

PROPOSED RULEMAKING

GAME COMMISSION

[58 PA. CODE CH. 139]

Seasons and Bag Limits

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its January 7, 2003, meeting, proposed the following amendment:

Amend § 139.4 (relating to seasons and bag limits for the license year) to provide dates for the 2003-2004 hunting license year.

This proposed rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for this proposed rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

This proposed rulemaking was made public at the January 7, 2003, meeting of the Commission. Comments can be sent until April 4, 2003, to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

1. Introduction

The Commission is proposing to amend § 139.4 to provide for seasons and bag limits for the 2003-2004 license year. These seasons and bag limits were proposed under sections 322(c)(1) and 2102(b)(1) of the code (relating to powers and duties of commission; and regulations).

2. Purpose and Authority

The Commission is required to set hunting and furtaking seasons and bag limits on an annual basis. Although the 2003-2004 seasons and daily season and possession limits are essentially the same as set in 2002-2003, they will now be based on the new wildlife management units (units). The new units will apply only to the hunting and trapping of bear, beaver, bobcat, deer, pheasant, quail and turkey within this Commonwealth. An additional amendment will include expanded hunting opportunities for small game hunting. Under this proposed rulemaking, the small game seasons for rabbit, pheasant and bobwhite quail will begin Saturday, October 18, the same time as the seasons for squirrel and ruffed grouse, to give rabbit, pheasant and bobwhite quail hunters 2 additional weeks of hunting. Another change will include a change in the dates of the elk season to November 10—15, which is a week earlier than the previous two seasons.

Section 322(c)(1) of the code specifically empowers the Commission to "... fix seasons ... and daily season and possession limits for any species of game or wildlife." Section 2102(b) of the code mandates that the Commission promulgate regulations relating to seasons and bag limits. These two provisions provide the statutory authority for the proposed rulemaking.

3. Regulatory Requirements

These proposed seasons and bag limits would establish when and where it is lawful to hunt and trap various game species and place limits on the numbers that can be legally taken.

4. Persons Affected

Persons wishing to hunt and trap in this Commonwealth would be affected by these seasons and bag limits.

5. Cost and Paperwork Requirements

The proposed new seasons and bag limits would not result in any additional cost either to the Commission or to hunters and furtakers.

6. Effective Date

The effective dates are July 1, 2003, to June 30, 2004.

7. Contact Person

For further information regarding the proposed rulemaking, contact Michael A. Dubaich, Acting Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

VERNON R. ROSS,
Executive Director

Fiscal Note: 48-154. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 139. SEASONS AND BAG LIMITS

(Editor's Note: As part of this proposed rulemaking, the Commission is proposing to delete the existing text of § 139.4, which currently appears at 58 Pa. Code pages 139-3—139-12, serial pages (290197)—(290206) and replace it with the following text, which has been printed in regular type to enhance readability.)

§ 139.4. Seasons and bag limits for the license year.

(SEASONS AND BAG LIMITS TABLE)

2003-2004 OPEN HUNTING AND FURTAKING SEASONS, DAILY LIMIT,

FIELD POSSESSION LIMIT AND SEASON LIMIT

OPEN SEASON INCLUDES FIRST AND LAST DATES LISTED

| <i>Species</i> | <i>Limit</i> | <i>First Day</i> | <i>Last Day</i> | <i>Daily Limit</i> | <i>Field Possession Limit After First Day</i> |
|---|--------------|------------------|-----------------|--------------------|---|
| Squirrels—(Combined species) Eligible Junior Hunters only, with or without the required license, when properly accompanied as required by law | | Oct. 11 | Oct. 13 | 6 | 12 |

| <i>Species</i> | <i>Limit</i> | <i>First Day</i> | <i>Last Day</i> | <i>Daily Limit</i> | <i>Field Possession Limit After First Day</i> |
|--|--------------|-------------------------------|---|--------------------|---|
| Squirrels—(Combined species) | | Oct. 18 Dec. 15 Dec. 26 | Nov. 29 and Dec. 23 and Feb. 7, 2004 | 6 | 12 |
| Ruffed Grouse—(Statewide) | | Oct. 18 Dec. 15 Dec. 26 | Nov. 29 and Dec. 23 and Jan. 10, 2004 | 2 | 4 |
| Ruffed Grouse—There is no open season for taking ruffed grouse in that portion of State Game Lands No. 176 in Centre County which is posted "RESEARCH AREA—NO GROUSE HUNTING" | | | | | |
| Rabbits, Cottontail | | Oct. 18 Dec. 15 Dec. 26 | Nov. 29 and Dec. 23 and Feb. 7, 2004 | 4 | 8 |
| Ringneck Pheasant—Male only in Wildlife Management Units 1A, 2A, 2B, 2C, 4A, 4B, 4C, 4D, 4E, 5A, 5B, 5C & 5D Eligible Junior Hunters only, with or without the required license, when properly accompanied as required by law | | Oct. 11 | Oct. 13 | 2 | 2 |
| Ringneck Pheasant—Male or female combined in Wildlife Management Units 1B, 2D, 2E, 2F, 2G, 3A, 3B, 3C & 3D Eligible Junior Hunters only, with or without the required license, when properly accompanied as required by law | | Oct. 11 | Oct. 13 | 2 | 2 |
| Ringneck Pheasant—Male only in Wildlife Management Units 1A, 2A, 2B, 2C, 4A, 4B, 4C, 4D, 4E, 5A, 5B, 5C & 5D | | Oct. 18 | Nov. 29 | 2 | 4 |
| Ringneck Pheasant—Male or female combined in Wildlife Management Units 1B, 2D, 2E, 2F, 2G, 3A, 3B, 3C & 3D | | Oct. 18 Dec. 15 Dec. 26 | Nov. 29 and Dec. 23 and Feb. 7, 2004 | 2 | 4 |
| <i>Species</i> | | <i>First Day</i> | <i>Last Day</i> | <i>Daily Limit</i> | <i>Field Possession Limit After First Day</i> |
| Bobwhite Quail—The hunting and taking of bobwhite quail is permitted in all wildlife management units except in wildlife management units 4A, 4B, 5A, 5B, 5C & 5D where the season is closed. | | Oct. 18 | Nov. 29 | 4 | 8 |

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| <i>Species</i> | <i>First Day</i> | <i>Last Day</i> | <i>Daily Limit</i> | <i>Field Possession Limit After First Day</i> |
|---|---|-----------------|--------------------|---|
| Hares (Snowshoe Rabbits) or Varying Hares | Dec. 26 | Jan. 3, 2004 | 1 | 2 |
| Woodchucks (Groundhog) | No closed season except during the antlered and antlerless deer season and until 12 noon daily during the spring gobbler turkey season. | | | Unlimited |
| <i>Species</i> | <i>First Day</i> | <i>Last Day</i> | <i>Daily Limit</i> | <i>Field Possession Limit After First Day</i> |
| Turkey—Male or Female | | | 1 | 1 |
| Wildlife Management Units 1A, 2A & 2B | Nov. 1 | Nov. 22 | | |
| Wildlife Management Unit 1B | Nov. 1 | Nov. 15 | | |
| Wildlife Management Units 2C, 2D, 2E, 2F, 2G, 3A, 3B, 3C, 3D, 4A, 4B, 4C, 4D & 4E | Nov. 1 | Nov. 22 | | |
| Wildlife Management Units 5A & 5B | Closed to fall turkey hunting | | | |
| Wildlife Management Unit 5C & 5D | Nov. 1 | Nov. 8 | | |
| Turkey (Spring Gobbler) Statewide Bearded Bird only | May 1, 2004 | May 29, 2004 | 1 | 1 |

MIGRATORY GAME BIRDS

Except as further restricted by this chapter, the seasons, bag limits, hunting hours and hunting regulations for migratory game birds shall conform to regulations adopted by the United States Secretary of the Interior under authority of the Migratory Bird Treaty Act (16 U.S.C.A. §§ 703—711) as published in the Federal Register on or about August 27 and September 28 of each year. Exceptions:

- (a) Hunting hours in § 141.4 (relating to hunting hours).
- (b) Nontoxic shot as approved by the Director of the United States Fish and Wildlife Service is required for use Statewide in hunting and taking of migratory waterfowl.
- (c) Subject to approval by the United States Fish and Wildlife Service, an early and late season for Canada geese will be held as defined in § 141.25.

| <i>Species</i> | <i>First Day</i> | <i>Last Day</i> | <i>Daily Limit</i> | <i>Field Possession Limit After First Day</i> |
|--|---|---------------------------------|--------------------|---|
| Crows (Hunting permitted on Friday, Saturday and Sunday only) | July 4 and Dec. 26 | Nov. 30 and April 4, 2004 | | Unlimited |
| Starlings and English Sparrows | No closed season except during the antlered and antlerless deer seasons and until 12 noon daily during the spring gobbler turkey season | | | Unlimited |

| <i>Species</i> | <i>First Day</i> | <i>Last Day</i> | <i>Daily Limit</i> | <i>Field Possession Limit After First Day</i> |
|--|------------------|-----------------|--------------------|---|
| FALCONRY | | | | |
| Squirrels—(Combined species) | Sept. 1 | Mar. 31, 2004 | 6 | 12 |
| Quail | Sept. 1 | Mar. 31, 2004 | 4 | 8 |
| Ruffed Grouse | Sept. 1 | Mar. 31, 2004 | 2 | 4 |
| Cottontail Rabbits | Sept. 1 | Mar. 31, 2004 | 4 | 8 |
| Snowshoe or Varying Hare | Sept. 1 | Mar. 31, 2004 | 1 | 2 |
| Ringneck Pheasant—Male and Female—(Combined) | Sept. 1 | Mar. 31, 2004 | 2 | 4 |

Migratory Game Birds—Seasons and bag limits shall be in accordance with Federal regulations.

DEER

| <i>Species</i> | <i>First Day</i> | <i>Last Day</i> | <i>Season Limit</i> | <i>Field Possession Limit</i> |
|---|---|-----------------|---|-------------------------------|
| Deer, Antlered—(Statewide) ¹ (Archery—Bows and Arrows Only) | Oct. 4 | Nov. 15 | 1 | One antlered. |
| | Dec. 26 | Jan. 10, 2004 | | |
| Deer, Antlerless—(Statewide) (Archery—Bows and Arrows Only) | Oct. 4 | Nov. 15 | An antlerless deer with each required antlerless license. | |
| | Dec. 26 | Jan. 10, 2004 | | |
| Deer, Regular Antlered—(Statewide) ¹ | Dec. 1 | Dec. 13 | 1 | One antlered. |
| Deer, Antlerless only—(Statewide) Only Junior and Senior License Holders, ² Disabled Person Permit (to use a vehicle) Holders and Residents serving on active duty in the U.S. Armed Forces, or in the U.S. Coast Guard, with required antlerless license | Oct. 23 | Oct. 25 | An antlerless deer with each required antlerless license. | |
| Deer, Regular Antlerless—(Statewide) | Dec. 1 | Dec. 13 | An antlerless deer with each required antlerless license. | |
| Deer, Antlerless only—(Statewide) (Muzzleloading season) | Oct. 18 | Oct. 25 | An antlerless deer with each required antlerless license. | |
| Deer, Antlered or Antlerless—(Statewide) ¹ (Flintlock Muzzleloading season) | Dec. 26 | Jan. 10, 2004 | One antlered, or one antlerless—plus an additional antlerless deer with each required antlerless license. | |
| Deer, Antlerless in Wildlife Management Units 2B, 5C & 5D | Dec. 26 | Jan. 10, 2004 | An antlerless deer with each required antlerless license. | |
| Deer, Antlerless (Letterkenny Army Depot, Franklin County and New Cumberland Army Depot, York County and Fort Detrick, Raven Rock Site, Adams County) | Hunting is permitted on days established by the United States Department of the Army. | | An antlerless deer with each required antlerless license. | |

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| <i>Species</i> | <i>First Day</i> | <i>Last Day</i> | <i>Season Limit</i> | <i>Field Possession Limit</i> |
|---|------------------|-----------------|---------------------|-------------------------------|
| BEAR | | | | |
| Bear, any age—(Statewide) | Nov. 24 | Nov. 26 | 1 | 1 ⁴ |
| Bear, any age in Wildlife Management Unit 3D | Dec. 1 | Dec. 6 | 1 | 1 ⁴ |
| ELK | | | | |
| Elk, Antlered | Nov. 10 | Nov. 15 | 1 | 1 |
| Elk, Antlerless | Nov. 10 | Nov. 15 | 1 | 1 |

FUR TAKING—TRAPPING

| <i>Species</i> | <i>First Day</i> | <i>Last Day</i> | <i>Daily Limit</i> | <i>Season Limit</i> |
|---|------------------|-----------------|--------------------|---------------------|
| Minks and Muskrats—(Statewide) | Nov. 22 | Jan. 10, 2004 | Unlimited | |
| Beaver—(Statewide) | Dec. 26 | Mar. 31, 2004 | | |
| Wildlife Management Units 1A, 1B, 2F & 2G | | | 20 | 20 |
| Wildlife Management Unit 3A, 3B, 3C & 3D | | | 20 | 40 |
| Wildlife Management Units 2A, 2B, 2C, 2D, 2E, 4A, 4B, 4C, 4D & 4E | | | 10 | 10 |
| Wildlife Management Units 5A, 5B, 5C & 5D | | | 6 | 6 |
| Coyotes, Foxes, Opossums, Raccoons, Skunks, Weasels —(Statewide) | Oct. 19 | Feb. 21, 2004 | Unlimited | |
| Bobcat ³ Wildlife Management Units 2F, 2G, 3A, 3B, 3C & 3D | Oct. 19 | Feb. 21, 2004 | 1 | 1 |

FUR TAKING—HUNTING

| <i>Species</i> | <i>First Day</i> | <i>Last Day</i> | <i>Daily Limit</i> | <i>Season Limit</i> |
|---------------------|---|-----------------|--------------------|---------------------|
| Coyotes—(Statewide) | No closed season. Coyotes may be taken from the first day to the last day inclusive of any deer or bear season only by persons who possess a valid furtaker's license and wears 250 square inches of daylight fluorescent orange-colored material in a 360 degree arc from 2 hours before sunrise to 2 hours after sunset or by persons lawfully engaged in hunting deer or bear and have a valid tag, or during the spring gobbler turkey season by persons who have a valid spring turkey tag and meet fluorescent orange and shot size requirements. | | Unlimited | |

| <i>Species</i> | <i>First Day</i> | <i>Last Day</i> | <i>Daily Limit</i> | <i>Season Limit</i> |
|---|---|-----------------|--------------------|---------------------|
| Opossums, Skunks, Weasels— (Statewide) | No closed season. These species may not be hunted prior to 12 noon during the spring gobbler turkey season. | | | |
| Raccoons and Foxes—(Statewide) | Oct. 18 | Feb. 21, 2004 | Unlimited | |
| Bobcat ³ Wildlife Management Units 2F, 2G, 3A, 3B, 3C & 3D | Oct. 18 | Feb. 21, 2004 | 1 | 1 |

No open seasons on other wild birds or wild mammals.

¹ Only one antlered deer (buck) may be taken during the hunting license year.

² Includes persons who have reached or will reach their 65th birthday in the year of the application for the license and hold a valid adult license or qualify for license and fee exemptions under section 2706 of the act (relating to resident license and fee exemptions).

³ Bobcat may only be taken by furtakers in possession of a Bobcat Hunting-Trapping Permit.

⁴ Only one bear may be taken during the hunting license year.

[Pa.B. Doc. No. 03-346. Filed for public inspection February 28, 2003, 9:00 a.m.]

[58 PA. CODE CHS. 139 AND 141]

Seasons and Bag Limits; Hunting and Trapping

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its January 7, 2003, meeting, proposed the following amendments:

Amend §§ 139.2, 141.45 and 141.62 (relating to definitions; turkey; and beaver trapping), add § 139.17 (relating to wildlife management units) and delete §§ 141.21, 141.46 and 141.64 (relating to hen ringneck pheasant; turkey management areas; and furbearer management areas) to implement a uniform wildlife management unit (WMU) system.

The proposed rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for this proposed rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

The proposed rulemaking was made public at the January 7, 2003, meeting of the Commission. Comments can be sent until April 4, 2003, to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

1. *Introduction*

The Commission is proposing to amend §§ 139.2 and 141.45, add § 139.17 and delete §§ 141.21, 141.46 and 141.64 to implement a uniform wildlife management unit (WMU) system.

2. *Purpose and Authority*

Wildlife populations are not equally distributed or abundant across this Commonwealth. Accordingly, the Commission has regulated the harvest of species using species-specific management units made up of multiple counties. The use of different species-specific units and clusters of counties for delineating management units has, in the past, created complexity and confusion for hunters and trappers and agency staff. To alleviate some of these problems, the wildlife management staff took a critical look at current species management units to

evaluate the feasibility of implementing a uniform WMU system for improved resource management and hunter and trapper use.

Using data solicited and incorporated from central office and field staff within the agency, the Commission was able to generate a single, uniform WMU map for all species by incorporating landscape, human population, land ownership and wildlife data to set readily identifiable boundaries. Using recognizable physical features on the landscape as boundaries rather than intangible boundaries, such as county lines, simplifies the WMU system for both users and resource managers. Once the WMUs are incorporated, the individual pheasant area maps, turkey management area maps and furbearer management area maps will no longer be required.

Section 322(c) of the code (relating to powers and duties of commission) specifically empowers the Commission to "... fix seasons ... and daily, season and possession limits for any species of game or wildlife." Section 322(c)(4) of the code specifically authorizes the Commission to "define geographic limitations or restrictions." Section 2102(a) of the code (relating to regulations) authorizes the Commission to "... promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting ..." These provisions provide the statutory basis for the proposed rulemaking.

3. *Regulatory Requirements*

The proposed rulemaking simplifies the current management areas system for users and resource managers by creating a single, uniform management system for all species with boundaries using recognizable physical features on the landscape.

4. *Persons Affected*

Persons who wish to hunt deer, ringneck pheasant and turkey and trap furbearers will be affected by the proposed rulemaking.

5. *Cost and Paperwork Requirements*

The proposed rulemaking should not result in additional cost or paperwork.

6. *Effective Date*

The proposed rulemaking will be effective on final-form publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

7. *Contact Person*

For further information regarding the proposed rule-making, contact Michael A. Dubaich, Acting Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

VERNON R. ROSS,
Executive Director

Fiscal Note: 48-155. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 139. SEASONS AND BAG LIMITS

§ 139.2. Definitions.

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

Antlered deer—

(i) In [**the counties of Armstrong, Beaver, Butler, Crawford, Erie, Indiana, Lawrence, Mercer, Washington and Westmoreland**] **Wildlife Management**

Units 1A, 1B, 2A and 2D, a deer having four or more points to one antler.

(ii) In [**the counties of Allegheny, Bucks, Chester, Delaware, Montgomery and Philadelphia**] **Wildlife Management Units 2B, 5C and 5D**, a deer having two or more points to one antler, or with one antler 3 inches or more in length.

(iii) In all other [**counties**] **wldlife management units**, a deer having three or more points to one antler.

(iv) In all [**counties**] **wildlife management units, [only]** junior license holders, disabled person permit (to use a vehicle) holders and residents serving on active duty in the United States Armed Forces, or in the United States Coast Guard, a deer having two or more points to one antler, or with one antler 3 inches or more in length.

* * * * *

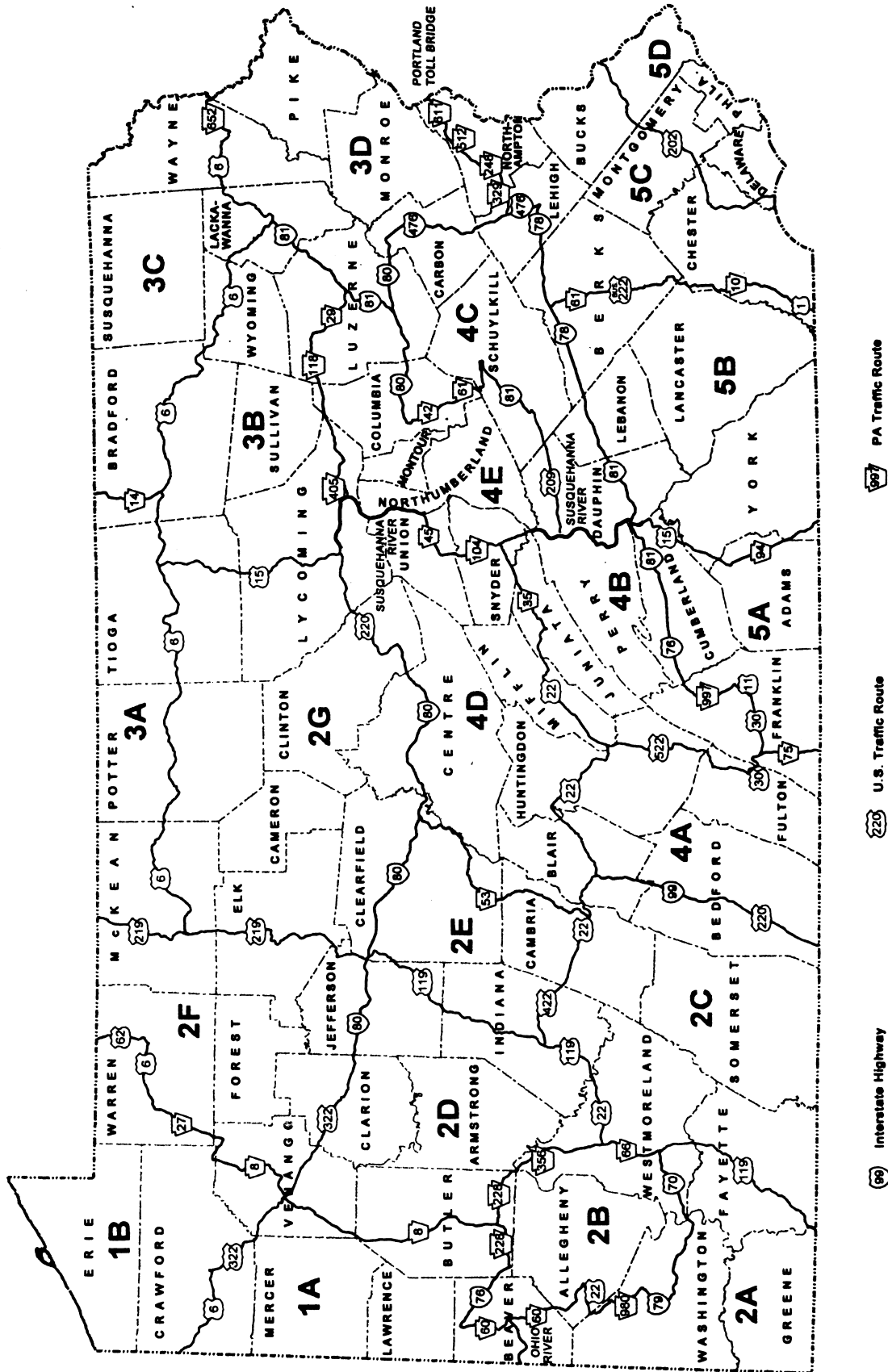
§ 139.17. Wildlife management units.

(a) **The divisional line between two or more wildlife management units shall be the center of the highway, natural water course or other natural boundary.**

(b) **The outline map of Pennsylvania sets forth wildlife management units.**

(See map of Pennsylvania Wildlife Management Units)

WILDLIFE MANAGEMENT UNITS



CHAPTER 141. HUNTING AND TRAPPING

Subchapter B. SMALL GAME

§ 141.21. [Hen ringneck pheasant] (Reserved).

[(a) Name. The area shall be known and referred to as hen ringneck pheasant shooting area.

(b) Description. The outline map of the hen ringneck pheasant shooting area sets forth the boundaries. See Appendix B for the map of the pheasant shooting area.]

Subchapter C. BIG GAME

§ 141.45. Turkey.

(a) While hunting wild turkey it is unlawful to:

* * * * *

(4) Use or possess rifles or single projectile ammunition, except arrows, in [Turkey Management Areas 1-A, 1-B and 9-B] Wildlife Management Units 1A, 1B, 2A, 2B, 5B, 5C and 5D.

(5) Move about or relocate during the fall season without wearing a minimum of 100 square inches of daylight fluorescent orange-colored material on the head or in such a manner so it is visible in a 360° arc in a [turkey management area] wildlife management unit limited to shotguns and bows and arrows only.

(6) Move about or relocate during the fall season in a [turkey management area] wildlife management unit not limited to shotguns and bows and arrows only, without wearing a minimum of 250 square inches of daylight fluorescent orange-colored material. The material shall be worn on the head, chest and back combined so it is visible in a 360° arc, except stationary turkey hunters may, in lieu of the 250 square inch requirement, place a band containing a minimum of 100 square inches of daylight fluorescent orange-colored material within 15 feet of their location so it is visible in a 360° arc.

* * * * *

§ 141.46. [Turkey management areas] (Reserved).

[(a) The divisional line between two or more turkey management areas shall be the center of the highway, natural water course or other natural boundary.

(b) The outline map of Pennsylvania sets forth turkey management areas. See Appendix C for the map.]

Subchapter D. TRAPPING

§ 141.62. Beaver trapping.

* * * * *

(b) Unlawful acts. It is unlawful to:

* * * * *

(2) Except in [Furbearer Management Area No. 3] Wildlife Management Units 3B, 3C and 3D, place, check, reset or tend a trap or snare on an established beaver dam or beaver house, or within 15 feet of either a dam, or a house. Measurement shall be from directly above the trap or snare, across the water, ice or land to the nearest point of the structure.

* * * * *

(4) In an area where beavers are known to inhabit, set, tend or operate more than a combined total of 20 traps or

snare no more than 10 of which may be traps. No more than two of the traps may be body gripping traps except in [Furbearer Management Area No. 3 and the counties of McKean, Potter, and Tioga] Wildlife Management Units 3A, 3B, 3C and 3D where the two body gripping trap limit does not apply.

* * * * *

§ 141.64. [Furbearer management areas] (Reserved).

[(a) The divisional line between two or more Furbearer Management Areas shall be the center of the highway, natural watercourse or other boundary as set forth on the map.

(b) The outline map of Pennsylvania in Appendix D sets forth the Furbearer Management Areas]

(Editor's Note: As part of this proposed rulemaking, the Commission is proposing to delete the maps in Appendices B—D, which currently appear at 58 Pa. Code pages 141-22—141-26, serial pages (279264)—(279268), and the map in Appendix F, which currently appears at 58 Pa. Code page 141-29, serial page (290367), and replace them with the map in § 139.17.)

[Pa.B. Doc. No. 03-347. Filed for public inspection February 28, 2003, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 53]

[L-00940096]

Filing Requirements Relating to Water and Wastewater Public Utilities

The Pennsylvania Public Utility Commission (Commission) on October 25, 2001, adopted a proposed rulemaking order to amend the regulations governing filing requirements for water and wastewater public utilities for general rate increase requests in excess of \$1 million. The contact persons are Judith Koch Carlson, Bureau of Fixed Utility Services (technical) (717) 783-5392 and Wayne T. Scott, Law Bureau (legal) (717) 783-6150.

Executive Summary

Section 53.53 (relating to information to be furnished with proposed general rate increase filings in excess of \$1 million) requires a utility that is requesting a general rate increase in excess of \$1 million to provide extensive information through the use of data requests in relation to the company's income, revenues, expenses, taxes, rate base, depreciation and rate of return. On October 24, 1994, the Commission issued an advance notice of proposed rulemaking to solicit comments from water and wastewater utility companies that will be the primary active participants in future rate cases of this nature for the purpose of providing input as to how these filing requirements may be modified to lessen the amount of information needed.

The proposed rulemaking significantly streamlines filing requirements. The proposed rulemaking also lessens the regulatory burden on all jurisdictional water and wastewater public utilities that request a rate increase in excess of \$1 million.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 19, 2003, the Commission submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Committees. In addition to submitting the proposed rulemaking, the Commission provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Commission. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed rulemaking, it will notify the Department within 30 of the close of the public comment period. The notification shall specify the regulatory review criteria that have not been met by the portion of the proposed rulemaking to which an objection is made. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the amendments, by the Department, the General Assembly and the Governor of objections raised.

Public Meeting held
October 25, 2001

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

Proposed Rulemaking Reupdating and Revising Existing Filing Requirements Relating to Water and Wastewater Public Utilities; Doc. No. L-00940096

Proposed Rulemaking Order

By the Commission:

On August 9, 1994, an order was entered at Docket No. L-00930088, entitled Policy Statement Resettlement Guidelines and Procedures for Major Rate Cases. In this order, the Commission adopted a final policy statement regarding the encouragement of negotiated settlements in major rate cases. The guidelines and procedures outlined in the policy statement are applicable to general rate increases in excess of \$1 million. The policy statement can be found in §§ 69.401—69.406 (relating to settlement guidelines and procedures for major rate cases—statement of policy).

The August 9, 1994, order required a revision of the existing filing requirement regulations in § 53.53. The Commission expressed its dissatisfaction with the filing requirements in their present form and ordered a general update to be commenced. The instant proposed rulemaking is a direct result of that Commission mandate.

Section 69.402(c)(1) (relating to the pre-filing notice guidelines) necessitates that a utility that is requesting a general rate increase in excess of \$1 million provide responses to a standard set of industry specific data requests. The data requests in question were approved in an order on April 20, 1995, also at Docket No. L-00930088. Also, as part of the August 9, 1994, order, the Commission, on page 8, expressed the sentiment that the updated filing requirements would also incorporate the standard data requests, to the extent appropriate.

On October 24, 1994, the Commission issued an advanced notice of proposed rulemaking at the instant docket, published at 24 Pa.B. 5425 (October 29 1994), seeking comments from the public on this matter. Comments were received from the Office of Consumer Advocate, Office of Trial Staff and the National Association of Water Companies. Numerous technical conferences were

held as well as a number of meetings among active participants. As mentioned previously, the Commission expressed the desire to have the standard data requests integrated into the revised filing requirements. A considerable amount of time was devoted to achieving this end, and the instant rulemaking order proposes extensive amendments to § 53.53. The filing requirements proposed in this proposed rulemaking are the result of a consensus reached among representatives of the parties who will be the primary active participants in future water/wastewater utility general rate cases in excess of \$1 million.

Accordingly, under sections 501 and 1501 of the Public Utility Code, 66 Pa.C.S. §§ 501 and 1501; the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1201 et seq.) and regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2 and 7.5; and section 745.5 of the Regulatory Review Act (71 P. S. § 745.5), we propose to amend our regulations as set forth in Annex A; *therefore,*

It Is Ordered that:

1. A proposed rulemaking is hereby instituted to amend the regulations governing the filing requirements for water and wastewater public utilities for general rate increase request in excess of \$1 million, as set forth in Annex A.
2. The Secretary shall submit this order and Annex A to the Office of Attorney General for review as to form and legality.
3. The Secretary shall submit a copy of this order and Annex A to the Governor's Budget Office for review of fiscal impact.
4. The Secretary shall submit a copy of this order and Annex A for review and comment by the designated standing committees of both houses of the General Assembly and for review and comments by IRRC.
5. The Secretary shall certify this order and Annex A and deposit them with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
6. Within 30 days of this order's publication in the *Pennsylvania Bulletin* an original and 15 copies of any comments concerning this order shall be submitted to the Commission, Attention: Secretary, P. O. Box 3265, Harrisburg, PA 17105-3265.
7. Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Sherri DelBiondo, Regulatory Coordinator (717) 772-4597.

JAMES J. MCNULTY,
Secretary

Fiscal Note: 57-223. No fiscal impact; (8) recommends adoption.

Annex A
TITLE 52. PUBLIC UTILITIES
PART I. PENNSYLVANIA PUBLIC UTILITY COMMISSION
Subpart C. FIXED SERVICE UTILITIES
CHAPTER 53. TARIFFS FOR NONCOMMON CARRIERS
INFORMATION FURNISHED WITH THE FILING OF RATE CHANGES

§ 53.53. Information to be furnished with proposed general rate increase filings in excess of \$1 million.

(a) When a public utility, other than a canal, turnpike, tunnel, bridge or wharf company, files a tariff or tariff

supplement seeking a general rate increase within the meaning of 66 Pa.C.S. § 1308(d) (relating to voluntary changes in rates), and the general rate increase exceeds \$1 million in gross annual revenues, in addition to the data required by other provisions of this chapter, the tariff or tariff supplement shall be accompanied by responses to the data requests contained in the following exhibits which apply to the utility types indicated.

(1) Exhibit A—Utilities except communications [and], electric [utilities], water and wastewater utilities.

* * * * *

(4) Exhibit D—Water and wastewater utilities.

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Exhibit A

I. VALUATION

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E. [WATER UTILITIES ONLY, IN ADDITION TO PROVIDING THE INFORMATION REQUESTED IN "A.":] (Reserved)

(Editor's Note: As part of this proposal, the Commission is proposing to delete the text of E, which appears at 52 Pa. Code page 53-25, serial page (213599).)

* * * * *

III. BALANCE SHEET AND OPERATING STATEMENT

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C. [WATER UTILITIES ONLY, IN ADDITION TO PROVIDING THE INFORMATION REQUESTED IN "A.":] (Reserved)

(Editor's Note: As part of this proposal, the Commission is proposing to delete the text of C, which appears at 52 Pa. Code pages 53-39 to 53-45, serial pages (213613) to (213619).)

* * * * *

IV. RATE STRUCTURE

A. [WATER UTILITIES] (Reserved)

(Editor's Note: As part of this proposal, the Commission is proposing to delete the text of A, which appears at 52 Pa. Code pages 53-58 to 53-60, serial pages (213632) to (213634).)

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Exhibit D

I. STATEMENT OF INCOME

A. WATER AND WASTEWATER UTILITIES

1. Provide comparative operating statements for the test year and the immediately preceding 12 months showing increases and decreases between the two periods. These statements should supply detailed explanation of the causes of the major variances between the test year and preceding year by detailed account number.

2. Prepare a Statement of Income for the various time frames of the rate proceeding including:

Col. 1 - Book recorded statement for the test year.

2 - Adjustments to book recorded statement to annualize and normalize under present rates.

3 - Income statement under present rates after adjustment in Col. 2.

4 - Adjustment to Col. 3 for revenue increase requested.

5 - Income statement under requested rates.

3. If a company has separate operating divisions, an income statement must be shown for each division, plus an income statement for the company as a whole.

4. Provide operating income claims under:

a. Present rates.

b. Pro forma present rates (annualized & normalized).

c. Proposed rates (annualized & normalized).

5. Provide rate of return on original cost under:

a. Present rates.

b. Pro forma present rates.

c. Proposed rates.

II. OPERATING REVENUES

1. Prepare a summary of operating revenues for the test year and the year preceding the test year, providing the following information:

a. For each classification of customers:

(i) Number of customers as of year-end.

(ii) Gallons sold.

(iii) Revenues.

b. Customers forfeited discounts and penalties and miscellaneous water revenues.

2. Prepare a summary of operating revenues for the test year, providing the following information:

a. For each classification of customers and for customers forfeited discounts and penalties and miscellaneous water/wastewater revenues:

(i) Revenues.

(ii) Annualizing and normalizing adjustments to arrive at adjusted operating revenues for ratemaking.

(iii) Proposed increase in operating revenues.

(iv) Percent increase in operating revenues.

(v) Operating revenues under proposed rates.

3. Provide a schedule of present and proposed tariff rates showing dollar change and percent of change by block. Provide increases to customers at various monthly uses showing billings at existing and proposed rates. Provide also an explanation of any change in block structure and the reason therefor. Provide a copy of the proposed tariff or tariff supplement.

4. Provide for the test year a detailed customer consumption analysis and the application of rates to support present and proposed rates by customer classification and/or tariff rate schedule.

5. Provide detailed computations of the determination of accrued revenues as of test year-end and year-end immediately preceding the test year, to-

gether with a detailed explanation of the procedures and methods used in developing accrued revenues.

6. Provide a detailed analysis of miscellaneous water revenues for the test year and the two years immediately preceding the test year. For the test year, provide a monthly breakdown and an explanation of significant monthly variances.

7. Provide a monthly summary of customers added and lost by customer classification for the test year and the current year-to-date.

8. Provide for the test year and the current year-to-date, the number of customers and monthly consumption for each classification of customers.

9. Provide by customer classification for the test year and for the two prior years the number of customers and consumption, and projected number of customers and consumption for two subsequent years.

10. Provide a breakdown of the number and size of private fire services according to the general water service class of customers.

a. Provide a listing of all public fire protection customers at test year-end and the pro forma billing of current rates for each customer.

11. Provide a detailed schedule of sales for resale revenues for the test year and two preceding years showing revenues and units sold by customer.

12. Provide for the test year and the two prior years consumption and billings for the ten (10) largest customers. Provide for the test year consumption priced at proposed rates.

13. Provide for the test year and the two prior years consumption and billings for the ten (10) largest sales for resale customers if such sales are not included in sales to the ten (10) largest customers requested in 53.53 II.12 of Annex A.

III. OPERATING EXPENSE

1. Prepare a summary of operating expenses by operating expense account for the test year and the two years preceding the test year.

2. Prepare a summary of operating expenses for the test year providing annualizing and normalizing adjustments to arrive at adjusted operating expenses for ratemaking, including supporting data.

3. List extraordinary property losses as a separate item, not included in operating expenses or depreciation and amortization. Sufficient supporting data must be provided.

4. Supply detailed calculations of normalization of rate case expense, including supporting data for outside services rendered. Provide the items comprising the rate case expense claim (include the actual billings or invoices in support of each kind of rate case expense) and the items comprising the actual expenses of prior rate cases.

5. Submit detailed computation of adjustments to operating expenses for salary, wage and fringe benefit increases (union and non-union merit, progression, promotion and general) granted during the test year and six months subsequent to the test year. Supply data showing for the test year:

a. Actual payroll expense (regular and overtime separately) by categories of operating expenses, i.e., maintenance, operating transmission, distribution, other.

b. Date, percentage increase and annual amount of each general payroll increase during the test year.

c. Dates and annual amounts of merit increases or management salary adjustments.

d. Total annual payroll increases in the test year.

e. Proof that the actual payroll plus the increases equal the payroll expense claimed in the supporting data (by categories of expenses).

f. Detailed list of employee benefits and cost thereof for union and non-union personnel. Any specific benefits for executives and officers should also be included, and cost thereof.

g. Support the annualized pension cost figures.

(i) State whether these figures include any unfunded pension costs. Explain.

(ii) Provide latest actuarial study used for determining pension accrual rates.

h. Submit a schedule showing any deferred income and consultant fee to corporate officers or employees.

6. Supply an exhibit showing an analysis, by functional accounts, of the charges by affiliates (service corporations, etc.) for services rendered included in the operating expenses of the filing company for the test year and for the 12-month period ended prior to the test year:

a. Supply a copy of contracts, if applicable.

b. Explain the nature of the services provided.

c. Explain basis on which charges are made.

d. If charges are allocated, identify allocation factors used.

e. Supply the components and amounts comprising the expense in this account.

f. Provide details of initial source of charge and reason thereof.

7. Describe costs relative to leasing equipment, computer rentals, and office space, including terms and conditions of the lease. State method for calculating monthly or annual payments.

8. Submit detailed calculations (or best estimates) of the cost resulting from major storm damage.

9. Submit details of expenditures for advertising (national and institutional and local media). Provide a schedule of advertising expense by major media categories for the test year and the prior two comparable years with respect to:

a. Public health and safety.

b. Conservation of energy.

c. Explanation of billing practices, rates, etc.

d. Provision of factual and objective data programs in educational institutions.

e. Other advertising programs.

f. Total advertising expense.

10. Prepare a detailed schedule for the test year showing types of social and service organization memberships paid for by the company and the cost thereof.

11. Submit a schedule showing, by major components, the expenditures associated with outside services employed, regulatory commission expenses and miscellaneous general expenses, for the test year and prior two comparable years.

12. Submit details of information covering research and development expenditures, including major projects within the company and forecasted company programs.

13. Provide a detailed schedule of all charitable and civic contributions by recipient and amount for the test year.

14. Provide the two most recent actuarial studies for both pension expense and postretirement benefits other than pensions (OPEBs).

15. Identify the total pension expense under SFAS 87 for the test year and the portion charged to O&M. Include an analysis showing the contribution to the pension plan and the amount deferred or expensed for each of the past two years and the test year.

16. Provide an analysis of OPEBs showing the accrual amount under SFAS 106 and the pay-as-you-go expense.

17. Reconcile the historical and future test year SFAS No. 106 expense levels with the amount identified in the actuarial report.

18. Identify the actual or projected amounts contributed to SFAS No. 106 funds for the historic and future test years. Identify the actual or projected dates and amounts of the contributions.

19. Explain the funding options or plans which are being used for SFAS No. 106 costs. Identify the portion of costs which are eligible for tax preferred funding.

20. Is the company studying and/or anticipating any changes to its postretirement benefits offered to employees as a result of SFAS No. 106 or for other reasons? If yes, provide such study and/or explain the anticipated change.

21. State whether the test year expenses reflect any accruals for postemployment benefits under SFAS 112. If yes, provide complete details including supporting documentation, assumptions, and funding mechanisms.

22. Provide a copy of all incentive compensation and/or bonus plans and provide the level of related bonus payments included in the cost of service. Provide information for the preceding two years and any changes since the last rate case.

23. Provide the most recent insurance premiums for each type of insurance coverage (both employee benefit and those purchased for the company) reflected in the company's filing. If available, provide estimated premiums for the subsequent calendar year.

24. Provide the level of payments made to industry organizations included in the cost of service along with a description of each payee organization.

25. If the company has included any costs associated with canceled construction projects or obsolete inventory in requested rates, separately identify the items, provide the related amounts and explain the reason for the cancellation or obsolescence.

26. Explain how the company accounts for vacation pay for book and ratemaking purposes.

27. Indicate whether any employee positions have been eliminated since the commencement of the historic test year or are expected to be eliminated during the future test year.

28. Furnish the name of each supplier, gallonage and expense for water purchased as recorded in Water Purchased for Resale-Account 706 for test year and two preceding years.

IV. TAXES

1. Provide a copy of the latest PA corporate tax report and the latest PA corporate tax settlement.

2. Submit details of calculations for taxes, other than income, where a company is assessed taxes for doing business in another state, or on its property located in another state.

3. Submit a schedule showing for the last three years the income tax refunds, plus interest (net of taxes) received from the federal government due to prior years' claims.

4. Provide detailed computations showing the deferred income taxes derived by using accelerated tax depreciation applicable to post-1969 utility property that increases productive capacity, and ADR rates on property (separate between state and federal; also, rate used).

a. State whether tax depreciation is based on all rate base items claimed as of the end of the test year, and whether it is the annual tax depreciation at the end of the test year.

b. Reconcile any difference between the deferred tax balance, as shown as a reduction to measures of value (rate base), and the deferred tax balance as shown on the balance sheet.

5. Submit a schedule showing a breakdown of accumulated investment tax credits (3 percent, 4 percent, 7 percent, 10 percent and 11 percent), together with details of methods used to write-off the unamortized balances.

6. Submit a schedule showing the adjustments for taxable net income per books (including below-the-line items) and pro-forma under existing rates, together with an explanation of any difference between the adjustments. Indicate charitable donations and contributions in the tax calculation for ratemaking purposes.

7. Submit detailed calculations supporting taxable income before state and federal income taxes where the income tax is subject to allocation due to operations in another state, or due to operation of other taxable utility or non-utility business, or by operating divisions or areas.

8. Furnish a breakdown of major items comprising prepaid and deferred income tax charges and other deferred income tax credits and reserves by accounting areas.

9. Explain the reason for the use of cost of removal of any retired plant figures in the income tax calculations.

10. State whether all tax savings due to accelerated depreciation on property installed prior to 1970 have been passed through to income. (If not, explain.)

11. Show any income tax loss/gain carryovers from previous years that may affect test year income taxes or future year income taxes. Show loss/gain carryovers by years of origin and amounts remaining by years at the end of the test year.

12. Provide a detailed analysis of taxes accrued per books as of the test year date. Also supply the basis for the accrual and the amount of taxes accrued monthly.

13. Under Section 1552 of the Internal Revenue Code and Regulations at 1.1552-1 thereunder, if applicable, a parent company, in filing a consolidated income tax return for the group, must choose one of four options by which it must allocate total income tax liability of the group to the participating members to determine each member's tax liability to the federal government. (If this interrogatory is not applicable, so state).

a. State what option has been chosen by the group.

b. Provide, in summary form, the amount of tax liability that has been allocated to each of the participating members in the consolidated income tax return.

c. Provide a schedule, in summary form, of contributions, which were determined on the basis of separate tax return calculations, made by each of the participating members to the tax liability indicated in the consolidated group tax return. Provide total amounts of actual payments to the tax depository for the tax year, as computed on the basis of separate returns of members.

d. Provide annual income tax return for group, and if income tax return shows net operating loss, provide details of amount of net operating loss allocated to the income tax returns of each of the members of the consolidated group.

14. Provide a copy of the corporate federal tax returns and supporting schedules for the preceding three years and, if applicable, a copy of the calculation workpapers for the company's consolidated tax savings adjustment.

15. Provide a schedule of federal and Pennsylvania taxes, other than income taxes, calculated on the basis of test year per books, pro forma at present rates, and pro forma at proposed rates, to include the following categories:

- a. Social security.
- b. Unemployment.
- c. Capital stock.
- d. Public utility realty.
- e. PUC assessment.
- f. Other property.
- g. Any other appropriate categories.

16. Submit a schedule showing a breakdown of the deferred income taxes by state and federal per books, pro-forma, existing rates, and under proposed rates.

17. With respect to determination of income taxes, federal and state:

a. Show income tax results of the annualizing and normalizing adjustments to the test year record before any rate increase.

b. Show income taxes for the annualized and normalized test year.

c. Show income tax effect of the rate increase requested.

d. Show income taxes for the normalized and annualized test year after application of the full rate increase.

18. State amount of debt interest utilized for income tax calculations, and details of debt interest computations, under each of the following rate case bases:

- a. Actual test year.
- b. Annualized test year-end.
- c. Proposed test year-end.

V. RATE BASE

1. Provide a schedule showing the measures of value and the rates of return at the original cost in the current case. All claims made on this exhibit should be cross-referenced to appropriate exhibits.

2. If a claim is made for construction work in progress, include, in the form of an exhibit, the summary page from all work orders, amount expended at the end of the test year and anticipated in-service dates. Indicate if any of the construction work in progress will result in insurance recoveries, reimbursements, or retirements of existing facilities. Describe in exact detail the necessity of each project claimed if not detailed on the summary page from the work order. Include final completion dates and estimated total amounts to be spent on each project. (This exhibit should be updated at the conclusion of these proceedings.)

3. If a claim is made for non-revenue producing construction work in progress, include, in the form of an exhibit, the summary page from all work orders, amount expended at the end of the test year and anticipated in-service dates. Indicate if any of the construction work in progress will result in insurance recoveries, reimbursements, or retirements of existing facilities. Describe in exact detail the necessity of each project claimed if not detailed on the summary page from the work order. Include final completion data and estimated total amounts to be spent on each project. (These exhibits should be updated at the conclusion of these proceedings.)

4. If a claim is made for plant held for future use, supply the following:

- a. A brief description of the plant or land site and its original cost.
- b. Expected date of use for each item claimed.
- c. Explanation as to why it is necessary to acquire each item in advance of its date of use.
- d. Date when each item was acquired.

e. Date when each item was placed in the plant held for future use account.

5. If fuel stocks comprise part of the cash working capital claim, provide an exhibit showing the actual book balances (quantity and price) for the fuel inventories by type of fuel for the thirteen months prior to the end of the test year by location, station, etc. (Explain the method of determining claim if other than that described above.)

6. Explain in detail by statement or exhibit the appropriateness of claiming any additional items, not previously mentioned, in the measures of value.

7. Provide schedules and data in support of the following working capital items:

- a. Prepayments—list and identify all items.
- b. Federal income tax accrued or prepaid.
- c. Pa. state income tax accrued or prepaid.
- d. Pa. capital stock tax accrued or prepaid.
- e. Pa. public utility realty tax accrued or prepaid.
- f. Payroll taxes accrued or prepaid.
- g. Any adjustments related to the above items for ratemaking purposes.

8. Supply an exhibit supporting the claim for cash working capital requirement based on the lead-lag method.

a. Pro forma expenses and revenues are to be used in lieu of book data for computing lead-lag days.

9. Indicate if amortized expenses have been removed from the lead-lag study. If so, please provide documentation showing such removal. If not, provide a list of such amortization expenses included.

10. Identify the funds availability arrangements or terms which the company has with its banks with respect to deposits of customer checks. For example, does the company have same day or next day access to funds deposited?

11. In reference to materials and supplies:

a. What method of inventory valuation was used to develop the claim for materials and supplies?

b. Does the utility use a material and supply model to calculate needed material and supply levels?

c. If so, provide the model. Supply an illustrative example of how the monthly balances are derived.

d. Provide the actual monthly value for the inventory of materials and supplies for the past 12 months. Supply as of the end of the test year, a 13-month average, by month, for the material and supply account.

e. Provide the monthly level of materials and supplies for three years prior to the conclusion of the historic test year.

12. For each non-blanket or projected plant addition to cost the lesser of \$100,000 or 0.5% of current rate base, included in the future test year, please provide:

- a. Description of the project.
- b. Original budgeted cost (broken down by AFUDC and non-AFUDC components).

c. Current budgeted cost (broken down by AFUDC and non-AFUDC components).

d. Reason for change in budgeted cost.

e. Original estimated date of completion and in service.

f. Current estimated date of completion and in service.

g. Reason for change in completion date.

h. Anticipated retirement related to the plant addition.

i. Starting date of project.

j. Amount expended to date.

k. Percent of project currently complete.

l. The depreciation rate applicable.

m. Identify which projects are due to a PA-DEP or EPA requirement.

13. Explain how the future test year plant balances were projected and provide supporting workpapers and documentation.

14. Are all of the assets used in the plant-in-service claim used exclusively by the utility? If not, provide the estimated percentage that each shared asset is used by other entities.

15. Is all plant included in rate base currently being used in providing water service? If not, provide a schedule which presents those plant items which are not, and indicate the corresponding amounts and account numbers. Further, provide a detailed narrative explaining the reason why such plant is not being used and the anticipated future disposition of the plant.

16. Provide all workpapers and supporting documentation showing the derivation of the projected balances of contributions in aid of construction, customer advances for construction and company service line and customer deposits for the future test year.

VI. DEPRECIATION

1. Provide a description of the depreciation methods utilized in calculating annual depreciation amounts and depreciation reserves, together with a discussion of the significant factors which were considered in arriving at estimates of service life and dispersion by account. Supply a comprehensive statement of any changes made in method of depreciation. Provide dates of all field inspections and facilities visited.

2. Set forth, in exhibit form, charts depicting the original and estimated survivor curves and a tabular presentation of the original life table plotted on the chart for each account where the retirement rate method of analysis is utilized.

3. Provide the surviving original cost at test year end by vintage by account and include applicable depreciation reserves and accruals. These calculations should be provided for plant in service as well as other categories of plant, including, but not limited to, contributions in aid of construction and customers' advances for construction.

4. Provide a comparison of respondent's calculated depreciation reserve v. book reserve by account at the end of the test year.

5. Supply a schedule by account and depreciable group showing the survivor curve and annual accrual rate estimated to be appropriate:

a. For the purposes of this filing.

b. For the purposes of the most recent rate increase filing prior to the current proceedings.

6. Provide an exhibit showing gross salvage, cost of removal, and net salvage for the five most recent calendar or fiscal years by account.

VII. RATE OF RETURN

1. Provide capitalization and capitalization ratios for the last 5-year period and projected through the next two years (with short-term debt and without short-term debt for the company, parent and system (consolidated)).

a. Provide year-end interest coverages before and after taxes for the last three years and at the latest date (indenture and SEC bases) for the company, parent and system (consolidated).

b. Provide year-end preferred stock dividend coverages for last three years and at latest date (charter and SEC bases).

2. Provide latest prospectus (company and parent).

3. Supply projected capital requirements and sources of company, parent and system (consolidated) for the test year and each of three comparable future years.

4. Provide a schedule of debt and preferred stock of company, parent and system (consolidated) as of test year-end and latest date, detailing for each issue (if applicable):

a. Date of issue.

b. Date of maturity.

c. Amount issued.

d. Amount outstanding.

e. Amount retired.

f. Amount required.

g. Gain on reacquisition.

h. Coupon rate.

i. Discount or premium at issuance.

j. Issuance expenses.

k. Net proceeds.

l. Sinking fund requirements.

m. Effective interest rate.

n. Dividend rate.

o. Effective cost rate.

p. Total average weighted effective cost rate.

5. Supply financial data of company and/or parent for last five years:

a. Earnings-price ratio (average).

b. Earnings-book value ratio (per share basis) (avg. book value).

c. Dividend yield (average).

d. Earnings per share (dollar).

e. Dividends per share (dollars).

f. Average book value per share yearly.

g. Average yearly market price per share (monthly high-low basis).

h. Pre-tax funded debt interest coverage.

i. Post-tax funded debt interest coverage.

j. Market price-book value ratio.

6. Provide AFUDC charged by company at test year-end and latest date, explain method by which rate was calculated and provide workpaper showing derivation of the company's current AFUDC rate.

7. Set forth provisions of company's and parent's charter and indentures (if applicable) which describe coverage requirements, limits on proportions of types of capital outstanding, and restrictions on dividend payouts.

8. Attach copies of the summaries of the company's projected budgets for the next two years (revenues, expenses and capital).

9. Describe long-term debt reacquisitions by company and parent as follows:

a. Reacquisitions by issue by year.

b. Total gain on reacquisitions by issue by year.

c. Accounting of gain for income tax and book purposes.

10. Provide the following information concerning compensating bank balance requirements for actual test year:

a. Name of each bank.

b. Address of each bank.

c. Type of accounts with each bank (checking, savings, escrow, other services, etc.).

d. Average daily balance in each account.

e. Amount and percentage requirements for compensating bank balances at each bank.

f. Average daily compensating bank balance at each bank.

g. Documents from each bank explaining compensating bank balance requirements.

h. Interest earned on each type of account.

11. Provide the following information concerning bank notes payable for actual test year:

a. Line of credit at each bank.

b. Average daily balances of notes payable to each bank, by name of bank.

c. Interest rate charged on each bank note (prime rate, formula).

d. Purpose of each bank note (e.g., construction, fuel storage, working capital, debt retirement).

e. Prospective future need for this type of financing.

12. Submit details on company or parent common stock offerings (past five years to present) as follows:

a. Date of prospectus.

b. Date of offering.

c. Record date.

- d. Offering period—dates and number of days.
- e. Amount and number of shares of offering.
- f. Offering ratio (if rights offering).
- g. Percent subscribed.
- h. Offering price.
- i. Gross proceeds per share.
- j. Expenses per share.
- k. Net proceeds per share (i—j).
- l. Market price per share.
 - (1) At record date.
 - (2) At offering date.
 - (3) One month after close of offering.
- m. Average market price during offering.
 - (1) Price per share.
 - (2) Rights per share—average value of rights.
- n. Latest reported earnings per share at time of offering.
- o. Latest reported dividends at time of offering.

13. Attach chart explaining company's corporate relationship to its affiliates (system structure).

14. If the utility plans to make a formal claim for a specified allowable rate of return, provide the following data in statement or exhibit form:

- a. Claimed capitalization and capitalization ratios with supporting data.
- b. Claimed cost of long-term debt with supporting data.
- c. Claimed cost of short-term debt with supporting data.
- d. Claimed cost of total debt with supporting data.
- e. Claimed cost of preferred stock with supporting data.
- f. Claimed cost of common equity with supporting data.

15. Supply copies of the following documents for the company and, if applicable, its parent:

- a. Most recent annual report to shareholders including any statistical supplements.
- b. Most recent SEC form 10K.
- c. All SEC form 10Q reports issued within last year.

16. Supply copies of the company's balance sheets for each month/quarter for the last two years.

17. Provide the bond rating history for the company and, if applicable, its parent from the major credit rating agencies for the last five years.

18. Provide copies of all bond rating reports relating to the company and, if applicable, its parent for the past two years.

19. Supply copies of all presentations by the company's and, if applicable, its parent's management to securities analysts during the past two years. This would include presentations of financial projections.

20. Provide a listing of all securities issuances for the company and, if applicable, its parent projected for the next two years. The response should identify for each projected issuance the date, dollar amount, type of security, and effective cost rate.

21. Identify any plan by the company to refinance high cost long-term debt or preferred stock.

22. Provide copies of all securities analysts reports relating to the company and/or its parent issued within the past two years.

23. If applicable, supply a listing of all common equity infusions from the parent to the company over the past five years. In each case, identify date and dollar amount.

24. If applicable, identify the company's common dividend payments to its parent for each of the last five years.

25. Provide the latest year-by-year financial projections for the company for the next five years. Also, please indicate the date these projections were prepared; whether approved by management; and whether the projections have been submitted to bond rating agencies. The information will be treated in a confidential manner, if requested.

26. Provide the company's 5-year construction budget.

27. Identify the company's and, if applicable, its parent's capital structure targets (percentages of capital types). Provide the complete basis for the capital structure targets.

28. For each month, of the most recent 24 months, supply the company's

- a. Short-term debt balance.
- b. Short-term debt interest rate.
- c. Balance of construction work in progress.

d. Balance of construction work in progress which is eligible for AFUDC accrual:

29. Fully identify all debt (other than instruments traded in public markets) owed to all shareholders, corporate officers, or members of the board of directors, its affiliates, parent company, or subsidiaries.

30. Provide a summary statement of all stock dividends, splits, or par value changes during the 2-year calendar period preceding the rate case filing.

31. If a claim of the filing utility is based on utilization of the capital structure or capital costs of the parent company and system (consolidated), the reasons for this claim must be fully stated and supported.

32. To the extent not provided elsewhere, supply financial data of company and/or parent for the last five years.

- a. Times interest earned ratio—pre and post tax basis.
- b. Preferred stock dividend coverage ratio—post tax basis.
- c. Times fixed charges earned ratio—pre tax basis.
- d. Dividend payout ratio.

e. AFUDC as a percent of earnings available for common equity.

f. Construction work in progress as a percent of net utility plant.

g. Effective income tax rate.

h. Internal cash generations as a percent of total capital requirements.

VIII. RATE STRUCTURE AND COST OF SERVICE

1. Provide a complete (fully allocated) cost of service study if an interval of approximately three years has passed between a previous cost of service study and the historic test year date of the current filing. The cost of service study shall provide the necessary data to determine if the water rate structure is fair and equitable to all classifications of water users (including public and private fire protection customers) and reflects, as nearly as possible, the cost of providing the service. The study shall correspond to the test year proposed revenue requirements (future test year only, if used). Summaries of conclusions and all back-up calculations shall be made part of the submission of the cost of service study, and shall include the following:

a. A description of the allocation methods used. A comparison of the allocated cost of service by class with the present and proposed revenues. A cost of service schedule showing the rate of return produced by present and proposed rates by class of service.

b. Indicate if the method used for establishing the allocation factors in the cost of service study deviates from the previous study submitted in the last rate case. If yes, indicate which allocation factors were changed and discuss the reason for the changes.

c. Supply the average day, the maximum day and the maximum hour deliveries to the system adjusted for storage for the test year and two prior years. Also provide workpapers, analyses, comparative data or other documentation supporting the estimated maximum day and peak hour demands by customer class reflected in the company's cost of service study.

d. Explain thoroughly the methodology employed if the company distinguishes between transmission and distribution mains in its allocation of costs.

e. Provide a detailed explanation of how storage is utilized to meet base, maximum day and maximum hour demands.

f. Provide workpapers, calculations and supporting documentation which develop the equivalent meters and equivalent service line weights reflected in the company's cost of service study.

g. Provide all workpapers and supporting documentation for the fire flow requirement and duration utilized in the cost of service study.

h. Provide a breakdown of the number and size of private fire services according to the general water service class of customer.

i. Provide a calculation of the company's base cost of water per unit of consumption.

j. Provide a detailed cost analysis that supports the company's customer charges, by meter size, showing all direct and indirect costs included.

2. Provide a listing of negotiated special rate contracts which includes a comparison of revenues under special rate contracts and under tariff rates. Provide the cost of service treatment of any deficiency in revenues resulting from the negotiated special rate contracts.

IX. QUALITY OF SERVICE

1. Indicate whether the company is in violation of any provision of the Pennsylvania Safe Drinking Water Act (SDWA) or any rule, regulation or order, or any condition of any permit, variance or exemption granted by the Department of Environmental Protection (DEP), or its predecessor.

a. Provide information indicating whether the company is in compliance with SDWA provisions at 25 Pa. Code, § 109.401 regarding general public notification requirements:

(i) Provide a copy of each public notification given in accordance with this section, since the last rate proceeding.

(ii) Provide a detailed explanation of all actions taken to remedy an acute violation, and/or to comply with the requirements prescribed by a variance or exemption.

(iii) State whether any fines or penalties were assessed by DEP, and indicate the amounts paid by the company.

b. Provide the most recent copies of all annual consumer confidence reports issued pursuant to SDWA Amendments of 1996 since the last rate proceeding.

(i) Provide any annual consumer confidence reports which reflect violations of state and federal safe drinking water requirements.

(ii) Explain how these violations were resolved.

2. Indicate whether the company is in compliance with 52 Pa. Code, § 65.5(a) regarding normal operating pressure standards, and with 52 Pa. Code, § 65.6(d) regarding pressure surveys at regular intervals.

a. Provide details on any major water pressure problems which had occurred since the last rate proceeding in any part of the water distribution system.

b. Describe any action taken on a temporary basis, and the long term solutions developed to address any major water pressure problems.

3. Provide support to demonstrate that water service is being furnished on a continuous basis by supplying a summary of the company's records of each service interruption greater than 24 hours since the last rate proceeding.

4. Provide a discussion of the company's policy, or provide a copy of the policy if in written form, on tracking and responding to customer complaints.

a. Provide a summary report demonstrating the company's compliance with 52 Pa. Code, § 65.3 regarding the full and prompt investigation of service or facility complaints and the record keeping requirements of such complaints.

5. Indicate whether the company is in compliance with 52 Pa. Code, § 65.4(b) regarding complete and current mapping of the entire distribution system.

6. Provide a summary report demonstrating the company's efforts in water conservation, since the last rate proceeding, pursuant to 52 Pa. Code, § 65.20.

7. Provide a discussion of the company's policy regarding meter requirements, replacements and testing. State if the company's procedures are in compliance with 52 Pa. Code, § 65.8(b).

a. Provide meter test records as required in 52 Pa. Code, § 65.8(c) for the 50 meters most recently removed from service.

b. Provide a discussion of the company's policy and history of compliance with 52 Pa. Code, § 65.9 regarding adjustment of bills for meter error within the last year.

X. BALANCE SHEET

1. Provide a comparative balance sheet for the test year-end and the preceding year-end.

2. Provide a detail of other physical property, investments in affiliated companies and other investments.

3. Provide the amounts and purpose of special cash accounts as of the test-year end.

4. Describe the nature and amounts of notes receivable, accounts receivable from associated companies, and any other significant receivables, other than customers' accounts.

5. Provide the amount of accumulated reserve for uncollectible accounts, method and rate of accrual, amounts accrued and amounts written-off in each of the last three years.

6. Provide a list of prepayments and give an explanation of special prepayments.

7. Explain in detail any other significant (in amount) current assets listed on balance sheet.

8. Explain in detail, including the amount and purpose, the deferred asset accounts that currently operate to effect or will at a later date affect the operating account supplying:

a. Origin of these accounts.

b. Probable changes to this account in the near future.

c. Amortization of these accounts currently charged to operations or to be charged in the near future.

9. Explain the nature of accounts payable to associated companies, and note amounts of significant items.

10. Provide details of other deferred credits as to their origin and disposition policy (e.g., amortization).

11. Provide details of any significant reserves, other than depreciation and bad debt, appearing on balance sheet.

12. Provide an analysis of unappropriated retained earnings for the test year and two preceding years.

13. Describe the purpose of any advances made by the company to its parent corporation and describe all terms and conditions associated with such advances, including an estimate of future advances or repayments that are expected to occur.

XI. OTHER DATA

1. Provide the company's monthly balance sheets and income statements for each month of the historic and future test year.

2. Supply a copy of internal and independent audit reports of the test year and prior calendar year, noting any exceptions and recommendations and disposition thereof.

3. Provide all monthly and/or quarterly budget variance reports to management and/or the board of directors submitted during the past year. Please provide the most recent detailed budget variance report which the company compiled, and update as additional reports are issued.

4. Provide a copy of the company's most recent operating and capital budgets.

5. Provide a schedule that shows the percentage of unaccounted for water for the test year and two prior years. Describe how this amount was determined and explain any steps taken to reduce unaccounted for water.

6. Provide a corporate history (include the dates of original incorporation, subsequent mergers and/or acquisitions). Indicate all counties and cities and other governmental subdivisions to which service is provided (including service areas outside the state), and the total population in the area served.

[Pa.B. Doc. No. 03-348. Filed for public inspection February 28, 2003, 9:00 a.m.]

STATE ARCHITECTS LICENSURE BOARD

[49 PA. CODE CH. 9]

Firm Practice

The State Architects Licensure Board (Board) proposes to amend §§ 9.161—9.164 by adding the requirements for registration as a limited liability company or limited liability partnership to read as set forth in Annex A.

A. *Effective Date*

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

B. *Statutory Authority*

The proposed amendments are authorized under sections 6(a) and 13(j) of the Architects Licensure Law (act) (63 P. S. §§ 34.6(a) and 34.13(j)).

C. *Background and Purpose*

Prior to 1998, section 13 of the act, regarding firm practice, listed the following entities permitted to engage in the practice of architecture: sole proprietorships, partnerships, professional associations, professional corporations and business corporations. In 1998, section 13 of the

act was amended to include limited liability companies and limited liability partnerships as acceptable entities. The Board's regulations have not been updated to reflect the changes in the act relating to firm practice. Hence, this proposed rulemaking.

D. Description of the Proposed

The Board proposes to amend § 9.161 (relating to compliance with applicable statutes) by adding limited liability companies and limited liability partnerships as entities permitted to engage in the practice of architecture and by requiring compliance with 15 Pa.C.S. Chapters 82 and 89 (relating to limited liability partnerships; and limited liability companies).

The amendment to § 9.162(2) (relating to firm practice) would clarify that its requirements apply to both general partnerships and limited liability partnerships. Section 9.162(5) adds the requirements for registering as a limited liability company, by mirroring the requirements set forth in the act and by adding the additional requirement that at least one member or manager of the company is be a licensee of the Board.

Section 9.163 (relating to prior approval by the Board) requires that the applicant seeking registration for an entity permitted to practice architecture in this Commonwealth shall complete a formal application provided by the Board.

Section 9.164 (relating to exception for two owners) adds limited liability companies and limited liability partnerships to the list of entities which may be wholly owned by only two persons.

E. Fiscal Impact and Paperwork Requirements

The proposed amendments should have no fiscal impact on the Commonwealth or its political subdivisions. Likewise, the proposed amendments should not necessitate legal, accounting, reporting or other paperwork requirements.

F. Sunset Date

The Board continuously monitors the cost effectiveness of its regulations. Therefore, no sunset date has been assigned.

G. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 27, 2003, the Board submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC), the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) and the House Professional Licensure Committee (HPLC). In addition to submitting the proposed rulemaking, the Board has provided IRRC, the SCP/PLC and the HPLC with a copy of a detailed Regulatory Analysis Form prepared by the Board. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act (71 P. S. § 745.5(g)), if IRRC has objections to any portion of the proposed rulemaking, it will notify the Board within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review of objections by the Board, the General Assembly and the Governor prior to final publication of the rulemaking.

I. Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed

rulemaking to Dorna Thorpe, State Architects Licensure Board, 116 Pine Street, P.O. Box 2649, Harrisburg, PA 17105-2649 dothorpe@state.pa.us within 30 days following publication of this proposed rulemaking in the Pennsylvania Bulletin.

ANN SHEPARD HOUSTON, President

Fiscal Note: 16A-417. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 9. STATE ARCHITECTS LICENSURE BOARD

PROFESSIONAL AND CORPORATE PRACTICE

§ 9.161. Compliance with applicable statutes.

An architect or group of architects may elect to practice architecture professionally as a sole proprietorship, a partnership, a professional association, a professional corporation, a limited liability company, a limited liability partnership or a business corporation. A practice so elected shall be formed and conducted under the act and this chapter. In addition, the practice shall comply as follows:

* * * * *

(6) In the case of a limited liability company, with 15 Pa.C.S. Chapter 89 (relating to limited liability companies).

(7) In the case of a limited liability partnership, with 15 Pa.C.S. Chapter 82 (relating to limited liability partnerships).

(8) * * *

§ 9.162. Firm practice.

The practice of architecture may be conducted in one of the following business forms:

* * * * *

(2) A partnership (general or limited liability) or professional association, when the following exist:

* * * * *

(5) A limited liability company, when the following exist:

(i) At least two-thirds of the members if managed by members or at least two-thirds of the managers if managed by managers are licensed under the laws of any state to practice architecture, engineering or landscape architecture.

(ii) At least one-third of the members if managed by members or at least one-third of the managers if managed by managers are licensed under the laws of any state to practice architecture.

(iii) At least one member or manager is a licensee of the Board.

(iv) At least two-thirds of all classes of voting membership at any one time shall be owned by an individual licensed under the laws of any state to practice architecture, engineering or landscape architecture.

(v) At least one-third of all classes of voting membership at any one time shall be owned by an individual licensed under the laws of any state to practice architecture.

§ 9.163. Prior approval by the Board.

The practice of architecture may not be conducted in one of the business forms specified [at] in § 9.162 (relating to firm practice) without first receiving the written approval of the Board. Written approval shall be sought by [filing] submitting a completed application on forms provided by the Board along with the following documents [with the Board]:

* * * * *

§ 9.164. Exception for two owners.

Section 9.162 (relating to firm practice) will not be construed to prevent the practice of architecture in a business form which is wholly owned by only two persons. The partnership, professional association, professional corporation, **limited liability company, limited liability partnership** or business corporation shall have at least one owner who is a licensee of the Board, and who owns at least 50% of the business.

[Pa.B. Doc. No. 03-349. Filed for public inspection February 28, 2003, 9:00 a.m.]

STATE BOARD OF OPTOMETRY

[49 PA. CODE CH. 23] Continuing Education

The State Board of Optometry (Board) proposes to amend §§ 23.82, 23.83 and 23.87 (relating to continuing education hour requirements; continuing education subject matter; and reporting of continuing education credit hours) to read as set forth in Annex A. The proposed amendments would update the Board's continuing education regulations and conform them to prior regulatory amendments.

Effective Date

These proposed amendments would be effective upon publication of final-form rulemaking in the *Pennsylvania Bulletin* and would apply to continuing education credits earned during the 2002—2004 biennial renewal period.

Statutory Authority

Section 3(b)(12) of the Optometric Practice and Licensure Act (act) (63 P. S. § 244.3(b)(12)) authorizes the Board to approve continuing education. Section 3(b)(14) of the act authorizes the Board to “promulgate all rules and regulations necessary to carry out the purposes of this act.”

Background and Need for the Amendments

The Board recently deleted § 23.201 and amended § 23.202 (relating to the application procedure for certification in pharmaceutical agents for therapeutic purposes) by final-form rulemaking published at 32 Pa.B. 2886 (June 15, 2002). The Board's continuing education regulations refer to §§ 23.201 and 23.202, and these references must be updated to conform with the prior regulatory amendments. In addition, the Board's proposed rule-

making to its continuing education regulations will clarify the subject matter acceptable to the Board for continuing education in pharmaceutical agents for therapeutic purposes. Finally, the proposed rulemaking clarifies a licensee's duties in reporting continuing education courses to the Board. The proposed rulemaking conforms the Board's continuing education regulations to the statute and prior regulatory amendments and thereby eliminates confusion regarding the acceptable subject matter for continuing education courses related to pharmaceutical agents for therapeutic purposes.

Description of Proposed Amendments

§ 23.82. Continuing education hour requirements.

The Board proposes to amend § 23.82(a) by deleting the references to the Board's regulations in §§ 23.201 and 23.202 and replacing them with references to section 4.1(a)(2) of the act (63 P. S. § 244.4a(a)(2)). This proposed amendment conforms the regulations to the Board's June 15, 2002, amendments of §§ 23.201 and 23.202, which deleted § 23.201 and amended § 23.202.

The Board proposes to amend § 23.82(b) to reflect the right to a hearing before discipline is imposed as provided in 2 Pa.C.S. § 504 (relating to hearing and record) and section 7(e) of the Optometric Practice and Licensure Act (63 P. S. § 244.7(e)). The Board may not unilaterally place a license on “inactive status” for failure to complete mandatory continuing education. The failure to complete mandatory continuing education is a violation of the act and regulations of the Board and the notice and hearing procedures of 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law) and the act must be followed before the Board may discipline a licensee. The Board proposes to amend the regulation to provide that the Board may under notice and opportunity for a hearing, impose discipline on a licensee for failing to complete mandatory continuing education in accordance with section 7(3) of the act (63 P. S. § 244.7(c)).

§ 23.83. Continuing education subject matter.

The Board proposes to amend this section to reflect the changes made in the 1996 amendments to the act, in section 5(b) of the act (63 P. S. § 244.5(b)), which require optometrists who are certified to administer and prescribe pharmaceutical agents for therapeutic purposes (optometrists holding therapeutic certification) to complete at least 6 hours in the administration and prescription of pharmaceutical agents for therapeutic purposes. The proposed amendment notifies optometrists that these courses shall provide instruction regarding the treatment and management of ocular or oculo-systemic disease. The proposed amendment also notifies optometrists that Board-approved courses of therapeutic content will be designated with a course number with the suffix “T.” In addition, the proposed amendment instructs course providers that the Board will notify the provider of approval of a course. Finally, the proposed amendment requests that preapproved course providers indicate on the certificate of attendance that the course is a therapeutic course.

§ 23.87. Reporting of continuing education hours.

The Board proposes to amend § 23.87 to conform the regulation to the current statutory requirement for biennial continuing education, 30 hours, and to note that providers with therapeutic certification shall include at least 6 hours in therapeutic courses. In addition, the Board proposes to amend the requirements for documentation that shall be submitted, upon request, to verify attendance at mandatory continuing education. The proposed amendment provides that optometrists shall in-

clude the course approval number to the Board when submitting documentation of continuing education compliance. The Board provides this number to the course provider. The course provider generally provides the course number on the certificate of attendance. If the course provider does not provide the course number on the certificate of attendance, the proposed amendment places the burden of obtaining the course number from the provider on the optometrist.

Fiscal Impact and Paperwork Requirements

The proposed amendments should have no fiscal impact on licensees, the Board, the private sector, the general public or any political subdivisions. The proposed amendments should not create additional paperwork for the Board or the private sector.

Sunset Date

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 12, 2003, the Board submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC), the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) and the House Professional Licensure Committee (HPLC). In addition to submitting the proposed rulemaking, the Board has provided IRRC, the SCP/PLC and the HPLC with a copy of a detailed Regulatory Analysis Form prepared by the Board. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed rulemaking, it will notify the Board within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review of objections by the Board, the General Assembly and the Governor prior to publication of the regulations.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Deborah Smith, Board Administrator, State Board of Optometry, P. O. Box 2649, Harrisburg, PA, 17105, www.dos.state.pa.us, within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

STEVEN J. RETO, O.D.,
Chairperson

Fiscal Note: 16A-529. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 23. STATE BOARD OF OPTOMETRY CONTINUING EDUCATION

§ 23.82. Continuing education hour requirements.

(a) An applicant for biennial license renewal or reactivation of license is required to complete, during the 2

years preceding renewal or reactivation, a minimum of 30 hours of continuing education. For licensees certified in accordance with section 4.1 of the act (63 P. S. § 244.4a) **[and §§ 23.201 and 23.202 (relating to qualifications for certification; and application procedure)]**, at least 6 of the required 30 hours shall concern the prescription and administration of pharmaceutical agents for therapeutic purposes. Completion of a **Board-approved** course described in **[§ 23.201(b)(1) (Reserved)] section 4.1(a)(2) of the act (63 P. S. § 244.4a(a)(2))** shall satisfy the continuing education requirement for the biennial renewal period in which it is completed.

(b) Persons failing to meet the continuing education requirements for any biennial renewal period will **[have their licenses placed in an inactive status and will be prohibited from the practice of optometry until such time as educational criteria are met, license is renewed, and any fees and penalties are properly paid] be disciplined in accordance with section 7(e) of the act (63 P. S. § 244.7(e)).**

(c) The Board may waive the requirements of continuing education in cases of certified illness or undue hardship. It **[shall be]** is the duty of each licensee seeking waiver to notify the Board in writing and request **[such]** the waiver **[, which]** prior to the end of the biennial renewal period for which the waiver is sought. **The waiver will be granted, denied[,] or granted in part.**

§ 23.83. Continuing education subject matter.

(a) Acceptable courses of study are limited to those pertaining to the use of means or methods for examination, diagnosis[,] and treatment of conditions of the human visual system and may include examination for and adapting and fitting of all types of lenses. The Board will not accept courses of study which do not relate to the actual practice of optometry such as studies in office management and financial procedures.

(b) **Courses that will meet the requirements for certification in the prescription and administration of pharmaceutical agents for therapeutic purposes in accordance with section 4.1 of the act (63 P. S. § 244.4a) shall concern the treatment and management of ocular or oculo-systemic disease. Course providers will receive notification of approval from the Board. Courses approved to meet the requirements for certification in the prescription and administration of pharmaceutical agents for therapeutic purposes will be given a course number with the suffix "T." Approval as a therapeutic course is subject to reevaluation by the Board. When courses in the prescription and administration of pharmaceutical agents for therapeutic purposes are provided by preapproved providers who do not receive a specific course number from the Board, course sponsors must indicate on the certificate of attendance that the course is offered to meet the requirements for certification.**

§ 23.87. Reporting of continuing education credit hours.

Applicants for a license or license renewal shall provide, at a time prescribed and on forms approved by the Board, a signed statement certifying that **[continuing education requirements have been met and] they have met the continuing education requirements in**

section 5(b) of the act (63 P. S. § 244.5(b)) by providing information [to document their certification,] which [information] shall include [but not be limited to] the following:

* * * * *

(3) Title of course, including the course number assigned by the Board, if applicable, and description of content. For those courses which are approved to meet the requirements for certification in the prescription and administration of pharmaceutical agents for therapeutic purposes, the licensee claiming credit for the course shall provide the Board with the course number.

* * * * *

[Pa.B. Doc. No. 03-350. Filed for public inspection February 28, 2003, 9:00 a.m.]

[49 PA. CODE CH. 23]
General Revisions

The State Board of Optometry (Board) proposes to amend §§ 23.1, 23.33—23.35, 23.42, 23.64 and 23.71 and to add § 23.72 to read as set forth in Annex A. The proposed rulemaking would generally update the Board's regulations to reflect current practices in the profession and to simplify the formation of professional corporations.

Effective Date

The proposed rulemaking would be effective upon publication of the final-form rulemaking in the Pennsylvania Bulletin.

Statutory Authority

Section 3(a)(2.1) of the Optometric Practice and Licensure Act (act) (63 P. S. § 244.3(a)(2.1)) added by the act of October 30, 1996 (P. L. 721, No. 130) (Act 130) provides that the Board shall have the duty "[t]o determine, in accordance with optometric education, training, professional competence and skill, the means and methods for examination, diagnosis and treatment of conditions of the visual system." Section 3(a)(3) of the act requires the Board "[t]o record all licenses in its office." Section 3(b)(9) of the act authorizes the Board "[t]o establish and administer a records system which records shall be open to public inspection during the regular business hours of the Board." Finally, section 3(b)(14) of the act authorizes the Board "[t]o promulgate all rules and regulations necessary to carry out the purposes of this act."

Background and Need for the Proposed Amendments

The Board's current regulations were promulgated prior to the amendments made by Act 130 and do not address the means and methods for the examination, diagnosis and treatment of conditions of the visual system. Act 130 placed additional duties on the Board. In addition, the Board routinely receives numerous requests for information regarding whether optometrists are permitted to perform specific procedures. Act 130 defines the practice of optometry very broadly. Act 130 specifies that the Board has the duty to address the more specific means and methods that optometrists may employ. This proposed rulemaking addresses both public inquiry and the amendments made by Act 130.

The Board's current regulations are outdated in that they do not set minimum requirements that optometrists shall follow in writing prescriptions and do not require optometrists to record the pharmaceutical agents used in a patient's medical record (optometrists were granted use of limited pharmaceutical agents by Act 130). In addition, the Board's regulations do not reflect the Board's current recordkeeping system. These proposed amendments are necessary to bring the Board's regulations into compliance with the amendments made in Act 130.

Following numerous meetings of the Board's regulations committee and consideration by the entire Board, an exposure draft was sent to the Pennsylvania Optometric Association (Association), the Pennsylvania College of Optometry (College) and the Pennsylvania Academy of Ophthalmology (Academy). Following this solicitation of input from stakeholders, the Board placed notices of a public hearing in major newspapers of this Commonwealth inviting the general public to a public hearing on July 12, 2001. The Association, College and Academy sent representatives to the public hearing. No members of the general public attended the meeting. After considering the input received, the Board now proposes the amendments as set forth in Annex A.

Description of the Proposed Amendments

§ 23.1 (relating to definitions)

In accordance with the mandate of Act 130, the Board proposes to amend § 23.1 to define "means and methods for the examination, diagnosis and treatment of conditions of the visual system." In formulating the provisions of the proposal, the Board considered extensive comments from the College, Academy and Association at its public hearing held on July 12, 2001. The Board's proposal includes diagnostic and treatment procedures that have been performed by optometrists for up to 25 years as well as newer technologies that have only become a standard part of optometric practice in the past few years.

The proposed amendment provides that optometrists may employ the following diagnostic techniques: the use of any computerized or automatic refracting device, visual field testing, ophthalmoscopy, anterior and posterior segment photography, provocative tests, electrodiagnostic tests, the use of lasers for diagnostic purposes, ultrasound examination of the eye and orbit and diagnostic tests to determine the patency of the lacrimal system. In addition, the proposed amendments provide that optometrists may order radiographs, computer assisted tomography scans, magnetic resonance imaging scans and laboratory work. Finally, the proposed amendments provide that optometrists may order, interpret and report on angiographic studies. The proposed amendments also address means and methods of treatment. The amendments provide that optometrists may employ vision therapy or orthoptics, low vision rehabilitation, epilation of lashes and may treat the lacrimal system including using punctal plugs. The specific procedures are authorized by Act 130 and are consistent with the practice of optometry in all states surrounding this Commonwealth.

§ 23.33 (relating to practice)

The Board proposes to amend § 23.33 to conform to current practice in the field of optometry. Subsection (a) of the current regulation restricts an optometrist to practice in a room used exclusively for the practice of optometry. The Board proposes to amend subsection (a) to clarify that this restriction applies only when the optometrist is practicing in his own office. The reality of today's

practice is that optometrists practice in health care facilities as well as their offices and cannot, therefore, always practice in a room used exclusively for the practice of optometry.

The Board also proposes to amend subsection (b) to further define the practice of an optometrist in a licensed health care facility. The proposed amendment merely reflects the current state of practice of the profession, defining "licensed health care facility" to include "in-patient or out-patient hospitals and emergency rooms, nursing homes and long term care facilities, or any facility with the need for optometric services."

Finally, the Board proposes to amend § 23.33 by adding a subsection (e) to permit optometrists to provide visual screenings at any location, public or private, within this Commonwealth. Optometrists are frequently asked to perform simple visual screenings, which do not require the facilities of the optometric office or health care facility, at various events and locations. The amendment would permit optometrists to perform these screenings. The provision of vision screening services is a great benefit to the citizens of this Commonwealth.

§§ 23.34 and 23.35 (relating to professional corporations; and fictitious names)

The Board proposes to amend §§ 23.34 and 23.35 to reflect current optometric practice and to reflect the current recordkeeping procedures of the Board administrative office and the Department of State Corporation Bureau (Bureau). The Board proposes to amend § 23.34(a) to permit optometrists to incorporate with other health care professionals if authorized by the Commonwealth's laws pertaining to incorporation. The Board proposes to amend §§ 23.34 and 23.35 by deleting the requirements that optometrists file articles of incorporation or fictitious name registrations with the Board for approval prior to filing with the Bureau. Departmental practice is for the Bureau to send copies of all optometric filings to the Board for review. Because the Bureau is essentially a filing office and is not staffed to ensure compliance with the current §§ 23.34 and 23.35, there is no way to enforce the current provisions. In addition, the Board has found no public benefit to the current requirements of these sections.

§ 23.42 (relating to equipment)

The Board proposes to amend § 23.42 first by clarifying that the equipment listed in the section is the minimum required for performing a basic, rather than "complete" optometric examination. In addition, the Board proposes to replace the equipment ophthalmometer with the equipment keratometer. This change reflects current practice.

§ 23.64 (relating to professional conduct)

The Board proposes to add subsection (c) to § 23.64. Subsection (c) would allow an optometrist to terminate his care of a patient who is not adhering to appropriate regimens of care and follow-up. The proposed subsection would require the optometrist to notify the patient in writing and explain why the optometrist was terminating his care of the patient. Finally, the proposed subsection would require the optometrist to copy the patient's record and give the record either to the patient or to the subsequent treating optometrist.

§ 23.71 (relating to patient records)

The Board proposes to amend § 23.71 to reflect current practice. The changes reflect the current terms used ("uncorrected" vision instead of "naked" vision) and refer to the use of perimetry, which is the standard in visual

field testing. In addition, the Board proposes to amend § 23.71 by adding subsection (a)(19) which requires the optometrist to record in the patient's medical record any pharmaceutical agents used or prescribed, including strength, dosage, number of refills and adverse reaction, if applicable. The information updates the regulations in compliance with Act 130's grant of authority to use pharmaceutical agents and reflects proper medical practice in recordkeeping.

Finally, the Board proposes to amend § 23.71(c) by setting forth requirements for optometrists who provide a patient with a contact lens prescription. The current section provides that the optometrist has the discretion to determine whether to provide a patient with a contact lens prescription rather than dispensing the lens to the patient. Some optometrists have been reluctant to provide patients with a contact lens prescription, even when the patient requested the prescription, for fear of liability if the dispenser provides the patient with incorrect lenses. The proposed subsection (c)(1) requires the optometrist to determine all requirements for a satisfactory fit prior to providing a contact lens prescription. This provision protects the optometrist by clarifying the optometrist's responsibility in determining fit requirements for contact lenses. The proposed subsection (c)(2) provides that an optometrist shall consider all contact lenses used in determining the contact lens prescription to be diagnostic lenses. This provision protects the optometrist by clarifying that the optometrist has not determined the final prescription until the optometrist writes the prescription, because any trial lenses used are merely diagnostic.

§ 23.72 (relating to prescriptions)

The Board proposes to amend its regulations by adding requirements for prescriptions in § 23.72. Act 130 expanded the scope of practice of optometry to include "[t]he administration and prescription of legend and nonlegend drugs as approved by the Secretary of Health. . ." 63 P. S. § 244.2. Prior to 1996, optometrists only wrote prescriptions for contact lenses and spectacles, and the Board's regulations did not set requirements for these prescriptions. To standardize practice in this Commonwealth and ensure that all optometrists in this Commonwealth include information important to the patient on any prescription written, the Board proposes requirements on optometric prescriptions generally and proposes to set specific requirements for contact lens, spectacle and pharmaceutical prescriptions.

Proposed § 23.72 would require that all optometric prescriptions bear the name, address and license number of the optometrist, the name of the patient, date the prescription is issued and expiration date. Contact lens prescriptions would have to specify the lens type, all specifications necessary for the ordering and fabrication of the lenses, number of refills and expiration date consistent with the type and modality of use of the contact lens being prescribed, but in no case greater than 1 year. These requirements are consistent with the generally accepted standard of optometric practice and ensure that the contact lens dispenser will dispense the proper lenses for the patient as determined by the optometrist. In addition, the maximum of 1 year expiration date ensures that contact lens wearing patients will be rechecked by the optometrist at least yearly, the maximum time period recommended by medical professionals. For spectacles, the maximum time period recommended for reexamination is 2 years. This time period is reflected in § 23.71(b).

Fiscal Impact and Paperwork Requirements

The proposed amendments should have no fiscal impact on licensees, the Board, the private sector, the general public or any political subdivisions. The proposed amendments should not create additional paperwork for the Board or the private sector.

Sunset Date

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 12, 2003, the Board submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC), the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) and the House Professional Licensure Committee (HPLC). In addition to submitting the proposed rulemaking, the Board has provided IRRC, SCP/PLC and HPLC with a copy of a detailed Regulatory Analysis Form prepared by the Board. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act (71 P. S. § 745.5(g)), if IRRC has objections to any portion of the proposed rulemaking, it will notify the Board within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review of objections by the Board, the General Assembly and the Governor prior to publication of the regulations.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Deborah Smith, Board Administrator, P. O. Box 2649, Harrisburg, PA 17105-2649, www.dos.state.pa.us, within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

STEVEN J. RETO, O.D.,
Chairperson

Fiscal Note: 16A-528. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

**CHAPTER 23. STATE BOARD OF OPTOMETRY
GENERAL PROVISIONS**

§ 23.1. Definitions.

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

* * * * *

Means and methods for the examination, diagnosis and treatment of conditions of the visual system—

(i) The means and methods for the examination, diagnosis and treatment of conditions of the visual system that may be employed by licensed optometrists include:

(A) The use of any computerized or automatic refracting device.

(B) Visual field testing such as manual or automated perimetry.

(C) Ophthalmoscopy, including ophthalmoscopy of a patient who has been anesthetized by a practitioner authorized to provide anesthesia services and in accordance with applicable law and regulation governing the anesthesia provider and facility, and with or without the use of diagnostic lenses including, any condensing lenses, gonioscopy lenses and fundus contact lenses.

(D) Anterior and posterior segment photography.

(E) Provocative tests for glaucoma and electrodiagnostic testing.

(F) The use of lasers for diagnostic purposes.

(G) The employment of vision therapy or orthoptics.

(H) Low vision rehabilitation.

(I) Treatment of the lacrimal system including the use of punctal plugs and diagnostic procedures to determine the patency of the lacrimal system.

(J) Epilation of lashes.

(K) Ultrasound examination of the eye and orbit, including A-scans with or without Intraocular Lens calculations and B-scans.

(L) Ordering of radiographs, computer assisted tomography scans ("CAT" scans), magnetic resonance imaging scans ("MRI" scans) and laboratory work.

(M) Ordering, interpretation and reporting of angiographic studies of ocular vasculature and blood flow.

(ii) The practice of optometry includes all levels of evaluation and management services and also includes, for those optometrists who are therapeutically certified, the administration and prescription of approved legend and nonlegend drugs.

* * * * *

BUSINESS PRACTICES

§ 23.33. Practice.

(a) An optometrist engaged in the active practice of optometry shall practice in a room used exclusively for the practice of optometry **when practicing in his office**. A change in this address, or the addition of places of practice, shall comply with §§ 23.43 and 23.44 (relating to offices; and additional practice locations).

(b) In compliance with § 23.36 (relating to consultant, advisor, staff or employe optometry), an optometrist may arrange the professional practice to include service to a licensed health care service facility, **including in-patient or out-patient hospitals and emergency rooms, nursing homes and long-term care facilities, or any facility with the need for optometric services.**

* * * * *

(e) An optometrist may provide visual screenings at any location, public or private, within this Commonwealth.

(f) * * *

§ 23.34. Professional corporations.

(a) An optometrist licensed by the Board may professionally incorporate with other optometrists, medical doctors, doctors of osteopathy, dentists, psychologists, podiatrists [and], chiropractors [,] and other health care professionals if this incorporation is authorized by Chapter 5, 17, 25, 29, 33 or 41.

(b) [The articles of incorporation and registry statement of the proposed corporation shall be filed with the Board for review and approval, prior to submission to the Corporation Bureau.

(c) The name of a professional corporation will be approved by the Board.] If a name is chosen for the professional corporation which does not contain the names of all the licensed professionals with an ownership interest in the practice, the Board shall be supplied with a list of these persons. [The Board will notify the optometrist of its approval, or disapproval, and this notice shall be submitted to the Corporation Bureau, together with the documents and fees required by that agency for filing articles of incorporation.

(d)] An optometrist [incorporating] practicing under the terms of this section shall notify the Board of a change in the name or ownership of the [corporation, and shall seek Board approval of these changes prior to practicing under a new name or ownership structure] business.

§ 23.35. Fictitious names.

* * * * *

(b) [A fictitious name registration shall be filed with the Board for approval, prior to submission to the Corporation Bureau.

(c) A fictitious name will be approved by the Board.] A list of the optometrists with an ownership interest in the practice shall be submitted to the Board concurrently with the fictitious name registration. [The Board will notify the optometrist of its approval, or disapproval, and this notice shall be submitted to the Corporation Bureau, together with the documents and fees required by that agency for filing a fictitious name registration.

(d)] An optometrist practicing under the terms of this section shall notify the Board of changes in the name or ownership of the business[, and shall seek Board approval of these changes prior to practicing under a new name or ownership structure].

OFFICE OF OPTOMETRIST

§ 23.42. Equipment

An office maintained for the practice of optometry shall be fully equipped for the making of a [complete] basic optometrical examination including[, but not limited to,] the following:

- (1) [Ophthalmometer] Keratometer.

* * * * *

UNLAWFUL PRACTICES

§ 23.64. Professional conduct.

* * * * *

(c) An optometrist may terminate his or her optometric care of a patient who, in the professional opinion of the optometrist, is not adhering to appropriate regimens of care and follow-up.

(1) The optometrist shall notify the patient, in writing, that the optometrist is terminating the professional relationship and the reasons for the termination.

(2) In addition, the optometrist shall make a copy of the patient's medical record available to the patient or successor eye care provider designated by the patient, and may charge a reasonable fee for copying the record.

[RECORDS] PROFESSIONAL PRACTICE

§ 23.71. Patient records.

(a) An optometrist shall use professional judgment to determine what services are to be provided to his patients. Records of the actual services rendered shall be maintained for a minimum of 5 years after the last consultation with a patient. Records shall indicate when a referral has been made to a physician. An examination may include[, but is not limited to,] the following:

* * * * *

- (2) [Naked] Uncorrected visual acuity.

* * * * *

- (14) Visual fields [, central (after age 40)] including manual or automated perimetry.

* * * * *

- (19) Pharmaceutical agents used or prescribed, including strength, dosage, number of refills and adverse reaction, if applicable.

(b) An optometrist shall comply with a patient request for a copy of the patient's spectacle prescription, within 2 years of the patient's last eye examination. Requests for spectacle prescriptions from examinations over 2 years prior to the request[, or for contact lens prescriptions,] may be complied with at the discretion of the optometrist. Requests for contact lens prescriptions may be complied with at the discretion of the optometrist.

(c) [An optometrist's license number shall appear on each prescription written by that optometrist.] An optometrist who, in his discretion, provides a contact lens prescription, shall comply with the following:

- (1) The optometrist shall determine the requirements for a satisfactory fit of a contact lens prior to providing a contact lens prescription.

- (2) The optometrist shall consider the contact lenses used in determining the contact lens prescription to be diagnostic lenses.

§ 23.72. Prescriptions.

(a) Optometric prescriptions shall bear:

- (1) The name, address and license number of the optometrist.

- (2) The name of the patient.

- (3) The date the prescription is issued by the licensed practitioner.

- (4) The expiration date.

(b) **Contact lens prescriptions shall specify the lens type, the specifications necessary for the ordering and fabrication of the lenses, number of refills and expiration date consistent with the type and modality of use of the contact lens being prescribed, but in no case shall the expiration date be greater than 1 year. The prescription may include a statement of caution or a disclaimer if the statement or disclaimer is supported by appropriate findings and documented in the patient's medical record.**

(c) **Pharmaceutical prescriptions shall specify the name of the drug prescribed, quantity and potency prescribed, expiration date, number of refills allowed, instructions for use and any indicated precautionary statements.**

(d) **Spectacle prescriptions shall specify any information that would be relevant to manufacturing glasses including the dioptic value of the sphere, astigmatism, prism, slab off, add power and axis or orientation of the astigmatism correction.**

[Pa.B. Doc. No. 03-351. Filed for public inspection February 28, 2003, 9:00 a.m.]

STATE BOARD OF VEHICLE MANUFACTURERS, DEALERS AND SALESPERSONS

[49 PA. CODE CH. 19]
Branch Lots

The State Board of Vehicle Manufacturers, Dealers and Salespersons (Board) proposes to add § 19.5 (relating to branch lots) to read as set forth in Annex A.

The proposed rulemaking would inform licensees of the conditions under which a licensed dealer may keep vehicles at an unlicensed location used only for storage purposes and the conditions under which a licensed dealer may exhibit a single vehicle at an unlicensed location.

Effective Date

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

Statutory Authority

The proposed rulemaking is authorized under section 4 of the Board of Vehicles Act (act) (63 P. S. § 818.4).

Background and Need for the Proposed Rulemaking

Storage of Vehicles

Section 5(e)(1)(ii) of the act (63 P. S. § 818.5(e)(1)(ii)) provides that “[a] branch lot shall be a separately licensed location which meets the facility requirements defined herein and by the regulations as a main lot, unless used solely for the storage of vehicles.” As space to park vehicles has become a premium commodity, dealers have developed storage lots that are separate and apart from their dealership facilities. Licensees, the Pennsylvania Independent Automobile Dealers Association (PIADA) and

law enforcement agents have asked the Board to promulgate a regulation further defining “used solely for the storage of vehicles” so that dealers may comply with the act and law enforcement agents may enforce the act. The Board’s proposed rulemaking would define storage of vehicles in relation to engaging in the business of a vehicle dealer in a way that is consistent with public protection concerns that prohibit a dealer from conducting sales activity at an unlicensed location.

Single Vehicle Display

Individual licensees and PIADA have asked the Board to clarify whether the placement of a single vehicle at an unlicensed location is always the display of that vehicle for sale, and therefore prohibited, or whether the placement of a single vehicle at an unlicensed location may, under certain circumstances, be considered permissible activity. The licensees’ concern arises because many shopping malls approach licensees to place automobiles in the shopping mall. PIADA has informed the Board that this type of vehicle display is permitted in states surrounding this Commonwealth and that Commonwealth dealers believe they are at a competitive disadvantage because the act requires vehicles to be displayed at licensed locations. Some surrounding states permit single vehicle displays at unlicensed locations provided the dealer is issued a special permit for the display. The Board proposes to make a distinction between display for sale which may only occur at a licensed location and other single vehicle display. This distinction will permit a licensed dealer to place a single vehicle at an unlicensed location.

Section 19(34) of the act (63 P. S. § 818.19(34)) authorizes the Board to discipline a dealer who “conducts its business . . . at any other location than that authorized by its license.” Under section 2 of the act (63 P. S. § 818.2), a dealer is a person “who is engaged in the business of buying, selling or exchanging new or used vehicles or an interest in new or used vehicles.” Section 2 of the act also defines “buying, selling or exchanging” to “include listing, offering, auctioning, advertising, representing or soliciting, offering or attempting to solicit or negotiate on behalf of another a sale, purchase or exchange or any similar or related activity.”

With those definitions in mind, clearly the General Assembly did not intend to prohibit all advertising at a location other than the licensed location; a ban would prohibit highway billboards, sideboard advertisements at sporting events and adboards on buses and subways. The General Assembly must have intended to prohibit only activities directly related to buying, selling or exchanging vehicles at locations other than the dealer’s licensed location.

Section 19.18(a)(3) (relating to established place of business for dealers) defines a dealer’s display area as a place “where the public is permitted and invited in the regular course of business to inspect or test drive . . . vehicles . . . offered for sale.” Section 19.18(a)(3) goes on to describe what requirements a “display area” must meet. These requirements include, among other things: adequate space to display and show no fewer than five vehicles; grading, surface and lighting requirements; requirements that the area be separated from other businesses; and requirements that the area have a telephone line, a sign showing the licensed name of the dealer and conspicuously posted business hours. Clearly, places such as a mall or someone’s front yard are not “display areas” under the Board’s regulations. Proposed § 19.5(c) reinforces the distinction between “display ar-

eas” as defined by § 19.18(a)(3) and an area where a vehicle is parked for use as an advertisement.

The Board has set the display limit at one vehicle to reduce consumer confusion. A consumer encountering one car on display at the county fairgrounds or local shopping mall is likely to consider that car an advertisement and will not be confused, disappointed or surprised to find that the car cannot be “inspected” as it could at a licensed location. By comparison, a consumer encountering several cars on display at a county fairground or shopping mall may reasonably expect to be able to inspect the displayed vehicles. This expectation is reasonable because several cars displayed together resemble a sales lot, whereas one car resembles a three-dimensional billboard.

The Board is cognizant of the concern expressed by many dealers that the prohibition against conducting business at other than the licensed location places Commonwealth dealers at a competitive disadvantage compared with dealers in other states. Dealers wish to display vehicles in high traffic areas, such as shopping malls, or at special events, such as fairs, which draw large numbers of potential customers. The Board must balance the needs of this Commonwealth’s licensed dealers with the needs of consumers and must resolve all disputes in light of its primary mission: to protect the public. Allowing a dealer to place a single vehicle at an unlicensed location, provided that no sales activity is conducted at that location, would not conflict with statutory requirements because the dealer would not be conducting business at the unlicensed location. In addition, restricting dealers to placing a single vehicle at an unlicensed location would not undermine the purposes of the act. The Board therefore proposes to amend its regulations to permit a dealer to place a single vehicle at an unlicensed location, with specific conditions to ensure that no sales activity occurs at the unlicensed location.

Description of Proposed Rulemaking

Storage of Vehicles

The proposed rulemaking defines storage of vehicles in contrast to the display or offer for sale of vehicles. A location is used solely for storage if it is identified as a storage-only lot, if no salespersons are present at the lot to converse with potential customers, if the vehicles are not demonstrated for customers at the lot, if the public is not permitted access to the vehicles, if the dealer does not advertise his or her name or other, licensed, locations at the lot and if potential customers may not acquire sales literature at the lot and cannot communicate with the dealer or his representative from the lot.

Single Vehicle Display

The proposed rulemaking requires that an unlicensed area used for display of a single vehicle may not contain the following: (1) more than one vehicle and the vehicle displayed must be locked at all times; (2) salespeople; (3) a sales office; and (4) sales agreement forms or other documents routinely used in vehicle sales transactions. This list reinforces the definition of “display area” given in § 19.18(a)(3) in two ways. First, by not permitting inspection or test-driving of vehicles or dissemination of sales literature, this proposed rulemaking strives to reduce consumer confusion. A consumer encountering a car in a mall is more likely to consider the car an advertisement and not an item for sale if that consumer is unable to enter the vehicle or obtain sales information. Second, by clearly spelling out what may not be present in an area if the dealer wishes to display a car without licensing the area, § 19.5(c) clarifies the rather lengthy definitions in § 19.18(a)(3).

Fiscal Impact and Paperwork Requirements

The proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking will impose no additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector.

Sunset Date

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 12, 2003, the Board submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. In addition to submitting the proposed rulemaking, the Board has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Board. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed rulemaking, it will notify the Board within 30 days of the close of the Committees’ public comment period. The notification shall specify the regulatory review criteria that have not been met by the portion of the proposed rulemaking to which an objection is made. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of objections raised.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Teresa Woodall, Administrative Assistant, State Board of Vehicle Manufacturers, Dealers and Salespersons, P. O. Box 2649, Harrisburg, PA 17105-2649, vehicle@pados.state.pa.us within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

EDWARD J. CERNIC, Jr.,
Chairperson

Fiscal Note: 16A-605. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 19. STATE BOARD OF VEHICLE MANUFACTURERS, DEALERS AND SALESPERSONS

GENERAL PROVISIONS

§ 19.5. Branch lots.

(a) *Facility.* Unless otherwise exempted by the act or this chapter, any location where a licensed vehicle dealer displays or offers vehicles for sale shall be licensed and comply with the facilities requirements set forth in the act and § 19.18 (relating to established place of business for dealers).

(b) *Storage of vehicles.* The storage of vehicles by a licensed vehicle dealer at an unlicensed location will not be considered to be the display or offer for sale of vehicles at that location if:

- (1) The lot is used solely for the storage of vehicles.
- (2) The lot is identified by a sign with the dealership name and a designation that the lot is for "storage only." The area may not otherwise be identified.
- (3) No salesperson is present at the lot other than as necessary to repair, recondition, inspect or move any of the vehicles.
- (4) No salesperson engages in any demonstration or discussion of product features of the vehicles or discusses any terms of sale.
- (5) The public is not permitted access to any of the vehicles at the lot and the vehicles are not capable of being entered or operated (other than by criminal acts).
- (6) No sign or other marking at the lot or on any of the vehicles at the lot (except for a Federally-mandated manufacturer's price sticker) indicates that any of the vehicles at the lot are available for sale at any other location.
- (7) No literature, such as business cards or brochures, is available for potential customers to remove from the lot.
- (8) Potential customers are not able to communicate with a representative of the dealer from the lot, by telephone, e-mail, computer or otherwise, to negotiate the sale of, to obtain additional information concerning, or to otherwise discuss the vehicles at the unlicensed lot or other vehicles available for sale by the dealer.

(c) *Single vehicle display.*

(1) The placement of a single vehicle before the public will not be considered the buying, selling or exchanging of the vehicle, as defined in section 2 of the act (63 P. S. § 818.2), if:

- (i) The placement is by a vehicle dealer licensed in this Commonwealth.
- (ii) No more than one vehicle is placed at the location.
- (iii) A salesperson present at the location does not discuss the features of the vehicle or other vehicles handled by the dealership and does not negotiate or conclude the sale of the vehicle or another vehicle of the dealer.
- (iv) There is no sales office at the location.
- (v) There are no sales agreement forms or other documents routinely used in vehicle sales transactions present at the location.
- (vi) The vehicle is locked or otherwise not capable of being entered or operated by potential customers or others (other than by criminal acts).
- (vii) The location is not at the licensed premises of any vehicle dealer or vehicle auction.

(2) This subsection applies to the placement of automobiles, light trucks and motorcycles, but does not apply to the placement of recreational vehicles, mobile homes, manufactured housing and other vehicles not identified in this subsection.

[Pa.B. Doc. No. 03-352. Filed for public inspection February 28, 2003, 9:00 a.m.]