

RULES AND REGULATIONS

Title 7—AGRICULTURE

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 104]

Sheep and Lamb Marketing Program; Wine Marketing and Research Program

The Department of Agriculture (Department) deletes Subchapter C (relating to sheep and lamb marketing program) and adds Subchapter F (relating to wine marketing and research program) to read as set forth in Annex A.

Statutory Authority

Sections 4501—4513 of 3 Pa.C.S. (relating to Agricultural Commodities Marketing Act) (act) provides the legal authority for this final-form rulemaking. Both the Sheep and Lamb Marketing Program (Sheep Program) and the Wine Marketing and Research Program (Wine Program) are agricultural commodity programs established under authority of the act. Section 4511 of the act (relating to rules and regulations) authorizes the Department to promulgate regulations necessary to enforce a marketing program established under its authority.

Purpose

This final-form rulemaking deletes Subchapter C. Since the Sheep Program was terminated some time ago, Subchapter C serves no purpose.

This final-form rulemaking also affirms the obligations of affected wine producers with respect to the Wine Program, provides a mechanism for accounting and payment of producer charges and establishes a mechanism for the collection of producer charges from affected producers who do not pay their fair share to support the Wine Program.

Background

The act authorizes the establishment of an agricultural commodity marketing program through a referendum among affected producers of the agricultural commodity involved. The Wine Program was established through a referendum among persons who produce or sell wine under authority of a limited winery license issued in accordance with the Liquor Code (47 P. S. §§ 1-101—8-803).

The production of wine is closely regulated. Holders of limited winery licenses are required to report their wine production and sales to the Liquor Control Board. This production information assists the Wine Program in calculating the producer charges owed it by each affected wine producer. The producer charges are 15¢ per gallon of wine sold within a particular January 1—December 31 marketing season.

The final-form rulemaking emphasizes the obligation of an affected wine producer to account for and pay the appropriate producer charges to the Wine Program and provide that program a mechanism by which to pursue collection of unpaid producer charges.

Need for the Final-Form Rulemaking

The final-form rulemaking is necessary for the operation of the Wine Program and makes extensive use of language from existing regulations for other act-based

agricultural commodity marketing programs. The Department is satisfied of the need for the final-form rulemaking.

Comments

Notice of proposed rulemaking was published at 34 Pa.B. 561 (January 31, 2004) and provided for a 30-day public comment period. The only formal written comments received with respect to the proposed rulemaking were offered by the Independent Regulatory Review Commission (IRRC). The Department's response to these comments follows.

Comment 1: IRRC observed that proposed § 104.71 (relating to scope) states that persons who produce and sell wine under authority of a limited winery license will be required to pay producer charges to the Wine Program, and recommended that the final-form rulemaking include a reference to the provision of the Liquor Code addressing limited wineries (47 P. S. § 5-505.2).

Response: The Department has implemented this recommendation in the final-form rulemaking.

Comment 2: IRRC recommended that the terms "ACMA," "marketing contract" "PLCB" and be deleted from § 104.72 (relating to definitions), since these terms are not used elsewhere in regulations. This same recommendation had been made informally by *Pennsylvania Bulletin* staff when the proposed rulemaking was submitted for publication.

Response: The Department has implemented this recommendation in the final-form rulemaking.

Comment 3: IRRC asked the Department to either explain or delete the phrase "or other time period designated by the Program" in proposed § 104.75(a)(2) (relating to accounting and payment).

Response: The referenced phrase has been deleted from the final-form rulemaking.

Comment 4: With respect to proposed § 104.75(e), IRRC offered the following:

This subsection requires producers to pay a penalty for nonpayment of producer charges "of at least \$100 but not more than \$5,000, and as nearly equivalent to 100% of the amount of the delinquent producer charge as is practicable." We note in the Vegetable Marketing and Research Program and the Peach and Nectarine Research Program the maximum fine levied is \$500. Why has the Department chosen to implement a much higher fine for this Program? The preamble should include the Department's reasoning for the fines in this subsection.

Response: The object of the subsection is to allow for a penalty that would, in most cases, effectively double the amount of money a delinquent producer would have to pay the Wine Program. This penalty amount is tempered by the \$5,000 ceiling in the final-form rulemaking. The Department and the Wine Program Board considered the upward civil penalty limits imposed by the commodity marketing programs described in the comment, but felt that the \$5,000 figure is more appropriate for the Wine Program, and that this figure would help provide an incentive for compliance with the accounting and payment provisions of the final-form rulemaking.

Fiscal Impact

Commonwealth: The final-form rulemaking imposes no costs and has no fiscal impact on the Commonwealth.

Political Subdivisions: The final-form rulemaking imposes no costs and has no fiscal impact on political subdivisions.

Private Sector: The final-form rulemaking imposes no costs and has no adverse fiscal impact upon the private sector. Although the final-form rulemaking references the 15¢ per gallon producer charge, the charge has been established through a referendum among affected producers, in accordance with the act. The final-form rulemaking repeats this existing obligation, but does not create it. The final-form rulemaking will help to fully fund the research and marketing efforts of the Wine Program. Although this is expected to have a favorable economic impact upon this Commonwealth's wine production industry, this benefit is not readily quantifiable.

General Public: The final-form rulemaking imposes no costs and has no adverse fiscal impact upon the general public.

Paperwork Requirements

The final-form rulemaking will not appreciably increase the paperwork burden of the Department, other government units or affected wine producers.

Sunset Date

There is no sunset date for the final-form rulemaking. The Department will review the efficacy of these regulations on an ongoing basis.

Contact Person

Further information is available by contacting the Department of Agriculture, Bureau of Market Development, Pennsylvania Wine Marketing and Research Program, 2301 North Cameron Street, Harrisburg, PA 17110-9408, Attn: Kyle Nagurny, (717) 787-2376.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 16, 2004, the Department submitted a copy of the notice of proposed rulemaking, published at 34 Pa.B. 561, to IRRC and the Chairpersons of the House and Senate Standing Committees on Agriculture and Rural Affairs for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on July 15, 2004, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on July 15, 2004, and approved the final-form rulemaking.

Findings

The Department finds that:

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

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

(3) The modifications that were made to this final-form rulemaking in response to comments received do not enlarge the purpose of the proposed rulemaking published at 34 Pa.B. 561.

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

Order

The Department, acting under authority of the authorizing statute, orders that:

(a) The regulations of the Department, 7 Pa. Code Chapter 104, are amended by deleting §§ 104.21—104.30 and by adding §§ 104.71—104.75 to read as set forth in Annex A.

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

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

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

DENNIS C WOLFF,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 34 Pa.B. 4082 (July 31, 2004).)

Fiscal Note: Fiscal Note 2-142 remains valid for the final adoption of the subject regulations.

Annex A**TITLE 7. AGRICULTURE****PART IV. BUREAU OF MARKET DEVELOPMENT****CHAPTER 104. ENFORCEMENT OF MARKETING PROGRAMS****Subchapter C. (Reserved)****§§ 104.21—104.30. (Reserved).****Subchapter F. WINE MARKETING AND RESEARCH PROGRAM**

Sec.	
104.71.	Scope.
104.72.	Definitions.
104.73.	Producer charges.
104.74.	Responsibility for payment of producer charge.
104.75.	Accounting and payment.

§ 104.71. Scope.

This subchapter establishes the procedures by which persons who produce or sell wine under authority of a limited winery license issued under authority of section 505.2 of the Liquor Code (47 P. S. § 5-505.2) shall account for and pay producer charges owed the Program.

§ 104.72. Definitions.

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

Board—The persons appointed by the Secretary from among those producers whose commodities are subject to the marketing and research program set forth in this subchapter.

Department—The Department of Agriculture of the Commonwealth.

Limited winery—The holder of a limited winery license issued under authority of the Liquor Code (47 P. S. §§ 1-101—8-803).

Marketing season—

(i) The initial marketing season for purposes of this subchapter shall be from July 1, 2001, through December 31, 2001.

(ii) Thereafter, the marketing season shall be the period beginning January 1 of any year and extending through December 31 of the same year.

Person—An individual, partnership, firm, corporation, association or any other business unit.

Producer—A person who produces or sells wine under authority of a limited winery license during a particular marketing season.

Program—The Pennsylvania Wine Marketing and Research Program.

Secretary—The Secretary of the Department.

§ 104.73. Producer charges.

The producer charges owed the Program shall be 15¢ per gallon of wine sold within a given marketing season, except in-State winery-to-winery sales in bond. In-State winery-to-winery sales in bond are exempt from charges. The producer charges may be changed by subsequent amendment of the Program in accordance with the referendum procedure in Chapter 103 (relating to referendums).

§ 104.74. Responsibility for payment of producer charge.

It is the responsibility of the producer to pay the appropriate producer charge owed the Program within the time period set forth in § 104.75(b) (relating to accounting and payment) and in the manner set forth in § 104.75(a).

§ 104.75. Accounting and payment.

(a) *Annual production statement.* The Program will provide a producer with annual production statement forms with which to verify the quantity of wine that it has produced within a particular marketing season. The producer shall provide the following information on the annual production statement and submit the form in accordance with this section.

- (1) The name and address of the producer.
- (2) The number of gallons of wine sold within the marketing season.
- (3) A calculation of the amount of producer charges owed the Program by the producer.

(b) *Deadlines.* The payment of the producer charges shall be postmarked and mailed, or actually delivered to the Program, by the first day of February immediately following the previous marketing season.

(c) *Form of payment.* Payments of producer charges shall be by check or money order made payable to the "PA Wine Marketing and Research Program."

(d) *Address.* Payments of producer charges shall be mailed or delivered to:

Department of Agriculture
 Bureau of Market Development
 Attn: Pennsylvania Wine Marketing and Research

Program
 2301 North Cameron Street
 Harrisburg, Pennsylvania 17110-9408.

(e) *Penalty for failure to account or pay.* Producers who fail to mail or deliver the required producer charges owed the Program within 30 days of the due date, as described in subsection (b), shall be required to pay a penalty of at least \$100 but not more than \$5,000, and as nearly equivalent to 100% of the amount of the delinquent producer charges as is practicable. An action seeking the imposition of a penalty, plus payment of producer charges due the Program, may be brought in the appropriate magisterial district. A penalty imposed shall be in addition to the delinquent producer charges owed the Program.

[Pa.B. Doc. No. 04-1542. Filed for public inspection August 20, 2004, 9:00 a.m.]

**DEPARTMENT OF AGRICULTURE
 [7 PA. CODE CH. 130d]**

Application of Soil and Groundwater Contaminated with Agricultural Chemicals to Agricultural Lands

The Department of Agriculture (Department), under the specific authority of section 904(d) of the Land Recycling and Environmental Remediation Standards Act (act) (35 P. S. § 6026.904(d)), adopts Chapter 130d (relating to application of soil and groundwater contaminated with agricultural chemicals to agricultural lands) to read as set forth in Annex A.

Authority

The Department has the power and authority to promulgate and adopt this final-form rulemaking. This authority is established under section 904(d) of the act. Section 904(d) of the act delineates the duties of the Department and directs the Department to "... promulgate regulations providing for the option of safely reusing soil and groundwater contaminated with agricultural chemicals generated as a result of remediation activities at agricultural chemical facilities through the land application of these materials on agricultural lands." The final-form rulemaking is required to "... provide for the appropriate application rates of such materials, either alone or in the combination with other agricultural chemicals, and prescribe appropriate operations controls and practices to protect the public health, safety and welfare and the environment at the site of land application."

Need for the Final-Form Rulemaking

The act requires the Department to promulgate regulations providing for the option of safely reusing soil and groundwater contaminated with agricultural chemicals generated as a result of remediation activities at agricultural chemical facilities through the land application of these materials on agricultural lands. The Department takes very seriously its duty to protect the health and safety of the general public and to preserve the quality and productivity of agricultural lands in this Commonwealth. The final-form rulemaking is intended to address the safety of the application of soil and groundwater contaminated agricultural chemicals and to protect and

assure the productivity and viability of the agricultural lands to which media is applied. The act and regulations provide for an alternative approach, other than incineration or landfill disposal, to dispose of soil and groundwater contaminated with agricultural chemicals taken from an agricultural chemical facility being remediated under the act.

In addition, the Department of Environmental Protection, under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003), has regulations in place concerning the land application of residual waste in 25 Pa. Code Chapter 291 (relating to land application of residual waste) including regulations specifically regarding application to agricultural land in 25 Pa. Code Chapter 291, Subchapter D (relating to additional requirements for the agricultural utilization of residual waste). "Residual waste" as defined by the Solid Waste Management Act includes agricultural waste. The act does not exempt the application of soil and groundwater contaminated with agricultural chemicals to agricultural lands from the regulations promulgated under the Solid Waste Management Act. Therefore, the Department has endeavored to assure the final-form rulemaking is consistent with the residual waste regulations pertaining to application of residual waste to agricultural land.

In the interest of carrying out its statutory duties and providing a safe alternative use for soil and groundwater contaminated with agricultural chemicals the Department has promulgated this final-form rulemaking. The final-form rulemaking is to establish safe standards, criteria and procedures for the application of the contaminated media to agricultural lands.

Comments

Notice of proposed rulemaking was published at 32 Pa.B. 1965 (April 20, 2002) and provided for a 30-day public comment period. The Department received numerous comments regarding the proposed rulemaking and made extensive revisions to the proposed rulemaking based on the comments. Therefore, the Department decided to distribute the revised rulemaking to all commentators for their review prior to submitting the revised rulemaking into the final-form rulemaking process. The Department received no additional comments.

Comments were received from the Independent Regulatory Review Commission (IRRC); the Honorable Raymond Bunt, Jr., Majority Chairperson, Agriculture and Rural Affairs Committee; the Honorable Peter J. Daley, Democratic Chairperson, Agriculture and Rural Affairs Committee; members and representatives of the regulated community, Syngenta Crop Protection, CropLife America and DuPont Crop Protection, who submitted their comments through the office of the Honorable Raymond Bunt, Jr.; and the Chesapeake Bay Foundation. The Department thanks all of those who commented on the final-form rulemaking. The comments were insightful and helped the Department to clarify, simplify and streamline the final-form rulemaking and develop a final-form rulemaking that meets the parameters of the act.

A comment and response document is available upon request from the contact person listed in this preamble.

Fiscal Impact

Commonwealth

The final-form rulemaking will impose substantial costs and have a fiscal impact upon the Commonwealth. The final-form rulemaking will add a new program and increase the regulatory workload of the Department. The

final-form rulemaking will require additional manpower for proper, meticulous and timely review of complex land application proposals and for inspections during land application and follow-up inspections after the land application is complete. In addition, denials may lead to appeals and further regulatory costs for the Department.

Political Subdivisions

The final-form rulemaking will impose costs and have a fiscal impact upon political subdivisions to the extent they become involved in regulating, through imposition of additional regulatory requirements such as ordinances and public meetings, an activity—the application of soil and groundwater contaminated with agricultural chemicals from an agricultural chemical facility to agricultural land—which was not allowed prior to the enactment of the act and the acceptance of this final-form rulemaking. The final-form rulemaking however, do not require involvement of, or regulation by, political subdivisions.

Private Sector

The final-form rulemaking only affects private sector persons who choose to land apply soil and groundwater taken from an agricultural chemical facility being remediated under the act and contaminated with agricultural chemicals to agricultural land. For members of the private sector that elect to follow this approach, the final-form rulemaking will impose substantial costs primarily related to the testing requirements for soil and groundwater contaminated with agricultural chemicals prior to their application to agricultural land. However, these costs are no more prohibitive than the cost of other means of disposal of that contaminated media, such as landfill disposal or incineration, both of which have less potential to harm the environment or productive agricultural land.

General Public

The final-form rulemaking will impose no additional costs and have no fiscal impact on the general public.

Paperwork Requirements

The final-form rulemaking will result in an appreciable increase in paperwork. The Department will be required to review complex land application proposals and records generated as a result of the land application of soil and groundwater contaminated with agricultural chemicals. The Department has been required to generate a land application proposal setting forth a general outline for the applicant.

Contact Person

Further information is available by contacting the Department of Agriculture, Bureau of Plant Industry, 2301 North Cameron Street, Harrisburg, PA 17110-9408, Attn: Vance Wagner, (717) 787-4843.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 10, 2002, the Department submitted a copy of the notice of proposed rulemaking, published at 32 Pa.B. 1965, to IRRC and the Chairpersons of the House Agricultural and Rural Affairs Committee and the Senate Agriculture and Rural Affairs Committee for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing

the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on June 23, 2004, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on June 24, 2004, and approved the final-form rulemaking.

Findings

The Department finds that:

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

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

(3) The modifications that were made to the final-form rulemaking in response to comments received do not enlarge the purpose of the proposed rulemaking published at 32 Pa.B. 1965.

(4) Prior to final submittal of the final-form rulemaking, a draft of the final-form rulemaking and comment and response document were sent to persons who commented during the proposed stage of rulemaking and were given 10 days to submit additional comments.

(5) The modifications that were made to the final-form rulemaking in response to additional comments received do not enlarge the purpose of the proposed rulemaking published at 32 Pa.B. 1965.

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

Order

The Department, acting under authority of the authorizing statute, orders that:

(a) The regulations of the Department, 7 Pa. Code Chapter 130d, are amended by adding §§ 130d.1—130d.5, 130d.21—130d.30, 130d.31—130d.33, 130d.41—130d.48, 130d.51, 130d.52, 130d.61 and 130d.62 to read as set forth in Annex A

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

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

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

DENNIS C WOLFF,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 34 Pa.B. 3652 (July 10, 2004).)

Fiscal Note: 2-116. (1) General Fund; (2) Implementing Year 2003-04 is \$0; (3) 1st Succeeding Year 2004-05 is \$50,000; 2nd Succeeding Year 2005-06 is \$53,000; 3rd Succeeding Year 2006-07 is \$55,000; 4th Succeeding Year 2007-08 is \$57,000; 5th Succeeding Year 2008-09 is \$60,000; (4) 2002-03 Program—N/A; 2001-02 Program—

N/A; 2000-01 Program—N/A; (7) General Government Operations—Department of Agriculture; (8) recommends adoption.

Annex A

TITLE 7. AGRICULTURE

PART V. BUREAU OF PLANT INDUSTRY

CHAPTER 130d. APPLICATION OF SOIL AND GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS TO AGRICULTURAL LANDS

Subch.

- A. GENERAL PROVISIONS
- B. LAND APPLICATION PROPOSAL REQUIREMENTS FOR PERMISSION TO APPLY SOIL AND GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS TO AGRICULTURAL LAND
- C. LAND APPLICATION PROPOSAL REVIEW PROCEDURES
- D. GENERAL OPERATING REQUIREMENTS FOR LAND APPLICATION OF SOIL AND GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS TO AGRICULTURAL LAND
- E. GENERAL REQUIREMENTS AND EXCEPTIONS FOR USE AND APPLICATION OF GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS AS TANK MIX
- F. CLOSURE

Subchapter A. GENERAL PROVISIONS

Sec.

- 130d.1. Definitions.
- 130d.2. Scope.
- 130d.3. Continuing authority.
- 130d.4. Retained recordkeeping.
- 130d.5. Public notice by applicant.

§ 130d.1. Definitions.

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

Act—The Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).

Active ingredient—

(i) In the case of a pesticide other than a plant regulator, defoliant or desiccant, an ingredient which will prevent, destroy, repel or mitigate any pest.

(ii) In the case of a plant regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the product thereof.

(iii) In the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant.

(iv) In the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue.

Agricultural chemical—A substance defined as a fertilizer, under 3 Pa.C.S. § 6702 (relating to definitions), or a substance defined as a plant amendment, plant-amending ingredient, soil amendment or soil-amending ingredient under 3 Pa.C.S. § 6902 (relating to definitions) or a substance regulated under the Pennsylvania Pesticide Control Act of 1973 (3 P. S. §§ 111.21—111.60).

Agricultural chemical facility—A facility where agricultural chemicals are held, stored, blended, formulated, sold or distributed. The term does not include facilities identified by the North American Industry Classification System (NAICS) in NAICS 325320 where agricultural chemicals are manufactured.

Agricultural land or farmland—Land in this Commonwealth that is currently being utilized for the commercial production of agricultural crops, livestock or livestock products, poultry products, milk or dairy products, fruit or other horticultural products.

Animal—All vertebrate and invertebrate species, including man and other mammals, birds, fish and shellfish.

Application site—The farmland area approved to receive an application of soil or groundwater contaminated with agricultural chemicals and delineated in the applicant's land application proposal containing and detailing the exact location of the farmland upon which the soil or groundwater contaminated with the agricultural chemicals is to be applied, including the property boundaries of the farmland and each field upon which the contaminated soil or groundwater will be applied.

Applicator—A certified applicator, private applicator, commercial applicator, public applicator or pesticide application technician.

(i) *Certified applicator.* An individual who is certified under section 16.1, 17 or 17.1 of the Pennsylvania Pesticide Control Act of 1973 (3 P. S. §§ 111.36a, 111.37 and 111.37a) as competent to use or supervise the use or application of any pesticide.

(ii) *Private applicator.* A certified applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or his employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.

(iii) *Commercial applicator.*

(A) A certified applicator (whether or not the applicator is a private applicator with respect to some uses) who uses or supervises the use of any pesticide on the property or premises of another, or on easements granted under State law.

(B) An applicator who uses or supervises the use of any restricted use pesticide on property owned or rented by him or his employer, when not for purposes of producing an agricultural product.

(C) The Secretary may by regulation deem certain types of applicators using any pesticide on their own property or that of their employer as commercial applicators.

(iv) *Public applicator.* A certified applicator who applies pesticides as an employee of the State or its instrumentalities or any local agency.

(v) *Pesticide application technician.* An individual employed by a commercial applicator or governmental agency who, having met the competency requirements of section 16.1 of the Pennsylvania Pesticide Control Act of 1973 is registered by the Secretary to apply pesticides under the direct supervision of a certified applicator.

Background—The concentration of a regulated substance determined by appropriate statistical methods that is present at the site, but is not related to the release of regulated substances at the site.

Cleanup or remediation—To clean up, mitigate, correct, abate, minimize, eliminate, control or prevent a release of a regulated substance into the environment in order to protect the present or future public health, safety, welfare or the environment, including preliminary actions to study or assess the release.

Contaminated media—Soil and groundwater contaminated with agricultural chemicals generated as a result of remediation activities at agricultural chemical facilities.

DEP—The Department of Environmental Protection of the Commonwealth.

Defoliant—Any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

Department—The Department of Agriculture of the Commonwealth.

Desiccant—Any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

Environment—Includes water, air, land and all plants and man and other animals living therein, and the interrelationships which exist among these.

Environmental protection acts—Includes:

(i) The Clean Streams Law (35 P. S. §§ 691.1—691.1001).

(ii) The Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4001.101—4001.1904).

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

(iv) The Low-Level Radioactive Waste Disposal Act (35 P. S. §§ 7130.101—7130.906).

(v) The act of July 13, 1988 (35 P. S. §§ 6019.1—6019.6), known as the Infectious and Chemotherapeutic Waste Disposal Law.

(vi) The Air Pollution Control Act (35 P. S. §§ 4001—4015).

(vii) The Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.31).

(viii) The Noncoal Surface Mining Conservation and Reclamation Act (35 P. S. §§ 3301—3326).

(ix) The Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27).

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

(xi) The Nutrient Management Act (3 P. S. §§ 1701—1718).

(xii) Sections 6701—6725 of 3 Pa.C.S. (relating to Fertilizer Act).

(xiii) The Pennsylvania Pesticide Control Act of 1973 (3 P. S. §§ 111.21—111.61).

(xiv) The Federal Insecticide, Fungicide and Rodenticide Act of 1947 (7 U.S.C.A. §§ 136—136y).

(xv) The Resource Conservation and Recovery Act of 1976 (42 U.S.C.A. §§ 6901—6986).

(xvi) Sections 6901—6921 of 3 Pa.C.S. (relating to Soil and Plant Amendment Act).

(xvii) Other State or Federal statutes relating to environmental protection or the protection of public health.

Equipment—

(i) Any type of ground, water or aerial equipment or contrivance using motorized, mechanical or pressurized power and used to apply any agricultural chemical.

(ii) The term does not include any pressurized hand-sized household apparatus used to apply any agricultural chemical or any equipment or contrivance of which the person who is applying the agricultural chemical is the source of power or energy in pesticide application.

General use pesticides—A pesticide not classified as a restricted use pesticide.

Groundwater—Water below the land surface in a zone of saturation.

HAL—Health Advisory Levels published by the United States Environmental Protection Agency for particular substances.

Habitats of concern—A habitat defined as one of the following:

- (i) Typical wetlands with identifiable function and value, except for exceptional value wetlands as defined in 25 Pa. Code § 105.17 (relating to wetlands).
- (ii) Breeding areas for species of concern.
- (iii) Migratory stopover areas for species of concern.
- (iv) Wintering areas for species of concern.
- (v) Habitat for State endangered plant and animal species.
- (vi) Areas otherwise designated as critical or of concern by the Game Commission, the Fish and Boat Commission or the Department of Conservation and Natural Resources.

Incorporation—Plowing or injecting contaminated media to a depth of at least 6 inches and in a manner that ensures a uniform mixture of top soil and contaminated media.

Label—The written, printed or graphic matter on, or attached to the agricultural chemical or device or any of its containers or wrappers.

Labeling—Pertaining to agricultural chemicals, the term means all labels and other written, printed or graphic matter which includes one of the following:

- (i) That which accompanies the pesticide, agricultural chemical or device at any time.
- (ii) To which reference is made on the label or in literature accompanying the agricultural chemical, except to current official publications of the United States Environmental Protection Agency, the United States Departments of Agriculture and Interior, the Departments of Health and Human Services and Education, State experiment stations, State agricultural colleges and other similar Federal or State institutions or agencies authorized by law to conduct research in the field of agricultural chemicals.

Land application proposal—An application for permission to apply soil and groundwater contaminated with agricultural chemicals, generated as a result of remediation activities carried out at an agricultural chemical facility, to agricultural land.

MCL—Maximum contaminant level established for drinking water by DEP.

Person—An individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, authority, nonprofit corporation, interstate body or other legal entity which is recognized by law as the subject of rights and duties. The term includes the Federal Government, State Government, political subdivisions and Commonwealth instrumentalities.

Pesticide—A substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest, and any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant.

Plant regulator—

(i) A substance or mixture of substances intended, through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of plants or the produce thereof, but does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants and soil amendments.

(ii) The term does not include any of those nutrient mixtures or soil amendments, commonly known as vitamin-hormone horticultural products, intended for improvement, maintenance, survival, health and propagation of plants and not for pest destruction and are nontoxic and nonpoisonous in the undiluted packaged concentration.

Prime farmland—Those lands which are defined by the Secretary of the United States Department of Agriculture in 7 CFR 657 (relating to prime and unique farmlands), and which have been historically used for cropland.

Secretary—The Secretary of the Department.

Tank mix or spray mix—A mixture of one or more agricultural chemicals which is diluted with water prior to the time of application.

Treatment—The term shall have the same meaning as given to this term in section 103 of the Hazardous Sites Cleanup Act (35 P. S. § 6020.103).

Under the direct supervision of a certified commercial or public applicator—Unless otherwise prescribed by labeling, the term means application by a registered pesticide application technician acting under the instructions and control of a certified applicator who is available if needed, even though the certified applicator is not physically present at the time and place the pesticide is applied, or application by a crew of noncertified or nonregistered employees working under the instruction and control of a certified commercial or public applicator who is physically present at the job site.

Unreasonable adverse effects on the environment—Any unreasonable risk to man, animal or the environment, taking into account the economic, social and environmental costs and benefits for the use of any agricultural chemical.

§ 130d.2. Scope.

(a) The Department has the powers and the duties set forth under section 904(d) of the act (35 P. S. § 6026.904(d)).

(b) This chapter specifies general procedures and rules for persons who solicit and receive approval from the Department to apply soil or groundwater contaminated with agricultural chemicals, generated as a result of remediation activities at agricultural chemical facilities, to agricultural land.

(c) This chapter applies only to the application of soil or groundwater contaminated with agricultural chemicals, generated as a result of remediation activities, at agricultural chemical facilities and applied to agricultural lands. The Department has no power to issue final approval for the land application of soil or groundwater generated as the result of remediation activities as follows:

- (1) That are contaminated with chemicals or substances other than agricultural chemicals.
- (2) That were not undertaken at an agricultural chemical facility.

(3) Where the contaminated soil or groundwater will be applied to land other than agricultural land.

(d) The applicant is responsible for obtaining any additional permits or approvals necessary for management of waste that contains agricultural chemicals and other chemicals or substances. The applicant shall submit an affidavit attesting to the fact that either no contaminants other than the agricultural chemicals tested for and set forth in its application are present in the soil or groundwater it seeks to apply to the agricultural land or if other contaminants exist, an affidavit stating what those contaminants are and attesting to the fact the applicant has received all permits or approvals necessary for the application of those contaminants to agricultural land. If the permits or approvals are obtained prior to submission of the land application proposal, the permits or approvals, or both, shall be attached to the land application proposal.

§ 130d.3. Continuing authority.

(a) Nothing in this chapter may be construed to amend, modify, repeal or otherwise alter any provision of any act cited and the regulations pertaining thereto, relating to civil and criminal penalties or enforcement actions and remedies available to the Department or in any way to amend, modify, repeal or alter the authority of the Department to take appropriate civil and criminal action under those statutes.

(b) Nothing in this chapter may be construed to place any duty, responsibility or liability on the Department for contaminants in soil or groundwater other than agricultural chemicals that were tested for and approved by the Department. The applicant is solely responsible for all duties and liability related to all contaminants other than the agricultural chemicals tested for, set forth in the applicant's land application proposal and approved by the Department.

§ 130d.4. Retained recordkeeping.

(a) *General.* An applicant receiving permission to apply soil or groundwater contaminated with agricultural chemicals to agricultural land, shall maintain records in accordance with recordkeeping provisions of section 35 of the Pennsylvania Pesticide Control Act of 1973 (3 P. S. §§ 111.55) and in accordance with the appropriate recordkeeping provisions of §§ 128.11, 128.24, 128.35, 128.53, 128.65 and 128.88. In addition, an approved applicant shall keep the following records:

(1) The daily operation records required by § 130d.46 (relating to daily operational records).

(2) The annual operation report required by § 130d.48 (relating to annual operational report).

(3) The final report required by § 130d.62 (relating to final report).

(4) The right of entry agreement required by § 130d.27(b) (relating to right of entry and agreement with landowner).

(b) *Inspection and audit.* All records and documents shall be available for inspection or audit at reasonable times (such as regular operating hours of the Department) by the Department or its authorized agents.

(c) *Retention time period.* All records, reports and documents shall be retained by the person responsible for the application of the soil and groundwater for 5 years after the date on which the site closure plan and final report were approved by the Department.

§ 130d.5. Public notice by applicant.

The applicant shall comply with the notice requirements established by section 25.1 of the Pennsylvania Pesticide Control Act of 1973 (3 P. S. §§ 111.45a) and §§ 128.81—128.89 (relating to prior notification) and § 128.112 (relating to notification of hypersensitive individuals).

Subchapter B. LAND APPLICATION PROPOSAL REQUIREMENTS FOR PERMISSION TO APPLY SOIL AND GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS TO AGRICULTURAL LAND

Sec.

130d.21. General requirements for land application proposal form.
130d.22. Chemical analysis of waste and sampling techniques and protocol.

130d.23. Waste sampling plan.

130d.24. Operating plan.

130d.25. Maps and related information.

130d.26. Financial responsibility.

130d.27. Right of entry and agreement with landowner.

130d.28. Identification of interest.

130d.29. Compliance information.

130d.30. Environmental assessment.

§ 130d.21. General requirements for land application proposal form.

(a) *Submittal.* Land application proposals shall be submitted in writing, on forms provided by the Department. Persons submitting land application proposals shall submit them to the Department at the address which appears on the land application proposal form developed by the Department.

(b) *Documentation.* Each land application proposal shall include and have attached thereto, information, maps, plans, specifications, designs, analyses, test reports and other data as may be required by the Department to determine compliance with this chapter. The Department will notify the applicant in writing requesting any additional information.

(c) *Affirmation of chemical analysis of waste and sampling techniques and protocol and the waste sampling plan.* The chemical analysis of waste and sampling techniques and protocol and the waste sampling plan, required by §§ 130d.22 and 130d.23 (relating to chemical analysis of waste and sampling techniques and protocol; and waste sampling plan), shall be supported by an affidavit, signed by the applicant, affirming that all known and likely agricultural chemicals, nutrients and constituents at the remediation site were tested for and the tests were performed in accordance with this chapter and the applicant's land application proposal.

(d) *Affirmation of compliance with all applicable laws, rules and ordinances.* The applicant shall submit a signed affidavit, affirming it has received the proper permits and approvals and that the removal, storage, handling and application of the contaminated soil or groundwater is in compliance with applicable laws, regulations and ordinances.

(e) *Affirmation of operation plan.* The operating plan shall be signed by the applicant and the appropriate applicator verifying that the techniques, methods and rates of application set forth in the operating plan will be followed.

§ 130d.22. Chemical analysis of waste and sampling techniques and protocol.

(a) *General criteria.* A person who seeks to apply soil or groundwater, generated as a result of remediation activities at an agricultural chemical facility, to agricultural

land shall perform a detailed analysis and testing of the soil or groundwater, or both, at the agricultural chemical facility site and the application site. A verified copy of the sampling techniques and results shall be submitted to the Department as part of the land application proposal.

(b) *Analysis and testing of the soil or groundwater, or both, at the agricultural chemical facility site.* The analysis and testing at the agricultural chemical facility site shall fully characterize the physical properties and chemical composition of each type of agricultural chemical that was held, stored, blended, formulated, sold, distributed, manufactured or generated by the agricultural chemical facility and shall be done in accordance with subsections (d) and (e)(1) and (2). The substances tested for shall be predicated on the manufacturing processes and business carried on at the agricultural chemical facility site being remediated and records obtained from that agricultural chemical facility or facilities on that site. The types of agricultural chemicals likely to be contained in the soil and groundwater shall be gleaned from information available regarding the agricultural chemical facility site at which the remediation activities are taking place including the following:

(1) Records, including sales records, memorandums, invoices and historical data, of the type of products manufactured, held, stored, formulated, sold, distributed, produced or used.

(2) Material safety data sheets or similar sources that may help characterize the types of agricultural chemicals and waste generated.

(3) Notices of past spills, violations or contamination if applicable.

(4) Information regarding any agricultural chemical byproduct or agricultural chemical produced during or as a result of the manufacturing processes, mixing, storage or distribution of materials.

(c) *Analysis and testing of soil at the proposed application site.* The analysis and testing at the proposed application site shall cover soil samples taken from the proposed application site and shall be done in accordance with subsections (d) and (e)(3). The soil samples taken from the proposed application site shall be tested for each agricultural chemical, nutrient or constituent found in the soil or groundwater, or both, at the agricultural chemical facility site that is proposed to be applied to the application site. In addition, the proposed application site analysis shall delineate the soil types found within the proposed application area. The testing and analysis of the soil at the proposed application site, at minimum, shall include:

(1) A chemical, nutrient and constituent analysis of each 15-acre field or plot upon which a soil pile or quantity of groundwater from the remediated agricultural chemical facility site is to be applied.

(2) Testing for all agricultural chemicals, the by-products or derivatives thereof, and each agricultural chemical, nutrient or constituent that was found to be present in the contaminated soil or groundwater, or both, at the agricultural chemical facility being remediated which are to be applied at the proposed application site.

(3) Documentation of the soil types found within the proposed application area.

(d) *Approved laboratory.* Soil or groundwater samples, or both, from each soil pile or quantity of groundwater taken from the agriculture chemical facility site being remediated and sought to be applied to agricultural land

and soil samples taken from the application site shall be tested on a parts per million basis and shall be submitted for analysis to a laboratory compliant with the United States Environmental Protection Agency's (EPA) Good Laboratory Practices (GLP) Program. A list of EPA GLP compliant laboratories is available on the Department's website. A copy of the test results shall be submitted to the Department as part of the land application proposal and to the owner of the agricultural land on which the contaminated soil and groundwater is sought to be applied.

(e) *Sampling techniques.* Sampling techniques shall be consistent with the sampling procedures set forth in the *Pennsylvania Agronomy Guide* which are set forth herein.

(1) *Soil pile samples from the agricultural chemical facility remediation site.* Sampling of soil piles from an agricultural chemical facility remediation site shall consist of one representative sample from each soil pile proposed to be land applied. A representative sample shall consist of 15 core samples from each soil pile at the remediation site which is proposed to be land applied to an agricultural site. A soil pile shall contain no more than 36,000 cubic yards of soil, which represents the cubic yards of soil contained in 15 acres of land at a 6-inch depth and is consistent with the standards established in the *Pennsylvania Agronomy Guide*. Multiple soil piles require multiple samples. Samples shall be collected and recorded in the following manner:

(i) Fifteen core samples shall be collected from each soil pile proposed to be land applied.

(ii) Each core sample shall be collected from a depth of at least 4 to 6 inches.

(iii) The core samples taken from each soil pile shall be mixed in order to acquire a representative sample from that particular soil pile.

(iv) Roots, stones and other debris not representative of the substrate being sampled and proposed for land application shall be removed from the core samples.

(v) The mixed sample from each soil pile shall be placed in a clean unused container and marked in a manner delineating the particular soil pile from which the sample was taken. The sample container shall be compliant with the standards established by the approved laboratory to which the soil samples will be submitted for testing.

(vi) The applicant shall complete the required report form, set forth the agricultural chemicals to be tested for, in compliance with the requirements of this chapter, and submit the sample or samples to an approved laboratory.

(2) *Water samples from the agricultural chemical facility remediation site.* Where groundwater from an agricultural chemical facility remediation site is proposed to be applied to agricultural land, the applicant shall collect 1 pint of water from the remediation site for every 2,000 gallons of water sought to be land applied or utilized as tank mix. Samples shall be collected and recorded in the following manner:

(i) Samples shall be collected from random and mixed points and depths throughout the remediation site to assure a true and representative sampling of the water contaminated with agricultural chemicals at the remediation site.

(ii) Samples shall be collected in clean unused glass bottles and kept chilled during and prior to delivery to an approved laboratory.

(iii) Samples shall be marked in a manner delineating the particular site location and depth from which the sample was taken.

(iv) The applicant shall complete the required report form, set forth the agricultural chemicals to be tested for, in compliance with this chapter, and submit the sample or samples to an approved laboratory.

(3) *Soil samples from the proposed application site.* Sampling of soil from the proposed application site shall consist of one representative sample per every 15 acres of land upon which the soil contaminated with agricultural chemicals from the agricultural chemical facility is proposed to be land applied. Samples shall be collected and recorded in the following manner:

(i) A representative sample shall consist of 15 core samples collected from 15 different areas per 15-acre plot (one core sample taken from each acre on that plot) of land area proposed to receive soil or water, or both, contaminated with agricultural chemicals from an agricultural chemical facility being remediated under the act.

(ii) Core samples shall be collected from a depth of at least 4 to 6 inches.

(iii) The 15 core samples collected from each 15-acre plot shall be thoroughly mixed to get a representative sample from that 15-acre plot.

(iv) Roots, stones and other debris not representative of the field plot being sampled shall be removed from the core samples.

(v) The mixed sample from each 15-acre plot shall be placed in a clean, unused container and marked in a manner delineating the particular 15-acre plot from which the sample was taken. The sample container shall be compliant with the standards established by the approved laboratory to which the soil sample will be submitted for testing.

(vi) The applicant shall complete the required report form, set forth the agricultural chemicals to be tested for and submit the sample or samples to an approved laboratory.

§ 130d.23. Waste sampling plan.

The applicant shall develop a waste sampling plan. The waste sampling plan shall be attached to and made part of the land application proposal submitted to the Department. The waste sampling plan shall encompass the sampling techniques utilized for the soil or groundwater from the agricultural chemical facility site and the application site. The waste sampling plan shall cover each agricultural chemical, nutrient or constituent proposed to be applied to the agricultural land. The waste sampling plan shall take into account and be consistent with the chemical analysis and testing protocol required by § 130d.22 (relating to chemical analysis of waste and sampling techniques and protocol). At a minimum, the plan shall include:

(1) *Quality assurance and quality control procedures.* The plan shall ensure an accurate and representative sampling of the contaminated soil or groundwater, or both, the person seeks to apply to agricultural land and an accurate and representative sampling from each field or plot at the application site upon which the contaminated media will be placed. The plan shall set forth the following:

(i) The type of chemicals, nutrients and constituents for which each soil pile or quantity of groundwater was

tested and analyzed and the rationale for the selection of those chemicals, nutrients and constituents.

(ii) The name and address of the approved laboratory that was used to test for the chemicals, nutrients and constituents.

(iii) The method utilized for labeling and managing the soil piles and quantities of groundwater to assure they are applied at the proper rates and to the proper areas once they reach the application site, since individual soil piles and quantities of groundwater may contain different types and concentrations of chemicals, nutrients and constituents.

(2) An evaluation of the ability of the agricultural chemicals and constituents contained in the soil or groundwater to be fully utilized by the crop to be grown on the application site and to leach into the environment.

(3) A narrative delineating the scientific evidence supporting the contention that the contaminated soil or groundwater can be land applied to agricultural land without negatively affecting the productivity of the agricultural land or causing harm to the environment or animal or human health.

§ 130d.24. Operating plan.

The land application proposal shall contain an operating plan setting forth general information and land application rates and procedures. Information in the operating plan will be considered by the Department when reviewing the land application proposal.

(1) *General information.* The operating plan shall contain the following general information:

(i) The address and a description of the remediation site from which the contaminated soil or groundwater to be applied to the agricultural land originated or was generated.

(ii) The address and a description of the agricultural site to which the contaminated soil or groundwater will be applied.

(iii) The proposed life of the operation from the time the first soil pile or quantity of groundwater arrives on the application site to final closure of the application site and the origin and chemical, nutrient and constituent make up of each soil pile or quantity of groundwater to be applied.

(iv) The proposed application rate per acre, which shall be consistent with standards established by this chapter, as well as, the Nutrient Management Act (3 P.S. §§ 1701—1718), 3 Pa.C.S. §§ 6701—6725 (relating to Fertilizer Act), 3 Pa.C.S. §§ 6901—6921 (relating to Soil and Plant Amendment Act), the Pennsylvania Pesticide Control Act of 1973 (3 P.S. §§ 111.21—111.61) and the Federal Insecticide, Fungicide and Rodenticide Act of 1947 (7 U.S.C.A. §§ 136—136y).

(v) The proposed methods, techniques and types of applications, which shall be consistent with standards established by this chapter as well as the Nutrient Management Act, the Fertilizer Act, the Soil and Plant Amendment Act, the Pennsylvania Pesticide Control Act of 1973 and the Federal Insecticide, Fungicide and Rodenticide Act of 1947.

(vi) The proposed dates of application.

(vii) The equipment to be used for site preparation, land application of the contaminated soil and groundwater and incorporation of the contaminated soil.

(viii) The use that will be made of the proposed application area and the crops that will be planted on each application plot for 3 years following the application.

(ix) A plan to control drift or migration of the chemicals, nutrients and constituents in the soil and groundwater being applied.

(x) Information necessary to show compliance with this chapter, such as the contaminants and contamination levels in each soil pile or quantity of groundwater, the specific plot upon which each soil pile or quantity of groundwater will be placed and the techniques and application rates to be utilized.

(2) *Application rate calculation.* The Department will review the application rate proposal set forth by the applicant in the land application proposal. The Department will consider the following, which shall be addressed in the applicant's operation plan:

(i) The type and concentration of each agricultural chemical contained in each soil pile or quantity of groundwater reported by the applicant in the land application proposal submitted to the Department.

(ii) The excavated soil type indicated by the applicant in the land application proposal submitted to the Department.

(iii) The total volume of excavated soil or contaminated groundwater in each individual soil pile or quantity.

(iv) The proposed application site crop for the upcoming growing season and a projected 3 year crop rotation plan including the use of the land, type of crop to be grown and the use of the crops. The same crop may be planted year after year with the approval of the Department.

(v) The concentration, in parts per million, of the active ingredients in each soil pile or quantity of groundwater contaminated with agricultural chemicals.

(vi) The application rate for the selected site and crop based on the current labeling for each pesticide found. If fertilizers are being applied, the applicant shall follow the recommendations for fertilizer applications for specific crops listed in the latest edition of the *Pennsylvania Agronomy Guide*.

(vii) For agricultural chemicals other than fertilizers a conversion factor (37000) shall be used. The calculation considers the concentration of parts per million and the conversion of FT³ to YD³.

$$(3FT)^3/YD^3 \div 1,000,000 = 1/37037.037$$

The result of the calculation is the total acreage required for land application for each individual agricultural chemical. A safety factor included in this calculation considers the cumulative effect of all the pesticides detected in the soil pile or quantity of groundwater. The acres required for each individual contaminant found in each soil pile or quantity of groundwater contaminated with agricultural chemicals are summed. This value is the uniform soil application rate. Soil application rate (volume of excavated soil or contaminated groundwater ÷ total acres required) (yds³/acre).

(viii) The application credits that shall be taken and the additive loading effect of the soil or groundwater contaminated with agricultural chemicals. The rate will be calculated using the following formula:

$$(\text{Land required for an individual contaminant} \div \text{total acres required}) \times \text{product label rate} = \text{active ingredient application credit (lbs/acres)}.$$

(3) *Application rate considerations and procedures.* The following shall be addressed in the applicant's operation plan:

(i) *Application rate.* The application rate as compared to the label rates of the various compounds present in each soil pile or quantity of groundwater contaminated with agricultural chemicals shall adhere to and not exceed the labeling rate for each compound present.

(ii) *Total loading.* All pesticides detected in a single soil pile or quantity of groundwater contaminated with agricultural chemicals shall be considered when developing soil application rates. The cumulative effect of all the pesticides can be considered by summing the acreage needed for each individual pesticide to develop the total acreage required. Where more than one pesticide is present in a soil pile or quantity of groundwater the soil pile or groundwater shall be applied at the most restrictive labeling rate. Nutrients shall be considered separately from pesticides when developing soil application rates. In addition, the sum of pesticide active ingredient applied through any land application activities and other applications in the same season (or following season, in the case of fall or postharvest land applications) may not exceed labeling rate restrictions for any pesticide applied.

(iii) *Incorporation.* The soil and groundwater contaminated with agricultural chemicals shall be applied in a manner that assures an even distribution of agricultural chemicals within the soil pile or quantity of groundwater and ensures the application rate will be uniform across the application site. In addition, where incorporation is necessary, the incorporation techniques used for soil piles contaminated with agricultural chemicals shall achieve a mixture of top soil and contaminated media and shall ensure the contaminated media is incorporated to a depth of at least 6 inches. The contaminated media shall be incorporated into the soil at the application site within 24 hours of application.

(iv) *Top soil considerations.* The applicant shall set forth procedures (such as developing a soil and erosion prevention plan and an incorporation plan) to assure that topsoil will not be lost, stripped off the land or buried under the contaminated soil to be applied.

(v) *Uniform application rate.* The applicant shall set forth procedures to assure the application rate will be uniform across the field application area or as close to uniform as is possible given the current technology, machinery and application techniques available.

(vi) *Multiple applications of nutrients.* The total amount of nutrients applied through the land application plus other commercial fertilizers, manure and nutrient applications shall be set forth in the operation plan in the land application proposal. In addition, if the nutrients are being applied to an agricultural site that is required to have a nutrient management plan, under the Nutrient Management Act, the applicant shall attest that the application of the additional nutrients contained in the soil piles or groundwater to be applied conform with and do not violate the standards established in the applicant's nutrient management plan. If the application requires a revision to the nutrient management plan, the applicant shall attach a notification from the State Conservation Commission attesting to the fact the nutrient management plan has been revised to account for the additional nutrients and the revised plan has received final approval.

(4) *Additional application requirements.* The operating plan shall also include the following information:

(i) A projected 3-year crop rotation plan for each field or plot upon which soil or groundwater contaminated with agricultural chemicals is to be applied, including type of crop to be grown, planting sequence, crop planting technique to be used, crop and land management and use of crops grown.

(ii) A nutrient and pesticide management plan for the site, including:

(A) A description of the kind and amount of fertilizer, soil conditioner or pesticide that will be placed on the site in addition to the soil or groundwater contaminated with agricultural chemicals.

(B) The number and kind of animals on the farm or property and the total nutrient value of the manure produced by those animals, and the location (field or plot) where the manure is to be placed.

(C) An explanation and analysis of the effect on the soil and crops from the additional nutrients, soil conditioners or pesticides that would be supplied by the soil and groundwater contaminated with agricultural chemicals.

(D) The benefit to the soil, crops or farming operation that the soil and groundwater contaminated with agricultural chemicals would provide.

§ 130d.25. Maps and related information.

(a) *Boundary map.* A land application proposal shall contain detailed maps including necessary narrative descriptions, which show the following:

(1) The boundaries and the names of the present owners of record of the land constituting the proposed application site and a description of all title, deed or usage restrictions, including easements, right-of-way, covenants and other property interests, affecting the proposed application site.

(2) The boundaries of the land where soil and groundwater contaminated with agricultural chemicals will be applied over the estimated total life of the proposed application, including the boundaries of each plot of land that will be affected in each sequence of land application activity.

(3) A grid showing the exact field or location where each soil pile or quantity of groundwater contaminated with agricultural chemicals will be applied.

(4) The location and name of public and private water supplies and wells within the proposed application site and adjacent areas that are within the setback requirements set forth in Subchapter D (relating to general operating requirements for land application of soil and groundwater contaminated with agricultural chemicals to agricultural land).

(b) *Soils map.* A land application proposal shall contain a United States Department of Agriculture Soil Conservation Service Soils Map or other reliable data if current soils maps are unavailable, which shows the location and types of soils within the proposed application area.

§ 130d.26. Financial responsibility.

The applicant shall comply with § 128.34 (relating to financial responsibility). The applicant shall be in compliance with § 128.34 prior to the initiation of the application of the soil or groundwater contaminated with agricultural chemicals to the agricultural land and shall remain in compliance until final closure of the application site as set forth in Subchapter F (relating to closure). Failure to comply with § 128.34 shall result in a denial of the land

application proposal or a revocation of the Department's approval when the applicant fails to maintain continued compliance with § 128.34.

§ 130d.27. Right of entry and agreement with landowner.

(a) *Consent of landowner.* When the landowner is the person submitting the land application proposal and responsible for the application of the soil and groundwater contaminated with agricultural chemicals, no right of entry or other agreement is necessary. In all other situations, the land application proposal shall contain a description or copies of the legal documents upon which the applicant bases his legal right to enter onto, operate on and apply soil and groundwater contaminated with agricultural chemicals on the proposed application site. When a description is given, the applicant shall sign a verified statement attesting to the fact the document exists in the form described. The Department will accept either one of the following legal documents or other document the Department may determine conveys the appropriate legal right:

(1) A copy of a signed consent agreement between the applicant and the current owner of the land upon which the soil or groundwater contaminated with agricultural chemicals will be applied.

(2) A copy of the document of conveyance that expressly grants or reserves the applicant the right to enter onto, operate on and apply soil and groundwater contaminated with agricultural chemicals on the current landowner's property and an abstract of title relating the documents to the current landowner.

(b) *Right of entry.* Each land application proposal shall contain, upon a form prepared and furnished by the Department, the irrevocable written consent of the landowner to the Commonwealth and its authorized agents to enter the proposed application site. The consent shall be obtained prior to final approval of the land application proposal by the Department and shall be applicable prior to the initiation of operations, for the duration of operations at the application site, and for not less than 1 year nor more than 3 years after final closure for the purpose of inspection and monitoring. Failure of the landowner to give consent shall result in denial of the land application proposal.

§ 130d.28. Identification of interest.

(a) *General information.* Each land application proposal shall contain the following information:

(1) The legal names, addresses and telephone numbers of:

(i) The applicant.

(ii) The applicator.

(iii) Any contractor, if the contractor is a person other than the applicant.

(2) The name, address and telephone number of the current owner of record of the agricultural land on which the applicant intends to apply the soil and groundwater contaminated with agricultural chemicals.

(b) *Ownership information.* Each land application proposal shall contain a statement of whether the applicant is an individual, corporation, partnership, limited partnership, limited liability company, proprietorship, municipality, syndicate, joint venture or other association or entity. For applicants other than sole proprietorships, the land application proposal shall contain the following information, if applicable:

(1) The name and address of every officer, general and limited partner, director and other persons performing a function similar to a director of the applicant.

(2) For corporations, the names, principal places of business and the Internal Revenue Service tax identification numbers of the applicant corporation, United States parent corporations of the applicant, including ultimate parent corporations, and all United States subsidiary corporations of the applicant and the applicant's parent corporations.

(3) The names and addresses of other persons or entities having or exercising control over any aspect of the land application of the soil and groundwater contaminated with agricultural chemicals, including associates and agents. This shall include a description of the duties and responsibilities and the control to be exercised by these persons.

(c) *Permits and approvals.* Each land application proposal submitted to the Department shall list the additional permits or approvals necessary for the land application of the contaminated soil and groundwater to the proposed application site. The land application proposal shall set forth the status of those permits or approvals.

(d) *Applicant history.* Each land application proposal shall set forth previous experience of the applicant with regard to land application of agricultural waste or soil or groundwater contaminated with agricultural or other chemicals. The applicant shall identify the location of the sites, the type of operation undertaken and any environmental problems or citations during or resulting from the operation.

§ 130d.29. Compliance information.

The land application proposal shall contain a verified statement attesting that the proposed land application will comply with all applicable Federal, State and local laws, rules, regulations and ordinances.

§ 130d.30. Environmental assessment.

(a) *Impacts.* The land application proposal shall include an environmental assessment setting forth a detailed analysis of the potential impact of the application of the soil and groundwater contaminated with agricultural chemicals to the proposed agricultural site, including potential environmental harms of the proposed land application such as any short term or long term effects or degradation to the fertility or quality of the agricultural land at the application site, water uses and land uses, and potential deleterious effects on contiguous land, the environment and the public health and safety. The applicant shall consider environmental features such as streams, wells, local parks and habitats of concern.

(b) *Mitigation.* The land application proposal shall include a mitigation plan. The mitigation plan shall delineate the steps the applicant will take in the event the application of the soil or groundwater contaminated with agricultural chemicals has a negative impact on the application site or the environment or causes harm or degradation to the application site or contiguous land, or both.

Subchapter C. LAND APPLICATION PROPOSAL REVIEW PROCEDURES

- Sec.
- 130d.31. Criteria for approval or denial.
- 130d.32. Receipt of land application proposal and completeness review.
- 130d.33. Review process.

§ 130d.31. Criteria for approval or denial.

(a) *Acceptance.* In accordance with the authority in section 904(b) of the act (35 P. S. § 6026.904(b)), the

Department will accept and review only those proposals which seek to apply soil or groundwater contaminated with agricultural chemicals, generated as a result of remediation activities at agricultural chemical facilities, that are to be applied to agricultural land.

(b) *Approval, denial, modification and rescission.* When exercising its power to approve, deny or request modification of a proposal to apply soil or groundwater contaminated with agricultural chemicals generated as a result of remediation activities at agricultural chemical facilities that is to be applied to agricultural land, the Department will follow the Pennsylvania Pesticide Control Act of 1973 (3 P. S. §§ 111.21—111.61), 3 Pa.C.S. §§ 6701—6725 (relating to Fertilizer Act), 3 Pa.C.S. §§ 6901—6921 (relating to Soil and Plant Amendment Act), the Nutrient Management Act (3 P. S. §§ 1701—1718) and the Federal Insecticide, Fungicide and Rodenticide Act of 1947 (7 U.S.C.A. §§ 136—136y). The Department will deny a land application proposal that violates any provision of the acts in this subsection. The Department may rescind approval of a land application proposal if the person applying the contaminated soil or groundwater violates any provision of the Pennsylvania Pesticide Control Act of 1973, the Fertilizer Act, the Soil and Plant Amendment Act, the Nutrient Management Act, the Federal Insecticide, the Fungicide and Rodenticide Act of 1947, the act or this chapter or if it discovers a mistake or falsification made in the land application proposal, the test results, the sampling techniques or any part of the operation and actual application of the soil or groundwater to the agricultural land.

(c) *Affirmation of facts.* A land application proposal will not be approved unless the applicant affirmatively demonstrates to the Department's satisfaction that the following conditions are met:

(1) The land application proposal is complete, accurate and meets the standards established by the act and this chapter.

(2) The land application of the soil and groundwater contaminated with agricultural chemicals detailed in the land application proposal can be feasibly accomplished, under the techniques and facts set forth therein and as required by the act and this chapter.

(3) The land application of the soil and groundwater contaminated with agricultural chemicals detailed in the land application proposal will not cause harm to the environment, the health, safety and welfare of the general public, or degrade or pollute the agricultural land to which it will be applied.

(4) The land application of the soil and groundwater contaminated with agricultural chemicals detailed in the land application proposal will not violate the Pennsylvania Pesticide Control Act of 1973, the Fertilizer Act, the Soil and Plant Amendment Act, the Nutrient Management Act or the Federal Insecticide, Fungicide and Rodenticide Act of 1947.

(d) *Soil or groundwater containing other chemicals in addition to agricultural chemicals.* Where the soil or groundwater sought to be applied contains other chemicals in addition to agricultural chemicals, the Department may begin review of the land application proposal for the application of the agricultural chemicals in the soil or groundwater but will not consider the land application proposal complete or issue an approval until the applicant has provided the Department with the information required by §§ 130d.2(d), 130d.21(d) and 130d.29 (relating to scope; general requirements for land application form; and compliance information).

§ 130d.32. Receipt of land application proposal and completeness review.

(a) *Receipt of land application proposal and completeness review.* After receipt of a land application proposal, the Department will determine whether the land application proposal is administratively complete.

(b) *Receipt.* For purposes of this section, "receipt of application" does not occur until the land application proposal is deemed administratively complete.

(c) *Administratively complete land application proposal.* A land application proposal is administratively complete if it contains all the necessary information, approvals, maps and other documents required by this chapter. There is no set timetable for review of a land application proposal. If the land application proposal is administratively complete, the Department will make every effort to render a decision, within 60 days of receiving the administratively complete land application proposal, to approve, approve with modifications or deny the land application proposal. The Department will mail the applicant a written notice of approval or disapproval. A notice of disapproval will state the reasons for the Department's disapproval of the land application proposal.

(d) *Incomplete land application proposal.* When the land application proposal is not complete, the Department will send a written notice and a request for additional information and documentation to the applicant. When additional information and documentation is requested, the Department's review and consideration of the land application proposal will cease until the requested material is received. Upon receipt of all the additional information and documentation requested, the Department will resume its review of the land application proposal. The Department will deny the land application proposal if the applicant fails to provide the additional information and documentation within 60 days of mailing of the request for additional information and documentation.

§ 130d.33. Review process.

(a) The Department will review all proposals for land application of soil or groundwater contaminated with agricultural chemicals, generated as the result of remediation activities at agricultural chemical facilities, to be applied to agricultural land.

(b) The Department will review all land application proposals with regard to the land application of agricultural chemicals only.

(c) Where chemicals other than agricultural chemicals are contained in the contaminated media, the Department will review the land application proposal in accordance with provisions set forth in §§ 130d.2(d) and 130d.31(d) (relating to scope; and criteria for approval or denial).

(d) The decision of the Department to approve or deny a land application proposal is final.

Subchapter D. GENERAL OPERATING REQUIREMENTS FOR LAND APPLICATION OF SOIL AND GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS TO AGRICULTURAL LAND

Sec.

- 130d.41. Standards for land application of soil and groundwater contaminated with agricultural chemicals.
- 130d.42. Land application rates and procedures.
- 130d.43. Additional application requirements.
- 130d.44. Limitations on land application of soil and groundwater contaminated with agricultural chemicals.
- 130d.45. Prohibited applications.
- 130d.46. Daily operational records.

130d.47. Reports.

130d.48. Annual operational report.

§ 130d.41. Standards for land application of soil and groundwater contaminated with agricultural chemicals.

A person approved to apply soil or groundwater contaminated with agricultural chemicals resulting from the remediation of an agricultural facility to agricultural land shall comply with the following:

(1) The land application and application rate shall be consistent with labeling requirements for the pesticide active ingredients found in the soil or groundwater being land applied and the Department may require a safety factor of 1/2 the label application rate. With regard to fertilizer found in the soil or groundwater being land applied, the application shall be consistent with labeling and standards established by the *Pennsylvania Agronomy Guide*.

(2) The cumulative effect of all pesticides found in the soil or groundwater being land applied shall be consistent with the labeling requirements for each pesticide and may not exceed the labeling rate for any of the pesticides contained in the soil pile or quantity of groundwater contaminated with agricultural chemicals.

(3) The cumulative effect of all fertilizers or soil amendments, or both, found in the soil or groundwater being land applied shall be consistent with and not exceed the standards established by the *Pennsylvania Agronomy Guide*.

(4) Proper application techniques set forth and approved by the Department in the applicant's operational plan shall be followed.

(5) Consultants or other individuals directing land application activities shall be certified in the appropriate use category for the pesticides being applied. A certified applicator is required to be onsite at all times during the application of pesticide contaminated soils.

(6) Individual soil piles and groundwater contaminated with agricultural chemicals may not be consolidated for application without prior written approval from the Department and the landowner.

(7) The Department may approve the application of additional agricultural chemicals, not found in background levels at the proposed application site, to the proposed application site in cases when the application rate will not result in crop injury, illegal crop residues, polluting or fouling of the agricultural land or cause unreasonable adverse effects on the environment. The Department will not approve an application of contaminated soil or groundwater where the application is likely to result in crop injury, illegal crop residues, polluting or fouling of the agricultural land or cause unreasonable adverse effects on the environment.

(8) The application of agricultural chemicals shall be in compliance with the Pennsylvania Pesticide Control Act of 1973 (3 P. S. §§ 111.21—111.61), the Federal Insecticide, Fungicide and Rodenticide Act of 1947 (7 U.S.C.A. §§ 136—136y), sections 6701—6725 of 3 Pa.C.S. (relating to Fertilizer Act), sections 6901—6921 of 3 Pa.C.S. (relating to Soil and Plant Amendment Act), the *Pennsylvania Agronomy Guide* and any nutrient management plan approved under the Nutrient Management Act.

(9) Banned, cancelled or suspended agricultural chemicals may not be applied, as established by the regulations under the Pennsylvania Pesticide Control Act of 1973, the Federal Insecticide, Fungicide and Rodenticide Act of

1947 and the Resource Conservation and Recovery Act of 1976 (42 U.S.C.A. §§ 6901—6986).

(10) Incompatible agricultural chemicals may not be applied. The land application of incompatible agricultural chemicals is prohibited by the Pennsylvania Pesticide Control Act of 1973 and the Federal Insecticide, Fungicide and Rodenticide Act of 1947.

(11) The person responsible for the land application of the soil and groundwater contaminated with agricultural chemicals shall comply with all local ordinances.

§ 130d.42. Land application rates and procedures.

(a) *Application rate.* When applying soil and groundwater contaminated with agricultural chemicals, the approved applicant shall follow the application rates set forth and approved by the Department in the land application proposal and operation plan.

(b) *Application rates and procedures.* The approved applicant shall follow the application rates, standards and techniques in the operating plan and approved land application proposal. The applicant shall assure:

(1) The application rate of the various compounds present in each soil pile or quantity of groundwater contaminated with agricultural chemicals adheres to and does not exceed the labeling rate for each compound present.

(2) Where more than one pesticide or other agricultural chemical is present in a soil pile or quantity of groundwater, the soil pile or groundwater shall be applied at the most restrictive labeling rate.

(3) The soil and groundwater contaminated with agricultural chemicals shall be applied in a manner that assures an even distribution of agricultural chemicals within the soil pile or quantity of groundwater and ensures the application rate will be uniform across the field application site. In addition, where incorporation is necessary, the incorporation techniques used for soil piles contaminated with agricultural chemicals shall achieve a mixture of top soil and contaminated media and ensure the contaminated media is incorporated to a depth of at least 6 inches. The contaminated media shall be incorporated into the soil at the application site within 24 hours of application.

(4) The applicant shall utilize techniques and procedures that assure topsoil will not be lost, removed, stripped off the land or buried under the contaminated soil to be applied. In addition, the techniques and procedures utilized shall assure the application rate will be uniform across the field application area or as close to uniform as is possible given the current technology, machinery and application techniques available.

(5) The total amount of nutrients applied through the land application plus other commercial fertilizers, manure and nutrient applications may not violate the provisions of any label, the Federal Insecticide, Fungicide and Rodenticide Act of 1947 (7 U.S.C.A. §§ 136—136y) or the Pennsylvania Pesticide Control Act of 1973 (3 P.S. §§ 111.21—111.61).

(c) *Timetable for land application of soil and groundwater contaminated with agricultural chemicals.* Land application of soil and groundwater contaminated with agricultural chemicals shall be applied between April 1 and September 30 of each year, unless otherwise approved in writing by the Department.

(d) *Federal Insecticide, Fungicide and Rodenticide Act of 1947 and Pennsylvania Pesticide Control Act of 1973.*

Application, application rates and application techniques used to land apply soil piles and quantities of groundwater contaminated with agricultural chemicals may not violate the Federal Insecticide, Fungicide and Rodenticide Act of 1947 or the Pennsylvania Pesticide Control Act of 1973.

§ 130d.43. Additional application requirements.

The approved applicant shall follow the crop rotation and nutrient and pesticide management plans in the approved operating plan. The Department will monitor the operation to assure the plans are being followed.

§ 130d.44. Limitations on land application of soil and groundwater contaminated with agricultural chemicals.

When applying soil and groundwater contaminated with agricultural chemicals the approved applicant shall assure the following:

(1) *Labeling rates.* Pesticide contaminated soil and groundwater shall be applied to a site or crop, or both, in a manner consistent with labeling directions and requirements for that pesticide.

(2) *Annual crops.* In the case of annual crops, the crop shall be grown on the application area during the season that the application is made.

(3) *Postharvest application.* If land application is conducted in the fall or postharvest, the crop following the application shall be suitable for the labeling requirements of the agricultural chemicals contained in the soil and groundwater to be land applied.

(4) *Site suitability.* Site suitability will be based on the land application proposal. The information contained within the land application proposal shall evidence that the rates of application of the soil and groundwater contaminated with agricultural chemicals will comply with labeling requirements, will not exceed labeling rates, will not exceed additivity requirements and will not cause damage to the proposed application site or adjacent land or water. General slope, drainage characteristics, presence of shallow groundwater, distance to surface waters and suitability for agricultural purposes are some of the characteristics that will be considered.

(5) *Application of soil piles.* To allow for proper incorporation of contaminated soil piles, the soil piles may not be applied overtop of the soil at the application site at a thickness greater than 1/2 inch. The soil piles shall be incorporated into the soil at the application site to a depth of at least 6 inches, unless otherwise authorized by the Department.

(6) *Application techniques.* Soil and groundwater contaminated with agricultural chemicals may not be applied by any type of spray irrigation equipment or by aerial equipment or any other technique that may cause or lead to excessive drift of the agricultural chemicals contained in the soil or groundwater unless the person has demonstrated in the land application proposal the equipment or technique will not cause aerosol transport offsite or onto a field that will contain an incompatible crop, and the Department has approved in writing this machinery or technique.

(7) *Ponding and standing accumulations.* Soil and groundwater contaminated with agricultural chemicals shall be applied to the soil surface and incorporated in a manner that prevents ponding or standing accumulations of contaminated soil or groundwater, or both, on or overtop of the topsoil at the application site.

(8) *Pasturing or grazing.* Livestock may not be pastured or allowed to graze on areas where soil and groundwater contaminated with agricultural chemicals has been applied for at least 3 years subsequent to the application, unless otherwise approved by the Department in writing.

(9) *Land use and crops.* The use that will be made of the proposed application area and the crops that will be grown on the site subsequent to the application of the soil and groundwater contaminated with agricultural chemicals shall be consistent with the labeling requirements of the pesticides contained in the soil piles or groundwater to be applied.

§ 130d.45. Prohibited applications.

(a) *General.* The following applications of soil or groundwater contaminated with agricultural chemicals are prohibited, unless specifically authorized by the Department in writing:

(1) An application which would violate any provisions of the act, the environmental protection acts or this chapter.

(2) An application to any "preserved farmland" as defined in 4 Pa. Code Chapter 7, Subchapter W (relating to agricultural land preservation policy).

(3) An application to soil designated as "prime farmland" as defined under 7 CFR 657 (relating to prime and unique farmland).

(4) An application which would render the farmland unusable for agricultural purposes or would cause unreasonable adverse effects on the environment.

(5) An application to a site which would cause the total annual application amounts of an agricultural chemical to exceed its respective labeling application rate.

(6) An application that does not comply with existing laws and regulations.

(7) An application where the soil or groundwater contaminated with agricultural chemicals contains a constituent in such high concentrations that it requires a loading rate which would give the media little or no nutrient or soil conditioning value or little or no pesticide value when applied to the proposed application site.

(b) *Setback areas where land application is prohibited.* The operation plan shall address how the applicant intends to comply with this subsection. Soil and groundwater contaminated with agricultural chemicals may not be applied in the following areas:

(1) Within 100 feet of an intermittent or perennial stream as defined in 25 Pa. Code § 271.1 (relating to definitions).

(2) Within 300 feet of a water source, as defined in 25 Pa. Code § 271.1, unless the current owner of the water source has provided a written waiver consenting to the activities closer than 300 feet.

(3) Within 100 feet of a sinkhole or diversion ditch.

(4) Within 100 feet of an exceptional value wetland, as defined in 25 Pa. Code § 105.17 (relating to wetlands).

(5) Within 100 feet measured horizontally from an occupied dwelling, unless the current owner thereof has provided a written waiver consenting to the activities closer than 100 feet. The waiver shall be knowingly made and separate from a lease or deed unless the lease or deed contains an explicit waiver from the owner.

§ 130d.46. Daily operational records.

(a) *General.* The applicant approved to apply soil and groundwater contaminated with agricultural chemicals to agricultural land shall make and maintain an operational record for each day that the contaminated soil or groundwater is applied. These records shall be maintained in dated files and made accessible to the Department upon request.

(b) *Contents of daily operational record.* The daily operational record shall include the following:

(1) The specific soil piles or quantities of groundwater contaminated with agricultural chemicals applied that day, including weight or volume and types and levels of pesticides, fertilizers, soil conditioners, nutrients and other chemicals in each soil pile or quantity of groundwater applied.

(2) The technique and equipment used to apply and incorporate each soil pile or quantity of groundwater contaminated with agricultural chemicals, as well as the depth of incorporation.

(3) The application rate and calculations evidencing the application rate for each soil pile or quantity of groundwater contaminated with agricultural chemicals are in compliance with this chapter.

(4) The specific location of the application of each soil pile or quantity of groundwater contaminated with agricultural chemicals.

(5) The name, mailing address, county and state of each remediation site from which the contaminated media came and the specific soil pile or quantity of groundwater received from each remediation site. The records shall cross-reference the specific location of the application of each soil pile or quantity of groundwater contaminated with agricultural chemicals.

(6) A record of any deviations from the approved land application proposal operating plan.

(7) The general weather conditions during application.

(8) A record of actions taken to correct deviations from the operating plan or violations of the act, the environmental protection acts or this chapter.

(c) *Retention.* Daily operational records shall be maintained and retained until final approval of the site closure plan required by Subchapter F (relating to closure) by the Department. These records shall be available to the Department upon request.

§ 130d.47. Reports.

(a) A person who receives approval from the Department to apply soil or groundwater contaminated with agricultural chemicals, generated as a result of remediation activities at agricultural chemical facilities, to agricultural land shall file an annual operational report or a final report, or both, with the Department. The annual operational report required by § 130d.48 (relating to annual operational report) shall be filed with the Department within 60 days of the end of the 1-year time period running from the beginning of application of the soil and groundwater contaminated with agricultural chemicals to the application site and each year of operation thereafter. The final report required by § 130d.62 (relating to final report) shall be filed with the Department along with the site closure plan required by § 130d.61 (relating to site closure plan) within 60 days of final closure of the application site. The annual report and the final report may be combined when the application of the contaminated soil or groundwater is completed in 1 year or less.

(b) The records and reports shall be submitted on forms prepared by the Department and shall contain the following:

(1) The name, mailing address, county and telephone number of the person applying the contaminated soil or groundwater.

(2) The name, mailing address, county and telephone number of the owner of the agricultural land upon which the contaminated soil or groundwater is being or has been applied.

(3) A copy of the daily records and annual operational report required by § 130d.46 (relating to daily operational records) and § 130d.48.

(4) A spread sheet on each soil pile or quantity of groundwater applied cross-referencing the field to which it was applied and documenting the following:

(i) The chemical analysis of the specific soil pile or quantity of groundwater applied.

(ii) The application method used for each soil pile or quantity of groundwater.

(iii) The date of incorporation and depth of incorporation of each soil pile.

§ 130d.48. Annual operational report.

(a) *General.* The applicant approved to apply soil and groundwater contaminated with agricultural chemicals to agricultural land shall make and maintain an annual operational record. These records shall be maintained according to generally accepted principles.

(b) *Contents of annual operational report.* The annual operational record shall be a compilation of the daily records made and maintained by the approved applicant. The annual operational record shall be a synopsis of the daily records and shall include the following:

(1) A synopsis of the weight or volume and types and levels of pesticides, fertilizers, soil conditioners nutrients and other chemicals applied to each field or plot at the application site.

(2) A synopsis of the techniques and equipment used to apply and incorporate each soil pile or quantity of groundwater contaminated with agricultural chemicals to each field or plot at the application site and the depth of incorporation at each field or plot.

(3) A synopsis of the application rate and calculations evidencing the application rate to each field or plot for each soil pile or quantity of groundwater contaminated with agricultural chemicals is in compliance with this chapter.

(4) A final list containing the name, mailing address, county and state of each remediation site from which contaminated media came that was applied to the site. This list shall identify each soil pile and quantity of groundwater received from each remediation site.

(5) A final list, including dates, of any deviations from the land application proposal operating plan.

(6) A final list, including dates, of actions taken to correct deviations from the operating plan or violations of the act, the environmental protection acts or this chapter.

(7) A current certificate of insurance, as specified in § 130d.26 (relating to financial responsibility), evidencing continuous coverage for comprehensive general liability insurance.

(8) A map of the same scale and type required by § 130d.25 (relating to maps and related information), showing the field boundaries where soil and groundwater contaminated with agricultural chemicals was applied, and the volume and type of agricultural chemicals and contaminated media applied to each field or other approved application area.

Subchapter E. GENERAL REQUIREMENTS AND EXCEPTIONS FOR USE AND APPLICATION OF GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS AS TANK MIX

Sec.
130d.51. General requirements.
130d.52. General exceptions.

§ 130d.51. General requirements.

(a) *Special land application proposal form.* A person seeking approval to utilize and apply groundwater contaminated with agricultural chemicals generated as a result of remediation activities at an agricultural chemical facility as tank mix, shall apply in writing on a special land application proposal form prepared by the Department. The person seeking permission shall follow the land proposal application procedures in Subchapters B and D (relating to land application proposal requirements for permission to apply soil and groundwater contaminated with agricultural chemicals to agricultural land; and general operating requirements for land application of soil and groundwater contaminated with agricultural chemicals to agricultural land).

(b) *Review and approval of special land application proposal form.* The Department will follow the review process in Subchapter C (relating to land application proposal review procedures) when reviewing an application for use of groundwater contaminated with agricultural chemicals as tank mix. When the Department permits groundwater contaminated with agricultural chemicals, generated as a result of remediation activities at an agricultural chemical facility, to be applied as tank mix to agricultural land, the applicant shall comply with the provisions of this chapter except those expressly waived in writing by the Department in its letter of approval.

(c) *Denial of special land application proposal form.* When the Department denies a request to utilize and apply groundwater contaminated with agricultural chemicals as tank mix, the person seeking approval may still submit a land application proposal form under the standard provisions of this chapter. The Department's letter of denial will set forth the reasons for the denial.

(d) *Ongoing testing and monitoring requirement.* When the Department approves the application of groundwater contaminated with agricultural chemicals, as tank mix, the approved applicant shall be required to conduct quarterly testing and monitoring of the groundwater and submit the results of the tests to the Department. The testing shall be done in accordance with §§ 130d.22 and 130d.23 (relating to chemical analysis of waste and sampling techniques and protocol; and waste sampling plan), shall test and monitor for the agricultural chemicals set forth in the applicant's approved land application proposal and shall be consistent with the land application proposal approved by the Department. The approved applicant shall continue to monitor and test until a final closure plan has been submitted to and approved by the Department and pumping and application of the groundwater contaminated with agricultural chemicals has ceased. This requirement applies to each well or other source from which the groundwater contaminated with

agricultural chemicals to be utilized as tank mix is being drawn or pumped. Based on the quarterly test results and consistent with the rates and procedures in §§ 130d.41—130d.45, the Department may allow or require the approved applicant to change the rates of application.

(e) *Cancellation of approval to utilize and apply groundwater contaminated with agricultural chemicals as tank mix.* The Department will cancel the approval to utilize and apply groundwater contaminated with agricultural chemicals as tank mix if the groundwater contamination levels rise above the DEP published MCL and HAL standards or new contaminants are found. The utilization and land application of the contaminated groundwater as tank mix shall immediately cease. The previously approved applicant shall no longer fall under the exception established by this subchapter and delineated in the Department's letter of approval. The previously approved applicant shall be required to either cease and desist or, where possible, comply with the standard land application requirements of this chapter. Land application of the groundwater contaminated with agricultural chemicals may not resume until the previously approved applicant can demonstrate compliance with this chapter.

§ 130d.52. General exceptions.

(a) When the chemical and waste analysis results manifest that the types and concentrations levels of agricultural chemicals contained in the quantity of groundwater, generated as a result of remediation activities at an agricultural chemical facility, sought to be land applied are at levels below DEP published MCL and HAL standards, the Department may allow the groundwater to be utilized as tank mix.

(b) When the Department permits groundwater contaminated with agricultural chemicals to be utilized as tank mix, the Department may waive certain provisions of this chapter. The Department will determine which provisions to waive based on the information contained in the land application proposal, with special attention to the types, levels and concentrations of agricultural chemicals in the groundwater the applicant is seeking to apply. The Department will set forth the waivers specifically in its letter of approval.

(c) The Department will not waive the following provisions:

(1) Subchapter B (relating to land application proposal requirements for permission to apply soil and groundwater contaminated with agricultural chemicals to agricultural land).

(2) Subchapter C (relating to land application proposal review procedures).

(3) Subchapter D (relating to general operating requirements for land application of soil and groundwater contaminated with agricultural chemicals to agricultural land).

(4) Subchapter F (relating to closure).

Subchapter F. CLOSURE

Sec.
130d.61. Site closure plan.
130d.62. Final report.

§ 130d.61. Site closure plan.

(a) *General.* The applicant approved by the Department to land apply soil and groundwater contaminated with agricultural chemicals to agricultural land shall submit a site closure plan and final report delineating the results of the land application activity to the Department. The site closure plan and final report shall be filed with the Department within 60 days of final closure of the application site.

(b) *Contents of plan.* The site closure plan shall include the following:

(1) A proposed postapplication field soil sampling and analysis plan which shall be consistent with the procedures for soil sampling and analysis in §§ 130d.22 and 130d.23 (relating to chemical analysis of waste and sampling techniques and protocol; and waste sampling plan).

(2) The compounds analyzed for and the methods of analysis. This should be consistent with the initial background components analyzed and the methods used.

(3) A discussion of any problems encountered during the project and actions taken to correct any problems or violations.

§ 130d.62. Final report.

The applicant approved by the Department to apply soil and groundwater contaminated with agricultural chemicals to agricultural land shall submit a final report to the Department. The final report shall be submitted to the Department within 60 days of final closure of the application site and shall contain the final results of the site closure plan, a narrative describing both positive and negative results of the land application and the following information:

(1) The names of the persons supervising the application.

(2) The total acreage on which the soil or groundwater, or both, contaminated with agricultural chemicals was applied.

(3) The dates of each application.

(4) The start and stop time of each application.

(5) The weather conditions during each application.

(6) The calibration measures used.

(7) The type of equipment used.

(8) The type of incorporation method used and the date of incorporation.

(9) The types and concentrations of agricultural chemicals present in each soil pile or quantity of groundwater and the specific field to which each soil pile or quantity of groundwater, or both, was applied.

(10) A discussion of any problems that occurred and actions taken to correct the problems.

(11) The analytical results of both the original application site analysis and the field closure soil sampling plan.

[Pa.B. Doc. No. 04-1543. Filed for public inspection August 20, 2004, 9:00 a.m.]

Title 31—INSURANCE

INSURANCE DEPARTMENT

[31 PA. CODE CH. 147]

Annual Audited Insurers' Financial Report Required

The Insurance Department (Department) amends Chapter 147 (relating to annual audited insurers' financial report required) to read as set forth in Annex A.

Purpose

The purpose of this final-form rulemaking is to update Chapter 147, commonly referred to as the CPA Audit Rule. Chapter 147 requires insurers to have annual audits of their year-end financial statements performed by independent certified public accountants (CPA). The annual audited financial reports are required to be filed with the Department by June 1 of each year. Chapter 147 was adopted in 1979 and is based on a model regulation developed by the National Association of Insurance Commissioners (NAIC). The model is included in the NAIC Financial Regulation Standards and Accreditation Program, which was established in 1989 to set minimum standards for state regulation of the financial solvency of the insurance industry. The Department has been accredited by the NAIC for compliance with the standards since 1994. Chapter 147 was last amended in 2001 to bring it into compliance with changes to the NAIC model. The NAIC model was revised in 2002 to address concerns about the use of indemnification clauses in the engagement of CPAs for the annual audits. In 2003, an additional revision was made to specifically require CPAs to adhere to applicable NAIC instructions and procedures in conducting audits. The updates in this final-form rulemaking include the 2002 and 2003 revisions to the NAIC model, as well as other revisions to improve the clarity of Chapter 147, particularly with respect to its applicability to continuing care providers.

Statutory Authority

This final-form rulemaking is adopted under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412) regarding the general rulemaking authority of the Department; sections 320, 630, 1007 and 2452 of The Insurance Company Law of 1921 (40 P. S. §§ 443, 764a, 967 and 991.2452) regarding the authority of the Insurance Commissioner (Commissioner) to require insurance companies, associations, exchanges, fraternal benefit societies and preferred provider organizations to file statements concerning their affairs and financial condition; sections 205 and 206 of The Pennsylvania Fair Plan Act (40 P. S. §§ 1600.205 and 1600.206); section 731 of the Medical Care Availability and Reduction of Error (MCARE) Act (40 P. S. § 1303.731); 40 Pa.C.S. §§ 6125, 6331 and 6701 (relating to reports and examinations; reports and examinations; and regulation); sections 11 and 14 of the Health Maintenance Organization Act (40 P. S. §§ 1561 and 1564); and sections 7 and 25 of the Continuing-Care Provider Registration and Disclosure Act (40 P. S. §§ 3207 and 3225) which, respectively, relate to the specific regulatory and rulemaking authority of the Department regarding financial reporting by the Pennsylvania Fair Plan, the Pennsylvania Professional Liability Joint Underwriting Association, hospital plan corporations, professional health service corporations, beneficial associations, health maintenance organizations and continuing care providers.

Comments and Response

Notice of proposed rulemaking was published at 34 Pa.B. 844 (February 14, 2004) with a 30-day public comment period.

No comments were received from the Chairpersons of the Senate Banking and Insurance Committee and the House Insurance Committee. No comments were received during the 30-day public comment period. The Independent Regulatory Review Commission (IRRC) submitted its comments and suggestions to the Department on April 14, 2004. The Department has responded to IRRC's comments in this final-form rulemaking.

The following is a discussion of comments and summary of changes in the final-form rulemaking.

§ 147.8. Scope of audit and report of independent certified public accountant.

Subsection (d) in the proposed rulemaking stated: "The Commissioner may from time to time prescribe that additional auditing procedures be observed by the independent certified public accountant in the audit of the financial statements of insurers under this chapter." IRRC had two comments regarding this subsection. First, IRRC commented that the phrase "from time to time" was vague and should be deleted. The Department agrees that the phrase is unnecessary and has deleted it in the final-form rulemaking. IRRC also commented that the final-form regulation should identify under what circumstances additional auditing procedures may be required. The language in subsection (d) was previously found in subsection (a) and has been in Chapter 147 since it was first adopted in 1979. It provides the Commissioner with the flexibility to respond to an unanticipated or unprecedented situation if additional auditing procedures may be needed. The Department is not aware of any instances where this subsection has been used to require additional auditing procedures. However, because the final-form rulemaking applies to various types of insurers and regulated entities, including continuing care providers and special purpose insurance mechanisms, the subsection may be needed to address unusual or unique situations that may not be contemplated or addressed by generally accepted auditing standards or the NAIC *Financial Condition Examiner's Handbook*. Therefore, the subsection provides the flexibility to respond, if necessary, to an unanticipated or unprecedented event that has not been addressed by Nationally recognized auditing standards.

Affected Parties

Chapter 147 applies to all types of insurers and continuing care providers licensed to transact business in this Commonwealth and the CPAs retained by these entities to conduct audits of their annual financial statements.

Fiscal Impact

State Government

The final-form rulemaking will clarify and strengthen existing regulatory requirements. There will be no increase in cost to the Department as a result of this final-form rulemaking.

General Public

The final-form rulemaking has no fiscal impact on the general public.

Political Subdivisions

There will be no fiscal impact on political subdivisions as a result of the final-form rulemaking.

Private Sector

The strengthened requirements in this final-form rulemaking are consistent with NAIC standards and will impose no significant costs on insurers and continuing care providers in obtaining annual audits of their financial statements.

Paperwork

The final-form rulemaking will not impose additional paperwork on the Department and affected parties. The final-form rulemaking may reduce paperwork to the extent that it provides for the filing of documents in electronic form.

Effectiveness/Sunset Date

The final-form rulemaking will become effective upon final-form publication in the *Pennsylvania Bulletin*. The Department continues to monitor the effectiveness of regulations on a triennial basis; therefore, no sunset date has been assigned.

Contact Person

Questions regarding the final form rulemaking should be sent to Peter J. Salvatore, Regulatory Coordinator, Insurance Department, 1326 Strawberry Square, Harrisburg, PA 17120, (171) 787-4429, fax (717) 705-3873, psalvatore@state.pa.us.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on June 11, 2004, the Department submitted a copy of the notice of proposed rulemaking, published at 34 Pa.B. 844, to IRRC and the Chairpersons of the House Insurance Committee and Senate Banking and Insurance Committee for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on July 14, 2004, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on July 15, 2004, and approved the final-form rulemaking.

Findings

The Commissioner finds that:

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

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

Order

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

(a) The regulations of the Department, 31 Pa. Code Chapter 147, are amended by amending §§ 147.2—147.11 and 147.13 to read as set forth in Annex A.

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

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

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

M. DIANE KOKEN,
Insurance Commissioner

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 34 Pa.B. 4082 (July 31, 2004).)

(Editor's Note: See 34 Pa.B. 4598 for a document relating to this rulemaking.)

Fiscal Note: Fiscal Note 11-217 remains valid for the final adoption of the subject regulations.

Annex A**TITLE 31. INSURANCE**

PART VIII. MISCELLANEOUS PROVISIONS
CHAPTER 147. ANNUAL AUDITED INSURERS'
FINANCIAL REPORT REQUIRED

§ 147.2. Definitions.

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

Audited financial report—The term includes those items specified in § 147.4 (relating to contents of annual audited financial report).

Commissioner—The Insurance Commissioner of the Commonwealth.

Department—The Insurance Department of the Commonwealth.

Domestic insurer—An insurer incorporated or organized under the laws of the Commonwealth.

Foreign insurer—An insurer not incorporated or organized under the laws of the Commonwealth.

Independent certified public accountant—

(i) A certified public accountant licensed, or an accounting firm registered, to practice in this Commonwealth under The CPA Law (63 P.S. §§ 9.1—9.16b) or in another state with similar licensing requirements, in good standing with the American Institute of Certified Public Accountants, Inc., and in good standing in the states in which the certified public accountant is licensed or the accounting firm is registered to practice; who conforms to the standards of the profession as contained in the "Code of Professional Ethics of the American Institute of Certified Public Accountants, Inc." and The CPA Law or similar laws.

(ii) For insurers organized in Canada or the United Kingdom of Great Britain and Northern Ireland, a chartered accountant.

Insurer—

(i) The term includes any of the following licensed to transact business in this Commonwealth:

- (A) An insurance company, association or exchange.
- (B) A reciprocal or interinsurance exchange.
- (C) The Inspection Bureau, the Industry Placement Facility and the Fair Plan coming under the Pennsylvania Fair Plan Act (40 P. S. §§ 1600.101—1600.502).
- (D) A nonprofit health plan corporation, whether operating a hospital plan or a professional health services plan, or both.
- (E) An employers' mutual liability insurance association.
- (F) A health maintenance organization.
- (G) A fraternal benefit society or beneficial association.
- (H) A preferred provider organization.
- (I) A joint underwriting association under section 731 of the Medical Care Availability and Reduction of Error (MCARE) Act (40 P. S. § 1303.731).

(ii) Except as otherwise noted, the term also includes a continuing care provider licensed to transact business in this Commonwealth.

§ 147.3. Filing and extensions for filing of annual audited financial report.

(a) Every insurer, unless exempted by the Commissioner under § 147.13 (relating to effective date and exemption), shall have an annual audit performed by an independent certified public accountant and shall file as instructed by the Commissioner an audited financial report for that year on or before June 1 for the year ending December 31 immediately preceding unless an extension is granted under subsection (b). The Commissioner may require an insurer to file an audited financial report earlier than June 1 by providing 90 days' advance notice to the insurer. The Commissioner may require audited financial reports and related information required under this chapter to be filed with the Department and the National Association of Insurance Commissioners in a form of electronic transmission acceptable to the Commissioner.

(b) Extensions of the filing date may be granted by the Commissioner for 30-day periods upon showing, by the insurer and its independent certified public accountant, the reasons for requesting an extension by the Commissioner. The request for extension shall be submitted in writing at least 10 days prior to the due date in sufficient detail to permit the Commissioner to make an informed decision with respect to the requested extension.

(c) Subsections (a) and (b) do not apply to continuing care providers. In accordance with the law and regulations relating to continuing care providers, each continuing care provider shall have an annual audit performed by an independent certified public accountant and shall file with the Commissioner an audited financial report for that year within 4 months following the end of the provider's fiscal year.

(d) Audited financial reports filed as instructed by the Commissioner will be open to the public for examination and inspection.

§ 147.4. Contents of annual audited financial report.

(a) The annual audited financial report shall reflect the financial condition of the insurer as of the end of the most recent calendar year and the results of its operations, cash flows and changes in capital and surplus for the year then ended in conformity with statutory accounting

practices prescribed, or otherwise permitted, by the Department. Statutory accounting practices are those practices and procedures prescribed by the Accounting Practices and Procedures Manuals published by the National Association of Insurance Commissioners, or as otherwise prescribed or provided by specific statutes, regulations, orders or rulings of the Commonwealth or the Department.

(b) The annual audited financial report shall, at a minimum, include the following:

(1) Financial statements that present in a comparable manner, as of the end of the current and the preceding calendar year, the financial condition of the insurer, including the following:

- (i) Balance sheet reporting admitted assets, liabilities, capital and surplus.
- (ii) Statement of operations.
- (iii) Statement of cash flows.
- (iv) Statement of changes in capital and surplus.

(2) Notes to financial statements. These notes shall be those required by the appropriate National Association of Insurance Commissioners Annual Statement Instructions and Accounting Practices and Procedures Manual. The notes shall include a reconciliation of differences, if any, between the audited statutory financial statements and the annual statements filed with the Department, with a written description of the nature of these differences, particularly with respect to surplus or stockholder equity and the results of operations. The insurer shall file an amendment to its annual statement with the Department, the National Association of Insurance Commissioners and other states in which the insurer is licensed, to reflect differences between the audited statutory financial statement and the annual statement filed with the Department within 60 days of the filing date of the audited financial report. The Commissioner may require amendments to financial statements to be filed with the Department and the National Association of Insurance Commissioners in a form of electronic transmission acceptable to the Commissioner.

(3) The report of an independent certified public accountant prepared in compliance with this chapter, including notification of adverse financial condition, report on significant deficiencies in internal controls and letter of qualifications of the independent certified public accountant.

(c) The financial statements included in the audited financial report shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the annual statement of the insurer filed with the Department, and the financial statements shall be comparative, presenting the amounts as of December 31 of the current year and the amounts as of the immediately preceding December 31. In the first year in which an insurer is required to file an audited financial report, the comparative data may be omitted if sufficient detail is made available to the Department upon request. An account which represents less than 5% of the insurer's admitted assets may be aggregated for reporting purposes, except that all invested asset accounts shall be separately reported.

(d) If an error is discovered after a report is filed, the independent certified public accountant shall withdraw the report and issue a corrected report to the insurer and to the Department within 30 days of the date the independent certified public accountant becomes aware of

the discovery of the error. To the extent that the error requires an amendment to the insurer's annual financial statement filed with the Department, the insurer shall file, within 60 days of the date the corrected report is issued, an amendment to its annual statement with the Department, the National Association of Insurance Commissioners and other states in which the insurer is licensed, to reflect differences between the corrected audited statutory financial statement and the annual statement filed with the Department and including reconciling notes as required by the appropriate National Association of Insurance Commissioners *Annual Statement Instructions* and *Accounting Practices and Procedures Manual*. The Commissioner may require amendments to financial statements to be filed with the Department and the National Association of Insurance Commissioners in a form of electronic transmission acceptable to the Commissioner.

(e) Subsections (a)—(d) do not apply to continuing care providers. The annual audited financial report for a continuing care provider shall comply with the following:

(1) The annual audited financial report for a nonprofit continuing care provider shall reflect its financial condition as of the end of its most recent fiscal year and the results of its activities, cash flows and changes in net assets for the fiscal year then ended in conformity with generally accepted accounting principles. The annual audited financial report shall, at a minimum, include the following:

(i) Financial statements that present in a comparable manner, as of the end of the current and the preceding fiscal year, or the period of time that the continuing care provider has been in existence, whichever is shorter, the financial condition of the continuing care provider, including balance sheet, statements of activities, cash flows, changes in net assets and notes to financial statements.

(ii) Report of an independent certified public accountant prepared in compliance with this chapter, including notification of adverse financial condition, report on significant deficiencies in internal controls and letter of qualifications of the independent certified public accountant.

(2) The annual audited financial report for a for-profit continuing care provider shall reflect its financial condition as of the end of its most recent fiscal year and the results of its operations, cash flows and changes in shareholder's equity for the year then ended in conformity with generally accepted accounting principles. The annual audited financial report shall, at a minimum, include the following:

(i) Financial statements that present in a comparable manner, as of the end of the current and the preceding fiscal year, or the period of time that the continuing care provider has been in existence, whichever is shorter, the financial condition of the continuing care provider, including balance sheet, statements of net income, cash flows, shareholder's equity and comprehensive income, and notes to financial statements.

(ii) Report of an independent certified public accountant prepared in compliance with this chapter, including notification of adverse financial condition, report on significant deficiencies in internal controls and letter of qualifications of the independent certified public accountant.

(3) If an error is discovered after an annual audited financial report is filed, the independent certified public accountant shall withdraw the report and issue a cor-

rected report within 30 days of the date the independent certified public accountant becomes aware of the discovery of the error.

§ 147.5. Designation of independent certified public accountant.

(a) Each insurer required by this chapter to file an annual audited financial report shall, within 60 days after becoming subject to the requirement, register with the Commissioner in writing the name and address of the independent certified public accountant or accounting firm retained to conduct the annual audit set forth in this chapter. Insurers which have not retained an independent certified public accountant by November 11, 1995, shall engage and register the name and address of an independent certified public accountant with the Commissioner at least 6 months before the date when the first audited financial report is required to be filed. This subsection does not apply to insurers which registered with the Commissioner in writing the name and address of an independent certified public accountant in compliance with this chapter prior to November 11, 1995.

(b) The insurer shall obtain a letter from its independent certified public accountant and file a copy with the Commissioner, stating that the independent certified public accountant is aware of the provisions of the insurance statutes and regulations that relate to accounting and financial matters of the State in accordance with whose regulation the audited financial report is made and affirming that the independent certified public accountant will express an opinion on the financial statements in terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by the Department, specifying the exceptions the independent certified public accountant may believe appropriate.

(c) If an independent certified public accountant who was the independent certified public accountant for the immediately preceding filed audited financial report is dismissed, resigns or is otherwise replaced, the insurer shall within 5 business days notify the Department of the dismissal, resignation or replacement.

(1) Within 10 business days of submitting a notification of dismissal, resignation or replacement, the insurer shall also furnish the Commissioner with a separate letter stating whether, in the 24 months preceding the dismissal, resignation or replacement, there were disagreements with the former independent certified public accountant on a matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreements, if not resolved to the satisfaction of the former independent certified public accountant, would have caused the independent certified public accountant to make reference to the subject matter of the disagreement in connection with the independent certified public accountant's opinion.

(2) The disagreements required to be reported include both those resolved to the former independent certified public accountant's satisfaction and those not resolved to the former independent certified public accountant's satisfaction. For purposes of this subsection, disagreements are those that occur at the decision making level—that is, between personnel of the insurer responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering the report. The insurer shall also in writing request the former independent certified public accountant to furnish it a letter addressed to the insurer stating whether the independent certified public accountant agrees with the statements

contained in the letter of the insurer and, if not, stating the reasons for which the independent certified public accountant does not agree. The insurer shall furnish the responsive letter from the former independent certified public accountant to the Commissioner together with its own.

(d) Subsection (b) does not apply to continuing care providers. A continuing care provider shall obtain a letter from its independent certified public accountant and file a copy with the Commissioner, stating that the independent certified public accountant is aware of the provisions of the Commonwealth's statutes and regulations that relate to accounting and financial matters applicable to continuing care providers and affirming that the independent certified public accountant will express an opinion on the financial statements in terms of their conformity with generally acceptable accounting principles.

§ 147.6. Qualifications of independent certified public accountant.

(a) The Commissioner will not recognize a person or firm as a qualified independent certified public accountant under any of the following conditions:

(1) The person is not licensed, or the firm is not registered, to practice and is not in good standing under the laws of the Commonwealth or of a state with licensing requirements similar to the Commonwealth.

(2) The person or firm is not in good standing with the American Institute of Certified Public Accountants, Inc. and, if applicable, the Public Company Accounting Oversight Board.

(3) The person or firm is not in good standing in all states in which the person is licensed, or the firm is registered, to practice.

(4) The person or firm has entered into an agreement of indemnity, or other release from liability, that would shift, transfer, or limit in any manner the potential liability of the person or firm for failure, whether by omission or commission, to adhere to applicable auditing or professional standards, whether or not the failure would result in whole or in part from misrepresentations made by the insurer or its representatives.

(b) For an insurer organized in Canada or the United Kingdom of Great Britain and Northern Ireland, the Commissioner will not recognize a person or firm as a qualified independent public accountant under any of the following conditions:

(1) The person or firm is not a chartered accountant.

(2) The person or firm has entered into an agreement of indemnity, or other release from liability, that would shift, transfer, or limit in any manner the potential liability of the person or firm for failure, whether by omission or commission, to adhere to applicable auditing or professional standards, whether or not the failure would result in whole or in part from misrepresentations made by the insurer or its representatives.

(c) Except as otherwise provided in this section, the Commissioner will recognize an independent certified public accountant as independent and qualified who conforms to the standards of the profession as contained in the "Code of Professional Ethics of the American Institute of Certified Public Accountants, Inc." and The CPA Law (63 P. S. §§ 9.1—9.16b) or similar laws.

(d) A partner or other person responsible for rendering an audited financial report may not act in that capacity for more than 7 consecutive years. Following a 7-year

period of service, the person will be disqualified from acting in that or a similar capacity for the same insurer or its insurance subsidiaries or affiliates for 2 years. An insurer may apply to the Commissioner for relief from the rotation requirement on the basis of unusual circumstances. In determining if the relief should be granted, the Commissioner may consider the following factors:

(1) The number of partners, the expertise of the partners or the number of insurance or continuing care provider clients in the currently registered firm.

(2) The premium volume of the insurer or revenue volume of the continuing care provider.

(3) The number of jurisdictions in which the insurer transacts business.

(e) The Commissioner will not recognize as a qualified independent certified public accountant, nor accept an annual audited financial report prepared in whole or in part by a natural person who meets one of the following conditions:

(1) The person has been convicted of fraud, bribery, a violation of 18 U.S.C.A. Chapter 96 (relating to the Racketeer Influenced and Corrupt Organizations) or any dishonest conduct or practice under Federal or state law.

(2) The person has been found to have violated the insurance laws of the Commonwealth with respect to previous reports submitted under this chapter.

(3) The person has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under this chapter.

(f) The Commissioner may hold a hearing in accordance with 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law) and Chapters 56—58 (relating to special rules of administrative practice and procedure; publication of citations and notice of hearings; and objections and procedure for hearings on reports of examination) to determine whether a certified public accountant is qualified and, considering the evidence presented, may rule that the accountant is not independent or qualified, or both, for purposes of expressing an opinion on the financial statements in the audited financial report made under this chapter and may require the insurer to replace the certified public accountant.

(g) A qualified independent certified public accountant may enter into an agreement with an insurer to have disputes relating to an audit resolved by mediation or arbitration. However, in the event of a receivership proceeding commenced against the insurer under Article V of The Insurance Department Act (40 P. S. §§ 221.1—221.63), the mediation or arbitration agreement may be disavowed by the statutory receiver.

(h) If the Commissioner has reason to believe that an audit performed contains a material departure from generally accepted auditing standards, the Commissioner may refer the matter to the State Board of Accountancy and the American Institute of Certified Public Accountants, Inc., for review and determination. Upon the finding by the State Board of Accountancy or the American Institute of Certified Public Accountants, Inc., that a certified public accountant violated applicable standards relating to competence, the performance of audits, accounting principles or other professional conduct, the Commissioner will not accept the audited financial report for that audit and will no longer accept audited financial statements certified by that certified public accountant.

(i) Within 60 days of receipt of notice from the Commissioner of a finding under subsection (h) that an audit

contains a material departure from generally accepted auditing standards, the insurer for which the audit was performed shall register with the Commissioner the name and address of a qualified independent certified public accountant retained by the insurer to perform an audit in compliance with this chapter for the year for which the finding was made. The audited financial report for the year for which the finding was made shall be filed within a time period to be determined by the Commissioner.

§ 147.7. Consolidated or combined audits.

(a) An insurer may make written application to the Commissioner for approval to file audited consolidated or combined financial reports in lieu of separate annual audited financial reports if the insurer is part of a group of insurance companies which utilizes a pooling or 100% reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer cedes all of its direct and assumed business to the pool. A columnar consolidating or combining worksheet, setting forth the amounts shown on the consolidated or combined audited financial report with a reconciliation of differences between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown on the annual statements of the insurer, shall be filed with the report. The reconciliation shall include explanations of consolidating and eliminating entries. Noninsurance operations may be shown on the worksheet on a combined or individual basis. Consolidated or combined audited financial reports shall be prepared in conformity with statutory accounting practices as set forth in § 147.4(a) (relating to contents of annual audited financial report).

(b) The Commissioner may require an insurer to file separate annual audited financial reports.

(c) Subsection (a) does not apply to continuing care providers. A continuing care provider may make written application to the Commissioner for approval to file consolidated or combined financial reports in lieu of separate annual audited financial reports if the continuing care provider is part of a group of affiliated entities. A columnar consolidating or combining worksheet, setting forth the amounts shown for each individual entity on the consolidated or combined audited financial report and including explanations of consolidating and eliminating entries, shall be filed with the report. Consolidated or combined audited financial reports shall be prepared as set forth in § 147.4(e).

§ 147.8. Scope of audit and report of independent certified public accountant.

(a) The annual financial statements filed by an insurer with the Department shall be audited by an independent certified public accountant. The audit of the financial statements of the insurer shall be conducted in accordance with generally accepted auditing standards.

(b) The scope of the audit and data testing procedures shall be conducted as required by the appropriate *Annual Statement Instructions* adopted by the National Association of Insurance Commissioners. Consideration shall also be given to other procedures in the *Financial Condition Examiner's Handbook* adopted by the National Association of Insurance Commissioners.

(c) Subsection (b) does not apply to continuing care providers.

(d) The Commissioner may prescribe that additional auditing procedures be observed by the independent

certified public accountant in the audit of the financial statements of insurers under this chapter.

§ 147.9. Notification of adverse financial condition.

(a) An insurer required to furnish the annual audited financial report shall require the independent certified public accountant to report, in writing, within 5 business days to the board of directors or audit committee of the insurer, any of the following:

(1) A determination by the independent certified public accountant that the insurer has materially misstated its financial condition as reported to the Commissioner as of the balance sheet date currently being audited.

(2) A determination by the independent certified public accountant that the insurer does not meet its capital and surplus requirement, or that the continuing care provider does not meet its liquid reserve requirement, under laws and regulations relating to the insurer or continuing care provider as of the balance sheet date currently being audited.

(b) An insurer required by this chapter to file an annual audited financial report who receives any report from the independent certified public accountant, as required by this section, shall forward a copy of the report to the Commissioner within 5 business days of receipt of the report and shall provide the independent certified public accountant making the report with evidence of the report being furnished to the Commissioner. If within the required 5 business day period, the independent certified public accountant does not receive evidence from the insurer of the report being furnished to the Commissioner, the independent certified public accountant shall directly furnish to the Commissioner a copy of the report within the next 5 business days.

(c) The engagement letter executed by the insurer and the independent certified public accountant shall expressly provide that the independent certified public accountant is not liable in any manner to the insurer for a statement made under subsection (b) if the statement is made in good faith in compliance with subsection (b).

(d) If the independent certified public accountant, subsequent to the date of the annual audited financial report filed under this chapter, becomes aware of facts which might have affected the independent certified public accountant's report, the independent certified public accountant is required to take action as prescribed in Volume 1, Section AU 561 of the Professional Standards of the American Institute of Certified Public Accountants, Inc. If, pursuant to the auditing standards for subsequent discovery of facts, the independent certified public accountant advises the insurer to make appropriate disclosure of newly discovered facts, the insurer shall provide the Department with written notice of the independent certified public accountant's advice within 5 business days of receipt of that advice.

§ 147.10. Report on significant deficiencies in internal controls.

(a) Concurrently with the filing of the annual audited financial reports, each insurer shall furnish the Commissioner with a written report prepared by the independent certified public accountant describing significant deficiencies in the insurer's internal control structure noted by the independent certified public accountant during the audit. The *Statement of Auditing Standard No. 60, Communication of Internal Control Structure Matters Noted in an Audit (AU Section 325 of the Professional Standards of the American Institute of Certified Public*

Accountants, Inc.) requires an independent certified public accountant to communicate significant deficiencies, known as "reportable conditions," noted during a financial statement audit to the appropriate parties within an entity. A report should not be issued if the independent certified public accountant does not identify significant deficiencies.

(b) The insurer is required to provide, within 60 days of the date of the independent certified public accountant's report on significant deficiencies, a description of remedial actions taken or proposed to correct significant deficiencies, if the actions are not described in the independent certified public accountant's report.

§ 147.11. Definitions, availability and maintenance of independent certified public accountant workpapers.

(a) Workpapers are the records kept by an independent certified public accountant of the procedures followed, the tests performed, the information obtained and the conclusions reached pertinent to audit of the financial statements of an insurer. For purposes of this chapter, workpapers include audit planning documentation, audit programs, permanent files, internal control and electronic data processing questionnaires, analyses, memoranda, letters of confirmation and representation, abstracts of company documents and schedules or commentaries which are prepared or obtained by the independent certified public accountant in the course of the independent certified public accountant's audit of the financial statements of an insurer and which support the opinion thereon.

(b) Every insurer required to file an annual audited financial report under this chapter shall require the independent certified public accountant to make available, through the insurer, for review by Department examiners workpapers prepared in the conduct of the audit, as well as communications related to the audit between the independent certified public accountant and the insurer, including the engagement letter, at the offices of the insurer, at the offices of the independent certified public accountant, at the offices of the Department or at another reasonable place designated by the Commissioner. The insurer shall require that the independent certified public accountant retain the audit workpapers and communications for at least 7 years after the period reported on and agree to make a partner or manager available to the Department upon reasonable request.

(c) In the conduct of the periodic review by Department examiners described in subsection (b), electronic copies or photocopies of pertinent audit workpapers may be made and retained by the Department.

(d) Copies of audit workpapers so obtained in the course of review will be considered part of the record of examination of the Commissioner and will be held as confidential records.

§ 147.13. Effective date and exemption.

(a) This chapter applies to all insurers doing business in this Commonwealth.

(b) For those insurers retaining an independent certified public accountant on November 11, 1995, the 7-year period of service referred to in § 147.6(d) (relating to qualifications of independent certified public accountant) begins when the independent certified public accountant or other person responsible for rendering the annual audited financial report was first retained or assigned that responsibility. The requirement that an insurer

retain the services of a new independent certified public accountant in order to comply with the 7-year rotation provision in § 147.6(d) shall become effective November 11, 1997.

(c) Foreign insurers having direct premiums written in this Commonwealth less than \$1 million in a calendar year and having fewer than 1,000 policyholders or certificateholders of directly written policies in this Commonwealth at the end of that calendar year shall be exempt from this chapter for that year unless the Commissioner makes a specific finding that compliance is necessary for the Commissioner to carry out statutory responsibilities. Foreign insurers having assumed premiums pursuant to contracts or treaties of reinsurance, or both, of \$1 million or more are not exempt.

(d) Domestic insurers having total admitted assets less than \$10 million, direct premium written Nationwide less than \$1 million in a calendar year and having fewer than 1,000 policyholders or certificateholders of directly written policies Nationwide at the end of that calendar year are exempt from this chapter for that year unless the Commissioner makes a specific finding that compliance is necessary for the Commissioner to carry out statutory responsibilities. Domestic insurers having total admitted assets greater than \$10 million or assumed premiums pursuant to contracts or treaties, or both, of reinsurance of \$1 million or more are not exempt.

(e) Domestic insurers not insuring or reinsuring risks located outside of this Commonwealth having total admitted assets less than \$10 million and either direct premium written of less than \$1 million in a calendar year or fewer than 1,000 policyholders or certificateholders of directly written policies at the end of that calendar year are exempt from this chapter for that year, unless the Commissioner makes a specific finding that compliance is necessary for the Commissioner to carry out statutory responsibilities. Insurers having total admitted assets greater than \$10 million or assumed premiums pursuant to contracts or treaties of reinsurance, or both, of \$1 million or more are not exempt.

(f) Foreign insurers filing annual audited financial reports in another state, pursuant to that state's requirements for annual audited financial reports whose requirements have been found by the Commissioner to be substantially similar to the requirements of this chapter, are exempt from this chapter if the insurer meets the following conditions:

(1) A copy of the annual audited financial report, report of evaluation of accounting procedures and system of internal controls, report on significant deficiencies in internal controls, and the independent certified public accountant's letter of qualifications which are filed with the other state are filed as instructed by the Commissioner in accordance with the filing dates specified in this chapter. Canadian insurers may submit independent certified public accountant's reports as filed with the Canadian Dominion Department of Insurance.

(2) A copy of a notification of adverse financial condition report filed with the other state is filed with the Commissioner within the time frames specified in § 147.9 (relating to notification of adverse financial condition).

(g) Upon written application of an insurer, the Commissioner may grant an exemption from compliance with this chapter if the Commissioner finds, upon review of the application, that compliance with this chapter would constitute a financial or organizational hardship upon the insurer. An exemption may be granted at any time and

from time to time for specified periods. Within 10 days from a denial of the written request of an insurer for an exemption from this chapter, the insurer may request in writing a hearing on its application for an exemption. Hearings will be held in accordance with 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law) and Chapters 56—58 (relating to special rules of administrative practice and procedure; publication of citations and notice of hearings; and objections and procedure for hearings on reports of examinations).

(h) Subsections (c)—(g) do not apply to continuing care providers.

(i) In the case of insurers organized in Canada or the United Kingdom of Great Britain and Northern Ireland, the annual audited financial report is defined as the annual statement of total business on the form filed by the insurers with their domiciliary supervision authority, audited by an independent chartered accountant. For these insurers, the letter required in § 147.15 (relating to letter of qualifications of independent certified public accountant) shall state that the independent certified public accountant is aware of the requirements relating to the annual audited financial report filed with the Commissioner under § 147.3 (relating to filing and extensions for filing of annual audited financial report) and shall affirm that the opinion expressed is in conformity with those requirements.

[Pa.B. Doc. No. 04-1544. Filed for public inspection August 20, 2004, 9:00 a.m.]

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INSURANCE DEPARTMENT
[31 PA. CODE CH. 151]
Continuing Care Providers

The Insurance Department (Department) amends Chapter 151 (relating to continuing care providers).

Purpose

This final-form rulemaking updates and clarifies Chapter 151 with respect to the requirements for annual audits of financial statements filed by continuing care providers with the Department. This final-form rulemaking is a companion to Insurance Department Document #11-217 (see 34 Pa.B. 4591 (August 21, 2004)), which includes amendments to clarify the requirements in Chapter 147 (relating to annual audited insurers' financial report required) with respect to audits of non-profit and for-profit continuing care providers. Chapter 151 was adopted in 1985 to implement the Continuing-Care Provider Registration and Disclosure Act (act) (40 P.S. §§ 3201—3225). Chapter 147 was last amended in 2001 and prescribes requirements for annual audits of all types of licensed insurers and continuing care providers. Therefore, the provisions in Chapter 151 regarding annual audits are outdated and not needed in addition to the requirements in Chapter 147.

Statutory Authority

This final-form rulemaking is adopted under the authority of the act.

Comments

Notice of proposed rulemaking was published at 34 Pa.B. 850 (February 14, 2004) with a 30-day public comment period.

No comments were received from the House Insurance Committee and the Senate Banking and Insurance Committee. No comments were received during the 30-day public comment period. During its regulatory review, the Independent Regulatory Review Commission (IRRC) did not submit comments to the Department. Therefore, no changes were made to the final-form rulemaking.

Affected Parties

Chapter 151 applies to continuing care providers licensed to transact business in this Commonwealth. The provisions regarding annual audits also apply to the certified public accountants retained to conduct audits of financial statements filed by continuing care providers with the Department.

Fiscal Impact

State Government

This final-form rulemaking updates and clarifies existing regulatory requirements. There will be no increase in costs to the Department as a result of this final-form rulemaking.

General Public

The final-form rulemaking has no fiscal impact on the general public.

Political Subdivisions

There will be no fiscal impact on political subdivisions as a result of the final-form rulemaking.

Private Sector

The updates in this final-form rulemaking will impose no significant costs on continuing care providers.

Paperwork

The final-form rulemaking will not impose additional paperwork on the Department or affected parties.

Effectiveness/Sunset Date

The final-form rulemaking will become effective upon final-form publication in the *Pennsylvania Bulletin*. The Department continues to monitor the effectiveness of regulations on a triennial basis; therefore, no sunset date has been assigned.

Contact Person

Questions or comments regarding the final-form rulemaking should be sent to Peter J. Salvatore, Regulatory Coordinator, Insurance Department, 1326 Strawberry Square, Harrisburg, PA 17120, (717) 787-4429, fax (717) 705-3873, psalvatore@state.pa.us.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on June 11, 2004, the Department submitted a copy of the notice of proposed rulemaking, published at 34 Pa.B. 850, to IRRC and the Chairpersons of the House Insurance Committee and the Senate Banking and Insurance Committee for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on July 14, 2004, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5g of the Regulatory Review Act, the final-form rulemaking was deemed approved by IRRC, effective July 14, 2004.

Findings

The Commissioner finds that:

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

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

Order

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

(a) The regulations of the Department, 31 Pa. Code Chapter 151, are amended by amending § 151.7 to read as set forth at 34 Pa.B. 850.

(b) The Commissioner shall submit this order and 34 Pa.B. 850 to the Office of General Counsel and Office of Attorney General for approval as to form and legality as required by law.

(c) The Commissioner shall certify this order and 34 Pa.B. 850 and deposit them with the Legislative Reference Bureau as required by law.

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

M. DIANE KOKEN,
Insurance Commissioner

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 34 Pa.B. 4082 (July 31, 2004).)

Fiscal Note: Fiscal Note 11-220 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 04-1545. Filed for public inspection August 20, 2004, 9:00 a.m.]

Title 61—REVENUE

DEPARTMENT OF REVENUE

[61 PA. CODE CH. 873]

Lucky for Life Lotto

The Secretary of Revenue (Secretary), under the authority in section 303 of the State Lottery Law (72 P. S. § 3761-303), adds Chapter 873 (relating to Lucky for Life Lotto) to read as set forth in Annex A.

Because of time constraints associated with the establishment, operation and administration of Lottery games, the Department of Revenue (Department), under section 204 of the act of July 31, 1968 (P. L. 769, No. 240) (CDL) (45 P. S. § 1204) and the regulation thereunder, 1 Pa. Code § 7.4, finds that notice of proposed rulemaking is, under the circumstances, impracticable and, therefore, may be omitted.

The Department's justification for utilizing the final-omitted rulemaking process is based upon the time constraints associated with the establishment, operation and administration of Lottery games. The efficient and successful operation of the Lottery requires that the Lottery implement the latest innovations and trends in

the lottery industry. The inability to adapt marketing strategies quickly may lead to a reduction in Lottery revenues. The necessity of the Lottery to react quickly to market forces has been recognized in the past as an appropriate justification for utilizing the final-omitted rulemaking process as evidenced by the approval of these types of regulations in the past.

Purpose of the Final-Omitted Rulemaking

The final-omitted rulemaking establishes and details the procedures that will be followed in operating and administering the Lucky for Life Lotto.

Explanation of Regulatory Requirements

The Lucky for Life Lotto game offers the player two opportunities to win: an instant prize feature and correctly matching the numbers on a ticket in a single play to those drawn in the Lottery drawing in which the ticket is entered.

The instant prize is determined by the Lottery's central computer system which will assign each play on a ticket a randomly selected number from 1 through 20. Nineteen of these numbers will have been pre-designated by the Lottery's central computer as "nonwinning" numbers, the remaining number having been predetermined by the computer as the "winning" number. If the randomly selected number assigned to a play matches the predetermined "winning" number, that play will be an instant winning play entitling the player to an instant prize of \$10.

Correctly matching six numbers from 1 through 38, or a designated combination thereof, within a single play, and meeting other validation criteria, entitles the ticket holder to a set prize as set forth in § 873.9 (relating to determination of prize winners). The first prize category (jackpot) prize is \$3,000 a month for life (\$1.008 million lifetime minimum), second prize \$2,000, third prize \$40 and fourth prize \$3.

Fiscal Impact

The Department has determined that the final-omitted rulemaking will have no adverse fiscal impact on the Commonwealth and that the game described by the regulations could increase revenues available to older residents in this Commonwealth.

Paperwork

The regulations will not generate substantial paperwork for the public or the Commonwealth.

Effectiveness/Sunset Date

The final-omitted rulemaking will become effective upon publication in the *Pennsylvania Bulletin*. The final-omitted rulemaking is scheduled for review within 5 years of final publication. No sunset date has been assigned.

Contact Person

The contact person for an explanation of the final-omitted rulemaking is Mary R. Sprunk, Office of Chief Counsel, Department of Revenue, Dept. 281061, Harrisburg, PA 17128-1061.

Regulatory Review

Under section 5.1(a) of the Regulatory Review Act (71 P. S. § 745.5a(a)), on June 11, 2004, the Department submitted a copy of the final-omitted rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Finance and the

Senate Committee on Finance. A copy of this material is available to the public upon request.

Under section 5.1(j.2) of the Regulatory Review Act, on July 14, 2004, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on July 15, 2004, and approved the final-omitted rulemaking.

Findings

The Department finds that the final-omitted rulemaking is necessary and appropriate for the administration and enforcement of the authorizing statute. Under section 204 of the CDL, the Department also finds that the proposed rulemaking procedures in sections 201 and 202 of the CDL (45 P. S. §§ 1201 and 1202) are unnecessary because of the time constraints associated with the establishment, operation and administration of Lottery games.

Order

The Department, acting under the authorizing statute, orders that:

(a) The regulations of the Department, 61 Pa. Code, are amended by adding §§ 873.1—873.19 to read as set forth in Annex A.

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

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

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

GREGORY C. FAJT,
Secretary

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 34 Pa.B. 4082 (July 31, 2004).)

Fiscal Note: 15-427. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 61. REVENUE

PART V. STATE LOTTERIES

CHAPTER 873. LUCKY FOR LIFE LOTTO.

Sec.	
873.1.	Creation.
873.2.	Purpose.
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873.6.	Lucky for Life Lotto bet slip and ticket characteristics and restrictions.
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873.10.	Ticket responsibility.
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873.14.	Unclaimed prize money.
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873.16.	Purchase and prize restrictions.
873.17.	Restriction on voluntary assignment of first place prize (jackpot).
873.18.	Governing law.
873.19.	Probability of winning.

§ 873.1. Creation.

Under the act and this part, there is created a numbers game, called Lucky for Life Lotto, which will commence at the discretion of the Secretary, and will continue until the Secretary publicly announces a suspension or termination date.

§ 873.2. Purpose.

(a) The Lucky for Life Lotto Game offers the player the opportunity to win two ways: instantly winning a prize; and correctly matching the numbers on his ticket in a single play to those drawn in the Lottery drawing in which the ticket is entered.

(b) The purpose of the Lucky for Life Lotto Game is to determine winners from ticket holders matching six numbers from 1 through 38, or a designated combination thereof, within a single play, with the six winning numbers to be randomly drawn. Correctly matching the six winning numbers drawn, or a designated combination thereof, and meeting other validation criteria, entitles the ticket holder to a set prize identified in § 873.9(a) (relating to determination of prize winners). Drawings will be conducted twice a week or as determined and publicly announced by the Secretary.

(c) In addition, every Lucky for Life Lotto ticket issued by the Lottery central computer system will be eligible to win an instant prize. The determination of the instant ticket winners, as described in § 873.7 (relating to determination of instant prize winners), will be made by the Lottery's central computer system based upon a statistical probability of 1 in 20. This probability will be adjusted to incorporate the number of plays on each ticket.

§ 873.3. Definitions.

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

Apparent winning ticket—A ticket bearing winning numbers which has not been validated by the Lottery.

Confidential security checks—Proprietary measures used by the Lottery to validate and verify a ticket's authenticity.

Drawing—The process of selecting winning numbers that determines the number of winners for each prize category of the game.

Game section—One of the five areas of the Lucky for Life Lotto bet slip that contains 38 squares each numbered 1 through 38. Each area is lettered either A, B, C, D or E and, when used to purchase a ticket, each corresponds to the numbers selected or quick picked, or both, and printed on the ticket for a single play.

Lucky for Life Lotto bet slip—A card having a game section used by a player to play the game.

On-line retailer or retailer—A person who is properly licensed by the Lottery to sell tickets.

Pay status—The designation within the Lottery's gaming computer system, which indicates that a given drawing has been verified and validated.

Play—A single line of six numbers from 1 to 38 which represents a single \$2 wager, and consists of six player-selected or quick-picked numbers, or both.

Quick pick—The random selection through a Lottery terminal of up to six different numbers from 1 through 38 that appear as a play in the Lucky for Life Lotto Game.

Set prize—Any prize other than the first prize category (jackpot) prize that can be won in this game.

Ticket—A Lucky for Life Lotto ticket is a lottery ticket produced by a licensed retailer in an authorized manner, and contains, at the discretion of the player one, two, three, four or five plays, designated respectively as game A, B, C, D and E. The ticket also contains at a minimum, the drawing date, the amount bet, instant play data as described in § 873.7 (relating to determination of instant prize winners) and validation data.

Trailing ticket—A ticket produced automatically by the lottery's central computer system when an original ticket with remaining plays is presented for payment. The ticket contains the same pertinent play data for the remaining plays as contained on the original ticket.

Validation criteria—Criteria, including those set forth in § 873.11(a) (relating to ticket validation requirements), against which Lottery tickets are compared in the determination of whether the ticket has won a prize.

Winning numbers—Six numbers, from 1 through 38, selected in a Lucky for Life Lotto drawing and which have been subsequently validated by the Lottery, which shall be used to determine the winning Lucky for Life Lotto plays on tickets.

§ 873.4. Ticket sales retailers.

(a) Lucky for Life Lotto Game ticket sales may only be made through licensed retailers the Director will appoint and contract with as provided in § 815.42 (relating to ticket sales agents).

(b) The Lottery may terminate sales by a retailer without prior notice to the retailer if the retailer becomes delinquent in payment of proceeds due the Lottery, or fails to handle Lottery funds in the prescribed manner, or if the retailer fails to follow the contract or an addendum thereof, this part or procedures established governing the sale of tickets or if the Lottery deems it to be in the best interest of the Commonwealth.

§ 873.5. Ticket price.

Lucky for Life Lotto tickets may be purchased for \$2 per play. A play, at the owner's option, may be up to six numbers selected by the player from 1 through 38, and the remainder selected randomly by the Lottery computer system, or all six numbers randomly selected through the Lottery terminal. Additional plays may, at the discretion of the player, be purchased for an additional \$2 for each play purchased. There may be up to five plays on a ticket.

§ 873.6. Lucky for Life Lotto bet slip and ticket characteristics and restrictions.

(a) The player shall select, or request selection by computer, up to six numbered squares from 1 through 38. If less than six numbers are selected by the player the remaining number or numbers will be selected randomly by the Lottery computer system from that same range of numbers, in one or more of the game sections on a Lucky for Life Lotto bet slip. Lucky for Life Lotto bet slips shall be available at no cost to the player. The minimum entry is \$2. For \$2, play game A; for \$4, play games A and B; for \$6, play games A, B and C; for \$8, play games A, B, C, and D; for \$10, play games A, B, C, D and E. Game sections shall be selected in alphabetical order in accordance with the instructions printed on the Lucky for Life Lotto bet slip. A Lucky for Life Lotto bet slip has no pecuniary or prize value and does not constitute evidence of the purchase of a ticket or the numbers selected.

(b) To purchase a ticket, a player shall, in addition to the purchase price, submit the completed Lucky for Life Lotto bet slip, or request number selection, either by quick pick or manual terminal entry, or both, to an on-line retailer to have issued a ticket. The ticket shall contain, at a minimum, a six number selection, in each play section, (for each \$2 wagered), the drawing date, amount bet, validation number data and instant play data. This ticket, or a subsequently produced trailing ticket, shall be the only valid proof of the bet placed, and the only valid receipt for claiming a prize. The ticket shall only be valid for the drawing date or dates printed on the ticket.

(c) If Lucky for Life Lotto bet slips are unavailable, number selections may be given to an on-line retailer in groups of up to six number selections for each \$2 wagered. The retailer shall manually enter each group of up to six number selections into the computer terminal. The terminal will randomly generate the remainder of the numbers if the player selected less than the six required numbers.

(d) A Lucky for Life Lotto ticket may not be cancelled or voided once printed by the Lottery terminal, even if the ticket is printed in error.

(e) It is the sole responsibility of the ticket holder to verify the accuracy and condition of data printed on the ticket. The placing of plays is done at the player's own risk through the on-line retailer who is acting on behalf of the player in entering the play or plays.

(f) The Department reserves the right to stop play on a number or combination of numbers to protect the integrity of the prize structure of the game anytime during the course of the game.

§ 873.7. Determination of instant prize winners.

(a) For each Lucky for Life Lotto play, the Lottery's central computer system will assign that play a randomly selected number from 1 through 20. Nineteen of the numbers from 1 through 20 will have been predesignated by the Lottery's central computer as "nonwinning" numbers, the remaining number having been predetermined by the computer as the "winning" number. If the randomly selected number assigned to a play matches the predetermined "winning" number, that play will be an instant winning play.

(b) If on a ticket no play is an instant winner the ticket produced by the Lottery terminal will indicate "NO INSTANT WIN TRY AGAIN."

(c) A ticket upon which one or more plays qualifies as an instant winner will indicate "INSTANT WINNER \$" followed by the total amount of the instant prize won on that ticket.

§ 873.8. Time, place and manner of conducting drawing.

(a) *Time of drawing.* A Lucky for Life Lotto drawing will be held twice a week or as determined and publicly announced by the Secretary.

(b) *Place of drawing.* A Lucky for Life Lotto drawing will be conducted in the Harrisburg area unless the Secretary directs that a drawing or part of the drawing procedure be conducted at some other location.

(c) *Manner of conducting drawings.* The Lottery will select at random, six numbers from a field of numbers from 1 through 38, with the aid of mechanical devices or

any other selection methodology as authorized by the Secretary. The validity of a drawing will be solely determined by the Lottery.

§ 873.9. Determination of prize winners.

<i>Tickets containing the following numbers in one single game play</i>	<i>Prize Category</i>	<i>Prize Amount</i>	<i>Percent (%) of Sales Anticipated to Be Paid in Prizes/Category</i>
All six winning numbers	1st	\$3,000/month/life	10.27%
Five winning numbers	2nd	\$2,000	6.95%
Four winning numbers	3rd	\$40	5.39%
Three winning numbers	4th	\$3	5.39%
Instant winner	Instant winner	\$10	25.0%

(b) Holders of tickets entitling them to a first prize category (jackpot) prize shall be entitled to a prize of \$3,000 a month for life (\$1,008,000 lifetime minimum), which shall be paid by an initial cash payment of \$36,000, plus equal annual payments of \$36,000, over the lifetime of the winner. In the event that the winner dies before having received the \$1,008,000 minimum, payments will continue under provisions of § 811.16 (relating to prizes payable after death of prize winner) until the \$1,008,000 minimum has been paid. For purposes of claiming the \$3,000 a month for life prize, "lifetime" for legal entities shall be defined as 28 years, beginning the date the prize is claimed.

(c) If the winner of a Pennsylvania Lottery Lucky for Life Lotto first place prize is younger than 18 years of age, the winner will not begin to receive the prize until the winner has attained 18 years of age.

(d) There can only be one claimant per ticket for a first prize category (jackpot) prize.

(e) Lucky for Life Lotto prizes will be paid as follows:

(1) Individual ticket prize payments will be made as a single payment with the exception of the first prize (jackpot) category.

(2) If more than five winning first prize (jackpot) plays are determined in the same drawing, each, upon meeting the requirements of §§ 873.11 and 873.12 (relating to ticket validation requirements; and procedures for claiming and payment of prizes), is entitled to a share of annual payments totaling \$180,000. Each share is limited to annual payments for the lifetime of the winner equal to \$180,000 divided by the actual number of jackpot prize winners. In these cases, the minimum lifetime amount is determined to be 28 annual payments each in the amount as determined above. For the purpose of calculating the share of the first-place prize pool, prizes will be rounded down to the nearest 50¢. This conditional pari-mutuel top prize payout may be changed at the discretion of the Secretary and the change will be announced by public notice in the *Pennsylvania Bulletin*. The change will only apply prospectively to Lucky for Life Lotto drawings as of the date specified in the public notice.

(f) A winning Lucky for Life Lotto play is entitled only to the highest prize won by those numbers, plus the instant prize, if applicable.

(g) The number of prize categories, the allocation of prize money among the prize categories, the instant prize amount and frequency of instant prize award, and the annuity amount or terms may be changed at the discretion of the Secretary and the change will be announced by

(a) The prizes to be awarded to an owner of an apparent winning ticket are as follows:

public notice in the *Pennsylvania Bulletin*. The changes will only apply prospectively to Lucky for Life Lotto drawings as of the date specified in the public notice.

(h) Retailer incentive and marketing promotion programs, including the use of free tickets, may be implemented at the discretion of the Secretary. Funds for the programs, if needed, will be drawn from the Lottery fund.

§ 873.10. Ticket responsibility.

(a) A ticket is a bearer document deemed to be owned by the person holding the ticket, except that if a name is contained on the back of the ticket, the person so named will, for all purposes, be considered the owner of the ticket.

(b) The Commonwealth will not be responsible for lost or stolen tickets.

(c) The purchaser of the ticket has the sole responsibility for checking the accuracy and condition of the data printed on the ticket.

(d) The Commonwealth will not be responsible for tickets redeemed in error by a player at an on-line retailer.

§ 873.11. Ticket validation requirements.

(a) *Valid tickets.* To be a valid ticket, the following conditions shall be met:

(1) The ticket validation number shall be present in its entirety and shall correspond to the computer record generated at the time the ticket is produced.

(2) The ticket shall be intact.

(3) The ticket may not be mutilated, altered, reconstituted or tampered with.

(4) The ticket may not be counterfeit or an exact duplicate of a winning ticket.

(5) The ticket shall have been issued by the Lottery through a licensed retailer.

(6) The ticket may not have been stolen.

(7) The ticket shall be validated in accordance with § 873.12 (relating to procedures for claiming and payment of prizes).

(8) The player-selected or computer-selected numbers, or both, on the ticket shall be in individual groups of six numbers each associated with a single letter, A, B, C, D or E. The six numbers and the associated letter shall constitute a single play.

(9) The ticket data shall have been recorded on the Lottery's central computer system prior to the drawing and the ticket data shall match this computer record in every way.

(10) The player-selected and computer-selected numbers, the validation number data and the drawing date of an apparent winning ticket shall appear on the official file of winning tickets; and a ticket with that exact data may not have been previously paid.

(11) The ticket may not be misregistered, defectively printed or printed or produced in error to an extent that it cannot be processed by the Lottery.

(12) The ticket shall pass other confidential security checks of the Lottery.

(13) By submitting a ticket for validation, the player agrees to abide by this chapter as determined by the Secretary.

(14) There may not be another breach of this part in relation to the ticket which, in the opinion of the Secretary, justifies disqualification.

(b) *Invalid or defective tickets/disputes.* A ticket not passing the validation checks in subsection (a) will be considered invalid and will not be paid.

(1) In cases of doubt, the determination of the Secretary is final and binding. The Secretary may replace an invalid ticket with a ticket of equivalent sale price from a current Lottery game.

(2) If a defective ticket is purchased or if the Secretary determines to adjust an error, the sole and exclusive remedy will be the replacement of the defective or erroneous ticket with a ticket of equivalent sale price from a current Lottery game.

(3) If a ticket is not paid by the Lottery and a dispute occurs as to whether the ticket is a winning ticket, the Lottery may replace the ticket as provided in paragraph (2). This is the sole and exclusive remedy of the holder of the ticket.

§ 873.12. Procedures for claiming and payment of prizes.

(a) A prize shall be claimed only through a licensed on-line retailer, and except for the instant prize, may be claimed as soon as that drawing is placed in pay status by the Lottery.

(1) The holder of a ticket designated as an instant prize winner may claim the instant prize before or after the drawing for which the ticket was valid.

(2) The holder of a ticket designated as an instant prize winner, who has claimed the instant prize prior to the drawing for which the ticket is valid shall be issued a trailing ticket which shall contain the same relevant play information as contained in the redeemed ticket except for the instant prize data.

(b) An on-line retailer is authorized and required to make payment of a prize of \$2,500 or less, if the ticket is presented within a designated time period as announced by the Secretary, on an individual winning ticket, if the retailer has sufficient funds available for payment.

(c) The holder of an apparent winning ticket representing a prize of \$2,500 or less will be paid by participating on-line retailers as provided in subsection (b), if the ticket validation requirements in § 873.11 (relating to ticket validation requirements) have been met, a proper validation pay ticket has been issued by the retailer's computer terminal, and other retailer procedures have been met.

(d) The holder of an apparent winning ticket representing a prize in excess of \$2,500, with the exception of the first place prize (jackpot), shall present the winning ticket to an on-line retailer or authorized claim center under Chapter 811 (relating to prizes).

(e) The holder of an apparent winning ticket representing a first place prize (jackpot) shall present, in person, the apparent winning ticket to Lottery Headquarters under Chapter 811.

(f) The payment of a prize to a person who dies before receiving any or all of a particular prize or to a person under 18 years of age will be paid under §§ 811.16 and 811.27 (relating to prizes payable after death of prize winner; and payment of prizes to persons under 18 years of age).

(g) The Commonwealth will be discharged of liability after payment of prizes as provided in § 811.26 (relating to discharge of State liability upon payment).

§ 873.13. Prizes.

(a) If the total of the set prizes awarded in a Lucky for Life Lotto drawing exceeds the sales for that drawing by 100% or more, then those set nonjackpot prize tiers, in which the stated prizes won exceed the percentage of sales anticipated to be paid in prizes/category, will become pari-mutuel (rounded down to the nearest 50c) to the extent necessary to limit the total set prizes awarded to 200% of sales. Moneys shall be drawn from the Lottery Fund, to the extent necessary, to fund the payment of prizes under this subsection.

(b) If the Lucky for Life Lotto is terminated for any cause, prize moneys remaining undistributed will be paid out of the State Lottery Fund and used for purposes otherwise provided for by law.

§ 873.14. Unclaimed prize money.

Prize money on a winning Lucky for Life Lotto play may be retained by the Secretary for payment to the person entitled to it. If within 1 year of the drawing date on the ticket, no claim is made on a winning play, as determined by the Secretary, the right to claim prize money terminates, and the prize money will be paid into the State Lottery Fund and used for purposes otherwise provided for by statute.

§ 873.15. Withholding.

Federal withholding taxes will be withheld by the Lottery for prize payments in amounts required in accordance with applicable provisions of law.

§ 873.16. Purchase and prize restrictions.

A ticket may not be purchased by, and a prize will not be paid to, an officer or employee of the Lottery, Lottery professional services contractors or subcontractors, who are involved in the operation of the on-line Lottery games system or its associated drawing; or to a spouse, child, brother, sister or parent residing in the same household of the officer, contractor, or subcontractor.

§ 873.17. Restriction on voluntary assignment of first place prize (jackpot).

A prize payable over, and whose term is determined by the lifetime of the winner, can be voluntarily assigned only to the extent of remaining unpaid minimum guaranteed prize amount.

§ 873.18. Governing law.

(a) In purchasing a ticket, the purchaser agrees to comply with and abide by applicable laws, this part, instructions, conditions and final decisions of the Secretary, and procedures established by the Director for the conduct of the Lucky for Life Lotto.

(b) Decisions made by the Director or the Secretary including the declaration of prizes and the payment thereof in interpretation of this part are final and binding on players and persons making a claim in respect thereof.

§ 873.19. Probability of winning.

<i>Tickets containing the following numbers in one single game play</i>	<i>Prize Category</i>	<i>Odds of winning</i>	<i>Prize Amount</i>
All six winning numbers	1st	1:2,760,681	\$3,000/month/life
Five winning numbers	2nd	1:14,378.5	\$2,000
Four winning numbers	3rd	1:371.1	\$40
Three winning numbers	4th	1:27.8	\$3
Instant winner	Instant winner	1:20	\$10

[Pa.B. Doc. No. 04-1546. Filed for public inspection August 20, 2004, 9:00 a.m.]
