lighting or other means.

Imminent health hazard—A significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance or event creates a situation that requires immediate correction or cessation of operation to prevent injury based on one or more of the following:

(i) The number of potential injuries.

(ii) The nature, severity and duration of the anticipated injury.

Injected—Manipulating a meat so that infectious or toxigenic microorganisms may be introduced from its surface to its interior through tenderizing with deep penetration or injecting the meat such as with juices which may be referred to as "injecting," "pinning" or "stitch pumping."

Juice—When used in the context of food safety, the term refers to the aqueous liquid expressed or extracted from one or more fruits or vegetables, purées of the edible portions of one or more fruits or vegetables, or any concentrate of the liquid or purée. The term includes juice as a whole beverage, an ingredient of a beverage, and a puree as an ingredient of a beverage. This definition does not apply to standards of identity established by the FDA or USDA.

Kitchenware—Food preparation and storage utensils.

License—A grant to a licensee to operate a public eating or drinking place, as defined in the Public Eating and Drinking Places Law.

Licensor—Includes the following:

(i) The county department of health or joint-county department of health, whenever the public eating or drinking place is located in a political subdivision which is under the jurisdiction of a county department of health or joint-county department of health.

(ii) The health authorities of cities, boroughs, incorporated towns and first-class townships, whenever the public eating or drinking place is located in a city, borough, incorporated town or first-class township not under the jurisdiction of a county department of health or joint-county department of health.

(iii) The health authorities of second class townships and second class townships which have adopted a home rule charter which elect to issue licenses under the Public Eating and Drinking Places Law whenever the public eating and drinking place is located in the second class township or second class township which has adopted a home rule charter not under the jurisdiction of a county department of health or joint-county department of health.

(iv) The Department, whenever the public eating and drinking place is located in any other area of this Commonwealth.

Linens—Fabric items such as cloth hampers, cloth napkins, tablecloths, wiping cloths and work garments, including cloth gloves.

mg/L—Milligrams per liter, which is the metric equivalent of parts per million.

Meat—The flesh of animals used as food including the dressed flesh of cattle, swine, sheep or goats and other edible animals. The term does not include fish, poultry and wild game animals as specified under § 46.221(b) and (c) (relating to game animals).

Milk Sanitation Law—The act of July 2, 1935 (P. L. 589, No. 210) (31 P. S. §§ 645—660e).

Mobile food facility—Any stationary, movable or temporary food facility—such as a stand, vehicle, cart, basket, box or similar structure from which food is stored, prepared, processed, distributed or sold—which physically locates at one site or location for no more than 14 consecutive days, whether operating continuously or not during this time. The term does not include a food facility that is physically located at one site for more than 14 consecutive days.

Modified atmosphere packaging—

(i) A type of reduced oxygen packaging in which the atmosphere of a package of food is modified so that its composition is different from air but the atmosphere may change over time due to the permeability of the packaging material or the respiration of the food.

(ii) The term includes: reduction in the proportion of oxygen, total replacement of oxygen or an increase in the proportion of other gases such as carbon dioxide or nitrogen.

Molluscan shellfish—An edible species of fresh or frozen oysters, clams, mussels and scallops or edible portions thereof, except when the scallop product consists only of the shucked adductor muscle.

Nonpublic water supply—A system for the provision of piped water for human consumption that is not a public water system.

Other food regulatory agency—Local bodies, State bodies other than the Commonwealth or Federal enforcement bodies having jurisdiction over a food establishment or food processing plant. Examples include the USDA with respect to most meat processing plants within this Commonwealth and the FDA having jurisdiction over food products imported from other countries.

pH—The symbol for the negative logarithm of the hydrogen ion concentration, which is a measure of the degree of acidity or alkalinity of a solution. Values between 0 and 7 indicate acidity and values between 7 and 14 indicate alkalinity. The value for pure distilled water is 7, which is considered neutral.

Packaged—

(i) Bottled, canned, cartoned, securely bagged or securely wrapped in a food facility or a food processing plant.

(ii) The term does not include a wrapper, carryout box or other nondurable container used to containerize food with the purpose of facilitating food protection during service and receipt of the food by the consumer.

Pennsylvania Construction Code Act—35 P. S. §§ 7210.101—7210.1103.

Pennsylvania Sewage Facilities Act—35 P. S. §§ 750.1—750.20a.

Permanent food facility—A food facility—whether stationary or mobile—that is not a temporary food facility operating more than 14 days in a single calendar year—whether these days are consecutive or not.

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

Personal care items—

(i) Items or substances that may be poisonous, toxic or a source of contamination and are used to maintain or enhance a person's health, hygiene or appearance.

(ii) The term includes items such as medicines, first aid supplies, cosmetics, toiletries (such as toothpaste and mouthwash) and similar items.

Person in charge—The individual present at a food facility responsible for the operation at the time of inspection.

Physical facilities—The structure and interior surfaces of a food facility, including accessories such as soap and towel dispensers and attachments such as light fixtures and heating or air conditioning system vents.

Plumbing fixture—A receptacle or device that is one or more of the following:

(i) Permanently or temporarily connected to the water distribution system of the premises and demands a supply of water from the system.

(ii) Discharges used water, waste materials or sewage directly or indirectly to the drainage system of the premises.

Plumbing system—The water supply and distribution pipes; plumbing fixtures and traps; soil, waste and vent pipes; sanitary and storm sewers and building drains, including their respective connections, devices and appurtenances within the premises; and water-treating equipment.

Poisonous or toxic material—A substance that is not intended for ingestion and that fits within one or more of the following categories:

(i) Cleaners and sanitizers, including cleaning and sanitizing agents and agents such as caustics, acids, drying agents, polishes and other chemicals.

(ii) Pesticides.

(iii) Substances necessary for the operation and maintenance of the establishment, such as nonfood grade lubricants, solvents and personal care items that may be deleterious to health.

(iv) Substances that are not necessary for the operation and maintenance of the establishment and are on the premises for retail sale, such as petroleum products and paints.

Potentially hazardous food—

(i) A food which consists, in whole or part, of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacea or other ingredients, including synthetic ingredients, which is in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms.

(ii) The term does not include foods that have a pH level of 4.6 or below or a water activity of 0.85 or less under standard conditions or food products in hermetically sealed containers processed to maintain commercial sterility.

Poultry—One or more of the following:

(i) A domesticated bird (chickens, turkeys, ducks, geese or guineas), whether live or dead, as defined in 9 CFR Chapter III, Subchapter A, Part 381 (relating to poultry products inspection regulations).

(ii) A migratory waterfowl or game bird, such as pheasant, partridge, quail, grouse, guineas, pigeon or squab, whether live or dead, as defined in the USDA regulations in 9 CFR Part 362 (relating to voluntary poultry inspection regulations).

(iii) The term does not include ratites.

Primal cut—A basic major cut into which carcasses and sides of meat are separated, such as a beef round, pork loin, lamb flank or veal breast.

Public eating or drinking place—A place within this Commonwealth where food or drink is served to or provided for the public, with or without charge. The term does not include dining cars operated by a railroad company in interstate commerce or a bed and breakfast homestead or inn.

Public Eating and Drinking Places Law—The act of May 23, 1945 (P. L. 926, No. 369) (35 P. S. §§ 655.1—655.13).

Public water system—A system which provides water to the public for human consumption, and which has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year, or as otherwise specified in 25 Pa. Code Chapter 109 (relating to safe drinking water).

(i) The term includes collection, treatment, storage and distribution facilities under control of the operator of the system and used in connection with the system.

(ii) The term also includes a system which provides water for bottling or bulk hauling for human consumption.

Ratite—An animal belonging to the same family as ostriches, emus and rheas.

Ready-to-eat food—Any of the following types of food:

(i) Food in a form that is edible without additional preparation to achieve food safety, such as raw animal-derived foods that have been cooked in accordance with § 46.361 or § 46.362 (relating to cooking raw animal-derived foods; and microwave cooking), or fish that have been frozen in accordance with § 46.364 (relating to parasite destruction in fish other than molluscan shellfish by freezing), although additional preparation may occur for palatability or aesthetic, epicurean, gastronomic or culinary purposes.

(ii) Food that is raw or partially-undercooked animal-derived food, where the food facility offering the food has complied with § 46.361(d)(1) and the consumer notification requirements of § 46.423 (relating to consumer advisory required with respect to animal-derived foods that are raw, undercooked or not otherwise processed to eliminate pathogens), although additional preparation may occur for palatability or aesthetic, epicurean, gastronomic or culinary purposes.

(iii) Food that is prepared in accordance with a variance issued by the Department under § 46.361(d)(2) and

§ 46.1103 (relating to variances), although additional preparation may occur for palatability or aesthetic, epicurean, gastronomic or culinary purposes.

(iv) Raw fruits and vegetables that are washed in accordance with § 46.285 (relating to washing raw fruits and vegetables).

(v) Fruits and vegetables that are cooked for hot holding in accordance with § 46.363 (relating to plant food cooking for hot holding).

(vi) Potentially hazardous food that is cooked in accordance with the time and temperature requirements for that specific food in §§ 46.361—46.363, and that is cooled as specified in § 46.384 (relating to potentially hazardous food: cooling).

(vii) Plant food with respect to which further washing, cooking or other processing is not required for food safety, and from which rinds, peels, husks or shells (if naturally present) are removed.

Reduced oxygen packaging—

(i) The reduction of the amount of oxygen in a package by removing oxygen; displacing oxygen and replacing it with another gas or combination of gases; or otherwise controlling the oxygen content to a level below that normally found in the surrounding 21% oxygen atmosphere.

(ii) A process as specified in subparagraph (i) that involves a food for which *Clostridium botulinum* is identified as a microbiological hazard in the final packaged form.

(iii) The term includes vacuum packaging, modified atmosphere packaging and controlled atmosphere packaging.

Refuse—Solid waste not carried by water through the sewage system.

Registration—A grant to a person to operate a food establishment within this Commonwealth as required by section 14 of the Food Act (31 P. S. § 20.14).

Reg. Penna. Dept. Agr.—An abbreviation connoting that a food bearing that abbreviation on its package label has been processed by a food establishment that is "registered with the Pennsylvania Department of Agriculture" in accordance with section 14(a) of the Food Act.

Restrict—To limit the activities of a food employee so that there is no risk of transmitting a disease that is transmissible through food and the food employee does not work with exposed food, clean equipment, utensils, linens and unwrapped single-service or single-use articles.

Restricted egg—Any check, dirty egg, incubator reject, inedible, leaker or loss as defined in Chapter 87 (relating to standards for grading and marketing eggs).

Restricted use pesticide—A pesticide classified for restricted use under section 3(d) of the Federal Insecticide, Fungicide and Rodenticide Act of 1947 (7 U.S.C.A. § 136(d)), or a pesticide designated by the Secretary for restricted use under section 7(b)(6) of the Pennsylvania Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(6)).

Retail food establishment—A food establishment which stores, prepares, packages, vends, offers for sale or otherwise provides food for human consumption and which relinquishes possession of food to a consumer directly, or indirectly, through a delivery service such as home delivery of grocery orders or delivery service provided by common carriers.

Risk—The likelihood that an adverse health effect will occur within a population as a result of a hazard in a food.

Safe material—One or more of the following:

(i) An article manufactured from or composed of materials that may not reasonably be expected to result, directly or indirectly, in their becoming a component or otherwise affecting the characteristics of any food.

(ii) An additive that is used as specified in section 409 or section 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C.A. §§ 301 and 376).

(iii) A material that is not an additive and that is used in conformity with applicable regulations of the FDA.

Sanitization—The application of cumulative heat or chemicals on cleaned food-contact surfaces that, when evaluated for efficacy, is sufficient to yield a reduction of five logs, which is equal to a 99.999% reduction, of representative disease microorganisms of public health importance.

Sealed—Free of cracks or other openings that allow the entry or passage of moisture.

Secretary—The Secretary of the Department or an authorized representative, employee or agent of the Department.

Service animal—An animal such as a guide dog, signal dog or other animal individually trained to provide assistance to an individual with a disability.

Servicing area—An operating base location to which a mobile food facility or transportation vehicle returns regularly for things such as discharging liquid or solid wastes, refilling water tanks and ice bins and boarding food.

Sewage—A substance, which contains waste products or excrements or other discharges from the bodies of human beings or animals and any noxious or deleterious substance being harmful or inimical to the public health, or to animal or aquatic life, or to the use of water for domestic water supply or for recreation.

Shellfish control authority—A State, Federal, foreign, tribal or other government entity legally responsible for administering a program that includes certification of molluscan shellfish harvesters and dealers for interstate commerce.

Shellfish permit—A permit issued by the Department in accordance with Chapter 49 (relating to shellfish) and the National Shellfish Sanitation Program, that authorizes a person to operate a food establishment for shellfish.

Shellfish permit holder—The entity that meets the following conditions:

(i) Is legally responsible for the operation of the food establishment such as the owner, owner's agent or other person.

(ii) Possesses a valid shellfish permit to operate a shellfish food establishment.

Shellstock—Raw, in-shell molluscan shellfish.

Shiga toxin-producing Escherichia coli—Any *E. coli* capable of producing Shiga toxins, also called Verocytotoxins or Shiga-like toxins. This includes, but is not limited to, *E. coli* serotypes O157:H7, O157:NM and O157:H.

Shucked shellfish—Molluscan shellfish that have one or both shells removed.

Single-service articles—Tableware, carry-out utensils and other items such as bags, containers, place mats, stirrers, straws, toothpicks and wrappers that are designed and constructed for one time, one person consumer use after which they are intended for discard.

Single-use articles—

(i) Utensils and bulk food containers designed and constructed to be used once and discarded.

(ii) The term includes items such as wax paper, butcher paper, plastic wrap, formed aluminum food containers, jars, plastic tubs or buckets, bread wrappers, pickle barrels, ketchup bottles and number 10 cans which do not meet the materials, durability, strength and cleanability specifications in §§ 46.521(a), 46.541(a) and 46.542(a) and (b) (relating to materials in multiuse utensils and food-contact surfaces; durability and strength; and cleanability of multiuse food-contact surfaces and CIP equipment) for multiuse utensils.

(iii) The term does not include formed aluminum containers used in conjunction with pan liners that may be reused to cook nonpotentially hazardous baked goods.

Slacking—The process of moderating the temperature of a food such as allowing a food to gradually increase from a temperature of -23°C (-10°F) to -4° C (25°F) in preparation for deep-fat frying or to facilitate even heat penetration during the cooking of previously block-frozen food such as spinach.

Smooth—One or more of the following:

(i) A food-contact surface having a surface free of pits and inclusions with cleanability equal to or exceeding that of (100 grit) number-3 stainless steel.

(ii) A nonfood-contact surface of equipment having a surface equal to that of commercial grade hot-rolled steel free of visible scale.

(iii) A floor, wall or ceiling having an even or level surface with no roughness or projections that renders it difficult to clean.

Substance—A material intended for use in producing, manufacturing, packaging, processing, preparing, treating, transporting or holding food and any source of radiation intended for any use.

Sulfiting agent—A substance which imparts a residual of sulfur dioxide.

Table-mounted equipment—Equipment that is not portable and is designed to be mounted off the floor on a table, counter or shelf.

Tableware—Eating, drinking and serving utensils for table use such as plates, flatware (including forks, knives and spoons) and hollowware (including bowls, cups, serving dishes and tumblers).

Temperature measuring device—A thermometer, thermocouple, thermistor or other device that indicates the temperature of food, air or water.

Temporary food facility—A food facility that operates for a period of no more than 14 consecutive days in a fixed location and in conjunction with a single event or celebration (such as a fair, festival, carnival or other transitory gathering).

Temporary license—Either of the following:

(i) A license that is the following:

(A) Issued to the operator of a temporary food facility.

(B) Valid for the duration of a particular event or celebration (such as a fair or carnival) of no more than 14 days duration (whether these days are consecutive or nonconsecutive).

(C) Issued to the operator with respect to no more than three events or celebrations in a particular calendar year.

(ii) A license that is the following:

(A) Issued to a food facility operator operating a food facility, whether stationary or mobile.

(B) In operation for a total of no more than 14 days within a particular calendar year.

(C) Not in conjunction with an event or celebration.

USDA—The United States Department of Agriculture.

Utensil—A food-contact implement or container used in the storage, preparation, transportation, dispensing, sale or service of food. The term includes the following:

(i) Kitchenware or tableware that is multiuse, single-service or single-use.

(ii) Gloves used in contact with food.

(iii) The temperature sensing probes of food temperature measuring devices.

(iv) Probe-type price or identification tags used in contact with food.

Utility sink—A sink used for the disposal of mop water or other similar liquid waste.

Vacuum packaging—A type of reduced oxygen packaging in which air is removed from a package of food and the package is hermetically sealed so that a vacuum remains inside the package, such as sous vide.

Variance—A written document issued by the Department that authorizes a modification or waiver of one or more requirements of this chapter if, in the opinion of the Department, a health hazard or nuisance will not result from the modification or waiver.

Vending machine—A self-service device that, upon insertion of a coin, paper currency, token, card or key, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation.

Vending machine location—The room, enclosure, space or area where one or more vending machines are installed and operated. The term includes the storage areas and areas on the premises that are used to service and maintain the vending machines.

Warewashing—The cleaning and sanitizing of food-contact surfaces of equipment and utensils.

Water activity or a_w —A measure of the free moisture in a food, obtained by dividing the water vapor pressure of the substance by the vapor pressure of pure water at the same temperature. Water activity is typically indicated by the symbol a_w .

Water for human consumption—The term includes water that is used for drinking, bathing and showering, cooking, dishwashing or maintaining oral hygiene.

Whole-muscle, intact beef—Whole muscle beef that is not injected, mechanically tenderized, reconstructed, or scored and marinated, from which beef steaks may be cut.

Subchapter B. MANAGEMENT AND PERSONNEL

SUPERVISION

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SUPERVISION

§ 46.101. Designation of person in charge.

The food facility operator shall be the person in charge or shall designate a person in charge and shall ensure that a person in charge is present at the food facility during all hours of operation.

§ 46.102. Duties of the person in charge.

The person in charge shall perform the following duties:

(1) Ensure that food facility operations are not conducted in a private home where the food facility has not been approved by the Department, or in a room used as living or sleeping quarters as specified in § 46.922(k) (relating to functionality of various physical facilities of a food facility).

(2) Ensure that persons unnecessary to the food facility operation are not allowed in the food preparation, food storage or warewashing areas, except that brief visits and tours may be authorized by the person in charge if steps are taken to ensure that exposed food; clean equipment, utensils, linens and unwrapped single-service and single-use articles are protected from contamination.

(3) Ensure that employees and other persons (such as delivery and maintenance persons and pesticide applicators) entering the food preparation, food storage and warewashing areas comply with this chapter.

(4) Routinely monitor employee handwashing to ensure that employees effectively clean their hands.

(5) Routinely monitor employee observations and periodically evaluate foods upon receipt to ensure that employees visibly observe foods as they are received to determine that they are from approved sources, delivered at the required temperatures, protected from contamination, unadulterated and accurately presented.

(6) Conduct daily oversight of the employees' routine monitoring of cooking temperatures using appropriate temperature measuring devices properly scaled and calibrated in accordance with §§ 46.561 and 46.691(b) (relating to accuracy of temperature measuring devices for food; and utensils and temperature and pressure measuring devices: repair and calibration), to ensure the employees are properly cooking potentially hazardous food, and are being particularly careful in cooking those foods known to cause severe foodborne illness and death, such as eggs and comminuted meats.

(7) Conduct daily oversight of the employees' routine monitoring of food temperatures during cooling, to ensure that employees are using proper methods to rapidly cool potentially hazardous foods that are not held hot or are not for consumption within 4 hours.

(8) Ensure that consumers who order raw or partially cooked ready-to-eat foods of animal origin are informed, in accordance with § 46.423 (relating to consumer advisory required with respect to animal-derived foods that are raw, undercooked or not otherwise processed to eliminate pathogens), that the food is not cooked sufficiently to ensure its safety.

(9) Routinely monitor solution temperature and exposure time for hot water sanitizing, and chemical concentration, pH, temperature and exposure time for chemical sanitizing, to ensure that employees properly sanitize cleaned multiuse equipment and utensils before they are reused.

(10) Ensure that consumers are notified that clean tableware is to be used when they return to self-service areas such as salad bars and buffets, in accordance with § 46.306 (relating to using clean tableware for second portions and refills).

(11) Ensure that employees prevent cross contamination of ready-to-eat food with bare hands by properly using suitable utensils, such as deli tissue, spatulas, tongs, single-use gloves or dispensing equipment, or by following a procedure approved under § 46.261(d) (relating to preventing contamination from food employees' hands).

(12) Ensure that employees are properly trained in food safety as it relates to their assigned duties.

EMPLOYEE HEALTH

§ 46.111. Duty to report disease or medical condition.

(a) *Responsibility of a food facility operator to require reporting.* A food facility operator shall require a food employee and a food employee applicant to whom a conditional offer of employment is made to report to the person in charge information about their health and activities as they relate to diseases described in § 46.112 (relating to diseases or medical conditions that must be reported) or diseases that are transmissible through food.

(b) *Responsibility of a person in charge to report information to Department.* The person in charge shall notify the Department that a food employee is diagnosed with an illness due to Salmonella typhi, Shigella spp., Shiga toxin-producing Escherichia coli or hepatitis A virus.

(c) *Responsibilities of a food employee or food employee applicant.* A food employee or a person who applies for a job as a food employee shall report to the person in charge the information specified in this section in a manner that allows the person in charge to prevent the likelihood of foodborne disease transmission. This information includes the date of onset of jaundice or the date of onset of any illness or condition specified in § 46.112.

§ 46.112. Diseases or medical conditions that must be reported.

A food employee or food employee applicant shall report the following diseases, medical conditions or special circumstances to the person in charge:

- (1) A diagnosis of an illness due to any of the following:
 - (i) Salmonella typhi.
 - (ii) Shigella spp.
 - (iii) Shiga toxin-producing Escherichia coli.
 - (iv) Hepatitis A virus.
- (2) A past illness from any of the following:

- (i) Salmonella typhi within the past 3 months.
- (ii) Shigella spp. within the past month.
- (iii) Shiga toxin-producing Escherichia coli within the last month.

(iv) Hepatitis A virus.

(3) A symptom caused by illness, infection or other source, where that symptom is associated with an acute gastrointestinal illness such as any of the following:

- (i) Diarrhea.
- (ii) Fever.
- (iii) Vomiting.
- (iv) Jaundice.
- (v) Sore throat with fever.

(4) A lesion containing pus such as a boil or infected wound that is open or draining and is any of the following:

- (i) On the hands or wrists, unless an impermeable cover such as a finger cot or stall protects the lesion and a single-use glove is worn over the impermeable cover.
- (ii) On exposed portions of the arms, unless the lesion is protected by an impermeable cover.
- (iii) On other parts of the body, unless the lesion is covered by a dry, durable, tight-fitting bandage.

(5) The food employee or food employee applicant is suspected of causing a confirmed disease outbreak caused by S. typhi, Shigella spp., Shiga toxin-producing Escherichia coli or hepatitis A virus, including an outbreak at an event such as a family meal, church supper or festival because the food employee or applicant prepared food implicated in the outbreak.

(6) The food employee or food employee applicant is suspected of being exposed to a confirmed disease outbreak caused by S. typhi, Shigella spp., Shiga toxin-producing Escherichia coli or hepatitis A virus, including an outbreak at an event such as a family meal, church supper or festival because the food employee or applicant did either of the following:

- (i) Consumed food implicated in the outbreak.
- (ii) Consumed food at the event prepared by a person who is infected or ill with the infectious agent that caused the outbreak or who is suspected of being a shedder of the infectious agent.

(7) The food employee or food employee applicant lives in the same household as a person who is diagnosed with a disease caused by S. typhi, Shigella spp., Shiga toxin-producing Escherichia coli or hepatitis A virus, and knows of that diagnosis.

(8) The food employee or food employee applicant lives in the same household as a person who attends or works in a setting where there is a confirmed disease outbreak caused by S. typhi, Shigella spp., Shiga toxin-producing Escherichia coli or hepatitis A virus, and knows of that outbreak.

§ 46.113. Duty to impose exclusions and restrictions.

(a) *General exclusions and restrictions.* A person in charge shall impose the following exclusions and restrictions:

- (1) Exclude a food employee from a food facility if the food employee is diagnosed with an infectious agent

specified in § 46.112(1) (relating to diseases or medical conditions that must be reported).

(2) Restrict a food employee from working with exposed food; clean equipment, utensils, linens and unwrapped single-service and single-use articles, in a food facility if the food employee is either of the following:

(i) Experiencing a symptom specified in § 46.112(3) or (4).

(ii) Not experiencing a symptom of acute gastroenteritis specified in § 46.112(3), but has a stool that yields a specimen culture that is positive for *Salmonella typhi*, *Shigella* spp. or Shiga toxin-producing *Escherichia coli*.

(b) *Special exclusions with respect to a food employee who is jaundiced.* If a food employee is jaundiced, the person in charge shall exclude the food employee as a food handler until 7 days after the onset of jaundice. If a food employee is jaundiced more than 7 days after onset, the person in charge shall restrict the food employee from working with exposed food and clean equipment, utensils, linens and unwrapped single service and single use articles in a food facility.

(c) *Special exclusions with respect to a food facility serving a highly susceptible population.* If the population served by the food facility is a highly susceptible population, a person in charge shall impose any exclusions or restrictions required under subsection (a) and also exclude a food employee from the food facility if the food employee is any of the following:

(1) Experiencing a symptom of acute gastrointestinal illness specified in § 46.112(3) and meets any of the high-risk conditions specified in § 46.112(5), (6), (7) or (8).

(2) Is not experiencing a symptom of acute gastroenteritis specified in § 46.112(3), but has a stool that yields a specimen culture that is positive for *S. typhi*, *Shigella* spp. or Shiga toxin-producing *Escherichia coli*.

(3) Had a past illness from *S. typhi* within the last 3 months.

(4) Had a past illness from *Shigella* spp. or Shiga toxin-producing *Escherichia coli* within the last month.

(5) Jaundiced, regardless of the time of onset.

§ 46.114. Duty to comply with exclusions and restrictions.

A food employee or a person who applies for a job as a food employee shall comply with exclusions and restrictions that are imposed by the person in charge under authority of § 46.113 (relating to duty to impose exclusions and restrictions).

§ 46.115. Removing exclusions and restrictions.

(a) *Disease or medical condition described in § 46.112(1).* A person in charge may not remove an exclusion imposed as a result of a disease or medical condition described in § 46.112(1) (relating to diseases or medical conditions that must be reported) unless the excluded person provides the person in charge written medical documentation specifying that the excluded person may work in an unrestricted capacity in a food facility, including a facility that serves a highly susceptible population, because the person is free of the infectious agent of concern. This documentation shall be from a physician licensed to practice medicine, a licensed nurse practitioner or a licensed physician assistant.

(b) *Disease or medical condition with respect to which restrictions are imposed under § 46.113(a)(2)(i).* A person in charge may not remove a restriction imposed under authority of § 46.113(a)(2)(i) (relating to duty to impose exclusions and restrictions) as a result of a disease or medical condition unless at least one of the following is accurate:

(1) The person is free of the symptoms specified in § 46.112(3) and (4), and no foodborne illness occurs that may have been caused by the restricted person.

(2) The person is suspected of causing foodborne illness, but both of the following are true:

(i) The person is free of the symptoms specified in § 46.112(3) and (4).

(ii) The person provides written medical documentation from a physician licensed to practice medicine, a licensed nurse practitioner or a licensed physician assistant stating that the restricted person is free of the infectious agent that is suspected of causing the person's symptoms or causing foodborne illness.

(3) The restricted person provides written medical documentation from a physician licensed to practice medicine, a licensed nurse practitioner or a licensed physician assistant stating that the symptoms experienced result from a chronic noninfectious condition such as Crohn's disease, irritable bowel syndrome or ulcerative colitis.

(c) *Disease or medical condition with respect to which restrictions are imposed under authority of § 46.113(a)(2)(ii).* A person in charge may not remove a restriction imposed as a result of a disease or medical condition imposed under authority of § 46.113(a)(2)(ii) unless the restricted person provides written medical documentation from a physician licensed to practice medicine, a licensed nurse practitioner or a licensed physician assistant that indicates the restricted person's stools are free from *Salmonella typhi*, *Shigella* spp. or Shiga toxin-producing *Escherichia coli*—whichever is the infectious agent of concern.

(d) *Disease or medical condition with respect to which exclusions or restrictions are imposed under authority of § 46.113(b).* A person in charge may not remove an exclusion or restriction imposed as a result of a disease or medical condition described in § 46.113(b) unless the excluded or restricted person provides written medical documentation from a physician licensed to practice medicine, a licensed nurse practitioner or a licensed physician's assistant that specifies that the person is free of hepatitis A virus.

(e) *Disease or medical condition with respect to which exclusions are imposed under authority of § 46.113(c).* A person in charge may not remove an exclusion imposed with respect to a food facility serving a highly susceptible population as a result of a disease or medical condition described in § 46.113(c) unless the restricted person provides written medical documentation from a physician licensed to practice medicine, a licensed nurse practitioner or a licensed physician's assistant that states, as applicable, that the person is:

(1) Free of the infectious agent of concern.

(2) Free of jaundice, if hepatitis A virus is the infectious agent of concern.

(3) Experiencing symptoms resulting from a chronic noninfectious condition such as Crohn's disease, irritable bowel syndrome or ulcerative colitis.

PERSONAL CLEANLINESS

§ 46.131. Cleanliness of hands and exposed portions of arms.

(a) *Responsibility of food employees.* Food employees shall keep their hands and exposed portions of their arms clean.

(b) *Cleaning procedure.*

(1) *General procedure.* Except as specified in paragraph (2), food employees shall clean their hands and exposed portions of their arms (or surrogate prosthetic devices for hands or arms) for at least 20 seconds using a cleaning compound in a handwashing sink that is equipped as specified in § 46.822(b) (relating to design, construction and installation of plumbing systems) by using the following cleaning procedure:

(i) Create vigorous friction on the surfaces of the lathered fingers, finger tips, areas between the fingers, hands and arms (or by vigorously rubbing the surrogate prosthetic devices for hands and arms) for at least 10–15 seconds.

(ii) Thoroughly rinse under clean running, warm water.

(iii) Immediately follow the rinse with thorough drying of cleaned hands and arms (or surrogate prosthetic devices) using a method specified in § 46.941(c) (relating to handwashing facilities: numbers and capacities).

(iv) Employees shall pay particular attention to the areas underneath the fingernails and between the fingers during this cleaning procedure.

(2) *Alternative procedure.* An automatic handwashing facility may be used by food employees to clean their hands if the facility is approved and capable of removing the types of soils encountered in the food operations involved.

§ 46.132. Duty of food employees to wash.

Food employees shall clean their hands and exposed portions of their arms as specified in § 46.131 (relating to cleanliness of hands and exposed portions of arms) as follows:

(1) Immediately before engaging in food preparation activities such as working with exposed food, working with clean equipment and utensils, and working with unwrapped single-service and single-use articles.

(2) After touching bare human body parts other than clean hands and clean, exposed portions of arms.

(3) After using the toilet room.

(4) After caring for or handling service animals or aquatic animals as specified in § 46.153(b) (relating to animals).

(5) Except as specified in § 46.151(a)(2) (relating to food contamination prevention), after coughing, sneezing, using a handkerchief or disposable tissue, using tobacco, eating or drinking.

(6) After handling soiled equipment or utensils.

(7) During food preparation, as often as necessary to remove soil and contamination and to prevent cross contamination when changing tasks.

(8) When switching between working with raw food and working with ready-to-eat food.

(9) Before donning gloves for working with food.

(10) After engaging in other activities that contaminate the hands.

§ 46.133. Required washing locations.

Food employees shall clean their hands in a handwashing sink or approved automatic handwashing facility. Food employees may not clean their hands in a sink used for food preparation or warewashing, or in a utility sink or a curbed cleaning facility used for the disposal of mop water and similar liquid waste.

§ 46.134. Hand sanitizers.

(a) *Requirements.* A hand sanitizer and a chemical hand sanitizing solution used as a hand dip shall:

(1) Comply with one or more of the following:

(i) Be an approved drug that is listed in the most current FDA publication *Approved Drug Products with Therapeutic Equivalence Evaluations* as an approved drug based on safety and effectiveness.

(ii) Have active antimicrobial ingredients that are listed in the most current FDA monograph for OTC (over-the-counter) Health-Care Antiseptic Drug Products as an antiseptic handwash.

(2) Comply with one or more of the following:

(i) Have components that are exempted from the requirement of being listed in Federal food additive regulations as specified in 21 CFR 170.39 (relating to threshold of regulation for substances used in food-contact articles).

(ii) Comply with, and be listed in, one or more of the following:

(A) 21 CFR 178 (relating to indirect food additives: adjuvants, production aids, and sanitizers as regulated for use as a food additive with conditions of safe use).

(B) 21 CFR 182 (relating to substances generally recognized as safe), 21 CFR 184 (relating to direct food substances affirmed as generally recognized as safe) or 21 CFR 186 (relating to indirect food substances affirmed as generally recognized as safe).

(iii) Be limited to situations when use is followed by a thorough hand rinsing in clean water before hand contact with food, or when hand contact with food is avoided by the use of gloves, or where there is no direct contact with food by bare hands.

(3) Be applied only to hands that are cleaned as specified in § 46.131(b) (relating to cleanliness of hands and exposed portions of arms).

(b) *Chemical hand sanitizing solution.* A chemical hand sanitizing solution used as a hand dip shall be maintained clean and at a strength equivalent to at least 100 mg/L (ppm) chlorine.

§ 46.135. Cleanliness of fingernails.

(a) *General.* Food employees shall keep their fingernails trimmed, filed and maintained so the edges and surfaces are cleanable and not rough.

(b) *Fingernail polish and artificial fingernails.* Unless wearing intact gloves in good repair, a food employee may not wear fingernail polish or artificial fingernails when working with exposed food.

§ 46.136. Jewelry.

Food employees may not wear jewelry (including medical information jewelry) on their arms and hands while preparing food. This prohibition does not apply to a plain ring such as a wedding band.

§ 46.137. Cleanliness of outer clothing.

Food employees shall wear clean outer clothing to prevent contamination of food, equipment, utensils, linens, single-service articles and single-use articles.

HYGIENIC PRACTICES**§ 46.151. Food contamination prevention.**

(a) *Eating, drinking or using tobacco.*

(1) *General prohibition.* An employee may not eat, drink or use any form of tobacco unless the use occurs in designated areas where the contamination of exposed food; clean equipment, utensils and linens; unwrapped single-service and single-use articles; or other items needing protection cannot result. The sole exception to this prohibition is in paragraph (2).

(2) *Exception for closed beverage containers.* A food employee may drink from a closed beverage container if the container is handled to prevent contamination of the following:

(i) The employee's hands.

(ii) The container.

(iii) Exposed food; clean equipment, utensils and linens; and unwrapped single-service and single-use articles.

(b) *Discharges from the eyes, nose and mouth.* Food employees experiencing persistent sneezing, coughing or a runny nose that causes discharges from the eyes, nose or mouth may not work with exposed food; clean equipment, utensils and linens; or unwrapped single-service or single-use articles.

§ 46.152. Hair restraints.

(a) *General requirement.* Employees shall wear hair restraints such as hats, hair coverings or nets, beard restraints and clothing that covers body hair, that are effectively designed and worn to keep their hair from contacting exposed food; clean equipment, utensils and linens; and unwrapped single-service and single-use articles.

(b) *Exception.* This section does not apply to food employees who present a minimal risk of contaminating exposed food, clean equipment, utensils, linens and unwrapped single-service and single-use articles. These food employees may include employees such as counter staff who only serve beverages and wrapped or packaged foods, hostesses and wait staff.

§ 46.153. Animals.

(a) *Circumstances under which handling of animals is prohibited.* Food employees may not care for or handle animals that may be present such as patrol dogs, service animals or pets that are allowed as specified in § 46.982 (relating to limitations on animals).

(b) *Circumstances under which handling of animals is permissible.* Employees with service animals may handle or care for their service animals and food employees may handle or care for fish in aquariums or molluscan shellfish or crustacea in display tanks if they wash their hands as specified in §§ 46.131(b) and 46.132 (relating to cleanliness of hands and exposed portions of arms; and duty of food employees to wash).

Subchapter C. FOOD**CHARACTERISTICS**

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CHARACTERISTICS

§ 46.201. Food shall be safe, unadulterated and honestly presented.

Food shall be safe, unadulterated and—in accordance with § 46.421(b) (relating to accurate representation)—honestly presented.

FOOD SOURCES

§ 46.211. Food sources.

Food shall be obtained from sources that comply with the Food Act, the Public Eating and Drinking Places Law and this chapter. Records of food sources shall be maintained and made available for review upon request by the Department.

§ 46.212. Food prepared in a private home.

Food prepared in a private home, not approved by the Department, may not be used or offered for human consumption in a food facility.

§ 46.213. Packaged food.

Packaged food shall be labeled as specified in § 46.422 (relating to labeling).

§ 46.214. Whole-muscle, intact beef.

Whole-muscle, intact beef steaks that are intended for consumption in an undercooked form without a consumer advisory as specified in § 46.361(c) (relating to cooking raw animal-derived foods) shall be one of the following:

(1) Obtained from a food establishment that either packages the steaks and labels them to indicate that they meet the definition of whole-muscle, intact beef or provides an invoice or other documentation indicating that the steaks meet that definition.

(2) Individually cut in a food facility, and all of the following:

(i) Cut from whole-muscle intact beef that is labeled or documented by a food establishment to indicate that the beef meets the definition of “whole-muscle intact beef” as specified in paragraph (1).

(ii) Prepared so they remain intact.

(iii) If packaged for undercooking in a food facility, labeled or documented to indicate that they meet the definition of “whole-muscle, intact beef” as specified in paragraph (1).

§ 46.215. Packaged meat and poultry that is not a ready-to-eat food.

Meat and poultry that is not a ready-to-eat food and is in a packaged form when it is offered for sale or otherwise offered for consumption shall be labeled to include safe handling instructions as specified in the Food Act, including 9 CFR 317.2(i) (relating to labels: defini-

tion; required features) and 9 CFR 381.125(b) (relating to special handling label requirements).

§ 46.216. Food in a hermetically sealed container.

Food in a hermetically sealed container shall be obtained from a food establishment that is regulated by the Department or other food regulatory agency that has jurisdiction over the food processing plant.

§ 46.217. Milk and milk products.

Milk and milk products shall be obtained from sources that comply with section 2 of the Milk Sanitation Law (31 P. S. § 646).

§ 46.218. Fish.

(a) *Sources.* Fish that are received for sale or service shall be one of the following:

- (1) Commercially and legally caught or harvested.
- (2) Approved for sale or service.

(b) *Nonmolluscan fish for raw consumption.* Fish, other than molluscan shellfish, that are intended for consumption in their raw form and allowed as specified in § 46.361(d)(1) (relating to cooking raw animal-derived foods) may not be offered for sale or service unless they are obtained from a supplier that freezes the fish as specified in § 46.364(a) and (b) (relating to parasite destruction in fish other than molluscan shellfish by freezing) or frozen on the premises as specified in § 46.364(a) and (b) and records are retained as specified in § 46.364(c).

§ 46.219. Molluscan shellfish.

(a) *Sources.* Molluscan shellfish shall be obtained from sources that are in compliance with section 14 of the Food Act (31 P. S. § 20.14), Chapter 49 (relating to shellfish) and this subchapter, and the requirements specified in the United States Department of Health and Human Services, Public Health Service, Food and Drug Administration, National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish.

(b) *Molluscan shellfish received or intended for sale in interstate commerce.* Molluscan shellfish received or intended for sale in interstate commerce shall be from sources that are listed in the Interstate Certified Shellfish Shippers List.

(c) *Molluscan shellfish that are recreationally caught.* Molluscan shellfish that are recreationally caught may not be received for sale or service.

§ 46.220. Wild mushrooms.

(a) *General source requirement.* Mushroom species picked in the wild shall be obtained from sources where each mushroom is individually inspected and found to be safe by a mushroom identification expert. The exceptions to this requirement are in subsection (b).

(b) *Exceptions.* Subsection (a) does not apply to the following:

(1) Cultivated wild mushroom species that are grown, harvested and processed in an operation that is regulated by the Department or other food regulatory agency that has jurisdiction over the operation.

(2) Wild mushroom species if they are in packaged form and are the product of a food processing plant that is regulated by the Department or other food regulatory agency that has jurisdiction over the food processing plant.

§ 46.221. Game animals.

(a) *Game animals commercially raised for food.* If game animals commercially raised for food are received for sale or service they shall be at least one of the following:

(1) Raised, slaughtered and processed under a voluntary inspection program administered by the USDA for game animals such as exotic animals (reindeer, elk, deer, antelope, water buffalo or bison) that are "inspected and approved" in accordance with the Voluntary Exotic Animal Program in 9 CFR 352 (relating to exotic animals; voluntary inspection) or rabbits that are "inspected and certified" in accordance with the Rabbit Inspection Program in 9 CFR 354 (relating to voluntary inspection of rabbits and edible products thereof).

(2) Under a routine inspection program conducted by the Department or other food regulatory agency that has animal health jurisdiction, and raised, slaughtered and processed according to both of the following:

(i) Laws governing meat and poultry, as determined by the Department or other food regulatory agency that has animal health jurisdiction.

(ii) Requirements which are developed by the Department or other food regulatory agency that has animal health jurisdiction, with consideration of factors such as the need for antemortem and postmortem examination by a licensed veterinarian or veterinarian's designee.

(b) *Wild game animals that are live-caught.* Wild game animals that are live-caught may not be received for sale or service unless all of the following apply:

(1) The animal is under a routine inspection program conducted by the Department or other regulatory agency that has animal health jurisdiction.

(2) The animal is slaughtered and processed according to the following:

(i) Laws governing meat and poultry, as determined by the Department or other food regulatory agency that has animal health jurisdiction.

(ii) Requirements which are developed by the Department or other food regulatory agency that has animal health jurisdiction, with consideration of factors such as the need for antemortem and postmortem examination by a licensed veterinarian or veterinarian's designee.

(c) *Field-dressed wild game animals.* Field-dressed wild game animals may not be received for sale or service unless under a routine inspection program that ensures that the following occur:

(1) The animals receive a postmortem examination by a licensed veterinarian or veterinarian's designee.

(2) The animals are field-dressed and transported according to requirements specified by the Department or other regulatory agency that has animal health jurisdiction.

(3) The animals are processed according to laws governing meat and poultry as determined by the Department or other regulatory agency that has animal health jurisdiction.

(d) *Endangered or threatened wildlife.* A game animal may not be received for sale or service if it is a species of wildlife that is listed in 50 CFR 17 (relating to endangered and threatened wildlife and plants).

§ 46.222. Ice.

Ice for use as a food or a cooling medium shall be made from drinking water.

SPECIFICATIONS FOR RECEIVING, ORIGINAL CONTAINERS AND RECORDS**§ 46.241. Receiving temperature of food.**

(a) *Refrigerated potentially hazardous food.* Except as specified in §§ 46.243(b) and 46.244(b) (relating to receiving shell eggs; and receiving eggs and milk products), refrigerated potentially hazardous food shall be at an internal temperature of 5°C (41°F) or below when received.

(b) *Cooked potentially hazardous food.* Potentially hazardous food that is cooked to a temperature and for a time specified in §§ 46.361—46.363 (relating to cooking raw animal-derived foods; microwave cooking; and plant food cooking for hot holding) and received hot shall be at an internal temperature of 58°C (135°F) or above.

(c) *Frozen food.* A food that is labeled frozen and shipped frozen by a food establishment shall be received frozen.

(d) *Visible evidence of improper temperature.* Upon receipt, potentially hazardous food shall be free of evidence of previous temperature abuse. This evidence might include dehydration, ice crystals, discoloration or damaged packaging.

§ 46.242. Additives.

Food may not contain unapproved food additives or additives that exceed amounts specified in 21 CFR Part 170 (relating to food additives) generally recognized as safe or prior-sanctioned substances that exceed amounts specified in 21 CFR Parts 181—186, substances that exceed amounts specified in 9 CFR 424.21 (relating to use of food ingredients and sources of radiation), or pesticide residues that exceed provisions specified in 40 CFR Part 180 (relating to food additives permitted in food or in contact with food on an interim basis pending additional study).

§ 46.243. Receiving shell eggs.

(a) *General.* Shell eggs shall be received clean and sound and may not exceed the restricted egg tolerances for PA Consumer Grade B as specified in § 87.41 (relating to standards).

(b) *Temperature.* Shell eggs shall be received by a food facility in refrigerated equipment that maintains an ambient temperature of 7°C (45°F) or less, or as otherwise specified in section 3 of the Egg Refrigeration Law (31 P. S. § 300.3).

(c) *Labeling.* Shell eggs received by a food facility shall be labeled as specified in §§ 87.51 and 87.52 (relating to receptacles; and marketing) and include safe handling instructions as specified in 21 CFR 101.17(h) (relating to food labeling warning, notice, and safe handling statements).

(d) *Repackaging.* Cartons of shell eggs not in sound condition, such as those containing cracked eggs, leaking eggs or frozen eggs, shall be removed from retail sale. The food facility may not rework, repack or transfer shell eggs from their original cartons or containers. Shell eggs may be sold as an incomplete dozen or container provided that the quantity labeling on the carton or container is changed to reflect the actual number of shell eggs within.

§ 46.244. Receiving eggs and milk products.

(a) *Liquid, frozen and dry eggs and egg products.* Liquid, frozen and dry eggs and egg products shall be obtained pasteurized.

(b) *Milk and milk products.* Milk and milk products shall be obtained pasteurized and received at a tempera-

ture of 7°C (45°F) or less, or as otherwise permitted under the Milk Sanitation Law.

(c) *Frozen milk products.* Frozen milk products shall be obtained pasteurized or as otherwise permitted under the Milk Sanitation Law.

(d) *Cheese.* Cheese shall be obtained pasteurized unless alternative procedures to pasteurization are specified and published in the CFR. An example of acceptable alternative standards for curing certain cheese varieties is in 21 CFR 133 (relating to cheeses and related cheese products).

§ 46.245. Package integrity of food upon receipt.

Food packages shall be in good condition and protect the integrity of the contents so that the food is not exposed to adulteration or potential contaminants.

§ 46.246. Receiving shucked shellfish: packaging and identification.

(a) *Label requirement.* Raw shucked shellfish shall be obtained in nonreturnable packages which bear a legible label that identifies the following:

(1) The name, address and certification number of the shucker-packer or repacker of the molluscan shellfish.

(2) For packages with a capacity of less than 1.87 L (1/2 gallon): the "sell by" or "best if used by" date.

(3) For packages with a capacity of 1.87 L (1/2 gallon) or more: the date shucked.

(b) *No label or inadequate label.* A package of raw shucked shellfish that does not bear a label or which bears a label which does not contain all the information as specified in subsection (a) shall be subject to a detention, in accordance with section 6 of the Food Act (31 P. S. § 20.6).

§ 46.247. Shellstock identification.

(a) *Harvester's and dealer's source identification tags or labels.* Shellstock shall be obtained in containers bearing legible source identification tags or labels that are affixed by the harvester and each dealer that depurates, ships or reships the shellstock, as specified in the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish.

(1) *Contents of harvester's tag or label.* A harvester's tag or label shall list the following information, in the following order:

(i) The harvester's identification number as described in the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish, and that is assigned by the Department or other shellfish control authority having jurisdiction.

(ii) The date of harvesting.

(iii) The most precise identification of the harvest location or aquaculture site that is practicable based on the system of harvest area designations that is in use by the Department or other shellfish control authority having jurisdiction, and including the abbreviation of the name of the state or country in which the shellfish are harvested.

(iv) The type and quantity of shellfish.

(v) The following statement in bold, capitalized type: **THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY OR RETAGGED AND THEREAFTER KEPT ON FILE FOR 90 DAYS.**

(2) *Contents of dealer's tag or label.* A dealer's tag or label shall list the following information, in the following order:

(i) The dealer's name and address, and the certification number assigned by the Department or other shellfish control authority having jurisdiction.

(ii) The original shipper's certification number including the abbreviation of the name of the state or country in which the shellfish are harvested.

(iii) The same information as specified for a harvester's tag under paragraph (1)(ii)—(iv).

(iv) The following statement in bold, capitalized type: **THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY AND THEREAFTER KEPT ON FILE FOR 90 DAYS.**

(b) *Missing or incomplete tag or label.* A container of shellstock that does not bear a tag or label or that bears a tag or label that does not contain all the information as specified in subsection (a) shall be subject to a detention, in accordance with section 6 of the Food Act (31 P. S. § 20.6).

(c) *Harvester's tag or label shall include dealer information.* If a place is provided on the harvester's tag or label for a dealer's name, address and certification number, the dealer's information shall be listed first, notwithstanding subsection (a)(1).

(d) *Exception to requirement of separate dealer's tag or label.* If the harvester's tag or label is designed to accommodate each dealer's identification as specified in subsection (a)(2)(i) and (ii), individual dealer tags or labels need not be provided.

§ 46.248. Shellstock: condition upon receipt.

Shellstock shall be reasonably free of mud, dead shellfish and shellfish with broken shells when received by a food facility. Dead shellfish or shellstock with badly broken shells shall be discarded.

§ 46.249. Molluscan shellfish: original container.

(a) *General requirement.* Molluscan shellfish may not be removed from the container in which they are received other than immediately before sale or preparation for service. The two exceptions to this requirement are set forth in subsections (b) and (c).

(b) *Exception: shellstock.* Shellstock may be removed from the container in which they are received, displayed on drained ice or held in a display container, and a quantity specified by a consumer may be removed from the display or display container and provided to the consumer if both of the following occur:

(1) The source of the shellstock on display is identified as specified in § 46.247 (relating to shellstock identification) and recorded as specified in § 46.250 (relating to shellstock: maintaining identification)

(2) The shellstock are protected from contamination.

(c) *Exception: shucked shellfish.* Shucked shellfish may be removed from the container in which they were received and held in a display container from which individual servings are dispensed upon a consumer's request if both of the following apply:

(1) The labeling information for the shellfish on display as specified in § 46.246 (relating to receiving shucked shellfish: packaging and identification) is retained and correlated to the date when, or dates during which, the shellfish are sold or served.

(2) The shellfish are protected from contamination.

§ 46.250. Shellstock: maintaining identification.

(a) *General requirement.* Shellstock tags shall remain attached to the container in which the shellstock are received until the container is empty. The exception to this requirement is set forth in subsection (b)(2).

(b) *Records of identification.* The identity of the source of shellstock that are sold or served shall be maintained by retaining shellstock tags or labels for 90-calendar days from the date the container is emptied by the following methods:

(1) Using an approved recordkeeping system that keeps the tags or labels in chronological order correlated to the date when, or dates during which, the shellstock are sold or served.

(2) When shellstock are removed from their tagged or labeled container, preserving source identification by using a recordkeeping system as specified in paragraph (1), and ensuring that shellstock from one tagged or labeled container are not commingled with shellstock from another container before being ordered by the consumer.

§ 46.251. Juice.

Prepackaged juice shall be obtained from a processor with an HACCP system as specified in 21 CFR 120 (relating to hazard analysis and critical control point HACCP systems) and be one of the following:

(1) Obtained pasteurized or otherwise treated to attain a 5-log reduction (a 99.999% reduction) of the most resistant microorganism of public health significance as specified in 21 CFR 120.24 (relating to process controls).

(2) Bear a warning label as specified in 21 CFR 101.17(g) (relating to food labeling warning, notice, and safe handling statements).

PREVENTING CONTAMINATION BY EMPLOYEES

§ 46.261. Preventing contamination from food employees' hands.

(a) *Hand washing required.* Food employees shall wash their hands as specified in § 46.131 (relating to cleanliness of hands and exposed portions of arms).

(b) *Hand contact with ready-to-eat food.* Except when washing fruits and vegetables as specified in § 46.285 (relating to washing raw fruits and vegetables) or when approved in accordance with subsection (d), food employees may not contact exposed, ready-to-eat food with their bare hands, and shall use suitable utensils such as deli tissue, spatulas, tongs, single-use gloves or dispensing equipment.

(c) *Hand contact with food that is not ready-to-eat food.* Food employees shall minimize bare hand and arm contact with exposed food that is not in a ready-to-eat form.

(d) *Approval of bare-hand contact.* Food employees may contact ready-to-eat foods with their bare hands if the food facility operator submits a written plan to the Department and the Department provides the food facility operator written approval of the plan. The written plan and related documentation, and the Department's written approval shall be available at the food facility for use by the person in charge and review by the Department upon request. The written plan shall contain the following:

(1) The reason the person-in-charge of the food facility is unable to comply with subsection (b).

(2) A provision identifying the public health hazards associated with bare-hand contact specific to the food facility, demonstrating that these hazards are understood by the food facility operator.

(3) Verification that the food facility has implemented and is in compliance with all applicable supervision, employee health, personal cleanliness and hygienic practices provisions required under Subchapter B (relating to management and personnel).

(4) A provision identifying exposed ready-to-eat foods that will be contacted with bare hands and the procedures and practices which are in place to assure that food employees wash their hands before returning to their work station and that cross-contamination from touching raw foods and ready-to-eat foods is precluded.

(5) An effective training plan for food employees.

(i) The plan shall emphasize the following subjects addressed in this chapter:

(A) Not working when ill.

(B) Good hygienic practices and personal cleanliness.

(C) Proper handwashing procedures.

(D) Safe food preparation procedures.

(ii) The training plan shall acknowledge management responsibility for training, specify the program content and training frequency (including refresher training).

(6) Documentation demonstrating that paragraph (5)(i) and (ii) are implemented, and are verified by management.

(7) An action plan identifying corrective actions to be taken in situations in which the practices and procedures in the written plan are not complied with.

§ 46.262. Preventing contamination when tasting.

A food employee may not use a utensil more than once to taste food that is to be sold or served.

PREVENTING FOOD AND INGREDIENT CONTAMINATION

§ 46.281. Preventing contamination of packaged and unpackaged food: separation, packaging and segregation.

(a) *Required protective measures.* Food shall be protected from cross contamination by the following procedures, as applicable:

(1) Separating raw animal-derived foods during storage, preparation, holding and display from:

(i) Raw ready-to-eat food including other raw animal-derived food such as fish for sushi or molluscan shellfish, or other raw ready-to-eat food such as vegetables.

(ii) Cooked ready-to-eat food.

(2) Separating types of raw animal-derived foods (such as beef, fish, lamb, pork and poultry) from each other during storage, preparation, holding and display, except when these raw animal-derived foods are combined as ingredients, by doing the following:

(i) Using separate equipment for each type or arranging each type of food in equipment so that cross contamination of one type with another is prevented.

(ii) Preparing each type of food at different times or in separate areas.

(3) Cleaning equipment and utensils as specified in § 46.712(a) (relating to frequency of cleaning equipment

food-contact surfaces and utensils) and sanitizing as specified in § 46.731(c) (relating to sanitization: requirement, frequency and methods).

(4) Storing the food in packages, covered containers or wrappings. The exception to this requirement is in subsection (b).

(5) Cleaning hermetically sealed containers of food of visible soil before opening.

(6) Protecting food containers that are received packaged together in a case or overwrap from cuts when the case or overwrap is opened.

(7) Storing damaged, spoiled or recalled food being held in the food facility as specified in § 46.964 (relating to distressed merchandise: segregated).

(8) Separating fruits and vegetables from ready-to-eat food before the fruits and vegetables are washed as specified in § 46.285 (relating to washing raw fruits and vegetables).

(b) *Exception to the requirement of storing foods in packages, covered containers or wrappings.* Subsection (a)(4) does not apply to the following:

(1) Whole, uncut, raw fruits and vegetables and nuts in the shell that require peeling or hulling before consumption.

(2) Primal cuts, quarters or sides of raw meat or slab bacon that are hung on clean, sanitized hooks or placed on clean, sanitized racks.

(3) Whole, uncut, processed meats such as country hams and smoked or cured sausages that are placed on clean, sanitized racks.

(4) Food being cooled as specified in § 46.384(d)(2) (relating to potentially hazardous food: cooling).

(5) Shellstock.

§ 46.282. Identification of content on food storage containers.

Working containers holding food or food ingredients (such as cooking oils, flour, herbs, potato flakes, salt, spices and sugar) that are removed from their original packages for use in the food facility shall be identified with the common name of the food they contain. However, containers holding food that can be readily and unmistakably recognized (such as dry pasta) need not be identified.

§ 46.283. Substituting pasteurized eggs for raw shell eggs in certain recipes.

Pasteurized eggs or egg products shall be substituted for raw shell eggs in the preparation of foods such as Caesar salad, hollandaise or béarnaise sauce, mayonnaise, eggnog, ice cream and egg-fortified beverages that are not either of the following:

(1) Cooked as specified in § 46.361(a)(1) or (2) (relating to cooking raw animal-derived foods).

(2) Included in § 46.361(d).

§ 46.284. Protection from unapproved additives.

(a) *Unapproved additives or unsafe levels of approved additives.* Food or food ingredients shall be protected from contamination that may result from the addition of unsafe or unapproved food or color additives, and from unsafe or unapproved levels of approved food and color additives, as described in § 46.242 (relating to additives).

(b) *Sulfiting agents.* A food employee may not do the following:

(1) Apply sulfiting agents to fresh fruits and vegetables intended for raw consumption or to a food considered to be a good source of vitamin B1, as that term is defined in 21 CFR 101.54(c) (relating to nutrient content claims for “good source,” “high,” “more,” and “high potency”).

(2) Serve or sell a food specified in paragraph (1), other than grapes, that is treated with sulfiting agents before receipt by the food facility.

§ 46.285. Washing raw fruits and vegetables.

(a) *General.* Raw fruits and vegetables shall be thoroughly washed in water to remove soil and other contaminants before being cut, combined with other ingredients, cooked, served or offered for human consumption in ready-to-eat form.

(b) *Exception.* Whole, raw fruits and vegetables which are intended for washing by the consumer before consumption need not be washed before they are sold.

(c) *Chemical washing.* Fruits and vegetables may be washed by using chemicals as specified in § 46.1024(b) (relating to chemicals: use criteria).

§ 46.286. Preventing contamination from ice used as a coolant.

(a) *Ice used as exterior coolant is prohibited as ingredient.* Ice may not be used as food after it has been used as a medium for cooling the exterior surfaces of food such as melons or fish, packaged foods such as canned beverages or cooling coils and tubes of equipment.

(b) *Storage or display of food in contact with water or ice.*

(1) *Packaged food.* Packaged food may not be stored in direct contact with ice or water if the food is subject to the entry of water because of the nature of its packaging, wrapping or container or its positioning in the ice or water.

(2) *General prohibition.* Unpackaged foods other than those described in paragraphs (3) and (4) may not be stored in direct contact with undrained ice.

(3) *Certain raw fruits and vegetables.* Whole, raw fruits or vegetables; cut, raw vegetables such as celery or carrot sticks or cut potatoes; and tofu may be immersed in ice or water.

(4) *Raw chicken and raw fish.* Raw chicken and raw fish that are received immersed in ice in shipping containers may remain in that condition while in storage awaiting preparation, display, service or sale.

PREVENTING CONTAMINATION FROM EQUIPMENT, UTENSILS AND LINENS

§ 46.301. Preventing contamination from food contact with equipment and utensils.

Food shall only contact surfaces of equipment and utensils that are cleaned as specified in §§ 46.711—46.719 (relating to cleaning of equipment and utensils) and sanitized as specified in § 46.731 (relating to sanitization: requirement, frequency and methods).

§ 46.302. In-use utensils and between-use storage.

(a) *General.* During pauses in food preparation or dispensing, food preparation and dispensing utensils shall be stored in the food with their handles above the top of the food and the container, unless the food is non-potentially hazardous and within containers or equipment that can be closed, such as bins of sugar, flour or cinnamon—in which case the food preparation and dis-

dispensing utensils shall be stored with their handles above the top of the food within the containers.

(b) *Storage on cleaned and sanitized tables or equipment.* During pauses in food preparation or dispensing, food preparation and dispensing utensils may be stored on a clean portion of the food preparation table or cooking equipment only if the in-use utensil and the table or equipment are cleaned and sanitized at a frequency specified in §§ 46.712 and 46.731 (relating to frequency of cleaning equipment food-contact surfaces and utensils; and sanitization: requirement, frequency and methods).

(c) *Storage in running water.* During pauses in food preparation or dispensing, food preparation and dispensing utensils may be stored in running water of sufficient velocity to flush particulates to the drain, if used with moist food such as ice cream or mashed potatoes.

(d) *Storage in clean, protected locations.* During pauses in food preparation or dispensing, food preparation and dispensing utensils may be stored in a clean, protected location if the utensils, such as scoops, are used only with a food that is not potentially hazardous.

(e) *Storage in a container of water.* During pauses in food preparation or dispensing, food preparation and dispensing utensils may be stored in a container of water if the water is maintained at a temperature of at least 58°C (135°F) and the container is cleaned at frequency specified in § 46.712(d)(7).

§ 46.303. Linens and napkins: use limitations.

Linens and napkins may not be used in contact with food unless they are used for either of the following purposes:

(1) To line a container for the service of foods, where the linens and napkins are replaced each time the container is refilled for a new consumer.

(2) For retail display of nonpotentially hazardous food, where the linens and napkins are replaced with each restocking of the retail display.

§ 46.304. Wiping cloths: use limitations.

(a) *Cloths used for wiping food spills.* Cloths that are used for wiping food spills shall be used for no other purpose.

(b) *Wet and dry wiping cloths.* Cloths used for wiping food spills shall be one of the following:

(1) Dry and used for wiping food spills from tableware and carry-out containers.

(2) Wet and cleaned as specified in § 46.751(b)(4) (relating to requirement and frequency of laundering), stored in a chemical sanitizer at a concentration specified in § 46.674(a) (relating to warewashing equipment: mechanical or manual), and used for wiping spills from food-contact and nonfood-contact surfaces of equipment.

(c) *Wiping cloths used with raw animal-derived foods.* Dry or wet cloths that are used with raw animal-derived foods shall be kept separate from cloths used for other purposes, and wet cloths used with raw animal-derived foods shall be kept in a separate sanitizing solution.

(d) *General cleanliness.* Wet wiping cloths used with a freshly made sanitizing solution and dry wiping cloths shall be free of food debris and visible soil.

§ 46.305. Gloves: use limitations.

(a) *Single-use gloves.* Single-use gloves shall be used for only one task (such as working with ready-to-eat food or

with raw animal-derived food), used for no other purpose and discarded when damaged or soiled, or when interruptions occur in the operation.

(b) *Slash-resistant gloves: general.* Except as specified in subsection (c), slash-resistant gloves that are used to protect the hands during operations requiring cutting shall be used in direct contact only with food that is subsequently cooked as specified in §§ 46.361—46.366 (relating to destruction of organisms of public health concern), such as frozen food or a primal cut of meat.

(c) *Slash-resistant gloves: exception.* Slash-resistant gloves may be used with ready-to-eat food that will not be subsequently cooked if the slash-resistant gloves have a smooth, durable and nonabsorbent outer surface; or if the slash-resistant gloves are covered with a smooth, durable, nonabsorbent glove or a single-use glove.

(d) *Cloth gloves.* Cloth gloves may not be used in direct contact with food unless the food is subsequently cooked as required in §§ 46.361—46.366, such as frozen food or a primal cut of meat.

§ 46.306. Using clean tableware for second portions and refills.

(a) *General.* A food employee may not use tableware, including single-service articles, soiled by the consumer, to provide second portions or refills. However, a food employee may refill a consumer's drinking cup or container without contact between the pouring utensil and the lip-contact area of the drinking cup or container.

(b) *Use of soiled tableware by self-service consumers to obtain food from display or serving equipment prohibited.* Self-service consumers may not be allowed to use soiled tableware (including single-service articles) to obtain additional food from the display and serving equipment. The sole exception to this prohibition is described in subsection (c).

(c) *Use of soiled drinking cups by self-service consumers to obtain drinks.* Drinking cups and containers may be reused by self-service consumers if refilling is a contamination-free process as specified in § 46.583(1), (2) and (4) (relating to dispensing equipment: protection of equipment and food).

§ 46.307. Refilling returnables.

(a) *Refilling with potentially hazardous food prohibited.* A take-home food container returned to a food facility may not be refilled at a food facility with a potentially hazardous food.

(b) *Refilling with a cleaned container.* Except as specified in subsection (c), a take-home food container refilled with food that is not potentially hazardous shall be cleaned as specified in § 46.719(b) (relating to washing returnable containers for refilling).

(c) *Refilling certain containers by a contamination-free process.* Personal take-out beverage containers, such as thermally insulated bottles, nonspill coffee cups and promotional beverage glasses, may be refilled by employees or the consumer if refilling is a contamination-free process as specified in § 46.583(1)—(3) (relating to dispensing equipment: protection of equipment and food).

PREVENTING CONTAMINATION FROM THE PREMISES

§ 46.321. Food storage.

(a) *General storage requirements.* Except as specified in subsections (b) and (c), food shall be protected from contamination by storing as follows:

- (1) In a clean, dry location.
- (2) Where it is not exposed to splash, dust or other contamination.
- (3) At least 15 cm (6 inches) above the floor.
- (b) *Exception for food stored on case lot handling equipment.* Food in packages and working containers may be stored less than 15 cm (6 inches) above the floor on case lot handling equipment as specified in § 46.595 (relating to case lot handling equipment: moveability).
- (c) *Exception for particular food containers.* Pressurized beverage containers, cased food in waterproof containers such as bottles or cans, and milk containers in plastic crates may be stored on a floor that is clean and not exposed to floor moisture.

(d) *Foods storage: prohibited areas.* Food may not be stored in any of the following locations:

- (1) A locker room.
- (2) A toilet room.
- (3) A dressing room.
- (4) A garbage room.
- (5) A mechanical room.
- (6) Under a sewer line that is not shielded to intercept potential drips.
- (7) Under a leaking water line (including a leaking automatic fire sprinkler head), or under a line on which water has condensed.
- (8) Under an open stairwell.
- (9) Under any other source of contamination, such as peeling paint, unprotected light bulbs, some ventilation units or outside sheds.

§ 46.322. Vended potentially hazardous food: original container.

Potentially hazardous food dispensed through a vending machine shall be in the package in which it was placed at the food facility at which it was prepared.

§ 46.323. Food preparation.

During preparation, unpackaged food shall be protected from environmental sources of contamination, such as outside dust, construction or renovation debris, or ventilation dust.

PREVENTING CONTAMINATION BY CONSUMERS

§ 46.341. Food display.

Except for nuts in the shell and whole, raw fruits and vegetables that are intended for hulling, peeling or washing by the consumer before consumption, food on display shall be protected from contamination by the use of packaging; counter, service line or salad bar food guards; display cases; or other effective means.

§ 46.342. Protection of condiments.

(a) *General.* Condiments shall be protected from contamination by being kept in dispensers that are designed to provide protection, protected food displays provided with the proper utensils, original containers designed for dispensing, or individual packages or portions.

(b) *Condiments at a vending machine location.* Condiments at a vending machine location shall be in individual packages or provided in dispensers that are filled at an approved location, such as the food facility that provides food to the vending machine location or a

properly equipped food facility that is located on the site of the vending machine location.

§ 46.343. Consumer self-service operations.

(a) *Raw, unpackaged animal-derived foods.* Raw, unpackaged animal-derived food (such as beef, lamb, pork, poultry and fish) may not be offered for consumer self-service. This subsection does not apply to consumer self-service of ready-to-eat foods at buffets or salad bars that serve foods such as sushi or raw shellfish; ready-to-cook individual portions for immediate cooking and consumption on the premises such as consumer-cooked meats or consumer-selected ingredients for Mongolian barbecue; or raw, frozen, shell-on shrimp or lobster.

(b) *Ready-to-eat foods.* Consumer self-service operations for ready-to-eat foods shall be provided with suitable utensils or effective dispensing methods that protect the food from contamination.

(c) *Monitoring by food employees.* Consumer self-service operations such as buffets and salad bars shall be monitored by food employees trained in safe operating procedures.

§ 46.344. Returned food and reservice of food.

(a) *General prohibition of reuse of returned or unused food.* Except as specified in subsection (b), after being served or sold and in the possession of a consumer, food that is unused or returned by the consumer may not be offered as food for human consumption.

(b) *Exception for certain foods and packages.* A container of food that is not potentially hazardous may be transferred from one consumer to another if either of the following occurs:

(1) The food is dispensed so that it is protected from contamination and the container is closed between uses, such as a narrow-neck bottle containing catsup, steak sauce or wine.

(2) The food, such as crackers, salt or pepper, is in an unopened original package and is maintained in sound condition.

DESTRUCTION OF ORGANISMS OF PUBLIC HEALTH CONCERN

§ 46.361. Cooking raw animal-derived foods.

(a) *General cooking requirement.* Except as specified in subsections (b)—(d), raw animal-derived foods (such as eggs, fish, meat, poultry and foods containing these raw animal-derived foods) shall be cooked to heat all parts of the food to a temperature and for a time that complies with one of the following methods, based on the food that is being cooked:

(1) 63°C (145°F) or above for 15 seconds for either of the following:

(i) Raw shell eggs that are broken and prepared in response to a consumer's order and for immediate service.

(ii) Except as specified in paragraphs (2) and (3), and subsection (b), fish, meat and pork, including game animals commercially raised for food as specified in § 46.221(a) (relating to game animals).

(2) 68°C (155°F) for 15 seconds or the temperature specified in the following chart that corresponds to the holding time for ratites and injected meats; the following if they are comminuted: fish, meat, game animals commercially raised for food as specified in § 46.221(a); and raw eggs that are not broken and prepared in response to a consumer's order and for immediate service:

<i>Minimum Temperature</i>	<i>Minimum Time</i>
63°C (145°F)	3 minutes
66°C (150°F)	1 minute
70°C (158°F)	Less than 1 second (instantaneous)

(3) 74°C (165°F) or above for 15 seconds for poultry, wild game animals as specified in § 46.221(b) and (c), stuffed fish, stuffed meat, stuffed pasta, stuffed poultry, stuffed ratites or stuffing containing fish, meat, poultry or ratites.

(b) *Certain roasts.* Whole beef roasts, corned beef roasts, pork roasts and cured pork roasts such as ham, shall be cooked as follows:

(1) In an oven that is preheated to the temperature specified for the roast's weight in the following chart and that is held at that temperature:

<i>Oven Type</i>	<i>Oven Temperature for Roast Weighing less than 4.5 kg (10 lbs.)</i>	<i>Oven Temperature for Roast Weighing 4.5 kg (10 lbs.) or more</i>
Still Dry	177°C (350°F) or more	121°C (250°F) or more
Convection	163°C (325°F) or more	121°C (250°F) or more
High Humidity Cooking	121°C (250°F) or more	121°C (250°F) or more

(2) As specified in the following chart, to heat all parts of the food to a temperature and for the holding time (including postoven heat rise) that corresponds to that temperature:

<i>Minimum Temperature</i>	<i>Minimum Time</i>
54.4°C (130°F)	112 minutes
55.0°C (131°F)	89 minutes
56.1°C (133°F)	56 minutes
57.2°C (135°F)	36 minutes
58.9°C (138°F)	28 minutes
60.0°C (140°F)	12 minutes
61.1°C (142°F)	8 minutes
62.2°C (144°F)	5 minutes
62.8°C (145°F)	4 minutes
63.9°C (147°F)	134 seconds
65.0°C (149°F)	85 seconds
66.1°C (151°F)	54 seconds
67.2°C (153°F)	34 seconds
68.3°C (155°F)	22 seconds
69.4°C (157°F)	14 seconds
70.0°C (158°F)	<1 Second

(c) *Raw or undercooked whole-muscle, intact beef steak.* A raw or undercooked whole-muscle, intact beef steak may not be served or offered for sale in a ready-to-eat form unless all of the following apply:

(1) The food facility serves a population that is not a highly susceptible population.

(2) The steak is labeled to indicate that it meets the definition of "whole-muscle, intact beef" as specified in § 46.214 (relating to whole-muscle, intact beef).

(3) The steak is cooked on both the top and bottom to a surface temperature of 63°C (145°F) or above and a cooked color change is achieved on all external surfaces.

(d) *Other raw animal-derived foods.* A raw animal-derived food such as raw egg, raw fish, raw-marinated fish, raw molluscan shellfish, or steak tartare; or a partially cooked food such as lightly cooked fish, soft

cooked eggs, or undercooked meat other than whole-muscle, intact beef steaks as specified in subsection (c), shall be served or offered for sale in a ready-to-eat form only if either of the following occurs:

(1) The food facility serves a population that is not a highly susceptible population, and the consumer is informed as specified in § 46.423 (relating to consumer advisory required with respect to animal-derived foods that are raw, undercooked or not otherwise processed to eliminate pathogens) that to ensure its safety, the food should be cooked as specified in subsections (a) or (b).

(2) The Department grants a variance from subsection (a) or (b) as specified in § 46.1103(a) (relating to variances), based on an HACCP plan that is all of the following:

(i) Submitted by the license holder and approved as specified in § 46.1103(b).

(ii) Documents scientific data or other information showing that a lesser time and temperature regimen results in a safe food.

(iii) Verifies that equipment and procedures for food preparation and training of food employees at the food facility meet the conditions of the variance.

§ 46.362. Microwave cooking.

Raw animal-derived foods cooked in a microwave oven shall meet all of the following conditions:

(1) Rotated or stirred throughout or midway during cooking to compensate for uneven distribution of heat.

(2) Covered to retain surface moisture.

(3) Heated to a temperature of at least 74°C (165°F) in all parts of the food.

(4) Allowed to stand covered for 2 minutes after cooking to obtain temperature equilibrium.

§ 46.363. Plant food cooking for hot holding.

Fruits and vegetables that are cooked for hot holding shall be cooked to a temperature of 58°C (135°F).

§ 46.364. Parasite destruction in fish other than molluscan shellfish by freezing.

(a) *General temperature requirement.* Except as specified in subsection (b), before service or sale in ready-to-eat form, raw, raw-marinated, partially cooked or marinated-partially cooked fish other than molluscan shellfish shall be frozen throughout to a temperature of one of the following:

(1) -20°C (-4°F) or below for 168 hours (7 days) in a freezer.

(2) -35°C (-31°F) or below for 15 hours in a blast freezer.

(b) *Exception for certain tuna species.* If the fish are tuna of the species *Thunnus alalunga*, *Thunnus albacares* (Yellowfin tuna), *Thunnus atlanticus*, *Thunnus maccoyii* (Bluefin tuna, Southern), *Thunnus obesus* (Bigeye tuna), or *Thunnus thynnus* (Bluefin tuna, Northern), the fish may be served or sold in a raw, raw-marinated or partially cooked ready-to-eat form without freezing as specified in subsection (a).

(c) *Records: creation and retention.*

(1) Except as specified in subsection (b) and paragraph (2), if raw, raw-marinated, partially cooked or marinated-partially cooked fish are served or sold in ready-to-eat form, the person in charge shall record the freezing temperature and time to which the fish are subjected and

shall retain the records at the food facility for 90-calendar days beyond the time of service or sale of the fish.

(2) If the fish are frozen by a supplier, a written agreement or statement from the supplier stipulating that the fish supplied are frozen to a temperature and for a time specified in subsection (a) may substitute for the records specified in paragraph (1).

§ 46.365. Reheating food.

(a) *Preparation for immediate service.* Cooked and refrigerated food that is prepared for immediate service in response to an individual consumer order, such as a roast beef sandwich au jus, may be served at any temperature.

(b) *Reheating for hot holding.*

(1) Potentially hazardous food that is cooked, cooled and reheated for hot holding shall be reheated so that all parts of the food reach a temperature of at least 74°C (165°F) for 15 seconds. Reheating for hot holding shall be done rapidly and the time the food is between the temperature specified in § 46.385(a)(2) or (3) (relating to potentially hazardous food: hot and cold holding) and 74°C (165°F) may not exceed 2 hours. Exceptions to these requirements are specified in paragraphs (2)—(4).

(2) Except as specified in paragraph (3), reheating of potentially hazardous food in a microwave oven for hot holding shall be performed in accordance with § 46.362 (relating to microwave cooking).

(3) Ready-to-eat food taken from a commercially processed, hermetically sealed container or from an intact package from a food establishment that is inspected by the Department or other food regulatory agency that has jurisdiction over the food processing plant shall be heated to a temperature of at least 58°C (135°F) for hot holding.

(4) Remaining unsliced portions of roasts that are cooked as specified in § 46.361(b) (relating to cooking raw animal-derived foods) may be reheated for hot holding using the oven parameters and minimum time and temperature conditions specified in § 46.361(b).

§ 46.366. Treating juice.

Juice packaged in a food facility shall be one of the following:

(1) Treated under an HACCP plan (as described in § 46.1122(b) (relating to HACCP plans)) to attain a 5-log reduction (a 99.999% reduction) of the most resistant microorganism of public health significance.

(2) If not treated to yield a 5-log reduction of the most resistant microorganism of public health concern, labeled as specified § 46.422 (relating to labeling) and as specified in 21 CFR 101.17(g) (relating to food labeling warning, notice, and safe handling statements) with the following:

Warning: This product has not been pasteurized and, therefore, may contain harmful bacteria that can cause serious illness in children, the elderly, and persons with weakened immune systems.

TEMPERATURE AND TIME CONTROL FOR LIMITATION OF GROWTH OF ORGANISMS OF PUBLIC HEALTH CONCERN

§ 46.381. Stored frozen food.

Stored frozen foods shall be maintained frozen.

§ 46.382. Potentially hazardous food: slacking.

Frozen potentially hazardous food that is slacked to moderate the temperature shall be held at one of the following:

(1) Under refrigeration that maintains the food temperature at 5°C (41°F) or less, or at 7°C (45°F) or less as specified in § 46.385(a)(3) (relating to potentially hazardous food: hot and cold holding).

(2) At any temperature if the food remains frozen.

§ 46.383. Potentially hazardous food: thawing.

Except as specified in paragraph (4), potentially hazardous food shall be thawed by one of the procedures that follow:

(1) Under refrigeration that maintains the food temperature at 5°C (41°F) or less, or at 7°C (45°F) or less as specified in § 46.385(a)(3) (relating to potentially hazardous food: hot and cold holding).

(2) Completely submerged under running water at a water temperature of 21°C (70°F) or below; with sufficient water velocity to agitate and float off loose particles in an overflow, for one of the following:

(i) A period of time that does not allow thawed portions of ready-to-eat food to rise above 5°C (41°F), or 7°C (45°F) as specified in § 46.385(a)(3).

(ii) A period of time that does not allow thawed portions of a raw animal-derived food requiring cooking as specified in § 46.361(a) or (b) (relating to cooking raw animal-derived foods) to be above 5°C (41°F), or 7°C (45°F) as specified in § 46.385(a)(3) for more than 4 hours including both of the following:

(A) The time the food is exposed to the running water and the time needed for preparation for cooking.

(B) The time it takes under refrigeration to lower the food temperature to 5°C (41°F), or 7°C (45°F) as specified in § 46.385(a)(3).

(3) As part of a cooking process if the food that is frozen is one of the following:

(i) Cooked as specified in § 46.361(a) or (b) or § 46.362 (relating to microwave cooking).

(ii) Thawed in a microwave oven and immediately transferred to conventional cooking equipment, with no interruption in the process.

(4) Using any procedure if a portion of frozen ready-to-eat food is thawed and prepared for immediate service in response to an individual consumer's order.

§ 46.384. Potentially hazardous food: cooling.

(a) *Cooling cooked potentially hazardous food.* Cooked potentially hazardous food shall be cooled as follows:

(1) Within 2 hours, from 58°C (135°F) to 21°C (70°F).

(2) Within 6 hours, from 58°C (135°F) to 5°C (41°F) or less, or to 7°C (45°F) as specified in § 46.385(a)(3) (relating to potentially hazardous food: hot and cold holding).

(b) *Cooling potentially hazardous food prepared from ingredients at ambient temperature.* Potentially hazardous food shall be cooled within 4 hours to 5°C (41°F) or less, or to 7°C (45°F) as specified in § 46.385(a)(3) if prepared from ingredients at ambient temperature, such as reconstituted foods and canned tuna.

(c) *Cooling methods.* Cooling shall be accomplished in accordance with the time and temperature criteria specified in subsection (a) by using one or more of the following methods, based on the type of food being cooled:

(1) Placing the food in shallow pans.

(2) Separating the food into smaller or thinner portions.

(3) Using rapid cooling equipment.

(4) Stirring the food in a container placed in an ice water bath.

(5) Using containers that facilitate heat transfer.

(6) Adding ice as an ingredient.

(7) Other effective methods.

(d) *Food containers in which food is cooled.* When placed in cooling or cold holding equipment, food containers in which food is being cooled shall be both of the following:

(1) Arranged in the equipment to provide maximum heat transfer through the container walls.

(2) Loosely covered, or uncovered if protected from overhead contamination as specified in § 46.321(a)(2) (relating to food storage), during the cooling period to facilitate heat transfer from the surface of the food.

§ 46.385. Potentially hazardous food: hot and cold holding.

(a) *General.* Except during preparation, cooking or cooling, or when time is used as the public health control as specified in subsection (c), potentially hazardous food shall be maintained at one of the following temperatures, as applicable:

(1) At 58°C (135°F) or above, except that roasts cooked to a temperature and for a time specified in § 46.361(b) (relating to cooking raw animal-derived foods) or reheated as specified in § 46.365(b)(5) (relating to reheating food) may be held at a temperature of 54°C (130°F) or above.

(2) At 5°C (41°F) or less except as specified in paragraphs (3)—(5), or § 46.584(b) (relating to vending machines).

(3) At 7°C (45°F) or between 7°C (45°F) and 5°C (41°F) in existing refrigeration equipment that is not capable of maintaining the food at 5°C (41°F) or less if either of the following is accurate:

(i) The equipment is in place and in use in the food facility; and by December 13, 2008, the equipment is upgraded or replaced so that it shall maintain food at a temperature of 5°C (41°F) or less.

(ii) A food facility operator can demonstrate to the Department that a hardship would result from meeting the requirements of this paragraph and a variance is applied for and granted by the Department. The variance will not relieve the applicant from meeting the food safety objectives of this chapter.

(4) At 7°C (45°F) or less for shell eggs, or as otherwise specified in section 3 of the Egg Refrigeration Law (31 P. S. § 300.3).

(5) At 7°C (45°F) or less for milk products, for a maximum period allowed by the “sell-by” coding required by § 59.22 (relating to milk dating), or as otherwise specified in the Milk Sanitation Law.

(b) *Date marking of ready-to-eat, potentially hazardous food.*

(1) Except as specified in paragraph (4) or (5), refrigerated, ready-to-eat, potentially hazardous food prepared and held in a food facility for more than 48 hours shall be clearly marked to indicate either of the following:

(i) The date by which the food shall be consumed on the premises, sold or discarded.

(ii) The date on which the food was prepared.

(2) Refrigerated ready-to-eat potentially hazardous food prepared and packaged by a food processing plant shall be clearly marked with the date the original container is opened in a food facility. Except as specified in paragraphs (4) and (5), all food repackaged from the original container by the food facility shall be clearly marked to indicate the date by which the food shall be consumed on the premises, sold or discarded, and in no case may this date be beyond the manufacturer’s use-by date.

(3) A refrigerated, ready-to-eat, potentially hazardous food that is frequently rewrapped (such as lunchmeat or a roast), or for which date marking is impractical (such as soft serve mix or milk in a dispensing machine), shall be marked as in paragraph (1) or (2), or by an alternative method acceptable to the Department.

(4) Paragraphs (1) and (2) do not apply to individual meal portions served or repackaged for sale from a bulk container upon a consumer’s request.

(5) Paragraph (2) does not apply to the following:

(i) Fermented sausages produced in a Federally inspected food processing plant that are not labeled “keep refrigerated” and which retain the original casing on the product.

(ii) Shelf stable, dry fermented sausages.

(iii) Shelf stable salt-cured products such as prosciutto and parma (ham) produced in a Federally inspected food processing plant that are not labeled “keep refrigerated”—provided that when the face is cut, the remaining portion is whole and intact.

(6) A refrigerated, ready-to-eat, potentially hazardous food ingredient or a portion of a refrigerated, ready-to-eat, potentially hazardous food is subsequently combined with additional ingredients or portions of food, shall retain the date marking of the earliest-prepared or first-prepared ingredient.

(c) *Time as a public health control.*

(1) Except as specified in paragraph (2), if time—rather than temperature—is used as the public health control for a working supply of potentially hazardous food before cooking, or for ready-to-eat potentially hazardous food that is displayed or held for service for immediate consumption, all of the following shall be done:

(i) The food shall be marked or otherwise identified to indicate the time that is 4 hours past the point in time when the food is removed from temperature control.

(ii) The food shall be cooked and served, served if ready-to-eat, or discarded, within 4 hours from the point in time when the food is removed from temperature control.

(iii) The food in unmarked containers or packages or marked to exceed a 4-hour limit shall be discarded.

(iv) Written procedures shall be maintained in the food facility and made available to the Department upon request, that ensure compliance with this subsection and § 46.384(a)—(b) (relating to potentially hazardous food: cooling) for food that is prepared, cooked and refrigerated before time is used as a public health control.

(2) In a food facility that serves a highly susceptible population, time only—rather than temperature—may not be used as the public health control for raw eggs.

SPECIALIZED PROCESSING METHODS

§ 46.401. Variance requirement for specialized processing methods.

A food facility shall obtain a variance from the Department as specified in § 46.1103(a) and (b) (relating to variances) before using any specialized processing method not currently recognized by the Department as a safe method for processing food.

§ 46.402. Reduced oxygen packaging.

(a) *General requirement.* A food facility that packages food using a reduced oxygen packaging method—where *Clostridium botulinum* is identified as a microbiological hazard in the final packaged form of the food—shall ensure that there are at least two barriers in place to control the growth and toxin formation of *Clostridium botulinum*. This requirement does not apply to a food facility that has obtained a variance under § 46.401 (relating to variance requirement for specialized processing methods).

(b) *HACCP plan requirement.* A food facility that packages food using a reduced oxygen packaging method—where *Clostridium botulinum* is identified as a microbiological hazard in the final packaged form of the food—shall have an HACCP plan that contains the information specified in § 46.1122(b)(4) (relating to HACCP plans) and that does all of the following:

- (1) Identifies the food to be packaged.
- (2) Limits the food packaged to a food that does not support the growth of *Clostridium botulinum* because it complies with one of the following:
 - (i) Has an a_w of 0.91 or less.
 - (ii) Has a pH of 4.6 or less.
 - (iii) Is a meat or poultry product cured at a food establishment regulated by USDA using substances specified in 9 CFR 424.21 (relating to use of food ingredients and sources of radiation), and is received in an intact package.
 - (iv) Is a food with a high level of competing organisms such as raw meat or raw poultry.
- (3) Specifies methods for maintaining food at 5°C (41°F) or below.
- (4) Describes how the packages shall be prominently and conspicuously labeled on the principal display panel in bold type on a contrasting background, with instructions to do the following:
 - (i) Maintain the food at 5°C (41°F) or below.
 - (ii) For food held at refrigeration temperatures, discard the food within 14 calendar days of its packaging if it is not served for on-premises consumption, or it is not consumed if served or sold for off-premises consumption.
 - (5) Limits the refrigerated shelf life to no more than 14 calendar days from packaging to consumption or the original manufacturer's "sell by" or "use by" date, whichever occurs first.
 - (6) Includes operational procedures that do all of the following:
 - (i) Prohibit contacting food with bare hands.
 - (ii) Identify a designated area and the method by which physical barriers or methods of separation of raw foods and ready-to-eat foods minimize cross-contamina-

tion, and access to the processing equipment is limited to responsible trained personnel familiar with the potential hazards of the operation.

(iii) Cleaning and sanitization procedures for food-contact surfaces are delineated.

(7) Describes the training program that ensures that the individual responsible for the reduced oxygen packaging operation understands concepts required for a safe operation, the equipment and facilities, and the procedures specified in paragraph (6) and § 46.1122(b)(4).

(c) *Special limitation with respect to certain fish.* Except for fish that is frozen before, during and after packaging, a food facility may not package fish using a reduced oxygen packaging method.

FOOD IDENTITY, PRESENTATION AND ON-PREMISES LABELING

§ 46.421. Accurate representation.

(a) *Standards of identity.* Packaged food shall comply with standard of identity requirements in the following:

(1) Sections 9 and 13(f) of the Food Act (31 P. S. §§ 20.9 and 20.13(f)).

(2) Definitions in 21 CFR Parts 131—169 and 9 CFR 319 (relating to definitions and standards of identity or composition).

(3) 21 CFR Part 130 (relating to food standards: general).

(4) 9 CFR Part 319, Subpart A (relating to general).

(b) *Food shall be honestly presented.*

(1) Food shall be offered for human consumption in a way that does not mislead or misinform the consumer.

(2) Food or color additives, colored overwraps or lights may not be used to misrepresent the true appearance, color or quality of a food.

§ 46.422. Labeling.

(a) *Labels required on packaged foods.* Food packaged in a food facility shall be labeled as specified in sections 9, 10 and 13(f) of the Food Act (31 P. S. §§ 20.9, 20.10 and 20.13(f)), 21 CFR Part 101 (relating to food labeling), 9 CFR 317 (relating to labeling, marking devices, and containers) and 9 CFR part 381, Subpart N (relating to labeling and containers).

(b) *Label information on packaged foods.* Label information on packaged foods shall include the following:

(1) The common name of the food, or absent a common name, an adequately descriptive identity statement.

(2) If made from two or more ingredients, a list of ingredients in descending order of predominance by weight, including a declaration of artificial color or flavor and chemical preservatives, if contained in the food.

(3) An accurate declaration of the quantity of contents.

(4) The name and place of business of the manufacturer, packer or distributor.

(5) Except as exempted in section 403(q)(3)—(5) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C.A. § 343(q)(3)—(5)), nutritional labeling as specified in 21 CFR Part 101 (relating to food labeling) and 9 CFR Part 317, Subpart B (relating to nutrition labeling).

(6) Disclosure of the use of canthaxanthin for any salmonid fish containing canthaxanthin as a color additive, by the labeling of the bulk fish container, including a

list of ingredients, displayed on the retail container or by other written means, such as a counter card.

(c) *Labeling information on bulk foods available for consumer self-dispensing or on unpackaged foods portioned to consumer specifications.* Bulk food that is available for consumer self-dispensing or unpackaged foods portioned to consumer specifications shall be prominently labeled with one of the following in plain view of the consumer:

(1) The manufacturer's or processor's label that was provided with the food.

(2) A card, sign or other method of notification (such as a product labeling book) that includes the information specified in subsection (b)(1), (2) and (5).

(d) *Labeling information on certain bakery products.* Bakery products need not be labeled if they are sold directly to the consumer and the following are accurate:

(1) The food is either manufactured or prepared on the premises of the food facility or at another food facility that is owned by the same person and is regulated by the Department or other food regulatory agency that has jurisdiction.

(2) The information specified in subsection (b)(1), (2) and (5) is available at the place of sale.

(3) A health, nutrient content or other claim is not made.

(e) *Concealed or altered labeling information.* Food facility or manufacturers' dating information on foods may not be concealed or altered.

§ 46.423. Consumer advisory required with respect to animal-derived foods that are raw, undercooked or not otherwise processed to eliminate pathogens.

Except as specified in §§ 46.361(c) and (d)(3) and 46.461 (relating to cooking raw animal-derived foods; and additional safeguards for a food facility that serves a highly susceptible population), if an animal-derived food such as beef, eggs, fish, lamb, milk, pork, poultry or shellfish that is raw, undercooked or not otherwise processed to eliminate pathogens is offered in a ready-to-eat form as a deli, menu, vended or other item; or as a raw ingredient in another ready-to-eat food, the food facility shall inform consumers by brochures, deli case or menu advisories, label statements, table tents, placards or other effective written means of the significantly increased risk associated with certain highly susceptible populations eating these foods in raw or undercooked form.

UNSAFE, ADULTERATED OR CONTAMINATED FOOD

§ 46.441. Discarding or reconditioning unsafe, adulterated or contaminated food.

The following foods shall be discarded:

(1) A food that is unsafe, adulterated or not honestly presented as specified in § 46.201 (relating to food shall be safe, unadulterated and honestly presented), unless the food is reconditioned according to a procedure approved by the Department.

(2) Food that is not from an approved source as specified in §§ 46.211—46.221.

(3) Ready-to-eat food that may have been contaminated by an employee that has been restricted or excluded as specified in § 46.113 (relating to duty to impose exclusions and restrictions).

(4) Food that is contaminated by food employees, consumers or other persons through contact with their hands, bodily discharges, such as nasal or oral discharges, or other means.

(5) A food specified in § 46.385(b)(1) and (2) (relating to potentially hazardous food: hot and cold holding), if any of the following occur:

(i) The food exceeds the temperature specified in § 46.385(a) for more than 4 hours or for an undetermined amount of time.

(ii) The food is in a container or package that does not bear a date or day.

(6) Refrigerated, ready-to-eat, potentially hazardous food prepared in a food facility and dispensed through a vending machine with an automatic shutoff control shall be discarded if it exceeds a temperature as specified in § 46.385(a).

SPECIAL REQUIREMENTS FOR HIGHLY SUSCEPTIBLE POPULATIONS

§ 46.461. Additional safeguards for a food facility that serves a highly susceptible population.

(a) *Prepackaged juice bearing a warning label prohibited.* In a food facility that serves a highly susceptible population, prepackaged juice or a prepackaged beverage containing juice that bears a warning label as specified in 21 CFR 101.17(g) (relating to foodlabeling warning, notice, and safe handling statements), may not be served or offered for sale.

(b) *Unpackaged juice prepared on the premises.* In a food facility that serves a highly susceptible population, unpackaged juice that is prepared on the premises for service or sale in a ready-to-eat form shall be processed under an HACCP plan that contains the information specified in § 46.1122 (relating to HACCP plans) and as specified in 21 CFR 120.24 (relating to process controls).

(c) *Pasteurized eggs required in certain foods.* In a food facility that serves a highly susceptible population, pasteurized shell eggs or pasteurized liquid, frozen or dry eggs or egg products shall be substituted for raw shell eggs in the preparation of the following:

(1) Foods such as Caesar salad, hollandaise or Béarnaise sauce, mayonnaise, egg nog, ice cream and egg-fortified beverages.

(2) Except as specified in subsection (e), recipes in which more than one egg is broken and the eggs are combined.

(d) *Prohibited ready-to-eat foods.* In a food facility that serves a highly susceptible population, the following foods may not be served or offered for sale in a ready-to-eat form:

(1) Raw animal-derived foods such as raw fish, raw-marinated fish, raw molluscan shellfish and steak tartare.

(2) A partially cooked animal-derived food such as lightly cooked fish, rare meat, soft-cooked eggs that are made from raw shell eggs and meringue.

(3) Raw seed sprouts.

(e) *Limited exception allowing use of raw eggs.* In a food facility that serves a highly susceptible population, subsection (b)(2) does not apply in any of the following circumstances:

(1) The raw eggs are combined immediately before cooking for one consumer's serving at a single meal,

cooked as specified in § 46.361(a)(1) (relating to cooking raw animal-derived foods), and served immediately, such as an omelet, soufflé or scrambled eggs.

(2) The raw eggs are combined as an ingredient immediately before baking and the eggs are thoroughly cooked to a ready-to-eat form, such as a cake, muffin or bread.

(3) The preparation of the food is conducted under an HACCP plan that accomplishes the following:

(i) Identifies the food to be prepared.

(ii) Prohibits contacting ready-to-eat food with bare hands.

(iii) Includes specifications and practices that ensure the following:

(A) Salmonella Enteritidis growth is controlled before and after cooking.

(B) Salmonella Enteritidis is destroyed by cooking the eggs according to the temperature and time specified in § 46.361(a)(2).

(iv) Contains the information specified in § 46.1122(b)(4) including procedures that accomplish the following:

(A) Control cross contamination of ready-to-eat food with raw eggs.

(B) Delineate cleaning and sanitization procedures for food-contact surfaces.

(v) Describes the training program that ensures that the food employee responsible for the preparation of the food understands the procedures to be used.

Subchapter D. EQUIPMENT, UTENSILS AND LINENS

GENERAL STANDARD

Sec. 46.501. Acceptability of food equipment certified or classified for sanitation by an ANSI-accredited certification program.

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46.521. Materials in multiuse utensils and food-contact surfaces.
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DESIGN AND CONSTRUCTION

46.541. Durability and strength.
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46.543. "V" threads: use limitation.
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ACCURACY

46.561. Accuracy of temperature measuring devices for food.
46.562. Accuracy of temperature measuring devices for ambient air and water.
46.563. Accuracy of pressure measuring devices on mechanical warewashing equipment.

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46.583. Dispensing equipment: protection of equipment and food.
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46.591. Warewashing machines.
46.592. Manual warewashing machines.
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NUMBERS AND CAPACITIES OF UTENSILS, TEMPERATURE MEASURING DEVICES AND TESTING DEVICES

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LOCATION AND INSTALLATION OF EQUIPMENT

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46.671. Equipment: good repair and proper adjustment.
46.672. Cutting surfaces.
46.673. Microwave ovens.
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MAINTENANCE AND OPERATION OF UTENSILS AND TEMPERATURE AND PRESSURE MEASURING DEVICES

46.691. Utensils and temperature and pressure measuring devices: repair and calibration.
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GENERAL STANDARD

§ 46.501. Acceptability of food equipment certified or classified for sanitation by an ANSI-accredited certification program.

Food equipment that is certified or classified for sanitation by an American National Standards Institute (ANSI)-accredited certification program shall be deemed to comply with the applicable provisions of §§ 46.521—46.523, 46.541—46.544, 46.561—46.563 and 46.581—46.595.

MATERIALS FOR USE IN CONSTRUCTION AND REPAIR

§ 46.521. Materials in multiuse utensils and food-contact surfaces.

(a) *Required characteristics.* Materials that are used in the construction of utensils and food-contact surfaces of equipment may not allow the migration of deleterious

substances or impart colors, odors or tastes to food. Under normal use conditions these materials shall be all of the following:

- (1) Safe.
- (2) Durable, corrosion-resistant and nonabsorbent.
- (3) Sufficient in weight and thickness to withstand repeated warewashing.
- (4) Finished to have a smooth, easily cleanable surface.
- (5) Resistant to pitting, chipping, crazing, scratching, scoring, distortion and decomposition.

(b) *Cast iron: use limitation.* Except as specified in paragraphs (1) and (2), cast iron may not be used for utensils or food-contact surfaces of equipment.

- (1) Cast iron may be used as a surface for cooking.
- (2) Cast iron may be used in utensils for serving food if the utensils are used only as part of an uninterrupted process from cooking through service.

(c) *Lead in ceramic, china and crystal utensils: use limitation.* Ceramic, china, crystal utensils and decorative utensils (such as hand painted ceramic or china) that are used in contact with food shall be lead-free or contain levels of lead not exceeding the limits of the following utensil categories:

<i>Utensil Category</i>	<i>Description</i>	<i>Maximum Lead in mg/L (ppm)</i>
Hot Beverage Mugs	Coffee Mugs	0.5
Large Hollowware	Bowls \geq 1.1 L (1.16 Qt.)	1.0
Small Hollowware	Bowls <1.1 L (1.16 Qt.)	2.0
Flat Utensils	Plates, Saucers	3.0

(d) *Copper: use limitation.*

(1) Except as specified in paragraph (2), copper and copper alloys (such as brass) may not be used in contact with a food that has a pH below 6 (such as vinegar, fruit juice or wine) or for a fitting or tubing installed between a backflow prevention device and a carbonator.

(2) Copper and copper alloys may be used in contact with beer brewing ingredients that have a pH below 6 in the prefermentation and fermentation steps of a beer brewing operation such as a brewpub or microbrewery.

(e) *Galvanized metal: use limitation.* Galvanized metal may not be used for utensils or food-contact surfaces of equipment that are used in contact with acidic food.

(f) *Sponges: use limitation.* Sponges may not be used in contact with cleaned and sanitized or in-use food-contact surfaces.

(g) *Lead in pewter alloys: use limitation.* Pewter alloys containing lead in excess of 0.05% may not be used as a food-contact surface.

(h) *Lead in solder and flux: use limitation.* Solder and flux containing lead in excess of 0.2% may not be used as a food-contact surface.

(i) *Wood: use limitation.* Except as specified in paragraphs (1)–(3), wood and wood wicker may not be used as a food-contact surface.

(1) Hard maple or an equivalently hard, close-grained wood may be used for the following:

(i) Cutting boards; cutting blocks; bakers' tables; and utensils such as rolling pins, doughnut dowels, salad bowls, pizza peels and chopsticks.

(ii) Wooden paddles used in confectionery operations for pressure scraping kettles when manually preparing confections at a temperature of 110°C (230°F) or above.

(2) Whole, uncut, raw fruits and vegetables, and nuts in the shell may be kept in the wood shipping containers in which they were received, until the fruits, vegetables or nuts are used.

(3) If the nature of the food requires removal of rinds, peels, husks or shells before consumption, the whole, uncut, raw food may be kept in the following:

(i) Untreated wood containers.

(ii) Treated wood containers if the containers are treated with a preservative that meets the requirements specified in 21 CFR 178.3800 (relating to preservatives for wood).

(j) *Nonstick coatings use limitation.* Multiuse kitchenware (such as frying pans, griddles, sauce pans, cookie sheets and waffle bakers) that have a perfluorocarbon resin coating shall be used with nonscoring or nonscratching utensils and cleaning aids.

§ 46.522. Materials for surfaces that are nonfood-contact surfaces.

Surfaces of equipment that are nonfood-contact surfaces, but are exposed to splash, spillage or other food soiling or that require frequent cleaning, shall be constructed of a corrosion-resistant, nonabsorbent and smooth material.

§ 46.523. Single-service and single-use articles: required characteristics.

Materials that are used to make single-service and single-use articles shall be safe and clean, and may not allow the migration of deleterious substances, or impart colors, odors or tastes to food.

DESIGN AND CONSTRUCTION

§ 46.541. Durability and strength.

(a) *Equipment and utensils.* Equipment and utensils shall be designed and constructed to be durable and to retain their characteristic qualities under normal use conditions.

(b) *Food temperature measuring devices.* Food temperature measuring devices may not have sensors or stems constructed of glass, except that thermometers with glass sensors or stems that are encased in a shatterproof coating (such as candy thermometers) may be used.

§ 46.542. Cleanability of multiuse food-contact surfaces and CIP equipment.

(a) *Multiuse food-contact surfaces.* Multiuse food-contact surfaces shall be all of the following:

- (1) Smooth.
- (2) Free of breaks, open seams, cracks, chips, inclusions, pits and similar imperfections.
- (3) Free of sharp internal angles, corners and crevices.
- (4) Finished to have smooth welds and joints.
- (5) Except as specified in subsection (b), accessible for cleaning and inspection by one of the following methods:

(i) Without being disassembled.

(ii) By disassembling without the use of tools.

(iii) By easy disassembling with the use of handheld tools commonly available to maintenance and cleaning personnel (such as screwdrivers, pliers, open-end wrenches and Allen wrenches).

(b) *Exception.* Subsection (a)(5) does not apply to cooking oil storage tanks, distribution lines for cooking oils or beverage syrup lines or tubes.

(c) *CIP equipment.* CIP equipment shall meet the characteristics specified in subsection (a) and shall be designed and constructed so that the following are accurate:

(1) Cleaning and sanitizing solutions circulate throughout a fixed system and contact all interior food-contact surfaces.

(2) The system is self-draining or capable of being completely drained of cleaning and sanitizing solutions.

(3) If the CIP equipment is not designed for disassembly during cleaning, it is designed with inspection access points to ensure that all interior food-contact surfaces throughout the fixed system are being effectively cleaned.

§ 46.543. "V" threads: use limitation.

Except for hot oil cooking or filtering equipment, "V" type threads may not be used on food-contact surfaces.

§ 46.544. Cleanability of hot oil filtering equipment, can openers, nonfood-contact surfaces, kick plates and ventilation hood systems.

(a) *Hot oil filtering equipment.* Hot oil filtering equipment shall meet the characteristics specified in § 46.542 (relating to cleanability of multiuse food-contact surfaces and CIP equipment), as applicable, and shall be readily accessible for filter replacement and cleaning of the filter.

(b) *Can openers.* Cutting or piercing parts of can openers shall be readily removable for cleaning and for replacement.

(c) *Nonfood-contact surfaces.* Nonfood-contact surfaces shall be free of unnecessary ledges, projections and crevices, and designed and constructed to allow easy cleaning and to facilitate maintenance.

(d) *Kick plates, removable.* Kick plates shall be designed so that the areas behind them are accessible for inspection and cleaning by being both of the following:

(1) Removable by one of the methods specified in § 46.542(a)(5) or capable of being rotated open.

(2) Removable or capable of being rotated open without unlocking equipment doors.

(e) *Ventilation hood systems and filters.* Filters or other grease extracting equipment, if not designed to be cleaned in place, shall be designed to be readily removable for cleaning and replacement.

ACCURACY

§ 46.561. Accuracy of temperature measuring devices for food.

(a) *Accuracy range for Celsius-scaled or Celsius/Fahrenheit-scaled devices.* Food temperature measuring devices that are scaled only in Celsius or dually scaled in Celsius and Fahrenheit shall be accurate to $\pm 1^{\circ}\text{C}$ in the intended range of use.

(b) *Accuracy for Fahrenheit-scaled devices.* Food temperature measuring devices that are scaled only in Fahrenheit shall be accurate to $\pm 2^{\circ}\text{F}$ in the intended range of use.

§ 46.562. Accuracy of temperature measuring devices for ambient air and water.

(a) *Accuracy range for Celsius-scaled or Celsius/Fahrenheit-scaled devices.* Ambient air and water temperature measuring devices that are scaled in Celsius or dually scaled in Celsius and Fahrenheit shall be designed to be easily readable and accurate to $\pm 1.5^{\circ}\text{C}$ in the intended range of use.

(b) *Accuracy for Fahrenheit-scaled devices.* Ambient air and water temperature measuring devices that are scaled only in Fahrenheit shall be accurate to $\pm 3^{\circ}\text{F}$ in the intended range of use.

§ 46.563. Accuracy of pressure measuring devices on mechanical warewashing equipment.

Pressure measuring devices that display the pressures in the water supply line for the fresh hot water sanitizing rinse on mechanical warewashing equipment shall have increments of 7 kilopascals (1 pound per square inch) or smaller, and shall be accurate to ± 14 kilopascals (± 2 pounds per square inch) in the 100—170 kilopascals (15—25 pounds per square inch) range.

FUNCTIONALITY

§ 46.581. Ventilation hood systems, drip prevention.

Exhaust ventilation hood systems in food preparation and warewashing areas (including components such as hoods, fans, guards and ducting) shall be designed to prevent grease or condensation from draining or dripping onto food, equipment, utensils, linens and single-service and single-use articles.

§ 46.582. Equipment openings, closures and deflectors.

(a) *Overlap and slope of covers.* A cover or lid for equipment shall overlap the opening and be sloped to drain.

(b) *Flange requirement.* An opening located within the top of a unit of equipment that is designed for use with a cover or lid shall be flanged upward at least 5 millimeters (2/10 of an inch).

(c) *Watertight joint.* Except as specified in subsection (d), fixed piping, temperature measuring devices, rotary shafts and other parts extending into equipment shall be provided with a watertight joint at the point where the item enters the equipment.

(d) *Alternative to watertight joint.* If a watertight joint is not provided, the piping, temperature measuring devices, rotary shafts and other parts extending through the openings shall be equipped with an apron designed to deflect condensation, drips and dust from openings into the food. The openings shall be flanged as specified in subsection (b).

§ 46.583. Dispensing equipment: protection of equipment and food.

In equipment that dispenses or vends liquid food or ice in unpackaged form, the following shall occur:

(1) The delivery tube, chute orifice and splash surfaces directly above the container receiving the food shall be designed in a manner, such as with barriers, baffles or drip aprons, so that drips from condensation and splash are diverted from the opening of the container receiving the food.

(2) The delivery tube, chute and orifice shall be protected from manual contact such as by being recessed.

(3) The delivery tube or chute and orifice of equipment used to vend liquid food or ice in unpackaged form to self-service consumers shall be designed so that the delivery tube or chute and orifice are protected from dust, insects, rodents and other contamination by a self-closing door if the equipment is either of the following:

(i) Located in an outside area that does not otherwise afford the protection of an enclosure against the rain, windblown debris, insects, rodents and other contaminants that are present in the environment.

(ii) Available for self-service during hours when it is not under the full-time supervision of a food employee.

(4) The dispensing equipment actuating lever or mechanism and filling device of consumer self-service beverage dispensing equipment shall be designed to prevent contact with the lip-contact surface of glasses or cups that are refilled.

§ 46.584. Vending machines.

(a) *Vending stage closure.* The dispensing compartment of a vending machine—including a machine that is designed to vend prepackaged snack food that is not potentially hazardous (such as chips, party mixes and pretzels)—shall be equipped with a self-closing door or cover if the machine is either of the following:

(1) Located in an outside area that does not otherwise afford the protection of an enclosure against the rain, windblown debris, insects, rodents and other contaminants that are present in the environment.

(2) Available for self-service during hours when it is not under the full supervision of a food employee.

(b) *Automatic shutoff.*

(1) A machine vending potentially hazardous food shall have an automatic control that prevents the machine from vending food under either of the following circumstances:

(i) If there is a power failure, mechanical failure or other condition that results in an internal machine temperature that cannot maintain food temperatures as specified in Subchapter C (relating to food).

(ii) If a condition specified in subparagraph (i) occurs, until the machine is serviced and restocked with food that has been maintained at temperatures specified in Subchapter C.

(2) When the automatic shutoff within a refrigerated vending machine dispensing potentially hazardous food is activated, the ambient temperature may not exceed 5°C (41°F) or 7°C (45°F) as specified in § 46.385(a)(3) (relating to potentially hazardous food: hot and cold holding) for more than 30 minutes immediately after the machine is filled, serviced or restocked.

(3) When the automatic shutoff within a hot holding vending machine dispensing potentially hazardous food is activated, the ambient temperature may not be less than 58°C (135°F) for more than 120 minutes immediately after the machine is filled, serviced or restocked.

(c) *Can openers.* Cutting or piercing parts of can openers on vending machines shall be protected from manual contact, dust, insects, rodents and other contamination.

(d) *Vending machines that dispense liquids in paper containers.* Vending machines designed to store beverages that are packaged in containers made from paper products shall be equipped with diversion devices and retention pans or drains for container leakage.

(e) *Vending machines that dispense liquid food in bulk.* Vending machines that dispense liquid food in bulk shall be both of the following:

(1) Provided with an internally mounted waste receptacle for the collection of drip, spillage, overflow or other internal wastes.

(2) Equipped with an automatic shutoff device that will place the machine out of operation before the waste receptacle overflows.

(f) *Requirements for a liquid shutoff device.* Shutoff devices described in subsection (e)(2) shall prevent water or liquid food from continuously running if there is a failure of a flow control device in the water or liquid food system or waste accumulation that could lead to overflow of the waste receptacle.

(g) *Doors and openings.*

(1) Vending machine doors and access opening covers to food and container storage spaces shall be tight-fitting so that the space along the entire interface between the doors or covers and the cabinet of the machine, if the doors or covers are in a closed position, is no greater than 1.5 millimeters or 1/16 inch by one or more of the following:

(i) Being covered with louvers, screens or materials that provide an equivalent opening of not greater than 1.5 millimeters or 1/16 inch. Screening of 12 mesh or more to 2.5 centimeters (12 mesh to 1 inch) meets this requirement.

(ii) Being effectively gasketed.

(iii) Having interface surfaces that are at least 13 millimeters or 1/2 inch wide.

(iv) Jambs or surfaces used to form an L-shaped entry path to the interface.

(2) Vending machine service connection openings through an exterior wall of the machine, shall be closed by sealants, clamps, or grommets so that the openings are no larger than 1.5 millimeters or 1/16 inch.

§ 46.585. Bearings and gear boxes: leakproof.

Equipment containing bearings and gears that require lubricants shall be designed and constructed so that the lubricant cannot leak, drip or be forced into food or onto food-contact surfaces.

§ 46.586. Beverage tubing: separation.

Beverage tubing and cold-plate beverage cooling devices may not be installed in contact with stored ice. This section does not apply to cold plates that are constructed integrally with an ice storage bin.

§ 46.587. Ice units: separation of drains.

Liquid waste drain lines may not pass through an ice machine or ice storage bin.

§ 46.588. Condenser unit: separation.

If a condenser unit is an integral component of equipment, the condenser unit shall be separated from the food and food storage space by a dustproof barrier.

§ 46.589. Molluscan shellfish tanks.

(a) *General.* Except as specified in subsection (b), molluscan shellfish life support system display tanks may not be used to display shellfish that are offered for human consumption and shall be conspicuously marked so that it is obvious to the consumer that the shellfish are for display only.

(b) *Exception.* Molluscan shellfish life-support system display tanks that are used to store and display shellfish that are offered for human consumption shall be operated and maintained in accordance with the following:

(1) A variance granted by the Department in accordance with the procedure described in § 46.1103(a) (relating to variances).

(2) An HACCP plan that is submitted by the food facility operator and approved as specified in § 46.1103(b), ensuring the following:

(i) Water used with fish other than molluscan shellfish does not flow into the molluscan tank.

(ii) The safety and quality of the shellfish as they were received are not compromised by the use of the tank.

(iii) The identity of the source of the shellstock is retained as specified in § 46.250 (relating to shellstock: maintaining identification).

§ 46.590. Temperature measuring devices.

(a) *Location of device in storage unit.* In a mechanically refrigerated or hot food storage unit, the sensor of a temperature measuring device shall be located to measure the air temperature or a simulated product temperature in the warmest part of a mechanically refrigerated unit and in the coolest part of a hot food storage unit.

(b) *General device requirement.* Except as specified in subsection (c), cold or hot holding equipment used for potentially hazardous food shall be designed to include and shall be equipped with at least one integral or permanently affixed temperature measuring device that is located to allow easy viewing of the device's temperature display.

(c) *Exception to device requirement.* Subsection (b) does not apply to equipment for which the placement of a temperature measuring device is not a practical means for measuring the ambient air surrounding the food because of the design, type and use of the equipment, such as calorod units, heat lamps, cold plates, bainmaries, steam tables, insulated food transport containers and salad bars.

(d) *Easily readable.* Temperature measuring devices shall be designed to be easily readable.

(e) Devices on warewashing machines. Food temperature measuring devices and water temperature measuring devices on warewashing machines shall have a numerical scale, printed record or digital readout in increments no greater than 1°C or 2°F in the intended range of use.

§ 46.591. Warewashing machines.

(a) *Data plate summarizing operating specifications.* A warewashing machine shall be provided with an easily accessible and readable data plate affixed to the machine by the manufacturer that indicates the machine's design and operating specifications, including the following:

(1) Temperatures required for washing, rinsing and sanitizing.

(2) Pressure required for the fresh water sanitizing rinse unless the machine is designed to use only a pumped sanitizing rinse.

(3) Conveyor speed for conveyor machines or cycle time for stationary rack machines.

(b) *Internal baffles.* Warewashing machine wash and rinse tanks shall be equipped with baffles, curtains or other means to minimize internal cross contamination of the solutions in wash and rinse tanks.

(c) *Temperature measuring devices.* A warewashing machine shall be equipped with a temperature measuring device that indicates the temperature in the following locations or instances:

(1) In each wash and rinse tank.

(2) As the water enters the hot water sanitizing final rinse manifold or in the chemical sanitizing solution tank.

(d) *Detergent and sanitizer level indicator.* A warewashing machine that is installed after December 13, 2003, shall be designed and equipped to automatically dispense detergents and sanitizers and incorporate a visual means to verify that detergents and sanitizers are delivered or a visual or audible alarm to signal if the detergents and sanitizers are not delivered to the respective washing and sanitizing cycles.

(e) *Flow pressure device.* Warewashing machines that provide a fresh hot water sanitizing rinse shall be equipped with a pressure gauge or similar device such as a transducer that measures and displays the water pressure in the supply line immediately before entering the warewashing machine. If the flow pressure measuring device is upstream of the fresh hot water sanitizing rinse control valve, the device shall be mounted in a 6.4 millimeter or 1/4 inch Iron Pipe Size valve. This subsection does not apply to a machine that uses only a pumped or recirculated sanitizing rinse.

§ 46.592. Manual warewashing machines.

If hot water is used for sanitization in manual warewashing operations, the sanitizing compartment of the sink shall comply with the following:

(1) Be designed with an integral heating device that is capable of maintaining water at a temperature not less than 77°C (171°F).

(2) Be provided with a rack or basket to allow complete immersion of equipment and utensils into the hot water.

§ 46.593. Warewashing sinks and drainboards: self-draining.

Sinks and drainboards of warewashing sinks and machines shall be self-draining.

§ 46.594. Equipment compartments: drainage.

Equipment compartments that are subject to accumulation of moisture due to conditions such as condensation, food or beverage drip, or water from melting ice shall be sloped to an outlet that allows complete draining.

§ 46.595. Case lot handling equipment: moveability.

Equipment, such as dollies, pallets, racks and skids used to store and transport large quantities of packaged foods received from a supplier in a cased or over-wrapped lot, shall be designed to be moved by hand or by conveniently available equipment such as hand trucks and forklifts.

NUMBERS AND CAPACITIES OF EQUIPMENT

§ 46.611. Cooling, heating and holding capacities.

Equipment for cooling and heating food, and holding cold and hot food, shall be sufficient in number and capacity to provide food temperatures as specified in Subchapter C (relating to food).

§ 46.612. Manual warewashing: sink compartment requirements.

(a) *General: three compartments required.* Except as specified in subsection (c), a sink with at least three

compartments shall be provided for manually washing, rinsing, and sanitizing equipment and utensils.

(b) *Large equipment and utensils.* Sink compartments shall be large enough to accommodate immersion of the largest equipment and utensils that require cleaning by immersion. If equipment or utensils are too large for the warewashing sink, a warewashing machine or alternative equipment as specified in subsection (c) shall be used.

(c) *Exception for approved alternative equipment.* Alternative manual warewashing equipment may be used when there are special cleaning needs or constraints and its use is approved by the Department. Alternative manual warewashing equipment may include any of the following:

- (1) High-pressure detergent sprayers.
- (2) Low- or line-pressure spray detergent foamers.
- (3) Other task-specific cleaning equipment, such as utensils supplied by an equipment manufacturer.
- (4) Brushes or similar bristled implements.
- (5) Two-compartment sinks as specified in § 46.676(f) (relating to manual warewashing equipment).
- (6) Receptacles that substitute for the compartments of a multi-compartment sink.

§ 46.613. Drainboards.

Drainboards, utensil racks or tables large enough to accommodate all soiled and cleaned items that may accumulate during hours of operation shall be provided for necessary utensil holding before cleaning and after sanitizing.

§ 46.614. Ventilation hood systems: adequacy.

Ventilation hood systems and devices shall be sufficient in number and capacity to prevent grease or condensation from collecting on walls, ceilings and fixtures.

§ 46.615. Clothes washers and dryers.

A mechanical clothes washer and dryer shall be provided and used at a food facility if work clothes or linens are laundered on the premises. This section does not apply if on-premises laundering is limited to wiping cloths intended to be used moist, or wiping cloths are air-dried as specified in § 46.772 (relating to wiping cloths: air-drying locations).

**NUMBERS AND CAPACITIES OF UTENSILS,
TEMPERATURE MEASURING DEVICES AND
TESTING DEVICES**

§ 46.631. Consumer self-service utensils.

A food-dispensing utensil shall be available for each container displayed at a consumer self-service unit (such as a buffet or salad bar).

§ 46.632. Food temperature measuring devices.

Food temperature measuring devices shall be provided and readily accessible for use in ensuring attainment and maintenance of food temperatures as specified in Subchapter C (relating to food). A food temperature measuring device with a suitable small-diameter probe that is designed to measure the temperature of thin masses shall be provided and readily accessible to accurately measure the temperature of thin foods, such as meat patties or fish fillets.

§ 46.633. Temperature measuring devices for manual warewashing.

In manual warewashing operations, a temperature measuring device shall be provided and readily accessible for frequently measuring the washing and sanitizing temperatures.

§ 46.634. Sanitizing solution testing devices.

A test kit or other device that accurately measures the concentration in mg/L or ppm of sanitizing solutions shall be provided.

LOCATION AND INSTALLATION OF EQUIPMENT

§ 46.651. Location of equipment, clothes washers and dryers and storage cabinets to prevent contamination.

(a) *Prohibited locations.* Except as specified in subsection (b), equipment, a cabinet used for the storage of food, or a cabinet that is used to store cleaned and sanitized equipment, utensils, laundered linens and single-service and single-use articles may not be located in the following:

- (1) Locker rooms.
- (2) Toilet rooms.
- (3) Garbage rooms.
- (4) Mechanical rooms.
- (5) Under sewer lines that are not shielded to intercept potential drips.
- (6) Under leaking water lines including leaking automatic fire sprinkler heads or under lines on which water has condensed.
- (7) Under open stairwells.
- (8) Under other sources of contamination.

(b) *Exception.* A storage cabinet used for linens or single-service or single-use articles may be stored in a locker room.

(c) *Mechanical clothes washer or dryer.* If a mechanical clothes washer or dryer is provided, it shall be located so that the washer or dryer is protected from contamination and only where there is no exposed food; clean equipment, utensils and linens; and unwrapped single-service and single-use articles.

§ 46.652. Installation of fixed equipment, fixed table-mounted equipment and fixed floor-mounted equipment.

(a) *Fixed equipment: spacing or sealing.* Equipment that is fixed because it is not easily movable shall be installed so that it is both of the following:

- (1) Spaced to allow access for cleaning along the sides, behind and above the equipment.
- (2) Spaced from adjoining equipment, walls and ceilings a distance of not more than 1 millimeter or 1/32 inch or—if the equipment is exposed to spillage or seepage—sealed to adjoining equipment or walls.

(b) *Fixed table-mounted equipment.* Table-mounted equipment that is not easily movable shall be installed to allow cleaning of the equipment and areas underneath and around the equipment by being one of the following:

- (1) Sealed to the table.
- (2) Elevated on legs that provide at least one of the following:

(i) 10 centimeters (4 inches) clearance between the table and the equipment.

(ii) 7.5 centimeters (3 inches) clearance between the table and the equipment if the horizontal distance of the table top under the equipment is no more than 50 centimeters (20 inches) from the point of access for cleaning.

(iii) 5 centimeters (2 inches) clearance between the table and the equipment if the horizontal distance of the table top under the equipment is no more than 7.5 centimeters (3 inches) from the point of access for cleaning.

(c) *Fixed floor-mounted equipment.*

(1) Except as specified in paragraph (2) or (3), floor-mounted equipment that is not easily movable shall be sealed to the floor or elevated on legs that provide at least a 15 centimeters (6 inches) clearance between the floor and the equipment.

(2) If no part of the floor under the floor-mounted equipment is more than 15 centimeters (6 inches) from the point of cleaning access, the clearance space may be only 10 centimeters (4 inches).

(3) This section does not apply to display shelving units, display refrigeration units and display freezer units located in the consumer shopping areas of a retail food store, if the floor under the units is maintained clean.

MAINTENANCE AND OPERATION OF EQUIPMENT

§ 46.671. Equipment: good repair and proper adjustment.

(a) *General.* Equipment shall be maintained in a state of repair and condition that meets the requirements specified in §§ 46.501, 46.521—46.523, 46.541—46.544, 46.561—46.563 and 46.581—46.595.

(b) *Equipment components.* Equipment components such as doors, seals, hinges, fasteners and kick plates shall be kept intact, tight and adjusted in accordance with manufacturer's specifications.

(c) *Cutting or piercing parts of can openers.* Cutting or piercing parts of can openers shall be kept sharp to minimize the creation of metal fragments that can contaminate food when the container is opened.

§ 46.672. Cutting surfaces.

Surfaces such as cutting blocks and boards that are subject to scratching and scoring shall be resurfaced if they can no longer be effectively cleaned and sanitized, or discarded if they are not capable of being resurfaced.

§ 46.673. Microwave ovens.

Microwave ovens shall meet the safety standards specified in 21 CFR 1030.10 (relating to microwave ovens).

§ 46.674. Warewashing equipment: mechanical or manual.

(a) *Cleaning frequency.* A warewashing machine; the compartments of sinks, basins, or other receptacles used for washing and rinsing equipment, utensils, or raw foods, or laundering wiping cloths; and drainboards or other equipment used to substitute for drainboards as specified in § 46.613 (relating to drainboards) shall be cleaned as follows:

(1) Before use.

(2) Throughout the day at a frequency necessary to prevent recontamination of equipment and utensils and to ensure that the equipment performs its intended function.

(3) If used, at least every 24 hours.

(b) *Cleaning agents.* When used for warewashing, the wash compartment of a sink, mechanical warewasher or wash receptacle of alternative manual warewashing equipment as specified in § 46.612(c) (relating to manual warewashing: sink compartment requirements), shall contain a wash solution of soap, detergent, acid cleaner, alkaline cleaner, degreaser, abrasive cleaner or other cleaning agent according to the cleaning agent manufacturer's label instructions.

(c) *Clean solutions.* The wash, rinse and sanitize solutions shall be maintained clean.

(d) *Chemical sanitization: temperature, pH, concentration and hardness.* A chemical sanitizer used in a sanitizing solution for a manual or mechanical operation at exposure times specified in § 46.731(c)(3) (relating to sanitization: requirement, frequency and methods) shall be listed in 21 CFR 178.1010 (relating to sanitizing solutions), shall be used in accordance with the EPA-approved manufacturer's label use instructions, and shall be used as follows:

(1) A chlorine solution shall have a minimum temperature based on the concentration and pH of the solution as listed in the following chart:

<i>Minimum Concentration</i>	<i>Minimum Temperature for Solution with pH of 10 or less</i>	<i>Minimum Temperature for Solution with pH of 8 or less</i>
25 mg/L (ppm)	49°C (120°F)	49°C (120°F)
50 mg/L (ppm)	38°C (100°F)	24°C (75°F)
100 mg/L (ppm)	13°C (55°F)	13°C (55°F)

(2) An iodine solution shall have the following:

(i) A minimum temperature of 24°C (75°F).

(ii) A pH of 5.0 or less or a pH no higher than the level for which the manufacturer specifies the solution is effective.

(iii) A concentration between 12.5 mg/L (ppm) and 25 mg/L (ppm).

(3) A quaternary ammonium compound solution shall:

(i) Have a minimum temperature of 24°C (75°F).

(ii) Have a concentration as specified in § 46.731 and as indicated by the manufacturer's use directions included in the labeling.

(iii) Be used only in water with 500 mg/L (ppm) hardness or less or in water having a hardness no greater than specified by the manufacturer's label.

(4) If another solution of a chemical specified in paragraphs (1)—(3) is used, the food facility operator shall demonstrate to the Department that the solution achieves sanitization and the use of the solution may be approved by the Department.

(5) If a chemical sanitizer other than chlorine, iodine or a quaternary ammonium compound is used, it shall be applied in accordance with the manufacturer use directions included in the labeling.

(e) *Determining chemical sanitizer concentration.* Concentration of the sanitizing solution shall be accurately determined by using a test kit or other device.

§ 46.675. Mechanical warewashing equipment.

(a) *Manufacturers' operating instructions.*

(1) A warewashing machine and its auxiliary components shall be operated in accordance with the machine's data plate and other manufacturer's instructions.

(2) A warewashing machine's conveyor speed or automatic cycle times shall be maintained accurately timed in accordance with manufacturer's specifications.

(b) *Wash solution temperature where hot water is used to sanitize.* The temperature of the wash solution in spray type warewashers that use hot water to sanitize may not be less than the following temperature, as applicable:

(1) For a stationary rack, single temperature machine, 74°C (165°F).

(2) For a stationary rack, dual temperature machine, 66°C (150°F).

(3) For a single tank, conveyor, dual temperature machine, 71°C (160°F).

(4) For a multitank, conveyor, multitemperature machine, 66°C (150°F).

(c) *Wash solution temperature where chemicals are used to sanitize.* The temperature of the wash solution in spray-type warewashers that use chemicals to sanitize may not be less than 49°C (120°F).

(d) *Sanitizing rinse temperature where hot water is used to sanitize.*

(1) Except as specified in paragraph (2), in a mechanical operation, the temperature of the fresh hot water sanitizing rinse as it enters the manifold may not be more than 90°C (194°F), or less than the following, as applicable:

(i) For a stationary rack, single temperature machine, 74°C (165°F).

(ii) For all other machines, 82°C (180°F).

(2) The maximum temperature specified in paragraph (1) does not apply to the high pressure and temperature systems with wand-type, hand-held, spraying devices used for the in-place cleaning and sanitizing of equipment such as meat saws.

(e) *Sanitization pressure.* The flow pressure of the fresh hot water sanitizing rinse in a warewashing machine may not be less than 100 kilopascals (15 pounds per square inch) or more than 170 kilopascals (25 pounds per square inch) as measured in the water line immediately downstream or upstream from the fresh hot water sanitizing rinse control valve.

§ 46.676. Manual warewashing equipment.

(a) *Warewashing sinks: use limitation.* A warewashing sink may not be used for handwashing. Warewashing sinks may not be used for food preparation unless the use is approved by the Department, the procedures specified in subsection (b) are followed and limited food preparation or warewashing occurs.

(b) *Sanitizing warewashing sink after other uses.* If a warewashing sink is used to wash wiping cloths, wash produce or thaw food, the sink shall be cleaned as specified in § 46.674(a) (relating to warewashing equipment: mechanical or manual) before and after each time it is used to wash wiping cloths, wash produce or thaw food. Sinks used to wash or thaw food shall be sanitized as specified in § 46.731 (relating to sanitization: require-

ment, frequency and methods) before and after using the sink to wash produce or thaw food.

(c) *Wash solution temperature.* The temperature of the wash solution in manual warewashing equipment shall be maintained at not less than 43°C (110°F) or the temperature specified on the cleaning agent manufacturer's label instructions.

(d) *Hot water sanitization temperatures.* If immersion in hot water is used for sanitizing in a manual operation, the temperature of the water shall be maintained at 77°C (171°F) or above.

(e) *Chemical sanitization using detergent-sanitizers.* If a detergent-sanitizer is used to sanitize in a cleaning and sanitizing procedure where there is no distinct water rinse between the washing and sanitizing steps, the agent applied in the sanitizing step shall be the same detergent-sanitizer that is used in the washing step.

(f) *Use of two-compartment sink.* A two-compartment sink may not be used for warewashing operations where cleaning and sanitizing solutions are used for a continuous or intermittent flow of kitchenware or tableware in an ongoing warewashing process. A two-compartment sink may be used for warewashing when all of the following are accurate:

(1) The food facility operator has obtained approval from the Department to use the two-compartment sink.

(2) The nature of warewashing is limited to batch operations for cleaning kitchenware (such as between cutting one type of raw meat and another or cleanup at the end of a shift) and the following are accurate:

(i) The number of items to be cleaned is limited.

(ii) The cleaning and sanitizing solutions are made up immediately before use and drained immediately after use.

(iii) Either a detergent-sanitizer is used to sanitize and is applied in accordance with the manufacturer's instructions and as subsection (e), or a hot water sanitization immersion step is used as specified in § 46.718(3) (relating to rinsing procedures).

MAINTENANCE AND OPERATION OF UTENSILS AND TEMPERATURE AND PRESSURE MEASURING DEVICES**§ 46.691. Utensils and temperature and pressure measuring devices: repair and calibration.**

(a) *General requirement of good repair and calibration.* Utensils shall be maintained in a state of repair or condition that complies with the requirements specified in §§ 46.501—46.521, 46.523, 46.541—46.544, 46.561—46.563, 46.581—46.595 or shall be discarded.

(b) *Food temperature measuring devices.* Food temperature measuring devices shall be calibrated in accordance with manufacturer's specifications as necessary to ensure their accuracy.

(c) *Ambient air temperature, water pressure and water temperature measuring devices.* Ambient air temperature, water pressure and water temperature measuring devices shall be maintained in good repair and be accurate within the intended range of use.

§ 46.692. Single-service and single-use articles.

(a) *Required use.* A food facility without facilities specified in §§ 46.711—46.719 (relating to cleaning of equipment and utensils) for cleaning and sanitizing kitchenware and tableware shall provide only single-use

kitchenware, single-service articles, single-use articles for use by food employees and single-service articles for use by consumers.

(b) *Use limitation.*

(1) Single-service and single-use articles may not be reused.

(2) The bulk milk container dispensing tube shall be cut on the diagonal leaving no more than 1 inch protruding from the chilled dispensing head.

§ 46.693. Mollusk and crustacean shells used as serving containers.

Mollusk and crustacean shells may not be used more than once as serving containers.

CLEANING OF EQUIPMENT AND UTENSILS

§ 46.711. Objective of cleaning equipment and utensils.

(a) *General cleanliness requirement.* Equipment food-contact surfaces and utensils shall be clean to sight and touch.

(b) *Grease and soil accumulations.* The food-contact surfaces of cooking equipment and pans shall be kept free of encrusted grease deposits and other soil accumulations.

(c) *Nonfood-contact surfaces.* Nonfood-contact surfaces of equipment shall be kept free of an accumulation of dust, dirt, food residue and other debris.

§ 46.712. Frequency of cleaning equipment food-contact surfaces and utensils.

(a) *General requirements.* Equipment food-contact surfaces and utensils shall be cleaned as follows:

(1) Except as specified in subsection (b), before each use with a different type of raw animal-derived food such as beef, fish, lamb, pork or poultry.

(2) Each time there is a change from working with raw foods to working with ready-to-eat foods.

(3) Between uses with raw fruits and vegetables and with potentially hazardous food.

(4) Before using or storing a food temperature measuring device.

(5) At any time during the operation when contamination may have occurred.

(b) *Exception.* Subsection (a)(1) does not apply if the food-contact surface or utensil is in contact with a succession of different raw animal-derived foods each requiring a higher cooking temperature as specified in § 46.361 (relating to cooking raw animal-derived foods) than the previous food (such as preparing raw fish followed by cutting raw poultry on the same cutting board).

(c) *Maximum cleaning interval for equipment food-contact surfaces and utensils in contact with potentially hazardous food.* Except as specified in subsection (d), if used with potentially hazardous food, equipment food-contact surfaces and utensils shall be cleaned throughout the day at least every 4 hours.

(d) *Exceptions.* Surfaces of utensils and equipment contacting potentially hazardous food may be cleaned less frequently than every 4 hours under any of the following circumstances:

(1) In storage, containers of potentially hazardous food and their contents are maintained at temperatures speci-

fied in Subchapter C (relating to food) and the containers are cleaned when they are empty.

(2) Utensils and equipment are used to prepare food in a refrigerated room or area that is maintained at one of the temperatures in the chart in subparagraph (i) and both of the following occur:

(i) The utensils and equipment are cleaned at the frequency in the following chart that corresponds to the temperature:

Temperature	Cleaning Frequency
5.0°C (41°F) or less	24 hours
>5.0°C and ≤7.2°C (>41°F and ≤45°F)	20 hours
>7.2°C and ≤10°C (>45°F and ≤50°F)	16 hours
>10°C and ≤12.8°C (>50°F and ≤55°F)	10 hours

(ii) The cleaning frequency based on the ambient temperature of the refrigerated room or area is documented in the food facility.

(3) Containers in serving situations such as salad bars, delis and cafeteria lines hold ready-to-eat potentially hazardous food that is maintained at the temperatures specified in Subchapter C are intermittently combined with additional supplies of the same food that is at the required temperature, and the containers are emptied and cleaned at least every 24 hours.

(4) Temperature measuring devices are maintained in contact with food, such as when left in a container of deli food or in a roast, held at temperatures specified in Subchapter C.

(5) Equipment is used for storage of packaged or unpackaged food such as a reach-in refrigerator and the equipment is cleaned at a frequency necessary to preclude accumulation of soil residues.

(6) The cleaning schedule is approved by the Department based on consideration of the following:

- (i) Characteristics of the equipment and its use.
- (ii) The type of food involved.
- (iii) The amount of food residue accumulation.

(iv) The temperature at which the food is maintained during the operation and the potential for the rapid and progressive multiplication of pathogenic or toxigenic microorganisms that are capable of causing foodborne disease.

(7) In-use utensils are intermittently stored in a container of water in which the water is maintained at 58°C (135°F) or more and the utensils and container are cleaned at least every 24 hours or at a frequency necessary to preclude accumulation of soil residues.

(e) *Maximum cleaning interval for equipment food-contact surfaces and utensils in contact with food that is not potentially hazardous.* Except when dry cleaning methods are used as specified in § 46.715(a) (relating to methods of cleaning), surfaces of utensils and equipment contacting food that is not potentially hazardous shall be cleaned as follows:

(1) At any time when contamination may have occurred.

(2) At least every 24 hours for iced tea dispensers and consumer self-service utensils such as tongs, scoops or ladles.

(3) Before restocking consumer self-service equipment and utensils such as condiment dispensers and display containers.

(4) In equipment such as ice bins and beverage dispensing nozzles and enclosed components of equipment such as ice makers, cooking oil storage tanks and distribution lines, beverage and syrup dispensing lines or tubes, coffee bean grinders and water vending equipment as follows:

- (i) At a frequency specified by the manufacturer.
- (ii) Absent manufacturer specifications, at a frequency necessary to preclude accumulation of soil or mold.

§ 46.713. Frequency of cleaning cooking and baking equipment.

(a) *Food-contact surfaces.* The food-contact surfaces of cooking and baking equipment shall be cleaned at least every 24 hours. This requirement does not apply to hot oil cooking and filtering equipment if it is cleaned as specified in § 46.712(d)(6) (relating to frequency of cleaning equipment food-contact surfaces and utensils).

(b) *Microwave ovens.* The cavities and door seals of microwave ovens shall be cleaned at least every 24 hours by using the manufacturer's recommended cleaning procedure.

§ 46.714. Frequency of cleaning nonfood-contact surfaces.

Nonfood-contact surfaces of equipment shall be cleaned at a frequency necessary to preclude accumulation of soil residues.

§ 46.715. Methods of cleaning.

(a) *Dry cleaning.*

(1) If used, dry cleaning methods such as brushing, scraping and vacuuming shall contact only surfaces that are soiled with dry food residues that are not potentially hazardous.

(2) Cleaning equipment used in dry cleaning food-contact surfaces may not be used for any other purpose.

(b) *Precleaning.*

(1) Food debris on equipment and utensils shall be scraped over a waste disposal unit or garbage receptacle or may be removed in a warewashing machine with a prewash cycle.

(2) If necessary for effective cleaning, utensils and equipment shall be preflushed, presoaked or scrubbed with abrasives.

(c) *Wet cleaning.*

(1) Equipment food-contact surfaces and utensils shall be effectively washed to remove or completely loosen soils by using the manual or mechanical means necessary, such as the application of detergents containing wetting agents and emulsifiers; acid, alkaline or abrasive cleaners; hot water; brushes; scouring pads; high-pressure sprays; or ultrasonic devices.

(2) The washing procedures selected shall be based on the type and purpose of the equipment or utensil, and on the type of soil to be removed.

§ 46.716. Washing: loading of soiled items into warewashing machines.

Soiled items to be cleaned in a warewashing machine shall be loaded into racks, trays or baskets or onto

conveyors in a position that exposes the items to the unobstructed spray from all cycles, and allows the items to drain.

§ 46.717. Washing procedures for alternative warewashing equipment.

If washing in sink compartments or a warewashing machine is impractical (such as when the equipment is fixed or the utensils are too large), washing shall be done by using alternative manual warewashing equipment as specified in § 46.612(c) (relating to manual warewashing: sink compartment requirements) in accordance with the following procedures:

(1) Equipment shall be disassembled as necessary to allow access of the detergent solution to all parts.

(2) Equipment components and utensils shall be scrapped or rough cleaned to remove food particle accumulation.

(3) Equipment and utensils shall be washed as specified in § 46.715(c)(1) (relating to methods of cleaning).

§ 46.718. Rinsing procedures.

Washed utensils and equipment shall be rinsed so that abrasives are removed and cleaning chemicals are removed or diluted through the use of water or a detergent-sanitizer solution by using one of the following procedures:

(1) Use of a distinct, separate water rinse after washing and before sanitizing if using any of the following:

(i) A three-compartment sink.

(ii) Alternative manual warewashing equipment equivalent to a three-compartment sink as specified in § 46.612(c) (relating to manual warewashing: sink compartment requirements).

(iii) A three-step washing, rinsing and sanitizing procedure in a warewashing system for CIP equipment.

(2) Use of a detergent-sanitizer as specified in § 46.676(f) (relating to manual warewashing equipment) if using either of the following:

(i) Alternative warewashing equipment as specified in § 46.612(c) that is approved for use with a detergent-sanitizer.

(ii) A warewashing system for CIP equipment.

(3) Use of a nondistinct water rinse that is integrated in the hot water sanitization immersion step of a two-compartment sink operation.

(4) If using a warewashing machine that does not recycle the sanitizing solution as specified in paragraph (5), or alternative manual warewashing equipment (such as sprayers), use of a nondistinct water rinse that is the following:

(i) Integrated in the application of the sanitizing solution.

(ii) Wasted immediately after each application.

(5) If using a warewashing machine that recycles the sanitizing solution for use in the next wash cycle, use of a nondistinct water rinse that is integrated in the application of the sanitizing solution.

§ 46.719. Washing returnable containers for refilling.

(a) *General requirement.* Except as specified in subsections (b) and (c), returned empty containers intended for

cleaning and refilling with food shall be cleaned and refilled in a regulated food establishment.

(b) *Exception.* A food-specific container for beverages may be refilled at a food facility if all of the following are accurate:

(1) Only a beverage that is not a potentially hazardous food is used as specified in § 46.307(a) (relating to refilling returnables).

(2) The design of the container and of the rinsing equipment and the nature of the beverage, when considered together, allow effective cleaning at home or in the food facility.

(3) Facilities for rinsing before refilling returned containers with fresh, hot water that is under pressure and not recirculated are provided as part of the dispensing system.

(4) The consumer-owned container returned to the food facility for refilling is refilled for sale or service only to the same consumer.

(5) The container is refilled by either of the following:

(i) An employee of the food facility.

(ii) The owner of the container if the beverage system includes a contamination-free transfer process that cannot be bypassed by the container owner.

(c) *Exception.* Consumer-owned containers that are not food-specific may be filled at a water vending machine or system.

SANITIZATION OF EQUIPMENT AND UTENSILS

§ 46.731. Sanitization: requirement, frequency and methods.

(a) *Requirement.* Equipment food-contact surfaces and utensils shall be sanitized in accordance with this section.

(b) *Frequency.* Utensils and food-contact surfaces of equipment shall be sanitized before use after cleaning.

(c) *Methods: hot water and chemical.* After being cleaned, equipment food-contact surfaces and utensils shall be sanitized by the following methods, based upon the type of operation:

(1) In hot water manual operations: by immersion for at least 30 seconds and as specified in § 46.676(d) (relating to manual warewashing equipment).

(2) In hot water mechanical operations: by being cycled through equipment that is set up as specified in § 46.675(a), (d) and (e) (relating to mechanical warewashing equipment) and achieving a utensil surface temperature of 71°C (160°F) as measured by an irreversible registering temperature indicator.

(3) In chemical manual or mechanical operations: including the application of sanitizing chemicals by immersion, manual swabbing, brushing or pressure spraying methods, using a solution as specified in § 46.674(d) (relating to warewashing equipment: mechanical or manual) for the following exposure time, as applicable:

(i) Except as specified in subparagraph (ii), an exposure time of at least 10 seconds for a chlorine solution specified in § 46.674(d)(1).

(ii) An exposure time of at least 7 seconds for a chlorine solution of 50 mg/L (ppm) that has a pH of 10 or less and a temperature of at least 38°C (100°F) or a pH of 8 or less and a temperature of at least 24°C (75°F).

(iii) An exposure time of at least 30 seconds for other chemical sanitizing solutions.

(iv) An exposure time used in relationship with a combination of temperature, concentration and pH that, when evaluated for efficacy, yields sanitization.

LAUNDERING

§ 46.751. Requirement and frequency of laundering.

(a) *Requirement.* Clean linens shall be free from food residues and other soiling matter.

(b) *Frequency of laundering.*

(1) Linens that do not come in direct contact with food shall be laundered between operations if they become wet, sticky or visibly soiled.

(2) Cloth gloves used as specified in § 46.305(d) (relating to gloves: use limitations) shall be laundered before being used with a different type of raw animal-derived food such as beef, lamb, pork and fish.

(3) Linens and napkins that are used as specified in § 46.303 (relating to linens and napkins: use limitations) and cloth napkins shall be laundered between each use.

(4) Wet wiping cloths shall be laundered daily.

(5) Dry wiping cloths shall be laundered as necessary to prevent contamination of food and clean serving utensils.

§ 46.752. Methods of laundering.

(a) *Storage of soiled linens.* Soiled linens shall be kept in clean, nonabsorbent receptacles or clean, washable laundry bags and stored and transported to prevent contamination of food, clean equipment, clean utensils and single-service and single-use articles.

(b) *Mechanical washing.* All linens shall be mechanically washed, except in food facilities where only wiping cloths are laundered as specified in § 46.615(b) (relating to clothes washers and dryers), the wiping cloths may be laundered in a mechanical washer, sink designated only for laundering wiping cloths or a warewashing or food preparation sink that is cleaned as specified in § 46.674(a) (relating to warewashing equipment: mechanical or manual).

§ 46.753. Use of laundry facilities.

(a) *General requirement.* Except as specified in subsection (b), laundry facilities on the premises of a food facility shall be used only for the washing and drying of items used in the operation of the facility.

(b) *Exception.* Separate laundry facilities located on the premises for the purpose of general laundering (such as for institutions providing boarding and lodging) may also be used for laundering food facility items.

PROTECTION OF CLEAN ITEMS

§ 46.771. Drying clean equipment and utensils.

(a) *Air-drying or adequate draining required.* After cleaning and sanitizing, equipment and utensils shall be air-dried or used after adequate draining as specified in 21 CFR 178.1010(a) (relating to sanitizing solutions) before contact with food.

(b) *Cloth drying.* After cleaning and sanitizing, equipment and utensils may not be cloth-dried, except that utensils that have been air-dried may be polished with cloths that are maintained clean and dry.

§ 46.772. Wiping cloths: air-drying locations.

(a) *General.* Except as provided in subsection (b), wiping cloths laundered in a food facility that does not have a mechanical clothes dryer as specified in § 46.615(b)

(relating to clothes washers and dryers) shall be air-dried in a location and in a manner that prevents contamination of food, equipment, utensils, linens, single-service and single-use articles and wiping cloths.

(b) *Exception.* This section does not apply if wiping cloths are stored after laundering in a sanitizing solution as specified in § 46.674(d) (relating to warewashing equipment: mechanical or manual).

§ 46.773. Lubricating and reassembling clean food-contact surfaces and equipment.

(a) *Food-contact surfaces.* Lubricants shall be applied to food-contact surfaces that require lubrication in a manner that does not contaminate food-contact surfaces.

(b) *Equipment.* Equipment shall be reassembled so that food-contact surfaces are not contaminated.

§ 46.774. Storing clean items.

(a) *General requirement for equipment, utensils, linens and single-service and single-use articles.* Except as specified in subsection (d), cleaned equipment and utensils, laundered linens and single-service and single-use articles shall be stored as follows:

- (1) In a clean, dry location.
- (2) Where they are not exposed to splash, dust or other contamination.
- (3) At least 15 cm (6 inches) above the floor.

(b) *Additional storage requirements for equipment and utensils.* Clean equipment and utensils shall be stored as specified in subsection (a) and shall be stored covered or inverted, and in a self-draining position that allows air drying.

(c) *Additional storage requirements for single-service and single-use articles.* Single-service and single-use articles shall be stored as specified in subsection (a) and shall be kept in the original protective package or stored by using other means that afford protection from contamination until used.

(d) *Items in closed packages.* Items that are kept in closed packages may be stored less than 15 cm (6 inches) above the floor on dollies, pallets, racks and skids that are designed as specified in § 46.595 (relating to case lot handling equipment: moveability).

(e) *Prohibited storage locations.* Except as specified in subsection (f), cleaned and sanitized equipment, utensils, laundered linens and single-service and single-use articles may not be stored in any of the following locations:

- (1) A locker room.
- (2) A toilet room.
- (3) A garbage room.
- (4) A mechanical room.
- (5) Under a sewer line that is not shielded to intercept potential drips.
- (6) Under a leaking water line—including a leaking automatic fire sprinkler head—or under a line on which water has condensed.
- (7) Under an open stairwell.
- (8) Under another source of contamination.

(f) *Limited exception for a locker room.* Laundered linens and single-service and single-use articles that are packaged or in a facility such as a cabinet may be stored in a locker room.

§ 46.775. Handling clean items.

(a) *Kitchenware and tableware.*

(1) Single-service and single-use articles and cleaned and sanitized utensils shall be handled, displayed and dispensed so that contamination of food- and lip-contact surfaces is prevented.

(2) Knives, forks and spoons that are not prewrapped shall be presented so that only the handles are touched by employees and by consumers if consumer self-service is provided.

(3) Except as specified in paragraph (2), single-service articles that are intended for food- or lip-contact shall be furnished for consumer self-service with the original individual wrapper intact or from an approved dispenser.

(b) *Preset tableware.* If tableware is preset, it shall be protected from contamination by being wrapped, covered or inverted. Exposed, unused settings shall be either removed when a consumer is seated, or cleaned and sanitized before further use if the settings are not removed when a consumer is seated.

(c) *Soiled and clean tableware.* Soiled tableware shall be removed from consumer eating and drinking areas and handled so that clean tableware is not contaminated.

Subchapter E. WATER, PLUMBING AND WASTE

WATER

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WATER

§ 46.801. Sources of drinking water.

Drinking water shall be obtained from an approved source that is either of the following:

- (1) A public water system.

(2) A nonpublic water system that is constructed, maintained and operated in accordance with 25 Pa. Code Chapter 109 (relating to safe drinking water). For the purpose of approval of a nonpublic water system that serves a food facility, a nonpublic water system shall be required to conform to the construction, maintenance and operation requirements established for a transient noncommunity water system as defined in 25 Pa. Code Chapter 109.

§ 46.802. Drinking water system flushing and disinfection.

A drinking water system shall be flushed and disinfected before being placed in service after construction, repair or modification and after an emergency situation, such as a flood, that may introduce contaminants to the system. A food facility shall obtain verification that the water meets the quality standards for public drinking water established in 25 Pa. Code Chapter 109 (relating to safe drinking water) before placing a drinking water system in service, and shall retain that verification and provide it to the Department upon request.

§ 46.803. Bottled drinking water.

Bottled drinking water used or sold in a food facility shall be obtained from approved sources in accordance with 25 Pa. Code Chapter 109 (relating to safe drinking water).

§ 46.804. Quality of water.

(a) *Standards for drinking water.* Except as specified in subsection (b), water obtained from either a public water system or a nonpublic water system for use in a food facility shall meet the quality standards for public drinking water established in 25 Pa. Code Chapter 109 (relating to safe drinking water).

(b) *Nondrinking water.*

(1) A nondrinking water supply shall be used only if approved by the Department.

(2) Nondrinking water shall be used only for nonculinary purposes such as air conditioning, nonfood equipment cooling, fire protection and irrigation.

(c) *Sampling of water from nonpublic water systems.* Except when used as nondrinking water as specified in subsection (b), water from a nonpublic water system shall be sampled and tested for contamination at the same frequency and for the same contaminants as established in 25 Pa. Code Chapter 109 for a transient noncommunity public water system that serves 25 people daily. All analytical work must be performed in accordance with 25 Pa. Code Chapter 109.

(d) *Sample report for nonpublic water system to be retained at food facility.* If a food facility receives all of its drinking water from a nonpublic water system, the results from all required self-monitoring samples collected during the previous 12 months or, if less frequent than annual monitoring is approved by the Department for the facility, the most recent sample report for the nonpublic water system shall be retained on file in the food facility. Food facilities that use a Department of Environmental Protection approved self-contained public water system shall maintain test result records in accordance with 25 Pa. Code Chapter 109.

§ 46.805. Quantity and availability of water: capacity and pressure.

(a) *Capacity.*

(1) The water source and system shall be of sufficient capacity to meet the peak water demands of the food facility.

(2) Hot water generation and distribution systems shall be sufficient to meet the peak hot water demands throughout the food facility.

(b) *Pressure.* Water under pressure shall be provided to all fixtures, equipment and nonfood equipment that are required to use water. However, water supplied as specified in § 46.806(b)(1) and (2) (relating to distribution, delivery and retention of water) to a temporary food facility or in response to a temporary interruption of a water supply need not be under pressure.

§ 46.806. Distribution, delivery and retention of water.

(a) *Delivery system.* Water shall be received from the source through the use of one or more of the following:

(1) A properly constructed and maintained service connection or lateral from a public water system that is approved by the Department of Environmental Protection in accordance with 25 Pa. Code Chapter 109 (relating to safe drinking water).

(2) One or more of the following that shall be constructed, maintained and operated in accordance with 25 Pa. Code Chapter 109:

- (i) Nonpublic water main, water pumps, pipes, hoses, connections and other appurtenances.
- (ii) Water transport vehicles.
- (iii) Water containers.

(b) *Alternative water supply.* Water meeting the applicable requirements in §§ 46.801—46.805 and subsection (a) shall be made available for a mobile food facility, for a temporary food facility without a permanent water supply and for a food facility with a temporary interruption of its water supply through one or more of the following sources:

- (1) A supply of containers of commercially bottled drinking water.
- (2) One or more closed portable water containers.
- (3) An enclosed vehicular water tank.
- (4) An on-premises water storage tank.
- (5) Piping, tubing or hoses connected to an adjacent approved source.

PLUMBING SYSTEM

§ 46.821. Approved materials to be used in plumbing systems.

(a) *Approved materials required.* A plumbing system and hoses conveying water shall be constructed and repaired with approved materials according to Chapter 3 of the Pennsylvania Construction Code Act (35 P. S. §§ 7210.301—7210.304).

(b) *Safe materials for water filters.* A water filter shall be made of safe materials.

§ 46.822. Design, construction and installation of plumbing systems.

(a) *Approved system and cleanable fixtures.*

(1) A plumbing system shall be designed, constructed and installed according to Chapter 3 of the Pennsylvania Construction Code Act (35 P. S. §§ 7210.301—7210.304).

(2) A plumbing fixture such as a handwashing facility, toilet or urinal shall be easily cleanable.

(b) *Handwashing facility: installation.*

(1) A handwashing sink shall be equipped to provide water at a temperature of at least 38°C (100°F) through a mixing valve or combination faucet.

(2) A steam mixing valve may not be used at a handwashing sink.

(3) A self-closing, slow-closing or metering faucet shall provide a flow of water for at least 15 seconds without the need to reactivate the faucet.

(4) An automatic handwashing facility shall be installed in accordance with manufacturer's instructions.

(c) *Air gap requirement for backflow prevention.* An air gap between the water supply inlet and the flood level rim of the plumbing fixture, equipment or nonfood equipment shall be at least twice the diameter of the water supply inlet and may not be less than 25 mm (1 inch).

(d) *Design standard for backflow prevention device.* A backflow or backsiphonage prevention device installed on a water supply system shall meet American Society of Sanitary Engineering standards for construction, installation, maintenance, inspection and testing for that specific application and type of device.

(e) *Design of conditioning device.* A water filter, screen and other water conditioning device installed on water lines shall be designed to facilitate disassembly for periodic servicing and cleaning. A water filter element shall be of the replaceable type.

§ 46.823. Numbers and capacities of plumbing facilities.

(a) *Handwashing facilities for employees and consumers.*

(1) Except as specified in paragraphs (2) and (3), at least one handwashing sink—and a number of handwashing sinks necessary for their convenient use by employees in areas specified in § 46.824(a) (relating to location and placement of plumbing facilities)—shall be provided.

(2) If approved by the Department and capable of removing the types of soils encountered in the food operations involved, automatic handwashing facilities may be substituted for handwashing sinks in a food facility that has at least one handwashing sink.

(3) If approved by the Department, when food exposure is limited to prepackaged foods and handwashing sinks are not conveniently available, such as in some temporary food facilities or at some vending machine locations, employees may use chemically treated towelettes for handwashing.

(4) At least one handwashing sink and a number of handwashing sinks necessary for the convenient use by consumers shall be provided in food facilities which allow consumption of food on the food facility premises. Handwash sinks for consumers shall be located in easily accessible areas and as required in § 46.824(a)(2), but may not require access through food preparation, food dispensing, food, equipment and utensil storage areas, or warewashing areas.

(b) *Toilets and urinals.* At least one toilet and not fewer than the toilets (and urinals, if used) required by the Department of Labor and Industry shall be provided.

(c) *Utility sink.* At least one utility sink or one curbed cleaning facility equipped with a floor drain shall be

provided and conveniently located for the cleaning of mops or similar wet floor cleaning tools and for the disposal of mop water and similar liquid waste.

(d) *Backflow prevention device: when required.* A plumbing system shall be installed to preclude backflow of a solid, liquid or gas contaminant into the water supply system at each point of use at the food facility, including on a hose bib if a hose is attached, or on a hose bib if a hose is not attached but can be attached, by an approved backflow prevention device as specified in § 46.822(d) (relating to design, construction and installation of plumbing systems).

(e) *Backflow prevention device on carbonators.* If not provided with an air gap as specified in § 46.822(c), a double check valve with an intermediate vent preceded by a screen of not less than 100 mesh to 25.4mm (100 mesh to 1 inch) shall be installed upstream from a carbonating device and downstream from any copper in the water supply line. A single or double check valve attached to the carbonator need not be of the vented type if an air gap or vented backflow prevention device has been otherwise provided.

§ 46.824. Location and placement of plumbing facilities.

(a) *Handwashing facilities.* A handwashing facility shall be located as follows:

(1) In food preparation, food dispensing and warewashing areas to allow convenient use by employees.

(2) In, or immediately adjacent to, toilet rooms.

(b) *Location of backflow prevention device.* A backflow prevention device shall be located so that it can be serviced and maintained.

(c) *Location of conditioning device.* A water filter, screen and other water-conditioning device installed on water lines shall be located to facilitate disassembly for periodic servicing and cleaning.

§ 46.825. Operation and maintenance of plumbing facilities.

(a) *Using a handwashing facility.*

(1) A handwashing facility shall be maintained so that it is accessible at all times for employee use.

(2) A handwashing facility may not be used for purposes other than handwashing.

(3) An automatic handwashing facility shall be used in accordance with manufacturer's instructions.

(b) *Cross connection prohibited.*

(1) Except for firefighting, a person may not create a cross connection by connecting a pipe or conduit between the drinking water system and a nondrinking water system or a water system of unknown quality.

(2) The piping of a nondrinking water system shall be durably identified so that it is readily distinguishable from piping that carries drinking water.

(c) *Scheduling inspection and service for a water system device.* A device such as a water treatment device or backflow preventer shall be scheduled for inspection and service, in accordance with manufacturer's instructions and as necessary to prevent device failure based on local water conditions, and records demonstrating inspection and service shall be maintained by the person in charge.

(d) *Cleaning the water reservoir of water devices such as fogging devices.*

(1) A reservoir that is used to supply water to a device such as a produce fogger shall be both of the following:

(i) Maintained in accordance with manufacturer's specifications.

(ii) Cleaned in accordance with manufacturer's specifications or according to the procedures specified in paragraph (2), whichever is more stringent.

(2) Cleaning procedures shall include at least the following steps and shall be conducted at least once a week:

(i) Draining and complete disassembly of the water and aerosol contact parts.

(ii) Brush-cleaning the reservoir, aerosol tubing and discharge nozzles with a suitable detergent solution.

(iii) Flushing the complete system with water to remove the detergent solution and particulate accumulation.

(iv) Rinsing by immersing, spraying or swabbing the reservoir, aerosol tubing and discharge nozzles with at least 50 mg/L (ppm) hypochlorite solution.

(e) *System maintained in good repair.* A plumbing system shall be repaired according to Chapter 3 of the Pennsylvania Construction Code Act (35 P. S. §§ 7210.301—7210.304), and shall be maintained in good repair.

WATER TANK AND MOBILE FOOD FACILITY WATER TANK

§ 46.841. Materials used in construction of water tanks and mobile food facility water tanks.

Materials that are used in the construction of a water tank, mobile food facility water tank and appurtenances shall be all of the following:

- (1) Safe materials.
- (2) Durable, corrosion-resistant and nonabsorbent.
- (3) Finished to have a smooth, easily cleanable surface.

§ 46.842. Design and construction of water tanks and mobile food facility water tanks.

(a) *Requirement: enclosed system sloped to drain.* A water tank shall be the following:

- (1) Enclosed from the filling inlet to the discharge outlet.
- (2) Sloped to an outlet that allows complete drainage of the tank.

(b) *Requirement: inspection and cleaning port protected and secured.* If a water tank is designed with an access port for inspection and cleaning, the opening shall be in the top of the tank and both of the following:

- (1) Flanged upward at least 13 mm (1/2 inch).
- (2) Equipped with a port cover assembly that is both of the following:
 - (i) Provided with a gasket and a device for securing the cover in place.
 - (ii) Flanged to overlap the opening and sloped to drain.

(c) *"V" type threads: use limitation.* A fitting with "V" type threads on a water tank inlet or outlet shall be allowed only when a hose is permanently attached.

(d) *Requirement: tank vent protected.* If provided, a water tank vent shall terminate in a downward direction and shall be covered with the following, as applicable:

(1) 16 mesh to 25.4 mm (16 mesh to 1 inch) screen or equivalent when the vent is in a protected area.

(2) A protective filter when the vent is in an area that is not protected from windblown dirt and debris.

(e) *Requirement: inlet and outlet sloped to drain.* A water tank and its inlet and outlet shall be sloped to drain, and a water tank inlet shall be positioned so that it is protected from contaminants such as waste discharge, road dust, oil or grease.

(f) *Hose: construction and identification.* A hose used for conveying drinking water from a water tank shall be all of the following:

- (1) Constructed of safe materials.
- (2) Durable, corrosion-resistant and nonabsorbent.
- (3) Resistant to pitting, chipping, crazing, scratching, scoring, distortion and decomposition.
- (4) Finished with a smooth interior surface.
- (5) Clearly and durably identified as to its use if not permanently attached.

§ 46.843. Numbers and capacities of water tanks and mobile food facility water tanks.

(a) *Filter requirement where compressed air pressurizes the water tank system.* A filter that does not pass oil or oil vapors shall be installed in the air supply line between the compressor and drinking water system when compressed air is used to pressurize the water tank system.

(b) *Protective cover or device.* A cap and keeper chain, closed cabinet, closed storage tube or other approved protective cover or device shall be provided for a water inlet, outlet and hose.

(c) *Mobile food facility tank inlet.* A mobile food facility's water tank inlet shall be both of the following:

- (1) 19.1 mm (3/4 inch) in inner diameter or less.
- (2) Provided with a hose connection of a size or type that will prevent its use for any other service.

§ 46.844. Operation and maintenance of water tanks and mobile food facility water tanks.

(a) *System flushing and disinfection.* A water tank, pump and hoses shall be flushed and sanitized before being placed in service after construction, repair, modification and periods of nonuse.

(b) *Preventing backflow while using a pump and hoses.* A person shall operate a water tank, pump and hoses so as to prevent backflow and other contamination of the water supply.

(c) *Protecting inlet, outlet and hose fitting.* If not in use, a water tank and hose inlet and outlet fitting shall be protected using a cover or device as specified in § 46.843(b) (relating to numbers and capacities of water tanks and mobile food facility water tanks).

(d) *Tank, pump and hoses, dedication.* A water tank, pump and hoses used for conveying drinking water shall be used for no other purpose, except that water tanks, pumps and hoses approved for liquid foods may be used for conveying drinking water if they are cleaned and sanitized before they are used to convey water.

SEWAGE, OTHER LIQUID WASTE AND RAINWATER

§ 46.861. Capacity and drainage of a sewage holding tank in a mobile food facility.

A sewage holding tank in a mobile food facility shall be both of the following:

(1) Sized 15% larger in capacity than the water supply tank.

(2) Sloped to a drain that is 25 mm (1 inch) in inner diameter or greater, equipped with a shut-off valve.

§ 46.862. Retention, drainage and delivery of sewage, other liquid waste and rainwater.

(a) *Facility drainage system.* Food facility drainage systems, including grease traps, that convey sewage shall be designed and installed as specified in § 46.822(a) (relating to design, construction and installation of plumbing systems).

(b) *Backflow prevention.*

(1) Except as specified in paragraphs (2) and (3), a direct connection may not exist between the sewage system and a drain originating from equipment in which food, portable equipment or utensils are placed.

(2) If allowed under Chapter 3 of the Pennsylvania Construction Code Act (35 P. S. §§ 7210.301—7210.304), a warewashing machine may have a direct connection between its waste outlet and a floor drain when the machine is located within 1.5 m (5 feet) of a trapped floor drain and the machine outlet is connected to the inlet side of a properly vented floor drain trap.

(3) If allowed under Chapter 3 of the Pennsylvania Construction Code Act, a warewashing or culinary sink may have a direct connection.

(c) *Grease trap.* If used, a grease trap shall be located to be easily accessible for cleaning.

(d) *Conveying sewage.* Sewage shall be conveyed to the point of disposal through an approved sanitary sewage system or other system, including use of sewage transport vehicles, waste retention tanks, pumps, pipes, hoses and connections that are constructed, maintained and operated according to Chapter 3 of the Pennsylvania Construction Code Act and section 7 of the Pennsylvania Sewage Facilities Act (35 P. S. § 750.7).

(e) *Removing mobile food facility wastes.* Sewage and other liquid wastes shall be removed from a mobile food facility at an approved waste servicing area or by a sewage transport vehicle in a way so that a public health hazard or nuisance is not created.

(f) *Flushing a waste retention tank.* A tank for liquid waste retention shall be thoroughly flushed and drained in a sanitary manner during the servicing operation.

§ 46.863. Disposal of sewage and nonsewage.

(a) *Disposal of sewage.* Sewage shall be disposed through an approved facility that is either of the following:

(1) A public sewage treatment plant.

(2) An individual sewage disposal system that is sized, constructed, maintained, and operated according to section 7 of the Pennsylvania Sewage Facilities Act (35 P. S. § 750.7)

(b) *Other liquid wastes and rainwater.* Condensate drainage and other nonsewage liquids and rainwater shall be drained from point of discharge to disposal according to Chapter 3 of the Pennsylvania Construction Code Act (35 P. S. §§ 7210.301—7210.304).

REFUSE, RECYCLABLES AND RETURNABLES

§ 46.881. Storage areas and receptacles for refuse, recyclables and returnables: materials, design, construction and installation.

(a) *Indoor storage area.* If located within the food facility, a storage area for refuse, recyclables and return-

ables shall meet the requirements specified in §§ 46.901, 46.921 and 46.922(e) and (f) (relating to indoor areas of food facilities: surface characteristics; cleanability of floors, walls and ceilings; and functionality of various physical facilities of a food facility).

(b) *Outdoor storage surface.* An outdoor storage surface for refuse, recyclables and returnables shall be constructed of nonabsorbent material such as concrete or asphalt and shall be smooth, durable and sloped to drain.

(c) *Outdoor enclosure.* If used, an outdoor enclosure for refuse, recyclables and returnables shall be constructed of durable and cleanable materials.

(d) *Receptacles.* Receptacles and waste handling units for refuse, recyclables and returnables and for use with materials containing food residue shall be durable, cleanable, insect- and rodent-resistant, leakproof and nonabsorbent. Plastic bags and wet strength paper bags may be used to line receptacles for storage inside the food facility, or within closed outside receptacles.

(e) *Receptacles in vending machines.* A refuse receptacle may not be located within a vending machine, except that a receptacle for beverage bottle crown closures may be located within a vending machine.

(f) *Outside receptacles.*

(1) Receptacles and waste handling units for refuse, recyclables and returnables used with materials containing food residue and used outside the food facility shall be designed and constructed to have tight-fitting lids, doors or covers.

(2) Receptacles and waste handling units for refuse and recyclables such as an onsite compactor shall be installed so that accumulation of debris and insect and rodent attraction and harborage are minimized and effective cleaning is facilitated around and, if the unit is not installed flush with the base pad, under the unit.

§ 46.882. Storage areas and receptacles for refuse, recyclables and returnables: numbers and capacities.

(a) *Storage areas, rooms and receptacles: capacity and availability.*

(1) An inside storage room and area and outside storage area and enclosure, and receptacles shall be of sufficient capacity to hold refuse, recyclables and returnables that accumulate.

(2) A receptacle shall be provided in each area of the food facility or premises where refuse is generated or commonly discarded, or where recyclables or returnables are placed.

(3) If disposable towels are used at handwashing sinks, a waste receptacle shall be located at each sink or group of adjacent sinks.

(b) *Toilet room receptacle for sanitary napkins.* A toilet room used by females shall be provided with a covered receptacle for sanitary napkins.

(c) *Cleaning implements and supplies.* Suitable cleaning implements and supplies (such as high-pressure pumps, hot water, steam and detergent) shall be provided as necessary for effective cleaning of receptacles and waste handling units for refuse, recyclables and returnables, except that approved off-premises-based cleaning services may be used if on-premises cleaning implements and supplies are not provided.

§ 46.883. Location of storage areas, redeeming machines, receptacles and waste handling units.

(a) *General requirement.* An area designated for refuse, recyclables, returnables and—except as specified in subsection (b)—a redeeming machine for recyclables or returnables shall be located so that it is separate from food, equipment, utensils, linens and single-service and single-use articles and a public health hazard or nuisance is not created.

(b) *Exception for redeeming machine.* A redeeming machine may be located in the packaged food storage area or consumer area of a food facility if food, equipment, utensils, linens and single-service and single-use articles are not subject to contamination from the machines and a public health hazard or nuisance is not created.

(c) *Receptacles.* The location of receptacles and waste handling units for refuse, recyclables and returnables may not create a public health hazard or nuisance or interfere with the cleaning of adjacent space.

§ 46.884. Operation and maintenance of storage areas, redeeming machines, receptacles and waste handling units.

(a) *Storing refuse, recyclables and returnables.* Refuse, recyclables and returnables shall be stored in receptacles or waste handling units so that they are inaccessible to insects and rodents.

(b) *Keeping areas, enclosures and receptacles in good repair.* Storage areas, enclosures and receptacles for refuse, recyclables and returnables shall be maintained in good repair.

(c) *Outside storage prohibitions.*

(1) Except as specified in paragraph (2), refuse receptacles not meeting the requirements specified in § 46.881(d) (relating to storage areas and receptacles for refuse, recyclables and returnables: materials, design, construction and installation) (such as receptacles that are not rodent-resistant, unprotected plastic bags and paper bags, or baled units that contain materials with food residue) may not be stored outside.

(2) Cardboard or other packaging material that does not contain food residues and that is awaiting regularly scheduled delivery to a recycling or disposal site may be stored outside without being in a covered receptacle if it is stored so that it does not create a rodent harborage problem.

(d) *Covering receptacles.* Receptacles and waste handling units for refuse, recyclables and returnables shall be kept covered as follows:

(1) Inside the food facility if the receptacles and units are filled or contain food residue and are not in continuous use.

(2) With tight-fitting lids or doors if kept outside the food facility.

(e) *Using drain plugs.* Drains in receptacles and waste handling units for refuse, recyclables and returnables shall have drain plugs in place.

(f) *Maintaining refuse areas and enclosures.* A storage area and enclosure for refuse, recyclables or returnables shall be maintained free of unnecessary items, as specified in § 46.981(n) (relating to premises, structures, attachments and fixtures: methods), and clean.

(g) *Cleaning receptacles.*

(1) Receptacles and waste handling units for refuse, recyclables and returnables shall be thoroughly cleaned in a way that does not contaminate food, equipment, utensils, linens or single-service and single-use articles, and waste water shall be disposed of as specified in § 46.862(e) (relating to retention, drainage and delivery of sewage, other liquid waste and rainwater).

(2) Soiled receptacles and waste handling units for refuse, recyclables and returnables shall be cleaned at a frequency necessary to prevent them from developing a buildup of soil or becoming attractants for insects and rodents.

§ 46.885. Removal of refuse, recyclable and returnables.

(a) *Frequency.* Refuse, recyclables and returnables shall be removed from the premises at a frequency that will minimize the development of objectionable odors and other conditions that attract or harbor insects and rodents.

(b) *Receptacles or vehicles.* Refuse, recyclables and returnables shall be removed from the premises by way of either of the following:

(1) Portable receptacles adequately constructed and maintained to contain the refuse, recyclables or returnables placed therein.

(2) A transport vehicle adequately constructed and maintained to contain the refuse, recyclables or returnables transported therein.

§ 46.886. Facilities for disposal and recycling refuse, recyclables and returnables.

Solid waste not disposed of through the sewage system such as through grinders and pulpers shall be recycled or disposed of in an approved public or private community recycling or refuse facility or solid waste shall be disposed of in an individual refuse facility such as a lawfully-operated landfill or incinerator.

Subchapter F. PHYSICAL FACILITIES

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MATERIALS FOR CONSTRUCTION AND REPAIR**§ 46.901. Indoor areas of food facilities: surface characteristics.**

(a) *General requirement.* Except as specified in subsection (b), materials for indoor floor, wall and ceiling surfaces of a food facility under conditions of normal use shall be all of the following:

- (1) Smooth, durable and easily cleanable for areas where food facility operations are conducted.
- (2) Closely woven and easily cleanable carpet for carpeted areas.
- (3) Nonabsorbent for areas subject to moisture such as food preparation areas, walk-in refrigerators, warewashing areas, toilet rooms, mobile food facility servicing areas and areas subject to flushing or spray cleaning methods.

(b) *Exception for a temporary food facility.*

(1) If graded to drain, a floor in a temporary food facility may be concrete, machine-laid asphalt, or dirt or gravel if it is covered with mats, removable platforms, duckboards or other suitable approved materials that are effectively treated to control dust and mud.

(2) Walls and ceilings in a temporary food facility shall be constructed of a material that protects the interior from the weather and windblown dust and debris.

§ 46.902. Outdoor areas of food facilities: surface characteristics.

(a) *Walking and driving areas.* The outdoor walking and driving areas of a food facility shall be surfaced with concrete, asphalt, gravel or other materials that have been effectively treated to minimize dust, facilitate maintenance and prevent muddy conditions.

(b) *Exterior surfaces.* Exterior surfaces of food facility buildings and mobile food facilities shall be of weather-resistant materials and shall comply with Chapter 3 of the Pennsylvania Construction Code Act (35 P. S. §§ 7210.301—7210.304).

(c) *Certain outdoor storage areas.* Outdoor storage areas of a food facility used for storing refuse, recyclables or returnables shall be of materials specified in § 46.881(b) and (c) (relating to storage areas and receptacles for refuse, recyclables and returnables: materials, design, construction and installation).

DESIGN, CONSTRUCTION AND INSTALLATION**§ 46.921. Cleanability of floors, walls and ceilings.**

(a) *General requirement.* Except as specified in subsection (d), the floors, floor coverings, walls, wall coverings and ceilings of a food facility shall be designed, constructed and installed so they are smooth and easily cleanable, except that antislip floor coverings or applications may be used for safety reasons.

(b) *Utility lines.*

(1) Utility service lines and pipes in a food facility may not be unnecessarily exposed.

(2) Exposed utility service lines and pipes in a food facility shall be installed so they do not obstruct or prevent cleaning of the floors, walls or ceilings.

(3) Exposed horizontal utility service lines and pipes in a food facility may not be installed on the floor.

(c) *Floor and wall junctures: coved and enclosed or sealed.*

(1) In food facilities in which cleaning methods other than water flushing are used for cleaning floors, the floor and wall junctures shall be coved and closed to no larger than 1 mm (1/32 inch).

(2) The floors in food facilities in which water flush cleaning methods are used shall be provided with drains and be graded to drain, and the floor and wall junctures shall be coved and sealed.

(d) *Floor carpeting: limitations and installation.*

(1) A floor covering such as carpeting or similar material may not be installed as a floor covering in food preparation areas, walk-in refrigerators, warewashing areas, toilet room areas where handwashing sinks, toilets and urinals are located, refuse storage rooms or other areas where the floor is subject to moisture, flushing or spray cleaning methods.

(2) If carpeting is installed as a floor covering in areas other than those specified in paragraph (1), it shall be both of the following:

(i) Securely attached to the floor with a durable mastic by using a stretch and tack method, or by another method.

(ii) Installed tightly against the wall under the coving or installed away from the wall with a space between the carpet and the wall and with the edges of the carpet secured by metal stripping or some other means.

(e) *Floor covering: mats and duckboards.* Mats and duckboards in a food facility shall be designed to be removable and easily cleanable.

(f) *Wall and ceiling coverings and coatings.*

(1) Wall and ceiling covering materials in a food facility shall be attached so that they are easily cleanable.

(2) Except in areas used only for dry storage, concrete, porous blocks or bricks used for indoor wall construction in a food facility shall be finished and sealed to provide a smooth, nonabsorbent, easily cleanable surface.

(g) *Attachments to walls and ceilings.* Attachments to walls and ceilings (such as light fixtures, mechanical room ventilation system components, vent covers, wall mounted fans, decorative items and other attachments) in a food facility shall be easily cleanable, except that in a consumer area of a food facility, wall and ceiling surfaces and decorative items and attachments that are provided for ambiance need not meet this requirement if they are kept clean.

(h) *Studs, joists and rafters in walls and ceilings.* Studs, joists and rafters in a food facility may not be exposed in areas subject to moisture. This requirement does not apply to temporary food facilities.

§ 46.922. Functionality of various physical facilities of a food facility.

(a) *Light bulbs: protective shielding.*

(1) Except as specified in paragraph (2), light bulbs in use in a food facility shall be shielded, coated or otherwise shatter-resistant in areas where there is exposed food; clean equipment, utensils and linens; or unwrapped single-service and single-use articles.

(2) Shielded, coated or otherwise shatter-resistant bulbs need not be used in areas used only for storing food in unopened packages, if both of the following are accurate:

(i) The integrity of the packages cannot be affected by broken glass falling onto them.

(ii) The packages are capable of being cleaned of debris from broken bulbs before the packages are opened.

(3) An infrared or other heat lamp shall be protected against breakage by a shield surrounding and extending beyond the bulb so that only the face of the bulb is exposed.

(b) *Heating, ventilating and air conditioning system vents.* Heating, ventilating and air conditioning systems in a food facility shall be designed and installed so that make-up air intake and exhaust vents do not cause contamination of food, food-contact surfaces, equipment or utensils.

(c) *Design and installation of insect control devices.*

(1) Insect control devices that are used in a food facility to electrocute or stun flying insects shall be designed to retain the insect within the device.

(2) Insect control devices shall be installed so that they meet the following requirements:

(i) The devices are not located over a food preparation area.

(ii) Dead insects and insect fragments are prevented from being impelled onto or falling on exposed food; clean equipment, utensils and linens; and unwrapped single-service and single-use articles.

(d) *Toilet rooms shall be enclosed.* A toilet room located on the premises of a food facility shall be completely enclosed and provided with a tight-fitting and self-closing door. This requirement does not apply to a toilet room that is located outside a food facility and does not open directly into the food facility (such as a toilet room that is provided by the management of a shopping mall).

(e) *Outer openings shall be protected.*

(1) Except as specified in paragraphs (2)—(5), outer openings of a food facility shall be protected against the entry of insects and rodents by use of the following:

(i) Filling or closing holes and other gaps along floors, walls and ceilings.

(ii) Having closed, tight-fitting windows.

(iii) Having solid, self-closing, tight-fitting doors.

(2) Paragraph (1) does not apply if a food facility opens into a larger structure, such as a mall, airport or office building, or into an attached structure, such as a porch, and the outer openings from the larger or attached structure are protected against the entry of insects and rodents.

(3) Exterior doors used as exits need not be self-closing if they are all of the following:

(i) Solid and tight-fitting.

(ii) Designated for use only when an emergency exists, and limited so they are not used for entrance or exit from the building for purposes other than the designated emergency exit use.

(4) Except as specified in paragraphs (2) and (5), if the windows or doors of a food facility, or of a larger structure within which a food facility is located, are kept open for ventilation or other purposes or a temporary food facility is not provided with windows and doors as specified in paragraph (1), the openings shall be protected against the entry of insects and rodents by one or more of the following:

(i) 16 mesh to 25.4mm (16 mesh to 1 inch) screens.

(ii) Properly designed and installed air curtains to control flying insects.

(iii) Other effective means.

(5) Paragraph (4) does not apply if insects, rodents and other animals are absent due to the location of the facility, the weather or other limiting condition.

(f) *Exterior walls and roofs: protective barrier.* Perimeter walls and roofs of a food facility shall effectively protect the facility from the weather and the entry of insects, rodents and other animals.

(g) *Outdoor food vending areas, overhead protection.* If located outside, a machine used to vend food shall be provided with overhead protection except that machines vending canned beverages need not meet this requirement.

(h) *Outdoor servicing areas: overhead protection.* Servicing areas of a food facility shall be provided with overhead protection. However, if the area is used only for the loading of water or the discharge of sewage and other liquid waste, through the use of a closed system of hoses, the area need not be provided with overhead protection.

(i) *Outdoor walking and driving surfaces: graded to drain.* Exterior walking and driving surfaces of a food facility shall be graded to drain.

(j) *Outdoor refuse areas: curbed and graded to drain.* Outdoor refuse areas shall be constructed in accordance with Chapter 3 of the Pennsylvania Construction Code Act (35 P. S. §§ 7210.301—7210.304) and shall be curbed and graded to drain to collect and dispose of liquid waste that results from the refuse and from cleaning the area and waste receptacles.

(k) *Living or sleeping quarters, use prohibition.* A room used as living or sleeping quarters, or an area directly opening into a room used as living or sleeping quarters, may not be used for conducting food facility operations.

(l) *Living or sleeping quarters: separation.* Living or sleeping quarters located on the premises of a food facility such as those provided for lodging registration clerks or resident managers shall be separated from rooms and areas used for food facility operations by complete partitioning and solid self-closing doors.

NUMBERS AND CAPACITIES

§ 46.941. Handwashing facilities: numbers and capacities.

(a) *Minimum number.* Handwashing facilities shall be provided in a food facility as specified in § 46.823(a) (relating to numbers and capacities of plumbing facilities).

(b) *Availability of handwashing cleanser.* Each handwashing sink or group of two adjacent sinks shall be provided with a supply of hand cleaning liquid, powder or bar soap.

(c) *Availability of hand drying.* Each handwashing sink or group of adjacent sinks shall be provided with one or more of the following:

(1) Individual, disposable towels.

(2) A continuous towel system that supplies the user with a clean towel.

(3) A heated-air hand drying device.

(d) *Limitations on use of handwashing aids and devices.* A sink used for food preparation or utensil washing, or a utility sink or curbed cleaning facility used for the

disposal of mop water or similar wastes, may not be provided with the handwashing aids and devices required for a handwashing sink as specified in subsections (b) and (c) and § 46.882(a)(3) (relating to storage areas and receptacles for refuse, recyclables and returnables: numbers and capacities).

(e) *Handwashing signage.* A sign or poster that notifies food employees to wash their hands shall be provided at all handwashing sinks used by food employees and shall be clearly visible to food employees.

(f) *Disposable towels, waste receptacle.* A handwashing sink or group of adjacent sinks that is provided with disposable towels shall be provided with a waste receptacle as specified in § 46.882(a)(3).

§ 46.942. Toilets and urinals: numbers and capacities.

(a) *Minimum number.* Toilets and urinals shall be provided in a food facility as specified in § 46.823(b) (relating to numbers and capacities of plumbing facilities).

(b) *Availability of toilet tissue.* A supply of toilet tissue shall be available at each toilet.

§ 46.943. Lighting: intensity.

The light intensity in a food facility shall be all of the following:

(1) At least 110 lux (10 foot candles) at a distance of 75 cm (30 inches) above the floor, in walk-in refrigeration units and dry food storage areas and in other areas and rooms during periods of cleaning.

(2) At least 220 lux (20 foot candles) at each of the following locations:

(i) At a surface where food is provided for consumer self-service such as buffets and salad bars or where fresh produce or packaged foods are sold or offered for consumption.

(ii) Inside equipment such as reach-in and under-counter refrigerators.

(iii) At a distance of 75 cm (30 inches) above the floor in areas used for handwashing, warewashing and equipment and utensil storage, and in toilet rooms.

(3) At least 540 lux (50 foot candles) at a surface where a food employee is working with food or working with utensils or equipment such as knives, slicers, grinders or saws where employee safety is a factor.

§ 46.944. Mechanical ventilation as needed.

If necessary to keep rooms free of excessive heat, steam, condensation, vapors, obnoxious odors, smoke and fumes in a food facility, mechanical ventilation of sufficient capacity shall be provided.

§ 46.945. Requirement and designation of dressing areas and storage areas.

(a) *Designation.* Dressing rooms or dressing areas shall be designated in a food facility if employees routinely change their clothes in that facility.

(b) *Storage of employees' clothing and possessions.* Lockers or other suitable facilities shall be provided for the orderly storage of employees' clothing and other possessions.

§ 46.946. Utility sinks.

A utility sink or curbed cleaning facility shall be provided as specified in § 46.823(c) (relating to numbers and capacities of plumbing facilities).

LOCATION AND PLACEMENT

§ 46.961. Handwashing facilities: located for convenience.

Handwashing facilities in a food facility shall be conveniently located as specified in § 46.824(a) (relating to location and placement of plumbing facilities).

§ 46.962. Toilet rooms: located for convenience.

Toilet rooms in a food facility shall be conveniently located and accessible to employees during all hours of operation.

§ 46.963. Employee accommodations: located to prevent contamination.

(a) *Designated eating, drinking and smoking areas.* Areas designated for employees to eat, drink and use tobacco shall be located so that food, equipment, linens and single-service and single-use articles are protected from contamination.

(b) *Lockers and other facilities.* Lockers or other suitable facilities shall be located in a designated room or area where contamination of food, equipment, utensils, linens and single-service and single-use articles cannot occur.

§ 46.964. Distressed merchandise: segregated.

Products that are held by the food facility operator for credit, redemption or return to the distributor such as damaged, spoiled or recalled products, shall be segregated and held in designated areas that are separate from food, equipment, utensils, linens and single-service and single-use articles.

§ 46.965. Refuse, recyclables and returnables: receptacles, waste handling units and designated storage areas.

Units, receptacles and areas designated for storage of refuse and recyclable and returnable containers shall be located as specified in § 46.883 (relating to location of storage areas, redeeming machines, receptacles and waste handling units).

MAINTENANCE AND OPERATION

§ 46.981. Premises, structures, attachments and fixtures: methods.

(a) *General requirement.* The physical facilities of a food facility shall be maintained in good repair.

(b) *Cleaning: frequency and limitations.*

(1) The physical facilities of a food facility shall be cleaned as often as necessary to keep them clean.

(2) Cleaning shall be done during periods when the least amount of food is exposed such as after closing. This requirement does not apply to cleaning that is necessary due to a spill or other accident.

(c) *Cleaning floors by dustless methods.*

(1) Except as specified in paragraph (2), only dustless methods of cleaning shall be used (such as wet cleaning, vacuum cleaning, mopping with treated dust mops or sweeping using a broom and dust-arresting compounds).

(2) Spills or drippage on floors that occur between normal floor cleaning times shall be cleaned as follows:

(i) Without the use of dust-arresting compounds.

(ii) In the case of liquid spills or drippage, with the use of a small amount of absorbent compound such as sawdust or diatomaceous earth applied immediately before spot cleaning.

(d) *Cleaning ventilation systems without causing contamination, health hazard or nuisance.*

(1) Intake and exhaust air ducts shall be cleaned and filters changed so they are not a source of contamination by dust, dirt and other materials.

(2) If vented to the outside, ventilation systems may not create a public health hazard or nuisance or unlawful discharge.

(e) *Preventing contamination by cleaning maintenance tools.* Food preparation sinks, handwashing sinks and warewashing equipment may not be used for the cleaning of maintenance tools, the preparation or holding of maintenance materials or the disposal of mop water and similar liquid wastes.

(f) *Drying mops.* After use, mops shall be placed in a position that allows them to air-dry without soiling walls, equipment or supplies.

(g) *Absorbent materials on floors: use limitation.* Except as specified in subsection (c)(2), sawdust, wood shavings, granular salt, baked clay, diatomaceous earth or similar materials may not be used on floors.

(h) *Maintaining and using handwashing facilities.* Handwashing facilities shall be kept clean, and maintained and used as specified in § 46.825(a) (relating to operation and maintenance of plumbing facilities).

(i) *Closing toilet room doors.* Toilet room doors as specified in § 46.922(d) (relating to functionality of various physical facilities of a food facility) shall be kept closed except during cleaning and maintenance operations.

(j) *Using dressing rooms and lockers.* Dressing rooms shall be used by employees if the employees regularly change their clothes in the facility. Lockers or other suitable facilities shall be used for the orderly storage of employee clothing and other possessions.

(k) *Controlling pests.* The presence of insects, rodents and other pests shall be controlled to minimize their presence on the premises by all of the following:

(1) Routinely inspecting incoming shipments of food and supplies.

(2) Routinely inspecting the premises for evidence of pests.

(3) Using methods, if pests are found, such as trapping devices or other means of pest control as specified in § 46.1026(b) and (c) (relating to pesticides).

(4) Eliminating harborage conditions.

(l) *Removing dead or trapped birds, insects, rodents and other pests.* Dead or trapped birds, insects, rodents and other pests shall be removed from control devices and the premises at a frequency that prevents their accumulation, decomposition or the attraction of pests.

(m) *Storing maintenance tools.* Maintenance tools (such as brooms, mops, vacuum cleaners and similar items) shall be stored so that they do not contaminate food, equipment, utensils, linens and single-service and single-use articles, and in an orderly manner that facilitates cleaning the area used for storing the maintenance tools.

(n) *Removing unnecessary items and litter from the premises.* The premises of a food facility shall be free of items that are unnecessary to the operation or maintenance of the facility, such as equipment that is nonfunctional or no longer used, and litter.

§ 46.982. Limitations on animals.

(a) *General.* Live animals may not be allowed on the premises of a food facility, unless under an exception specified in subsection (b).

(b) *Exceptions.*

(1) Live animals may be allowed only in the following situations, and if the contamination of food; clean equipment, utensils and linens; and unwrapped single-service and single-use articles cannot result:

(i) Edible fish or decorative fish in aquariums, shellfish or crustacea on ice or under refrigeration, and shellfish and crustacea in display tank systems.

(ii) Patrol dogs accompanying police or security officers in offices and dining, sales and storage areas, and sentry dogs running loose in outside fenced areas.

(iii) Service animals that are controlled by the disabled employee or person, in areas that are not used for food preparation and that are usually open for customers (such as dining and sales areas), if a health or safety hazard will not result from the presence or activities of the service animal.

(iv) Pets in the common dining areas of institutional care facilities (such as nursing homes, assisted living facilities, group homes or residential care facilities) at times other than during meals if all of the following are accurate:

(A) Effective partitioning and self-closing doors separate the common dining areas from food storage or food preparation areas.

(B) Condiments, equipment and utensils are stored in enclosed cabinets or removed from the common dining areas when pets are present.

(C) Dining areas including tables, countertops and similar surfaces are effectively cleaned before the next meal service.

(v) Caged animals or animals that are similarly restrained in areas that are not used for food preparation, storage, sales, display or dining, such as in a variety store that sells pets or a tourist park that displays animals.

(2) Live or dead fish bait may be stored if contamination of food, clean equipment, utensils and linens; and unwrapped single-service and single-use articles cannot result.

Subchapter G. POISONOUS OR TOXIC MATERIALS

LABELING AND IDENTIFICATION

- Sec.
46.1001. Poisonous or toxic substances: original containers to display identifying information.
46.1002. Poisonous or toxic substances: working containers labeled with common name.

OPERATIONAL SUPPLIES AND APPLICATIONS

- 46.1021. Poisonous or toxic substances: storage.
46.1022. Poisonous or toxic substances: limitations on presence and use.
46.1023. Prohibition of use of poisonous or toxic material containers to store food.
46.1024. Chemicals: use criteria.
46.1025. Lubricants that have incidental contact with food: criteria.
46.1026. Pesticides.
46.1027. Medicines.
46.1028. First aid supplies: storage.
46.1029. Other personal care items: storage.

STOCK AND RETAIL SALE

- 46.1041. Storage and display: separation of poisonous or toxic materials from food.

LABELING AND IDENTIFICATION**§ 46.1001. Poisonous or toxic substances: original containers to display identifying information.**

Containers of poisonous or toxic materials and personal care items shall bear a legible manufacturer's label.

§ 46.1002. Poisonous or toxic substances: working containers labeled with common name.

Working containers used for storing poisonous or toxic materials such as cleaners and sanitizers taken from bulk supplies shall be clearly and individually identified with the common name of the material.

OPERATIONAL SUPPLIES AND APPLICATIONS**§ 46.1021. Poisonous or toxic substances: storage.**

Poisonous or toxic materials shall be stored so they cannot contaminate food, equipment, utensils, linens and single-service and single-use articles by taking both of the following measures:

(1) Separating the poisonous or toxic materials by spacing or partitioning.

(2) Locating the poisonous or toxic materials in an area that is not above food, equipment, utensils, linens and single-service or single-use articles. This paragraph does not apply to equipment and utensil cleaners and sanitizers that are stored in warewashing areas for availability and convenience if the materials are stored to prevent contamination of food, equipment, utensils, linens and single-service and single-use articles.

§ 46.1022. Poisonous or toxic substances: limitations on presence and use.

(a) *Limitation.* Only those poisonous or toxic materials that are required for the operation and maintenance of a food facility, such as for the cleaning and sanitizing of equipment and utensils and the control of insects and rodents, shall be allowed in a food facility. This section does not apply to packaged poisonous or toxic materials that are for retail sale.

(b) *Conditions of use.* Poisonous or toxic materials shall be used in a lawful manner according to the following:

(1) Manufacturer's use directions included in labeling, and, for a pesticide, manufacturer's label instructions that state that use is allowed in a food facility.

(2) The conditions of certification, if certification is required, for use of the pest control materials.

(3) Additional conditions that may be approved by the Department.

(c) *Conditions of application.* Poisonous or toxic materials shall be applied so that the following are accurate:

(1) A hazard to employees or other persons is not constituted.

(2) Contamination (including toxic residues due to drip, drain, fog, splash or spray on food, equipment, utensils, linens and single-service and single-use articles) is prevented, and for a restricted-use pesticide, this is achieved by doing all of the following:

(i) Removing the items.

(ii) Covering the items with impermeable covers, or taking other appropriate preventive actions.

(iii) Cleaning and sanitizing equipment and utensils after the application.

(d) *Applicator.* A restricted use pesticide shall be applied only by an applicator certified in accordance with

the Pennsylvania Pesticide Control Act of 1973 (3 P. S. §§ 111.21—111.61) or a person under the direct supervision of a certified applicator.

§ 46.1023. Prohibition of use of poisonous or toxic material containers to store food.

A container previously used to store poisonous or toxic materials may not be used to store, transport or dispense food.

§ 46.1024. Chemicals: use criteria.

(a) *Sanitizers.* Chemical sanitizers and other chemical antimicrobials applied to food-contact surfaces shall meet the requirements specified in 21 CFR 178.1010 (relating to sanitizing solutions).

(b) *Chemicals for washing fruits and vegetables.* Chemicals used to wash or peel raw, whole fruits and vegetables shall meet the requirements specified in 21 CFR 173.315 (relating to chemicals used in washing or to assist in the peeling of fruits and vegetables).

(c) *Boiler water additives.* Chemicals used as boiler water additives shall meet the requirements specified in 21 CFR 173.310 (relating to boiler water additives).

(d) *Drying agents.*

(1) Drying agents used in conjunction with sanitization shall contain only components that are listed as one or more of the following:

(i) Generally recognized as safe for use in food as specified in 21 CFR 182 (relating to substances generally recognized as safe) or 21 CFR 184 (relating to direct food substances affirmed as generally recognized as safe).

(ii) Generally recognized as safe for the intended use as specified in 21 CFR 186 (relating to indirect food substances affirmed as generally recognized as safe).

(iii) Approved for use as a drying agent under a prior sanction specified in 21 CFR 181 (relating to prior-sanctioned food ingredients).

(iv) Specifically regulated as an indirect food additive for use as a drying agent as specified in 21 CFR Parts 175—178.

(v) Approved for use as a drying agent under the threshold of regulation process established by 21 CFR 170.39 (relating to threshold of regulation for substances used in food-contact articles).

(2) When sanitization is with chemicals, the approval required in paragraph (1)(iii) or (v), or the regulation as an indirect food additive required in paragraph (1)(iv), shall be specifically for use with chemical sanitizing solutions.

§ 46.1025. Lubricants that have incidental contact with food: criteria.

Lubricants shall meet the requirements specified in 21 CFR 178.3570 (relating to lubricants with incidental food contact) if they are used on food-contact surfaces, on bearings and gears located on or within food-contact surfaces, or on bearings and gears that are located so that lubricants may leak, drip or be forced into food or onto food-contact surfaces.

§ 46.1026. Pesticides.

(a) *Restricted use pesticides: criteria.* Restricted use pesticides specified in § 46.1022(d) (relating to poisonous or toxic substances: limitations on presence and use) shall meet the requirements of a restricted use pesticide as

specified in § 128.2 (relating to definitions). This section requires restricted use pesticides be one of the following:

(1) Classified for restricted use under section 3(d) of the Federal Insecticide, Fungicide and Rodenticide Act of 1947 (7 U.S.C.A. § 136a(d)).

(2) A pesticide designated by the Secretary for restricted use under section 7(b)(6) of the Pennsylvania Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(6)).

(b) *Rodent bait stations.* Rodent bait shall be contained in a covered, tamper-resistant bait station.

(c) *Tracking powders: pesticides and nontoxics.* A tracking powder pesticide may not be used in a food facility. A nontoxic tracking powder (such as talcum or flour) may be used in a food facility if it will not contaminate food, equipment, utensils, linens and single-service and single-use articles.

§ 46.1027. Medicines.

(a) *Limitation and storage.*

(1) Only those medicines that are necessary for the health of employees shall be allowed in a food facility. This section does not apply to medicines that are stored or displayed for retail sale.

(2) Medicines that are in a food facility for the employees' use shall be labeled as specified in § 46.1001 (relating to poisonous or toxic substances: original containers to display identifying information) and located to prevent the contamination of food, equipment, utensils, linens and single-service and single-use articles.

(b) *Refrigerated medicines: storage.* Medicines belonging to employees or to children in a day care center that require refrigeration and are stored in a food refrigerator shall be in compliance with the following:

(1) Stored in a package or container and kept inside a covered, leakproof container that is identified as a container for the storage of medicines.

(2) Located so they are inaccessible to children.

§ 46.1028. First aid supplies: storage.

First aid supplies that are in a food facility for the employees' use shall be both of the following:

(1) Labeled as specified in § 46.1001 (relating to poisonous or toxic substances: original containers to display identifying information).

(2) Stored in a kit or a container that is located to prevent the contamination of food, equipment, utensils, linens and single-service and single-use articles.

§ 46.1029. Other personal care items: storage.

Except as specified in §§ 46.1027(b) and 46.1028 (relating to medicines; and first aid supplies: storage), employees shall store their personal care items in facilities as specified in § 46.945(b) (relating to requirement and designation of dressing areas and storage areas).

STOCK AND RETAIL SALE

§ 46.1041. Storage and display: separation of poisonous or toxic materials from food.

Poisonous or toxic materials shall be stored and displayed for retail sale so they cannot contaminate food, equipment, utensils, linens and single-service and single-use articles by one or both of the following:

(1) Separating the poisonous or toxic materials by spacing or partitioning.

(2) Locating the poisonous or toxic materials in an area that is not above food, equipment, utensils, linens and single-service or single-use articles.

Subchapter H. ADMINISTRATIVE PROCEDURES

ACCESS, APPROVALS AND VARIANCES

Sec.

- 46.1101. Access to food facilities.
- 46.1102. Obtaining Department or licensor approval.
- 46.1103. Variances.

PLAN SUBMISSION AND APPROVAL

- 46.1121. Facility and operating plans.
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- 46.1123. Confidentiality of trade secrets.
- 46.1124. Preoperational inspection of construction.

REQUIREMENTS FOR OPERATION

- 46.1141. Requirement: license or registration.
- 46.1142. Application procedure for appropriate license or registration.
- 46.1143. Issuance.
- 46.1144. Conditions of retention: responsibilities of the food facility operator.

ACCESS, APPROVALS AND VARIANCES

§ 46.1101. Access to food facilities.

After the Department or licensor presents identification, the person in charge shall allow the Department or licensor to determine if the food facility is in compliance with this chapter by allowing access to the facility, allowing inspection and providing information and records specified in this chapter and to which the Department or licensor is entitled under the Public Eating and Drinking Places Law, the Food Act and any other relevant statutory or food regulatory authority during the food facility's hours of operation and other reasonable times if the facility is not open during normal business hours.

§ 46.1102. Obtaining Department or licensor approval.

(a) *General.* This section describes the process by which a person may obtain an approval from the Department or a licensor required by any other provision of this chapter.

(b) *Written request.* A person seeking an approval from the Department or a licensor under this chapter shall submit a written request for approval to the entity from which approval is sought. If approval is sought from the Department, the written request shall be mailed or delivered to the following address:

Pennsylvania Department of Agriculture
Bureau of Food Safety and Laboratory Services
Attn: Chief, Division of Food Safety
2301 North Cameron Street
Harrisburg, Pennsylvania 17110-9408

(c) *Contents of request.* The written request for approval described in subsection (b) shall specify the provision of this chapter under which approval is sought, the reason approval is sought and relevant documentation in support of the request.

(d) *Processing a request.* The Department or licensor will, within 30 days of receipt of a written request for approval under this section, mail or otherwise provide the requester with a written grant or denial of the request, or a specific request for additional information. If a written request for additional information is made, the Department or licensor shall have an additional 30 days from the date it receives the additional information within which to mail or otherwise provide the requester with a written grant or denial of the request.

(e) *Standard for approval.* The Department or licensor shall grant approval if it determines the approval would

not constitute or cause a violation of the Food Act, the Public Eating and Drinking Places Law or this chapter, and that no health hazard would result from the approval.

§ 46.1103. Variances.

(a) *Modifications and waivers.* The Department may grant a variance by modifying or waiving the requirements of this chapter if—in the opinion of the Department—a health hazard will not result from the variance. If a variance is granted, the Department will retain the information specified in subsection (b) in its records for the food facility.

(b) *Documentation of proposed variance and justification.* Before a variance from a requirement of this chapter is approved, the information that shall be provided by the person requesting the variance and retained in the Department's file on the food facility includes the following:

(1) A statement of the proposed variance of the chapter requirement citing relevant chapter section numbers.

(2) An analysis of the rationale for how the potential public health hazards addressed by the relevant chapter sections will be alternatively addressed by the proposal.

(3) An HACCP plan—if required as specified in § 46.1122(a)(1) (relating to HACCP plans)—that includes the information specified in § 46.1122(b) as it is relevant to the variance requested.

(c) *Conformance with approved procedures.* If the Department grants a variance as specified in subsection (a), or an HACCP plan is otherwise required as specified in § 46.1122(a), the food facility operator shall do the following:

(1) Comply with the HACCP plans and procedures that are submitted as specified in § 46.1122(b) and approved as a basis for the modification or waiver.

(2) Maintain and provide to the Department, upon request, records specified in § 46.1122(b)(4) and (5) that demonstrate that the following are routinely employed:

- (i) Procedures for monitoring critical control points.
- (ii) Monitoring of the critical control points.
- (iii) Verification of the effectiveness of an operation or process.
- (iv) Necessary corrective actions if there is failure at a critical control point.

PLAN SUBMISSION AND APPROVAL

§ 46.1121. Facility and operating plans.

(a) *When plans are required.* A food facility licensing applicant or food facility operator shall have plans and specifications reviewed by the Department or licensor and will submit these properly prepared plans and specifications (as described in subsection (b)) to the Department or licensor for review and approval (using the procedure described in § 46.1142 (relating to application procedure for appropriate license or registration)) before any of the following:

- (1) The construction of a food facility.
- (2) The conversion of an existing structure for use as a food facility.
- (3) The remodeling of a food facility (including installation and use of any new major food equipment for heating, cooling and hot and cold holding food) or a change of type of food facility or food operation if the

Department or licensor determines that plans and specifications are necessary to ensure compliance with this chapter.

(4) A change of ownership of a food facility.

(b) *Contents of the plans and specifications.* The plans and specifications for a food facility shall include (as required by the Department or licensor based on the type of operation, type of food preparation and foods prepared) the following information to demonstrate conformance with this chapter:

(1) Intended menu and consumer advisory intentions, if a consumer advisory is required under § 46.423 (relating to consumer advisory required with respect to animal-derived foods that are raw, undercooked or not otherwise processed to eliminate pathogens).

(2) Anticipated volume of food to be stored, prepared and sold or served.

(3) Proposed layout, mechanical schematics, construction materials and finish schedules.

(4) Proposed equipment types, manufacturers, model numbers, locations, dimensions, performance capacities and installation specifications.

(5) Source of water supply, means of sewage disposal and refuse disposal.

(6) An HACCP plan, if required under § 46.1122 (relating to HACCP plans).

(7) Other information that may be required by the Department or licensor for the proper review of the proposed construction, conversion or modification of a food facility, and requested by the Department or licensor in writing.

§ 46.1122. HACCP plans.

(a) *When an HACCP plan is required.*

(1) Before engaging in an activity that requires an HACCP plan, a food facility applicant or food facility operator shall submit to the Department or licensor for approval a properly prepared HACCP plan as specified in subsection (b) and the relevant provisions of this chapter if any of the following occurs:

(i) Submission of an HACCP plan is required according to applicable Federal or State laws.

(ii) A variance is required as specified in § 46.250(b)(2)(ii), § 46.361(d)(2), § 46.401 or § 46.589(b).

(iii) The Department or licensor determines that a food preparation or processing method requires a variance based on a plan submittal specified in § 46.1121(b) (relating to facility and operating plans), an inspectional finding or a variance request.

(2) A food facility applicant or food facility operator shall have a properly prepared HACCP plan as specified in § 46.402 (relating to reduced oxygen packaging).

(b) *Contents of an HACCP plan.* For a food facility that is required in subsection (a) to have an HACCP plan, the plan and specifications shall indicate the following:

(1) A categorization of the types of potentially hazardous foods that are specified in the menu such as soups and sauces, salads, and bulk, solid foods such as meat roasts, or of other foods that are specified by the Department or licensor.

(2) A flow diagram by specific food or category type identifying critical control points and providing information on the following:

(i) Ingredients, materials and equipment used in the preparation of that food.

(ii) Formulations or recipes that delineate methods and procedural control measures that address the food safety concerns involved.

(3) Food employee and supervisory training plan that addresses the food safety issues of concern.

(4) A statement of standard operating procedures for the plan under consideration including clearly identifying the following:

(i) Each critical control point.

(ii) The critical limits for each critical control point.

(iii) The method and frequency for monitoring and controlling each critical control point by the food employee designated by the person in charge.

(iv) The method and frequency for the person in charge to routinely verify that the food employee is following standard operating procedures and monitoring critical control points.

(v) Action to be taken by the person in charge if the critical limits for each critical control point are not met.

(vi) Records to be maintained by the person in charge to demonstrate that the HACCP plan is properly operated and managed.

(5) Additional scientific data or other information, as required by the Department or licensor, supporting the determination that food safety is not compromised by the proposal.

§ 46.1123. Confidentiality of trade secrets.

The Department will treat as confidential information that meets the criteria specified in law for a trade secret and is contained on inspection report forms and in the plans and specifications submitted as specified in §§ 46.1121(b) and 46.1122(b) (relating to facility and operating plans; and HACCP plans).

§ 46.1124. Preoperational inspection of construction.

The Department or licensor will conduct one or more preoperational inspections to verify that the food facility is constructed and equipped in accordance with the approved plans and approved modifications of those plans, and variances granted under § 46.1103 (relating to variances). The Department or licensor will also verify the food facility is otherwise in compliance with this chapter, the Food Act and the Public Eating and Drinking Places Law.

REQUIREMENTS FOR OPERATION

§ 46.1141. Requirement: license or registration.

(a) *General requirement.* A person may not operate a food facility without a valid registration issued by the Department, or license issued by the Department or licensor, unless otherwise provided in subsection (b).

(b) *Exceptions.*

(1) A building, structure or place owned, leased or otherwise in possession of a person or municipal corporation or public or private organization, used or intended to be used by two or more farmers or an association of farmers for the purpose of selling food directly to consumers—otherwise known as a farmer’s market—shall be considered to be a single retail food establishment for purposes of registration under section 14 of the Food Act (31 P. S. § 20.3).

(2) The following food establishments are exempt from registration requirements under section 14 of the Food Act:

(i) Vehicles used primarily for the transportation of a consumer commodity in bulk or quantity to manufacturers, packers, processors or wholesale or retail distributors.

(ii) A food establishment in which at least 50% of the commodities sold were produced on the farm on which the food establishment is located.

(iii) A food establishment in which food or beverages are sold only through a vending machine.

(iv) A food establishment in which only prepackaged, nonpotentially hazardous food or beverages are sold.

§ 46.1142. Application procedure for appropriate license or registration.

Prior to the opening of a food facility, the operator shall contact the Department or licensor to obtain the appropriate application form for the required license or registration. The Department or licensor will supply the applicant the appropriate form, based upon the type of food facility involved. If the food facility is a public eating and drinking place, the applicant shall obtain a license. If the food facility is a retail food establishment, the applicant must obtain a registration. A single location (such as a grocery store that also serves hot ready-to-eat foods) might require both a license and a registration.

§ 46.1143. Issuance.

(a) *New, converted or remodeled food facilities.* For food facilities that are required to submit plans as specified in § 46.1121(a) (relating to facility and operating plans), the Department will issue a registration, or the Department or licensor will issue a license to the applicant after the following occur:

(1) The required plans, specifications and information are reviewed and approved.

(2) A preoperational inspection, as described in § 46.1124 (relating to preoperational inspection of construction) shows that the facility is built or remodeled in accordance with the approved plans and specifications and that the facility is in compliance with this chapter.

(3) A properly completed application is submitted.

(4) The required fee is submitted.

(b) *License or registration renewal.* The food facility operator of an existing food facility shall submit an application, the required fee and be in compliance with this chapter prior to issuance by the Department of a renewed registration or license, or the issuance of a renewed license by the Department or a licensor.

(c) *Change of ownership.* Licenses and registrations are nontransferable. New owners shall apply to the Department or licensor in accordance with § 46.1142 (relating to application procedure for appropriate license or registration).

§ 46.1144. Conditions of retention: responsibilities of the food facility operator.

To retain a license or registration issued by the Department or licensor under this chapter, a food facility operator shall do the following:

(1) Post the license or registration in a location in the food facility that is conspicuous to consumers and the Department or licensor.

(2) Comply with this chapter—including the conditions of a granted variance as specified in § 46.1103(c) (relating to variances)—and approved plans as specified in § 46.1121(b) (relating to facility and operating plans).

(3) If a food facility is required in § 46.1122(a) (relating to HACCP plans) to operate under an HACCP plan, comply with the plan as specified in § 46.1103(c).

(4) Immediately contact the Department or licenser to report an illness of a food employee as specified in § 46.111(b) (relating to duty to report disease or medical condition).

(5) Immediately discontinue operations and notify the Department or licenser if an imminent health hazard may exist because of an emergency such as a fire, flood, extended interruption of electrical or water service, sewage backup, misuse of poisonous or toxic materials, onset of an apparent foodborne illness outbreak, gross unsanitary occurrence or condition or other circumstance that may endanger public health. A food facility operator need not discontinue operations in an area of a facility that is unaffected by the imminent health hazard.

(6) Not resume operations discontinued in accordance with paragraph (5) or otherwise according to the Public Eating and Drinking Places Law or the Food Act until approval is obtained from the Department or licenser.

(7) Allow representatives of the Department or licenser access to the food facility as specified in § 46.1101 (relating to access to food facilities).

(8) Except as specified in paragraph (9), replace existing facilities and equipment with facilities and equipment that comply with this chapter if either of the following occurs:

(i) The Department or licenser directs the replacement because the facilities and equipment constitute a public health hazard or no longer comply with the criteria upon which the facilities and equipment were accepted.

(ii) The facilities and equipment are replaced in the normal course of operation.

(9) Upgrade or replace refrigeration equipment as specified in § 46.385(a)(3) (relating to potentially hazardous food: hot and cold holding), by December 13, 2008, if the circumstances specified in paragraph (8)(i) and (ii) do not occur first, and unless a variance has been approved as specified in § 46.1103.

(10) Comply with directives of the Department or licenser including time frames for corrective actions specified in inspection reports, notices, orders, warnings and other directives issued by the Department or licenser in regard to the operator's food facility or in response to community emergencies.

(11) Accept notices issued and served by the Department or licenser according to the Public Eating and Drinking Places Law or the Food Act.

CHAPTER 47. (Reserved)

§§ 47.1—47.3. (Reserved).

Subpart B. LIQUID FOODS

CHAPTER 53. (Reserved)

§§ 53.1—53.7. (Reserved).

§§ 53.11—53.19. (Reserved).

§ 53.21. (Reserved).

§ 53.22. (Reserved).

CHAPTER 55. (Reserved)

§§ 55.1—55.5. (Reserved).

CHAPTER 61. (Reserved)

§§ 61.1—61.7. (Reserved).

§§ 61.11—61.13. (Reserved).

§ 61.21. (Reserved).

§ 61.22. (Reserved).

§§ 61.31—61.34. (Reserved).

§§ 61.41—61.43. (Reserved).

§§ 61.51—61.53. (Reserved).

§§ 61.61—61.65. (Reserved).

§ 61.71. (Reserved).

§ 61.72. (Reserved).

CHAPTER 63. (Reserved)

§§ 63.1—63.4. (Reserved).

Subpart C. MISCELLANEOUS PROVISIONS

CHAPTER 78. (Reserved)

§§ 78.1—78.3. (Reserved).

§§ 78.11—78.14. (Reserved).

§§ 78.21—78.24. (Reserved).

§ 78.31. (Reserved).

§ 78.32. (Reserved).

§§ 78.41—78.43. (Reserved).

§§ 78.51—78.53. (Reserved).

§§ 78.61—78.65. (Reserved).

§§ 78.71—78.78. (Reserved).

§§ 78.91—78.97. (Reserved).

§ 78.101. (Reserved).

§ 78.111—78.114. (Reserved).

§ 78.121. (Reserved).

§ 78.122. (Reserved).

§ 78.131—78.133. (Reserved).

§ 78.141—78.147. (Reserved).

§ 78.151—78.155. (Reserved).

§ 78.161. (Reserved).

§ 78.171—78.173. (Reserved).

§ 78.181. (Reserved).

§ 78.191. (Reserved).

§ 78.192. (Reserved).

§ 78.201—78.204. (Reserved).

§ 78.211. (Reserved).

§ 78.212. (Reserved).

§ 78.221. (Reserved).

CHAPTER 79. (Reserved)

§ 79.1. (Reserved).

CHAPTER 80. (Reserved)

§ 80.1. (Reserved).

§§ 80.11—80.13. (Reserved).

§§ 80.21—80.23. (Reserved).

§ 80.31. (Reserved).

§ 80.32. (Reserved).

§§ 80.41—80.48. (Reserved).

§ 80.51. (Reserved).

§ 80.52. (Reserved).

§§ 80.61—80.63. (Reserved).

§ 80.71. (Reserved).

§ 80.72. (Reserved).

§§ 80.81—80.84. (Reserved).

CHAPTER 81. (Reserved)

§ 81.1. (Reserved).

§ 81.11. (Reserved).

§ 81.12. (Reserved).

§ 81.21. (Reserved).

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