PENNSYLVANIA BULLETIN

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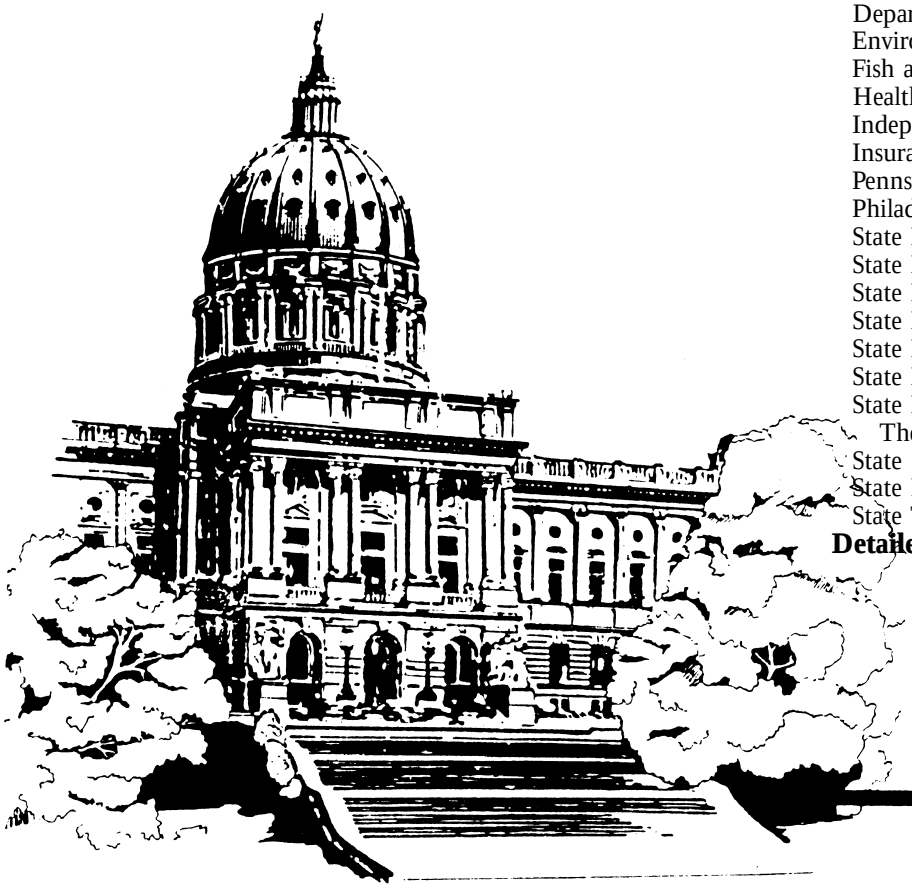

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No. 358, September 2004

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Pennsylvania Bulletin

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

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

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

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

Adoption, Amendment or Repeal of Regulations

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

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

The agency then allows sufficient time for public comment before taking final action. An adopted proposal must be published in the *Pennsylvania Bulletin* before it can take effect. If the agency wishes to adopt changes to the Notice of Proposed Rulemaking to enlarge the scope, they must repropose.

Citation to the *Pennsylvania Bulletin*

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

Pennsylvania Code

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

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

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

How to Find Documents

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

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

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

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Printing Format

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

Fiscal Notes

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

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

List of Pa. Code Chapters Affected

The following numerical guide is a list of the chapters of each title of the *Pennsylvania Code* affected by documents published in the *Pennsylvania Bulletin* during 2004.

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THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

[204 PA. CODE CH. 81]

Amendments to the Pennsylvania Rules of Professional Conduct; No. 30 Disciplinary Rules; Doc. No. 1

Order

Per Curiam:

And Now, this 23rd day of August, 2004, it is ordered, pursuant to Article V, Section 10, of the Constitution of Pennsylvania, that:

1. The Pennsylvania Rules of Professional Conduct are amended by adding new Rules 1.0, 2.4 and 6.5, deleting Rules 2.2 and 7.6, and making the other amendments set forth in Annex A hereto.

2. This Order shall be processed in accordance with Pa.R.J.A. 103(b). New Rules 1.0, 2.4 and 6.5, the deletion of Rules 2.2 and 7.6, and the amendments to other rules set forth in Annex A shall take effect on January 1, 2005 and shall govern matters thereafter commenced and, insofar as just and practicable, matters then pending.

Mr. Justice Saylor joins this Order, and also favors conformance of the revised rules with the provisions of the Model Rules of Professional Responsibility which would expressly permit the rules to be used as evidence of the applicable standard of conduct in appropriate cases outside the disciplinary arena.

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart A. PROFESSIONAL RESPONSIBILITY

CHAPTER 81. RULES OF PROFESSIONAL CONDUCT

Subchapter A. RULES OF PROFESSIONAL CONDUCT

PREAMBLE: A Lawyer's Responsibilities

(1) A lawyer**, as a member of the legal profession,** is a representative of clients, an officer of the legal system and a public citizen having a special responsibility for the quality of justice.

(2) As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others. **[As intermediary between clients, a lawyer seeks to reconcile their divergent interests as an advisor and, to a limited extent, as a spokesperson for each client. A] As an evaluator, a** lawyer acts **[as evaluator]** by examining a client's legal affairs and reporting about them to the client or to others.

(3) In addition to these representational functions, a lawyer may serve as a third-party neutral, a nonrepresentational role helping the parties to resolve a dispute or other matter. Some of these Rules apply directly to lawyers who are or have served as third-party neutrals. See, e.g., Rules 1.12 and 2.4. In addition, there are Rules that apply to lawyers who are not active in the practice of law or to practicing lawyers even when they are acting in a nonprofessional capacity. For example, a lawyer who commits fraud in the conduct of a business is subject to discipline for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. See Rule 8.4.

(4) In all professional functions a lawyer should be competent, prompt and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct or other law.

(5) A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

(6) As a public citizen, a lawyer should seek improvement of the law, **access to the legal system,** the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. **In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority.** A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance**[, and]. Therefore, all lawyers** should **[therefore]** devote professional time and **resources and use** civic influence **[in their behalf] to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel**. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.

(7) Many of a lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law. However, a lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to attain the

highest level of skill, to improve the law and the legal profession and to exemplify the legal profession's ideals of public service.

(8) A lawyer's responsibilities as a representative of clients, an officer of the legal system and a public citizen are usually harmonious. Thus, when an opposing party is well represented, a lawyer can be a zealous advocate on behalf of a client and at the same time assume that justice is being done. So also, a lawyer can be sure that preserving client confidences ordinarily serves the public interest because people are more likely to seek legal advice, and thereby heed their legal obligations, when they know their communications will be private.

(9) In the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interest in remaining an **[upright] ethical** person while earning a satisfactory living. The Rules of Professional Conduct **often** prescribe terms for resolving such conflicts. Within the framework of these Rules, **however,** many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules. **These principles include the lawyer's obligation zealously to protect and pursue a client's legitimate interests, within the bounds of the law, while maintaining a professional, courteous and civil attitude toward all persons involved in the legal system.**

(10) The legal profession is largely self-governing. Although other professions also have been granted powers of self-government, the legal profession is unique in this respect because of the close relationship between the profession and the processes of government and law enforcement. This connection is manifested in the fact that ultimate authority over the legal profession is vested largely in the courts.

(11) To the extent that lawyers meet the obligations of their professional calling, the occasion for government regulation is obviated. Self-regulation also helps maintain the legal profession's independence from government domination. An independent legal profession is an important force in preserving government under law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent on government for the right to practice.

(12) The legal profession's relative autonomy carries with it special responsibilities of self-government. The profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar. Every lawyer is responsible for observance of the Rules of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers. Neglect of these responsibilities compromises the independence of the profession and the public interest which it serves.

(13) Lawyers play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship to our legal system. The Rules of Professional Conduct, when properly applied, serve to define that relationship.

SCOPE

(14) The Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself. Some of the Rules are imperatives, cast in the terms "shall" or "shall not." These define proper conduct for purposes of professional discipline. Others, generally cast in the term "may" or "should," are permissive and define areas under the Rules in which the lawyer has **[professional]** discretion **to exercise professional judgment**. No disciplinary action should be taken when the lawyer chooses not to act or acts within the bounds of such discretion. Other Rules define the nature of relationships between the lawyer and others. The Rules are thus partly obligatory and disciplinary and partly constitutive and descriptive in that they define a lawyer's professional role. Many of the Comments use the term "should." Comments do not add obligations to the Rules but provide guidance for practicing in compliance with the Rules.

(15) The Rules presuppose a larger legal context shaping the lawyer's role. That context includes court rules and statutes relating to matters of licensure, laws defining specific obligations of lawyers and substantive and procedural law in general. **The Comments are sometimes used to alert lawyers to their responsibilities under such other law.** Compliance with the Rules, as with all law in an open society, depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinion and finally, when necessary, upon enforcement through disciplinary proceedings. The Rules do not, however, exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules. The Rules simply provide a framework for the ethical practice of law.

(16) Furthermore, for purposes of determining the lawyer's authority and responsibility, principles of substantive law external to these Rules determine whether a client-lawyer relationship exists. Most of the duties flowing from the client-lawyer relationship attach only after the client has requested the lawyer to render legal services and the lawyer has agreed to do so. But there are some duties, such as that of confidentiality under Rule 1.6, that **[may]** attach when the lawyer agrees to consider whether a client-lawyer relationship shall be established. **See Rule 1.18.** Whether a client-lawyer relationship exists for any specific purpose can depend on the circumstances and may be a question of fact.

(17) Under various legal provisions, including constitutional, statutory and common law, the responsibilities of government lawyers may include authority concerning legal matters that ordinarily reposes in the client in private client-lawyer relationships. For example, a lawyer for a government agency may have authority on behalf of the government to decide upon settlement or whether to appeal from an adverse judgment. Such authority in various respects is generally vested in the attorney general and the state's attorney in state government, and their federal counterparts, and the same may be true of other government law officers. Also, lawyers under the supervision of these officers may be authorized to represent several government agencies in intragovernmental legal controversies in circumstances where a private lawyer could not represent multiple private clients. **[They also may have authority to represent the "public interest" in circumstances where a private lawyer would not be authorized to do so.]** These Rules do not abrogate any such authority.

(18) Failure to comply with an obligation or prohibition imposed by a Rule is a basis for invoking the disciplinary process. The Rules presuppose that disciplinary assess-

ment of a lawyer's conduct will be made on the basis of the facts and circumstances as they existed at the time of the conduct in question and in recognition of the fact that a lawyer often has to act upon uncertain or incomplete evidence of the situation. Moreover, the Rules presuppose that whether or not discipline should be imposed for a violation, and the severity of a sanction, depend on all the circumstances, such as the willfulness and seriousness of the violation, extenuating factors and whether there have been previous violations.

(19) Violation of a Rule should not **itself** give rise to a cause of action **against a lawyer** nor should it create any presumption **in such a case** that a legal duty has been breached. **In addition, violation of a Rule does not necessarily warrant any other nondisciplinary remedy, such as disqualification of a lawyer in pending litigation.** The Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a Rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule. Accordingly, nothing in the Rules should be deemed to augment any substantive legal duty of lawyers or the extra disciplinary consequences of violating such a duty.

[Moreover, these Rules are not intended to govern or affect judicial application of either the attorney-client or work product privilege. Those privileges were developed to promote compliance with law and fairness in litigation. In reliance on the attorney-client privilege, clients are entitled to expect that communications within the scope of the privilege will be protected against compelled disclosure. The attorney-client privilege is that of the client and not of the lawyer. The fact that in exceptional situations the lawyer under the rules has a limited discretion to disclose a client confidence does not vitiate the proposition that, as a general matter, the client has a reasonable expectation that information relating to the client will not be voluntarily disclosed and that disclosure of such information may be judicially compelled only in accordance with recognized exceptions to the attorney-client and work product privileges.

The lawyer's exercise of discretion not to disclose information under Rule 1.6 should not be subject to reexamination. Permitting such reexamination would be incompatible with the general policy of promoting compliance with law through assurances that communications will be protected against disclosure.]

(20) These Rules were **first** derived from the Model Rules of Professional Conduct adopted by the American Bar Association in 1983 as amended. **Those Rules were subject to thorough review and restatement through the work of the ABA Commission on Evaluation of the Rules of Professional Conduct ("Ethics 2000 Commission"), and have been subject to certain modifications in their adoption in Pennsylvania.** The Rules omit some provisions that appear in the ABA Model Rules of Professional Conduct. The omissions should not be interpreted as condoning behavior proscribed by the omitted provision.

(21) The Comment accompanying each Rule explains and illustrates the meaning and purpose of the Rule. The Preamble and this note on Scope provide general orientation. The Comments are intended as guides to interpretation, but the text of each Rule is authoritative. **[Code comparisons were prepared to compare counterparts in the Code of Professional Responsibility. The notes have not been adopted, do not constitute part of the Rules, and are not intended to affect the application or interpretation of the Rules and Comments.]**

CLIENT-LAWYER RELATIONSHIP

Rule 1.0. Terminology.

(a) "Belief" or "believes" denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.

["Consult" or "consultation" denotes communication of information reasonably sufficient to permit the client to appreciate the significance of the matter in question.]

(b) "Confirmed in writing," when used in reference to the informed consent of a person, denotes an informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (e) for the definition of "informed consent." If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

(c) "Firm" or "law firm" denotes a lawyer or lawyers in a **[private firm,] law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or** lawyers employed in **a legal services organization or** the legal department of a corporation or other organization **[and lawyers employed in a legal services organization. See Comment, Rule 1.10]**.

(d) "Fraud" or "fraudulent" denotes conduct **[having] that is fraudulent under the substantive or procedural law of the applicable jurisdiction and has** a purpose to deceive **[and not merely negligent misrepresentation or failure to apprise another of relevant information]**.

(e) "Informed consent" denotes the consent by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

(f) "Knowingly," "Known," or "Knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

(g) "Partner" denotes an equity owner in a law firm, whether in the capacity of a partner in a partnership, a shareholder in a professional corporation, a member in a limited liability company, a beneficiary of a business trust, **a member of an association authorized to practice law,** or otherwise.

(h) "Reasonable" or "Reasonably" when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.

(i) "Reasonable belief" or "Reasonably believes" when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

(j) "Reasonably should know" when used in reference to a lawyer denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.

(k) "Screened" denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these Rules or other law.

(l) "Substantial" when used in reference to degree or extent denotes a material matter of clear and weighty importance.

(m) "Tribunal" denotes a court, an arbitrator in a binding arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.

(n) "Writing" or "written" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, Photostatting, photography, audio or video recording and e-mail. A "signed" writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

Comment:

Confirmed in Writing

(1) If it is not feasible to obtain or transmit a written confirmation at the time the client gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter. If a lawyer has obtained a client's informed consent, the lawyer may act in reliance on that agreement of consent so long as it is confirmed in writing within a reasonable time thereafter.

Firm

(2) The terms of any formal agreement between associated lawyers are relevant in determining whether they are a firm, as is the fact that they have mutual access to information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the Rule that is involved. A group of lawyers could be regarded as a firm for purposes of a rule that the same lawyer should not represent opposing parties in litigation, e.g., Rules 1.7(a), 1.10(a), while it might not be so regarded for purposes of a rule that information acquired by one lawyer is attributed to another, e.g., Rule 1.10(b).

(3) With respect to the law department of an organization, including the government, there is ordinarily no question that the members of the department constitute a firm within the meaning of the Rules of Professional Conduct. There can be uncertainty, however, as to the identity of the client. For example, it may not be clear whether the law department of a corporation represents a subsidiary or an affiliated corporation, as well as the corporation by which the members of the department are directly employed. A similar question can arise concerning an unincorporated association and its local affiliates.

(4) Similar questions can also arise with respect to lawyers in legal aid and legal services organizations. Depending upon the structure of the organization, the entire organization or different components of it may constitute a firm or firms for purposes of these Rules.

Fraud

(5) When used in these Rules, the terms "fraud" and "fraudulent" refer to conduct that is characterized as such under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive. This does not include merely negligent misrepresentation or negligent failure to apprise another of relevant information. For purposes of these Rules, it is not necessary that anyone has suffered damages or relied on the misrepresentation or failure to inform.

Informed Consent

(6) Many of the Rules of Professional Conduct require the lawyer to obtain the informed consent of a client or other person (e.g., a former client or, under certain circumstances, a prospective client) before accepting or continuing representation or pursuing a course of conduct. See, e.g., Rules 1.2(c), 1.6(a), 1.7(b), 1.8(a)(3), (b), (f) and (g), 1.9(a) and (b), 1.10 (d), 1.11(a)(2) and (d)(2)(i), 1.12(a) and 1.18(d)(1). The communication necessary to obtain such consent will vary according to the Rule involved and the circumstances giving rise to the need to obtain informed consent. The lawyer must make reasonable efforts to ensure that the client or other person possesses information reasonably adequate to make an informed decision. Ordinarily, this will require communication that includes a disclosure of the facts and circumstances giving rise to the situation, any explanation reasonably necessary to inform the client or other person of the material advantages and disadvantages of the proposed course of conduct and a discussion of the client's or other person's options and alternatives. In some circumstances it may be appropriate for a lawyer to advise a client or other person to seek the advice of other counsel. A lawyer need not inform a client or other person of facts or implications already known to the client or other person; nevertheless, a lawyer who does not personally inform the client or other person assumes the risk that the client or other person is inadequately informed and the consent is invalid. In determining whether the information and explanation provided are reasonably adequate, relevant factors include whether the client or other person is experienced in legal matters generally and in making decisions of the type involved, and whether the client or other person is independently represented by other counsel in giving the consent. Normally, such persons need less information and explanation than others, and generally a client or other person who is independently represented by other counsel in giving the consent should be assumed to have given informed consent.

(7) Obtaining informed consent will usually require an affirmative response by the client or other person. In general, a lawyer may not assume consent from a client's or other person's silence. Consent may be inferred, however, from the conduct of a client or other person who has reasonably adequate information about the matter. Rule 1.8 (a) requires that a client's consent be obtained in a writing signed by the client. For a definition of "signed," see paragraph (n). The term informed consent in Rule 1.0 and the guidance provided in the Comment should be understood in the context of legal ethics and is not intended to incorporate jurisprudence of medical malpractice law.

Screened

(8) This definition applies to situations where screening of a personally disqualified lawyer is permitted to remove imputation of a conflict of interest under Rules 1.10, 1.11, 1.12 or 1.18.

(9) The purpose of screening is to assure the affected parties that confidential information known by the personally disqualified lawyer remains protected. The personally disqualified lawyer should acknowledge the obligation not to communicate with any of the other lawyers in the firm with respect to the matter. Similarly, other lawyers in the firm who are working on the matter should be informed that the screening is in place and that they may not communicate with the personally disqualified lawyer with respect to the matter. Additional screening measures that are appropriate for the particular matter will depend on the circumstances. To implement, reinforce and remind all affected lawyers of the presence of the screening, it may be appropriate for the firm to undertake such procedures as a written undertaking by the screened lawyer to avoid any communication with other firm personnel and any contact with any firm files or other materials relating to the matter, written notice and instructions to all other firm personnel forbidding any communication with the screened lawyer relating to the matter, denial of access by the screened lawyer to firm files or other materials relating to the matter and periodic reminders of the screen to the screened lawyer and all other firm personnel.

(10) In order to be effective, screening measures must be implemented as soon as practical after a lawyer or law firm knows or reasonably should know that there is a need for screening.

Rule 1.1. Competence.

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation **reasonably** necessary for the representation.

Comment:

Legal Knowledge and Skill

(1) In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question. In many instances, the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some circumstances.

(2) A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar. **[A newly admitted lawyer can be as competent as a practitioner with long experience.]** Some important legal skills, such as the analysis of precedent, the evaluation of evidence and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. A lawyer can provide adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the association of a lawyer of established competence in the field in question.

(3) In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required where referral to or consultation or association with another lawyer would be impracticable. Even in an emergency, however, assistance should be limited to that reasonably necessary in the circumstances, for ill considered action under emergency conditions can jeopardize the client's interest.

(4) A lawyer may accept representation where the requisite level of competence can be achieved by reasonable preparation. This applies as well to a lawyer who is appointed as counsel for an unrepresented person. See also Rule 6.2.

Thoroughness and Preparation

(5) Competent handling of particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more **[elaborate] extensive** treatment than matters of lesser **complexity and** consequence. **An agreement between the lawyer and the client regarding the scope of the representation may limit the matters for which the lawyer is responsible. See Rule 1.2(c).**

Maintaining Competence

(6) To maintain the requisite knowledge and skill, a lawyer should **keep abreast of changes in the law and its practice,** engage in continuing study and education **and comply with all continuing legal education requirements to which the lawyer is subject. [If a system of peer review has been established, the lawyer should consider making use of it in appropriate circumstances.]**

Rule 1.2. Scope of Representation **and Allocation of Authority Between Client and Lawyer**.

(a) **[A] Subject to paragraphs (c) and (d), a** lawyer shall abide by a client's decisions concerning the objectives of representation**[, subject to paragraphs (c), (d) and (e),]** and**, as required by Rule 1.4,** shall consult with the client as to the means by which they are to be pursued. **A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation.** A lawyer shall abide by

a client's decision whether to **[accept an offer of settlement of] settle** a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the **[objectives] scope** of the representation if **the limitation is reasonable under the circumstances and** the client **[consents after consultation] gives informed consent**.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

[(e) When a lawyer knows that a client expects assistance not permitted by the rules of professional conduct or other law, the lawyer shall consult with the client regarding the relevant limitations on the lawyer's conduct.]

Comment:

[*Scope of Representation*] *Allocation of Authority between Client and Lawyer*

(1) [Both lawyer and client have authority and responsibility in the objectives and means of representation. The] Paragraph (a) confers upon the client **[has] the** ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. **[Within those limits, a client also has a right to consult with the lawyer about the means to be used in pursuing those objectives. At the same time, a lawyer is not required to pursue objectives or employ means simply because a client may wish that the lawyer do so. A clear distinction between objectives and means sometimes cannot be drawn, and in many cases the client-lawyer relationship partakes of a joint undertaking. In questions of means the lawyer should assume responsibility for technical and legal tactical issues, but should defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected. Law defining the lawyer's scope of authority in litigation varies among jurisdictions.] The decisions specified in paragraph (a), such as whether to settle a civil matter, must also be made by the client. See Rule 1.4(a)(1) for the lawyer's duty to communicate with the client about such decisions. With respect to the means by which the client's objectives are to be pursued, the lawyer shall consult with the client as required by Rule 1.4(a)(2) and may take such action as is impliedly authorized to carry out the representation.**

(2) On occasion, however, a lawyer and a client may disagree about the means to be used to accomplish the client's objectives. Clients normally defer to the special knowledge and skill of their lawyer with respect to the means to be used to accomplish their objectives, particularly with respect to technical, legal and tactical matters. Conversely, lawyers usually defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected. Because of the varied nature of the matters about which a lawyer and client might disagree and because the actions in question may implicate the interests of a tribunal or other persons, this Rule does not prescribe how such disagreements are to be resolved. Other law, however, may be applicable and should be consulted by the lawyer. The lawyer should also consult with the client and seek a mutually acceptable resolution of the disagreement. If such efforts are unavailing and the lawyer has a fundamental disagreement with the client, the lawyer may withdraw from the representation. See Rule 1.16(b)(4). Conversely, the client may resolve the disagreement by discharging the lawyer. See Rule 1.16(a)(3).

(3) At the outset of a representation, the client may authorize the lawyer to take specific action on the client's behalf without further consultation. Absent a material change in circumstances and subject to Rule 1.4, a lawyer may rely on such an advance authorization. The client may, however, revoke such authority at any time.

(4) In a case in which the client appears to be suffering **[mental disability] diminished capacity**, the lawyer's duty to abide by the client's decisions is to be guided by reference to Rule 1.14.

Independence from Client's Views or Activities

(5) Legal representation should not be denied to people who are unable to afford legal services, or whose cause is controversial or the subject of popular disapproval. By the same token, representing a client does not constitute approval of the client's views or activities.

[*Services Limited in Objectives or Means*] *Agreements Limiting Scope of Representation*

(6) The **[objectives or]** scope of services **to be** provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. **[For example, a retainer may be for a specifically defined purpose. Representation provided through a legal aid agency may be subject to limitations on the types of cases the agency handles.]** When a lawyer has been retained by an insurer to represent an insured, **for example,** the representation may be limited to matters related to the insurance coverage. **[The] A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the** terms upon which representation is undertaken may exclude specific **[objectives or]** means **that might otherwise be used to accomplish the client's objectives**. Such limitations may exclude **[objectives or means] actions that the client thinks are too costly or** that the lawyer regards as repugnant or imprudent.

(7) Although this Rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the law-

yer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 1.1.

(8) [An agreement] All agreements concerning **[the scope of] a lawyer's** representation **of a client** must accord with the Rules of Professional Conduct and other law. **[Thus, the client may not be asked to agree to representation so limited in scope as to violate Rule 1.1, or to surrender the right to terminate the lawyer's services or the right to settle litigation that the lawyer might wish to continue.] See, e.g., Rules 1.1, 1.8 and 5.6.**

Criminal, Fraudulent and Prohibited Transactions

(9) [A] Paragraph (d) prohibits a lawyer from knowingly counseling or assisting a client to commit a crime or fraud. This prohibition, however, does not preclude the lawyer **[is required to give] from giving** an honest opinion about the actual consequences that appear likely to result from a client's conduct. **[The] Nor does the** fact that a client uses advice in a course of action that is criminal or fraudulent **[does not,]** of itself**[,]** make a lawyer a party to the course of action. **[However, a lawyer may not knowingly assist a client in criminal or fraudulent conduct.]** There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.

(10) When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. **[The lawyer is not permitted to reveal the client's wrongdoing, except where permitted by Rule 1.6. However, the] The** lawyer is required to avoid **[furthering the purpose] assisting the client**, for example, **by drafting or delivering documents that the lawyer knows are fraudulent or** by suggesting how **[it] the wrongdoing** might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally **[supposes is] supposed was** legally proper but then discovers is criminal or fraudulent. **[Withdrawal] The lawyer must, therefore, withdraw** from the representation**[, therefore, may be required] of the client in the matter**. **See Rule 1.16(a). In some cases, withdrawal alone might be insufficient. It may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm any opinion, document, affirmation or the like. See Rule 4.1.**

(11) Where the client is a fiduciary, the lawyer may be charged with special obligations in dealings with a beneficiary.

(12) Paragraph (d) applies whether or not the defrauded party is a party to the transaction. Hence, a lawyer **[should] must** not participate in a **[sham]** transaction**[; for example, a transaction]** to effectuate criminal or fraudulent **[escape] avoidance** of tax liability. Paragraph (d) does not preclude undertaking a criminal defense incident to a general retainer for legal services to a lawful enterprise. The last clause of paragraph (d) recognizes that determining the validity or interpretation of a statute or regulation may require a course of action involving disobedience of the statute or regulation or of the interpretation placed upon it by governmental authorities.

(13) If a lawyer comes to know or reasonably should know that a client expects assistance not permitted by the Rules of Professional Conduct or other law or if the lawyer intends to act contrary to the client's instructions, the lawyer must consult with the client regarding the limitations on the lawyer's conduct. See Rule 1.4(a)(5).

Rule 1.3. Diligence.

A lawyer shall act with reasonable diligence and promptness in representing a client.

Comment:

(1) A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and **[may]** take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer **[should] must also** act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf. **[However, a] A** lawyer is not bound**, however,** to press for every advantage that might be realized for a client. **[A] For example, a** lawyer **[has] may have authority to exercise** professional discretion in determining the means by which a matter should be pursued. See Rule 1.2. **[A lawyer's work load should be controlled so that each matter can be handled adequately.] The lawyer's duty to act with reasonable diligence does not require the use of offensive tactics or preclude the treating of all persons involved in the legal process with courtesy and respect.**

(2) A lawyer's work load must be controlled so that each matter can be handled competently.

(3) Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness. **A lawyer's duty to act with reasonable promptness, however, does not preclude the lawyer from agreeing to a reasonable request for a postponement that will not prejudice the lawyer's client.**

(4) Unless the relationship is terminated as provided in Rule 1.16, a lawyer should carry through to conclusion all matters undertaken for a client. If a lawyer's employment is limited to a specific matter, the relationship terminates when the matter has been resolved. If a lawyer has served a client over a substantial period in a variety of matters, the client sometimes may assume that the lawyer will continue to serve on a continuing basis unless the lawyer gives notice of withdrawal. Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, preferably in writing, so that the client will not mistakenly suppose the lawyer is looking

after the client's affairs when the lawyer has ceased to do so. For example, if a lawyer has handled a judicial or administrative proceeding that produced a result adverse to the client **[but has not been specifically instructed concerning pursuit of an] and the lawyer and the client have not agreed that the lawyer will handle the matter on** appeal, the lawyer **[should advise] must consult with** the client **[of] about** the possibility of appeal before relinquishing responsibility for the matter. **See Rule 1.4(a)(2). Whether the lawyer is obligated to prosecute the appeal for the client depends on the scope of the representation the lawyer has agreed to provide to the client. See Rule 1.2.**

(5) To prevent neglect of client matters in the event of a sole practitioner's death or disability, the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of the lawyer's death or disability, and determine whether there is a need for immediate protective action. Cf. Rule 28 of the American Bar Association Model Rules for Lawyer Disciplinary Enforcement (providing for court appointment of a lawyer to inventory files and take other protective action in absence of a plan providing for another lawyer to protect the interests of the clients of a deceased or disabled lawyer).

Rule 1.4. Communication.

(a) A lawyer shall **[keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.]:**

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Comment:

(1) Reasonable communication between the lawyer and the client is necessary for the client effectively to participate in the representation.

Communicating with Client

(2) If these Rules require that a particular decision about the representation be made by the client, paragraph (a)(1) requires that the lawyer promptly consult with and secure the client's consent prior to taking action unless prior discussions with the client have resolved what action the client wants the lawyer to take. For example, a lawyer who receives from opposing counsel an offer of settlement in a civil controversy or a proffered plea bargain in a criminal case must promptly inform the client of its substance unless the client has previously indicated that the proposal will be acceptable or unacceptable or has authorized the lawyer to accept or to reject the offer. See Rule 1.2(a).

(3) Paragraph (a)(2) requires the lawyer to reasonably consult with the client about the means to be used to accomplish the client's objectives. In some situations—depending on both the importance of the action under consideration and the feasibility of consulting with the client—this duty will require consultation prior to taking action. In other circumstances, such as during a trial when an immediate decision must be made, the exigency of the situation may require the lawyer to act without prior consultation. In such cases the lawyer must nonetheless act reasonably to inform the client of actions the lawyer has taken on the client's behalf. Additionally, paragraph (a)(3) requires that the lawyer keep the client reasonably informed about the status of the matter, such as significant developments affecting the timing or the substance of the representation.

(4) A lawyer's regular communication with clients will minimize the occasions on which a client will need to request information concerning the representation. When a client makes a reasonable request for information, however, paragraph (a)(4) requires prompt compliance with the request, or if a prompt response is not feasible, that the lawyer, or a member of the lawyer's staff, acknowledge receipt of the request and advise the client when a response may be expected. Client telephone calls should be promptly returned or acknowledged.

Explaining Matters

(5) The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so. **[For example, a lawyer negotiating on behalf of a client should provide the client with facts relevant to the matter, inform the client of communications from another party and take other reasonable steps that permit the client to make a decision regarding a serious offer from another party. A lawyer who receives from opposing counsel an offer of settlement in a civil controversy or a proffered plea bargain in a criminal case should promptly inform the client of its substance unless prior discussions with the client have left it clear that the proposal will be unacceptable. See Rule 1.2(a). Even when a client delegates authority to the lawyer, the client should be kept advised of the status of the matter.]** Adequacy of communication depends in part on the kind of advice or assistance **that is** involved. For example, **[in negotiations where] when** there is time to explain a proposal **made in a negotiation**, the lawyer should review all important provisions with the client before proceeding to an agreement. In litigation a lawyer should explain the general strategy and prospects of success and ordinarily should consult the client on tactics that **[might] are likely to result in significant expense or to** injure or coerce others. On the other hand, a lawyer ordinarily **[cannot]**

will not be expected to describe trial or negotiation strategy in detail. The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interests, and the client's overall requirements as to the character of representation. **In certain circumstances, such as when a lawyer asks a client to consent to a representation affected by a conflict of interest, the client must give informed consent, as defined in Rule 1.0(e).**

(6) Ordinarily, the information to be provided is that appropriate for a client who is a comprehending and responsible adult. However, fully informing the client according to this standard may be impracticable, for example, where the client is a child or suffers from **[mental disability] diminished capacity**. See Rule 1.14. When the client is an organization or group, it is often impossible or inappropriate to inform every one of its members about its legal affairs; ordinarily, the lawyer should address communications to the appropriate officials of the organization. See Rule 1.13. Where many routine matters are involved, a system of limited or occasional reporting may be arranged with the client. **[Practical exigency may also require a lawyer to act for a client without prior consultation.]**

Withholding Information

(7) In some circumstances, a lawyer may be justified in delaying transmission of information when the client would be likely to react imprudently to an immediate communication. Thus, a lawyer might withhold a psychiatric diagnosis of a client when the examining psychiatrist indicates that disclosure would harm the client. A lawyer may not withhold information to serve the lawyer's own interests or convenience **or the interests or convenience of another person**. Rules or court orders governing litigation may provide that information supplied to a lawyer may not be disclosed to the client.

Rule 1.5. Fees.

(a) A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee. The factors to be considered in determining the propriety of a fee include the following:

(1) whether the fee is fixed or contingent;

(2) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(3) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(4) the fee customarily charged in the locality for similar legal services;

(5) the amount involved and the results obtained;

(6) the time limitations imposed by the client or by the circumstances;

(7) the nature and length of the professional relationship with the client; and

(8) the experience, reputation, and ability of the lawyer or lawyers performing the services.

(b) When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(d) A lawyer shall not enter into an arrangement for, charge, or collect:

(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support; or

(2) a contingent fee for representing a defendant in a criminal case.

(e) A lawyer shall not divide a fee for legal services with another lawyer who is not in the same firm unless:

(1) the client is advised of and does not object to the participation of all the lawyers involved, and

(2) the total fee of the lawyers is not illegal or clearly excessive for all legal services they rendered the client.

Comment:

Basis or Rate of Fee

(1) When the lawyer has regularly represented a client, they ordinarily will have evolved an understanding concerning the basis or rate of the fee. In a new client-lawyer relationship, however, an understanding as to the fee should be promptly established. It is not necessary to recite all the factors that underlie the basis of the fee, but only those that are directly involved in its computation. It is sufficient, for example, to state that the basic rate is an hourly charge or a fixed amount or an estimated amount, or to identify the factors that may be taken into account in finally fixing the fee. When developments occur during the representation that render an earlier estimate substantially inaccurate, a revised estimate should be provided to the client. A written statement concerning the fee reduces the possibility of misunderstanding. Furnishing the client with a simple memorandum or a copy of the lawyer's customary fee schedule is sufficient if the basis or rate of the fee is set forth.

Terms of Payment

(2) A lawyer may require advance payment of a fee, but is obliged to return any unearned portion. See Rule 1.16(d). A lawyer may accept property in payment for services, such as an ownership interest in an enterprise, providing this does not involve acquisition of a proprietary interest in the cause of action or subject matter of the litigation contrary to Rule 1.8**[(j)](i)**. However, a fee paid in property instead of money may be subject to special scrutiny because it involves questions concerning both the value of the services and the lawyer's special knowledge of the value of the property.

(3) An agreement may not be made whose terms might induce the lawyer improperly to curtail services for the client or perform them in a way contrary to the client's interest. For example, a lawyer should not enter into an agreement whereby services are to be provided only up to

a stated amount when it is foreseeable that more extensive services probably will be required, unless the situation is adequately explained to the client. Otherwise, the client might have to bargain for further assistance in the midst of a proceeding or transaction. However, it is proper to define the extent of services in light of the client's ability to pay. A lawyer should not exploit a fee arrangement based primarily on hourly charges by using wasteful procedures. When there is doubt whether a contingent fee is consistent with the client's best interest, the lawyer should offer the client alternative bases for the fee and explain their implications. Applicable law may impose limitations on contingent fees, such as a ceiling on the percentage.

Division of Fee

(4) A division of fee is a single billing to a client covering the fee of two or more lawyers who are not in the same firm. A division of fee facilitates association of more than one lawyer in a matter in which neither alone could serve the client as well, and most often is used when the fee is contingent and the division is between a referring lawyer and a trial specialist. Paragraph (e) permits the lawyers to divide a fee if the total fee is not illegal or excessive and the client is advised and does not object. It does not require disclosure to the client of the share that each lawyer is to receive.

Disputes over Fees

(5) If a procedure has been established for resolution of fee disputes, such as an arbitration or mediation procedure established by the bar, the lawyer should conscientiously consider submitting to it. Law may prescribe a procedure for determining a lawyer's fee, for example, in representation of an executor or administrator, a class or a person entitled to a reasonable fee as part of the measure of damages. The lawyer entitled to such a fee and a lawyer representing another party concerned with the fee should comply with the prescribed procedure.

(6) It is Disciplinary Board policy that allegations of excessive fees charged are initially referred to Fee Dispute Committees for resolution.

Rule 1.6. Confidentiality of Information.

(a) A lawyer shall not reveal information relating to representation of a client unless the client **[consents after consultation] gives informed consent**, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraphs (b) and (c).

(b) A lawyer shall reveal such information if necessary to comply with the duties stated in Rule 3.3.

(c) A lawyer may reveal such information to the extent that the lawyer reasonably believes necessary:

(1) to prevent reasonably certain death or substantial bodily harm;

[(1)] (2) to prevent the client from committing a criminal act that the lawyer believes is likely to result in **[death or substantial bodily harm or]** substantial injury to the financial interests or property of another;

[(2)] (3) to prevent**, mitigate** or **[to]** rectify the consequences of a client's criminal or fraudulent act in the commission of which the lawyer's services are being or had been used; or

[(3)] (4) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim or disciplinary proceeding against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or

(5) to secure legal advice about the lawyer's compliance with these Rules; or

[(4)] (6) to effectuate the sale of a law practice consistent with Rule 1.17.

(d) The duty not to reveal information relating to representation of a client continues after the client-lawyer relationship has terminated.

Comment:

[The lawyer is part of a judicial system charged with upholding the law. One of the lawyer's functions is to advise clients so that they avoid any violation of the law in the proper exercise of their rights.

The observance of the ethical obligation of a lawyer to hold inviolate confidential information of the client not only facilitates the full development of facts essential to proper representation of the client but also encourages people to seek early legal assistance.

Almost without exception, clients come to lawyers in order to determine what their rights are and what is, in the maze of laws and regulations, deemed to be legal and correct. The common law recognizes that the client's confidences must be protected from disclosure. Based upon experience, lawyers know that almost all clients follow the advice given, and the law is upheld.]

(1) This Rule governs the disclosure by a lawyer of information relating to the representation of a client during the lawyer's representation of the client. See Rule 1.18 for the lawyer's duties with respect to information provided to the lawyer by a prospective client, Rule 1.9(c)(2) for the lawyer's duty not to reveal information relating to the lawyer's prior representation of a former client and Rules 1.8(b) and 1.9(c)(1) for the lawyer's duties with respect to the use of such information to the disadvantage of clients and former clients.

(2) A fundamental principle in the client-lawyer relationship is that**, in the absence of the client's informed consent,** the lawyer **[maintain confidentiality of] must not reveal** information relating to the representation. **See Rule 1.0(e) for the definition of informed consent. This contributes to the trust that is the hallmark of the client-lawyer relationship.** The client is thereby encouraged to **seek legal assistance and to** communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter. **The lawyer needs this information to represent the client effectively and, if necessary, to advise the client to refrain from wrongful conduct.** Almost without exception, clients come to lawyers in order to determine their rights and what is, in the **[maze] complex** of laws and regulations, deemed to be legal and correct. Based upon experience, lawyers know that almost all clients follow the advice given, and the law is upheld.

(3) The principle of **client-lawyer** confidentiality is given effect **[in two] by** related bodies of law**[,]:** the

attorney-client privilege **[(which includes],** the work product doctrine**[ ) in the law of evidence]** and the rule of confidentiality established in professional ethics. The attorney-client privilege **[applies] and work-product doctrine apply** in judicial and other proceedings in which a lawyer may be called as a witness or otherwise required to produce evidence concerning a client. The rule of client-lawyer confidentiality applies in situations other than those where evidence is sought from the lawyer through compulsion of law. The confidentiality rule**, for example,** applies not **[merely] only** to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. A lawyer may not disclose such information except as authorized or required by the Rules of Professional Conduct or other law. See also Scope.

[The requirement of maintaining confidentiality of information relating to representation applies to government lawyers who may disagree with the policy goals that their representation is designed to advance.]

(4) Paragraph (a) prohibits a lawyer from revealing information relating to the representation of a client. This prohibition also applies to disclosures by a lawyer that do not in themselves reveal protected information but could reasonably lead to the discovery of such information by a third person. A lawyer's use of a hypothetical to discuss issues relating to the representation is permissible so long as there is no reasonable likelihood that the listener will be able to ascertain the identity of the client or the situation involved.

(5) A lawyer has duties of disclosure to a tribunal under Rule 3.3(a) that may entail disclosure of information relating to the representation. Rule 1.6(b) recognizes the paramount nature of this obligation.

Authorized Disclosure

(6) [A] Except to the extent that the client's instructions or special circumstances limit that authority, a lawyer is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation**[, except to the extent that the client's instructions or special circumstances limit that authority]**. In **[litigation] some situations**, for example, a lawyer may **[disclose information by admitting] be impliedly authorized to admit** a fact that cannot properly be disputed or**[, in negotiation by making] to make** a disclosure that facilitates a satisfactory conclusion **to a matter**. Lawyers in a firm may, in the course of the firm's practice, disclose to each other information relating to a client of the firm, unless the client has instructed that particular information be confined to specified lawyers.

Disclosure Adverse to Client

(7) [The] Although the public interest is usually best served by a strict rule requiring lawyers to preserve the confidentiality of information relating to the representation of their clients, the confidentiality rule is subject to limited exceptions. In becoming privy to information about a client, a lawyer may foresee that the client intends or learn that the client has caused serious harm to another person. However, to the extent that a lawyer is required or permitted to disclose a client's purposes or conduct, the client may be inhibited from revealing facts that would enable the lawyer effectively to represent the client. Generally, the public interest is better served if full disclosure by clients to their lawyers is encouraged rather than inhibited. With limited exceptions, information relating to the representation must be kept confidential by a lawyer, as stated in paragraph (a).

(8) Where **human life is threatened**, the client is or has been engaged in criminal or **fraudulent** conduct, or the integrity of the lawyer's own conduct is involved, the principle of confidentiality may have to yield, depending on the lawyer's knowledge about and relationship to the conduct in question.

(9) Several situations must be distinguished:

(10) First, a lawyer may foresee certain death or serious bodily harm to another person. Paragraph (c)(1) recognizes the overriding value of life and physical integrity and permits disclosure reasonably necessary to prevent reasonably certain death or substantial bodily harm. Such harm is reasonably certain to occur if it will be suffered imminently or there is a present and substantial threat that a person will suffer such harm at a later date if the lawyer fails to take action necessary to eliminate the threat. Thus, a lawyer who knows that a client has accidentally discharged toxic waste into a town's water supply may reveal this information to the authorities if there is a present and substantial risk that a person who drinks the water will contract a life-threatening or debilitating disease and that the lawyer's disclosure is necessary to eliminate the threat or reduce the number of victims.

(11) Second, paragraph (c)(2) is a limited exception to the rule of confidentiality that permits the lawyer to reveal information to the extent necessary to enable affected persons or appropriate authorities to prevent the client from committing a crime that is reasonably certain to result in substantial injury to the financial or property interests of another. Disclosure is permitted under paragraph (c)(2) only where the lawyer reasonably believes that such threatened action is a crime; the lawyer may not substitute his or her own sense of wrongdoing for that of society at large as reflected in the applicable criminal laws. The client can, of course, prevent such disclosure by refraining from the wrongful conduct.

(12) [First] Third, a lawyer may not counsel or assist a client in conduct that is criminal or fraudulent. See Rule 1.2(d). To avoid assisting a client's criminal or fraudulent conduct, the lawyer may have to reveal information relating to the representation. Rule 1.6(c)**[(2)](3)** permits doing so. **[A lawyer has duties of disclosure to a tribunal under Rule 3.3(a) that may entail disclosure of information relating to the representation. Rule 1.6(b) recognizes the paramount nature of this obligation.]**

(13) [Second] Fourth, a lawyer may have been innocently involved in past conduct by a client that was criminal or fraudulent. In such a situation, the lawyer did not violate Rule 1.2(d). However, if the lawyer's services were made an instrument of the client's crime or fraud, the lawyer has a legitimate and overriding interest in being able to rectify the consequences of such conduct. Rule 1.6(c)(3) gives the lawyer professional discretion to

reveal information relating to the representation to the extent necessary to accomplish rectification.

[Third, a lawyer may learn that a client intends prospective conduct that is criminal and likely to result in death or bodily harm or substantial injury to the financial interest or property of another. permits the lawyer to reveal information relating to the representation to prevent such harms when the lawyer "reasonably believes" that a client will cause a homicide or serious bodily harm. It is very difficult for a lawyer to "know" that a client will carry out such an intent, for the client may have a change of mind. The Rule must be based on the lawyer's discretion. Exercise of that discretion requires a lawyer to consider such factors as the nature of the lawyer's relationship to the client and with anyone who might be injured by the client and the lawyer's prior involvement in the situation. Where possible, the lawyer should seek to persuade the client to take suitable action. A disclosure adverse to the client's interest should be no greater than the lawyer necessary to the purpose of prevention of harm.

A lawyer's considered decision not to make disclosures permitted by does not violate this Rule.]

(14) Fifth, where a legal claim or disciplinary charge alleges complicity of the lawyer in a client's conduct or other misconduct of the lawyer involving representation of the client, the lawyer may respond to the extent the lawyer reasonably believes necessary to establish a defense. The same is true with respect to a claim involving the conduct or representation of a former client. Such a charge can arise in a civil, criminal, disciplinary or other proceeding and can be based on a wrong allegedly committed by the lawyer against the client or on a wrong alleged by a third person; for example, a person claiming to have been defrauded by the lawyer and client acting together. If the lawyer is charged with wrongdoing in which the client's conduct is implicated, the rule of confidentiality should not prevent the lawyer from defending against the charge. The lawyer's right to respond arises when an assertion of such complicity has been made. Paragraph (c)**[(3)](4)** does not require the lawyer to await the commencement of an action or proceeding that charges such complicity, so that the defense may be established by responding directly to a third party who has made such an assertion. The right to defend **also applies**, of course, **[applies]** where a proceeding has been commenced.

(15) [A] Sixth, a lawyer entitled to a fee is permitted by paragraph (c)**[(3)](4)** to prove the services rendered in an action to collect it. This aspect of the Rule expresses the principle that the beneficiary of a fiduciary relationship may not exploit it to the detriment of the fiduciary.

(16) Seventh, a lawyer's confidentiality obligations do not preclude a lawyer from securing confidential legal advice about the lawyer's personal responsibility to comply with these Rules. In most situations, disclosing information to secure such advice will be impliedly authorized for the lawyer to carry out the representation. Even when the disclosure is not impliedly authorized, paragraph (c)(5) permits such disclosure because of the importance of a lawyer's compliance with the Rules of Professional Conduct.

(17) Eighth, it is recognized that the due diligence associated with the sale of a law practice authorized under Rule 1.17 may necessitate the limited disclosure of certain otherwise confidential information. **Paragraph (c)(6) permits such disclosure.** However, as stated above, the lawyer must make every effort practicable to avoid unnecessary disclosure of information relating to a representation, to limit disclosure to those having a need to know it, and to obtain appropriate arrangements minimizing the risk of disclosure.

(18) Other law may require that a lawyer disclose information about a client. Whether such a law supersedes Rule 1.6 is a question of law beyond the scope of these Rules. When disclosure of information relating to the representation appears to be required by other law, the lawyer must discuss the matter with the client to the extent required by Rule 1.4.

(19) A lawyer may be ordered to reveal information relating to the representation of a client by a court or by another tribunal or governmental entity claiming authority pursuant to other law to compel the disclosure. Absent informed consent of the client to do otherwise, the lawyer should assert on behalf of the client all nonfrivolous claims that the order is not authorized by other law or that the information sought is protected against disclosure by the attorney-client privilege or other applicable law. In the event of an adverse ruling, the lawyer must consult with the client about the possibility of appeal to the extent required by Rule 1.4.

(20) Paragraph (c) permits disclosure only to the extent the lawyer reasonably believes the disclosure is necessary to accomplish one of the purposes specified. Where practicable, the lawyer should first seek to persuade the client to take suitable action to obviate the need for disclosure. In any case, a disclosure adverse to the client's interest should be no greater than the lawyer reasonably believes necessary to accomplish the purpose. If the disclosure will be made in connection with a judicial proceeding, the disclosure should be made in a manner that limits access to the information to the tribunal or other persons having a need to know it and appropriate protective orders or other arrangements should be sought by the lawyer to the fullest extent practicable.

(21) Paragraph (c) permits but does not require the disclosure of information relating to a client's representation to accomplish the purposes specified in paragraphs (c)(1) through (c)(6). In exercising the discretion conferred by this Rule, the lawyer may consider such factors as the nature of the lawyer's relationship with the client and with those who might be injured by the client, the lawyer's own involvement in the transaction and factors that may extenuate the conduct in question. A lawyer's decision not to disclose as permitted by paragraph (c) does not violate this Rule. Disclosure may be required, however, by other Rules. Some Rules require disclosure only if such disclosure would be permitted by paragraph (c). See Rules 1.2(d), 4.1(b), 8.1 and 8.3. Rule 3.3, on the other hand, requires disclosure in some circumstances regardless of whether such disclosure is permitted by this Rule. See Rule 3.3(c).

Withdrawal

(22) If the lawyer's services will be used by the client in materially furthering a course of criminal or fraudulent

conduct, the lawyer must withdraw, as stated in Rule 1.16(a)(1). After withdrawal the lawyer is required to refrain from making disclosure of the client's confidences, except as otherwise provided in Rule 1.6. Neither this Rule nor Rule 1.8(b) nor Rule 1.16(d) prevents the lawyer from giving notice of the fact of withdrawal, and the lawyer may also withdraw or disaffirm any opinion, document, affirmation, or the like. Where the client is an organization, the lawyer may be in doubt whether contemplated conduct will actually be carried out by the organization. Where necessary to guide conduct in connection with this Rule, the lawyer may make inquiry within the organization as indicated in Rule 1.13(b).

[***Dispute Concerning Lawyer's Conduct***

Where a legal claim or disciplinary charge alleges complicity of the lawyer in a client's conduct or other misconduct of the lawyer involving representation of the client, the lawyer may respond to the extent the lawyer reasonably believes necessary to establish a defense. The same is true with respect to a claim involving the conduct or representation of a former client. The lawyer's right to respond arises when an assertion of such complicity has been made. Paragraph (c)(3)(4) does not require the lawyer to await the commencement of an action or proceeding that charges such complicity, so that the defense may be established by responding directly to a third party who has made such an assertion. The right to defend, of course, applies where a proceeding has been commenced. Where practicable and not prejudicial to the lawyer's ability to establish the defense, the lawyer should advise the client of the third party's assertion and request that the client respond appropriately. In any event, disclosure should be no greater than the lawyer reasonably believes is necessary to vindicate innocence, the disclosure should be made in a manner which limits access to the information to the tribunal or other persons having a need to know it, and appropriate protective orders or other arrangements should be sought by the lawyer to the fullest extent practicable.

If the lawyer is charged with wrongdoing in which the client's conduct is implicated, the rule of confidentiality should not prevent the lawyer from defending against the charge. Such a charge can arise in a civil, criminal or professional disciplinary proceeding, and can be based on a wrong allegedly committed by the lawyer against the client, or on a wrong alleged by a third person; for example, a person claiming to have been defrauded by the lawyer and client acting together. A lawyer entitled to a fee is permitted by paragraph (c)(3)(4) to prove the services rendered in an action to collect it. This aspect of the rule expresses the principle that the beneficiary of a fiduciary relationship may not exploit it to the detriment of the fiduciary. As stated above, the lawyer must make every effort practicable to avoid unnecessary disclosure of information relating to a representation, to limit disclosure to those having the need to know it, and to obtain protective orders or make other arrangements minimizing the risk of disclosure.

Disclosures Otherwise Required or Authorized

The attorney-client privilege is differently defined in various jurisdictions. If a lawyer is called as a witness to give testimony concerning a client, absent waiver by the client, Rule 1.6(a) requires the lawyer to invoke the privilege when it is applicable. The lawyer must comply with the final orders of a court or other tribunal of competent jurisdiction requiring the lawyer to give information about the client.

The Rules of Professional Conduct in various circumstances permit or require a lawyer to disclose information relating to the representation. See Rules 2.2 , 2.3 , 3.3 and 4.1. In addition to these provisions, a lawyer may be obligated or permitted by other provisions of law to give information about a client. Whether another provision of law supersedes Rule 1.6 is a matter of interpretation beyond the scope of these Rules, but a presumption should exist against such a supersession.

It is recognized that the due diligence associated with the sale of a law practice authorized under Rule 1.17 may necessitate the limited disclosure of certain otherwise confidential information. However, as stated above, the lawyer must make every effort practicable to avoid unnecessary disclosure of information relating to a representation, to limit disclosure to those having a need to know it, and to obtain appropriate arrangements minimizing the risk of disclosure.]

Acting Competently to Preserve Confidentiality

(23) A lawyer must act competently to safeguard information relating to the representation of a client against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision. See Rules 1.1, 5.1 and 5.3.

(24) When transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients. This duty, however, does not require that the lawyer use special security measures if the method of communication affords a reasonable expectation of privacy. Special circumstances, however, may warrant special precautions. Factors to be considered in determining the reasonableness of the lawyer's expectation of confidentiality include the sensitivity of the information and the extent to which the privacy of the communication is protected by law or by a confidentiality agreement. A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to the use of a means of communication that would otherwise be prohibited by this Rule.

Former Client

(25) The duty of confidentiality continues after the client-lawyer relationship has terminated. **See Rule 1.9(c)(2). See Rule 1.9(c)(1) for the prohibition against using such information to the disadvantage of the former client.**

Rule 1.7. Conflict of Interest: **[General Rule] Current Clients**.

[(a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:

(1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and

(2) each client consents after consultation.

(b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:

(1) the lawyer reasonably believes the representation will not be adversely affected; and

(2) the client consents after full disclosure and consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.]

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) each affected client gives informed consent.

Comment:

[***Loyalty to a Client***

Loyalty is an essential element in the lawyer's relationship to a client. An impermissible conflict of interest may exist before representation is undertaken, in which event the representation should be declined. If such a conflict arises after representation has been undertaken, the lawyer should withdraw from the representation. See Rule 1. 16. Where more than one client is involved and the lawyer withdraws because a conflict arises after representation, whether the lawyer may continue to represent any of the clients is determined by Rule 1.9. See also Rule 2.2(c). As to whether a client-lawyer relationship exists, or, having once been established, is continuing, see Comment to Rule 1.3 and Scope.

As a general proposition, loyalty to a client prohibits undertaking representation directly adverse to that client without that client's consent. Paragraph (a) expresses that general rule. Thus, a lawyer ordinarily may not act as an advocate against a person the lawyer represents in some other matter, even if it is wholly unrelated. On the other hand, simultaneous representation in unrelated matters of clients whose interests are only generally adverse, such as competing economic enterprises, does not require consent of the respective clients. Paragraph (a) applies only when the representation of one client would be directly adverse to the other.

Loyalty to a client is also impaired when a lawyer cannot consider, recommend or carry out an appropriate course of action for the client because of the lawyer's other responsibilities or interests. The conflict in effect forecloses alternatives that would otherwise be available to the client. Paragraph (b) addresses such situations. A possible conflict does not itself preclude the representation. The critical questions are the likelihood that a conflict will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client. Consideration should be given to whether the client wishes to accommodate the other interest involved.

Consultation and Consent

A client may consent to representation notwithstanding a conflict. However, as indicated in paragraph (a)(1) with respect to representation directly adverse to a client, and paragraph (b)(1) with respect to material limitations on representation of a client, when a disinterested lawyer would conclude that the client should not agree to the representation under the circumstances, the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client's consent. When more than one client is involved, the question of conflict must be resolved as to each client. Moreover, there may be circumstances where it is impossible to make the disclosure necessary to obtain consent. For example, when the lawyer represents different clients in related matters and one of the clients refuses to consent to the disclosure necessary to permit the other client to make an informed decision, the lawyer cannot properly ask the latter to consent.

Lawyer's Interests

The lawyer's own interests should not be permitted to have adverse effect on representation of a client. For example, a lawyer's need for income should not lead the lawyer to undertake matters that cannot be handled competently and without charging an illegal or clearly excessive fee. See Rule 1.1 and 1.5. If the probity of a lawyer's own conduct in a transaction is in serious question. It may be difficult or impossible for the lawyer to give a client detached advice. A lawyer may not allow related business interests to affect representation, for example, by referring clients to an enterprise in which the lawyer has an undisclosed interest.

Conflicts in Litigation

Paragraph (a) prohibits representation of opposing parties in litigation. Simultaneous representation of parties whose interests in litigation may conflict, such as co-plaintiff's or co-defendants, is governed by paragraph (b). An impermissible conflict may exist by reason of substantial discrepancy in the parties' testimony, incompatibility in positions in relation to an opposing party or the fact that there are substantially different possibilities of settlement of the claims or liabilities in question. Such conflicts can arise in criminal cases as well as

civil. The potential for conflict of interest in representing multiple defendants in a criminal case is so grave that ordinarily a lawyer should decline to represent more than one codefendant. On the other hand, common representation of persons having similar interests is proper if the risk of adverse effect is minimal and the requirements of paragraph (b) are met. Compare Rule 2.2 involving intermediation between clients.

Ordinarily, a lawyer may not act as advocate against a client the lawyer represents in some other matter, even if the other matter is wholly unrelated. However, there are circumstances in which a lawyer may act as advocate against a client. For example, a lawyer representing an enterprise with diverse operations may accept employment as an advocate against the enterprise in an unrelated matter if doing so will not adversely affect the lawyer's relationship with the enterprise or conduct of the suit and if both clients consent upon full disclosure and consultation. By the same token, government lawyers in some circumstances may represent government employees in proceedings in which a government agency is the opposing party. The propriety of concurrent representation can depend on the nature of the litigation. For example, a suit charging fraud entails conflict to a degree not involved in a suit for a declaratory judgment concerning statutory interpretation.

A lawyer may represent parties having antagonistic positions on a legal question that has arisen in different cases, unless representation of either client would be adversely affected. Thus, it is ordinarily not improper to assert such positions in cases pending in different trial courts, but it may be improper to do so in cases pending at the same time in an appellate court.

Interest of Person Paying for a Lawyer's Service

A lawyer may be paid from a source other than the client, if the client is informed of that fact and consents and the arrangement does not compromise the lawyer's duty of loyalty to the client. See Rule 1.8(f). For example, when an insurer and its insured have conflicting interests in a matter arising from a liability insurance agreement and the insurer is required to provide special counsel for the insured, the arrangement should assure the special counsel's professional independence. So also, when a corporation and its directors or employees are involved in a controversy in which they have conflicting interests, the corporation may provide funds for separate legal representation of the directors or employees, if the clients consent after full disclosure and consultation and the arrangement ensures the lawyer's professional independence.

Other Conflict Situations

Conflicts of interest in contexts other than litigation sometimes may be difficult to assess. Relevant factors in determining whether there is potential for adverse effect include the duration and intimacy of the lawyer's relationship with the client or clients involved, the functions being performed by the lawyer, the likelihood that actual conflict will arise and the likely prejudice to the client from the conflict if it does arise. The question is often one of proximity and degree.

For example, a lawyer may not represent multiple parties to a negotiation whose interests are fundamentally antagonistic to each other, but common representation is permissible where the clients are generally aligned in interest even though there is some difference of interest among them.

Conflict questions may also arise in estate planning and estate administration. A lawyer may be called upon to prepare wills for several family members, such as husband and wife, and, depending upon the circumstances, a conflict of interest may arise. In estate administration the identity of the client may be unclear under the law of a particular jurisdiction. Under one view, the client is the fiduciary; under another view the client is the estate or trust, including its beneficiaries. The lawyer should make clear the relationship to the parties involved.

A lawyer for a corporation or other organization who is also a member of its board of directors should determine whether the responsibilities of the two roles may conflict. The lawyer may be called on to advise the corporation in matters involving actions of the directors. Consideration should be given to the frequency with which such situations may arise, the potential intensity of the conflict, the effect of the lawyer's resignation from the board and the possibility of the corporation's obtaining legal advice from another lawyer in such situations. If there is material risk that the dual role will compromise the lawyer's independence of professional judgment, the lawyer should not serve as a director.

Conflict Charged by an Opposing Party

Resolving questions of conflict of interest is primarily the responsibility of the lawyer undertaking the representation. In litigation, a court may raise the question when there is a reason to infer that the lawyer has neglected the responsibility. In a criminal case, inquiry by the court is generally required when a lawyer represents multiple defendants. Where the conflict is such as clearly to call in question the fair or efficient administration of justice, opposing counsel may properly raise the question. Such an objection should be viewed with caution, however, for it can be misused as a technique of harassment. See Scope.]

General Principles

(1) Loyalty and independent judgment are essential elements in the lawyer's relationship to a client. Concurrent conflicts of interest can arise from the lawyer's responsibilities to another client, a former client or a third person or from the lawyer's own interests. For specific Rules regarding certain concurrent conflicts of interest, see Rule 1.8. For former client conflicts of interest, see Rule 1.9. For conflicts of interest involving prospective clients, see Rule 1.18. For the definition of "informed consent," see Rule 1.0(e).

(2) Resolution of a conflict of interest problem under this Rule requires the lawyer to: 1) clearly identify the client or clients; 2) determine whether a conflict of interest exists; 3) decide whether the representation may be undertaken despite the existence of a conflict, i.e., whether the conflict is consentable; and 4) if so, consult with the clients affected under paragraph (a) and obtain their in-

formed consent. The clients affected under paragraph (a) include the clients referred to in paragraph (a)(1) and the clients whose representation might be materially limited under paragraph (a)(2).

(3) A conflict of interest may exist before representation is undertaken, in which event the representation must be declined, unless the lawyer obtains the informed consent of each client under the conditions of paragraph (b). To determine whether a conflict of interest exists, a lawyer should adopt reasonable procedures, appropriate for the size and type of firm and practice, to determine in both litigation and non-litigation matters the persons and issues involved. See also Comment to Rule 5.1. Ignorance caused by a failure to institute such procedures will not excuse a lawyer's violation of this Rule. As to whether a client-lawyer relationship exists or, having once been established, is continuing, see Comment to Rule 1.3 and Scope.

(4) If a conflict arises after representation has been undertaken, the lawyer ordinarily must withdraw from the representation, unless the lawyer has obtained the informed consent of the client under the conditions of paragraph (b). See Rule 1.16. Where more than one client is involved, whether the lawyer may continue to represent any of the clients is determined both by the lawyer's ability to comply with duties owed to the former client and by the lawyer's ability to represent adequately the remaining client or clients, given the lawyer's duties to the former client. See Rule 1.9. See also Comments (5) and (29).

(5) Unforeseeable developments, such as changes in corporate and other organizational affiliations or the addition or realignment of parties in litigation, might create conflicts in the midst of a representation, as when a company sued by the lawyer on behalf of one client is bought by another client represented by the lawyer in an unrelated matter. Depending on the circumstances, the lawyer may have the option to withdraw from one of the representations in order to avoid the conflict. The lawyer must seek court approval where necessary and take steps to minimize harm to the clients. See Rule 1.16. The lawyer must continue to protect the confidences of the client from whose representation the lawyer has withdrawn. See Rule 1.9(c).

Identifying Conflicts of Interest: Directly Adverse

(6) Loyalty to a current client prohibits undertaking representation directly adverse to that client without that client's informed consent. Thus, absent consent, a lawyer may not act as an advocate in one matter against a person the lawyer represents in some other matter, even when the matters are wholly unrelated. The client as to whom the representation is directly adverse is likely to feel betrayed, and the resulting damage to the client-lawyer relationship is likely to impair the lawyer's ability to represent the client effectively. In addition, the client on whose behalf the adverse representation is undertaken reasonably may fear that the lawyer will pursue that client's case less effectively out of deference to the other client, i.e., that the representation may be materially limited by the lawyer's interest in retaining the current client. Similarly, a directly adverse conflict may arise when a lawyer is required to cross-examine a client who appears as a witness in a lawsuit involving another client, as when the testimony will be damaging to the client who is represented in the lawsuit. On the other hand, simultaneous representation in unrelated matters of clients whose interests are only economically adverse, such as representation of competing economic enterprises in unrelated litigation, does not ordinarily constitute a conflict of interest and thus may not require consent of the respective clients.

(7) Directly adverse conflicts can also arise in transactional matters. For example, if lawyer is asked to represent the seller of a business in negotiations with a buyer represented by the lawyer, not in the same transaction but in another, unrelated matter, the lawyer could not undertake the representation without the informed consent of each client.

(8) Even where there is no direct adverseness, a conflict of interest exists if there is a significant risk that a lawyer's ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer's other responsibilities or interests. For example, a lawyer asked to represent several individuals seeking to form a joint venture is likely to be materially limited in the lawyer's ability to recommend or advocate all possible positions that each might take because of the lawyer's duty of loyalty to the others. The conflict in effect forecloses alternatives that would otherwise be available to the client. The mere possibility of subsequent harm does not itself require disclosure and consent. The critical questions are the likelihood that a difference in interests will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client.

Lawyer's Responsibilities to Former Clients and Other Third Persons

(9) In addition to conflicts with other current clients, a lawyer's duties of loyalty and independence may be materially limited by responsibilities to former clients under Rule 1.9 or by the lawyer's responsibilities to other persons, such as fiduciary duties arising from a lawyer's service as a trustee, executor or corporate director.

Personal Interest Conflicts

(10) The lawyer's own interests should not be permitted to have an adverse effect on representation of a client. For example, if the probity of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice. Similarly, when a lawyer has discussions concerning possible employment with an opponent of the lawyer's client, or with a law firm representing the opponent, such discussions could materially limit the lawyer's representation of the client. In addition, a lawyer may not allow related business interests to affect representation, for example, by referring clients to an enterprise in which the lawyer has an undisclosed financial interest. See Rule 1.8 for specific Rules pertaining to a number of personal interest conflicts, including business transactions with cli-

ents. See also Rule 1.10 (personal interest conflicts under Rule 1.7 ordinarily are not imputed to other lawyers in a law firm).

(11) When lawyers representing different clients in the same matter or in substantially related matters are closely related by blood or marriage, there may be a significant risk that client confidences will be revealed and that the lawyer's family relationship will interfere with both loyalty and independent professional judgment. As a result, each client is entitled to know of the existence and implications of the relationship between the lawyers before the lawyer agrees to undertake the representation. Thus, a lawyer related to another lawyer, e.g., as parent, child, sibling or spouse, ordinarily may not represent a client in a matter where that lawyer is representing another party, unless each client gives informed consent. The disqualification arising from a close family relationship is personal and ordinarily is not imputed to members of firms with whom the lawyers are associated. See Rule 1.10.

(12) A lawyer is prohibited from engaging in sexual relationships with a client unless the sexual relationship predates the formation of the client-lawyer relationship. See Rule 1.8(j).

Interest of Person Paying for a Lawyer's Service

(13) A lawyer may be paid from a source other than the client, including a co-client, if the client is informed of that fact and consents and the arrangement does not compromise the lawyer's duty of loyalty or independent judgment to the client. See Rule 1.8(f). If acceptance of the payment from any other source presents a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's own interest in accommodating the person paying the lawyer's fee or by the lawyer's responsibilities to a payer who is also a co-client, then the lawyer must comply with the requirements of paragraph (b) before accepting the representation, including determining whether the conflict is consentable and, if so, that the client has adequate information about the material risks of the representation.

Prohibited Representations

(14) Ordinarily, clients may consent to representation notwithstanding a conflict. However, as indicated in paragraph 1.7(b), some conflicts are nonconsentable, meaning that the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client's consent. When the lawyer is representing more than one client, the question of consentability must be resolved as to each client.

(15) Consentability is typically determined by considering whether the interests of the clients will be adequately protected if the clients are permitted to give their informed consent to representation burdened by a conflict of interest. Thus, under paragraph (b)(1), representation is prohibited if in the circumstances the lawyer cannot reasonably conclude that the lawyer will be able to provide competent and diligent representation. See Rule 1.1 (competence) and Rule 1.3 (diligence).

(16) Paragraph (b)(2) describes conflicts that are nonconsentable because the representation is prohibited by applicable law. For example, in some states substantive law provides that the same lawyer may not represent more than one defendant in a capital case, even with the consent of the clients, and under federal criminal statutes certain representations by a former government lawyer are prohibited, despite the informed consent of the former client. In addition, decisional law in some states limits the ability of a governmental client, such as a municipality, to consent to a conflict of interest.

(17) Paragraph (b)(3) describes conflicts that are nonconsentable because of the institutional interest in vigorous development of each client's position when the clients are aligned directly against each other in the same litigation or other proceeding before a tribunal. Whether clients are aligned directly against each other within the meaning of this paragraph requires examination of the context of the proceeding. Although this paragraph does not preclude a lawyer's multiple representation of adverse parties to a mediation (because mediation is not a proceeding before a "tribunal" under Rule 1.0(m)), such representation may be precluded by paragraph (b)(1).

Informed Consent

(18) Informed consent requires that each affected client be aware of the relevant circumstances and of the material and reasonably foreseeable ways that the conflict could have adverse effects on the interests of that client. See Rule 1.0(e) (informed consent). The information required depends on the nature of the conflict and the nature of the risks involved. When representation of multiple clients in a single matter is undertaken, the information must include the implications of the common representation, including possible effects on loyalty, confidentiality and the attorney-client privilege and the advantages and risks involved. See Comment, paragraphs (30) and (31) (effect of common representation on confidentiality).

(19) Under some circumstances it may be impossible to make the disclosure necessary to obtain consent. For example, when the lawyer represents different clients in related matters and one of the clients refuses to consent to the disclosure necessary to permit the other client to make an informed decision, the lawyer cannot properly ask the latter to consent. In some cases the alternative to common representation can be that each party may have to obtain separate representation with the possibility of incurring additional costs. These costs, along with the benefits of securing separate representation, are factors that may be considered by the affected client in determining whether common representation is in the client's interests.

Confirming Consent

(20) Paragraph (b) requires the lawyer to obtain the informed consent of the client to a concurrent conflict of interest. The client's consent need not be confirmed in writing to be effective. Rather, a writing tends to impress upon clients the seriousness of the decision the client is being asked to make and to avoid disputes or ambiguities that might later occur in the absence of a writing. See also Rule 1.0(b) (writing includes electronic transmission).

Revoking Consent

(21) A client who has given consent to a conflict may revoke the consent and, like any other client, may terminate the lawyer's representation at any time. Whether revoking consent to the client's own representation precludes the lawyer from continuing to represent other clients depends on the circumstances, including the nature of the conflict, whether the client revoked consent because of a material change in circumstances, the reasonable expectations of the other client and whether material detriment to the other clients or the lawyer would result.

Consent to Future Conflict

(22) Whether a lawyer may properly request a client to waive conflicts that might arise in the future is subject to the test of paragraph (b). The effectiveness of such waivers is generally determined by the extent to which the client reasonably understands the material risks that the waiver entails. The more comprehensive the explanation of the types of future representations that might arise and the actual and reasonably foreseeable adverse consequences of those representations, the greater the likelihood that the client will have the requisite understanding. Thus, if the client agrees to consent to a particular type of conflict with which the client is already familiar, then the consent ordinarily will be effective with regard to that type of conflict. If the consent is general and open-ended, then the consent ordinarily will be ineffective, because it is not reasonably likely that the client will have understood the material risks involved. On the other hand, if the client is an experienced user of the legal services involved and is reasonably informed regarding the risk that a conflict may arise, such consent is more likely to be effective, particularly if, e.g., the client is independently represented by other counsel in giving consent and the consent is limited to future conflicts unrelated to the subject of the representation. In any case, advance consent cannot be effective if the circumstances that materialize in the future are such as would make the conflict nonconsentable under paragraph (b).

Conflicts in Litigation

(23) Paragraph (b)(3) prohibits representation of opposing parties in the same litigation, regardless of the clients' consent. On the other hand, simultaneous representation of parties whose interests in litigation may conflict, such as co-plaintiffs or co-defendants, is governed by paragraph (a)(2). A conflict may exist by reason of substantial discrepancy in the parties' testimony, incompatibility in positions in relation to an opposing party or the fact that there are substantially different possibilities of settlement of the claims or liabilities in question. Such conflicts can arise in criminal cases as well as in civil cases. The potential for conflict of interest in representing multiple defendants in a criminal case is so grave that ordinarily a lawyer should decline to represent more than one co-defendant. On the other hand, common representation of persons having similar interests in civil litigation is proper if the requirements of paragraph (b) are met.

(24) Ordinarily a lawyer may take inconsistent legal positions in different tribunals at different times on behalf of different clients. The mere fact that advocating a legal position on behalf of one client might create precedent adverse to the interests of a client represented by the lawyer in an unrelated matter does not create a conflict of interest. A conflict of interest exists, however, if there is a significant risk that a lawyer's action on behalf of one client will materially limit the lawyer's effectiveness in representing another client in a different case, for example, when a decision favoring one client will create a precedent likely to seriously weaken the position taken on behalf of the other client. Factors relevant in determining whether the clients need to be advised of the risk include: where the cases are pending, whether the issue is substantive or procedural, the temporal relationship between the matters, the significance of the issue to the immediate and long-term interests of the clients involved and the clients' reasonable expectations in retaining the lawyer. If there is significant risk of material limitation, then absent informed consent of the affected clients, the lawyer must refuse one of the representations or withdraw from one or both matters.

(25) When a lawyer represents or seeks to represent a class of plaintiffs or defendants in a class-action lawsuit, unnamed members of the class are ordinarily not considered to be clients of the lawyer for purposes of applying paragraph (a)(1) of this Rule. Thus, the lawyer does not typically need to get the consent of such a person before representing a client suing the person in an unrelated matter. Similarly, a lawyer seeking to represent an opponent in a class action does not typically need the consent of an unnamed member of the class whom the lawyer represents in an unrelated matter.

Nonlitigation Conflicts

(26) Conflicts of interest under paragraphs (a)(1) and (a)(2) arise in contexts other than litigation. For a discussion of directly adverse conflicts in transactional matters, see Comment (7). Relevant factors in determining whether there is significant potential for material limitation include the duration and intimacy of the lawyer's relationship with the client or clients involved, the functions being performed by the lawyer, the likelihood that disagreements will arise and the likely prejudice to the client from the conflict. The question is often one of proximity and degree. See Comment (8).

(27) For example, conflict questions may arise in estate planning and estate administration. A lawyer may be called upon to prepare wills for several family members, such as husband and wife, and, depending upon the circumstances, a conflict of interest may be present. In estate administration the identity of the client may be unclear under the law of a particular jurisdiction. Under one view, the client is the fiduciary; under another view the client is the estate or trust, including its beneficiaries. In order to comply with conflict of interest rules, the lawyer should make clear the lawyer's relationship to the parties involved.

(28) Whether a conflict is consentable depends on the circumstances. For example, lawyer may not represent multiple parties to a negotiation whose interests are fundamentally antagonistic to each other, but common representation is permissible

where the clients are generally aligned in interest even though there is some difference in interest among them. Thus, a lawyer may seek to establish or adjust a relationship between clients on an amicable and mutually advantageous basis, for example, in helping to organize a business in which two or more clients are entrepreneurs, working out the financial reorganization of an enterprise in which two or more clients have an interest or arranging a property distribution in settlement of an estate. The lawyer seeks to resolve potentially adverse interests by developing the parties' mutual interests. Otherwise, each party might have to obtain separate representation, with the possibility of incurring additional cost, complication or even litigation. Given these and other relevant factors, the clients may prefer that the lawyer act for all of them.

Special Considerations in Common Representation

(29) In considering whether to represent multiple clients in the same matter, a lawyer should be mindful that if the common representation fails because the potentially adverse interests cannot be reconciled, the result can be additional cost, embarrassment and recrimination. Ordinarily, the lawyer will be forced to withdraw from representing all of the clients if the common representation fails. In some situations, the risk of failure is so great the multiple representation is plainly impossible. For example, a lawyer cannot undertake common representation of clients where contentious litigation or negotiations between them are imminent or contemplated. Moreover, because the lawyer is required to be impartial between commonly represented clients, representation of multiple clients is improper when it is unlikely that impartiality can be maintained. Generally, if the relationship between the parties has already assumed antagonism, the possibility that the clients' interests can be adequately served by common representation is not very good. Other relevant factors are whether the lawyer subsequently will represent both parties on a continuing basis and whether the situation involves creating or terminating a relationship between the parties.

(30) A particularly important factor in determining the appropriateness of common representation is the effect on client-lawyer confidentiality and the attorney-client privilege. With regard to the attorney-client privilege, the prevailing rule is that, as between commonly represented clients, the privilege does not attach. Hence, it must be assumed that if litigation eventuates between the clients, the privilege will not protect any such communications, and the clients should be so advised.

(31) As to the duty of confidentiality, continued common representation will almost certainly be inadequate if one client asks the lawyer not to disclose to the other client information relevant to the common representation. This is so because the lawyer has an equal duty of loyalty to each client, and each client has the right to be informed of anything bearing on the representation that might affect that client's interests and the right to expect that the lawyer will use that information to that client's benefit. See Rule 1.4. The lawyer should, at the outset of the common representation and as part of the process of obtaining each client's informed consent, advise each client that information will be shared and that the lawyer will have to withdraw if one client decides that some matter material to the representation should be kept from the other. In limited circumstances, it may be appropriate for the lawyer to proceed with the representation when the clients have agreed, after being properly informed, that the lawyer will keep certain information confidential. For example, the lawyer may reasonably conclude that failure to disclose one client's trade secrets to another client will not adversely affect representation involving a joint venture between the clients and agree to keep that information confidential with the informed consent of both clients.

(32) When seeking to establish or adjust a relationship between clients, the lawyer should make clear that the lawyer's role is not that of partisanship normally expected in other circumstances and, thus, that the clients may be required to assume greater responsibility for decisions than when each client is separately represented. Any limitations on the scope of the representation made necessary as a result of the common representation should be fully explained to the clients at the outset of the representation. See Rule 1.2(c).

(33) Subject to the above limitations, each client in the common representation has the right to loyal and diligent representation and the protection of Rule 1.9 concerning the obligations to a former client. The client also has the right to discharge the lawyer as stated in Rule 1.16.

Organizational Clients

(34) A lawyer who represents a corporation or other organization does not, by virtue of that representation, necessarily represent any constituent or affiliated organization, such as parent or subsidiary. See Rule 1.13(a). Thus, the lawyer for an organization is not barred from accepting representation adverse to an affiliate in an unrelated matter, unless the circumstances are such that the affiliate should also be considered a client of the lawyer, there is an understanding between the lawyer and the organizational client that the lawyer will avoid representation adverse to the client's affiliates, or the lawyer's obligations to either the organizational client or the new client are likely to limit materially the lawyer's representation of the other client.

(35) A lawyer for a corporation or other organization who is also a member of its board of directors should determine whether the responsibilities of the two roles may conflict. The lawyer may be called on to advise the corporation in matters involving actions of the directors. Consideration should be given to the frequency with which such situations may arise, the potential intensity of the conflict, the effect of the lawyer's resignation from the board and the possibility of the corporation's obtaining legal advice from another lawyer in such situations. If there is material risk that the dual role will compromise the lawyer's independence of professional judgment, the lawyer should not serve as a director or should cease to act as the corporation's lawyer when conflicts of interest arise. The lawyer should advise the other members of the board that in some circumstances matters dis-

cussed at board meetings while the lawyer is present in the capacity of director might not be protected by the attorney-client privilege and that conflict of interest considerations might require the lawyer's recusal as a director or might require the lawyer and the lawyer's firm to decline representation of the corporation in a matter.

Rule 1.8. Conflict of Interest: **[Prohibited Transactions] Current Clients: Specific Rules**.

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are **fair and reasonable to the client and are** fully disclosed and transmitted in writing **[to the client]** in a manner **[which] that** can be reasonably understood by the client;

(2) the client is advised **in writing of the desirability of seeking** and is given a reasonable opportunity to seek the advice of independent **legal** counsel **[in] on** the transaction; and

(3) the client **[consents] gives informed consent** in **a** writing **[thereto] signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction**.

(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client **[consents after consultation] gives informed consent, except as permitted or required by these Rules**.

(c) A lawyer shall not **solicit any substantial gift from a client, including a testamentary gift, or** prepare **on behalf of a client** an instrument giving the lawyer or a person related to the lawyer **[as parent, child, sibling, or spouse]** any substantial gift **[from a client, including a testamentary] unless the lawyer or other recipient of the** gift**[, except where the client]** is related to the **[donee within the third degree of relationship] client**. **For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close familial relationship.**

(d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and

(2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

(1) the client **[consents after full disclosure of the circumstances and consultation] gives informed consent**;

(2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and

(3) information relating to representation of a client is protected as required by Rule 1.6.

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client **[consents after consultation, including] gives informed consent. The lawyer's** disclosure **[of] shall include** the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

(h) A lawyer shall not

(1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless **[permitted by law and]** the client is independently represented in making the agreement**[, nor shall a lawyer]**; **or**

(2) settle a claim **or potential claim** for such liability with an unrepresented client or former client **[without first advising] unless** that person **is advised** in writing **[that] of the desirability of seeking and is given a reasonable opportunity to seek the advice of** independent **[representation is appropriate] legal counsel** in connection therewith.

[(i) A lawyer related to another lawyer as parent, child, sibling, or spouse shall not represent a client in a representation directly adverse to a person who the lawyer knows is represented by the other lawyer except upon consent by the client after consultation regarding the relationship.

(j)] (i) A lawyer shall not acquire a proprietary interest in a cause of action that the lawyer is conducting for a client, except that the lawyer may:

(1) acquire a lien **[granted] authorized** by law to secure the lawyer's fee or expenses; and

(2) contract with a client for a reasonable contingent fee in a civil case.

(j) A lawyer shall not have sexual relations with a client unless a consensual relationship existed between them when the client-lawyer relationship commenced.

(k) While lawyers are associated in a firm, a prohibition in the foregoing paragraphs (a) through (i) that applies to any one of them shall apply to all of them.

Comment:

Business *Transactions Between Client and Lawyer*

(1) [As a general principle, all transactions between client and lawyer should be fair and reasonable to the client. In such transactions a review by independent counsel on behalf of the client is often advisable. Furthermore, a lawyer may not exploit information relating to the representation to the client's disadvantage. For example, a lawyer who has learned that the client is investing in specific

real estate may not, without the client's consent, seek to acquire nearby property where doing so would adversely affect the client's plan for investment. Paragraph (a)] A lawyer's legal skill and training, together with the relationship of trust and confidence between lawyer and client, create the possibility of overreaching when the lawyer participates in a business, property or financial transaction with a client, for example, a loan or sales transaction or a lawyer investment on behalf of a client. The requirements of paragraph (a) must be met even when the transaction is not closely related to the subject matter of the representation, as when a lawyer drafting a will for a client learns that the client needs money for unrelated expenses and offers to make a loan to the client. The Rule applies to lawyers engaged in the sale of goods or services related to the practice of law, for example, the sale of title insurance or investment services to existing clients of the lawyer's legal practice. See Rule 5.7. It also applies to lawyers purchasing property from estates they represent. It does not apply to ordinary fee arrangements between client and lawyer, which are governed by Rule 1.5, although its requirements must be met when the lawyer accepts an interest in the client's business or other nonmonetary property as payment of all or part of a fee. In addition, the Rule does not **[, however,]** apply to standard commercial transactions between the lawyer and the client for products or services that the client generally markets to others, for example, banking or brokerage services, medical services, products manufactured or distributed by the client, and utilities services. In such transactions, the lawyer has no advantage in dealing with the client, and the restrictions in paragraph (a) are unnecessary and impracticable.

(2) Paragraph (a)(1) requires that the transaction itself be fair to the client and that its essential terms be communicated to the client, in writing, in a manner that can be reasonably understood. Paragraph (a)(2) requires that the client also be advised, in writing, of the desirability of seeking the advice of independent legal counsel. It also requires that the client be given a reasonable opportunity to obtain such advice. Paragraph (a)(3) requires that the lawyer obtain the client's informed consent, in a writing signed by the client, both to the essential terms of the transaction and to the lawyer's role. When necessary, the lawyer should discuss both the material risks of the proposed transaction, including any risk presented by the lawyer's involvement, and the existence of reasonably available alternatives and should explain why the advice of independent legal counsel is desirable. See Rule 1.0(e) (definition of "Informed consent").

(3) The risk to a client is greatest when the client expects the lawyer to represent the client in the transaction itself or when the lawyer's financial interest otherwise poses a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's financial interest in the transaction. Here the lawyer's role requires that the lawyer must comply, not only with the requirements of paragraph (a), but also with the requirements of Rule 1.7. Under that Rule, the lawyer must disclose the risks associated with the lawyer's dual role as both legal adviser and participant in the transaction, such as the risk that the lawyer will structure the transaction or give legal advice in a way that favors the lawyer's interests at the expense of the client. Moreover, the lawyer must obtain the client's informed consent. In some cases, the lawyer's interest may be such that Rule 1.7 will preclude the lawyer from seeking the client's consent to the transaction.

(4) If the client is independently represented in the transaction, paragraph (a)(2) of this Rule is inapplicable, and the paragraph (a)(1) requirement for full disclosure is satisfied either by a written disclosure by the lawyer involved in the transaction or by the client's independent counsel. The fact that the client was independently represented in the transaction is relevant in determining whether the agreement was fair and reasonable to the client as paragraph (a)(1) further requires.

Use of Information Related to Representation

(5) Use of information relating to the representation to the disadvantage of the client violates the lawyer's duty of loyalty. Paragraph (b) applies when the information is used to benefit either the lawyer or a third person, such as another client or business associate of the lawyer. For example, if a lawyer learns that a client intends to purchase and develop several parcels of land, the lawyer may not use that information to purchase one of the parcels in competition with the client or to recommend that another client make such a purchase. The Rule does not prohibit uses that do not disadvantage the client. For example, a lawyer who learns a government agency's interpretation of trade legislation during the representation of one client may properly use that information to benefit other clients. Paragraph (b) prohibits disadvantageous use of client information unless the client gives informed consent, except as permitted or required by these Rules. See Rules 1.2(d), 1.6, 1.9(c), 3.3, 4.1(b), 8.1 and 8.3.

Gifts to Lawyers

(6) A lawyer may accept a gift from a client, if the transaction meets general standards of fairness. For example, a simple gift such as a present given at a holiday or as a token of appreciation is permitted. **If a client offers the lawyer a more substantial gift, paragraph (c) does not prohibit the lawyer from accepting it, although such a gift may be voidable by the client under the doctrine of undue influence, which treats client gifts as presumptively fraudulent. In any event, due to concerns about overreaching and imposition on clients, a lawyer may not suggest that a substantial gift be made to the lawyer or for the lawyer's benefit, except where the lawyer is related to the client as set forth in paragraph (c).**

(7) If effectuation of a substantial gift requires preparing a legal instrument such as a will or conveyance, **[however,]** the client should have the detached advice that another lawyer can provide. **[Paragraph (c) recognizes an] The sole** exception **to this Rule is** where the client is a relative of the donee **[or the gift is not substantial]**.

(8) This Rule does not prohibit a lawyer from seeking to have the lawyer or a partner or associate of the lawyer named as executor of the client's estate or to another potentially lucrative fiduciary position. Nevertheless, such appointments will be

subject to the general conflict of interest provision in Rule 1.7 when there is a significant risk that the lawyer's interest in obtaining the appointment will materially limit the lawyer's independent professional judgment in advising the client concerning the choice of an executor or other fiduciary. In obtaining the client's informed consent to the conflict, the lawyer should advise the client concerning the nature and extent of the lawyer's financial interest in the appointment, as well as the availability of alternative candidates for the position.

Literary Rights

(9) An agreement by which a lawyer acquires literary or media rights concerning the conduct of the representation creates a conflict between the interests of the client and the personal interests of the lawyer. Measures suitable in the representation of the client may detract from the publication value of an account of the representation. Paragraph (d) does not prohibit a lawyer representing a client in a transaction concerning literary property from agreeing that the lawyer's fee shall consist of a share in ownership in the property, if the arrangement conforms to Rule 1.5 and **[paragraph (j)] paragraphs (a) and (i)**.

Financial Assistance

(10) Lawyers may not subsidize lawsuits or administrative proceedings brought on behalf of their clients, including making or guaranteeing loans to their clients for living expenses, because to do so would encourage clients to pursue lawsuits that might not otherwise be brought and because such assistance gives lawyers too great a financial stake in the litigation. These dangers do not warrant a prohibition on a lawyer lending a client court costs and litigation expenses, including the expenses of medical examination and the costs of obtaining and presenting evidence, because these advances are virtually indistinguishable from contingent fees and help ensure access to the courts. Similarly, an exception allowing lawyers representing indigent clients to pay court costs and litigation expenses regardless of whether these funds will be repaid is warranted.

*Person Paying for **a** Lawyer's Services*

[Rule 1.8(f) requires disclosure of the fact that the lawyer's services are being paid for by a third party. Such an arrangement must also conform to the requirements of Rule 1.6 concerning confidentiality and Rule 1.7 concerning conflict of interest. Where the client is a class, consent may be obtained on behalf of the class by court-supervised procedure.]

(11) Lawyers are frequently asked to represent a client under circumstances in which a third person will compensate the lawyer, in whole or in part. The third person might be a relative or friend, an indemnitor (such as a liability insurance company) or a co-client (such as a corporation sued along with one or more of its employees). Because third-party payers frequently have interests that differ from those of the client, including interests in minimizing the amount spent on the representation and in learning how the representation is progressing, lawyers are prohibited from accepting or continuing such representations unless the lawyer determines that there will be no interference with the lawyer's independent professional judgment and there is informed consent from the client. See also Rule 5.4(c) (prohibiting interference with a lawyer's professional judgment by one who recommends, employs or pays the lawyer to render legal services for another).

(12) Sometimes, it will be sufficient for the lawyer to obtain the client's informed consent regarding the fact of the payment and the identity of the third-party payer. If, however, the fee arrangement creates a conflict of interest for the lawyer, then the lawyer must comply with Rule. 1.7. The lawyer must also conform to the requirements of Rule 1.6 concerning confidentiality. Under Rule 1.7(a), a conflict of interest exists if there is significant risk that the lawyer's representation of the client will be materially limited by the lawyer's own interest in the fee arrangement or by the lawyer's responsibilities to the third-party payer (for example, when the third-party payer is a co-client). Under Rule 1.7(b), the lawyer may accept or continue the representation with the informed consent of each affected client, unless the conflict is nonconsentable under that paragraph.

Aggregate Settlements

(13) Differences in willingness to make or accept an offer of settlement are among the risks of common representation of multiple clients by a single lawyer. Under Rule 1.7, this is one of the risks that should be discussed before undertaking the representation, as part of the process of obtaining the clients' informed consent. In addition, Rule 1.2(a) protects each client's right to have the final say in deciding whether to accept or reject an offer of settlement and in deciding whether to enter a guilty or nolo contendere plea in a criminal case. The rule stated in this paragraph is a corollary of both these Rules and provides that, before any settlement offer or plea bargain is made or accepted on behalf of multiple clients, the lawyer must inform each of them about all the material terms of the settlement, including what the other clients will receive or pay if the settlement or plea offer is accepted. See also Rule 1.0(e) (definition of informed consent). Lawyers representing a class of plaintiffs or defendants, or those proceeding derivatively, may not have a full client-lawyer relationship with each member of the class; nevertheless, such lawyers must comply with applicable rules regulating notification of class members and other procedural requirements designed to ensure adequate protection of the entire class.

Limiting Liability and Settling Malpractice Claims

(14) Agreements prospectively limiting a lawyer's liability for malpractice are prohibited unless the client is independently represented in making the agreement because they are likely to undermine competent and diligent representation. Also, many clients are unable to evaluate the desirability of making such an agreement before a dispute has arisen, particularly if they are then represented by the lawyer seeking the agreement. This paragraph does not, however, prohibit a lawyer from entering into an agreement with the client to arbitrate legal malpractice claims, provided such agreements are enforceable and the client is fully informed of the scope and effect of the agreement. Nor does this paragraph limit the ability of lawyers to practice in the form of a limited-liability entity, where permit-

ted by law, provided that each lawyer remains personally liable to the client for his or her own conduct and the firm complies with any conditions required by law. Nor does it prohibit an agreement in accordance with Rule 1.2 that defines the scope of the representation, although a definition of scope that makes the obligations of representation illusory will amount to an attempt to limit liability.

(15) Agreements settling a claim or a potential claim for malpractice are not prohibited by this Rule. Nevertheless, in view of the danger that a lawyer will take unfair advantage of an unrepresented client or former client, the lawyer must first advise such a person in writing of the appropriateness of independent representation in connection with such a settlement. In addition, the lawyer must give the client or former client a reasonable opportunity to find and consult independent counsel.

[***Family Relationships Between Lawyers***

Rule 1.8(i) applies to related lawyers who are in different firms. Related lawyers in the same firm are governed by Rules 1.7, 1.9 and 1.10. The disqualification stated in Rule 1.8(i) is personal and is not imputed to members of firms with whom the lawyers are associated.

Acquisition of **]** ***Acquiring Proprietary*** *Interest in Litigation*

(16) Paragraph **[(j)] (i)** states the traditional general rule that lawyers are prohibited from acquiring a proprietary interest in litigation. **[This] Like paragraph (e), the** general rule**[, which]** has its basis in common law champerty and maintenance**[,] and is designed to avoid giving the lawyer too great an interest in the representation. In addition, when the lawyer acquires an ownership interest in the subject of the representation, it will be more difficult for a client to discharge the lawyer if the client so desires. The Rule** is subject to specific exceptions developed in decisional law and continued in these Rules**[, such as the exception for reasonable contingent fees set forth in Rule 1.5 and the exception for certain advances of the costs of litigation set forth in paragraph (e)]. The exception for certain advances of the costs of litigation is set forth in paragraph (e). In addition, paragraph (i) sets forth exceptions for liens authorized by law to secure the lawyer's fees or expenses and contracts for reasonable contingent fees. The law of each jurisdiction determines which liens are authorized by law. These may include liens granted by statute, liens originating in common law and liens acquired by contract with the client. When a lawyer acquires by contract a security interest in property other than that recovered through the lawyer's efforts in the litigation, such an acquisition is a business or financial transaction with a client and is governed by the requirements of paragraph (a). Contracts for contingent fees in civil cases are governed by Rule 1.5.**

[This Rule is not intended to apply to customary qualification and limitations in legal opinions and memoranda.]

Client-Lawyer Sexual Relationships

(17) The relationship between lawyer and client is a fiduciary one in which the lawyer occupies the highest position of trust and confidence. The relationship is almost always unequal; thus, a sexual relationship between lawyer and client can involve unfair exploitation of the lawyer's fiduciary role, in violation of the lawyer's basic ethical obligation not to use the trust of the client to the client's disadvantage. In addition, such a relationship presents a significant danger that, because of the lawyer's emotional involvement, the lawyer will be unable to represent the client without impairment of the exercise of independent professional judgment. Moreover, a blurred line between the professional and personal relationships may make it difficult to predict to what extent client confidences will be protected by the attorney-client evidentiary privilege, since client confidences are protected by privilege only when they are imparted in the context of the client-lawyer relationship. Because of the significant danger of harm to client interests and because the client's own emotional involvement renders it unlikely that the client could give adequate informed consent, this Rule prohibits the lawyer from having sexual relations with a client regardless of whether the relationship is consensual and regardless of the absence of prejudice to the client.

(18) Sexual relationships that predate the client-lawyer relationship are not prohibited. Issues relating to the exploitation of the fiduciary relationship and client dependency are diminished when the sexual relationship existed prior to the commencement of the client-lawyer relationship. However, before proceeding with the representation in these circumstances, the lawyer should consider whether the lawyer's ability to represent the client will be materially limited by the relationship. See Rule 1.7(a)(2).

(19) When the client is an organization, paragraph (j) of this Rule prohibits a lawyer for the organization (whether inside counsel or outside counsel) from having a sexual relationship with a constituent of the organization who supervises, directs or regularly consults with that lawyer concerning the organization's legal matters.

Imputation of Prohibitions

(20) Under paragraph (k), a prohibition on conduct by an individual lawyer in paragraphs (a) through (i) also applies to all lawyers associated in a firm with the personally prohibited lawyer. For example, one lawyer in a firm may not enter into a business transaction with a client of another member of the firm without complying with paragraph (a), even if the first lawyer is not personally involved in the representation of the client. The prohibition set forth in paragraph (j) is personal and is not applied to associated lawyers.

Rule 1.9. **[Conflict of Interest:] Duties to** Former **[Client] Clients**.

(a) A lawyer who has formerly represented a client in a matter shall not thereafter **[(a)]** represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client **[consents after full disclosure of the circumstances and consultation of] gives informed consent**.

(b) A lawyer shall not knowingly represent a person in the same or a substantially related mat-

ter in which a firm with which the lawyer formerly was associated had previously represented a client

(1) whose interests are materially adverse to that person; and

(2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter;

unless the former client gives informed consent.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

[(b)] (1) use information relating to the representation to the disadvantage of the former client except as **[Rule 1.6] these Rules** would permit **or require** with respect to a client, or when the information has become generally known**[.]; or**

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

Comment:

(1) After termination of a client-lawyer relationship, a lawyer **has certain continuing duties with respect to confidentiality and conflicts of interest and thus** may not represent another client except in conformity with this Rule. **[The principles in Rule 1.7 determine whether the interests of the present and former client are adverse. Thus] Under this Rule**, for example, a lawyer could not properly seek to rescind on behalf of a new client a contract drafted on behalf of the former client. So also a lawyer who has prosecuted an accused person could not properly represent the accused in a subsequent civil action against the government concerning the same transaction. **Nor could a lawyer who has represented multiple clients in a matter represent one of the clients against the others in the same or a substantially related matter after a dispute arose among the clients in that matter, unless all affected clients give informed consent. See Comment (9). Current and former government lawyers must comply with this Rule to the extent required by Rule 1.11.**

(2) The scope of a "matter" for purposes of **[Rule 1.9(a) may depend] this Rule depends** on the facts of a particular situation or transaction. The lawyer's involvement in a matter can also be a question of degree. When a lawyer has been directly involved in a specific transaction, subsequent representation of other clients with materially adverse interests **in that transaction** clearly is prohibited. On the other hand, a lawyer who recurrently handled a type of problem for a former client is not precluded from later representing another client in a **[wholly] factually** distinct problem of that type even though the subsequent representation involves a position adverse to the prior client. Similar considerations can apply to the reassignment of military lawyers between defense and prosecution functions within the same military **[jurisdiction] jurisdictions**. The underlying question is whether the lawyer was so involved in the matter that the subsequent representation can be justly regarded as a changing of sides in the matter in question.

[Information acquired by the lawyer in the course of representing a client may not subsequently be used by the lawyer to the disadvantage of the client. However, the fact that a lawyer has once served a client does not preclude the lawyer from using generally known information about that client when later representing another client.]

(3) Matters are "substantially related" for purposes of this Rule if they involve the same transaction or legal dispute or if there otherwise is a substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client's position in the subsequent matter. For example, a lawyer who has represented a businessperson and learned extensive private financial information about that person may not then represent that person's spouse in seeking a divorce. Similarly, a lawyer who has previously represented a client in securing environmental permits to build a shopping center would be precluded from representing neighbors seeking to oppose rezoning of the property on the basis of environmental considerations; however, the lawyer would not be precluded, on the grounds of substantial relationship, from defending a tenant of the completed shopping center in resisting eviction for nonpayment of rent. Information that has been disclosed to the public or to other parties adverse to the former client ordinarily will not be disqualifying. Information acquired in a prior representation may have been rendered obsolete by the passage of time, a circumstance that may be relevant in determining whether two representations are substantially related. In the case of an organizational client, general knowledge of the client's policies and practices ordinarily will not preclude a subsequent representation; on the other hand, knowledge of specific facts gained in a prior representation that are relevant to the matter in question ordinarily will preclude such a representation. A former client is not required to reveal the confidential information learned by the lawyer in order to establish a substantial risk that the lawyer has confidential information that could be used adversely to the former client's interests in the subsequent matter. A conclusion about the possession of such information may be based on the nature of the services the lawyer provided the former client and information that would in ordinary practice be learned by a lawyer providing such services.

Lawyers Moving Between Firms

(4) When lawyers have been associated with a firm but then end their association, the question of whether a lawyer should undertake representation is more complicated. There are several competing considerations. First, the client previously represented by the former firm must be reasonably assured that the principle of loyalty to the client is not compromised. Second, the Rule should not be so broadly cast as to preclude other persons from having reasonable choice of legal counsel. Third, the Rule should not unreasonably hamper lawyers from forming new associations and taking on new clients after having left a previous association. In this connection, it should be recognized that today many lawyers practice in firms, that many lawyers to some degree limit their practice to one field or another, and that many move from one association to another several times in their careers. If the concept of imputation were applied with unqualified rigor, the result would be radical curtailment

of the opportunity of lawyers to move from one practice setting to another and of the opportunity of clients to change counsel.

(5) Paragraph (b) operates to disqualify the lawyer only when the lawyer involved has actual knowledge information protected by Rules 1.6 and 1.9(c). Thus, if a lawyer while with one firm acquired no knowledge of information relating to a particular client of the firm, and that lawyer later joined another firm, neither the lawyer individually nor the second firm is disqualified from representing another client in the same or a related matter even though the interests of the two clients conflict. See Rule 1.10(b) for the restrictions on a firm once a lawyer becomes associated with a firm, including screening provisions. See Rule 1.10(c) for the restrictions on a firm once a lawyer has terminated association with the firm.

(6) Application of paragraph (b) depends on a situation's particular facts, aided by inferences, deductions or working presumptions that reasonably may be made about the way in which lawyers work together. A lawyer may have general access to files of all clients of a law firm and may regularly participate in discussions of their affairs; it should be inferred that such a lawyer in fact is privy to all information about all the firm's clients. In contrast, another lawyer may have access to the files of only a limited number of clients and participate in discussions of the affairs of no other clients; in the absence of information to the contrary, it should be inferred that such a lawyer in fact is privy to information about the clients actually served but not those of other clients. In such an inquiry, the burden of proof should rest upon the firm whose disqualification is sought.

(7) Independent of the question of disqualification of a firm, a lawyer changing professional association has a continuing duty to preserve confidentiality of information about a client formerly represented. See Rules 1.6 and 1.9(c).

(8) Paragraph (c) provides that information acquired by the lawyer in the course of representing a client may not subsequently be used or revealed by the lawyer to the disadvantage of the client. However, the fact that a lawyer has once served a client does not preclude the lawyer from using generally known information about that client when later representing another client.

(9) [Disqualification from subsequent representation is] The provisions of this Rule are for the protection of **former** clients and can be waived **[by them] if the client gives informed consent. [A waiver, effective only if there is a disclosure of the circumstances, including the lawyer's intended role on behalf of the new client.] See Rule 1.0 (e). With regard to the effectiveness of an advance waiver, see Comment (22) to Rule 1.7. With regard to disqualification of a firm with which a lawyer is or was formerly associated, see Rule 1.10.**

[With regard to an opposing party's raising a question of conflict of interests, see Comment to Rule 1.7. With regard to disqualification of a firm with which a lawyer is associated, see Rule 1.10.]

Rule 1.10. **[Imputed Disqualification] Imputation of Conflicts of Interest**: General Rule.

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7, **[1.8(c),] or** 1.9 **[or 2.2], unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm, or unless permitted by Rules 1.10(b) or (c)**.

(b) When a lawyer becomes associated with a firm, the firm may not knowingly represent a person in the same or a substantially related matter in which that lawyer, or a firm with which the lawyer was associated, had previously represented a client whose interests are materially adverse to that person and about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter unless:

(1) the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the appropriate client to enable it to ascertain compliance with the provisions of this rule.

(c) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:

(1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter.

(d) A disqualification prescribed by this Rule may be waived by the affected client under the conditions stated in Rule 1.7.

(e) While lawyers are associated in a firm, a prohibition in paragraphs (a) through (i) of Rule 1.8 that applies to any one of them shall apply to all of them.

(f) The disqualification of lawyers in a firm with former or current government lawyers is governed by Rule 1.11.

(g) The disqualification of lawyers in a firm with a former judge, arbitrator, mediator or other third-party neutral is governed by Rule 1.12.

(h) Where a lawyer in a firm is disqualified from a matter due to consultation with a prospective client pursuant to Rule 1.18(b) and (c), disqualification of other lawyers in the same firm is governed by Rule 1.18(d).

(i) The disqualification of a lawyer when another lawyer in the lawyer's firm is likely to be called as a witness is governed by Rule 3.7.

Comment:

Definition of "Firm"

(1) For the purposes of the Rules of Professional Conduct, the term "firm" **[includes] denotes** lawyers in a **[private firm, and] law partnership, professional**

corporation, sole proprietorship or other association authorized to practice law; or lawyers employed **in a legal services organization or** in the legal department of a corporation or other organization**[, or in a legal services organization]**. **[The terms of any formal agreement between associated lawyers are relevant in determining whether they are a firm, as is the fact that they have mutual access to confidential information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the rule that is involved. A group of lawyers could be regarded as a firm for purposes of the rule that the same lawyer should not represent opposing parties in litigation, while it might not be so regarded for purposes of the rule that information acquired by one lawyer is attributed to another.**

With respect to the law department of an organization, there is ordinarily no question that the members of the department constitute a firm within the meaning of the Rules of Professional Conduct. However, there can be uncertainty as to the identity of the client. For example, it may not be clear whether the law department of a corporation represents a subsidiary or an affiliated corporation, as well as the corporation by which the members of the department are directly employed. A similar question can arise concerning an unincorporated association and its local affiliates.] See Rule 1.0(c). Whether two or more lawyers constitute a firm within this definition depends on specific facts. See Rule 1.0, Comments (2)—(4).

[Similar questions can also arise with respect to lawyers in legal aid. Lawyers employed in the same unit of a legal service organization constitute a firm, but not necessarily those employed in separate units. As in the case of independent practitioners, whether the lawyers should be treated as associated with each other can depend on the particular rule that is involved, and on the specific facts of the situation.

Where a lawyer has joined a private firm after having represented the government, the situation is governed by Rule 1.11(a) and (b); where a lawyer represents the government after having served private clients, the situation is governed by Rule 1.11(d)(2)(i). The individual lawyer involved is bound by the Rules generally, including Rules 1.6, 1.7, and 1.9.

Different provisions are thus made for movement of a lawyer from one private firm to another and for movement of a lawyer between a private firm and the government. The government is entitled to protection of its client confidences, and therefore, to the protections provided in Rules 1.6, 1.9, and 1.11. However, if the more extensive disqualification in Rule 1.10 were applied to former government lawyers, the potential effect on the government would be unduly burdensome. The government deals with all private citizens and organizations, and thus has a much wider circle of adverse legal interests than does any private law firm. In these circumstances, the government's recruitment of lawyers would be seriously impaired if Rule 1.10 were applied to the government. On balance, therefore, the government is better served in the long run by the protections stated in Rule 1.11.]

Principles of Imputed Disqualification

(2) The rule of imputed disqualification stated in paragraph (a) gives effect to the principle of loyalty to the client as it applies to lawyers who practice in a law firm. Such situations can be considered from the premise that a firm of lawyers is essentially one lawyer for purposes of the rules governing loyalty to the client, or from the premise that each lawyer is vicariously bound by the obligation of loyalty owed by each lawyer with whom the lawyer is associated. Paragraph (a) operates only among the lawyers currently associated in a firm. When a lawyer moves from one firm to another, the situation is governed by paragraphs (b) and (c).

(3) The rule in paragraph (a) does not prohibit representation where neither questions of client loyalty nor protection of confidential information are presented. Where one lawyer in a firm could not effectively represent a given client because of strong political beliefs, for example, but that lawyer will do no work on the case and the personal beliefs of the lawyer will not materially limit the representation by others in the firm, the firm should not be disqualified. On the other hand, if an opposing party in a case were owned by a lawyer in the law firm, and others in the firm would be materially limited in pursuing the matter because of loyalty to that lawyer, the personal disqualification of the lawyer would be imputed to all others in the firm.

(4) The rule in paragraph (a) also does not prohibit representation by others in the law firm where the person prohibited from involvement in a matter is a nonlawyer, such as a paralegal or legal secretary. Nor does paragraph (a) prohibit representation if the lawyer is prohibited from acting because of events before the person became a lawyer, for example, work that the person did while a law student. Such persons, however, ordinarily must be screened from any personal participation in the matter to avoid communication to others in the firm of confidential information that both the nonlawyers and the firm have a legal duty to protect. See Rules 1.0(k) and 5.3.

(5) Rule 1.10(c) operates to permit a law firm, under certain circumstances, to represent a person with interests directly adverse to those of a client represented by a lawyer who formerly was associated with the firm. The Rule applies regardless of when the formerly associated lawyer represented the client. However, the law firm may not represent a person with interests adverse to those of a present client of the firm, which would violate Rule 1.7. Moreover, the firm may not represent the person where the matter is the same or substantially related to that in which the formerly associated lawyer represented the client and any other lawyer currently in the firm has material information protected by Rules 1.6 and 1.9(c).

(6) Rule 1.10(d) removes imputation with the informed consent of the affected client or former client under the conditions stated in Rule 1.7. The conditions stated in Rule 1.7 require the lawyer to determine that the representation is not prohibited by Rule 1.7(b) and that each affected client or former client has given informed consent to the representation. In some cases, the risk may be so severe that the conflict may not be cured by client consent. For a discussion of the effectiveness of

client waivers of conflicts that might arise in the future, see Rule 1.7, Comment (22). For a definition of informed consent, see Rule 1.0(e).

(7) Where a lawyer has joined a private firm after having represented the government, **[the situation] imputation** is governed by Rule 1.11 **[(a) and]** (b)**[;] and (c), not this Rule. Under Rule 1.11(d),** where a lawyer represents the government after having served **[private]** clients**[, the situation is governed by Rule 1.11(c)(1). The individual lawyer involved is bound by the Rules generally, including Rules 1.6, 1.7 and 1.9] in private practice, nongovernmental employment or in another government agency, former-client conflicts are not imputed to government lawyers associated with the individually disqualified lawyer**.

(8) Where a lawyer is prohibited from engaging in certain transactions under Rule 1.8, paragraph (k) of that Rule, and not this Rule, determines whether that prohibition also applies to other lawyers associated in a firm with the personally prohibited lawyer.

(9) The disqualification of lawyers in a firm with a former judge, arbitrator, mediator or other third-party neutral is governed by Rule 1.12.

(10) Where a lawyer is disqualified from a matter as a result of a consultation with a prospective client pursuant to Rule 1.18(b) and (c), disqualification of the other lawyers in the firm is governed by Rule 1.18(d).

(11) The disqualification of a lawyer when another lawyer in the lawyer's firm is likely to be called as a witness is governed by Rule 3.7.

[***Lawyers Moving Between Firms***

When lawyers have been associated in a firm but then end their association, however, the problem is more complicated. The fiction that the law firm is the same as a single lawyer is no longer wholly realistic. There are several competing considerations. First, the client previously represented must be reasonably assured that the principle of loyalty to the client is not compromised. Second, the rule of disqualification should not be so broadly cast as to preclude other persons from having reasonable choice of legal counsel. Third, the rule of disqualification should not unreasonably hamper lawyers from forming new associations and taking on new clients after having left a previous association. In this connection, it should be recognized that today many lawyers practice in firms, that many to some degree limit their practice to one field or another, and that many move from one association to another several times in their careers. If the concept of imputed disqualification were defined with unqualified rigor, the result would be radical curtailment of the opportunity of lawyers to move from one practice setting to another and of the opportunity of clients to change counsel.

Reconciliation of these competing principles in the past has been attempted under two rubrics. One approach has been to seek per se rules of disqualification. For example, it has been held that a partner in a law firm is conclusively presumed to have access to all confidences concerning all clients of the firm. Under this analysis, if a lawyer has been a partner in one law firm and then becomes a partner in another law firm, there is a presumption that all confidences known by a partner in the first firm are known to all partners in the second firm. This presumption might properly be applied in some circumstances, especially where the client has been extensively represented, but may be unrealistic where the client was represented only for limited purposes. Furthermore, such a rigid rule exaggerates the difference between a partner and an associate in modern law firms.

The other rubric formerly used for dealing with vicarious disqualification is the appearance of impropriety proscribed in Canon 9 of the ABA Model Code of Professional Responsibility. This rubric has a two-fold problem. First, the appearance of impropriety can be taken to include any new client-lawyer relationship that might make a former client feel anxious. If that meaning were adopted, disqualification would become little more than a question of subjective judgment by the former client. Second, since "impropriety" is undefined, the term "appearance of impropriety" is question-begging. It therefore has to be recognized that the problem of imputed disqualification cannot be properly resolved either by simple analogy to a lawyer practicing alone or by the very general concept of appearance of impropriety.

A rule based on a functional analysis is more appropriate for determining the question of vicarious disqualification. Two functions are involved: preserving confidentiality and avoiding positions adverse to a client.

Confidentiality

Preserving confidentiality is a question of access to information. Access to information, in turn, is essentially a question of fact in particular circumstances, aided by inferences, deductions or working presumptions that reasonably may be made about the way in which lawyers work together. A lawyer may have general access to files of all clients of a law firm and may regularly participate in discussions of their affairs; it should be inferred that such a lawyer in fact is privy to all information about all the firm's clients. In contrast, another lawyer may have access to the files of only a limited number of clients and participate in discussion of the affairs of no other clients; in the absence of information to the contrary, it should be inferred that such a lawyer in fact is privy to information about the clients actually served but not those of other clients.

Application of paragraphs (b) and (c) depends on a situation's particular facts. In any such inquiry, the burden of proof should rest upon the firm whose disqualification is sought.

Paragraphs (b) and (c) operate to disqualify the firm only when the lawyer involved has actual knowledge of information protected by Rules 1.6 and 1.9(b) and (c). Thus, if a lawyer while with one firm acquired no knowledge of information relating to a particular client of the firm, and that lawyer later joined another firm, neither the lawyer individually nor the second firm is disqualified from representing another client in the same or a related matter even though the interests of the two clients conflict.

Independent of the question of disqualification of a firm, a lawyer changing professional association

has a continuing duty to preserve confidentiality of information about a client formerly represented. See Rules 1.6 and 1.9.

Adverse Positions

The second aspect of loyalty to client is the lawyer's obligation to decline subsequent representations involving positions adverse to a former client arising in substantially related matters. This obligation requires abstention from adverse representation by the individual lawyer involved, but does not properly entail abstention of other lawyers through imputed disqualification. Hence, this aspect of the problem is governed by Rule 1.9(a). Thus, if a lawyer left one firm for another, the new affiliation would not preclude the firms involved from continuing to represent clients with adverse interests in the same or related matters, so long as the conditions of Rule 1.10(b) and (c) have been met.]

Rule 1.11. **[Successive] Special Conflicts of Interest for Former and Current** Government **Officers** and **[Private Employment] Employees**.

(a) Except as law may otherwise expressly permit, a lawyer **who has formerly served as a public officer or employee of the government:**

(1) is subject to Rule 1.9(c); and

(2) shall not **otherwise** represent a private client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency **[consents after consultation. No] gives its informed consent to the representation.**

(b) When a lawyer is disqualified from representation under paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

(1) the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this rule.

[(b)] (c) Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows is confidential government information about a person acquired when the lawyer was a public officer or employee may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. **As used in this Rule, the term "confidential government information" means information that has been obtained under governmental authority and which, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose and which is not otherwise available to the public.** A firm with which that lawyer is associated may undertake or continue representation in the matter only if the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom.

[(c)] (d) Except as law may otherwise expressly permit, a lawyer **currently** serving as a public officer or employee:

(1) is subject to Rules 1.7 and 1.9; and

(2) shall not:

[(1)] (i) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless **[under applicable law no one is, or by lawful delegation may be, authorized to act in the lawyer's stead in the matter; or (2)] the appropriate government agency gives its informed consent; or**

(ii) negotiate for private employment with any person who is involved as a party or as **[attorney] a lawyer** for a party in a matter in which the lawyer is participating personally and substantially**, except that a lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for private employment as permitted by Rule 1.12(b) and subject to the conditions stated in Rule 1.12(b)**.

[(d)] (e) As used in this Rule, the term "matter" includes:

(1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties; and

(2) any other matter covered by the conflict of interest rules of the appropriate government agency.

[(e) As used in this Rule, the term "confidential government information" means information which has been obtained under governmental authority and which, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose, and which is not otherwise available to the public.]

Comment:

[This Rule prevents a lawyer from exploiting public office for the advantage of a private client. It is a counterpart of Rule 1.10(b), which applies to lawyers moving from one firm to another.]

(1) A lawyer **[representing a government agency, whether employed or specially retained by the government, is] who has served or is currently serving as a public officer or employee is personally** subject to the Rules of Professional Conduct, including the prohibition against **[representing adverse interests] current conflicts of interest** stated in Rule 1.7 **[and the protections afforded former clients in Rule 1.9]**. In addition, such a lawyer **[is] may be** subject **[to Rule 1.11 and]** to statutes and government regulations regarding conflict of interest. Such statutes and regulations may circumscribe the extent to which the government agency may give consent under this Rule. **See Rule 1.0(e) for the definition of informed consent.**

(2) Paragraphs (a)(1), (a)(2) and (d)(1) restate the obligations of an individual lawyer who has served or is currently serving as an officer or employee of the government toward a former government or private client. Rule 1.10 is not applicable to the conflicts of interest addressed by this Rule. Rather, paragraph (b) sets forth a special imputation rule for former government lawyers that provides for screening and notice. Because of the special prob-

lems raised by imputation within a government agency, paragraph (d) does not impute the conflicts of a lawyer currently serving as an officer or employee of the government to other associated government officers or employees, although ordinarily it will be prudent to screen such lawyers.

(3) Paragraphs (c) and (d)(2) apply regardless of whether a lawyer is adverse to a former client and are thus designed not only to protect the former client, but also to prevent a lawyer from exploiting public office for the advantage of another client. For example, a lawyer who has pursued a claim on behalf of the government may not pursue the same claim on behalf of a later private client after the lawyer has left government service, except when authorized to do so by the government agency under paragraph (a)(2). Similarly, a lawyer who has pursued a claim on behalf of a private client may not pursue the claim on behalf of the government, except when authorized to do so by paragraph (d). As with paragraphs (a)(1), and (d)(1), Rule 1.10 is not applicable to the conflicts of interest addressed by these paragraphs.

(4) [where] This Rule represents a balancing of interests. On the one hand, where the successive clients are a **[public] government** agency and **[a] another client, public or** private **[client]**, the risk exists that power or discretion vested in **[public authority] that agency** might be for the special benefit of **[a private] the other** client. A lawyer should not be in a position where benefit to **[a private] the other** client might affect performance of the lawyer's professional functions on behalf of **[public authority] the government**. Also, unfair advantage could accrue to the private client by reason of access to confidential government information about the client's adversary obtainable only through the lawyer's government service. **[However] On the other hand**, the rules governing lawyers presently or formerly employed by a government agency should not be so restrictive as to inhibit transfer of employment to and from the government. The government has a legitimate need to attract qualified lawyers as well as to maintain high ethical standards. **Thus, a former government lawyer is disqualified only from particular matters in which the lawyer participated personally and substantially.** The provisions for screening **[and waiver] in paragraph (b)** are necessary to prevent the disqualification rule from imposing too severe a deterrent against entering public service. **The limitation of disqualification in paragraphs (a)(2) and (d)(2) to matters involving a specific party or parties, rather than extending disqualification to all substantive issues on which the lawyer worked, serves a similar function.**

(5) When **[the client is an agency of one government, that agency should be treated as a private] a lawyer has been employed by one government agency and then moves to a second government agency, it may be appropriate to treat that second agency as another** client for purposes of this Rule **[if the lawyer thereafter represents an agency of another government]**, as when a lawyer **[represents] is employed by** a city and subsequently is employed by a federal agency. **[Paragraphs (a)(1) and (b) do not prohibit a lawyer from receiving a salary or distribution of firm profits established by prior independent agreement. They prohibit directly relating the attorney's compensation to the fee in the matter in which the lawyer is disqualified. Paragraph (a)(2) does not require that a lawyer give notice to the] However, because the conflict of interest is governed by paragraph (d), the latter agency is not required to screen the lawyer as paragraph (b) requires a law firm to do. The question of whether two** government **[agency at a time when premature disclosure would injure the client; a requirement for premature disclosure might preclude engagement of the lawyer. Such notice is, however, required to] agencies should be regarded as the same or different clients for conflict of interest purposes is beyond the scope of these Rules. See Rule 1.13 Comment (6).**

(6) Paragraphs (b) and (c) contemplate a screening arrangement. See Rule 1.0(k) (requirements for screening procedures). These paragraphs do not prohibit a lawyer from receiving a salary or distribution of firm profits established by prior independent agreement, but that lawyer may not receive compensation directly relating the attorney's compensation to the fee in the matter in which the lawyer is disqualified.

(7) [Paragraph (a)(2) does not require that a lawyer give notice to the government agency at a time when premature disclosure would injure the client; a requirement for premature disclosure might preclude engagement of the lawyer. Such notice is, however, required to] Notice, including a description of the screened lawyer's prior representation and of the screening procedures employed, generally should be given as soon as practicable **[in order that the government agency will have a reasonable opportunity to ascertain that the lawyer is complying with Rule 1.11 and to take appropriate action if it believes the lawyer is not complying] after the need for screening becomes apparent**.

(8) Paragraph **[(b)](c)** operates only when the lawyer in question has knowledge of the information, which means actual knowledge; it does not operate with respect to information that merely could be imputed to the lawyer.

(9) Paragraphs (a) and **[(c)](d)** do not prohibit a lawyer from jointly representing a private party and a government agency when doing so is permitted by Rule 1.7 and is not otherwise prohibited by law.

[Paragraph (c) does not disqualify other lawyers in the agency with which the lawyer in question has become associated.]

(10) For purposes of paragraph (e) of this Rule, a "matter" may continue in another form. In determining whether two particular matters are the same, the lawyer should consider the extent to which the matters involve the same basic facts, the same or related parties, and the time elapsed.

Rule 1.12. Former Judge **[or],** Arbitrator **[or Law Clerk], Mediator Or Other Third-Party Neutral**.

(a) Except as stated in paragraph (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer, **[arbitrator] third-party neutral (including arbitrator or**

mediator) or law clerk to such a person, unless all parties to the proceeding **give informed** consent **[after disclosure]**.

(b) A lawyer shall not negotiate for employment with any person who is involved as a party or as **[attorney] lawyer** for a party in which the lawyer is participating personally and substantially as a judge or other adjudicative officer, or **[arbitrator] third-party neutral**. A lawyer serving as a law clerk to a judge, other adjudicative officer or **[arbitrator] third-party neutral** may negotiate for employment with a party or **[attorney] lawyer** involved in a matter in which the clerk is participating personally and substantially, but only after the lawyer has notified the judge, other adjudicative officer or **[arbitrator] third-party neutral**.

(c) If a lawyer is disqualified by paragraph (a), no lawyer in a firm with which the lawyer is associated may knowingly undertake or continue representation in the matter unless:

(1) the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the **parties and any** appropriate tribunal to enable **[it] them** to ascertain compliance with the provisions of this Rule.

(d) An arbitrator selected as a partisan of a party in a multi-member arbitration panel is not prohibited from subsequently representing that party.

Comment:

(1) This Rule generally parallels Rule 1.11. The term "personally and substantially" signifies that a judge who was a member of a multi-member court, and thereafter left judicial office to practice law, is not prohibited from representing a client in a matter pending in the court, but in which the former judge did not participate. So also the fact that the former judge exercised administrative responsibility in a court does not prevent the former judge from acting as a lawyer in a matter where the judge had previously exercised remote or incidental administrative responsibility that did not affect the merits. Compare the Comment to Rule 1.11. The term "adjudicative officer" includes such officials as judges pro tempore, referees, special masters, hearing officers and other judicial officers, and also lawyers who serve as part-time judges. Compliance Canons A(2), B(2) and C of the Model Code of Judicial Conduct provide that a part-time judge, judge pro tempore or retired judge recalled to active service, may not "act as a lawyer in any proceeding in which he served as a judge or in any other proceeding relating thereto." Although phrased differently from this Rule, those Rules correspond in meaning.

(2) Like former judges, lawyers who have served as arbitrators, mediators or other third-party neutrals may be asked to represent a client in a matter in which the lawyer participated personally and substantially. This Rule forbids such representation unless all of the parties give their informed consent. See Rule 1.0(e). Other law or codes of ethics governing third-party neutrals may impose more stringent standards of personal or imputed disqualification. See Rule 2.4.

(3) Although lawyers who serve as third-party neutrals do not have information concerning the parties that is protected under Rule 1.6, they typically owe the parties an obligation of confidentiality under the law or codes of ethics governing third-party neutrals. Thus, paragraph (c) provides that conflicts of the personally disqualified lawyer will be imputed to other lawyers in a law firm unless the conditions of this paragraph are met.

(4) Requirements for screening procedures are stated in Rule 1.0(k). Paragraph (c)(1) does not prohibit the screened lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly related to the matter in which the lawyer is disqualified.

(5) Notice, including a description of the screened lawyer's prior representation and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent. Notice must be given to the parties as well as to the appropriate tribunal.

Rule 1.13. Organization as Client.

(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

(b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law which reasonably might be imputed to the organization, and is likely to result in substantial injury to the organization, the lawyer shall proceed as is reasonably necessary in the best interest of the organization. In determining how to proceed, the lawyer shall give due consideration to the seriousness of the violation and its consequences, the scope and nature of the lawyer's representation, **[and responsibility in the organization concerning such matters] the responsibility in the organization and the apparent motivation of the person involved, the policies of the organization concerning such matters** and any other relevant considerations. Any measures taken shall be designed to minimize disruption of the organization and the risk of revealing information relating to the representation to persons outside the organization. Such measures may include among others:

(1) asking **for** reconsideration of the matter;

(2) advising that a separate legal opinion on the matter be sought for presentation to appropriate authority in the organization; and

(3) referring the matter to higher authority in the organization, including, if warranted by the seriousness of the matter, referral to the highest authority that can act **[in] on** behalf of the organization as determined by applicable law.

(c) If, despite the lawyer's efforts in accordance with paragraph (b), the highest authority that can act on behalf of the organization insists upon action, or a refusal to act, that is clearly a violation of law and is likely to result in substantial injury to the organization, the lawyer may resign in accordance with Rule 1.16.

(d) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when **[it is apparent] the lawyer knows or reasonably should know** that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

(e) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

Comment:

The Entity as the Client

(1) An organizational client is a legal entity, but it cannot act except through its officers, directors, employees, shareholders and other constituents. Officers, directors, employees and shareholders are the constituents of the corporate organizational client. The duties defined in this Comment apply equally to unincorporated associations. "Other constituents" as used in this Comment means the positions equivalent to officers, directors, employees and shareholders held by persons acting for organizational clients that are not corporations.

(2) When one of the constituents of an organizational client communicates with the organization's lawyer in that person's organizational capacity, the communication is protected by Rule 1.6. Thus, by way of example, if an organizational client requests its lawyer to investigate allegations of wrongdoing, interviews made in the course of that investigation between the lawyer and the client's employees or other constituents are covered by Rule 1.6. This does not mean, however, that constituents of an organizational client are the clients of the lawyer. The lawyer may not disclose to such constituents information relating to the representation except for disclosures explicitly or impliedly authorized by the organizational client in order to carry out the representation or as otherwise permitted by Rule 1.6.

(3) When constituents of the organization make decisions for it, the decisions ordinarily must be accepted by the lawyer even if their utility or prudence is doubtful. Decisions concerning policy and operations, including ones entailing serious risk, are not as such in the lawyer's province. However, different considerations arise when the lawyer knows that the organization may be substantially injured by action of a constituent that is in violation of law. In such a circumstance, it may be reasonably necessary for the lawyer to ask the constituent to reconsider the matter. If that fails, or if the matter is of sufficient seriousness and importance to the organization, it may be reasonably necessary for the lawyer to take steps to have the matter reviewed by a higher authority in the organization. Clear justification should exist for seeking review over the head of the constituent normally responsible for it. The stated policy of the organization may define circumstances and prescribe channels for such review, and a lawyer should encourage the formulation of such a policy. Even in the absence of organization policy, however, the lawyer may have an obligation to refer a matter to higher authority, depending on the seriousness of the matter and whether the constituent in question has apparent motives to act at variance with the organization's interest. Review by the chief executive officer or by the board of directors may be required when the matter is of importance commensurate with their authority. At some point it may be useful or essential to obtain an independent legal opinion.

(4) [In an extreme case, it may be reasonably necessary for the lawyer to refer the matter to the] The organization's highest authority**[. Ordinarily, that is] to whom a matter may be referred ordinarily will be** the board of directors or similar governing body. However, applicable law may prescribe that under certain conditions **the** highest authority reposes elsewhere, for example, in the independent directors of a corporation.

Relation to Other Rules

(5) The authority and responsibility provided in **[paragraph (b)] this Rule** are concurrent with the authority and responsibility provided in other Rules. In particular, this Rule does not limit or expand the lawyer's responsibility under Rule 1.6, 1.8, 1.16, 3.3 or 4.1. If the lawyer's services are being used by an organization to further a crime or fraud by the organization, Rule 1.2(d) can be applicable.

Government Agency

(6) The duty defined in this Rule applies to governmental organizations. **[However, when the client is a governmental organization, a different balance may be appropriate between maintaining confidentiality and assuring that the wrongful official act is prevented or rectified, for public business is involved. In addition, duties of lawyers employed by the government or lawyers in military service may be defined by statutes and regulation. Therefore, defining] Defining** precisely the identity of the client and prescribing the resulting obligations of such lawyers may be more difficult in the government context **and is a matter beyond the scope of these Rules. See Scope (17).** Although in some circumstances the client may be a specific agency, it **[is generally] may also be a branch of government, such as the executive branch, or** the government as a whole. For example, if the action or failure to act involves the head of a bureau, either the department of which the bureau is a part or the **relevant branch of** government **[as a whole]** may be the client for **[purpose] purposes** of this Rule. Moreover, in a matter involving the conduct of government officials, a government lawyer may have authority **under applicable law** to question such conduct more extensively than that of a lawyer for a private organization in similar circumstances. **Thus, when the client is a governmental organization, a different balance may be appropriate between maintaining confidentiality and assuring that the wrongful act is prevented or rectified, for public business is involved. In addition, duties of lawyers employed by the government or lawyers in military service may be defined by statutes and regulation.** This Rule does not limit that authority. See **[note on]** Scope.

Clarifying the Lawyer's Role

(7) There are times when the organization's interest may be or become adverse to those of one or more of its constituents. In such circumstances the lawyer should advise any constituent, whose interest the lawyer finds adverse to that of the organization, of the conflict or potential conflict of interest, that the lawyer cannot represent such constituent, and that such person may wish to obtain independent representation. Care must be taken to assure that the individual understands that, when there is such adversity of interest, the lawyer for the organization cannot provide legal representation for that constituent individual, and that discussions between the lawyer for the organization and the individual may not be privileged.

(8) Whether such a warning should be given by the lawyer for the organization to any constituent individual may turn on the facts of each case.

Dual Representation

(9) Paragraph (e) recognizes that a lawyer for an organization may also represent a principal officer or major shareholder.

Derivative Actions

(10) Under generally prevailing law, the shareholders or members of a corporation may bring suit to compel the directors to perform their legal obligations in the supervision of the organization. Members of unincorporated associations have essentially the same right. Such an action may be brought nominally by the organization, but usually is, in fact, a legal controversy over management of the organization.

(11) The question can arise whether counsel for the organization may defend such an action. The proposition that the organization is the lawyer's client does not alone resolve the issue. Most derivative actions are a normal incident of an organization's affairs, to be defended by the organization's lawyer like any other suit. However, if the claim involves serious charges of wrongdoing by those in control of the organization, a conflict may arise between the lawyer's duty to the organization and the lawyer's relationship with the board. In those circumstances, Rule 1.7 governs who should represent the directors and the organization.

Rule 1.14. Client **[Under a Disability] with Diminished Capacity**.

(a) When a client's **[ability] capacity** to make adequately considered decisions in connection with **[the] a** representation is **[impaired] diminished**, whether because of minority, mental **[disability] impairment** or for some other reason, the lawyer **[should] shall**, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) **[A lawyer may seek the appointment of a guardian or take other protective action with respect to a client only when] When** the lawyer reasonably believes that the client **has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and** cannot adequately act in the client's own interest**, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian**.

(c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

Comment:

(1) The normal client-lawyer relationship is based on the assumption that the client, when properly advised and assisted, is capable of making decisions about important matters. When the client is a minor or suffers from a **diminished** mental **[disorder or disability] capacity**, however, maintaining the ordinary client-lawyer relationship may not be possible in all respects. In particular, **[an] a severely** incapacitated person may have no power to make legally binding decisions. Nevertheless, a client **[lacking legal competence] with diminished capacity** often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being. **[Furthermore, to an increasing extent the law recognizes intermediate degrees of competence.]** For example, children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody. So also, it is recognized that some persons of advanced age can be quite capable of handling routine financial matters while needing special legal protection concerning major transactions.

(2) The fact that a client suffers a **[disability] diminished capacity** does not diminish the lawyer's obligation to treat the client with attention and respect. **[If the person has no guardian or legal representative, the lawyer often must act as de facto guardian.]** Even if the person **[does have] has** a legal representative, the lawyer should as far as possible accord the represented person the status of client, particularly in maintaining communication.

(3) The client may wish to have family members or other persons participate in discussions with the lawyer. When necessary to assist in the representation, the presence of such persons generally does not affect the applicability of the attorney-client evidentiary privilege. Nevertheless, the lawyer must keep the client's interests foremost and, except for protective action authorized under paragraph (b), must look to the client, and not family members, to make decisions on the client's behalf.

(4) If a legal representative has already been appointed for the client, the lawyer should ordinarily look to the representative for decisions on behalf of the client. **[If a legal representative has not been appointed, the lawyer should see to such an appointment where it would serve the client's best interests. Thus, if a disabled client has substantial property that should be sold for the client's benefit, effective completion of the transaction ordinarily requires appointment of a legal representative. In many circumstances, however, appointment of a legal representative may be expensive or traumatic for the client. Evaluation of these considerations is a matter of professional judgment on the lawyer's part.] In matters involving a minor, whether the lawyer should look to the parents as natural guardians may depend on the type of proceeding or matter in which the lawyer is representing the minor.** If the lawyer represents the guardian as distinct from the ward, and is aware that the guardian is acting adversely to the ward's interest, the lawyer may have an obligation to prevent or rectify the guardian's misconduct. See Rule 1.2(d).

Taking Protective Action

(5) If a lawyer reasonably believes that a client is at risk of substantial physical, financial or other harm unless action is taken, and that a normal client-lawyer relationship cannot be maintained as provided in paragraph (a) because the client lacks sufficient capacity to communicate or to make adequately considered decisions in connection with

the representation, then paragraph (b) permits the lawyer to take protective measures deemed necessary. Such measures could include: consulting with family members, using a reconsideration period to permit clarification or improvement of circumstances, using voluntary surrogate decision-making tools such as durable powers of attorney or consulting with support groups, professional services, adult-protective agencies or other individuals or entities that have the ability to protect the client. In taking any protective action, the lawyer should be guided by such factors as the wishes and values of the client to the extent known, the client's best interests and the goals of intruding into the client's decision-making autonomy to the least extent feasible, maximizing client capacities and respecting the client's family and social connections.

(6) In determining the extent of the client's diminished capacity, the lawyer should consider and balance such factors as: the client's ability to articulate reasoning leading to a decision, variability of state of mind and ability to appreciate consequences of a decision; the substantive fairness of a decision; and the consistency of a decision with the known long-term commitments and values of the client. In appropriate circumstances, the lawyer may seek guidance from an appropriate diagnostician.

(7) If a legal representative has not been appointed, the lawyer should consider whether appointment of a guardian ad litem, conservator or guardian is necessary to protect the client's interests. Thus, if a client with diminished capacity has substantial property that should be sold for the client's benefit, effective completion of the transaction may require appointment of a legal representative. In addition, rules of procedure in litigation sometimes provide that minors or persons with diminished capacity must be represented by a guardian or next friend if they do not have a general guardian. In many circumstances, however, appointment of a legal representative may be more expensive or traumatic for the client than circumstances in fact require. Evaluation of such circumstances is a matter entrusted to the professional judgment of the lawyer. In considering alternatives, however, the lawyer should be aware of any law that requires the lawyer to advocate the least restrictive action on behalf of the client.

Disclosure of the Client's Condition

(8) [Rules of procedure in litigation generally provide that minors or persons suffering mental disability shall be represented by a guardian or next friend if they do not have a general guardian. However, disclosure] Disclosure of the client's **[disability can] diminished capacity could** adversely affect the client's interests. For example, raising the question of **[disability] diminished capacity** could, in some circumstances, lead to proceedings for involuntary commitment. **Information relating to the representation is protected by Rule 1.6. Therefore, unless authorized to do so, the lawyer may not disclose such information. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized to make the necessary disclosures, even when the client directs the lawyer to the contrary. Nevertheless, given the risks of disclosure, paragraph (c) limits what the lawyer may disclose in consulting with other individuals or entities or seeking the appointment of a legal representative. At the very least, the lawyer should determine whether it is likely that the person or entity consulted with will act adversely to the client's interests before discussing matters related to the client.** The lawyer's position in such cases is an unavoidably difficult one. **[The lawyer may seek guidance from an appropriate diagnostician.]**

Emergency Legal Assistance

(9) In an emergency where the health, safety or a financial interest of a person with seriously diminished capacity is threatened with imminent and irreparable harm, a lawyer may take legal action on behalf of such a person even though the person is unable to establish a client-lawyer relationship or to make or express considered judgments about the matter, when the person or another acting in good faith on that person's behalf has consulted with the lawyer. Even in such an emergency, however, the lawyer should not act unless the lawyer reasonably believes that the person has no other lawyer, agent or other representative available. The lawyer should take legal action on behalf of the person only to the extent reasonably necessary to maintain the status quo or otherwise avoid imminent and irreparable harm. A lawyer who undertakes to represent a person in such an exigent situation has the same duties under these Rules as the lawyer would with respect to a client.

(10) A lawyer who acts on behalf of a person with seriously diminished capacity in an emergency should keep the confidences of the person as if dealing with a client, disclosing them only to the extent necessary to accomplish the intended protective action. The lawyer should disclose to any tribunal involved and to any other counsel involved the nature of his or her relationship with the person. The lawyer should take steps to regularize the relationship or implement other protective solutions as soon as possible. Normally, a lawyer would not seek compensation for such emergency actions taken.

Rule 1.16. Declining or Terminating Representation.

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the Rules of Professional Conduct or other law;

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

(3) the lawyer is discharged.

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if**:**

(1) withdrawal can be accomplished without material adverse effect on the interests of the client**[, or if:];**

[(1)](2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

[(2)](3) the client has used the lawyer's services to perpetrate a crime or fraud;

[(3) a] (4) the client insists upon **[pursuing an objective] taking action** that the lawyer considers repugnant or **[imprudent] with which the lawyer has a fundamental disagreement**;

[(4)] (5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

[(5)] (6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

[(6)] (7) other good cause for withdrawal exists.

(c) **A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation.** When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee **or expense** that has not been earned **or incurred**. The lawyer may retain papers relating to the client to the extent permitted by other law.

Comment:

(1) A lawyer should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest and to completion. **Ordinarily, a representation in a matter is completed when the agreed-upon assistance has been concluded. See Rules 1.2(c) and 6.5. See also Rule 1.3, Comment (4).**

Mandatory Withdrawal

(2) A lawyer ordinarily must decline or withdraw from representation if the client demands that the lawyer engage in conduct that is illegal or violates the Rules of Professional Conduct or other law. The lawyer is not obliged to decline or withdraw simply because the client suggests such a course of conduct; a client may make such a suggestion in the hope that a lawyer will not be constrained by a professional obligation.

(3) When a lawyer has been appointed to represent a client, withdrawal ordinarily requires approval of the appointing authority. See also Rule 6.2. **Similarly, court approval or notice to the court is often required by applicable law before a lawyer withdraws from pending litigation.** Difficulty may be encountered if withdrawal is based on the client's demand that the lawyer engage in unprofessional conduct. The court may **[wish] request** an explanation for the withdrawal, while the lawyer may be bound to keep confidential the facts that would constitute such an explanation. The lawyer's statement that professional considerations require termination of the representation ordinarily should be accepted as sufficient. **Lawyers should be mindful of their obligations to both clients and the court under Rules 1.6 and 3.3.**

Discharge

(4) A client has a right to discharge a lawyer at any time, with or without cause, subject to liability for payment for the lawyer's services. Where future dispute about the withdrawal may be anticipated, it may be advisable to prepare a written statement reciting the circumstances.

(5) Whether a client can discharge appointed counsel may depend on applicable law. A client seeking to do so should be given a full explanation of the consequences. These consequences may include a decision by the appointing authority that appointment of successor counsel is unjustified, thus requiring **self-representation by** the client **[to represent himself]**.

(6) If the client **[is mentally incompetent] has severely diminished capacity**, the client may lack the legal capacity to discharge the lawyer, and in any event the discharge may be seriously adverse to the client's interests. The lawyer should make special effort to help the client consider the consequences and**[, in an extreme case,]** may **[initiate proceedings for a conservatorship or similar protection of the client. See] take reasonably necessary protective action as provided in** Rule 1.14.

Optional Withdrawal

(7) A lawyer may withdraw from representation in some circumstances. The lawyer has the option to withdraw if it can be accomplished without material adverse effect on the client's interests. Withdrawal is also justified if the client persists in a course of action that the lawyer reasonably believes is criminal or fraudulent, for a lawyer is not required to be associated with such conduct even if the lawyer does not further it. Withdrawal is also permitted if the lawyer's services were misused in the past even if that would materially prejudice the client. The lawyer may **also** withdraw where the client insists on **[a] taking action that the lawyer considers** repugnant or **[imprudent objective] with which the lawyer has a fundamental disagreement**.

(8) A lawyer may withdraw if the client refuses to abide by the terms of an agreement relating to the representation, such as an agreement concerning fees or court costs or an agreement limiting the objectives of the representation.

Assisting the Client upon Withdrawal

(9) Even if the lawyer has been unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the client. The lawyer may retain papers as security for a fee only to the extent permitted by law. **See Rule 1.15.**

[Whether or not a lawyer for an organization may under certain unusual circumstances have a legal obligation to the organization after withdrawing or being discharged by the organization's highest authority is beyond the scope of these Rules.]

Rule 1.17. Sale of Law Practice.

[The personal representative or estate of a deceased lawyer or a lawyer disabled from the practice of law] A lawyer or law firm may, for consideration, **[transfer the client representations and]** sell **[the] or purchase a law practice, including** good will, **[of the deceased or disabled lawyer's practice]** if the following conditions are satisfied:

(a) The seller ceases to engage in the private practice of law in Pennsylvania;

[(a)] (b) The seller sells the practice as an entirety to a single lawyer. For purposes of this Rule, a practice is sold as an entirety if the purchasing lawyer assumes responsibility for all of the active files except those specified in paragraph **[(f)] (g)** of this Rule.

[(b)] (c) Actual written notice is given to each of the seller's clients, which notice must include at a minimum:

(1) notice of the proposed transfer of the client's representation, including the identity and address of the purchasing lawyer;

(2) a statement that the client has the right to representation by the purchasing lawyer under the preexisting fee arrangements;

(3) a statement that the client has the right to retain other counsel or to take possession of the file; and

(4) a statement that the client's consent to the transfer of the representation will be presumed if the client does not take any action or does not otherwise object within 60 days of receipt of the notice.

[(c)] (d) The fees charged clients shall not be increased by reason of the sale. Existing agreements between the seller and the client concerning fees and the scope of work must be honored by the purchaser, unless the client **[consents] gives informed consent confirmed** in writing **[after consultation]**.

[(d)] (e) The agreement of sale shall include a clear statement of the respective responsibilities of the parties to maintain and preserve the records and files of the seller's practice, including client files.

[(e)] (f) In the case of a sale by reason of disability, if a proceeding under Rule 301 of the Pennsylvania Rules of Disciplinary Enforcement has not been commenced against the selling lawyer, the selling lawyer shall file the notice and request for transfer to voluntary inactive status, as of the date of the sale, pursuant to Rule 219(i) thereof.

[(f)] (g) The sale shall not be effective as to any client for whom the proposed sale would create a conflict of interest for the purchaser or who cannot be represented by the purchaser because of other requirements of the Pennsylvania Rules of Professional Conduct or rules of the Pennsylvania Supreme Court governing the practice of law in Pennsylvania, unless such conflict, requirement or rule can be waived by the client and **[is in fact waived by the client in writing] the client gives informed consent**.

[(g)] (h) For purposes of this Rule:

(1) the term "single lawyer" means an individual lawyer or a law firm that buys a law practice, and

(2) the term "seller" means **an individual lawyer or a law firm that sells a law practice and includes** both the personal representative or estate of **[the] a** deceased or disabled lawyer and the deceased or disabled lawyer, as appropriate.

[(h)] (i) Admission to or withdrawal from a **law** partnership or professional **[corporation] association**, retirement plan or similar arrangement or a sale limited to the tangible assets of a law practice is not a sale or purchase for purposes of this Rule 1.17.

Comment:

(1) The practice of law is a profession, not merely a business. Clients are not commodities that can be purchased and sold at will. Pursuant to this Rule, when a lawyer **[dies or is disabled] or a law firm ceases to engage in the private practice of law in Pennsylvania** and another lawyer or firm takes over the representation of the clients **[of the deceased or disabled lawyer, the heirs]** of the seller **[or],** the seller**, including the personal representative or estate of a deceased or disabled lawyer,** may obtain compensation for the reasonable value of the practice similar to withdrawing partners of law firms. See Rules 5.4 and 5.6. **Admission to or retirement from a law partnership or professional association, retirement plans and similar arrangements, and a sale of tangible assets of a law practice, do not constitute a sale or purchase governed by this Rule.**

Sale of Entire Practice

(2) The requirement that all of the private practice be sold is satisfied if the seller in good faith makes the entire practice available for sale to the purchaser. The fact that a number of the seller's clients decide not to be represented by the purchaser but take their matters elsewhere, therefore, does not result in a violation of this Rule.

Single Purchaser

(3) This Rule requires a single purchaser. The prohibition against piecemeal sale of a practice protects those clients whose matters are less lucrative and who might find it difficult to secure other counsel if a sale could be limited to substantial fee generating matters. The purchaser is required to undertake all client matters in the practice, subject to client consent. If, however, the purchaser is unable to undertake all client matters because of nonwaivable conflicts of interest, other requirements of these Rules or rules of the Supreme Court governing the practice of law in Pennsylvania, the requirement that there be a single purchaser is nevertheless satisfied.

Client Confidences, Consent and Notice

(4) Negotiations between seller and prospective purchaser prior to disclosure of information relating to a specific representation of an identifiable client no more violate the confidentiality provisions of Rule 1.6 than do preliminary discussions concerning the possible association of another lawyer or mergers between firms with respect to which client consent is not required. Providing the purchaser access to the client-specific information relating to the representation and to the file, however, requires client consent. The Rule provides that before such information can be disclosed by the seller to the purchaser the client must be given actual written notice of the contemplated sale and file transfer including the identity of the purchaser and any proposed change in the terms of future representation, and must be told that the decision to consent or make other arrangements must be made within 60 days. If actual notice is given, and the client makes no response within the 60 day period, client consent to the sale will be presumed.

(5) The Rule provides the minimum notice to the seller's clients necessary to make the sale effective under the Rules of Professional Conduct. The person responsible for notice is encouraged to give sufficient information concerning the purchasing law firm or lawyer who will handle the matter so as to provide the client adequate information to make an informed decision concerning ongoing representation by the purchaser. Such information may include without limitation the buyer's background, education, experience with similar matters,

length of practice, and whether the lawyer(s) are currently licensed in Pennsylvania.

(6) No single method is provided for the giving of actual written notice to the client under paragraph **[(b)](c)**. It is up to the person undertaking to give notice to determine the most effective and efficient means for doing so. For many clients, certified mail with return receipt requested will be adequate. However, with regard to other clients, this method may not be the best method. It is up to the person responsible for giving notice to make this decision.

(7) The party responsible for giving notice is likewise not identified in the Rule. In many cases the seller will undertake to give notice. However, the Rule permits the purchasing lawyer or law firm to fulfill the notice requirement.

(8) All of the elements of client autonomy, including the client's absolute right to discharge a lawyer and transfer the representation to another, survive the sale of the practice.

Fee Arrangements Between Client and Purchaser

(9) The sale may not be financed by increases in fees charged to the clients of the practice. This protection is underscored by both paragraph **[(b)](c)**(2) and paragraph **[(c)](d)**. Existing agreements between the seller and the client as to the fees and the scope of the work must be honored by the purchaser, unless the client **[consents after consultation] gives informed consent confirmed in writing**.

Other Applicable Ethical Standards

(10) Lawyers participating in the sale of a law practice are subject to ethical standards applicable to involving another lawyer in the representation of a client. These include, for example, **the seller's obligation to exercise competence in identifying a purchaser qualified to assume the practice and the purchaser's obligation to undertake the representation competently (see Rule 1.1);** the obligation to avoid disqualifying conflicts, and to secure client **[consultation] informed consent** for those conflicts which can be waived by the client (see Rule 1.7 **regarding conflicts and Rule 1.0(e) for the definition of informed consent**); and the obligation to protect information relating to the representation. **[( ]**See Rules 1.6 and 1.9**[ )]**.

(11) If approval of the substitution of the purchasing attorney for the selling attorney is required by the Rules of any tribunal in which a matter is pending, such approval must be obtained before the matter can be included in the sale. **[( ]**See Rule 1.16.**[ )]**

Applicability of the Rule

(12) [The seller may be represented by a non-lawyer representative not subject to these Rules. In such circumstances, the purchasing lawyer shall be responsible for compliance with these Rules.] This Rule applies to the sale of a law practice by representatives of a deceased, disabled or disappeared lawyer. Thus, the seller may be represented by a non-lawyer representative not subject to these Rules. Since, however, no lawyer may participate in the sale of a law practice which does not conform to the requirements of this Rule, the representatives of the seller as well as the purchasing lawyer can be expected to see to it that they are met.

(13) This Rule does not apply to transfers of legal representation between lawyers when such transfers are unrelated to the sale of a practice.

COUNSELOR

Rule 2.1. Advisor.

In representing a client, a lawyer **[should] shall** exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

Comment:

Scope of Advice

(1) A client is entitled to straightforward advice expressing the lawyer's honest assessment. Legal advice often involves unpleasant facts and alternatives that a client may be disinclined to confront. In presenting advice, a lawyer endeavors to sustain the client's morale and may put advice in as acceptable a form as honesty permits. However, a lawyer should not be deterred from giving candid advice by the prospect that the advice will be unpalatable to the client.

(2) Advice couched in **[narrowly] narrow** legal terms may be of little value to a client, especially where practical considerations, such as cost or effects on other people, are predominant. Purely technical legal advice, therefore, can sometimes be inadequate. It is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice. Although a lawyer is not a moral advisor as such, moral and ethical considerations impinge upon most legal questions and may decisively influence how the law will be applied.

(3) A client may expressly or impliedly ask the lawyer for purely technical advice. When such a request is made by a client experienced in legal matters, the lawyer may accept it at face value. When such a request is made by a client inexperienced in legal matters, however, the lawyer's responsibility as advisor may include indicating that more may be involved than strictly legal considerations.

(4) Matters that go beyond strictly legal questions may also be in the domain of another profession. Family matters can involve problems within the professional competence of psychiatry, clinical psychology or social work; business matters can involve problems within the competence of the accounting profession or of financial specialists. Where consultation with a professional in another field is itself something a competent lawyer would recommend, the lawyer should make such a recommendation. At the same time, a lawyer's advice at its best often consists of recommending a course of action in the **[fact] face** of conflicting recommendations of experts.

Offering Advice

(5) In general, a lawyer is not expected to give advice until asked by the client. However, when a lawyer knows that a client proposes a course of action that is likely to result in substantial adverse legal consequences to the client, **the lawyer's** duty to the client under Rule 1.4 may require that the lawyer **[act] offer advice** if the client's course of action is related to the representation. **Similarly, when a matter is likely to involve litigation, it may be necessary under Rule 1.4 to inform the client of forms of dispute resolution that might constitute reasonable alternatives to litigation.** A lawyer ordinarily has no duty to initiate investigation of a client's affairs or to give advice that the client has

indicated is unwanted, but a lawyer may initiate advice to a client when doing so appears to be in the client's interest.

[Rule 2.2. Intermediary.

(a) A lawyer may act as intermediary between clients if:

(1) the lawyer consults with each client concerning the implications of the common representation, including the advantages and risks involved, and the effect on the attorney-client privileges, and obtains each client's consent to the common representation;

(2) the lawyer reasonably believes that the matter can be resolved on terms compatible with the clients' best interests, that each client will be able to make adequately informed decisions in the matter and that there is little risk of material prejudice to the interests of any of the clients if the contemplated resolution is unsuccessful; and

(3) the lawyer reasonably believes that the common representation can be undertaken impartially and without improper effect on other responsibilities the lawyer has to any of the clients.

(b) While acting as intermediary, the lawyer shall consult with each client concerning the decisions to be made and the considerations relevant in making them, so that each client can make adequately informed decisions.

(c) A lawyer shall withdraw as intermediary if any of the clients so requests, or if any of the conditions stated in paragraph (a) is no longer satisfied. Upon withdrawal, the lawyer shall not continue to represent any of the clients in the matter that was the subject of the intermediation.

Comment:

A lawyer acts as intermediary under this Rule when the lawyer represents two or more parties with potentially conflicting interests. A key factor in defining the relationship is whether the parties share responsibility for the lawyer's fee, but the common representation may be inferred from other circumstances. Because confusion can arise as to the lawyer's role where each party is not separately represented, it is important that the lawyer make clear the relationship.

The Rule does not apply to a lawyer acting as arbitrator or mediator between or among parties who are not clients of the lawyer, even where the lawyer has been appointed with the concurrence of the parties. In performing such a rule the lawyer may be subject to applicable codes of ethics, such as the Code of Ethics for Arbitration in Commercial Disputes prepared by a joint Committee of the American Bar Association and the American Arbitration Association.

A lawyer acts as intermediary in seeking to establish or adjust a relationship between clients on an amicable and mutually advantageous basis; for example, in helping to organize a business in which two or more clients are entrepreneurs, working out the financial reorganization of an enterprise in which two or more clients have an interest, arranging a property distribution in settlement of an estate or mediating a dispute between clients. The lawyer seeks to resolve potentially conflicting interests by developing the parties' mutual interests. The alternative can be that each party may have to obtain separate representation, with the possibility in some situations of incurring additional cost, complication or even litigation. Given these and other relevant factors, all the clients may prefer that the lawyer act as intermediary.

In considering whether to act as intermediary between clients, a lawyer should be mindful that if the intermediation fails the result can be additional cost, embarrassment and recrimination. In some situations the risk of failure is so great that intermediation is plainly impossible. For example, a lawyer cannot undertake common representation of clients between whom contentious litigation is imminent or who contemplate contentious negotiations. More generally, if the relationship between the parties has already assumed definite antagonism, the possibility that the clients' interests can be adjusted by intermediation ordinarily is not very good.

The appropriateness of intermediation can depend on its form. Forms of intermediation range from informal arbitration, where each client's case is presented by the respective client and the lawyer decides the outcome, to mediation, to common representation where the clients' interests are substantially though not entirely compatible. One form may be appropriate in circumstances where another would not. Other relevant factors are whether the lawyer subsequently will represent both parties on a continuing basis and whether the situation involves creating a relationship between the parties or terminating one.

Confidentiality and Privilege

A particularly important factor in determining the appropriateness of intermediation is the effect on client-lawyer confidentiality and the attorney-client privilege. In a common representation, the lawyer is still required both to keep each client adequately informed and to maintain confidentiality of information relating to the representation. See Rules 1.4 and 1.6. Complying with both requirements while acting as intermediary requires a delicate balance. If the balance cannot be maintained, the common representation is improper. With regard to the attorney-client privilege, the prevailing rule is that as between commonly represented clients the privilege does not attach. Hence, it must be assumed that if litigation eventuates between the clients, the privilege will not protect any such communications, and the clients should be so advised.

Since the lawyer is required to be impartial between commonly represented clients, intermediation is improper when that impartiality cannot be maintained. For example, a lawyer who has represented one of the clients for a long period and in a variety of matters might have difficulty being impartial between that client and one to whom the lawyer has only recently been introduced.

Consultation

In acting as intermediary between clients, the lawyer is required to consult with the clients on the implications of doing so, and proceed only upon consent based on such a consultation. The consulta-

tion should make clear that the lawyer's role is not that of partisanship normally expected in other circumstances.

Paragraph (b) is an application of the principle expressed in Rule 1.4. Where the lawyer is intermediary, the clients ordinarily must assume greater responsibility for decisions than when each client is independently represented.

Withdrawal

Common representation does not diminish the rights of each client in the client-lawyer relationship. Each has the right to loyal and diligent representation, the right to discharge the lawyer as stated in Rule 1.16, and the protection of Rule 1.9 concerning obligations to a former client.]

Rule 2.3. Evaluation for Use by **[a]** Third **[Person] Persons**.

(a) A lawyer may **[undertake] provide** an evaluation of a matter affecting a client for the use of someone other than the client if**[: (1)]** the lawyer reasonably believes that making the evaluation is compatible with other aspects of the lawyer's relationship with the client**[; and].**

[(2)] (b) When the lawyer knows or reasonably should know that the evaluation is likely to affect the client's interests materially and adversely, the lawyer shall not provide the evaluation unless the client **[consents after consultation] gives informed consent**.

[(b)] (c) Except as disclosure is **[required] authorized** in connection with a report of an evaluation, information relating to the evaluation is otherwise protected by Rule 1.6.

Comment:

Definition

(1) An evaluation may be performed at the client's direction **[but] or when impliedly authorized in order to carry out the representation. See Rule 1.2. Such an evaluation may be** for the primary purpose of establishing information for the benefit of third parties**[;],** for example, an opinion concerning the title of property rendered at the behest of a vendor for the information of a prospective purchaser, or at the behest of a borrower for the information of a prospective lender. In some situations, the evaluation may be required by a government agency**[;],** for example, an opinion concerning the legality of the securities registered for sale under the securities laws. In other instances, the evaluation may be required by a third person, such as a purchaser of a business.

[Lawyers for the government may be called upon to give a formal opinion on the legality of contemplated government agency action. In making such an evaluation, the government lawyer acts at the behest of the government as the client but for the purpose of establishing the limits of the agency's authorized activity. Such an opinion is to be distinguished from confidential legal advice given agency officials. The critical question is whether the opinion is to be made public.]

(2) A legal evaluation should be distinguished from an investigation of a person with whom the lawyer does not have a client-lawyer relationship. For example, a lawyer retained by a purchaser to analyze a vendor's title to property does not have a client-lawyer relationship with the vendor. So also, an investigation into a person's affairs by a government lawyer, or by special counsel employed by the government, is not an evaluation as that term is used in this Rule. The question is whether the lawyer is retained by the person whose affairs are being examined. When the lawyer is retained by that person, the general rules concerning loyalty to client and preservation of confidences apply, which is not the case if the lawyer is retained by someone else. For this reason, it is essential to identify the person by whom the lawyer is retained. This should be made clear not only to the person under examination, but also to others to whom the results are to be made available.

[Duty] Duties Owed** to Third Person **and Client

(3) When the evaluation is intended for the information or use of a third person, a legal duty to that person may or may not arise. That legal question is beyond the scope of this Rule. However, since such an evaluation involves a departure from the normal client-lawyer relationship, careful analysis of the situation is required. The lawyer must be satisfied as a matter of professional judgment that making the evaluation is compatible with other functions undertaken in behalf of the client. For example, if the lawyer is acting as advocate in defending the client against charges of fraud, it would normally be incompatible with that responsibility for the lawyer to perform an evaluation for others concerning the same or a related transaction. Assuming no such impediment is apparent, however, the lawyer should advise the client of the implications of the evaluation, particularly the lawyer's responsibilities to third persons and the duty to disseminate the findings.

[Access to and Disclosure of Information] Scope of Evaluation

(4) The quality of an evaluation depends on the freedom and extent of the investigation upon which it is based. Ordinarily a lawyer should have whatever latitude of investigation seems necessary as a matter of professional judgment. Under some circumstances, however, the terms of the evaluation may be limited. For example, certain issues or sources may be categorically excluded, or the scope of search may be limited by time constraints or the noncooperation of persons having relevant information. Any such limitations which are material to the evaluation should be described in the report. If after a lawyer has commenced an evaluation, the client refuses to comply with the terms upon which it was understood the evaluation was to have been made, the lawyer's obligations are determined by law, having reference to the terms of the client's agreement and the surrounding circumstances. **In no circumstances is the lawyer permitted to knowingly make a false statement of material fact or law in providing an evaluation under this Rule. See Rule 4.1.**

Confidential Information

(5) Information relating to an evaluation is protected by Rule 1.6. In many situations, providing an evaluation to a third party poses no significant risk to the client; thus, the lawyer may be impliedly authorized to disclose information to carry out the representation. See Rule 1.6(a). Where, however, it is reasonably likely that providing the evaluation will affect the client's interests materially and adversely, the lawyer must first obtain the client's

consent after the client has been adequately informed concerning the important possible effects on the client's interests. See Rule 1.6(a) and Rule 1.0(e) (Informed Consent).

Financial Auditors' Requests for Information

(6) When a question concerning the legal situation of a client arises at the instance of the client's financial auditor and the question is referred to the lawyer, the lawyer's response may be made in accordance with procedures recognized in the legal profession. Such a procedure is set forth in the American Bar Association Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information, adopted in 1975.

Rule 2.4. Lawyer Serving as Third-Party Neutral.

(a) A lawyer serves as a third-party neutral when the lawyer assists two or more persons who are not clients of the lawyer to reach a resolution of a dispute or other matter that has arisen between them. Service as a third-party neutral may include service as an arbitrator, a mediator or in such other capacity as will enable the lawyer to assist the parties to resolve the matter.

(b) A lawyer serving as a third-party neutral shall inform unrepresented parties that the lawyer is not representing them. When the lawyer knows or reasonably should know that a party does not understand the lawyer's role in the matter, the lawyer shall explain the difference between the lawyer's role as a third-party neutral and a lawyer's role as one who represents a client.

Comment:

(1) Alternative dispute resolution has become a substantial part of the civil justice system. Aside from representing clients in dispute-resolution processes, lawyers often serve as third-party neutrals. A third-party neutral is a person, such as a mediator, arbitrator, conciliator or evaluator, who assists the parties, represented or unrepresented, in the resolution of a dispute or in the arrangement of a transaction. Whether a third-party neutral serves primarily as a facilitator, evaluator or decision maker depends on the particular process that is either selected by the parties or mandated by a court.

(2) The role of a third-party neutral is not unique to lawyers, although, in some court-connected contexts, only lawyers are allowed to serve in this role or to handle certain types of cases. In performing this role, the lawyer may be subject to court rules or other law that apply either to third-party neutrals generally or to lawyers serving as third-party neutrals. Lawyer-neutrals may also be subject to various codes of ethics, such as the Code of Ethics for Arbitration in Commercial Disputes prepared by a joint committee of the American Bar Association and the American Arbitration Association or the Model Standards of Conduct for Mediators jointly prepared by the American Bar Association, the American Arbitration Association and the Society of Professionals in Dispute Resolution.

(3) Unlike nonlawyers who serve as third-party neutrals, lawyers serving in this role may experience unique problems as a result of differences between the role of a third-party neutral and a lawyer's service as a client representative. The potential for confusion is significant when the parties are unrepresented in the process. Thus, paragraph (b) requires a lawyer-neutral to inform unrepresented parties that the lawyer is not representing them. For some parties, particularly parties who frequently use dispute-resolution processes, this information will be sufficient. For others, particularly those who are using the process for the first time, more information will be required. Where appropriate, the lawyer should inform unrepresented parties of the important differences between the lawyer's role as third-party neutral and a lawyer's role as a client representative, including the inapplicability of the attorney-client evidentiary privilege. The extent of disclosure required under this paragraph will depend on the particular parties involved and the subject matter of the proceeding, as well as the particular features of the dispute-resolution process selected.

(4) A lawyer who serves as a third-party neutral subsequently may be asked to serve as a lawyer representing a client in the same matter. The conflicts of interest that arise for both the individual lawyer and the lawyer's law firm are addressed in Rule 1.12.

(5) Lawyers who represent clients in alternative dispute-resolution processes are governed by the Rules of Professional Conduct. When the dispute-resolution process takes place before a tribunal, as in binding arbitration (see Rule 1.0(m)), the lawyer's duty of candor is governed by Rule 3.3. Otherwise, the lawyer's duty of candor toward both the third-party neutral and other parties is governed by Rule 4.1.

ADVOCATE

Rule 3.1. Meritorious Claims and Contentions.

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis **in law and fact** for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

Comment:

(1) The advocate has a duty to use legal procedure for the fullest benefit of the client's cause, but also a duty not to abuse legal procedure. The law, both procedural and substantive, establishes the limits within which an advocate may proceed. However, the law is not always clear and never is static. Accordingly, in determining the proper scope of advocacy, account must be taken of the law's ambiguities and potential for change.

(2) The filing of an action or defense or similar action taken for a client is not frivolous merely because the facts have not first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery. **What is required of lawyers, however, is that they inform themselves about the facts of their clients' cases and the applicable law and determine that they can make good faith arguments in support of their clients' positions.** Such action is not frivolous even though the lawyer believes that the client's position ultimately will not prevail. The action is frivolous, however, if the **[client desires to have the action taken primarily for the purpose of harassing or mali-**

ciously injuring a person, or, if the] lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification or reversal of existing law.

(3) The lawyer's obligations under this Rule are subordinate to federal or state constitutional law that entitles a defendant in a criminal matter to the assistance of counsel in presenting a claim or contention that otherwise would be prohibited by this Rule.

Rule 3.2. Expediting Litigation.

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

Comment:

(1) Dilatory practices bring the administration of justice into disrepute. **[Delay should not be indulged merely for the convenience of the advocates, or] Although there will be occasions when a lawyer may properly seek a postponement for personal reasons, it is not proper for a lawyer to routinely fail to expedite litigation solely for the convenience of the advocates. Nor will a failure to expedite be reasonable if done** for the purpose of frustrating an opposing party's attempt to obtain rightful redress or repose. It is not a justification that similar conduct is often tolerated by the bench and bar. The question is whether a competent lawyer acting in good faith would regard the course of action as having some substantial purpose other than delay. Realizing financial or other benefit from otherwise improper delay in litigation is not a legitimate interest of the client.

Rule 3.3. Candor Toward the Tribunal.

(a) A lawyer shall not knowingly:

(1) make a false statement of material fact or law to a tribunal **or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer**;

[(2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;

(3)] (2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

[(4)] (3) offer evidence that the lawyer knows to be false. If a lawyer, **the lawyer's client, or a witness called by the lawyer,** has offered material evidence **before a tribunal or in an ancillary proceeding conducted pursuant to a tribunal's adjudicative authority, such as a deposition,** and **the lawyer** comes to know of its falsity, the lawyer shall take reasonable remedial measures**, including, if necessary, disclosure to the tribunal**. **A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.**

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

[(b)](c) The duties stated in **[paragraph] paragraphs** (a) **and (b)** continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

[(c) A lawyer may refuse to offer evidence that the lawyer reasonably believes is false.]

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

Comment:

(1) This Rule governs the conduct of a lawyer who is representing a client in the proceedings of a tribunal. See Rule 1.0(m) for the definition of "tribunal." It also applies when the lawyer is representing a client in an ancillary proceeding conducted pursuant to the tribunal's adjudicative authority, such as a deposition. Thus, for example, paragraph (a)(3) requires a lawyer to take reasonable remedial measures if the lawyer comes to know that a client who is testifying in a deposition has offered evidence that is false.

(2) [The advocate's task is] This Rule sets forth the special duties of lawyers as officers of the court to avoid conduct that undermines the integrity of the adjudicative process. A lawyer acting as an advocate in an adjudicative proceeding has an obligation to present the client's case with persuasive force. Performance of that duty while maintaining confidences of the client, however, is qualified by the advocate's duty of candor to the tribunal. **[However, an advocate does] Consequently, although a lawyer in an adversary proceeding is** not **required to present an impartial exposition of the law or to** vouch for the evidence submitted in a cause**[;], the lawyer must not allow** the tribunal **[is responsible for assessing its probative value] to be misled by false statements of law or fact or evidence that the lawyer knows to be false**.

Representations by a Lawyer

(3) An advocate is responsible for pleadings and other documents prepared for litigation, but is usually not required to have personal knowledge of matters asserted therein, for litigation documents ordinarily present assertions by the client, or by someone on the client's behalf, and not assertions by the lawyer. Compare Rule 3.1. However, an assertion purporting to be on the lawyer's own knowledge, as in an affidavit by the lawyer or in a statement in open court, may properly be made only when the lawyer knows the assertion is true or believes it to be true on the basis of a reasonably diligent inquiry. There are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation. The obligation prescribed in Rule 1.2(d) not to counsel a client to commit or assist the client in committing a fraud applies in litigation. Regarding compliance with Rule 1.2(d), see the Comment to that Rule. See also the Comment to Rule 8.4(b).

Legal Argument

(4) Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. A lawyer is not required to make a disinterested exposition of the law, but must recognize the existence of pertinent legal authorities. Furthermore, as stated in

paragraph (a)**[(3)](2)**, an advocate has a duty to disclose directly adverse authority in the controlling jurisdiction that has not been disclosed by the opposing party. The underlying concept is that legal argument is a discussion seeking to determine the legal premises properly applicable to the case.

[***False*** **]** ***Offering*** *Evidence*

[When evidence that a lawyer knows to be false is provided by a person who is not the client, the lawyer must refuse to offer it regardless of the client's wishes.

When false evidence is offered by the client, however, a conflict may arise between the lawyer's duty to keep the client's revelations confidential and the duty of candor to the court. Upon ascertaining that material evidence is false, the lawyer should seek to persuade the client that the evidence should not be offered or, if it has been offered, that its false character should immediately be disclosed. If the persuasion is ineffective, the lawyer must take reasonable remedial measures.]

(5) Paragraph (a)(3) requires that the lawyer refuse to offer evidence that the lawyer knows to be false, regardless of the client's wishes. This duty is premised on the lawyer's obligation as an officer of the court to prevent the trier of fact from being misled by false evidence. A lawyer does not violate this Rule if the lawyer offers the evidence for the purpose of establishing its falsity.

(6) If a lawyer knows that the client intends to testify falsely or wants the lawyer to introduce false evidence, the lawyer should seek to persuade the client that the evidence should not be offered. If the persuasion is ineffective and the lawyer continues to represent the client, the lawyer must refuse to offer the false evidence. If only a portion of a witness's testimony will be false, the lawyer may call the witness to testify but may not elicit or otherwise permit the witness to present the testimony that the lawyer knows is false.

(7) The duties stated in paragraphs (a) and (b) apply to all lawyers, including defense counsel in criminal cases. In some jurisdictions, however, courts have required counsel to present the accused as a witness or to give a narrative statement if the accused so desires, even if counsel knows that the testimony or statement will be false. The obligation of the advocate under the Rules of Professional Conduct is subordinate to such requirements. See also Comment (9).

(8) The prohibition against offering false evidence only applies if the lawyer knows that the evidence is false. A lawyer's reasonable belief that evidence is false does not preclude its presentation to the trier of fact. A lawyer's knowledge that evidence is false, however, can be inferred from the circumstances. See Rule 1.0(f). Thus, although a lawyer should resolve doubts about the veracity of testimony or other evidence in favor of the client, the lawyer cannot ignore an obvious falsehood.

[***Refusing to Offer Proof Believed to Be False***

(9) [Generally speaking,] Although paragraph (a)(3) only prohibits a lawyer **[has authority] from offering evidence the lawyer knows to be false, it permits the lawyer** to refuse to offer testimony or other proof that the lawyer **reasonably** believes is **[untrustworthy] false**. Offering such proof may reflect adversely on the lawyer's ability to discriminate in the quality of evidence and thus impair the lawyer's effectiveness as an advocate. **[In criminal cases, however, a lawyer may, in some jurisdictions, be denied this authority by constitutional requirements governing the right to counsel.] Because of the special protections historically provided criminal defendants, however, this Rule does not permit a lawyer to refuse to offer the testimony of such a client where the lawyer reasonably believes but does not know that the testimony will be false. Unless the lawyer knows the testimony will be false, the lawyer must honor the client's decision to testify. See also Comment (7).**

[***Perjury by a Criminal Defendant***

Whether an advocate for a criminally accused has the same duty of disclosure has been intensely debated. While it is agreed that the lawyer should seek to persuade the client to refrain from perjurious testimony, there has been dispute concerning the lawyer's duty when that persuasion fails. If the confrontation with the client occurs before trial, the lawyer ordinarily can withdraw. Withdrawal before trial may not be possible, however, either because trial is imminent, or because the confrontation with the client does not take place until the trial itself, or because no other counsel is available.

The most difficult situation, therefore, arises in a criminal case where the accused insists on testifying when the lawyer knows that the testimony is perjurious. The lawyer's effort to rectify the situation can increase the likelihood of the client's being convicted as well as opening the possibility of a prosecution for perjury. On the other hand, if the lawyer does not exercise control over the proof, the lawyer participates, although in a merely passive way, in deception of the court.

Three resolutions of this dilemma have been proposed. One is to permit the accused to testify by a narrative without guidance through the lawyer's questioning. This compromises both contending principles; it exempts the lawyer from the duty to disclose false evidence but subjects the client to an implicit disclosure of information imparted to counsel. Another suggested resolution, of relatively recent origin, is that the advocate be entirely excused from the duty to reveal perjury if the perjury is that of the client. This is a coherent solution but makes the advocate a knowing instrument of perjury.

The other resolution of the dilemma is that the lawyer must reveal the client's perjury if necessary to rectify the situation. A criminal accused has a right to the assistance of an advocate, a right to testify and a right of confidential communication with counsel. However, an accused should not have a right to assistance of counsel in committing perjury. Furthermore, an advocate has an obligation, not only in professional ethics but under the law as well, to avoid implication in the commission of perjury or other falsification of evidence. See Rule 1.2(d).]

Remedial Measures

(10) [If perjured testimony or false] Having offered material evidence **[has been offered] in the belief that it was true, a lawyer may subsequently come to know that the evidence is false. Or, a lawyer may be surprised when the lawyer's client, or another witness called by the lawyer, offers testimony the lawyer knows to be false, either during the lawyer's direct examination or in response to cross-examination by the opposing lawyer. In such situations or if the lawyer knows of the falsity of testimony elicited from the client during a deposition, the lawyer must take reasonable remedial measures. In such situations**, the advocate's proper course **[ordinarily]** is to remonstrate with the client confidentially**, advise the client of the lawyer's duty of candor to the tribunal and seek the client's cooperation with respect to the withdrawal or correction of the false statements or evidence**. If that fails, the advocate **[should seek to withdraw if that will remedy the situation] must take further remedial action**. If withdrawal **from the representation is not permitted or** will not **[remedy the situation or is impossible] undo the effect of the false evidence**, the advocate **[should] must** make **such** disclosure to the **[court] tribunal as is reasonably necessary to remedy the situation, even if doing so requires the lawyer to reveal information that otherwise would be protected by Rule 1.6**. It is for the **[court] tribunal** then to determine what should be done—making a statement about the matter to the trier of fact, ordering a mistrial or perhaps nothing. **[If the false testimony was that of the client, the client may controvert the lawyer's version of their communication when the lawyer discloses the situation to the court. If there is an issue whether the client has committed perjury, the lawyer cannot represent the client in resolution of the issue, and a mistrial may be unavoidable. An unscrupulous client might in this way attempt to produce a series of mistrials and thus escape prosecution. However, a second such encounter could be construed as a deliberate abuse of the right to counsel and as such a waiver of the right to further representation.]**

(11) [Except in the defense of a criminal accused, the rule generally recognized is that, if necessary to rectify the situation, an advocate must disclose the existence of the client's deception to the court or to the other party. Such a] The disclosure **of a client's false testimony** can result in grave consequences to the client, including not only a sense of betrayal but also loss of the case and perhaps a prosecution for perjury. But the alternative is that the lawyer cooperate in deceiving the court, thereby subverting the truth-finding process which the adversary system is designed to implement. See Rule 1.2(d). Furthermore, unless it is clearly understood that the lawyer will act upon the duty to disclose the existence of false evidence, the client can simply reject the lawyer's advice to reveal the false evidence and insist that the lawyer keep silent. Thus the client could in effect coerce the lawyer into being a party to fraud on the court.

Preserving Integrity of Adjudicative Process

(12) Lawyers have a special obligation to protect a tribunal against criminal or fraudulent conduct that undermines the integrity of the adjudicative process, such as bribing, intimidating or otherwise unlawfully communicating with a witness, juror, court official or other participant in the proceeding, unlawfully destroying or concealing documents or other evidence or failing to disclose information to the tribunal when required by law to do so. Thus, paragraph (b) requires a lawyer to take reasonable remedial measures, including disclosure if necessary, whenever the lawyer knows that a person, including the lawyer's client, intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding.

[*Constitutional Requirements*

The general rule that an advocate must reveal the existence of perjury with respect to a material fact, even that of a client —applies to defense counsel in criminal cases, as well as in other instances. However, the definition of the lawyer's ethical duty in such a situation may be qualified by constitutional provisions for due process and the right to counsel in criminal cases. In some jurisdictions these provisions have been construed to require that counsel present an accused as a witness if the accused wishes to testify, even if counsel knows the testimony will be false. The obligation of the advocate under these Rules is subordinate to such a constitutional requirement.]

Duration of Obligation

(13) A practical time limit on the obligation to rectify **[the presentation of]** false evidence **or false statements of law and fact** has to be established. The conclusion of the proceeding is a reasonably definite point for the termination of the obligation. **A proceeding has concluded within the meaning of this Rule when a final judgment in the proceeding has been affirmed on appeal or the time for review has passed.**

Ex Parte Proceedings

(14) Ordinarily, an advocate has the limited responsibility of presenting one side of the matters that a tribunal should consider in reaching a decision; the conflicting position is expected to be presented by the opposing party. However, in any ex parte proceeding, such as an application for a temporary restraining order, there is no balance of presentation by opposing advocates. The object of an ex parte proceeding is nevertheless to yield a substantially just result. The judge has an affirmative responsibility to accord the absent party just consideration. The lawyer for the represented party has the correlative duty to make disclosures of material facts known to the lawyer and that the lawyer reasonably believes are necessary to an informed decision.

Withdrawal

(15) Normally, a lawyer's compliance with the duty of candor imposed by this Rule does not require that the lawyer withdraw from the representation of a client whose interests will be or have been adversely affected by the lawyer's disclosure. The lawyer may, however, be required by Rule 1.16 to seek permission of the tribunal to withdraw if the lawyer's compliance with this Rule's duty of candor results in such an extreme deterioration of the client-lawyer relationship that the lawyer can no longer competently represent the client. Also see Rule 1.16(b) for the circumstances in which a lawyer will be permitted to seek a tribunal's permission to withdraw. In connection with a request for permission to withdraw that is premised on a

client's misconduct, a lawyer may reveal information relating to the representation only to the extent reasonably necessary to comply with this Rule or as otherwise permitted by Rule 1.6.

Rule 3.4. Fairness to Opposing Party and Counsel.

A lawyer shall not:

(a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value or assist another person to do any such act;

(b) falsify evidence, counsel or assist a witness to testify falsely, pay, offer to pay, or acquiesce in the payment of compensation to a witness contingent upon the content of the witness' testimony or the outcome of the case; but a lawyer may pay, cause to be paid, guarantee or acquiesce in the payment of:

(1) expenses reasonably incurred by a witness in attending or testifying,

(2) reasonable compensation to a witness for the witness' loss of time in attending or testifying, and

(3) a reasonable fee for the professional services of an expert witness;

(c) when appearing before a tribunal, assert the lawyer's personal opinion as to the justness of a cause, as to the credibility of a witness, as to the culpability of a civil litigant, or as to the guilt or innocence of an accused; but the lawyer may argue, on the lawyer's analysis of the evidence, for any position or conclusion with respect to the matters stated herein; or

(d) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:

(1) the person is a relative or an employee or other agent of a client; and

(2) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information and such conduct is not prohibited by Rule 4.2.

Comment:

(1) The procedure of the adversary system contemplates that the evidence in a case is to be marshalled competitively by the contending parties. Fair competition in the adversary system is secured by prohibitions against destruction or concealment of evidence, improperly influencing witnesses, obstructive tactics in discovery procedure, and the like.

(2) Documents and other items of evidence are often essential to establish a claim or defense. Subject to evidentiary privileges, the right of an opposing party, including the government, to obtain evidence through discovery or subpoena is an important procedural right. The exercise of that right can be frustrated if relevant material is altered, concealed or destroyed. Applicable law in many jurisdictions makes it an offense to destroy material for purpose of impairing its availability in a pending proceeding or one whose commencement can be foreseen. Falsifying evidence is also generally a criminal offense. Paragraph (a) applies to evidentiary material generally, including computerized information. **Applicable law may permit a lawyer to take temporary possession of physical evidence of client crimes for the purpose of conducting a limited examination that will not alter or destroy material characteristics of the evidence. In such a case, applicable law may require the lawyer to turn the evidence over to the police or other prosecuting authority, depending on the circumstances.**

(3) With regard to paragraph (b), it is not improper to pay a witness's expenses or to compensate an expert witness on terms permitted by law. The common law rule in most jurisdictions is that it is improper to pay an occurrence witness any fee for testifying and that it is improper to pay an expert witness a contingent fee.

(4) Paragraph (d) permits a lawyer to advise employees of a client to refrain from giving information to another party, for the employees may identify their interests with those of the client. See also Rules 4.2 and 4.3(b).

Rule 3.5. Impartiality and Decorum of the Tribunal.

A lawyer shall not:

(a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law;

(b) communicate ex parte with such a person **[except as permitted] during the proceeding unless authorized to do so** by law **or court order**;

(c) communicate with a juror or prospective juror after discharge of the jury if:

(1) the communication is prohibited by law or court order;

(2) the juror has made known to the lawyer a desire not to communicate; or

(3) the communication involves misrepresentation, coercion, duress of harassment; or

[(c)] (d) engage in conduct **[disruptive to] intended to disrupt** a tribunal.

Comment:

(1) Many forms of improper influence upon a tribunal are proscribed by criminal law. Others are specified in the ABA Model Code of Judicial Conduct, with which an advocate should be familiar. A lawyer is required to avoid contributing to a violation of such provisions.

(2) During a proceeding a lawyer may not communicate ex parte with persons serving in an official capacity in the proceeding, such as judges, masters or jurors, unless authorized to do so by law or court order.

(3) A lawyer may on occasion want to communicate with a juror or prospective juror after the jury has been discharged. The lawyer may do so unless the communication is prohibited by law or a court order but must respect the desire of the juror not to talk with the lawyer. The lawyer may not engage in improper conduct during the communication.

(4) The advocate's function is to present evidence and argument so that the cause may be decided according to law. Refraining from abusive or obstreperous conduct is a corollary of the advocate's right to speak on behalf of litigants. A lawyer may stand firm against abuse by a judge but should avoid reciprocation; the judge's default is no justification for similar dereliction by an advocate. An advocate can present the cause, protect the record for subsequent review and preserve professional integrity by patient firmness no less effectively than by belligerence or theatrics.

(5) The duty to refrain from disruptive conduct applies to any proceeding of a tribunal, including a deposition. See Rule 1.0(m).

Rule 3.6. Trial Publicity.

(a) A lawyer **who is participating or has participated in the investigation or litigation of a matter** shall not make an extrajudicial statement that **[a reasonable person would expect to] the lawyer knows or reasonably should know will** be disseminated by means of public communication **[if the lawyer knows or reasonably should know that it]** and will have a substantial likelihood of materially prejudicing an adjudicative proceeding **in the matter**.

[(b) A statement referred to in paragraph (a) ordinarily is likely to have such an effect when it refers to a civil matter triable to a jury, a criminal matter, or any other proceeding that could result in incarceration, and the statement relates to:

(1) the character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness, or the identity of a witness, or the expected testimony of a party or witness;

(2) in a criminal case or proceeding that could result in incarceration, the possibility of a plea of guilty to the offense or the existence or contents of any confession, admission, or statement given by a defendant or suspect or that person's refusal or failure to make a statement;

(3) the performance or results of any examination or test or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;

(4) any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in incarceration;

(5) information the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and would if disclosed create a substantial risk of prejudicing an impartial trial; or

(6) the fact that a defendant has been charged with a crime, unless there is included therein a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty.

(c)] (b) Notwithstanding paragraph (a) **[and (b)(1—5)]**, a lawyer **[involved in the investigation or litigation of a matter]** may state **[without elaboration]**:

(1) the **[general nature of]** claim, offense or defense **involved and, except when prohibited by law, the identity of the persons involved**;

(2) **[the]** information contained in a public record;

(3) that an investigation of the matter is in progress**[, including the general scope of the investigation, the offense or claim or defense involved and, except when prohibited by law, the identity of the persons involved]**;

(4) the scheduling or result of any step in litigation;

(5) a request for assistance in obtaining evidence and information necessary thereto;

(6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and

(7) in a criminal case**, in addition to subparagraphs (1) through (6)**:

(i) the identity, residence, occupation and family status of the accused;

(ii) if the accused has not been apprehended, information necessary to aid in apprehension of that person;

(iii) the fact, time and place of arrest; and

(iv) the identity of investigating and arresting officers or agencies and the length of the investigation.

(c) Notwithstanding paragraph (a), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

(d) No lawyer associated in a firm or government agency with a lawyer subject to paragraph (a) shall make a statement prohibited by paragraph (a).

Comment:

(1) It is difficult to strike a balance between protecting the right to a fair trial and safeguarding the right of free expression. Preserving the right to a fair trial necessarily entails some curtailment of the information that may be disseminated about a party prior to trial, particularly where trial by jury is involved. If there were no such limits, the result would be the practical nullification of the protective effect of the rules of forensic decorum and the exclusionary rules of evidence. On the other hand, there are vital social interests served by the free dissemination of information about events having legal consequences and about legal proceedings themselves. The public has a right to know about threats to its safety and measures aimed at assuring its security. It also has a legitimate interest in the conduct of judicial proceedings, particularly in matters of general public concern. Furthermore, the subject matter of legal proceedings is often of direct significance in debate and deliberation over questions of public policy.

[No body of rules can simultaneously satisfy all interests of fair trial and all those of free expression. The formula in this Rule is based upon the ABA Model Code of Professional Responsibility and the ABA Standards Relating to Fair Trial and Free Press, as amended in 1978.]

(2) Special rules of confidentiality may validly govern proceedings in juvenile, domestic relations and mental disability proceedings, and perhaps other types of litigation. **Rule 3.4(c) requires compliance with such rules.**

(3) The Rule sets forth a basic general prohibition against a lawyer's making statements that the lawyer knows or should know will have a substantial likelihood of materially prejudicing an adjudicative proceeding. Recognizing that the public value of informed commentary is great and the likelihood of prejudice to a proceeding by the commentary of a lawyer who is not involved in the proceeding is small, the Rule applies only to lawyers who are, or who have been involved in the investigation or litigation of a case, and their associates.

(4) Paragraph (b) identifies specific matters about which a lawyer's statements would not ordinarily be considered to present a substantial likelihood of material prejudice, and should not in any event be considered prohibited by the general prohibition of paragraph (a). Paragraph (b) is not intended to be an exhaustive listing of the subjects upon which a lawyer may make a statement, but statements on other matters may be subject to paragraph (a).

(5) There are, on the other hand, certain subjects that are more likely than not to have a material prejudicial effect on a proceeding, particularly when they refer to a civil matter triable to a jury, a criminal matter, or any other proceeding that could result in incarceration. These subjects relate to:

(1) the character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness, or the identity of a witness, or the expected testimony of a party or witness;

(2) in a criminal case or proceeding that could result in incarceration, the possibility of a plea of guilty to the offense or the existence or contents of any confession, admission, or statement given by a defendant or suspect or that person's refusal or failure to make a statement;

(3) the performance or results of any examination or test or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;

(4) any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in incarceration;

(5) information that the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and that would, if disclosed, create a substantial risk of prejudicing an impartial trial; or

(6) the fact that a defendant has been charged with a crime, unless there is included therein a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty.

(6) Another relevant factor in determining prejudice is the nature of the proceeding involved. Criminal jury trials will be most sensitive to extrajudicial speech. Civil trials may be less sensitive. Non-jury hearings and arbitration proceedings may be even less affected. The Rule will still place limitations on prejudicial comments in these cases, but the likelihood of prejudice may be different depending on the type of proceeding.

(7) Finally, extrajudicial statements that might otherwise raise a question under this Rule may be permissible when they are made in response to statements made publicly by another party, another party's lawyer, or third persons, where a reasonable lawyer would believe a public response is required in order to avoid prejudice to the lawyer's client. When prejudicial statements have been publicly made by others, responsive statements may have the salutary effect of lessening any resulting adverse impact on the adjudicative proceeding. Such responsive statements should be limited to contain only such information as is necessary to mitigate undue prejudice created by the statements made by others.

(8) See Rule 3.8(e) for additional duties of prosecutors in connection with extrajudicial statements about criminal proceedings.

Rule 3.7. Lawyer as Witness.

(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness **[except where] unless**:

(1) the testimony relates to an uncontested issue;

(2) the testimony relates to the nature and value of legal services rendered in the case; or

(3) disqualification of the lawyer would work substantial hardship on the client.

(b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9.

Comment:

(1) Combining the roles of advocate and witness can prejudice **the tribunal and** the opposing party and can **also** involve a conflict of interest between the lawyer and client.

Advocate-Witness Rule

(2) The tribunal has proper objection when the trier of fact may be confused or misled by a lawyer serving as both advocate and witness. The opposing party has proper objection where the combination of roles may prejudice that party's rights in the litigation. A witness is required to testify on the basis of personal knowledge, while an advocate is expected to explain and comment on evidence given by others. It may not be clear whether a statement by an advocate-witness should be taken as proof or as an analysis of the proof.

(3) To protect the tribunal, paragraph (a) prohibits a lawyer from simultaneously serving as advocate and necessary witness except in those circumstances specified in paragraphs (a)(1) through (a)(3). Paragraph (a)(1) recognizes that if the testimony will be uncontested, the ambiguities in the dual role are purely theoretical. Paragraph (a)(2) recognizes that where the testimony concerns the extent and value of legal services rendered in the action in which the testimony is offered, permitting the lawyers to testify avoids the need for a second trial with new counsel to resolve that issue. Moreover, in such a situation the judge has firsthand knowledge of the matter in issue; hence, there is less dependence on the adversary process to test the credibility of the testimony.

(4) Apart from these two exceptions, paragraph (a)(3) recognizes that a balancing is required between the interests of the client and those of the **tribunal and the** opposing party. Whether the **tribunal is likely to be misled or the** opposing party is likely to suffer prejudice depends on the nature of the case, the importance and probable tenor of the lawyer's testimony, and the probability that the lawyer's testimony will conflict with that of other witnesses. Even if there is risk of such prejudice, in determining whether the lawyer should be disqualified, due regard must be given to the effect of disqualification on the lawyer's client. It is relevant that one or both parties could reasonably foresee that the lawyer would probably be a witness. The **[principle of imputed**

disqualification] conflict of interest principles stated in **[Rule] Rules 1.7, 1.9 and** 1.10 **[has] have** no application to this aspect of the problem.

(5) Because the tribunal is not likely to be misled when a lawyer acts as advocate in a trial in which another lawyer in the lawyer's firm will testify as a necessary witness, paragraph (b) permits the lawyer to do so except in situations involving a conflict of interest.

Conflict of Interest

(6) [Whether the combination of roles involves an improper] In determining if it is permissible to act as advocate in a trial in which the lawyer will be a necessary witness, the lawyer must also consider that the dual role may give rise to a conflict of interest **[with respect to the client is determined by Rule] that will require compliance with Rules** 1.7 or 1.9. For example, if there is likely to be substantial conflict between the testimony of the client and that of the lawyer **[or a member of the lawyer's firm]**, the representation **[is improper] involves a conflict of interest that requires compliance with Rule 1.7. This would be true even though the lawyer might not be prohibited by paragraph (a) from simultaneously serving as advocate and witness because the lawyer's disqualification would work a substantial hardship on the client. Similarly, a lawyer who might be permitted to simultaneously serve as an advocate and a witness by paragraph (a)(3) might be precluded from doing so by Rule 1.9.** The problem can arise whether the lawyer is called as a witness on behalf of the client or is called by the opposing party. Determining whether or not such a conflict exists is primarily the responsibility of the lawyer involved. **If there is a conflict of interest, the lawyer must secure the client's informed consent. In some cases, the lawyer will be precluded from seeking the client's consent.** See **[Comment to]** Rule 1.7. **[If a lawyer who is a member of a firm may not act as both advocate and witness by reason of conflict of interest, Rule 1.10 disqualifies the firm also.] See Rule 1.0(b) for the definition of "confirmed in writing" and Rule 1.0(e) for the definition of "informed consent."**

(7) Paragraph (b) provides that a lawyer is not disqualified from serving as an advocate because a lawyer with whom the lawyer is associated in a firm is precluded from doing so by paragraph (a). If, however, the testifying lawyer would also be disqualified by Rule 1.7 or Rule 1.9 from representing the client in the matter, other lawyers in the firm will be precluded from representing the client by Rule 1.10 unless the client gives informed consent under the conditions stated in Rule 1.7.

Rule 3.8. Special Responsibilities of a Prosecutor.

The prosecutor in a criminal case shall:

(a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;

(b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for, obtaining counsel and has been given reasonable opportunity to obtain counsel;

(c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;

(d) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal; and

(e) **except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and** exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 **or this Rule**.

Comment:

(1) A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence. Precisely how far the prosecutor is required to go in this direction is a matter of debate and varies in different jurisdictions. Many jurisdictions have adopted the ABA Standards of Criminal Justice Relating to Prosecution Function, which in turn are the product of prolonged and careful deliberation by lawyers experienced in both criminal prosecution and defense. **[See also Rule 3.3(d), governing ex parte proceedings, among which grand jury proceedings are included.]** Applicable law may require other measures by the prosecutor and knowing disregard of those obligations or a systematic abuse of prosecutorial discretion could constitute a violation of Rule 8.4.

(2) In some jurisdictions, a defendant may waive a preliminary hearing and thereby lose a valuable opportunity to challenge probable cause. Accordingly, prosecutors should not seek to obtain waivers of preliminary hearings or other important pretrial rights from unrepresented accused persons. Paragraph (c) does not apply**, however,** to an accused appearing pro se with the approval of the tribunal. Nor does it forbid the lawful questioning of **[a]** an uncharged suspect who has knowingly waived the rights to counsel and silence.

(3) The exception in paragraph (d) recognizes that a prosecutor may seek an appropriate protective order from the tribunal if disclosure of information to the defense could result in substantial harm to an individual or to the public interest.

(4) Paragraph (e) supplements Rule 3.6, which prohibits extrajudicial statements that have a substantial likelihood of prejudicing an adjudicatory proceeding. In the context of a criminal prosecution, a prosecutor's extrajudicial statement can create the additional problem of increasing public condemnation of the accused. Although the announcement of an indictment, for example, will necessarily have severe consequences for the accused, a prosecutor can, and should, avoid comments which have no legitimate law enforcement purpose and have a substantial likelihood of increasing public opprobrium of the accused. Nothing

in this Comment is intended to restrict the statements which a prosecutor may make which comply with Rule 3.6(b) or 3.6(c).

Rule 3.9. Advocate in Nonadjudicative Proceedings.

A lawyer representing a client before a legislative **body** or administrative **[tribunal] agency** in a nonadjudicative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions of Rules 3.3(a) through (c), 3.4(a) through (c), and 3.5.

Comment:

(1) In representation before bodies such as legislatures, municipal councils, and executive and administrative agencies acting in a rule-making or policy-making capacity, lawyers present facts, formulate issues and advance argument in the matters under consideration. The decision-making body, like a court, should be able to rely on the integrity of the submissions made to it. A lawyer appearing before such a body **[should] must** deal with **[the tribunal] it** honestly and in conformity with applicable rules of procedure. **See Rules 3.3(a) through (c), 3.4 and 3.5.**

(2) Lawyers have no exclusive right to appear before nonadjudicative bodies, as they do before a court. The requirements of this Rule therefore may subject lawyers to regulations inapplicable to advocates who are not lawyers. However, legislatures and administrative agencies have a right to expect lawyers to deal with them as they deal with courts.

(3) This Rule **only applies when a lawyer represents a client in connection with an official hearing or meeting of a governmental agency or a legislative body to which the lawyer or the lawyer's client is presenting evidence or argument. It** does not apply to representation of a client in a negotiation or other bilateral transaction with a governmental agency**[; representation] or in connection with an application for a license or other privilege or the client's compliance with generally applicable reporting requirements, such as the filing of income-tax returns. Nor does it apply to the representation of a client in connection with an investigation or examination of the client's affairs conducted by government investigators or examiners. Representation** in such **[a transaction] matters** is governed by Rules 4.1 through 4.4.

Rule 3.10. Issuance of Subpoenas to Lawyers.

A public prosecutor or other governmental lawyer shall not, without prior judicial approval, subpoena an attorney to appear before a grand jury or other tribunal investigating criminal activity in circumstances where the prosecutor or other governmental lawyer seeks to compel the attorney/witness to provide evidence concerning a person who is or has been represented by the attorney/witness.

Comment:

(1) It is intended that the required "prior judicial approval" will normally be withheld unless, after a hearing conducted with due regard for the need for appropriate secrecy, the court finds (1) the information sought is not protected from disclosure by Rule 1.6, the attorney-client privilege or the work product doctrine; (2) the evidence sought is relevant to the proceeding; (3) compliance with the subpoena would not be unreasonable or oppressive; (4) the purpose of the subpoena is not primarily to harass the attorney/witness or his or her client; and (5) there is no other feasible alternative to obtain the information sought.

TRANSACTIONS WITH PERSONS OTHER THAN CLIENTS

Rule 4.1. Truthfulness in Statements to Others.

In the course of representing a client a lawyer shall not knowingly:

(a) make a false statement of material fact or law to a third person; or

(b) fail to disclose a material fact to a third person when disclosure is necessary to avoid aiding and abetting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

Comment:

Misrepresentation

(1) A lawyer is required to be truthful when dealing with others on a client's behalf, but generally has no affirmative duty to inform an opposing party of relevant facts. A misrepresentation can occur if the lawyer incorporates or affirms a statement of another person that the lawyer knows is false. Misrepresentations can also occur by **[failure to act] partially true but misleading statements or omissions that are the equivalent of affirmative false statements. For dishonest conduct that does not amount to a false statement or for misrepresentations by a lawyer other than in the course of representing a client, see Rule 8.4.**

Statements of Fact

(2) This Rule refers to statements of fact. Whether a particular statement should be regarded as one of fact can depend on the circumstances. Under generally accepted conventions in negotiation, certain types of statements ordinarily are not taken as statements of material fact. Estimates of price or value placed on the subject of a transaction and a party's intentions as to an acceptable settlement of a claim are **ordinarily** in this category, and so is the existence of an undisclosed principal except where nondisclosure of the principal would constitute fraud.

***Crime or** Fraud by Client*

(3) Under Rule 1.2(d), a lawyer is prohibited from counseling or assisting a client in conduct that the lawyer knows is criminal or fraudulent. Paragraph (b) **[recognizes that] states a specific application of the principle set forth in Rule 1.2(d) and addresses the situation where a client's crime or fraud takes the form of a lie or misrepresentation. Ordinarily, a lawyer can avoid assisting a client's crime or fraud by withdrawing from the representation. Sometimes it may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm an opinion, document, affirmation or the like. In extreme cases,** substantive law may require a lawyer to disclose **[certain]** information **relating to the representation** to avoid being deemed to have assisted the client's crime or fraud. **[The requirement of] If the lawyer can avoid assisting a client's crime or fraud only by disclosing this information, then under paragraph (b) the lawyer is required to do so, unless the** disclosure **[created by this paragraph is, however, subject to the obligations created] is prohibited** by Rule 1.6. **Rule 1.6 permits a lawyer to disclose information when necessary to prevent or**

rectify certain crimes or frauds. See Rule 1.6(c). If disclosure is permitted by Rule 1.6, then such disclosure is required under this Rule, but only to the extent necessary to avoid assisting a client crime or fraud.

Rule 4.2. Communication with Person Represented by Counsel.

In representing a client, a lawyer shall not communicate about the subject of the representation with a **[party] person** the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized **to do so** by law **[to do so] or a court order**.

Comment:

(1) This Rule contributes to the proper functioning of the legal system by protecting a person who has chosen to be represented by a lawyer in a matter against possible overreaching by other lawyers who are participating in the matter, interference by those lawyers with the client-lawyer relationship and the uncounselled disclosure of information relating to the representation.

(2) This Rule applies to communications with any person who is represented by counsel concerning the matter to which the communication relates.

(3) The Rule applies even though the represented person initiates or consents to the communication. A lawyer must immediately terminate communication with a person if, after commencing communication, the lawyer learns that the person is one with whom communication is not permitted by this Rule.

(4) This Rule does not prohibit communication with a **[party] represented person**, or an employee or agent of such a **[party]** person, concerning matters outside the representation. For example, the existence of a controversy between a government agency and a private party, or between two organizations, does not prohibit a lawyer for either from communicating with nonlawyer representatives of the other regarding a separate matter. **[Also, parties] Nor does this Rule preclude communication with a represented person who is seeking advice from a lawyer who is not otherwise representing a client in the matter. A lawyer may not make a communication prohibited by this Rule through the acts of another. See Rule 8.4(a). Parties** to a matter may communicate directly with each other**,** and a lawyer **is not prohibited from advising a client concerning a communication that the client is legally entitled to make. Also, a lawyer** having independent justification or legal authorization for communicating with **a represented person** is permitted to do so. **[Communications authorized by law include, for example, the right of a party to a controversy with a government agency to speak with government officials about the matter.**

This Rule also covers any person, whether or not a party to a formal proceeding, who is represented by counsel concerning the matter in question.

In the case of an organization, this Rule prohibits communications by a lawyer for one party concerning the matter in representation with persons having a managerial responsibility on behalf of the organization, and with any other person whose act or omission in connection with that matter may be imputed to the organization for purposes of civil or criminal liability or whose statement may constitute an admission on the part of the organization. If an agent or employee of the organization is represented in the matter by his or her own counsel, the consent by that counsel to a communication will be sufficient for purposes of this Rule. Compare Rule 3.4(d).]

(5) Communications authorized by law may include communications by a lawyer on behalf of a client who is exercising a constitutional or other legal right to communicate with the government. Communications authorized by law may also include constitutionally permissible investigative activities of lawyers representing governmental entities, directly or through investigative agents, prior to the commencement of criminal or civil enforcement proceedings. When communicating with the accused in a criminal matter, a government lawyer must comply with this Rule in addition to honoring the constitutional rights of the accused. The fact that a communication does not violate a state or federal constitutional right is insufficient to establish that the communication is permissible under this Rule.

(6) A lawyer who is uncertain whether a communication with a represented person is permissible may seek a court order. A lawyer may also seek a court order in exceptional circumstances to authorize a communication that would otherwise be prohibited by this Rule, for example, where communication with a person represented by counsel is necessary to avoid reasonably certain injury.

(7) In the case of **a represented** organization, this Rule prohibits communications with **a constituent** of the organization **who supervises, directs or regularly consults with the organization's lawyer concerning the matter or has authority to obligate the organization with respect to the matter or** whose act or omission in connection with **the** matter may be imputed to the organization for purposes of civil or criminal liability. **Consent of the organization's lawyer is not required for communication with a former constituent.** If **a constituent** of the organization is represented in the matter by his or her own counsel, the consent by that counsel to a communication will be sufficient for purposes of this Rule. Compare Rule 3.4(f). **In communicating with a current or former constituent of an organization, a lawyer must not use methods of obtaining evidence that violate the legal rights of the organization. See Rule 4.4.**

(8) The prohibition on communications with a represented person only applies in circumstances where the lawyer knows that the person is in fact represented in the matter to be discussed. This means that the lawyer has actual knowledge of the fact of the representation; but such actual knowledge may be inferred from the circumstances. See Rule 1.0(f). Thus, the lawyer cannot evade the requirement of obtaining the consent of counsel by closing eyes to the obvious.

(9) In the event the person with whom the lawyer communicates is not known to be represented by counsel in the matter, the lawyer's communications are subject to Rule 4.3.

Rule 4.3. Dealing with Unrepresented Person **[and Communicating with One of Adverse Interest]**.

(a) In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested.

(b) During the course of a lawyer's representation of a client, a lawyer shall not give advice to a person who is not represented by a lawyer, other than the advice to secure counsel, if **the lawyer knows or reasonably should know** the interests of such person are or have a reasonable possibility of being in conflict with the interests of the lawyer's client.

(c) When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer should make reasonable efforts to correct the misunderstanding.

Comment:

(1) An unrepresented person, particularly one not experienced in dealing with legal matters, might assume that a lawyer is disinterested in loyalties or is a disinterested authority on the law even when the lawyer represents a client. **[During the course of a lawyer's representation of a client, the lawyer should not give advice to an unrepresented person other than the advice to obtain counsel.] In order to avoid a misunderstanding, a lawyer will typically need to identify the lawyer's client and, where necessary, explain that the client has interests opposed to those of the unrepresented person. For misunderstandings that sometimes arise when a lawyer for an organization deals with an unrepresented constituent, see Rule 1.13(d).**

(2) The Rule distinguishes between situations involving unrepresented persons whose interests may be adverse to those of the lawyer's client and those in which the person's interests are not in conflict with the client's. In the former situation, the possibility that the lawyer will compromise the unrepresented person's interests is so great that the Rule prohibits the giving of any advice, apart from the advice to obtain counsel. Whether a lawyer is giving impermissible advice may depend on the experience and sophistication of the unrepresented person, as well as the setting in which the behavior and comments occur. This Rule does not prohibit a lawyer from negotiating the terms of a transaction or settling a dispute with an unrepresented person. So long as the lawyer has explained that the lawyer represents an adverse party and is not representing the person, the lawyer may inform the person of the terms on which the lawyer's client will enter into an agreement or settle a matter, prepare documents that require the person's signature and explain the lawyer's own view of the meaning of the document or the lawyer's view of the underlying legal obligations.

Rule 4.4. Respect for Rights of Third Persons.

(a) In representing a client, a lawyer shall not use **means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use** methods of obtaining evidence that violate the legal rights of **such** a **[third]** person.

(b) A lawyer who receives a document relating to the representation of the lawyer's client and knows or reasonably should know that the document was inadvertently sent shall promptly notify the sender.

Comment:

(1) Responsibility to a client requires a lawyer to subordinate the interests of others to those of the client, but that responsibility does not imply that a lawyer may disregard the rights of third persons. It is impractical to catalogue all such rights, but they include legal restrictions on methods of obtaining evidence from third persons **and unwarranted intrusions into privileged relationships, such as the client-lawyer relationship**.

(2) Paragraph (b) recognizes that lawyers sometimes receive documents that were mistakenly sent or produced by opposing parties or their lawyers. If a lawyer knows or reasonably should know that a document was sent inadvertently, then this Rule requires the lawyer to promptly notify the sender in order to permit that person to take protective measures. Whether the lawyer is required to take additional steps, such as returning the original document, is a matter of law beyond the scope of these Rules, as is the question of whether the privileged status of a document has been waived. Similarly, this Rule does not address the legal duties of a lawyer who receives a document that the lawyer knows or reasonably should know may have been wrongfully obtained by the sending person. For purposes of this Rule, "document" includes e-mail or other electronic modes of transmission subject to being read or put into readable form.

(3) Some lawyers may choose to return a document unread, for example, when the lawyer learns before receiving the document that it was inadvertently sent to the wrong address. Where a lawyer is not required by applicable law to do so, the decision to voluntarily return such a document is a matter of professional judgment ordinarily reserved to the lawyer. See Rules 1.2 and 1.4.

LAW FIRMS AND ASSOCIATIONS

Rule 5.1. Responsibilities of **[a Partner or] Partners, Managers and** Supervisory **[Lawyer] Lawyers**.

(a) A partner in a law firm, **[should] and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall** make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

(b) A lawyer having direct supervisory authority over another lawyer **[should] shall** make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

(c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner **or has comparable managerial authority** in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Comment:

(1) Paragraph (a) applies to lawyers who have managerial authority over the professional work of

a firm. See Rule 1.0(c). This includes members of a partnership, the shareholders in a law firm organized as a professional corporation, and members of other associations authorized to practice law; lawyers having comparable managerial authority in a legal services organization or a law department of an enterprise or government agency; and lawyers who have intermediate managerial responsibilities in a firm. Paragraph (b) applies to lawyers who have supervisory authority over the work of other lawyers in a firm.

(2) Paragraph (a) requires lawyers with managerial authority within a firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that all lawyers in the firm will conform to the Rules of Professional Conduct. Such policies and procedures include those designed to detect and resolve conflicts of interest, identify dates by which actions must be taken in pending matters, account for client funds and property and ensure that inexperienced lawyers are properly supervised.

(3) Other measures that may be required to fulfill the responsibility prescribed in paragraph (a) can depend on the firm's structure and the nature of its practice. In a small firm of experienced lawyers, informal supervision and periodic review of compliance with the required systems ordinarily will suffice. In a large firm, or in practice situations in which difficult ethical problems frequently arise, more elaborate measures may be necessary. Some firms, for example, have a procedure whereby junior lawyers can make confidential referral of ethical problems directly to a designated senior partner or special committee. See Rule 5.2. Firms, whether large or small, may also rely on continuing legal education in professional ethics. In any event, the ethical atmosphere of a firm can influence the conduct of all its members and the partners may not assume that all lawyers associated with the firm will inevitably conform to the Rules.

(4) Paragraph (c)**[(1)]** expresses a general principle of **personal** responsibility for acts of another. See also Rule 8.4(a).

(5) Paragraph (c)(2) defines the duty of **a partner or other lawyer having comparable managerial authority in a law firm, as well as** a lawyer who has direct supervisory authority over performance of specific legal work by another lawyer. Whether a lawyer has **[such]** supervisory authority in particular circumstances is a question of fact. Partners **[of a private firm] and lawyers with comparable authority** have at least indirect responsibility for all work being done by the firm, while a partner **or manager** in charge of a particular matter ordinarily **also** has **[direct authority over] supervisory responsibility for the work of** other firm lawyers engaged in the matter. Appropriate remedial action by a partner **or managing lawyer** would depend on the immediacy of **[the partner's] that lawyer's** involvement and the seriousness of the misconduct. **[The] A** supervisor is required to intervene to prevent avoidable consequences of misconduct if the supervisor knows that the misconduct occurred. Thus, if a supervising lawyer knows that a subordinate misrepresented a matter to an opposing party in negotiation, the supervisor as well as the subordinate has a duty to correct the resulting misapprehension.

(6) Professional misconduct by a lawyer under supervision could reveal a violation of paragraph (b) on the part of the supervisory lawyer even though it does not entail a violation of paragraph (c) because there was no direction, ratification or knowledge of the violation.

(7) Apart from this Rule and Rule 8.4(a), a lawyer does not have disciplinary liability for the conduct of a partner, associate or subordinate. Whether a lawyer may be liable civilly or criminally for another lawyer's conduct is a question of law beyond the scope of these Rules.

(8) The duties imposed by this Rule on managing and supervising lawyers do not alter the personal duty of each lawyer in a firm to abide by the Rules of Professional Conduct. See Rule 5.2(a).

Rule 5.2. Responsibilities of a Subordinate Lawyer.

(a) A lawyer is bound by the Rules of Professional Conduct **[even when] notwithstanding that** the lawyer acts at the direction of another person.

(b) A subordinate lawyer does not violate the Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.

Comment:

(1) Although a lawyer is not relieved of responsibility for a violation by the fact that the lawyer acted at the direction of a supervisor, that fact may be relevant in determining whether a lawyer had the knowledge required to render conduct a violation of the Rules. For example, if a subordinate filed a frivolous pleading at the direction of a supervisor, the subordinate would not be guilty of a professional violation unless the subordinate knew of the document's frivolous character.

(2) When lawyers in a supervisor-subordinate relationship encounter a matter involving professional judgment as to ethical duty, the supervisor may assume responsibility for making the judgment. Otherwise a consistent course of action or position could not be taken. If the question can reasonably be answered only one way, the duty of both lawyers is clear and they are equally responsible for fulfilling it. However, if the question is reasonably arguable, someone has to decide upon the course of action. That authority ordinarily reposes in the supervisor, and a subordinate may be guided accordingly. For example, if a question arises whether the interests of two clients conflict under Rule 1.7, the supervisor's reasonable resolution of the question should protect the subordinate professionally if the resolution is subsequently challenged.

Rule 5.3. Responsibilities Regarding Nonlawyer Assistants.

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner **and a lawyer who individually or together with other lawyers possesses comparable managerial authority** in a law firm **[should] shall** make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer.

(b) a lawyer having direct supervisory authority over the nonlawyer **[should] shall** make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner **or has comparable managerial authority** in the law firm in which the person is employed, or has direct supervisory authority over the person, and in either case knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Comment:

(1) Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer **[should] must** give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

[A partner in a law firm should make reasonable efforts to ensure that the firm has measures in effect giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer.

A lawyer having direct supervisory authority over the nonlawyer should make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer.]

(2) Paragraph (a) requires lawyers with managerial authority within a law firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that nonlawyers in the firm will act in a way compatible with the Rules of Professional Conduct. See Comment (1) to Rule 5.1. Paragraph (b) applies to lawyers who have supervisory authority over the work of a nonlawyer. Paragraph (c) specifies the circumstances in which a lawyer is responsible for conduct of a nonlawyer that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer.

Rule 5.4. Professional Independence of a Lawyer.

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;

(2) a lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that portion of the total compensation which fairly represents the services rendered by the deceased lawyer;

(3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement;

(4) a lawyer or law firm may purchase the practice of another lawyer or law firm from an estate or other eligible person or entity consistent with Rule 1.17; and

(5) a lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter.

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(c) A lawyer shall not permit a person who recommends, employs or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for profit, if:

(1) a nonlawyer **[is the beneficial owner]** owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(2) a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation;

(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer; or

(4) in the case of any form of association other than a professional corporation, the organic law governing the internal affairs of the association provides the equity owners of the association with greater liability protection than is available to the shareholders of a professional corporation.

Subparagraphs (1), (2) and (4) shall not apply to a lawyer employed in the legal department of a corporation or other organization.

Comment:

(1) The provisions of this Rule express traditional limitations on sharing fees. These limitations are to protect the lawyer's professional independence of judgment.

(2) Where someone other than the client pays the lawyer's fee or salary, or recommends employment of the lawyer, that arrangement does not modify the lawyer's obligation to the client. As stated in paragraph (c), such arrangements should not interfere with the lawyer's professional judgment.

(3) Paragraph (a)(4) incorporates the authorization for the sale of a law practice pursuant to Rule 1.17. Fees may be shared between a lawyer purchasing a law practice and the estate or representative of the lawyer when a law practice is sold.

(4) Paragraph (a)(5) adds a new dimension to the current Rule by specifically permitting sharing of fees with a nonprofit organization. It is a practice approved in ABA Formal Opinion 93-374.

(5) These Rules do not restrict the organization of a private law firm to certain specified forms, such as a general partnership or a professional corporation. It is permissible to organize a private law firm using any form of association desired, including, without limitations such nontraditional forms as a limited partnership, registered

limited liability partnership, limited liability company or business trust, so long as all of the restrictions in paragraph (d) are satisfied.

(6) Paragraph (d)(1) recognizes that the owners of a private law firm may choose to organize their firm in such a way that it has more than one level of ownership such as, for example, a partnership composed of or including professional corporations. An ownership structure with more than one level will be permissible as long as all of the beneficial owners (as opposed to record owners) are lawyers, subject to the exception for estate administration.

(7) Underlying the restriction in paragraph (d)(4) is a recognition that there are a variety of organizational forms that may be used by a law firm that provide some level of protection from personal liability for their owners. The use of such a form of organization is permissible so long as the limitation on liability provided by that form is no more extensive than that available through the professional corporation form. See 15 Pa.C.S. § 2925. Implicit in paragraph (d)(4) is a recognition that, so long as the owners have the personal liability preserved by the professional corporation law, a limitation on other personal liability is appropriate and should be respected. The result in *First Bank & Trust Co. v. Zagoria*, 250 Ga. 844, 302 S.E.2d 674 (1983), and similar cases is rejected.

(8) Although the last sentence of subsection (d) recognizes that the restrictions in paragraph (d)(1), (2) and (4) are not properly applicable to a lawyer employed in the legal department of a corporation or other organization, it is still important to preserve the professional independence of a lawyer in that situation and thus the restriction in paragraph (d)(3) will apply to such a lawyer.

Rule 5.6. Restrictions on Right to Practice.

A lawyer shall not participate in offering or making:

(a) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement or an agreement for the sale of a law practice consistent with Rule 1.17; or

(b) an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a **client** controversy **[between private parties]**.

Comment:

(1) An agreement restricting the right of **[partners or associates] lawyers** to practice after leaving a firm not only limits their professional autonomy but also limits the freedom of clients to choose a lawyer. Paragraph (a) prohibits such **[agreement] agreements** except for restrictions incident to provisions concerning retirement benefits for service with the firm.

(2) Paragraph (b) prohibits a lawyer from agreeing not to represent other persons in connection with settling a claim on behalf of a client.

(3) This Rule does not apply to prohibit restrictions that may be included in the terms of the sale of a law practice pursuant to Rule 1.17.

Rule 5.7. Responsibilities Regarding Nonlegal Services.

(a) A lawyer who provides nonlegal services to a recipient that are not distinct from legal services provided to that recipient is subject to the Rules of Professional Conduct with respect to the provision of both legal and nonlegal services.

(b) A lawyer who provides nonlegal services to a recipient that are distinct from any legal services provided to the recipient is subject to the Rules of Professional Conduct with respect to the nonlegal services if the lawyer knows or reasonably should know that the recipient might believe that the recipient is receiving the protection of a client-lawyer relationship.

(c) A lawyer who is an owner, controlling party, employee, agent, or is otherwise affiliated with an entity providing nonlegal services to a recipient is subject to the Rules of Professional Conduct with respect to the nonlegal services if the lawyer knows or reasonably should know that the recipient might believe that the recipient is receiving the protection of a client-lawyer relationship.

(d) Paragraph (b) or (c) does not apply if the lawyer makes reasonable efforts to avoid any misunderstanding by the recipient receiving nonlegal services. Those efforts must include advising the recipient that the services are not legal services and that the protection of a client-lawyer relationship does not exist with respect to the provision of nonlegal services to the recipient.

(e) The term "nonlegal services" denotes services that might reasonably be performed in conjunction with and in substance are related to the provision of legal services, and that are not prohibited as unauthorized practice of law when provided by a nonlawyer.

Comment:

(1) For many years, lawyers have provided to their clients nonlegal services that are ancillary to the practice of law. **[Nonlegal services are those that are not prohibited as unauthorized practice of law when provided by a nonlawyer.]** Examples of nonlegal services include providing title insurance, financial planning, accounting, trust services, real estate counseling, legislative lobbying, economic analysis, social work, psychological counseling, tax return preparation, and patent, medical or environmental consulting. A broad range of economic and other interests of clients may be served by lawyers participating in the delivery of these services. **[The ABA, for example, adopted, repealed and then adopted a different version of Rule 5.7. In the course of this debate, several ABA sections offered competing versions of Rule 5.7.**

One approach to the issue of nonlegal services is to try to substantively limit the type of nonlegal services a lawyer may provide to a recipient or the manner in which the services are provided. A competing approach does not try to substantively limit the lawyer's provision of nonlegal services, but instead attempts to clarify the conduct to which the rules of Professional Conduct apply and to avoid misunderstanding on the part of the recipient of the nonlegal services. This Rule adopts the latter approach.]

The Potential for Misunderstanding

(2) Whenever a lawyer directly provides nonlegal services, there exists the potential for ethical problems. Principal among these is the possibility that the person for whom the nonlegal services are performed may fail to understand that the services may not carry with them the protection normally afforded by the client-lawyer relation-

ship. The recipient of the nonlegal services may expect, for example, that the protection of client confidences, prohibitions against representation of persons with conflicting interests, and obligations of a lawyer to maintain professional independence apply to the provision of nonlegal services when that may not be the case. The risk of such confusion is especially acute when the lawyer renders both types of services with respect to the same matter.

Providing Nonlegal Services that Are Not Distinct from Legal Services

(3) Under some circumstances, the legal and nonlegal services may be so closely entwined that they cannot be distinguished from each other. In this situation, confusion by the recipient as to when the protection of the client-lawyer relationship applies are likely to be unavoidable. Therefore, Rule 5.7(a) requires that the lawyer providing the nonlegal services adhere to all of the requirements of the Rules of Professional Conduct.

(4) In such a case, a lawyer will be responsible for assuring that both the lawyer's conduct and, to the extent required by Rule 5.3, that of nonlawyer employees, comply in all respects with the Rules of Professional Conduct. When a lawyer is obliged to accord the recipients of such nonlegal services the protection of those Rules that apply to the client-lawyer relationship, the lawyer must take special care to heed the proscriptions of the Rules addressing conflict of interest (Rules 1.7 through 1.11, especially Rules 1.7(b) and 1.8(a), (b) and (f)), and to scrupulously adhere to the requirements of Rule 1.6 relating to disclosure of confidential information. The promotion of the nonlegal services must also in all respects comply with Rules 7.1 through 7.3, dealing with advertising and solicitation.

(5) Rule 5.7(a) applies to the provision of nonlegal services by a lawyer even when the lawyer does not personally provide any legal services to the person for whom the nonlegal services are performed if the person is also receiving legal services from another lawyer that are not distinct from the nonlegal services.

Avoiding Misunderstanding when a Lawyer Directly Provides Nonlegal Services that Are Distinct from Legal Services

(6) Even when the lawyer believes that his or her provision of nonlegal services is distinct from any legal services provided to the recipient, there is still a risk that the recipient of the nonlegal services will misunderstand the implications of receiving nonlegal services from a lawyer; the recipient might believe that the recipient is receiving the protection of a client-lawyer relationship. Where there is such a risk of misunderstanding, Rule 5.7(b) requires that the lawyer providing the nonlegal services adhere to all the Rules of Professional Conduct, unless exempted by Rule 5.7(d).

Avoiding Misunderstanding when a Lawyer Is Indirectly Involved in the Provision of Nonlegal Services

(7) Nonlegal services also may be provided through an entity with which a lawyer is somehow affiliated, for example, as owner, employee, controlling party or agent. In this situation, there is still a risk that the recipient of the nonlegal services might believe that the recipient is receiving the protection of a client-lawyer relationship. Where there is such a risk of misunderstanding, Rule 5.7(c) requires that the lawyer involved with the entity providing nonlegal services adhere to all the Rules of Professional Conduct, unless exempted by Rule 5.7(d).

Avoiding the Application of Paragraphs (b) and (c)

(8) Paragraphs (b) and (c) specify that the Rules of Professional Conduct apply to a lawyer who directly provides or is otherwise involved in the provision of nonlegal services if there is a risk that the recipient might believe that the recipient is receiving the protection of a client-lawyer relationship. Neither the Rules of Professional Conduct nor paragraphs (b) or (c) will apply, however, if pursuant to paragraph (d), the lawyer takes reasonable efforts to avoid any misunderstanding by the recipient. In this respect, Rule 5.7 is analogous to Rule 4.3(c).

(9) In taking the reasonable measures referred to in paragraph (d), the lawyer must communicate to the person receiving the nonlegal services that the relationship will not be a client-lawyer relationship. The communication should be made before entering into an agreement for the provision of nonlegal services, in a manner sufficient to assure that the person understands the significance of the communication, and preferably should be in writing.

(10) The burden is upon the lawyer to show that the lawyer has taken reasonable measures under the circumstances to communicate the desired understanding. For instance, a sophisticated user of nonlegal services, such as a publicly-held corporation, may require a lesser explanation than someone unaccustomed to making distinctions between legal services and nonlegal services, such as an individual seeking tax advice from a lawyer-accountant or investigative services in connection with a lawsuit.

The Relationship Between Rule 5.7 and Other Rules of Professional Conduct

(11) Even before Rule 5.7 was adopted, a lawyer involved in the provision of nonlegal services was subject to those Rules of Professional Conduct that apply generally. For example, Rule 8.4(c) makes a lawyer responsible for fraud committed with respect to the provision of nonlegal services. Such a lawyer must also comply with Rule 1.8(a). Nothing in this rule is intended to suspend the effect of any otherwise applicable Rule of Professional Conduct such as Rule 1.7(b), Rule 1.8(a) and Rule 8.4(c).

(12) In addition to the Rules of Professional Conduct, principles of law external to the Rules, for example, the law of principal and agent, may govern the legal duties owed by a lawyer to those receiving the nonlegal services.

PUBLIC SERVICE

Rule 6.1. **Voluntary** Pro Bono Publico Service.

A lawyer should render public interest legal service. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations, by service in activities for improving the law, the legal system or the legal profession, and by financial support for organizations that provide legal services to persons of limited means.

Comment:

(1) The ABA House of Delegates has formally acknowledged "the basic responsibility of each lawyer engaged in the practice of law to provide public interest legal services" without fee, or at a substantially reduced fee, in one or more of the following areas: poverty law, civil rights law, public rights law, charitable organization representation and the administration of justice. This

Rule expresses that policy but is not intended to be enforced through disciplinary process.

(2) The rights and responsibilities of individuals and organizations in the United States are increasingly defined in legal terms. As a consequence, legal assistance in coping with the web of statutes, rules and regulations is imperative for persons of modest and limited means, as well as for the relatively well-to-do.

(3) The basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. Every lawyer, regardless of professional prominence or professional workload, should find time to participate in or otherwise support the provision of legal services to the disadvantaged. The provision of free legal services to those unable to pay reasonable fees continues to be an obligation of each lawyer as well as the profession generally, but the efforts of individual lawyers are often not enough to meet the need. Thus, it has been necessary for the profession and government to institute additional programs to provide legal services. Accordingly, legal aid offices, lawyer referral services and other related programs have been developed, and others will be developed by the profession and government. Every lawyer should support all proper efforts to meet this need for legal services.

(4) Law firms should act reasonably to enable and encourage all lawyers in the firm to provide the pro bono legal services called for by this Rule.

Rule 6.2. Accepting Appointments.

A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as:

(a) representing the client is likely to result in violation of the Rules of Professional Conduct or other law;

(b) representing the client is likely to result in an unreasonable financial burden on the lawyer; or

(c) the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client.

Comment:

(1) A lawyer ordinarily is not obliged to accept a client whose character or cause the lawyer regards as repugnant. The lawyer's freedom to select clients is, however, qualified. All lawyers have a responsibility to assist in providing pro bono publico service. **See Rule 6.1.** An individual lawyer fulfills this responsibility by accepting a fair share of unpopular matters or indigent or unpopular clients. A lawyer may also be subject to appointment by a court to serve unpopular clients or persons unable to afford legal services.

Appointed Counsel

(2) For good cause a lawyer may seek to decline an appointment to represent a person who cannot afford to retain counsel or whose cause is unpopular. Good cause exists if the lawyer could not handle the matter competently, see Rule 1.1, or if undertaking the representation would result in an improper conflict of interest, for example, when the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client. A lawyer may also seek to decline an appointment if acceptance would be unreasonably burdensome, for example, when it would impose a financial sacrifice so great as to be unjust.

(3) An appointed lawyer has the same obligations to the client as retained counsel, including the obligations of loyalty and confidentiality, and is subject to the same limitations on the client-lawyer relationship, such as the obligation to refrain from assisting the client in violation of the Rules.

Rule 6.3. Membership in Legal Services Organization.

A lawyer may serve as a director, officer or member of a legal services organization, apart from the law firm in which the lawyer practices, notwithstanding that the organization serves persons having interests adverse to a client of the lawyer. The lawyer shall not knowingly participate in a decision or action of the organization:

(a) if participating in the decision **or action** would be incompatible with the lawyer's obligations to a client under Rule 1.7; or

(b) where the decision or action could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the lawyer.

Comment:

(1) Lawyers should be encouraged to support and participate in legal service organizations. A lawyer who is an officer or a member of such an organization does not thereby have a client-lawyer relationship with persons served by the organization. However, there is potential conflict between the interests of such persons and the interests of the lawyer's clients. If the possibility of such conflict disqualified a lawyer from serving on the board of a legal services organization, the profession's involvement in such organizations would be severely curtailed.

(2) It may be necessary in appropriate cases to reassure a client of the organization that the representation will not be affected by conflicting loyalties of a member of the board. Established, written policies in this respect can enhance the credibility of such assurances.

Rule 6.4. Law Reform Activities Affecting Client Interests.

A lawyer may serve as a director, officer or member of an organization involved in reform of the law or its administration notwithstanding that the reform may affect the interests of a client of the lawyer. When the lawyer knows that the interests of a client may be materially benefited by a decision in which the lawyer participates, the lawyer shall disclose that fact but need not identify the client.

Comment:

(1) Lawyers involved in organizations seeking law reform generally do not have a client-lawyer relationship with the organization. Otherwise, it might follow that a lawyer could not be involved in a bar association law reform program that might indirectly affect a client. See also Rule 1.2(b). For example, a lawyer specializing in antitrust litigation might be regarded as disqualified from participating in drafting revisions of rules governing that subject. In determining the nature and scope of participation in such activities, a lawyer should be mindful of obligations to clients under other Rules, particularly Rule 1.7. A lawyer is professionally obligated to protect the integrity of the program by making an appropriate disclo-

sure within the organization when the lawyer knows a private client might be materially benefited.

Rule 6.5. Nonprofit and Court Appointed Limited Legal Services Programs.

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

Comment:

(1) Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services—such as advice or the completion of legal forms—that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7, 1.9 and 1.10.

(2) A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation. See Rule 1.2(c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the Rules of Professional Conduct, including Rules 1.6 and 1.9(c), are applicable to the limited representation.

(3) Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with Rules 1.7 or 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by Rules 1.7 or 1.9(a) in the matter.

(4) Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, paragraph (b) provides that Rule 1.10 is inapplicable to a representation governed by this Rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that the lawyer's firm is disqualified by Rule 1.7 or 1.9(a). By virtue of paragraph (b), however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

(5) If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and 1.10 become applicable.

INFORMATION ABOUT LEGAL SERVICES

Rule 7.1. Communications Concerning a Lawyer's Service.

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it**[:] contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.**

[(a) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;

(b) is likely to create an unjustified expectation about results the lawyer can achieve, such as the amount of previous damage awards, the lawyer's record in obtaining favorable verdicts, or client endorsements, or states or implies that the lawyer can achieve results by means that violate the rules of professional conduct or other law;

(c) compares the lawyer's services with other lawyer's services, unless the comparison can be factually substantiated; or

(d) contains subjective claims as to the quality of legal services or a lawyer's credentials that are not capable of measurement or of verification.]

Comment:

(1) This Rule governs all communications about a lawyer's services, including advertising permitted by Rule 7.2. Whatever means are used to make known a lawyer's services, statements about them **[should] must** be truthful. **[The prohibition in paragraph (b) of statements that may create "unjustified expectations" has been expanded to incorporate the substance of the previous Comment, and to make clear that results obtained on behalf of one client may be misleading as indicators of the result another client might expect. Such information may create the unjustified expectation that similar results can be obtained for others without reference to the specific factual and legal circumstances. Paragraph (d) expresses the qualification found in existing law condemning claims that are subjective, and not capable of objective verification, concerning the quality of a lawyer's services or of his credentials.]**

(2) Truthful statements that are misleading are also prohibited by this Rule. A truthful statement is misleading if it omits a fact necessary to make the

lawyer's communication considered as a whole not materially misleading. A truthful statement is also misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation.

(3) An advertisement that truthfully reports a lawyer's achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case. Similarly, an unsubstantiated comparison of the lawyer's services or fees with the services or fees of other lawyers may be misleading if presented with such specificity as would lead a reasonable person to conclude that comparison can be substantiated. The inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead a prospective client.

(4) See also Rule 8.4(e) for the prohibition against stating or implying an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law.

Rule 7.2. Advertising.

(a) Subject to the requirements of Rule 7.1, a lawyer may advertise services **[through public media, such as telephone directory, legal directory, newspaper or other periodical, outdoor, radio or television, or]** through written**, recorded or electronic** communications**, including public media,** not within the purview of Rule 7.3.

(b) A copy or recording of an advertisement or written communication shall be kept for two years after its last dissemination along with a record of when and where it was used. This record shall include the name of at least one lawyer responsible for its content.

(c) A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may pay:

(1) the reasonable cost of **[advertising] advertisements** or written **[communication] communications** permitted by this Rule;

(2) the usual charges of a **[not-for-profit]** lawyer referral service or other legal service organization; and

(3) for a law practice in accordance with Rule 1.17.

(d) No advertisement or public communication shall contain an endorsement by a celebrity or public figure.

(e) An advertisement or public communication that contains a paid endorsement shall disclose that the endorser is being paid or otherwise compensated for his or her appearance or endorsement.

(f) A non-lawyer shall not portray a lawyer or imply that he or she is a lawyer in any advertisement or public communication; nor shall an advertisement or public communication portray a fictitious entity as a law firm, use a fictitious name to refer to lawyers not associated together in a law firm, or otherwise imply that lawyers are associated together in a law firm if that is not the case.

(g) An advertisement or public communication shall not contain a portrayal of a client by a non-client; the re-enactment of any events or scenes; or, pictures or persons, which are not actual or authentic, without a disclosure that such depiction is a dramatization.

(h) Every advertisement that contains information about the lawyer's fee**[,]** shall be subject to the following requirements:

(1) Advertisements that state or indicate that no fee shall be charged in the absence of recovery shall disclose that the client will be liable for certain expenses in addition to the fee, if such is the case.

(2) A lawyer who advertises a specific fee or hourly rate or range of fees for a particular service shall honor the advertised fee for at least ninety (90) days; provided that for advertisements in media published annually, the advertised fee shall be honored for no less than one (1) year following initial publication unless otherwise stated as part of the advertisement.

(i) All advertisements and written communications shall disclose the geographic location, by city or town, of the office in which the lawyer or lawyers who will actually perform the services advertised principally practice law. If the office location is outside the city or town, the county in which the office is located must be disclosed.

(j) A lawyer shall not, directly or indirectly (whether through an advertising cooperative or otherwise), pay all or any part of the costs of an advertisement by a lawyer not in the same firm or by any for-profit entity other than the lawyer's firm, unless the advertisement discloses the name and principal office address of each lawyer or law firm involved in paying for the advertisement and, if any lawyer or law firm will receive referrals from the advertisement, the circumstances under which referrals will be made and the basis and criteria on which the referral system operates.

(k) A lawyer shall not, directly or indirectly, advertise that the lawyer or his or her law firm will only accept, or has a practice limited to, particular types of cases unless the lawyer or his or her law firm handles, as a principal part of his, her or its practice, all aspects of the cases so advertised from intake through trial. If a lawyer or law firm advertises for a particular type of case that the lawyer or law firm ordinarily does not handle from intake through trial, that fact must be disclosed. A lawyer or law firm shall not advertise as a pretext to refer cases obtained from advertising to other lawyers.

Comment:

(1) To assist the public in obtaining legal services, lawyers should be allowed to make known their services not only through reputation but also through organized information campaigns in the form of advertising. Advertising involves an active quest for clients, contrary to the tradition that a lawyer should not seek clientele. However, the public's need to know about legal services can be fulfilled in part through advertising. This need is particularly acute in the case of persons of moderate means who have not made extensive use of legal services. The interest in expanding public information about legal services ought to prevail over considerations of tradition. Nevertheless, advertising by lawyers entails the risk of practices that are misleading or overreaching.

(2) This Rule permits public dissemination of information concerning a lawyer's name or firm name, address and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; a lawyer's foreign language ability; names of references and, with their consent, names of clients regularly represented; and other information that might invite the attention of those seeking legal assistance.

(3) Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Some jurisdictions have had extensive prohibitions against television advertising, against advertising going beyond specified facts about a lawyer, or against "undignified" advertising. Television is now one of the most powerful media for getting information to the public, particularly persons of low and moderate income; prohibiting television advertising, therefore, would impede the flow of information about legal services to many sectors of the public. Limiting the information that may be advertised has a similar effect and assumes that the bar can accurately forecast the kind of information that the public would regard as relevant. **Similarly, electronic media, such as the Internet, can be an important source of information about legal services, and lawful communication by electronic mail is permitted by this Rule. But see Rule 7.3(a) for the prohibition against the solicitation of a prospective client through a real-time electronic exchange that is not initiated by the prospective client.**

(4) Neither this Rule nor Rule 7.3 prohibits communications authorized by law, such as a notice to members of a class in class action litigation.

Record of Advertising

(5) Paragraph (b) requires that a record of the content and use of advertising be kept in order to facilitate enforcement of this Rule. It does not require that advertising be subject to review prior to dissemination. Such a requirement would be burdensome and expensive relative to its possible benefits, and may be of doubtful constitutionality.

Paying Others to Recommend a Lawyer

(6) Subject to the limitations set forth under paragraph (j), a lawyer is allowed to pay for advertising permitted by this Rule, but otherwise is not permitted to pay another person for channeling professional work. **Paragraph (c)(1), however, allows a lawyer to pay for advertising and communications permitted by this Rule, including the cost of print, directory listings, online directory listings, newspaper ads, television and radio air time, domain-name registrations, sponsorship fees, banner ads, and group advertising. A lawyer may compensate employees, agents and vendors who are engaged to provide marketing or client-development services, such as publicists, public-relations personnel, business-development staff and website designers. See Rule 5.3 for the duties of lawyers and law firms with respect to the conduct of non-lawyers who prepare marketing materials for them.** This restriction does not prevent an organization or person other than the lawyer from advertising or recommending the lawyer's services. Thus, a legal aid agency or prepaid legal services plan may pay to advertise legal services provided under its auspices. Likewise, a lawyer may participate in **[not-for-profit]** lawyer referral programs and pay the usual fees charged by such programs. Paragraph (c) does not prohibit paying regular compensation to an assistant, such as a secretary, to prepare communications permitted by this Rule.

Endorsements

(7) Paragraphs (d) and (e) require truthfulness in any advertising in which an endorsement of a lawyer or law firm is made. The prohibition against endorsement by **a** celebrity or public figure is consistent with the purpose of Rule 7.1 to avoid the creation of an unjustified expectation of a particular legal result on the part of a prospective client.

Portrayals

(8) Paragraphs (f) and (g), similarly, require truth in advertising when portrayals are made part of legal advertising. A portrayal, by its nature, is a depiction of a person, event or scene, not the actual person, event or scene itself. Paragraphs (f) and (g) were added to ensure that any portrayals used in advertising legal services are not misleading or overreaching. Creating the impression that lawyers are associated in a firm where that is not the case was considered inherently misleading because it suggests that the various lawyers involved are available to support each other and contribute to the handling of a case. Paragraph (f) accordingly prohibits advertisements that create the impression of a relationship among lawyers where none exists, such as by using a fictitious name to refer to the lawyers involved if they are not associated together in a firm.

Disclosure of Fees and Client Expenses

(9) Consistent with the public's need to have an accurate dissemination of information about the cost of legal services, paragraph (h) requires disclosure of a client's responsibility for payment of expenses in contingent fee matters when the client will be required to pay any portion of expenses that will be incurred in the handling of a legal matter.

(10) Under the same rationale, paragraph (h) imposes minimum periods of time during which advertised fees must be honored.

Disclosure of Geographic Location of Practice

(11) Paragraph (i) requires disclosure of the geographic location in which the advertising lawyer's primary practice is situated. This provision seeks to rectify situations in which a person seeking legal services is misled into concluding that an advertising lawyer has his or her primary practice in the client's hometown when, in fact, the advertising lawyer's primary practice is located elsewhere. Paragraph (i) ensures that a client has received a disclosure as to whether the lawyer he or she ultimately chooses maintains a primary practice located outside of the client's own city, town or county.

Disclosure of Payment of Advertising Costs

(12) Paragraph (j) prohibits lawyers and law firms from paying advertising costs of independent lawyers or other persons unless disclosure is made in the advertising of the name and address of each paying lawyer or law firm, as well as of the business relationship between the paying parties and the advertising parties.

(13) Advertisements sponsored by advertising cooperatives (where lawyers or law firms pool resources to buy advertising space or time) are considered advertisements by each of the lawyers participating in the cooperative and accordingly will be subject generally to all of the provisions of these Rules on advertising. Advertising cooperatives have been referred to expressly in paragraph

(j) to make clear that references to "indirect" actions are intended to have a wide scope and include advertising cooperatives and similar arrangements. Thus, advertising cooperatives and similar arrangements are permissible, but only if the required disclosures are made. In the case of cooperative arrangements, the required disclosures must include the basis or criteria on which lawyers or law firms participating in the cooperative will be referred cases, e.g., chronological order of calls, geographic location, etc.

(14) Paragraph (k) prohibits a lawyer from misleading the public by giving the impression in an advertisement that the lawyer or his or her law firm specializes in a particular area of the law unless the lawyer or his or her law firm handles the type of case advertised as a principal part of the practice of the lawyer or law firm. For example, where a lawyer advertises for "personal injury cases" or "serious personal injury cases" or "death cases only" those types of cases must, in fact, constitute a principal part of the practice of the lawyer or his or her firm.

(15) Paragraph (k) also prohibits advertising for the primary purposes of obtaining cases that can be referred or brokered to another lawyer. Obviously, a lawyer is permitted and encouraged to refer cases to other lawyers where that lawyer does not have the skill or expertise to properly represent a client. However, it is misleading to the public for a lawyer or law firm, with knowledge that the lawyer or law firm will not be handling a majority of the cases attracted by advertising, to nonetheless advertise for those cases only to refer the cases to another lawyer whom the client did not initially contact. In addition, a lawyer who advertises for a particular type of case may not mislead the client into believing that the lawyer or law firm will fully represent that client when, in reality, the lawyer or law firm refers all of its non-settling cases to another law firm for trial.

Rule 7.3. Direct Contact with Prospective Clients.

(a) A lawyer shall not solicit in-person or by intermediary professional employment from a prospective client with whom the lawyer has no family or prior professional relationship when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain**, unless the person contacted is a lawyer or has a family, close personal, or prior professional relationship with the lawyer**. The term "solicit" includes contact in-person **[or],** by telephone **or by real-time electronic communication**, but, subject to the requirements of Rule 7.1 and Rule 7.3(b), does not include written communications, which may include targeted, direct mail advertisements.

(b) A lawyer **[shall not] may** contact, or send a written communication to, a prospective client for the purpose of obtaining professional employment **[if] unless**:

(1) the lawyer knows or reasonably should know that the physical, emotional or mental state of the person is such that the person could not exercise reasonable judgment in employing a lawyer;

(2) the person has made known to the lawyer a desire not to receive communications from the lawyer; or

(3) the communication involves coercion, duress, or harassment.

Comment:

(1) There is a potential for abuse inherent in direct solicitation**, including in-person, telephone or real-time electronic communication,** by a lawyer of prospective clients known to need legal services. **[It subjects] These forms of contact subject** the lay person to the private importuning of a trained advocate, in a direct interpersonal encounter. **[A] The** prospective client, **[often feels] who may already feel** overwhelmed by the **[situation] circumstances** giving rise to the need for legal services, **[and may have an impaired capacity for reason, judgment and protective self-interest. Furthermore, the lawyer seeking the retainer is faced with a conflict stemming from the lawyer's own interest, which may color the advice and representation offered the vulnerable prospect] may find it difficult fully to evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and insistence upon being retained immediately. The situation is fraught with the possibility of undue influence, intimidation, and overreaching.**

[The situation is therefore fraught with the possibility of undue influence, intimidation, and overreaching. This potential for abuse inherent in direct solicitation of prospective clients justifies its limitation, particularly since lawyer advertising permitted under Rule 7.2 offers an alternative means of communicating necessary information to those who may be in need of legal services.

Advertising makes it possible for a prospective client to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the prospective client to direct personal persuasion that may overwhelm the client's judgment.

The use of general advertising to transmit information from lawyer to prospective client, rather than direct private contact, will help to assure that the information flows cleanly as well as freely. Advertising is out in public view, thus subject to scrutiny by those who know the lawyer. This informal review is itself likely to help guard against statements and claims that might constitute false or misleading communications, in violation of Rule 7.1. Direct, private communications from a lawyer to a prospective client are not subject to such third-person scrutiny and consequently are much more likely to approach (and occasionally cross) the dividing line between accurate representations and those that are false and misleading.]

(2) This potential for abuse inherent in direct in-person, live telephone or real-time electronic solicitation of prospective clients justifies its prohibition, particularly since lawyer advertising and written communication permitted under Rule 7.2 offer alternative means of conveying necessary information to those who may be in need of legal services. Advertising and written communications, which may be mailed, or autodialed make it possible for a prospective client to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the prospective client to direct in-person, telephone or real-time electronic persuasion that may overwhelm the client's judgment.

(3) The use of general advertising and written, recorded or electronic communications to transmit

information from lawyer to prospective client, rather than direct in-person, live telephone or real-time electronic contact, will help to assure that the information flows cleanly as well as freely. The contents of advertisements and communications permitted under Rule 7.2 can be permanently recorded so that they cannot be disputed and may be shared with others who know the lawyer. This potential for informal review is itself likely to help guard against statements and claims that might constitute false and misleading communications, in violation of Rule 7.1 The contents of direct in-person, live telephone or real-time electronic conversations between a lawyer and prospective client can be disputed and may not be subject to third-party scrutiny. Consequently, they are much more likely to approach (and occasionally cross) the dividing line between accurate representations from those that are false and misleading.

(4) There is far less likelihood that a lawyer would engage in abusive practices against an individual who is a former client, or with whom the lawyer has a close personal or family relationship, or in situations in which the lawyer is motivated by considerations other than the lawyer's pecuniary gain. Nor is there a serious potential for abuse when the person contacted is a lawyer. Consequently, the general prohibition in Rule 7.3(a) is not applicable in those situations. Also, paragraph (a) is not intended to prohibit a lawyer from participating in constitutionally protected activities of public or charitable legal-service organizations or bona fide political, social, civic, fraternal, employee or trade organizations whose purposes include providing or recommending legal services to its members or beneficiaries.

(5) But even permitted forms of solicitation can be abused. Thus, any solicitation which contains information which is false or misleading within the meaning of Rule 7.1, which involves coercion, duress or harassment within the meaning of Rule 7.3(b)(3), or which involves contact with a prospective client who has made known to the lawyer desire not to be solicited by the lawyer within the meaning of Rule 7.3(b)(2) is prohibited. Moreover, if after sending a letter or other communication to a client as permitted by Rule 7.2 the lawyer receives no response, any further effort to communicate with the prospective client may violate the provisions of Rule 7.3(b).

(6) This Rule is not intended to prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for their members, insureds, beneficiaries or other third-parties for the purposes informing such entities of the availability of and details concerning the plan or arrangement which the lawyer or lawyer's firm is willing to offer. This form of communication is not directed to a prospective client. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become prospective clients of the lawyer. Under these circumstances, the activity which the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under Rule 7.2.

Rule 7.4. Communication of Fields of Practice **and Specialization**.

(a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. A lawyer shall not state that the lawyer is a specialist except as follows:

(1) a lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "patent attorney" or a substantially similar designation;

(2) a lawyer engaged in admiralty practice may use the designation "admiralty," "proctor in admiralty" or a substantially similar designation;

(3) a lawyer who has been certified by an organization approved by the Supreme Court of Pennsylvania as a certifying organization in accordance with paragraph (b) may advertise the certification during such time as the certification of the lawyer and the approval of the organization are both in effect;

(4) a lawyer may communicate that the lawyer is certified in a field of practice only when that communication is not false or misleading and that certification is granted by the Supreme Court of Pennsylvania.

(b) Upon recommendation of the Pennsylvania Bar Association, the Supreme Court of Pennsylvania may approve for purposes of paragraph (a) an organization that certifies lawyers, if the Court finds that:

(1) advertising by a lawyer of certification by the certifying organization will provide meaningful information, which is not false, misleading or deceptive, for use of the public in selecting or retaining a lawyer; and

(2) certification by the organization is available to all lawyers who meet objective and consistently applied standards relevant to practice in the area of the law to which the certification relates.

The approval of the certifying organization shall be for such period not longer than five (5) years as the Court shall order, and may be renewed upon recommendation of the Pennsylvania Bar Association.

Comment:

(1) This Rule permits a lawyer to indicate areas of practice in communications about the lawyer's services; for example, in a telephone directory or other advertising. If a lawyer practices only in certain fields, or will not accept matters except in such fields, the lawyer is permitted so to indicate. However, stating that the lawyer is a "specialist" is not permitted unless the lawyer has been certified as a specialist by a certifying organization approved under the procedure of paragraph (b). The standards in paragraph (b)(1) and (2) are intended to comply with the requirements for advertising claims of specialization set forth in *Peel v. Attorney Registration and Disciplinary Commission of Illinois*, 496 U. S. 91, 110 L.Ed.2d 83, 110 S.Ct. 2281 (1990).

Rule 7.5. Firm Names and Letterheads.

(a) A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government, government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1. If otherwise lawful a firm may use as, or continue to include in, its name, the name or names of one or more deceased or retired members of the firm or of a predecessor firm in a continuing line of succession.

(b) A law firm with offices in more than one jurisdiction may use the same name **or other professional designation** in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(c) The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

(d) Lawyers shall not state or imply that they practice in a partnership or other organization unless that is the fact.

Comment:

(1) A firm may be designated by the names of all or some of its members, by the names of deceased members where there has been a continuing succession in the firm's identity or by a trade name such as the "ABC Legal Clinic." **A lawyer or law firm may also be designated by a distinctive website address or comparable professional designation.** Although the United States Supreme Court has held that legislation may prohibit the use of trade names in professional practice, use of such names in law practice is acceptable so long as it is not misleading. If a private firm uses a trade name that includes a geographical name such as "Springfield Legal Clinic," an express disclaimer that it is a public legal aid agency may be required to avoid a misleading implication. It may be observed that any firm name including the name of a deceased partner is, strictly speaking, a trade name. The use of such names to designate law firms has proven a useful means of identification. However, it is misleading to use the name of a lawyer not associated with the firm or a predecessor of the firm**, or the name of a nonlawyer**.

(2) With regard to paragraph (d), lawyers sharing office facilities, but who are not in fact **[partners] associated with each other in a law firm**, may not denominate themselves as, for example, "Smith and Jones," for that title suggests **[partnership in the practice of] that they are practicing** law **together in a firm**.

[Rule 7.6. Advertising a Certification.

(a) A lawyer shall not advertise that the lawyer has been certified by a certifying organization, unless the certifying organization has been approved for advertising of certification by the procedure set forth in this Rule 7.6.

(b) Approval of certifying organizations shall be obtained in accordance with Rule 7.4(b) and in accordance with the procedures and rules adopted by the Supreme Court of Pennsylvania.

Comment:

This Rule will prevent lawyers from using certifications obtained from non-approved organizations. With the adoption of the Supreme Court of Pennsylvania Rules approving certifying organizations, the public will be provided with meaningful and relevant information in selecting or choosing a lawyer. Additionally, unauthorized and meaningless certifications will be effectively terminated.]

Rule 7.7. Lawyer Referral Service.

(a) A lawyer shall not accept referrals from a lawyer referral service if the service engaged in communication with the public or direct contact with prospective clients in a manner that would violate the Rules of Professional Conduct if the communication or contact were made by the lawyer.

(b) A "lawyer referral service" is any person, group of persons, association, organization or entity that receives a fee or charge for referring or causing the direct or indirect referral of a potential client to a lawyer drawn from a specific group or panel of lawyers.

Comment:

(1) This Rule prevents a lawyer from circumventing the Rules of Professional Conduct by using a lawyer referral service or similar organization which would not be subject to the Rules of Professional Conduct. **A lawyer may pay the usual charges of a lawyer referral service. A lawyer may not, however, share legal fees with a non-lawyer. See Rule 5.4(a).**

MAINTAINING THE INTEGRITY OF THE PROFESSION

Rule 8.1. Bar Admission and Disciplinary Matters.

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

(a) **[A lawyer is subject to discipline if the lawyer has made a materially false statement in, or if the lawyer has deliberately failed to disclose a material fact requested in connection with, the lawyer's application for admission to the bar or any disciplinary matter.] knowingly make a false statement of material fact; or**

(b) **[A lawyer shall not further the application for admission to the bar of another person known by the lawyer to be unqualified in respect to character, education, or other relevant attribute.] fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6.**

Comment:

(1) The duty imposed by this Rule extends to persons seeking admission to the bar as well as to lawyers. Hence, if a person makes a material false statement in connection with an application for admission, it may be the basis for subsequent disciplinary action if the person is admitted, and in any event may be relevant in a subsequent admission application. The duty imposed by this Rule applies to a lawyer's own admission or discipline as well as that of others. Thus, it is a separate professional offense for a lawyer to knowingly make a misrepresentation or omission in connection with a disciplinary investigation of the lawyer's own conduct. **[This] Paragraph (b) of this** Rule also requires **correction of any prior misstatement in the matter that the applicant or lawyer may have made and** affirmative clarification of any misunderstanding on the part of the admissions or disciplinary authority of which the person involved becomes aware.

(2) This Rule is subject to the provisions of the fifth amendment of the United States Constitution and corresponding provisions of state constitutions. A person relying on such a provision in response to a question,

however, should do so openly and not use the right of nondisclosure as a justification for failure to comply with this Rule.

(3) A lawyer representing an applicant for admission to the bar, or representing a lawyer who is the subject of a disciplinary inquiry or proceeding, is governed by the rules applicable to the client-lawyer relationship**, including Rule 1.6 and, in some cases, Rule 3.3**.

Rule 8.2. Statements Concerning Judges and Other Adjudicatory Officers.

(a) A lawyer shall not **[knowingly]** make a **[false statements] statement** that the lawyer knows to be false or with reckless disregard as to its truth or falsity **[of fact]** concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to **[a]** judicial or legal office.

[(b) A lawyer shall not knowingly make false accusations against a judge or other adjudicatory officers.

(c)] (b) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of **[Canon 7]** the Code of Judicial Conduct.

Comment:

(1) Assessments by lawyers are relied on in evaluating the professional or personal fitness of persons being considered for election or appointment to judicial office and to public legal offices, such as attorney general, prosecuting attorney and public defender. Expressing honest and candid opinions on such matters contributes to improving the administration of justice. Conversely, false statements by a lawyer can unfairly undermine public confidence in the administration of justice.

(2) When a lawyer seeks judicial office, the lawyer should be bound by applicable limitations on political activity.

(3) To maintain the fair and independent administration of justice, lawyers are encouraged to continue traditional efforts to defend judges and courts unjustly criticized.

Rule 8.3. Reporting Professional Misconduct.

(a) A lawyer **[having knowledge] who knows** that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.

(b) A lawyer **[having knowledge] who knows** that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

(c) This Rule does not require disclosure of information otherwise protected by Rule 1.6 or information **[earned] gained** by a lawyer or judge while **[serving as a sobriety, financial or practice monitor for another lawyer (except for information required to be reported by the order appointing the monitor) or while participating in an alcohol or substance abuse rehabilitation program, to the extent that the information would be protected by Rule 1.6 if it had been communicated in the context of an attorney-client relationship] participating in an approved lawyers assistance program**.

Comment:

(1) Self-regulation of the legal profession requires that members of the profession initiate disciplinary investigation when they know of a violation of the Rules of Professional Conduct. Lawyers have a similar obligation with respect to judicial misconduct. An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense.

(2) A report about misconduct is not required where it would involve violation of Rule 1.6. However, a lawyer should encourage a client to consent to disclosure where prosecution would not substantially prejudice the client's interests.

(3) If a lawyer were obligated to report every violation of the Rules, the failure to report any violation would itself be a professional offense. Such a requirement existed in many jurisdictions but proved to be unenforceable. This Rule limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provisions of this Rule. **The duty to report involves only misconduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.** The term "substantial" refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware.

(4) While a lawyer may report professional misconduct at any time, the lawyer must report misconduct upon acquiring actual knowledge of misconduct. The discretionary reporting of misconduct should not be undertaken for purposes of tactical advantage over another lawyer, to punish or inconvenience another for a personal or professional slight, or to harass another lawyer.

(5) A report should be made to the bar disciplinary agency unless some other agency, such as a peer review agency, is more appropriate in the circumstances. Similar considerations apply to the reporting of judicial misconduct.

(6) The duty to report professional misconduct does not apply to a lawyer retained to represent a lawyer whose professional conduct is in question. Such a situation is governed by the Rules applicable to the client-lawyer relationship.

(7) Information about a lawyer's or judge's misconduct or fitness may be received by **[another lawyer in the course of the receiving lawyer's participation in an alcohol or substance abuse rehabilitation program or while the receiving lawyer is serving as a sobriety, financial or practice monitor] a lawyer in the course of that lawyer's participation in an approved lawyers or judges assistance program**. In **[those circumstances] that circumstance**, providing for **[the confidentiality of such information] an exception to the reporting requirements of paragraphs (a) and (b) of this Rule** encourages lawyers and judges to seek treatment **through such a program**. Conversely, without such **[confidentiality] an exception**, lawyers and judges may hesitate to seek assistance from these programs, which may then result **in addi-**

tional harm to their professional careers and additional injury to the welfare of clients and to the public. **[Paragraph (c) therefore provides an exemption from the reporting requirements of paragraphs (a) and (b) with respect to information that would be privileged if the relationship between the impaired lawyer or judge and the recipient of the information were that of a client and a lawyer. The one exception is where the order appointing a sobriety, financial or practice monitor requires disclosure of certain information (for example, where the monitor is ordered to report violations by the impaired lawyer of the terms of his or her probation); but even in that case, information beyond that specifically required to be disclosed is to be kept confidential.] The Rules do not otherwise address the confidentiality of information received by a lawyer or judge participating in an approved lawyers assistance program; such an obligation, however, may be imposed by the rules of the program or other law.**

Rule 8.4. Misconduct.

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official **or to achieve results by means that violate the Rules of Professional Conduct or other law**; or

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

Comment:

[As an officer of the court, a lawyer should be particularly sensitive to conduct that is prejudicial to the administration of justice. An example of a type of conduct that may prejudice the administration of justice is violation of an applicable order of court.]

(1) Lawyers are subject to discipline when they violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so or do so through the acts of another, as when they request or instruct an agent to do so on the lawyer's behalf. Paragraph (a), however, does not prohibit a lawyer from advising a client of action the client is lawfully entitled to take.

(2) Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offenses carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, **[or]** breach of trust, **or serious interference with the administration of justice** are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

(3) A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of Rule 1.2(d) concerning a good faith challenge to the validity, scope, meaning or application of the law apply to challenges of legal regulation of the practice of law.

(4) Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of **[attorneys] lawyers**. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization.

[Pa.B. Doc. No. 04-1625. Filed for public inspection September 3, 2004, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 200]

Promulgation of Rule 223.3 Governing Jury Instructions on Noneconomic Loss in an Action for Bodily Injury or Death; No. 414 Civil Procedural Rules; Doc. No. 5

Order

Per Curiam:

And Now, this 20th day of August, 2004, new Pennsylvania Rule of Civil Procedure 223.3 is promulgated to read as follows.

Whereas prior distribution and publication of this amendment would otherwise be required, it has been determined that immediate promulgation is required in the interest of justice and efficient administration.

This order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective December 1, 2004.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 200. BUSINESS OF COURTS

Rule 223.3. Conduct of the Trial. Actions for Bodily Injury or Death. Jury Instructions on Noneconomic Loss.

In any action for bodily injury or death in which a plaintiff has raised a claim for a damage award for noneconomic loss, the court shall give the following instructions to the jury.

The plaintiff has made a claim for a damage award for past and for future noneconomic loss. There are four items that make up a damage award for noneconomic loss, both past and future: (1) pain and suffering; (2) embarrassment and humiliation; (3) loss of ability to enjoy the pleasures of life; and (4) disfigurement.

The first item to be considered in the plaintiff's claims for damage awards for past noneconomic loss and for future noneconomic loss is pain and suffering. You are instructed that plaintiff is entitled to be fairly and adequately compensated for all physical pain, mental anguish, discomfort, inconvenience, and distress that you find (he) (she) has endured from the time of the injury until today and that plaintiff is also entitled to be fairly and adequately compensated for all physical pain, mental anguish, discomfort, inconvenience, and distress you find (he) (she) will endure in the future as a result of (his) (her) injuries.

The second item that goes to make up noneconomic loss is embarrassment and humiliation. Plaintiff is entitled to be fairly and adequately compensated for such embarrassment and humiliation as you believe (he) (she) has endured and will continue to endure in the future as a result of (his) (her) injuries.

The third item is loss of enjoyment of life. Plaintiff is entitled to be fairly and adequately compensated for the loss of (his) (her) ability to enjoy any of the pleasures of life as a result of the injuries from the time of the injuries until today and to be fairly and adequately compensated for the loss of (his) (her) ability to enjoy any of the pleasures of life in the future as a result of (his) (her) injuries.

The fourth and final item is disfigurement. The disfigurement that plaintiff has sustained is a separate item of damages recognized by the law. Therefore, in addition to any sums you award for pain and suffering, for embarrassment and humiliation, and for loss of enjoyment of life, the plaintiff is entitled to be fairly and adequately compensated for the disfigurement (he) (she) has suffered from the time of the injury to the present and that (he) (she) will continue to suffer during the future duration of (his) (her) life.

In considering plaintiff's claims for damage awards for past and future noneconomic loss, you will consider the following factors: (1) the age of the plaintiff; (2) the severity of the injuries; (3) whether the injuries are temporary or permanent; (4) the extent to which the injuries affect the ability of the plaintiff to perform basic activities of daily living and other activities in which the plaintiff previously engaged; (5) the duration and nature of medical treatment; (6) the duration and extent of the physical pain and mental anguish which the plaintiff has experienced in the past and will experience in the future; (7) the health and physical condition of the plaintiff prior to the injuries; and (8) in case of disfigurement, the nature of the disfigurement and the consequences for the plaintiff.

Official Note: These instructions may be modified by agreement of the parties or by the court, based on circumstances of the case.

[Pa.B. Doc. No. 04-1626. Filed for public inspection September 3, 2004, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CH. 1000]

Promulgation of Rule 1042.71 Governing Findings as to Damages in a Medical Professional Liability Action; No. 416 Civil Procedural Rules; Doc. No. 5

Order

Per Curiam:

And Now, this 20th day of August, 2004, new Pennsylvania Rule of Civil Procedure 1042.71 is promulgated to read as follows.

Whereas prior distribution and publication of this amendment would otherwise be required, it has been determined that immediate promulgation is required in the interest of justice and efficient administration.

This order shall be processed in accordance with Pa.R.J.A. 103(b). New Rule 1042.71 shall be effective October 1, 2004.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1000. ACTIONS

Subchapter B. ACTION IN TRESPASS

PRE-TRIAL CONFERENCE

Rule 1042.71. Medical Professional Liability Actions. Damages. Findings.

At the request of any party to a medical professional liability action, the trier of fact shall make a determination, with separate findings for each plaintiff, specifying the amount of all of the following:

(1) except as provided under Section 508 of the MCARE Act, past damages for:

(i) medical and other related expenses in a lump sum;

(ii) loss of earnings in a lump sum; and

(iii) noneconomic loss in a lump sum.

Official Note: Section 508 of Act No. 13 of 2002, the MCARE Act, 40 P. S. § 1303.508, governs collateral sources.

(2) future damages for:

(i) medical and other related expenses by year;

(ii) loss of earnings or earning capacity in a lump sum; and

(iii) noneconomic loss in a lump sum.

Official Note: Section 509(a) of the MCARE Act, 40 P. S. § 1303.509(a), provides for the separate findings set forth in this rule.

This rule applies to all medical professional liability actions, whether tried before a jury or a court without a jury.

The term "plaintiff" as used in Rule 1042.71 is synonymous with the term "claimant" as used in Section 509(a) of the MCARE Act, 13 P. S. § 1303.509(a), and as defined in Section 103 of the Act, 40 P. S. § 1303.103.

[Pa.B. Doc. No. 04-1627. Filed for public inspection September 3, 2004, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CH. 4000]

Amendment of Rule 4011 Governing Limitation of Scope of Discovery; No. 415 Civil Procedural Rules; Doc. No. 5

Order

Per Curiam:

And Now, this 20th day of August, 2004, Pennsylvania Rule of Civil Procedure 4011 is amended to read as follows.

Whereas prior distribution and publication of this amendment would otherwise be required, it has been determined that immediate promulgation is required in the interest of justice and efficient administration.

This order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective October 1, 2004.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 4000. DEPOSITIONS AND DISCOVERY

ENTRY UPON PROPERTY FOR INSPECTION AND OTHER ACTIVITIES

Rule 4011. Limitation of Scope of Discovery and Deposition.

No discovery or deposition shall be permitted which

* * * * *

(c) is beyond the scope of discovery as set forth in Rules 4003.1 through 4003.6; **[or]**

(d) **[Rescinded.] is prohibited by any law barring disclosure of mediation communications and mediation documents; or**

Official Note: **Section 5949 of the Judicial Code, 42 Pa.C.S. § 5949, provides, with specified exceptions, that all mediation communications and mediation documents are privileged. See Section 5949(c) for definitions of mediation communication and mediation document.**

(e) would require the making of an unreasonable investigation by the deponent or any party or witness.

[(f) Rescinded Nov. 20, 1978, effective April 16, 1979.]

[Pa.B. Doc. No. 04-1628. Filed for public inspection September 3, 2004, 9:00 a.m.]

Title 255—LOCAL COURT RULES

WESTMORELAND COUNTY

Rescinding Rule W1920.12; No. 3 of 2004

Order

And Now, this 17th day of August, 2004, *It Is Hereby Ordered* that Westmoreland County Rule of Civil Procedure W1920.12 is rescinded effective immediately.

By the Court

DANIEL J. ACKERMAN,
President Judge

[Pa.B. Doc. No. 04-1629. Filed for public inspection September 3, 2004, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Disbarment

Notice is hereby given that Linus Gilbert Farr having been disbarred from the practice of law in the State of New Jersey, the Supreme Court of Pennsylvania issued an Order dated August 19, 2004 disbarring Linus Gilbert Farr from the practice of law in this Commonwealth, effective September 18, 2004. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

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

[Pa.B. Doc. No. 04-1630. Filed for public inspection September 3, 2004, 9:00 a.m.]

RULES AND REGULATIONS

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF DENTISTRY

[49 PA. CODE CH. 33]

Expanded Function Dental Assistants

The State Board of Dentistry (Board) amends § 33.103 (relating to examinations) to read as set forth in Annex A.

Description and Need for the Final-Form Rulemaking

This final-form rulemaking deletes the requirement for a clinical examination for expanded function dental assistants (EFDAs).

The act of December 27, 1994 (P. L. 1361, No. 160) (Act 160) amended The Dental Law (act) (63 P. S. §§ 120—130g) to require the certification and regulation of EFDAs. Act 160 required that EFDAs wishing to be certified by the Board shall have completed an education program and passed an examination approved by the Board.

The Board, through a final-form rulemaking published at 30 Pa.B. 2359 (May 13, 2000), determined that the examination would include both written and clinical (performance) components to ensure that certificateholders possess the requisite knowledge and skill to properly and safely perform their job functions. In part, the Board included a clinical component at the request of many EFDAs who believed that this was a necessary requirement. The public, including individuals, dentists, dental hygienists, EFDAs and numerous professional associations, participated in the lengthy rulemaking process. Both written and clinical components to an examination were seen as necessary to insure protection of public health and safety.

Efforts to develop an examination for EFDAs had been underway for several years. Numerous attempts were made to contract with vendors, either through the use of Requests for Proposals (RFPs) or through sole source contracting. However, despite these efforts, the Department of State was only able to enter into contract negotiations with one potential bidder for the development of an EFDA examination.

The Board had concerns regarding the cost of the examination. Those concerns were also expressed by anticipated certificateholders and professional associations. A performance component greatly increases the cost of the examination due to the need to rent a facility and to hire additional proctors for necessary manual grading. Additionally, the examination must be initially administered to approximately 1,800 temporary permitholders. Because no National examination for EFDAs exists, the costs of developing and administering an examination for this Commonwealth must be included in the costs for candidates in this Commonwealth. After the first examination is given, only approximately 100 candidates will be tested each year. When an examination is developed for a small candidate population, the costs will be higher because those costs cannot be distributed over a large continuous population of candidates.

Due in some part to the prospect of an examination fee of $700 to $900, permitholders and members of the Legislature sought input after the RFP process had been completed. After examining these concerns, the Board decided to take some additional time to address the issue of the necessity of a clinical examination.

Accordingly, the Board held a public hearing on July 20, 2001, to receive testimony from interested parties concerning the EFDA examination. Based upon the testimony received, as well as written comment, the Board was persuaded that the clinical portion of the examination requirement should be deleted. The Board believes that the public can be adequately protected with a written examination and that supervising dentists and EFDA programs requiring clinical experience can ensure capability.

The quality of a dental restoration is ultimately determined by the competency of the supervising dentist. If a restoration is below standard, it can be redone without harm to the patient and with minimal inconvenience. In addition, competency testing for other comparable occupations indicates that a written examination can adequately test for clinical competency.

Summary of Comments and Responses to the Proposed Rulemaking

The Board published notice of proposed rulemaking at 32 Pa.B. 5283 (October 26, 2002) with a 30-day public comment period. The Board received comments from the Independent Regulatory Review Commission (IRRC), as part of its review of proposed rulemaking under the Regulatory Review Act (71 P. S. §§ 745.1—745.12). The Board did not receive comments from the House Professional Licensure Committee (HPLC) or the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) as part of their review of proposed rulemaking under the Regulatory Review Act. No public comments were received following the 30-day public comment period. During the predraft stage, the Board held a public hearing on July 20, 2001. Thirty-three persons supported the proposed rulemaking, two persons supported eliminating the clinical exam for temporary permitholders only and two persons supported retention of both the clinical and written exams.

IRRC suggested that the Board clarify the type of examination required (written or clinical) as done with dentists and dental hygienists in § 33.103(a), (b) and (d). The Board has changed the proposed language to require that candidates for certification shall pass a written examination acceptable to the Board.

Paperwork Requirements

The final-form rulemaking will allow the Board to contract with a professional testing organization to administer the written examination. The final-form rulemaking will not create additional paperwork requirements for licensees.

Effective Date

The final-form rulemaking will become effective upon publication in the *Pennsylvania Bulletin*.

Statutory Authority

The Board is authorized to adopt regulations concerning certification requirements for EFDAs under section 3(o) of the act (63 P. S. § 122(o)).

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 10, 2002, the Board submitted a copy of the notice of proposed rulemaking, published at 32 Pa.B. 5283, to IRRC and the Chairpersons of the HPLC and the SCP/PLC for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC 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 HPLC, the SCP/PLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on June 30, 2004, the final-form rulemaking was approved by the HPLC. On July 28, 2004, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on July 29, 2004, and approved the final-form rulemaking.

Additional Information

Persons who require additional information about the final-form rulemaking should submit inquiries to Lisa Burns, Administrator, State Board of Dentistry, P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-7162, www.dos.state.pa.us/dent.

Findings

The Board 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) A public comment period was provided as required by law and all comments were considered.

(3) The final-form rulemaking adopted by this order is necessary and appropriate for the administration of the act.

Order

The Board, acting under its authorizing statute, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 33, are amended by amending § 33.103 to read as set forth in Annex A.

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

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

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

VEASEY B. CULLEN, D.M.D.,
Chairperson

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 34 Pa.B. 4528 (August 14, 2004).)

Fiscal Note: Fiscal Note 16A-4612 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 33. STATE BOARD OF DENTISTRY

Subchapter B. LICENSURE OF DENTISTS AND DENTAL HYGIENISTS AND CERTIFICATION OF EXPANDED FUNCTION DENTAL ASSISTANTS

§ 33.103. Examinations.

(a) *Dentists.* Candidates for licensure shall pass the National Board Dental Examination (written examination) and the Northeast Regional Board (NERB) Dental Examination (clinical examination).

(b) *Dental hygienists.* Candidates for licensure shall pass the National Board Dental Hygiene Examination (written examination) and the NERB Dental Hygiene Examination (clinical examination).

(c) *Expanded function dental assistants.* Candidates for certification shall pass a written examination acceptable to the Board.

(d) *Additional requirement.* The Board will recognize successful completion of the NERB Dental Examination or NERB Dental Hygiene Examination or the expanded function dental assistant examination approved by the Board for up to 5 years from the date scores are reported to the Board. After 5 years, the Board will accept passing scores on the examinations only if the candidate has been engaged in postgraduate training or in the practice of dentistry, as a dental hygienist or as an expanded function dental assistant in another jurisdiction.

[Pa.B. Doc. No. 04-1631. Filed for public inspection September 3, 2004, 9:00 a.m.]

STATE REAL ESTATE COMMISSION
[49 PA. CODE CH. 35]
Deletion of Examination Fees

The State Real Estate Commission (Commission) amends Chapter 35 to read as set forth in Annex A. The final-form rulemaking deletes references to examination fees determined by contract and charged by a professional testing organization from the schedule of fees in § 35.203 (relating to fees) and examination provisions in §§ 35.271—35.275.

Statutory Authority

Section 812.1 of The Administrative Code of 1929 (71 P. S. § 279.3a) sets forth the powers and duties of the Commission with regard to the administration of examinations.

Response to Public Comments and Regulatory Review and Amendments in Final-Form Rulemaking

Notice of the proposed rulemaking was published at 34 Pa.B. 61 (January 3, 2004). Publication was followed by a 30-day public comment period during which the Commission received comment from the Pennsylvania Association of Realtors supporting the proposed rulemaking. The House Professional Licensure Committee (HPLC), the Senate Consumer Protection and Professional Licensure

Committee (SCP/PLC) and the Independent Regulatory Review Commission (IRRC) did not comment.

No changes have been made to the final-form rulemaking. The licensing examination fee of $45 has been removed from § 35.203. References to the fees prescribed in § 35.203 for the licensing examination have been removed from §§ 35.271—35.275.

Fiscal Impact and Paperwork Requirements

The final-form rulemaking has no fiscal impact on the Commonwealth, its political subdivisions or the public, that is, the regulated community. The final-form rulemaking does not affect the legal, accounting, reporting or other paperwork requirements of the regulated community. The examination fees are set by and paid directly to the third-party testing vendor.

Sunset Date

The Commission continually monitors the effectiveness of its regulations through communication with the regulated population. Accordingly, no sunset date has been set.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 3, 2004, the Board submitted a copy of the notice of proposed rulemaking, published at 34 Pa.B. 61, to IRRC and the Chairpersons of the HPLC and the SCP/PLC for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC 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 HPLC, the SCP/PLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on June 30, 2004, the final-form rulemaking was approved by the HPLC. On July 28, 2004, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5(g) of the Regulatory Review Act, the final-form rulemaking was deemed approved by IRRC effective July 28, 2004.

Contact Person

Further information can be obtained by contacting Deborah Sopko, Administrative Assistant, State Real Estate Commission, P. O. Box 2649, Harrisburg, PA 17105-2649, www.dos.state.pa.us/bpoa.

Findings

The Commission finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and 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 were considered.

(3) This final-form rulemaking is necessary and appropriate for administering and enforcing the authorizing act identified in this preamble.

Order

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

(a) The regulations of the Commission, 49 Pa. Code Chapter 35, are amended by amending §§ 35.203 and 35.271—35.275 to read as set forth at 34 Pa.B. 61.

(b) The Commission shall submit this order and 34 Pa.B. 61 to the Office of General Counsel and the Office of Attorney General as required by law.

(c) The Commission shall certify this order and 34 Pa.B. 61 and deposit them with the Legislative Reference Bureau as required by law.

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

JOSEPH J. MCGETTIGAN,
Chairperson

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 34 Pa.B. 4528 (August 14, 2004).)

Fiscal Note: Fiscal Note 16A-569 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 04-1632. Filed for public inspection September 3, 2004, 9:00 a.m.]

PROPOSED RULEMAKING

DEPARTMENT OF TRANSPORTATION

[67 PA. CODE CH. 88]

Ignition Interlock

The Department of Transportation (Department), under 75 Pa.C.S. §§ 3805 and 6103 (relating to ignition interlock; and promulgation of rules and regulations by department), proposes to amend Chapter 88 (relating to ignition interlock—statement of policy) to read as set forth in Annex A.

Purpose

The purpose of this proposed rulemaking is to provide standards and procedures for compliance with 75 Pa.C.S. § 3805 regarding the installation of ignition interlock systems on vehicles as a condition for the restoration of the driving privilege after serving suspension for DUI convictions.

Significant Provisions of this Proposed Rulemaking

Section 88.102 (relating to instillation of ignition interlock system) provides that a person subject to 75 Pa.C.S. § 3805 shall engage a provider to install the ignition interlock systems and identify all vehicles owned by or registered to the person. The provider is required to verify the information, install an interlock system on all vehicles owned by or registered to the person and certify to the Department that the installation has been completed. This section also describes the circumstances under which installation of an ignition interlock system is not required. The section also establishes requirements for securing a financial hardship exemption to permit installation of the ignition interlock system on only one vehicle.

Section 88.103 (relating to maintenance of ignition interlock system) requires that vehicles in which an ignition interlock system has been installed be made available for regularly scheduled maintenance and requires the provider to verify that the person has not acquired additional vehicles and that the person remains in compliance with 75 Pa.C.S. § 3805 and Chapter 88.

Section 88.104 (relating to removal of ignition interlock system) outlines when an ignition interlock system may be removed from a vehicle. Section 88.105 (relating to recall and reissuance of ignition interlock restricted license) provides that, upon notification of a person's noncompliance, the Department may recall the person's ignition interlock restricted license. Section 88.106 (relating to issuance of unrestricted license) provides the parameters for the issuance of an unrestricted license following the completion of the ignition interlock restricted license period, and the cancellation of that unrestricted license for subsequent violation.

Sections 88.107 and 88.108 (relating to issuance of license to a person restricted by another state; and ignition interlock for nonresidents) provide for the administration of the ignition interlock provisions with regard to out-of-State drivers and nonresidents.

Persons and Entities Affected

This proposed rulemaking affects drivers required to install an ignition interlock system on one or more of their vehicles under 75 Pa.C.S. § 3805.

Fiscal Impact

This proposed rulemaking will not require the expenditure of any significant additional funds by the Commonwealth. Providers of ignition interlock systems may incur additional costs in the maintenance of the systems and in monitoring and reporting driver compliance with the proposed rulemaking. These costs will be recouped in the installation and maintenance fee charged to the individual vehicle owners or lessees on whose vehicles an ignition interlock system is installed.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 24, 2004, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Transportation Committees. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

Sunset Date

The Department is not establishing a sunset date for this proposed rulemaking since it is needed to administer provisions required by 75 Pa.C.S. (relating to the Vehicle Code). The Department, however, will continue to closely monitor the regulations for effectiveness.

Public Comments

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to Rebecca L. Bickley, Director, Bureau of Driver Licensing, 4th Floor, Riverfront Office Center, 1101 S. Front Street, Harrisburg, PA 17104 within 30 days of publication of this notice in the *Pennsylvania Bulletin*.

Contact Person

The contact person for this proposed rulemaking is Anne P. Titler, Acting Manager, Driver Safety Division, Bureau of Driver Licensing, 4th Floor, Riverfront Office Center, 1101 S. Front Street, Harrisburg, PA 17104, (717) 783-4737.

ALLEN D. BIEHLER, P. E.,
Secretary

Fiscal Note: 18-395. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 67. TRANSPORTATION

PART I. DEPARTMENT OF TRANSPORTATION

Subpart A. VEHICLE CODE PROVISIONS

ARTICLE IV. LICENSING

CHAPTER 88. IGNITION INTERLOCK**[—STATEMENT OF POLICY]**

(*Editor's Note*: As part of this proposed rulemaking, the Department is proposing to delete the text of §§ 88.1—

88.8 (relating to ignition interlock—statement of policy), which appears at 67 Pa. Code pages 88-1—88-4, serial pages (302679) to (302682).)

§§ 88.1—88.8. (Reserved).

§ 88.101. Definitions.

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

Department—The Department of Transportation of the Commonwealth.

Provider—A vendor or person who installs and monitors ignition interlock equipment and who has the authority to verify vehicle ownership through access to the Department's vehicle records system.

Unrestricted license—A replacement license issued under 75 Pa.C.S. § 1951(d) (relating to driver's license and learner's permit) that does not contain the ignition interlock restriction.

§ 88.102. Installation of ignition interlock system.

(a) *General rule.* A person subject to 75 Pa.C.S. § 3805 (relating to ignition interlock) who seeks a restoration of operating privileges shall engage a provider, at the person's own expense, to install the ignition interlock systems required under 75 Pa.C.S. § 3805, and otherwise ensure compliance with this chapter.

(b) *Identification of owned vehicles.* The person seeking a restoration of operating privilege under 75 Pa.C.S. § 3805 shall submit to the provider a certification, on a form provided by the Department, that identifies each motor vehicle owned by the person or registered to the person. A vehicle is considered registered to a person under this chapter if Department records reflect that the vehicle is registered to a person or the person is otherwise designated as the registrant of the vehicle or named as the lessee of the vehicle under 75 Pa.C.S. § 1305 (relating to application for registration). The provider shall verify the accuracy of the facts in the person's certification through an inquiry to the Department's motor vehicle records system.

(c) *Installation and certification.* The provider shall install an ignition interlock system on each motor vehicle owned by the person or registered to the person and shall certify to the Department that the installation has been completed.

(d) *Installation not required.* Installation of an ignition interlock system is not required in the following situations:

(1) *No motor vehicles owned or registered.* If the person certifies to the provider, on a form provided by the Department, that there are no motor vehicles owned by the person or registered to the person, installation is not required on any motor vehicle.

(2) *Inoperable vehicles.* If the person certifies to the provider, on a form provided by the Department, that a motor vehicle owned or registered to the person is inoperable, installation is not required on the inoperable vehicle.

(e) *Verification.* The provider shall verify the accuracy of a certification submitted under subsection (d)(1) and (2) through an inquiry to the Department's motor vehicle records system and shall certify to the Department that the person is in compliance with this subsection.

(f) *Economic hardship exemption.* A person will be exempt from the requirement to install an ignition interlock system on each of the person's motor vehicles if the person demonstrates that the requirement will result in undue financial hardship.

(1) Undue financial hardship must be demonstrated only by one of the following:

(i) Evidence on the person's most recently filed Federal Income Tax return showing an adjusted gross income below 200% of the poverty guidelines issued for that tax year by the United States Department of Health and Human Services for the person's family size.

(ii) Documentation of participation in a governmental assistance program included on a list of applicable programs published by the Department in the *Pennsylvania Bulletin*.

(2) The person shall submit to the provider an application for a hardship exemption on a form provided by the Department along with the required documentation.

(3) The provider shall review the required documentation to confirm that it meets the requirements of paragraph (1).

(4) The provider shall then install an ignition interlock system on only one vehicle owned by the person or registered to the person, forward the application to the Department and certify to the Department that the person has complied with this section.

§ 88.103. Maintenance of ignition interlock system.

(a) *General rule.* The person shall make any vehicles on which an ignition interlock system is installed available for regularly scheduled maintenance by the provider.

(b) *Additional vehicles.* As part of each regularly scheduled maintenance check of the ignition interlock system, the provider shall, through an inquiry to the Department's motor vehicle record's system, verify that no additional vehicles are owned by or registered to the person. Unless the person has been granted an economic hardship exemption under § 88.102(e) (relating to installation of ignition interlock system), if any additional vehicles are owned by or registered to the person, the provider shall, at the person's expense, install and maintain an ignition interlock system on the vehicles.

(c) *Notification of noncompliance.* If the person fails to comply with any provision of this section, the provider shall notify the Department of the person's noncompliance.

§ 88.104. Removal of ignition interlock system.

(a) *General rule.* An ignition interlock system installed in a motor vehicle under this chapter may not be removed from the vehicle unless one of the following occurs:

(1) The motor vehicle is no longer owned by or registered to the person who engaged the provider to install the ignition interlock system.

(2) The person has been issued an unrestricted license by the Department under 75 Pa.C.S. § 3805(c) (relating to ignition interlock).

(3) The provider has certified compliance with § 88.102(e) (relating to installation of ignition interlock system) to the Department and the provider has installed an ignition interlock system on another motor vehicle owned by the person or registered to the person.

(4) The person is no longer a resident of this Commonwealth and has been issued a valid license from the state of current residency.

(b) *Unauthorized removal.* If a person removes an ignition interlock system, or directs a provider to remove an ignition interlock system, under circumstances not provided for in this section, the provider shall notify the Department of the person's noncompliance.

§ 88.105. Recall and reissuance of ignition interlock restricted license.

(a) *Recall.* Upon receipt of notification from a provider of a person's noncompliance with any provision of this chapter, the Department may recall the person's ignition interlock restricted license.

(b) *Reissuance.* After receiving a new certification from a provider of compliance with this chapter by the person, the Department may reissue an ignition interlock restricted license to the person, and the person shall complete the balance of the ignition interlock restricted license period previously imposed before an unrestricted license will be issued.

§ 88.106. Issuance of unrestricted license.

(a) *General rule.* Upon completion of the ignition interlock restricted license period, a person who has been issued an ignition interlock restricted license may apply to the Department for issuance of an unrestricted license on a form provided by the Department.

(b) *Pending charges.* A person applying for an unrestricted license shall notify the Department on the application of any convictions and pending charges of illegally operating a motor vehicle not equipped with an ignition interlock, including all convictions and charges of tampering with an ignition interlock system, in violation of 75 Pa.C.S. § 3808 (relating to illegally operating a motor vehicle not equipped with ignition interlock), for a violation within the preceding 12 months. If the person notifies the Department of a pending charge, or of a conviction that has not yet been reported to and processed by the Department, the Department will deny the application.

(c) *Cancellation of unrestricted license.* If the Department receives or processes a record of a person's first conviction of violating 75 Pa.C.S. § 3808 after issuing an unrestricted license to the person, the Department will cancel the person's unrestricted license and will issue an ignition interlock restricted license to the person after receiving a new certification from a provider of the person's compliance with this chapter.

§ 88.107. Issuance of license to a person restricted by another state.

A person who has been issued a license with an ignition interlock restriction by another state, and who is otherwise eligible for issuance of a license under 75 Pa.C.S. § 1508(b) (relating to examination of applicant for driver's license), may apply for an ignition interlock restricted license from the Department in accordance with this chapter. The person shall become eligible for issuance of an unrestricted license only after serving an ignition interlock restricted license period of 1 year. If the person can provide documentation from the state that initially imposed the ignition interlock restriction satisfactory to the Department showing the amount of time that the person has been subject to the ignition interlock restriction, the person will be given credit against the ignition interlock restricted license period imposed with the Pennsylvania license.

§ 88.108. Ignition interlock for nonresidents.

A person who is required to comply with 75 Pa.C.S. § 3805 (relating to ignition interlock), but is not a resident of this Commonwealth at the time when the person seeks a restoration of operating privileges, shall submit an affidavit and supporting documents to the Department indicating the person's state of residence. If the Department determines that the person is not a resident of this Commonwealth and the person has met all other restoration requirements, the person's driving privilege may be restored. If, however, the person should become a resident of this Commonwealth during the ignition interlock restricted license period, the person will not be issued an unrestricted license until the person complies with 75 Pa.C.S. § 3805 and this chapter.

[Pa.B. Doc. No. 04-1633. Filed for public inspection September 3, 2004, 9:00 a.m.]

FISH AND BOAT COMMISSION

[Correction]

[58 PA. CODE CHS. 91 AND 111]

Boating; General Provisions and Special Regulations Counties

An error occurred in the proposed rulemakings which appeared at 34 Pa.B. 4151—4153 (August 7, 2004). The e-mail address for comments on these proposed rulemakings is ra-pfbcregs@state.pa.us.

[Pa.B. Doc. No. 04-1441 and 04-1442. Filed for public inspection August 6, 2004, 9:00 a.m.]

STATE BOARD OF MEDICINE

[49 PA. CODE CH. 17]

Licensure of Medical Doctors

The State Board of Medicine (Board) proposes to amend §§ 17.1, 17.2 and 17.5 (relating to license without restriction; license without restriction—endorsement; and graduate license) to read as set forth in Annex A.

A. *Effective Date*

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

B. *Statutory Authority*

Section 8 of the Medical Practice Act of 1985 (act) (63 P. S. § 422.8) authorizes the Board to promulgate standards for licensing consistent with sections 27, 28 and 29 of the act (63 P. S. §§ 422.27, 422.28 and 422.29).

C. *Background and Purpose*

The Board has determined that its regulations pertaining to eligibility for a license to practice medicine of graduates of foreign medical schools and applicants for a license by endorsement are, in view of currently available alternatives, unduly restrictive and costly. The Board therefore intends to amend §§ 17.1(b) and 17.5(c)(2) to delete the requirements that graduates of foreign medical schools demonstrate 32 months and 4,000 hours of in-

struction and 72 weeks of clinical instruction. The Board's experience indicates that these requirements have become unduly restrictive to qualified applicants to the practice of medicine in this Commonwealth. Further, the Board has determined that the time and expense involved with verifying each credit hour and each clinical rotation exceeds the relative benefit. This is especially significant given fact that the Educational Commission for Foreign Medical Graduates (ECFMG), the Nationally recognized certifying and examining body, obtains original source verification of medical education prior to certifying foreign medical graduates. Additionally, few, if any, other jurisdictions have comparable requirements. Thus, the Commonwealth is placed at a competitive disadvantage in attracting qualified applicants.

The Board will continue the requirements in §§ 17.1(a)(3) and 17.5(c)(1) that graduates of foreign medical colleges obtain certification from the ECFMG to be eligible for licensing. ECFMG certification is the Nationally recognized standard for assessing the qualifications of graduates of foreign medical schools. It has long been a requirement of the Board and is a requirement for license in most, if not all, jurisdictions in the United States.

Prior to granting certification, the ECFMG verifies that the physician has obtained a diploma from a medical school recognized by the country in which the school is situated; that the school is listed in the International Medical Education Directory, that the curriculum requirement is a minimum of 4 academic years and that the physician has passed steps 1 and 2 of the United States Medical Licensing Examination (USMLE), has passed the Clinical Skills Assessment Examination and has passed the Test of English as a Foreign Language. Additionally, the ECFMG verifies the validity of primary source documentation such as diploma, transcript and documentation of other credentials, as well as any name change documentation.

Accordingly, the Board is satisfied that a physician who graduates from a foreign medical school and obtains ECFMG certification should be eligible for a graduate training license. Once the remaining current requirements of graduate medical training and passage of step 3 of the USMLE are met, the physician should be eligible for an unrestricted license.

The Board intends to amend § 17.2(c), pertaining to license by endorsement, to delete the examination as a mandatory requirement. The deletion of the mandatory requirement will provide the Board with greater discretion in assessing the qualifications for license by endorsement of physicians who have extensive practice experience. In enforcing this section, the Board has reviewed applications from eminently qualified physicians of high professional reputation. The Board has come to recognize that requiring these practitioners to take general licensing examinations poses an undue restriction to licensing these qualified practitioners. Accordingly, the Board intends to strike the examination as a mandatory requirement when reviewing applications for license by endorsement.

The current language in § 17.2(d) describes criteria that the Board viewed as equivalent to ECFMG certification for physicians licensed prior to March 25, 1958. These regulations are no longer necessary because they would be applicable to individuals who would now be approximately 74 years of age. ECFMG certification has included steps 1 and 2 of the USMLE since June and September 1992, respectively. Prior certification by the ECFMG required the passage of one of several alternative examinations. At this point individuals who have prior ECFMG certification should also possess over 10 years of experience. Accordingly, the Board believes it appropriate for endorsement purposes to treat individuals with ECFMG certification as possessing the equivalent of passing scores on steps 1 and 2 of the USMLE. Accordingly, § 17.2(d) will be amended to recognize this equivalency.

The Board identified the criteria it has considered when reviewing applications for license by endorsement from individuals who otherwise are qualified to practice medicine but who have not taken a licensing examination recognized by the Board. This proposed rulemaking will codify those criteria. Under the proposed rulemaking, the Board may consider years of experience, professional and academic achievement and credentials, and certification by a Board recognized specialty certification body in lieu of the examination provided for in § 17.2(c).

The Board also intends to accept the Federation of State Medical Board's Credentials Verification Service (FCVS) as an optional mechanism for applicants to document completion of education, training and examination requirements. The FCVS serves as a depository and as a clearinghouse for applicants. Applicants who are seeking licensure shall submit documentation demonstrating completion of medical education and clinical training. Applicants applying in more than one jurisdiction will have the option of submitting credentialing documents to the FCVS, which will verify the authenticity and accuracy of those documents. Applicants who utilize the FCVS may save time and expense because their credentials will be verified once rather than multiple times.

D. *Description of the Proposed Rulemaking*

The proposed amendments to §§ 17.1(b) and 17.5(c)(2) delete the requirements that graduates of foreign medical schools demonstrate 32 months and 4,000 hours of instruction and 72 weeks of clinical instruction. Section 17.1(b) is further amended to indicate that applicants may use the FCVS to verify their credentials.

Section 17.2(c), pertaining to license by endorsement, will be amended to delete the examination requirement as mandatory. Section 17.2(d) will be amended to accept ECFMG certification as the equivalent of passing scores on steps 1 and 2 of the USMLE.

Section 17.2(e) will be amended to identify the criteria the Board will consider in lieu of examination when reviewing applications for license by endorsement.

E. *Fiscal Impact and Paperwork Requirements*

There is no adverse fiscal impact or paperwork requirement imposed on the Commonwealth, political subdivisions or the private sector.

F. *Sunset Date*

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

G. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 23, 2004, the Board submitted a copy of the proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC), and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

H. *Public Comment*

Interested persons are invited to submit written comments, recommendations or objections regarding the proposed rulemaking to Joanne Troutman, Health Licensing Division, Bureau of Professional and Occupational Affairs, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication for the proposed rulemaking in the *Pennsylvania Bulletin*.

CHARLES D. HUMMER, Jr., M.D.,
Chairperson

Fiscal Note: 16A-4917. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 17. STATE BOARD OF MEDICINE—MEDICAL DOCTORS

Subchapter A. LICENSURE OF MEDICAL DOCTORS

§ 17.1. License without restriction.

(a) Except as provided in **[subsection (b) and]** § 17.2 (relating to license without restriction—endorsement), to secure a license without restriction an applicant shall:

* * * * *

(b) **[An applicant who is a graduate of an unaccredited medical college, who files an application for a license after December 31, 1988—the application is not considered filed with the Board until it is complete—shall, in addition to satisfying the requirements in subsection (a), have completed:**

(1) Four academic years totaling at least 32 months and 4,000 hours of instruction in medical curriculum. Regular attendance shall be verified. Credit will not be given toward this requirement for instruction obtained in other than an accredited or unaccredited medical college, except for clinical rotations assigned under the auspices of the medical college in which the applicant was enrolled while participating in the clinical rotations.

(2) Seventy-two weeks of clinical rotations in an institution which has a graduate medical training program in the clinical area for which credit is sought, or, if the institution is not within the United States, is either a part of a medical college or has a formal affiliation with a medical college.] Applicants may use the Federation's Credentials Verification Service (FCVS) to verify their credentials to the Board.

§ 17.2. License without restriction—endorsement.

* * * * *

(c) *License examination.* In evaluating the qualifications of an applicant who seeks a license without restriction on the basis of endorsement, the Board will accept **[no substitute for]** a passing score on a licensing examination acceptable to the Board. **[See § 17.1(a)(1).]** If the examination was not taken in English, but is otherwise acceptable, and a passing score was secured, the Board will accept the examination result if the applicant has also secured a **passing** score **[of 550]** on the Test of English as a Foreign Language (TOEFL) **[or ECFMG certification]**.

(d) *ECFMG certification.* **[The ECFMG established a certification mechanism which became effective on March 25, 1958. In part, the ECFMG certification process is designed to test whether a graduate of an unaccredited medical college has acquired sufficient medical knowledge to participate in graduate medical training in United States hospitals, and whether a person who has graduated from an unaccredited medical college and whose principal language is not English has mastered the English language so that the person has achieved the communication skills necessary to participate in graduate medical training in United States hospitals. The Board recognizes that many medical doctors who graduated from unaccredited medical colleges prior to the establishment of the ECFMG certification process and who have not received ECFMG certification have, nevertheless, been licensed as medical doctors prior to March 25, 1958, in this Commonwealth and in other states, territories and possessions of the United States. If, prior to March 25, 1958, a graduate of an unaccredited medical college secured a license to practice medicine and surgery without restriction in any of the states, territories or possessions of the United States, and has successfully completed 3 years of graduate medical training, the Board will endorse these qualifications as equivalent to the ECFMG certification. Additionally, the Board will endorse the combination of the successful completion of a fifth pathway program and an ECFMG certification examination as equivalent to the ECFMG certification.] For purposes of endorsement, a graduate from an unaccredited medical school who has obtained certification by the ECFMG shall be deemed to have the equivalent of a passing score on steps 1 and 2 of the USMLE.**

(e) The Board may consider years of experience, professional and academic achievement and credentials, and certification by a Board recognized specialty certification body in lieu of the examination requirement provided in subsection (c).

§ 17.5. Graduate license.

* * * * *

(c) Additional requirements for securing a graduate license are that the applicant shall satisfy the following:

* * * * *

(2) **[Have completed, if the applicant is a graduate of an unaccredited medical college or satisfies the requirements of subsection (b)(2), and files an application for a graduate license after December**

31, 1988—the application is not considered filed with the Board until it is complete—the following:

(i) Four academic years totaling at least 32 months and 4,000 hours of instruction in medical curriculum. Regular attendance shall be verified. Credit will not be given towards this requirement for instruction which was obtained in other than an accredited or unaccredited medical college, except for clinical rotations assigned under the auspices of the medical college in which the applicant was enrolled while he participated in the clinical rotations.

(ii) Seventy-two weeks of clinical rotations in an institution which has a graduate medical training program in the clinical area for which credit is sought, or, if the institution is not within the United States, is either a formal part of a medical college or has a formal affiliation with a medical college.

(3)] Satisfy the requirements in § 16.12 (relating to general qualifications for licenses and certificates).

* * * * *

[Pa.B. Doc. No. 04-1634. Filed for public inspection September 3, 2004, 9:00 a.m.]

STATE BOARD OF NURSING

[49 PA. CODE CH. 21]

Certified Registered Nurse Practitioner Program Approval

The State Board of Nursing (Board) proposes to add §§ 21.361—21.377 (relating to approval of certified registered nurse practitioner programs).

Effective Date

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

Statutory Authority

The proposed rulemaking is authorized under sections 6.1 and 8.1 of the Professional Nursing Law (act) (63 P. S. §§ 216.1 and 218.1).

Background and Need for the Proposed Rulemaking

In 1974, the General Assembly, in amendments to the act and the Medical Practice Act of 1974, authorized the Board and the State Board of Medical Education and Licensure (now the State Board of Medicine) to jointly promulgate regulations which would authorize qualified nurses to perform acts of medical diagnosis and prescribe medical, therapeutic or corrective measures.

In 1997, the Board and the State Board of Medicine jointly promulgated regulations granting certified registered nurse practitioner (CRNP) status to certain professional nurses (RNs). Section 21.271(b) (relating to currently licensed; course of study and experience; continuing education) and § 18.41(b) (relating to currently licensed; course of study and experience; continuing education) of the State Board of Medicine's regulations provide that "[t]he applicant [for certification] shall have successfully completed a course of study consisting of at least 1 academic year in a program administered by nursing in an institution of higher education as approved by the Boards."

The act of December 9, 2002 (P. L. 1567, No. 206) (Act 206) amended section 2.1 of the act (63 P. S. § 212.1) to give the Board exclusive jurisdiction over CRNPs, including CRNP education. Prior to the enactment of Act 206, these regulations were approved for publication as proposed rulemaking by both the Board and the State Board of Medicine. Section 6.1 of the act authorizes the Board to establish standards for the operation and approval of nursing education programs for RNs. Section 8.1(b)(1)(i), added by Act 206, requires the Board to approve CRNP education programs.

Description of Proposed Rulemaking

In developing the proposed rulemaking, the Board utilized the regulatory scheme developed for approving schools of nursing for RNs. The following is a section by section analysis of the proposed additions pertaining to CRNP education.

§ 21.361. Approval of programs.

Section 21.361 provides that the Board will approve CRNP programs that require a bachelor's degree for admission and that culminate in a master's degree in nursing or postmaster's certificate. The requirement of a bachelor's degree for admission is consistent with criteria established by the National League of Nursing (League), the organization that provides standardized guidelines for nursing education throughout the United States. This requirement is also consistent with section 8.1(b) of the act, added by section 3 of Act 206, which provides for a 2-year period before all approved programs must culminate in a master's or postmaster's degree. Section 21.361 also provides that the Board will approve RN to MSN (master of science in nursing) and RN to ND (doctorate degree in nursing) and other experimental or accelerated programs that culminate with at least a master's degree. This provision serves to permit nontraditional CRNP programs for RNs who obtained their education through an associate degree or diploma program to become approved for CRNP education. Finally, § 21.361 provides that the goal of approved programs is to prepare the RN to function as a nurse practitioner.

§ 21.362. Annual reports and compliance reviews; list of approved programs.

Section 21.362 sets forth the requirements that approved programs complete an annual report and conduct a compliance review triennially. This requirement is consistent with the requirements imposed by the Board on other nursing education programs. See § 21.31 (relating to surveys; list of approved schools). In response to the information provided in the compliance review sent to the Board, the Board will send each program a written report of recommendations or requirements. Finally, § 21.362 provides that the Board will annually publish a list of approved programs. The same procedures are already established for other nursing education programs. See § 21.31.

§ 21.363. Approval process.

Section 21.363 details the two types of approval status granted to nursing education programs. Approved programs are initially placed on full approval status. A program may be placed on provisional approval if it is not in compliance with the Board's regulations. The same procedures are already established for other nursing education programs. See § 21.33 (relating to types of approval).

§ 21.364. Removal from approved list; discontinuance of CRNP program.

Section 21.364 details the procedure the Board will follow if it determines that a program should be placed on provisional approval or disapproved. The procedure includes a right to a hearing and the right to cure the program's deficiencies. These same procedures are already established for other nursing education programs. See § 21.34 (relating to removal from approved list).

§ 21.365. Establishment.

Section 21.365 provides the criteria under which a program must be established, and the information proposed programs must submit to the Board to become approved programs. The program must be developed and maintained under a regionally or Nationally accredited university or college; must be under the direction of a CRNP with a current Pennsylvania license and an earned doctorate degree (or plan to complete doctoral preparation); may be under the school's nurse educational program; and must submit information to the Board about the program's administration. These provisions are consistent with the criteria imposed on other nursing education programs. See § 21.51 (relating to establishment).

§ 21.366. Organizational requirements.

Section 21.366 sets forth the organizational requirements for programs that are seeking Board approval. The program must be a definable entity within the institution with adequate funding. The college or university under which the program operates shall make resources available to the program and interact with the program and the program's faculty in accordance with university policies. These organizational requirements are consistent with the organizational requirements for other nursing education programs. See §§ 21.61 and 21.62 (relating to baccalaureate and associate degree programs: organizational requirements; and diploma programs: organizational requirements).

§ 21.367. Faculty requirements for certified registered nurse practitioner programs.

This section sets forth the requirements for faculty in the program and the program's clinical courses. Faculty shall demonstrate expertise and maintain expertise in the subject area they are teaching; clinical faculty shall have at least 2 years of nurse practitioner experience and shall maintain clinical competency through ongoing clinical practice. These requirements are consistent with the League guidelines for CRNP programs and requirements for other nursing programs. See §§ 21.71 and 21.74 (relating to faculty and staff requirements for baccalaureate and associate degree programs; and faculty and staff requirements for diploma programs).

§ 21.368. Faculty policies.

Section 21.368 relates the faculty policies and provides that faculty shall be employed by and responsible to the college or university, that CRNP faculty shall be governed by college- or university-wide policies, that faculty duties shall be defined in writing and that CRNP faculty hours must be consistent with the faculty hours in other college or university programs. These requirements are consistent with those imposed on other nursing education programs. See §§ 21.72 and 21.75 (relating to faculty policies).

§ 21.369. General curriculum requirements.

Section 21.369 relates to the general curriculum requirements for CRNP programs. The curriculum must be developed, implemented and evaluated by the program's faculty to include the knowledge, attitudes, skills and abilities necessary to practice as a CRNP. The curriculum must include both theoretical and clinical experiences, and instructional strategies must be appropriate to the program. The curriculum must include both general nursing courses and advanced nursing practice courses, including pharmacology. Section 21.369(c)(3) details requirements for clinical courses, including that students complete a minimum of 500 clinical hours. Section 21.369(c)(4) details requirements for advanced pharmacology courses. This section also provides that the program's clinical facilities must provide students with a variety of clinical experiences. Finally, the curriculum must prepare graduates for CRNP practice. These requirements are consistent with League guidelines for the education of CRNPs and Board requirements for other nursing programs. See § 21.81 (relating to general curriculum requirements).

§ 21.370. Evaluation.

Section 21.370 sets forth the requirements for the annual evaluation of the CRNP program conducted by the program and submitted to the Board under § 21.361(a). The evaluation must be conducted by faculty, administrators and students and include teacher effectiveness and curriculum. In addition, outcomes must be measured 1 and 3 years postgraduation. These requirements are consistent with those imposed on other nursing education programs. See § 21.82 (relating to curriculum evaluation).

§ 21.371. Curriculum changes requiring Board approval.

Section 21.371 provides that the Board approve curriculum changes that are substantial changes in program objectives, course content or instruction that affect the integration of material into the total curriculum and changes that confer a new or different certification specialty. Because Act 206 provides that, in 2 years, nurse practitioner certification may only be granted to nurses who hold certification from a Board-recognized National certification organization which required passing of a National certifying examination in the particular clinical specialty area, the Board anticipates that many programs will reorganize under Nationally-recognized certification specialties. These requirements are consistent with those imposed on other nursing education programs. See § 21.83 (relating to curriculum changes requiring Board approval).

§ 21.372. CRNP program philosophy; purposes and objectives.

Section 21.372 relates to the CRNP program philosophy. The section provides that the program must adopt a clear statement of the program's philosophy and purposes, and that the philosophy and purposes must be developed and reviewed by the faculty and consistent with the acceptable social, educational and CRNP standards. These requirements are consistent with the League guidelines and Board regulations for other nursing education programs. See §§ 21.84, 21.86 and 21.88 (relating to baccalaureate curriculum philosophy; purposes and objectives; associate degree curriculum philosophy; purposes and objectives; and diploma curriculum philosophy; purposes and objectives).

§ 21.373. Facility and resource requirements.

Section 21.373 provides that the support of the college or university must be adequate to meet the CRNP program's needs for physical plant, library resources and clinical areas. These requirements are consistent with

financial and resource requirements placed on other schools of nursing. See § 21.91 (relating to facility and resource requirements).

§ 21.374. Selection and admission standards.

Section 21.374 relates to the selection and admission standards for CRNP programs. Programs may admit currently licensed RNs holding a baccalaureate degree, or its equivalent, who meet the admissions requirements to the college or university's graduate program. The Board regulates the admission standards of other nursing programs. See §§ 21.101 and 21.102 (relating to selection and admission standards; and admission of classes). The League guidelines require a baccalaureate degree for admission to a CRNP program.

§ 21.375. Advanced standing.

This section provides that a CRNP program must have a written policy, consistent with that of the college or university, regarding granting advanced standing. This requirement is consistent with the requirement placed on other nursing schools. See § 21.103 (relating to transfer of students or advanced standing).

§ 21.376. Program records.

Section 21.376 details the requirements for keeping the program's records. Student records must be maintained in locked files on forms specifically designed for the program, and must be kept for 50 years. Faculty records must include the Pennsylvania display license and certification, educational records and documentation of continuing education. Administrative records must include affiliation agreements, minutes of meetings, annual reports, follow-up studies of graduates, budgets and written policies. Finally, the school bulletin must be comprehensive and current, include refund policies and policies related to admission, promotion, retention, transfer, advanced placement and dismissal. These requirements are consistent with the requirements applied to other nursing education programs. See §§ 21.121—21.125 (relating to records).

§ 21.377. Custody of records.

This section relates to the custody of records and provides for transfer of records to the college or university if the program closes. If the college or university closes, the Board must be provided with information as to where the records are to be kept. This section is consistent with § 21.125 (relating to custody of records), which applies to other nursing programs.

The Board sent this proposed rulemaking to numerous nursing associations and hospital systems. These organizations were: American Association of Neuroscience Nurses; Emergency Nurses Association; GPC—Oncology Nursing Society; The Hospital and Healthsystem Association of Pennsylvania; Intravenous Nurse Society; Licensed Practical Nurses Association of Pennsylvania; Pennsylvania Association of Home Health Agencies; Pennsylvania Association of Private School Administrators; Pennsylvania Association of Non-Profit Homes for the Aging; Pennsylvania Association of Nurse Anesthetists; Pennsylvania Association of Practical Nursing Program Administrators; Pennsylvania Coalition of Nurse Practitioners; Pennsylvania College of Associate Degree Nursing; Pennsylvania Council of Operating Room Nurses; Pennsylvania Department of Health-Bureau of CH Systems; Pennsylvania Health Care Association; Pennsylvania Higher Education Nursing Schools Association; Pennsylvania League for Nursing, Inc.; Pennsylvania Organization of Nurse Leaders; Pennsylvania Society of Gastroenterology Nurses and Associates; Pennsylvania State Nurses Association; School Nurse Section, Southwestern Pennsylvania Organization for Nurse Leaders; Pennsylvania Medical Society; Nurses of Pennsylvania; Pennsylvania Association of School Nurses and Practitioners; Pennsylvania Nurses Association; and Professional Nursing Resources, Inc. In addition, the Board considered the impact the proposed rulemaking would have on the regulated community and on public safety and welfare.

Fiscal Impact and Paperwork Requirements

The proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions because the costs of the Board's activities are supported by fees charged to licensees and others who benefit from specific activities of the Board. In this case, the fees for approval of CRNP programs will be identical to the fees charged for approval of RN programs. The proposed rulemaking will impose no additional paperwork requirements upon the Commonwealth or political subdivisions. CRNP educational programs will be required to submit documentation regarding their programs for the Board's review. In addition, these programs will be required to submit a brief annual report and more comprehensive triennial report to the Board, as is currently required of RN education programs.

Sunset Date

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 23, 2004, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comment

Interested persons are invited to submit written comments, recommendations or objections regarding this proposed rulemaking to Ann Steffanic, Board Administrator, State Board of Nursing, P. O. Box 2649, Harrisburg, PA 17105 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

JANET SHIELDS, CRNP,
Chairperson

Fiscal Note: 16A-5119. No fiscal impact; (8) recommends adoption.

Annex

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 21. STATE BOARD OF NURSING

Subchapter C. CERTIFIED REGISTERED NURSE PRACTITIONERS

APPROVAL OF CERTIFIED REGISTERED NURSE PRACTITIONER PROGRAMS

§ 21.361. Approval of programs.

(a) The Board will consider for approval CRNP programs which require, at a minimum, a baccalaureate degree in nursing for admission and which culminate with a master's degree in nursing or postmaster's certificate.

(b) The Board will consider for approval Registered Nurse (RN) to MSN (Master of Science in Nursing), RN to N.D. (Nursing Doctorate), experimental or accelerated programs that culminate with at least a master's degree in nursing.

(c) The Board will consider for approval those programs with a primary goal to prepare the RN to function as a nurse practitioner in an expanded role in a particular specialty area and perform acts of medical diagnosis, prescription of medical therapeutic or corrective measures in collaboration with a physician licensed to practice medicine in this Commonwealth.

§ 21.362. Annual reports and compliance reviews; list of approved programs.

(a) Approved programs must complete an annual report to the Board on a form provided by the Board. The annual report must update information regarding the program's administration, faculty, curriculum and student enrollment.

(b) Approved programs must conduct a compliance review of CRNP programs at least once every 3 years. The compliance review must be submitted to the Board on a form provided by the Board. The compliance review must include information regarding accreditation, administration, clinical sites, faculty, curriculum, testing, educational resources and student body of the program.

(c) The Board will send a written report of recommendations or requirements, or both, based on the CRNP program's compliance review, to the CRNP program. The Board will conduct an announced or unannounced site compliance visit at its discretion.

(d) Lists of approved CRNP programs will be compiled and published annually (the approved list) and will be made available for distribution. The approved list will consist of programs on full approval status and programs on provisional approval status.

§ 21.363. Approval process.

(a) A program that meets the requirements of §§ 21.361, 21.365—21.369 and 21.372—21.375 will be granted full approval status.

(b) The Board will place a CRNP program on provisional approval status if, as evidenced by the compliance review or other information, the program is not in compliance with the Board's regulations. The Board will require progress reports or other information deemed necessary for the evaluation of a program on provisional approval status. Two years will be the maximum time allowed for the correction of the deficiencies that resulted in the program being placed on provisional approval status. If the program on provisional approval status is not in compliance within this designated time, the CRNP program will be removed from the approved list.

(c) The Board may return a CRNP program on provisional approval status to full approval status if the program attains and maintains the acceptable standards in §§ 21.365—21.378, and adheres to the policies and regulations of the Board.

§ 21.364. Removal from approved list; discontinuance of CRNP program.

(a) The Board will give at least 30 days notice of intent to remove a CRNP program from full approval status to provisional approval status or from provisional approval status to removal from the approved list and will provide an opportunity for the program's officials to present documentation, within 10 days of notification of intent to remove, to show why approval should not be withdrawn. The Board will hold a hearing, within 30 days of the submission of documentation, at which the program official may appear and present additional evidence to show cause as to why approval should not be withdrawn. The 30-day period for holding a hearing may be waived by consent of the parties. Failure to hold a hearing within 30 days will not be cause to withdraw the notice of intent to remove.

(b) Programs wishing to discontinue must follow the procedures in § 21.41 (relating to discontinuance of a program of nursing).

§ 21.365. Establishment.

(a) A CRNP program must be developed and maintained under the authority of a regionally or Nationally accredited university or college.

(b) A CRNP program must be under the direction of a faculty member who holds an active certification as a Pennsylvania CRNP and an earned doctorate degree or a specific plan for completing doctoral preparation. The length of appointment of temporary and acting directors of CRNP programs may not exceed 1 year.

(c) A university or college may conduct CRNP programs within the graduate program of the university or college where it resides, if the college or university has a professional nurse program and the philosophy of the parent institution encompasses dual programs of education. A college or university desiring to establish a program of nursing is required to:

(1) Submit a proposal to the Board, at least 12 months prior to the first intended admission of students, which includes the following:

(i) Sufficient statistical data to support the need for a certified registered nurse practitioner program within the community and to assure availability of an adequate number of interested candidates.

(ii) Letters of intent from the cooperating agencies indicating positive commitment to the CRNP program and the availability of sufficient clinical resources to meet the educational requirements of the CRNP program.

(iii) The projected cost of the CRNP program including costs for faculty, clinical teaching resources, educational supplies, office supplies, and the like, and sufficient evidence of stable financial support.

(2) Employ the director of the CRNP program prior to the intended admission date of students.

(d) The planned CRNP educational program proposal must include:

(1) A statement of the organization and administrative policies of the college or university.

(2) A statement of the administrative structure and functions of the nursing school.

(3) A statement of the educational preparation and nursing experience of faculty members employed.

(4) A statement of the philosophy, purposes and objectives of the program, which are congruent with the philosophy of the university or college.

(5) A statement of the curriculum, based on sound educational concepts, and including detailed course descriptions, objectives, and descriptions of the relevant clinical practice related to the specialty area.

(6) A statement of admissions policies.

(7) A statement identifying the National educational standards and guidelines used in the development of the nursing practitioner program.

(8) Statements of financial viability for 5 years.

(9) A description of the clinical facilities.

(e) Following the review of the CRNP program proposal and before final Board action is taken to grant permission to recruit students, an initial facility survey may be made by the designee of the Board.

§ 21.366. Organizational requirements.

(a) The CRNP program must be a definable entity distinguishable from other educational programs and services within the institution.

(b) Relationships with central administrative officers, interrelationships among other disciplines and services of the college or university, and representation on college or university councils and committees for faculty in a CRNP program must be consistent with the interaction and responsibilities accorded to other faculty members of the college or university.

(c) Adequate funds must be allocated and properly budgeted for the sound and effective operation of the CRNP program.

(d) Policies in effect for faculty members of the CRNP program must be those in effect for faculty members throughout the college or university.

(e) The resources, facilities and services of the college or university must be available to and used by the CRNP program and be adequate to meet the needs of the faculty and students.

§ 21.367. Faculty requirements for certified nurse practitioner programs.

(a) The minimum faculty requirements submitted under § 21.365(d)(3) (relating to establishment) for the program are:

(1) Qualified faculty members teaching in their areas of specialized practice encompassed within the curriculum.

(2) Additional faculty members as needed to insure an educationally effective student-faculty ratio.

(b) Faculty qualifications for clinical courses in the CRNP program are as follows:

(1) Faculty members shall provide evidence of expertise in their subject areas, and when appropriate, be currently licensed and certified in this Commonwealth and hold and maintain National certification. Faculty members already employed in a CRNP program who do not hold National certification in their area of specialization shall obtain National certification, if available, by _____ (*Editor's Note:* The blank refers to a date 2 years after adoption of this proposal.).

(2) Faculty members shall have at least 2 years of clinical nurse practitioner experience.

(3) Faculty members shall give evidence of maintaining expertise in their clinical or functional areas of specialization.

(4) Faculty members shall maintain currency in clinical practice through ongoing clinical practice.

(5) Faculty members shall meet specialty requirements for continuing competency in accordance with their educational program responsibilities.

§ 21.368. Faculty policies.

(a) The faculty shall be employed by and be responsible to the college or university.

(b) Policies, including personnel policies in effect for CRNP program faculty, must be those in effect for faculty members throughout the college or university.

(c) Functions and responsibilities of each faculty member must be defined in writing.

(d) Teaching hours of CRNP faculty must be consistent with the policies of the college or university.

§ 21.369. General curriculum requirements.

(a) The curriculum must be developed, implemented and evaluated by the faculty and be based on the philosophy and objectives of the school.

(b) The curriculum must be organized and developed to include the knowledge, attitudes, skills and abilities necessary for practice as a CRNP and in accordance with this chapter as related to CRNP practice.

(c) The curriculum must provide for both clinical and theoretical experiences. The curriculum must have the following components incorporated into each CRNP program:

(1) *Graduate nursing core.* The graduate nursing core must include the following content:

(i) Research.

(ii) Health care policy and organization.

(iii) Ethics.

(iv) Professional role development.

(v) Theoretical foundations of nursing practice.

(vi) Human diversity and social issues.

(vii) Health promotion and disease prevention.

(2) *Advanced nursing practice core.* The advanced nursing practice core must include the following content:

(i) Advanced health/physical assessment.

(ii) Advanced Physiology and Pathophysiology.

(iii) Advanced pharmacology.

(3) *Specialty content.* The CRNP student shall receive sufficient clinical experience to provide depth and breadth in a given specialty or with designated populations, geared to nurse practitioner practice. Clinical hours must

meet at least National certification requirements with a minimum of 500. Additional hours must be provided for specialties that provide care to multiple age groups (for example, family CRNPs) or for those who will practice in multiple care settings. When defining additional clinical hours, the complexity of the specialty content, as well as the need for clinical experience to enhance retention and skills, shall be considered. The expected graduate competencies must be the key determinant of the clinical component.

(4) *Advanced pharmacology.*

(i) CRNP program graduates shall have a well-grounded understanding of pharmacologic principles, which includes the cellular response level. This area of core content must also include both pharmacotherapeutics and pharmacokinetics of broad categories of pharmacologic agents. Advanced pharmacology must be taught in a separate or dedicated 3-credit or 45-hour course. Pharmacology content must also be integrated into the other content areas identified in the advanced practice nursing core. Additional application of this content must also be presented within the specialty course content and clinical experiences of the program to prepare the CRNP to practice within a specialty scope of practice.

(ii) The purpose of this content is to provide the graduate with the knowledge and skills to assess, diagnose and manage (including the prescription of pharmacologic agents) a patient's common health problems in a safe, high quality, manner.

(iii) The course work must provide graduates with the knowledge and skills to:

(A) Comprehend the pharmacotherapeutics of broad categories of drugs.

(B) Analyze the relationship between pharmacologic agents and physiologic/pathologic responses.

(C) Understand the pharmacokinetics and pharmacodynamics of broad categories of drugs.

(D) Understand the motivations of clients in seeking prescriptions and the willingness to adhere to prescribed regimens.

(E) Safely and appropriately select pharmacologic agents for the management of client health problems based on client variations, the problem being managed, and cost effectiveness.

(F) Provide comprehensive and appropriate client education in relation to prescribed pharmacologic agents.

(G) Analyze the effects of single and multiple drug regimens on the client's health and functioning.

(H) Understand the variety of State legal requirements for CRNP prescriptive authority.

(I) Fulfill legal requirements for writing prescriptions as a CRNP in this Commonwealth in accordance with §§ 21.283—21.287 (relating to CRNP practice).

(5) *Professional role content.* The course work must provide graduates with curriculum in:

(i) Management of client health/illness status.

(ii) The nurse-client relationship.

(iii) The teaching-mentoring function.

(iv) Professional role.

(v) Managing and negotiating health care delivery systems.

(vi) Monitoring and ensuring the quality of health care practice.

(d) The instructional strategies must be appropriate and consistent with the program's philosophy, mission and objectives.

(e) The clinical facilities of the CRNP program must provide a variety of experiences with sufficient quality and quantity. Clinical experiences must be consistent with the scope of practice.

(f) CRNP courses and curriculum must be organized to continue the development of values, understandings, knowledge and skills needed in all aspects of practice as a CRNP and emphasize specialty areas.

(g) The ratio of students to faculty must insure optimal learning opportunities in clinical laboratory sessions and must be consistent with the objectives of the CRNP courses.

(h) The curriculum for CRNP programs must give evidence of providing learning experiences which will prepare graduates for CRNP practice. The standards of practice are defined and delineated by the profession and §§ 21.18 and 21.284 (relating to standards of nursing conduct; and prescribing and dispensing parameters).

(i) Course syllabi that identify all aspects of each course must be developed and readily available.

§ 21.370. Evaluation.

(a) As part of the CRNP program approval process, the CRNP program must submit an outline of, and appropriate time line for, its planned evaluative process. The evaluative process must include, at a minimum, the following:

(1) A self-evaluation process completed by faculty, administrators and students of the CRNP program evidencing input into the CRNP program by faculty, administrators and students. The self-evaluative process must include:

(i) Peer evaluation of teacher effectiveness.

(ii) Student evaluation of teaching and program effectiveness.

(iii) Periodic evaluation of the program by faculty, students and graduates of the program.

(iv) Periodic evaluation of the program's human and fiscal resources, program policies, facilities and services.

(2) Provisions for the program's curriculum evaluation process, completed by faculty, students, and graduates of the program. The curriculum must:

(i) Assess the program's effectiveness relative to current standards of practice.

(ii) Assess the program's effectiveness relative to current trends in education and health care.

(iii) Assess the program's effectiveness in attaining program objectives

(iv) Demonstrate that curriculum changes have been evaluated by the CRNP program faculty and are consistent with core competencies in the CRNP specialties.

(3) Provision for ongoing student evaluative process that assesses the student's progress toward and ultimate achievement of program objectives. The student evaluative process must:

(i) Be evident in the course outlines provided to students at the beginning of each course.

(ii) Include documentation of faculty-supervised performance evaluation of students.

(iii) Utilize evaluation tools that reflect nurse practitioner National competencies in the specialty areas.

(iv) Include student evaluation of the quality of clinical experiences.

(b) Programs must measure outcomes of graduates at 1-year and 3-year intervals postgraduation.

§ 21.371. Curriculum changes requiring Board approval.

Curriculum changes that require Board approval include changes in:

(1) Program objectives, course content or instruction that affect the integration of material into the total curriculum.

(2) An approved program which deem a new or different certification specialty title for graduates of that program require approval as a new CRNP education program.

§ 21.372. CRNP program philosophy; purposes and objectives.

(a) A clear statement of philosophy and purposes of the CRNP program, consistent with the philosophy and purposes of the college or university, must be formulated and adopted.

(b) The philosophy, purposes and objectives of the CRNP program must be developed and clearly stated by the faculty and be reviewed and revised at stated time intervals by this group.

(c) The philosophy and purposes of the CRNP program must be consistent with currently accepted social, educational and CRNP standards.

§ 21.373. Facility and resource requirements.

(a) The support of the college or university must be adequate to meet CRNP program needs and include the following:

(1) Faculty and staff offices.

(2) Classrooms, conference rooms and laboratories.

(3) Administrative and secretarial support.

(4) Interactive information systems (computer/technical support) sufficient to develop, manage and evaluate the program.

(b) There must be current, appropriate, adequate and available learning resources to include audio/visual equipment, computers and library materials.

(c) The CRNP program must provide appropriate clinical resources and experience for students, including:

(1) Space for faculty's and students' needs.

(2) Exposure of appropriate duration to a patient population sufficient in number to insure that the student can meet program goals.

(3) Faculty to provide adequate supervision and evaluation.

(i) Supervision of all students in the clinical areas is the responsibility of the CRNP program faculty.

(ii) One program faculty member shall supervise no more than 6 students in a clinical course. If faculty are providing onsite preceptorship, the maximum ratio is two students per faculty member. If faculty are managing their own caseload of patients, the maximum ratio is one student per faculty member.

(iii) Onsite clinical preceptors may include: advanced practice nurses who are currently licensed, physicians who are currently licensed and CRNPs who are currently licensed and certified. One preceptor may supervise no more than one student at any one time.

§ 21.374. Selection and admission standards.

(a) Policies and procedures related to the selection and admission of students are the responsibility of the individual program. Consideration must be given to scholastic aptitude, academic achievement, personal qualities and physical and emotional health necessary to fulfill the objectives of the program.

(b) Students admitted to CRNP programs shall meet the requirements for admission to the university or college for a master's degree in nursing programs and additional requirements that may be established for the CRNP program.

(c) Students admitted to CRNP programs shall have successfully completed the equivalent of a baccalaureate degree in nursing from an accredited institution of higher learning in a nursing program.

(d) Students admitted to CRNP programs shall be currently licensed as a registered nurse (RN) or, if enrolled in an RN to Master of Science in Nursing (MSN) or RN to Nursing Doctorate (ND) program shall complete all competencies for undergraduate requirements prior to taking graduate courses.

§ 21.375. Advanced standing.

The school must have a written policy consistent with its philosophy and objectives concerning criteria for granting advanced standing. The policy of master's degree programs must be consistent with that of the college or university.

§ 21.376. Program records.

(a) The program must employ a record system that ensures the operation of the program. Records must be maintained in locked files which assure their safekeeping.

(b) Each nursing faculty shall select record forms specifically for the CRNP program that include the following:

(1) Student records, including the permanent record, containing both clinical and theoretical experience and achievement, must be kept for 50 years.

(2) Faculty records, including the following:

(i) "Display portion" of current Pennsylvania nursing licenses and CRNP certification.

(ii) Records of preparation and experience, including official college transcripts.

(iii) Current record of continuing education activities.

(iv) Record of National certification, if applicable.

(3) Administrative records, including the following:

(i) Affiliation agreements with cooperating agencies.

(ii) Minutes of meetings.

(iii) Annual reports.

(iv) Follow-up studies of graduates.

(v) Budgets.

(vi) Current written policies.

(4) School bulletin, including the following:

(i) Comprehensive and current information.

(ii) Clearly defined refund policies governing fees and tuition paid by the students.

(iii) Clearly defined policies relating to admission, promotion, retention, transfer, advanced placement and dismissal.

§ 21.377. Custody of records.

(a) When a program closes, the college or university is responsible for the safekeeping of the records of students for at least 50 years after graduation of the last class.

(b) If the college or university also closes, advice should be obtained from the Board concerning the permanent safekeeping and availability of the records of the school of nursing.

(c) The Board shall be informed in writing concerning the permanent placement of these records.

[Pa.B. Doc. No. 04-1635. Filed for public inspection September 3, 2004, 9:00 a.m.]

[49 PA. CODE CH. 21]
Temporary Practice Permits

The State Board of Nursing (Board) proposes to add §§ 21.7 and 21.149 (relating to temporary practice permits) to read as set forth in Annex A.

Effective Date

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

Statutory Authority

The proposed rulemaking is authorized under sections 2.1(k) and 4.1 of the Professional Nursing Law (act) (63 P. S. §§ 212.1(k) and 214.1) and sections 3.1 and 17.6 of the Practical Nurse Law (63 P. S. §§ 653.1 and 667.6).

Background and Need for the Proposed Rulemaking

Over the past 2 years, the Board has experienced a great increase in the number of applications for temporary practice permit (TPP) extensions, specifically among individuals seeking extensions to TPPs for currently-licensed nurses. Section 14.1 of the act and section 17.6 of the Practical Nurse Law authorize the Board to issue a TPP to a person who holds a current license issued by another state, territory or possession of the United States.

Qualifications for licensure vary from state to state. In this Commonwealth, individuals who have graduated from a school of nursing that is not approved by the Board (that is, a nursing education program outside this Commonwealth) shall have their educational program evaluated to determine if it is equivalent to the education required for licensure in this Commonwealth. In addition, an individual shall have passed the licensure examination (NCLEX-RN for professional nurses or NCLEX-PN for practical nurses). See section 7 of the act (63 P. S. § 217) and section 16 of the Practical Nurse Law (63 P. S. § 656).

In reviewing the applications for extension, the Board discovered that the vast majority of applicants have not timely completed their applications for licensure. The statute requires that an applicant file an application for licensure at the same time as the application for a TPP. Submission of an application for licensure triggers the review of the applicant's nursing education program for equivalency, because one of the supporting documents submitted is a transcript of the individual's course work in his nursing education program. Upon review of the requests for extension of TPPs, the Board has discovered that applicants fail to provide the Board with required supporting documents in their license applications. The Board has identified this failure to provide supporting documentation as the reason these nurses experience delays in obtaining licensure. This proposed rulemaking sets forth time limits by which an applicant shall request supporting documentation for licensure. These time limits should dramatically reduce the requests for extensions to TPPs.

The Board seeks to reduce multiple or lengthy extensions to TPPs for several reasons. First, until an applicant has completed the application for licensure, the Board has not reviewed the applicant's qualifications to practice nursing. Therefore, it is possible that some applicants for licensure may practice in this Commonwealth for a period of time before the Board has determined whether the individual meets the statutory qualifications, which may in turn pose a threat to public health and safety. Second, the statute does not provide a mechanism by which the Board can discipline an individual who holds a TPP for misconduct. The Board can demand the return of the TPP and, if the person does apply for licensure, any misconduct while holding a TPP may provide sufficient grounds to deny licensure. However, the Board cannot require that the TPP holder participate in educational programs or place the TPP on probation.

Section 21.7 and 21.149 are virtually identical except that § 21.7 applies to professional nurses and § 21.149 applies to practical nurses. Therefore, the Board will describe only § 21.7. Subsection (a) applies to TPPs for graduate nurses and subsection (b) applies to TPPs for currently licensed nurses.

Description of the Proposed Rulemaking

Section 21.7(a)(1) mirrors section 4.1 of the act in requiring an individual who has graduated from an approved nursing program who wishes to practice as a graduate nurse prior to taking the licensing examination to apply for a TPP. In addition, § 21.7(a)(1) mirrors the statutory restriction that a TPP is valid for up to 1 year and expires if the TPP holder fails the licensing examination.

Section 21.7(a)(2) requires that the TPP holder submit an application for licensure by examination to the Board and register with the professional testing organization at least 90 days prior to the expiration date of the TPP. This provision is based on the 90-day validity period of the "authorization to test." In other words, once an applicant has been approved to take the licensing examination, that approval is valid for 90 days.

Section 21.7(a)(3) provides that a TPP holder who wishes to apply for an extension of the TPP shall apply for the extension at least 60 days prior to the date the TPP is set to expire. In addition, the applicant for extension shall provide the Board with a detailed explanation of the need for the extension. Finally, § 21.7(a)(3) notifies these applicants that the Board will only grant an extension in cases of illness or extreme hardship. The 60-day time period allows the Board sufficient time to process and consider a request for an extension at a meeting of the Board.

Section 21.7(a)(4) provides that an extension will not be granted to an individual who has failed to comply with the 90-day and 60-day deadlines in § 21.7(a)(2) and (3). This provision is necessary to relieve the Board from considering extension applications from applicants who have not taken the steps necessary to timely obtain permanent licensure from the Board.

Section 21.7(b) applies to TPPs for currently-licensed professional nurses. Section 21.7(b)(1) mirrors section 4.1 of the act by providing that an individual who is currently licensed and wishes to practice in this Commonwealth during the 1-year period from the date of application for licensure until the Board makes a determination on the application may apply for a TPP. The Board specifies that the applicant need only submit Form 1 of the application for licensure, because the other forms are essentially verifications of education and licensure from the other state and must be submitted directly from the individual's educational institution and the other state. Moreover, once all the forms are completed, the Board will consider the application for licensure and a TPP would not be necessary.

Section 27.1(b)(2) provides that the individual applying for a TPP as a currently-licensed nurse shall demonstrate proficiency in English. This is necessary to ensure that the nurse can pass the licensure examination and can take and execute orders in the course of the nurse's practice. Currently, all licensed nurses for whom English is a second language who apply for licensure through the Commission on Graduates of Foreign Nursing Schools (CGFNS) are required to pass an English proficiency examination. The Board's experience with the CGFNS strongly suggests that requiring this examination actually speeds the licensure process and helps to ensure public safety. The nurse may demonstrate English proficiency by submitting proof that the nursing education program was conducted in English or by passing an English proficiency examination. The nurse shall submit proof of English proficiency with Form 1 of the application. This provision is designed to ensure that a nurse who will be granted a TPP is sufficiently knowledgeable in English to communicate with patients, other nurses and doctors from whom the nurse will take orders. The provision ensures that the nurse will not be hindered from safe practice by an inability to understand English.

Section 21.7(b)(3) requires the TPP holder to submit Form 2 of the application for licensure within 45 days of the date the TPP is granted. Form 2 includes the application for verification of licensure from the foreign jurisdiction, request of certification of the individual's nursing education program, including a copy of the individual's transcript translated into English, if necessary, and verification that the applicant has submitted an application to the CGFNS. Section 5 of the act (63 P. S. § 215) and § 21.28(c) (relating to licensure by endorsement) mandate verification of a foreign-educated applicant's educational qualifications by the CGFNS. The Board's review of the date that applicants who were seeking TPP extensions had applied for verification of their foreign nursing license, certification of their nursing education program and verification of their nursing program through the CGFNS demonstrated that the applicants were not applying for these verifications until approximately 1 to 2 months prior to the expiration date of the TPP. The CGFNS verification procedure alone takes approximately 9 months, depending on the availability of documentation from a particular country. Prompt application for verifications will alleviate most of the need for applicants to apply for an extension of their TPP.

Section 21.7(b)(4) provides that each TPP applicant shall ensure that the Board has received all supporting documentation for an application for licensure at least 90 days prior to the expiration of the TPP. The Board will notify applicants at this 90-day point if their applications are incomplete. Section 21.7(b)(4) requires the applicant to submit a written explanation of the efforts made to timely secure the required documentation.

Section 21.7(b)(5) authorizes an individual who holds a TPP to apply for an extension of the TPP if the applicant has complied with this regulation and submitted an extension application, remitted the application fee, submitted a written explanation of the reasons for the extension request and provided proof of compliance with § 21.7(b)(3). Finally, § 21.7(b)(5) requires that the individual seeking an extension request the extension at least 60 days prior to the expiration date of the TPP. It has been the common practice of TPP holders to request an extension on the last day the TPP is valid. The Board may not meet for 3 or more weeks after the date the TPP expires and the individual continues to practice without benefit of licensure or a TPP. This paragraph should insure that nurses have no gap in their authority to practice, and insure the public safety because these nurses are not covered by insurance and an injured patient could be left without recourse.

Section 21.7(b)(6) reiterates that an individual who fails to meet the requirements of subsection (b) will not be granted an extension of the TPP expiration date.

Section 21.149 is very similar to § 21.7, but in reference to TPPs for practical nurses.

The Board requested input in drafting of the proposed rulemaking from nursing associations and hospital systems. These organizations were as follows: American Association of Neuroscience Nurses, Emergency Nurses Association, GPC—Oncology Nursing Society, The Hospital and Healthsystem Association of Pennsylvania, Intravenous Nurse Society, Licensed Practical Nurses Association of Pennsylvania, Pennsylvania Association of Home Health Agencies, Pennsylvania Association of Private School Administrators, Pennsylvania Association of Non-Profit Homes for the Aging, Pennsylvania Association of Nurse Anesthetists, Pennsylvania Association of Practical Nursing Program Administrators, Pennsylvania Coalition of Nurse Practitioners, Pennsylvania College of Associate Degree Nursing, Pennsylvania Council of Operating Room Nurses, Pennsylvania Department of Health-Bureau of CH Systems, Pennsylvania Health Care Association, Pennsylvania Higher Education Nursing Schools Association, Pennsylvania League for Nursing, Inc., Pennsylvania Organization of Nurse Leaders, Pennsylvania Society of Gastroenterology Nurses and Associates, Pennsylvania State Nurses Association, School Nurse Section, Southwestern Pennsylvania Organization for Nurse Leaders, Pennsylvania Medical Society, Nurses of Pennsylvania, Pennsylvania Association of School Nurses and Practitioners, Pennsylvania Nurses Association, and Professional Nursing Resources, Inc., Grane Healthcare and the North Philadelphia Health System. The Board did not receive any comments on the exposure draft.

Also, the Board considered the impact the proposed rulemaking would have on the regulated community and on public safety and welfare. The Board finds that the proposed rulemaking addresses a compelling public interest as described in this preamble.

Fiscal Impact and Paperwork Requirements

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

Sunset Date

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 23, 2004, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comment

Interested persons are invited to submit written comments, recommendations or objections regarding this proposed rulemaking to Ann Steffanic, Board Administrator, State Board of Nursing, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

JANET HUNTER SHIELDS, MSN, CRNP, CNS,
Chairperson

Fiscal Note: 16A-5121. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL LICENSURE AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 21. STATE BOARD OF NURSING

Subchapter A. REGISTERED NURSES

GENERAL PROVISIONS

§ 21.7. Temporary practice permits.

(a) The Board may grant a temporary practice permit to a graduate registered nurse as follows:

(1) An individual who wishes to practice as a graduate registered nurse during the period from the date of completion of a Board-approved educational program and notification of the results of the licensing examination shall submit an application for a temporary practice permit for a graduate registered nurse on a form provided by the Board and remit the fee specified in § 21.5 (relating to fees). A temporary practice permit granted under this section is valid for up to 1 year from the date of issuance and immediately expires if the applicant fails the licensing examination.

(2) At least 90 days prior to the expiration date of the temporary practice permit, the graduate registered nurse shall:

(i) Submit an application for licensure by examination as a registered nurse.

(ii) Remit the fee specified in § 21.5.

(iii) Submit the licensure examination registration form and fee required to the professional testing organization.

(3) At least 60 days prior to the expiration date of the temporary practice permit, the graduate registered nurse who wishes to extend the expiration date of the temporary practice permit because of illness or extreme hardship shall:

(i) Submit an application for temporary practice permit extension on a form provided by the Board.

(ii) Remit the fee specified in § 21.5.

(iii) Provide a detailed, written explanation of the reason the extension is requested. If requesting an extension due to illness, the applicant shall provide certification of the illness from the applicant's treating physician.

(4) The Board will not grant an extension to an individual who fails to meet the requirements of paragraphs (2) and (3).

(b) The Board may grant a temporary practice permit to a currently-licensed registered nurse as follows:

(1) An individual who holds a current registered nurse license issued by any other state, territory or possession of the United States or Canada and who wishes to practice professional nursing during the period from the date of submission of Form 1 of the application for licensure until the Board makes a determination on the application for licensure or 1 year, whichever comes first, shall:

(i) Submit an application for temporary practice permit for a currently-licensed registered nurse on a form provided by the Board.

(ii) Remit the fee specified in § 21.5.

(2) An individual applying for a temporary practice permit for a currently-licensed registered nurse shall demonstrate proficiency in English by submitting proof that the individual's nursing education program was conducted in English or that the individual has received a passing score on a Board-approved English proficiency examination. A list of Board-approved English proficiency examinations is available upon request to the Board. This information must be submitted with Form 1 of the application for licensure.

(3) Within 45 days of the date the temporary practice permit is issued, an individual who has been granted a temporary practice permit for a currently-licensed registered nurse shall submit Form 2 of the application for licensure and shall:

(i) Request verification of licensure from the foreign jurisdiction and retain documentation of the submission of the request to provide to the Board upon request.

(ii) Request certification of the applicant's nursing education program from the licensing board or appropriate educational authorities. The certification of nursing education must be submitted to the Board in English directly from the appropriate educational authorities. The appli-

cant shall retain documentation of the submission of the request to provide to the Board upon request.

(iii) Submit the Commission on Graduates of Foreign Nursing Schools (CGFNS) application if the applicant is required to meet CGFNS requirements in §§ 21.23(c) and 21.28(c) (relating to qualifications of applicant for examination; and licensure by endorsement) and retain documentation of the submission of the CGFNS application to provide to the Board upon request.

(iv) If the applicant is required to take the licensure examination, submit the licensure examination registration form and fee required to the professional testing organization and retain documentation of the submission of the application to take the examination to provide to the Board upon request.

(4) An individual who has been granted a temporary practice permit for a currently-licensed registered nurse shall ensure that all documentation in support of the application for licensure is received by the Board no later than 90 days prior to the expiration date of the temporary practice permit. Any individual whose supporting documentation has not been received by the Board at least 90 days prior to the expiration date of the temporary practice permit shall submit, within 10 days of receiving notice of the deficiency from the Board, a detailed written explanation of why the supporting documentation has not been supplied to the Board in a timely manner.

(5) An individual who has been granted a temporary practice permit for a currently-licensed registered nurse and who has complied with paragraphs (2)—(4) may request an extension of the temporary practice permit by:

(i) Submitting a temporary practice permit extension application provided by the Board.

(ii) Remitting the fee specified in § 21.5.

(iii) Submitting a written, detailed explanation of the reasons the extension is requested. If requesting an extension due to illness, the applicant shall provide certification of the illness from the applicant's physician.

(iv) Providing proof of the timely request for verification of licensure referenced in paragraph (3)(i).

(6) The request for temporary practice permit extension must be submitted to the Board at least 60 days prior to the expiration date of the temporary practice permit.

(7) The Board will not grant an extension to an individual who fails to meet the requirements of paragraphs (2)—(5).

Subchapter B. PRACTICAL NURSES

GENERAL PROVISIONS

§ 21.149. Temporary practice permits.

(a) The Board may grant a temporary practice permit to a graduate practical nurse as follows:

(1) An individual who wishes to practice as a graduate practical nurse during the period from the date of completion of a Board-approved educational program and notification of the results of the licensing examination shall submit an application for temporary practice permit for a graduate practical nurse on a form provided by the Board and remit the fee specified in § 21.5 (relating to fees). A temporary practice permit granted under this section is valid for up to 1 year from the date of issuance and immediately expires if the applicant fails the licensing examination.

(2) At least 90 days prior to the expiration date of the temporary practice permit, the graduate practical nurse shall:

(i) Submit an application for licensure by examination as a practical nurse.

(ii) Remit the fee specified in § 21.5.

(iii) Submit the licensure examination registration form and fee required to the professional testing organization.

(3) At least 60 days prior to the expiration date of the temporary practice permit, the graduate practical nurse who wishes to extend the expiration date of the temporary practice permit shall:

(i) Submit an application for temporary practice permit extension on a form provided by the Board.

(ii) Remit the fee specified in § 21.5.

(iii) Provide a detailed, written explanation of the reasons the extension is requested. If requesting an extension due to illness, the applicant shall provide certification of the illness from the applicant's physician.

(4) The Board will not grant an extension to an individual who fails to meet the requirements of paragraphs (2) and (3).

(b) The Board will grant a temporary practice permit for a currently-licensed practical nurse as follows:

(1) An individual who holds a current practical nurse license issued by any other state, territory or possession of the United States or Canada and who wishes to practice practical nursing during the period from the date of submission of Form 1 of the application for licensure until the Board makes a determination on the application for licensure or 1 year, whichever comes first, shall:

(i) Submit an application for temporary practice permit for a currently-licensed practical nurse on a form provided by the Board.

(ii) Remit the fee specified in § 21.5.

(2) An individual applying for a temporary practice permit for a currently-licensed practical nurse shall demonstrate proficiency in English by submitting proof that the individual's nursing education program was conducted in English or that the individual has received a passing score on a Board-approved English proficiency examination. A list of Board-approved English proficiency examinations is available upon request to the Board. This information shall be submitted with Form 1 of the application for licensure.

(3) Within 45 days of the date the temporary practice permit is issued, an individual who has been granted a temporary practice permit for a currently-licensed practical nurse shall submit Form 2 of the application for licensure and shall:

(i) Request verification of licensure from the foreign jurisdiction and retain documentation of submission of the request to provide to the Board upon request.

(ii) Request certification of the applicant's nursing education program from the licensing board or appropriate educational authorities. The certification of nursing education must be submitted to the Board in English directly from the appropriate educational authorities. The applicant shall retain documentation of submission of the request to submit to the Board upon request.

(iii) Submit the Commission on Graduates of Foreign Nursing Schools (CGFNS) application if the applicant is required to meet CGFNS requirements in § 21.155(d)

(relating to licensure by endorsement) and retain documentation of the submission of the CGFNS application to provide to the Board upon request.

(iv) If the applicant is required to take the licensure examination, submit the licensure examination registration form and fee required to the professional testing organization and retain documentation of the submission of the application to take the examination to provide to the Board upon request.

(4) An individual who has been granted a temporary practice permit for a currently-licensed practical nurse shall ensure that all documentation in support of the application for licensure is received by the Board at least 90 days prior to the expiration date of the temporary practice permit. An individual whose supporting documentation has not been received by the Board at least 90 days prior to the expiration date of the temporary practice permit shall submit, within 10 days of receiving notice of the deficiency from the Board, a detailed written explanation of why the supporting documentation has not been supplied to the Board in a timely manner.

(5) An individual who has been granted a temporary practice permit for a currently-licensed practical nurse and who has complied with paragraphs (2)—(4) may request an extension of the temporary practice permit because of illness or extreme hardship by:

(i) Submitting a temporary practice permit extension application on a form provided by the Board.

(ii) Remitting the fee specified in § 21.5.

(iii) Submitting a written, detailed explanation of the reasons the extension is requested. If requesting an extension due to illness, the applicant shall provide certification of the illness from the applicant's treating physician.

(iv) Providing proof of the timely request for verification of licensure referenced in paragraph (3)(i).

(6) The request for temporary practice permit extension must be submitted to the Board at least 60 days prior to the expiration date of the temporary practice permit.

(7) The Board will not grant an extension to an individual who fails to meet the requirements of paragraphs (2)—(5).

[Pa.B. Doc. No. 04-1636. Filed for public inspection September 3, 2004, 9:00 a.m.]

STATE BOARD OF PHARMACY

[49 PA. CODE CH. 27]

Examination Fees

The State Board of Pharmacy (Board) proposes to amend § 27.91 (relating to schedule of fees) to read as set forth in Annex A.

Effective Date

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

Statutory Authority

This proposed rulemaking is authorized under sections 6(k)(1) and (9) and 8.2(a) of the Pharmacy Act (act) (63 P. S. §§ 390-6(k)(1) and (9) and 390-8.2(a)) and section 812.1 of The Administrative Code of 1929 (71 P. S. § 279.3a).

Background and Purpose

The proposed amendment to § 27.91 deletes references to the fees for the North American Pharmacist Licensure Examination (NAPLEX) and the Multistate Pharmacy Jurisprudence Examination (MPJE). These fees are set by the administrators of the examinations, not by the Board. To avoid the necessity of amending the regulation whenever the examination administrator changes the fees, the Board proposes to delete references to the fees.

Description of Proposed Rulemaking

The Board proposes to amend § 27.91 to delete references to the fees for the NAPLEX and the MPJE examinations. The fees are set by the test administrators.

Fiscal Impact and Paperwork Requirements

The proposed rulemaking will have no fiscal impact on the Board or its licensees. The proposed rulemaking should have no fiscal impact on the private sector, the general public or political subdivisions. The proposed rulemaking will avoid preparation of new regulations each time an examination fee is changed and should not create additional paperwork for the private sector.

Sunset Date

The Board reviews the effectiveness of its regulations on an ongoing basis. Therefore, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 23, 2004, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Carole Clarke, Counsel, State Board of Pharmacy, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

MICHAEL J. ROMANO, R.Ph.,
Chairperson

Fiscal Note: 16A-5413. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 27. STATE BOARD OF PHARMACY

FEES

§ 27.91. Schedule of fees.

An applicant for a license, certificate, permit or service shall pay the following fees at the time of application:

* * * * *

[North American Pharmacist Licensure Examination (NAPLEX)..... $250

Multistate Pharmacy Jurisprudence Examination (MPJE)..... $85]

* * * * *

[Pa.B. Doc. No. 04-1637. Filed for public inspection September 3, 2004, 9:00 a.m.]

STATE BOARD OF PODIARTY

[49 PA. CODE CH. 29]

Professional Liability Insurance

The State Board of Podiatry (Board) proposes to amend §§ 29.51—29.54 to read as set forth in Annex A.

Effective Date

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

Statutory Authority

This rulemaking is proposed under section 15 of the Podiatry Practice Act (63 P. S. § 42.15) and the Medical Care Availability and Reduction of Error (MCARE) Act (40 P. S. §§ 1303.101—1303.910).

Background and Purpose

The Health Care Services Malpractice Act (40 P. S. §§ 1303.101—1303.901), in particular provisions that relate to requirements for the maintenance of professional liability insurance by podiatrists, have been repealed and replaced by the MCARE Act. This proposed rulemaking would amend the current regulations by eliminating references to the Health Care Services Malpractice Act and replacing them with references to the MCARE Act.

Description of Proposed Rulemaking

Section 303 of the MCARE Act (40 P. S. § 1303.303) lists "podiatrist" as a health care provider. Section 702 of the MCARE Act (40 P. S. § 1303.702) defines "participating health care provider" as "[a] health care provider as defined in section 103 that conducts more than 20% of its health care business or practice within this Commonwealth." In compliance with these provisions of the MCARE Act, § 29.51 (relating to applicants) would be amended to require an applicant for licensure to inform the Board as to what percentage of the applicant's practice is conducted in this Commonwealth.

Section 29.52 (relating to requirements for applicants) would be amended to require applicants for licensure or licensees applying for biennial renewal, who practice in this Commonwealth, to furnish satisfactory proof to the Board that they are complying with the MCARE Act. The proposed rulemaking would also delete references to amounts of liability insurance that were required by the repealed Health Care Services Malpractice Act.

Section 29.53 (relating to original license) would require podiatrists applying for original licensure to furnish the Board with proof of professional liability insurance.

Section 29.54 (relating to penalty) would provide the podiatrist with notice that failure to comply with the MCARE Act may result in a suspension or revocation of the podiatrist's license after a formal hearing before the Board.

Fiscal Impact and Paperwork Requirements

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

Sunset Date

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 23, 2004, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comment

Interested persons are invited to submit written comments, recommendations or objections regarding this proposed rulemaking to Roberta L. Silver, Counsel, State Board of Podiatry, 2601 North Third Street, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days of publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

JEFFREY S. GERLAND, D.P.M.,
Chairperson

Fiscal Note: 16A-447. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 29. STATE BOARD OF PODIATRY

LICENSURE APPLICATIONS

§ 29.51. Applicants.

On applications for licensure or the biennial renewal of a license, the applicant shall answer the following three questions:

(1) Using as a base the number of patients served in an annual period, what percentage of your practice is in Pennsylvania?

0% _____ 1— **[50%] 20%** _____ **[51%] 21%** or more _____

(If the answer to question (1) is 0%, or if practicing only as a Federal **[employe] employee**, (2) and (3) need not be answered.)

* * * * *

§ 29.52. Requirements for applicants.

(a) Applicants for licensure or **[licenses] licensees** applying for biennial renewal, who practice in this Commonwealth, shall furnish satisfactory proof to the Board that they are complying with **[the provisions of]** the **[Health Care Services Malpractice Act (40 P. S. §§ 1301.101—1301.1006)] Medical Care Availability and Reduction of Error (MCARE) Act (40 P. S. §§ 1303.101—1303.910)**, in that the applicant, if required by the act and the rules and regulations pertaining thereto, is maintaining the required amount of professional liability insurance or an approved self-insurance plan, and has paid the required fees and surcharges**. [as set forth therein:**

(1) Proof of coverage of 100,000/300,000, if more than 50% of his practice is conducted in this Commonwealth, and proof that his insurance company has paid the required surcharge into the Medical Professional Liability Loss Fund or that he has paid the $50 fee to the office of the Administrator for Arbitration Panels for Health Care, should be furnished.

(2) Basic coverage insurance in the amount of 200,000/600,000 or an approved self-insurance plan is required if 50% or less of his practice is in this Commonwealth. The licensee is not required to pay the required surcharge nor is the licensee entitled to participate in the Medical Professional Liability Catastrophe Loss Fund. The licensee is required to pay the $50 fee to the Administrator for Arbitration Panels for Health Care.

(3)](b) Licensees practicing solely as Federal **[employes] employees** are not required to participate in the professional liability insurance program, nor are they required to comply with **[the provisions of]** the **[Health Care Services Malpractice] MCARE** Act.

[(4)](c) Licensees who have no practice in this Commonwealth are not required to **[pay the arbitration fees or]** comply with the **[provisional insurance requirements of the Health Care Services Malpractice] MCARE** Act.

§ 29.53. Original license.

A podiatrist applying for his original license**[,]** to practice podiatry shall, within 90 days after receipt of **[his] the podiatrist's** original license, furnish the Board with the information required in § 29.51 (relating to applicants), and proof of professional liability insurance**[, the payment of the $50 fee to the Administrator for Arbitration Panels for Health Care, and payment of the surcharge to the Medical Professional Liability Catastrophe Loss Fund]**.

§ 29.54. Penalty.

Failure to comply with **[the requirements of]** the **[Health Care Services Malpractice Act (40 P. S. §§ 1301.101—1301.1006)] MCARE Act (40 P. S. §§ 1303.101—1303.910)**, the regulations issued thereunder, and this subchapter shall result in a suspension or revocation of **[his] the licensee's** license after a formal hearing before the Board.

[Pa.B. Doc. No. 04-1638. Filed for public inspection September 3, 2004, 9:00 a.m.]

STATE BOARD OF PSYCHOLOGY

[49 PA. CODE CH. 41]

Education Requirements

The State Board of Psychology (Board) proposes to amend §§ 41.1 and 41.31 (relating to definitions; and qualifications for taking licensure examination) to read as set forth in Annex A.

A. *Effective Date*

This proposed rulemaking will be effective for applicants for licensure who first enrolled in a psychology or psychology related educational program at least 2 academic years from the publication of the final-form rulemaking in the *Pennsylvania Bulletin*. Applicants who are currently enrolled in a doctoral degree program on the date prior to publication of final-form rulemaking would qualify under existing language and would have 5 years from the effective date of the final-form rulemaking to obtain the requisite education to become eligible to sit for the license examination. Applicants who do not obtain the requisite education within the 5 years would be required to comply with the requirements set forth in this proposed rulemaking.

B. *Statutory Authority*

This proposed rulemaking is made under sections 3.2(1) and 6(a)(2) of the Professional Psychologists Practice Act (act) (63 P. S. §§ 1203.2(1) and 1206(a)(2)).

C. *Purpose and Background*

Section 6(a)(2) of the act mandates that applicants for licensure have a doctoral degree in psychology or a field related to psychology. The Board has defined "doctoral degree in psychology" and "doctoral degree in a field related to psychology" in § 41.1.

Currently, a doctoral degree must be accredited by the American Psychological Association (APA) or designated by the Association of State and Provincial Psychology Boards/National Register Designation Committee (ASPPB/National Register). Applicants who graduate from doctoral degree programs which are neither accredited or designated are reviewed on a case-by-basis under criteria in subsection (c).

In 1991, when this provision was amended, many psychology programs were either not accredited or designated. However, today the vast majority of programs are either accredited or designated. A list of those programs can be found on the APA's website: www.apa.org and on the National Register's website: www.nationalregister.org.

Programs accredited by the APA or Canadian Psychological Association (CPA) or designated by the ASPPB/National Register undergo a rigorous review process. Following a self-study and the completion of a comprehensive application, each program is subject to a several-day site visit by a trained team of reviewers who meet with the institution's administration, department and program faculty and students and review the entire curriculum being taught in the program as well as the self-study report. Doctoral and internship programs and postdoctoral residencies are reviewed annually by written report and undergo periodic review involving additional self-studies and site visits. The process also requires programs to correct deficiencies detected in the evaluation.

Since 1991, the Board has also reviewed numerous doctoral degree programs that are neither accredited nor designated. The Board has found that the standards at these programs vary significantly and that most do not meet the APA or the ASPPB/National Register standards. In addition, because the Board is not capable of conducting site visits at these programs, the Board has been forced to rely on the documentary evidence provided.

The Board believes that to protect the citizens of this Commonwealth who receive psychological services, psychologists must receive uniform quality education. In the Board's view, this can only be accomplished if all doctoral degree programs are held to the same standards. Therefore, the Board proposes that to obtain a license as a psychologist, the applicant must have earned a doctoral degree from a program that is either accredited by the APA or the CPA or designated by the ASPPB/National Register.

Recognizing that there are no foreign equivalents to these reviewing bodies, but to ensure that qualified applicants from these programs are not prohibited from obtaining a Pennsylvania license, under this proposed rulemaking, applicants from colleges and universities which are not located in the United States, Canada or the United States' territories must comply with standards identical to those required for ASPPB/National Register designation.

D. *Description of Proposed Rulemaking:*

1. *Proposed § 41.1. Definition of "doctoral degree in a field related to psychology."*

The Board proposes to amend subparagraphs (i) and (ii) of the definition to limit its application to a degree awarded by a program accredited by the APA or the CPA or designated by the ASPPB/National Register. The proposed rulemaking will limit its application to programs in foreign colleges or universities.

Currently, the definition requires that the foreign college or university be accredited. To avoid confusion as to the required accreditation body, the Board proposes amending this subparagraph to indicate that a recognized accrediting body in the jurisdiction where the college or university is located must accredit the college or university.

Currently the definition requires that the program be comprised of an integrated, organized sequence of study. The Board proposes to amend this provision by adding the specific requirements necessary for an integrated, organized sequence of study: the breadth or foundations of scientific psychology; scientific, methodological and theoretical foundations of practice; diagnosing or defining problems; and supervised practicum and required specialty courses.

Currently the definition requires at least 60 graduate semester hours in the listed categories of educational subjects. Recognizing current educational requirements at APA or CPA accredited and ASPPB/National Register designated programs, the Board also proposes to require licensees to complete 3 full-time academic years of graduate study plus a dissertation prior to being awarded a doctoral degree. Two of the 3 academic years would have to be completed at the institution granting the degree.

Lastly, the Board proposes to clarify the residency requirement in the current definition. Applicants for licensure routinely and repeatedly question the Board about the length and contacts necessary to satisfy the residency requirement. The Board has consistently advised applicants that the program must require residency for a minimum of 2 academic semesters and that the program must provide opportunities for interaction between faculty and students in addition to instruction time to enhance the student's understanding of scholarship and provide socialization to the science and practice of psychology. Applicants have attempted to demonstrate that this requirement has been met by showing that students and faculty members meet 1 weekend per month for a set number of months. The Board has found that absent other substantive contacts, these monthly meetings are insufficient to meet the residency requirement. Because applicants have sought additional information about this residency requirement, the Board proposes amending the definition by clarifying that the residency must extend for "2 consecutive academic semesters as a full-time student physically present at a degree granting institution" and must "enhance understanding of scholarship and professional activities and provide socialization to the science and practice of psychology."

2. *Proposed § 41.1. Definition of "doctoral degree in psychology."*

The Board proposes to duplicate the amendments to the definition of a "doctoral degree in a field related to psychology" in the definition. The definition would be amended to also clarify that the degree must be from a program accredited by the APA or the CPA or designated by the ASPPB/National Register and would be amended to clarify that this provision only applies to foreign colleges or universities.

3. *Proposed § 41.31. Qualifications for taking licensing examination.*

The Board proposes to consolidate the requirements in subsection (b)(1), for applicants with doctoral degree in psychology, and subsection (b)(2), for applicants with doctoral degrees in fields related to psychology, as the qualification requirements for taking the examination would be the same for both degrees.

E. *Fiscal Impact and Paperwork Requirements*

The proposed rulemaking should have no fiscal impact on the Commonwealth. Board members would no longer be required to review transcripts, courses, residencies and internships for applicants who attended non-APA and non-ASPPB programs in the United States, Canada and United States territories, and Board staff would simply confirm that the doctoral degree program was accredited by the APA or the CPA or designated by the ASPPB/National Register. However, there were no costs associated with Board member review as that review was conducted at the end of the monthly Board meetings. Therefore, the change should not result in any discernible fiscal impact on the Board or the Commonwealth. The Board would continue to conduct its review for applicants with doctoral degrees from foreign colleges and universities.

The proposed rulemaking would decrease paperwork requirements for applicants from programs in the United States, Canada and United States territories. These applicants would only be required to submit a Verification of Doctoral Program Approval Status completed by the program's director of clinical training reflecting accreditation by the APA or the CPA or designation by the ASPPB and an official transcript from the registrar. Applicants from foreign colleges and universities would continue to submit an evaluation from a foreign education credential evaluator acceptable to the Board evidencing compliance with the educational requirements for degree holders from foreign colleges or universities in § 41.1.

F. *Sunset Date*

The Commission reviews the effectiveness of its regulations on an ongoing basis. Therefore, no sunset date has been assigned.

G. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 23, 2004, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

H. *Public Comment*

Interested persons are invited to submit written comments, recommendations or objections regarding the proposed rulemaking to Judith Pachter Schulder, Counsel, State Board of Psychology, Penn Center, 2601 North Third Street, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

ALEX M. SIEGEL, Ph.D., J.D.,
Chairperson

Fiscal Note: 16A-6313. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 41. STATE BOARD OF PSYCHOLOGY

GENERAL

§ 41.1. Definitions.

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

* * * * *

Doctoral degree in a field related to psychology—A degree awarded upon successful completion of a program which meets **one of** the following **[criteria or which is approved by the Board under § 41.31(b)(3) (relating to qualifications for taking licensing examination)]**:

(i) Is accredited by the American Psychological Association (APA) or the Canadian Psychological Association (CPA).

(ii) Is designated by the Joint Designation Committee of the Association of State and Provincial Psychology Boards (ASPPB).

(iii) Is offered by a foreign college or university which:

[(i)] (A) Offers training in **[an accredited] a** college or university **accredited by a recognized accrediting body in the jurisdiction where the college or university is located**.

[(ii)] (B) * * *

[(iii)] (C) * * *

[(iv)] (D) Comprises an integrated, organized sequence of study**[.] that enables all students to acquire and demonstrate substantial understanding of and competence in the following areas:**

[(v) Provides in its core program required instruction in ethics as they relate to scientific methods and professional standards, research design and methodology, statistics and psychometrics. In addition, requires students to demonstrate competence in each of the following four substantive content areas (this criterion will typically be met by requiring a minimum of three graduate semester hours in each area) biological:]

(I) The breadth or foundations of scientific psychology as exemplified by study in each of the following domains for a minimum of 3 graduate semester hours:

(-a-) Biological bases of behavior—for example, physiological psychology, comparative psychology, neuropsychology, sensation and perception, **and** psychopharmacology**[; cognitive].**

(-b-) Cognitive-affective bases of behavior—for example, learning, thinking, motivation**[,] and** emotion**[; social].**

(-c-) Social bases of behavior—for example, social psychology, group processes**[,] and** organizational and systems theory**[; individual].**

(-d-) History and systems of psychology.

(-e-) Psychological measurement.

(-f-) Research methodology.

(-g-) Techniques of data analysis.

(II) Scientific, methodological and theoretical foundations of the practice in the substantive domains of professional psychology by study in each of the following domains for a minimum of 3 graduate semester hours:

(-a-) Individual differences **in behavior[—for example, human].**

(-b-) Human development**[, personality theory, abnormal psychology].**

(-c-) Dysfunctional behavior or psychopathology.

(-d-) Professional standards and ethics.

(III) Diagnosing or defining problems through psychological assessment and measurement and formulating and implementing intervention strategies by study in each of the following domains for a minimum of 3 graduate semester hours:

(-a-) Theories and methods of assessment and diagnosis.

(-b-) Effective interventions.

(-c-) Consultation and supervision.

(-d-) Evaluating the efficacy of interventions.

[(vi)] (IV) [Includes supervised] Supervised practicum, internship, field or laboratory training **appropriate to the practice of psychology.**

[(vii) Includes course requirements] Required courses in **a** specialty **[areas] area** of psychology.

[(viii) Ensures that instruction, supervision and training in the areas enumerated in subparagraphs (v)—(vii) are appropriate to the practice of psychology. Considerations pertinent to this requirement are the psychological content and focus of courses and training, irrespective of title, and the psychological qualifications of the instructor—for example, professional identification, membership in professional organizations, licensure status.

(ix)] (E) Requires degree candidates to complete a combined total of at least **[60] 3 full-time academic years of graduate study (or the equivalent thereof), for example, 90** graduate semester hours **or its equivalent** in the areas described in **[subparagraphs (v)—(vii)] subparagraph (iii)(D), and a dissertation prior to awarding the doctoral degree. At least 2 of the 3 academic years or the equivalent thereof must be at the institution from which the doctoral degree is granted.**

[(x)] (F) Has a residency requirement that each degree candidate complete a minimum of two consecutive academic semesters as a **[matriculated] full-time** student physically present at the institution granting the degree **which requires interaction with faculty and other students, other than in regular academic classes, that enhances understanding of scholarship and professional activities and provides socialization to the science and practice of psychology**.

Doctoral degree in psychology—A degree awarded upon successful completion of a program in psychology which **[is accredited] meets one of the following criteria:**

(i) Is accredited by the **[American Psychological Association ( ]** APA**[ )]** or **the CPA**.

(ii) [which is designated] Is designated by **[the American Association of State Psychology Boards ( ]** ASPPB**[ ) or by other designating groups acceptable to the Board; which is approved by the Board under § 41.31(b)(3); or which meets the following criteria].**

(iii) Is offered by a foreign college or university which:

[(i)] (A) Offers training in **[an accredited] a** college or university **accredited by a recognized accrediting body in the jurisdiction where the college or university is located.**

[(ii)] (B) * * *

[(iii)] (C) * * *

[(iv)] (D) Clearly demonstrates authority and primary responsibility for the required core program **[(see subparagraph (viii))]** and specialty areas **[(see subparagraph (x))]**, and for the admission, evaluation and recommendation of students for degrees, whether or not the degree program cuts across administrative lines.

[(v)] (E) Comprises an integrated, organized sequence of study**[.] that enables all students to acquire and demonstrate substantial understanding of and competence in the following areas:**

(I) The breadth or foundations of scientific psychology as exemplified by study in each of the following domains for a minimum of 3 graduate semester hours:

(-a-) Biological bases of behavior, including physiological psychology, comparative psychology, neuropsychology, sensation and perception and psychopharmacology.

(-b-) Cognitive-affective bases of behavior, including learning, thinking, motivation and emotion.

(-c-) Social bases of behavior, including social psychology and organizational and systems theory.

(-d-) History and systems of psychology.

(-e-) Psychological measurement.

(-f-) Research methodology.

(-g-) Techniques of data analysis.

(II) Scientific, methodological and theoretical foundations of the practice in the substantive domains of professional psychology by study in each of the following domains for a minimum of 3 graduate semester hours:

(-a-) Individual differences in behavior.

(-b-) Human development.

(-c-) Dysfunctional behavior or psychopathology.

(-d-) Professional standards and ethics.

(III) Diagnosing or defining problems through psychological assessment and measurement and formulating and implementing intervention strategies by study in each of the following domains for a minimum of 3 graduate semester hours:

(-a-) Theories and methods of assessment and diagnosis.

(-b-) Effective interventions.

(-c-) Consultation and supervision.

(-d-) Evaluating the efficacy of interventions.

(IV) Required courses in a specialty of psychology.

(V) Supervised practicum and internship appropriate to the practice of psychology.

[(vi)] (F) * * *

[(vii)] (G) * * *

[(viii) Provides in its core program required instruction in ethics as they relate to scientific methods and professional standards, research design and methodology, statistics and psychometrics. In addition, requires students to demonstrate competence in each of the following four substantive content areas (this criterion will typically be met by requiring a minimum of three graduate semester hours in each area): biological bases of behavior—for example, physiological psychology, comparative psychology, neuropsychology, sensation and perception, psychopharmacology; cognitive-affective bases of behavior—for example, learning, thinking, motivation, emotion; social bases of behavior—for example, social psychology, group processes, organizational and systems theory; individual differences—for example, human development, personality theory, abnormal psychology.

(ix) Includes supervised practicum, internship, field or laboratory training appropriate to the practice of psychology.

(x) Includes course requirements in specialty areas of psychology.

(xi)] (H) Requires degree candidates to complete a combined total of at least **[60] 3 full-time academic years of graduate study (or the equivalent thereof) for example, 90** graduate semester hours **(or the equivalent)** in the areas described in **[subparagraphs (viii)—(x)] clause (E) and a dissertation prior to awarding the doctoral degree. At least 2 of the 3 academic years (or the equivalent thereof) must be at the institution from which the doctoral degree is granted.**

[(xii)] (I) Has a residency requirement that each degree candidate complete a minimum of two consecutive academic semesters as a **[matriculated] full-time** student physically present at the institution granting the degree **which requires interaction with faculty and other students, other than in regular academic classes, that enhances understanding of scholarship and professional activities and provides socialization to the science and practice of psychology.**

* * * * *

§ 41.31. Qualifications for taking licensing examination.

* * * * *

(b) *Education.* Before an applicant seeking licensure under section 6 of the act (63 P. S. § 1206) shall be permitted to take the licensing examination, the Board must be satisfied that the applicant has complied with the **[education]** requirements **[of that section] for a doctoral degree in psychology or a field related to psychology as defined in § 41.1 (relating to definitions).** The **[Board will apply the]** following **[criteria to determine whether] documentation evidences** compliance **[occurred]**:

(1) **[The applicant has been awarded a doctoral] For** degree **[in psychology as defined in § 41.1 (relating to definitions)] holders from a program in the United States, Canada or United States territories [The applicant's official transcript or other documents provided by the degree-granting institution shall demonstrate the applicant's satisfactory completion of the core, specialty and practicum, internship, field or laboratory training requirements of the program], a Verification of Doctoral Program Approval Status completed by the program's Director of Clinical Training reflecting accreditation by the American Psychological Association (APA) or Canadian Psychological Association (CPA) or designation by the Association of State and Provincial Psychological Boards (ASPPB) and an official transcript from the Registrar.**

[(2) The applicant has been awarded a doctoral degree in a field related to psychology as defined in § 41.1. The applicant's official transcript or other documents provided by the degree-granting institution shall demonstrate the applicant's satisfactory completion of the core, specialty and practicum, internship, field or laboratory training requirements of the program.

(3) The applicant is a graduate of] (2) For degree holders from a foreign college or university **[who has successfully completed a program equivalent to a program acceptable under paragraph (1) or (2). A determination of equivalency shall be made by an agency], an evaluation from a foreign education credential evaluator acceptable to the Board evidencing compliance with the educational requirements for degree holders from foreign colleges or universities in § 41.1 (relating to definitions). [Final review of the applicant's satisfactory completion of the core, specialty and practicum, internship, field or laboratory training requirements of the program will be made by the] The** Board **will make a determination regarding the applicant's compliance based upon the evaluation.**

[(4) Notwithstanding the criteria in paragraphs (1)—(3), applicants] (3) Applicants who do not meet the criteria in paragraphs (1) and (2) shall be permitted to cure **[the following]** educational deficiencies **[through postdoctoral study:**

(i) A deficiency in no more than one of the four required instructional areas within the core program.

(ii) A deficiency in no more than one of the four substantive content areas within the core program.

(iii) Deficiencies beyond those specified in subparagraphs (i) and (ii) only in exceptional circum-

stances and with the approval of the Board. The applicant shall specify the exceptional circumstances in a written request to the Board. The Board will evaluate each request and each applicant's situation on a case-by-case basis. The granting of the request shall be at the Board's discretion] by completing a respecialization program accredited by the APA or the CPA or designated by ASPPB.

[(5)] (4) First-time applicants who were enrolled in a doctoral degree program prior to **[March 23, 1991]** _____ **(*Editor's Note:* The blank refers to a date 2 years after the effective date of adoption of this proposal rulemaking).)**, will **[have their education credentials] be** evaluated under regulations in effect **[at that time] on** _____. **(*Editor's Note:* The blank refers to a date the effective date of the adoption of this proposal rulemaking).)** Reapplicants under subsection (a)(1) or § 41.42(b) (relating to reexamination) will be evaluated under regulations in effect at the time of reapplication.

* * * * *

[Pa.B. Doc. No. 04-1639. Filed for public inspection September 3, 2004, 9:00 a.m.]

STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS

[49 PA. CODE CHS. 47—49]

Sexual Misconduct

The State Board of Social Workers, Marriage and Family Therapists and Professional Counselors (Board) proposes to adopt regulations regarding sexual misconduct committed by licensed social workers, licensed clinical social workers, licensed marriage and family therapists and licensed professional counselors by adding §§ 47.61—47.66, 48.21—48.26 and 49.21—49.26 to read as set forth in Annex A.

Effective Date

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

Statutory Authority

The Board is authorized to adopt regulations necessary for the administration of its enabling statute under section 6(2) of the Social Workers, Marriage and Family Therapists and Professional Counselors Act (act) (63 P. S. § 1906(2)).

Background and Purpose

This proposed rulemaking was developed as a result of increasing complaints of sexual misconduct against health care professionals who are licensed by the Department of State, Bureau of Professional and Occupational Affairs. In this proposal, the Board addresses issues concerning sexual misconduct in the context of the provision of social work, clinical social work, marriage and family therapy and professional counseling services.

The proposed rulemaking seeks to better protect consumers of social work, marriage and family therapy and professional counseling services and to provide guidance to the licensees by defining terms such as "client/patient," "immediate family member", "professional relationship" and "sexual intimacies." The proposed rulemaking guides licensees by informing them that sexual intimacies between a social worker, clinical social worker, marriage and family therapist or professional counselor and a client or patient is prohibited. The proposed rulemaking guides social workers, clinical social workers, marriage and family therapists and professional counselors by informing them that their professional relationship with a client/patient exists for a time period beginning with the first professional contact or consultation and ends upon the last date of a professional service. The proposed rulemaking notifies social workers, clinical social workers, marriage and family therapists and professional counselors that the consent of an individual to engage in sexual intimacies cannot be a defense in a disciplinary proceeding before the Board and that a social worker, clinical social worker, marriage and family therapist and professional counselor who engages in conduct prohibited by the amendments will not be eligible for placement into an impaired professional program under the act.

Prior to drafting this proposed rulemaking, the Board invited interested associations, colleges and universities and individuals to comment on a preliminary draft. The Board reviewed and considered all comments and suggestions received by interested parties during the regulatory development process. The interested associations, colleges and universities, and individuals included the following: National Association of Social Workers, Association of Social Work Boards, Pennsylvania Alliance of Counseling Professionals, Council on Social Work Education, Pennsylvania Society for Clinical Social Work, University of Scranton, University of Southern Maine, American Association of State Counseling Boards, American Association of Marriage and Family Therapy, Pennsylvania Social Work Coalition, Pennsylvania Catholic Conference, California University of Pennsylvania, Indiana University of Pennsylvania, Millersville University of Pennsylvania, Shippensburg University of Pennsylvania, Slippery Rock University of Pennsylvania, West Chester University of Pennsylvania, Pennsylvania State University, University of Pittsburgh, Drexel University, University of Pennsylvania, Beaver College, Bucknell University, Eastern College, Gwynedd-Mercy College, Immaculata College, Lehigh University, Marywood University, Philadelphia College of Bible, Philadelphia University, University of Scranton, Villanova University, Westminster College, Duquesne University and Society for Social Work Leadership in Health Care.

Description of Proposed Rulemaking

Sections 47.61, 48.21 and 49.21 (relating to definitions) define "client/patient," "immediate family member," "professional relationship" and "sexual intimacies."

The term "client/patient" is defined to mean a person, group or family for whom a social worker, clinical social worker, marriage and family therapist or professional counselor provides professional services. In the case of individuals with legal guardians, including minors and legally incapacitated adults, the legal guardian is the client/patient for decision making purposes. The minor, legally incapacitated adult or other person actually re-

ceiving the service is the client/patient for issues specifically reserved to the individual such as confidential communications in a therapeutic relationship and issues directly affecting the physical or emotional safety of the individual such as sexual or other exploitive dual relationships.

The term "immediate family member" is defined to mean a parent or guardian, child, sibling, spouse or other family member with whom the client/patient lives.

The term "professional relationship" is defined as a therapeutic relationship which is deemed to exist for a period of time beginning with the first professional contact or consultations between a social worker, clinical social worker, marriage and family therapist or professional counselor and a client/patient and continuing thereafter until the last date of a professional service. If a social worker, clinical social worker, marriage and family therapist or professional counselor sees a client/patient on an intermittent basis, the professional relationship shall be deemed to start anew on each date that the social worker, clinical social worker, marriage and family therapist or professional counselor provides a professional service to the client/patient.

The term "sexual intimacies" is defined as any behavior of a romantic, sexually suggestive, sexually demeaning or erotic nature. Examples of this behavior include: sexual intercourse, nontherapeutic verbal communication or inappropriate nonverbal communication of a sexual or romantic nature; sexual invitations; soliciting a date from a client/patient, masturbating in the presence of a client/patient (or encouraging a client/patient to masturbate in the presence of the social worker, clinical social worker, marriage and family therapist and professional counselor); or exposure, kissing or hugging, touching, physical contact or self-disclosure of a sexual or erotic nature. In drafting this definition, the Board seeks to insure that nonsexual hugging, touching, physical contact or self-disclosure are excluded from the definition. The Board notes that authorities agree that nonsexual physical conduct or self-disclosure may be appropriate. That conduct can be healing and supportive to many clients/patients and some nonerotic self-disclosure may create trust and facilitate a therapeutic alliance particularly with children, the physically and mentally disabled and the elderly. Through this definition, the Board is only intending to prohibit kissing, hugging, touching, physical contact or self-disclosure of a sexual or erotic nature.

Sections 47.62, 48.22 and 49.22 (relating to prohibited conduct) state the general principle that sexual intimacies between a social worker, clinical social worker, marriage and family therapist or professional counselor and a current client/patient, or an immediate family member of a current client/patient, are prohibited.

Sections 47.63, 48.23 and 49.23 (relating to former sexual partners as client/patients) state the proposition that social workers, clinical social workers, marriage and family therapists and professional counselors may not accept as client/patients persons with whom they have engaged in sexual intimacies.

Sections 47.64(a), 48.24(a) and 49.24(a) (relating to sexual intimacies with a former client/patient or an immediate family member of a former client/patient) would prohibit sexual intimacies between a social worker, clinical social worker, marriage and family therapist or professional counselor and a former client/patient, or an immediate family member of a former client/patient, for at least 7 years following the termination of the professional relationship and then only if certain conditions are precedent. In determining that 7 years should be the threshold period in which to bar sexual intimacies, the Board reviewed codes of ethics of many professional associations. In particular, the Commission on Rehabilitation Counseling Certification prohibits sexual intimacies for 5 years, the National Association of Social Workers prohibits sexual intimacies indefinitely, the Pennsylvania Certification Board prohibits sexual intimacies indefinitely and the American Association of Marriage and Family Therapy prohibits it for 2 years. The Board believes that 7 years should be the threshold to bar sexual intimacies based on its view that a substantial period of time is required before the bonds of the therapeutic relationship are actually broken. The 7-year period is viewed by the Board as a compromise between a 5-year prohibition and an indefinite prohibition.

Sections 47.64(b), 48.24(b) and 49.24(b) define the criteria to determine if a personal relationship is exploitative of the therapeutic relationship. These criteria/factors include: the amount of time that has passed since the professional relationship terminated; the nature and duration of the therapy; the circumstances of termination; the client/patient's personal history or vulnerabilities; the client/patient's current mental status; statements or actions made by the social worker, clinical social worker, marriage and family therapist or professional counselor during the course of therapy suggesting or inviting the possibility of a posttermination sexual or romantic relationship with the client/patient.

Sections 47.65, 48.25 and 49.25 (relating to disciplinary proceedings) address disciplinary matters before the Board which involve sexual intimacies. Subsection (a) would put all licensees on notice that the consent of a former client/patient or immediate family member of a former client/patient to engage in sexual intimacies shall not be a defense in any disciplinary action brought under §§ 47.62—47.64, §§ 48.22—48.24 or §§ 49.22—49.24. Subsection (b) would put all licensees on notice that neither evidence of specific instances, opinion evidence nor reputation evidence of past sexual conduct of a former client/patient or immediate family member of a former client/patient is admissible in proceedings alleging conduct which constitutes a sexual impropriety or violation. Subsection (c) would put all licensees on notice that in a disciplinary proceeding brought for sexual impropriety, the social worker, clinical social worker, marriage and family therapist and professional counselor has the burden of proving that there has been no exploitation of the client/patient in light of all of the factors enumerated under §§ 47.64 (b)(1)—(7), §§ 48.24(b)(1)—(7) or §§ 49.24(b)(1)—(7).

Sections 47.66, 48.26 and 49.26 (relating to impaired professional program) would inform licensees that a licensee subject to disciplinary action for a sexual impropriety or violation will not be eligible for an impaired professional program under the act.

Fiscal Impact and Paperwork Requirements

The proposed rulemaking should have no fiscal impact and will not impose additional paperwork on the private sector, the general public and the Commonwealth and its political subdivisions.

Sunset Date

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 23, 2004, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to Beth Sender Michlovitz, Counsel, State Board of Social Workers, Marriage and Family Therapists and Professional Counselors, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of the proposed rulemaking in the *Pennsylvania Bulletin*. Reference (16A-691) Sexual Misconduct when submitting comments.

RONALD E. HAYS,
Chairperson

Fiscal Note: 16A-691. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 47. STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS

SEXUAL MISCONDUCT

§ 47.61. Definitions.

The following words and terms, when used in this section and §§ 47.62—47.66, have the following meanings, unless the context clearly indicates otherwise:

Client/patient—A person, group or family for whom a social worker or clinical social worker provides social work services or clinical social work services. In the case of individuals with legal guardians, including minors and legally incapacitated adults, the legal guardian shall be the client/patient for decision making purposes. The minor, legally incapacitated adult or other person actually receiving the service shall be the client/patient for issues specifically reserved to the individual, such as confidential communications in a therapeutic relationship and issues directly affecting the physical or emotional safety of the individual, such as sexual or other exploitive dual relationships.

Immediate family member—A parent/guardian, child, sibling, spouse or other family member with whom the client/patient lives.

Professional relationship—A therapeutic relationship which shall be deemed to exist for a period of time beginning with the first professional contact or consultation between a social worker or clinical social worker and a client/patient and continuing thereafter until the last date of a professional service. If a social worker or clinical social worker sees a client/patient on an intermittent basis, the professional relationship shall be deemed to start anew on each date that the social worker or clinical social worker provides a professional service to the client/patient.

Sexual intimacies—Romantic, sexually suggestive, sexually demeaning or erotic behavior. Examples of this behavior include the following:

(i) Sexual intercourse.

(ii) Nontherapeutic verbal communication or inappropriate nonverbal communication of a sexual or romantic nature.

(iii) Sexual invitations.

(iv) Soliciting a date from a client/patient.

(v) Masturbating in the presence of a client/patient (or encouraging a client/patient to masturbate in the presence of the social worker or clinical social worker).

(vi) Exposure, kissing, hugging, touching, physical contact or self-disclosure of a sexual or erotic nature.

§ 47.62. Prohibited conduct.

Sexual intimacies between a social worker or clinical social worker and a current client/patient, or an immediate family member of a current client/patient, are prohibited.

§ 47.63. Former sexual partners as client/patients.

Social workers and clinical social workers may not accept as clients/patients persons with whom they have engaged in sexual intimacies.

§ 47.64. Sexual intimacies with a former client/patient or an immediate family member of a former client/patient.

(a) Sexual intimacies between a social worker or clinical social worker and a former client/patient, or an immediate family member of a former client/patient, are prohibited for at least 7 years following the termination of the professional relationship, and then only under very limited circumstances.

(b) Following the passage of the 7-year period, social workers and clinical social workers who engage in sexual intimacies with a former client/patient, or an immediate family member of a former client/patient, shall have the burden of demonstrating that there has been no exploitation of the client/patient in light of all relevant factors, including:

(1) The amount of time that has passed since the professional relationship terminated.

(2) The nature and duration of the therapy.

(3) The circumstances of termination.

(4) The client/patient's personal history—for example, unique vulnerabilities.

(5) The client/patient's current mental status.

(6) Statements or actions made by the social worker or clinical social worker during the course of therapy suggesting or inviting the possibility of a posttermination sexual or romantic relationship with the client/patient.

(7) The likelihood of adverse impact on the client/patient and immediate family members of the client/patient.

§ 47.65. Disciplinary proceedings.

(a) The consent of a former client/patient or immediate family member of the former client/patient to engage in sexual intimacies with the social worker or clinical social worker may not be a defense in any disciplinary action brought under §§ 47.62—47.64 (relating to prohibited conduct; former sexual partners as client/patients; and sexual intimacies with a former client/patient or an immediate family member of a former, client/patient).

(b) With the exception of information contained in a professional record, neither opinion evidence, reputation evidence nor specific instances of the past sexual conduct of a former client/patient, or immediate family member of a former client/patient, may be admissible in a disciplinary action brought under §§ 47.62—47.64.

(c) In a disciplinary proceeding brought under §§ 47.62—47.64, the social worker or clinical social worker shall have the burden of proving that there has been no exploitation of the client/patient in light of all of the relevant factors enumerated under § 47.64(b)(1)—(7).

§ 47.66. Impaired professional program.

When the Board takes disciplinary or corrective action against a social worker or clinical social worker under section 11(a) of the act (63 P. S. § 1911(a)) for conduct prohibited by §§ 47.62—47.64 (relating to prohibited conduct; former sexual partners as clients/patients; and sexual intimacies with a former client/patient or an immediate family member of a former client/patient), the social worker or clinical social worker will not be eligible for placement into an impaired professional program in lieu of disciplinary or corrective action.

CHAPTER 48. STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS—LICENSURE OF MARRIAGE AND FAMILY THERAPISTS

SEXUAL MISCONDUCT

§ 48.21. Definitions

The following words and terms, when used in this section and §§ 48.22—48.26, have the following meanings, unless the context clearly indicates otherwise:

Client/patient—A person, group or family for whom a marriage and family therapist provides marriage and family therapy services. In the case of individuals with legal guardians, including minors and legally incapacitated adults, the legal guardian shall be the client/patient for decision making purposes. The minor, legally incapacitated adult or other person actually receiving the service shall be the client/patient for issues specifically reserved to the individual, such as confidential communications in a therapeutic relationship and issues directly affecting the physical or emotional safety of the individual, such as sexual or other exploitive dual relationships.

Immediate family member—A parent/guardian, child, sibling, spouse or other family member with whom the client/patient lives.

Professional relationship—A therapeutic relationship which shall be deemed to exist for a period of time beginning with the first professional contact or consultation between a marriage and family therapist and a client/patient and continuing thereafter until the last date of a professional service. If a marriage and family therapist sees a client/patient on an intermittent basis, the professional relationship shall be deemed to start anew on each date that the marriage and family therapist provides a professional service to the client/patient.

Sexual intimacies—Romantic, sexually suggestive, sexually demeaning or erotic behavior. Examples of this behavior include the following:

(i) Sexual intercourse.

(ii) Nontherapeutic verbal communication or inappropriate nonverbal communication of a sexual or romantic nature.

(iii) Sexual invitations.

(iv) Soliciting a date from a client/patient.

(v) Masturbating in the presence of a client/patient (or encouraging a client/patient to masturbate in the presence of the marriage and family therapist).

(vi) Exposure, kissing, hugging, touching, physical contact or self-disclosure of a sexual or erotic nature.

§ 48.22. Prohibited conduct.

Sexual intimacies between a marriage and family therapist and a current client/patient, or an immediate family member of a current client/patient, are prohibited.

§ 48.23. Former sexual partners as client/patients.

Marriage and family therapists may not accept as client/patients persons with whom they have engaged in sexual intimacies.

§ 48.24. Sexual intimacies with a former client/patient or an immediate family member of a former client/patient.

(a) Sexual intimacies between a marriage and family therapist and a former client/patient, or an immediate family member of a former client/patient are prohibited for at least 7 years following the termination of the professional relationship, and then only under very limited circumstances.

(b) Following the passage of the 7-year period, marriage and family therapists who engage in sexual intimacies with a former client/patient, or an immediate family member of a former client/patient, shall have the burden of demonstrating that there has been no exploitation of the client/patient in light of all relevant factors, including:

(1) The amount of time that has passed since the professional relationship terminated.

(2) The nature and duration of the therapy.

(3) The circumstances of termination.

(4) The client/patient's personal history, for example, unique vulnerabilities.

(5) The client/patient's current mental status.

(6) Statements or actions made by the marriage and family therapist during the course of therapy suggesting or inviting the possibility of a posttermination sexual or romantic relationship with the client/patient.

(7) The likelihood of adverse impact on the client/patient and immediate family members of the client/patient.

§ 48.25. Disciplinary proceedings.

(a) The consent of a former client/patient or immediate family member of a former client/patient to engage in sexual intimacies with the marriage and family therapist may not be a defense in any disciplinary action brought under §§ 48.22—48.24 (relating to prohibited conduct;

former sexual partners as client/patients; and sexual intimacies with a former client/patient or an immediate family member of a former client/patient).

(b) With the exception of information contained in a professional record, neither opinion evidence, reputation evidence nor specific instances of the past sexual conduct of a former client/patient, or immediate family member of a former clinet/patient, may be admissible in a disciplinary action brought under §§ 48.22—48.24.

(c) In a disciplinary proceeding brought under §§ 48.22—48.24, the marriage and family therapist shall have the burden of proving that there has been no exploitation of the client/patient in light of all of the relevant factors enumerated under § 48.24(b)(1)—(7).

§ 48.26. Impaired professional program.

When the Board takes disciplinary or corrective action against a marriage and family therapist under section 11(a) of the act (63 P. S. § 1911(a)) for conduct prohibited by §§ 48.22—48.24 (relating to prohibited conduct; former sexual partners as clients/patients; and sexual intimacies with a former client/patient or an immediate family member of a former client/patient), the marriage and family therapist will not be eligible for placement into an impaired professional program in lieu of disciplinary or corrective action.

CHAPTER 49. STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS—LICENSURE OF PROFESSIONAL COUNSELORS

SEXUAL MISCONDUCT

§ 49.21. Definitions

The following words and terms, when used in this section and §§ 49.22—49.26, have the following meanings, unless the context clearly indicates otherwise:

Client/patient—A person, group or family for whom a professional counselor provides professional counseling services. In the case of individuals with legal guardians, including minors and legally incapacitated adults, the legal guardian shall be the client/patient for decision making purposes. The minor, legally incapacitated adult or other person actually receiving the service shall be the client/patient for issues specifically reserved to the individual, such as confidential communications in a therapeutic relationship and issues directly affecting the physical or emotional safety of the individual, such as sexual or other exploitive dual relationships.

Immediate family member—A parent/guardian, child, sibling, spouse or other family member with whom the client/patient lives.

Professional relationship—A therapeutic relationship which shall be deemed to exist for a period of time beginning with the first professional contact or consultation between a professional counselor and a client/patient and continuing thereafter until the last date of a professional service. If a professional counselor sees a client/patient on an intermittent basis, the professional relationship shall be deemed to start anew on each date that the professional counselor provides a professional service to the client/patient.

Sexual intimacies—Romantic, sexually suggestive, sexually demeaning or erotic behavior. Examples of this behavior include the following:

(i) Sexual intercourse.

(ii) Nontherapeutic verbal communication or inappropriate nonverbal communication of a sexual or romantic nature.

(iii) Sexual invitations.

(iv) Soliciting a date from a client/patient.

(v) Masturbating in the presence of a client/patient (or encouraging a client/patient to masturbate in the presence of the professional counselor).

(vi) Exposure, kissing, hugging, touching, physical contact or self-disclosure of a sexual or erotic nature.

§ 49.22. Prohibited conduct.

Sexual intimacies between a professional counselor and a current client/patient, or an immediate family member of a current client/patient, are prohibited.

§ 49.23. Former sexual partners as client/patients.

Professional counselors may not accept as client/patients persons with whom they have engaged in sexual intimacies.

§ 49.24. Sexual intimacies with a former client/patient or an immediate family member of a former client/patient.

(a) Sexual intimacies between a professional counselor and a former client/patient, or an immediate family member of a former client/patient, are prohibited for at least 7 years following the termination of the professional relationship, and then only under very limited circumstances.

(b) Following the passage of the 7-year period, professional counselors who engage in sexual intimacies with a former client/patient, or an immediate family member of a former client/patient, shall have the burden of demonstrating that there has been no exploitation of the client/patient in light of all relevant factors, including:

(1) The amount of time that has passed since the professional relationship terminated.

(2) The nature and duration of the therapy.

(3) The circumstances of termination.

(4) The client/patient's personal history, for example, unique vulnerabilities.

(5) The client/patient's current mental status.

(6) Statements or actions made by the professional counselor during the course of therapy suggesting or inviting the possibility of a posttermination sexual or romantic relationship with the client/patient.

(7) The likelihood of adverse impact on the client/patient and immediate family members of the client/patient.

§ 49.25. Disciplinary proceedings.

(a) The consent of a former client/patient or immediate family member of a former client/patient to engage in sexual intimacies with the professional counselor may not be a defense in any disciplinary action brought under §§ 49.22—49.24 (relating to prohibited conduct; former sexual partners as client/patients; and sexual intimacies with a former client/patient or an immediate family member of a former client/patient).

(b) With the exception of information contained in a professional record, neither opinion evidence, reputation evidence nor specific instances of the past sexual conduct of a former client/patient, or immediate family member of

a former client/patient, may be admissible in a disciplinary action brought under §§ 49.22—49.24.

(c) In a disciplinary proceeding brought under §§ 49.22—49.24, the professional counselor shall have the burden of proving that there has been no exploitation of the client/patient in light of all of the relevant factors enumerated under § 49.24(b)(1)—(7).

§ 49.26. Impaired professional program.

When the Board takes disciplinary or corrective action against a professional counselor under section 11(a) of the act (63 P. S. § 1911(a)) for conduct prohibited by §§ 49.22—49.24 (relating to prohibited conduct; former sexual partners as clients/patients; and sexual intimacies with a former client/patient or an immediate family member of a former client/patient), the professional counselor will not be eligible for placement into an impaired professional program in lieu of disciplinary or corrective action.

[Pa.B. Doc. No. 04-1640. Filed for public inspection September 3, 2004, 9:00 a.m.]

STATE REAL ESTATE COMMISSION

[49 PA. CODE CH. 35]

Reciprocal License

The State Real Estate Commission (Commission) proposes to amend Chapter 35 (relating to State Real Estate Commission) to read as set forth in Annex A.

A. *Effective Date*

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

B. *Statutory Authority*

This rulemaking is proposed under the authority of sections 201, 501, 601, 602 and 604 of the Real Estate Licensing and Registration Act (RELRA) (63 P. S. §§ 455.201, 455.501, 455.601, 455.602 and 455.604).

C. *Background and Purpose*

This proposal implements the act of December 30, 2003 (P. L. 418, No. 58) (Act 58), which amended the RELRA to provide for requirements for the issuance of a reciprocal license. Act 58 authorizes the Commission to issue and adopt regulations concerning reciprocal licenses to licensees of other states whose standards are substantially comparable to those in this Commonwealth and who agree to afford an opportunity to licensees from this Commonwealth. In addition, Act 58 authorized the Commission to enter into reciprocal agreements.

Act 58 requires that:

- Licensees whose principal place of business is outside of this Commonwealth be classified as "reciprocal licensees" and all other licensees in this Commonwealth be classified as "standard licensees."

- Reciprocal licensees obtain standard licenses when their principal place of business moves to this Commonwealth or when their licenses in their principal places of business are no longer current.

- Reciprocal licensees maintain current licensure in another state to renew.

- Reciprocal licensees either maintain an office in this Commonwealth or in the state where the licensee holds the equivalent of a standard license.

- Both reciprocal and standard licensees other than brokers be employed and supervised by brokers.

- Applicants for reciprocal licenses be licensed in a state that has standards which are substantially comparable to those in this Commonwealth and that agrees to afford this opportunity to licensees of this Commonwealth.

- Applicants for reciprocal licenses verify that:

(1) To the applicant's knowledge, the applicant is not the subject of discipline or a current investigation or proceeding alleging misconduct under a licensing law or criminal law of either the Commonwealth or another jurisdiction.

(2) The applicant has reviewed and is familiar with the RELRA and the regulations and agrees to be bound by the RELRA and regulations.

(3) The applicant agrees to permit the disclosure of the record in any disciplinary proceeding involving alleged misconduct by the applicant from any jurisdiction in which the applicant is or has been licensed.

(4) The applicant consents to service of process as described in § 35.221(3) (related to general requirements).

- The state where the applicant holds the equivalent of a standard license:

(1) Certifies that the license is active and in good standing.

(2) Describes any past disciplinary action taken by the licensing authority against the applicant.

(3) Lists the applicant's office address and the name of the applicant's employing broker.

- The Commission publish a list of states with which the Commission has signed reciprocal agreements.

- Reciprocal licensees pay the same fees and have the same rights and responsibilities as standard licensees.

D. *Description of Proposed Rulemaking*

§ 35.201. Definitions.

The Commission is proposing to amend the definitions of "broker," "builder-owner salesperson," "campground membership salesperson," "cemetery broker," "cemetery salesperson," "licensee" and "salesperson" in § 35.201 to include both standard and reciprocal licenses in accordance with section 602(a) of the RELRA.

The Commission is also proposing to add definitions for "branch office," "main office" and "principal place of business." Currently, the Commission registers and inspects main and branch offices. Both are tied to the fixed location of the broker of record or broker who is a sole proprietor. The definition for "main office" addresses the office requirements in §§ 35.241, 35.242 and 35.244—35.246. The definition for "branch office" addresses the licensure, supervision and operation and inspection of branch office requirements in §§ 35.243—35.246.

The definition of "principal place of business" addresses the requirement in section 602(a) of the RELRA that the reciprocal licensee's principal place of business must be outside of this Commonwealth. For licensing purposes, the main office of a reciprocal broker would be that

broker's principal place of business. Each of the reciprocal broker's offices in this Commonwealth would be classified as branch offices.

The Commission also proposes adding a definition for "reciprocal license" in accordance with section 602(a) of the RELRA. Current licensees who also hold the equivalent of standard licenses in other states will have the option to convert their standard licenses to reciprocal licenses or maintain their current standard licenses. If they convert their licenses to reciprocal licenses, they will not have to complete the continuing education requirement in § 35.382 (relating to requirement) but they will not be able to have their principal place of business in this Commonwealth.

§ 35.203. Fees.

Section 602(c)(4) of the RELRA mandates that the licensure fees for reciprocal licenses be the same as those for standard licenses. Accordingly, § 35.203 has been amended to reflect that the fees apply equally to standard and reciprocal licenses.

§ 35.221. General requirements.

Section 604(c) of the RELRA sets out the general requirements for licensure: complete an application, pay the licensure fee, provide details of criminal convictions and consent to service of process. The Commission proposes to amend § 35.321 to clarify that these requirements apply to standard and reciprocal licensure applicants.

§ 35.222. Licensure as a broker.

§ 35.223. Licensure as salesperson.

§ 35.224. Licensure as cemetery broker.

§ 35.225. Licensure as cemetery salesperson.

§ 35.226. Licensure as builder-owner salesperson.

§ 35.227. Licensure as rental listing referral agent.

§ 35.228. Licensure as campground membership salesperson.

§ 35.229. Licensure as time-share salesperson.

Each of the previously mentioned sections currently refers to obtaining a license in this Commonwealth. Act 58 removes the reference to a Pennsylvania license and replaces it with standard and reciprocal license. The Commission is proposing to make that same change to each of these provisions.

For standard license applicants, the Commission is also proposing amending the examination requirement to reflect current practice. Applicants shall pass the entire licensure examination unless the applicant has been actively practicing as a broker in another state within the last 5 years. In that instance, the applicant need only pass the State portion of the examination.

As for a reciprocal license applicants, the Commission is proposing tracking the language of section 602(d) and (e) of the RELRA to indicate that where a broker applicant holds a current license issued by a state that recognizes a Pennsylvania standard license without further requirement, the broker may obtain a reciprocal license without further requirements. However, when the applicant applies from a state which would require a standard license applicant to complete additional education, experience or examination requirements, or both, the applicant shall complete equivalent requirements.

The Commission also proposes adding the requirement for a verified statement enumerated in section 602(c) of the RELRA for each of the reciprocal classifications. When the applicant will be acting as a salesperson, builder-owner salesperson or associate broker, the Commission proposes adding a sworn statement from the broker attesting to the applicant's good reputation and certifying that the applicant will be actively supervised and trained by the broker, as is required for standard license applicants. When the applicant will be acting as a time-share salesperson or a campground membership salesperson, the Commission proposes adding a sworn statement from the broker certifying that he actively supervised and trained the applicant, as required for standard license applicants.

§ 35.241. General office requirement.

Current § 35.241 contains the requirement that a broker maintain a fixed office in this Commonwealth unless the broker maintains a fixed office in another state. The Commission proposes replacing the word "fixed" with "main" to correspond to the remaining office provisions which refer to "main" offices. Also, the Commission proposes clarifying that the out-of-State main office must be in the state which has a reciprocal agreement with the Commission and where the reciprocal licensee holds the equivalent of a standard license.

§ 35.242. Office of a broker or cemetery broker.

§ 35.244. Supervision and operation of office.

§ 35.245. Display of licenses in offices.

§ 35.246. Inspection of office.

Current §§ 35.242, 35.244, 35.245 and 35.246 delineate main and branch office requirements. To clarify that the Commission is only statutorily authorized to impose requirements on offices in this Commonwealth and because the main offices of reciprocal license holders are outside of this Commonwealth, the Commission proposes to amend these sections to specify that the requirements only apply to the main offices of standard license holders and to the branch offices of both standard and reciprocal license holders.

Further, current § 35.244 requires that main and branch offices be under the supervision of a broker or associate broker. Similarly, cemetery main and branch offices must be under the supervision of a cemetery broker or associate broker and rental listing referral offices must be under the direction and supervision of a rental listing referral agent. The Commission proposes amending § 35.244 to clarify that the brokers/associate brokers/cemetery brokers/associate cemetery brokers/rental listing referral agents may hold either a standard or reciprocal license. Additionally, the Commission proposes clarifying that associate brokers, salespersons, cemetery salespersons, campground membership salespersons and time-share salespersons may practice in affiliation with a broker holding either a standard or reciprocal license.

§ 35.255. Reciprocal licenses.

The Commission proposes adding § 35.255 to address renewal, reactivation and conversion requirements for reciprocal licensees. Subsection (a) tracks new section 602(h)(2) of the RELRA which exempts reciprocal licensees from the continuing education requirements in section 404.1 of the RELRA (63 P. S. § 455.404a). To renew reciprocal licensees, in addition to completing the application and paying the renewal fee, shall provide the Commission with a certification from the state where the licensee holds the equivalent of a standard license that the license is current and in good standing.

Subsection (b) tracks new section 602(h)(2) of the RELRA which exempts reciprocal licensees from the reactivation requirements in section 501(b) of the RELRA. Unlike standard licensees, a reciprocal licensee who fails to renew a reciprocal license, even after 5 years, may reactivate the license without being re-examined so long as the licensee holds the equivalent of a current standard license in the state where the licensee has his principal place of business.

Subsection (c) tracks new section 602(g) of the RELRA which requires a reciprocal licensee to obtain a standard license if the reciprocal licensee changes his principal place of business to a location within this Commonwealth. The Commission proposes clarifying that when the reciprocal licensee changes this principal place of business or when the reciprocal licensee fails to hold the equivalent of a current standard in the state where the licensee has his principal place of business, the reciprocal licensee is required to: (1) notify the Commission within 90 days of the change; and (2) pass the State portion of the licensing examination. Once the license has been converted, the standard licensee shall comply with the requirements for a standard license, including completion of the continuing education requirement.

§ 35.271. Examination for broker's license.

§ 35.272. Examination for salesperson's license.

§ 35.273. Examination for cemetery broker's license.

§ 35.274. Examination for builder-owner salesperson's license.

§ 35.275. Examination for rental listing referral agent's license.

Similar to the proposed revisions in §§ 35.222—35.229, the Commission proposes to replace the reference to "Pennsylvania" license to "standard" license in conformity with Act 58. Additionally, new provisions, tracking section 602(g) of the RELRA, have been added for each licensure classification clarifying that when the holder of a reciprocal license converts to a standard license, the education, experience and examination requirements do not apply. Rather, the licensee is only required to pass the State portion of the examination. These provisions are consistent with the requirements for standard licensee applicants who hold a current license in another state.

§ 35.305. Business name on advertisements.

On November 18, 2000, the Commission amended subsection (b) to permit licensees to advertise a nickname provided the name was registered with the Commission. Despite providing the example of Jack v. John and Margaret v. Peggy, the Commission has received numerous inquiries from licensees questioning whether they could use a nickname for their last name. As such, the Commission proposes amending subsection (b) to clarify that the nickname may only be for the licensee's first name.

§ 35.325. Escrow account.

Current subsection (b) authorizes the employing broker or the broker of record to give an employee the written authority to deposit money into an escrow account and a licensed employee the authority to withdraw funds. In an attempt to clarify that the Commission is referring to a sole proprietor when it uses the terms "employing broker," the Commission proposes amending subsection (b) by substituting "sole proprietor" for "employing broker."

§ 35.382. Requirement.

§ 35.383. Waiver of continuing education requirement.

§ 35.384. Qualifying courses; required and elective topics.

New section 602(h)(2) of the RELRA exempts reciprocal licensees from the continuing education requirements in section 404.1 of the RELRA. Accordingly, the Commission proposes amending §§ 35.382—35.384 by substituting "standard license holders" or "holding a standard license" for "licensees" throughout.

The Commission extended an invitation to the following boards and associations to preliminarily review and comment on the Commission's draft regulatory proposal: Pennsylvania Association of Realtors; Realtors Educational Institute; Institute of Real Estate Studies; Polley Associates; Pennsylvania Cemetery & Funeral Association; Pennsylvania Bar Association; Allegheny Highland Association; Greater Allegheny-Kiski Area Board; Allegheny Valley Board; Beaver County Association; Bradford-Sullivan County Association; Bucks County Board; Butler County Association; Cambria-Somerset Association; Carbon County Association; Carlisle Association; Central Montgomery County Association; Central Susquehanna Valley Board; Central Westmoreland Board; Centre County Association; Chester County Association; Clearfield-Jefferson Association; Delaware Valley Realtors Association; East Montgomery County Association; Elk-Cameron County Board; Greater Erie Board; Fayette County Board; Franklin County Association; Greenville Area Board; Hanover-Adams County Association; Greater Harrisburg Association; Greater Hazleton Association; Huntingdon County Board; Indiana County Board; Lancaster County Association; Lawrence County Board; Lebanon County Association; Lehigh Valley Association; McKean County Association; Greater Meadville Board; Greater Mercer County Board; Mifflin-Juniata County Board; Mon Yough Association; Monongahela Valley Board; Greater Philadelphia Association; North Central Penn Board; Pike/Wayne Association; Pocono Mountains Association; Reading-Berks Association; Realtors Association of Metropolitan Pittsburgh; Schuylkill County Board; Greater Scranton Association; Tri-State Commercial and Industrial Association; Warren County Board; Washington-Greene Association; West Branch Valley Association; Westmoreland West Association; Greater Wilkes-Barre Association; York County Association; The Pennsylvania Federation of Housing Counselors and Agencies; and The Real Estate Consumer Council. The Commission considered comments submitted to it in drafting the proposal.

E. *Fiscal Impact and Paperwork Requirements*

The proposed rulemaking should have no fiscal impact on the Commonwealth. Reciprocal licensees are required by Act 58 to pay the same licensure fees as standard license holders. As such, the licensure fees will cover all administrative fees.

Additional paperwork requirements for the Commission would be limited to entering into reciprocal agreements with the other states and annually publishing a list of those states who have entered into agreement and others that require the imposition of additional education, experience and examination requirements. Licensees would have no additional paperwork requirements. The proposed rulemaking should not necessitate any legal, accounting or reporting requirements on the regulated community.

F. *Sunset Date*

The Commission reviews the effectiveness of its regulations on an ongoing basis. Therefore, no sunset date has been assigned.

G. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 23, 2004, the Commission submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Commission, the General Assembly and the Governor of comments, recommendations or objections raised.

H. *Public Comment*

Interested persons are invited to submit written comments, recommendations or objections regarding the proposed amendments to Judith Pachter Schulder, Counsel, State Real Estate Commission, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days of publication of this proposed rulemaking. Reference No. 16A-5610 (Reciprocal Licenses) when submitting comments.

JOSEPH J. MCGETTIGAN,
Chairperson

Fiscal Note: 16A-5610. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 35. STATE REAL ESTATE COMMISSION

Subchapter B. GENERAL PROVISIONS

§ 35.201. Definitions.

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

* * * * *

***Branch office*—Any fixed location in this Commonwealth, other than the main office, maintained by a broker or cemetery broker, devoted to the transaction of real estate business.**

Broker—An individual or entity **holding either a standard or reciprocal license, unless otherwise specified,** that, for another and for a fee, commission or other valuable consideration, does one or more of the following:

* * * * *

Broker of record—The individual broker responsible for the real estate transactions of a partnership, association or corporation that holds a broker's license**[, or the individual broker or limited broker responsible for the real estate transactions of a partnership, association or corporation that holds a limited broker's license]**.

Builder-owner salesperson—An individual **holding either a standard or reciprocal license, unless otherwise specified,** who is a full-time employee of a builder-owner of single- and multi-family dwellings located in this Commonwealth and who is authorized, for and on behalf of, the builder-owner, to do one or more of the following:

* * * * *

Campground membership salesperson—An individual **holding either a standard or reciprocal license, unless otherwise specified,** who, either as an employee or an independent contractor, sells or offers to sell campground memberships**[. The individual shall sell campground memberships]** under the active supervision of a broker. A licensed broker, salesperson or timeshare salesperson does not need to possess a campground membership salesperson's license to sell campground memberships.

* * * * *

Cemetery broker—An individual or entity **holding either a standard or reciprocal license, unless otherwise specified,** that is engaged as, or carrying on the business or acting in the capacity of, a broker exclusively within the limited field or branch of business that applies to cemetery lots, plots and mausoleum spaces or openings.

* * * * *

Cemetery salesperson—An individual **holding either a standard or reciprocal license, unless otherwise specified,** employed by a broker or cemetery broker exclusively to perform the duties of a cemetery broker.

* * * * *

Licensee—An individual or entity **[licensed] holding either a standard or reciprocal license, unless otherwise specified,** under the act. For purposes of the consumer notice in § 35.336(a) (relating to disclosure summary for the purchase or sale of residential or commercial real estate or for the lease of residential or commercial real estate when the licensee is working on behalf of the tenant), the term means a broker or salesperson.

* * * * *

***Main office*—The fixed location of the broker or cemetery broker in this Commonwealth or another state devoted to the transaction of real estate business.**

* * * * *

***Principal place of business*—The fixed location of the broker or cemetery broker in the state where the licensee holds the equivalent of a standard license.**

* * * * *

***Reciprocal license*—A license issued to an individual or entity whose principal place of business for the provision of real estate services is outside of this Commonwealth and who holds a current license to provide real estate services from a state that has executed a reciprocal agreement with the Commission.**

* * * * *

Salesperson—An individual **holding either a standard or reciprocal license, unless otherwise specified,** who is employed by a broker to do one or more of the following:

* * * * *

***Standard license*—A license issued to an individual or entity who has fulfilled the education/experience and examination requirements of the act.**

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§ 35.203. Fees.

The following fees are charged by the Commission:

* * * * *

Application for **standard or reciprocal** licensure of:

* * * * *

Initial **standard or reciprocal** licensure for broker, cemetery broker, branch office, rental listing referral agent, or broker of record, partner or officer for a partnership, association or corporation:

* * * * *

Initial **standard or reciprocal** registration of cemetery company or initial **standard or reciprocal** licensure for associate broker, salesperson, cemetery associate broker, builder-owner salesperson, time-share salesperson or campground membership salesperson:

* * * * *

Biennial renewal of **standard or reciprocal** license of broker, cemetery broker, branch office, rental listing referral agent, or broker of record, partner or officer for a partnership, association or corporation	$84
Biennial renewal of cemetery company registration or **standard or reciprocal** license of associate broker, salesperson, cemetery associate broker, cemetery salesperson or campground membership salesperson	$64

* * * * *

Certification of current status of **standard or reciprocal** licensure, registration or approval	$15
Certification of history of **standard or reciprocal** licensure, registration or approval	$40
Duplicate **standard or reciprocal** license	$5
Late renewal of **standard or reciprocal** license	In addition to the prescribed renewal fee, $5 for each month or part of the month beyond the renewal date

* * * * *

Subchapter C. LICENSURE

LICENSURE REQUIREMENTS

§ 35.221. General requirements.

In addition to meeting the other requirements of this subchapter pertaining to the specific license sought, an applicant for a **[Pennsylvania] standard or reciprocal** real estate license shall submit the following to the Commission with the license application:

* * * * *

§ 35.222. Licensure as a broker.

(a) **[Except as provided in subsection (b), an] An** individual who wants to obtain a **[Pennsylvania] standard** broker's license shall **comply with § 35.221 (relating to general requirements) and**:

(1) Have scored a passing grade on each part of the broker's licensing examination within 3 years prior to submission of a properly completed license application **except that an applicant who has been actively licensed as a broker by another state within the last 5 years shall take and pass only the Pennsylvania portion of the examination**. See § 35.271 (relating to examination for broker's license).

(2) Comply with §§ 35.241 and 35.242 (relating to general office requirement; and office of broker or **[limited] cemetery** broker).

(3) Submit a completed **[license]** application to the Commission with recommendations attesting to the applicant's good reputation for honesty, trustworthiness, integrity and competence from:

(i) One real estate broker **[licensed] holding either a current standard or reciprocal license issued** by the Commission.

* * * * *

(b) An individual **[holding a broker's license issued by another jurisdiction]** who wants to obtain a **[Pennsylvania] reciprocal** broker's license **[either]** shall comply with **[subsection (a) or shall] § 35.221 and**:

(1) Possess a **current** broker's license issued by another **[jurisdiction that has been active within 5 years prior to the submission of a properly completed license application] state that agrees to issue a license to a standard Pennsylvania licensee without further requirement. When an applicant applies from a state which would require a standard Pennsylvania licensee to complete additional education, experience or examination requirements, the applicant shall complete equivalent requirements.**

(2) **[Have scored a passing grade on the Pennsylvania portion of the broker's examination within 3 years prior to the submission of a properly completed license application. See § 35.271.**

(3)] Comply with §§ 35.241 and 35.242.

[(4)](3) Submit a completed license application to the Commission with a **verified statement that:**

(i) To the applicant's knowledge, the applicant is not the subject of discipline or a current investigation or proceeding alleging misconduct under a licensing law or criminal law of either the Commonwealth or another state.

(ii) The applicant has reviewed, is familiar with and agrees to be bound by the act and this chapter.

(iii) The applicant agrees to permit the disclosure of the record in any disciplinary proceeding involving alleged misconduct by the applicant from any state in which the applicant is or has been licensed.

(iv) The applicant consents to service of process as described in § 35.221(3).

(4) If the applicant will be acting as an associate broker, submit a sworn statement from the broker with whom the applicant desires to be affiliated:

(i) Attesting to the applicant's good reputation for honesty, trustworthiness, integrity and competence.

(ii) Certifying that the applicant will be actively supervised and trained by the broker.

(5) Submit a certification from the real estate licensing authority of the other **[jurisdiction containing the following information] state**:

(i) **[The applicant's license number, the date of issuance of the license and confirmation that the applicant obtained initial licensure by written examination.**

(ii) Whether the] Confirming that the applicant's license **[has been] is** active **[within the last 5 years] and in good standing**.

[(iii) A description of] (ii) Describing any past disciplinary action taken by the licensing authority against the applicant.

[(iv) The] (iii) Listing the applicant's office address and the name of the applicant's **[employer] employing broker**.

(c) A partnership, association or corporation that wants to obtain a **[Pennsylvania] standard or reciprocal** broker's license shall:

(1) Ensure that each member of the partnership or association, or each officer of the corporation, who intends to engage in the real estate business **[is licensed] holds either a current standard or reciprocal license issued** by the Commission as a salesperson or broker.

* * * * *

§ 35.223. Licensure as salesperson.

(a) **[Except as provided in subsection (b), an] An** individual who wants to obtain a **[Pennsylvania] standard** salesperson's license shall **comply with § 35.221 (relating to general requirements)** and:

(1) Have scored a passing grade on each part of the salesperson's licensing examination within 3 years prior to the submission of a properly completed license application **except that an applicant who has been actively licensed as a broker or a salesperson by another state within the last 5 years shall take and pass only the Pennsylvania portion of the examination**. See § 35.272 (relating to examination for salesperson's license).

* * * * *

(b) An individual **[holding a broker's or salesperson's license issued by another jurisdiction]** who wants to obtain a **[Pennsylvania] reciprocal** salesperson's license **[shall comply with subsection (a) or]** shall **comply with § 35.221 and**:

(1) Possess a **current** broker's or salesperson's license issued by another **[jurisdiction that has been active within 5 years prior to the submission of a properly completed license application] state that agrees to issue a license to a standard Pennsylvania licensee without further requirement. When an applicant applies from a state which would require a standard Pennsylvania licensee to complete additional education, experience or examination requirements, the applicant shall complete equivalent requirements.**

(2) **[Have scored a passing grade on the Pennsylvania portion of the salesperson's examination within 3 years prior to the submission of a properly completed license application. See § 35.272.] Submit a completed license application to the Commission with a verified statement that:**

(i) To the applicant's knowledge, the applicant is not the subject of discipline or a current investigation or proceeding alleging misconduct under a licensing law or criminal law of either this Commonwealth or another state.

(ii) The applicant has reviewed, is familiar with and agrees to be bound by the act and this chapter.

(iii) The applicant agrees to permit the disclosure of the record in any disciplinary proceeding involving alleged misconduct by the applicant from any state in which the applicant is or has been licensed.

(iv) The applicant consents to service of process as described in § 35.221(3).

(3) Submit **[a completed license application to the Commission with]** a certification from the real estate licensing authority of the other **[jurisdiction containing the following information] state**:

(i) **[The applicant's license number, the date of issuance of the license and confirmation that the applicant obtained initial licensure by written examination.**

(ii) An indication of whether] Confirming that the **applicant's** license **[has been] is** active **[within the last 5 years] and in good standing**.

[(iii) A description of] (ii) Describing any past disciplinary action taken by the licensing authority against the applicant.

[(iv) The] (iii) Listing the applicant's office address and the name of the applicant's **[employer] employing broker**.

(4) Submit a sworn statement from a standard or reciprocal broker with whom the applicant will be affiliated:

(i) Attesting to the applicant's good reputation for honesty, trustworthiness, integrity and competence.

(ii) Certifying that the applicant will be actively supervised and trained by the broker.

§ 35.224. Licensure as cemetery broker.

(a) An individual who wants to obtain a **[Pennsylvania] standard** cemetery broker's license shall **comply with § 35.221 (relating to general requirements) and**:

(1) Have scored a passing grade on each part of the salesperson's licensing examination within 3 years prior to the submission of a properly completed license application **except that an applicant who has been actively licensed as a cemetery broker by another state**

within the last 5 years shall take and pass only the Pennsylvania portion of the examination. See § 35.273 (relating to examination for cemetery broker's license).

* * * * *

(3) Submit a completed **[license]** application to the Commission with recommendations attesting to the applicant's good reputation for honesty, trustworthiness, integrity and competence from:

(i) One real estate broker **[licensed] holding either a current standard or reciprocal license issued** by the Commission.

* * * * *

(b) **An individual who wants to obtain a reciprocal cemetery broker's license shall comply with § 35.221 and:**

(1) Possess a current cemetery broker's license issued by a state that agrees to issue a license to a standard Pennsylvania licensee without further requirement. When an applicant applies from a state that would require a standard Pennsylvania licensee to complete additional education, experience or examination requirements, the applicant shall complete equivalent requirements.

(2) Comply with §§ 35.241 and 35.242.

(3) Submit a completed license application to the Commission with a verified statement that:

(i) To the applicant's knowledge, the applicant is not the subject of discipline or a current investigation or proceeding alleging misconduct under a licensing law or criminal law of either this Commonwealth or another state.

(ii) The applicant has reviewed, is familiar with and agrees to be bound by the act and this chapter.

(iii) The applicant agrees to permit the disclosure of the record in any disciplinary proceeding involving alleged misconduct by the applicant from any state in which the applicant is or has been licensed.

(iv) The applicant consents to service of process as described in § 35.221(3).

(4) If the applicant will be acting as an associate cemetery broker, submit a sworn statement from the broker with whom the applicant will be affiliated:

(i) Attesting to the applicant's good reputation for honesty, trustworthiness, integrity and competence.

(ii) Certifying that the applicant will be actively supervised and trained by the broker.

(5) Submit a certification from the real estate licensing authority of the other state:

(i) Confirming that the applicant's license is active and in good standing.

(ii) Describing any past disciplinary action taken by the licensing authority against the applicant.

(iii) Listing the applicant's office address and the name of the applicant's employing broker.

(c) A partnership, association or corporation that wants to obtain a **[Pennsylvania] standard** cemetery broker's license shall:

(1) Ensure that each member of the partnership, association**[,]** or each officer of the corporation, who intends to engage in the real estate business **[is licensed by the Commission] possesses a standard license** as a broker or cemetery broker **issued by the Commission**.

* * * * *

(d) A partnership, association or corporation that wants to obtain a reciprocal cemetery broker's license shall:

(1) Ensure that each member of the partnership, association or each officer of the corporation, who intends to engage in the real estate business possesses a standard or reciprocal license as a broker or cemetery broker issued by the Commission.

(2) Designate a broker or cemetery broker holding a standard or reciprocal license to serve as broker of record.

(3) Comply with §§ 35.241 and 35.242.

(4) Submit a complete license application to the Commission.

§ 35.225. Licensure as cemetery salesperson.

(a) An individual who wants to obtain a **[Pennsylvania] standard** cemetery salesperson's license shall **comply with § 35.221 (relating to general requirements) and**:

* * * * *

(b) An individual who wants to obtain a reciprocal cemetery salesperson's license shall comply with § 35.221 and:

(1) Possess a current cemetery salesperson's license issued by a state that agrees to issue a license to a standard Pennsylvania licensee without further requirement. When an applicant applies from a state that would require a standard Pennsylvania licensee to complete additional education, experience or examination requirements, the applicant shall complete equivalent requirements.

(2) Submit a certification from the real estate licensing authority of the other state:

(i) Confirming that the applicant's license is active and in good standing.

(ii) Describing any past disciplinary action taken by the licensing authority against the applicant.

(iii) Listing the applicant's office address and the name of the applicant's employing broker.

(3) Submit a completed license application to the Commission with a verified statement that:

(i) To the applicant's knowledge, the applicant is not the subject of discipline or a current investigation or proceeding alleging misconduct under a licensing law or criminal law of either this Commonwealth or another state.

(ii) The applicant has reviewed, is familiar with and agrees to be bound by the act and this chapter.

(iii) The applicant agrees to permit the disclosure of the record in any disciplinary proceeding involving alleged misconduct by the applicant from any state in which the applicant is or has been licensed.

(iv) The applicant consents to service of process as described in § 35.221(3).

(4) Submit a sworn statement from the broker with whom the applicant will be affiliated:

(i) Attesting to the applicant's good reputation for honesty, trustworthiness, integrity and competence.

(ii) Certifying that the applicant will be actively supervised and trained by the broker.

§ 35.226. Licensure as builder-owner salesperson.

(a) An individual who wants to obtain a **[Pennsylvania] standard** builder-owner salesperson's license shall **comply with § 35.221 (relating to general requirements) and**:

(1) Have scored a passing grade on each part of the salesperson's licensing examination within 3 years prior to the submission of a properly completed license application **except that an applicant who has been actively licensed as a broker, salesperson or builder-owner salesperson by another state within the last 5 years shall take and pass only the Pennsylvania portion of the examination**. See § 35.274 (relating to examination for builder-owner salesperson's license).

* * * * *

(b) An individual who wants to obtain a reciprocal license as a builder-owner salesperson shall comply with § 35.221 and:

(1) Possess a current builder-owner salesperson license issued by a state that agrees to issue a license to a standard Pennsylvania licensee without further requirement. When an applicant applies from a state that would require a standard Pennsylvania licensee to complete additional education, experience or examination requirements, the applicant shall complete equivalent requirements.

(2) Submit a certification from the real estate licensing authority of the other state:

(i) Confirming that the applicant's license is active and in good standing.

(ii) Describing any past disciplinary action taken by the licensing authority against the applicant.

(iii) Listing the applicant's office address and the name of the applicant's employing broker.

(3) Submit a completed license application to the Commission with a verified statement that:

(i) To the applicant's knowledge, the applicant is not the subject of discipline or a current investigation or proceeding alleging misconduct under a licensing law or criminal law of either the Commonwealth or another state.

(ii) The applicant has reviewed, is familiar with and agrees to be bound by the act and this chapter.

(iii) The applicant agrees to permit the disclosure of the record in any disciplinary proceeding involving alleged misconduct by the applicant from any state in which the applicant is or has been licensed.

(iv) The applicant consents to service of process as described in § 35.221(3).

(4) Submit a sworn statement from the builder-owner with whom the applicant will be affiliated:

(i) Attesting to the applicant's good reputation for honesty, trustworthiness, integrity and competence.

(ii) Certifying that the applicant is a builder-owner of single or multifamily dwellings and employs the applicant.

§ 35.227. Licensure as rental listing referral agent.

(a) An individual who wants to obtain a **[Pennsylvania] standard** rental listing referral agent's license shall **comply with § 35.221 (relating to general requirements) and**:

(1) Have scored a passing grade on each part of the salesperson's examination within 3 years prior to the submission of a properly completed license application **except that an applicant who has been actively licensed as a broker, salesperson or rental listing referral agent by another state within the last 5 years shall take and pass only the Pennsylvania portion of the examination**. See § 35.275 (relating to examination for rental listing referral agent's license).

* * * * *

(b) **An individual who wants to obtain a reciprocal rental listing referral agent's license shall comply with § 35.221 and:**

(1) Possess a current rental listing referral agent's license issued by a state that agrees to issue a license to a standard Pennsylvania licensee without further requirement. When an applicant applies from a state that would require a standard Pennsylvania licensee to complete additional education, experience or examination requirements, the applicant shall complete equivalent requirements.

(2) Submit a certification from the real estate licensing authority of the other state:

(i) Confirming that the license is active and in good standing.

(ii) Describing any past disciplinary action taken by the licensing authority against the applicant.

(iii) Listing the applicant's office address and the name of the applicant's employing broker.

(3) Submit a completed license application to the Commission with a verified statement that:

(i) To the applicant's knowledge, the applicant is not the subject of discipline or a current investigation or proceeding alleging misconduct under a licensing law or criminal law of either the Commonwealth or another state.

(ii) The applicant has reviewed, is familiar with and agrees to be bound by the act and this chapter.

(iii) The applicant agrees to permit the disclosure of the record in any disciplinary proceeding involving alleged misconduct by the applicant from any state in which the applicant is or has been licensed.

(iv) The applicant consents to service of process as described in § 35.221(3).

(4) Comply with § 35.241 (relating to general office requirement).

(c) A partnership, association or corporation that wants to obtain a **[Pennsylvania] standard or reciprocal** rental listing referral agent's license shall:

(1) Designate an individual who is licensed by the Commission **as either a current standard or reciprocal** as a rental listing referral agent **issued by the Commission** to serve as manager of record.

* * * * *

§ 35.228. Licensure as campground membership salesperson.

(a) An individual who wants to obtain a **[Pennsylvania] standard** campground membership salesperson's license shall **comply with § 35.221 (relating to general requirements) and**:

* * * * *

(b) An individual who **[sells campground memberships without a license may be subject to disciplinary action by the Commission for unlicensed practice as a campground membership salesperson under section 301 of the act (63 P. S. § 455.301).] wants to obtain a reciprocal campground membership salesperson's license shall comply with § 35.221 and:**

(1) Possess a current campground membership salesperson's license issued by a state that agrees to issue a license to a standard Pennsylvania licensee without further requirement. When an applicant applies from a state that would require a standard Pennsylvania licensee to complete additional education, experience or examination requirements, the applicant shall complete equivalent requirements.

(2) Submit a certification from the real estate licensing authority of the other state:

(i) Confirming that the applicant's license is active and in good standing.

(ii) Describing any past disciplinary action taken by the licensing authority against the applicant.

(iii) Listing the applicant's office address and the name of the applicant's employing broker.

(3) Submit a completed license application to the Commission with a verified statement that:

(i) To the applicant's knowledge, the applicant is not the subject of discipline or a current investigation or proceeding alleging misconduct under a licensing law or criminal law of either the Commonwealth or another state.

(ii) The applicant has reviewed, is familiar with and agrees to be bound by the act and this chapter.

(iii) The applicant agrees to permit the disclosure of the record in any disciplinary proceeding involving alleged misconduct by the applicant from any state in which the applicant is or has been licensed.

(iv) The applicant consents to service of process as described in § 35.221(3).

(4) Submit a sworn statement from the broker from whom the applicant received his onsite training certifying that the broker actively trained and supervised the applicant and providing other information regarding the onsite training the Commission may require.

§ 35.229. Licensure as time-share salesperson.

(a) An individual who wants to obtain a **[Pennsylvania] standard** time-share salesperson's license shall **comply with § 35.221 (relating to general requirements) and**:

* * * * *

(b) An individual who **[sells time shares without a license may be subject to disciplinary action by the Commission for unlicensed practice as a time-share salesperson under section 301 of the act (63 P. S. § 455.301).] wants to obtain a reciprocal time-share salesperson's license shall comply with § 35.221 and:**

(1) Possess a current time-share salesperson's license issued by a state that agrees to issue a license to a standard Pennsylvania licensee without further requirement. When an applicant applies from a state that would require a standard Pennsylvania licensee to complete additional education, experience or examination requirements, the applicant shall complete equivalent requirements.

(2) Submit a certification from the real estate licensing authority of the other state:

(i) Confirming that the applicant's license is active and in good standing.

(ii) Describing any past disciplinary action taken by the licensing authority against the applicant.

(iii) Listing the applicant's office address and the name of the applicant's employing broker.

(3) Submit a completed license application to the Commission with a verified statement that:

(i) To the applicant's knowledge, the applicant is not the subject of discipline or a current investigation or proceeding alleging misconduct under a licensing law or criminal law of either this Commonwealth or another state.

(ii) The applicant has reviewed and is familiar with the act and the regulations and agrees to be bound by the act and regulations.

(iii) The applicant agrees to permit the disclosure of the record in any disciplinary proceeding involving alleged misconduct by the applicant from any state in which the applicant is or has been licensed.

(iv) The applicant consents to service of process as described in § 35.221(3).

(4) Submit a sworn statement from the broker from whom the applicant received his onsite training certifying that he actively trained and supervised the applicant and providing other information regarding the onsite training the Commission may require.

OFFICES

§ 35.241. General office requirement.

(a) A broker, cemetery broker, or rental listing referral agent shall maintain a **[fixed] main** office in this Commonwealth unless he maintains a **[fixed] main** office in another **[jurisdiction] state** where he **[is licensed] holds the equivalent of a standard license**.

* * * * *

§ 35.242. Office of broker or cemetery broker.

(a) The office of a broker or cemetery broker **in this Commonwealth** shall be devoted to the transaction of real estate business and be arranged to permit business to be conducted in privacy.

(b) If the office of a broker or cemetery broker **in this Commonwealth** is located in a private residence, the entrance to the office shall be separate from the entrance to the residence.

(c) The business name of the broker or cemetery broker, as designated on the license, shall be displayed prominently and in permanent fashion outside the office **in this Commonwealth**.

(d) A branch office operated by a broker or cemetery broker **in this Commonwealth** shall be in compliance with this section.

§ 35.244. Supervision and operation of office.

(a) The main or branch office **in this Commonwealth** of a broker shall be under the direction and supervision of a broker or associate broker **holding either a standard or reciprocal license**.

(b) The main or branch office **in this Commonwealth** of a cemetery broker shall be under the direction and supervision of a broker, cemetery broker, associate broker or **associate** cemetery broker **holding either a standard or reciprocal license**.

(c) **An associate broker, salesperson, cemetery salesperson, campground membership salesperson or time-share salesperson shall practice in affiliation with a broker holding either a reciprocal or standard license issued by the Commission.**

(d) A branch office **in this Commonwealth** may not be operated in a manner that permits, or is intended to permit, an **[employe] employee** to carry on the business of the office for the **[employe's] employee's** sole benefit.

[(d)] (e) The office **in this Commonwealth** of a rental listing referral agent shall be under the direction and supervision of a rental listing referral agent **holding either a standard or reciprocal license issued by the Commission**. A rental listing referral agent may not supervise more than one office.

§ 35.245. Display of licenses in office.

(a) The current license of a broker, cemetery broker or rental listing referral agent **holding a standard license and those licensees employed by that broker, cemetery broker or rental listing referral agent** shall be displayed in a conspicuous place at the main office.

(b) The current license of **[an associate broker, salesperson, associate cemetery broker or cemetery salesperson] a broker, cemetery broker or rental listing referral agent holding a reciprocal license and those licensees employed by that broker, cemetery broker or rental listing referral agent** shall be displayed in a conspicuous place at the **branch** office out of which the **[licensee] broker, cemetery broker or rental listing referral agent** works.

* * * * *

(d) A broker or cemetery broker **holding a standard license** shall maintain at the main office a list of licensed **[employes] employees** and the branch office out of which each licensed **[employe] employee** works.

(e) A broker or cemetery holding a reciprocal license shall maintain at the branch office a list of employees licensed in this Commonwealth and the branch office out of which each licensed employee works.

§ 35.246. Inspection of office.

(a) *Routine inspections*. No more than four times a year during regular business hours, the Commission or its authorized representatives may conduct a routine inspection of the main office **of a broker, cemetery broker or rental listing referral agent holding a standard license** or **a** branch office of a broker, cemetery broker or rental listing referral agent **holding either a standard or reciprocal license** for the purpose of determining whether the office is being operated in compliance with the act and this chapter.

(b) *Special inspections*. In addition to the routine inspections authorized by subsection (a), the Commission or its authorized representatives may conduct a special inspection of a main **office of a standard license holder** or **a** branch office **of a standard or reciprocal license holder**:

* * * * *

STATUS OF LICENSURE

§ 35.255. Reciprocal licenses.

(a) *Renewal.* In addition to completing the application and paying the fee, the licensee shall provide the Commission with a certification that the license is current and in good standing from the state where the licensee has his principal place of business.

(b) *Reactivation.* A licensee who fails to renew a reciprocal license may reactivate the license without being reexamined provided that he holds the equivalent of a current standard license in the state where the licensee has his principal place of business.

(c) *Conversion to standard license.* A reciprocal licensee who designates his principal place of business as in this Commonwealth or who fails to maintain a current standard license in the state of his principal place of business shall notify the Commission within 90 days of the change. To continue to practice in this Commonwealth at the end of the renewal period, the reciprocal licensee shall obtain a standard license in accordance with the applicable requirements of this chapter. Thereafter, the standard licensee shall comply with the requirements for a standard license, including completion of the continuing education requirement.

Subchapter D. LICENSING EXAMINATIONS

§ 35.271. Examination for broker's license.

(a) An individual who wants to take the broker's examination for a **[Pennsylvania] standard** broker's license shall:

* * * * *

(b) The Commission will apply the following standards in determining whether an examination candidate has met the education requirement of subsection (a)(4):

* * * * *

(2) **[Except as provided in paragraph (6), 2] Two** of the required 16 credits shall be in a Commission-developed or approved real estate office management course and 2 of the required 16 credits shall be in a Commission-developed or approved law course. At least 6 of the remaining 12 credits shall be in 3 or more of the

Commission-developed courses listed in this paragraph. The remaining 6 credits shall be in real estate courses but not necessarily those listed in this paragraph. A candidate may not apply credits used to qualify for the salesperson's examination toward fulfillment of the broker education requirement.

* * * * *

[(6) Two credits will be allowed for each year of active practice the candidate has had a licensed broker in another jurisdiction during the 10-year period immediately preceding the submission of the examination application.]

(c) A reciprocal licensee who is converting that license to a standard broker's license is exempt from subsection (a) and is only required to pass the state portion of the examination.

§ 35.272. Examination for salesperson's license.

(a) An individual who wants to take the salesperson's examination for the purpose of obtaining a **[Pennsylvania] standard** salesperson's license shall:

* * * * *

(c) A licensee who is converting that license to a standard salesperson's license is exempt from the requirements in subsections (a) and (b) and is only required to pass the state portion of the examination.

§ 35.273. Examination for cemetery broker's license.

(a) An individual who wants to take the salesperson's examination for the purpose of obtaining a **[Pennsylvania] standard** cemetery broker's license shall:

(b) The Commission will apply the following standards in determining whether an examination candidate has met the education requirements of subsection (a)(3):

* * * * *

(5) Courses shall have been completed within 10 years prior to the date of successful completion of the licensing examination **except for applicants who are converting a reciprocal license to a standard license or hold a current license in another state**.

(c) A reciprocal licensee who is converting that license to a standard cemetery broker's license is exempt from subsection (a) and is only required to pass the State portion of the examination.

§ 35.274. Examination for builder-owner salesperson's license.

(a) An individual who wants to take the salesperson's examination for the purpose of obtaining a **[Pennsylvania] standard** builder-owner salesperson's license shall:

* * * * *

(b) A reciprocal licensee who is converting that license to a standard builder-owner salesperson's license is only required to pass the State portion of the examination.

§ 35.275. Examination for rental listing referral agent's license.

(a) An individual who wants to take the salesperson's examination for the purpose of obtaining a **[Pennsylvania] standard** rental listing referral agent's license shall:

* * * * *

(b) The Commission will apply the following standards in determining whether an examination candidate has met the requirements of subsection (a)(2):

* * * * *

(4) Courses shall have been completed within 10 years prior to the date of successful completion of the licensing examination **except for applicants who are converting a reciprocal license to a standard license or hold a current license in another state**.

(c) A reciprocal licensee who is converting that license to a standard rental listing referral agent's license is exempt from the requirements in subsections (a) and (b) and is only required to pass the state portion of the examination.

Subchapter E. STANDARDS OF CONDUCT AND PRACTICE

ADVERTISING AND SOLICITATION

§ 35.305. Business name on advertisements.

* * * * *

(b) **[Individual brokers of record, associate brokers, salespersons, cemetery associate brokers, cemetery salespersons and rental listing referral agents] Licensees** who wish to use and advertise **[nicknames (for example, Jack v. John or Margaret v. Peggy)] a nickname for their first names** shall include the **[names] nickname** on their licensure applications or biennial renewal applications.

* * * * *

ESCROW REQUIREMENTS

§ 35.325. Escrow account.

* * * * *

(b) **[The employing] A** broker **who is a sole proprietor** or broker of record **[of a partnership, association or corporation]** may give an **[employe] employee** written authority to deposit money into an escrow account and may give a licensed **[employe] employee** written authority to withdraw funds from the escrow account for payments that are properly chargeable to the account.

* * * * *

Subchapter H. CONTINUING EDUCATION

§ 35.382. Requirement.

(a) *Condition precedent to renewal of current **standard** license.* **[Beginning with the 1994-1996 biennial license period and continuing with each biennial license period thereafter, a] A** broker or salesperson **holding a standard license** who desires to renew a current license shall, as a condition precedent to renewal, complete 14 hours of Commission-approved continuing education during the preceding license period.

(b) *Condition precedent to reactivation and renewal of noncurrent **standard** license.* **[Effective March 1, 1994, a] A** broker or salesperson **holding a standard license** who desires to reactivate and renew a noncurrent license shall, as a condition precedent to reactivation and renewal, complete 14 hours of Commission-approved continuing education during the 2-year period preceding the date of submission of the reactivation application. A

broker or salesperson **holding a standard license** may not use the same continuing education coursework to satisfy the requirements of this subsection and subsection (a).

(c) *Exception*. The continuing education requirement does not apply to **reciprocal license holders or** cemetery brokers, cemetery salespersons, builder-owner salespersons, timeshare salespersons, campground membership salespersons and rental listing referral agents **who hold standard licenses**.

§ 35.383. Waiver of continuing education requirement.

(a) The Commission may waive all or part of the continuing education requirement of § 35.382 (relating to requirement) upon proof that the **[licensee] standard license holder** seeking the waiver is unable to fulfill the requirement because of illness, emergency or hardship. Subsections (b)—(d) are examples of situations in which hardship waivers will be granted. Hardship waivers will be granted in other situations for good cause shown.

(b) A **[licensee] standard license holder** who seeks to renew a current license that was initially issued within 6 months of the biennial license period for which renewal is sought will be deemed eligible, on the basis of hardship, for a full waiver of the continuing education requirement.

(c) A **[licensee] standard license holder** who seeks to renew a current license that was reactivated from noncurrent status within 6 months of the biennial license period for which renewal is sought will be deemed eligible, on the basis of hardship, for a full waiver of the continuing education requirement.

(d) A **[licensee] standard license holder** who is a qualified continuing education instructor will be deemed eligible, on the basis of hardship, for the waiver of 1 hour of continuing education for each hour of actual classroom instruction in an approved continuing education topic that the instructor is qualified to teach. Duplicate hours of instruction in the same topic during the same biennial license period will not be considered for waiver purposes.

§ 35.384. Qualifying courses**[; required and elective topics]**.

(a) **[*Qualifying courses.*]** A **[licensee may] standard license holder shall** satisfy the continuing education requirement by doing one of the following:

* * * * *

(b) **[*Required topics.* A minimum of 5 and a maximum of 8 hours shall be in required topics. A minimum of 2 hours shall be in the act and this chapter and a minimum of 3 hours shall be in fair housing laws and practices.]** The Commission may, for a given biennial license period and with adequate notice to **[licensees] standard license holders**, require up to 3 hours in a topic that addresses a critical issue of current relevance to licensees.

(c) **[*Elective topics.*] * * ***

* * * * *

[Pa.B. Doc. No. 04-1641. Filed for public inspection September 3, 2004, 9:00 a.m.]

STATEMENTS OF POLICY

Title 12—COMMERCE, TRADE AND LOCAL GOVERNMENT

DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

[12 PA. CODE CH. 123]

Community Revitalization Program

The Department of Community and Economic Development (Department) amends Chapter 123 (relating to community revitalization program) to read as set forth in Annex A. The statement of policy is amended under the authority of section 209 of Act 7A of 2004, known as the General Appropriation Act of 2004 (Appropriation Act).

Background

The Appropriation Act requires the Department to publish Community Revitalization Program (Program) guidelines in the *Pennsylvania Bulletin* prior to the spending of the 2004-2005 moneys designated for the program. This amended statement of policy updates the existing Program guidelines published in 2003.

Amendments

Section 123.1 (relating to introduction) is amended to update the reference to the Appropriation Act and to the current fiscal year.

Section 123.3 (relating to eligibility) is amended to update the reference to the Appropriation Act and to the current fiscal year.

Section 123.5 (relating to application submission and approval procedure) is amended to update the reference to the current fiscal year, the grant award cycles and the proposed award dates.

Section 123.6 (relating to procedures) is amended to update the reference to the current fiscal year.

Fiscal Impact

The amended statement of policy has no fiscal impact on the Commonwealth, political subdivisions or the public.

Paperwork Requirements

Additional paperwork requirements are not imposed as a result of the amended statement of policy.

Contact Person

For further information regarding the amended statement of policy, contact Richard Guinan, Director, Operations and Compliance, Department of Community and Economic Development, Commonwealth Keystone Building, 400 North Street, Fourth Floor, Harrisburg, PA 17120-0225, (717) 787-7402.

Findings

The Department finds that delay in implementing the statement of policy will have a serious adverse impact on the public interest.

Order

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

(a) The statement of policy of the Department, 12 Pa. Code Chapter 123, is amended by amending §§ 123.1, 123.3, 123.5 and 123.6 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 for approval as to form and legality 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 YABLONSKY,
Secretary

Fiscal Note: 4-81. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 12. COMMERCE, TRADE AND LOCAL GOVERNMENT

PART V. COMMUNITY AFFAIRS AND DEVELOPMENT

Subpart A. STRATEGIC PLANNING AND OPERATION

CHAPTER 123. COMMUNITY REVITALIZATION PROGRAM

§ 123.1 Introduction.

(a) The CRP provides grants for community revitalization and improvement projects throughout this Commonwealth. CRP funds may be used for projects that are in accordance with Act 7A of 2004. Eligible projects are defined in § 123.3(b) (relating to eligibility).

(b) Assistance from the CRP is in the form of grants from the Commonwealth to eligible applicants for projects which, in the judgment of the Department, comply with the provisions of Act 7A of 2004, are in accordance with the program guidelines in this chapter and meet all Department Single Application for Assistance criteria found in the application.

(c) Applicants should be aware that applications for other Department programs may also be considered under the CRP. This creates a large pool of applications for a limited appropriation from the General Assembly. As such, not every application can or will be funded.

(d) 2004 CRP expenditures will be charged to the State fiscal year July 1, 2004, to June 30, 2005.

§ 123.3 Eligibility.

(a) *Eligible applicants*. The following applicants are eligible:

(1) General purpose units of local government, including counties, cities, boroughs, townships and home rule municipalities.

(2) Municipal and redevelopment authorities and agencies.

(3) Industrial development authorities and agencies.

(4) Nonprofit corporations incorporated under the laws of the Commonwealth.

(5) Community organizations engaged in activities consistent with the CRP guidelines as determined by the Department.

(b) *Eligible projects.*

(1) CRP funds may be used for community revitalization and improvement projects that are consistent with Act 7A of 2004. Eligible projects include projects which meet one or more of the following criteria:

(i) Improve the stability of the community.

(ii) Promote economic development.

(iii) Improve existing or develop new, or both, civic, cultural, recreational, industrial and other facilities.

(iv) Assist in business retention, expansion, creation or attraction.

(v) Promote the creation of jobs and employment opportunities.

(vi) Enhance the health, welfare and quality of life of this Commonwealth.

(2) Projects for the sole benefit of a for-profit entity are not eligible for program funding.

(c) *Guideline Compliance for Fiscal Year 2004-2005.* Projects that receive funding must meet one or more of the criteria in subsection (b).

§ 123.5 Application submission and approval procedure.

(a) The application is available by calling the Customer Service Center, the Department's regional offices or at the Department's website www.inventpa.com. Applications will be accepted throughout the fiscal year up to the March 31, 2005, submission deadline. Applications will be subject to § 123.7 (relating to limitations and penalties). Applications may be submitted by mail to the following address:

Department of Community and Economic Development
Customer Service Center
Commonwealth Keystone Building
400 North Street, Fourth Floor
Harrisburg, PA 17120-0225
1-800-379-7448

(2) To expedite processing, applications should be submitted on-line by means of the Department's on-line Single Application for Assistance found at "www.esa.dced.state.pa.us".

(b) The CRP grant awards will be made in three funding rounds during the fiscal year. The Department will grant approximately 33% of the program appropriation in each round. These percentages are targets. The Department will make every effort to allocate program funds in accordance with these targets, but is not bound to them. Applicants should not apply in each round, and should apply only once during the 2004-2005 Fiscal Year. Grant applications not funded in a round will be rolled into the next round for consideration.

(1) The first round consideration will include all applications received between July 1, 2004, and September 30, 2004.

(2) The second round will include applications received by December 30, 2004, and applications not approved in the first round.

(3) The third round will include applications received by March 31, 2005, and applications not approved in the first and second rounds.

(4) Targeted grant announcement dates, subject to change without notice at the discretion of the Department, are as follows:

(i) November 2004 for the first round.

(ii) February 2005 for the second round.

(iii) May 2005 for the third round.

(c) Any CRP funds remaining after the third round may be awarded by the Department up to the end of the fiscal year.

(d) Letters will not be sent to applicants after each funding round advising applicants that they have not been funded.

(e) Applicants that do not receive funding during any of the rounds will be notified during July 2005 to reapply during the next fiscal year.

(f) Follow up information as to the status of submitted grant applications may be obtained by contacting the DCED Customer Service Center. However, calls are not encouraged. The account manager letter is confirmation of receipt of the application. The demand for this program is very high, and staff may not be familiar with each individual application. Applicant care in preparation of the application will assist the Department in processing the application.

(g) Applicants should not submit more than one application per fiscal year. Additional applications do not enhance opportunity for funding. The Department reserves the right to reject additional applications from the same applicant, without notice to the applicant.

(h) The Department reserves the right to reject, without notification, applications received after March 31, 2005, for the 2004-2005 fiscal year appropriation.

§ 123.6 Procedures.

(a) The CRP grant award notifications will be made by letter. After the award letter has been mailed, the applicant will receive a contract document that shall be signed by the grantee and returned to the Department for execution on behalf of the Commonwealth. Grants will not be awarded without a fully executed contract.

(b) The applicant shall maintain full and accurate records with respect to the project. The Department will have free access to these records including invoices of material and other relative data and records, as well as the right to inspect all project work. The applicant shall furnish upon request of the Department all data, reports, contracts, documents and other information relevant to the project.

(c) Approved grants in the amount of $100,000 or more require the grantee to provide an audit of the grant by a certified public accountant, prepared at the expense of the grantee, in compliance with State law. The single audit performed for Federal audit purposes will not be accepted for auditing grants funded with State monies.

(d) Approved grants under $100,000 require the grantee to submit a detailed financial statement and a close out report of the use of State funds consistent with the contract. An audit is recommended, although not required.

(e) Funds will be disbursed according to the provisions in the contract between the applicant and the Department.

(f) Applications from grant recipients who did not fulfill their audit requirements under previous contracts will not be considered and will be placed on hold until the audit requirements are met.

(g) Applications not acted on favorably will be considered to have been denied and will not be considered for the 2005-2006 fiscal year.

[Pa.B. Doc. No. 04-1642. Filed for public inspection September 3, 2004, 9:00 a.m.]

NOTICES

DEPARTMENT OF AGRICULTURE

Plum Pox Virus Untended Stone Fruit Orchard Indemnity Program

The Department of Agriculture (Department) gives notice of the procedures and requirements under which it will continue to award grants to owners of untended stone fruit orchards when these orchards are: (1) subject to a quarantine order issued by the Department under authority of the Plant Pest Act (act) (3 P. S. §§ 258.1—258.27); (2) destroyed by order of the Department as part of its ongoing Plum Pox Virus (PPV) containment and eradication effort; and (3) not otherwise eligible to be reimbursed for the removal, destruction and loss of these trees and the prevention of subsequent land erosion under existing reimbursement grant programs. This program will be known as the Plum Pox Virus Untended Stone Fruit Orchard Indemnity Program (program).

PPV afflicts trees and shrubs in the genus *Prunus*. These trees include apricot, plum, peach, nectarine, cherry and other stone fruit trees used in commercial fruit production, various ornamental and fruit-bearing trees and shrubs that are in popular use in residential backyard planting and landscaping and trees in untended orchards that are no longer being maintained for commercial fruit production or other commercial purposes.

In summary, the program complements four other programs under which the Department provides partial indemnification for losses sustained by stone fruit tree owners:

1. The Plum Pox Virus Commercial Orchard Fruit Tree Indemnity Program, the procedures and requirements of which were originally published at 30 Pa.B. 4014 (August 5, 2000) and 30 Pa.B. 6608 (December 23, 2000) and recent amendments published at 34 Pa.B. 1258 (February 28, 2004).

2. The Plum Pox Virus Commercial Nursery Fruit Tree Indemnity Program, the procedures and requirements of which were published at 30 Pa.B. 4737 (September 9, 2000) and recent amendments published at 34 Pa.B. 1256 (February 28, 2004).

3. The Plum Pox Virus Noncommercial Prunus Tree and Landscape Nursery Prunus Tree Indemnity Program, the procedures and requirements of which were published at 31 Pa.B. 2936 (June 9, 2001).

4. The Plum Pox Virus Voluntary Commercial Orchard Fruit Tree Indemnity Program, the procedures and requirements of which were originally published at 34 Pa.B. 2470 (May 8, 2004).

The program fills a gap that is not addressed in the four programs listed. Rather than focusing on stone fruit trees used for commercial orchard purposes, commercial nursery purposes, landscaping purposes or landscape nursery purposes (as do the various programs described previously), the program focuses on untended stone fruit orchards. These are typically orchards that were planted or used for commercial stone fruit production but that are no longer used for any commercial purpose. These untended orchards are sometimes referred to in the stone fruit production industry as "abandoned" orchards. An untended orchard provides a reservoir for PPV and the aphids that carry it. In addition, untended stone fruit orchards are at higher risk of PPV infection since they are not actively managed. The program provides a framework within which the Department can compensate owners of untended orchards for the cost resulting from the destruction of the untended orchard by order of the Department.

Authority

There are two separate sources of authority and funding for the program. The first is section 207 of the General Appropriation Act of 2004, which appropriated the sum of $500,000 to the Department for fruit tree indemnity payments related to PPV and costs related to disease eradication and other prevention and control measures. The second is the First Supplemental General Appropriation Act of 2003 (No. 9A), which appropriated $1 million in nonlapsing funds to the Department for these same purposes.

Background

Under the authority and responsibility imparted it under the act, the Department has established PPV-related quarantines in parts of four counties. In Adams County, the Townships of Huntington and Latimore, the Borough of York Springs and portions of Butler, Menallen and Tyrone Townships are quarantined. In Cumberland County, the Borough of Mount Holly Springs and the Townships of South Middleton, Southampton and Dickinson are quarantined. In Franklin County, Quincy Township and the Borough of Mount Alto are quarantined. In York County, Conewago, Franklin, Monaghan and Washington Townships are quarantined. The areas covered by these quarantine orders—and any area designated in any subsequent PPV-related quarantine order issued by the Department—are referred to collectively as the "PPV quarantine area."

PPV is a serious plant pest that injures and damages stone fruits such as peaches, nectarines, cherries, plums and apricots by drastically reducing the fruit yields from these stone fruit trees and by disfiguring the fruit to the point it is unmarketable. PPV has the potential to cause serious damage to the stone fruit production and stone fruit nursery industries within this Commonwealth. PPV is transmitted from infected trees by aphids and by budding or grafting with PPV-infected plant material. There is no known control for PPV other than the destruction of infected trees.

Untended stone fruit orchards present a particularly serious problem to the Department's PPV containment and eradication effort. An untended orchard contains trees and shrubs that are susceptible to PPV and provides an excellent environment for the aphids that transmit the disease from tree to tree. Untended stone fruit orchards are not monitored by the owner for signs of plant disease, are not subject to applications of pesticides that reduce the chance of aphid-borne PPV transmission and are frequently overgrown with other plants that make the untended orchard difficult to access. All of these factors combine to make untended stone fruit orchards more likely to become infected with PPV, thus serving as a continuous virus reservoir.

It is the intention of the Department to issue (as funding is available) a series of quarantine orders covering untended stone fruit orchards in an increasingly

widening circle having the current quarantine area as its center. An owner of an untended stone fruit orchard in this expanded quarantine area will be issued a treatment order by the Department under authority of the act. The treatment order will direct the removal of all stone fruit trees from the untended stone fruit orchard and prescribe other measures necessary to address the PPV threat in that untended orchard. The Department will also provide the owner instructions as to the process through which the Department may award the owner a grant under the program to compensate the owner for the costs of destruction and soil erosion prevention required under the treatment order.

Obtaining an Application

A person seeking a grant under the program shall apply for the grant using a reimbursement grant application/agreement form provided by the Department. The forms may be obtained through the following contact person.

Contents of Application

An application for a grant under the program will require the following information from an applicant:

1. The name and address of the applicant.

2. Verification that the applicant is an owner of an untended stone fruit orchard.

3. A description of the location of the untended stone fruit orchard with respect to which a grant is sought.

4. Verification that the untended stone fruit orchard with respect to which a grant is sought is the subject of a treatment order issued by the Department, directing that stone fruit trees in that untended orchard be destroyed, removed or otherwise disposed of for purposes of controlling or containing PPV.

5. Verification that prior to the destruction of the stone fruit trees the applicant and the Department personnel conducted a physical inspection of the untended orchard to assess the approximate number of stone fruit trees and the approximate acreage affected by the treatment order and had agreed upon the accuracy of this information in writing.

6. The stone fruit tree number and acreage figures described in paragraph (5).

7. Verification that the measures required under the treatment order have been carried out, and that the stone fruit trees in the untended orchard have been removed, destroyed or otherwise disposed of in accordance with that treatment order.

8. Verification of the costs incurred by the applicant in carrying out the treatment order.

9. Verification that the applicant is not entitled to reimbursement for destruction or replacement of the untended stone fruit trees under: (a) the Plum Pox Virus Commercial Orchard Fruit Tree Indemnity Program; (b) the Plum Pox Virus Commercial Nursery Fruit Tree Indemnity Program; (c) the Plum Pox Virus Noncommercial Prunus Tree and Landscape Nursery Prunus Tree Indemnity Program; or (d) the Plum Pox Virus Voluntary Commercial Orchard Fruit Tree Indemnity Program.

10. A signature acknowledging that representations made in the application are true, and further acknowledging that the criminal punishments and penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities) apply to any false statement made in the application.

Grant Amount

A portion of the grant amount shall address the cost of removal and destruction of the untended stone fruit trees and any other PPV abatement measure required under the treatment order. The amount of a grant to be applied to these removal, destruction and PPV abatement costs shall not exceed $1,000 per acre. A portion of the grant amount may also address the cost of implementing reasonable erosion measures (such as planting a conservation-type grass cover crop) on the land from which the untended stone fruit trees are removed—if those erosion measures are necessary. In calculating the appropriate grant amount, the Department will consider the number of untended stone fruit trees on the affected acreage.

Review of Applications

The Department will review and approve or disapprove complete, timely grant applications within 30 days of receipt. The Department will stamp or otherwise identify each grant application to record the date and the order in which the application was received. The Department will consider grant applications in the order they are received. The Department will approve a grant application if all of the following criteria are met:

1. The application is complete and provides the Department all the information necessary to a reasoned review of the document.

2. There are sufficient unencumbered funds available from the $500,000 appropriation contained in the Appropriation Act of 2004 and $1 million nonlapsing appropriation contained in the Appropriation Act of 2003 to fund the grant amount sought in the reimbursement grant application.

Notice of Decision

The Department will, within 10 days of completing its review, inform (whether by mail or other means) a grant applicant of whether the grant application is approved or disapproved. If the application is disapproved, the written notice will specify the basis for disapproval.

No Right or Entitlement to Funds

The appropriation of funds for the purposes previously described does not create in a person a right or entitlement to a grant from these funds. Departmental approval of a grant application is the event that establishes entitlement of the applicant to the grant funds sought, provided appropriated funds are available in an amount adequate to fund the grant.

Additional Information/Contact Person

Applications and further information can be obtained by contacting the Department of Agriculture, Attn.: Karl Valley, Bureau of Plant Industry, 2301 North Cameron Street, Harrisburg, PA 17110-9408, (717) 772-5226.

DENNIS C WOLFF,
Secretary

[Pa.B. Doc. No. 04-1643. Filed for public inspection September 3, 2004, 9:00 a.m.]

DEPARTMENT OF BANKING

Action on Applications

The Department of Banking, under the authority contained in the act of November 30, 1965 (P. L. 847, No. 356), known as the Banking Code of 1965; the act of December 14, 1967 (P. L. 746, No. 345), known as the Savings Association Code of 1967; the act of May 15, 1933 (P. L. 565, No. 111), known as the Department of Banking Code; and the act of December 19, 1990 (P. L. 834, No. 198), known as the Credit Union Code, has taken the following action on applications received for the week ending August 24, 2004.

BANKING INSTITUTIONS

Mutual Holding Company Reorganization

Date	*Name of Corporation*	*Location*	*Action*
8-24-04	Beneficial Mutual Savings Bank Philadelphia Philadelphia County	Philadelphia	Effective

Represents reorganization into a mutual holding company to be known as Beneficial Savings Bank MHC, Philadelphia, PA, parent company of Beneficial Mutual Bancorp, Inc. Beneficial Mutual Savings Bank will be a wholly-owned subsidiary of Beneficial Mutual Bancorp, Inc., a newly formed Federally-chartered stock holding company, which in turn is a subsidiary of Beneficial Savings Bank MHC, a newly formed Federally-chartered mutual holding company.

Holding Company Acquisitions

Date	*Name of Corporation*	*Location*	*Action*
8-18-04	S & T Bancorp, Inc., Indiana, to acquire 24.99% of the outstanding shares of Allegheny Valley Bancorp, Inc., Pittsburgh	Indiana	Filed
8-24-04	F. N. B. Corporation, Hermitage, to acquire 100% of the voting shares of Slippery Rock Financial Corporation, Slippery Rock	Hermitage	Filed

Conversions

Date	*Name of Institution*	*Location*	*Action*
8-20-04	Prudential Savings Association (d/b/a Prudential Savings Bank, PaSA) Philadelphia Philadelphia County	1834 Oregon Avenue Philadelphia Philadelphia County	Effective

To:

Prudential Savings Bank
Philadelphia
Philadelphia County

Represents conversion from State-chartered mutual savings association to a State-chartered mutual savings bank.

Branches Acquired by Means of Conversion:

601 Morgan Avenue Drexel Hill Delaware County	2101 South 19th Street Philadelphia Philadelphia County
112 South 9th Street Philadelphia Philadelphia County	238a Moore Street Philadelphia Philadelphia County
1722 South Broad Street Philadelphia Philadelphia County	

8-24-04	Beneficial Mutual Savings Bank Philadelphia Philadelphia County	Philadelphia	Effective

Represents conversion from a State-chartered mutual savings bank to a State-chartered stock savings bank in conjunction with the reorganization into a mutual holding company form of ownership.

Consolidations, Mergers and Absorptions

Date	*Name of Bank*	*Location*	*Action*
8-24-04	First Financial Bank Downingtown Chester County Purchase of certain deposits of a branch office of Firstrust Savings Bank, Conshohocken, Located at: 125 East Swedesford Road Exton Chester	Downingtown	Approved

Note: This transaction does not involve any real estate. The subject branch office will be closed by Firstrust Savings Bank; approval for discontinuance issued by the Department of Banking on July 26, 2004.

Branch Applications

Date	*Name of Bank*	*Location*	*Action*
8-20-04	Mid Penn Bank Millersburg Dauphin County	17 North Second Street Harrisburg Dauphin County	Filed
8-20-04	Mid Penn Bank Millersburg Dauphin County	550 Allentown Boulevard Harrisburg Dauphin County	Filed
8-20-04	Integrity Bank Camp Hill Cumberland County	One Marketway South York York County	Filed
8-24-04	S & T Bank Indiana Indiana County	208 West Plank Road Altoona Blair County	Approved
8-24-04	S & T Bank Indiana Indiana County	Messenger service branch to operate within a 20-mile radius of the 208 West Plank Road, Altoona, office	Approved
8-24-04	Beneficial Savings Bank Philadelphia Philadelphia County	1305-11 Bethlehem Pike Flourtown Montgomery County	Approved

Branch Relocations

Date	*Name of Bank*		*Location*	*Action*
8-19-04	Citizens Bank of Pennsylvania Philadelphia Philadelphia County	*To:*	12 Chestnut Road Paoli Chester County	Filed
		From:	10 East Lancaster Avenue Paoli Chester County	Filed
8-20-04	S & T Bank Indiana Indiana County	*To:*	12900 Frankstown Road Pittsburgh Allegheny County	Filed
		From:	12262 Frankstown Road Pittsburgh Allegheny County	

SAVINGS INSTITUTIONS

No activity.

CREDIT UNIONS

No activity.

A.WILLIAM SCHENCK, III,
Secretary

[Pa.B. Doc. No. 04-1644. Filed for public inspection September 3, 2004, 9:00 a.m.]

DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

County Application for Homestead Exemption

In accordance with section 8587 of the act of May 5, 1998 (P. L. 301, No. 50) (act), the Department of Community and Economic Development gives notice of the development of the County Application for Homestead Exemption for use by assessors under section 8584(A) of the act. The application and instructions for completion of the application follow as Annex A. Electronic copies of the application are available at www.inventpa.com. The form will remain in effect until changed by a notice in the *Pennsylvania Bulletin*.

Further information can be obtained from the Department of Community and Economic Development, Customer Service Center, Commonwealth Keystone Building, 400 North Street, Fourth Floor, Harrisburg, PA 17120-0225, (800) 379-7448, ra-dcedcs@state.pa.us.

DENNIS YABLONSKY,
Secretary

Annex A

_____ County Application for Homestead Exemption

Please read instructions before completing application. Applications must be filed with the County Assessors Office by March 1st.

1. Parcel Number (and/or Map Number if different) _____

2. Property Address _____

3. Municipality _____ School District _____

4. Applicant Owner(s) _____

5. Mailing Address of Applicant (if different than property address) _____

6. Phone Number of Applicant:

Daytime _____ Evening _____

7. Do you use this property as your primary residence?

_____ Yes _____ No

8. Do you claim anywhere else as your primary residence, or do you or your spouse receive a homestead tax abatement or other homestead benefit from any other county or state?

_____ Yes _____ No

9. Is your residence part of a cooperative or a condominium where some or all of the property taxes are paid jointly?

_____ Yes _____ No

If yes, do you pay a portion of the jointly paid taxes?

_____ Yes _____ No

10. Is your property used for other purposes besides your primary residence, such as a business or rental property?

_____ Yes _____ No

If yes, what portion of the property is used for your primary residence? _____ %

11. Do you wish to seek a farmstead exclusion for the buildings or structures on this property?

_____ Yes _____ No

If yes, do any farm buildings or structures receive an abatement of property tax under another law?

_____ Yes _____ No

Please read before signing: Any person who knowingly files an application which is false to any material matter shall be subject to payment of taxes due, plus interest, plus penalty and shall be subject to prosecution as a misdemeanor of the third degree and fine of up to $2,500.

I hereby certify that all the above information is true and correct

_____ _____
Signature Date

OFFICIAL USE ONLY

Date Filed _____
Reviewed by _____
Date Reviewed _____
Applicable Years _____

[ ] Approved

[ ] Denied

Homestead Value _____
Farmstead Value _____
Assessment Information:
Land _____
Improvements _____
TOTAL _____

You must file this form in order to receive PROPERTY TAX RELIEF under the Homeowner Tax Relief Act of 2004

Instructions
Application for Homestead & Farmstead Exclusions

The Homeowner Tax Relief Act, Act 72 of 2004, was signed into law by Governor Rendell on July 5, 2004, to allow school districts to reduce property taxes through a homestead exclusion. Property tax relief will be funded by a combination of state revenue from gaming and dedicated local income taxes. Under a homestead property tax exclusion, the assessed value of each home is reduced by the same amount before the property tax is computed. Most likely, initial property tax reductions will not take effect until July 1, 2006; however, the changes may occur as early as July 1, 2005 or as late as July, 1, 2007. In addition, some school boards may choose not to adopt the homestead exclusion.

1. Fill in the parcel number and the map number (if two different numbers) of the property for which you are seeking a homestead exclusion. You can find the parcel number and map number on your real property tax bill. If you do not have a real property tax bill, call your local tax collector or county assessment office (555-555-5555).

2. Fill in the address of the property for which you are seeking a homestead exclusion.

3. Fill in your municipality and school district. If you are not sure what your municipality or school district is, contact your local tax collector or county assessment office (555-555-5555).

4. Fill in your name and the name of other owners of record, such as your spouse or a co-owner of the property. All recorded owners must apply for the exclusion.

5. If your mailing address differs from the address of the property for which you are seeking a homestead exemption, fill in your mailing address.

6. Please list phone number where you can be reached during the day, and the evening, if you are unavailable during the day.

7. Only a primary residence may receive the homestead exclusion. You may not claim this property as your primary residence if you claim another property as a homestead or if you or your spouse receives a homestead tax abatement or other homestead benefit from any other county or state.

The Homestead Exclusion can only be claimed once, for a place of primary residence. This is the fixed place of abode where the owner intends to reside permanently, not temporarily; the place where a person makes their home, until something happens that the person adopts another home. You may be asked to provide proof that this property is your primary residence, such as your driver's license, your voter registration card, your personal income tax form or your local earned income tax form.

8. Do you have another residence which you claim as your primary residence? For instance, do you claim another state as your primary residence, or another county in Pennsylvania?

9. If you live in a unit of a cooperative or a condominium and you pay all or a portion of your real property taxes jointly through a management agent or association, rather than paying your taxes separately from other units, check yes. If so, please provide the percentage of overall tax you pay. You may be asked to provide a contact to confirm this information.

10. Check yes if the property for which you are seeking a homestead exclusion is used for other purposes, such as a business or rental property. If so, please indicate what portion of the property is used as your private residence.

12. Check yes if you believe your property qualifies for the farmstead exclusion. If yes, please indicate what buildings or structures are exempted, excluded or abated from real property taxation under any other law. You may be asked to provide proof that buildings and structures are used for commercial agricultural activity, such as the net income or loss schedule from your state or federal income tax forms.

Only buildings and structures on farms which are at least ten contiguous acres in area and used as the primary residence of the owner are eligible for a farmstead exclusion. The buildings and structures must be used for commercial agricultural production, i.e., to store farm products produced on the farm, to house animals maintained on the farm, or to store agricultural supplies or machinery and equipment used on the farm.

Change in Use

When the use of a property approved as homestead or farmstead property changes so that the property no longer qualifies for the homestead or farmstead exclusion, property owners must notify the assessor within 45 days of the change in use. If the use of your property changes and you are not sure if it still qualifies for the homestead or farmstead exemption, you should contact the assessor.

False or Fraudulent Applications

The assessor may select, randomly or otherwise, applications to review for false or fraudulent information. Any person who files an application which contains false information, or who does not notify the assessor of a change in use which no longer qualifies as homestead or farmstead property, will be required to:

- Pay the taxes which would have been due but for the false application, plus interest.
- Pay a penalty equal 10% of the unpaid taxes.
- If convicted of filing a false application, be guilty of a misdemeanor of the third degree and be sentenced to pay a fine not exceeding $2,500.

By signing and dating this form, the applicant is affirming or swearing that all information contained in the form is true and correct.

Applications must be filed before March 1 of each year. Please return to:

_____

_____

_____

For Questions on the Homestead or Farmstead Exclusion, please contact your local tax collector or the _____ County Assessment office at 555-555-5555, office hours X:00 to X:00, Monday through Friday.

[Pa.B. Doc. No. 04-1645. Filed for public inspection September 3, 2004, 9:00 a.m.]

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Applications, Actions and Special Notices

APPLICATIONS

THE CLEAN STREAMS LAW AND THE FEDERAL CLEAN WATER ACT

APPLICATIONS FOR NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES) PERMITS AND WATER QUALITY MANAGEMENT (WQM) PERMITS

This notice provides information about persons who have applied for a new, amended or renewed NPDES or WQM permit, a permit waiver for certain stormwater discharges or submitted a Notice of Intent (NOI) for coverage under a general permit. The applications concern, but are not limited to, discharges related to industrial, animal or sewage waste, discharges to groundwater, discharges associated with municipal separate storm sewer systems (MS4), stormwater

associated with construction activities or concentrated animal feeding operations (CAFOs). This notice is provided in accordance with 25 Pa. Code Chapters 91 and 92 and 40 CFR Part 122, implementing The Clean Streams Law (35 P. S. §§ 691.1—691.1001) and the Federal Clean Water Act.

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

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

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

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

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

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

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

I. NPDES Renewal Applications

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

NPDES Permit No. (Type)	*Facility Name and Address*	*County and Municipality*	*Stream Name (Watershed No.)*	*EPA Waived Y/N ?*
PA0020052	Eldred Borough Municipal Authority 3 Bennett Street Eldred, PA 16731-0270	Eldred Borough McKean County	Allegheny River 16-C	Y

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

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

PA0228877, SIC 4952, **David Ryman**, 15 Stony Brook Road, Orangeville, PA 17859. This proposed action is for a new NPDES permit for discharge of treated sewage to Stony Brook in Orange Township, **Columbia County**.

The receiving stream is in the Fishing Watershed (5-C) and classified for EV, and aquatic life, water supply and recreation.

For the purpose of evaluating effluent requirements for TDS, NO_2-NO_3, fluoride and phenolics, the downstream potable water supply considered during the evaluation is United Water PA Bloomsburg, approximately 1.1 miles below the discharge on Fishing Creek.

Outfall 001: The proposed effluent limits, based on a design flow of 0.0004 MGD, are:

Parameter	*Average Monthly (mg/l)*	*Instantaneous Maximum (mg/l)*
$CBOD_5$	10	20
Suspended Solids	10	20
Free Chlorine Residual	Monitor	

Parameter	Average Monthly (mg/l)	Instantaneous Maximum (mg/l)
Fecal Coliform		
(5-1 to 9-30)	200/100 ml as a geometric average	
(10-1 to 4-30)	200/100 ml as a geometric average	
pH	6.0—9.0 SU at all times	

The EPA waiver is in effect.

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

PA0204862, Industrial Waste, SIC 3211, **Guardian Industries Corporation**, 1000 Glasshouse Road, Jefferson Hills, PA 15025. This application is for renewal of an NPDES permit to discharge untreated cooling tower blowdown and stormwater from the Floreffe Plant in Jefferson Borough, **Allegheny County**.

The following effluent limitations are proposed for discharge to the receiving waters, Monongahela River, classified as a WWF with existing and/or potential uses for aquatic life, water supply and recreation. The first existing/proposed downstream potable water supply is the Pennsylvania American Water Company, 410 Cook Lane, Pittsburgh, PA 15234, 20.5 miles below the discharge point.

Outfall 001: existing discharge, design flow of 0.0087 mgd.

	Mass (lb/day)		Concentration (mg/l)		
Parameter	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
Flow (MGD)	Monitor and Report				
Temperature (°F)					110
Total Residual Chlorine					
(1st Month to 12th Month)				Monitor and Report	
(13th Month to Expiration)			0.5		1.25
pH	not less than 6.0 nor greater than 9.0				

Other Conditions: Outfall 001 discharges stormwater runoff in addition to noncontact cooling water. Outfall 002 is abandoned.

Outfalls 003—011: existing discharge, design flow of varied MGD.

The discharge from these outfalls shall consist solely of uncontaminated stormwater runoff only.

The EPA waiver is in effect.

PA0252662, Industrial Waste, SIC 4941, **Central Indiana County Water Authority**, 30 East Wiley Street, Homer City, PA 15748. This application is for issuance of an NPDES permit to discharge treated backwash water from the Central Indiana Water Treatment Plant in Center Township, **Indiana County**.

The following effluent limitations are proposed for discharge to the receiving waters, Yellow Creek, classified as a CWF with existing and/or potential uses for aquatic life, water supply and recreation. The first existing/proposed downstream potable water supply is the Saltsburg Municipal Water Authority at Saltsburg, PA, 35 miles below the discharge point.

Outfall 001: new discharge, design flow of 0.062 mgd.

	Mass (lb/day)		Concentration (mg/l)		
Parameter	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
Flow	Monitor and Report				
Total Suspended Solids			30		60
Total Iron			2		4
Aluminum (T)			4		8
Manganese (T)			1		2
Total Residual Chlorine			0.5		1
pH	not less than 6.0 nor greater than 9.0				

The EPA waiver is in effect.

PA0096164, Sewage, **Thomas Guiher**, P. O. Box 346, Donegal, PA 15628. This application is for renewal of an NPDES permit to discharge treated sewage from the Living Treasures II Sewage Treatment Plant in Donegal Township, **Westmoreland County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as Indian Creek, which are classified as a HQ-CWF with existing and/or potential uses for aquatic life, water supply and recreation. The first downstream potable water supply intake from this facility is the Indian Creek Valley Water Authority.

Outfall 001: existing discharge, design flow of 0.014 mgd.

	Concentration (mg/l)			
Parameter	*Average Monthly*	*Average Weekly*	*Maximum Daily*	*Instantaneous Maximum*
$CBOD_5$	10			20
Suspended Solids	25			50
Ammonia Nitrogen				
(5-1 to 10-31)	3.0			6.0
(11-1 to 4-30)	9.0			18.0
Fecal Coliform				
(5-1 to 9-30)	200/100 ml as a geometric mean			
(10-1 to 4-30)	20,000/100 as a geometric mean			
Total Residual Chlorine	1.4			3.3
Dissolved Oxygen	not less than 5.0 mg/l			
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is in effect.

PA0110663, Sewage, **Municipal Authority of the Borough of Cresson**, P. O. Box 172, Cresson, PA 16630. This application is for renewal of an NPDES permit to discharge treated sewage from the Cresson Sewage Treatment Plant in Cresson Township, **Cambria County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as Little Conemaugh River, which are classified as a WWF with existing and/or potential uses for aquatic life, water supply and recreation. The first downstream potable water supply intake from this facility is the Buffalo Township Municipal Authority Freeport.

Outfall 001: existing discharge, design flow of 1.5 mgd.

	Concentration (mg/l)			
Parameter	*Average Monthly*	*Average Weekly*	*Maximum Daily*	*Instantaneous Maximum*
$CBOD_5$	25	37.5		50
Suspended Solids	30	45		60
Ammonia Nitrogen				
(5-1 to 10-31)	1.9	2.9		3.8
(11-1 to 4-30)	2.5	3.8		5.0
Copper	10 ug/l		25 ug/l	
Fecal Coliform				
(5-1 to 9-30)	200/100 ml as a geometric mean			
(10-1 to 4-30)	2,000 as a geometric mean			
Dissolved Oxygen	not less than 5 mg/l			
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is not in effect.

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

PA0239534, Sewage, **Michael A. Hecei**, 2553 PA Avenue West Extension, Warren, PA 16365. This proposed facility is in Glade Township, **Warren County**.

Description of Proposed Activity: Discharge of treated sewage from a small flow treatment facility.

The receiving water, an unnamed tributary to Page Hollow, is in State Water Plan 16-B and classified for CWF, aquatic life, water supply and recreation. The nearest downstream potable water supply, the Emlenton Water Company, is on the Allegheny River, approximately 105 miles below the point of discharge.

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

	Concentrations		
Parameter	*Average Monthly (mg/l)*	*Average Weekly (mg/l)*	*Instantaneous Maximum (mg/l)*
Flow	XX		
BOD_5	10		20
Total Suspended Solids	10		20
Fecal Coliform	200/100 ml as a geometric average		
Total Residual Chlorine	XX		
pH	6.0 to 9.0 standard units at all times		

XX—Monitor and Report

The EPA waiver is in effect.

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

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

WQM Permit No. 1304401, Nesquehoning Borough, 114 W. Catawissa Street, Nesquehoning Borough, PA 18240-1499. This proposed facility is in Nesquehoning Borough, **Carbon County**.

Description of Proposed Action/Activity: This project consists of construction of a pump station to serve the Maple Shade Meadows and Hauto Valley Lakes Developments.

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

WQM Permit No. 0804404, Sewerage, **Lowell Patton**, R. R. 1, Box 196A, Towanda, PA 18848. This proposed facility will be in Sheshequin Township, **Bradford County**.

Description of Proposed Action/Activity: Applicant seeks a WQM permit to authorize the construction and operation of a small flow treatment facility to serve a residence. Discharge will be to an unnamed tributary to the Susquehanna River (WWF).

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

WQM Permit No. 6104404, Sewerage, **Cranberry Venango County General Authority**, 3726 SR 257, Seneca, PA 16346. This proposed facility is in Cranberry Township, **Venango County**.

Description of Proposed Action/Activity: This project is for the construction of a pressure sewer system and sewer extension along Route 322, through Victory Heights and ending west of Astral Road.

IV. NPDES Applications for Stormwater Discharges from MS4

V. Applications for NPDES Waiver Stormwater Discharges from MS4

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

Southeast Region: Water Management Program Manager, 2 East Main Street, Norristown, PA 19401.

NPDES Permit No.	*Applicant Name and Address*	*County*	*Municipality*	*Receiving Water/Use*
PAI011504059	Welcome Homes Builders, Inc. ArtisanWay 1 Wheelock Lane Malvern, PA 19355	Chester	East Nantmeal Township	French Creek EV
PAI011504060	Richard Dougherty 3050 Chestnut Hill Road Subdivision 977 East Schuylkill Road Suite 200 Pottstown, PA 19465	Chester	South Coventry Township	French Creek EV
PAI012304005	Tinicum Industrial Partners, LP Airport Business Complex Dev. 230 Bala Avenue Bala Cynwyd, PA 19004	Delaware	Tinicum Township	Delaware River WWF

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

Monroe County Conservation District: 8050 Running Valley Road, Stroudsburg, PA 18360, (570) 629-3060.

NPDES Permit No.	*Applicant Name and Address*	*County*	*Municipality*	*Receiving Water/Use*
PAI024504014	Cramer's Cashway, Inc. 320 N. Courtland St. E. Stroudsburg, PA 18301	Monroe	Tobyhanna Township	Indian Run HQ-CWF
PAI024504021	Glenn Detrick 1411 Chipperfield Dr. Stroudsburg, PA 18360	Monroe	Hamilton Township	UNT McMichaels Creek HQ-CWF

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

NPDES Permit No.	*Applicant Name and Address*	*County*	*Municipality*	*Receiving Water/Use*
PAI024804030	Turkey Hill Minit Markets Attn: Bill Weisser 257 Centerville Rd. Lancaster, PA 17603-4079	Northampton	Moore Township	Bushkill Creek HQ-CWF
PAI024804031	Plainfield Township Attn: William Schmauder 6292 Sullivan Trail Nazareth, PA 18064	Northampton	Plainfield Township	Bushkill Creek HQ-CWF

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

NPDES Permit No.	*Applicant Name and Address*	*County*	*Municipality*	*Receiving Water/Use*
PAI2032104003	The Breeches at Allenberry, LLC P. O. Box 7 Boiling Springs, PA 17007	Cumberland	Monroe Township	Yellow Breeches HQ-CWF
PAI033604006	SOCO Enterprises 1330 Charlestown Road Phoenixville, PA 19460	Lancaster	Earl and East Earl Townships	Mill Creek HQ-CWF
PAI2033604007	Stephen J. Barr and John D. Byler P. O. Box 7 Gap, PA 17527	Lancaster	Salisbury Township	UNT to Pequea Creek HQ-WWF
PAI030603011	Anthony Forino 555 Mountain Home Road Sinking Spring, PA 19608	Berks	Cumru Township	Wyomissing Creek HQ-CWF

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

Centre Conservation District: 414 Holmes Ave., Suite 4, Bellefonte, PA 16823, (814) 355-6817.

NPDES Permit No.	*Applicant Name and Address*	*County*	*Municipality*	*Receiving Water/Use*
PAI041404012	Opequon Hill Subdiv. Tom Kulakowski P. O. Box 726 Lemont, PA 6851	Centre	Benner Township	Buffalo Run and UNT to Spring Creek HQ-CWF

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

Westmoreland County Conservation District: Center for Conservation Education, 211 Donohoe Road, Greensburg, PA 15601, (724) 837-5271.

NPDES Permit No.	*Applicant Name and Address*	*County*	*Municipality*	*Receiving Water/Use*
PAI056503008	Department of Transportation P. O. Box 459 Uniontown, PA 15401	Westmore-land	New Alexandria Borough Derry Township	Loyalhanna Creek WWF Boatyard Run CWF Spruce Run HQ-CWF

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

Conservation District: Erie Conservation District, 1927 Wager Road, Erie, PA 16509, (814) 825-6403.

NPDES Permit No.	*Applicant Name and Address*	*County*	*Municipality*	*Receiving Water/Use*
PAS10K022(1)	Steven Rapp 4132 Stone Creek Drive Erie, PA 16506	Erie	Millcreek Township	Walnut Creek CWF and MF Thomas Run HQ-CWF and MF

Central Office: Environmental Cleanup Program Manager, P. O. Box 8417, Harrisburg, PA 17105-8471.

NPDES Permit No.	*Applicant Name and Address*	*County*	*Municipality*	*Receiving Water/Use*
PAI124604001	Lehigh Valley Industrial Park, Inc. 100 Brodhead Rd. Bethlehem, PA 18017	Northampton	Bethlehem City	East Saucon Creek CWF

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

PAG-12	CAFOs
PAG-13	Stormwater Discharges from MS4

PUBLIC WATER SUPPLY (PWS) PERMIT

Under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17), the following parties have applied for a PWS permit to construct or substantially modify a public water system.

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

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

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

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

SAFE DRINKING WATER

Applications Received under the Pennsylvania Safe Drinking Water Act

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

Permit No. 4504503, Public Water Supply.

Applicant	**Stroudsburg Municipal Authority**
Township or Borough	Stroud Township
County	**Monroe**
Responsible Official	Kenneth Brown 410 Stokes Avenue East Stroudsburg, PA 18301
Type of Facility	PWS
Consulting Engineer	John Edward Spitko, Jr., P. E. Boucher & James, Inc. P. O. Box 904 Doylestown, PA 18901
Application Received Date	August 11, 2004
Description of Action	The proposed project involves the construction of a water main extension at the intersection of Wigwam Park Road (SR 2018) and Route 611 (situated in the shoulder of Route 611) and a new water booster pumping station.

Permit No. 4504501, Public Water Supply.

Applicant	**Pocono Manor Inn**
Township or Borough	Pocono Township
County	**Monroe**
Responsible Official	James M. Ireland
Type of Facility	PWS
Consulting Engineer	Austin James Associates P. O. Box U Pocono Pines, PA 18350
Application Received Date	August 11, 2004
Description of Action	Construct new well, hydropneumatic tank, disinfection and water stabilization facilities as a secondary source of potable water for the Inn and Conference Center at Pocono Manor.

Central Office: Bureau Director, Water Supply and Wastewater Management, P. O. Box 8467, Harrisburg, PA 17105-8467.

Permit No. 9996217, Public Water Supply.

Applicant	**Nestle Waters North America, Inc.**
Township or Borough	Poland Spring, ME
Responsible Official	Pamela Fischer, Quality Assurance Manager
Type of Facility	Out-of-State Bottled Water System
Application Received Date	August 16, 2004

Description of Action	Applicant requesting a major permit amendment to use the Spruce Spring source in Pierce Pond Township, ME. Bottled water to be sold in this Commonwealth under the brand names Poland Spring Natural Spring Water, Poland Spring Sparkling Spring Water, Deer Park Spring Water, Deer Park Distilled Water, Ice Mountain Spring Water, Great Bear Natural Spring Water and Poland Spring Distilled Water.

MINOR AMENDMENT

Applications Received under the Pennsylvania Safe Drinking Water Act

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

Application No. Minor Amendment.

Applicant	**Jackson Perry**
Township or Borough	Wayne Township, **Schuylkill County**
Responsible Official	Jackson Perry, Owner 1703 Panther Valley Road Pine Grove, PA 17963
Type of Facility	Bulk Water Hauling System
Consulting Engineer	Edward Davis, Sr., P. E. WJP Engineers 1406 Laurel Boulevard Pottsville, PA 17901
Application Received Date	August 6, 2004
Description of Action	This application proposes modification to an existing, permitted, bulk water hauling facility. Modifications include: adding an ultraviolet system on the load out side of the facility; adding a booster pump and 200-gallon stainless steel temperature tank to better control the flow rate through the facility and provide additional pressure; adding an alternate cartridge filtration system; and changing flow meters.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

UNDER ACT 2, 1995

PREAMBLE 1

Acknowledgment of Notices of Intent to Remediate Submitted under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).

Sections 302—305 of the Land Recycling and Environmental Remediation Standards Act (act) require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* an acknowledgment noting receipt of Notices of Intent to Remediate. An acknowledgment of the receipt of a Notice of Intent to Remediate is used to identify a site where a person proposes to, or has been required to, respond to a release of a regulated substance at a site. Persons intending to use the Background Standard, Statewide Health Standard, the Site-Specific Standard or who intend to remediate a site as a special industrial area must file a Notice of Intent to Remediate with the Department. A Notice of Intent to Remediate filed with the Department provides a brief description of the location of the site, a list of known or suspected contaminants at the site, the proposed remediation measures for the site and a description of the intended future use of the site. A person who demonstrates attainment of one, a combination of the cleanup standards or who receives approval of a special industrial area remediation identified under the act will be relieved of further liability for the remediation of the site for any contamination identified in reports submitted to and approved by the Department. Furthermore, the person shall not be subject to citizen suits or other contribution actions brought by responsible persons not participating in the remediation.

Under sections 304(n)(1)(ii) and 305(c)(2) of the act, there is a 30-day public and municipal comment period for sites proposed for remediation using a Site-Specific Standard, in whole or in part, and for sites remediated as a special industrial area. This period begins when a summary of the Notice of Intent to Remediate is published in a newspaper of general circulation in the area of the site. For the sites identified, proposed for remediation to a Site-Specific Standard or as a special industrial area, the municipality within which the site is located may request to be involved in the development of the remediation and reuse plans for the site if the request is made within 30 days of the date specified. During this comment period, the municipality may request that the person identified as the remediator of the site develop and implement a public involvement plan. Requests to be involved and comments should be directed to the remediator of the site.

For further information concerning the content of a Notice of Intent to Remediate, contact the environmental cleanup program manager in the Department regional office before which the notice appears. If information concerning this acknowledgment is required in an alternative form, contact the community relations coordinator at the appropriate regional office. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following Notices of Intent to Remediate:

Southeast Region: Environmental Cleanup Program Manager, 2 East Main Street, Norristown, PA 19401.

Vacant Lot, City of Philadelphia, **Philadelphia County**. Nancy Repetto, Powell-Harpstead, Inc., 800 East Washington Street, West Chester, PA 19380 on behalf of Donald Smith, PresbyHomes & Services, 2000 Joshua Rd., Lafayette Hills, PA 19444-2430 has submitted a Notice of Intent to Remediate. Soil at the site has been impacted by lead and PAH. All sites less than 0.1 acre on a property of 1 acre. A summary of the Notice of Intent to Remediate was reported to have been published in the *Philadelphia Daily News* on August 13, 2004.

Dreshertown Plaza, Upper Dublin Township, **Montgomery County**. Craig Herr, RT Environmental Services, Inc., 215 West Church Rd., King of Prussia, PA 19406 on behalf of Roger Bucchianeri, Brandolini Co.,

1301 Lancaster Ave., Berwyn, PA 19312, has submitted a Notice of Intent to Remediate. Soil and groundwater at the site has been impacted by a dry cleaning operation. The primary contaminants are PCE and TCE. The use of the property will remain nonresidential. A summary of the Notice of Intent to Remediate was reported to have been published in *The Ambler Gazette* on June 16, 2004.

Southcentral Region: Environmental Cleanup Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

ENCO Realty Facility, City of Reading, **Berks County**. Whittemore & Haigh Engineering, Inc., 200 Bethlehem Drive, Suite 201, Morgantown, PA 19543, on behalf of ENCO Realty, 650 Morgantown Road, Reading, PA 19611, submitted a Notice of Intent to Remediate site soils contaminated with lead, arsenic, iron and tetrachloroethylene. Site contamination is due to historical industrial use of the property dating back to the 1920s. The intended future use of the site will be a production facility for frozen foods.

Corning Frequency Control Plant 1, Mount Holly Springs Borough, **Cumberland County**. Weston Solutions, Inc., P. O. Box 2653, West Chester, PA 19380, on behalf of Corning Incorporated, HP-ME-02-50, Corning, NY 14831, submitted a Notice of Intent to Remediate site soils and groundwater. Historic releases of industrial materials, including solvents and solid wastes, have reportedly occurred at locations near the Plant 1 building. The site is expected to be used in the future for industrial/commercial purposes. The site will be remediated to a Statewide Health Standard.

Corning Frequency Control Plant 2, Mount Holly Springs Borough, **Cumberland County**. Weston Solutions, Inc., P. O. Box 2653, West Chester, PA 19380, on behalf of Corning Incorporated, HP-ME-02-50, Corning, NY 14831, submitted a Notice of Intent to Remediate site soils and groundwater. Historic releases of industrial materials, including solvents, have reportedly occurred in a localized area on the north side of the Plant 2 building. The future use of the site is expected to remain industrial. The site will be remediated to a Statewide Health Standard.

Thompson Road Property, Fawn Grove Borough, **York County**. Laboratory, Analytical & Biological Services, Inc., P. O. Box 836, East Berlin, PA 17316, on behalf of Southeastern School District, 104 East Main Street, Fawn Grove, PA 17321, submitted a Notice of Intent to Remediate site soils and groundwater contaminated with heating oil. The future use of the property is unknown at this time, but could include residential, agricultural, commercial or industrial use.

Lebanon Plaza Mall, North Cornwall Township, **Lebanon County**. Geoquest, Inc., 3 Barnard Lane, Bloomfield, CT 06002, on behalf of Lebanon Plaza Associates, LLC, Quentin Road, Lebanon, PA 17042, submitted a Notice of Intent to Remediate site soils and groundwater contaminated with solvents from a former dry cleaning facility. The site will continue to be used as a retail mall.

Southwest Region: Environmental Cleanup Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

Frankstown-Sterrett Plan of Lots—Lot No. 1, City of Pittsburgh, **Allegheny County**. Susan R. Frund, P. G., Michael Baker Jr., Inc., 100 Airside Drive, Moon Township, PA 15108 (on behalf of John Coyne, Urban Redevelopment Authority of Pittsburgh, 200 Ross Street, Pittsburgh, PA 15219) has submitted a Notice of Intent to Remediate soil contaminated with VOCs, SVOCs, PCBs and metals. The applicant proposes to remediate the site to meet the Statewide Health Standard. A summary of the Notice of Intent to Remediate was reported to be published in the *Pittsburgh Post Gazette.*

Motiva Pittsburgh Terminal (Former), Moon Township, **Allegheny County**. Kent V. Littlefield, P. G., Science Applications International Corporation, 6310 Allentown Boulevard, Harrisburg, PA 17112 (on behalf of John M. Arnold, Pittsburgh Terminals Corporation, P. O. Box 2621, Harrisburg, PA 17105) has submitted a Notice of Intent to Remediate soil and groundwater contaminated with chlorinated solvents, PAHs, other organics and lead. The applicant proposes to remediate the site to meet the Site-Specific and Statewide Health Standards.

Johnstown Cambria Iron Works, City of Johnstown, **Cambria County**. Harry Trout, L. Robert Kimball, & Associates, 415 Moon Clinton Road, Coraopolis, PA 15108 (on behalf of Deborah M. Walter, Johnstown Redevelopment Authority, 401 Washington Street, Johnstown, PA 15901) has submitted a Notice of Intent to Remediate soil contaminated with fuel oil and lead. The applicant proposes to remediate the site to meet the Special Industrial Area Requirements. A summary of the Notice of Intent to Remediate was reported to have been published in the *Tribune Democrat* on July 23, 2004.

OPERATE WASTE PROCESSING OR DISPOSAL AREA OR SITE

Application received under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003), the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101—4000.1904) and regulations to operate solid waste processing or disposal area or site.

Southwest Region: Regional Solid Waste Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

Permit ID No. 301246. Innovative Supply, Inc., R. R. 9, Box 320, Latrobe, PA 15650-9028. Innovative Supply, Inc., Plant, R. D. 5, Route 130, Greensburg, PA 15601. A permit renewal application for a residual waste processing facility in Unity Township, **Westmoreland County**, was received in the regional office on August 20, 2004.

AIR QUALITY

PLAN APPROVAL AND OPERATING PERMIT APPLICATIONS

NEW SOURCES AND MODIFICATIONS

The Department of Environmental Protection (Department) has developed an "integrated" plan approval, State operating permit and Title V operating permit program. This integrated approach is designed to make the permitting process more efficient for the Department, the regulated community and the public. This approach allows the owner or operator of a facility to complete and submit all the permitting documents relevant to its application one time, affords an opportunity for public input and provides for sequential issuance of the necessary permits.

The Department has received applications for plan approvals and/or operating permits from the following facilities.

Copies of the applications, subsequently prepared draft permits, review summaries and other support materials are available for review in the regional office identified in

this notice. Persons interested in reviewing the application files should contact the appropriate regional office to schedule an appointment.

Persons wishing to receive a copy of a proposed plan approval or operating permit must indicate their interest to the Department regional office within 30 days of the date of this notice and must file protests or comments on a proposed plan approval or operating permit within 30 days of the Department providing a copy of the proposed document to that person or within 30 days of its publication in the *Pennsylvania Bulletin*, whichever comes first. Interested persons may also request that a hearing be held concerning the proposed plan approval and operating permit. Comments or protests filed with the Department regional offices must include a concise statement of the objections to the issuance of the Plan approval or operating permit and relevant facts which serve as the basis for the objections. If the Department schedules a hearing, a notice will be published in the *Pennsylvania Bulletin* at least 30 days prior the date of the hearing.

Persons with a disability who wish to comment and require an auxiliary aid, service or other accommodation to participate should contact the regional office identified before the application. TDD users should contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

Final plan approvals and operating permits will contain terms and conditions to ensure that the source is constructed and operating in compliance with applicable requirements in 25 Pa. Code Chapters 121—143, the Federal Clean Air Act (act) and regulations adopted under the act.

PLAN APPROVALS

Plan Approval Applications Received under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter B that may have special public interest. These applications are in review and no decision on disposition has been reached.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481; Devendra Verma, New Source Review Chief, (814) 332-6940.

20-175B: Cardinal Home Products—Tel-O-Post Division (205 North Pymatuning Street, Linesville, PA 16424) a plan approval for installation of a flow coating line at their Linesville Plant in the Borough of Linesville, **Crawford County**.

Intent to Issue Plan Approvals and Intent to Issue or Amend Operating Permits under the Air Pollution Control Act and 25 Pa. Code Chapter 127, Subchapter B. These actions may include the administrative amendments of an associated operating permit.

Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790; Mark Wejkszner, New Source Review Chief, (570) 826-2531.

45-310-035: Hanson Aggregates Pennsylvania, Inc. (1900 Sullivan Trail, P. O. Box 231, Easton, PA 18044-0231) for installation of a replacement baghouse on the horizontal impact crusher (CR2) at their company's Stroudsburg Quarry in Hamilton Township, **Monroe County**. This facility is a non-Title V facility. Resulting particulate emissions from the replacement of the baghouse will be less than 1 ton per year. The plan approval will include all appropriate monitoring, recordkeeping and reporting requirements designed to keep the source operating within all applicable air quality requirements.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Ronald Davis, New Source Review Chief, (717) 705-4702.

36-03141A: Kellogg USA, Inc. (2050 State Road, Lancaster, PA 17604) for modifications of an existing coating line in their facility in East Hempfield Township, **Lancaster County**. These changes will result in an actual increase in PM emissions of 2 tons per year. This plan approval will include monitoring, recordkeeping and reporting requirements designed to keep the sources operating within all applicable air quality requirements.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701; Richard Maxwell, New Source Review Chief, (570) 327-3637.

17-305-020A: Junior Coal Contracting, Inc. (2330 Six Mile Road, Philipsburg, PA 16866) for reactivation of their coal processing plant (Leslie Tipple) in Decatur Township, **Clearfield County**.

The coal processing plant incorporates a feed bin, rotary breaker, various conveyors and stockpiles and truck and railcar loading operations. It will process up to 437,500 tons of coal per year. Fugitive PM emission control will be provided by the use of a water truck, the use of breaker and feed bin enclosures, the use of partial conveyor covers and material transfer point enclosures and the implementation of various work practices (truck tarping, vehicle speed limits minimizing the front end loader bucket-to-truck bed and bucket-to-railcar free fall height, and the like).

Junior Coal Contracting, Inc. has additionally requested plan approval to construct a 375 horsepower diesel engine. This engine will emit up to 5.66 tons of NOx, 5.53 tons of CO, .81 ton of VOCs, .58 ton of PM and .34 ton of SOx per year.

The Department's review of the information submitted by Junior Coal Contracting, Inc. indicates that the coal processing plant and diesel engine will comply with all applicable air quality requirements pertaining to air contamination sources and the emission of air contaminants including the fugitive air contaminant emission requirements of 25 Pa. Code §§ 123.1 and 123.2, the best available technology requirements of 25 Pa. Code §§ 127.1 and 127.12 and the requirements of Subpart Y of the Federal Standards of Performance for New Stationary Sources, 40 CFR 60.250—60.254. Based on this finding, the Department proposes to issue plan approval for the reactivation of the coal processing plant and the construction of the diesel engine.

The following is a summary of the conditions the Department proposes to place in the plan approval to be issued to ensure compliance with all applicable regulatory requirements:

1. The facility shall not process more than 437,500 tons of coal in any 12 consecutive month period.

2. An operable water truck equipped with a pressurized spray bar and pressurized spray nozzle or hose connection shall be kept onsite at all times and shall be used, as needed, for the control of fugitive dust emissions from plant roadways, stockpile areas, and the like.

3. The rotary breaker shall be completely enclosed accept for the coal entrance and exit points.

4. The feed bin shall be enclosed on three sides and shall be equipped with a roof.

5. All conveyors shall be partially or fully enclosed and all material transfer points shall be enclosed.

6. All trucks entering or exiting the site from a public roadway shall have their truck beds completely tarped or otherwise covered unless empty.

7. The entrance road and internal plant roadways shall have posted speed limits of 5 miles per hour.

8. The facility's entrance roadway shall be paved for the first 300 feet and the remainder shall be covered with 1B limestone up to the tipple area.

9. Front end loader bucket-to-truck bed and bucket-to-railcar height shall be kept to a minimum during all truck and railcar loading operations.

10. The height of the radial stacking conveyor shall be adjusted to maintain a maximum coal free fall distance of less than 5 feet at all times.

11. The maximum height of any coal stockpile shall be 30 feet above grade.

12. The diesel engine shall not be operated more than 2,500 hours in any 12 consecutive month period and shall not emit more than 5.66 tons of NOx, 5.53 tons of CO, .81 ton of VOCs, .58 ton of PM and .34 ton of SOx in any 12 consecutive month period. Additionally, the sulfur content of the diesel fuel used in the diesel engine shall not exceed .3% (by weight).

13. This plan approval does not authorize the reactivation of the wet coal preparation plant which also physically exists onsite nor does it authorize the construction, installation or operation of any gasoline, natural gas, propane or diesel-fired stationary engines, generators or engine-generator sets other than the 375 horsepower diesel engine specifically approved herein.

14. Records shall be maintained of the number of tons of coal loaded out each month as well as the number of hours the diesel engine operates each month. Records shall be retained for at least 5 years and shall be made available to the Department upon request.

17-00037A: King Coal Sales, Inc. (P. O. Box 712, Philipsburg, PA 16866) for construction of a coal processing operation at their Cunard Tipple site in Morris Township, **Clearfield County**.

The coal processing operation will consist of a feed bin, rotary breaker, various conveyors and stockpiles, a truck loading operation and a stationary diesel engine. The respective operation will process up to 448,000 tons of coal per year. Fugitive PM emission control will be provided by the use of a water truck and water-assisted broom-type street sweeper, the use of breaker and feed bin enclosures, the use of conveyor enclosures, the application of water and the implementation of various work practices (truck tarping, vehicle speed limits, minimizing the front end loader bucket-to-truck bed free fall height, and the like).

The 233 horsepower stationary diesel engine incorporated in the coal processing operation will emit up to 5.66 tons of NOx, 3.01 tons of CO, 46 tons of VOCs, .29 ton of PM and .15 ton of SOx per year.

The Department's review of the information submitted by King Coal Sales, Inc. indicates that the proposed coal processing operation will comply with all applicable air quality requirements pertaining to air contamination sources and the emission of air contaminants including the fugitive air contaminant emission requirements of 25 Pa. Code §§ 123.1 and 123.2, the best available technology requirements of 25 Pa. Code §§ 127.1 and 127.12 and the requirements of Subpart Y of the Federal Standards of Performance for New Stationary Sources, 40 CFR 60.250—60.254. Based on this finding, the Department proposes to issue plan approval for the construction of the proposed coal processing operation.

The following is a summary of the conditions the Department proposes to place in the plan approval to be issued to ensure compliance with all applicable regulatory requirements:

1. The facility shall not process more than 448,000 tons of coal in any 12 consecutive month period.

2. An operable water truck equipped with a pressurized spray bar and pressurized spray nozzle or hose connection shall be kept onsite at all times and shall be used, as needed, for the control of fugitive dust emissions from roadways, stockpile areas, and the like.

3. An operable water-assisted broom-type street sweeper with a pressurized spray bar shall be maintained onsite at all times and shall be used, as needed, for the control of fugitive dust emissions from the paved access road leading from SR 53 to the facility gate as well as from those portions of SR 53 adjacent to the junction of the plant access road and SR 53.

4. The rotary breaker shall be completely enclosed except for the coal entrance and exit points.

5. The feed bin shall be enclosed on three sides and equipped with a roof.

6. All conveyors shall be fully enclosed.

7. All trucks entering or exiting the site from a public roadway shall have their truck beds completely tarped or other covered unless empty.

8. The entrance road and internal plant roadways shall have posted speed limits of 10 miles per hour.

9. The access road from SR 53 to the facility gate shall be paved and the remainder of the facility roadways shall be composed of stone.

10. Front end loader bucket-to-truck bed height shall be kept to a minimum during all truck loading.

11. The discharge of the radial stacking conveyor shall be equipped with at least two water spray nozzles and the height of the radial stacking conveyor shall be adjusted to maintain a maximum coal free fall distance of less than 5 feet at all times.

12. The maximum height of any coal stockpile shall be 30 feet above grade.

13. The rotary breaker shall not operate concurrently with the rotary breaker already existing onsite.

14. The diesel engine shall not be operated more than 2,240 hours in any 12 consecutive month period and shall not emit more than 5.66 tons of NOx, 3.01 tons of CO, .46 ton of VOCs, .29 ton of PM and .15 ton of SOx in any 12 consecutive month period. Additionally, the sulfur content of the diesel fuel used in the diesel engine shall not exceed .3% (by weight).

15. This plan approval does not authorize the construction, installation or operation of any gasoline, natural gas, propane or diesel-fired stationary engines, generators or engine-generator sets other than the 233 horsepower diesel engine specifically approved herein.

16. Records shall be maintained of the number of tons of coal loaded out from this coal processing operation each month as well as the number of hours the diesel engine operates each month. Records shall be retained for at least 5 years and shall be made available to the Department upon request.

Department of Public Health, Air Management Services: 321 University Avenue, Philadelphia, PA 19104; Edward Braun, Chief, (215) 823-7584.

AMS 03075: Defense Energy Support Center (8725 John J. Kingman Road, Suite 2833, Fort Belvoir, VA 22060) for installation of a vacuum-enhanced skimming remediation system with two thermal oxidizers at 2800 South 20th Street, Philadelphia, PA. The permitted VOC emissions are 24.1 tons per year. The plan approval will contain operating and recordkeeping requirements to ensure operation within all applicable requirements.

OPERATING PERMITS

Intent to Issue Title V Operating Permits under the Air Pollution Control Act and 25 Pa. Code Chapter 127, Subchapter G.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701; Muhammad Zaman, Facilities Permitting Chief, (570) 327-0512.

55-00002: Department of Public Welfare (1401 North 7th Street, Harrisburg, PA 17105) for renewal of the Title V Operating Permit for their Selinsgrove Center facility in Penn Township, **Snyder County**. The facility's sources include 3 coal-fired boilers, 2 parts washers, 12 auxiliary generators, 3 furnaces and 1 ash collection system, which have the potential to emit major quantities of PM/PM10 and SOx. The facility has the potential to emit NOx, VOCs, CO and HAPs below the major emission thresholds. The three coal-fired boilers are subject to Compliance Assurance Monitoring requirements in 40 CFR 64.1—64.10. The proposed Title V operating permit contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481; Eric Gustafson, Facilities Permitting Chief, (814) 332-6940.

20-00145: PPG Industries, Inc. (Kebert Industrial Park, Meadville, PA 16335) for reissuance of a Title V Permit to operate their flat glass manufacturing facility in Greenwood Township, **Crawford County**. The facility's major emission sources include four boilers, two glass melting furnaces, two wareroom packers, two Cullet Drop-O lines, two batch house mixer scale lines, three diesel generators, two diesel pumps, diesel fire pump, emergency water pump, two passivation lines, soda ash silo, sand silo, cullet silo, lime stone silo, gypsum silo, dolomite silo, two W line systems, two batch line mixers and a parts cleaner. PPG is a major facility due to NOx and SOx emissions more than 100 tons per year.

62-00136: Berenfield Containers, Inc. (31 Railroad Street, Clarendon, PA 16313) for reissuance of a Title V Permit to operate their metal barrels, drums and pails manufacturing facility in Clarendon Borough, **Warren County**. The facility's major emission sources include space and water heaters, spray booths, paint roller coater, equipment clean up, ovens, weld-seam strip coater, silk screening and cold cleaning degreasers. The facility is major facility for Title V due to its potential to emit of VOCs.

Intent to Issue Operating Permits under the Air Pollution Control Act and 25 Pa. Code Chapter 127, Subchapter F.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19428; Edward Jurdones Brown, Facilities Permitting Chief, (484) 250-5920.

09-00102: Soil Technologies, Inc. (7 Steel Road, East P. O. Box 847, Morrisville, PA 19067) for operation of their facility that uses thermal remediation to clean contaminated soils/aggregates of hydrocarbon contamination in Falls Township, **Bucks County**. The permit is for a non-Title V (State-only) facility. The major sources of air emissions are the rotary kiln dryer, a storage building where the contaminated soil/aggregate is handled, a pugmill mixer and associated control devices. The permit will include monitoring, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

46-00056: Hale Products, Inc. (700 Spring Mill Avenue, Conshohocken, PA 19428) for operation of their facility that tests pumps and operates two paint booths in the Borough of Conshohocken, **Montgomery County**. The permit is for a non-Title V (State-only) facility. The major sources of air emissions are three pump test engines, two emergency generators and two paint booths and associated control devices. The permit will include monitoring, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

23-00086: Engineered Systems Co. (2250 Market Street, Aston, PA 19014) for operation of their assembly facility in Upper Chichester Township, **Delaware County**. The permit is for a non-Title V (State-only) facility. Major sources of air emissions include two spray paint booths and a natural gas-fired curing oven. The permit will include monitoring, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745; Mark Wayner, Facilities Permitting Chief, (412) 442-4174.

65-00802: Beckwith Machinery Company—Delmont Plant (P. O. Box 140, Delmont, PA 15626) in Salem Township, **Westmoreland County**. The facility's source of emissions is a waste oil boiler.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481; Eric Gustafson Facilities Permitting Chief, (814) 332-6940.

25-00192: Reed Manufacturing Co. (1425 West 8th Street, Erie, PA 16502) for a Natural Minor Operating Permit to operate their tool manufacturing facility in the City of Erie, **Erie County**. The facility's primary emission sources include machining, heat treating, degreasing and surface coating operations. The emissions from this facility are well below major source levels.

Department of Public Health, Air Management Services: 321 University Avenue, Philadelphia, PA 19104; Edward Braun, Chief, (215) 823-7584.

S04-013: Baum Printing Co. (9985 Gantry Road, Philadelphia, PA 19115) for operation of an offset lithographic printing facility in the City of Philadelphia, **Philadelphia County**. The facility's air emission sources are six nonheatset offset sheetfed lithographic printing presses.

The operating permit will be reissued under 25 Pa. Code, Philadelphia Code Title 3 and Air Management Regulation XIII. Permit copies and other supporting information are available for public inspection at the AMS, 321 University Avenue, Philadelphia, PA 19104. For further information, contact Edward Wiener, (215) 685-9426.

Persons wishing to file protests or comments on the operating permit must submit the protests or comments within 30 days from the date of this notice. Protests or comments filed with the AMS must include a concise statement of the objections to the permit issuance and the relevant facts upon which the objections are based. Based upon the information received during the public comment period, the AMS may modify the operating permit or schedule a public hearing. The hearing notice will be published in the *Pennsylvania Bulletin* and a local newspaper at least 30 days before the hearing.

S04-006: Degussa Flavors and Fruit Systems, LLC (1741 Tomlinson Road, Philadelphia, PA 19116) for operation of a flavor manufacturing facility in the City of Philadelphia, **Philadelphia County**. The facility's air emission sources include three boilers. The facility's air pollution control devices include one cyclone.

The operating permit will be reissued under 25 Pa. Code, Philadelphia Code Title 3 and Air Management Regulation XIII. Permit copies and other supporting information are available for public inspection at the AMS, 321 University Avenue, Philadelphia, PA 19104. For further information, contact Edward Wiener, (215) 685-9426.

Persons wishing to file protests or comments on the operating permit must submit the protests or comments within 30 days from the date of this notice. Protests or comments filed with the AMS must include a concise statement of the objections to the permit issuance and the relevant facts upon which the objections are based. Based upon the information received during the public comment period, the AMS may modify the operating permit or schedule a public hearing. The hearing notice will be published in the *Pennsylvania Bulletin* and a local newspaper at least 30 days before the hearing.

S04-008: Riverside Materials, Inc. (2870 East Allegheny Avenue, Philadelphia, PA 19134) for operation of their asphalt paving mixture manufacturing facility in the City of Philadelphia, **Philadelphia County**. The facility's air emission sources include a hot mix asphalt drum controlled by a knockout box/baghouse in addition to a crushing plant and a hot oil heater.

The operating permit will be reissued under 25 Pa. Code, Philadelphia Code Title 3 and Air Management Regulation XIII. Permit copies and other supporting information are available for public inspection at the AMS, 321 University Avenue, Philadelphia, PA 19104. For further information, contact Edward Wiener, (215) 685-9426.

Persons wishing to file protests or comments on the operating permit must submit the protests or comments within 30 days from the date of this notice. Protests or comments filed with the AMS must include a concise statement of the objections to the permit issuance and the relevant facts upon which the objections are based. Based upon the information received during the public comment period, the AMS may modify the operating permit or schedule a public hearing. The hearing notice will be published in the *Pennsylvania Bulletin* and a local newspaper at least 30 days before the hearing.

COAL AND NONCOAL MINING ACTIVITY APPLICATIONS

Applications under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. §§ 3301—3326); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66); and The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21). Mining activity permits issued in response to applications will also address the applicable permitting requirements of the following statutes: the Air Pollution Control Act (35 P. S. §§ 4001—4015); the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27); and the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003).

The following permit applications to conduct mining activities have been received by the Department of Environmental Protection (Department). A copy of an application is available for inspection at the district mining office indicated before an application. Where a 401 Water Quality Certification is needed for any aspect of a particular proposed mining activity, the submittal of the permit application will serve as the request for certification.

Written comments, objections or requests for informal conferences on applications may be submitted by any person or any officer or head of any Federal, State or local government agency or authority to the Department at the district mining office indicated before an application within 30 days of this publication, or within 30 days after the last publication of the applicant's newspaper advertisement, as provided by 25 Pa. Code §§ 77.121—77.123 and 86.31—86.34.

Where any of the mining activities listed will have discharges of wastewater to streams, the Department will incorporate NPDES permits into the mining activity permits issued in response to these applications. NPDES permits will contain, at a minimum, technology-based effluent limitations as identified in this notice for the respective coal and noncoal applications. In addition, more restrictive effluent limitations, restrictions on discharge volume or restrictions on the extent of mining which may occur will be incorporated into a mining activity permit, when necessary, for compliance with water quality standards (in accordance with 25 Pa. Code Chapters 93 and 95). Persons or agencies who have requested review of NPDES permit requirements for a particular mining activity within the previously mentioned public comment period will be provided with a 30-day period to review and submit comments on the requirements.

Written comments or objections should contain the name, address and telephone number of the person submitting comments or objections; the application number; and a statement of sufficient detail to inform the Department on the basis of comment or objection and relevant facts upon which it is based. Requests for an informal conference must contain the name, address and telephone number of requestor; the application number; a brief summary of the issues to be raised by the requestor at the conference; and a statement whether the requestor wishes to have the conference conducted in the locality of the proposed mining activities.

Coal Applications Returned

Knox District Mining Office: P. O. Box 669, Knox, PA 16232, (814) 797-1191.

24020104. Hepburnia Coal Company (P. O. Box I, Grampian, PA 16838). Revision to an existing bituminous strip operation to add coal ash placement in Fox Township, **Elk County**. Receiving streams: unnamed tributary to Little Toby Creek. Application received January 14, 2004. Application returned: August 17, 2004.

Coal Applications Received

Effluent Limits—The following coal mining applications that include an NPDES permit application will be subject to, at a minimum, the following technology-based effluent limitations for discharges of wastewater to streams:

Parameter	*30-Day Average*	*Daily Maximum*	*Instantaneous Maximum*
Iron (total)	3.0 mg/l	6.0 mg/l	7.0 mg/l
Manganese (total)	2.0 mg/l	4.0 mg/l	5.0 mg/l
Suspended solids	35 mg/l	70 mg/l	90 mg/l
pH*		greater than 6.0; less than 9.0	
Alkalinity greater than acidity*			

* The parameter is applicable at all times.

A settleable solids instantaneous maximum limit of 0.5 ml/l applied to: (1) surface runoff (resulting from a precipitation event of less than or equal to a 10-year 24-hour event) from active mining areas, active areas disturbed by coal refuse disposal activities and mined areas backfilled and revegetated; and (2) drainage (resulting from a precipitation event of less than or equal to a 1-year 24-hour event) from coal refuse disposal piles.

Greensburg District Mining Office: Armbrust Building, R. R. 2 Box 603-C, Greensburg, PA 15601-0982, (724) 925-5500.

03020103 and NPDES Permit No. PA0250074. Original Fuels, Inc. (P. O. Box 343, Punxsutawney, PA 15767). Application received for transfer of permit currently issued to Alverda Enterprises, Inc. for continued operation and reclamation of a bituminous surface mining site in South Bend Township, **Armstrong County**, affecting 20.3 acres. Receiving streams: unnamed tributaries to Big Run and Whiskey Run (CWF). The first downstream potable water supply intake from the point of discharge is greater than 10 miles from the proposed site. Transfer application received August 19, 2004.

Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, (814) 472-1900.

56703107 and NPDES Permit No. PA0605956. Hoffman Mining, Inc., P. O. Box 130, 118 Runway Road, Friedens, PA 15541, permit renewal and/or continued operation of a bituminous surface and auger mine in Paint Township, **Somerset County**, affecting 863.0 acres. Receiving streams: unnamed tributary to Paint Creek; to Kaufman Run; to unnamed tributaries to Kaufman Run; to Stony Creek; and to Shade Creek (CWF and WWF). The first downstream potable water supply intake from the point of discharge is the Cambria Somerset Authority Stoneycreek Surface Water Intake. Application received August 6, 2004.

56990101 and NPDES Permit No. PA0235008. Hoffman Mining, Inc., P. O. Box 130, 118 Runway Road, Friedens, PA 15541, surface mining permit renewal for reclamation only in Paint Township, **Somerset County**, affecting 54.3 acres. Receiving streams: unnamed tributary to Kaufman Run and Kaufman Run (CWF). The first downstream potable water supply intake from the point of discharge is the Cambria Somerset Authority Stoneycreek Surface Water Withdrawal. Application received August 4, 2004.

32820134 and NPDES Permit No. PA0606154. The Arcadia Company, Inc., 250 Airport Road, P. O. Box 1319, Indiana, PA 15701, permit renewal for reclamation only and for continued restoration of a bituminous surface mine in Grant, Montgomery, Banks and Canoe Townships, **Indiana County**, affecting 1,166.0 acres. Receiving streams: unnamed tributaries to Little Mahoning Creek, Little Mahoning Creek, unnamed tributary to Cush Creek (HQ-CWF and CWF). There are no potable water supply intakes within 10 miles downstream. Application received August 5, 2004.

32990111 and NPDES Permit No. PA0235199. Mears Enterprises, Inc., P. O. Box 157, Clymer, PA 15728, permit renewal for reclamation only and for continued restoration of a bituminous surface mine in Cherryhill Township, **Indiana County**, affecting 71.5 acres. Receiving streams: Two Lick Creek (TSF). The first downstream potable water supply intake from the point of discharge is the Pennsylvania American Water Company Two Lick Creek Surface Water Withdrawal. Application received August 5, 2004.

Knox District Mining Office: White Memorial Building, P. O. Box 669, Knox, PA 16232-0669, (814) 797-1191.

33890113 and NPDES Permit No. PA0207438. Original Fuels, Inc. (P. O. Box 232, Punxsutawney, PA 15767). Renewal of an existing bituminous surface strip, auger mine, tipple refuse disposal and limestone and sandstone removal operation in Perry Township, **Jefferson County** affecting 508.8 acres. Receiving Streams: five unnamed tributaries to Pine Run (CWF). There are no potable surface water supply intakes within 10 miles downstream. Application for reclamation only. Application received August 13, 2004.

33030108 and NPDES Permit No. PA0242420. Falls Creek Energy Co., Inc. (R. D. 6, Box 231, Kittanning, PA 16201). Revision to an existing bituminous surface strip operation in Beaver Township, **Jefferson County** affecting 107.7 acres. Receiving streams: unnamed tributaries to Little Sandy Creek (CWF). The first downstream potable water supply intake from the point of discharge is the Hawthorn Area Water Authority and the Reynoldsville Municipal Authority. Revision to add an additional 18.6 acres to the permit area. Application received August 16, 2004.

Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, (814) 342-8200.

17040107 and NPDES Permit No. PA0243817. Moravian Run Reclamation Co., Inc. (605 Sheridan Drive, Clearfield, PA 16830). Commencement, operation and restoration of a bituminous surface mine-auger per-

mit in Girard Township, **Clearfield County** affecting 147.5 acres. Receiving streams: unnamed tributaries to Deer Creek and Deer Creek (CWF). There are no potable water supply intakes from the point of discharge. Application received August 6, 2004.

14040101 and NPDES Permit No. PA0243833. River Hill Coal Co., Inc. (P. O. Box 141, Kylertown, PA 16847). Commencement, operation and restoration of a bituminous surface mine-auger-coal refuse reprocessing permit in Rush Township, **Centre County** affecting 559 acres. Receiving streams: tributaries to Trout Run to Moshannon Creek and tributaries to Moshannon Creek (CWF). There are no potable water supply intakes from the point of discharge. Application received August 13, 2004.

17020107 and NPDES Permit No. PA0243281. AMFIRE Mining Company, LLC (One Energy Place, Latrobe, PA 15650). Transfer of an existing surface mine permit application from Moravian Run Reclamation Co., Inc. The site is in Lawrence Township, **Clearfield County** and affects 112 acres. Receiving streams: West Branch Susquehanna River; unnamed tributaries to West Branch Susquehanna River (CWF). Application received July 27, 2004.

17950119 and NPDES Permit No. PA0220221. AMFIRE Mining Company, LLC (One Energy Place, Latrobe, PA 15650). Transfer of an existing bituminous surface mine-auger permit from Moravian Run Reclamation Co., Inc. The permit is in Pike Township, **Clearfield County** and affects 168 acres. Receiving streams: unnamed tributaries to Little Clearfield Creek (HQ-CWF). Application received July 27, 2004.

17020106 and NPDES Permit No. PA0243264. AMFIRE Mining Company, LLC (One Energy Place, Latrobe, PA 15650). Transfer of an existing bituminous surface mine-auger permit from Moravian Run Reclamation Co., Inc. The permit is in Girard Township, **Clearfield County** and affects 169 acres. Receiving streams: Deer Creek, unnamed tributaries to Deer Creek; unnamed tributaries to Bald Hill Run (CWF). Application received July 27, 2004.

17940116 and NPDES Permit No. PA0219908. AMFIRE Mining Company, LLC (One Energy Place, Latrobe, PA 15650). Transfer of an existing bituminous surface mine-auger permit from Moravian Run Reclamation Co., Inc. The permit is in Penn Township, **Clearfield County** and affects 247 acres. Receiving streams: Poplar Run; unnamed tributaries to Poplar Run (CWF). Application received July 27, 2004.

17990120 and NPDES Permit No. PA0242756. AMFIRE Mining Company, LLC (One Energy Place, Latrobe, PA 15650). Transfer of an existing bituminous surface mine-auger permit from Moravian Run Reclamation Co., Inc. The permit is in Penn Township, **Clearfield County** and affects 37.5 acres. Receiving streams: unnamed tributary to Bell Run (CWF). Application received July 27, 2004.

17930128 and NPDES Permit No. PA0242756. AMFIRE Mining Company, LLC (One Energy Place, Latrobe, PA 15650). Transfer of an existing bituminous surface mine-auger permit from Moravian Run Reclamation Co., Inc. The permit is in Penn Township, **Clearfield County** and affects 106.2 acres. Receiving streams: unnamed tributaries to Bell Run (CWF). Application received July 27, 2004.

17930125 and NPDES Permit No. PA0219665. EnerCorp, Inc. (1686 Allport Cutoff, Morrisdale, PA 16858). Renewal of an existing bituminous surface mine permit in Morris Township, **Clearfield County**. The permit affects 130 acres. The application includes a revision to the existing permit for a change in land use from forestland to pastureland. Receiving streams: unnamed tributary to Moshannon Creek. Application received July 27, 2004.

17980115 and NPDES Permit No. PA0238074. Junior Coal Contracting, Inc. (2330 Six Mile Road, Philipsburg, PA 16866). Renewal of an existing bituminous surface mine-auger permit in Decatur and Woodward Townships, **Clearfield County** affecting 60.5 acres. Receiving streams: unnamed tributary to Beaver Run; Beaver Run. Application received August 6, 2004.

17010113 and NPDES Permit No. PA0243167. AMFIRE Mining Company, LLC (One Energy Place, Latrobe, PA 15650). Transfer of an existing bituminous surface mine-auger permit from Moravian Run Reclamation Co., Inc. The permit is in Girard Township, **Clearfield County** and affects 90 acres. Receiving streams: Bald Hill Run, unnamed tributaries to Bald Hill Run (CWF). Application received August 10, 2004.

17040108 and NPDES Permit No. PA0243825. Larry D. Baumgardner Coal Co., Inc. (P. O. Box 186, Lanse, PA 16849). Commencement, operation and restoration of a bituminous surface mine permit in Boggs Township, **Clearfield County** affecting 62.1 acres. Receiving streams: unnamed tributaries to Laurel Run (CWF). The first downstream potable water supply intake from the point of discharge is: none. Application received August 17, 2004.

Noncoal Permit Applications Received

Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, (814) 342-8200.

4773SM4 and NPDES Permit No. PA0115461. Hanson Aggregates (PA), Inc. (1900 Sullivan Trail, P. O. Box 231, Easton, PA 18044). Renewal of an existing large industrial minerals NPDES Permit in Liberty Township, **Tioga County** affecting 145.7 acres. Receiving streams: Bellman Run, Cowanesque River. Application received July 28, 2004.

Knox District Mining Office: P. O. Box 669, Knox, PA 16232, (814) 797-1191.

43040302. New Castle Lime and Stone Company (P. O. Box 422, Edinburg, PA 16116). Commencement, operation and restoration of a sand and gravel operation in Shenango Township, **Mercer County** affecting 48.3 acres. Receiving streams: unnamed tributary to the Shenango River and the Shenango River (WWF). There are no potable surface water supply intakes within 10 miles downstream. Application received August 12, 2004.

15359-43040302-E-1. New Castle Lime and Stone Company (P. O. Box 422, Edinburg, PA 16116). Application for a stream encroachment to upgrade and maintain a portion of the existing access road which is within 100 feet of the unnamed tributary no. 1 to the Shenango River in Shenango Township, **Mercer County** affecting 48.3 acres. Receiving streams: unnamed tributary to the Shenango River and the Shenango River (WWF). There are no potable surface water supply intakes within 10 miles downstream. Application received August 12, 2004.

Pottsville District Mining Office: 5 W. Laurel Boulevard, Pottsville, PA 17901-2454.

5273SM1T2 and NPDES Permit No. PA0594261. Haines & Kibblehouse, Inc. (P. O. Box 196, Skippack,

PA 19474), transfer of an existing quarry operation from Pyramid Land Development, Inc. and renewal of NPDES Permit for discharge of treated mine drainage in Aston Township, **Delaware County** affecting 50.02 acres, receiving stream: Chester Creek. Application received August 11, 2004.

67870301C6 and NPDES Permit No. PA0010235. York Building Products, Inc. (P. O. Box 1708, York, PA 17405), renewal of NPDES Permit for discharge of treated mine drainage from a quarry operation in West Manchester Township, **York County**, receiving stream: Willis Run (WWF). Application received August 16, 2004.

21960801. Valley-View Henry Farms (4756 Enola Road, Newville, PA 17241), Stage I and II bond release for a quarry operation in Lower Mifflin Township, **Cumberland County** affecting 2.0 acres on property owned by Eugene Henry. Application received August 16, 2004.

49040301. Central Builders Supply Company (125 Bridge Avenue, Sunbury, PA 17801), commencement, operation and restoration of a quarry operation in Point Township, **Northumberland County** affecting 58.6 acres, receiving stream: none. Application received August 16, 2004.

FEDERAL WATER POLLUTION CONTROL ACT, SECTION 401

The following permit applications, requests for Environmental Assessment approval and requests for 401 Water Quality Certification have been received by the Department of Environmental Protection (Department). Section 401 of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C.A. § 1341) requires the State to certify that the involved projects will not violate the applicable provisions of sections 301—303, 306 and 307 of the FWPCA (33 U.S.C.A. §§ 1311—1313, 1316 and 1317) as well as relevant State requirements. Persons objecting to approval of a request for certification under section 401 of the FWPCA or to the issuance of a Dam Permit, Water Obstruction and Encroachment Permit or the approval of an Environmental Assessment must submit comments, suggestions or objections within 30 days of the date of this notice, as well as questions, to the regional office noted before the application. Comments should contain the name, address and telephone number of the person commenting, identification of the certification request to which the comments or objections are addressed and a concise statement of comments, objections or suggestions including the relevant facts upon which they are based.

The Department may conduct a fact-finding hearing or an informal conference in response to comments if deemed necessary. Individuals will be notified, in writing, of the time and place of a scheduled hearing or conference concerning the certification request to which the comment, objection or suggestion relates. Maps, drawings and other data pertinent to the certification request are available for inspection between 8 a.m. and 4 p.m. on each working day at the regional office noted before the application.

Persons with a disability who wish to attend a hearing and require an auxiliary aid, service or other accommodation to participate in the proceedings should contact the specified program. TDD users should contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

Applications received under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27) and section 302 of the Flood Plain Management Act (32 P. S. § 679.302) and requests for certification under section 401 of the FWPCA (33 U.S.C.A. § 1341(a)).

WATER OBSTRUCTIONS AND ENCROACHMENTS

Southeast Region: Water Management Program Manager, 2 East Main Street, Norristown, PA 19401.

E15-722. Robert Bruce Homes, Inc., 1223 West Chester Pike, West Chester, PA 19380, Caln Township, **Chester County**, ACOE Philadelphia District.

To construct and maintain a triple span arch bridge, each span having a 20-foot clear span and 6-foot rise over an unnamed tributary to Beaver Creek (TSF-MF) to accommodate a cul-de-sac access road associated with the proposed Clarelyn Subdivision.

Proposed activities will impact approximately 65 linear feet of watercourse and 0.09 acre of adjacent wetlands (PEM). The site is on the west side of Lloyd Avenue approximately 3,000 feet southwest of the intersection of Lloyd Avenue and Route 322 (Downingtown, PA USGS Quadrangle N: 0.7 inch; W: 13.5 inches).

The applicant proposes to construct 0.56 acre of wetland replacement with this project.

E46-940. Mason's Mill Partners, L. P., 1800 Byberry Road, Suite 1410, Huntingdon Valley, PA 19006-3526, Bryn Athyn Borough, **Montgomery County**, ACOE Philadelphia District.

To construct and maintain a 14-foot wide single span reinforced concrete bridge and appurtenant structures having an approximate 40-foot span and 4.4-foot underclearance over the Southampton Creek, a tributary of the Pennypack Creek (TSF-MF). Work will include incidental grading in the floodway to accommodate bridge construction and to facilitate pavement of the roadway approaches.

The project proposes to temporarily impact 20 and permanently impact a total of 14 linear feet of watercourse. The site is approximately 940 feet south of the intersection of Byberry and Mason Mill Roads (Hatboro, PA USGS Quadrangle N: 5.84 inches; W: 10.63 inches).

E46-964. Spring Mill Realty, 528 Main Street, Suite 200, Harleysville, PA 19438, Upper Salford Township, **Montgomery County**, ACOE Philadelphia District.

To perform the following activities associated with the Shelly Road Commercial Site:

1. To construct and maintain two 60-inch RCP culvert crossings across a tributary to the East Branch of the Perkiomen Creek (TSF) to provide ingress and egress to this commercial facility. These crossings were previously authorized by General Permits GP074600311 and GP074600312 and later updated and consolidated by GP074602334. These activities will become further consolidated into this encroachment permit and the previously mentioned general permits will be dissolved upon issuance of this permit.

2. To relocate approximately 85 linear feet of unnamed tributary of the East Branch of the Perkiomen Creek and to redirect stream flows through 74 linear feet of 60-inch RCP culvert to accommodate the widening of Shelly Road.

3. To place fill within approximately 0.025 acre of wetland to facilitate an access road for a proposed package sewage treatment plant serving this commercial site.

4. To install and maintain approximately 50 linear feet of conduit and an associated outfall structure from the proposed package sewage treatment plant within the floodway of the Perkiomen Creek and abutting wetlands. This outfall was previously authorized by General Permits GP044600305 and GP044600311 and later updated and consolidated by GP044602338. These activities will become further consolidated into this encroachment permit and the previously mentioned general permits will be dissolved upon issuance of this permit.

Permanent stream impacts will total approximately 200 linear feet. The site is just south of the intersection of Sumneytown Pike (SR 0063) and Shelly Road (Perkiomenville USGS Quadrangle N: 9.0 inches; W: 5.5 inches).

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

E48-353. City of Easton/Hugh Moore Park Commission, City Hall, One South Third Street, Easton, PA 18042 in City of Easton, **Northampton County**, U. S. Army Corps of Engineers, Philadelphia District.

To construct and maintain an 80-foot by 120-foot museum building in the 100-year floodplain of the Lehigh River (WWF). The project is in Hugh Moore Park, approximately 0.8 mile upstream from SR 2012 (Easton, PA-NJ Quadrangle N: 6.7 inches; W: 15.9 inches).

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

E67-767: James B. Yelton, P. O. Box 153, Glen Rock, PA 17327 in Springfield Township, **York County**, ACOE Baltimore District.

To construct and maintain a 20-foot wide bridge having a span of 14 feet for a driveway to cross an unnamed tributary of the South Branch Codorus Creek (WWF) (Glen Rock, PA Quadrangle N: 11.9 inches; W: 16.8 inches) Springfield Township, York County.

E67-711: York Township, 25 Oak Street, York, PA 17402 in York Township, **York County**, ACOE Baltimore District.

To remove an existing 8-inch sanitary sewer line, then construct and maintain 1,016 feet of 8-inch and 227 feet of 10-inch sanitary sewer line in and along an unnamed tributary to Tyler Run, Tyler Run and associated wetlands at a point between Tyler Run Road and Powdermill Road (York, PA Quadrangle N: 10.49 inches; W: 11.48 inches) in York Township, York County. The project includes two utility line stream crossings, one utility line stream/wetland crossing and three areas of gabion basket installation for bank stabilization for a total impact of 197 feet.

E21-365: Insite Development, LLC, 4216 Little Run Road, Harrisburg, PA 17110, in Hampden Township, **Cumberland County**, ACOE Baltimore District.

To: (1) construct and maintain one 54-foot wide, 36-foot span by 10-foot 6-inch high open bottom arch structure across an unnamed tributary to the Conodoguinet Creek (WWF); (2) construct and maintain five separate roadway crossings resulting in the filling of 0.76 acre of wetlands tributary to the unnamed tributary of the Conodoguinet Creek; (3) installation of sanitary sewer, storm sewer, water, cable, electric and telephone utilities, all within the proposed footprints of the roadways, for the purpose of constructing the 48-lot residential subdivision on 43.5 acres, known as Hawks Landing, between Lamb's Gap Road (SR 1011) and Hunter's Drive, to the south side of Wertzville Road (SR 0944) (Wertzville, PA Quadrangle N: 6.35 inches; W: 0.92 inch) in Hampden Township, Cumberland County. The permittee is required to provide a minimum of 0.97 acre of replacement wetlands.

E07-387: The Pennsylvania State University, 101P Office of Physical Plant, University Park, PA 16802.

To construct and maintain a pedestrian bridge with a 6-foot wide by 38-foot long span and a minimum underclearance of 7 feet to be at a point along an unnamed tributary to Spring Run (WWF) (Altoona, PA Quadrangle N: 7.05 inches; W: 4.73 inches) within the City of Altoona, **Blair County**.

E21-364: James H. and Mary C. Slyder, 429 Chestnut Street, Mt. Holly Springs, PA 17065 in Mount Holly Springs Borough, **Cumberland County**.

To construct and maintain four duplex housing units on 0.9 acre of land within the detailed floodway of Mountain Creek (TSF), approximately 200 feet upstream of the Mill Street Bridge (Mt. Holly Springs, PA Quadrangle N: 22.05 inches; W: 8.75 inches) in Mount Holly Springs Borough, Cumberland County.

E36-786: Paradise Sportsmen's Association, 339 South Belmont Road, Paradise, PA 17652 in Salisbury Township, **Lancaster County**, ACOE Baltimore District.

To construct and maintain a stream restoration project spanning approximately 6,500 feet on Pequea Creek (HQ-CWF) on the Honey Brook, PA Quadrangle (Latitude: 40°03′40″; W: 75°57′42″) in Salisbury Township, Lancaster County.

Northcentral Region: Water Management Program Manager, 208 West Third Street, Williamsport, PA 17701, (570) 327-3636.

E08-415. Department of Transportation, P. O. Box 218, 715 Jordan Avenue, Montoursville, PA 17754-0218. Box culvert, SR 1055, Section 004 in Rome Township, **Bradford County**, ACOE Baltimore District (Windham, PA Quadrangle N: 3.35 inches; W: 12.4 inches).

To: (1) remove the existing steel I-beam bridge which has timber decking with a clear span of 10 feet, a curb-to-curb width of 22.5 feet on an 83 degree skew with a minimum underclearance of 3.8 feet and a hydraulic opening of approximately 40 square feet; (2) construct and maintain a precast reinforced concrete box culvert with a 12-foot by 4.5-foot opening with concrete wingwalls surrounded by R-6 riprap for scour protection on an 83 degree skew submerged 1 foot in the streambed. The project is in the Branch of Parks Creek (CWF) on SR 1055, Section 004 approximately 1 mile north of the intersection of SR 1055 with SR 1044. The project will not impact wetlands, disturbing approximately 0.1 acre of earth and approximately 20 feet of waterway.

E47-079. Valley Township Municipal Authority, P. O. Box 307, Danville, PA 17821. Valley Township sewer extension in Valley Township, **Montour County**, ACOE Baltimore District (Danville, PA Quadrangle N: 21.4 inches; W: 16.4 inches).

This application is an after-the-fact application for the sewer line crossings. The permit is submitted under a violation notice stemming from onsite violations. The original crossing authorization was conducted under General Permit authorization. The crossings include 17 stream crossings associated with the Mahoning Creek Watershed and 4 wetland crossings. Six of the crossings are on Mahoning Creek (TSF), seven crossings on un-

named tributaries to Mahoning Creek (TSF) and six crossings on unnamed tributaries to Mauses Creek (CWF).

E53-403. Hebron Township, 786 Baker Creek Road, Coudersport, PA 16915. Prosser Hollow Road bridge replacement project in Hebron Township, **Potter County**, ACOE Pittsburgh District (Sweden Valley, PA Quadrangle N: 12.25 inches; W: 15.125 inches).

To remove an existing structure and construct, operate and maintain a single cell, open-bottom, precast arch culvert to carry Prosser Hollow Road across the Allegheny River (HQ-CWF). The precast arch culvert shall be constructed with a minimum span of 47 feet, underclearance of 10 feet and roadway width of 26 feet. All construction and future maintenance work shall be completed during stream low flow and dry work conditions by dams and pumping or fluming stream flow around work areas. Since the Allegheny River is a wild trout fishery, no maintenance work shall be conducted in or along the unnamed tributary channel between October 1 and December 31 without prior written permission from the Fish and Boat Commission. The project will impact 0.47 acre of wetland, while impacting 82 feet of waterway that is along the eastern right-of-way of SR 0244, approximately at the intersection of Depot Street and SR 0244.

E60-166. White Deer Watershed Association, P. O. Box 102, White Deer, PA 17887. White Deer Creek Stream restoration project in White Deer Township, **Union County**, ACOE Baltimore District (Milton, PA Quadrangle N: 13.8 inches; W: 16.8 inches).

The applicant is proposing to revitalize 1,950 linear feet of White Deer Creek (HQ-CWF). The applicant proposes to install four cross vane rock structures, rock toe stabilization treatments, boulder/soil stabilization matrix, boulder bank revetment, boulder wall stabilization treatments and to remove an abandon water line below the Harbeson Road Bridge. The streams natural pattern will be maintained with some minor augmentation to the proposed channels cross-section to allow for a more stable form.

DAM SAFETY

Central Office: Bureau of Waterways Engineering, 400 Market Street, Floor 3, P. O. Box 8554, Harrisburg, PA 17105-8554.

D46-342. Skippack Golf Course Dam, Department of Conservation and Natural Resources, Bureau of State Parks, P. O. Box 8451, Harrisburg, PA 17105-8451. To construct, operate and maintain the Skippack Golf Course Dam across Zacharias Creek (TSF), impacting 0 acre of wetlands and 20 feet of stream for the purpose of irrigation of the Skippack Golf Course in Ebensburg State Park. Work includes the removal and replacement of an existing dam and dredging of the impoundment area (Collegeville, PA Quadrangle N: 14.85 inches; W: 1.6 inches) in Skippack Township, **Montgomery County**.

ACTIONS

THE CLEAN STREAMS LAW AND THE FEDERAL CLEAN WATER ACT

FINAL ACTIONS TAKEN FOR NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES) PERMITS AND WATER QUALITY MANAGEMENT (WQM) PERMITS

The Department of Environmental Protection (Department) has taken the following actions on previously received applications for new, amended and renewed NPDES and WQM permits, applications for permit waivers and Notices of Intent (NOI) for coverage under general permits. This notice is provided in accordance with 25 Pa. Code Chapters 91 and 92 and 40 CFR Part 122, implementing provisions of The Clean Streams Law (35 P. S. §§ 691.1—691.1001) and the Federal Clean Water Act.

Location	*Permit Authority*	*Application Type or Category*
Section I	NPDES	Renewals
Section II	NPDES	New or amendment
Section III	WQM	Industrial, sewage or animal wastes; discharges to groundwater
Section IV	NPDES	MS4 individual permit
Section V	NPDES	MS4 permit waiver
Section VI	NPDES	Individual permit stormwater construction
Section VII	NPDES	NOI for coverage under NPDES general permits

Sections I—VI contain actions related to industrial, animal or sewage wastes discharges, discharges to groundwater and discharges associated with municipal separate storm sewer systems (MS4), stormwater associated with construction activities and concentrated animal feeding operations (CAFOs). Section VII contains notices for parties who have submitted NOIs for coverage under general NPDES permits. The approval for coverage under general NPDES permits is subject to applicable effluent limitations, monitoring, reporting requirements and other conditions set forth in each general permit. The approval of coverage for land application of sewage sludge or residential septage under applicable general permit is subject to pollutant limitations, pathogen and vector attraction reduction requirements, operational standards, general requirements, management practices and other conditions set forth in the respective permit. Permits and related documents, effluent limitations, permitting requirements and other information are on file and may be inspected and arrangements made for copying at the contact office noted before the action.

Persons aggrieved by an action may appeal, under section 4 of the Environmental Hearing Board Act (35 P. S. § 7514) and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law), to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users should contact the Environmental Hearing Board (Board) through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin*, unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of

practice and procedure are also available in Braille or on audiotape from the Secretary of the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decision law.

For individuals who wish to challenge an action, appeals must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

I. NPDES Renewal Permit Actions

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

NPDES Permit No. (Type)	*Facility Name and Address*	*County and Municipality*	*Stream Name (Watershed No.)*	*EPA Waived Y/N?*
PA0218031 Sewage	Alan A. Axelson 2370 Morrow Road Pittsburgh, PA 15241	Washington County Morris Township	Short Creek	Y

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

Southeast Region: Water Management Program Manager, 2 East Main Street, Norristown, PA 19401.

NPDES Permit No. PA0011070, Industrial Waste, **Knoll Inc.**, 1235 Water Street, P. O. Box 157, East Greenville, PA 18041. This proposed facility is in Upper Hanover Township, **Montgomery County**.

Description of Proposed Action/Activity: Approval for the renewal to discharge into the Perkiomen Creek in Watershed 3E.

NPDES Permit No. PA0042641, Sewage, **Department of Conservation and Natural Resources**, 2808 Three Mile Road, Perkasie, PA 18944-2065. This proposed facility is in Bedminster Township, **Bucks County**.

Description of Proposed Action/Activity: Approval for the renewal to discharge from the Nockamixon State Park STP into Tohickon Creek in Watershed 3D.

NPDES Permit No. PA0026964, Sewage, **Lower Perkiomen Valley Regional Sewer Authority**, P. O. Box 613, 5 River Road, Oaks, PA 19456. This proposed facility is in Upper Providence Township, **Montgomery County**.

Description of Proposed Action/Activity: Approval for the renewal to discharge into the Schuylkill River and Perkiomen Creek in Watershed 3D.

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

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

WQM Permit No. 5604401, Sewerage, **Seven Springs Municipal Authority**, 290 Lagoon Lane, Champion, PA 15622. This proposed facility is in Middlecreek Township, **Somerset County**.

Description of Proposed Action/Activity: 47 million gallon recovery impoundment.

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

WQM Permit No. WQG018306, Sewerage, **Donald G. Jr. and Stacey L. Mulson**, P. O. Box 2, Mill Village, PA 16427. This proposed facility is in Mill Village Borough, **Erie County**.

Description of Proposed Action/Activity: Sewage discharge for a single residence.

WQM Permit No. WQG018313, Sewerage, **Barry Walk, Jr.**, 10972 Station Road, North East, PA 16428. This proposed facility is in Greenfield Township, **Erie County**.

Description of Proposed Action/Activity: Sewage discharge for a single residence.

WQM Permit No. WQG018305, Sewerage, **William Evans**, 8835 Parson Road, Erie, PA 16509. This proposed facility is in Summit Township, **Erie County**.

Description of Proposed Action/Activity: Sewage discharge for a single residence.

IV. NPDES Stormwater Discharges from MS4 Permit Actions

V. NPDES Waiver Stormwater Discharges from MS4 Actions

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

Southeast Region: Water Management Program Manager, 2 East Main Street, Norristown, PA 19401.

NPDES Permit No.	*Applicant Name and Address*	*County*	*Municipality*	*Receiving Water/Use*
PAS10G427-1	Lutheran Senior Services of Southern Chester County Route 796 and Baltimore Pike West Grove, PA 19390	Chester	Penn Township	East Branch Big Elk Creek HQ-TSF-MF
PAI011504020	Stephen Cushman Hillvellyn Subdivision 403 West Lincoln Highway Exton, PA 19341	Chester	West Caln Township	Two Log Run HQ-TSF-MF
PAI011504033	Camp Hill Village Kimberton Hills, Inc. P. O. Box 1045 Kimberton, PA 19442	Chester	West Vincent Township	French Creek HQ-TSF-MF

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

NPDES Permit No.	*Applicant Name and Address*	*County*	*Municipality*	*Receiving Water/Use*
PAI041803006	Art Condo NCAC Dev. Co., LLC P. O. Box 462 Lamar, PA 16848-0462	Clinton	Porter Township	Fishing Creek HQ-CWF
PAI041404002	L. S. I. Inc. Lindsey H. Kiefer 2990 Ernest Lane State College, PA 16801	Centre	Ferguson Township	UNT Spruce Run HQ-CWF
PAI041804001	William R. Bastian Wag-Myr Woodlands Inc. 236 Wag Myr Lane Loganton, PA 17747	Clinton	Green Township	UNT Fishing Creek HQ-EV

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

Somerset County Conservation District: North Ridge Building, 1590 North Center Avenue, Suite 103, Somerset, PA 15501-7000, (814) 445-4652.

NPDES Permit No.	*Applicant Name and Address*	*County*	*Municipality*	*Receiving Water/Use*
PAI055604003	Seven Springs Municipal Authority 290 Lagoon Lane Champion, PA 15622	Somerset	Middlecreek Township	Unnamed tributary to Allen Creek and Laurel Hill Creek HQ-CWF

VII. Approvals to Use NPDES and/or Other General Permits T

The EPA Region III Administrator has waived the right to review or object to this permit action under the waiver provision 40 CFR 123.23(d).

List of NPDES and/or Other General Permit Types

PAG-1	General Permit for Discharges from Stripper Oil Well Facilities
PAG-2	General Permit for Discharges of Stormwater Associated with Construction Activities (PAR)
PAG-3	General Permit for Discharges of Stormwater from Industrial Activities
PAG-4	General Permit for Discharges from Single Residence Sewage Treatment Plants
PAG-5	General Permit for Discharges from Gasoline Contaminated Ground Water Remediation Systems
PAG-6	General Permit for Wet Weather Overflow Discharges from Combined Sewer Systems
PAG-7	General Permit for Beneficial Use of Exceptional Quality Sewage Sludge by Land Application
PAG-8	General Permit for Beneficial Use of Nonexceptional Quality Sewage Sludge by Land Application to Agricultural Land, Forest, a Public Contact Site or a Land Reclamation Site
PAG-8 (SSN)	Site Suitability Notice for Land Application under Approved PAG-8 General Permit Coverage
PAG-9	General Permit for Beneficial Use of Residential Septage by Land Application to Agricultural Land, Forest or a Land Reclamation Site

PAG-9 (SSN)	Site Suitability Notice for Land Application under Approved PAG-9 General Permit Coverage
PAG-10	General Permit for Discharge Resulting from Hydrostatic Testing of Tanks and Pipelines
PAG-11	(To Be Announced)
PAG-12	CAFOs
PAG-13	Stormwater Discharges from MS4

General Permit Type—PAG-2

Facility Location and Municipality	*Permit No.*	*Applicant Name and Address*	*Receiving Water/Use*	*Contact Office and Telephone No.*
Hilltown Township Bucks County	PAG2000904115	Hilltown Township Forest Road Park 13 West Creamery Road P. O. Box 260 Hilltown, PA 18927	Morris Run TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Wrightstown Township Bucks County	PAG2000904069	William Dimmler The Dimmler Tract P. O. Box 213 Wycombe, PA 18980-0214	Mill Creek CWF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Richland Township Bucks County	PAG2000904043	Shelly Enterprises 64 Highland Avenue Soudertown, PA 18969	Tohickon Creek CWF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Ridley Township Delaware County	PAG2002304010	Macboulevard Associates, LP 1288 Valley Forge Road Valley Forge, PA 19482	Crum Creek WWF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Middletown Township Delaware County	PAG2002304018	Visionary Land Development, LLP 27 Wallingford Avenue Wallingford, PA 19086	Chester Creek TSF, MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Radnor Township Delaware County	PAG2002304034	Villanova University 800 Lancaster Avenue Villanova, PA 19085	Mill Creek WWF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Upper Providence Township Montgomery County	PAG2004603213	Stewart and Conti Development Secret Hollow Estates 3801 Germantown Pike Collegeville, PA 19426	Schuylkill River and Doe Run WWF, TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Limerick Township Montgomery County	PAG2004604087	Kane Core, Inc. Landis Farms Estates 4365 Skippack Pike Schwenksville, PA 19473	Schuylkill River TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Pottstown Borough Montgomery County	PAG2004604063	Pottstown Hospital, LLC Pottstown Memorial Medical Center 1600 East High Street Pottstown, PA 19464	Sprogles Run WWF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Upper Merion Township Montgomery County	PAG2004603135	Peace Evangelical Lutheran Church 200 East Beidler Road King of Prussia, PA 19406	Schuylkill River WWF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900

Facility Location and Municipality	*Permit No.*	*Applicant Name and Address*	*Receiving Water/Use*	*Contact Office and Telephone No.*
Worcester Township Montgomery County	PAG2004603144	Sparango Construction Company Applewood Estates of Worcester 506 Bethlehem Pike Fort Washington, PA 19034	Zacharias Creek TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Lower Pottsgrove Township Montgomery County	PAG2004603250	Wilmer Hallman Sanatoga Ridge Community—Phase II 2461 East High Street Pottstown, PA 19464	Sanatoga Creek WWF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Montgomery Township Montgomery County	PAG2004604066	Oak Restaurant PA Taco Bell Inc. Land Development 14 Balligomingo Road P. O. Box 429 Conshohocken, PA 19428	Little Neshaminy Creek WWF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
East Norriton Township Montgomery County	PAG2004603038	Dunn Noble Development Company Walgreens Pharmacy 107 North Commerce Way Suite 107 Bethlehem, PA 18017	Stoney Creek TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Perkiomen Township Montgomery County	PAG2004604082	City Suburban Developers 515 Centennial Street Development 152 Garrett Road Upper Darby, PA 19082	Tributary Perkiomen Creek TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Mayfield Borough Lackawanna County	PAG2003504023	Daniel Swirdovich 800 Laurel Road Mayfield, PA 18433	Unnamed tributary to Lackawanna River CWF	Lackawanna County Conservation District (570) 281-9495
South Abington Township Lackawanna County	PAG2003504025	Edward Bush, Sr. Clarks Summit Development, LLC 820 Northern Blvd. Clarks Summit, PA 18411-2229	Unnamed tributary to Leggetts Creek CWF	Lackawanna County Conservation District (570) 281-9495
Forest City Borough Susquehanna County	PAG2005804007	Greater Forest City Industries 636 Main St. Forest City, PA 18421	Unnamed tributary to Lackawanna River CWF	Susquehanna County Conservation District (570) 278-4600
Clearfield County City of DuBois	PAG2001704001	Joseph Korb 15 East Ave. DuBois, PA 15801	UNT Sandy Lick Creek CWF	Department of Environmental Protection Water Management 208 W. 3rd St. Suite 101 Williamsport, PA 17701 (570) 327-3574
Allegheny County Richland Township	PAR10A429-1	Richland Properties, Inc. 7805 McKnight Road Pittsburgh, PA 15237	Deer Creek WWF	Allegheny County Conservation District (412) 241-7645
Allegheny County South Fayette Township	PAR10A558-1	MHM Development Co., Inc. 409 Broad Street Sewickley, PA 15143	Millers Run WWF Coal Run WWF	Allegheny County Conservation District (412) 241-7645
Allegheny County Bethel Park South Park Township	PAG2000203027	Wadwell Group 122 Cidar Lane McMurray, PA 15317	Lick Run TSF	Allegheny County Conservation District (412) 241-7645
Allegheny County Robinson Township	PAG2000204046	HGD Associates, LP 1009 Beaver Grade Rd. Coraopolis, PA 15108	Trout Run TSF	Allegheny County Conservation District (412) 241-7645

Facility Location and Municipality	*Permit No.*	*Applicant Name and Address*	*Receiving Water/Use*	*Contact Office and Telephone No.*
Allegheny County Monroeville	PAG2000204059	St. Bernadette Catholic Church 245 Azalea Drive Monroeville, PA 15146	Thompson Run WWF	Allegheny County Conservation District (412) 241-7645
Allegheny County Robinson Township	PAG2000204060	Robinson Township Municipal Authority P. O. Box 15539 Pittsburgh, PA 15244-0539	Montour Run TSF	Allegheny County Conservation District (412) 241-7645
Allegheny County Pittsburgh	PAG2000204062	Rivertech Associates LP 1046 Pittsburgh Street Springdale, PA 15144 Prudential Realty Management Company 3700 South Water Street Pittsburgh, PA 15203	Monongahela River WWF	Allegheny County Conservation District (412) 241-7645
Allegheny County North Fayette Township	PAG2000204065	Charles Dinardo 200 Patton Drive Coraopolis, PA 15108	Pinkerton Run WWF Robinson Run WWF	Allegheny County Conservation District (412) 241-7645
Allegheny County Marshall Township	PAG2000204071	Tech 21 Development Corporation LP 600 Grant Street Suite 1400 Pittsburgh, PA 15219-2703	Brush Creek WWF	Allegheny County Conservation District (412) 241-7645
Allegheny County Upper St. Clair Township	PAG2000204072	Upper St. Clair Township 1820 McLaughlin Run Road Pittsburgh, PA 15241	McLaughlin Run WWF	Allegheny County Conservation District (412) 241-7645
Allegheny County Penn Hills	PAG2000204079	Penn Hills Properties LP One Atlantic Avenue Pittsburgh, PA 15202-1707	Thompson Run WWF	Allegheny County Conservation District (412) 241-7645
Armstrong County Washington Township	PAG2000304006	Allegheny Energy Supply Co., LLC 4350 Northern Pike Monroeville, PA 15146-2841	Allegheny River WWF	Armstrong County Conservation District (724) 548-3425
Indiana County Center Township	PAG2003204010	Department of Transportation District 10 2550 Oakland Avenue Indiana, PA 15701	Yellow Creek CWF	Indiana County Conservation District (724) 463-8547
Washington County North Franklin Township	PAG2006304025	Trinity Area School District 231 Park Avenue Washington, PA 15301	Unnamed tributary to Chartiers Creek WWF	Washington County Conservation District (724) 228-6774
Westmoreland County Washington Township	PAG2006504029	Municipal Authority of Washington Township 383 Pine Run Church Road Apollo, PA 15613	Unnamed tributary to Beaver Run TSF	Westmoreland County Conservation District (724) 837-5271
Westmoreland County South Huntingdon Township	PAG2006504033	Yough School District 99 Lowber Road Herminie, PA 15637	Unnamed tributary to Sewickley Creek WWF	Westmoreland County Conservation District (724) 837-5271
Westmoreland County Hempfield Township	PAG2006504034	F & L Group, Inc. 350 Bethel Road North Huntingdon, PA 15642	Tributary to Jacks Run WWF	Westmoreland County Conservation District (724) 837-5271
Westmoreland County East Huntingdon Township	PAG2006504035	Westmoreland County Industrial Development Corporation Suite 601 Courthouse Square 2 North Main Street Greensburg, PA 15601	Unnamed Tributary to Buffalo Run WWF	Westmoreland County Conservation District (724) 837-5271

Facility Location and Municipality	*Permit No.*	*Applicant Name and Address*	*Receiving Water/Use*	*Contact Office and Telephone No.*
Westmoreland County Unity Township	PAG2006504037	DeMill Development, LLC Rt. 2, Box 181 New Alexandria, PA 15670	Unnamed tributary of the Loyalhanna CWF	Westmoreland County Conservation District (724) 837-5271
Westmoreland County Hempfield Township	PAG2006504038	Greensburg Thermal 755 Opossum Lake Rd. Carlisle, PA 17013	Jacks Run WWF	Westmoreland County Conservation District (724) 837-5271
Westmoreland County North Huntingdon Township	PAG2006504039	William Scalise 8340 Pennsylvania Ave. North Huntingdon, PA 15642	Andrews Run TSF	Westmoreland County Conservation District (724) 837-5271
Westmoreland County Hempfield Township	PAG2006504040	Mark Cuomo 27 Barri Drive Irwin, PA 15642	Jacks Run WWF	Westmoreland County Conservation District (724) 837-5271
Butler County Cranberry Township	PAG200100408	David Rodgers Madison Heights Lake & Subdivision 215 Executive Drive Cranberry Township, PA 16066	UNT Brush Creek WWF	Butler Conservation District (724) 284-5270
Butler County Cranberry Township	PAG2001004017	FMZ Construction & Development Inc. Washington Farms Subdivision 125 Gracie Lane Mars, PA 16046	UNT Wolfe Creek WWF	Butler Conservation District (724) 284-5270

General Permit Type—PAG-3

Facility Location and Municipality	*Permit No.*	*Applicant Name and Address*	*Receiving Water/Use*	*Contact Office and Telephone No.*
Macungie Borough Lehigh County	PAR202218	Tyler Pipe Company Division of McWane, Inc. 101 North Church Street Macungie, PA 18062	Swabia Creek CWF	NERO Water Mgmt. Program 2 Public Square Wilkes-Barre, PA 18711-0790 (570) 826-2511
Wilkes-Barre City Luzerne County	PAR202238	Inter Metro Industries Corp. 651 North Washington St. Wilkes-Barre, PA 18705	Mill Creek CWF	NERO Water Mgmt. Program 2 Public Square Wilkes-Barre, PA 18711-0790 (570) 826-2511
Plains Township Luzerne County	PAR202239	Inter Metro Industries Corp. 651 North Washington St. Wilkes-Barre, PA 18705	Mill Creek CWF	NERO Water Mgmt. Program 2 Public Square Wilkes-Barre, PA 18711-0790 (570) 826-2511
Allegheny County South Fayette Township	PAR206140	Ionics Incorporated 3039 Washington Pike Bridgeville, PA 15017-1403	Chartiers Creek	Southwest Regional Office Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000

Facility Location and Municipality	*Permit No.*	*Applicant Name and Address*	*Receiving Water/Use*	*Contact Office and Telephone No.*
Somerset County Upper Turkeyfoot Township	PAR226111	King & Bungard Lumber Co. Inc. 668 Casselman Road Markletown, PA 15551	Casselman River	Southwest Regional Office Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
Beaver County Koppel Borough	PAR606114	Philip Metals Inc. P. O. Box N Rt. 18N Big Beaver Blvd. Koppel, PA 16136	Stockman Run to Beaver River	Southwest Regional Office Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
Somerset County Jenner Township	PAR606146	Hemminger Auto & Truck Inc. 185 Ridge Road Somerset, PA 15501	UNT to Quemahoning Creek	Southwest Regional Office Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
Greene County Perry Township	PAR606148	Burnside's Auto Salvage P. O. Box 429 Mt. Morris, PA 15349	Unnamed feeder to Dunkard Creek	Southwest Regional Office Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000

General Permit Type—PAG-4

Facility Location and Municipality	*Permit No.*	*Applicant Name and Address*	*Receiving Water/Use*	*Contact Office and Telephone No.*
Indiana County Rayne Township	PAG046289	Christ Our Savior Orthodox Church 6768 Tanoma Road Indiana, PA 15701	Crooked Creek	Southwest Regional Office Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
West Salem Township Mercer County	PAG048641	Chris Kirkland 15 Carisle Road Transfer, PA 16154	Unnamed tributary of Big Run	NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942
Jefferson Township Mercer County	PAG048631	Renee E. Titus 494 McCullough Road Sharpsville, PA 16150	Unnamed tributary of Daley Run	NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942
Hempfield Township Mercer County	PAG048353	Nicholas Barbosa, Jr. 371 Fredonia Road Greenville, PA 16125-9755	Unnamed tributary of Mathay Run	NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942

Facility Location and Municipality	*Permit No.*	*Applicant Name and Address*	*Receiving Water/Use*	*Contact Office and Telephone No.*
Mill Village Borough Erie County	PAG048995	Donald G. Jr. and Stacey L. Mulson P. O. Box 2 Mill Village, PA 16427	Unnamed tributary to French Creek	NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942
Greenfield Township Erie County	PAG048992	Barry Walk, Jr. 10972 Station Road North East, PA 16428	Unnamed tributary to West Branch of French Creek	NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942
Summit Township Erie County	PAG048994	William Evans 8835 Parson Road Erie, PA 16509	Unnamed tributary to LeBoeuf Creek	NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942

General Permit Type—PAG-5

Facility Location and Municipality	*Permit No.*	*Applicant Name and Address*	*Receiving Water/Use*	*Contact Office and Telephone No.*
Springfield Township Montgomery County	PAG050011	BP Amoco Corporation 1 West Pennsylvania Ave. Suite 915 Towson, MD 21204-5031	Wissahickon Creek 3F	Southeast Regional Office 2 East Main Street Norristown, PA 19401
Hanover Township Luzerne County	PAG052218	Sunoco, Inc. 2345 Sans Souci Parkway Hanover Township, PA 19040	Susquehanna River CWF	NERO Water Mgmt. Program 2 Public Square Wilkes-Barre, PA 18711-0790 (570) 826-2511

General Permit Type—PAG-8

Facility Location and Municipality	*Permit No.*	*Applicant Name and Address*	*Site Name and Location*	*Contact Office and Telephone No.*
Lake City Borough Erie County	PAG088310	Lake City Borough 2350 Main Street Lake City, PA 16423	Lake City Municipal Authority Maple Avenue Lake City, PA 16423	NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942

General Permit Type—PAG-8 (SSN)

Facility Location and Municipality	*Applicant Name and Address*	*Site Name and Location*	*Contact Office and Telephone No.*
Independence Township Beaver County	Vanport Township Municipal Authority 285 River Avenue Vanport, PA 15009	Jodikinos Farm Biosolids Site	Southwest Regional Office Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000

General Permit Type—PAG-13

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

NPDES Permit No.	*Applicant Name and Address*	*County*	*Municipality*	*Receiving Water/Use*	*Department Protocol (Y/N)*
PAG132272	Wilkes-Barre City 40 East Market Street Wilkes-Barre, PA 18711	Luzerne	Wilkes-Barre City	Unnamed tributary to Susquehanna River CWF Solomon Creek CWF Susquehanna River WWF	Y

PUBLIC WATER SUPPLY (PWS) PERMITS

The Department of Environmental Protection has taken the following actions on applications received under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17) for the construction, substantial modification or operation of a public water system.

Persons aggrieved by an action may appeal, under section 4 of the Environmental Hearing Board Act (35 P. S. § 7514) and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law), to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users should contact the Environmental Hearing Board (Board) through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin*, unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary of the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decision law.

For individuals who wish to challenge an action, appeals must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

SAFE DRINKING WATER

Actions taken under the Pennsylvania Safe Drinking Water Act.

Southeast Region: Water Supply Management Program Manager, 2 East Main Street, Norristown, PA 19401.

Permit No. 1504504, Public Water Supply.

Applicant	**Pennsylvania American Water Company** 100 Cheshire Court, Suite 104 Coatesville, PA 19320
Township	West Sadsbury
County	**Chester**
Type of Facility	PWS
Consulting Engineer	Bohler Engineering, Inc. 1120 Welsh Road, Suite 200 North Wales, PA 19454
Permit to Construct Issued	August 23, 2004

Permit No. 5104501, Public Water Supply.

Applicant	**Philadelphia Water Department** Aramark Tower 1101 Market Street, 2nd Floor Philadelphia, PA 19107
	City of Philadelphia
County	**Philadelphia**
Type of Facility	PWS
Consulting Engineer	Vahe Hovsepian Philadelphia Water Department Aramark Tower 1101 Market Street, 2nd Floor Philadelphia, PA 19107
Permit to Construct Issued	August 23, 2004

Operations Permit issued to **Pennsylvania American Water Company**, 800 W. Hersheypark Drive, Hershey, PA 17033, PWS ID 1150166, Royersford Borough, **Montgomery County** on August 23, 2004, for the operation of facilities approved under Construction Permit No. 4603506.

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

Operations Permit issued to **Aqua Pennsylvania, Inc.**, 762 West Lancaster Avenue, Bryn Mawr, PA 19010, PWS ID 2400012, Jackson Township, **Luzerne County**, on August 5, 2004, for the operation of facilities approved under Construction Permit N/A.

Operations Permit issued to **Victoria Arms Townhouses/Condos Association**, P. O. Box 1574, Brodheadsville, PA 18322, PWS ID 2450117, Polk Township, **Monroe County**, on August 6, 2004, for the operation of facilities approved under Construction Permit No. 4594507.

Operations Permit issued to **Clarks Mobile Home Park**, R. R. 1, Box 514, Olyphant, PA 18447, PWS ID 2350064, Scott Township, **Lackawanna County,** on August 17, 2004, for the operation of facilities approved under Construction Permit No. 3591505.

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

Operations Permit issued to **Shady Grove Mennonite School**, Antrim Township, **Franklin County** on August 11, 2004, for the operation of facilities approved under Construction Permit No. 2803508.

The following permit reflects a change from the notice published at 34 Pa.B. 2947 (June 5, 2004). The permit to construct issue date was incorrect. The correct version is as follows.

Permit No. 6704508 MA, Minor Amendment, Public Water Supply.

Applicant	**Pennsylvania American Water**
Municipality	Fairview Township
County	**York**
Type of Facility	This permit approves the installation of a pressure reducing valve vault for the entire water distribution system for the Fairfield Development in York County.
Consulting Engineer	James C. Elliot, P. E. Gannett Fleming, Inc. P. O. Box 67100 Harrisburg, PA 17106-7100
Permit to Construct Issued	May 21, 2004

The following permit reflects a change from the notice published at 34 Pa.B. 2947 (June 5, 2004). The permit to construct issue date was incorrect. The correct version is as follows.

Permit No. 0603520, Public Water Supply.

Applicant	**Reading Area Water Authority**
Municipality	Ontelaunee Township
County	**Berks**
Type of Facility	Water main extension to Ontelaunee Township and construction of a chlorine booster pump station.
Consulting Engineer	Thomas L. Weld Jr., P. E. BCM Engineers 920 Germantown Pike Plymouth, PA 19462
Permit to Construct Issued	May 21, 2004

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

Permit No. 2603502, Public Water Supply.

Applicant	**Seven Springs Municipal Authority** 290 Lagoon Lane Champion, PA 15622
Borough or Township	Saltlick Township
County	**Fayette**
Type of Facility	Innovative Technology Permit for bag filtration plant for Trout Run No. 4 Spring.
Consulting Engineer	Widmer Engineering, Inc. 225 West Crawford Avenue Connellsville, PA 15425
Permit to Construct Issued	August 20, 2004

Operations Permit issued to **Municipal Water Authority of Aliquippa**, 160 Hopewell Avenue, Aliquippa, PA 15001, PWS ID 5040006, Center Township, **Beaver County** on August 10, 2004, for the operation of facilities approved under Construction Permit No. 0402503.

Operations Permit issued to **Addison Area Water Authority**, P. O. Box 13, Addison, PA 15411, PWS ID 4560028, Addison Borough, **Somerset County** on August 10, 2004, for the operation of facilities approved under Construction Permit No. 5696506-A1.

Operations Permit issued to **Reade Township Municipal Authority**, 1032 Skyline Drive, Blandburg, PA 16619-0506, PWS ID 4110297, Reade Township, **Cambria County** on August 13, 2004, for the operation of facilities approved under Construction Permit No. 1102503.

Permit No. 0288509-A1-C2, Minor Amendment. Public Water Supply.

Applicant	**Borough of Sharpsburg** 1611 Main Street Pittsburgh, PA 15215
Borough or Township	Sharpsburg Borough
County	**Allegheny**
Type of Facility	Designation of water quality parameter performance requirements.
Permit to Operate Issued	August 20, 2004

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

Permit No. 364W14-MA2, Minor Amendment.

Applicant	**Hawthorn Area Water Authority**
Borough or Township	Hawthorn Borough
County	**Clarion**
Type of Facility	PWS
Permit to Construct Issued	August 19, 2004

SEWAGE FACILITIES ACT PLAN APPROVAL

Plan Approvals Granted under the Pennsylvania Sewage Facilities Act (35 P. S. §§ 750.1—750.20a)

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

Plan Location:

Borough or Township	*Borough or Township Address*	*County*
Orange Township	2028 SR 487 Orangeville, PA 17859	Columbia
Orangeville Borough	301 Mill Street Orangeville, PA 17859	Columbia

Plan Description: The plan proposes to extend a small diameter pressure sewer approximately 1,750 feet to serve five existing residential properties and a commer-

cial market. Each of the dwellings and commercial properties will purchase and maintain an individual grinder pump. This sewage will be conveyed and treated at the existing Orangeville Borough Sewage Treatment Plant. The Department's review of the Sewage Facilities Update Revision has not identified any significant negative environmental impacts resulting from this proposal.

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

Plan Location:

Borough or Township	*Borough or Township Address*	*County*
West Chillisquaque Township	P. O. Box 252 Montandon, PA 17850	Northumberland

Plan Description: The approved plan provides for two distinct projects. The first is construction of a new sewer line in the area of Jones Road and Carpenter Road to serve an additional five EDUs. This is a realignment of the proposed sewer line in the September 2002 Act 537 Plan. This project will not significantly change the funding proposed in the September 2002 Plan. The second project is construction of approximately 2,100 linear feet of sanitary sewer line east along Route 45. This Route 45 extension will serve an additional 13 EDUs. This second project is an extension of the sanitary sewer line proposed in the September 2002 Plan. The project cost for the Route 45 extension is estimated to be $127,194 and is expected to be funded by contingency funds from the Milton Regional Sewer Authority. The sewage from both projects will be conveyed to and treated at the Milton Regional Sewage Treatment Plant. The Department's review of the sewage facilities update revision has not identified any significant environmental impacts resulting from this proposal. Any required NPDES permits or WQM permits must be obtained in the name of the municipality or authority as appropriate.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

UNDER ACT 2, 1995

PREAMBLE 2

The following plans and reports were submitted under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).

Provisions of Chapter 3 of the Land Recycling and Environmental Remediation Standards Act (act) require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* a notice of submission of plans and reports. A final report is submitted to document cleanup of a release of a regulated substance at a site to one of the act's remediation standards. A final report provides a description of the site investigation to characterize the nature and extent of contaminants in environmental media, the basis for selecting the environmental media of concern, documentation supporting the selection of residential or nonresidential exposure factors, a description of the remediation performed and summaries of sampling analytical results which demonstrate that remediation has attained the cleanup standard selected. Submission of plans and reports, other than the final report, shall also be published in the *Pennsylvania Bulletin*. These include the remedial investigation report, risk assessment report and cleanup plan for a site-specific standard remediation. A remedial investigation report includes conclusions from the site investigation, concentration of regulated substances in environmental media; benefits of refuse of the property and, in some circumstances, a fate and transport analysis. If required, a risk assessment report describes potential adverse effects caused by the presence of regulated substances. If required, a cleanup plan evaluates the abilities of potential remedies to achieve remedy requirements.

For further information concerning plans or reports, contact the Environmental Cleanup Program manager in the Department regional office after which the notice of receipt of plans or reports appears. If information concerning plans or reports is required in an alternative form, contact the Community Relations Coordinator at the appropriate regional office. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following plans and reports:

Southcentral Region: Environmental Cleanup Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

Trussell Residence, Warwick Township, **Lancaster County**. Marshall Miller & Associates, Inc., 3913 Hartzdale Drive, Suite 1306, Camp Hill, PA 17011, on behalf of The Trussells, 854 Furnace Hills Pike, Lititz, PA 17543, submitted a Final Report concerning remediation of site soils contaminated with used motor oil and diesel fuel. The report was submitted within 90 days of the release and is intended to document remediation of the site to the Statewide Health Standard.

Northcentral Region: Environmental Cleanup Program Manager, 208 West Third Street, Williamsport, PA 17701.

Equimeter Plant No. 2, City of DuBois, **Clearfield County**. Blasland, Bouck & Lee, Inc., on behalf of DuBois Area Economic Development Corporation, 238 First Commonwealth Bank Building, P. O. Box 606, DuBois, PA 15801 has submitted a Final Report concerning soil and groundwater contaminated with chlorinated solvents and metals. This Final Report is intended to demonstrate attainment of the Site-Specific Standard.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

UNDER ACT 2, 1995

PREAMBLE 3

The Department has taken action on the following plans and reports under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).

Provisions of 25 Pa. Code § 250.8, administration of the Land Recycling and Environmental Remediation Standards Act (act), require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* a notice of final actions on plans and reports. A final report is submitted to document cleanup of a release of a regulated substance at a site to one of the remediation standards of the act. A final report provides a description of the site investigation to characterize the nature and extent of contaminants in environmental media, the basis of selecting the environmental media of concern, documentation supporting the selection of residential or nonresidential exposure factors, a description of the remediation performed and summaries of sampling

methodology and analytical results which demonstrate that the remediation has attained the cleanup standard selected. Plans and reports required by provisions of the act for compliance with selection of remediation to a site-specific standard, in addition to a final report, include a remedial investigation report, risk assessment report and cleanup plan. A remedial investigation report includes conclusions from the site investigation, concentration of regulated substances in environmental media, benefits of refuse of the property and, in some circumstances, a fate and transport analysis. If required, a risk assessment report describes potential adverse effects caused by the presence of regulated substances. If required, a cleanup plan evaluates the abilities of potential remedies to achieve remedy requirements. A work plan for conducting a baseline remedial investigation is required by provisions of the act for compliance with selection of a special industrial area remediation. The baseline remedial investigation, based on the work plan, is compiled into the baseline environmental report to establish a reference point to show existing contamination, describe proposed remediation to be done and include a description of existing or potential public benefits of the use or reuse of the property. The Department may approve or disapprove plans and reports submitted. This notice provides the Department's decision and, if relevant, the basis for disapproval.

For further information concerning the plans and reports, contact the Environmental Cleanup Program manager in the Department regional office before which the notice of the plan or report appears. If information concerning a final report is required in an alternative form, contact the Community Relations Coordinator at the appropriate regional office. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following plans and reports:

Southeast Region: Environmental Cleanup Program Manager, 2 East Main Street, Norristown, PA 19401.

Proposed Wendy's Site, Upper Darby Township, **Delaware County**. Samuel Kucia, Environmental Consulting, Inc., 500 East Washington St., Norristown, PA 19401 on behalf of Benjamin Willner, Willner Realty and Dev., Co., 140 S. 69th St., 2nd Floor, Upper Darby, PA 19082 has submitted a Final Report concerning the remediation of site soil contaminated with unleaded gasoline. The Final report demonstrated attainment of the Statewide Health Standard and was approved by the Department on August 12, 2004.

McLeod Ford, Oxford Borough, **Chester County**. John Kollmeier, Brownfield Assoc., Inc., P. O. Box 703, Mendenhall, PA 19357 on behalf of Patrick Curran and Joseph Chamberlain, Investment Guild, Inc., 29 N. Third St., Oxford, PA 19363 has submitted a Low Risk Property Final Report that was approved by the Department on August 12, 2004.

Southcentral Region: Environmental Cleanup Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

Michel's Pipeline Construction, Inc., West Hanover Township, **Dauphin County**. Advantage Engineering, LLC, 20 South 36th Street, Camp Hill, PA 17011, on behalf of Michel's Pipeline Construction, Inc., 817 West Main Street, P. O. Box 128, Brownsville, WI 53006, submitted a Final Report concerning remediation site soils and groundwater contaminated with diesel fuel and no. 2 fuel oil. The Final Report demonstrated attainment of the Statewide Health Standard and was approved by the Department on August 9, 2004.

West Shore Office Center, East Pennsboro Township, **Cumberland County**. Marshall Miller and Associates, 3913 Hartzdale Drive, Suite 1306, Camp Hill, PA 17011, on behalf of Senate Avenue Associates, 4601 Presidents Drive, Suite 140, Lanham, MD 20706, submitted a Final Report concerning remediation of site soils and groundwater contaminated with diesel fuel. The final report demonstrated attainment of the Statewide Health Standard and was approved by the Department on August 16, 2004.

Former BOC Gases, East Petersburg Borough, **Lancaster County**. ENSR International, Suite 100, 2005 Cabot Boulevard West, Langhorne, PA 19047, on behalf of Auto-Metrics of Lancaster, 1800 West State Street, East Petersburg, PA 17520, submitted a final report concerning remediation of site soils and groundwater contaminated with no. 2 fuel oil. The final report demonstrated attainment of the Statewide Health Standard and was approved by the Department on August 20, 2004.

Defense Distribution Depot Susquehanna PA SWMU 2, Fairview Township, **York County**. Defense Logistics Agency, Defense Distribution Depot Susquehanna PA, 2001 Mission Drive, Suite 1, New Cumberland, PA 17070-5002, submitted a Remedial Investigation Report and a Cleanup Plan concerning remediation of site soils contaminated with chlorinated solvents, PAHs, PCBs, pesticides and inorganics. The applicant proposes to remediate the site to meet the Site-Specific Standards. The Remedial Investigation and Cleanup Plan were approved by the Department on August 20, 2004.

Defense Distribution Depot Susquehanna PA SWMU 4, Fairview Township, **York County**. Defense Logistics Agency, Defense Distribution Depot Susquehanna PA, 2001 Mission Drive, Suite 1, New Cumberland, PA 17070-5002, submitted a Remedial Investigation Report and a Cleanup Plan concerning remediation of site soils contaminated with chlorinated solvents, PAHs, PCBs, pesticides and inorganics. The applicant proposes to remediate the site to meet the Site-Specific Standards. The Remedial Investigation and Cleanup Plan were approved by the Department on August 20, 2004.

Southwest Region: Environmental Cleanup Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

Former Sunoco, Inc., Retail Gasoline Facility (a/k/a Tissue's Auto Parts, now Eckerd Store), Cheswick Borough, **Allegheny County**. Douglas S. Byers, P. G., GeoEnvironmental Consortium, Inc., 701 Freeport Road, Pittsburgh, PA 15238 (on behalf of Rhonda Giovannitti, Sunoco, Inc., 5733 Butler Street, Pittsburgh, PA 15201) has submitted a Final Report concerning remediation of site soil and groundwater contaminated with MTBE, PAH and unleaded gasoline. The Final Report demonstrated attainment of the Statewide Health Standard and was approved by the Department on May 19, 2004.

C. E. Kelly Support Facility/Neville Island Maintenance Facility, Neville Island, **Allegheny County**. John Mason, CH2MHILL, 1700 Market Street, Suite 1600, Philadelphia, PA 19103 (on behalf of Steven R. Lenney, Charles E. Kelly Support Facility, 6 Loubaugh

Street, Oakdale, PA 15701) has submitted a Final Report concerning remediation of site groundwater contaminated with chlorinated solvents. The Final Report did not demonstrate attainment of the Statewide Health Standard and was Disapproved by the Department on July 2, 2004.

MUNICIPAL WASTE GENERAL PERMITS

Applications Withdrawn under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003), the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101—4000.1904) and municipal waste regulations for a general permit to operate municipal waste processing facilities and the beneficial use of municipal waste.

Central Office: Division of Municipal and Residual Waste, Rachel Carson State Office Building, 14th Floor, 400 Market Street, Harrisburg, PA 17105-8472.

General Permit Application No. WMGM012. Valley Forge Land Clearing and Wood Recycling, 1330 Charlestown Road, Phoenixville, PA 19460. The applicant has requested that their application for the processing and beneficial use of wood and timber waste (that is, tree stumps, roots, grubbing material, and the like) to create mulch for commercial purposes be withdrawn. The withdrawal of this application was effective August 18, 2004.

OPERATE WASTE PROCESSING OR DISPOSAL AREA OR SITE

Permits modified under the Solid Waste Management Act, the Municipal Waste Planning, Recycling and Waste Reduction Act and regulations to operate solid waste processing or disposal area or site.

Southwest Region: Regional Solid Waste Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

Permit ID No. 301224. United Environment Group, Inc., 241 McAleer Road, Sewickley, PA 15143. Operation of a residual waste processing and transfer facility in Ohio Township, **Allegheny County**. Permit modified in the regional office to approve a radiation protection action plan operational changes and management of additional types of petroleum contaminated waste on August 18, 2004.

Permits terminated under the Solid Waste Management Act, the Municipal Waste Planning, Recycling and Waste Reduction Act and regulations to operate solid waste processing or disposal area or site.

Southwest Region: Regional Solid Waste Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

Permit ID No. 101669. Imperial Processing Facility, Practical Environmental Solutions, Inc., 208 Overlook Drive, McMurray, PA 15317. Operation of a municipal waste processing facility in Findlay Township, **Allegheny County**. Permit terminated in the regional office on August 23, 2004.

AIR QUALITY

General Plan Approval and Operating Permit Usage Authorized under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127 to construct, modify, reactivate or operate air contamination sources and associated air cleaning devices.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401; Thomas McGinley, New Source Review Chief, (484) 250-5920.

AQ-SE-0016: Allan A. Myers, LP (1805 Berks Road, P. O. Box 98, Worcester, PA 19490) on August 11, 2004, to operate and relocate two mobile portable nonmetallic mineral crushing units in Bethel and Aston Townships, **Delaware County**.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Ronald Davis, New Source Review Chief, (717) 705-4702.

GP1-67-03026: Precision Custom Components, LLC (P. O. Box 15101, York, PA 17405-7101) on August 16, 2004, for small gas and no. 2 oil fired combustion units under GP1 in the City of York, **York County**.

GP1-67-03072: Coyne Textile Services (140 Cortland Avenue, Syracuse, NY 13221) on August 17, 2004, for small gas and no. 2 oil fired combustions units under GP1 in West Manchester Township, **York County**.

GP3-10-07-03014: New Enterprise Stone and Lime Co., Inc. (P. O. Box 77, New Enterprise, PA 16664) on August 17, 2004, for portable nonmetallic mineral processing plants under GP3 in Taylor Township, **Blair County**.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481; Devendra Verma, New Source Review Chief, (814) 332-6940.

61-012: OMG Americas (270 Two Mile Run Road, Franklin, PA 16323) on August 18, 2004, to install a natural gas fired boiler in Sugarcreek Borough, **Venango County**.

37-237: Essroc McQuiston Quarry (Smalls Ferry Road, Bessemer, PA 16112) on August 18, 2004, to install a VOC storage tank in Bessemer Borough, **Lawrence County**.

Plan Approvals Issued under the Air Pollution Control Act and regulations in 25 Pa. Code Chapter 127, Subchapter B relating to construction, modification and reactivation of air contamination sources and associated air cleaning devices.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401; Thomas McGinley, New Source Review Chief, (484) 250-5920.

23-0074: GS Roofing Products Co., Inc. (800 W. Front Street, Chester, PA 19013) on August 11, 2004, to operate a thermal oxidizer in City of Chester, **Delaware County**.

09-0127A: Bracalente Manufacturing Co., Inc. (20 West Creamery Road, Trumbauersville, PA 18970) on August 20, 2004, to operate eight degreasers in Trumbauersville Borough, **Bucks County**.

Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790; Mark Wejkszner, New Source Review Chief, (570) 826-2531.

39-316-004: North American Container Corp. (2027 South 12th Street, Building 3, Allentown, PA 18103) on August 17, 2004, to construct a wood sawing operation and associated air cleaning device at their facility in the City of Allentown, **Lehigh County**.

Plan Approval Revisions Issued including Extensions, Minor Modifications and Transfers of Ownership under the Air Pollution Control Act and 25 Pa. Code §§ 127.13, 127.13a and 127.32.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401; Thomas McGinley, New Source Review Chief, (484) 250-5920.

09-0087B: Air Products and Chemicals, Inc. (351 Philadelphia Avenue, Morrisville, PA 19067) on August 15, 2004, to operate an SiF4 process scrubber in Falls Township, **Bucks County**.

15-0115: QVC, Inc. (1200 Wilson Drive, West Chester, PA 19380) on August 6, 2004, to operate two 12.55 mmBtu/hr gas/fuel boilers in West Goshen Township, **Chester County**.

23-0006D: Foamex LP (1500 East Second Street, Eddystone, PA 19022) on August 12, 2004, to operate a thermal reticulator in Eddystone Borough, **Delaware County**.

46-0018C: Brown Printing Co. (668 Gravel Pike, East Greenville, PA 18041) on August 16, 2004, to operate a lithographic printing press in Upper Hanover Township, **Montgomery County**.

15-0060B: SECCRA LDFL (P. O. Box 221, Kennett Square, PA 19348) on August 17, 2004, to operate a landfill gas open flare in London Grove Township, **Chester County**.

46-0005W: Merck and Co., Inc. (Sumneytown Pike, P. O. Box WP20, West Point, PA 19486) on August 22, 2004, to operate a 770 bhp emergency generator in Upper Gwynedd Township, **Montgomery County**.

46-0033B: Waste Management Disposal Services of PA Inc. (1425 Sell Road, Pottstown, PA 19464) on August 22, 2004, to operate a landfill gas collection system in West Pottsgrove Township, **Montgomery County**.

46-0036H: Visteon Systems LLC (2750 Morris Road, Lansdale, PA 19446) on August 20, 2004, to operate selective soldering machine no. 11 in Worcester Township, **Montgomery County**.

46-0108B: Highway Materials, Inc. (1750 Walton Road, Blue Bell, PA 19422) on August 22, 2004, to operate a crusher and screen in Marlborough Township, **Montgomery County**.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Ronald Davis, New Source Review Chief, (717) 705-4702.

01-05029: Reliant Energy Hunterstown, LLC (121 Champion Way, Canonsburg, PA 15317) on August 19, 2004, to construct a natural gas fired electric generating facility at their Hunterstown Station in Straban Township, **Adams County**. This plan approval was extended.

06-03112B: Birdsboro Alloying, Inc. (200 C Furnace Street, Birdsboro, PA 19508) on June 15, 2004, to construct an aluminum scrap dryer controlled by an afterburner in Birdsboro Borough, **Berks County**. This plan approval was extended.

31-05011C: US Silica Co. (P. O. Box 187, Berkeley Springs, WV 25411) on August 23, 2004, to modify an existing fluid bed dryer to use additional fuels of no. 4 oil, no. 6 oil and recycled oil at their Mapleton Depot Plant in Brady Township, **Huntingdon County**. This plan approval was extended.

36-05104A: Ephrata Manufacturing Co. (104 West Pine Street, Ephrata, PA 17522) on July 31, 2004, to construct a baghouse to control emissions from a sand muller and a sand conveying system in Ephrata Borough, **Lancaster County**. This plan approval was extended.

Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745; William Charlton, New Source Review Chief, (412) 442-4174.

65-00792A: AMI Doduco, Inc. (1003 Corporate Drive, Export, PA 15632) on August 17, 2004, to construct a powder metal operation at plant no. 5 in Murrysville, **Westmoreland County**. This plan approval was extended.

11-00509A: RNS Services, Inc. (7 Riverside Plaza, Blossburg, PA 16912) on August 17, 2004, to construct a coal processing plant in Cambria Township, **Cambria County**. This plan approval was extended.

11-00508A: Johnstown Crematory (146 Chandler Avenue, Johnstown, PA 15906) on August 17, 2004, construct a crematory in Lower Yoder Township, **Cambria County**. This plan approval was extended.

26-00534A: Fayette Thermal, LLC (755 Opossum Lake Road, Carlisle, PA 17013) on August 17, 2004, to install of boilers at their East Millsboro Steam Plant in Luzerne Township, **Fayette County**. This plan approval was extended.

04-00034A: Engineered Polymer Solutions (Valspar Coatings, 372 Cleveland Avenue, Rochester, PA 15074) on August 18, 2004, to install a packed bed scrubber at their Rochester Plant in Rochester Township, **Beaver County**. This plan approval was extended.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481; Devendra Verma, New Source Review Chief, (814) 332-6940.

37-322A: Joseph A. Tomon Funeral Home (Grim Avenue, Ellport, PA 16117) on August 17, 2004, to install a crematory in Ellport, **Lawrence County**.

Title V Operating Permits Issued under the Air Pollution Control Act and 25 Pa. Code Chapter 127, Subchapter G.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401; Edward Jurdones Brown, Facilities Permitting Chief, (484) 250-5920.

46-00013: Hatfield Quality Meats, Inc.—sub Clemens Family Corp. (2700 Funks Road, P. O. Box 902, Hatfield, PA 19440) on August 4, 2004, a renewal to operate a facility Title V Operating Permit in Hatfield Township, **Montgomery County**.

15-00029: Dopaco, Inc. (100 Arrandale Boulevard, Exton, PA 19341) on August 5, 2004, to amend the operation of a Title V Operating Permit in Downingtown Borough, **Chester County**.

46-00027: Ortho McNeil Pharmaceutical (Welsh and McKean Roads, Spring House, PA 19477) on August 18, 2004, to amend the operation of a facility Title V Operating Permit in Lower Gwynedd Township, **Montgomery County**.

Operating Permits for Non-Title V Facilities Issued under the Air Pollution Control Act and 25 Pa. Code Chapter 127, Subchapter F.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401; Edward Jurdones Brown, Facilities Permitting Chief, (484) 250-5920.

23-00055: Cheyney University (1837 University Circle, Cheyney, PA 19319) on August 12, 2004, to operate a synthetic minor operating permit in Thornbury Township, **Delaware County**.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Ronald Davis, New Source Review Chief, (717) 705-4702.

07-03038: Amerway, Inc. (3701 Beale Avenue, Altoona, PA 16601) on August 12, 2004, to operate their solder wire manufacturing facility in the City of Altoona, **Blair County**.

36-03137: Martin Limestone, Inc. (P. O. Box 550, Blue Ball, PA 17506) on August 18, 2004, to operate their limestone crushing facility in Earl Township, **Lancaster County**.

67-05100: Cummins Power Systems, Inc. (2727 Ford Road, Bristol, PA 19007-6895) on August 17, 2004, to operate their Zions View Substation in East Manchester Township, **York County**.

Operating Permit Revisions Issued including Administrative Amendments, Minor Modifications or Transfers of Ownership under the Air Pollution Control Act and 25 Pa. Code §§ 127.412, 127.450, 127.462 and 127.464.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Ronald Davis, New Source Review Chief, (717) 705-4702.

21-05038: Holy Spirit Hospital (503 North 21st Street, Camp Hill, PA 17011) on August 16, 2004, to operate a medical waste incinerator in East Pennsboro Township, **Cumberland County**. The Title V Operating Permit was administratively modified to include the reinstatement of no. 6 fuel oil in boiler no. 2, the incorporation of boiler no. 3 currently operating under General Permit GP1-21-03060, inclusion of a new emergency generator and removal of a sterilizer that was previously listed. This is Revision No. 1.

36-03108: North American Bristol Corp. (88 Newport Road, Leola, PA 17540) on August 19, 2004, to operation a plastic pipe manufacturing facility in Upper Leacock Township, **Lancaster County**. The State-only operating permit was administratively amended to reflect a transfer of ownership from Bristolpipe Corporation. This is Revision No. 1.

44-05002: CNH America LLC (P. O. Box 868, Belleville, PA 17004) on August 18, 2004, to operate a farm equipment manufacturing facility in Union Township, **Mifflin County**. The Title V Operating Permit was administratively amended to incorporate Plan Approvals 44-05002A, 44-05002B and 44-05002C and also to include an ownership change. This is Revision No. 1.

Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745; Mark Wayner, Facilities Permitting Chief, (412) 442-4174.

26-00177: Golden Eagle Construction Co. (P. O. Box 945, Uniontown, PA 15401) on July 16, 2004, for their Uniontown Asphalt Plant in North Union Township, **Fayette County**. The Department has revised the State-only Operating Permit to incorporate the name of the new permit contact person.

26-00288: Better Materials Corp. (220 Springfield Pike, Connellsville, PA 15425) for their Springfield Pike Asphalt Plant and Continuous Limestone Processing Plant in Connellsville Township, **Fayette County**. This Department initiated action incorporated the Plan Approval conditions from PA-26-288C into the operating permit.

26-00288: Better Materials Corp. (220 Springfield Pike, Connellsville, PA 15425) for their Springfield Pike Asphalt Plant and Continuous Limestone Processing Plant in Connellsville Township, **Fayette County**. This Department initiated action incorporated the Plan Approval conditions from PA-26-288D into the operating permit.

ACTIONS ON COAL AND NONCOAL MINING ACTIVITY APPLICATIONS

Actions on applications under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. §§ 3301—3326); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66); and The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21). The final action on each application also constitutes action on the request for 401 Water Quality Certification and the NPDES permit application. Mining activity permits issued in response to the applications will also address the application permitting requirements of the following statutes: the Air Quality Control Act (35 P. S. §§ 4001—4015); the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27); and the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003).

Coal Permits Actions

Greensburg District Mining Office: Armbrust Building, R. R. 2 Box 603-C, Greensburg, PA 15601-0982, (724) 925-5500.

03803044 and NPDES Permit No. PA0126375. C. H. Snyder Company (P. O. Box 1022, Kittanning, PA 16201). NPDES renewal of an existing surface mine in East Franklin Township, **Armstrong County**, affecting 97.9 acres. Receiving stream: unnamed tributary to Limestone Run. Renewal application received March 8, 2004. Renewal permit issued August 20, 2004.

03920103 and NPDES Permit No. PA0200484. Allegheny Mineral Corporation (P. O. Box 1022, Kittanning, PA 16201). Permit renewal issued for continued operation and reclamation of a bituminous surface/auger mining site in West Franklin Township and Worthington Borough, **Armstrong County**, affecting 284.7 acres. Receiving streams: Buffalo Creek and Claypoole Run. Application received June 7, 2004. Renewal issued August 24, 2004.

California District Mining Office: 25 Technology Drive, Coal Center, PA 15423, (724) 769-1100.

56961302. NPDES Permit No. PA0214639, Rox COAL, Inc. (P. O. Box 149, Friedens, PA 15541), to transfer the permit for the Miller Deep Mine in Jenner and Lincoln Townships, **Somerset County** and related NPDES permit from K. B. Coal, Inc. No additional discharges. Permit issued August 17, 2004.

Knox District Mining Office: P. O. Box 669, Knox, PA 16232, (814) 797-1191.

24030102 and NPDES Permit No. PA0242322. Energy Resources, Inc. (P. O. Box 259, Brockway, PA 15824). Commencement, operation and restoration of a bituminous strip operation in Fox Township, **Elk County** affecting 83.2 acres. Receiving streams: unnamed tributary no. 1 to Mill Run. Application received February 11, 2003. Permit issued August 11, 2004.

Noncoal Permits Actions

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901-2454, (570) 621-3118.

4873SM3T2 and NPDES Permit No. PA0595021. Kinsley Construction, Inc. (P. O. Box 2886, York, PA 17405), transfer of an existing quarry operation in Springettsbury Township, **York County** affecting 66.58 acres, receiving stream: unnamed tributary to Codorus Creek. Application received February 9, 2004. Transfer issued August 17, 2004.

67990301C and NPDES Permit No. PA0223999. Glen-Gery Corporation (P. O. Box 7001, Wyomissing, PA 19610-6001), renewal of NPDES Permit for discharge of treated mine drainage from a quarry operation in Dover Township, **York County**, receiving stream: unnamed tributary to Fox Run. Application received June 8, 2004. Renewal issued August 18, 2004.

06040801. Charles B. Wagner & Sons, LLC (P. O. Box 26, Strausstown, PA 19559), commencement, operation and restoration of a quarry operation in Upper Tulpehocken Township, **Berks County** affecting 5.0 acres, receiving stream: none. Application received April 2, 2004. Permit issued August 20, 2004.

Knox District Mining Office: White Memorial Building, P. O. Box 669, Knox, PA 16232-0669, (814) 797-1191.

42040803. William N. Chittester (7166 Rt. 6, Kane, PA 16735). Commencement, operation and restoration of a small noncoal shale and sandstone permit in Wetmore Township, **McKean County** affecting 4.0 acres. Receiving streams: Wilson Run. Application received June 7, 2004. Permit issued August 11, 2004.

62042802. Sweeney Resources, LLC (c/o Conrad J. Wilson, 20 Forest Street, Sugar Grove, PA 16350). Commencement, operation and restoration of a small noncoal sand and gravel operation in Sugar Grove Borough, **Warren County** affecting 5.0 acres. Receiving streams: N/A. Application received May 24, 2004. Permit issued August 11, 2004.

Small Noncoal Permit—Final Bond Release

08930801. Chet Ostrosky (R. D. 1, Box 91, Wyalusing, PA 18853). Final bond release for a small noncoal mining operation in Herrick Township, **Bradford County**. Restoration of 1 acre completed. Application for final bond release received July 20, 2004. Final bond release approved August 18, 2004.

ACTIONS ON BLASTING ACTIVITY APPLICATIONS

Actions on applications under the Explosives Acts of 1937 and 1957 (73 P. S. §§ 151—161) and 25 Pa. Code § 211.124. Blasting activity performed as part of a coal or noncoal mining activity will be regulated by the mining permit for that coal or noncoal mining activity.

Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, (814) 342-8200.

14044021. Forest Homes (P. O. Box 436, State College, PA 16804), for construction blasting in Gregg Township, **Centre County**, with an expected duration of 141 days. Permit issued August 13, 2004.

FEDERAL WATER POLLUTION CONTROL ACT SECTION 401

The Department of Environmental Protection (Department) has taken the following actions on previously received permit applications, requests for Environmental Assessment approval and requests for Water Quality Certification under section 401 of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C.A. § 1341).

Except as otherwise noted, the Department has granted 401 Water Quality Certification certifying that the construction and operation described will comply with the applicable provisions of sections 301—303, 306 and 307 of the FWPCA (33 U.S.C.A. §§ 1311—1313, 1316 and 1317) and that the construction will not violate applicable Federal and State water quality standards.

Persons aggrieved by an action may appeal, under section 4 of the Environmental Hearing Board Act (35 P. S. § 7514) and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law), to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users should contact the Environmental Hearing Board (Board) through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin*, unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary of the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decision law.

For individuals who wish to challenge an action, appeals must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

Actions on applications for the following activities filed under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27), section 302 of the Flood Plain Management Act (32 P. S. § 679.302) and The Clean Streams Law (35 §§ 691.1—691.702) and Notice of Final Action for Certification under section 401 of the FWPCA (33 U.S.C.A. § 1341).

Permits, Environmental Assessments and 401 Water Quality Certifications Issued

WATER OBSTRUCTIONS AND ENCROACHMENTS

Southeast Region: Water Management Program Manager, 2 East Main Street, Norristown, PA 19401.

E51-193. Fairmount Park Commission, 4231 North Concourse Drive, Philadelphia, PA 19131, City and County of Philadelphia, ACOE Philadelphia District.

1. To perform minor grading within the 100-year floodplain of the Schuylkill River (WWF-MF) to accommodate approximately 1 mile of riverfront park development extending from the terminus of Race Street to the terminus of Locust Street. Work will consist of recreational rails, landscaping features and other amenities along with various public waterfront access elements to facilitate recreational use of the river.

2. To construct and maintain an approximately 40-foot by 12-foot boat ramp and associated amenities within a breached area of the existing concrete bulkhead to facilitate the ingress and egress of canoes and other small vessels. This structure will be in the same general vicinity of the sculptural landscape structure, which was never constructed and is no longer part of this project.

The property lies between the Schuylkill River's eastern bank and the CSX rail line from Race Street terminus to the Locust Street terminus (Philadelphia, PA Quadrangle N: 13.5 inches; W: 6.9 inches).

The issuance of this amendment also constitutes approval of a Water Quality Certification for this project under section 401 of the Federal Water Pollution Control Act.

E46-956. Good Mac Realty Partners, LP, 636 Old York Road, Jenkintown, PA 19045, Upper Moreland Township, **Montgomery County**, ACOE Philadelphia District.

To construct and maintain the following water obstructions and encroachments associated with the proposed 3900 Welsh Road Center (Allegro Tract) Development, which will impact a total of 0.06 acre of wetlands and 215 linear feet of stream channel. The site is on Welsh Road between Blair Mill Road and Computer Avenue (Ambler, PA Quadrangle N: 5.7 inches; W: 2.0 inches) in Upper Moreland Township, Montgomery County.

Work involves the following:

1. To remove approximately 80 linear feet of an existing 36-inch by 58-inch CMP culvert and restoration of approximately 151 feet of an unnamed tributary to the Pennypack Creek (TSF, MF).

2. To extend an existing 22-inch by 34-inch stormwater pipe and Outfall FES-1 by approximately 27 linear feet in an unnamed tributary to Pennypack Creek (TSF, MF). In addition, approximately 15 linear feet of R-4 riprap protection will be placed in the channel below Outfall FES-1.

3. To modify and extend Stormwater pipe and Endwall No. 1 (EW-1) in an unnamed tributary to Pennypack Creek (TSF, MF). In addition, approximately 20 linear feet of R-5 riprap protection will be placed in the channel below EW-1.

4. To place fill within approximately 165 linear feet of an unnamed tributary to Pennypack Creek (TSF, MF) associated with the modification and extension of the stormwater pipes and Outfalls EW-1 and FES-1.

5. To fill approximately 0.06 acre of wetlands (PFO) adjacent to an unnamed tributary to Pennypack Creek.

The permittee agrees to construct 0.06 acre of replacement wetland (PFO).

The issuance of this permit also constitutes approval of a Water Quality Certification under section 401 of the Federal Water Pollution Control Act.

E51-210. City of Philadelphia, Capital Program Office, Fairmount Park Commission, 11th Floor, One Parkway Building, Philadelphia, PA 19102.

To perform the following activities associated with the Fairmount Park Bikeway Enhancement Project. This permit authorizes work for Section 3 (Wissahickon Creek) only. Section 1 (Kelly Drive) and Section 2 (Manayunk Canal) will be submitted at a future date and will require separate authorization.

1. To rehabilitate and maintain Section 3 of the existing Fairmount Park Bikeway Trail System (Wissahickon Creek Trail) situated in and along the 100-year floodplain of the Wissahickon Creek (TSF). Work will include repaving the existing trail, reconstruction of the existing retaining walls, stabilizing slopes, improving existing stormwater conveyance systems and installing various amenities.

2. To install 625 linear feet of R-8 riprap slope protection along the banks of the Wissahickon Creek at five locations along the noted trail.

The work will extend from Ridge Avenue (Germantown, PA USGS Quadrangle N: 2.80 inches; W: 11.4 inches) to Rittenhouse Street at Lincoln Drive (Germantown, PA USGS Quadrangle N: 5.20 inches; W: 9.2 inches).

The issuance of this permit also constitutes approval of a Water Quality Certification under section 401 of the Federal Water Pollution Control Act.

E09-859. Department of Transportation, 700 Geerdes Boulevard, King of Prussia, PA 19406-1525, Newtown Township, **Bucks County**, ACOE Philadelphia District.

To improve and widen Stoopville Road (SR 2028) associated with the proposed Toll Brothers McLaughlin Subdivision. This site is at the intersection of Stoopville and Linton Hill Roads (Lambertville, PA Quadrangle N: 2.7 inches, W: 7.1 inches).

Work consists of:

1. To remove an existing 30 linear feet of 18-inch RCP drainage culvert and to construct and maintain in its place 59 linear feet of twin 24-inch by 38-inch RCP drainage culvert beneath the Stoopville Road (SR 2028) in and along an unnamed tributary of Newtown Creek (WWF).

2. To install an 8-inch diameter DIP sewer line under the culvert to serve McLaughlin Tract subdivision.

3. To fill 0.06 acre of wetland (PFO) associated with the widening of Stoopville Road. The widening will provide a turning lane for the proposed McLaughlin residential subdivision.

4. To construct 0.06 acre of wetland (PSS) replacement at the Toll Brothers McLaughlin Tract residential subdivision to compensate for impacts associated with road widening.

The issuance of this permit also constitutes approval of a Water Quality Certification under section 401 of the Federal Water Pollution Control Act.

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

EA66-003NE. United States Fish and Wildlife Service, Attn: Dave Putnam, 315 South Allen Street, Suite 322, State College, PA 16801-4850 in Forkston Township, **Wyoming County**, U. S. Army Corps of Engineers, Baltimore District.

To construct and maintain streambank stabilization measures consisting of log vanes along approximately 250 feet of the North Branch Mehoopany Creek at the Frank Minor property. This project is being constructed under section 105.12(a)(16) for restoration activities. The project is approximately 0.25 mile west of the intersection of SR 0087 and SR 3001 (Jenningsville, PA Quadrangle N: 6.75 inches; W: 0.5 inch).

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

E05-322: Pennsylvania General Electric Company, LLC, 208 Liberty Street, Warren, PA 16365 in Monroe Township, **Bedford County**, ACOE Baltimore District.

To construct and maintain: (1) a 3-foot by 6-inch utility line crossing of an unnamed tributary to West Branch Sideling Hill Creek (EV) (Mench, PA Quadrangle N: 3.55 inches; W: 14.25 inches); (2) a 7-foot by 6-inch utility line crossing of an unnamed tributary to West Branch Sideling Hill Creek (EV) (Mench, PA Quadrangle N: 1.65 inches; W: 12.85 inches); and (3) a 7-foot by 6-inch utility line stream crossing of an unnamed tributary to West Branch Sideling Hill Creek (EV) (Mench, PA Quadrangle N: 1.6 inches; W: 13.1 inches) for the purpose of installing 8,400 linear feet of 6-inch steel natural gas transmission line in Monroe Township, Bedford County. The project will result in approximately 36 linear feet of temporary stream impacts.

E21-362: Upper Allen Township, 100 Gettysburg Pike, Mechanicsburg, PA 17055 in Upper Allen Township, **Cumberland County**, ACOE Baltimore District.

To: (1) construct and maintain one canoe launching pad; (2) to fill and maintain 0.003 acre of wetlands in conjunction with access road widening; and (3) construct and maintain walking/hiking trails and access road improvements within the 100-year floodplain, all along the Yellow Breeches Creek (CWF) for the purpose of developing the Simpson Park, on the south side of Route 114 just east of the North York Road (SR 2004), Route 114 intersection (Lemoyne, PA Quadrangle N: 7.3 inches; W: 13.8 inches) in Upper Allen Township, Cumberland County. The amount of wetland impact is considered a de minimis impact of 0.003 acre and wetland mitigation is not required.

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

E17-396. Gary Bowman, 1993 Turnpike Avenue Extension. Fill in the floodway in Lawrence Township, **Clearfield County**, ACOE Baltimore District (Clearfield, PA Quadrangle N: 8.4 inches; W: 12.1 inches).

To permit 463 cubic yards of fill material to remain in the floodway of Woods Run. This permit also authorizes 63 linear feet of stone stream bank stabilization on the west bank and 60 linear feet of stone stream bank protection on the east bank. This project is 500 feet south of the intersection of Turnpike Avenue Extension and SR 322. This permit was issued under section 105.13(e) "Small Projects."

E19-244. George Samuels, 593B River Hill Drive, Catawissa, PA 17820. Channel culvert in Catawissa Borough, **Columbia County**, ACOE Baltimore District (Catawissa, PA Quadrangle N: 12.30 inches; W: 11.30 inches).

To construct a stream crossing of 50 linear feet by 6 feet deep gravity block abutments on each side of the stream covered with steel grate flooring measuring about 50 feet by 17 feet wide in Foundary Run (CWF) on private property adjacent to SR 42 near the intersection of SR 487. The project will not impact wetlands while impacting about 50 feet of waterway. Approximately 0.04 acre of earth will be disturbed by the project. This permit was issued under section 105.13(e) "Small Projects." This permit also includes 401 Water Quality Certification.

E53-397. Samuel M. Crossley, III, 665 North Hollow Road, Coudersport, PA 16915-8156. Crossley Minor Road Crossing North Hollow Run in Sweden Township, **Potter County**, ACOE Pittsburgh District (Sweden Valley, PA Quadrangle N: 7.25 inches; W: 8.00 inches).

To remove an existing single cell culvert and construct, operate and maintain a single span bridge to carry a private road across North Hollow Run to provide continued agricultural equipment access. The single span bridge shall be constructed with a minimum 7-foot span, 4.5-foot underclearance and 16-foot width. All construction and future work shall be conducted at stream low flow. The project is along the western right-of-way of SR 4013 approximately 3,225 feet south of SR 1002 and SR 4013 intersection. This permit does not authorize any temporary or permanent wetland impacts and as such, the permittee shall ensure no wetland impacts result from the removal of the existing culvert or improvements of the existing road crossing. This permit was issued under section 105.13(e) "Small Projects." This permit also includes 401 Water Quality Certification.

E53-402. Kenneth W. Deboer, 8 Maple Road, Roulette, PA 16746-1536. Deboer Private Road crossing Trout Brook in Roulette Township, **Potter County**, Pittsburgh ACOE District (Coudersport, PA Quadrangle N: 5.57 inches; W: 16.25 inches).

To modify, operate and maintain a private road crossing Trout Brook to provide access for a single residential dwelling. The private road crossing shall be constructed with a single corrugated metal culvert pipe having minimum diameter of 5.3 feet and a depression of 1 foot below the existing streambed elevations. The private road crossing Trout Brook shall also include concrete slab headwalls. Since Trout Brook is a wild trout fishery, no construction or future repair work shall be done in the stream channel between October 1 and December 31 without the prior written approval of the Fish and Boat Commission. All modification and future maintenance work shall be conducted at stream low flow. The Deboer private road crossing is along the northern right-of-way of SR 0006 approximately 3,800 feet north of T-323 and SR 0006 intersection. This permit does not authorize any temporary or permanent wetland impacts. The permittee shall ensure no wetland impacts result from any modifications of the private road crossing. This permit was issued under section 105.13(e) "Small Projects." This permit also includes 401 Water Quality Certification.

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

E11-298. USSCO Credit Union—Johnstown, PA, 522 Central Avenue, Johnstown, PA 15902. Wetland fill in Richland Township, **Cambria County**, Pittsburgh ACOE District (Geistown, PA Quadrangle N: 7.5 inches; W: 12.0 inches—Latitude: 40° 17′ 29″ and Longitude: 78° 50′ 10″). To place and maintain fill in 0.32 acre of wetlands for the purpose of expansion of the USSCO Johnstown Federal Credit Union along Oakridge Drive approximately 2,000 feet east of SR 56. To meet wetland replacement requirements, the applicant proposes to pay into the Wetland Replacement Fund.

E56-330. Seven Springs Municipal Authority, 290 Lagoon Lane, Champion, PA 15622. Wetland fill in Middlecreek Township, **Somerset County**, Pittsburgh ACOE District (Kingwood, PA Quadrangle N: 22.35 inches; W: 4.65 inches—Latitude: 39° 59′ 53″ and Longitude: 79° 17′ 00″). To place and maintain fill in 0.2 acre of wetland (PEM) for the purpose of constructing an approximately 50 million gallon reservoir impoundment. This reservoir will be used to store water from an existing wastewater lagoon and lakes at the Seven Springs Mountain Resort. The project site is approximately 1,700 feet south, off of Pritts Distillery Road. The permittee will construct 0.28 acre of replacement wetland. The project includes construction of utility line stream crossing at three locations under the channel bed of Allen Creek and an unnamed tributary to Allen Creek (HQ-CWF).

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

E16-125, Clarion County Economic Development Corporation, 338 Amsler Avenue, Suite One, Shippenville, PA 16254. Beaver Industrial Park in Beaver Township, **Clarion County**, ACOE Pittsburgh District (Knox, PA Quadrangle N: 14.7 inches; W: 5.6 inches).

To develop a 77-acre parcel into the five lots for future industrial development approximately 1.5 miles northeast of the intersection of U. S. Interstate 80 and SR 338. Proposed lot development includes clearing and grubbing, water, gas, sewer and electric utility line installation and improvements to the existing township road involving: (1) to fill 0.30 acre of PEM and PSS and 0.39 acre of PFO wetland; and (2) to construct and maintain a utility line stream crossing and an stormwater outfall on a unnamed tributary to Canoe Creek having a drainage area of less than 100 acres; 0.41 acre (PEM/PSS) and 0.43 acre (PFO) acres of onsite wetland restoration is proposed. The project proposes to directly affect 0.69 acres of PEM, PSS and PFO wetlands.

E27-071, East Resources, Inc., P. O. Box 279, 51 West Main Street, Allegany, NY 14706. Warrant 2366 access road and utility line across Iron Run in Howe Township, **Forest County,** ACOE Pittsburgh District (Russell City, PA Quadrangle N: 19.8 inches; W: 11.7 inches).

To construct and maintain a bridge having a clear span of approximately 12 feet and underclearance of 3 feet and to install (by boring) and maintain two 2-inch diameter pipelines within a 6-inch diameter PVC casing pipe across Iron Run approximately 1,000 feet upstream of its confluence with South Branch Tionesta Creek as part of the development of Warrant 2366 southeast of the Village of Brookston. Project includes 0.007 acre of wetland impact associated with the crossing and 0.037 acre of wetland impact associated with other roadway construction.

E43-302, Cedarwood Development, Inc., 1765 Merriman Road, Akron, OH 44313. Hermitage Crossing Development in the City of Hermitage, **Mercer County**, ACOE Pittsburgh District (Sharpsville, PA Quadrangle N: 0.15 inch; W: 10.65 inches).

To construct a commercial development consisting of a Wal-Mart Super Center (203,007 square feet), three restaurant pads and 70,000 square feet of small retail shops and associated parking approximately 1.0 mile north of the intersection of U. S. Route 62 and SR 18 involving: (1) to fill 0.52 acre of PEM wetland, 0.31 acre of PSS wetland and 0.15 acre of PFO wetland; (2) to fill a total of 2,035 linear feet of two unnamed tributaries to Pine Hollow Run each having a drainage area of less than 100 acres; and (3) to enclose approximately 120 linear feet of an unnamed tributary to Pine Hollow Run having a drainage area of less than 100 acres. 1.30 acres of onsite wetland restoration in the floodway/floodplain of Pine Hollow Run is proposed. 480 linear feet of stream restoration on Pine Hollow Run and 750 linear feet of stream restoration on an unnamed perennial tributary to Pine Hollow Run having a drainage area of less than 100 acres are proposed. Project includes outfalls from stormwater detention basins discharging to the floodplain/floodplain wetlands of Pine Hollow Run.

WATER QUALITY CERTIFICATIONS

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

Certification Request Initiated by: Federal Highway Administration in cooperation with National Park Service, Eastern Federal Lands Highway Division, 21400 Ridgetop Circle, Sterling, VA 20166-6511.

Date of Initial Pennsylvania Bulletin Notice: July 17, 2004

Federal Highway Division, Eastern Federal Lands Highway Division, 21400 Ridgetop Circle, Sterling, VA 20166-6511, Dingman, Lehman, Delaware Townships and Delaware Water Gap National Recreation Area, **Pike County**, ACOE Philadelphia District.

Project Description: In cooperation with the National Park Service, the Eastern Federal Lands Highway Division, of the Federal Highway Administration, is currently preparing plans for Project PRA-DEWA 14(5). This project consists of milling and overlay of the existing US Route 209 from milepoint 16.1 to milepoint 17.7. There will also be drainage repair, minor shoulder widening and work at Conashaugh Creek, including repairs to culvert joints, headwalls and wing walls. This project also includes a bridge replacement at approximately milepoint 4.9 over Toms Creek; this will include milling and overlay of both approaches. The total project area is 17 acres and the total disturbed area is an estimated 8 acres (Flatbrookville Quadrangle N: 22.65 inches; W: 10.75 inches (bridge)).

Applicable Conditions: No comments.

Final Action on Request: Approved 401 Water Quality Certification, August 18, 2004.

SPECIAL NOTICES

Categorical Exclusion

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

Location:

Borough or Township	*Borough or Township Address*	*County*
Sandy Township	P. O. Box 267 DuBois, PA 15801	Clearfield

Description: The Pennsylvania Infrastructure Investment Authority, which administers the Commonwealth's State Revolving Fund, is intended to be the funding source for this project. Sandy Township proposes to replace or rehabilitate approximately 51,000 feet of aged sewer pipe to reduce infiltration and inflow into it's sewage collection system. The Department's review of the project and the information received has not identified any significant, adverse environmental impacts resulting from this proposal. The Department has categorically excluded this project from the State Environmental Review Process.

Public Meeting and Request for Comment for the Proposed Total Maximum Daily Loads (TMDLs) for the Monastery Run Watershed in Westmoreland County

Greensburg District Mining Office: Ron Horansky, Watershed Manager, Armbrust Professional Center, R. D. 2 Box 603-C, Greensburg, PA 15601.

The Department of Environmental Protection (Department) is holding a public meeting on October 7, 2004, at 7 p.m. at the Unity Township Municipal Building to discuss and accept comments on a proposed TMDL, established in accordance with the requirements of the 1996 section 303(d) of the Clean Water Act. Two stream segments in the Monastery Run Watershed have been identified as impaired on the Pennsylvania 303(d) list due to metals and suspended solids from the AMD. The listed segments and miles degraded are as follows:

Stream Code	*Stream Name*	*Miles Degraded*
43457	Monastery Run	2.0
43458	Fourmile Run	1.3

The proposed plan provides calculations of the stream's total capacity to accept iron, aluminum, manganese and acidity, a surrogate for pH and maintain levels below water quality criteria. The applicable water quality criteria are as follows:

Parameter	*Criterion Value (mg/l)*	*Total Recoverable/ Dissolved*
Aluminum (Al)	0.75	Total Recoverable
Iron (Fe)	1.50	30-Day Average; Total Recoverable
Manganese (Mn)	1.00	Total Recoverable
pH	6.0—9.0	N/A

The primary pollutant source for the watershed is abandoned mine workings. All of the allocations in the TMDL are load allocations (LA) assigned to nonpoint sources of pollution.

The TMDL was developed using Monte Carlo Simulation (MCS) to determine long-term average concentrations that each stream segment could accept and still meet water quality criteria 99% of the time. MCS allows for the expansion of a dataset based on its statistical makeup. Since there was no critical flow condition where criteria were exceeded, the Department used the average flow to express the loading values in the TMDL.

The TMDL sets allowable loading rates for metals and acidity at specified points in the watershed. The basis of information used in the establishment of this TMDL is field data collected over a 7-year period.

The data and all supporting information used to develop the proposed TMDL are available from the Department. To request a copy of the proposed TMDL and an information sheet or directions to the meeting place, contact Ron Horansky, Armbrust Professional Center, R. D. 2 Box 603-C, Greensburg, PA 15601, (724) 925-5500, rhoransky@state.pa.us.

The TMDL can be viewed and printed by accessing the Department's website: www.dep.state.pa.us (DEP Keyword: TMDL).

Written comments will be accepted at the previous address and must be postmarked by November 4, 2004. Persons who plan to make a presentation at the public meeting should notify the Department by 3 p.m. on October 1, 2004. The Department will consider all comments in developing the final TMDL, which will be submitted to the EPA for approval.

Public Meeting and Request for Comment for the Proposed Total Maximum Daily Loads (TMDLs) for the Saxman Run Watershed in Westmoreland County

Greensburg District Mining Office: Ron Horansky, Watershed Manager, Armbrust Professional Center, R. D. 2 Box 603-C, Greensburg, PA 15601.

The Department is holding a public meeting on October 7, 2004, at 7 p.m. at the Unity Township Municipal Building to discuss and accept comments on a proposed TMDL, established in accordance with the requirements of the 1996 section 303(d) of the Clean Water Act. One stream segment in the Saxman Run Watershed has been identified as impaired on the Pennsylvania 303(d) list due to metals and suspended solids from AMD. The listed segments and miles degraded are as follows:

Stream Code	*Stream Name*	*Miles Degraded*
43448	Saxman Run	2.5

The proposed plan provides calculations of the stream's total capacity to accept iron, aluminum, manganese and acidity, a surrogate for pH and maintain levels below water quality criteria. The applicable water quality criteria are as follows:

Parameter	*Criterion Value (mg/l)*	*Total Recoverable/Dissolved*
Aluminum (Al)	0.75	Total Recoverable
Iron (Fe)	1.50	30-Day Average; Total Recoverable
Manganese (Mn)	1.00	Total Recoverable
pH	6.0—9.0	N/A

The primary pollutant source for the watershed is abandoned mine workings. There is one waste load allocation assigned to the active MB Energy, Inc. mine permit. All of the remaining allocations in the TMDL are LAs assigned to nonpoint sources of pollution.

The TMDL was developed using MCS to determine long-term average concentrations that each stream segment could accept and still meet water quality criteria 99% of the time. MCS allows for the expansion of a dataset based on its statistical makeup. Since there was no critical flow condition where criteria were exceeded, the Department used the average flow to express the loading values in the TMDL.

The TMDL sets allowable loading rates for metals and acidity at specified points in the watershed. The basis of information used in the establishment of this TMDL is field data collected in 2003.

The data and all supporting information used to develop the proposed TMDL are available from the Department. To request a copy of the proposed TMDL and an information sheet or directions to the meeting place, contact Ron Horansky, Armbrust Professional Center, R. D. 2 Box 603-C, Greensburg, PA 15601, (724) 925-5500, rhoransky@state.pa.us.

The TMDL can be viewed and printed by accessing the Department's website: www.dep.state.pa.us (DEP Keyword: TMDL).

Written comments will be accepted at the previous address and must be postmarked by November 4, 2004. Persons who plan to make a presentation at the public meeting should notify the Department by 3 p.m. on October 1, 2004. The Department will consider all comments in developing the final TMDL, which will be submitted to the EPA for approval.

[Pa.B. Doc. No. 04-1646. Filed for public inspection September 3, 2004, 9:00 a.m.]

Availability of Technical Guidance

Technical guidance documents are on the Department of Environmental Protection's (Department) website: www.dep.state.pa.us (DEP Keyword: Participate). The "Current Inventory" heading is the Governor's list of nonregulatory guidance documents. The "Final Documents" heading is the link to a menu of the various Department bureaus and from there to each bureau's final technical guidance documents. The "Draft Technical Guidance" heading is the link to the Department's draft technical guidance documents.

The Department will continue to revise its nonregulatory documents, as necessary, throughout 2004.

Ordering Paper Copies of Department Technical Guidance

The Department encourages the use of the Internet to view guidance documents. When this option is not available, persons can order a bound paper copy of the latest inventory or an unbound paper copy of any of the final documents listed on the inventory by calling the Department at (717) 783-8727.

In addition, bound copies of some of the Department's documents are available as Department publications. Check with the appropriate bureau for more information about the availability of a particular document as a publication.

Changes to Technical Guidance Documents

Following is the current list of recent changes. Persons who have questions or comments about a particular document should call the contact person whose name and phone number is listed with each document.

Draft Technical Guidance

DEP ID: 273-4110-001. Title: Guidelines for Identifying, Tracking and Resolving Violations for Air Quality. Description: The Bureau of Air Quality is establishing this new technical guidance document to provide guidelines to program staff to implement the provisions of the Department's policy on "Standards and Guidelines for Identifying, Tracking and Resolving Violations." The policy applies to any Air Quality staff in the Department involved with the compliance and enforcement of applicable air quality requirements. Written Comments: Interested persons may submit written comments on draft technical guidance # 273-4110-001 by October 4, 2004. Comments submitted by facsimile will not be accepted. The Department will accept comments submitted by e-mail. A return name and address must be included in each e-mail transmission. Written comments should be submitted to Krishnan Ramamurthy, Chief, Division of Compliance and Enforcement, 12th Floor, Rachel Carson State Office Building, P. O. Box 8468, Harrisburg, PA 17105-8468, kramamurth@state.pa.us. Questions regarding the draft technical guidance document should be directed to Krishnan Ramamurthy, (717) 787-9257, kramamurth@state.pa.us.

KATHLEEN A. MCGINTY,
Secretary

[Pa.B. Doc. No. 04-1647. Filed for public inspection September 3, 2004, 9:00 a.m.]

Recycling Fund Advisory Committee Meeting

A Recycling Fund Advisory Committee meeting is scheduled for Thursday, September 16, 2004, at 10 a.m. in Room 105, Rachel Carson State Office Building, Harrisburg.

Questions concerning this meeting should be directed to Lawrence Holley, (717) 787-7382, lholley@state.pa.us. The agenda and meeting materials for this meeting will be available through the Public Participation Center on the Department of Environmental Protection's (Department) website: www.dep.state.pa.us.

Persons with a disability who require accommodations to attend the meeting should contact the Department at (717) 787-7382 or through the Pennsylvania AT&T Relay Services at (800) 654-5984 (TDD) to discuss how the Department can accommodate their needs.

KATHLEEN A. MCGINTY,
Secretary

[Pa.B. Doc. No. 04-1648. Filed for public inspection September 3, 2004, 9:00 a.m.]

Solid Waste Advisory Committee Meeting Change

The Solid Waste Advisory Committee meeting scheduled for Thursday, September 9, 2004, and Friday, September 10, 2004, at King's Gap Environmental Education Center in Carlisle has been rescheduled. The meeting will be held on Thursday, September 16, 2004, at 12 p.m. in Room 105, Rachel Carson State Office Building, Harrisburg.

Questions concerning this meeting should be directed to Gayle Leader, (717) 787-9871, gleader@state.pa.us. The agenda and meeting materials for this meeting will be available through the Public Participation Center on the Department of Environmental Protection's (Department) website: www.dep.state.pa.us.

Persons with a disability who require accommodations to attend the meeting should contact the Department at (717) 787-9871 or through the Pennsylvania AT&T Relay Services at (800) 654-5984 (TDD) to discuss how the Department can accommodate their needs.

KATHLEEN A. MCGINTY,
Secretary

[Pa.B. Doc. No. 04-1649. Filed for public inspection September 3, 2004, 9:00 a.m.]

Storage Tank Advisory Committee Meeting Cancellation; Fee Subcommittee Meeting

The September 14, 2004, meeting of the Storage Tank Advisory Committee (STAC) has been cancelled. Instead, an STAC Fee Subcommittee meeting has been scheduled at 9 a.m. on September 14, 2004, in the 10th Floor Conference Room, Rachel Carson State Office Building, 400 Market Street, Harrisburg. The next regularly scheduled STAC meeting will be held on Tuesday, December 7, 2004, at 10 a.m. in the 10th Floor Conference Room, Rachel Carson State Office Building, 400 Market Street, Harrisburg.

Questions concerning the Fee Subcommittee meeting should be directed to Charles Swokel, (717) 772-5599, cswokel@state.pa.us. The meeting materials will be available through the Public Participation Center on the Department of Environmental Protection's (Department) website: www.dep.state.pa.us.

Persons in need of accommodations as provided for in the Americans With Disabilities Act of 1990 should contact Ruth Carmen at (717) 772-5831 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Department can accommodate their needs.

KATHLEEN A. MCGINTY,
Secretary

[Pa.B. Doc. No. 04-1650. Filed for public inspection September 3, 2004, 9:00 a.m.]

DEPARTMENT OF HEALTH

Application of Meadville Medical Center for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Meadville Medical Center has requested an exception to the requirements of 28 Pa. Code § 138.15 (relating to high-risk cardiac catheterizations).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax: (717) 772-2163, ra-paexcept@state.pa.us.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division and address previously listed.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Division at the previously listed address or phone number, for speech and/or hearing impaired persons V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Services at (800) 654-5984.

CALVIN B. JOHNSON, M.D., M.P.H.,
Secretary

[Pa.B. Doc. No. 04-1651. Filed for public inspection September 3, 2004, 9:00 a.m.]

Application of UPMC McKeesport for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that UPMC McKeesport has requested an exception to the requirements of 28 Pa. Code § 107.2 (relating to medical staff membership).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax: (717) 772-2163, ra-paexcept@state.pa.us.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division and address previously listed.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Division at the previously listed address or phone number, for speech and/or hearing impaired persons V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Services at (800) 654-5984.

CALVIN B. JOHNSON, M.D., M.P.H.,
Secretary

[Pa.B. Doc. No. 04-1652. Filed for public inspection September 3, 2004, 9:00 a.m.]

Health Policy Board Meeting

The Health Policy Board is scheduled to hold a meeting on Wednesday, September 15, 2004, at 10 a.m. in Room 812, Health and Welfare Building, Seventh and Forster Streets, Harrisburg, PA 17108.

For additional information or persons with a disability who wish to attend the meeting and require an auxiliary aid, service or other accommodation to do so, contact

Cynthia Trafton, Bureau of Health Planning, (717) 772-5298, ctrafton@state.pa.us, for speech and/or hearing impaired persons, V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Services at (800) 654-5984 (TT).

This meeting is subject to cancellation without notice.

CALVIN B. JOHNSON, M.D., M.P.H.,
Secretary

[Pa.B. Doc. No. 04-1653. Filed for public inspection September 3, 2004, 9:00 a.m.]

Human Immunodeficiency Virus (HIV) Community Prevention Planning Committee Public Meeting

The Statewide Integrated HIV Planning Council, established by the Department of Health (Department) under sections 301(a) and 317(b) of the Public Health Service Act (42 U.S.C.A. §§ 241(a) and 247(b)), will hold a public meeting on Wednesday September 8, 2004, from 10:30 a.m. to 3 p.m. at the Best Western Inn and Suites, 815 Eisenhower Boulevard, Middletown, PA 17057.

The Department reserves the right to cancel this meeting without prior notice.

For additional information or persons with a disability who wish to attend the meeting and require an auxiliary aid, service or other accommodation to do so, contact Kenneth McGarvey, Department of Health, Bureau of Communicable Diseases, P. O. Box 90, Room 1010, Health and Welfare Building, Harrisburg, PA 17108, (717) 783-0572, for speech and/or hearing impaired persons, V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Services at (800) 654-5984 (TT).

CALVIN B. JOHNSON, M.D., M.P.H.,
Secretary

[Pa.B. Doc. No. 04-1654. Filed for public inspection September 3, 2004, 9:00 a.m.]

Laboratories Approved to Perform Blood Lead and/or Erythrocyte Protoporphyrin Determinations

The following laboratories are licensed in accordance with the Clinical Laboratory Act (35 P. S. §§ 2151—2165) and/or the Federal Clinical Laboratory Improvement Act of 1967 (42 U.S.C.A. § 263a) and are currently approved under 28 Pa. Code § 5.50 (relating to approval to provide special analytical services) to perform analyses of blood for lead or erythrocyte protoporphyrin content. This approval is based on demonstrated proficiency in periodic evaluations conducted by the Bureau of Laboratories of the Department of Health (Department).

Lead poisoning is a reportable noncommunicable disease. Approved laboratories which offer blood lead testing services are required to inform the Department of actual or possible incidents of this condition in accordance with 28 Pa. Code § 27.34 (relating to reporting cases of lead poisoning.) These regulations specify the following requirements for reporting by clinical laboratories.

(1) A clinical laboratory shall report all blood lead test results on both venous and capillary specimens for persons under 16 years of age to the Department's Childhood Lead Poisoning Prevention Program, Division of Maternal and Child Health, Bureau of Family Health.

(2) A clinical laboratory shall report an elevated blood lead level in a person 16 years of age or older to the Department's Division of Environmental Health Epidemiology, Bureau of Epidemiology or to other locations as designated by the Department. An elevated blood lead level is defined by the National Institute for Occupational Safety and Health (NIOSH). NIOSH defines an elevated blood lead level as a venous blood lead level of 25 micrograms per deciliter or higher. The Department will publish in the *Pennsylvania Bulletin* any NIOSH update of the definition within 30 days of NIOSH's notification to the Department.

(3) A clinical laboratory which conducts blood lead tests on 100 or more specimens per month shall submit results electronically in a format specified by the Department.

(4) A clinical laboratory which conducts blood lead tests on less than 100 blood lead specimens per month shall submit results either electronically or by hard copy in the format specified by the Department.

(5) A laboratory which performs blood lead tests on blood specimens collected in this Commonwealth shall be licensed as a clinical laboratory and shall be specifically approved by the Department to conduct those tests.

(6) Blood lead analyses requested for occupational health purposes on blood specimens collected in this Commonwealth shall be performed only by laboratories which are licensed and approved as specified in paragraph (5) and which are also approved by the Occupational Safety and Health Administration of the United States Department of Labor under 29 CFR 1910.1025(j)(2)(iii) (relating to lead).

(7) A clinical laboratory shall complete a blood lead test within 5 work days of the receipt of the blood specimen and shall submit the case report to the Department by the close of business of the next work day after the day on which the test was performed. The clinical laboratory shall submit a report of lead poisoning using either the hard-copy form or electronic transmission format specified by the Department.

(8) When a clinical laboratory receives a blood specimen without all of the information required for reporting purposes, the clinical laboratory shall test the specimen and shall submit the incomplete report to the Department.

Erythrocyte protoporphyrin determinations may be performed as an adjunct determination to substantiate blood lead levels of 25 micrograms per deciliter or higher. Since erythrocyte protoporphyrin concentrations may not increase as a result of low-level exposures to lead, direct blood lead analysis is the only reliable method for identifying individuals with blood lead concentrations below 25 micrograms per deciliter.

Persons seeking blood lead or erythrocyte protoporphyrin analyses should determine that the laboratory employs techniques and procedures acceptable for the purpose for which the analyses are sought. Laboratories offering blood lead analysis only are designated with the letter "L" following the name of the laboratory. Those offering erythrocyte protoporphyrin analysis only are designated with the letter "P." Laboratories offering both services are designated with the letters "LP."

The list of approved laboratories will be revised approximately semiannually and published in the *Pennsylvania Bulletin*. The name of a laboratory is sometimes changed but the location, personnel and testing procedures of the facility remain unchanged. When changes of

this type occur, the Clinical Laboratory Permit number does not change. If questions arise about the identity of a laboratory due to a name change, the Clinical Laboratory Permit number should be used as the primary identifier. To assist in identifying a laboratory that performed a test if the name of the facility changed, the Clinical Laboratory Permit numbers of the facilities are included in the lists of approved laboratories above the name of the laboratory at the time the list was prepared.

The Department's blood lead proficiency testing program is approved by the United States Department of Health and Human Services in accordance with the requirements contained in the Clinical Laboratory Improvement Amendments of 1988 (42 CFR 493.901 and 493.937) which are administered by the Centers for Medicare and Medicaid Services. Participation in these programs may therefore be used to demonstrate acceptable performance for approval purposes under both Federal and Commonwealth statutes.

Questions regarding this list should be directed to Dr. M. Jeffery Shoemaker, Director, Division of Chemistry and Toxicology, Department of Health, Bureau of Laboratories, P. O. Box 500, Exton, PA 19341-0500, (610) 280-3464.

Persons with a disability who require an alternative format of this notice (for example, large print, audiotape or Braille) should contact Dr. Shoemaker at V/TT: (717) 783-6514 or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

022912
ACL LABORATORIES-LP
8901 WEST LINCOLN AVE
WEST ALLIS, WI 53227
414-328-7945

000671
ALLEG CNTY CORONERS DIV OF LABS-L
542 FORBES AVENUE
ROOM 10 COUNTY OFFICE BUILDING
PITTSBURGH, PA 15219
412-350-6873

000016
ANGELINE KIRBY MEM HEALTH CENTER-L
71 NORTH FRANKLIN STREET
WILKES-BARRE, PA 18701
570-823-5450

020506
CENTRAL PA ALLIANCE LABORATORY-LP
1803 MT ROSE AVENUE
SUITE C3-C4
YORK, PA 17403
717-851-1426

027845
CLINICAL REFERENCE LABORATORY-LP
8433 QUIVIRA ROAD
LENEXA, KS 66215
913-492-3652

000561
EAST PENN MFG CO INC-LP
DEKA RD
KELLER TECH CENTER
LYONS STATION, PA 19536
610-682-6361

000332
ELLWOOD CITY HOSPITAL-LP
724 PERSHING ST
ELLWOOD CITY, PA 16117
724-752-0081

001950
EMSF PATSY J BRUNO MD LABORATORY-L
369 NORTH 11TH STREET
SUNBURY, PA 17801
570-286-7755

000173
GEISINGER MEDICAL CENTER-L
N ACADEMY RD
DANVILLE, PA 17822
570-271-6338

025914
GENOVA DIAGNOSTICS-L
63 ZILLICOA STREET
ASHEVILLE, NC 28801
828-253-0621

000104
GEORGE TOLSTOI LAB—UNIONTOWN HSP-L
500 WEST BERKELEY STREET
UNIONTOWN, PA 15401
724-430-5143

020802
HAGERSTOWN MEDICAL LABORATORY-L
11110 MEDICAL CAMPUS RD
STE 230
HAGERSTOWN, MD 21742
301-790-8670

024655
HEALTH NETWORK LABORATORIES-LP
2024 LEHIGH STREET
ALLENTOWN, PA 18103-4798
610-402-8150

005618
LAB CORP OF AMERICA HOLDINGS-LP
6370 WILCOX ROAD
DUBLIN, OH 43016-1296
800-282-7300

021885
LAB CORP OF AMERICA HOLDINGS-LP
1447 YORK COURT
BURLINGTON, NC 27215
800-334-5161

001088
LABCORP OF AMERICA HOLDINGS-LP
69 FIRST AVE
PO BOX 500
RARITAN, NJ 08869
908-526-2400

022715
LABONE INC-LP
10101 RENNER BOULEVARD
LENEXA, KS 66219-9752
913-888-1770

009523
LABORATORY CORP OF AMERICA-L
13900 PARK CENTER ROAD
HERNDON, VA 20171
703-742-3100

028006
LEAD LAB AT LASALLE UNIVERSITY-L
LASALLE UNIVERSITY—SCHOOL OF NURSING
1900 OLNEY AVENUE
PHILADELPHIA, PA 19141-1199
215-951-5036

000242
MAIN LINE CLIN LABS LANKENAU CP-L
100 EAST LANCASTER AVENUE
WYNNEWOOD, PA 19096
610-645-2615

009003
MAYO CLINIC-LP
200 FIRST ST SW HILTON 530
ROCHESTER, MN 55905
507-284-3018

026302
MEDICAL ASSOCIATES PC-P
935 HIGHLAND BLVD
SUITE 4400
BOZEMAN, MT 59715
406-587-5123

005574
MEDTOX LABORATORIES INC-LP
402 WEST COUNTY ROAD D
ST PAUL, MN 55112
612-636-7466

000203
MERCY FITZGERALD HOSPITAL-L
1500 LANSDOWNE AVENUE
DARBY, PA 19023
610-237-4262

000082
MERCY HOSPITAL OF PITTSBURGH-L
PRIDE & LOCUST STREETS
PITTSBURGH, PA 15219
412-232-7831

000504
NATIONAL MED SERVICES INC LAB-LP
3701 WELSH ROAD
WILLOW GROVE, PA 19090
215-657-4900

000807
OMEGA MEDICAL LABORATORIES INC-L
2001 STATE HILL ROAD
SUITE 100
WYOMISSING, PA 19610-1699
610-378-1900

023801
PACIFIC TOXICOLOGY LABORATORIES-LP
9348 DE SOTO AVENUE
CHATSWORTH, CA 91311
818-598-3110

022533
PENNSYLVANIA DEPT OF HEALTH-LP
110 PICKERING WAY
LIONVILLE, PA 19353
610-280-3464

000022
POCONO MEDICAL CENTER LAB-L
206 EAST BROWN STREET
EAST STROUDSBURG, PA 18301
570-476-3544

000324
PRIMARY CARE HLTH SERV INC LAB-L
7227 HAMILTON AVE
PITTSBURGH, PA 15208
412-244-4728

000255
PUBLIC HEALTH LAB CITY OF PHILA-L
500 SOUTH BROAD STREET
ROOM 359
PHILADELPHIA, PA 19146
215-685-6815

009620
QUEST DIAGNOSTICS CLIN LABS INC-L
7600 TYRONE AVENUE
VAN NUYS, CA 91405
818-376-6195

000315
QUEST DIAGNOSTICS CLINICAL LABS INC-LP
900 BUSINESS CENTER DRIVE
HORSHAM, PA 19044
215-957-9300

022174
QUEST DIAGNOSTICS INCORPORATED-LP
33608 ORTEGA HIGHWAY
SAN JUAN CAPISTRANO, CA 92690-6130
949-728-4000

001136
QUEST DIAGNOSTICS NICHOLS INSTITUTE-LP
14225 NEWBROOK DRIVE
PO BOX 10841
CHANTILLY, VA 20153-0841
703-802-6900

000482
QUEST DIAGNOSTICS OF PA INC-LP
875 GREENTREE RD
4 PARKWAY CENTER
PITTSBURGH, PA 15220-3610
412-920-7600

025461
QUEST DIAGNOSTICS VENTURE LLC-LP
875 GREENTREE ROAD
4 PARKWAY CENTER
PITTSBURGH, PA 15220-3610
412-920-7631

000150
READING HOSPITAL & MED CTR-L
6TH AND SPRUCE STREETS
WEST READING, PA 19611
610-988-8080

022376
SPECIALTY LABORATORIES-L
2211 MICHIGAN AVENUE
SANTA MONICA, CA 90404
310-828-6543

000151
ST JOSEPH QUALITY MEDICAL LAB-L
215 NORTH 12TH STREET
BOX 316
READING, PA 19603
610-378-2200

025103
TAMARAC MEDICAL-LP
7000 SOUTH BROADWAY
SUITE 2C
LITTLETON, CO 80122
303-794-1083

000083
UPMC PRESBYTERIAN SHADYSIDE CP PUH-L
ROOM 5929 MAIN TOWER CHP
200 LOTHROP STREET
PITTSBURGH, PA 15213-2582
412-648-6000

CALVIN B. JOHNSON, M.D., M.P.H.,
Secretary

[Pa.B. Doc. No. 04-1655. Filed for public inspection September 3, 2004, 9:00 a.m.]

DEPARTMENT OF REVENUE

Pennsylvania Hallo Win Instant Lottery Game

Under the State Lottery Law (72 P. S. §§ 3761-101—3761-314) and 61 Pa. Code § 819.203 (relating to notice of instant game rules), the Secretary of Revenue hereby provides public notice of the rules for the following instant lottery game:

1. *Name:* The name of the game is Pennsylvania Hallo Win.

2. *Price:* The price of a Pennsylvania Hallo Win instant lottery game ticket is $5.

3. *Play Symbols:*

(a) Each Pennsylvania Hallo Win instant lottery game ticket will contain four play areas known as Game 1, Game 2, Game 3 and Fast Cash Bonus. Each game is played separately.

(b) The play symbols and their captions located in the play area for Game 1 are: Pumpkin Symbol (PUMKIN) and X Symbol (XXX).

(c) The prize play symbols and their captions located in the play area for Game 2 are: $5.00 (FIV DOL), $6.00 (SIX DOL), $7.00 (SVN DOL), $10.00 (TEN DOL), 13 (THRTN), 31 (TRY ONE), 39 (TRY NIN), $310 (THRHUNTEN) and $31,000 (TRYONETHO).

(d) The play symbols and their captions located in the "YOUR SYMBOLS" and "LUCKY SYMBOL" areas for Game 3 are: Hat Symbol (HAT), Cat Symbol (CAT), Spider Symbol (SPIDER), Skull Symbol (SKULL), Candle Symbol (CANDLE), Frog Symbol (FROG), Bat Symbol (BAT) and Snake Symbol (SNAKE).

(e) The prize play and play symbols and their captions located in the "BONUS" area for Fast Cash Bonus are: 13 (THRTN), 31 (TRY ONE) and NO BONUS (TRY AGAIN).

4. *Prize Symbols:* The prize symbols and their captions located in the prize area for Game 1 are: $5.00 (FIV DOL), $6.00 (SIX DOL), $7.00 (SVN DOL), $10.00 (TEN DOL), 13 (THRTN), 31 (TRY ONE), 39 (TRY NIN), 62 (SXY TWO), $310 (THRHUNTEN) and $31,000 (TRYONETHO). The prize symbols and their captions located in the play area for Game 3 are: $5.00 (FIV DOL), $6.00 (SIX DOL), $7.00 (SVN DOL), $10.00 (TEN DOL), 13 (THRTN), 78 (SVY EGT), $310 (THRHUNTEN) and $31,000 (TRYONETHO). The prize play symbols and their captions located in the play area for Fast Cash Bonus are: 13 (THRTN), 31 (TRY ONE) and No Bonus (TRY AGAIN).

5. *Prizes:* The prizes that can be won in Game 1 are $5, $6, $7, $10, $13, $31, $39, $62, $310 and $31,000. The prizes that can be won in Game 2 are $5, $6, $7, $10, $13, $31, $39, $310 and $31,000. The prizes that can be won in Game 3 are $5, $6, $7, $10, $13, $78, $310 and $31,000. The prizes that can be won in Fast Cash Bonus are $13 and $31. A player can win up to 7 times on a ticket.

6. *Approximate Number of Tickets Printed for the Game:* Approximately 2,400,000 tickets will be printed for the Pennsylvania Hallo Win instant lottery game.

7. *Determination of Prize Winners:*

(a) Determination of prize winners for Game 1 are:

(1) Holders of tickets with three matching Pumpkin (PUMKIN) play symbols in the same row, column or diagonal and a prize symbol of $31,000 (TRYONETHO) appearing in the "PRIZE" area for the Game, on a single ticket, shall be entitled to a prize of $31,000.

(2) Holders of tickets with three matching Pumpkin (PUMKIN) play symbols in the same row, column or diagonal and a prize symbol of $310 (THRHUNTEN) appearing in the "PRIZE" area for the Game, on a single ticket, shall be entitled to a prize of $310.

(3) Holders of tickets with three matching Pumpkin (PUMKIN) play symbols in the same row, column or diagonal and a prize symbol of 62 (SXY TWO) appearing in the "PRIZE" area for the Game, on a single ticket, shall be entitled to a prize of $62.

(4) Holders of tickets with three matching Pumpkin (PUMKIN) play symbols in the same row, column or diagonal and a prize symbol of 39 (TRY NIN) appearing in the "PRIZE" area for the Game, on a single ticket, shall be entitled to a prize of $39.

(5) Holders of tickets with three matching Pumpkin (PUMKIN) play symbols in the same row, column or diagonal and a prize symbol of 31 (TRY ONE) appearing in the "PRIZE" area for the Game, on a single ticket, shall be entitled to a prize of $31.

(6) Holders of tickets with three matching Pumpkin (PUMKIN) play symbols in the same row, column or diagonal and a prize symbol of 13 (THRTN) appearing in the "PRIZE" area for the Game, on a single ticket, shall be entitled to a prize of $13.

(7) Holders of tickets with three matching Pumpkin (PUMKIN) play symbols in the same row, column or diagonal and a prize symbol of $10.00 (TEN DOL) appearing in the "PRIZE" area for the Game, on a single ticket, shall be entitled to a prize of $10.

(8) Holders of tickets with three matching Pumpkin (PUMKIN) play symbols in the same row, column or diagonal and a prize symbol of $7.00 (SVN DOL) appearing in the "PRIZE" area for the Game, on a single ticket, shall be entitled to a prize of $7.

(9) Holders of tickets with three matching Pumpkin (PUMKIN) play symbols in the same row, column or diagonal and a prize symbol of $6.00 (SIX DOL) appearing in the "PRIZE" area for the Game, on a single ticket, shall be entitled to a prize of $6.

(10) Holders of tickets with three matching Pumpkin (PUMKIN) play symbols in the same row, column or diagonal and a prize symbol of $5.00 (FIV DOL) appearing in the "PRIZE" area for the Game, on a single ticket, shall be entitled to a prize of $5.

(b) Determination of prize winners for Game 2 are:

(1) Holders of tickets with three matching prize play symbols of $31,000 (TRYONETHO) in the play area, on a single ticket, shall be entitled to a prize of $31,000.

(2) Holders of tickets with three matching prize play symbols of $310 (THRHUNTEN) in the play area, on a single ticket, shall be entitled to a prize of $310.

(3) Holders of tickets with three matching play symbols of 39 (TRY NIN) in the play area, on a single ticket, shall be entitled to a prize of $39.

(4) Holders of tickets with three matching play symbols of 31 (TRY ONE) in the play area, on a single ticket, shall be entitled to a prize of $31.

(5) Holders of tickets with three matching play symbols of 13 (THRTN) in the play area, on a single ticket, shall be entitled to a prize of $13.

(6) Holders of tickets with three matching play symbols of $10.00 (TEN DOL) in the play area, on a single ticket, shall be entitled to a prize of $10.

(7) Holders of tickets with three matching play symbols of $7.00 (SVN DOL) in the play area, on a single ticket, shall be entitled to a prize of $7.

(8) Holders of tickets with three matching play symbols of $6.00 (SIX DOL) in the play area, on a single ticket, shall be entitled to a prize of $6.

(9) Holders of tickets with three matching play symbols of $5.00 (FIV DOL) in the play area, on a single ticket, shall be entitled to a prize of $5.

(c) Determination of prize winners for Game 3 are:

(1) Holders of tickets upon which any one of the "YOUR SYMBOL" play symbols matches the "LUCKY SYMBOL" play symbol and a prize symbol of $31,000 (TRYONETHO) appears under the matching "YOUR SYMBOL" play symbol, on a single ticket, shall be entitled to a prize of $31,000.

(2) Holders of tickets upon which any one of the "YOUR SYMBOL" play symbols matches the "LUCKY SYMBOL" play symbol and a prize symbol of $310 (THRHUNTEN) appears under the matching "YOUR SYMBOL" play symbol, on a single ticket, shall be entitled to a prize of $310.

(3) Holders of tickets upon which any one of the "YOUR SYMBOL" play symbols matches the "LUCKY SYMBOL" play symbol and a prize symbol of 78 (SVY EGT) appears under the matching "YOUR SYMBOL" play symbol, on a single ticket, shall be entitled to a prize of $78.

(4) Holders of tickets upon which any one of the "YOUR SYMBOL" play symbols matches the "LUCKY SYMBOL" play symbol and a prize symbol of 13 (THRTN) appears under the matching "YOUR SYMBOL" play symbol, on a single ticket, shall be entitled to a prize of $13.

(5) Holders of tickets upon which any one of the "YOUR SYMBOL" play symbols matches the "LUCKY SYMBOL" play symbol and a prize symbol of $10.00 (TEN DOL) appears under the matching "YOUR SYMBOL" play symbol, on a single ticket, shall be entitled to a prize of $10.

(6) Holders of tickets upon which any one of the "YOUR SYMBOL" play symbols matches the "LUCKY SYMBOL" play symbol and a prize symbol of $7.00 (SVN DOL) appears under the matching "YOUR SYMBOL" play symbol, on a single ticket, shall be entitled to a prize of $7.

(7) Holders of tickets upon which any one of the "YOUR SYMBOL" play symbols matches the "LUCKY SYMBOL" play symbol and a prize symbol of $6.00 (SIX DOL) appears under the matching "YOUR SYMBOL" play symbol, on a single ticket, shall be entitled to a prize of $6.

(8) Holders of tickets upon which any one of the "YOUR SYMBOL" play symbols matches the "LUCKY SYMBOL" play symbol and a prize symbol of $5.00 (FIV DOL) appears under the matching "YOUR SYMBOL" play symbol, on a single ticket, shall be entitled to a prize of $5.

(e) Determination of prize winners for Fast Cash Bonus are:

(1) Holders of tickets with a 31 (TRY ONE) play symbol in the "BONUS" area, on a single ticket, shall be entitled to a prize of $31.

(2) Holders of tickets with a 13 (THRTN) play symbol in the "BONUS" area, on a single ticket, shall be entitled to a prize of $13.

8. *Number and Description of Prizes and Approximate Odds:* The following table sets forth the approximate number of winners, amount of prizes and approximate odds of winning:

Fast Cash Bonus	*Game 1*	*Game 2*	*Game 3*	*Win*	*Approximate Odds 1 In:*	*Approximate No. of Winners Per 2,400,000 Tickets*
	$5			$5	30	80,000
		$5		$5	30	80,000
			$5	$5	30	80,000
	$6			$6	150	16,000
		$6		$6	150	16,000
			$6	$6	300	8,000
	$7			$7	150	16,000
		$7		$7	150	16,000
			$7	$7	300	8,000
			$5 × 2	$10	30	80,000
	$10			$10	300	8,000
		$10		$10	300	8,000
		$6	$7	$13	600	4,000
	$6		$7	$13	600	4,000

Fast Cash Bonus	*Game 1*	*Game 2*	*Game 3*	*Win*	*Approximate Odds 1 In:*	*Approximate No. of Winners Per 2,400,000 Tickets*
	$6	$7		$13	600	4,000
	$7	$6		$13	600	4,000
	$7		$6	$13	600	4,000
		$7	$6	$13	600	4,000
$13				$13	42.86	56,000
	$5	$5	$7 × 3	$31	150	16,000
	$13	$13	$5	$31	150	16,000
$13		$13	$5	$31	120	20,000
$13			$6 × 3	$31	120	20,000
	$5	$6	$10 × 2	$31	150	16,000
	$10		$7 × 3	$31	150	16,000
$31				$31	150	16,000
$13			$13 × 2	$39	600	4,000
$13	$6	$7	$13	$39	600	4,000
	$5	$6	$7 × 4	$39	600	4,000
			$7 × 3 + $6 × 3	$39	600	4,000
		$39		$39	600	4,000
$31		$31		$62	13,333	180
	$10	$10	$10 × 3 + $6 × 2	$62	13,333	180
$13	$5	$5	$13 × 3	$62	13,333	180
$31	$10	$7	$7 × 2	$62	15,000	160
	$62			$62	15,000	160
$31		$7	$10 × 4	$78	60,000	40
$31	$31	$10	$6	$78	60,000	40
			$13 × 6	$78	60,000	40
	$39	$39		$78	60,000	40
			$78	$78	60,000	40
	$310			$310	120,000	20
		$310		$310	120,000	20
			$310	$310	120,000	20
	$31,000			$31,000	2,400,000	1
		$31,000		$31,000	2,400,000	1
			$31,000	$31,000	2,400,000	1

Game 1—Get Three "PUMPKIN" symbols in a row, column or diagonal, win prize shown.

Game 2—Get 3 like amounts, win that prize.

Game 3—When any of your symbols match the lucky symbol, win the prize shown under the matching symbol.

Fast Cash Bonus—Reveal prize amount of $13 or $31 and win that prize.

9. *Retailer Incentive Awards:* The Lottery may conduct a separate Retailer Incentive Game for retailers who sell Pennsylvania Hallo Win instant lottery game tickets. The conduct of the game will be governed by 61 Pa. Code § 819.222 (relating to retailer bonuses and incentives).

10. *Unclaimed Prize Money:* For a period of 1 year from the announced close of Pennsylvania Hallo Win, prize money from winning Pennsylvania Hallo Win instant lottery game tickets will be retained by the Secretary for payment to the persons entitled thereto. If no claim is made within 1 year of the announced close of the Pennsylvania Hallo Win instant lottery game, the right of a ticket holder to claim the prize represented by the ticket, if any, will expire and the prize money will be paid into the State Lottery Fund and used for purposes provided for by statute.

11. *Governing Law:* In purchasing a ticket, the customer agrees to comply with and abide by the State Lottery Law, 61 Pa. Code Part V (relating to State Lotteries) and the provisions contained in this notice.

12. *Termination of the Game:* The Secretary may announce a termination date, after which no further tickets from this game may be sold. The announcement will be disseminated through media used to advertise or promote Pennsylvania Hallo Win or through normal communications methods.

GREGORY C. FAJT,
Secretary

[Pa.B. Doc. No. 04-1656. Filed for public inspection September 3, 2004, 9:00 a.m.]

Pennsylvania Poker Showdown Instant Lottery Game

Under the State Lottery Law (72 P. S. §§ 3761-101—3761-314) and 61 Pa. Code § 819.203 (relating to notice of instant game rules), the Secretary of Revenue hereby provides public notice of the rules for the following instant lottery game:

1. *Name:* The name of the game is Pennsylvania Poker Showdown.

2. *Price:* The price of a Pennsylvania Poker Showdown instant lottery game ticket is $5.

3. *Play Symbols:*

(a) Each Pennsylvania Poker Showdown instant lottery game ticket will contain one play area consisting of nine separate "HANDS," and a "BONUS" play area. Each "HAND" is played separately. The "HANDS" and the "BONUS" play area have a different game play method and are played separately.

(b) The play area contains "HAND 1," "HAND 2," "HAND 3," "HAND 4," "HAND 5," "HAND 6," "HAND 7," "HAND 8" and "HAND 9." There are 52 card play symbols, five of which will be located in each of the nine "HAND" play areas. The card play symbols are: Black 2 through Ace of Spades card play symbols, Black 2 through Ace of Clubs card play symbols, Red 2 through Ace of Diamonds card play symbols and Red 2 through Ace of Hearts card play symbols.

(c) The prize play and play symbols and their captions located in the "BONUS" area are: $5.00 (FIV DOL), $10.00 (TEN DOL), 15 (FIFTN), 20 (TWENTY), 25 (TWY FIV), 35 (TRY FIV), 50 (FIFTY), $100 (ONE HUN) and NO BONUS (TRY AGAIN).

4. *Prizes:* The prizes that can be won in the "HANDS" play area are $5, $10, $20, $25, $50, $100, $500, $50,000 and $100,000. The prizes that can be won in the "BONUS" play area are: $5, $10, $15, $20, $25, $35, $50 and $100. The player can win up to 10 times on a ticket.

5. *Approximate Number of Tickets Printed for the Game:* Approximately 6,000,000 tickets will be printed for the Pennsylvania Poker Showdown instant lottery game.

6. *Determination of Prize Winners:*

(a) Holders of tickets containing a "Royal Flush" (the 10, Jack, Queen, King and Ace card play symbols, all of the same suit), in the same "HAND," on a single ticket, shall be entitled to a prize of $100,000.

(b) Holders of tickets containing a "Straight Flush" (any five consecutive card play symbols of the same suit), in the same "HAND," on a single ticket, shall be entitled to a prize of $50,000.

(c) Holders of tickets containing "4 of a Kind" (any four card play symbols of the same value), in the same "HAND," on a single ticket, shall be entitled to a prize of $500.

(d) Holders of tickets containing a "Full House" (three card play symbols of the same value combined with a "Pair" of card play symbols with a different value), in the same "HAND," on a single ticket, shall be entitled to a prize of $100.

(e) Holders of tickets with a $100 (ONE HUN) prize play symbol in the "BONUS" area, on a single ticket, shall be entitled to a prize of $100.

(f) Holders of tickets containing a "Flush" (any five card play symbols of the same suit), in the same "HAND," on a single ticket, shall be entitled to a prize of $50.

(g) Holders of tickets with a 50 (FIFTY) prize play symbol in the "BONUS" area, on a single ticket, shall be entitled to a prize of $50.

(h) Holders of tickets with a 35 (TRY FIV) prize play symbol in the "BONUS" area, on a single ticket, shall be entitled to a prize of $35.

(i) Holders of tickets containing a "Straight" (any five consecutive card play symbols of any suit), in the same "HAND," on a single ticket, shall be entitled to a prize of $25.

(j) Holders of tickets with a 25 (TWY FIV) prize play symbol in the "BONUS" area, on a single ticket, shall be entitled to a prize of $25.

(k) Holders of tickets containing "3 of a Kind" (any three card play symbols of the same value), in the same "HAND," on a single ticket, shall be entitled to a prize of $20.

(l) Holders of tickets with a 20 (TWENTY) prize play symbol in the "BONUS" area, on a single ticket, shall be entitled to a prize of $20.

(m) Holders of tickets with a 15 (FIFTN) prize play symbol in the "BONUS" area, on a single ticket, shall be entitled to a prize of $15.

(n) Holders of tickets containing "2 Pair" (two different pairs of card play symbols, each "Pair" being two card play symbols of the same value), in the same "HAND," on a single ticket, shall be entitled to a prize of $10.

(o) Holders of tickets with a $10.00 (TEN DOL) prize play symbol in the "BONUS" area, on a single ticket, shall be entitled to a prize of $10.

(p) Holders of tickets containing "1 Pair" (a pair of card play symbols, the "Pair" being two card play symbols of the same value), in the same "HAND," on a single ticket, shall be entitled to a prize of $5.

(q) Holders of tickets with a $5.00 (FIV DOL) prize play symbol in the "BONUS" area, on a single ticket, shall be entitled to a prize of $5.

7. *Number and Description of Prizes and Approximate Odds:* The following table sets forth the approximate number of winners, amounts of prizes and approximate odds of winning:

Win With Prize(s) of:	*Win:*	*Approximate Odds of 1 In:*	*Approximate No. of Winners Per 6,000,000 Tickets*
Any Pair	$5	10.91	550,000
$5 BONUS	$5	30	200,000

Win With Prize(s) of:	*Win:*	*Approximate Odds of 1 In:*	*Approximate No. of Winners Per 6,000,000 Tickets*
2 Pair	$10	60	100,000
$10 BONUS	$10	60	100,000
Any Pair + 2 Pair	$15	85.71	70,000
$15 BONUS	$15	600	10,000
Any Pair × 2 + $5 BONUS	$15	600	10,000
2 Pair + $5 BONUS	$15	600	10,000
Any Pair × 4	$20	200	30,000
2 Pair × 2	$20	200	30,000
3 of a Kind	$20	100	60,000
$20 BONUS	$20	600	10,000
Any Pair × 2 + $10 BONUS	$20	600	10,000
2 Pair + $10 BONUS	$20	600	10,000
Any Pair × 5	$25	150	40,000
Straight	$25	200	30,000
$25 BONUS	$25	200	30,000
Any Pair × 7	$35	600	10,000
Any Pair + 2 Pair + 3 of a Kind	$35	600	10,000
$35 BONUS	$35	300	20,000
3 of a Kind + 2 Pair	$35	600	10,000
Straight × 2	$50	600	10,000
2 Pair × 5	$50	600	10,000
Flush	$50	600	10,000
$50 BONUS	$50	300	20,000
Any Pair × 9 + $5 BONUS	$50	300	20,000
Any Pair × 5 + $25 BONUS	$50	300	20,000
3 of a Kind × 5	$100	3,000	2,000
Straight × 4	$100	3,000	2,000
Flush × 2	$100	5,000	1,200
Full House	$100	3,000	2,000
$100 BONUS	$100	1,333	4,500
Flush × 2 + Full House × 4	$500	120,000	50
Full House × 5	$500	120,000	50
4 of a Kind	$500	120,000	50
Full House × 5 + 4 of a Kind	$1,000	1,200,000	5
Straight Flush	$50,000	1,200,000	5
Royal Flush	$100,000	1,200,000	5

BONUS = Win Between	Straight = $25
$5 and $100 automatically	Flush = $50
A Pair = $5	Full House = $100
2 Pairs = $10	4 of a Kind = $500
3 of a Kind = $20	Straight Flush = $50,000
	Royal Flush = $100,000

8. *Retailer Incentive Awards:* The Lottery may conduct a separate Retailer Incentive Game for retailers who sell Pennsylvania Poker Showdown instant lottery game tickets. The conduct of the game will be governed by 61 Pa. Code § 819.222 (relating to retailer bonuses and incentives).

9. *Unclaimed Prize Money:* For a period of 1 year from the announced close of Pennsylvania Poker Showdown, prize money from winning Pennsylvania Poker Showdown instant lottery game tickets will be retained by the Secretary for payment to the persons entitled thereto. If no claim is made within 1 year of the announced close of the Pennsylvania Poker Showdown instant lottery game, the right of a ticket holder to claim the prize represented by the ticket, if any, will expire and the prize money will be paid into the State Lottery Fund and used for purposes provided for by statute.

10. *Governing Law:* In purchasing a ticket, the customer agrees to comply with and abide by the State Lottery Law, 61 Pa. Code Part V (relating to State Lotteries) and the provisions contained in this notice.

11. *Termination of the Game:* The Secretary may announce a termination date, after which no further tickets from this game may be sold. The announcement will be disseminated through media used to advertise or promote Pennsylvania Poker Showdown or through normal communications methods.

GREGORY C. FAJT,
Secretary

[Pa.B. Doc. No. 04-1657. Filed for public inspection September 3, 2004, 9:00 a.m.]

Pennsylvania Trick or Treat Tripler Instant Lottery Game

Under the State Lottery Law (72 P. S. §§ 3761-101—3761-314) and 61 Pa. Code § 819.203 (relating to notice of instant game rules), the Secretary of Revenue hereby provides public notice of the rules for the following instant lottery game:

1. *Name:* The name of the game is Pennsylvania Trick or Treat Tripler.

2. *Price:* The price of a Pennsylvania Trick or Treat Tripler instant lottery game ticket is $1.

3. *Play Symbols:* Each Pennsylvania Trick or Treat Tripler instant lottery game ticket will contain one play area featuring a "LUCKY SYMBOL" area and a "YOUR CANDY SYMBOLS" area. The play symbols and their captions located in the "LUCKY SYMBOL" area are: Hat Symbol (HAT), Pumpkin Symbol (PUMKIN), Spider Symbol (SPIDER), Skull Symbol (SKULL), Candle Symbol (CANDLE), Frog Symbol (FROG), Bat Symbol (BAT), Snake Symbol (SNAKE), Cat Symbol (CAT), Witch Symbol (WITCH) and Ghost Symbol (GHOST). The play symbols and their captions located in the "YOUR CANDY SYMBOLS" area are: Hat Symbol (HAT), Pumpkin Symbol (PUMKIN), Spider Symbol (SPIDER), Skull Symbol (SKULL), Candle Symbol (CANDLE), Frog Symbol (FROG), Bat Symbol (BAT), Snake Symbol (SNAKE), Cat Symbol (CAT), Witch Symbol (WITCH), Ghost Symbol (GHOST), and Treat Symbol (TRPLE).

4. *Prize Symbols:* The prize symbols and their captions located in the "YOUR CANDY SYMBOLS" area are: Free (TICKET), $1.00 (ONE DOL), $2.00 (TWO DOL), $3.00 (THR DOL), $5.00 (FIV DOL), $6.00 (SIX DOL), $9.00 (NIN DOL), $10.00 (TEN DOL), 15 (FIFTN), 30 (THIRTY), 90 (NINTY), $100 (ONE HUN), $300 (THR HUN) and $3,000 (THR THO).

5. *Prizes:* The prizes that can be won in this game are: Free Ticket, $1, $2, $3, $5, $6, $9, $10, $15, $30, $90, $100, $300 and $3,000. A player can win up to 5 times on a ticket.

6. *Approximate Number of Tickets Printed for the Game:* Approximately 8,400,000 tickets will be printed for the Pennsylvania Trick or Treat Tripler instant lottery game.

7. *Determination of Prize Winners:*

(a) Holders of tickets upon which any one of the "YOUR CANDY SYMBOLS" play symbols matches the "LUCKY SYMBOL" play symbol and a prize symbol of $3,000 (THR THO) appears under the matching "YOUR CANDY SYMBOLS" play symbol, on a single ticket, shall be entitled to a prize of $3,000.

(b) Holders of tickets upon which any one of the "YOUR CANDY SYMBOLS" play symbols matches the "LUCKY SYMBOL" play symbol and a prize symbol of $300 (THR HUN) appears under the matching "YOUR CANDY SYMBOLS" play symbol, on a single ticket, shall be entitled to a prize of $300.

(c) Holders of tickets upon which any one of the "YOUR CANDY SYMBOLS" is a Treat Symbol (TRPLE), and a prize symbol of $100 (ONE HUN) appears under the Treat Symbol (TRPLE), on a single ticket, shall be entitled to a prize of $300.

(d) Holders of tickets upon which any one of the "YOUR CANDY SYMBOLS" play symbols matches the "LUCKY SYMBOL" play symbol and a prize symbol of $100 (ONE HUN) appears under the matching "YOUR CANDY SYMBOLS" play symbol, on a single ticket, shall be entitled to a prize of $100.

(e) Holders of tickets upon which any one of the "YOUR CANDY SYMBOLS" play symbols matches the "LUCKY SYMBOL" play symbol and a prize symbol of 90 (NINTY) appears under the matching "YOUR CANDY SYMBOLS" play symbol, on a single ticket, shall be entitled to a prize of $90.

(f) Holders of tickets upon which any one of the "YOUR CANDY SYMBOLS" is a Treat Symbol (TRPLE), and a prize symbol of 30 (THIRTY) appears under the Treat Symbol (TRPLE),on a single ticket, shall be entitled to a prize of $90.

(g) Holders of tickets upon which any one of the "YOUR CANDY SYMBOLS" play symbols matches the "LUCKY SYMBOL" play symbol and a prize symbol of 30 (THIRTY) appears under the matching "YOUR CANDY SYMBOLS" play symbol, on a single ticket, shall be entitled to a prize of $30.

(h) Holders of tickets upon which any one of the "YOUR CANDY SYMBOLS" is a Treat Symbol (TRPLE), and a prize symbol of $10.00 (TEN DOL) appears under the Treat Symbol (TRPLE), on a single ticket, shall be entitled to a prize of $30.

(i) Holders of tickets upon which any one of the "YOUR CANDY SYMBOLS" play symbols matches the "LUCKY SYMBOL" play symbol and a prize symbol of 15 (FIFTN) appears under the matching "YOUR CANDY SYMBOLS" play symbol, on a single ticket, shall be entitled to a prize of $15.

(j) Holders of tickets upon which any one of the "YOUR CANDY SYMBOLS" is a Treat Symbol (TRPLE), and a prize symbol of $5.00 (FIV DOL) appears under the Treat Symbol (TRPLE), on a single ticket, shall be entitled to a prize of $15.

(k) Holders of tickets upon which any one of the "YOUR CANDY SYMBOLS" play symbols matches the "LUCKY SYMBOL" play symbol and a prize symbol of $10.00 (TEN DOL) appears under the matching "YOUR CANDY SYMBOLS" play symbol, on a single ticket, shall be entitled to a prize of $10.

(l) Holders of tickets upon which any one of the "YOUR CANDY SYMBOLS" play symbols matches the "LUCKY SYMBOL" play symbol and a prize symbol of $9.00 (NIN DOL) appears under the matching "YOUR CANDY SYMBOLS" play symbol, on a single ticket, shall be entitled to a prize of $9.

(m) Holders of tickets upon which any one of the "YOUR CANDY SYMBOLS" is a Treat Symbol (TRPLE), and a prize symbol of $3.00 (THR DOL) appears under the Treat Symbol (TRPLE), on a single ticket, shall be entitled to a prize of $9.

(n) Holders of tickets upon which any one of the "YOUR CANDY SYMBOLS" play symbols matches the "LUCKY SYMBOL" play symbol and a prize symbol of $6.00 (SIX DOL) appears under the matching "YOUR CANDY SYMBOLS" play symbol, on a single ticket, shall be entitled to a prize of $6.

(o) Holders of tickets upon which any one of the "YOUR CANDY SYMBOLS" is a Treat Symbol (TRPLE), and a prize symbol of $2.00 (TWO DOL) appears under the Treat Symbol (TRPLE), on a single ticket, shall be entitled to a prize of $6.

(p) Holders of tickets upon which any one of the "YOUR CANDY SYMBOLS" play symbols matches the "LUCKY SYMBOL" play symbol and a prize symbol of $5.00 (FIV DOL) appears under the matching "YOUR CANDY SYMBOLS" play symbol, on a single ticket, shall be entitled to a prize of $5.

(q) Holders of tickets upon which any one of the "YOUR CANDY SYMBOLS" play symbols matches the "LUCKY SYMBOL" play symbol and a prize symbol of $3.00 (THR DOL) appears under the matching "YOUR CANDY SYMBOLS" play symbol, on a single ticket, shall be entitled to a prize of $3.

(r) Holders of tickets upon which any one of the "YOUR CANDY SYMBOLS" is a Treat Symbol (TRPLE), and a prize symbol of $1.00 (ONE DOL) appears under the Treat Symbol (TRPLE), on a single ticket, shall be entitled to a prize of $3.

(s) Holders of tickets upon which any one of the "YOUR CANDY SYMBOLS" play symbols matches the "LUCKY SYMBOL" play symbol and a prize symbol of $2.00 (TWO DOL) appears under the matching "YOUR CANDY SYMBOLS" play symbol, on a single ticket, shall be entitled to a prize of $2.

(t) Holders of tickets upon which any one of the "YOUR CANDY SYMBOLS" play symbols matches the "LUCKY SYMBOL" play symbol and a prize symbol of $1.00 (ONE DOL) appears under the matching "YOUR CANDY SYMBOLS" play symbol, on a single ticket, shall be entitled to a prize of $1.

(u) Holders of tickets upon which any one of the "YOUR CANDY SYMBOLS" play symbols matches the "LUCKY SYMBOL" play symbol and a prize play symbol of Free (TICKET) appears under the matching "YOUR CANDY SYMBOLS" play symbol, on a single ticket, shall be entitled to a prize of one Pennsylvania Instant Lottery Game ticket of equivalent sale price which is currently on sale.

8. *Number and Description of Prizes and Approximate Odds:* The following table sets forth the approximate number of winners, amounts of prizes and approximate odds of winning:

Win With Prize(s) of:	*Win:*	*Approximate Odds of 1 In:*	*Approximate No. of Winners Per 8,400,000 Tickets*
FREE	TICKET	15	560,000
$1	$1	13.64	616,000
$2	$2	15	560,000
$1 w/Treat	$3	85.71	98,000
$3	$3	100	84,000
$1 × 5	$5	600	14,000
$5	$5	600	14,000
$2 w/Treat	$6	300	28,000
$3 × 2	$6	600	14,000
$6	$6	600	14,000
$3 w/Treat	$9	200	42,000
$9	$9	600	14,000
$2 × 5	$10	600	14,000
$5 × 2	$10	600	14,000
$10	$10	300	28,000
$5 w/Treat	$15	1,000	8,400
$3 × 5	$15	3,000	2,800
$15	$15	3,000	2,800
$6 × 5	$30	2,400	3,500
$10 w/Treat	$30	2,353	3,570
$15 × 2	$30	2,400	3,500
$30	$30	2,400	3,500
$30 w/Treat	$90	48,000	175
$90	$90	48,000	175
$100	$100	80,000	105
$100 w/Treat	$300	240,000	35
$300	$300	240,000	35
$3,000	$3,000	840,000	10

Treat = Triple the prize shown.

9. *Retailer Incentive Awards:* The Lottery may conduct a separate Retailer Incentive Game for retailers who sell Pennsylvania Trick or Treat Tripler instant lottery game tickets. The conduct of the game will be governed by 61 Pa. Code § 819.222 (relating to retailer bonuses and incentives).

10. *Unclaimed Prize Money:* For a period of 1 year from the announced close of Pennsylvania Trick or Treat Tripler, prize money from winning Pennsylvania Trick or Treat Tripler instant lottery game tickets will be retained by the Secretary for payment to the persons entitled thereto. If no claim is made within 1 year of the announced close of the Pennsylvania Trick or Treat Tripler instant lottery game, the right of a ticket holder to claim the prize represented by the ticket, if any, will expire and the prize money will be paid into the State Lottery Fund and used for purposes provided for by statute.

11. *Governing Law:* In purchasing a ticket, the customer agrees to comply with and abide by the State Lottery Law, 61 Pa. Code Part V (relating to State Lotteries) and the provisions contained in this notice.

12. *Termination of the Game:* The Secretary may announce a termination date, after which no further tickets from this game may be sold. The announcement will be disseminated through media used to advertise or promote Pennsylvania Trick or Treat Tripler or through normal communications methods.

GREGORY C. FAJT,
Secretary

[Pa.B. Doc. No. 04-1658. Filed for public inspection September 3, 2004, 9:00 a.m.]

Pennsylvania Turkey Day Doubler Instant Lottery Game

Under the State Lottery Law (72 P. S. §§ 3761-101—3761-314) and 61 Pa. Code § 819.203 (relating to notice of instant game rules), the Secretary of Revenue hereby provides public notice of the rules for the following instant lottery game:

1. *Name:* The name of the game is Pennsylvania Turkey Day Doubler.

2. *Price:* The price of a Pennsylvania Turkey Day Doubler instant lottery game ticket is $1.

3. *Play Symbols:* Each Pennsylvania Turkey Day Doubler instant lottery game ticket will contain one play area featuring a "TURKEY NUMBER" area and a "YOUR NUMBERS" area. The play symbols and their captions located in the "TURKEY NUMBER" area are: 1 (ONE), 2 (TWO), 3 (THREE), 4 (FOUR), 5 (FIVE), 6 (SIX), 7 (SEVEN), 8 (EIGHT), 9 (NINE) and 10 (TEN). The play symbols and their captions located in the "YOUR NUMBERS" area are: 1 (ONE), 2 (TWO), 3 (THREE), 4 (FOUR), 5 (FIVE), 6 (SIX), 7 (SEVEN), 8 (EIGHT), 9 (NINE), 10 (TEN) and Turkey Symbol (TRKY).

4. *Prize Symbols:* The prize symbols and their captions located in the "YOUR NUMBERS" area are: FREE (TICKET), $1.00 (ONE DOL), $2.00 (TWO DOL), $4.00 (FOR DOL), $5.00 (FIV DOL), $10.00 (TEN DOL), 20 (TWENTY), 25 (TWY FIV), 40 (FORTY), 50 (FIFTY), 80 (EIGHTY), $100 (ONE HUN) and $2,000 (TWO THO).

5. *Prizes:* The prizes that can be won in this game are: Free Ticket, $1, $2, $4, $5, $10, $20, $25, $40, $50, $80, $100 and $2,000. A player can win up to 5 times on a ticket.

6. *Approximate Number of Tickets Printed for the Game:* Approximately 8,400,000 tickets will be printed for the Pennsylvania Turkey Day Doubler instant lottery game.

7. *Determination of Prize Winners:*

(a) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches the "TURKEY NUMBER" play symbol and a prize symbol of $2,000 (TWO THO) appears under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of $2,000.

(b) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches the "TURKEY NUMBER" play symbol and a prize symbol of $100 (ONE HUN) appears under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of $100.

(c) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches the "TURKEY NUMBER" play symbol and a prize symbol of 80 (EIGHTY) appears under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of $80.

(d) Holders of tickets upon which any one of the "YOUR NUMBERS" is a Turkey Symbol (TRKY), and a prize symbol of 40 (FORTY) appears under the Turkey Symbol (TRKY), on a single ticket, shall be entitled to a prize of $80.

(e) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches the "TURKEY NUMBER" play symbol and a prize symbol of 50 (FIFTY) appears under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of $50.

(f) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches the "TURKEY NUMBER" play symbol and a prize symbol of 40 (FORTY) appears under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of $40.

(g) Holders of tickets upon which any one of the "YOUR NUMBERS" is a Turkey Symbol (TRKY), and a prize symbol of 20 (TWENTY) appears under the Turkey Symbol (TRKY), on a single ticket, shall be entitled to a prize of $40.

(h) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches the "TURKEY NUMBER" play symbol and a prize symbol of 25 (TWY FIV) appears under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of $25.

(i) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches the "TURKEY NUMBER" play symbol and a prize symbol of 20 (TWENTY) appears under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of $20.

(j) Holders of tickets upon which any one of the "YOUR NUMBERS" is a Turkey Symbol (TRKY), and a prize symbol of $10.00 (TEN DOL) appears under the Turkey Symbol (TRKY), on a single ticket, shall be entitled to a prize of $20.

(k) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches the "TURKEY NUMBER" play symbol and a prize symbol of $10.00 (TEN DOL) appears under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of $10.

(l) Holders of tickets upon which any one of the "YOUR NUMBERS" is a Turkey Symbol (TRKY), and a prize symbol of $5.00 (FIV DOL) appears under the Turkey Symbol (TRKY), on a single ticket, shall be entitled to a prize of $10.

(m) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches the "TURKEY NUMBER" play symbol and a prize symbol of $5.00 (FIV DOL) appears under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of $5.

(n) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches the "TURKEY NUMBER" play symbol and a prize symbol of $4.00 (FOR

DOL) appears under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of $4.

(o) Holders of tickets upon which any one of the "YOUR NUMBERS" is a Turkey Symbol (TRKY), and a prize symbol of $2.00 (TWO DOL) appears under the Turkey Symbol (TRKY), on a single ticket, shall be entitled to a prize of $4.

(p) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches the "TURKEY NUMBER" play symbol and a prize symbol of $2.00 (TWO DOL) appears under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of $2.

(q) Holders of tickets upon which any one of the "YOUR NUMBERS" is a Turkey Symbol (TRKY), and a prize symbol of $1.00 (ONE DOL) appears under the Turkey Symbol (TRKY), on a single ticket, shall be entitled to a prize of $2.

(r) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches the "TURKEY NUMBER" play symbols and a prize symbol of $1.00 (ONE DOL) appears under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of $1.

(s) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches the "TURKEY NUMBER" play symbol and a prize play symbol of FREE (TICKET) appears under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of one Pennsylvania Instant Lottery Game ticket of equivalent sale price which is currently on sale.

8. *Number and Description of Prizes and Approximate Odds:* The following table sets forth the approximate number of winners, amounts of prizes and approximate odds of winning:

Win With Prize(s) of:	*Win:*	*Approximate Odds of 1 In:*	*Approximate No. of Winners Per 8,400,000 Tickets*
FREE	TICKET	19.35	434,000
$1	$1	13.64	616,000
$2	$2	75	112,000
$1 w/Turkey	$2	23.08	364,000
$1 × 2	$2	60	140,000
$4	$4	300	28,000
$2 w/Turkey	$4	100	84,000
$1 × 4	$4	300	28,000
$2 × 2	$4	300	28,000
$5	$5	600	14,000
$1 × 5	$5	600	14,000
$2 w/Turkey + $1	$5	100	84,000
$10	$10	600	14,000
$5 w/Turkey	$10	200	42,000
$2 × 5	$10	600	14,000
$5 × 2	$10	600	14,000
$20	$20	3,000	2,800
$10 w/Turkey	$20	3,000	2,800
$4 × 5	$20	3,000	2,800
$5 × 4	$20	3,000	2,800
$10 × 2	$20	3,000	2,800
$5 × 5	$25	1,000	8,400
$25	$25	1,500	5,600
$40	$40	48,000	175
$20 w/Turkey	$40	48,000	175
$10 × 4	$40	48,000	175
$20 × 2	$40	48,000	175
$50	$50	30,000	280
$80	$80	240,000	35
$40 w/Turkey	$80	240,000	35
$20 × 4	$80	240,000	35
$100	$100	240,000	35
$20 × 5	$100	240,000	35
$2,000	$2,000	840,000	10

Turkey = Double the prize shown.

9. *Retailer Incentive Awards:* The Lottery may conduct a separate Retailer Incentive Game for retailers who sell Pennsylvania Turkey Day Doubler instant lottery game tickets. The conduct of the game will be governed by 61 Pa. Code § 819.222 (relating to retailer bonuses and incentives).

10. *Unclaimed Prize Money:* For a period of 1 year from the announced close of Pennsylvania Turkey Day Doubler, prize money from winning Pennsylvania Turkey Day Doubler instant lottery game tickets will be retained by the Secretary for payment to the persons entitled thereto. If no claim is made within 1 year of the announced close

of the Pennsylvania Turkey Day Doubler instant lottery game, the right of a ticket holder to claim the prizerepresented by the ticket, if any, will expire and the prize money will be paid into the State Lottery Fund and used for purposes provided for by statute.

11. *Governing Law:* In purchasing a ticket, the customer agrees to comply with and abide by the State Lottery Law, 61 Pa. Code Part V (relating to State Lotteries) and the provisions contained in this notice.

12. *Termination of the Game:* The Secretary may announce a termination date, after which no further tickets from this game may be sold. The announcement will be disseminated through media used to advertise or promote Pennsylvania Turkey Day Doubler or through normal communications methods.

GREGORY C. FAJT,
Secretary

[Pa.B. Doc. No. 04-1659. Filed for public inspection September 3, 2004, 9:00 a.m.]

DEPARTMENT OF TRANSPORTATION

Finding
Lehigh County

Under section 2002(b) of The Administrative Code of 1929 (71 P. S. § 512(b)), the Deputy Secretary for Highway Administration makes the following written finding:

The Department of Transportation (Department) proposes improvements to the intersections of SR 0309 and SR 4010 and SR 0309 and Education Park Drive at the south end of the Village of Schnecksville and in North Whitehall Township, Lehigh County. The work involves widening, reconstruction and signalization of the two intersections. The project requires land from the National Register of Historic Places eligible Schnecksville Historic District.

Impacts to the Schnecksville Historic District will be mitigated by measures as outlined in the Memorandum of Agreement (MOA) for the project, which was signed by the appropriate agencies.

The MOA stipulates that the Department will prepare State-level documentation of the historic district to convey its present day historic feeling and association. The Department will also prepare a National Register of Historic Places Registration Form for the Schnecksville Historic District.

The Deputy Secretary for Highway Administration has considered the environmental, economic, social and other effects of the proposed project as enumerated in section 2002 of The Administrative Code of 1929 and has concluded that there is no feasible and prudent alternative to the project as designed, and all reasonable steps have been taken to minimize effects.

GARY L. HOFFMAN, P. E.,
Deputy Secretary for Highway Administration

[Pa.B. Doc. No. 04-1660. Filed for public inspection September 3, 2004, 9:00 a.m.]

Finding
Mercer County

Under section 2002(b) of The Administrative Code of 1929 (71 P. S. § 512(b)), the Deputy Secretary for Highway Administration makes the following written finding:

The Department of Transportation (Department) plans to replace the existing Quaker Bridge carrying SR 4006 over the Little Shenango River in Hempfield Township, Mercer County. The existing Quaker Bridge has been determined eligible for the National Register of Historic Places. The effect of this project on the existing Quaker Bridge will be mitigated by the following measures to minimize harm to the resources.

1. Prior to the replacement of the Quaker Bridge, the Department will have the structure recorded following State-level recordation guidelines. The Department will ensure that all documentation is completed and accepted by the State Historic Preservation Officer (SHPO) prior to implementation of the undertaking, and that copies of the recordation are made available to the SHPO and the appropriate local facility designated by the SHPO.

2. The Department will develop an educational program in association with the Mercer County Historical Society. The program will highlight the history and significance of the Quaker Bridge and educate the public about historic truss bridges. A copy of any material or text developed for this program will be provided to the SHPO.

3. The bridge plaques will be salvaged and offered to the Mercer County Historical Society.

The Deputy Secretary for Highway Administration has considered the environmental, economic, social and other effects of the proposed project as enumerated in section 2002 of The Administrative Code of 1929 and has concluded that there is no feasible and prudent alternative to the project as designed and all reasonable steps have been taken to minimize effects.

No adverse environmental effect is likely to result from the replacement of this bridge.

GARY L. HOFFMAN, P. E.,
Deputy Secretary for Highway Administration

[Pa.B. Doc. No. 04-1661. Filed for public inspection September 3, 2004, 9:00 a.m.]

ENVIRONMENTAL QUALITY BOARD STATE CONSERVATION COMMISSION

Joint Public Meetings and Public Hearings on Proposed Rulemakings Affecting Agriculture; Meetings Change

The Environmental Quality Board (Board) and the State Conservation Commission (Commission) will hold two joint public information meetings and two public hearings regarding two separate, but closely related proposed rulemakings. The Commission's proposed amendments to 25 Pa. Code Chapter 83, Subchapter D (relating to nutrient management) under the Nutrient Management Act (3 P. S. §§ 1701—1719) were published at 34 Pa.B. 4361 (August 7, 2004). The Board's proposed

amendments to 25 Pa. Code Chapters 91 and 92 (relating to general provisions; and National Pollutant Discharge Elimination System permitting, monitoring and compliance) under The Clean Streams Law (35 P. S. §§ 691.1—691.1001) were published at 34 Pa.B. 4353 (August 7, 2004).

The Board's proposed rulemaking affects all farms that store manure or apply it to their land. They also regulate concentrated animal feeding operations (CAFOs), the largest farms in this Commonwealth. The primary purpose of the proposed CAFO rulemaking is to allow the Commonwealth to maintain delegation of the Federal National Pollutant Discharge Elimination System CAFO program.

The Commission's proposed rulemaking changes existing regulations affecting concentrated animal operations based on advances in the sciences of agronomics and manure management, as well as public concerns with livestock agriculture. Currently, 840 operations are subject to the existing nutrient management regulations and an additional 950 farms have voluntarily complied with the requirements.

Joint Public Information Meetings

The Board and the Commission will jointly hold two public information meetings to discuss the proposed rulemakings and answer questions. The public information meetings will be held at 6:30 p.m. on Monday, September 13, 2004, at the Holiday Inn, 5401 Carlisle Pike, Mechanicsburg, PA and on Thursday, September 16, 2004, at the Ramada Inn, 191 United Road, DuBois, PA. No formal record will be kept at the public information meetings.

Joint Public Hearings

The Board and the Commission will jointly hold two public hearings for the purpose of accepting comments on the proposed rulemakings. The public hearings will be held at 6 p.m. on Wednesday, October 13, 2004, at the Holiday Inn, 5401 Carlisle Pike, Mechanicsburg, PA and at 6 p.m. on Thursday, October 14, 2004, at the Ramada Inn, 191 United Road, DuBois, PA.

Individuals who would like to present testimony at the joint public hearings must contact Natalie Shepherd, Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477, (717) 787-4526; or Douglas Goodlander, State Conservation Commission, Agriculture Building, Room 405, 2301 North Cameron Street, Harrisburg, PA 17110, (717) 787-8821 at least 1 week in advance of the public hearing to reserve a time to present testimony. Oral testimony will be limited to 10 minutes for each witness. The Board and the Commission prefer that witnesses use this time to summarize written testimony. Witnesses should specify which sections of which rulemaking they are commenting on when providing comments. Witnesses are requested to submit three written copies of their statement at the public hearing. Each organization is requested to designate one witness to present testimony on its behalf.

Persons with a disability who wish to attend the public information meetings or public hearings and require an auxiliary aid, service or other accommodation to participate should contact Natalie Shepherd at (717) 787-4526 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how their needs can be accommodated.

Written Comments

Interested persons are also invited to submit comments, suggestions or objections regarding the Board's proposed rulemakings to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 15th Floor, 400 Market Street, Harrisburg, PA 17105-2301). Interested persons are also invited to submit comments, suggestions or objections regarding the Commission's proposed rulemakings to the State Conservation Commission, Agriculture Building, Room 405, 2301 North Cameron Street, Harrisburg, PA 17110.

Comments submitted by facsimile will not be accepted. Comments must be received by the Board and the Commission by November 5, 2004. Interested persons may also submit a summary of their comments to the Board or the Commission. The summary may not exceed one page in length and must also be received by November 5, 2004. The one-page summary will be provided to each member of the Board or the Commission in the agenda packet distributed prior to the meeting at which the final rulemaking will be considered.

Electronic Comments

Comments may be submitted by e-mail to the Board at RegComments@state.pa.us or to the Commission at ag-scc@state.pa.us and must be received by November 5, 2004. A subject heading of the proposed rulemaking (Nutrient Management, CAFO/All Farms, or both) and a return name and address must be included in each transmission. If the sender does not receive an acknowledgement of electronic comments within 2 working days, the comments should be retransmitted to ensure receipt.

KATHLEEN A. MCGINTY,
Chairperson
Environmental Quality Board

DENNIS C WOLF,
Chairperson
State Conservation Commission

[Pa.B. Doc. No. 04-1662. Filed for public inspection September 3, 2004, 9:00 a.m.]

HEALTH CARE COST CONTAINMENT COUNCIL

Meetings Scheduled

The Health Care Cost Containment Council (Council) has scheduled the following meetings: Wednesday, September 8, 2004, Data Systems Committee meeting—10 a.m., Education Committee meeting—1 p.m.; Thursday, September 9, 2004, Council meeting—10 a.m. The meetings will be held in the conference room at the Council Office, 225 Market Street, Suite 400, Harrisburg, PA 17101. The public is invited to attend. Persons who need accommodation due to a disability who wish to attend the meetings should contact Cherie Elias, Health Care Cost Containment Council, 225 Market Street, Harrisburg, PA 17101, (717) 232-6787 at least 24 hours in advance so that arrangements can be made.

MARC P. VOLAVKA,
Executive Director

[Pa.B. Doc. No. 04-1663. Filed for public inspection September 3, 2004, 9:00 a.m.]

INDEPENDENT REGULATORY REVIEW COMMISSION

Notice of Comments Issued

Section 5(g) of the Regulatory Review Act (71 P. S. § 745.5(g)) provides that the Independent Regulatory Review Commission (Commission) may issue comments within 30 days of the close of the public comment period. The Commission comments are based upon the criteria contained in section 5.2 of the Regulatory Review Act (71 P. S. § 745.5b).

The Commission has issued comments on the following proposed regulation. The agency must consider these comments in preparing the final-form regulation. The final-form regulation must be submitted within 2 years of the close of the public comment period or it will be deemed withdrawn.

Reg. No.	*Agency/Title*	*Close of the Public Comment Period*	*IRRC Comments Issued*
57-233	Pennsylvania Public Utility Commission Passenger Service and Property and Household Goods Carriers (34 Pa.B. 3258 (June 26, 2004))	7/26/04	8/25/04

Pennsylvania Public Utility Commission Regulation # 57-233 (IRRC # 2410)

Passenger Service and Property and Household Goods Carriers

August 25, 2004

We submit for consideration the following comments that include references to the criteria in the Regulatory Review Act (71 P. S. § 745.5b) which have not been met. The Pennsylvania Public Utility Commission (PUC) must respond to these comments when it submits the final-form regulation. The public comment period for this regulation closed on July 26, 2004. If the final-form regulation is not delivered within 2 years of the close of the public comment period, the regulation will be deemed withdrawn.

1. Section 29.32. Death or incapacitation of a certificate holder.—Clarity.

Existing language in the first sentence of this section refers to a certificateholder "being legally declared insane." Is this terminology still used in legal proceedings, or is there updated terminology that has replaced "insane"?

The second sentence of the section references "appropriate proceedings." Section 29.61 also references "appropriate proceedings." Where can the reference to these proceedings be found?

2. Section 29.44. Accident reports.—Clarity.

The preamble states that "carriers must also provide a written report of the accident to the Commission within 30 days of the accident." However, the 30-day requirement in subsection (a) is being deleted. Does the PUC still intend to receive an accident report within 30 days?

3. Section 29.306. Consumer information.—Clarity.

This new section requires scheduled route carriers to post a PUC-issued complaint decal inside the vehicle which lists the phone number and website to be used to file a complaint or provide this information on the receipt. The same requirements apply to airport transfer carriers (§ 29.344) and paratransit and experimental service carriers (§ 29.356). The comparable provision for call or demand service (§ 29.318) requires only the decal and for limousine service (§ 29.336) both the decal and the information on the receipt are required.

The PUC staff has indicated that the intent is to allow a carrier in all categories to be able to choose which method of complaint information notices are used under each of these sections. The PUC's intent should be clearly delineated in the final-form regulation.

4. Section 29.314. Vehicle and equipment requirements.—Fiscal impact; Reasonableness.

Subsection (d) prohibits a vehicle that is more than 8 model years old from being operated in call or demand service. This provision is also found in § 29.333(e). Commentators have voiced objections to this provision asserting that it will impose substantial financial burdens on their operations. How did the PUC determine the age threshold? Has the PUC considered any alternative limitations, such as a mileage limitation?

5. Section 29.505. Criminal history.—Statutory authority; Legislative intent; Clarity.

Subsections (a) and (b)

Subsection (a) requires a common or contract carrier to obtain a criminal history record from the State Police before permitting a driver to operate a vehicle in its service. Subsection (b) requires that the carrier obtain a new record every 2 years.

We object to these provisions for two reasons. First, there is no statutory authority for a carrier to obtain a criminal history record. Other than certain criminal justice agencies and licensing authorities, the Criminal History Record Information Act authorizes only an individual or his legal representative to obtain and review his criminal history information (18 Pa.C.S. § 9151(a)).

Second, there is nothing in the provisions of the Public Utility Code governing certificates of public convenience (66 Pa.C.S. §§ 1101—1104) which authorizes the PUC to require that either carriers or drivers obtain this information. Whenever the legislature intended to authorize an agency to require an applicant for licensure or employment to submit his criminal history information, it provided for that authority in clear and unmistakable terms. Some examples of statutory provisions where this authority has been granted relate to humane society police (3 P. S. § 456.4), mortgage brokers (63 P. S. § 456.310(c)(3)) and applicants for nurse aide training programs (63 P. S. § 674(a)(1)). Additionally, we note that the USA Patriot Act of 2001 (49 U.S.C.A. § 5103a) requires commercial drivers who transport hazardous materials to submit a criminal history background check. This requirement does not apply to commercial drivers who transport other materials.

Subsection (d)

Subsection (d) prohibits a carrier from allowing a person convicted of a felony or misdemeanor involving moral turpitude from operating one of its vehicles, as long as the person remains under the supervision of the courts or the corrections system.

We find this provision to be unclear. The regulation does not define "crime of moral turpitude." Some commentators have understandably expressed confusion as to what crimes are included in this category. If the PUC decides to retain this provision, it should include a definition of this phrase.

A similar provision exists in § 31.134(a), (b) and (d). The same concerns previously outlined should be addressed in these subsections, as well.

6. Section 31.121. Information for shippers.—Fiscal impact; Reasonableness; Need; Clarity.

Subsection (a)

This subsection contains an Information for Shippers form that a household goods carrier is required to provide to a prospective shipper when the shipper requests moving service and before the carrier prepares an order for service. The following comments relate to the language in the form.

Inventory

Under this section of the form, the carrier is required to "complete a detailed inventory listing all items to be moved and their condition." Additionally, the carrier is required to assign an identification number to all items. This inventory requirement also appears in § 31.133(a). It is not contained in the existing regulations.

Commentators have noted that inventories are routinely performed on moves over 40 miles. However, they have objected to this requirement for moves under 40 miles. They assert that a detailed inventory will be expensive and time consuming for both the carrier and the shipper. One carrier notes that it takes approximately 20 to 30 minutes to inventory one average room of household goods. At the conclusion of the move, additional time would be required to verify that the inventoried items were delivered. Since the shipper is charged by the hour in these types of moves, the overall cost for a move could significantly increase. Commentators also note that the additional time required for inventories will place a financial burden on carriers since they will have to either schedule fewer moves per day, or hire additional employees.

Based on discussion with PUC staff, we understand that Federal regulations require inventories for interstate moves. The preamble, however, does not explain the need to apply this requirement to all moves. Additionally, it is unclear if this requirement is based on a significant complaint volume related to the lack of a detailed inventory on moves under 40 miles. The PUC should explain the basis for this requirement.

Additionally, commentators have suggested that the shipper be given the right to waive the inventory requirement for moves under 40 miles. We agree that a waiver provision would maintain the consumer protections associated with the inventory while providing flexibility for shippers who may not want to pay the additional cost of having an inventory prepared. The PUC should include this option in the final-form regulation.

Loss and Insurance

This section of the form provides that in the case of loss or damage to a shipper's goods, the shipper is protected up to 60¢ per pound per article. The existing regulation protected the shipper up to 30¢ per pound. The PUC should explain how it determined the proposed increase to 60¢ per pound.

Proof of Damage/Receipt

This section of the form states, in part, "Do not sign the delivery receipt if it contains language purporting to release or discharge the carrier from liability." Similar language appears in proposed § 31.132(f). Some commentators have asserted that the *Pennsylvania Code* and existing tariffs establish limitations on a carrier's liability in certain situations. Are there instances in which the carrier would be released from liability? If so, these instances should be identified in the final-form regulation.

Subsection (c)

This subsection requires that the form be provided to the shipper "at least 48 hours prior to the move." Commentators have noted that some short distance moves are arranged quickly, and in these instances, it may not be possible to comply with the 48-hour requirement. Has the PUC considered allowing the shipper to waive the 48-hour requirement in these instances?

7. Section 31.122. Estimated cost of services.—Clarity.

Subsection (a) requires the carrier to prepare the estimated cost of services on a form and provide it "to the shipper prior to the move . . . ." Does the PUC intend this form to be given before the move begins? Or is it intended to be given 48 hours prior to that time, consistent with the requirements for delivering the "Information for Shippers" form in § 31.121? The final-form regulation should specify the time frame within which the estimate must be provided.

8. Section 31.123. Delivery when charges exceed estimates.

The preamble states that the PUC is amending this section to replace "money order" with "cashier's check." However, this change does not appear in the regulation. PUC staff explained that the sentence which refers to a money order is no longer necessary since the amendments to the Information for Shippers form address payment options. Therefore, when the PUC submits the final-form regulation, it should update the preamble to reflect the amendments in the regulation.

9. Miscellaneous clarity issue.

Electronic communication

The proposed regulation contains numerous requirements related to reports to the PUC and documents for customers. For example, § 29.313 requires drivers of vehicles in call or demand services to keep log sheets for each shift that is operated. Section 31.121 requires a carrier to provide shippers with an Information for Shippers form. The regulation does not address the issue of electronic versions of these various reports or forms. The PUC should consider allowing carriers to meet the requirements of the regulation through electronic communication methods when available and practical.

JOHN R. MCGINLEY, Jr.,
Chairperson

[Pa.B. Doc. No. 04-1664. Filed for public inspection September 3, 2004, 9:00 a.m.]

INSURANCE DEPARTMENT

Allstate Insurance Company; Private Passenger Auto Rate Filing

On August 19, 2004, the Insurance Department (Department) received from Allstate Insurance Company a filing for a rate level change for private passenger automobile insurance.

The company requests an overall 4.2% increase amounting to $27.711 million annually, to be effective November 15, 2004.

Unless formal administrative action is taken prior to October 18, 2004, the subject filing may be deemed approved by operation of law.

The filing is available for review on the Department's website: www.ins.state.pa.us. To access the filing, under "Quick Links," click "Rate filings published in the PA Bulletin."

Copies of the filing are also available for public inspection, by appointment, during normal working hours at the Department's regional offices in Harrisburg, Philadelphia and Pittsburgh.

Interested parties are invited to submit written comments, suggestions or objections to Ken Creighton, ACAS, Insurance Department, Insurance Product Regulation and Market Enforcement, 1311 Strawberry Square, Harrisburg, PA 17120, kcreighton@state.pa.us within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 04-1665. Filed for public inspection September 3, 2004, 9:00 a.m.]

Application for Domestic Certificate of Authority

Physicians Insurance Program Reciprocal Exchange has applied for a Certificate of Authority to operate as a domestic insurance reciprocal exchange in this Commonwealth. The filing was made under The Insurance Company Law of 1921 (40 P. S. §§ 341—991). Persons wishing to comment on the application are invited to submit a written statement to the Insurance Department (Department) within 30 days from the date of this issue of the *Pennsylvania Bulletin*. Written statements must include name, address and telephone number of the interested party, identification of the application to which the statement is addressed and a concise statement with sufficient detail and relevant facts to inform the Department of the exact basis of the statement. Written statements should be sent to Robert Brackbill, Company Licensing Division, Insurance Department, 1345 Strawberry Square, Harrisburg, PA 17120, fax (717) 787-8557, rbrackbill@state.pa.us.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 04-1666. Filed for public inspection September 3, 2004, 9:00 a.m.]

Continental Casualty Company; 35% Rate Increase Filing for 22 Long Term Care Policy Forms; Rate Filing

Continental Casualty Company (CNA) is requesting approval to increase the premium 35% for Long Term Care Series P1-N0022-A37, P1-N0022-B37, P1-N0022-A87 and P1-N0022-B87. CNA is seeking a 35% increase for Series P1-N0023-A37, P1-N0023-B37, P1-N0023-A87 and P1-N0023-B87. CNA is seeking a 35% increase for Series P1-N0026-A37, P1-N0026-B37, P1-N0026-A87 and P1-N0026-B87. CNA is seeking a 35% increase for Series P1-N0027-A37, P1-N0027-B37, P1-N0027-A87 and P1-N0027-B87. CNA is seeking a 35% increase for Series P1-N0030-A37, P1-N0030-A87, P1-N0031-A37, P1-N0031-A87, P1-N0034-A37 and P1-N0034-A87. The average premium will increase from $1,529 to $2,064 and will affect 4,655 policyholders in this Commonwealth.

Unless formal administrative action is taken prior to November 18, 2004, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's (Department) website: www.ins.state.pa.us. To access the filing, select "Consumer Information" on the left side. Under "General Information," click on "Notices." The pdf copy is at the "Filing.pdf" link following the name of the filing.

Copies of the filing are also available for public inspection, by appointment, during normal working hours at the Department's regional office in Harrisburg.

Interested parties are invited to submit written comments, suggestions or objections to James Laverty, Actuary, Insurance Department, Insurance Product Regulation and Market Enforcement, Room 1311, Strawberry Square, Harrisburg, PA 17120, jlaverty@state.pa.us within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 04-1667. Filed for public inspection September 3, 2004, 9:00 a.m.]

Terry Cook; Prehearing

Appeal of Terry Cook under 40 P. S. §§ 991.2101—991.2193; UMPC Health Plan; Doc. No. HC04-08-016

The proceedings in this matter will be governed by 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law), 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) and any other relevant procedure provisions of law.

A prehearing telephone conference initiated by the Administrative Hearings Office shall be conducted on October 5, 2004, at 11 a.m. Each party shall provide a telephone number to be used for the telephone conference to the Hearings Administrator on or before August 31, 2004. A date for a hearing shall be determined, if necessary, at the prehearing telephone conference.

On or before September 21, 2004, Terry Cook shall file with the Administrative Hearings Office and serve upon Catrina Jackson, UPMC Health Plan, One Chatham Center, Pittsburgh, PA 15219 (or another representative entering an appearance in these proceedings) a state-

ment: (1) containing a chronology of all medical provider visits, communications and referrals relative to the August 8, 2003, surgery, including names and dates; (2) containing a chronology of all communications Highmark Blue Cross/Blue Shield relative to the surgery; (3) identifying Terry Cook's primary care physician and the period of time the physician has been so; and (4) accompanied by all documentation identified in the chronologies. Failure to comply with this paragraph may cause a party to waive claims and/or defenses.

On or before September 21, 2004, UPMC shall file and serve a statement: (1) containing a chronology of all communications with Terry Cook, his medical providers and Highmark Blue Cross/Blue Shield relative to the surgery which took place prior to the first level complaint submission in this matter; (2) accompanied by all documentation identified in the chronology; and (3) accompanied by plan documents applicable to Terry Cook. Failure to comply with this paragraph may cause a party to waive claims and/or defenses.

Motions preliminary to those at the hearing, protests, petitions to intervene or notices of intervention, if any, must be filed on or before September 27, 2004, with the Hearings Administrator, Administrative Hearings Office, Capitol Associates Building, Room 200, 901 North Seventh Street, Harrisburg, PA 17102. Answer to petitions to intervene shall be filed on or before October 1, 2004.

Persons with a disability who wish to attend the administrative hearing and require an auxiliary aid, service or other accommodation to participate in the hearing should contact Jeffrey Wallace, Agency Coordinator, (717) 787-4298.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 04-1668. Filed for public inspection September 3, 2004, 9:00 a.m.]

Ebersole-Kohl Zerby-Consoli West Associates, P. C.; Prehearing

Appeal of Ebersole-Kohl Zerby-Consoli West Associates, P. C. under the Medical Care Availability and Reduction of Error (MCARE) Act (40 P. S. §§ 1303.101—1303.910); Doc. No. MM04-08-014

On or before September 15, 2004, the appellant shall file a concise statement setting forth the factual and/or legal basis for the disagreement with MCARE's July 1, 2004, determination. The statement may be in narrative form or in numbered paragraphs, but in either event shall not exceed two pages. A prehearing telephone conference initiated by this office is scheduled for October 6, 2004, at 10:30 a.m. Each party shall provide a telephone number to be used for the telephone conference to the Hearings Administrator on or before August 31, 2004. A hearing date shall be determined, if necessary, at the prehearing telephone conference.

Motions preliminary to those at hearing, protests, petitions to intervene or notices of intervention, if any, must be filed on or before September 24, 2004, with the Hearings Administrator, Administrative Hearings Office, Capitol Associates Building, Room 200, 901 North Seventh Street, Harrisburg, PA 17102. Answer to petitions to intervene, if any, shall be filed on or before October 1, 2004.

Persons with a disability who wish to attend the administrative hearing and require an auxiliary aid, service or other accommodation to participate in the hearing should contact Jeffrey Wallace, Agency Coordinator, (717) 787-4298.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 04-1669. Filed for public inspection September 3, 2004, 9:00 a.m.]

Harrisburg Jet Center, Inc.; Prehearing

Appeal of Harrisburg Jet Center, Inc. under the Storage Tank and Spill Prevention Act; Underground Storage Tank Indemnification Fund; USTIF File No. 04-0008(M); Doc. No. UT04-08-025

The proceedings in this matter will be governed by 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law), 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) and any other relevant procedure provisions of law.

A prehearing telephone conference shall be held on October 19, 2004, at 11 a.m. A date for a hearing shall be determined, if necessary, at the prehearing telephone conference. Each party shall provide the Hearings Administrator a telephone number to be used for the telephone conference on or before August 31, 2004. Motions preliminary to those at hearing, protests, petitions to intervene, notices of appearance or notices of intervention, if any, must be filed with the Hearings Administrator, Administrative Hearings Office, Room 200, Capitol Associates Building, 901 North Seventh Street, Harrisburg, PA 17102 on or before October 8, 2004. Answers to petitions to intervene, if any, shall be filed on or before October 15, 2004.

Persons with a disability who wish to attend the administrative hearing and require an auxiliary aid, service or other accommodation to participate in the hearing should contact Jeffrey Wallace, Agency Coordinator, (717) 787-4298.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 04-1670. Filed for public inspection September 3, 2004, 9:00 a.m.]

Review Procedure Hearings; Cancellation or Refusal of Insurance

The following insureds have requested a hearing as authorized by the act of June 17, 1998 (P. L. 464, No. 68), in connection with the termination of the insureds' automobile policies. The hearings will be held in accordance with the requirements of the act; 1 Pa. Code Part II (relating to the General Rules of Administrative Practice and Procedure); and 31 Pa. Code §§ 56.1—56.3 (relating to Special Rules of Administrative Practice and Procedure). The administrative hearings will be held in the Insurance Department's regional office in Harrisburg, PA. Failure by an appellant to appear at a scheduled hearing may result in dismissal with prejudice.

The following hearings will be held in the Administrative Hearings Office, Capitol Associates Building, Room 200, 901 N. Seventh Street, Harrisburg, PA 17102.

Appeal of Brian and Kelly Wisneski; file no. 04-181-07346; Erie Insurance Exchange; doc. no. P04-08-019; September 28, 2004, 2 p.m.

Appeal of Peter S. Kubat; file no. 04-193-06605; Erie Insurance Exchange; doc. no. P04-08-017; October 7, 2004, 10:30 a.m.

Parties may appear with or without counsel and offer relevant testimony or evidence. Each party must bring documents, photographs, drawings, claims files, witnesses, and the like, necessary to support the party's case. A party intending to offer documents or photographs into evidence shall bring enough copies for the record and for each opposing party.

In some cases, the Insurance Commissioner (Commissioner) may order that the company reimburse an insured for the higher cost of replacement insurance coverage obtained while the appeal is pending. Reimbursement is available only when the insured is successful on appeal, and may not be ordered in all instances. If an insured wishes to seek reimbursement for the higher cost of replacement insurance, the insured must produce documentation at the hearing which will allow comparison of coverages and costs between the original policy and the replacement policy.

Following the hearing and receipt of the stenographic transcript, the Commissioner will issue a written order resolving the factual issues presented at the hearing and stating what remedial action, if any, is required. The Commissioner's Order will be sent to those persons participating in the hearing or their designated representatives. The Order of the Commissioner may be subject to judicial review by the Commonwealth Court.

Persons with a disability who wish to attend an administrative hearing and require an auxiliary aid, service or other accommodation to participate in the hearing should contact Jeffrey Wallace, Agency Coordinator, (717) 787-4298.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 04-1671. Filed for public inspection September 3, 2004, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Customer Information to be Maintained and Provided by Electric Distribution Companies to Electric Generation Suppliers

Public Meeting held
August 19, 2004

Commissioners Present: Terrance J. Fitzpatrick, Chairperson; Robert K. Bloom, Vice Chairperson; Glen R. Thomas; Kim Pizzingrilli; Wendell F. Holland

Customer Information to be Maintained and Provided by Electric Distribution Companies to Electric Generation Suppliers; Doc. No. M-00041819

Tentative Order

By the Commission:

Background

This Commonwealth's retail electric sector was opened to competition by means of the Electricity Generation Customer Choice and Competition Act (act) in 1997. 66 Pa.C.S. § 2801, et seq. Subsequent to the passage of the act, the Commission issued a number of orders to assure a "fair and orderly transition from the current regulated structure to a structure under which retail customers will have direct access to a competitive market for the generation and sale or purchase of electricity." 66 Pa.C.S. § 2802(13).

In one of these orders, the Commission held that electric distribution companies (EDC) must compile and make available certain customer information to electric generation suppliers (EGS). *Procedures Applicable to Electric Distribution Companies and Electric Generation Suppliers During the Transition to Full Retail Choice*, Doc. No. M-00991230 (Order entered May 13, 1999). The Commission wished to ensure the orderly transition to the period when all customers had the ability to select their own supplier. The Commission determined that the release of this information was necessary to level the playing field between the supplier affiliates of EDCs and new market entrants.

Under the terms of this Order, the Commission required EDCs to make available a customer's name, address, account number, rate class and load data to EGSs. Load data was defined as the 12 months historical kWh usage, 12 months of historical demand, the load curve for the customer class or subclass or actual data for those with hourly meters and load strata information. Telephone numbers were specifically excluded from the customer information lists to be provided to EGSs. Customers were given the option of restricting the release of all of their information through a negative check-off process.

The Commission has not revisited this issue since January 2000. Some EDCs continue to maintain and provide updated customer information to EGSs under the terms of separate, Commission approved agreements. Others provide outdated lists from 1999 or simply have discontinued the practice all together. One company has voluntarily continued the practice for reasons of administrative efficiency.

Under the terms of the act, the Commission was charged with various objectives, including ensuring customer choice:

> Consistent with the time line set forth in section 2806 (relating to implementation, pilot programs and performance-based rates), the commission shall allow customers to choose among electric generation suppliers in a competitive generation market through direct access. Customers should be able to choose among alternatives such as firm and interruptible service, flexible pricing and alternate generation sources, including reasonable and fair opportunities to self-generate and interconnect. These alternatives may be provided by different electric generation suppliers.

The Commission is also charged with promulgating regulations to ensure that customers receive the necessary information to make informed choices about purchasing electric services:

> The commission shall establish regulations to require each electric distribution company, electricity sup-

plier, marketer, aggregator and broker to provide adequate and accurate customer information to enable customers to make informed choices regarding the purchase of all electricity services offered by that provider. Information shall be provided to consumers in an understandable format that enables consumers to compare prices and services on a uniform basis.

66 Pa.C.S. § 2807(d)(2).

Notwithstanding completion of the transition to full retail choice for all EDC customers in 2000, the Commission also has a continuing obligation to maintain a properly functioning and fully competitive retail market. 66 Pa.C.S. § 2811. To that end, we believe that EDCs should continue to make available a reasonable amount of customer information to EGSs, the costs for which they may recover. The availability of this information fosters a more level playing field between the supplier affiliates of EDCs and alternative EGSs. Customers will in turn have more opportunities to make informed decisions regarding generation supply options.

Current Approaches

As noted, several EDCs currently make available up to date customer information to EGSs. These include Duquesne Light Company (Duquesne) and PECO Energy Company (PECO). A brief review of their approaches follows.

Duquesne makes available to EGSs a customer's name, address, rate class and account number. Customers do not have the ability to restrict the release of this information. These terms were a consequence of Duquesne's POLR II settlement. *Petition of Duquesne Light Company for Approval of Plan for Post-Transition Period Provider Of Last Resort Service*, Doc. No. R-00974104 (Order entered December 20, 2000). This obligation will terminate with the expiration of the settlement on December 31, 2004.

PECO provides customer information to EGSs under the terms of its Unicom merger settlement. *Application Of PECO Energy Company, Pursuant To Chapters 11, 19, 21, 22 And 28 Of The Public Utility Code, For Approval Of (1) A Plan Of Corporate Restructuring, Including The Application Creation Of A Holding Company And (2) The Merger Of The Newly Formed Holding Company And Unicom Corporation*, Doc. No. A-110550F0147 (Order entered June 22, 2000). PECO does not provide information on those customers that have elected to restrict the release of their information.

PECO maintains two separate lists for customers who have not completely restricted the release of information. Both lists include the name, address, rate class and account number of customers. However, one list is for customers who have requested that their load data be kept confidential. The other list is for customers who have not restricted the release of load data. This additional load information includes strata, registered peak demand, load factor and capacity obligation for customers. Under the terms of the Unicom merger settlement, this obligation to provide customer information was set to expire on January 31, 2004. However, it is the Commission's understanding that PECO will continue to make this information available voluntarily.

Discussion

1. *Information to be Made Available*

Neither the act nor Commission regulations expressly identify specific customer information that must be provided to EGSs. The regulations do place limited restrictions on the release of customer information:

(a) An EDC or EGS may not release private customer information to a third party unless the customer has been notified of the intent and has been given a convenient method of notifying the entity of the customer's desire to restrict the release of the private information. Specifically, a customer may restrict the release of either the following:

(1) The customer's telephone number.

(2) The customer's historical billing data.

(b) Customers shall be permitted to restrict information as specified in subsection (a) by returning a signed form, orally or electronically.

(c) Nothing in this section prohibits the EGS and EDC from performing their mandatory obligations to provide electricity service as specified in the disclosure statement and in the code.

52 Pa. Code § 54.8

Accordingly, there is no general legal prohibition against EDCs making available customer information to third parties. Nor do customers have the right to restrict the release of all of their information.

The Commission proposes to reinstate the requirement that we established during the transition to full retail choice. At a minimum, EDCs will be required to provide the names, account numbers, addresses and load data of its retail distribution customers to licensed EGSs.

2. *Manner of Availability*

The information shall be provided in a format that is readily accessible by EGSs. Customer information is currently provided by some EDCs in electronic formats, including CD-ROMs through the regular mail and the electronic transfer of the information over the Internet. Given the rapid change of data storage and transfer technologies over time, the Commission does not wish to be proscriptive. Accordingly, EDCs shall continue to make available this information in electronic formats that are generally accepted for commercial transactions within the private business community.

3. *Cost Recovery for this Service*

The Commission believes that EDCs should be able to recover the reasonable costs of compiling and providing this data to EGSs. The Commission welcomes input on the definition of reasonable costs.

Finally, it bears noting that although we are presently proposing the adoption of guidelines regarding the disclosure of certain customer information to EGSs, after comments and finalization of these guidelines the Commission reserves the right to issue formal and binding regulations covering this subject matter. Nevertheless, even in the absence of regulations, an individual EDC that appears to discriminate by providing a greater degree of customer information to its supplier affiliate than to nonaffiliated EGSs would raise issues of anticompetitive conduct under section 2811 of the act that may require, on a case by case basis, investigation by the Commission and/or referral to the Attorney General and other entities. See 66 Pa.C.S. § 2811(b) and (c) and 52 Pa. Code § 54.122.

The Commission invites all interested parties to provide comments on these guidelines for the customer information to be maintained and provided by EDCs to EGSs; *Therefore,*

It Is Ordered That:

1. Comments regarding this Tentative Order be filed with the Commission no later than 30 days after this Tentative Order is published in the *Pennsylvania Bulletin*.

2. The Secretary's Bureau serve a copy of this Tentative Order on all EDCs, all licensed EGSs, the Office of Consumer Advocate, Office of Small Business Advocate and the Office of Trial Staff.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 04-1672. Filed for public inspection September 3, 2004, 9:00 a.m.]

Order

Public Meeting held
August 19, 2004

Commissioners Present: Terrance J. Fitzpatrick, Chairperson; Robert K. Bloom, Vice Chairperson; Glen R. Thomas; Kim Pizzingrilli; Wendell F. Holland

Petition of the Brotherhood of Unified Taxi Drivers/Owners; S. P. 28208

Order

By the Commission:

Before us for consideration is the Letter/Petition for Reconsideration (Petition) filed on July 14, 2004, by the Brotherhood of Unified Taxi Drivers/Owners.

History of the Proceeding

At its June 10, 2004, public meeting, the Commission approved a temporary fuel surcharge for motor carriers providing call and demand service, airport transfer service and paratransit service. The temporary fuel surcharge became effective on June 14, 2004, under Special Permission No. 28208 and will terminate on June 12, 2005. The Bureau of Transportation and Safety was directed to investigate the merits of the fuel surcharge on a quarterly basis, beginning September 30, 2004, or as otherwise directed by the Commission.

The temporary fuel surcharge was granted in response to the Commission's receipt of verbal and written requests from passenger motor carriers, including a written request filed by the Pennsylvania Taxicab and Paratransit Association (PTPA) on behalf of its 119 members and a petition filed by Lehigh Valley Taxicab Co., Inc. The requesting parties and the petitioner had cited the recent, unanticipated rise in retail gasoline prices.

Under 66 Pa.C.S. § 1308(a), the Commission permitted call or demand, paratransit and airport transfer carriers to recover increased fuel costs. Call and demand carriers were authorized to charge a temporary fuel surcharge of $0.30 per trip for each paying passenger. Paratransit and airport transfer carriers were authorized to charge a temporary fuel surcharge of $0.70 per trip for each paying passenger.

On July 14, 2004, the Petitioner filed the instant Petition requesting the Commission reconsider the amount of the fuel surcharge for taxicabs providing transportation in Philadelphia.

Discussion

The Public Utility Code establishes a party's right to seek relief following the issuance of our final decisions under 66 Pa.C.S. § 703(f) and (g), regarding rehearings, rescission and amendment of orders. Requests for relief must be consistent with 52 Pa. Code § 5.572(b), regarding petitions for relief following the issuance of a final decision. The standards for a petition for relief following a final decision were addressed in *Duick v. PG&W*, 56 Pa. PUC 553 (1982) (*Duick*).

Duick held that a petition for rehearing under section 703(f) of the Public Utility Code must allege newly discovered evidence not discoverable through the exercise of due diligence prior to the close of the record. *Duick*, at 558. A petition for reconsideration or modification under section 703(g), however, may properly raise any matter designed to convince us that we should exercise our discretion to amend, modify or rescind a prior Order, in whole or in part. Furthermore, the petitions are likely to succeed only when they raise "new and novel arguments" not previously heard or considerations which appear to have been overlooked or not addressed by us. *Duick*, at 559. *AT&T v. Pa. PUC*, 568 A.2d 1362 (Pa. Cmwlth Ct. 1990), further elucidated the standards for rehearing, reconsideration, revision or rescission.

The Brotherhood of Unified Taxi Drivers/Owners failed to file its petition for reconsideration within 15 days after the Commission's temporary fuel surcharge Order was entered, as required by 52 Pa. Code § 5.572. While the Petitioner attempted to file its petition by facsimile on June 18 and June 27, neither of the faxed petitions contained the appropriate verification required by 52 Pa. Code § 1.36. Further, our regulations prohibit filing petitions by facsimile. 52 Pa. Code § 1.11(c). On July 14, the Petitioner filed its verified Petition in writing with the Secretary of the Commission. Notwithstanding the tardiness, we will nonetheless consider the petition given the significant concerns involved.

Petitioner states that the temporary fuel surcharge of $0.30 per trip per paying passenger for call and demand carriers is "wholly insufficient." Petitioner states that the average fuel cost for Philadelphia taxi drivers has risen from $20 to $22 per day, to $30 to $33 per day. Petitioner alleges that most drivers average 15 to 25 trips per shift, and that the additional $4.50 to $7.50 obtained from the fuel surcharge fails to cover the additional fuel costs. Petitioner states that the average retail price of fuel in Philadelphia is $2.30 "per gallon for the required octane rate for our vehicles." Petitioner did not provide any statistical information about the average length of trip or the average miles per gallon for its typical vehicle, nor did the Petitioner provide rationale for the need to use premium grade gasoline.

Notwithstanding the lack of statistical information, we believe that we can address the Petitioner's allegation by using the information contained in our June 10 Order. In our analysis to determine the appropriate temporary fuel surcharge amount, the Commission not only compared the retail price of fuel over the past 2 years, it also considered the average length of a trip by taxi carrier and the average miles per gallon for a taxi vehicle. It is believed that premium gasoline must be used in most Philadelphia Medallion taxicabs because full-size sedans,

such as the Chevrolet Caprice or Ford Crown Victoria, are utilized as taxicabs. This fact is substantiated by the Philadelphia District enforcement staff. These vehicles suffer poor engine performance unless premium gasoline is used. In our June 10 Order, the Commission compared the retail cost of regular gasoline in 2004 to the cost in 2002. According to historical information obtained from the Department of Energy's website, the retail cost of premium gasoline on May 31, 2002, was $1.59, while the retail cost of premium gasoline on May 31, 2004, was $2.28.[1] The average cost of a taxicab trip was calculated by dividing 6.8 miles (the average trip length for cabs as determined by the PTPA) by 11.5 (the average miles per gallon per vehicle provided by PTPA by its National organization) to first obtain the average amount of fuel used per trip of .45 gallon. This average amount of fuel per trip is then multiplied by the cost of fuel in both May 2002 and May 2004 to obtain the average cost of fuel per trip. The calculations reveal that the fuel cost per taxi trip in 2002 was $0.72, while the fuel cost per trip in 2004 was $1.02. The $0.30 difference in fuel costs for vehicles utilizing premium gas is the same difference found by the Commission for vehicles using a regular grade of gasoline.

The Petitioner also requests that the temporary fuel surcharge be applied to the flat rate that is charged to passengers traveling from the Philadelphia International Airport to the Center City (defined as the area of Philadelphia encompassed by Spring Garden Street to the north, by the Delaware River to the east, by South Street to the south and by the Schuylkill River to the west) and vice versa. Our Order of June 10 provided for the collection of the temporary fuel surcharge on all trips, whether calculated on a meter, by odometer mileage or by zone.

The Petitioner alleges that taxicab operators are discriminatorily treated by the Commission's June 10 Order, since it permits paratransit and airport transfer carriers to collect the fuel surcharge from each passenger. The June 10 temporary fuel surcharge provided that call and demand carriers, airport transfer carriers and paratransit carriers are authorized to charge the temporary fuel surcharge to each paying passenger. In call and demand service, the passenger normally hires the vehicle and its driver. Therefore, the passenger or group of passengers traveling to the same destination pay a single charge. In airport transfer carriage, passengers are charged individually. Most paratransit transportation charges are on an individual basis. While we recognize the temporary fuel surcharge may unduly benefit carriers depending on the particular circumstances of the trip, we also need to bear in mind our obligation to address an industry-wide problem "without creating a chaotic rate structure impossible to manage or police." *Emergency Fuel Surcharge*, 47 Pa. P. U. C. 389, 391 (1974). We believe that the June 10 Order adequately addresses the unique needs of each type of transportation.

Although not part of the Petitioner's allegations in its Petition, the Commission will use this opportunity to clarify another matter related to the June 10 Order. We have become aware through numerous telephonic inquiries that many call and demand carriers utilizing meters to calculate charges have encountered difficulty collecting the fuel surcharge unless it appears in the total charge displayed on the meter. We recognize that some taxi meter models may not register the surcharge as part of the total charge, and that some carriers have already utilized the surcharge feature of their meter for other miscellaneous charges and are unable to add another surcharge amount. Therefore, we will permit call and demand carriers to add the $0.30 fuel surcharge to the initial mile increment or flag drop. It is recognized that call and demand carriers will need to reprogram or recalibrate their meters to accomplish this change, and carriers are strongly reminded to ensure the meter is resealed following the reprogramming or recalibration. The Commission is waiving its requirements in 52 Pa. Code § 30.31(6)(ii), and permitting Medallion taxi owners to reseal their meters with a meter seal provided by the meter repair center rather than the Commission issued meter seal.

Accordingly, for the previous reasons, the Petition of the Brotherhood of Unified Taxi Drivers/Owners is denied. *Therefore,*

It Is Ordered That:

1. The petition of the Brotherhood of Unified Taxi Drivers/Owners is denied.

2. The Secretary of this Commission shall duly certify this order and deposit same with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 04-1673. Filed for public inspection September 3, 2004, 9:00 a.m.]

[1] By comparison, the average retail cost of regular gasoline on May 31, 2002 was $1.35 and $2 on May 31, 2004.

Service of Notice of Motor Carrier Applications

The following temporary authority and/or permanent authority applications for the right to render service as a common carrier or contract carrier in this Commonwealth have been filed with the Pennsylvania Public Utility Commission. Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities). A protest shall indicate whether it applies to the temporary authority application, the permanent authority application, or both. Filings must be made with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant by September 27, 2004. Documents filed in support of the applications are available for inspection and copying at the Office of the Secretary between 8 a.m. and 4:30 p.m., Monday through Friday, and at the business address of the respective applicant.

Applications of the following for approval to *begin* operating as *common carriers* for transportation of *persons* as described under each application.

A-00121011. Mont Alto Ambulance Association (P. O. Box 491, Mont Alto, Franklin County, PA 17237)—persons in paratransit service, between points in the County of Franklin, and from points in said county, to points in Pennsylvania, and return.

A-00121040. Robert W. Smith (12545 Roger Drive, Espyville, Crawford County, PA 16424)—persons in paratransit service, between points in the Counties of Crawford, Erie, Mercer and Warren, and from points in said counties, to points in Pennsylvania, and return, limited to the transportation of persons whose personal convictions prevent them from owning or operating motor vehicles.

A-00121038. Family Transport Services, Inc. (125 Elm Ave., Sharon, Mercer County, PA 16146), a Commonwealth corporation—persons in paratransit service, between points in the City of Sharon, Mercer County, and within an airline distance of 50 statute miles of the limits thereof, and from points in said area, to points in Pennsylvania, and return. *Attorney:* Richard F. Moroco, 194 East State Street, P. O. Box 3066, Sharon, PA 16146.

A-00121022. Integrity Transportation Services, LLC (2340 Overlook Drive, Aston, Delaware County, PA 19014), a limited liability company of the Commonwealth—persons, in limousine service, between points in the Counties of Montgomery, Chester, Bucks and Delaware, and the City and County of Philadelphia, and from points in said territory, to points in Pennsylvania, and return. *Attorney*: Gerald S. Segal, The Windsor Penthouse Suite, 1700 Benjamin Franklin Parkway, Philadelphia, PA 19103.

Application of the following for *amendment* to the certificate of public convenience approving the operation of motor vehicles as *common carriers* for transportation of *persons* as described under the application.

A-00100359, Folder 2, Am-D. Baker's Transportation Service, Inc. (1400 W. First Street, Oil City, Venango County, PA 16301), a corporation of the Commonwealth—persons, upon call or demand in the City of Franklin, Venango County: *So As To Permit* the transportation of persons, upon call or demand, in the Township of Cranberry, Venango County. *Attorney*: John A. Pillar, 680 Washington Road, Suite B-101, Pittsburgh, PA 15228-1925.

Application of the following for approval of the *beginning* of the exercise of the right and privilege of operating motor vehicles as *common carriers* for the transportation of *persons* by *transfer of rights* as described under the application.

A-00121027. Manuel Cardona and Julio Morales, Copartners t/d/b/a Penn Central Taxi (237 Evergreen Street, Harrisburg, Dauphin County, PA 17104)—persons, upon call or demand, in the Counties of Dauphin and Cumberland; which is to be a transfer of all the right authorized under the certificate issued at A-00118453, to Albit Garcia t/d/b/a Penn Central Taxi, subject to the same limitations and conditions. *Attorney*: George W. Gekas, 2215 Forest Hills Drive, Suite 37, Harrisburg, PA 17112-1099.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 04-1674. Filed for public inspection September 3, 2004, 9:00 a.m.]

Telecommunications

A-311314F7001. Verizon North Inc. and OLCR, Inc. Joint petition of Verizon North Inc. and OLCR, Inc. for approval of adoption of an interconnection agreement under section 252(i) of the Telecommunications Act of 1996.

Verizon North Inc. and OLCR, Inc., by its counsel, filed on August 16, 2004, at the Pennsylvania Public Utility Commission (Commission), a joint petition for approval of adoption of an interconnection agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the Verizon North Inc. and OLCR, Inc. joint petition are on file with the Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 04-1675. Filed for public inspection September 3, 2004, 9:00 a.m.]

Telecommunications

A-311314F7000. Verizon Pennsylvania Inc. and OLCR, Inc. Joint petition of Verizon Pennsylvania Inc. and OLCR, Inc. for approval of adoption of an interconnection agreement under section 252(i) of the Telecommunications Act of 1996.

Verizon Pennsylvania Inc. and OLCR, Inc., by its counsel, filed on August 16, 2004, at the Pennsylvania Public Utility Commission (Commission), a joint petition for approval of adoption of an interconnection agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the Verizon Pennsylvania Inc. and OLCR, Inc. joint petition are on file with the Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 04-1676. Filed for public inspection September 3, 2004, 9:00 a.m.]

Water Service

A-212285F0117. Pennsylvania American Water Company and Snowshoe Condominium Association. Application of Pennsylvania American Water Company and Snowshoe Condominium Association for approval of: (1) the transfer, by sale, of the water works property and rights of the Snowshoe Condominium Association to Pennsylvania American Water Company; and (2) the beginning by Pennsylvania American Water Company of water service to the public in additional portions of Mount Pocono Borough, Monroe County, presently being served by Snowshoe Condominium Association.

Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities). Filings must be made with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant, on or before September 20, 2004. The documents filed in

support of the application are available for inspection and copying at the Office of the Secretary between 8 a.m. and 4:30 p.m., Monday through Friday, and at the applicant's business address.

Applicant: Pennsylvania American Water Company

Through and By Counsel: Velma A. Redmond, Esquire, Susan Simms Marsh, Esquire, 800 West Hersheypark Drive, Hershey, PA 17033.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 04-1677. Filed for public inspection September 3, 2004, 9:00 a.m.]

PHILADELPHIA REGIONAL PORT AUTHORITY

Request for Bids

The Philadelphia Regional Port Authority (PRPA) will accept sealed bids until 2 p.m. on Thursday, September 23, 2004, for the following projects as related to Modifications to Interior at Shed 2, Tioga Marine Terminal (TMT): Project # 04-128.2, Refrigeration & Mechanical; Project # 04-128.4, Electrical Work; Project # 04-128.6, Fire Protection; and Project # 04-128.8, Insulation & Roofing.

The bid documents can be obtained from the Director of Procurement, PRPA, 3460 N. Delaware Ave., 2nd Floor, Philadelphia, PA 19134, (215) 426-2600 and will be available September 7, 2004 (prospective bidders should call first). Additional information and project listings can be found at www.philaport.com. The cost of the bid document is $35 (includes 7% Pennsylvania sales tax). The cost is nonrefundable. PRPA is an equal opportunity employer. Contractors must comply with all applicable equal opportunity laws and regulations. Bidders must provide to the Procurement Department in writing the names of individuals who will be attending prebid meetings. This information must be faxed 24 hours prior to the meeting to (215) 426 6800, Attn.: Procurement Department.

A mandatory prebid job site meeting will be held on September 14, 2004, at 10 a.m. at TMT, Delaware Avenue and Tioga Street, Philadelphia, PA.

JAMES T. MCDERMOTT, Jr.,
Executive Director

[Pa.B. Doc. No. 04-1678. Filed for public inspection September 3, 2004, 9:00 a.m.]

STATE TAX EQUALIZATION BOARD

2003 Common Level Ratios

The State Tax Equalization Board (Board) has established a common level ratio for each county in this Commonwealth for the calendar year 2003. The ratios were mandated by the act of December 13, 1982 (P. L. 1158, No. 267).

The law requires the Board to use statistically acceptable techniques to make the methodology for computing ratios public and to certify, prior to July 1, the ratio to the Chief Assessor of each county each year.

The statistical technique which the Board used for the 2003 common level ratio is to determine the arithmetic mean of the individual sales ratios for every valid sale received from the county for the calendar year 2003.

The methodology used is to include every valid sale with a ratio from 1% to 100% and compute a mean. Using this mean as a base, the Board has defined high and low limits by multiplying and dividing this computed mean by 4. Using these computed limits, the Board has utilized the valid sales, rejecting those sales which exceed the limits. The resulting arithmetic mean ratio is the ratio which the Board is certifying as the common level ratio for each county for 2003.

There is one exception to this procedure. The original mean ratio for those counties which have a predetermined assessment ratio for 2003 of 100% will utilize valid sales from 1% to 200%.

The common level ratios for 2003 are as follows:

2003 Common Level Ratios

County	*Ratio*	*County*	*Ratio*	*County*	*Ratio*
ADAMS	34.6	ELK	19.8	*MONTGOMERY	68.7
*ALLEGHENY	93.9	*ERIE	91.8	MONTOUR	8.8
ARMSTRONG	39.7	*FAYETTE	97.5	NORTHAMPTON	39.2
BEAVER	32.2	FOREST	21.1	NORTHUMBERLAND	13.4
*BEDFORD	19.5	*FRANKLIN	14.5	*PERRY	91.0
*BERKS	86.3	*FULTON	50.4	^PHILADELPHIA	27.3
BLAIR	7.9	*GREENE	88.7	PIKE	22.7
BRADFORD	43.3	HUNTINGDON	15.9	*POTTER	42.2
BUCKS	3.1	INDIANA	13.7	SCHUYLKILL	43.2
BUTLER	10.4	JEFFERSON	18.8	SNYDER	16.4
CAMBRIA	16.3	*JUNIATA	17.7	SOMERSET	40.5
CAMERON	37.3	*LACKAWANNA	19.2	SULLIVAN	23.4
CARBON	43.2	*LANCASTER	81.7	SUSQUEHANNA	41.4
CENTRE	37.3	*LAWRENCE	93.0	*TIOGA	90.4
*CHESTER	68.0	LEBANON	8.2	UNION	16.2
CLARION	19.0	LEHIGH	40.8	*VENANGO	92.1
CLEARFIELD	19.1	LUZERNE	6.8	WARREN	36.8
CLINTON	28.3	LYCOMING	62.4	WASHINGTON	15.4

County	*Ratio*	*County*	*Ratio*	*County*	*Ratio*
COLUMBIA	32.8	MCKEAN	22.5	WAYNE	8.2
CRAWFORD	33.9	*MERCER	28.6	*WESTMORELAND	21.1
*CUMBERLAND	90.4	MIFFLIN	49.3	WYOMING	23.7
*DAUPHIN	87.7	MONROE	17.9	*YORK	80.9
*DELAWARE	79.5				

*Counties with a predetermined assessment ratio of 100%.
^Revised CLR August 11, 2004.

DANIEL G. GUYDISH,
Chairperson

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