

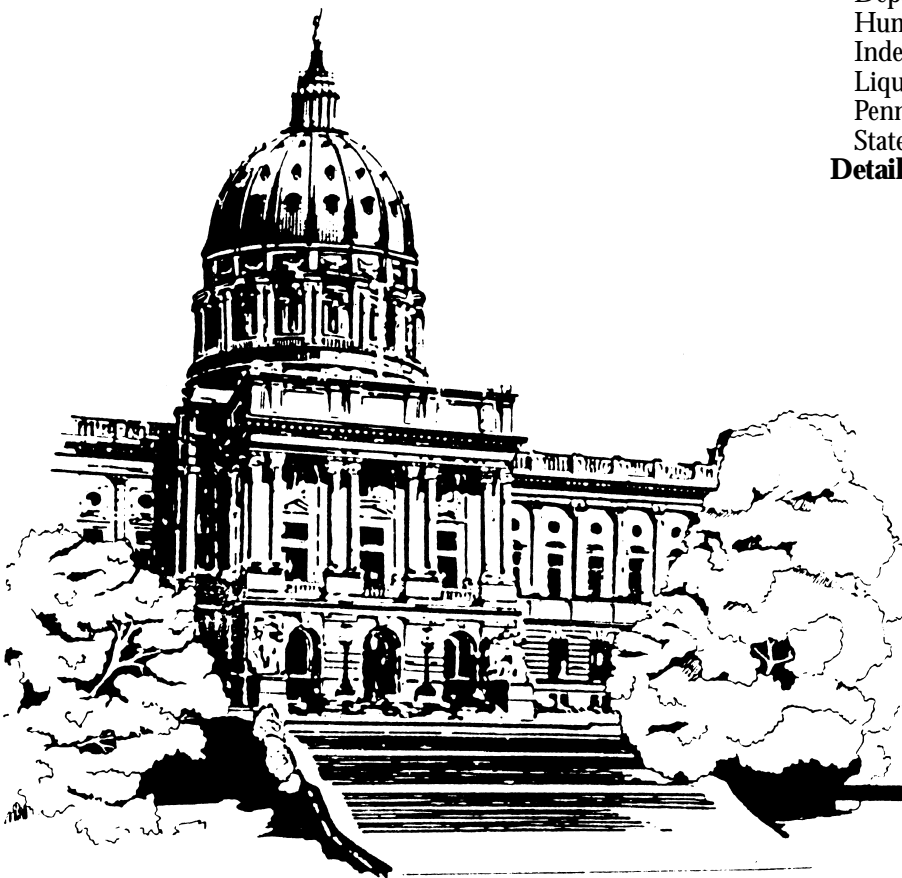
# PENNSYLVANIA BULLETIN

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**Agencies in this issue:**

The Courts  
Commission on Crime and Delinquency  
Department of Agriculture  
Department of Banking  
Department of Conservation and Natural Resources  
Department of Environmental Protection  
Department of General Services  
Department of Public Welfare  
Department of Transportation  
Human Relations Commission  
Independent Regulatory Review Commission  
Liquor Control Board  
Pennsylvania Public Utility Commission  
State Harness Racing Commission

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**No. 358, September 2004**

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# READER'S GUIDE TO THE PENNSYLVANIA BULLETIN AND PENNSYLVANIA CODE

## ***Pennsylvania Bulletin***

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

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

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

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

## **Adoption, Amendment or Repeal of Regulations**

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

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

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

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

## **Citation to the *Pennsylvania Bulletin***

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

## ***Pennsylvania Code***

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

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

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

## **How to Find Documents**

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

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

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

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### Printing Format

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

### Fiscal Notes

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

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

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## List of Pa. Code Chapters Affected

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 CHS. 85 AND 91]

#### Amendments to Rules of Organization and Procedure of the Disciplinary Board of the Supreme Court of Pennsylvania; Order No. 60; Doc. No. R-138

The Rules of Organization and Procedure of the Board have been drafted to restate in full the substance of the Pennsylvania Rules of Disciplinary Enforcement. By an Order dated March 5, 2004, the Supreme Court of Pennsylvania amended Pa.R.D.E. 208(f)(4) and 214(d)(4) and by an Order dated April 30, 2004, the Supreme Court of Pennsylvania amended Pa.R.D.E. 201 and 216. By this Order, the Board is making conforming changes to its Rules to reflect the adoption of those amendments.

The Disciplinary Board of the Supreme Court of Pennsylvania finds that:

(1) To the extent that 42 Pa.C.S. § 1702 (relating to rule making procedures) and Article II of the act of July 31, 1968 (P. L. 769, No. 240), known as the Commonwealth Documents Law, would otherwise require notice of proposed rulemaking with respect to the amendments adopted hereby, such proposed rulemaking procedures are inapplicable because the amendments adopted hereby relate to agency procedure and are perfunctory in nature.

(2) The amendments to the Rules of Organization and Procedure of the Board adopted hereby are not inconsistent with the Pennsylvania Rules of Disciplinary Enforcement and are necessary and appropriate for the administration of the affairs of the Board.

The Board, acting pursuant to Pa.R.D.E. 205(c)(10), orders:

(1) Title 204 of the *Pennsylvania Code* is hereby amended as set forth in Annex A hereto.

(2) The Secretary of the Board shall duly certify this Order, and deposit the same with the Administrative Office of Pennsylvania Courts as required by Pa.R.J.A. 103(c).

(3) The amendments adopted hereby shall take effect upon publication in the *Pennsylvania Bulletin*.

(4) This Order shall take effect immediately.

*By The Disciplinary Board of the Supreme Court of Pennsylvania*

ELAINE M. BIXLER,  
*Executive Director and Secretary*

#### Annex A

### TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

#### PART V. PROFESSIONAL ETHICS AND CONDUCT

##### Subpart C. DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA

##### CHAPTER 85. GENERAL PROVISIONS

#### § 85.3. Jurisdiction.

(a) *General rule.* Enforcement Rule 201(a) provides that the exclusive disciplinary jurisdiction of the Supreme Court and the Board under the Enforcement Rules extends to:

\* \* \* \* \*

(6) Any attorney not admitted in this Commonwealth who practices law or renders or offers to render any legal service in this Commonwealth.

\* \* \* \* \*

#### CHAPTER 91. MISCELLANEOUS MATTERS

##### Subchapter B. ATTORNEYS CONVICTED OF CRIMES

#### § 91.34. Temporary suspension upon conviction of serious crime.

\* \* \* \* \*

(e) *Dissolution or modification of temporary suspension.* Enforcement Rule 214(d)(4) provides that:

\* \* \* \* \*

(2) a copy of the petition shall be served upon Disciplinary Counsel and the Secretary of the Board (see § 89.27 (relating to service upon Disciplinary Counsel));

(3) a hearing on the petition before a member of the Board designated by the Chair of the Board shall be held within ten business days [before a member of the Board designated by the Chairman of the Board] after service of the petition on the Secretary of the Board;

(4) the designated Board member shall hear the petition and submit a transcript of the hearing and a recommendation to the Court within five business days after the conclusion of the hearing; and

\* \* \* \* \*

##### Subchapter C. RECIPROCAL DISCIPLINE

#### § 91.51. Reciprocal discipline.

Enforcement Rule 216 provides as follows:

\* \* \* \* \*

(3) Upon the expiration of 30 days from service of the Form DB-19, the Supreme Court may impose the identical or comparable discipline unless Disciplinary [counsel] Counsel or the respondent-attorney demonstrates, or the Court finds that upon the face of the record upon which the discipline is predicated it clearly appears:

\* \* \* \* \*

(ii) there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Court could not consistently with its duty accept as final the conclusion on that subject; or

(iii) that the imposition of the same or comparable discipline would result in grave injustice[; or] , or be offensive to the public policy of this Commonwealth.

[ (iv) that the misconduct established has been held to warrant substantially different discipline in this Commonwealth. ]

Where the Court determines that any of said elements exist, the Court shall enter such other order as it deems appropriate.

(4) In all other respects, a final adjudication in another jurisdiction that an attorney, **whether or not admitted in that jurisdiction**, has been guilty of misconduct shall establish conclusively the misconduct for **the** purposes of a disciplinary proceeding in **[ this ] the** Commonwealth.

\* \* \* \* \*

**Subchapter G. EMERGENCY PROCEEDINGS**

**§ 91.151. Emergency temporary suspension orders and related relief.**

\* \* \* \* \*

(d) *Dissolution or amendment.* Enforcement Rule 208(f)(4) provides that:

\* \* \* \* \*

(2) a copy of the petition shall be served upon Disciplinary Counsel **and the Secretary of the Board** (see § 89.27 (relating to service upon Disciplinary Counsel));

(3) a hearing on the petition **before a member of the Board designated by the Chair of the Board** shall be held within ten **business** days **[ before a member of the Board designated by the Chairman of the Board ]** after service of the petition on the **Secretary of the Board**;

(4) the designated Board member shall hear the petition and submit a transcript of the hearing and a recommendation to the Court within five **business** days after the conclusion of the hearing; and

\* \* \* \* \*

[Pa.B. Doc. No. 04-1681. Filed for public inspection September 10, 2004, 9:00 a.m.]

# Title 210—APPELLATE PROCEDURE

## PART I. RULES OF APPELLATE PROCEDURE

### [210 PA. CODE CH. 3]

#### Proposed Amendments to Rules 311 and 342

The Appellate Court Procedural Rules Committee and the Orphans' Court Procedural Rules Committee propose to amend Pennsylvania Rules of Appellate Procedure 311 and 342. The amendment is being submitted to the bench and bar for comments and suggestions prior to its submission to the Supreme Court.

Proposed new material is bold while deleted material is bold and bracketed.

All communications in reference to the proposed amendment should be sent no later than November 30, 2004 to:

Dean R. Phillips, Chief Counsel  
Rebecca M. Darr, Deputy Counsel  
Appellate Court Procedural Rules Committee  
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An Explanatory Comment precedes the proposed amendment and has been inserted by this Committee for the convenience of the bench and bar. It will not constitute part of the rule nor will it be officially adopted or promulgated.

*By the Appellate Court  
Procedural Rules Committee*

HONORABLE JOSEPH A. HUDOCK,  
*Chair*

### EXPLANATORY COMMENT

#### Background

In 1992, the Supreme Court amended Rule 341 to redefine final orders as "any order that disposes of all claims and all parties." Pa.R.A.P. 341(b)(1). This amendment was intended to limit excessive and unnecessary interlocutory appeals that had proliferated under the "final aspect" doctrine. Under the final aspect doctrine, a final order was any order that either disposed of the entire case, or that, as practical matter put the appellant out of court. The 1992 amendments to Rule 341 added Subdivision (c), which provided for immediate appeals following a certification of finality where an order dismissed less than all claims and all parties. The discretion to certify an immediate appeal from such orders is circumscribed by specific criteria enumerated in the Note to Rule 341. Otherwise, where an order denies a motion to dismiss less than all claims and parties, the aggrieved party generally has to wait until the end of the entire case or seek permission to appeal immediately under Pa.R.A.P. 312 and 1311. However, appeals under 312 and 1311 are limited, by statute and rules, to orders involving a controlling question of law and where an immediate appeal would facilitate the ultimate resolution of the case.<sup>1</sup>

While elimination of the final aspect doctrine decreased the number of interlocutory appeals and is widely perceived by the bench and bar of this Commonwealth to have facilitated case management and the orderly administration of justice, it has caused significant problems for Orphans' Court litigants and judges. The alternative vehicles for appeal are not sufficiently inclusive to allow interlocutory appeals from certain Orphans' Court orders even though such interlocutory appeals are necessary to the orderly administration and adjudication of estates, trusts and other Orphans' Court matters.

In 1996, a panel of the Superior Court decided that an appeal filed by co-executors from an order approving the sale of the family farm and farmhouse was interlocutory under the 1992 amendment redefining final orders. *In re Estate of Habazin*, 679 A.2d 1293 (Pa. Super. 1996). Following input from the Orphans' Court bench and bar, and the recommendation of both the Orphans' Court and Appellate Court Procedural Rules Committees, the Supreme Court of Pennsylvania amended Pa.R.A.P. 342 to

<sup>1</sup> There are several other vehicles for interlocutory appeals. Pa.R.A.P. 311 permits interlocutory appeals as of right for certain specific kinds of orders while Pa.R.A.P. 313 permits an appeal as of right from collateral orders.

permit an immediate appeal from orders determining an interest in realty, personalty or individual rights upon a determination of finality by the Orphans' Court judge. Rule 342 did not limit the Orphans' Court judge's discretion to determine the propriety of an immediate appeal. Nonetheless, the right to appeal depended on the aggrieved party persuading the Orphans' Court judge that such an appeal was appropriate to facilitate the ultimate resolution of the case and the only way to seek review of the denial of such a determination was a petition for review, addressed to the intermediate appellate court, alleging an abuse of discretion. Such petitions for review are reviewed narrowly and very rarely granted.

Since 2001, Rule 342 has permitted interlocutory appeals in Orphans' Court proceedings while providing for some judicial oversight so that an aggrieved party is not given an unfettered immediate right to appeal orders such as those disposing of incidental property, making small interim distributions or permitting or compelling the payment of debts and taxes.<sup>2</sup> Within the last two years, however, several decisions have raised the issue of whether Rule 342 is sufficient in its present form to provide a comprehensive vehicle for interlocutory appeals in Orphans' Court matters.

For example, a number of Orphans' Court judges and practitioners have expressed the view that appeals from orders removing executors or trustees, or refusing to do so, should be immediately appealable as of right. Prior to 2001, such orders were considered immediately appealable as collateral orders. See *Estate of Georgianna*, 458 A.2d 989 (Pa. Super. 1983), affirmed, 475 A.2d 744 (Pa. 1984) (holding that if an immediate appeal was not allowed, such orders would evade appellate review resulting in the irreparable loss of important rights). See also *McGillick Foundation*, 642 A.2d 467 (Pa. 1994) (where the Supreme Court ruled on the merits of a trustee's removal without addressing the jurisdictional issue of whether or not the Orphans' Court order was final and immediately appealable). However, in 2002, a Superior Court panel held that, following the 2001 amendments to Rule 342, orders removing an executor or trustee, or declining to do so, were no longer immediately appealable. See *Estate of Sorber*, 803 A.2d 767 (Pa. Super. 2002) In *Sorber*, the Superior Court panel interpreted Rule 342 to be the sole vehicle for appeal of non-final Orphans' Court orders determining an interest in realty, personalty or status of individuals. *Sorber* held that the new Rule 342, in effect, overruled *Georgianna*.

The second decision calling Rule 342 into question is *Estate of Schmitt*, 846 A.2d 127 (Pa. Super. 2004), where a panel of the Superior Court sua sponte quashed an appeal from an order the Orphans' Court striking a caveat to a will. The *Schmitt* panel, citing *Sorber*, held that an Orphans' Court order in a matter involving the validity of a will is not final until confirmation of the final account of the personal representative. The *Schmitt* panel reached an arguably different result from Superior Court panels in *Estate of Janosky*, 827 A.2d 512 (Pa. Super. 2003) and *Luongo v. Luongo*, 823 A.2d 942 (Pa. Super. 2003), appeal denied, 847 A.2d 1287 (Pa. 2003). In each of those cases, the panels did not sua sponte raise the issue of whether orders determining the validity of a will are

appealable as final orders and, in both cases, the panels determined the appeals on their merits.

In *Schmitt*, the Superior Court determined that since the aggrieved party had not requested a determination of finality under Rule 342, the Orphans' Court did not need to determine whether Rule 342 was broad enough to cover orders determining the validity of a will. Thus, the *Schmitt* decision left open the possibility that the only vehicle for appealing an order determining the validity of a will (or trust) might be an interlocutory appeal by permission pursuant to Rules 312 and 1311. However, because those rules mandate a strict standard which must be met before interlocutory appellate review will be allowed, including a requirement that the appeal involve a controlling question of law, Rules 312 and 1311 do not represent a realistic avenue of appeal for those seeking to challenge an Orphans' Court determination of an instrument's validity.

Orphans' Court judges and practitioners have suggested that orders determining the validity of a will are final orders because they determine the only matter at issue in a will contest, to wit, the validity of the will or trust itself. The fact that there may be subsequent litigation involving the administration of a will or trust after its validity is determined by order of court does not mean that the aggrieved party should be deprived of the opportunity for an immediate appeal. Once the validity of the instrument is determined, it is certainly conceivable that the administration of the estate or trust will be routine, such that there will be no ultimate determination of finality. In fact, most estates are settled on the basis of a family settlement agreement or receipt and release. See *Fiduciary Review*, July 2004. Simply put, the failure to allow an immediate appeal from either orders removing an executor or orders determining the validity of a will cannot be corrected following an appeal after distribution is complete.<sup>3</sup>

### Summary of Recommendation

It is proposed that orders determining the validity of a will or trust be immediately appealable under Rule 311 as interlocutory appeals as of right. In order to assure that parties will have the opportunity to take an immediate appeal as of right from such orders, the Appellate Court and Orphans' Court Procedural Rules Committees recommend the adoption of proposed new Pa.R.A.P. 311(a)(9). While this recommendation ultimately begs the question of whether such orders are, in fact, true final orders, it is a practical resolution to a conceptual problem. It should be of no consequence to an aggrieved party whether the order is appealable as of right by express definition under Rule 311, or because it is interpreted by case law to be final under Rule 341(b) in that it ends a case as to all claims or parties.

In order to assure that orders removing executors and trustees, or refusing to remove such fiduciaries, are immediately appealable as of right, as was the practice prior to *Schmitt*, the Committees also propose to amend Rule 342 to clarify that the 2001 amendment was not intended to overrule *Estate of Georgianna*, or to otherwise

<sup>2</sup> Rule 342 currently reads as follows: "In addition to final orders pursuant to Subdivision (b) of Rule 341 or determined to be final under Subdivision (c) of Rule 341, an order of the Orphans' Court Division determining an interest in realty, personalty, the status of individuals or entities or an order of distribution not final under Subdivision (b) of Rule 341 or determined to be final under Subdivision (c) of Rule 341 shall constitute a final order upon a determination of finality by the Orphans' Court Division."

<sup>3</sup> For example, in the Pennsylvania Probate, Estates and Fiduciaries Code, ("the P.E.F. Code"), 20 Pa.C.S.A. § 101 et seq., personal representatives who act pursuant to a will that has been admitted to probate are protected. Section 793 of the P.E.F. Code states: "No appeal from an order or decree . . . concerning the validity of a will or the right to administer shall suspend the powers or prejudice the acts of a personal representative acting thereunder." Section 3329 of the P.E.F. Code provides: "No act of administration performed by a personal representative in good faith shall be impeached by the subsequent revocation of his letters or by the subsequent probate of a will, of a later will or of a codicil . . ." Accordingly, there is no effective remedy against the personal representative if he or she administers an estate under one instrument and, after a final accounting, an appellate court determines that such distribution was made under the wrong will.

preclude an aggrieved party from pursuing appeals in Orphans' Court matters under Rule 313 (Collateral Orders). The amendment to Rule 342 does not expressly authorize interlocutory appeals by permission under Rules 312 and 1311 because the Committees believe that Rule 342 fully covers permissive interlocutory appeals in Orphans' Court matters and, since such appeals are left entirely to the discretion of the Orphans' Court judge, the standard under Rule 342 is substantially broader than the standard under Rules 312 and 1311.

Annex A

TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

ARTICLE I. PRELIMINARY PROVISIONS

CHAPTER 3. ORDERS FROM WHICH APPEALS MAY BE TAKEN

INTERLOCUTORY APPEALS

Rule 311. Interlocutory Appeals as of Right.

\* \* \* \* \*

(a) *General rule.* An appeal may be taken as of right and without reference to Pa.R.A.P. 341(c) from:

\* \* \* \* \*

(9) *Estate and trust matters.* An order determining the validity of a will or trust.

\* \* \* \* \*

(g) *Waiver of objections.*

(1) Where an interlocutory order is immediately appealable under this rule, failure to appeal:

(i) Under Subdivisions (a)(1)—(8), (b)(2) or (f) of this rule shall not constitute a waiver of the objection to the order and the obligation may be raised on any subsequent appeal in the matter from a determination on the merits.

\* \* \* \* \*

(iii) Under [ Subdivision ] Subdivisions (a)(9) or (e) of this rule shall constitute a waiver of all objections to such orders and any objection may not be raised on any subsequent appeal in the matter from a determination on the merits.

\* \* \* \* \*

Explanatory Comment—2004

Orders determining the validity of a will or trust, including, but not limited to, orders granting or denying the probate of a will, are immediately appealable pursuant to the 2004 amendment adding subdivision (a)(9). Prior to the 2004 amendment, the Superior Court often permitted an immediate appeal from such orders without determining the basis for an immediate appeal under the Rules of Appellate Procedure. See *Estate of Janosky*, 827 A.2d 512 (Pa. Super. 2003), and *Estate of Luongo*, 823 A.2d 942 (Pa. Super. 2003). However, in *Estate of Schmitt*, 846 A.2d 127 (Pa. Super. 2004), a panel of the Superior Court held that an order striking a caveat was not immediately appealable as a final order under Pa.R.A.P. 341(b). In response to the Schmitt decision, the Appellate Court Procedural Rules Committee determined that while orders deciding the validity of a will or trust are not strict final orders under Subdivision (b) of Rule 341, it is not practical to administer an estate or trust while there is a pending challenge to the validity of the

instrument. Accordingly, the Committee believes that a party seeking to probate an instrument or to challenge the validity of an instrument should be allowed to take an immediate interlocutory appeal as of right under Rule 311 and shall be bound by the waiver doctrine if the party does not immediately appeal. See the 2004 amendment to Subdivision (g) of this Rule.

FINAL ORDERS

Rule 342. Orphans' Court Orders Determining Realty, Personalty and Status of Individuals or Entities.

In addition to final orders pursuant to Rule 311(a)(9), Subdivision (b) of Rule 341, or determined to be final under Subdivision (c) of Rule 341 and collateral orders under Rule 313, an order of the Orphans' Court Division determining an interest in realty, personalty, the status of individuals or entities or an order of distribution not final under Subdivision (b) of Rule 341 or determined to be final under Subdivision (c) of Rule 341 shall constitute a final order upon a determination of finality by the Orphans' Court Division.

Explanatory Comment—1976

See comment following Rule 341.

*Official Note:* This Rule was amended in 2001 to allow appeals from orders determining an interest in realty, personalty or the status of individuals, upon certification of the Orphans' Court judge. Prior to the 2001 amendment, this rule only permitted appeals from an order of distribution not final under Rule 341(b). The amendment to the Rule was not intended to preclude immediate of appeals in Orphans' Court matters as heretofore permitted under Rule 311 (Interlocutory Appeals as of Right) and Rule 313 (Collateral Orders). However, the Rule may have been ambiguous in that regard because in *Estate of Sorber*, 803 A.2d 767 (Pa. Super. 2002), a panel of the Superior Court interpreted the 2001 amendment to Rule 342 to preclude immediate appeals from collateral orders unless determined to be final by the Orphans' Court judge. To the extent that *Estate of Sorber* would not permit appeals pursuant to the collateral order doctrine codified in Rule 313, *Sorber* is no longer applicable.

[Pa.B. Doc. No. 04-1682. Filed for public inspection September 10, 2004, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CHS. 1, 5 AND 10]

Order Amending Rules 103, 114, 510, 511, 512, 540, 542, 543, 547, 571, 1000, 1001, and 1003 and Approving the Revision of the Comments to Rules 509, 529, 536, 560, and 565; No. 311 Criminal Procedural Rules; Doc. No. 2

The Criminal Procedural Rules Committee has prepared a Final Report explaining the changes to the Rules of Criminal Procedure that establish one statewide, uniform procedure for handling court cases in which a defendant has failed to appear for the preliminary hear-

ing. By this new procedure, if a defendant fails to appear before the issuing authority for the preliminary hearing after notice and without cause, the defendant's absence will be deemed a waiver of the defendant's right to be present, the case will proceed in the defendant's absence, and a warrant for the defendant's arrest will be issued. The Final Report follows the Court's Order.

**Order**

*Per Curiam:*

Now, this 24th day of August, 2004, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 29 Pa.B. 6454 (December 25, 1999) and 30 Pa.B. 4543 (September 2, 2000), and in the *Atlantic Reporter* (Second Series Advance Sheets, Vols. 740 and 756), and a Final Report to be published with this *Order*:

*It Is Ordered* pursuant to Article V, Section 10 of the Constitution of Pennsylvania that:

(1) Rules of Criminal Procedure 103, 114, 510, 511, 512, 540, 542, 543, 547, 571, 1000, 1001, and 1003 are hereby amended; and

(2) the revisions of the Comments to Rules of Criminal Procedure 509, 529, 536, 560, and 565 are hereby approved

all in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective August 1, 2005.

**Annex A**

**TITLE 23A. RULES OF CRIMINAL PROCEDURE**

**CHAPTER 1. SCOPE OF RULES, CONSTRUCTION AND DEFINITIONS, LOCAL RULES**

**PART A. Business of the Courts**

**Rule 103. Definitions.**

The following words and phrases, when used in any Rule of Criminal Procedure, shall have the following meanings:

\* \* \* \* \*

**ARRAIGNMENT** is the pretrial proceeding in the court of common pleas conducted pursuant to Rule 571.

\* \* \* \* \*

**PRELIMINARY ARRAIGNMENT** is the proceeding following an arrest conducted before an issuing authority pursuant to Rule 540 or Rule 1003(D).

\* \* \* \* \*

**Comment**

The definitions of arraignment and preliminary arraignment were added in 2004 to clarify the distinction between the two proceedings. Although both are administrative proceedings at which the defendant is advised of the charges and the right to counsel, the preliminary arraignment occurs shortly after an arrest before a member of the minor judiciary, while an arraignment occurs in the court of common pleas after a case is held for court and an information is filed.

The definition of information was added to the rules as part of the implementation of the 1973 amendment to PA. CONST. art. I, § 10, permitting the substitution of informations for indictments. The term "information" as used here should not be confused with prior use of the term in

Pennsylvania practice as an instrument which served the function now fulfilled by the complaint.

\* \* \* \* \*

**Official Note:** Previous Rules 3 and 212 adopted June 30, 1964, effective January 1, 1965, suspended January 31, 1970, effective May 1, 1970; present Rule 3 adopted January 31, 1970, effective May 1, 1970; amended June 8, 1973, effective July 1, 1973; amended February 15, 1974, effective immediately; amended June 30, 1977, effective September 1, 1977; amended January 4, 1979, effective January 9, 1979; amended July 12, 1985, effective January 1, 1986; January 1, 1986 effective date extended to July 1, 1986; amended August 12, 1993, effective September 1, 1993; amended February 27, 1995, effective July 1, 1995; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; renumbered Rule 103 and Comment revised March 1, 2000, effective April 1, 2001; amended May 10, 2002, effective September 1, 2002; amended March 3, 2004, effective July 1, 2004; amended April 30, 2004, effective July 1, 2004; **amended August 24, 2004, effective August 1, 2005.**

*Committee Explanatory Reports:*

\* \* \* \* \*

**Final Report explaining the August 24, 2004 amendments adding definitions of arraignment and preliminary arraignment published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).**

**Rule 114. Orders and Court Notices: Filing; Service; and Docket Entries.**

\* \* \* \* \*

(B) Service

\* \* \* \* \*

(3) Methods of Service

**[ Service ] Except as otherwise provided in Chapter 5 concerning notice of the preliminary hearing, service shall be:**

\* \* \* \* \*

**Comment**

This rule was amended in 2004 to provide in one rule the procedures for the filing and service of all orders and court notices, and for making docket entries of the date of receipt, date appearing on the order or notice, and the date and manner of service. This rule incorporates the provisions of former Rule 113 (Notice of Court Proceedings Requiring Defendant's Presence). **But see Rules 511, 540(F)(2), and 542(D) for the procedures for service of notice of a preliminary hearing, which are different from the procedures in this rule.**

\* \* \* \* \*

**Official Note:** Formerly Rule 9024, adopted October 21, 1983, effective January 1, 1984; amended March 22, 1993, effective as to cases in which the determination of guilt occurs on or after January 1, 1994; renumbered Rule 9025 and Comment revised June 2, 1994, effective September 1, 1994; renumbered Rule 114 and Comment revised March 1, 2000, effective April 1, 2001; amended March 3, 2004, effective July 1, 2004; **amended August 24, 2004, effective August 1, 2005.**

*Committee Explanatory Reports:*

\* \* \* \* \*

**Final Report explaining the August 24, 2004 changes concerning notice of preliminary hearing published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).**

**CHAPTER 5. PRETRIAL PROCEDURES  
IN COURT CASES**

**PART B(1). Complaint Procedures**

**Rule 509. Use of Summons or Warrant of Arrest in Court Cases.**

\* \* \* \* \*

**Comment**

This rule provides for the mandatory use of a summons instead of a warrant in court cases except in special circumstances as specified therein. **[This change of procedure is provided for relatively minor cases even though they are indictable.]**

**Before a warrant may be issued pursuant to paragraph (2)(c) when a summons is returned undelivered, the summons must have been served as provided in Rule 511(A), and both the certified mail and the first class mail must have been returned undelivered.**

\* \* \* \* \*

**Official Note:** Original Rule 108 adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 108 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 102 and amended September 18, 1973, effective January 1, 1974; amended December 14, 1979, effective April 1, 1980; Comment revised April 24, 1981, effective July 1, 1981; amended October 22, 1981, effective January 1, 1982; renumbered Rule 109 and amended August 9, 1994, effective January 1, 1995; renumbered Rule 509 and amended March 1, 2000, effective April 1, 2001; **Comment revised August 24, 2004, effective August 1, 2005.**

*Committee Explanatory Reports:*

\* \* \* \* \*

**Final Report explaining the August 24, 2004 Comment revision adding a new second paragraph elaborating on paragraph (2)(c) published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).**

**PART B(2). Summons Procedures**

**Rule 510. Contents of Summons; [Time] Notice of Preliminary Hearing.**

(A) Every summons in a court case shall command the defendant to appear before the issuing authority for a preliminary hearing at the place **[stated therein]** and **on the date and at the time [fixed therein which] stated on the summons. The date set for the preliminary hearing shall be not less than 20 days from the date of mailing the summons unless the issuing authority fixes an earlier date upon the request of the defendant or the defendant's attorney with the consent of the affiant.**

(B) The summons shall give notice to the defendant:

\* \* \* \* \*

(3) that if the defendant fails to appear **[at] on the date, and at the time and place specified on the summons, the case will proceed in the defendant's absence, and a warrant will be issued for the defendant's arrest.**

**[ (B) ] (C)** A copy of the complaint shall be attached to the summons.

**Comment**

**[ Summonses in the ] For the summons procedures in non-summary cases in the Municipal Court of Philadelphia [ are governed by the Rules of Chapter 10 ], see Rule 1003(C).**

\* \* \* \* \*

**See Rule 511 for service of the summons and proof of service.**

**See Rule 543(D) for the procedures when a defendant fails to appear for the preliminary hearing.**

For the consequences of defects in a summons in a court case, see Rule 109.

**Official Note:** Original Rule 109, adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 109 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 110 and amended September 18, 1973, effective January 1, 1974; amended October 22, 1981, effective January 1, 1982; amended November 9, 1984, effective January 2, 1985; amended August 9, 1994, effective January 1, 1995; renumbered Rule 510 and amended March 1, 2000, effective April 1, 2001; **amended August 24, 2004, effective August 1, 2005.**

*Committee Explanatory Reports:*

\* \* \* \* \*

**Final Report explaining the August 24, 2004 amendments concerning notice that case will proceed in defendant's absence published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).**

Rule 511. Service of Summons; **Proof of Service.**

(A) The summons shall be served upon the defendant by **both first class mail and certified mail**, return receipt requested. A copy of the complaint shall be served with the summons.

(B) **Proof of service of the summons by mail shall include:**

(1) **a return receipt signed by the defendant; or**

(2) **if the certified mail is returned for whatever reason, the returned summons with the notation that the certified mail was undelivered and evidence that the first class mailing of the summons was not returned to the issuing authority within 15 days after mailing.**

**Comment**

**This rule was amended in 2004 to require that the summons be served by both first class mail and certified mail, return receipt requested.**

**Paragraph (B) sets forth what constitutes proof of service of the summons by mail in a court case for purposes of these rules.**

**Official Note:** Original Rule 111, adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 111 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 112 September 18, 1973, effective January 1, 1974; renumbered Rule 511 March 1, 2000, effective April 1, 2001; **amended August 24, 2004, effective August 1, 2005.**

*Committee Explanatory Reports:*

\* \* \* \* \*

**Final Report explaining the August 24, 2004 amendments adding new paragraph (B) concerning proof of service published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).**

**Rule 512. Procedure in Court Cases Following Issuance of Summons.**

The defendant shall appear before the issuing authority for a preliminary hearing **on the date, and** at the time and place specified in the summons. If the defendant fails to appear, the issuing authority shall issue a warrant for the arrest of the defendant **and proceed as provided in Rule 543(D).**

**Comment**

\* \* \* \* \*

For the [ **procedure** ] **procedures in non-summary cases** in the Municipal Court [ **of Philadelphia** ], see Chapter 10.

**Official Note:** Rule 113 adopted September 18, 1973, effective January 1, 1974; amended August 9, 1994, effective January 1, 1995; renumbered Rule 512 and Comment revised March 1, 2000, effective April 1, 2001; **amended August 24, 2004, effective August 1, 2005.**

*Committee Explanatory Reports:*

\* \* \* \* \*

**Final Report explaining the August 24, 2004 amendments cross-referencing Rule 543(D) published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).**

**PART C(1). Release Procedures**

**Rule 529. Modification of Bail Order Prior to Verdict.**

\* \* \* \* \*

**Comment**

\* \* \* \* \*

**Once bail has been modified by a common pleas judge, only the common pleas judge subsequently may modify bail, even in cases that are pending before a district justice. See Rules 543 and 536.**

Pursuant to this rule, the motion, notice, and hearing requirements in paragraphs (B)(1) and (C)(2) must be followed in all cases before a common pleas [ **court** ] judge may modify a bail order unless the modification is made on the record in open court either when all parties are present at a pretrial hearing—such as a suppression hearing—or during trial.

\* \* \* \* \*

**Official Note:** Former Rule 4008 adopted July 23, 1973, effective 60 days hence; rescinded September 13, 1995, effective January 1, 1996, and replaced by Rule 530. Present Rule 4008 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective

dates extended to April 1, 1996; the April 1, 1996 effective dates extended to July 1, 1996; renumbered Rule 529 and amended March 1, 2000, effective April 1, 2001; **Comment revised August 24, 2004, effective August 1, 2005.**

*Committee Explanatory Reports:*

\* \* \* \* \*

**Final Report explaining the August 24, 2004 Comment revision published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).**

**PART C(2). General Procedures in all Bail Cases**

**Rule 536. Procedures Upon Violation of Conditions: Revocation of Release and Forfeiture; Bail Pieces; Exoneration of Surety.**

\* \* \* \* \*

**Comment**

\* \* \* \* \*

**Once bail has been modified by a common pleas judge pursuant to Rule 529, only the common pleas judge subsequently may change the conditions of release, even in cases that are pending before a district justice. See Rules 543 and 529.**

Whenever the bail authority is a judicial officer in a court not of record, pursuant to paragraph (A)(2)(a), that officer should set forth in writing his or her reasons for ordering a forfeiture, and the written reasons should be included with the transcript.

\* \* \* \* \*

**Official Note:** Former Rule 4016[ , ] adopted July 23, 1973, effective 60 days hence, replacing prior Rule 4012; Comment revised January 28, 1983, effective July 1, 1983; rescinded September 13, 1995, effective January 1, 1996, and replaced by Rule [ **536** ] **4016**. Present Rule 4016 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; the April 1, 1996 effective dates extended to July 1, 1996; renumbered Rule 536 and Comment revised March 1, 2000, effective April 1, 2001; amended March 3, 2004, effective July 1, 2004; **Comment revised August 24, 2004, effective August 1, 2005.**

*Committee Explanatory Reports:*

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**Final Report explaining the August 24, 2004 Comment revision published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).**

**PART D. Proceedings in Court Cases Before Issuing Authorities**

**Rule 540. Preliminary Arraignment.**

\* \* \* \* \*

(F) Unless the preliminary hearing is waived by a defendant who is represented by counsel, the issuing authority shall:

\* \* \* \* \*

(2) give the defendant notice, **orally and in writing,**

(a) of the **date, time, and place** of the preliminary hearing [ **thus fixed.** ], **and**

(b) that failure to appear without good cause for the preliminary hearing will be deemed a waiver by the defendant of the right to be present at any further proceedings before the issuing authority, and will result in the case proceeding in the defendant's absence and in the issuance of a warrant of arrest.

\* \* \* \* \*  
Comment  
\* \* \* \* \*

Under paragraph [ (C) ] (D), if a defendant has been arrested without a warrant, the issuing authority must make a prompt determination of probable cause before a defendant may be detained. See *Riverside v. McLaughlin*, 500 U.S. 44 (1991). The determination may be based on written affidavits, an oral statement under oath, or both.

Pursuant to the 2004 amendment to paragraph (F)(2), at the time of the preliminary arraignment, the defendant must be given notice, both orally and in writing, of the date, time, and place of the preliminary hearing. The notice must also explain that, if the defendant fails to appear without good cause for the preliminary hearing, the defendant's absence will constitute a waiver of the right to be present, the case will proceed in the defendant's absence, and a warrant for the defendant's arrest will be issued.

See Rule 1003(D) for the procedures governing preliminary arraignments in the Municipal Court.

**Official Note:** Original Rule 119 adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 119 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 140 September 18, 1973, effective January 1, 1974; amended April 26, 1979, effective July 1, 1979; amended January 28, 1983, effective July 1, 1983; rescinded August 9, 1994, effective January 1, 1995. New Rule 140 adopted August 9, 1994, effective January 1, 1995; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; renumbered Rule 540 and amended March 1, 2000, effective April 1, 2001; amended May 10, 2002, effective September 1, 2002; **amended August 24, 2004, effective August 1, 2005.**

*Committee Explanatory Reports:*

\* \* \* \* \*

**Final Report explaining the August 24, 2004 amendments concerning notice that the case will proceed in defendant's absence published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).**

**Rule 542. Preliminary Hearing; Continuances.**

\* \* \* \* \*

[ (D) If a prima facie case of the defendant's guilt is not established at the preliminary hearing, and no application for a continuance, supported by reasonable grounds, is made by an interested person, and no reason for a continuance otherwise appears, the issuing authority shall discharge the defendant. ]

[ (E) ] (D) CONTINUANCES

(1) The issuing authority may, for cause shown, grant a continuance and shall note on the transcript every continuance together with:

[ (1) ] (a) \* \* \*

[ (2) ] (b) \* \* \*

[ (3) ] (c) the new date and time for the preliminary hearing, and the reasons that the particular date was chosen.

(2) The issuing authority shall give notice of the new date and time for the preliminary hearing to the defendant, the defendant's attorney of record, if any, and the attorney for the Commonwealth.

(a) The notice shall be in writing.

(b) Notice shall be served on the defendant either in person or by both first class mail and certified mail, return receipt requested.

(c) Notice shall be served on defendant's attorney of record and the attorney for the Commonwealth either by personal delivery, or by leaving a copy for or mailing a copy to the attorneys at the attorneys' offices.

Comment

\* \* \* \* \*

Former paragraph (D) concerning the procedures when a prima facie case is found was deleted in 2004 as unnecessary because the same procedures are set forth in Rule 543 (Disposition of Case at Preliminary Hearing).

For the procedures when a defendant fails to appear for the preliminary hearing, see Rule 543(D).

The proof of service by mail on the defendant of the notice of the continued preliminary hearing is comparable to proof of service under Rule 511(B), and must include:

(1) a return receipt signed by the defendant, or

(2) if the certified mail is returned for whatever reason, the returned notice with the notation that the certified mail was undelivered and evidence that the first class mailing of the notice was not returned to the issuing authority within 15 days after mailing.

For the contents of the transcript, see Rule 135.

**Official Note:** Former Rule 141, previously Rule 120, adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970; revised January 31, 1970, effective May 1, 1970; renumbered Rule 141 and amended September 18, 1973, effective January 1, 1974; amended June 30, 1975, effective July 30, 1975; amended October 21, 1977, effective January 1, 1978; paragraph (D) amended April 26, 1979, effective July 1, 1979; amended February 13, 1998, effective July 1, 1998; rescinded October 8, 1999, effective January 1, 2000. Former Rule 142, previously Rule 124, adopted June 30, 1964, effective January 1, 1965, suspended effective May 1, 1970; present rule adopted January 31, 1970, effective May 1, 1970; renumbered Rule 142 September 18, 1973, effective January 1, 1974; amended October 22, 1981, effective January 1, 1982; effective date extended to July 1, 1982; amended July 12, 1985, effective January 1, 1986, effective date extended to July 1, 1986; rescinded October 8, 1999, effective January 1, 2000. New Rule 141, combining former Rules 141 and



142, adopted October 8, 1999, effective January 1, 2000; renumbered Rule 542 and Comment revised March 1, 2000, effective April 1, 2001; **amended August 24, 2004, effective August 1, 2005.**

*Committee Explanatory Reports:*

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**Final Report explaining the August 24, 2004 amendments concerning notice published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004). Rule 543. Disposition of Case at Preliminary Hearing.**

**(A) At the conclusion of the preliminary hearing, the decision of the issuing authority shall be publicly pronounced.**

**[ (A) ] (B)** If the Commonwealth establishes a prima facie case of the defendant's guilt, the issuing authority shall hold the defendant for court. Otherwise, the defendant shall be discharged. **[ In either event, the decision of the issuing authority shall be publicly pronounced.**

**(B) ] (C) \* \* \***

\* \* \* \* \*

**(D) In any case in which the defendant fails to appear for the preliminary hearing:**

**(1) if the issuing authority finds that the defendant did not receive notice, or finds that there was good cause explaining the defendant's failure to appear, the issuing authority shall continue the preliminary hearing to a specific date and time, and shall give notice of the new date and time as provided in Rule 542(D)(2).**

**(2) If the issuing authority finds that the defendant's absence is without good cause and after notice, the absence shall be deemed a waiver by the defendant of the right to be present at any further proceedings before the issuing authority. In these cases, the issuing authority shall:**

**(a) proceed with the case in the same manner as though the defendant were present;**

**(b) if the preliminary hearing is conducted, give the defendant notice by first class mail of the results of the preliminary hearing; and**

**(c) if the case is held for court or if the preliminary hearing is continued, issue a warrant for the arrest of the defendant.**

**(3) When the issuing authority issues a warrant pursuant to paragraph (D)(2)(C), the issuing authority retains jurisdiction to dispose of the warrant until:**

**(a) the arraignment occurs; or**

**(b) the defendant fails to appear for the arraignment and the common pleas judge issues a bench warrant for the defendant.**

**Upon receipt of notice that the arraignment has occurred or a bench warrant has been issued, the issuing authority promptly shall recall and cancel the issuing authority's warrant.**

**Comment**

Paragraph **[ (B) ] (C)** was amended in 1983 to reflect the fact that a bail determination will already have been made at the preliminary arraignment, except in those

cases **[ where ] in which**, pursuant to a summons, the defendant's first appearance is at the preliminary hearing. See Rules 509 and 510.

**When a defendant fails to appear for the preliminary hearing, before proceeding with the case as provided in paragraph (D), the issuing authority must determine (1) whether the defendant received notice of the time, date, and place of the preliminary hearing either in person at a preliminary arraignment as provided in Rule 540(E)(2) or in a summons served as provided in Rule 511, and (2) whether the defendant had good cause explaining the absence.**

**If the issuing authority determines that the defendant did not receive notice or that there is good cause explaining why the defendant failed to appear, the preliminary hearing must be continued and rescheduled for a date certain. See paragraph (D)(1). For the procedures when a preliminary hearing is continued, see Rule 542(D).**

**If the issuing authority determines that the defendant received notice and has not provided good cause explaining why he or she failed to appear, the defendant's absence constitutes a waiver of the defendant's right to be present for subsequent proceedings before the issuing authority. The duration of this waiver only extends through those proceedings that the defendant is absent.**

**When the defendant fails to appear after notice and without good cause, paragraph (D)(2)(a) provides that the case is to proceed in the same manner as if the defendant were present. The issuing authority either would proceed with the preliminary hearing as provided in Rule 542(A), (B), (C) and Rule 543(A), (B), and (C); or, if the issuing authority determines it necessary, continue the case to a date certain as provided in Rule 542(D); or, in the appropriate case, convene the preliminary hearing for the taking of testimony of the witnesses who are present, and then continue the remainder of the hearing until a date certain. When the case is continued, the issuing authority still should send the required notice of the new date to the defendant, thus providing the defendant with another opportunity to appear.**

**Paragraph (D)(2)(c) requires the issuing authority to issue an arrest warrant if the case is held for court or when the preliminary hearing is continued.**

**Pursuant to paragraph (D)(3), the defendant must be taken before the issuing authority for resolution of the warrant, counsel, and bail in those cases in which a defendant is apprehended on the issuing authority's warrant prior to the arraignment or the issuance of a common pleas judge's bench warrant.**

**For purposes of modifying bail once bail has been set by a common pleas judge, see Rules 529 and 536.**

**See Rule 571 (Arraignment) for notice of arraignment requirements.**

**See Rule 1003 (Procedure in Non-Summary Municipal Court Cases) for the preliminary hearing procedures in Municipal Court.**

**Official Note:** Original Rule 123, adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 123 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 143 September 18, 1973, effective January 1, 1974; amended January 28, 1983, effective July 1, 1983; amended August 9, 1994, effective January 1, 1995; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; renumbered Rule 142 October 8, 1999, effective January 1, 2000; renumbered Rule 543 and amended March 1, 2000, effective April 1, 2001; **amended August 24, 2004, effective August 1, 2005.**

*Committee Explanatory Reports:*

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**Final Report explaining the August 24, 2004 changes concerning the procedures when a defendant fails to appear published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).**

**Rule 547. Return of Transcript and Original Papers.**

(A) When a defendant is held for court, the issuing authority shall prepare a transcript of the proceedings. The transcript shall contain all the information required by these rules to be recorded on the transcript [under Rules 135 and 542]. It shall be signed by the issuing authority, and have affixed to it the issuing authority's seal of office.

(B) The issuing authority shall transmit the transcript to the clerk of the proper court within [five] 5 days after holding the defendant for court.

(C) In addition to this transcript the issuing authority shall also transmit the following items:

- (1) the original complaint;

\* \* \* \* \*

**Comment**

See Rule 135 for the general contents of the transcript. There are a number of other rules that require certain things to be recorded on the transcript to make a record of the proceedings before the issuing authority. See, e.g., Rules 542 and 543.

**Official Note:** Formerly Rule 126, adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970; revised January 31, 1970, effective May 1, 1970; renumbered Rule 146 and amended September 18, 1973, effective January 1, 1974; amended October 22, 1982, effective January 1, 1982; amended July 12, 1985, effective January 1, 1986; effective date extended to July 1, 1986; renumbered Rule 547 and amended March 1, 2000, effective April 1, 2001; **amended August 24, 2004, effective August 1, 2005.**

*Committee Explanatory Reports:*

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**Final Report explaining the August 24, 2004 changes published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).**

**PART E. Informations**

**Rule 560. Information: Filing, Contents, Function.**

\* \* \* \* \*

**Comment**

\* \* \* \* \*

When there is an omission or error of the type referred to in paragraph (C), the information should be amended pursuant to Rule 564.

**See Rule 543(D) for the procedures when a defendant fails to appear for the preliminary hearing. When the preliminary hearing is held in the defendant's absence and the case is held for court, the attorney for the Commonwealth should proceed as provided in this rule.**

**Official Note:** Rule 225 adopted February 15, 1974, effective immediately; Comment revised January 28, 1983, effective July 1, 1983; amended August 14, 1995, effective January 1, 1996; renumbered Rule 560 and amended March 1, 2000, effective April 1, 2001; Comment revised April 23, 2004, effective immediately; **Comment revised August 24, 2004, effective August 1, 2005.**

*Committee Explanatory Reports:*

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**Final Report explaining the August 24, 2004 Comment revision concerning failure to appear for preliminary hearing published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).**

**Rule 565. Presentation of Information Without Preliminary Hearing.**

\* \* \* \* \*

**Comment**

\* \* \* \* \*

Under the Juvenile Act, a juvenile is entitled to substantially the same rights at a transfer hearing as a defendant would be at a preliminary hearing. See Juvenile Act, 42 Pa.C.S. § 6355. Therefore, to avoid duplicative proceedings, this rule permits the attorney for the Commonwealth to bypass the preliminary hearing when a juvenile has been transferred for prosecution as an adult.

**Nothing in this rule is intended to preclude the attorney for the Commonwealth from filing an information or from having the date for the arraignment scheduled in those cases in which the issuing authority has conducted the preliminary hearing in the defendant's absence as provided in Rule 543(D).**

**Official Note:** Rule 231 adopted February 15, 1974, effective immediately; amended April 26, 1979, effective July 1, 1979; amended August 12, 1993, effective September 1, 1993; renumbered Rule 565 and amended March 1, 2000, effective April 1, 2001; **Comment revised August 24, 2004, effective August 1, 2005.**

*Committee Explanatory Reports:*

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**Final Report explaining the August 24, 2004 Comment revision concerning preliminary hearing in defendant's absence published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).**

**PART F. Procedures Following Filing of Information**

**Rule 571. Arraignment.**

\* \* \* \* \*

(E) At the conclusion of the arraignment, or after the common pleas judge issues a bench warrant because the defendant fails to appear for the arraignment, in cases held for court following a preliminary hearing in the defendant's absence, the

clerk of courts promptly shall notify the issuing authority that the arraignment has occurred or a bench warrant has been issued.

Comment

[Although this rule does not explicitly require formal arraignments, judicial districts must see to it that the purposes for which arraignments are held, as specified in this rule, are observed in some fashion in all court cases.]

The main purposes of arraignment are: to [assure] ensure that the defendant is advised of the charges; to have counsel enter an appearance, or if the defendant has no counsel, to consider the defendant's right to counsel; and to commence the period of time within which to initiate pretrial discovery and to file other motions. Although the specific form of the arraignment is not prescribed by this rule, judicial districts are required to ensure that the purposes of arraignments are accomplished in all court cases.

Concerning the waiver of counsel, see Rule 121.

\* \* \* \* \*

Paragraph (D) is intended to facilitate, for defendants represented by counsel, waiver of appearance at arraignment through procedures such as arraignment by mail. For the procedures to provide notice of court proceedings requiring the defendant's presence, see Rule 114.

In cases that are held for court following a preliminary hearing in the defendant's absence, paragraph (E) requires that, following the arraignment or the issuance of a bench warrant, the clerk of courts must inform the issuing authority in the most expedient manner, such as by telephone, or by facsimile or electronic transmission. In addition, the clerk should complete and return the notification form provided by the issuing authority. See Rule 543(D) (Disposition of Case at Preliminary Hearing).

**Official Note:** Formerly Rule 317, adopted June 30, 1964, effective January 1, 1965; paragraph (b) amended November 22, 1971, effective immediately; paragraphs (a) and (b) amended and paragraph (e) deleted November 29, 1972, effective 10 days hence; paragraphs (a) and (c) amended February 15, 1974, effective immediately. Rule 317 renumbered Rule 303 and amended June 29, 1977, amended and paragraphs (c) and (d) deleted October 21, 1977, and amended November 22, 1977, all effective as to cases in which the indictment or information is filed on or after January 1, 1978; Comment revised January 28, 1983, effective July 1, 1983; amended October 21, 1983, effective January 1, 1984; amended August 12, 1993, effective September 1, 1993; rescinded May 1, 1995, effective July 1, 1995, and replaced by new Rule 303. New Rule 303 adopted May 1, 1995, effective July 1, 1995; renumbered Rule 571 and amended March 1, 2000, effective April 1, 2001; amended November 17, 2000, effective January 1, 2001; amended May 10, 2002, effective September 1, 2002; amended March 3, 2004, effective July 1, 2004; amended August 24, 2004, effective August 1, 2005.

*Committee Explanatory Reports:*

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**Final Report explaining the August 24, 2004 addition of paragraph (E) and the correlative Comment provisions published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).**

CHAPTER 10. RULES OF CRIMINAL PROCEDURE FOR THE PHILADELPHIA MUNICIPAL COURT

Rule 1000. Scope of Rules.

[ (A) The rules in this chapter govern proceedings in Municipal Court cases in the Philadelphia Municipal Court and appeals from Municipal Court cases.

(B) Except as provided in this chapter, procedure in Municipal Court cases shall be governed by the Rules of Criminal Procedure adopted and promulgated by the Supreme Court of Pennsylvania. ]

(A) The rules in this chapter govern all proceedings in the Philadelphia Municipal Court, including summary cases; Municipal Court cases, as defined in Rule 1001(A); the filing of appeals from Municipal Court cases; the filing of petitions for writs of certiorari; and the preliminary proceedings in criminal cases charging felonies.

(B) Any procedure that is governed by a statewide rule of criminal procedure, but which is not specifically covered in Chapter 10, shall be governed by the relevant statewide rule.

Comment

The 2004 amendments make it clear that, except as otherwise provided in the rules, Chapter 10 governs all proceedings in the Philadelphia Municipal Court, including the procedures for instituting criminal cases charging felonies, preliminary arraignments, and preliminary hearings. See 42 Pa.C.S. § 1123 (Jurisdiction and Venue).

**Official Note:** Rule 6000 adopted December 30, 1968, effective January 1, 1969; amended March 28, 1973, effective March 28, 1973; amended July 1, 1980, effective August 1, 1980; renumbered Rule 1000 and amended March 1, 2000, effective April 1, 2001; amended August 24, 2004, effective August 1, 2005.

*Committee Explanatory Reports:*

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**Final Report explaining the August 24, 2004 amendments clarifying the scope of Chapter 10 published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).**

Rule 1001. Disposition of Criminal Cases—Philadelphia Municipal Court.

(A) [ Any misdemeanor ] A Municipal Court case is any case in which the only offense or offenses charged are misdemeanors under the Crimes Code or other statutory criminal [ offense ] offenses for which no prison term may be imposed or which is punishable by a term of imprisonment of not more than 5 years, including any offense under the Vehicle Code other than a summary offense [ , shall be a Municipal Court case ].

\* \* \* \* \*

(C) A Municipal Court case may be transferred from the Municipal Court to the Court of Common Pleas by order of the President Judge of the Court of Common Pleas, or the President Judge's designee, upon the President Judge's approval of:

\* \* \* \* \*

**Comment**

This rule, which defines "Municipal Court case," is intended to ensure that the Municipal Court will take dispositive action, including trial and verdict when appropriate, in any criminal case that does not involve a felony, excluding summary cases under the Vehicle Code. The latter are under the jurisdiction of the Philadelphia Traffic Court, see 42 Pa.C.S. §§ 1301—1303, 1321.

**Official Note:** Present Rule 6001 adopted March 28, 1973, effective March 28, 1973, replacing prior Rule 6001; amended June 28, 1974, effective July 1, 1974; paragraph (C) added February 10, 1975, effective immediately; title amended July 1, 1980, effective August 1, 1980; Comment revised January 28, 1983, effective July 1, 1983; amended June 19, 1996, effective July 1, 1996; amended August 28, 1998, effective immediately; renumbered Rule 1001 and Comment revised March 1, 2000, effective April 1, 2001; **amended August 24, 2004, effective August 1, 2005.**

*Committee Explanatory Reports:*

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**Final Report explaining the August 24, 2004 amendments clarifying the definition of "Municipal Court Case" published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).**

**Rule 1003. Procedure in Non-Summary Municipal Court Cases.**

**(A) INITIATION OF CRIMINAL PROCEEDINGS**

(1) Criminal proceedings in court cases [which charge any misdemeanor under the Crimes Code or other statutory criminal offenses, other than a summary offense, for which no prison term may be imposed or which is punishable by a term of imprisonment of not more than 5 years] shall be instituted by filing a written complaint, except that proceedings may be also instituted by:

(a) an arrest without a warrant when a **felony** or misdemeanor is committed in the presence of the police officer making the arrest; or

(b) an arrest without a warrant upon probable cause when the offense is a misdemeanor not committed in the presence of the police officer making the arrest, when the arrest without a warrant is specifically authorized by law[. ]; or

(c) an arrest without a warrant upon probable cause when the offense is a **felony**.

\* \* \* \* \*

**(C) SUMMONS AND ARREST WARRANT PROCEDURES**

When an issuing authority finds grounds to issue process based on a complaint, the issuing authority shall:

\* \* \* \* \*

(2) issue a warrant of arrest when:

\* \* \* \* \*

(e) the identity of the defendant is unknown; [ or ]

**(f) a defendant is charged with more than one offense, and one of the offenses is punishable by imprisonment for a term of more than 5 years; or**

\* \* \* \* \*

**(D) PRELIMINARY ARRAIGNMENT**

\* \* \* \* \*

(3) At the preliminary arraignment, the issuing authority:

\* \* \* \* \*

(d) shall also inform the defendant:

\* \* \* \* \*

(ii) of the day, date, hour, and place for trial, which shall not be less than 20 days after the preliminary arraignment unless the issuing authority fixes an earlier date upon request of the defendant or defense counsel, with the consent of the attorney for the Commonwealth; [ and ]

**(iii) in a case charging a felony, of the date, time, and place of the preliminary hearing, which shall not be less than 3 nor more than 10 days after the preliminary arraignment unless extended for cause or the issuing authority fixes an earlier date upon the request of the defendant or defense counsel with the consent of the complainant and the attorney for the Commonwealth; and**

[ (iii) ] (iv) \* \* \*

\* \* \* \* \*

**(E) PRELIMINARY HEARING IN CASES CHARGING A FELONY**

In cases charging a felony, the preliminary hearing in Municipal Court shall be conducted as provided in Rule 542 (Preliminary Hearing; Continuances) and Rule 543 (Disposition of Case at Preliminary Hearing).

[ (E) ] (F) \* \* \*

\* \* \* \* \*

**Comment**

[ Former Rule 6003 was rescinded and replaced in 1994 by new Rule 6003, renumbered Rule 1003 in 2000. Although Rule 1003 has been extensively reorganized, only paragraphs (D)(1) and (D)(3)(c) reflect changes in the procedures contained in the former rule. ]

The 2004 amendments make it clear that Rule 1003 covers the preliminary procedures for all non-summary Municipal Court cases, see Rule 1001(A), and cases charging felonies, including the institution of proceedings, the preliminary arraignment, and the preliminary hearing.

See Chapter 5 (Procedure in Court Cases), Parts I (Instituting Proceedings), II (Complaint Procedures), III(A) (Summons Procedures), III(B) (Arrest Procedures in Court Cases), and IV (Proceedings in Court Cases Before Issuing Authorities) for the statewide rules governing the preliminary procedures in court cases, including non-summary Municipal Court cases, not otherwise covered by this rule.

The 2004 amendments to paragraph (A)(1) align the procedures for instituting cases in Municipal Court with the statewide procedures in Rule 502 (Means of Instituting Proceedings in Court Cases).

The 1996 amendments to paragraph (A)(2) align the procedures for private complaints in non-summary cases in Municipal Court [ cases ] with the statewide procedures for private complaints in Rule 506 (Approval of

Private Complaints). In all cases [ **where** ] in which the affiant is not a law enforcement officer, the complaint must be submitted to the attorney for the Commonwealth for approval or disapproval.

**As used in this rule, "Municipal Court judge" includes a bail commissioner acting within the scope of the bail commissioner's authority under 42 Pa.C.S. § 1123(A)(5).**

\* \* \* \* \*

Under paragraph (D)(4), after the preliminary arraignment, if the defendant is detained, the defendant must be given an immediate and reasonable opportunity to post bail, secure counsel, and notify others of the arrest. Thereafter, if the defendant does not post bail, he or she must be committed to jail as provided by law.

**For purposes of modifying bail once bail has been set by a common pleas judge, see Rules 529 and 536.**

**Official Note:** Original Rule 6003 adopted June 28, 1974, effective July 1, 1974; amended January 26, 1977, effective April 1, 1977; amended December 14, 1979, effective April 1, 1980; amended July 1, 1980, effective August 1, 1980; amended October 22, 1981, effective January 1, 1982; Comment revised December 11, 1981, effective July 1, 1982; amended January 28, 1983, effective July 1, 1983; amended February 1, 1989, effective July 1, 1989; rescinded August 9, 1994, effective January 1, 1995. New Rule 6003 adopted August 9, 1994, effective January 1, 1995; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; amended March 22, 1996, effective July 1, 1996; amended August 28, 1998, effective immediately; renumbered Rule 1003 and amended March 1, 2000, effective April 1, 2001; amended May 10, 2002, effective September 1, 2002; **amended August 24, 2004, effective August 1, 2005.**

*Committee Explanatory Reports:*

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**Final Report explaining the August 24, 2004 changes clarifying preliminary arraignment and preliminary hearing procedures in Municipal Court cases published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).**

#### FINAL REPORT<sup>1</sup>

**Amendments to Pa.Rs.Crim.P. 103, 114, 510, 511, 512, 540, 542, 543, 547, 571, 1000, 1001, and 1003, and Revision of the Comments to Pa.Rs.Crim.P. 509, 529, 536, 560, 565**

#### Procedures when Defendant Fails to Appear for Preliminary Hearing

On August 24, 2004, effective August 1, 2005, upon the recommendation of the Criminal Procedural Rules Committee, the Court amended Rules 103, 114, 510, 511, 512, 540, 542, 543, 547, 571, 1000, 1001, and 1003, and approved the revision of the Comments to Rules 509, 529, 536, 560, 565. These rule changes establish one statewide, uniform procedure for handling court cases in which a defendant has failed to appear for the preliminary hearing. If a defendant fails to appear before the issuing authority for the preliminary hearing after notice and without cause, the defendant's absence will be deemed a waiver of the defendant's right to be present, the case will

proceed in the defendant's absence, and a warrant for the defendant's arrest will be issued.

#### I. BACKGROUND

In 1996, in response to questions from some district justices and the Administrative Offices of Pennsylvania Courts' (AOPC) Judicial Computer Project (JPC) Staff concerning the numerous variations in procedures across Pennsylvania for handling cases in which a defendant fails to appear for the preliminary hearing (FTAs),<sup>2</sup> the Committee undertook an extensive review of the procedures in place for handling these FTAs. Agreeing that there should be one statewide procedure, in 1998, the Committee recommended to the Court rule changes to establish a procedure that required, after a 10-day waiting period and after the issuing authority had considered whether the defendant received notice of the preliminary hearing and there was a good reason that would explain the defendant's failure to appear, the case would be forwarded to the court of common pleas for further proceedings.<sup>3</sup> The proposal also prohibited the district justices from issuing warrants for the defendant. In August 1999, the Court asked the Committee to reconsider this Recommendation, and to specifically address four questions—whether district justices should issue warrants in FTA cases; whether a clarification concerning the interplay of Rule 536 concerning bail and the proposed changes to Rule 543 was necessary; whether "further proceedings" needed to be defined; and whether the notice through counsel provision added to the proposed changes to Rule 543 was in conflict with Rules 512, 540, and 542.

The Committee reexamined the various practices around the state for handling failures to appear at the preliminary hearing, and reconsidered the issues that had arisen during the development of the original recommendation, including the problems related to timely service of district justice "bench warrants"; the concerns about sending the cases to common pleas court without a preliminary hearing or warrant, and without guidance as to "further proceedings"; the reticence on the part of common pleas judges to handle these cases; the likelihood that there would be many remands to the district justice for the preliminary hearing, resulting in unnecessary delays; and the impact of the procedures on Rule 600.

Many differing views were articulated during the course of this reconsideration, and another compromise position so that the district justice would issue a bench warrant in these cases and the case would remain with the district justice for disposition. Accordingly, a defendant's failure to appear without good cause and after notice of the preliminary hearing constitutes a waiver of the defendant's presence for any further proceedings before the issuing authority. When this occurs, the case is to proceed pursuant to Rules 542 and 543 in the same manner as if the defendant was present. "Further proceedings before the issuing authority" within the scope of this revised procedure means (1) the preliminary hearing could be conducted and, if a prima facie case is established, the case is held for court, and if not, then the charges are dismissed; or (2) the issuing authority could

<sup>2</sup> For example, some district justices issue warrants for the arrest of the defendant, and the case remains in their court until the defendant is returned on the warrant and the preliminary hearing is held. Other district justices declare the defendant a "fugitive" and forward the case to the clerk of courts for processing in the court of common pleas. Ordinarily, in these cases, the district attorney moves to file the information without a preliminary hearing. In other judicial districts, district justices conduct the preliminary hearing in the defendant's absence when a defendant fails to appear for the preliminary hearing, and the case proceeds in the same manner as if the defendant had appeared.

<sup>3</sup> The Committee's Report explaining this previous proposal was published at 26 Pa.B. 2307 (May 18, 1996).

<sup>1</sup> The Committee's Final Reports should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the Committee's explanatory Final Reports.

grant a continuance, or (3) in certain cases, the issuing authority could convene the preliminary hearing to take testimony of the witnesses, and thereafter continue the hearing.<sup>4</sup> This new approach is consistent with the present practice in a number of magisterial districts, and enhances the goals the Committee set for the proposal: to move the case forward, to be fair and reasonable, and to protect the rights of the defendant.

## II. DISCUSSION OF RULE CHANGES

### A. Rule 543 (Disposition of Case at Preliminary Hearing)

The Committee initially reviewed the rules in Chapter 5 Part D, particularly Rules 542 (Preliminary Hearing; Continuances) and 543 (Disposition of Case at Preliminary Hearing), and agreed to incorporate into Rule 543(D), with additional elaboration of the procedure in the Comment, the substance of the proposal—the deemed waived provision, and the requirements that the issuing authority proceed with the case as though the defendant was present, and if the case is held for court or the preliminary hearing is continued, issue a warrant.

The cornerstone of the rule changes is that the issuing authority must determine whether the defendant has received notice of the preliminary hearing and whether the defendant has good cause for failing to appear before any formal action may be taken against a defendant who fails to appear.<sup>5</sup> If the issuing authority finds that the defendant did not receive notice or finds that there was good cause explaining the defendant's failure to appear, paragraph (D)(1) requires the issuing authority to continue the preliminary hearing to a specific date and time, and give notice as provided in Rule 542(D)(2).

#### 1. Waiver Procedures

If the issuing authority determines that the defendant received notice and is absent without good cause, paragraph (D)(2) requires that the defendant's absence be deemed a waiver by the defendant of the right to be present at any further proceedings before the issuing authority. The Rule 543 Comment explains that the duration of the waiver only extends to the period of time that the defendant is absent. Thus, if a defendant is arrested on the warrant issued pursuant to paragraph (D)(2)(c) or voluntarily appears, the waiver would no longer be in effect.

When a defendant fails to appear, the issuing authority is required to proceed with the case in the same manner as though the defendant was present, paragraph (D)(2)(a). The decision about how to proceed is left to the discretion of the issuing authority, and the Comment elaborates on what is intended by "further proceedings." For example, the issuing authority could conduct the preliminary hearing, which the issuing authority might want to do if all the witnesses are present and the Commonwealth is ready to proceed; continue the preliminary hearing; or hold the preliminary hearing for the purpose of taking testimony of the witnesses who are present and then continue the hearing to a date certain. When there is a continuance, the Comment instructs the issuing authority to send the required notice of continuance to the defendant, even though the defendant has absented himself or herself from the original proceedings.

#### 2. Arrest Warrant Procedures

The Committee agreed when the case is held for court or the preliminary hearing is continued, the issuing

authority must issue a warrant for the arrest of the defendant. This procedure is set forth in paragraph (D)(2)(c). Conversely, in those cases in which a preliminary hearing is held in the defendant's absence and the case is dismissed, no warrant would be issued.

In developing these arrest warrant procedures, the Committee considered that there are two options for handling arrest warrants issued following a defendant's failure to appear for the preliminary hearing: jurisdiction over the warrant could (1) stay with the issuing authority or (2) move with the case to the court of common pleas. We settled on a procedure in which the jurisdiction of the warrant stays with the issuing authority because, in most cases, the issuing authority will have set the bail and will be the most familiar with the case for purposes of making a post-arrest bail decision. By having the issuing authority retain jurisdiction in these cases, there is a greater likelihood that the defendant will be located quickly and processed in a timely manner without the delay that would occur with the case moving to the common pleas court. In addition, the Committee is sensitive to the fact that common pleas judges would not want the additional burden of handling these warrant cases prior to the arraignment.

Paragraph (D)(2)(c) requires the issuing authority to issue a warrant if the case is held for court or the preliminary hearing is continued. In addition, the Comment explains when the defendant is apprehended while the case is still within the issuing authority's jurisdiction, that the defendant is taken to the issuing authority for "resolution of the warrant, counsel, and bail." The issuing authority should proceed under Rule 536 concerning bail, and advise the defendant concerning his or her right to counsel if the defendant is not represented.

In establishing the warrant procedure in paragraph (D)(2)(c), the Committee recognized that there has to be an outside limit for the issuing authority's jurisdiction, and approved the concept, as set forth in paragraph (D)(3), that the issuing authority retains jurisdiction over the warrant until either the arraignment occurs in common pleas court or the common pleas judge issues a bench warrant when the defendant fails to appear for the arraignment—either of these "events" extinguishes the warrant. Once either event occurs, new paragraph (E) of Rule 571 (Arraignment) requires the clerk of courts to notify the issuing authority so the issuing authority recalls and cancels the warrant. Rule 543(D)(3) requires the issuing authority to promptly recall and cancel his or her warrant upon receipt of the notice.<sup>6</sup>

### B. Correlative Rule Changes Related to Notice

#### 1. Notice of the Preliminary Hearing: Rules 114, 509, 510, and 540

In developing the new procedures for handling FTAs, the Committee wanted to ensure there is a determination by the issuing authority that the defendant received notice of the preliminary hearing before a case may proceed in the defendant's absence. Under the present rules, notice of the date and time of a preliminary hearing is given to a defendant in one of two ways: (1) when a defendant appears for a preliminary arraignment, notice of the date and time for the preliminary hearing is given orally to the defendant at the preliminary arraignment, Rule 540(E)(2); and (2) when the case is begun by summons, the summons sets forth the place, date, and time for the preliminary hearing, Rule 510, and is served by certified mail, return receipt requested, Rule 511.

<sup>4</sup> The revised proposal was published for comment at 29 Pa.B. 6454 (12/25/99). A Supplemental Report explaining additional changes made after consideration of the publication responses was published at 30 Pa.B. 4543 (9/2/2000).

<sup>5</sup> See Section B below for the discussion of the correlative rule changes concerning the new notice provisions.

<sup>6</sup> The terms "recall" and "cancel" are taken from the district justices' computer manual for the procedures for handling warrants.

(a) *Oral and Written Notice at Preliminary Arraignment: Rule 540 (Preliminary Arraignment)*

The amendments to Rule 540(F)(2) require that the notice of the preliminary hearing be given to the defendant at the preliminary arraignment both orally and in writing. Noting that the preliminary arraignment can be a confusing time for a defendant, and in most cases the defendant is not represented, the Committee agreed adding the requirement that the notice of the preliminary hearing be in writing increases the likelihood that a defendant will remember the information he or she receives at the preliminary arraignment.

(b) *Notice in Summons: Rule 511 (Service of Summons: Proof of Service)*

The present rules do not address how an issuing authority is to determine whether the defendant actually receives a summons that was mailed, and the Committee agreed that it would be helpful to the bench and bar if the rules provide guidance in this area. In deciding how to best accomplish this, we looked at the Rules of Civil Procedure to see how this matter is handled in civil cases. Pa.R.Civ.P. 405 (Return of Service) provides, *inter alia*, that proof of service by mail:

shall include a return receipt signed by the defendant or, if the defendant has refused to accept mail service and the plaintiff thereafter has served the defendant by ordinary mail,

(1) the returned letter with the notation that the defendant refused to accept delivery, and

(2) an affidavit that the letter was mailed by ordinary mail and was not returned within fifteen days after mailing.

The Committee agreed that a provision comparable to this, but modified for criminal practice, would allay the members' concerns about service by mail. Accordingly, Rule 511 (Service of Summons) has been amended as follows:

1. The title is expanded to include "proof of service."

2. The present text of the rule now is paragraph (A), and requires service of the summons by both first class mail and certified mail, return receipt requested.

3. New paragraph (B), modeled on the procedures in Civil Rule 405(c), sets forth what constitutes proof of service of a summons by mail: a returned receipt signed by the defendant or undelivered certified mail and evidence that the first class mailing was not returned to the issuing authority.

(c) *Rule 114 (Orders And Court Notices: Filing; Service; And Docket Entries)*

In developing the notice portions of the proposal, the Committee reviewed Rule 114. The requirements for notice in Rule 114 apply to proceedings in the court of common pleas, and therefore establish methods of service that are different from the requirements in Rules 510, 511, and 540 for notice of the preliminary hearing. Accordingly, as an aid to the bench and bar and to avoid any confusion about which rules apply, the Committee agreed that Rule 114 should be amended to make it clear that the Rule 114 service provisions do not apply to service of the notice of the preliminary hearing.

2. *Notice of Consequences of Failing to Appear for Preliminary Hearing: Rule 540 (Preliminary Arraignment)*

With the development of this proposal and the significant consequences that will result for failing to appear

without cause at the preliminary hearing, the Committee agreed it is imperative that the rules require some form of notice to the defendant of the consequences of his or her failure to appear for the preliminary hearing. Accordingly, Rule 540(F)(2)(b) has been added, requiring the following information be given to the defendant:

failure to appear without cause for the preliminary hearing will be deemed a waiver by the defendant of the right to be present at any further proceedings before the issuing authority, and will result in the case proceeding in the defendant's absence and the issuance of a warrant of arrest.

3. *Notice of Continuance: Rule 542(D) (Preliminary Hearing; Continuances)*

Another notice issue arises when a preliminary hearing is continued. Under present Rule 542(E), there is no provision for notice of the new date and time set for the preliminary hearing to be given to the parties, a procedural gap the Committee agreed should be filled. To accomplish this, Rule 542(D)(2) has been added requiring the issuing authority to give written notice of the new date and time to the defendant, defendant's attorney of record, if any, and to the attorney for the Commonwealth. Under the new provisions, service on the defendant may be accomplished either in person or by both first class mail and certified mail, return receipt requested. See paragraph (D)(2)(b). Paragraph (D)(2)(c) provides for service on the defendant's attorney and on the attorney for the Commonwealth either by personal delivery or by leaving a copy for or mailing a copy to the attorney at the attorney's office.

The Rule 542 Comment ties this rule with the Rule 511(B) service requirements, and explains that, when the notice of the continuance is mailed to the defendant, proof of service by mail must include (1) a return receipt signed by the defendant, or (2) if the certified mail is returned for whatever reason, the returned notice with the notation that the certified mail was undelivered and evidence that the first class mailing of the summons was not returned to the issuing authority within fifteen days after mailing.

C. *Other Correlative and "Housekeeping" Amendments*

1. *Rule 103 (Definitions)*

During our discussions about the rules in this proposal, the Committee considered whether there is a need to more clearly distinguish between the preliminary arraignment and the arraignment. The Committee noted the term "arraignment" seems to be used interchangeably for both the preliminary arraignment before the issuing authority and the arraignment in the court of common pleas, and that this tends to create confusion. Rule 103 has been amended with the inclusion of definitions of "preliminary arraignment" and "arraignment." In addition, the Rule 571 Comment has been revised by deleting "formal" before arraignment and emphasizing the purpose of the arraignment.

2. *Rule 509 (Use of Summons or Warrant of Arrest in Court Cases)*

The Comment to Rule 509 (General Rule: Use of Summons or Warrant of Arrest in Court Cases) has been revised by the addition of a provision clarifying that before a warrant may be issued when a summons has been returned undelivered, the summons must have been served as provided in Rule 511(A), and both the first class and certified mail must have been returned undelivered.

3. *Rule 512 (Procedure in Court Cases Following Issuance of Summons)*

Rule 512 has been amended in two ways: (1) “on the date and” has been added before “at the time” and (2) a cross-reference to Rule 543(D) has been added. Some minor “housekeeping” changes also were made.

4. *Rule 547 (Return of Transcript and Original Papers)*

A few “housekeeping” changes to Rule 547 and the Comment have been made to draw attention to the fact that there are rules, other than Rules 135 and 543, that require that certain information be included in the transcript to make a record of the proceedings before the district justice.

5. *Rules 560 (Information: Filing, Contents, Function) and 565 (Presentation of Information without Preliminary Hearing)*

In developing the new preliminary hearing waiver procedures, the members expressed concern that the application of Rules 560 and 565 to the new procedure for proceeding with the preliminary hearing in the defendant’s absence might be confusing. Agreeing a purpose of the new FTA procedure is that a case that is bound over following a preliminary hearing in a defendant’s absence is to be treated in the same manner as any other case that is bound over for court, the Committee concluded the Comments to Rules 560 and 565 should be revised. The Comments now include a brief explanation that the attorney for the Commonwealth should prepare the information and proceed in the same manner with these cases as with any other case that is held for court.

6. *Bail*

Another issue of concern for the Committee related to the interplay between the FTA procedures in Rule 543 (Disposition of Case at Preliminary Hearing), Rule 529 (Modification of Bail Order Prior to Verdict), which prohibits a district justice from modifying bail after bail has been modified by a common pleas judge, and Rule 536 (Procedures upon Violation of Conditions: Revocation of Release and Forfeiture; Bail Pieces; Exoneration of Surety), which permits the bail authority to change the conditions of release when a person violates a condition of the bail bond. The Committee questioned whether, in a case in which a common pleas judge has modified bail while the case is pending with the district justice, and subsequently the defendant fails to appear for a preliminary hearing and the district justice issues a warrant, the district justice would be authorized to modify the bail pursuant to Rule 536 when the defendant is arrested on the warrant? After reviewing the Committee’s rule history, the members concluded that Rule 529 “trumps” Rule 536: once a common pleas judge modifies bail, only the common pleas judge subsequently may modify bail, even in cases that still are pending before the district justice. In the failure to appear warrant context, once the defendant is apprehended, the decision to change the conditions of bail would have to be made by the common pleas judge, although pursuant to Rule 536(A)(1)(d), the district justice would be authorized to hold the defendant pending this decision.

The Committee noted that, although this scenario will not occur frequently, the issue is one that could create confusion. Accordingly, the Rule 543 Comment has been revised to cross-reference Rules 529 and 536, and the revisions to the Comments to Rules 529 and 536 explain the interplay between the two rules: once bail has been set by a common pleas judge pursuant to Rule 529, as provided in Rule 536(A), only the common pleas judge

may change the conditions of release even when the case is pending before a district justice.

D. *Cases in the Philadelphia Municipal Court*

As the Committee worked on the new procedures for handling cases in which the defendant fails to appear for the preliminary hearing, we also considered whether comparable changes should be made in Chapter 10 concerning the procedures in Philadelphia Municipal Court. Although the functioning of the Municipal Court differs in a number of ways from magisterial district courts, the members agreed there is no reason why FTAs for preliminary hearings in Municipal Court should not be handled procedurally in the same manner as FTAs elsewhere in the Commonwealth. Accordingly, Rule 1003 (Procedure in Non-Summary Cases in Municipal Court) has been amended to make it clear the procedures in Municipal Court for both preliminary hearings and cases in which the defendant fails to appear for the preliminary hearing are the same as the procedures in the other judicial districts. A new paragraph (E) has been added that directs that the preliminary hearing in Municipal Court be conducted as provided in Rules 542 and 543.

In reviewing the Municipal Court rules, the Committee noted that the current definition of “Municipal Court case” in Rule 1001 (Disposition of Criminal Cases—Philadelphia Municipal Court), “any misdemeanor under the Crimes Code or other statutory criminal offense for which no prison term may be imposed or which is punishable by a term of imprisonment of not more than five (5) years, including any offense under the Motor Vehicle laws other than a summary offense,” appears to limit the scope of Chapter 10. To ensure that there is no confusion about the application of the Chapter 10 rules to not only Municipal Court cases, but also to the preliminary procedures in cases charging felonies, including preliminary arraignments and preliminary hearings, Rules 1000, 1001, and 1003 have been amended by a number of clarifying and conforming changes addressing these issues.

[Pa.B. Doc. No. 04-1683. Filed for public inspection September 10, 2004, 9:00 a.m.]

## Title 25—LOCAL COURT RULES

### SOMERSET COUNTY

#### Consolidated Rules of Court; No. 50 Misc. 2004

#### Adopting Order

Now, this 19th day of August, 2004, it is hereby Ordered:

1. Somerset County Orphans’ Court Rule 6.3.1, subparagraph (e) (Som.O.C.R. 6.3.1(e)), Notice To Parties In Interest, is amended to read as follows, effective thirty days after publication in the *Pennsylvania Bulletin*:

(e) The Clerk shall give notice of all accounts filed and of the time and place of the call of the confirmation list. The notice shall be published once a week for two consecutive weeks immediately before the day on which the Accounts, with accompanying Statement Of Proposed Distribution, shall be presented for confirmation, in the legal publication designated by local rule and in one newspaper of general circulation



published within Somerset County, and the Clerk shall also post copies of the confirmation list in the Clerk's office.

2. The Somerset County Court Administrator is directed to:

A. File seven (7) certified copies of this Order and the attached Rule with the Administrative Office of Pennsylvania Courts.

B. Distribute two (2) certified copies of this Order and the following Rule to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

C. File one (1) certified copy of this Order and the attached Rule with the Pennsylvania Orphans' Court Rules Committee.

D. File proof of compliance with this Order in the docket for these Rules, which shall include a copy of each transmittal letter.

*By the Court*

EUGENE E. FIKE, II,  
*President Judge*

**RULES OF COURT  
SOMERSET COUNTY ORPHANS' COURT RULES**

**Som. O.C.R. 6.3.1. Notice To Parties In Interest.**

(a) Notice of the filing and of the date and time for confirmation as required by law and Rule of Court shall be given by certified or registered mail, return receipt requested, at least ten days prior to the confirmation date. In lieu of such notice, a written waiver of notice may be filed for any party. The notice shall state that any party may file objections in writing with the Clerk of the Orphans' Court at any time prior to the date and time fixed for confirmation, and that if no objection is filed, the Account and Statement of Proposed Distribution will be confirmed absolutely.

(b) In addition to notices otherwise required by law or statute, the surety on the bond of any fiduciary seeking discharge shall be given written notice of the filing of the petition and of the date and time for presentation for Final Decree, by certified or registered mail, return receipt requested, at least ten days prior to the date scheduled for discharge. In lieu of such notice, a written waiver of notice may be filed. The notice shall state that the surety may file objections in writing with the Clerk of the Orphans' Court at any time prior to the time fixed for Final Decree, and that if no objection is filed, a Final Decree shall be made as of course.

(c) Prior to the date for the call of the account for confirmation, the accountant, or counsel, shall file with the Court a return of notice as prescribed in Rule 5.4.1. hereof, in form approved by the Court.

(d) If it shall appear that timely and proper notice has not been given to all parties entitled to notice or that the requisite affidavit of notice has not been filed, or that all costs have not been paid, no order of confirmation or discharge will then be made and in lieu thereof the procedure shall be as follows:

(1) If the irregularity is remedied within twenty (20) days, the Clerk shall represent the matter to the Motions Judge in Chambers for confirmation or discharge order,

provided at least ten (10) days have elapsed after notice was given to any party and provided that no objection, exception or answer has been filed meanwhile. If any such objection, exception or answer has been filed, the provisions of Rule 6.4.1.(b) shall apply.

(2) If the irregularity has not been so remedied within twenty (20) days, the time for confirmation or for discharge order shall be as of course extended until the next regular scheduled session for confirmation and discharge, and re-advertisement and re-notification of all parties shall be required, unless the fiduciary makes written application to the Court and obtains special relief for cause shown.

(3) In any case now pending or hereafter arising in which an account, statement of proposed distribution, or discharge petition has been filed but remains unconfirmed for unremedied procedural defect, the Clerk may file a petition with the Court stating the essential facts and requesting issuance of a rule to show cause why an order denying confirmation or dismissing the discharge petition should not be made. A copy of such petition shall be furnished by mail to the fiduciary and his or her counsel, and to each party entitled to receive notice and the case shall be placed on the argument schedule for hearing and argument *sec reg*.

(e) The Clerk shall give notice of all accounts filed and of the time and place of the call of the confirmation list. The notice shall be published once a week for two consecutive weeks immediately before the day on which the Accounts, with accompanying Statement Of Proposed Distribution, shall be presented for confirmation, in the legal publication designated by local rule and in one newspaper of general circulation published within Somerset County, and the Clerk shall also post copies of the confirmation list in the Clerk's office.

(f) The form of advertisement of Accounts and Statements of Proposed Distribution that have been filed for confirmation by the Court shall be as follows:

NOTICE OF CONFIRMATION OF FIDUCIARIES  
ACCOUNTS.

To all claimants, beneficiaries, heirs, next-of-kin, and all other parties in interest:

NOTICE is hereby given that the following named fiduciaries of the respective estates designated below have filed their Accounts and Statements of Proposed Distribution in the office of the Register of Wills in and for the County of Somerset, Pennsylvania, and the same will be presented to the Orphans' Court Division, Courtroom No. \_\_\_\_\_, Somerset County Courthouse, Somerset, Pennsylvania, on \_\_\_\_\_, the \_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_ at \_\_\_\_ .m., for confirmation. All objections must be filed in writing in the office of the Clerk of Orphans' Court Division, Court of Common Pleas, Somerset, Pennsylvania, prior to the foregoing stated date and time:

ESTATE	FIDUCIARY	ATTORNEY
X	X	X

\_\_\_\_\_  
Clerk of the Orphans' Court

[Pa.B. Doc. No. 04-1684. Filed for public inspection September 10, 2004, 9:00 a.m.]

## VENANGO COUNTY

### Promulgation of Local Rules 211.1, 211.2, 211.3, 212.1, 212.2 and 212.3; Civ. No. 1090-2004

#### Order of the Court

*And Now*, this 25th day of August, 2004, we hereby order that Venango County Local Rules 211.1, 211.2, 211.3, 212.1, 212.2 and 212.3 are adopted. These rules shall be continuously available for public inspection and copying in the office of the prothonotary. Upon request and payment of reasonable costs of reproduction and mailing, the prothonotary shall furnish to any person a copy of any local rule. The said local rules shall become effective thirty (30) days after the date of publication in the *Pennsylvania Bulletin*.

*By the Court*

H. WILLIAM WHITE,  
*President Judge*

#### **Rule 211.1. Argument Court. Praecept for Argument. When Held.**

(a) Whenever a matter at issue involves a question of law only and no evidentiary hearing is required for determination thereof, any party or counsel desiring to submit such matter to the court may file a praecipe for argument.

(b) Argument Court shall be held on the dates scheduled on the court calendar, which is approximately once a month, or as otherwise ordered by the court.

(c) Cases for argument shall be placed on the argument docket at least thirty (30) days prior to argument court.

#### **Rule 211.2. Argument Court. Filing and Content of Briefs.**

(a) The moving party shall file a brief with the Prothonotary, which shall be docketed, simultaneously with the filing of the praecipe for argument. If the moving party has not filed a praecipe for argument, the brief of the moving party shall be due fourteen (14) days after any of the responding parties have filed a praecipe for argument.

(b) A responding party's reply brief shall be filed with the Prothonotary and docketed within seven (7) days of the filing of the moving party's brief.

(c) All briefs must include:

- (1) A procedural summary, which includes an analysis as to why the issue is before the court;
- (2) A synopsis of the relevant facts with reference to where they appear in the record;
- (3) A statement of questions involved;
- (4) A summary of pertinent law; and
- (5) An analysis of the party's position.

#### **Rule 211.3. Argument Court. Failure to File a Brief. Late Briefs.**

(a) If the moving party has failed to file a brief or where the motion does not raise complex legal and/or factual issues, the moving party has failed to include a statement of applicable authority in the body of the motion, the motion shall, in the discretion of the judge, be dismissed or not considered.

(b) If any party's brief is not timely filed, the court will sanction, which shall include:

- (1) The party being barred from oral argument; and

(2) Such other sanctions as the court deems appropriate.

#### **Rule 212.1. Civil Actions to be Tried by Jury. Listing for Trial. Time for Filing Pre-Trial Statement.**

(a) The parties can list a case for trial by filing a praecipe with the Prothonotary. A case may be placed on the trial list after it is at issue and there are no unresolved motions before the court.

(b) The court calendar shall list civil pre-trial conference days. All cases listed for trial shall be scheduled for the next pre-trial conference day. The court calendar shall also recite when the argument list and trial list closes.

(c) Pre-trial statements shall be filed no later than seven (7) days before the pre-trial conference.

#### **Rule 212.2. Civil Actions to be Tried by Jury. Pre-Trial Statement. Content.**

(a) In addition to the requirements of Pa.R.C.P. 212.2, a pre-trial statement shall contain:

(1) A statement of the status of discovery, which shall include whether any further discovery is required and a proposed schedule for completing discovery;

(2) A statement of the status of the scheduling of an independent medical examination;

(3) A statement of the status of any depositions for use at trial;

(4) A statement of novel questions of law, including whether any motions in limine will be filed; and

(5) A statement of damages with a detailed analysis of the claim, including the manner of calculating damages.

#### **Rule 212.3. Pre-Trial Conference.**

(a) Trial counsel must be present at the pre-trial conference unless:

(1) Trial counsel is at trial in another court; or

(2) Trial counsel otherwise has the court's permission and substitute counsel attends (in all cases, substitute counsel will be thoroughly familiar with the case and prepared to discuss and resolve all outstanding issues).

(b) The parties are not required to appear at the pre-trial conference but may appear. At the very least, the parties must be available by telephone. If the parties are not present, counsel shall be fully vested with settlement authority. Where settlement authority is coming from an insurance company, a company representative with settlement authority shall attend or be available by telephone.

(c) The court shall establish a trial date, taking into consideration the requests of all parties and their counsel. Once the trial date is set at the pre-trial conference, it shall be firm.

(d) The court shall discuss trial alternatives such as a summary trial. This court intends to use a summary trial for any jury trial that is expected to last more than three (3) days.

(e) The court shall determine whether to regulate further discovery.

(f) In jury trials, the court shall discuss settlement. In non-jury trials, the court shall discuss settlement only with the consent of all parties.

(g) The court shall dictate an order in the presence of counsel that:

(1) Memorializes all material matters discussed at the conference;

(2) Schedules trial;

(3) Addresses further discovery;

(4) Discusses pending trial depositions;

(5) Addresses motions in limine;

(6) Addresses voir dire questions;

(7) Places responsibility for the preparation and delivery of verdict slips, proposed findings, trial briefs, and requested points for charge; and

(8) Directs counsel to have all exhibits pre-marked—plaintiffs/numbers, defendants/letters—and available for inspection at jury selection.

[Pa.B. Doc. No. 04-1685. Filed for public inspection September 10, 2004, 9:00 a.m.]

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# PROPOSED RULEMAKING

## COMMISSION ON CRIME AND DELINQUENCY

[37 PA. CODE CHS. 191 AND 411]

### Crime Victims Compensation

The Commission on Crime and Delinquency (Commission) proposes to delete Chapter 191 (relating to general provisions) and to add Chapter 411 (relating to crime victims compensation) to read as set forth in Annex A.

#### *Authority*

The rulemaking is proposed under the authority of the Crime Victims Act (act) (18 P. S. §§ 11.101—11.5102). Section 312(3) of act (18 P. S. § 11.312(3)) empowers the Office of Victims' Services (Office) to "adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions and purposes of Chapter 7." Section 312(3) of act also empowers the Office to establish compensation limits and reimbursement rates for the purpose of carrying out the provisions of Chapter 7.

#### *Purpose*

This rulemaking proposes to delete Chapter 191 and to replace it with regulations specific to the Office. The new regulations would be in Chapter 411, adjacent to other regulations pertaining to the Commission or its other offices. The proposed rulemaking reflects the substantial statutory changes that have occurred since 1989 when regulations affecting the program were most recently amended. New regulations are needed to conform to the new requirements of the act. The proposed rulemaking would simplify or clarify many of the Office's claims processing, determination and appeal procedures. In addition, this proposed rulemaking incorporates the Schedule of Compensation Limits and Reimbursement Rates (schedule) for the Crime Victims Compensation Program (program) published as a statement of policy at 32 Pa.B. 4489 (September 14, 2002), thus allowing conservation of limited financial resources.

This proposed rulemaking is necessary because substantial statutory changes have occurred in a benefit program subsequent to the last time the applicable regulations were amended in 1989. The program has an increasing visibility in the Commonwealth's criminal justice system, having awarded a total of \$9.2 million in FY 2002-2003 consisting of initial awards for 3,094 claims and supplemental awards for 1,578 previous claims. In addition, this proposed rulemaking would adopt the schedule as published at 32 Pa.B. 4489, thus allowing conservation of limited financial resources. New regulations are needed to conform the regulatory framework to the needs and priorities of the current program.

#### *Requirements of the Proposed Rulemaking*

The proposed rulemaking enumerates and details the new requirements of the act in the following structure:

#### *§§ 411.1—411.3 (relating to general provisions)*

These sections provide the scope of the proposed rulemaking and the definitions of words and terms used in Chapter 411, as well as the persons eligible for compensation.

#### *§§ 411.11—411.18 (relating to claims)*

These sections provide procedures for filing and review of claims, as well as procedures for closing claims. These

sections also address the role of the Office in making initial determinations on claims. The sections address actions of the direct victim that are considered and affect awards. These sections provide provisions pertaining to awards, including reductions, offsets and limitations, emergency awards and awards in general.

#### *§§ 411.31—411.33 (relating to appeals)*

These sections provide appeal procedures.

#### *§§ 411.41—411.44 (relating to schedule of reimbursement rates and compensation limits)*

These sections set the schedule of reimbursement rates and the compensation limits for awards, out-of-pocket loss, loss of earnings and loss of support payments.

#### *§§ 411.51—411.53 (relating to miscellaneous)*

Section 411.51 (relating to subrogation) provides subrogation authority to the Office regarding award payments.

Section 411.52 (relating to representation by attorney) provides provisions for claimants that are represented by an attorney and factors for the Office to consider when assessing reimbursement of attorney fees.

Section 411.53 (relating to prohibitions) provides prohibitions against reimbursement claims submitted by providers who have already written off bills to the direct victim, funeral directors who have assumed an obligation to pay for the funeral and persons who assumed the obligation for crime scene clean up.

#### *Affected Parties*

Victims of crimes, as defined in the act, benefit by having clear and up-to-date regulations regarding eligibility, compensation and procedures. Additionally, the proposed rulemaking is intended to provide further guidance and direction to healthcare providers and hospitals in regard to their eligibility and reimbursement under the act.

Under the authority of the act of June 28, 2002 (P. L. 496, No. 85) (Act 85), there is now a 70% reimbursement rate for medical expenses set by the Office which may adversely affect a variety of providers, because they will not receive as much reimbursement as previously received, when they were paid in full to the extent of the maximum of \$35,000 under the act. However, paying at 100% was the exception to the rule, and the setting of a percentage reimbursement rate has conformed to the practice of other third-party payors.

#### *Cost and Paperwork Estimates*

The proposed rulemaking provides guidance in implementing a program that is already in effect, for which funding has been appropriated. Therefore, there is no new significant fiscal impact. However, various health providers will incur costs resulting from the percentage reduction of payments. This reduction will save the Crime Victim's Compensation Fund an estimated \$1,453,052. This amount would have been paid to the providers prior to the reduction of payments.

The fiscal impact to the Commission from all the reimbursement rates set by the Office under Act 85 will consist of an estimated annual net savings of \$684,888. This calculation takes into account the savings to the Commission resulting from the Office's setting of a 70% reimbursement rate to providers (\$1,453,052) and the

estimated costs to the Commission from new benefits or increased benefits (\$768,164).

The proposed rulemaking does not affect existing reporting, record keeping, or other paperwork requirements.

*Effective Date*

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

*Sunset Date*

No sunset date has been assigned. The regulations will be reviewed annually.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 26, 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 House and Senate Judiciary 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 Commission, the General Assembly and the Governor of comments, recommendations or objections raised.

*Public Comment and Contact Person*

Interested persons are invited to submit written comments regarding the proposed rulemaking within 30 days of the publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Comments should be submitted to the Commission on Crime and Delinquency, Office of Victims' Services, P. O. Box 1167, Harrisburg, PA 17108-1167, Attn: Lynn Shiner. Persons with disabilities needing an alternative means of providing public comment may make arrangements by contacting the Commission.

Persons needing additional information regarding the proposed rulemaking should contact Lynn Shiner at the previous address. Alternative formats of the proposed rulemaking (for example, Braille, large print or cassette tape) will be also be made available to members of the public upon request.

CARL J. ANDERSON,  
*Executive Director*

**Fiscal Note:** 35-29. (1) General Fund; (2) Implementing Year 2003-04 is \$768,164; (3) 1st Succeeding Year 2004-05 is \$844,980; 2nd Succeeding Year 2005-06 is \$844,980; 3rd Succeeding Year 2006-07 is \$844,980; 4th Succeeding Year 2007-08 is \$844,980; 5th Succeeding Year 2008-09 is \$844,980; (4) 2002-03 Program—\$9,243,150; 2001-02 Program—\$7,139,690; 2000-01 Program—\$7,844,299; (7) Crime Victims Reimbursements; (8) recommends adoption. Federal reimbursements are expected to cover a portion of the costs of these services (approximately 60%). Savings generated from the decrease in the medical reimbursement rate offset a portion of the additional payments to crime victims.

**Annex A**

**TITLE 37. LAW**

**PART III. AGENCIES AND OFFICES**

**Subpart J. (Reserved)**

**CHAPTER 191. (Reserved)**

*(Editor's Note:* The Department is proposing to delete Chapter 191 in its entirety. The present text of Chapter 191 appears at 37 Pa. Code pages 191-1—191-23, serial pages (290735) to (290736), (261627) to (261628), (237977) to (237978), (261629) to (261630), (237981) to (237982), (261631) to (261632), (237985) to (237986), (261633) to (261635) and (237989) to (237995).)

**§§ 191.1—191.15. (Reserved).**

**PART VI. COMMISSION ON CRIME AND DELINQUENCY**

**CHAPTER 411. CRIME VICTIMS COMPENSATION**

**GENERAL PROVISIONS**

- Sec. 411.1. Scope.
- 411.2. Definitions.
- 411.3. Persons eligible for compensation.

**CLAIMS**

- 411.11. Filing procedures.
- 411.12. Review.
- 411.13. Closing of claims.
- 411.14. Determinations.
- 411.15. Actions affecting awards.
- 411.16. Reductions, offsets and limitations.
- 411.17. Emergency awards.
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**APPEALS**

- 411.31. Reconsideration.
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- 411.33. Final decision after hearing.

**SCHEDULE OF REIMBURSEMENT RATES AND COMPENSATION LIMITS**

- 411.41. Amount.
- 411.42. Out-of-pocket loss.
- 411.43. Loss of earnings.
- 411.44. Loss of support.

**MISCELLANEOUS**

- 411.51. Subrogation.
- 411.52. Representation by attorney.
- 411.53. Prohibitions.

**GENERAL PROVISIONS**

**§ 411.1. Scope.**

Except as otherwise indicated, this chapter applies to claims for compensation relating to crimes occurring on or after August 27, 2002.

**§ 411.2. Definitions.**

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

*Act*—The Crime Victims Act (18 P. S. §§ 11.101—11.5102).

*Average weekly wage*—The amount designated for persons covered by the Unemployment Compensation Law (43 P. S. §§ 751—771) in this Commonwealth as determined periodically by the Department of Labor and Industry.

*Cash equivalent*—The net amount of a monthly Social Security entitlement, railroad retirement, pension plan, retirement plan, disability, veteran's retirement, court-ordered child support, or court-ordered spousal support payments.

*Dependent child*—The child of a direct victim or intervenor on whose behalf regular payments are received for the purpose of whole or partial support and who is one of the following:

(i) Eighteen years of age or younger, including an unborn child for the purposes of this chapter only as defined by 18 Pa.C.S. § 3203 (relating to definitions).

(ii) Nineteen years of age or older but under twenty-three years of age and currently attending secondary school or is a full-time student in a post-secondary educational institution.

(iii) Nineteen years of age or older but unable to provide for his own support due to a physical or mental disability.

*Final decision*—An OVS determination of a claim that may be appealed by the claimant as provided in 2 Pa.C.S. Chapter 7, Subchapter A (relating to judicial review of Commonwealth agency action).

*Guardian*—A person appointed by a court for the care and management of a person or estate of a minor or incapacitated person, or designated by a parent of a minor to perform that role.

*Health care provider*—

(i) An individual authorized by a licensing board or agency of the Commonwealth or equivalent governmental entity to practice the science and skill of diagnosis and treatment of ailments of the human body.

(ii) The term includes medical doctor, osteopathic physician, chiropractor, dentist, registered nurse, optometrist, pharmacist, physical therapist, podiatrist, psychologist, licensed professional counselor and licensed social worker.

*Human services provider*—Social workers, children and youth caseworkers, area agency on aging, victim service providers (system and community based advocates), and other social service professionals, including mental health, substance abuse, and medical social work.

*Immediate need*—Thirty days from the date of the crime or 30 days from the date the victim is threatened by any change of circumstance or indicator of danger and a move or relocation is necessary to become or remain safe.

*Loss of earnings*—Loss of wages or income, or both.

*Medical care*—Diagnostic, treatment or rehabilitative services performed in a health care facility regulated by the Commonwealth or equivalent governmental entity or performed by a health care provider or person under the direct supervision of a health care provider.

*OVS*—The Office of Victims' Services in the Pennsylvania Commission on Crime and Delinquency.

*PFA*—Protection From Abuse Order issued under 23 Pa.C.S. Chapter 61 (relating to protection from abuse).

*Pigeon drop*—The act of approaching a person and asking that person if he would like to share an amount of found money. In order to share the money, the person shows a good faith effort by willingly providing a specified amount of money with the expectation of receiving a part of the "found" money.

*Primary source of income*—Fifty percent of the direct victim's gross annual income.

*Principal support*—Fifty percent or more of a claimant's living expenses.

*Private residence*—Includes a house, apartment, condominium, mobile home or other personal living space.

*Stolen benefit cash*—Includes the loss of the cash equivalent of 1 month's worth of Social Security, railroad retirement, pension plan, retirement plan, disability, veteran's retirement, court-ordered child support or court-ordered spousal support payments if the payments are the primary source of the direct victim's income and the direct victim is deprived of the money as a direct result of a crime.

(b) The definitions in section 103 of the act (18 P. S. § 11.103) are incorporated by reference.

### § 411.3. Persons eligible for compensation.

(a) *General rule.* Except as otherwise provided in the act, the following persons are eligible for compensation:

(1) A direct victim.

(2) An intervenor.

(3) A surviving spouse, parent or child of a deceased direct victim or intervenor.

(4) Other persons dependent for principal support upon a deceased direct victim or intervenor.

(5) A person who assumes the obligation or who pays for the crime scene cleanup, funeral or burial expenses incurred as a direct result of the crime.

(6) Hospitals or other licensed health care providers.

(7) Persons eligible for counseling.

(b) *Exception.* A person who is criminally responsible for the crime upon which a claim is based or an accomplice of the person is not eligible to receive compensation with respect to the claim. A member of the family of the individual who committed the crime is not eligible if the offender is living in the same household as the direct victim and will substantially benefit from the award. The Attorney General may at any time sue the offender or the direct victim, or both, to recover the award if the offender benefits from the award.

## CLAIMS

### § 411.11. Filing procedures.

(a) A claim may be filed by a person eligible under the act.

(b) A claimant may request compensation by completing and submitting OVS's official claim forms to OVS.

(c) A claim may be filed by mail, in person or electronically. If filed by mail, a claim is deemed as filed on the date it is postmarked. If filed by electronic means or in person, it is deemed as filed on the date received by OVS.

(d) When OVS receives a claim, a claim number is assigned and data is entered into OVS's records.

(e) In determining whether the direct victim or intervenor complied with the requirement of the act to have reported the crime to proper authorities within the prescribed time period after the occurrence of the crime, the following apply:

(1) Proper authorities may include a law enforcement officer, district attorney or other applicable prosecutorial authority, district justice, military police, campus police, appropriate hospital security, probation and parole officer, child protective services, adult protective services, or, in the case of a PFA order, the prothonotary or equivalent authority. If the crime occurs in a foreign country, a proper authority includes the United States consulate.

(2) OVS may consider a delay past the prescribed time period to be justified when one of the following circumstances exist:

(i) The direct victim, intervenor or the claimant is mentally or physically incapacitated.

(ii) The victim is a minor.

(iii) There is a fear of retaliation.

(iv) The occurrence of the crime is not readily apparent.

(v) Other circumstances deemed appropriate by OVS.

(3) In making the determinations discussed in this section, OVS will not deem the time periods to begin to run until the date and time that the person with the obligation to report the crime or file the claim learns that a crime occurred.

(f) Claimants do not have to wait until a PFA becomes final to file a claim. In the process of verifying a claim, OVS will ask the claimant to submit confirmation of the issuance of a final PFA order.

(g) If a temporary PFA order is issued and the claimant chooses not to pursue a final order, OVS will consider the PFA order withdrawn and deny the claim unless OVS determines the withdrawal to be justified. OVS may consider the withdrawal of a PFA justified when one of the following circumstances exist:

(1) The direct victim, intervenor or the claimant is mentally or physically incapacitated.

(2) There is a fear of retaliation.

(3) Other circumstances deemed appropriate by OVS.

(h) Subsections (f) and (g) only cover the filing of an initial PFA. If there is a violation of a PFA involving an otherwise eligible crime, the crime must be reported in a timely manner to the proper authorities, which may include filing of a private criminal complaint, to be considered for compensation payments.

(i) When requested by OVS, the claimant shall submit copies of documents that are needed to process the particular type of claim, which include the following:

(1) *Stolen benefit cash.*

(i) Statements for the month of the crime for payments such as Social Security, retirement, pension, disability, court-ordered child support or court-ordered spousal support.

(ii) Federal tax returns as filed, including all schedules if applicable, for the years requested or a signed statement that the claimant is not required to file a tax return.

(iii) Documentation of the homeowner's or renter's insurance coverage.

(2) *Medical treatment expenses.*

(i) Itemized bills in the name of the claimant showing the name, address and telephone number of the provider, dates of service, type of service performed, and the amount charged for each service.

(ii) Insurance benefit statements indicating payments or rejection.

(iii) Canceled checks, verification from a medical provider, or receipts for any medical bills related to the injury that were paid by the direct victim, intervenor or claimant.

(iv) Written justification if the direct victim or intervenor is covered by an insurance plan or medical assistance, but did not utilize the prescribed coverage, such as that the direct victim or intervenor could not obtain the required care, could not maintain ongoing care from a previous provider, or travel considerations.

(3) *Funeral expenses.*

(i) Certified death certificate.

(ii) Itemized funeral bills in the name of the claimant for which the claimant is responsible.

(iii) Canceled checks, receipts, or verification from a provider for funeral bills relating to the death that were paid by claimant.

(iv) Statements for benefits or payments received by the claimant as a result of the death of the direct victim or intervenor, such as life insurance or Social Security death benefits.

(4) *Loss of earnings.*

(i) Pay stubs or other earnings records for periods immediately prior to the loss. If not obtainable, withholding statements and Federal tax returns as filed, including schedules, if applicable, for the years requested, or a written statement that no Federal tax returns were filed.

(ii) Full name and complete address of claimant's employer.

(iii) Full name and complete address of a physician or psychologist who will certify the existence, duration, and cause of the disability.

(5) *Loss of support.*

(i) Certified death certificate.

(ii) Full name and complete address of employer of the deceased.

(iii) Federal tax returns as filed, including schedules, if applicable, for the years requested, or a written statement that no Federal tax returns were filed. If unavailable, pay stubs, withholding statements, or other earnings records for periods immediately prior to the injury.

(iv) Statements for benefits received as a result of the death of the direct victim or intervenor, such as life insurance, Social Security, veterans' benefits, or survivor benefits.

(v) Documents that demonstrate financial dependency, including birth certificates, support orders, or Federal tax returns as filed.

(vi) Guardianship papers, where applicable.

(6) *Counseling expenses.*

(i) Itemized bills in the name of the claimant showing the name, address and telephone number of the provider, dates of service, and the amount charged.

(ii) Insurance benefit statements indicating payments or rejection.

(iii) Canceled checks, verification from a provider, or receipts for any counseling bills related to the injury that were paid by the direct victim, intervenor or claimant.

(iv) Written justification if the direct victim or intervenor is covered by an insurance plan or medical assistance, but did not utilize the prescribed coverage, such as that the direct victim or intervenor could not obtain the required care, could not maintain ongoing care from a previous provider, or travel considerations.

(v) The following information establishing the claimant's relationship to the direct victim, the claimant witnessing the crime, or the claimant's discovery of the homicide victim:

(A) *Witness.* A police report obtained by OVS. If the witness is not listed in the police report, a written statement provided by someone who could substantiate that the witness was at the scene, preferably written by someone named in the police report.

(B) *Relative of direct victim.* A copy of a birth certificate, if applicable, or other identifiable information acknowledging the relationship to the direct victim.

(C) *Individual engaged to the direct victim.* An engagement announcement or a copy of the application for a marriage license. If either is unavailable, a written statement from the engaged individual plus a written statement from a family member acknowledging the intent of the union.

(D) *Shared household.* A copy of a document, such as a bill or a lease or mortgage agreement that indicates the same address for the direct victim and the victim or claimant filing for counseling expenses.

(E) *Individual who discovers homicide body.* A police report.

(F) *Individual responsible for the direct victim's welfare.* Foster parent documentation, guardianship papers, or other documentation showing that the claimant filing for counseling is an individual responsible for the direct victim's welfare.

(7) *Crime-scene cleanup expenses.*

(i) Itemized bills and receipts in the name of the claimant related to the crime-scene cleanup for which the claimant is responsible.

(ii) Cancelled checks, receipts or verification from a provider for bills related to the crime-scene cleanup.

(iii) Documentation of homeowner's or renter's insurance coverage.

(8) *Relocation expenses.*

(i) Itemized bills and receipts related to the relocation for which the claimant is responsible.

(ii) Cancelled checks, receipts, or verification from a provider for bills related to the relocation.

(iii) A verification letter from a human service agency, law enforcement, or medical provider explaining the immediate need for relocation.

(9) *Miscellaneous expenses.*

(i) Itemized bills and receipts in the name of the claimant for which the claimant is responsible related to the miscellaneous expense.

(ii) Cancelled checks, receipts, or verification from a provider for bills related to the injury.

(j) The claimant shall provide OVS with information pertaining to payments received or to be received by another source as a result of the injury, including restitution payments, workers compensation, insurance benefits or awards or settlements in a civil action.

(k) If a minor or incapacitated person has more than one guardian, OVS will determine the appropriate party for filing a claim on behalf of the minor or incapacitated person.

(l) If the direct victim or intervenor dies while a non-homicide claim relating to that direct victim or

intervenor is being processed, OVS may substitute the executor or administrator of the direct victim or intervenor and complete the processing of the claim. A claim may not be filed by the estate of a direct victim or intervenor.

(m) The claimant may request a supplemental award by submitting additional out-of-pocket expenses or losses at any time after the initial claim, provided that the claimant has not received the maximum award payable by law. OVS will verify out-of-pocket expenses and losses submitted for a supplemental award to determine that they directly relate to the original incident.

#### § 411.12. Review.

(a) OVS will review the claim and supporting documents and investigate the validity of the claim. The investigation must include an examination of police, court and official records and reports concerning the crime and an examination of medical and hospital reports relating to the injury upon which the claim is based.

(b) If additional information is needed to determine the eligibility or validity of a claim, or to substantiate the degree of loss, OVS may ask the claimant for that information or request it directly from outside entities to the extent permitted by law.

(c) OVS may issue subpoenas and subpoenas duces tecum, either on its own instance or upon written application of a party. Subpoenas and subpoenas duces tecum must comply with 231 Pa. Code (relating to rules of civil procedure). Their issuance must depend upon a showing of necessity. OVS, on its own motion or on the application of the claimant, will, whenever necessary, and upon the terms and conditions as OVS may determine, take or cause to be taken affidavits and depositions of witnesses residing within or outside this Commonwealth.

(d) OVS may not request or review counseling notes of mental health service providers. OVS will request an assessment from the mental health service provider as to the extent the service provided is needed as a direct result of the crime.

(e) OVS, at its expense, may direct an examination of the direct victim or intervenor by a health care provider designated by OVS. The direct victim or intervenor's failure to appear for the examination may result in OVS's denial of the applicable portion of the claimant's request for reimbursement.

(f) OVS will investigate and determine claims regardless of whether the alleged criminal has been apprehended, prosecuted or adjudicated for the criminal incident which is the basis for the claim.

#### § 411.13. Closing of claims.

(a) OVS will close a claim when a final determination has been made and written notification has been given to the claimant.

(b) When OVS has requested additional information under § 411.12(b) (relating to review) and the information is not provided within 60 days of the request, OVS will close the claim file until requested information is received.

(c) If sufficient information is not provided to OVS to determine eligibility within 2 years from the date of the filing of the claim, the claim will be closed with no further right of appeal. OVS will attempt to notify the claimant in writing 6 months prior to the closing of the claim.

(d) Eligible claims where no verifiable out-of-pocket expense or loss has been received by OVS within 5 years from the date of the filing of the claim will be closed with



no further right of appeal. OVS will attempt to notify the claimant in writing 6 months prior to the closing of the claim.

(e) OVS may reopen a claim at any time for further investigation.

**§ 411.14. Determinations.**

(a) If OVS is able to make an initial determination that the claim does not meet the basic eligibility requirements or the action of the direct victim, intervenor or claimant affects the award, the claim will be denied in writing as a statutory denial or denial for cause. A claimant may provide to OVS additional information or clarification on the claim post-marked no later than 30 days from the date of OVS's initial determination, at which time OVS may reconsider or reaffirm its initial determination.

(b) OVS will determine whether to grant an award, increase or decrease an award or deny the claim based on the supporting documents, the report of the investigation and staff recommendations.

(c) OVS will promptly notify the claimant of its final decision in writing. OVS may also send a copy of the determination to all appropriate individuals, including the State Treasurer, court personnel, victim advocate or the claimant's attorney of record.

**§ 411.15. Actions affecting awards.**

(a) Except as provided in the Act, OVS may deny a claim or reduce the amount awarded if it finds that the conduct of the direct victim or intervenor contributed to the injury. The conduct of the direct victim or intervenor will be deemed to have contributed to the injury if the direct victim or intervenor did one of the following:

(1) Initiated, provoked or prolonged a physical confrontation with the offender.

(2) Participated in an illegal act that was causally related to the injuries sustained.

(3) Used poor judgment resulting in the placement of the direct victim or intervenor into a situation likely to result in injury.

(b) In determining whether the conduct of a direct victim or intervenor warrants a denial or reduction of the award, OVS may consider evidence indicating that the direct victim or intervenor was acting with legal justification as defined in 18 Pa.C.S. (relating to the Crimes Code) or other evidence of mitigation that the claimant asks OVS to consider.

(c) A direct victim or intervenor of a driving under the influence (DUI) crime incident will not be assessed for the lack of a current driver's license at the time of the incident, unless the license was suspended or revoked for a prior DUI. OVS may assess a contribution amount in other auto-related crimes when the victim's driver's license has been revoked or was under suspension at the time of the crime.

(d) OVS will assess a \$5,000 contribution for an award for medical expenses, or the current amount of medical benefits coverage required under Pennsylvania law, if a direct victim or intervenor, who was injured, was driving his own car without insurance.

(e) Stolen cash claims that are received and are eligible for an award will have a minimum 10% contribution assessed if they are classified as theft by deception under 18 Pa.C.S. § 3922 (relating to theft by deception) and fall under the definition of "pigeon drop."

(f) OVS may deny a claim or reduce the amount awarded if it finds that a direct victim, intervenor or claimant has not cooperated fully with law enforcement agencies or OVS. Failure to cooperate includes one or more of the following:

(1) Failure to cooperate fully with a law enforcement agency in the investigation of the crime on which the claim is based.

(2) Failure to cooperate fully in the prosecution of the alleged offender of the crime on which the claim is based.

(3) Failure to provide truthful, complete and accurate information for OVS to determine the eligibility or validity of a claim or amount of an award.

(g) OVS may consider a failure to cooperate with law enforcement and OVS to be justified when one of the following circumstances exist:

(1) The direct victim, intervenor or the claimant is mentally or physically incapacitated.

(2) There is a fear of retaliation.

(3) Other circumstances deemed appropriate by OVS.

(h) If the crime involved is related to domestic violence, the conduct of the direct victim will not be considered unless the direct victim was the primary aggressor. In determining which party was the primary aggressor, OVS will consider the following:

(1) Prior acts of domestic violence.

(2) The relative severity of the injuries inflicted upon the persons involved in those prior acts of domestic violence.

(3) The likelihood of future injury.

(4) Whether, during the prior acts, one of the parties acted in self-defense.

(5) Other factors that OVS deems relevant to the determination.

**§ 411.16. Reductions, offsets and limitations.**

(a) Except as otherwise provided in the act, an award made under the act and this chapter shall be reduced by the amount of any payments received or to be received as follows by the claimant as a result of the injury:

(1) From or on behalf of the individual who committed the crime.

(2) Under insurance or health and welfare programs, including those mandated by law.

(3) Under a contract of insurance wherein the claimant is the beneficiary.

(4) From public funds.

(5) As an emergency award under section 706 of the act (18 P. S. § 11.706).

(6) Under pension programs, including those providing for disability or survivor's benefits.

(7) Under a settlement or award made by or on behalf of a party alleged to be responsible in whole or in part for the injury, without regard to the party's criminal culpability.

(b) Charitable donations specifically designated for a funeral expense or which appear on a funeral bill as a direct payment and charitable donations specifically designated for an eligible expense or which appear on any bill as a direct payment will be used as an offset.

(c) In claims involving death or burial, OVS will reimburse travel expenses for the transport of a body or making funeral arrangements for no more than two persons, including a person designated by the family or person who pays for the funeral.

(d) In claims involving death or burial, reimbursement will not be made for alcoholic beverages, postage, thank you gifts and newspaper articles or paid advertisements or notices relating to the death or burial, other than the obituary.

(e) When an injury is the result of a motor vehicle incident and the injury is covered by liability or first party benefits, including Under/Insured and Uninsured Motorist coverages, a provider may not request payment in excess of reimbursement allowances applicable in the Commonwealth under the Medicare Program or their usual and customary charge, whichever is less.

(f) Medical, rehabilitation, or other devices, including wheel chairs, chair lifts, ramps, van conversion equipment, therapy spas, or special needs home remodeling that exceeds \$5000 will need to have two bids unless good cause is shown. OVS will pay the lowest amount unless good cause is shown justifying the higher amount.

(g) If the direct victim or intervenor has no financial means to order the needed services or equipment that exceed \$10,000 listed in subsection (f), OVS will assist the claimant by evaluating the claim prior to purchase and make information available to the potential providers.

(h) In claims involving stolen benefit cash or crime scene clean-up, if a claimant chooses not to access any of his homeowner's or renter's insurance, OVS will apply as an offset any amount that the claimant would have been paid by the insurance company.

#### § 411.17. Emergency awards.

(a) If it appears to OVS that the claimant has an urgent financial need, OVS may make an emergency award to the claimant pending a final decision on the claim.

(b) An emergency award is solely for a claimant who incurs an undue hardship by paying medical expenses or funeral expenses out of his own pocket, or who incurred loss of earnings or support as a result of the crime incident.

(c) The total amount of an emergency award will not exceed \$1,500 per claim.

(d) OVS will expeditiously determine that the eligibility requirements have been met, review submitted documentation, and process the request.

(e) OVS may reconsider an emergency award at any time prior to the final decision and may increase previous orders for emergency compensation up to \$1,500 per claim.

#### § 411.18. Awards.

(a) If the losses payable by OVS for out-of-pocket loss and loss of support or loss of earnings exceed the overall monetary limitation in the act, or the overall limitation as reduced by a contribution assessed by OVS under § 411.16 (a) (relating to reductions, offsets and limitations), OVS will allocate the award as follows:

(1) Out-of-pocket losses will be paid in full, followed by as much of the loss of support or loss of earnings as resources allow.

(2) If the total out-of-pocket losses exceed the overall limitation in the act, OVS will attempt to pay unpaid

providers in full, followed by reimbursements to claimants for expenses already paid. OVS will attempt to satisfy the expenses of as many unpaid providers as feasible, in order to minimize the number of creditors seeking payment from the claimant.

(3) If more than one claimant files a claim for allowable expenses relating to the death of the victim or the intervenor, the award will be divided proportionately among the claimants when filed within the same time frame. In all other cases, awards are considered in the order that they are received.

(b) A claimant may not accept a portion of OVS's determination and reject another portion of the same determination. If a claimant desires to contest a portion of OVS's determination, the claimant must contest the entire determination.

(c) OVS will reduce an award of compensation by the amount of any other payments received or to be received by the claimant as a result of the injury, as set forth in the act and under § 411.16.

(d) After OVS has made an award relating to an injury, a person who receives any amounts paid by another source as a result of the injury shall notify OVS about the payments.

(e) If a court has ordered an offender to pay restitution for the injury, but the order is not specific as to which components of the claimant's loss are to be reimbursed by the restitution payments, OVS will deem the restitution payments as being applied first to property losses that cannot be compensated under the act. Only after the property losses are fully paid will OVS use the restitution payments to offset for losses for which OVS has awarded or may award compensation.

(f) OVS may make a supplemental award to a claimant who previously received an award from OVS and who subsequently incurs an additional loss that is attributable to the original injury when the maximum award under the law has not been exceeded.

(g) If a claimant is liable for a bill incurred for out-of-pocket losses as a result of the crime injury but has not paid the balance, OVS will order payment to be made directly to the provider of the service.

(h) OVS may reimburse all medical copays and deductibles.

(i) If OVS makes an error in the amount of an award, OVS may seek repayment of the award.

(j) OVS retains the discretion to determine the priority of awards.

(k) In determining whether an injury is a direct result of a crime, OVS may consider a certification by a service provider.

## APPEALS

#### § 411.31. Reconsideration

(a) A claimant may contest OVS's determination by submitting a written request for reconsideration post-marked no later than 30 days from the date of the determination. If a request for reconsideration is not filed within the time required, the determination becomes a final decision of OVS.

(b) If requesting reconsideration, the claimant shall provide additional information or clarification that would assist OVS in conducting its reconsideration.

(c) Based on further review and additional information or clarification that OVS receives, OVS will issue a reconsidered determination that either reaffirms or modifies its initial determination.

(d) OVS may issue the reconsidered determination as a final decision of the agency if it determines that the facts developed in the claims determination process establish that a particular determination is warranted as a matter of law.

**§ 411.32. Hearing.**

(a) If OVS is unable to determine if a claim is justified based upon supporting documents, it may direct a hearing before a hearing examiner designated by the OVS.

(b) Except for request for reconsideration falling under § 411.31(d) (relating to reconsideration), a claimant may appeal the reconsidered determination by OVS by requesting a hearing under 2 Pa.C.S. Chapter 7, Subchapter A (relating to judicial review of Commonwealth agency action.)

(c) A claimant may submit a written request for a hearing post-marked no later than 30 days after OVS issues its reconsidered determination. If a claimant fails to file the request for hearing within this time, the reconsideration determination becomes a final decision of OVS.

(d) If requesting a hearing, the claimant shall provide a specific reason why the claimant asserts that OVS's determination is not correct.

(e) A hearing officer who has no previous involvement in any aspect of the claim will be assigned by the OVS.

(f) The provisions of 1 Pa. Code, Part II (relating to general rules of administrative practice and procedures) govern a hearing to the extent they are not inconsistent with this chapter.

(g) At least 30 days before the date of hearing, the claimant, the claimant's attorney, and the victim's advocate will be provided written notice of the time, place and purpose of the hearing.

(h) The claimant shall provide written confirmation to OVS of the claimant's intent to attend the hearing, including a list of witnesses and documentary exhibits to be presented, which must be received by OVS at least 10 days prior to the hearing date. The claimant shall also provide a list of witnesses and documentary exhibits to OVS counsel and the hearing examiner.

(i) Failure to comply with the confirmation requirements in subsection (f) may result in cancellation of the hearing.

(j) A cancelled hearing may be rescheduled if the claimant shows good cause for failure to comply with subsection (f). A hearing will not be rescheduled more than once.

(k) The attorney representing OVS may submit a prehearing memorandum to the hearing officer, with a copy to the claimant, outlining the legal and factual positions of OVS with respect to the claim, and listing witnesses and documentary exhibits to be presented at the hearing. The attorney representing OVS may also issue subpoenas for attendance of witnesses or for production of documentary evidence.

(l) Upon a showing of relevancy and materiality, the hearing officer may issue subpoenas for attendance of witnesses or for the production of documentary evidence.

(m) In conducting the hearing, the hearing officer will liberally allow the admission of evidence that may not conform to the strict rules of evidence under common law or court rules. A stenographer or court reporter shall record the proceedings. Witnesses shall testify under oath.

(n) The claimant shall have the burden of proving entitlement to compensation by a preponderance of the evidence.

(o) Both OVS and the claimant may present testimony in support of their respective positions and cross-examine the opposing party's witnesses.

(p) Hearings generally will be open to the public except that the hearing may be held in camera in any of the following instances:

(1) Prosecution against the alleged perpetrator of the crime is pending.

(2) The welfare and safety of the direct victim, intervenor, or his family or community may be adversely affected by a public hearing.

(3) To protect the rights and interests of a minor.

(q) A claimant may have support persons or victim advocates, or both, accompany him. The number of advocates and support persons may be limited by the hearing officer.

(r) Upon adjourning the hearing, the hearing officer will offer the claimant and OVS's attorney an opportunity to file posthearing briefs, to be filed after the transcript is issued, on a schedule to be determined by the hearing officer.

(s) Upon receipt of the transcript from the stenographer, notification will be sent by certified mail to the claimant that the transcript is available and can be purchased at the claimant's own expense.

(t) OVS will reimburse claimants \$20 per day for attendance at a hearing directed by OVS in connection with the claim. Additional expenses will be reimbursed as follows:

(1) Private vehicle usage at mileage rate currently paid by the Commonwealth to its own employees for travel.

(2) Common carrier fares when preapproved by OVS.

(3) Lodging the night before or the night after a hearing session, to a daily maximum of \$75, if the claimant must travel at least 50 miles from home for the hearing.

**§ 411.33. Final decision after hearing.**

(a) The hearing officer will issue a report and recommendation which will be delivered to a designated Commission official who has no previous involvement in the claim.

(b) The designated Commission official will review the report and recommendation, the hearing transcript and the documentary exhibits. The designated Commission official may not have access to information not in the hearing record.

(c) The designated Commission official may not be advised in the hearing process by an attorney or any OVS staff member who has previous involvement with any aspect of the claim that is being heard. The designated Commission official may request the General Counsel of the Commonwealth to appoint an attorney who has no prior involvement to provide advice on the matter.

(d) Upon completing the review of the hearing officer's report and recommendation, the designated Commission official will do one of the following:

- (1) Adopt the hearing officer's report and recommendation as written as a final decision.
- (2) Modify the report and recommendation and issue the modified document as the final decision.
- (3) Reject the report and recommendation in its entirety and prepare and issue a final decision.
- (e) The designated Commission official will distribute the final decision to the claimant, the claimant's attorney, the victim's advocate, and to OVS.
- (f) The claimant shall have the right of further appeal as set forth in the act or other applicable law.

#### SCHEDULE OF REIMBURSEMENT RATES AND COMPENSATION LIMITS

##### § 411.41. Amount.

An award made under the act and this chapter shall be in an amount not exceeding out-of-pocket loss, together with loss of past, present or future earnings or support resulting from the injury. The total amount of an award may not exceed \$35,000 except for payment of the following:

- (1) Counseling, the maximum amount of which shall be in accordance with section 707(b)(4.1) of the act (18 P. S. § 11.707(b)(4.1)).
- (2) Forensic rape examination and medications directly related to the exam or for the purpose of the exam, the amount of which shall not exceed \$1,000.
- (3) Reasonable and necessary costs of cleaning the crime scene of a private residence, the amount of which shall not exceed \$500.

##### § 411.42. Out-of-pocket loss.

(a) *General.* The following general provisions apply to reimbursement for out-of-pocket loss.

- (1) OVS may make a monetary award for an out-of-pocket loss as it is defined in the act.
- (2) OVS may pay the service provider directly or reimburse the claimant for amounts paid, as applicable.

(b) *Medical expenses.* The following provisions for payment of medical expenses apply:

- (1) OVS will pay a hospital or other licensed health care provider at the rate of 70% of the usual and customary charge for the service rendered.
- (2) Forensic rape examinations.
  - (i) OVS will reimburse a maximum of \$1,000 to a hospital or other licensed health care provider or both for a forensic rape examination and medications directly related to the sexual assault or rape.
  - (ii) The reimbursement will not include expenses for analyzing collected evidence for DNA or presence of Rohypnol or other similar drugs.
  - (iii) Claims shall be filed with OVS no later than 1 year after the date of the crime.

(c) *Funeral expenses.* Except as otherwise set forth in this subsection, OVS will reimburse for expenses relating to a funeral of a direct victim or intervenor. The total reimbursement amount for funeral expenses will not exceed \$5,000. Additionally, within that \$5,000 monetary limitation, reimbursement will be subject to the following limitations:

(1) Four thousand eight hundred dollars for funeral services, including the following:

- (i) Cremation.
- (ii) Interment.
- (iii) Body preparation including embalming.
- (iv) Grave opening and closing.
- (v) Cemetery plot, tent and chairs.
- (vi) Mausoleum.
- (vii) Viewing services and facilities.
- (viii) Automotive equipment, such as the hearse, limousine and flower car.
- (ix) Death announcements, prayer cards, register book and thank you cards.
- (x) Casket.
- (xi) Minister, pastor, rabbi or other member of the clergy.
- (xii) Other miscellaneous expenses, including organist, programs, death certificates, and the obituary notice.
- (2) Nine hundred dollars for a monument.
- (3) Three hundred dollars for floral arrangements.
- (4) Three hundred dollars for funeral or memorial meal.
- (5) One hundred and seventy-five dollars for clothing purchased for the deceased for the funeral or interment.

(d) *Replacement of personal health-related items damaged or stolen as a result of a crime.* Except as otherwise set forth in this subsection, OVS will reimburse a claimant for costs for the replacement of each prosthetic device, wheelchair, cane, walker, hearing aid, eyeglasses or other corrective lenses, dental device or prescription medications. Reimbursement will not exceed \$1,000 and will be subject to the following limitations:

- (1) Two hundred dollars for eyeglass frames.
- (2) One thousand dollars for replacement of all combined prescription medications stolen or damaged in a single crime incident.
- (3) One hundred dollars for replacement of canes.
- (4) Two hundred fifty dollars for replacement for walkers.

(e) *Counseling.* OVS will pay expenses of counseling performed by or under the supervision of a psychiatrist, psychologist, licensed professional counselor or licensed social worker to claimants as follows:

- (1) A maximum of \$10,000 in total expenses of a direct victim who was under 18 years of age upon the occurrence of the crime.
- (2) A maximum of \$5,000 in total expenses of a direct victim who was 18 years of age or older upon the occurrence of the crime.
- (3) A maximum of \$5,000 in total expenses of any of the following individuals affected by the homicide of a direct victim:

- (i) An individual responsible for the welfare of the direct victim, which includes legal guardians and foster parents.
- (ii) An individual related in the second degree of consanguinity or affinity to the direct victim.

(iii) An individual residing in the same household with the direct victim.

(iv) An individual engaged to be married to the direct victim.

(4) A maximum of \$2,500 in total expenses of any of the individuals described in paragraph (3) affected by a crime against a direct victim that is not a homicide.

(5) A maximum of \$1,500 in total expenses of an individual who:

(i) Is physically present at a crime scene and witnesses a violent crime.

(ii) Discovers the body in a homicide.

(6) For counseling expenses relating to a homicide, OVS may not reduce the amount of the award or deny the reimbursement due to the conduct of the direct victim.

(f) *Relocation expenses.* OVS will reimburse for expenses incurred by the temporary or permanent relocation of a direct victim and individuals residing in the direct victim's household when immediate relocation is necessary to protect their health and safety. This reimbursement will not exceed \$1,000 per household for each crime incident for the following:

(1) Relocation expenses to be reimbursed are as follows:

(i) Lodging to a daily maximum of \$75.

(ii) Rental of substitute living quarters.

(iii) Utility connection fees, which do not include cable.

(iv) Rental of a passenger vehicle for a total daily maximum of \$30.

(v) Private vehicle usage at mileage rate currently paid by the Commonwealth to its own employees for travel.

(vi) Common carrier fares.

(vii) Moving company charges or van rental.

(viii) Tolls and parking expenses.

(ix) Rental of post office box.

(x) Charges for storage of personal belongings.

(xi) Child care expenses.

(2) Reimbursement will be made only when a medical provider, human services provider, or law enforcement representative, which may include a district attorney or other prosecutorial agency, verifies the immediate need for relocation.

(3) OVS may consider a delay past the prescribed immediate need time period to be justified when the direct victim, intervenor, or claimant is mentally or physically incapacitated, there is a fear of retaliation, or other circumstances deemed appropriate by OVS.

(g) *Travel expenses.* OVS will reimburse expenses associated with travel to obtain medical care or counseling and, in the case of an injury that results in death, for travel in connection with making the funeral arrangements and transport of the body.

(1) Meals totaling no more than \$28 per day, with no more than \$6 for breakfast, \$6 for lunch and \$16 for dinner.

(2) Lodging to a daily maximum of \$75.

(3) Private vehicle usage at mileage rate currently paid by the Commonwealth to its own employees.

(4) Vehicle rental to a daily maximum of \$30.

(5) Payment of a driver other than common carriers needed as result of a crime at maximum hourly rate of \$8.

(6) Common carrier fares in full.

(7) Tolls and parking expenses.

(8) Meals and lodging reimbursement is limited to trips of 50 miles or more from the eligible person's home.

(9) Containers or other necessary requirements to transport the body.

(10) In the case of an injury that results in death, for travel in connection with the transport of the body and making funeral arrangements not to exceed 5 days.

(h) *Crime scene clean up.* The cost of cleaning the crime scene of a private residence up to a maximum of \$500.

(i) Reimbursement will be limited to the cost of cleaning supplies purchased for the purpose of cleaning the scene, the cost of any necessary equipment purchased or rented and the cost of professional labor for the purpose of cleaning the crime-scene.

(ii) Multiple private residences may each be considered for crime-scene cleanup if the sites are identified in the police report. The maximum award amount for each crime-scene cleanup is \$500.

(i) *Miscellaneous expenses.* OVS may reimburse a claimant for other services reasonably necessary, including the following:

(1) The purchase or rental of nonmedical remedial care or products that are needed to assist in normal, daily life functions and are prescribed or recommended by a health care provider, such as a wheel chair ramp, lifts or other special accommodations, including equipment or robotic devices needed to assist in normal, daily life functions.

(2) The cost of obtaining services needed as a result of the crime such as laundering, cleaning, child care, administration of medication, food shopping and meal preparation.

(i) Members of the family of the direct victim or intervenor engaged to perform the services will be paid their net loss of earnings not to exceed the average weekly wage and if not otherwise reimbursed for the loss of earnings.

(ii) Individuals engaged to perform services who are not family members who are engaged to perform services will be paid a maximum hourly rate of \$8.

(3) At the discretion of OVS, telephone and television expenses incurred in connection with inpatient care of the direct victim or intervenor due to the injury.

(4) At the discretion of OVS, charges incurred for records, products, or services including those for rehabilitation, rehabilitative occupational training, other remedial treatment and care, tutors, and interpreters.

#### § 411.43. Loss of earnings.

(a) *Stolen benefit cash.* An award for stolen cash will not exceed the average weekly wage as determined annually by the Department of Labor and Industry or the actual amount stolen, whichever is less. The actual amount stolen must be indicated in the police report. Changes or amendments to the amount stolen must be made to the police within 2 weeks of the crime and subsequently documented by the police.

(b) *Loss of earnings.* OVS may make an award within the monetary limitations of the act to compensate a direct

victim, intervenor or claimant for loss of earnings attributable to the injury. A loss of earnings must be definitely ascertainable at the time of the injury and may not include a loss that is conditioned upon future events.

(c) *Claims involving death.* In claims involving the death of a direct victim or intervenor, OVS may pay up to 1 week's net loss of earnings in connection with the death not to exceed the average weekly wage if the claimant was not otherwise reimbursed for the loss. The loss is limited to that suffered by a claimant who incurred a loss of earnings as a result of one of the following:

- (1) Trauma as certified by a physician or psychologist.
- (2) Making funeral arrangements.
- (3) Accompanying the deceased to the place of interment.
- (d) The following formula will be used to calculate loss-of-earnings:

$$\text{Loss of Earnings} = \text{Gross Earnings} - \text{Estimated Tax Obligations} - \text{Other Benefits Received}$$

(e) For purposes of the formula in subsection (d), the following apply:

(1) "Gross earnings" include taxable and nontaxable income that was terminated or reduced as a result of injury. Overtime may be included if the claimant demonstrates a history of regular overtime pay or provides verification that overtime is a condition of employment.

(2) Estimated tax obligations include Federal, State and local taxes.

(3) "Other benefits received" include disability payments, bereavement pay, cash assistance, food stamps, workers' compensation, restitution or awards or settlements from a civil action or insurance payment.

(f) In calculating gross earnings, OVS may use either a time period immediately preceding the crime, the tax year in which the crime occurred, or the most recent tax year that ended prior to the year of the crime.

(g) As a condition for continuing receipt of loss of earnings benefits, OVS may require the claimant to file a claim for and pursue other benefits to which the claimant may be entitled and which could be an offset to the loss of earnings award.

(h) For a claimant who is self-employed and who continues to operate his business during the period of disability, OVS may compensate the claimant for the amount paid to other persons hired to perform the services usually performed by the claimant.

(i) For a claimant whose unemployment compensation benefits are suspended as a result of the injury, OVS may make an award to replace the suspended benefits.

(j) If the claimant was unemployed at the time of the injury and provides OVS with an affidavit from the employer on company letterhead stating the beginning date of employment, the hours per week to be worked, and the pay rate along with the employer's Federal identification number (FID#) certifying that the claimant was unable to begin because of the injury, OVS may measure loss of earnings based on anticipated earnings that would have been received in the new position.

(k) If the claimant was self-employed for less than a year prior to the injury and the tax records consequently provide a questionable measure of the claimant's earning potential, OVS may measure gross earnings by using the

claimant's earnings as an employee for the period immediately prior to the start of the claimant's business.

(l) If a claimant is self-employed and is unable to fulfill a contract negotiated and signed prior to the crime due to the injury, OVS may consider the lost net income.

#### § 411.44. Loss of support.

(a) OVS may make an award within the monetary limitations of the act to compensate an eligible person or persons who, as a consequence of the injury causing the death of a direct victim or intervenor, is deprived of the financial support that the direct victim or intervenor had been required by court order to provide or had actually been providing at the time of the injury that caused the death. When a court-ordered support obligation is in effect at the time of an injury causing the death, the following formula will be used to calculate loss of support:

$$\text{Loss of Support} = \text{Support} - \text{Other Benefits Received}$$

(b) For purposes of the formula in subsection (a), the following apply:

(1) "Support" includes annual support based on obligation specified in the order plus any amount in arrears due to the claimant at time of death.

(2) "Other benefits received" include restitution, insurance benefits, Social Security or pension benefits and awards from civil actions.

(c) When no court-ordered support obligation is in effect at the time of an injury causing the death of a direct victim or intervenor, the following formula will be used to calculate loss of support:

$$\text{Loss of Support} = \text{Support} - \text{Other Benefits Received}$$

(d) For purposes of the formula in subsection (c), the following apply:

(1) "Support" includes the gross earnings less estimated tax obligations multiplied by 80%. Gross earnings include all taxable and nontaxable income that terminated at time of death such as wages, business income, retirement payments, Social Security payments and other benefits.

(2) "Other benefits received" include restitution, insurance benefits, Social Security or pension benefits and awards from civil actions.

(3) Loss of support must be definitely ascertainable at the time of the injury that caused the death and may not include a loss that is conditioned upon future events.

(e) In applying the formula in subsection (c), the following conditions apply:

(1) A surviving spouse or dependent child will be allocated up to 80% of the net annual earnings of the victim or intervenor.

(2) A surviving parent will be allocated the actual amount of support provided by the direct victim or intervenor, not to exceed 80% of the net annual earnings.

(3) Any other person dependent upon the direct victim or intervenor for principal support will be allocated the actual amount of support provided by the direct victim or intervenor, not to exceed 80% of the net annual earnings.

(f) When calculating loss of support, OVS may consider as applicable, the life expectancy or labor force participation expectancy of the direct victim or intervenor, or the age of the dependent.

(g) In calculating gross earnings, OVS may use either a time period immediately preceding the crime, the tax year

in which the crime occurred, or the most recent tax year that ended prior to the year of the crime.

(h) If the direct victim or intervenor was not employed at the time of the crime, OVS may use employment history up to the 3 years immediately preceding the crime to estimate potential support that would have been provided to an eligible person.

(i) If more than one person is eligible for a loss of support award, OVS will allocate each a share of the total annual amount based on OVS's determination of fairness and equity under the circumstances of the claim.

(j) If the total uncompensated loss of support for two or more eligible persons exceeds the monetary limitations set forth in the act, the limited resources will be distributed at the discretion of OVS proportionately among the eligible persons.

(k) OVS may provide lump sum or accelerated payments for loss of support. The calculated maximum can be dispersed in one lump sum if extenuating circumstances necessitate, or under lesser conditions, paid out in a 3 year or 5 year payment plan. Also, if the total projected award is of a lesser amount, and extended yearly payments are impractical, the award will be paid in total in a single sum. In claims in which OVS makes protracted payments into the future, the claimant is subject to a continuing obligation to provide information that OVS requests. Failure to provide this information when requested may result in the suspension of future, payments or may require repayment of prior accelerated payments.

(l) The claimant or the recipient of a loss of support award has a continuing obligation to report to OVS any change in circumstances, such as if the recipient obtains a new source of support. In these circumstances, OVS may terminate or reduce protracted payments made under the original award.

(m) When an award for loss of support is paid to a person for the benefit of another person, OVS may require the payee to file a periodic accounting of OVS's payments or take other action as OVS may determine necessary and appropriate for the benefit of the beneficiary.

(n) As a condition for continuing receipt of loss of support benefits, OVS may require the claimant to file a claim for and pursue other benefits to which the claimant may be entitled to offset the loss of support benefits.

(o) At any time, OVS may reconsider and modify a future loss of support award previously issued or a protracted payment if another eligible person qualifies for a loss of support award.

(p) Gifts of property or money bestowed upon the dependent on special occasions may not be considered in making a determination of dependency.

#### MISCELLANEOUS

##### § 411.51. Subrogation.

(a) Payment of an award made under the act shall subrogate the Commonwealth, to the extent of any payment, to any right of action against any person according to the claimant, the direct victim, or the intervenor to recover losses resulting from the crime with respect to which the award is made. In such a case, the Commonwealth shall be entitled to bring an action against the person causing or otherwise liable for the personal injuries or death for which the payment was made. Money

recovered under this section shall be deposited in the Crime Victim's Compensation Fund established under the act.

(b) If an amount greater than that paid under the act is recovered and collected in such an action, the Commonwealth will pay the balance to the claimant. The Attorney General will enforce any subrogation. A claimant who failed to notify OVS of the receipt of funds from another claim or award arising out of the crime shall forfeit and pay to the Commonwealth an amount equal to all awards paid by OVS to the claimant or on the claimant's behalf.

(c) The OVS Director has the discretion to settle subrogation claims for an amount less than the award. Under no circumstances will OVS settle subrogation claims for an amount that is less than 75% of the original award to the claimant. OVS reserves the right to assert further subrogation on additional recovery by the claimant. If the direct victim or intervenor incurs additional expenses related to the injury, the claimant must exhaust the actual insurance or civil recovery as well as the amount OVS reduced prior to receiving further payments from OVS.

##### § 411.52. Representation by attorney.

(a) The rules in 1 Pa. Code, Part II (relating to general rules of administrative practice and procedures) apply to the representation of a claimant by an attorney before OVS or in a hearing related to a claim submitted to OVS.

(b) If an attorney has filed a notice of appearance on behalf of the claimant, the notice shall remain in effect until one of the following occurs:

(1) The claimant files with OVS a written revocation of the authority of the attorney.

(2) The attorney files with OVS a written statement of withdrawal from the case.

(3) The attorney makes a statement of withdrawal from the case on the record at a hearing.

(4) OVS receives notice of the license suspension or revocation or the death of the attorney.

(c) During the period in which a notice of appearance filed under this section remains in effect, OVS may communicate with the attorney instead of the claimant. Service upon the attorney shall be deemed effective service upon the claimant.

(d) An attorney who represents a claimant before OVS may receive a fee for that representation only under the provisions of the act. After OVS makes an award, the attorney may request that OVS pay attorney's fees and costs by filing with OVS an affidavit of services, listing the nature of each service rendered and the amount of time spent in rendering the service, plus an itemized list of costs incurred in the preparation, procuring, and filing of record papers regarding the claim.

(e) In evaluating applications for attorney's fees, OVS will consider the following factors:

(1) The time and labor required.

(2) The novelty and difficulty of the questions.

(3) The skill needed to perform the legal service properly.

(4) Awards and similar claims.

(f) A payment for attorney's fees shall be in addition to the award made to the direct victim, claimant or interve-

nor, but may not exceed 15% of that award. OVS may not reduce an award to a direct victim on account of payment of attorney's fees.

(g) OVS may award no more than \$75 per hour to an attorney in the preparation and presentation of a claim that is awarded.

(h) It is unlawful for an attorney to contract for or receive a sum larger than the amount allowed.

(i) OVS may deny or reduce an award for attorney's fees if an attorney asserts a false claim as to the time spent on a matter concerning OVS or asserts a false claim as to the services rendered to a claimant. OVS may refer the matter to the Disciplinary Board of the Pennsylvania Supreme Court, the Attorney General, or other appropriate authorities.

#### § 411.53. Prohibitions.

(a) Providers who write off bills to a direct victim or intervenor may not at any point following the write off seek reimbursement from OVS, direct victim or intervenor.

(b) A funeral director who assumes the obligation to pay for funeral expenses may not seek reimbursement from the direct victim or intervenor's family.

(c) A person who assumes the obligation for crime scene clean up may not seek reimbursement from the direct victim or intervenor's family.

[Pa.B. Doc. No. 04-1686. Filed for public inspection September 10, 2004, 9:00 a.m.]

## DEPARTMENT OF PUBLIC WELFARE

### [55 PA. CODE CHS. 3040 AND 3041] Subsidized Child Care Eligibility

The Department of Public Welfare (Department), under the authority of the Public Welfare Code (62 P. S. §§ 201—211, 401—493 and 701—703), proposes to delete Chapter 3040 (relating to subsidized child day care eligibility) and to add Chapter 3041 (relating to subsidized child care eligibility) to read as set forth in Annex A.

#### *Purpose of the Proposed Rulemaking*

The purpose of the proposed rulemaking is to help families of low income more easily obtain affordable, accessible and quality child care. The Department intends to create a fairer and more equitable child care system that supports families in their efforts to achieve and maintain financial self-sufficiency. The proposed rulemaking provides families with increased and easier access to this Commonwealth's child care system and allows more families to qualify for subsidized child care benefits.

The Department's goal is to develop a "user-friendly" child care system that is accessible to eligible families who need help finding and paying for quality child care that is responsive to their needs.

The proposed rulemaking supports families and children by promoting the following goals:

(1) Healthy child development by increasing access to high quality child care for infants, toddlers, preschool and

school-aged children and by reducing administrative processes that may cause interruption in services or frequent change of provider.

(2) Family self-sufficiency by giving parents reliable child care so they can work or improve their skills and earning potential through education or training, while working.

(3) Parent choice by providing parents with a broad range of child care options and empowering them to make their own decisions on the child care that best meets the needs of the child and the family.

Chapter 3041 replaces Chapter 3040 in its entirety.

#### *Background*

The Department has worked closely with families who access the child care subsidy program, child development and community service advocates, child care providers, child care eligibility agencies and other interested stakeholders to listen and respond to the needs, concerns and suggestions of these groups. The proposed rulemaking is the result of an inclusive and collaborative process and partnership between the child care community and the Department.

#### *Requirements*

The proposed rulemaking substantially reorganizes the existing child care subsidy chapter. Therefore, a new chapter is proposed to replace the existing regulations. Major changes to the existing regulations include: simplification of the verification requirements to make it easier for families to apply and qualify for child care; recognition that participation in education and training is an effective way to support job advancement and financial self-sufficiency; and removing the requirement that parents pursue child support. A new provision supports continuity of quality child care for children in school-district-sponsored prekindergarten programs. This supports families who need extended hours of care. Finally, simplification of regulatory language makes the eligibility process easier to understand. Following is a summary of the major proposed amendments:

#### *§§ 3041.11—3041.22 (relating to general requirements and benefits)*

The proposed rulemaking expands the hours of uninterrupted sleep time during which a parent or caretaker (parent) is eligible for subsidized child care. Currently, if parents need uninterrupted sleep time because their work shift ends between 12 a.m. and 9 a.m., they could not receive subsidy; the proposed rulemaking would permit payment of subsidized child care for sleep time, making the policy consistent with the regulations in place for child care benefits under the Temporary Assistance for Needy Families (TANF) program. The proposed rulemaking supports the needs of the child whose parent works at night and must sleep after their work shift ends to be a productive parent and worker on the following day.

The proposed rulemaking permits a family of two parents with one working parent to be eligible for subsidized child care if the other parent has a permanent physical or mental disability that results not only in the inability to work or participate in education or training but also results in the inability to care for the child. The proposed rulemaking supports a child with a parent who has a disability by enabling the family to receive necessary child care.

The proposed rulemaking includes a provision to permit child care to resume following a parent's summer break



from education or training. The change is proposed so that a child can be at home with the parent over the summer, but continue in the child care subsidy program in the fall of the year. The proposed rulemaking promotes continuous care for the child at a familiar setting.

*§§ 3041.41—3041.47 (relating to eligibility requirements)*

The proposed rulemaking reduces the number of hours a parent must work to be eligible to receive subsidized child care from 25 to 20 hours a week. The proposed rulemaking will benefit parents who work part-time and allow more children to be eligible for subsidized child care. The proposed rulemaking eliminates a current gap in eligibility for subsidized child care for some working parents moving from welfare to work, who are ineligible for TANF child care because of income from employment, but who cannot receive subsidized child care because they do not work 25 hours per week or do not apply for child care benefits within 183 days after TANF ends.

The proposed rulemaking also would make child care subsidy available to parents who work a minimum of 10 hours a week if the parent attends education or training for at least 10 hours a week. The proposed rulemaking would support parents who pursue education or training to qualify for a better paying job in the future.

*§§ 3041.51 and 3041.52 (relating to special eligibility programs)*

The proposed rulemaking includes a new provision that supports children from families of low income attending prekindergarten programs provided by a school entity or a certified or licensed facility operating under contract with a school entity. Otherwise eligible children who need extended hours or days of care provided through the prekindergarten program while their parents work will remain eligible for subsidized child care to pay for extended days or hours as long as they are participating in the prekindergarten program. The proposed rulemaking promotes continuous, uninterrupted care that helps a child maintain stable relationships with a caregiver and promotes sequenced cognitive, social and emotional development. Stable relationships and continuity of care in a quality environment are two of the essential foundations for school readiness and success in life. The proposed rulemaking makes it easier for children from families of low income with working parents to participate in a prekindergarten program that provides an educational program to preschool children from families of low income. Research indicates that high quality child care in an educational setting for children from families of low income is beneficial to prepare a child for school. For related Pennsylvania research data see "Early Care and Education: The Keystone of Pennsylvania's Future," Commonwealth of Pennsylvania, Governor's Task Force on Early Childhood Care and Education, November 2002, and the accompanying research reports by the Universities Children's Policy Collaborative (Pennsylvania State University, Temple University and the University of Pittsburgh) at [www.prevention.psu.edu/ece/index.html](http://www.prevention.psu.edu/ece/index.html).

While this proposed prekindergarten program applies to children from families of low-income, the Department supports quality child care and early educational programs for all children, including those who do not receive assistance through the subsidized child care program. In tandem with this proposed rulemaking for subsidized child care, the Department is: (1) encouraging quality child care through the enhancement of Keystone Stars Quality Initiative, a program developed to recognize and

reward quality care providers; and (2) developing a parent education campaign to support parents in their selection and self-monitoring of their child care setting.

*§§ 3041.61—3041.71 (relating to verification)*

The proposed rulemaking simplifies the verification requirements to make it easier for families to apply for and qualify for subsidized child care. The proposed rulemaking establishes more verification options, allows self-declarations by the parent in some instances, requires the eligibility agency to help the parent obtain verification documents and eliminates some of the reverification requirements. The proposed rulemaking makes it easier for parents to document eligibility and will mean families can receive child care subsidy more rapidly.

The proposed rulemaking allows families to make their own child support arrangements, rather than requiring pursuit of court-ordered child support as a prerequisite for receiving child care subsidy. The proposed rulemaking provides more flexibility for the family to accommodate its own needs and circumstances.

*§§ 3041.91—3041.94 (relating to domestic violence waivers)*

The proposed rulemaking allows parents who are the victims of domestic violence to request a waiver of certain eligibility and verification requirements if compliance would increase the difficulty of a family or household member to escape domestic violence or place a family or household member at risk of domestic violence. The term "domestic and other violence" is defined broadly to include any incident of physical, mental or sexual abuse, including incidents by perpetrators who are nonfamily members and that occur outside of the home.

The intent of the proposed rulemaking is to ensure that the special circumstances of families dealing with domestic violence are accommodated, such as the need for extra time to acquire documents that prove eligibility and need for child care to continue if work is interrupted as a result of domestic violence. The Department is sympathetic and sensitive to the extra assistance and support that may be necessary to help domestic violence victims stabilize their living situations. By permitting a waiver of eligibility requirements due to domestic violence, a parent may be better able to achieve or maintain financial self-sufficiency.

*§§ 3041.141—3041.150 (relating to TANF and former TANF families)*

The proposed rulemaking provides for a window of opportunity and priority status for individuals who formerly received TANF. Under the proposed rulemaking, a parent who is not making use of subsidized child care when TANF ends has 183 days to request and receive subsidized child care if the parent needs it for work or a combination of work or training. A parent who formerly received TANF receives priority status and cannot be put on a waiting list for subsidized child care during this 183-day period.

*Affected Individuals and Organizations*

The proposed rulemaking affects children who receive subsidized child care, parents who apply for or receive subsidized child care, child care providers and child care eligibility agencies.

Children and parents are affected by the requirements in the proposed rulemaking that specify the eligibility conditions and verification requirements that they must meet to access subsidized child care. Child care providers

are affected since the proposed rulemaking affects the eligibility conditions for families currently served or who may be served in the future. Waiting lists may be increased since more children will be eligible for subsidized child care services.

#### *Accomplishments and Benefits*

The proposed rulemaking benefits the children and families of low-income by allowing easier access to affordable, quality child care. The proposed rulemaking allows more families to be eligible for subsidized child care benefits.

#### *Fiscal Impact*

The proposed rulemaking will result in no additional costs to the parents receiving subsidized child care, the child care providers, the child care eligibility agencies or local government.

The proposed rulemaking will result in additional costs for the Department to serve an estimated 3,388 additional children annually. The Department's budget for FY 2004-05 includes an additional \$5.5 million of Federal Child Care and Development Block Grant funds to provide subsidized child care to these additional eligible children. The benefit of providing subsidized child care to additional children from families of low-income outweighs the increased costs.

#### *Paperwork Requirements*

The proposed rulemaking will result in reduced paperwork and recordkeeping for both parents and eligibility agencies. By providing additional options for verification, such as self-declaration, the paperwork required for verification will be reduced.

#### *Effective Date*

This proposed rulemaking is effective 30 calendar days after final-form publication in the *Pennsylvania Bulletin*.

#### *Public Comment*

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to Susan Miller, Bureau of Child Day Care, P. O. Box 2675, Harrisburg, PA 17105 within 30 calendar days after the date of publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference Regulation No. 14-489 when submitting comments.

Persons with a disability who require an auxiliary aid or service may submit comments by using the AT&T Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 31, 2004, 2003, 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 Children and Youth Committee and the Senate Committee on Public Health and Welfare. 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 Depart-

ment, the General Assembly and the Governor of comments, recommendations or objections raised.

ESTELLE B. RICHMAN,  
*Secretary*

**Fiscal Note:** 14-489. No fiscal impact; (8) recommends adoption. This regulatory action expands the eligibility for child care subsidies for children whose parents/caretakers need child care to work. Costs are estimated at \$5.5 million for the remainder of Fiscal Year 2004-2005 to provide for 3,388 children and \$7.5 million annually thereafter. The 2004-05 costs are included in the Federal Child Care and Development Block Grant appropriation in Act 7A of 2004.

### Annex A

## TITLE 55. PUBLIC WELFARE

### PART V. CHILDREN, YOUTH AND FAMILIES MANUAL

#### Subpart B. ELIGIBILITY FOR SERVICES

#### CHAPTER 3040. (Reserved).

*(Editor's Note:* The Department is proposing to delete Chapter 3040 in its entirety. The present text of Chapter 3040 appears in 55 Pa. Code pages 3040-1—3040-55, serial pages (303411) to (303412), (265401) to (265402), (252653) to (252654), (265403) to (265404), (252657) to (252658), (303413) to (303418), (265407) to (265408), (303419) to (303420), (265411) to (265416), (252673) to (252674), (265417) to (265418), (303421) to (303424), (265423) to (265426), (252685) to (252692), (265427) to (265430), (252697) to (252698) and (304727) to (304739).)

#### §§ 3040.1—3040.4. (Reserved).

#### §§ 3040.11—3040.29. (Reserved).

#### §§ 3040.31—3040.49. (Reserved).

#### §§ 3040.51—3040.55. (Reserved).

#### §§ 3040.61—3040.64. (Reserved).

#### §§ 3040.71—3040.78. (Reserved).

#### §§ 3040.91—3040.94. (Reserved).

### CHAPTER 3041. SUBSIDIZED CHILD CARE ELIGIBILITY

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#### GENERAL PROVISIONS

##### § 3041.1. Purpose.

This chapter establishes the requirements for a family to receive subsidized child care. Subsidized child care is a nonentitlement benefit made available through limited Federal and State funds.

##### § 3041.2. Scope.

This chapter applies to child care eligibility agencies, child care providers and parents and caretakers requesting or receiving subsidized child care.

##### § 3041.3. Definitions.

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

*Adjusted family income*—Gross countable family income, minus allowable deductions.

*Annual income*—The family's adjusted monthly income, multiplied by 12 months.

*Appeal*—A written or oral request by a parent, caretaker or individual acting on behalf of a parent or caretaker for a hearing under Chapter 275 (relating to appeal and fair hearing and administrative disqualification hearings), indicating disagreement with a Departmental or eligibility agency action or failure to act that affects the family's eligibility for subsidized child care.

*Application*—A signed, dated request by a parent, caretaker or individual acting on behalf of a parent or caretaker for subsidized child care.

*CAO—County Assistance Office*—The local office of the Department responsible for the determination of eligibility and service delivery in the Cash Assistance, Food Stamp and Medical Assistance Programs.

*Caretaker*—

(i) An adult other than the child's biological or adoptive parent or stepparent, who lives with and exercises care and control of a child for whom subsidized child care is requested.

(ii) The term includes a foster parent, formal and informal kinship caregiver and other relative or nonrelative caring for the child.

*Child care*—Care in lieu of parental care for part of a 24-hour day.

*Collateral contact*—A form of verification in which the eligibility agency obtains information from a third party.

*Co-payment*—The weekly amount the family pays for subsidized child care.

*Department*—The Department of Public Welfare of the Commonwealth.

*Disqualification*—The prohibition against receipt of subsidized child care that results from fraud or an intentional program violation.

*Domestic and other violence (domestic violence)*—Includes, but is not limited to:

- (i) A physical act that results in, or threatens to result in, physical injury to the individual.
- (ii) Mental abuse, including but not limited to stalking, threats to kidnap, kill or otherwise harm people or property, threats to commit suicide, repeated use of degrading or coercive language, controlling access to food or sleep and controlling or withholding access to economic and social resources.
- (iii) Sexual abuse.
- (iv) Sexual activity involving a dependent child.
- (v) Being forced as the caretaker or relative of a dependent child to engage in nonconsensual sexual acts or activities.
- (vi) A threat of, or attempt at, physical or sexual abuse.
- (vii) Neglect or deprivation of medical care.

*Education*—An elementary school, middle school, junior high or high school program including a general educational development program.

*Eligibility agency*—The entity designated by the Department with authority to purchase subsidized child care and determine a family's eligibility and co-payment.

*Eligibility determination*—A decision regarding whether a family qualifies for the subsidized child care program and a determination of the co-payment.

*Eligibility redetermination*—A semiannual review by the eligibility agency to determine if a family continues to qualify for subsidized child care, including a review of the co-payment.

*Employment*—Working for another individual or entity for income.

*FPIG—Federal Poverty Income Guidelines*—The income levels published annually in the *Federal Register* by the United States Department of Health and Human Services.

*Family*—The child or children for whom subsidized child care is requested and the following individuals who live with that child or children in the same household:

- (i) A biological, adoptive, foster or stepparent of the child for whom subsidized child care is requested.
- (ii) A caretaker and a caretaker's spouse.
- (iii) A biological, adoptive or foster child or stepchild of the parent or caretaker who is under 18 years of age and not emancipated by marriage or by the court.
- (iv) An unrelated child under the care and control of the parent or caretaker, who is under 18 years of age and not emancipated by marriage or by the court.
- (v) A child who is 18 years of age or older but under 22 years of age who is enrolled in a high school, a general educational development program or a post-secondary program leading to a degree, diploma or certificate and who is wholly or partially dependent upon the income of the parent or caretaker or spouse of the parent or caretaker.

*Fiscal year*—A period of time beginning July 1 of any calendar year and ending June 30 of the following calendar year.

*Fraud*—The intentional act of a parent or caretaker that results in obtaining, continuing or increasing child

care subsidy for which the family is not eligible and that involves any of the following:

- (i) A false or misleading statement.
- (ii) The failure to disclose information.

*Income*—Includes:

- (i) Gross wages from employment.
- (ii) Cash or in-kind payments received by an individual in exchange for services, including income from self-employment.
- (iii) Cash or contributions received by an individual for which the individual does not provide a service.
- (iv) Unearned benefits received periodically by an individual, such as unemployment compensation, worker's compensation or retirement benefits.

*Maximum child care allowance*—The payment ceilings set by the Department for child care services provided to families eligible for subsidized child care.

*Net profit from self-employment*—Gross earnings from self-employment, minus the cost of doing business as specified in Appendix A (relating to income to be included, deducted and excluded in determining gross monthly income).

*Overpayment*—The receipt of subsidy for a child for which the family is or was not eligible or an amount in excess of the amount for which the family was eligible.

*Parent*—The biological or adoptive mother or father, stepmother or stepfather who exercises care and control of the child for whom subsidy is requested.

*Partial redetermination*—A review of eligibility that does not include a review of each eligibility factor.

*Payment rate*—The daily rate that is paid to the child care provider for services delivered to a child who is eligible for subsidized child care.

*Prospective employment or prospective education or training*—Employment, education or training verified by the employer, school official or training official to begin no later than 30 calendar days following the date the parent or caretaker signs and dates the application for subsidized child care or no later than 30 calendar days following the loss of current employment.

*Provider*—An organization or individual that directly delivers child care services.

*Published rate*—A provider's daily charge for a child who does not receive subsidized child care.

*Recoupment*—Recovery of an overpayment by increasing the co-payment or other payment arrangement.

*Self-certification*—A written statement provided by a parent or caretaker for the purpose of establishing selected factors of nonfinancial eligibility.

*Self-declaration*—A written statement provided by the parent or caretaker for the purpose of establishing financial or nonfinancial eligibility for a period of time not to exceed 30 calendar days.

*Self-employment*—Operating one's own business, trade or profession for profit.

*Subsidized child care*—Child care service paid for in part with State or Federal funds.

*Subsidy suspension*—A temporary lapse of subsidized child care that does not affect the family's eligibility status.

*TANF—Temporary Assistance for Needy Families Program*—A Federal nonentitlement program under sections 401—419 of the Social Security Act (42 U.S.C.A. §§ 601—619) that provides cash assistance to families including dependent children and an adult.

*Training program*—A course of instruction that provides the skills or qualifications necessary for a specific vocation or field of employment. It may include adult basic education, English as a second language, a 2-year or 4-year post-secondary degree program, an internship, clinical placement, apprenticeship, lab work and field work required by the training institution.

*Verification*—

(i) The process of confirming information needed to determine eligibility for subsidized child care.

(ii) The term includes documentary evidence or information obtained through collateral contacts, self-certification and self-declaration.

*Waiting list*—A record maintained by the eligibility agency of the names of families and their children determined eligible to receive subsidized child care, but for whom subsidy is not currently available.

*Work*—Employment or self-employment.

#### GENERAL REQUIREMENTS AND BENEFITS

##### § 3041.11. Nondiscrimination.

(a) An eligibility agency may not discriminate against applicants for or recipients of Federal or State subsidized funds on the basis of age, race, sex, color, religious creed, national or ethnic origin, ancestry, sexual preference or physical or mental disability.

(b) An eligibility agency shall offer child care subsidy within the provisions of applicable civil rights laws and regulations, including the following:

(1) The Pennsylvania Human Relations Act (43 P. S. §§ 951—963).

(2) The Age Discrimination Act of 1975 (42 U.S.C.A. §§ 6101—6107).

(3) Title VI of the Civil Rights Act of 1964 (42 U.S.C.A. §§ 2000d—2000d-4a).

(4) Title VII of the Civil Rights Act of 1964 (42 U.S.C.A. §§ 2000e—2000e-15).

(5) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C.A. § 794).

(6) The Americans with Disabilities Act of 1990 (42 U.S.C.A. §§ 12101—12210).

##### § 3041.12. Provision of subsidized child care.

(a) Subsidized child care is provided for a child whose family meets financial and nonfinancial eligibility requirements.

(b) Subsidized child care is available to an otherwise eligible child who is under 13 years of age.

(c) Subsidized child care is available to an otherwise eligible child who is 13 years of age or older but under 19 years of age and is physically or mentally incapable of caring for himself. The physical or mental incapacity shall be documented by a physician or psychologist.

(d) A former TANF family is eligible for a child care subsidy under this chapter as specified in §§ 3041.141—150 (relating to TANF and former TANF families).

(e) The Department, through the Department's contracts with the eligibility agency, will direct funding for various populations, including individuals who formerly received TANF benefits.

##### § 3041.13. Parent choice.

(a) A family who is eligible for subsidized child care shall have the right to choose care from a provider who agrees to comply with the Department's standards for provider participation. Providers eligible to participate include:

(1) A child day care center certified under Chapter 3270 (relating to child day care centers).

(2) A group child day care home certified under Chapter 3280 (relating to group day care homes).

(3) A family child day care home registered under Chapter 3290 (relating to family day care homes).

(4) A provider specifically exempt from certification or registration under Chapters 3270, 3280 and 3290 (relating to child day care centers; group child day care homes; and family child day care homes), including in-home care if specifically exempt.

(b) A family eligible for Head Start expansion shall choose a child care provider as specified in § 3041.51 (relating to Head Start expansion program).

##### § 3041.14. Subsidy benefits.

(a) A subsidy-eligible family may receive payment for child care needed during:

(1) The hours that the child needs care while the parent or caretaker is employed or attending an education or training program, including travel between the parent's or caretaker's work, education or training and the child care facility.

(2) The hours that the child needs care when the parent or caretaker requires uninterrupted sleep time because the work shift ends between the hours of 12 a.m. and 9 a.m.

(b) Child care is considered unnecessary when a biological or adoptive parent or stepparent living in the household is available to care for the child during the hours of the day for which subsidized child care is requested, unless either of the following occur:

(1) The parent or caretaker or both parents or caretakers, who are otherwise available and expected to care for the child, are physically or mentally incapable of providing child care or cannot provide child care because of the need to attend treatment for a physical or mental illness or disability.

(2) The child is at risk because of suspected abuse by a parent or caretaker who is available to provide care.

##### § 3041.15. Payment of provider charges.

(a) A provider participating in the subsidized child care program is eligible to receive payment from the eligibility agency for services provided to a subsidy-eligible child.

(b) The eligibility agency may not pay child care costs that exceed the maximum child care allowance less the family co-payment for the type of care the child received from the provider.

(c) If a parent or caretaker selects a provider whose published rate exceeds the Department's payment rate, the provider may charge the parent or caretaker the difference between these two amounts.

(d) The eligibility agency may not pay for any additional charge assessed by the provider, beyond the cost of child care.

(e) A change in a parent's or caretaker's need for child care and the resulting adjustment in the amount of payment to the provider shall begin on the date the parent or caretaker reports the change or on the date the change begins, whichever is later.

**§ 3041.16. Subsidy limitations.**

(a) A family in which a parent or caretaker is receiving TANF is not eligible for subsidized child care under this chapter.

(b) Subsidized child care may not be used as a substitute for a publicly funded educational program, such as kindergarten or a specialized treatment program.

(c) If a parent or caretaker is the operator of a child day care center, group child day care home or family child day care home as specified in Chapter 3270, Chapter 3280 or Chapter 3290 (relating to child day care centers; group child day care homes; and family child day care homes) or is the operator of a home that is exempt from certification or registration under section 1070 of the Public Welfare Code (62 P.S. § 1070), and if space is available to enroll the parent's or caretaker's child at the facility operated by the parent or caretaker, that child is not eligible to receive subsidized child care.

(d) A family consisting of two parents or caretakers may be eligible for subsidized child care when one parent or caretaker has a permanent physical or mental disability that results in the inability to work or participate in an education or training program. The disability must prevent the parent or caretaker from caring for the child for whom subsidy is requested.

(e) Subsidized child care is provided for a child whose family is determined eligible, up to the limits of available subsidized child care funds.

(f) The parent or caretaker shall select an eligible child care provider no later than 30 calendar days following the date the eligibility agency notifies the parent or caretaker that funding is available or that the family's current child care provider is ineligible to participate in the subsidized child care program.

**§ 3041.17. Prohibition of additional conditions and charges.**

The eligibility agency may not:

(1) Impose eligibility conditions other than conditions listed in this chapter.

(2) Require the parent or caretaker to select a particular provider or combination of providers as a condition of eligibility.

**§ 3041.18. Attendance.**

(a) The days for which the parent or caretaker establishes a need for child care shall be specified in writing by the parent to the eligibility agency at the time the child is enrolled in subsidized child care.

(b) A child is expected to attend child care at the provider on all days for which the parent or caretaker established a need for child care as specified in § 3041.14 (relating to subsidy benefits), unless the provisions specified in § 3041.21 (relating to subsidy suspension) apply.

**§ 3041.19. Absence.**

(a) Upon notification from the provider that a child has been absent more than 10 consecutive days for which the

child is scheduled to attend child care, not including days of a child's illness, developmental or physical disability or other reason as specified in § 3041.21 (relating to subsidy suspension), the eligibility agency shall send the parent or caretaker an adverse action notice terminating the child's eligibility and payment to the provider.

(b) The notice shall inform the parent or caretaker of the following:

(1) The parent or caretaker shall report to the eligibility agency the date of the child's return to care.

(2) Payment may resume if the child returns to care no later than the 10th calendar day following the date the written notice of adverse action is postmarked or hand-delivered to the parent or caretaker by the eligibility agency.

(3) If the child does not return to care by the 10th calendar day following the date the written notice of adverse action is postmarked or hand-delivered to the parent or caretaker by the eligibility agency and there are no grounds for subsidy suspension, the child's subsidy will be terminated effective the 11th calendar day from the date of the notice.

**§ 3041.20. Subsidy continuation during breaks in work.**

A family's eligibility for subsidized child care continues for and during the following:

(1) Sixty calendar days from the date of an involuntary loss of work, the date a strike begins or the date the parent graduates from or completes an education or training program.

(2) A total of 84 calendar days from the first day of family leave, other than maternity leave, as defined under the Family and Medical Leave Act of 1993 (29 U.S.C.A. §§ 2601—2654), provided there is a need for child care.

(3) Regularly scheduled breaks in work or breaks in an education or training program, if the regularly scheduled break is less than 31 calendar days.

**§ 3041.21. Subsidy suspension.**

(a) If a child is unable to attend child care for more than 10 consecutive days for which the child is scheduled to attend care, subsidy shall be suspended for up to 90 calendar days in the following circumstances:

(1) The child is visiting the noncustodial parent or caretaker.

(2) The child is ill or hospitalized, preventing the child from participating in child care.

(3) The child is absent because of family illness or emergency.

(4) The child remains at home with his parent or caretaker during family leave.

(5) The provider is closed because of failure to meet certification or registration requirements.

(6) The child's needs cannot be met by the provider.

(7) The parent or caretaker is on maternity or family leave, as defined under the Family and Medical Leave Act of 1993 (29 U.S.C.A. §§ 2601—2654).

(b) If the parent or caretaker is attending an education or training program that dismisses for a summer break, the eligibility agency shall suspend subsidy for the duration of the summer break.

(c) The child is no longer eligible for subsidy if the child continues to be absent following 90 calendar days of suspension or following the end of the child's parent's summer break.

**§ 3041.22. Subsidy disruption.**

(a) If child care is disrupted due to the provider's loss of the Department's certification or registration or another reason that prevents the child's continued care at that provider, the child is eligible for subsidy at another provider.

(b) If a child loses care as a result of circumstances referenced in subsection (a), and if funding for subsidized child care is not immediately available for another provider, the child's subsidy is suspended until the parent or caretaker selects another provider and funding is available.

(c) Subsidy to a child may be disrupted if the eligibility agency cannot continue to subsidize the number of children enrolled in subsidized child care due to insufficient State or Federal funding.

(1) Subsidy for children whose families have the highest income is disrupted first.

(2) A child whose subsidy is disrupted under this subsection shall be placed on the waiting list according to the date of the initial eligibility for subsidized child care.

**DETERMINING FAMILY SIZE AND INCOME**

**§ 3041.31. Family size.**

(a) Individuals included in the definition of family shall be included in determining family size.

(b) An individual applying as a parent and a caretaker may only be counted once.

(c) An individual may not be included in more than one family unless the individual is a child who is in a shared custody arrangement between two families and both families are seeking subsidized child care.

(d) A foster child may be counted as a family of one or may be included in a family as defined in this chapter.

**§ 3041.32. Income counted.**

Income from the following family members is counted to determine financial eligibility:

(1) The biological or adoptive parents or stepparents of the child for whom subsidy is sought.

(2) A caretaker and the caretaker's spouse.

(3) The child for whom subsidy is sought, excluding the child's earned income.

**§ 3041.33. Income adjustment.**

To determine adjusted family income the eligibility agency shall:

(1) Determine gross income as specified in Appendix A, Part I (relating to income to be included, deducted and excluded in determining gross monthly income) for each family member listed in § 3041.32 (relating to income counted).

(2) Estimate monthly income from each income source in accordance with § 3041.34 (relating to estimating income).

(3) Convert weekly, biweekly, semimonthly and other pay periods to gross monthly amounts using the Conversion Table in Appendix A, Part I.

(4) Calculate the total gross monthly income.

(5) Determine the basic living need allowance deduction for a stepparent and deduct that amount from the stepparent's income using the Basic Living Need Allowance Deduction specified in Appendix A, Part II.

(6) Determine other allowable deductions listed in Appendix A, Part II for each source of income.

(7) Determine adjusted family income by subtracting the total monthly deductions specified in paragraphs (5) and (6) from the total gross monthly income specified in paragraph (4).

(8) Multiply adjusted family income by 12 to determine annual family income.

**§ 3041.34. Estimating income.**

(a) For the purpose of determining adjusted family income, the eligibility agency shall use its best estimate of monthly income based upon circumstances at the time of application or redetermination as specified in Appendix A, Part I (relating to income to be included, deducted and excluded in determining gross monthly income) for the table used to convert weekly, biweekly, and semi-monthly and other pay periods to monthly amounts.

(b) For parents or caretakers who are working and have received pay at the time they apply for subsidized child care, income shall be estimated based upon verified, actual amounts already received by the family prior to application or redetermination or verification of anticipated income.

(c) When estimating income, the eligibility agency shall use the past 30 calendar days as an indicator of future amounts, unless:

(1) A change has occurred.

(2) A change is anticipated.

(3) An unusual circumstance existed that is not expected to recur, such as overtime not likely to continue.

(d) The eligibility agency shall adjust its estimate of monthly income to take into account recent or anticipated changes and unusual circumstances.

(e) When an applicant anticipates starting work within the next 30 days or has not yet received a first paycheck, income eligibility is established based on verified anticipated income.

**ELIGIBILITY REQUIREMENTS**

**§ 3041.41. Financial eligibility.**

To be eligible to receive subsidized child care, a family shall meet the following financial conditions:

(1) At initial application, annual family income shall not exceed 200% of the FPIG.

(2) Following an initial determination of eligibility, a family shall remain financially eligible for subsidized child care as long as the annual income does not exceed 235% of the FPIG.

(3) The eligibility agency shall inform the parent or caretaker of the annual family income that will exceed 235% of the FPIG and cause the family to be ineligible for subsidized child care.

**§ 3041.42. Residence.**

A family that is financially eligible shall meet the following nonfinancial eligibility conditions to receive subsidized child care:

(1) Family members shall be residents of this Commonwealth.

(2) The parent or caretaker shall apply in his county of residence. In counties where there is more than one eligibility agency for the county, the parent or caretaker shall apply to the eligibility agency that is responsible for the geographic area that includes the zip code of the family's residence.

**§ 3041.43. Work, education and training.**

(a) The parent or caretaker shall work at least 20 hours per week. The eligibility agency may average a parent's or caretaker's work hours over a 4-week period in cases where hours of work vary from week to week.

(b) In the following circumstances, the parent or caretaker is exempt from the work and work-hour requirement specified in subsection (a):

(1) A parent or caretaker under 22 years of age and attending high school.

(2) A parent or caretaker under 18 years of age, does not have a high school or general educational development diploma, but is enrolled in and attending an education program on a full-time basis.

(c) When a parent or caretaker attends a training program and works at least 10 hours per week, the eligibility agency shall count the time spent in the training program toward the 20 hour per week work requirement. The eligibility agency will count other parent or caretaker activities required to complete the training program toward the 20 hour per week work requirement. Activities include an internship, a clinical placement, a practicum, student teaching, field work or lab work.

(d) A parent or caretaker who misses work due to illness, injury, employer closings, holidays, temporary work slow-downs, emergencies or domestic violence shall remain eligible for subsidy if the parent or caretaker is normally scheduled to work an average of 20 hours per week.

**§ 3041.44. Prospective work, education and training.**

(a) A family in which a parent or caretaker has prospective employment or prospective enrollment in an education or training program may be eligible for subsidized child care if the following requirements are met:

(1) The employment or education program will begin no later than 30 calendar days following the date of application or no later than 60 calendar days following the loss of work for a parent or caretaker who is receiving subsidized child care.

(2) Verification of prospective employment or enrollment in an education or training program is provided as specified in § 3041.66 (relating to verification of work, education and training).

(b) Subsidy may not begin until the parent or caretaker begins employment or participation in an education or training program.

**§ 3041.45. Anticipating income.**

(a) For applicants who report prospective work, a co-payment is not required until payment for employment is received.

(b) For recipients of subsidized child care who report prospective work, the family is assessed the minimum co-payment for a family of its size until payment for work is received.

(c) The parent or caretaker shall notify the eligibility agency of the actual amount of payment no later than 10 calendar days after receiving the first payment for work.

**§ 3041.46. Immunization.**

(a) A child receiving subsidized child care shall have received age-appropriate immunizations. Exemption from the immunization requirement shall be granted by the eligibility agency if:

(1) A child's parent or caretaker objects to immunizations on religious grounds.

(2) A child's medical condition contraindicates immunization as documented by a physician.

(b) If an otherwise eligible child does not have age-appropriate immunizations and is not exempt from immunization, the family shall be authorized for subsidy and the parent or caretaker shall be given 90 calendar days to obtain immunizations for the child and self-certify that the child has age-appropriate immunizations or that the child is exempt from the immunization requirement.

(c) The parent's or caretaker's self-certification on the application or on another form provided by the Department is verification of immunization or exemption from immunization requirements.

**§ 3041.47. Citizenship.**

A child receiving subsidized child care shall be a United States citizen or an alien lawfully admitted for permanent residence or otherwise lawfully and permanently residing in the United States.

**SPECIAL ELIGIBILITY PROGRAMS**

**§ 3041.51. Head Start expansion program.**

(a) A Head Start expansion program is a program that combines the Head Start program with the subsidized child care program.

(b) A child who is enrolled in a Head Start program, whose parent or caretaker needs extended hours or days of child care to work, is eligible for subsidized child care under this section, if the parent or caretaker meets the eligibility requirements for subsidized child care as specified in subsection (f).

(c) The parent or caretaker shall obtain from the Head Start program and provide to the eligibility agency verification that the Head Start expansion program meets the Federal Head Start standards.

(d) If a child in the family as specified in § 3041.31 (relating to family size) is enrolled in the Head Start expansion program, the family eligibility provisions of this section also apply to other children in the family who need child care.

(e) If extended hours or days of care are provided beyond the Head Start program hours or days, the extended hours and days of care shall be provided by a facility that has a certificate of compliance or registration by the Department as a child day care facility.

(f) A parent or caretaker whose child participates in the Head Start expansion program shall be required to meet only the following conditions:

(1) Verification of, at the time of application, a minimum of 20 hours of work per week as specified in § 3041.43 (relating to work, education and training).

(2) Verification that extended hours and days of child care are needed to work.



(3) Compliance with the waiting list conditions specified in § 3041.133 (relating to waiting list).

(4) Payment of the minimum co-payment for a family of one as specified in Appendix B (relating to co-payment chart family co-payment scale (based on the 2004 Federal Poverty Income Guidelines)).

(5) Payment of the co-payment as specified in § 3041.101(a)—(e) (relating to general co-payment requirements).

(g) Subsidy for a child receiving care under this section may be suspended during summer school breaks.

(h) A parent or caretaker whose child receives subsidized child care and is enrolled in a Head Start program is not required to report changes in circumstances during the period of the child's Head Start enrollment. The family shall remain eligible for subsidy for the duration of the child's enrollment in a Head Start program, regardless of a change in family income or circumstances.

(i) The eligibility agency may not require a parent or caretaker whose child receives subsidized child care and is enrolled in a Head Start program to complete a partial redetermination or redetermination until the child's Head Start program reports to the eligibility agency that the child is no longer enrolled in the Head Start program.

**§ 3041.52. Prekindergarten program.**

(a) A child who is 3 or 4 years of age and who is enrolled in a prekindergarten program operated by a school entity or a certified child day care center or licensed private academic school serving children 3 or 4 years of age operating under contract with a school entity, whose parent or caretaker needs extended hours or days of child care to work, is eligible for subsidized child care under this section, if the parent or caretaker meets the eligibility requirements for subsidized child care as specified in this section.

(b) The eligibility agency shall verify that the prekindergarten program is operated by a school entity or by a certified child day care center or licensed private academic school operating under contract with a school entity.

(c) If extended hours or days of care are provided beyond the prekindergarten program's hours or days, the extended hours and days of care shall be provided by a facility that has a certificate of compliance or registration by the Department as a child day care facility.

(d) A parent or caretaker whose child participates in a pre-kindergarten program shall be required to meet the conditions specified in this chapter, except as specified in subsections (e), (f) and (g).

(e) Subsidy for a child receiving care under this section may be suspended during summer school breaks.

(f) A parent or caretaker whose child receives subsidized child care and is enrolled in a prekindergarten program will not be required to report changes in circumstances during the period of the child's prekindergarten enrollment. The family shall remain eligible for subsidy for the duration of the child's enrollment in a prekindergarten program, regardless of a change in family income or circumstances.

(g) The eligibility agency may not require a parent or caretaker whose child receives subsidized child care and is enrolled in a prekindergarten program to complete a partial redetermination or redetermination until the

child's prekindergarten program reports to the eligibility agency that the child is no longer enrolled in the pre-kindergarten program.

(h) A school entity is a public school, school district, intermediate unit or area vocational-technical school as defined in 22 Pa. Code § 49.1 (relating to definitions).

**VERIFICATION**

**§ 3041.61. General verification requirements.**

(a) The parent or caretaker shall be the primary source of verification in establishing and maintaining eligibility for subsidized child care.

(b) The eligibility agency shall inform each parent and caretaker that the eligibility agency is available to assist in obtaining verification that the parent or caretaker is unable to obtain.

(c) The eligibility agency shall assist parents and caretakers who request assistance in obtaining verification.

(d) Verification that establishes a fact related to the determination of eligibility shall be accepted by the eligibility agency. Requirements for a specific type of verification may not be imposed by the eligibility agency.

(e) The parent or caretaker may report a change in circumstances at any time.

(f) The eligibility agency may not require a parent or caretaker to verify again information that is unlikely to have changed since application or the last eligibility redetermination. If the eligibility agency suspects or knows that the information provided by a parent or caretaker has changed, the eligibility agency may require the parent or caretaker to verify the information again.

(g) The eligibility agency may not deny or terminate subsidy to a family when the parent or caretaker has cooperated in the verification process and needed verification is pending or cannot be obtained due to circumstances beyond the parent's or caretaker's control.

(h) The eligibility agency shall require the parent or caretaker to provide documentary evidence of eligibility, as specified in §§ 3041.41—3041.47 (relating to eligibility requirements) and shall permit self-certification of other eligibility requirements.

(i) Self-certification shall be made subject to 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

**§ 3041.62. Collateral contact.**

(a) The eligibility agency shall make a collateral contact on behalf of the parent or caretaker if any of the following occurs:

(1) The parent or caretaker has made a reasonable effort to obtain documentary evidence without success.

(2) Documentary evidence is unavailable.

(3) The eligibility determination process must be expedited to avoid unnecessary hardship to the parent or caretaker or to ensure that the time frame for an eligibility determination is met.

(4) The verification provided by the parent or caretaker requires additional clarification.

(5) The eligibility agency suspects that the parent or caretaker is withholding information or has falsified the information given.

(b) The eligibility agency shall make a collateral contact in person, by consulting public records, by mail or by telephone with a source of reliable information.

(c) Sources of reliable collateral contact information include the following:

(1) Public records, such as domestic relations or other courthouse records.

(2) An employer, a friend, a neighbor, a relative, a landlord, a government agency, a community social service agency or a child care provider.

(d) When making a collateral contact, the eligibility agency shall obtain from the parent or caretaker a list of reliable sources of information who would serve as collateral contacts.

(e) The eligibility agency shall obtain consent from the parent or caretaker and spouse at the time of application for subsidy permitting the eligibility agency to obtain verification of eligibility information.

(f) The eligibility agency shall retain in the family's file the signed consent. The consent shall remain in effect for as long as the family receives subsidy.

(g) The eligibility agency shall cooperate with a source who acts as a collateral contact.

(h) The eligibility agency may not contact an alleged abuser or former abuser in a domestic violence situation.

**§ 3041.63. Self-declaration.**

(a) If a parent's or caretaker's attempts to verify eligibility by documentary evidence or collateral contact are unsuccessful, the eligibility agency shall proceed without delay to determine the family's eligibility based upon a written self-declaration by the parent or caretaker.

(b) The eligibility agency shall instruct the parent or caretaker that a written self-declaration shall be made subject to 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

(c) The eligibility agency shall accept a parent's or caretaker's self-declaration statement, unless evidence contradicts the statement.

(d) The eligibility agency shall require the parent or caretaker to provide another form of acceptable verification no later than 30 calendar days following the date the written self-declaration is accepted as verification by the eligibility agency unless otherwise specified in this chapter.

**§ 3041.64. Verification of income.**

(a) Acceptable verification of earned income from employment includes one of the following:

(1) Pay stubs reflecting earnings for 3 weeks in the most recent 6-week period, the Department's Employment Verification form reflecting actual or anticipated earnings, the IRS form used for reporting tips, an employer statement of anticipated earnings and hours or other document that establishes the parent's or caretaker's earnings from employment.

(2) A collateral contact, as specified in § 3041.62 (relating to collateral contact).

(3) A written self-declaration by the parent or caretaker as specified in § 3041.63 (relating to self-declaration).

(b) Acceptable verification of income from self-employment includes one of the following:

(1) Tax returns, business records or other documents establishing profit from self-employment.

(2) A collateral contact, as specified in § 3041.62.

(3) A written self-declaration by a parent or caretaker of net profit from self-employment, reflecting gross earnings, less the cost of doing business, as specified in § 3041.63.

(c) Acceptable verification of unearned income includes one of the following:

(1) A copy of a current benefit check, an award letter that designates the amount of a grant or benefit, such as a letter from the Social Security Administration stating the amount of the Social Security benefit, a bank statement or other document or database report that establishes the amount of unearned income.

(2) A collateral contact, as specified in § 3041.62.

(3) A written self-declaration by the parent or caretaker, as specified in § 3041.63.

(d) For any case in which a family receives or pays child support through Pennsylvania's Child Support Enforcement System, the eligibility agency shall verify the amount of support received or paid by the family by requesting this information from the Department.

**§ 3041.65. Verification of residence.**

Acceptable verification of the parent's or caretaker's residence shall be the parent's or caretaker's self-certification of his address provided on the application or eligibility redetermination form.

**§ 3041.66. Verification of work, education and training.**

Acceptable verification of hours of work, education, training or enrollment in an education or training program includes one of the following:

(1) A document provided by the parent or caretaker as verification of earned income, provided this verification indicates or can be used to compute the number of hours the parent or caretaker worked, is normally scheduled to work or in cases where hours vary, the average number of hours worked.

(2) A copy of a work schedule signed by the employer.

(3) A copy of the class or training schedule from the school or training program.

(4) Another document that establishes hours of work, education or training.

(5) A collateral contact, as specified in § 3041.62 (relating to collateral contact).

(6) A written self-declaration by the parent or caretaker that indicates the parent or caretaker works at least 20 hours per week, as specified in § 3041.63 (relating to self-declaration).

**§ 3041.67. Verification of immunization.**

Acceptable verification of immunization shall be the parent's or caretaker's self-certification of age-appropriate immunizations, as provided on the application or eligibility redetermination form.

**§ 3041.68. Verification of citizenship.**

The eligibility agency shall accept as verification the parent's or caretaker's self-certification on the application regarding the citizenship of a child for whom subsidized child care is sought.

**§ 3041.69. Verification of identity.**

Acceptable verification of identity includes one of the following:

(1) Employer identification card.

- (2) Military photo-identification card.
- (3) Passport.
- (4) Other verifiable photo-identification.
- (5) Driver's license with or without a photograph.
- (6) State-issued birth certificate.
- (7) Certificate of naturalization.
- (8) Certificate of United States citizenship.
- (9) Registration receipt card.
- (10) Valid or expired Pennsylvania learner's permit.
- (11) Social Security card.
- (12) Marriage license, divorce decree or court order for a name change.
- (13) Marriage record that contains the date of birth.
- (14) Voter's registration card.
- (15) Collateral contact as specified in § 3041.62 (relating to collateral contact).
- (16) Written self-declaration by the parent or caretaker, as specified in § 3041.63 (relating to self-declaration).

**§ 3041.70. Verification of temporary inability to work.**

(a) Verification of the parent's or caretaker's physical or mental disability must include an assessment by a physician, psychologist or other licensed health care professional that includes the following:

- (1) The physical or mental condition causing the inability to work or to participate in an education or training program.
- (2) How the condition causing the physical or mental disability prevents the parent or caretaker from providing care for the child.
- (3) The date the parent or caretaker is expected to return to work or resume participation in an education or training program or the date the parent or caretaker will be able to care for the child.

(b) Subsidized child care eligibility shall continue for a maximum of 6 months if the conditions specified in subsection (a) are met.

**§ 3041.71. Verification of permanent inability to work.**

(a) The conditions specified in § 3041.70(a) (relating to verification of temporary inability to work) shall be met.

(b) The parent or caretaker with a physical or mental disability shall provide verification of disability payments from Social Security, Supplemental Security Income (SSI), Worker's Compensation, 100% of Veterans Disability or 100% of another type of work-related disability.

(c) If the parent or caretaker with the physical or mental disability does not receive income as specified in subsection (b), the parent or caretaker shall verify application for disability benefits for which he may be eligible.

**ELIGIBILITY AGENCY RESPONSIBILITIES**

**§ 3041.81. Eligibility agency.**

(a) The eligibility agency shall manage the subsidized child care program in part of a county, a single county or several counties.

(b) The eligibility agency may be either a prime contractor or a subcontractor designated in a prime contract.

**§ 3041.82. Eligibility determination.**

(a) The eligibility agency shall determine eligibility for subsidized child care as specified in this chapter.

(b) The eligibility agency may not impose eligibility conditions other than the conditions listed in this chapter.

(c) The eligibility agency may not require the parent or caretaker to select a particular provider or combination of providers as a condition of eligibility.

**§ 3041.83. Confidentiality.**

(a) The eligibility agency and its employees shall keep confidential the information in the family file and use that information only for purposes directly connected to the administration of their duties.

(b) Agents of the United States, the Commonwealth and the Department who are responsible for eligibility review, evaluation or audit functions shall have access to, and the right to the use and disclosure of, information on applicants or recipients of subsidized child care. This use and disclosure is confined to the agent's responsibility to carry out review, evaluation or audit functions.

(c) Disclosure of information beyond the scope of review, evaluation or audit functions performed by the agents requires the parent's or caretaker's informed and written consent.

(d) Information in the family file may be disclosed to the local CAO when necessary to ensure that funds are authorized appropriately.

(e) The eligibility agency shall assure the confidentiality of an individual who files an appeal or complaint about a family's receipt of subsidized child care for a child.

**§ 3041.84. Family file.**

(a) An eligibility agency shall establish and maintain a separate file for the family of each parent or caretaker who applies for subsidized child care.

(b) The family file shall contain documents pertaining to eligibility determination, redetermination, subsidized child care authorization, co-payment agreements and copies of written notices required by this chapter.

(c) A parent or caretaker or his authorized representative has a right to examine the family file.

**§ 3041.85. Record retention.**

(a) An eligibility agency shall retain family files, completed application forms, written notices, books, records and other fiscal and administrative documents pertaining to subsidized child care.

(b) Records shall be maintained for at least 7 years from the end of the fiscal year in which subsidized child care has been provided or until an audit or litigation is resolved.

**§ 3041.86. Child abuse reporting.**

The eligibility agency shall immediately report suspected child abuse in accordance with 23 Pa.C.S. §§ 6301—6385 (relating to the Child Protective Services Law) and Chapter 3490 (relating to protective services).

**DOMESTIC VIOLENCE WAIVERS**

**§ 3041.91. General requirements.**

(a) The eligibility agency shall grant a domestic violence waiver to a parent or caretaker who is the victim of past or present domestic violence or the threat of domestic violence.

(b) A domestic violence waiver shall be granted if compliance with a requirement of this chapter would either make it more difficult for a family or household member to escape domestic violence or place a family or household member at risk of domestic violence.

(c) The following requirements of this chapter may not be waived:

(1) Age of the child as specified in § 3041.12(b) and (c) (relating to provision of subsidized child care).

(2) Income limits as specified in § 3041.41 (relating to financial eligibility).

(3) Pennsylvania residency as specified in § 3041.42 (relating to residence).

(4) Citizenship as specified in § 3041.47 (relating to citizenship).

(5) The minimum number of hours of work, education or training as specified in § 3041.43 (relating to work, education and training), except for a parent or caretaker who meets the hours of work, education or training at the time of application. The parent or caretaker shall continue to participate in some but not all hours of work, education or training.

(d) If a parent or caretaker has been receiving subsidized child care and is unable to participate in work, education or training as a result of domestic violence or the threat of domestic violence, a waiver shall be granted and subsidized child care shall continue for as long as the parent or caretaker is unable to participate in work, education or training, subject to a maximum of 183 days.

(e) A waiver of the verification of the amount of income as specified in § 3041.64 (relating to verification of income) may not exceed 60 days.

(f) Except as specified in subsection (c), the eligibility agency may grant a domestic violence waiver for a maximum of 183 days.

(g) The eligibility agency shall review a domestic violence waiver every 183 days. If circumstances have not changed since the waiver was granted, a waiver granted under subsections (b) and (c) shall be renewed. A waiver granted under subsection (d) may not be renewed.

(h) The eligibility agency shall document the reasons for granting or denying the waiver on a form provided by the Department.

**§ 3041.92. Alternate address or telephone number.**

A parent or caretaker who is a victim of domestic violence may use an alternate address for receipt of mail or telephone number for receipt of telephone calls.

**§ 3041.93. Time frame for waiver determinations.**

The eligibility agency shall act on a parent's or caretaker's waiver request no later than 15 calendar days following the date the parent or caretaker requests the waiver.

**§ 3041.94. Notice of waiver determination.**

(a) The eligibility agency shall provide written notice to the parent or caretaker regarding the eligibility agency's determination to grant or deny a waiver request.

(b) If the waiver is granted, the notice shall include the following:

(1) The basis for granting the waiver.

(2) A statement that the eligibility agency will review the waiver circumstances every 183 days.

(c) If the waiver is denied, the notice shall include the following:

(1) The basis for the denial.

(2) The right to appeal the decision and how to appeal as specified in §§ 3041.162 and 3041.171 (relating to notice of right to appeal; and appealable actions).

(3) The verification the parent or caretaker shall submit for the eligibility agency to grant the waiver and the time frames in which the parent or caretaker must submit the verification.

(4) The evidence or information needed to substantiate the waiver request and the time frames in which the parent or caretaker shall provide the information.

**CO-PAYMENTS AND PAYMENT BY THE DEPARTMENT**

**§ 3041.101. General co-payment requirements.**

(a) The eligibility agency shall determine the amount of the parent's or caretaker's co-payment during the eligibility process based on the parent's or caretaker's actual or verified anticipated income and family size.

(b) A co-payment is established at an initial determination of eligibility for subsidized child care and reestablished at each successive redetermination of eligibility.

(c) The co-payment covers each child in the family who is receiving subsidized child care.

(d) The co-payment includes each day of the week for which the family establishes a need for child care.

(e) The co-payment is due on the first day of the family's first full service week and each week thereafter.

**§ 3041.102. Department's payment.**

(a) If the co-payment does not exceed the payment rate for care, the difference between the payment rate and the weekly co-payment is the Department's payment for subsidized child care.

(b) If the Department's weekly payment to the provider is less than \$5, the family is not eligible for subsidized child care with that provider.

**§ 3041.103. Adjusted co-payment for prospective work, education and training.**

(a) Upon notification by the parent or caretaker of receipt of payment for employment, the eligibility agency shall:

(1) Complete a partial redetermination no later than 10 calendar days following notification.

(2) Adjust the family co-payment, if applicable, no later than 20 calendar days following the date the parent or caretaker reports the receipt of payment from employment.

(3) Provide notice to the parent or caretaker of the planned change in the co-payment.

(b) The parent or caretaker shall begin paying the adjusted co-payment starting the first day of the first full service week following the date the written notice is postmarked or hand-delivered to the parent or caretaker by the eligibility agency.

**§ 3041.104. Parent or caretaker co-payment requirements.**

(a) Except as provided in subsection (b), a parent or caretaker whose child is authorized for subsidy is required to pay a co-payment and an equivalent advance

co-payment to the provider prior to enrollment in the subsidized child care program. Only the co-payment is due thereafter.

(b) A parent or caretaker who transfers from TANF shall pay a co-payment and an equivalent advance co-payment to the provider. The advance co-payment must be paid by the time of the first redetermination.

(c) If the co-payment is decreased as the result of a redetermination or partial redetermination, the parent or caretaker will begin paying the reduced co-payment on the first day of the service week following the date of the redetermination or partial redetermination.

(d) If the co-payment is decreased as the result of a redetermination or partial redetermination, the provider will refund to the parent or caretaker the difference between the current advance co-payment and the decreased co-payment on the first day of the service week following the redetermination or partial redetermination.

(e) If the co-payment is increased as the result of a redetermination or partial redetermination, the parent or caretaker shall begin paying the increased co-payment on the first service day of the week following the 10-day advance notice specified in § 3041.161(a) (relating to general notification requirements) advising the parent or caretaker of the co-payment increase. The parent or caretaker shall also pay an increased advance co-payment, which is the difference between the current and the increased co-payment.

(f) The co-payment is due on the first day of the service week.

(g) The advance co-payment is refunded upon termination of subsidy if the parent or caretaker has met applicable requirements in this chapter.

#### **§ 3041.105. Delinquent co-payment.**

(a) A co-payment is delinquent if it is not paid by the last day of the service week.

(b) On the day the provider reports the co-payment is delinquent, the eligibility agency shall notify the parent or caretaker in writing that action will be taken to terminate subsidy for the child.

(c) If a co-payment is delinquent, the first payment paid during a week is applied to the current week's co-payment. Subsequent payments during a week are applied to the delinquent co-payment.

#### **§ 3041.106. Eligibility agency responsibilities.**

(a) The eligibility agency shall generate notices based on delinquent co-payments.

(b) The eligibility agency shall send the provider a copy of each notice issued to a parent or caretaker whose child is enrolled with the provider.

(c) When a co-payment is reported to the eligibility agency as delinquent, the eligibility agency shall mail to the parent or caretaker, on a form provided by the Department, a written notice stating that service will be terminated 10 calendar days following the date of the written notice unless the delinquent co-payment is paid.

(1) If the parent or caretaker pays the delinquent co-payment within the 10-day adverse action period, subsidized child care will begin again on the date the delinquent co-payment is paid.

(2) If the parent or caretaker does not pay the delinquent co-payment within the 10-day adverse action pe-

riod, subsidized child care will be terminated on the 11th day following the adverse action period.

(d) A family whose subsidy is terminated for failure to make required co-payments may not be reauthorized for subsidy until all outstanding co-payments have been paid in full.

(e) The eligibility agency shall retain a copy of the termination notice.

#### **§ 3041.107. Availability and use of the Federal Poverty Income Guidelines.**

(a) The FPIG are used to determine the income limits and co-payments for subsidized child care.

(b) Following annual publication of the FPIG, the Department will publish an updated co-payment chart in Appendix B (relating to co-payment chart family co-payment scale based on the 2004 Federal poverty income guidelines) through a notice in the *Pennsylvania Bulletin*.

(c) Except for child care provided under § 3041.51 (relating to Head Start expansion program), the eligibility agency shall inform each parent or caretaker of the dollar amount that is equivalent to 235% of FPIG as specified in Appendix B and shall explain that 235% and the specific dollar figure are the highest annual income amount permitted to receive subsidized child care.

#### **§ 3041.108. Co-payment for families headed by a parent.**

(a) For families headed by a parent, the family co-payment shall be determined based on the following:

(1) The family size and family income, as specified in §§ 3041.31—3041.34.

(2) The co-payment shall be at least \$5, unless waived as specified in §§ 3041.44(a) and 3041.91(c) (relating to prospective work, education and training; and general requirements).

(3) The family's annual co-payment may not exceed 11% of the family's annual income.

(4) If the family's annual income is 100% of FPIG or less, the annual co-payment may not exceed 8% of the family's annual income.

(b) The eligibility agency shall determine the co-payment by using the co-payment chart in Appendix B (relating to co-payment chart family co-payment scale based on the 2004 Federal poverty income guidelines). The co-payment is calculated in \$5 increments for each \$2,000 of annual income.

(c) If a family has only one child who is enrolled in school and who receives a total of fewer than 5 hours daily of before or after-school care, the family shall pay one-half the weekly co-payment specified in Appendix B.

(d) If the co-payments for 1 month are equal to or exceed the monthly payment for care, the family is not eligible for subsidized child care with that provider.

#### **§ 3041.109. Co-payment for families headed by a caretaker.**

(a) A family headed by a caretaker shall be charged the minimum co-pay for a family of its size under the co-payment chart in Appendix B (relating to co-payment chart family co-payment scale based on the 2004 Federal poverty income guidelines) regardless of the family's income.

(b) When a family is headed by a parent who is also the caretaker for another child for whom subsidy is

requested, the eligibility agency shall determine the family co-payment as specified in § 3041.108(a) (relating to co-payment for families headed by a parent).

(c) If the co-payments for 1 month are equal to or exceed the monthly payment for care, the family is not eligible for subsidized child care with that provider.

#### **ELIGIBILITY DETERMINATION AND REDETERMINATION**

##### **§ 3041.121. Application.**

(a) The eligibility agency shall make applications for subsidized child care available to any person upon request.

(b) A signed application for subsidized child care under this chapter may be filed by a parent or caretaker on any day and at any time that the eligibility agency is open for business.

(c) A parent or caretaker may submit an application by mail, hand-delivery, facsimile or electronically.

##### **§ 3041.122. Initial determination of eligibility.**

(a) The eligibility agency shall stamp the date of receipt on the signed application on the same day the eligibility agency receives the application by mail, hand-delivery, facsimile or electronically.

(b) The eligibility agency shall determine a family's eligibility and authorize payment for subsidized child care no later than 10 calendar days following verification of all factors of eligibility. The eligibility agency may not delay a determination of eligibility beyond 30 calendar days following receipt of a signed application from the parent or caretaker.

(c) The eligibility agency shall determine a family eligible retroactive to the date the family submitted a signed application if the verification provided by the parent or caretaker establishes eligibility.

##### **§ 3041.123. Effective date of coverage.**

(a) If the eligibility agency determines a family eligible for subsidized child care and if funding is available, coverage of child care costs is retroactive to the date the family submitted a signed application.

(b) If the eligibility agency places a child on a waiting list following the determination of eligibility, coverage of child care costs must begin on the date funding is available.

##### **§ 3041.124. Notification of parent, caretaker and child care provider.**

(a) The eligibility agency shall notify the parent or caretaker of the family's eligibility status within 30 calendar days of receiving a signed application.

(b) If the eligibility agency determines a family eligible for subsidized child care, the eligibility agency shall notify the family's child care provider of the family's eligibility status.

##### **§ 3041.125. Period of eligibility.**

A family receiving subsidy remains eligible until determined ineligible, providing the parent or caretaker meets the reporting requirements as specified in § 3041.127 (relating to parent and caretaker report of change).

##### **§ 3041.126. Face-to-face interview.**

(a) If the eligibility agency determines a family eligible for subsidized child care and if funding is available, the parent or caretaker shall attend a face-to-face interview with the eligibility agency no later than 30 calendar days

following the date the eligibility agency reviews the family's application for subsidized child care.

(b) If the eligibility agency determines a family eligible for subsidized child care and if funding is not available at the time of the eligibility determination, the parent or caretaker shall attend a face-to-face interview with the eligibility agency no later than 30 calendar days following the date the first child from a family is enrolled in subsidized child care.

(c) The eligibility agency shall accommodate the parent's or caretaker's work hours in scheduling the interview.

(d) The eligibility agency may extend the 30-day time frame for the face-to-face interview based upon hardship, such as conflicts with the parent's or caretaker's working hours, transportation problems or illness of the parent or caretaker or another family member.

##### **§ 3041.127. Parent and caretaker report of change.**

(a) A parent or caretaker may report a change in circumstances whenever a change occurs.

(b) A parent or caretaker shall report the following changes to the eligibility agency no later than 10 calendar days following the date of the change:

(1) Loss of employment or self-employment, including layoffs or strikes.

(2) Decrease in the hours of work, education or training below an average of 20 hours per week.

(3) For a parent, an increase in monthly gross family income of \$300 or more or an increase that causes the family's annual income to exceed 235% of the FPIG. For a caretaker, an annual gross family income increase to 235% or more of the FPIG.

(4) Onset of maternity, paternity or adoption leaves and return to work following leave.

(5) Onset of a physical or mental disability and return to work following disability.

(6) Change of address.

(7) Change in family composition.

##### **§ 3041.128. Review of changes.**

If the parent or caretaker reports either of the following changes, the eligibility agency shall review the change and may complete a partial redetermination as specified in § 3041.129 (relating to partial redetermination based on reported changes):

(1) A decrease in family income, including earned income from employment or self-employment.

(2) The start, resumption or end of an education or training program.

##### **§ 3041.129. Partial redetermination based on reported changes.**

(a) The eligibility agency shall complete a partial redetermination of eligibility if the parent or caretaker reports a change as specified in § 3041.127 (relating to parent and caretaker report of change).

(b) The partial redetermination shall be completed by the eligibility agency no later than 10 calendar days from the date the parent or caretaker reports and verifies a change.

(c) The eligibility agency shall establish a new redetermination date to review eligibility if the information obtained during a partial redetermination indicates one of the following:

(1) The family's financial or nonfinancial status is expected to change in a manner that affects eligibility or co-payment.

(2) A parent or caretaker is physically or mentally disabled and the disability is anticipated to end prior to the family's redetermination date.

(3) A parent's or caretaker's employment is seasonal or temporary.

(4) A parent's or caretaker's education program ends prior to the family's redetermination date.

(5) A parent or caretaker begins maternity, paternity or adoption leave or a parent's or caretaker's maternity, paternity or adoption leave changes or ends prior to the family's redetermination date.

(6) A waiver of eligibility or verification requirement is granted due to domestic violence as specified in § 3041.91 (relating to general requirements).

(d) If a parent or caretaker reports a change in the factors affecting financial or nonfinancial eligibility that does not cause a change in the co-payment or in the eligibility determination, the eligibility agency is not required to complete a partial redetermination.

(e) The eligibility agency shall retain in the family file the information used in the partial redetermination.

(f) If the parent or caretaker reports a change that results in the family or a child in the family becoming ineligible for subsidy, the eligibility agency shall take the necessary steps to terminate the subsidy with proper notification to the family, under § 3041.165 (relating to notice of adverse action).

#### **§ 3041.130. Redetermination of eligibility.**

(a) The eligibility agency shall complete a redetermination of eligibility every 6 months and establish the family's next redetermination date.

(b) Prior to the redetermination, the eligibility agency shall do the following:

(1) Provide the parent or caretaker with the Department's form listing the following information last reported for each parent, stepparent, caretaker or child in the family:

(i) Earned income.

(ii) Unearned income.

(iii) Hours of work, education and training.

(iv) Family composition.

(v) Address.

(vi) Reasons for granting a domestic violence waiver by the eligibility agency as specified in § 3041.91 (relating to general requirements).

(2) Request that the parent or caretaker verify the family's current earned income.

(3) Verify the following factors only if the parent or caretaker reports a change:

(i) Unearned income.

(ii) A decrease in hours of work, education or training to fewer than 20 hours per week.

(iii) Family composition.

(iv) Address.

#### **§ 3041.131. Procedures for redetermination.**

(a) No earlier than 6 weeks prior to redetermination, the eligibility agency shall send the family a form that lists the factors that will be reviewed for the redetermination of eligibility and explain the verification that will be needed to complete the redetermination.

(b) If the parent or caretaker submits only some of the required verification elements prior to the redetermination, the eligibility agency shall request in writing that the parent or caretaker submit the additional verification no later than the family's redetermination date.

(c) The eligibility agency shall retain a copy of the notification in the family file.

(d) The eligibility agency shall send a written notice to the parent or caretaker regarding failure to provide required verification only after the family's redetermination date.

(e) The eligibility agency shall require the parent or caretaker to complete, sign, and either mail, hand-deliver or fax the applicable form at each redetermination.

#### **§ 3041.132. Voluntary request to terminate subsidized child care.**

(a) A parent or caretaker may request the eligibility agency to terminate subsidy.

(b) Upon receipt of a request to terminate subsidy, the eligibility agency shall take steps to terminate the family's eligibility.

(c) The eligibility agency shall notify the parent or caretaker as specified in § 3041.166 (relating to notice confirming voluntary withdrawal).

#### **§ 3041.133. Waiting list.**

(a) If funds are not available to enroll a child following determination of the family's eligibility for subsidy, the eligibility agency shall place an eligible child on a waiting list on a first-come, first-served basis. Placement on the waiting list must be determined by the date and time eligibility for the child was determined.

(b) If a parent or caretaker requests subsidized child care for an additional child following the date the family was initially determined eligible for subsidized child care, the additional child shall be placed on the waiting list according to the date and time that the parent or caretaker requests care for the additional child.

(c) If a parent or caretaker does not select an eligible provider and enroll the child for child care no later than 30 calendar days following the date funding is available, the child will not be eligible for subsidy and will be removed from the waiting list.

(d) If a family was determined eligible and placed on the waiting list more than 6 months prior to the date that funding became available to enroll the child in subsidized child care, the eligibility agency shall complete a redetermination prior to enrollment and confirm that the family is eligible for subsidized child care.

### **TANF AND FORMER TANF FAMILIES**

#### **§ 3041.141. General provisions.**

(a) Families who are no longer eligible for TANF and meet the eligibility requirements specified in this chapter may qualify for subsidized child care.

(b) The eligibility agency shall review the information received from the CAO about a parent or caretaker who formerly received TANF benefits.

(c) The eligibility agency shall determine the date TANF benefits ended and establish the 183-day period, after eligibility for TANF ends, within which the parent or caretaker may receive child care benefits.

(d) Eligibility shall begin the day following the date TANF benefits ended and shall continue for 183 consecutive days.

(e) The parent or caretaker may request child care benefits at any time during the 183-day period after eligibility for TANF ended.

**§ 3041.142. General requirements for former TANF families.**

(a) During the 183-day period after eligibility for TANF ended, a parent or caretaker shall meet only the following conditions:

- (1) The parent or caretaker shall be working.
- (2) The parent's or caretaker's annual income may not exceed 235% of the FPIG.
- (3) The parent or caretaker shall establish a need for child care to work.
- (4) The parent or caretaker shall select an eligible child care provider as specified in § 3041.13(a) (relating to parent choice).
- (5) The parent or caretaker shall make timely payment of the co-payment as specified in § 3041.101 (relating to general co-payment requirements).

(b) A former TANF parent or caretaker who is transferred to the eligibility agency by the CAO or who applies for subsidized child care during the 183-day period after eligibility for TANF ended as specified in subsection (a), may not be placed on a waiting list.

(c) On the 184th day after eligibility for TANF ended, the period of former TANF eligibility ends and the parent or caretaker shall meet the requirements of this chapter.

(d) On the 184th day after eligibility for TANF ended, the eligibility agency shall complete a redetermination of eligibility and establish the family's next redetermination date.

**§ 3041.143. Notification.**

(a) If the eligibility agency determines that a parent or caretaker was receiving child care on the date TANF benefits ended, the eligibility agency shall notify the parent or caretaker by letter of the following:

(1) The parent or caretaker is eligible for subsidized child care benefits for the 183-day period after eligibility for TANF ends, but will be subject to a redetermination of eligibility on the 184th day after eligibility for TANF ended.

(2) The parent or caretaker shall contact the eligibility agency to establish that the parent or caretaker continues to need child care.

(b) If the eligibility agency determines that a parent or caretaker was not receiving child care or cannot determine whether the parent or caretaker was receiving child care on the date TANF benefits ended, the eligibility agency shall notify the parent or caretaker by letter of the following:

(1) The parent or caretaker may be eligible for child care benefits.

(2) The parent or caretaker may contact the eligibility agency if child care is needed during the 183-day period after eligibility for TANF ended.

(3) Eligibility for subsidized child care is assured if the minimum requirements specified in § 3041.142 (a) (relating to general requirements for former TANF families) are met.

**§ 3041.144. Face-to-face interview for former TANF families.**

(a) When the parent or caretaker contacts the eligibility agency in response to the letter specified in § 3041.143(a) (relating to notification), the eligibility agency shall inform the parent or caretaker of the requirement to attend a face-to-face interview with the eligibility agency. The face-to-face interview shall occur no later than 30 calendar days following the date of the letter.

(b) When the parent or caretaker contacts the eligibility agency in response to the letter specified in § 3041.143(b), the eligibility agency shall schedule a face-to-face interview with the parent or caretaker. The eligibility agency may substitute a telephone contact for a face-to-face interview if a face-to-face interview cannot be scheduled without the parent or caretaker losing work time.

(c) To maintain continuous child care payment from the day following the date TANF benefits ended, the parent or caretaker shall attend a face-to-face interview or participate in a telephone contact with the eligibility agency as specified in § 3041.145 (relating to self-declaration and reporting).

**§ 3041.145. Self-declaration and reporting.**

At the time of the parent's or caretaker's face-to-face interview with the eligibility agency or at the time of telephone contact by the eligibility agency with the parent or caretaker, the eligibility agency shall:

(1) Require the parent or caretaker to self-declare the following:

(i) The parent or caretaker needs child care to work, the employer's name and the hours worked.

(ii) Facts in the TANF transfer information regarding family address, family size and income are accurate.

(iii) The family is financially eligible as specified in § 3041.142(a) (relating to general requirements for former TANF families).

(2) Advise the parent or caretaker of the requirement to report the following:

(i) Loss of employment or self-employment.

(ii) Change in family composition.

(iii) Increase in monthly gross family income of \$300 or more or an increase that causes the family's annual income to exceed 235% of the FPIG for a parent.

(iv) Increase in annual gross family income to exceed 235% or more of the FPIG for a caretaker.

(3) Advise the parent or caretaker that an eligibility determination shall be completed by the eligibility agency as specified in § 3041.142(b).

(4) Collect information regarding the parent's or caretaker's choice of child care provider or help the parent or caretaker to locate an eligible child care provider.



**§ 3041.146. Failure to contact the eligibility agency.**

(a) If a parent or caretaker who was receiving child care on the date TANF benefits ended fails to contact the eligibility agency in response to the letter specified in § 3041.143(a) (relating to notification), the eligibility agency shall contact the parent or caretaker by telephone no later than 31 calendar days following the date of the letter.

(b) When the eligibility agency contacts the parent or caretaker as specified in subsection (a), the eligibility agency shall determine the following:

(1) The parent's or caretaker's choice to meet the contact requirement using a telephone contact or participating in a face-to-face interview.

(2) The parent's or caretaker's continuing need for child care.

(c) If the eligibility agency determines that the parent or caretaker was not receiving child care or cannot determine whether the parent or caretaker was receiving child care on the date TANF benefits ended, the eligibility agency may not authorize payment for child care benefits until the date the parent or caretaker contacts the eligibility agency and requests benefits.

(d) If a parent or caretaker who was receiving child care on the date TANF benefits ended does not attend a face-to-face interview as specified in § 3041.144(a) (relating to face-to-face interview for former TANF families), the eligibility agency shall contact the parent or caretaker by telephone no later than the day following the date the parent or caretaker failed to attend the face-to-face interview to determine the information specified in subsection (b).

**§ 3041.147. Payment authorization.**

(a) The eligibility agency shall review a request from a parent or caretaker to authorize child care payment at any time during the 183-day period after eligibility for TANF benefits ended.

(b) The eligibility agency shall authorize child care payment at any time during the 183-day period after eligibility for TANF ended.

(c) The eligibility agency may not pay child care costs that exceed the maximum child care allowance less the family co-payment for the type of care the child received from the provider.

**§ 3041.148. Retroactive payment.**

(a) If the eligibility agency authorizes payment for a parent or caretaker who was receiving child care on the date TANF benefits ended, the authorization shall be retroactive to the day following the date TANF benefits ended.

(b) If the eligibility agency determines that the parent or caretaker was not receiving child care or cannot determine whether the parent or caretaker was receiving child care on the date TANF benefits ended, the eligibility agency shall require the parent or caretaker to submit verification of child care costs incurred during the 183-day period after eligibility for TANF ended.

(c) The eligibility agency shall authorize payment for the parent or caretaker specified in section (b) retroactive to the day following the date the parent or caretaker first incurred child care expenses.

(d) The eligibility agency shall inform the parent or caretaker that the parent or caretaker shall select an eligible provider within 30 calendar days as specified in

§ 3041.13 (relating to parent choice), if the parent or caretaker had selected an ineligible provider.

**§ 3041.149. Transfer from other states.**

(a) A parent or caretaker who received TANF benefits in another state and applies for subsidized child care is eligible if the parent or caretaker meets the following conditions:

(1) The parent or caretaker applies within 183 days after TANF benefits ended.

(2) The parent or caretaker meets the requirements specified in § 3041.142 (relating to general requirements for former TANF families).

(b) The eligibility agency shall determine the date TANF benefits ended in the other state and establish eligibility for the 183-day period after eligibility for TANF ended as specified in § 3041.141 (relating to general provisions).

**§ 3041.150. Expiration of TANF benefits.**

(a) A parent or caretaker who reaches the 5-year TANF expiration date and is no longer eligible for TANF is eligible for 60 calendar days of subsidized child care to seek employment.

(b) The eligibility agency shall determine the date TANF benefits ended and establish the period of former TANF eligibility as specified in § 3041.141 (relating to general provisions).

(c) The parent or caretaker may apply at any time during the 183-day period after eligibility for TANF ended.

(d) Notwithstanding subsection (a), the maximum period of eligibility under this section is 183 days.

**NOTIFICATION AND RIGHT TO APPEAL****§ 3041.161. General notification requirements.**

(a) The eligibility agency shall notify the parent or caretaker in writing no later than 10 calendar days prior to taking an action that affects the family's eligibility status for subsidized child care or a change in the amount of the family's subsidized child care benefit.

(b) Following the preparation of a written notice, the eligibility agency shall:

(1) Mail or hand-deliver within 1 working day of preparation, the original and one copy of the notice to the parent or caretaker.

(2) Notify the family's child care provider as soon as the family is determined eligible or ineligible for subsidized child care.

(3) Retain a copy of the notice in the family file as specified in § 3041.84 (relating to family file).

**§ 3041.162. Notice of right to appeal.**

The following information shall be included in the notice of the right to appeal:

(1) The statement regarding the parent's or caretaker's right to appeal.

(2) The time frame associated with filing a timely appeal as specified in §§ 3041.174(d) and 3041.176(b) (relating to parent or caretaker rights and responsibilities; and hearing procedures).

(3) The time frame associated with subsidy continuation as specified in § 3041.173 (relating to subsidy continuation during the appeal process).

(4) The consequence of filing an appeal untimely.

(5) The responsibility to repay if subsidy continues and the parent or caretaker does not win the appeal.

**§ 3041.163. Notice of eligibility.**

(a) The notice of eligibility shall be on a form provided by the Department.

(b) If the eligibility agency determines a family eligible for subsidy upon initial application, at the time of redetermination or at a review of a reported change, the written notification shall include the following:

(1) The amount of the co-payment.

(2) The parent's or caretaker's responsibility to pay the co-payment as specified in § 3041.101(e) (relating to general co-payment requirements).

(3) The parent's or caretaker's responsibility to pay an equivalent advance co-payment.

(4) The parent's or caretaker's responsibility to report changes as specified in § 3041.127 (relating to parent and caretaker report of change).

(5) The name, address and telephone number of the local legal services office where the parent or caretaker may obtain free legal representation.

(6) The right of the parent or caretaker to appeal the decision and how to appeal as specified in §§ 3041.162 and 3041.171 (relating to notice of right to appeal; and appealable actions).

**§ 3041.164. Notice of ineligibility.**

(a) The notice of ineligibility must be on a form provided by the Department.

(b) If the eligibility agency determines a family ineligible for subsidy upon initial application, at the time of redetermination or at a review of a reported change, the written notification shall include the following:

(1) The decision.

(2) The reason for the decision.

(3) A citation, and brief explanation in simple, nontechnical language, of the applicable section of this chapter or other applicable law that was the basis for the decision.

(4) The name, address and telephone number of the local legal services office where the parent or caretaker may obtain free legal representation.

(5) The right of the parent or caretaker to appeal the decision and how to appeal as specified in §§ 3041.162 and 3041.171 (relating to notice of right to appeal; and appealable actions).

**§ 3041.165. Notice of adverse action.**

(a) The eligibility agency shall send a notice to a parent or caretaker currently receiving subsidy when the eligibility agency proposes to terminate, suspend or disrupt subsidy payment or to increase the family co-payment.

(b) The eligibility agency shall prepare a notice of adverse action on a form provided by the Department.

(c) The notice of adverse action must include:

(1) The decision or proposed action.

(2) The date the action will occur.

(3) The reason for the decision or proposed action and information about how to become eligible.

(4) A citation, and brief explanation in simple, nontechnical language, of the applicable section of this chapter or other applicable law that is the basis for the decision or proposed action.

(5) The name, address and telephone number of the local legal services office where the parent or caretaker may obtain free legal representation.

(6) The right of the parent or caretaker to appeal the decision and how to appeal as specified in §§ 3041.162 and 3041.171 (relating to notice of right to appeal; and appealable actions).

**§ 3041.166. Notice confirming voluntary withdrawal.**

The eligibility agency shall, by written notice to the parent or caretaker, confirm the parent's or caretaker's voluntary withdrawal of a child from subsidized child care.

**§ 3040.167. Notice of overpayment.**

(a) The eligibility agency shall notify the parent or caretaker in writing of an overpayment.

(b) The notification may also include a notice of adverse action if the overpayment affects the amount of the co-payment or results in suspension or termination.

(c) The notice of overpayment must include the following:

(1) The reason for the overpayment as specified in § 3041.181 (relating to overpayment).

(2) The period of the overpayment.

(3) The amount of the overpayment.

(4) An explanation of how the overpayment was calculated.

(5) The repayment methods as specified in § 3040.186 (relating to collection).

(6) The right of the parent or caretaker to appeal the decision on the overpayment amount and how to appeal as specified in §§ 3041.162 and 3041.171 (relating to notice of right to appeal; and appealable actions).

**APPEAL AND HEARING PROCEDURES**

**§ 3041.171. Appealable actions.**

A parent or caretaker has the right to appeal a Departmental or eligibility agency action or failure to act, including the following:

(1) Denial of subsidy.

(2) Termination of subsidy.

(3) Computation of the co-payment.

(4) Denial of a request for waiver of a requirement of this chapter based on domestic violence as specified in § 3041.91 (relating to general requirements).

(5) Failure of the eligibility agency to act upon a request for subsidy within the time limits specified in this chapter.

(6) Subsidy suspension, as specified in § 3040.21 (relating to subsidy suspension).

(7) Subsidy disruption, as specified in § 3040.22 (relating to subsidy disruption)

**§ 3041.172. Discontinuation of subsidy.**

Subsidy is not continued pending a hearing decision if the parent or caretaker appeals the disruption of subsidy

when the eligibility agency lacks funding to continue subsidy to a child as specified in § 3041.22 (relating to subsidy disruption).

**§ 3041.173. Subsidy continuation during the appeal process.**

(a) Subsidy continues at the prior level until the appeal is heard and a final decision is made by the Department, if the parent or caretaker meets the following conditions:

(1) Appeals no later than 10 calendar days after the date the written notice is postmarked or hand-delivered to the parent or caretaker by the eligibility agency.

(2) Appeals for a reason other than disruption of subsidy or a lack of funding.

(b) If subsidy continues as specified in subsection (a), the parent or caretaker shall continue to make timely payment of the co-payment that was in effect prior to issuance of the notice of adverse action until a final decision is made by the Department, as specified in § 3041.101 (relating to general co-payment requirements).

(c) If subsidy continues during the appeal process and the hearing officer finds in favor of the eligibility agency or the Department, the parent or caretaker shall reimburse the Department for the amount of the subsidy or increase in subsidy paid for child care from the proposed effective date of the adverse action until the date subsidy is terminated or decreased, based on the final administrative action order.

**§ 3041.174. Parent or caretaker rights and responsibilities.**

(a) A parent or caretaker appealing an adverse action shall submit a written request to the eligibility agency in accordance with Chapter 275 (relating to appeal and fair hearing and administrative disqualification hearings). The parent or caretaker shall specify the reason for the appeal, the current address and a telephone number, if possible, where the parent or caretaker can be reached during the day.

(b) A parent or caretaker may orally appeal. The eligibility agency shall document the date of the oral appeal in the case file. The parent or caretaker shall confirm the oral appeal in writing to the eligibility agency no later than 7 calendar days following the date the parent or caretaker orally requested an appeal.

(c) A parent or caretaker may authorize an adult to represent him at the hearing.

(d) If the parent or caretaker wants subsidy to continue pending a hearing decision, subject to § 3041.173 (relating to subsidy continuation during the appeal process), the parent or caretaker shall submit a written appeal no later than 10 calendar days following the date the written notice is postmarked or hand-delivered to the parent or caretaker by the eligibility agency.

(e) If the parent or caretaker requests that subsidy continue pending a hearing decision, the parent or caretaker shall make timely payment of the co-payment that was in effect prior to issuance of the notice of adverse action until a final decision is made by the Department, as specified in § 3041.101 (relating to general co-payment requirements).

**§ 3041.175. Eligibility agency responsibilities.**

(a) If the parent or caretaker is unable to prepare a written appeal, the eligibility agency shall assist the

parent or caretaker in preparing a written appeal. The parent or caretaker shall sign the appeal request.

(b) Upon receipt of the appeal, the eligibility agency shall date-stamp the appeal, the envelope and the attachments with the date of receipt and retain copies of all original appeal information.

(c) The eligibility agency shall keep a copy and forward the original appeal along with the postmarked envelope to the Department's Bureau of Hearings and Appeals no later than 3 working days following the date the appeal is received by the eligibility agency.

(d) The eligibility agency may not take the proposed adverse action until 10 calendar days following the date the written notice is postmarked or hand-delivered to the parent or caretaker and then only if the parent or caretaker has not filed an appeal. Subsidy may be continued at the prior level only if the parent or caretaker meets the requirements in § 3041.173 (relating to subsidy continuation during the appeal process).

(e) The eligibility agency may take the proposed adverse action before 10 calendar days following the date a provider closes for financial difficulties or loss of certification or registration or if funding is not available to continue subsidized care to the child.

**§ 3041.176. Hearing procedures.**

(a) Chapter 275 (relating to appeal and fair hearing and administrative disqualification hearings) applies to hearings that are held under this chapter, except as specifically superseded by this chapter.

(b) An appeal postmarked or received after 30 calendar days from the date the written notice is postmarked or hand-delivered to the parent or caretaker will be dismissed as untimely without a hearing, unless one of the provisions allowing for appeals after 30 calendar days applies as specified in § 275.3(b)(2) and (3) (relating to time limitations on right to appeal).

(c) The hearing may be conducted by a telephone conference call with the parties to the appeal, including the parent or caretaker, the authorized representative of the parent or caretaker, the eligibility agency, the Department and the hearing officer.

(d) The parent or caretaker has the right to request a face-to-face hearing instead of a telephone hearing. Face-to-face hearings will be held in locations specified by the Department.

(e) If a parent or caretaker does not withdraw an appeal the eligibility agency, or the Department if appropriate, will take part in the scheduled hearing to justify the action to which the parent or caretaker objects.

(f) If the eligibility agency or the Department fails to appear at the hearing and the parent or caretaker appear, the parent's or caretaker's appeal will be sustained.

(g) If the parent or caretaker fails to appear for the hearing, regardless of whether the eligibility agency or the Department appears, the appeal is considered abandoned and the decision of the eligibility agency or the Department will be sustained.

(h) The Department will notify the eligibility agency and the parent or caretaker, in writing, when disposition of the appeal is made.

(i) The eligibility agency shall implement the final administrative action within the time limit ordered by the

Department or on the first day child care is needed in the week following receipt of the final administrative action order.

#### **OVERPAYMENT AND DISQUALIFICATION**

##### **§ 3041.181. Overpayment.**

The parent or caretaker may not be required to repay an overpayment except for an overpayment resulting from one of the following:

- (1) Fraud.
- (2) Failure to comply with this chapter.
- (3) Subsidy continuation pending an appeal when the parent or caretaker did not win the appeal.

##### **§ 3041.182. Eligibility agency responsibilities.**

(a) The eligibility agency shall inform a parent or caretaker who files an appeal and requests subsidy continuation pending appeal, that if the hearing decision is in favor of the eligibility agency or the Department, the parent or caretaker shall reimburse the amount of the overpayment unless the hearing officer determines a hardship.

(b) The eligibility agency shall pursue possible overpayments in active and closed cases, including those that were voluntarily closed.

(c) The following are the responsibilities of the eligibility agency when exploring possible overpayments:

- (1) Determination of whether the overpayment is the result of one of the conditions specified in § 3041.181 (relating to overpayment).
- (2) Written assurance that the methods of exploring overpayments are appropriate to the particular situation and to the different eligibility factors.
- (3) Assurance that the methods of exploring overpayments do not infringe on the civil liberties of individuals or interfere with the due process of law.
- (4) Investigation of a credible complaint that a parent or caretaker is erroneously receiving subsidized child care.
- (5) Identification and documentation of the causes of the overpayment.
- (6) Computation of the amount of the overpayment.
- (7) Referral of suspected fraud cases to the Office of Inspector General.
- (8) Submission of an overpayment notice to the parent or caretaker as specified in § 3041.167 (relating to notice of overpayment).

##### **§ 3041.183. Delaying recoupment.**

Recoupment shall be delayed until after a hearing decision, if the family appeals the overpayment decision no later than 10 calendar days after the date the written notice is postmarked or hand-delivered to the parent or caretaker by the eligibility agency.

##### **§ 3041.184. Notifying the Department.**

The eligibility agency shall notify the Department when recoupment stops before the overpayment is fully recouped.

##### **§ 3041.185. Repayment.**

The parent or caretaker shall repay the eligibility agency or Department the full amount of the overpayment.

##### **§ 3041.186. Collection.**

(a) The eligibility agency shall collect the total amount of the overpayment from a family whose child continues to receive subsidized child care when the eligibility agency identifies an overpayment.

(b) If the Department, eligibility agency or other entity identifies an overpayment subject to repayment as specified in § 3041.181 (relating to overpayment) related to a family whose child continues to receive subsidized child care, the eligibility agency shall:

(1) Notify the parent or caretaker by a letter that a repayment is required, the amount of the repayment and the following repayment options:

- (i) A one-time payment of the full amount owed.
- (ii) A one-time partial payment and an increase in the co-payment to be paid until repayment is complete.
- (iii) An increase in the co-payment until the repayment is complete.

(2) Automatically implement an increase to the co-payment until the repayment is complete when the parent or caretaker does not select an option as specified in paragraph (1) no later than 10 calendar days following the date of the letter.

(3) Notify the parent or caretaker by a second letter of failure to choose a repayment option as specified in paragraph (1), the amount of the increased co-payment and the number of weeks the increased co-payment will continue.

##### **§ 3041.187. Co-payment increase.**

(a) A co-payment increase for the purpose of collecting an overpayment may not exceed an amount greater than 5% of the family's gross monthly income. If the parent or caretaker indicates to the eligibility agency that an increase to 5% would cause hardship to the family, the family and the eligibility agency may agree to a lesser amount.

(b) A parent or caretaker may choose to increase the co-payment beyond the amount specified in subsection (a) to repay an overpayment in a shorter period of time.

(c) The eligibility agency shall issue a written notice of adverse action as specified in §§ 3041.161 and 3041.165 (relating to general notification requirements; and notice of adverse action) before implementation of an increase in the co-payment.

##### **§ 3041.188. Collection for a family whose child is no longer in care.**

(a) The eligibility agency shall collect the total amount of the overpayment from a family whose child is no longer receiving subsidized child care if the eligibility agency identifies an overpayment.

(b) If the Department, eligibility agency or other entity identifies an overpayment for a family whose child is no longer receiving subsidized child care, the eligibility agency shall:

(1) Notify the Department of the subsidy termination date, the amount of the overpayment recouped and the amount outstanding. The Department will notify the parent or caretaker by letter of the overpayment, the amount of the outstanding overpayment and that full repayment is required. The letter must state that the parent or caretaker has 10 calendar days to respond to the Department indicating agreement or disagreement and indicating the choice of a repayment method.

(2) Send a second letter that repeats the information contained in the letter specified in paragraph (1) when the Department notifies the eligibility agency that the parent or caretaker failed to respond. The second letter must also request a response from the parent or caretaker no later than 10 calendar days following the date of the letter.

(c) The Department may institute civil legal proceedings when the parent or caretaker fails to respond to the second letter.

**§ 3041.189. Disqualification.**

(a) The parent or caretaker is disqualified from participating in the subsidized child care program if one of the following applies:

(1) A Federal or State court finds the parent or caretaker guilty of fraud in applying for or receiving subsidized child care.

(2) A hearing officer determines that the parent or caretaker committed fraud, pursuant to the procedures and standards in Chapter 275 (relating to administrative disqualification hearings).

(3) The parent or caretaker signs a disqualification consent agreement as part of a court's deferred adjudication process.

(b) Upon disqualification under subsection (a), a parent or caretaker and eligible children in the parent's or caretaker's family shall be prohibited from participation in the subsidized child care program:

(1) For 6 months from the date of the first conviction, hearing decision or determination.

(2) For 12 months from the second conviction, hearing decision or determination.

(3) Permanently from the date of the third conviction, hearing decision or determination.

(c) A parent or caretaker may not be granted a hearing on a court conviction or administrative disqualification hearing decision that led to the disqualification.

**APPENDIX A**

**INCOME TO BE INCLUDED, DEDUCTED AND EXCLUDED IN DETERMINING GROSS MONTHLY INCOME**

*PART I. INCOME INCLUSIONS.*

Income from the following sources is included when determining total gross monthly income:

A. Money, wages or salary earned by a parent or caretaker before deductions for taxes, Social Security, savings bonds, pensions, union dues, health insurance and similar purposes, for work performed as an employee. This includes commissions, tips, piece-rate payments and cash bonuses. Income earned by an unemancipated minor is not included.

B. Armed forces pay which includes base pay plus cash, but does not include housing subsistence, allowances or the value of rent-free quarters.

C. Voluntary and court-ordered support received for any person in the family.

D. Net income from nonresident and real property, defined as gross receipts minus the expenses for continuing the income, such as depreciation charges, business taxes (not personal income taxes), interest on mortgages, repairs and similar expenses.

E. Social Security benefits, Supplemental Security Income, survivors' benefits and permanent disability insurance payments made by the Social Security Administration before deductions of health insurance premiums.

F. Railroad retirement, disability or survivors' benefit payments made by the United States Government under the Railroad Retirement Act, before deductions of health insurance premiums.

G. State blind pension payments made by the Department.

H. Public assistance or welfare benefits or retirement benefits.

I. Private pensions and annuities, including retirement benefits paid to a retired person or his survivors by a former employer or a union, either directly or through an insurance company.

J. Government employee pensions paid by Federal, State, county or other governmental agencies to former employees, including members of the armed forces, or their survivors.

K. Unemployment compensation received from government unemployment insurance agencies or private companies during periods of unemployment and strike benefits received from union funds.

L. Workers' compensation received from private or public insurance companies.

M. Veterans' payments, defined as money paid periodically by the Veterans Administration (VA) to disabled members of the armed forces or to the survivors or dependents of deceased or disabled veterans, subsistence allowances paid to the survivors of deceased veterans and subsistence allowances paid to veterans for education and on-the-job training, as well as so-called "refunds" paid to ex-service persons as GI insurance premiums. For the disabled veteran in the Vocational Rehabilitation Program, the subsistence allowance and the veteran's disability allowance are counted as income.

N. Capital gains, profit from S-corporations and dividends, including dividends from stocks, bonds, mutual funds or from membership in an association.

O. Interest on savings and bonds.

P. Income from estates and trust funds.

Q. Net income from royalties.

R. Lump sum cash of more than \$100: inheritances, life insurance benefits; personal injury and other damage awards and settlements; retroactive benefits such as Retirement, Survivor's or Disability Insurance and delayed Unemployment, divorce settlements, gifts or Worker's Compensation.

S. Lump sum cash lottery winnings or cash prizes of more than \$100.

T. Profit from self-employment; total gross receipts minus costs of doing business. The costs of doing business include:

(1) Costs of maintaining a place of business such as rent, utilities, insurance on the business and its property and property taxes. Note: If a business is operated in a home, the costs of maintaining a place of business are only those costs identified for the part of the home used exclusively for the business.

(2) Interest on the purchase of income-producing equipment and property.

(3) Employee labor costs, such as wage, salaries, taxes, benefits, Unemployment Compensation or Worker's Compensation.

(4) Cost of goods sold, supplies and materials.

(5) Advertising costs.

(6) Accounting and legal fees.

(7) Professional licensing fees and union dues, if necessary to practice a profession or trade.

(8) Transportation costs necessary to produce income.

(9) Depreciation.

(10) Other deductions allowed by the Internal Revenue Service (IRS).

U. Net income from room rent or room and board: Gross income received minus \$10 per month for each room rented. Divide the remainder by 2. That number is the income inclusion.

#### CONVERSION TABLE

Convert weekly, biweekly, semi-monthly and other pay periods to gross monthly amounts using the following Conversion Table:

<i>Frequency of income</i>	<i>Conversion method</i>
Daily	Multiply the daily income by the number of workdays in a week, then multiply by 4.3.
Weekly	Multiply by 4.3.
Biweekly (every 2 weeks)	Divide by 2, then multiply by 4.3.
Semimonthly (twice a month)	Multiply by 2 for monthly gross income.
Monthly	Use the figure given.
Quarterly	Divide by 3.
Annually	Divide by 12.
Lump sum income	Divide by 12.

#### PART II. INCOME DEDUCTIONS.

The following are deducted when determining adjusted monthly income:

A. Voluntary or court-ordered support paid by the parent or caretaker or a family member to a present or former spouse not residing in the same household.

B. Voluntary or court-ordered child support paid by the parent or caretaker or family member to a person not residing in the same household.

C. A medical expense not reimbursed through medical insurance that exceeds 10% of the family gross monthly income. The medical expense must have been incurred within the 90-day period prior to the date the parent or caretaker notifies the eligibility agency of that expense and there must be an expectation that the expense will continue to be incurred for the 6 months following the outset of the expense. Medical expenses are based on the monthly expenses or monthly payment plan, or both. Medical expenses include bills for doctors, hospital costs, dental services, health care premiums, institutional care, medications, prosthetic devices, durable medical equipment or mental health services.

D. The Basic Living Need Allowance Deduction for stepparents is the pro-rata share of the stepparent's income attributed to support of the stepparent and any child under the care and control of the stepparent for whom subsidy is not sought, but who are considered part of the family as defined in this chapter. To compute this deduction, divide the stepparent's total gross monthly income, less other allowable deductions listed in this section, by the total number of persons in the family. This amount is then multiplied by the number of persons in the family who may be included in the Basic Living Need Allowance Deduction.

#### PART III. INCOME EXCLUSIONS.

Income from the following sources is excluded in determining gross monthly income:

A. Employment earnings of an individual who is an unemancipated minor.

B. Tax refunds, including earned income tax credits.

C. Withdrawals of bank, credit union or brokerage deposits.

D. Money borrowed.

E. Nonrecurring money (in amounts under \$100 per person per year) given as a gift, from any source.

F. The value of benefits under the Food Stamp Act of 1977 (7 U.S.C.A. §§ 2011—2036).

G. The value of foods donated from the United States Department of Agriculture.

H. The value of supplemental foods assistance under the Child Nutrition Act of 1966 (42 U.S.C.A. §§ 1771—1791) and the special food service programs for children under that act.

I. Loans and grants, such as scholarships, obtained and used for conditions that preclude their use for living costs.

J. Any grant or loan to an undergraduate student for educational purposes, made or insured under any program administered under the Higher Education Act of 1965 (20 U.S.C.A. §§ 1001—1145-q).

K. Any payment received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C.A. §§ 4601—4655).

L. Any home produce used for household consumption.

M. Any payment made on behalf of an individual for household expenses, such as rent, food and utilities.

N. Payments to Volunteers in Service to America under the Domestic Volunteer Service Act of 1973 (42 U.S.C.A. §§ 4951—5085), which include Americorps income.

O. Earnings received by any youth under the Workforce Investment Act of 1998, as amended; Pub. L. 105—220, Aug. 7, 1998, 112 Stat. 939. (29 U.S.C. 2801 et seq.).

P. Any foster care payments by a foster care placement agency.

Q. Stipends derived from the Foster Grandparent Programs under sections 211 and 212 of the Domestic Violence Service Act of 1973 (42 U.S.C.A. §§ 5011 and 5012).

R. Low Income Home Energy Assistance Program (LIHEAP) benefits and cash in-kind energy assistance provided by private agencies and utility companies.

S. Any adoption assistance payments by a county children and youth agency.

T. Income received from Federal student aid or participation in a Federal work-study program.

U. Payments made by the Veterans Administration to children of Vietnam veterans under The Benefits for Children of Vietnam Veterans Act (38 U.S.C. § 1823c).

**APPENDIX B**

**CO-PAYMENT CHART FAMILY CO-PAYMENT SCALE (BASED ON THE 2004 FEDERAL POVERTY INCOME GUIDELINES)**

Weekly Co-pay	Family Size: 1 Annual Income		Family Size: 2 Annual Income		Family Size: 3 Annual Income	
	Less than:		Less than:		Less than:	
\$5.00		\$7,310		\$10,490		\$11,670
\$10.00	\$7,310.01	\$9,310	\$10,490.01	\$12,490	\$11,670.01	\$13,670
\$15.00	\$9,310.01	\$11,310	\$12,490.01	\$14,490	\$13,670.01	\$15,670
\$20.00	\$11,310.01	\$13,310	\$14,490.01	\$16,490	\$15,670.01	\$17,670
\$25.00	\$13,310.01	\$15,310	\$16,490.01	\$18,490	\$17,670.01	\$19,670
\$30.00	\$15,310.01	\$17,310	\$18,490.01	\$20,490	\$19,670.01	\$21,670
\$35.00	\$17,310.01	\$19,310	\$20,490.01	\$22,490	\$21,670.01	\$23,670
\$40.00	\$19,310.01	\$21,310	\$22,490.01	\$24,490	\$23,670.01	\$25,670
\$45.00	\$21,310.01	\$21,879	\$24,490.01	\$26,490	\$25,670.01	\$27,670
\$50.00			\$26,490.01	\$28,490	\$27,670.01	\$29,670
\$55.00			\$28,490.01	\$29,352	\$29,670.01	\$31,670
\$60.00					\$31,670.01	\$33,670
\$65.00					\$33,670.01	\$35,670
\$70.00					\$35,670.01	\$36,825
	200% FPIG	\$18,620	200% FPIG	\$24,980	200% FPIG	\$31,340

Weekly Co-pay	Family Size: 4 Annual Income		Family Size: 5 Annual Income		Family Size: 6 Annual Income	
	Less than:		Less than:		Less than:	
\$5.00		\$12,850		\$14,030		\$15,210
\$10.00	\$12,850.01	\$14,850	\$14,030.01	\$16,030	\$15,210.01	\$17,210
\$15.00	\$14,850.01	\$16,850	\$16,030.01	\$18,030	\$17,210.01	\$19,210
\$20.00	\$16,850.01	\$18,850	\$18,030.01	\$20,030	\$19,210.01	\$21,210
\$25.00	\$18,850.01	\$20,850	\$20,030.01	\$22,030	\$21,210.01	\$23,210
\$30.00	\$20,850.01	\$22,850	\$22,030.01	\$24,030	\$23,210.01	\$25,210
\$35.00	\$22,850.01	\$24,850	\$24,030.01	\$26,030	\$25,210.01	\$27,210
\$40.00	\$24,850.01	\$26,850	\$26,030.01	\$28,030	\$27,210.01	\$29,210
\$45.00	\$26,850.01	\$28,850	\$28,030.01	\$30,030	\$29,210.01	\$31,210
\$50.00	\$28,850.01	\$30,850	\$30,030.01	\$32,030	\$31,210.01	\$33,210
\$55.00	\$30,850.01	\$32,850	\$32,030.01	\$34,030	\$33,210.01	\$35,210
\$60.00	\$32,850.01	\$34,850	\$34,030.01	\$36,030	\$35,210.01	\$37,210
\$65.00	\$34,850.01	\$36,850	\$36,030.01	\$38,030	\$37,210.01	\$39,210
\$70.00	\$36,850.01	\$38,850	\$38,030.01	\$40,030	\$39,210.01	\$41,210
\$75.00	\$38,850.01	\$40,850	\$40,030.01	\$42,030	\$41,210.01	\$43,210
\$80.00	\$40,850.01	\$42,850	\$42,030.01	\$44,030	\$43,210.01	\$45,210
\$85.00	\$42,850.01	\$44,298	\$44,030.01	\$46,030	\$45,210.01	\$47,210
\$90.00			\$46,030.01	\$48,030	\$47,210.01	\$49,210
\$95.00			\$48,030.01	\$50,030	\$49,210.01	\$51,210

PROPOSED RULEMAKING

<i>Weekly Co-pay</i>	<i>Family Size: 4 Annual Income</i>	
\$100.00		
\$105.00		
\$110.00		
\$115.00		
\$120.00		
	200% FPIG	\$37,700

<i>Family Size: 5 Annual Income</i>	
\$50,030.01	\$51,771
200% FPIG	\$44,060

<i>Family Size: 6 Annual Income</i>	
\$51,210.01	\$53,210
\$53,210.01	\$55,210
\$55,210.01	\$57,210
\$57,210.01	\$59,210
\$59,210.01	\$59,244
200% FPIG	\$50,420

<i>Weekly Co-pay</i>	<i>Family Size: 7 Annual Income</i>	
\$5.00	Less than:	\$16,390
\$10.00	\$16,390.01	\$18,390
\$15.00	\$18,390.01	\$20,390
\$20.00	\$20,390.01	\$22,390
\$25.00	\$22,390.01	\$24,390
\$30.00	\$24,390.01	\$26,390
\$35.00	\$26,390.01	\$28,390
\$40.00	\$28,390.01	\$30,390
\$45.00	\$30,390.01	\$32,390
\$50.00	\$32,390.01	\$34,390
\$55.00	\$34,390.01	\$36,390
\$60.00	\$36,390.01	\$38,390
\$65.00	\$38,390.01	\$40,390
\$70.00	\$40,390.01	\$42,390
\$75.00	\$42,390.01	\$44,390
\$80.00	\$44,390.01	\$46,390
\$85.00	\$46,390.01	\$48,390
\$90.00	\$48,390.01	\$50,390
\$95.00	\$50,390.01	\$52,390
\$100.00	\$52,390.01	\$54,390
\$105.00	\$54,390.01	\$56,390
\$110.00	\$56,390.01	\$58,390
\$115.00	\$58,390.01	\$60,390
\$120.00	\$60,390.01	\$62,390
\$125.00	\$62,390.01	\$64,390
\$130.00	\$64,390.01	\$66,390
\$135.00	\$66,390.01	\$66,717
\$140.00		
\$145.00		
\$150.00		
\$155.00		
\$160.00		
\$165.00		
	200% FPIG	\$56,780

<i>Family Size: 8 Annual Income</i>	
Less than:	\$17,570
\$17,570.01	\$19,570
\$19,570.01	\$21,570
\$21,570.01	\$23,570
\$23,570.01	\$25,570
\$25,570.01	\$27,570
\$27,570.01	\$29,570
\$29,570.01	\$31,570
\$31,570.01	\$33,570
\$33,570.01	\$35,570
\$35,570.01	\$37,570
\$37,570.01	\$39,570
\$39,570.01	\$41,570
\$41,570.01	\$43,570
\$43,570.01	\$45,570
\$45,570.01	\$47,570
\$47,570.01	\$49,570
\$49,570.01	\$51,570
\$51,570.01	\$53,570
\$53,570.01	\$55,570
\$55,570.01	\$57,570
\$57,570.01	\$59,570
\$59,570.01	\$61,570
\$61,570.01	\$63,570
\$63,570.01	\$65,570
\$65,570.01	\$67,570
\$67,570.01	\$69,570
\$69,570.01	\$71,570
\$71,570.01	\$73,570
\$73,570.01	\$74,190
200% FPIG	\$63,140

<i>Family Size: 9 Annual Income</i>	
Less than:	\$18,750
\$18,750.01	\$20,750
\$20,750.01	\$22,750
\$22,750.01	\$24,750
\$24,750.01	\$26,750
\$26,750.01	\$28,750
\$28,750.01	\$30,750
\$30,750.01	\$32,750
\$32,750.01	\$34,750
\$34,750.01	\$36,750
\$36,750.01	\$38,750
\$38,750.01	\$40,750
\$40,750.01	\$42,750
\$42,750.01	\$44,750
\$44,750.01	\$46,750
\$46,750.01	\$48,750
\$48,750.01	\$50,750
\$50,750.01	\$52,750
\$52,750.01	\$54,750
\$54,750.01	\$56,750
\$56,750.01	\$58,750
\$58,750.01	\$60,750
\$60,750.01	\$62,750
\$62,750.01	\$64,750
\$64,750.01	\$66,750
\$66,750.01	\$68,750
\$68,750.01	\$70,750
\$70,750.01	\$72,750
\$72,750.01	\$74,750
\$74,750.01	\$76,750
\$76,750.01	\$78,750
\$78,750.01	\$80,750
\$80,750.01	\$81,663
200% FPIG	\$69,500



<i>Weekly Co-pay</i>	<i>Family Size: 10 Annual Income</i>		<i>Family Size: 11 Annual Income</i>		<i>Family Size: 12 Annual Income</i>	
	Less than:		Less than:		Less than:	
\$5.00	\$19,930.01	\$19,930	\$21,110.01	\$21,110	\$22,290.01	\$22,290
\$10.00	\$19,930.01	\$21,930	\$21,110.01	\$23,110	\$22,290.01	\$24,290
\$15.00	\$21,930.01	\$23,930	\$23,110.01	\$25,110	\$24,290.01	\$26,290
\$20.00	\$23,930.01	\$25,930	\$25,110.01	\$27,110	\$26,290.01	\$28,290
\$25.00	\$25,930.01	\$27,930	\$27,110.01	\$29,110	\$28,290.01	\$30,290
\$30.00	\$27,930.01	\$29,930	\$29,110.01	\$31,110	\$30,290.01	\$32,290
\$35.00	\$29,930.01	\$31,930	\$31,110.01	\$33,110	\$32,290.01	\$34,290
\$40.00	\$31,930.01	\$33,930	\$33,110.01	\$35,110	\$34,290.01	\$36,290
\$45.00	\$33,930.01	\$35,930	\$35,110.01	\$37,110	\$36,290.01	\$38,290
\$50.00	\$35,930.01	\$37,930	\$37,110.01	\$39,110	\$38,290.01	\$40,290
\$55.00	\$37,930.01	\$39,930	\$39,110.01	\$41,110	\$40,290.01	\$42,290
\$60.00	\$39,930.01	\$41,930	\$41,110.01	\$43,110	\$42,290.01	\$44,290
\$65.00	\$41,930.01	\$43,930	\$43,110.01	\$45,110	\$44,290.01	\$46,290
\$70.00	\$43,930.01	\$45,930	\$45,110.01	\$47,110	\$46,290.01	\$48,290
\$75.00	\$45,930.01	\$47,930	\$47,110.01	\$49,110	\$48,290.01	\$50,290
\$80.00	\$47,930.01	\$49,930	\$49,110.01	\$51,110	\$50,290.01	\$52,290
\$85.00	\$49,930.01	\$51,930	\$51,110.01	\$53,110	\$52,290.01	\$54,290
\$90.00	\$51,930.01	\$53,930	\$53,110.01	\$55,110	\$54,290.01	\$56,290
\$95.00	\$53,930.01	\$55,930	\$55,110.01	\$57,110	\$56,290.01	\$58,290
\$100.00	\$55,930.01	\$57,930	\$57,110.01	\$59,110	\$58,290.01	\$60,290
\$105.00	\$57,930.01	\$59,930	\$59,110.01	\$61,110	\$60,290.01	\$62,290
\$110.00	\$59,930.01	\$61,930	\$61,110.01	\$63,110	\$62,290.01	\$64,290
\$115.00	\$61,930.01	\$63,930	\$63,110.01	\$65,110	\$64,290.01	\$66,290
\$120.00	\$63,930.01	\$65,930	\$65,110.01	\$67,110	\$66,290.01	\$68,290
\$125.00	\$65,930.01	\$67,930	\$67,110.01	\$69,110	\$68,290.01	\$70,290
\$130.00	\$67,930.01	\$69,930	\$69,110.01	\$71,110	\$70,290.01	\$72,290
\$135.00	\$69,930.01	\$71,930	\$71,110.01	\$73,110	\$72,290.01	\$74,290
\$140.00	\$71,930.01	\$73,930	\$73,110.01	\$75,110	\$74,290.01	\$76,290
\$145.00	\$73,930.01	\$75,930	\$75,110.01	\$77,110	\$76,290.01	\$78,290
\$150.00	\$75,930.01	\$77,930	\$77,110.01	\$79,110	\$78,290.01	\$80,290
\$155.00	\$77,930.01	\$79,930	\$79,110.01	\$81,110	\$80,290.01	\$82,290
\$160.00	\$79,930.01	\$81,930	\$81,110.01	\$83,110	\$82,290.01	\$84,290
\$165.00	\$81,930.01	\$83,930	\$83,110.01	\$85,110	\$84,290.01	\$86,290
\$170.00	\$83,930.01	\$85,930	\$85,110.01	\$87,110	\$86,290.01	\$88,290
\$175.00	\$85,930.01	\$87,930	\$87,110.01	\$89,110	\$88,290.01	\$90,290
\$180.00	\$87,930.01	\$89,136	\$89,110.01	\$91,110	\$90,290.01	\$92,290
\$185.00			\$91,110.01	\$93,110	\$92,290.01	\$94,290
\$190.00			\$93,110.01	\$95,110	\$94,290.01	\$96,290
\$195.00			\$95,110.01	\$96,609	\$96,290.01	\$98,290
\$200.00					\$98,290.01	\$100,290
\$205.00					\$100,290.01	\$102,290
\$210.00					\$102,290.01	\$104,082
	200% FPIG	\$75,860	200% FPIG	\$82,220	200% FPIG	\$88,580

## PROPOSED RULEMAKING

<i>Weekly Co-pay</i>	<i>Family Size: 13 Annual Income</i>		<i>Family Size: 14 Annual Income</i>		<i>Family Size: 15 Annual Income</i>	
	<i>Less than:</i>		<i>Less than:</i>		<i>Less than:</i>	
\$5.00	Less than:	\$23,470	Less than:	\$24,650	Less than:	\$25,830
\$10.00	\$23,470.01	\$25,470	\$24,650.01	\$26,650	\$25,830.01	\$27,830
\$15.00	\$25,470.01	\$27,470	\$26,650.01	\$28,650	\$27,830.01	\$29,830
\$20.00	\$27,470.01	\$29,470	\$28,650.01	\$30,650	\$29,830.01	\$31,830
\$25.00	\$29,470.01	\$31,470	\$30,650.01	\$32,650	\$31,830.01	\$33,830
\$30.00	\$31,470.01	\$33,470	\$32,650.01	\$34,650	\$33,830.01	\$35,830
\$35.00	\$33,470.01	\$35,470	\$34,650.01	\$36,650	\$35,830.01	\$37,830
\$40.00	\$35,470.01	\$37,470	\$36,650.01	\$38,650	\$37,830.01	\$39,830
\$45.00	\$37,470.01	\$39,470	\$38,650.01	\$40,650	\$39,830.01	\$41,830
\$50.00	\$39,470.01	\$41,470	\$40,650.01	\$42,650	\$41,830.01	\$43,830
\$55.00	\$41,470.01	\$43,470	\$42,650.01	\$44,650	\$43,830.01	\$45,830
\$60.00	\$43,470.01	\$45,470	\$44,650.01	\$46,650	\$45,830.01	\$47,830
\$65.00	\$45,470.01	\$47,470	\$46,650.01	\$48,650	\$47,830.01	\$49,830
\$70.00	\$47,470.01	\$49,470	\$48,650.01	\$50,650	\$49,830.01	\$51,830
\$75.00	\$49,470.01	\$51,470	\$50,650.01	\$52,650	\$51,830.01	\$53,830
\$80.00	\$51,470.01	\$53,470	\$52,650.01	\$54,650	\$53,830.01	\$55,830
\$85.00	\$53,470.01	\$55,470	\$54,650.01	\$56,650	\$55,830.01	\$57,830
\$90.00	\$55,470.01	\$57,470	\$56,650.01	\$58,650	\$57,830.01	\$59,830
\$95.00	\$57,470.01	\$59,470	\$58,650.01	\$60,650	\$59,830.01	\$61,830
\$100.00	\$59,470.01	\$61,470	\$60,650.01	\$62,650	\$61,830.01	\$63,830
\$105.00	\$61,470.01	\$63,470	\$62,650.01	\$64,650	\$63,830.01	\$65,830
\$110.00	\$63,470.01	\$65,470	\$64,650.01	\$66,650	\$65,830.01	\$67,830
\$115.00	\$65,470.01	\$67,470	\$66,650.01	\$68,650	\$67,830.01	\$69,830
\$120.00	\$67,470.01	\$69,470	\$68,650.01	\$70,650	\$69,830.01	\$71,830
\$125.00	\$69,470.01	\$71,470	\$70,650.01	\$72,650	\$71,830.01	\$73,830
\$130.00	\$71,470.01	\$73,470	\$72,650.01	\$74,650	\$73,830.01	\$75,830
\$135.00	\$73,470.01	\$75,470	\$74,650.01	\$76,650	\$75,830.01	\$77,830
\$140.00	\$75,470.01	\$77,470	\$76,650.01	\$78,650	\$77,830.01	\$79,830
\$145.00	\$77,470.01	\$79,470	\$78,650.01	\$80,650	\$79,830.01	\$81,830
\$150.00	\$79,470.01	\$81,470	\$80,650.01	\$82,650	\$81,830.01	\$83,830
\$155.00	\$81,470.01	\$83,470	\$82,650.01	\$84,650	\$83,830.01	\$85,830
\$160.00	\$83,470.01	\$85,470	\$84,650.01	\$86,650	\$85,830.01	\$87,830
\$165.00	\$85,470.01	\$87,470	\$86,650.01	\$88,650	\$87,830.01	\$89,830
\$170.00	\$87,470.01	\$89,470	\$88,650.01	\$90,650	\$89,830.01	\$91,830
\$175.00	\$89,470.01	\$91,470	\$90,650.01	\$92,650	\$91,830.01	\$93,830
\$180.00	\$91,470.01	\$93,470	\$92,650.01	\$94,650	\$93,830.01	\$95,830
\$185.00	\$93,470.01	\$95,470	\$94,650.01	\$96,650	\$95,830.01	\$97,830
\$190.00	\$95,470.01	\$97,470	\$96,650.01	\$98,650	\$97,830.01	\$99,830
\$195.00	\$97,470.01	\$99,470	\$98,650.01	\$100,650	\$99,830.01	\$101,830
\$200.00	\$99,470.01	\$101,470	\$100,650.01	\$102,650	\$101,830.01	\$103,830
\$205.00	\$101,470.01	\$103,470	\$102,650.01	\$104,650	\$103,830.01	\$105,830
\$210.00	\$103,470.01	\$105,470	\$104,650.01	\$106,650	\$105,830.01	\$107,830
\$215.00	\$105,470.01	\$107,470	\$106,650.01	\$108,650	\$107,830.01	\$109,830
\$220.00	\$107,470.01	\$109,470	\$108,650.01	\$110,650	\$109,830.01	\$111,830
\$225.00	\$109,470.01	\$111,470	\$110,650.01	\$112,650	\$111,830.01	\$113,830
\$230.00	\$111,470.01	\$111,555	\$112,650.01	\$114,650	\$113,830.01	\$115,830

<i>Weekly Co-pay</i>	<i>Family Size: 13 Annual Income</i>	
\$235.00		
\$240.00		
\$245.00		
\$250.00		
\$255.00		
\$260.00		
	200% FPIG	\$94,940

<i>Family Size: 14 Annual Income</i>	
\$114,650.01	\$116,650
\$116,650.01	\$118,650
\$118,650.01	\$119,028
200% FPIG	\$101,300

<i>Family Size: 15 Annual Income</i>	
\$115,830.01	\$117,830
\$117,830.01	\$119,830
\$119,830.01	\$121,830
\$121,830.01	\$123,830
\$123,830.01	\$125,830
\$125,830.01	\$126,501
200% FPIG	\$107,660

<i>Weekly Co-pay</i>	<i>Family Size: 16 Annual Income</i>	
\$5.00	Less than:	\$29,010
\$10.00	\$29,010.01	\$31,010
\$15.00	\$31,010.01	\$33,010
\$20.00	\$33,010.01	\$35,010
\$25.00	\$35,010.01	\$37,010
\$30.00	\$37,010.01	\$39,010
\$35.00	\$39,010.01	\$41,010
\$40.00	\$41,010.01	\$43,010
\$45.00	\$43,010.01	\$45,010
\$50.00	\$45,010.01	\$47,010
\$55.00	\$47,010.01	\$49,010
\$60.00	\$49,010.01	\$51,010
\$65.00	\$51,010.01	\$53,010
\$70.00	\$53,010.01	\$55,010
\$75.00	\$55,010.01	\$57,010
\$80.00	\$57,010.01	\$59,010
\$85.00	\$59,010.01	\$61,010
\$90.00	\$61,010.01	\$63,010
\$95.00	\$63,010.01	\$65,010
\$100.00	\$65,010.01	\$67,010
\$105.00	\$67,010.01	\$69,010
\$110.00	\$69,010.01	\$71,010
\$115.00	\$71,010.01	\$73,010
\$120.00	\$73,010.01	\$75,010
\$125.00	\$75,010.01	\$77,010
\$130.00	\$77,010.01	\$79,010
\$135.00	\$79,010.01	\$81,010
\$140.00	\$81,010.01	\$83,010
\$145.00	\$83,010.01	\$85,010
\$150.00	\$85,010.01	\$87,010
\$155.00	\$87,010.01	\$89,010
\$160.00	\$89,010.01	\$91,010
\$165.00	\$91,010.01	\$93,010
\$170.00	\$93,010.01	\$95,010
\$175.00	\$95,010.01	\$97,010
\$180.00	\$97,010.01	\$99,010

<i>Family Size: 17 Annual Income</i>	
Less than:	\$30,190
\$30,190.01	\$32,190
\$32,190.01	\$34,190
\$34,190.01	\$36,190
\$36,190.01	\$38,190
\$38,190.01	\$40,190
\$40,190.01	\$42,190
\$42,190.01	\$44,190
\$44,190.01	\$46,190
\$46,190.01	\$48,190
\$48,190.01	\$50,190
\$50,190.01	\$52,190
\$52,190.01	\$54,190
\$54,190.01	\$56,190
\$56,190.01	\$58,190
\$58,190.01	\$60,190
\$60,190.01	\$62,190
\$62,190.01	\$64,190
\$64,190.01	\$66,190
\$66,190.01	\$68,190
\$68,190.01	\$70,190
\$70,190.01	\$72,190
\$72,190.01	\$74,190
\$74,190.01	\$76,190
\$76,190.01	\$78,190
\$78,190.01	\$80,190
\$80,190.01	\$82,190
\$82,190.01	\$84,190
\$84,190.01	\$86,190
\$86,190.01	\$88,190
\$88,190.01	\$90,190
\$90,190.01	\$92,190
\$92,190.01	\$94,190
\$94,190.01	\$96,190
\$96,190.01	\$98,190
\$98,190.01	\$100,190

<i>Family Size: 18 Annual Income</i>	
Less than:	\$31,370
\$31,370.01	\$33,370
\$33,370.01	\$35,370
\$35,370.01	\$37,370
\$37,370.01	\$39,370
\$39,370.01	\$41,370
\$41,370.01	\$43,370
\$43,370.01	\$45,370
\$45,370.01	\$47,370
\$47,370.01	\$49,370
\$49,370.01	\$51,370
\$51,370.01	\$53,370
\$53,370.01	\$55,370
\$55,370.01	\$57,370
\$57,370.01	\$59,370
\$59,370.01	\$61,370
\$61,370.01	\$63,370
\$63,370.01	\$65,370
\$65,370.01	\$67,370
\$67,370.01	\$69,370
\$69,370.01	\$71,370
\$71,370.01	\$73,370
\$73,370.01	\$75,370
\$75,370.01	\$77,370
\$77,370.01	\$79,370
\$79,370.01	\$81,370
\$81,370.01	\$83,370
\$83,370.01	\$85,370
\$85,370.01	\$87,370
\$87,370.01	\$89,370
\$89,370.01	\$91,370
\$91,370.01	\$93,370
\$93,370.01	\$95,370
\$95,370.01	\$97,370
\$97,370.01	\$99,370
\$99,370.01	\$101,370

PROPOSED RULEMAKING

<i>Weekly Co-pay</i>	<i>Family Size: 16 Annual Income</i>	
\$185.00	\$99,010.01	\$101,010
\$190.00	\$101,010.01	\$103,010
\$195.00	\$103,010.01	\$105,010
\$200.00	\$105,010.01	\$107,010
\$205.00	\$107,010.01	\$109,010
\$210.00	\$109,010.01	\$111,010
\$215.00	\$111,010.01	\$113,010
\$220.00	\$113,010.01	\$115,010
\$225.00	\$115,010.01	\$117,010
\$230.00	\$117,010.01	\$119,010
\$235.00	\$119,010.01	\$121,010
\$240.00	\$121,010.01	\$123,010
\$245.00	\$123,010.01	\$125,010
\$250.00	\$125,010.01	\$127,010
\$255.00	\$127,010.01	\$129,010
\$260.00	\$129,010.01	\$131,010
\$265.00	\$131,010.01	\$133,010
\$270.00	\$133,010.01	\$133,974
\$275.00		
\$280.00		
\$285.00		
\$290.00		
\$295.00		
\$300.00		
	200% FPIG	\$114,020

<i>Family Size: 17 Annual Income</i>	
\$100,190.01	\$102,190
\$102,190.01	\$104,190
\$104,190.01	\$106,190
\$106,190.01	\$108,190
\$108,190.01	\$110,190
\$110,190.01	\$112,190
\$112,190.01	\$114,190
\$114,190.01	\$116,190
\$116,190.01	\$118,190
\$118,190.01	\$120,190
\$120,190.01	\$122,190
\$122,190.01	\$124,190
\$124,190.01	\$126,190
\$126,190.01	\$128,190
\$128,190.01	\$130,190
\$130,190.01	\$132,190
\$132,190.01	\$134,190
\$134,190.01	\$136,190
\$136,190.01	\$138,190
\$138,190.01	\$140,190
\$140,190.01	\$141,447
	200% FPIG \$120,380

<i>Family Size: 18 Annual Income</i>	
\$101,370.01	\$103,370
\$103,370.01	\$105,370
\$105,370.01	\$107,370
\$107,370.01	\$109,370
\$109,370.01	\$111,370
\$111,370.01	\$113,370
\$113,370.01	\$115,370
\$115,370.01	\$117,370
\$117,370.01	\$119,370
\$119,370.01	\$121,370
\$121,370.01	\$123,370
\$123,370.01	\$125,370
\$125,370.01	\$127,370
\$127,370.01	\$129,370
\$129,370.01	\$131,370
\$131,370.01	\$133,370
\$133,370.01	\$135,370
\$135,370.01	\$137,370
\$137,370.01	\$139,370
\$139,370.01	\$141,370
\$141,370.01	\$143,370
\$143,370.01	\$145,370
\$145,370.01	\$147,370
\$147,370.01	\$148,920
	200% FPIG \$126,740

<i>Weekly Co-pay</i>	<i>Family Size: 19 Annual Income</i>	
\$5.00	Less than:	\$32,550
\$10.00	\$32,550.01	\$34,550
\$15.00	\$34,550.01	\$36,550
\$20.00	\$36,550.01	\$38,550
\$25.00	\$38,550.01	\$40,550
\$30.00	\$40,550.01	\$42,550
\$35.00	\$42,550.01	\$44,550
\$40.00	\$44,550.01	\$46,550
\$45.00	\$46,550.01	\$48,550
\$50.00	\$48,550.01	\$50,550
\$55.00	\$50,550.01	\$52,550
\$60.00	\$52,550.01	\$54,550
\$65.00	\$54,550.01	\$56,550
\$70.00	\$56,550.01	\$58,550
\$75.00	\$58,550.01	\$60,550
\$80.00	\$60,550.01	\$62,550
\$85.00	\$62,550.01	\$64,550
\$90.00	\$64,550.01	\$66,550

<i>Family Size: 20 Annual Income</i>	
Less than:	\$33,730
\$33,730.01	\$35,730
\$35,730.01	\$37,730
\$37,730.01	\$39,730
\$39,730.01	\$41,730
\$41,730.01	\$43,730
\$43,730.01	\$45,730
\$45,730.01	\$47,730
\$47,730.01	\$49,730
\$49,730.01	\$51,730
\$51,730.01	\$53,730
\$53,730.01	\$55,730
\$55,730.01	\$57,730
\$57,730.01	\$59,730
\$59,730.01	\$61,730
\$61,730.01	\$63,730
\$63,730.01	\$65,730
\$65,730.01	\$67,730

<i>Family Size: 21 Annual Income</i>	
Less than:	\$34,910
\$34,910.01	\$36,910
\$36,910.01	\$38,910
\$38,910.01	\$40,910
\$40,910.01	\$42,910
\$42,910.01	\$44,910
\$44,910.01	\$46,910
\$46,910.01	\$48,910
\$48,910.01	\$50,910
\$50,910.01	\$52,910
\$52,910.01	\$54,910
\$54,910.01	\$56,910
\$56,910.01	\$58,910
\$58,910.01	\$60,910
\$60,910.01	\$62,910
\$62,910.01	\$64,910
\$64,910.01	\$66,910
\$66,910.01	\$68,910

<i>Weekly Co-pay</i>	<i>Family Size: 19 Annual Income</i>		<i>Family Size: 20 Annual Income</i>		<i>Family Size: 21 Annual Income</i>	
\$95.00	\$66,550.01	\$68,550	\$67,730.01	\$69,730	\$68,910.01	\$70,910
\$100.00	\$68,550.01	\$70,550	\$69,730.01	\$71,730	\$70,910.01	\$72,910
\$105.00	\$70,550.01	\$72,550	\$71,730.01	\$73,730	\$72,910.01	\$74,910
\$110.00	\$72,550.01	\$74,550	\$73,730.01	\$75,730	\$74,910.01	\$76,910
\$115.00	\$74,550.01	\$76,550	\$75,730.01	\$77,730	\$76,910.01	\$78,910
\$120.00	\$76,550.01	\$78,550	\$77,730.01	\$79,730	\$78,910.01	\$80,910
\$125.00	\$78,550.01	\$80,550	\$79,730.01	\$81,730	\$80,910.01	\$82,910
\$130.00	\$80,550.01	\$82,550	\$81,730.01	\$83,730	\$82,910.01	\$84,910
\$135.00	\$82,550.01	\$84,550	\$83,730.01	\$85,730	\$84,910.01	\$86,910
\$140.00	\$84,550.01	\$86,550	\$85,730.01	\$87,730	\$86,910.01	\$88,910
\$145.00	\$86,550.01	\$88,550	\$87,730.01	\$89,730	\$88,910.01	\$90,910
\$150.00	\$88,550.01	\$90,550	\$89,730.01	\$91,730	\$90,910.01	\$92,910
\$155.00	\$90,550.01	\$92,550	\$91,730.01	\$93,730	\$92,910.01	\$94,910
\$160.00	\$92,550.01	\$94,550	\$93,730.01	\$95,730	\$94,910.01	\$96,910
\$165.00	\$94,550.01	\$96,550	\$95,730.01	\$97,730	\$96,910.01	\$98,910
\$170.00	\$96,550.01	\$98,550	\$97,730.01	\$99,730	\$98,910.01	\$100,910
\$175.00	\$98,550.01	\$100,550	\$99,730.01	\$101,730	\$100,910.01	\$102,910
\$180.00	\$100,550.01	\$102,550	\$101,730.01	\$103,730	\$102,910.01	\$104,910
\$185.00	\$102,550.01	\$104,550	\$103,730.01	\$105,730	\$104,910.01	\$106,910
\$190.00	\$104,550.01	\$106,550	\$105,730.01	\$107,730	\$106,910.01	\$108,910
\$195.00	\$106,550.01	\$108,550	\$107,730.01	\$109,730	\$108,910.01	\$110,910
\$200.00	\$108,550.01	\$110,550	\$109,730.01	\$111,730	\$110,910.01	\$112,910
205.00	\$110,550.01	\$112,550	\$111,730.01	\$113,730	\$112,910.01	\$114,910
\$210.00	\$112,550.01	\$114,550	\$113,730.01	\$115,730	\$114,910.01	\$116,910
\$215.00	\$114,550.01	\$116,550	\$115,730.01	\$117,730	\$116,910.01	\$118,910
\$220.00	\$116,550.01	\$118,550	\$117,730.01	\$119,730	\$118,910.01	\$120,910
\$225.00	\$118,550.01	\$120,550	\$119,730.01	\$121,730	\$120,910.01	\$122,910
\$230.00	\$120,550.01	\$122,550	\$121,730.01	\$123,730	\$122,910.01	\$124,910
\$235.00	\$122,550.01	\$124,550	\$123,730.01	\$125,730	\$124,910.01	\$126,910
\$240.00	\$124,550.01	\$126,550	\$125,730.01	\$127,730	\$126,910.01	\$128,910
\$245.00	\$126,550.01	\$128,550	\$127,730.01	\$129,730	\$128,910.01	\$130,910
\$250.00	\$128,550.01	\$130,550	\$129,730.01	\$131,730	\$130,910.01	\$132,910
\$255.00	\$130,550.01	\$132,550	\$131,730.01	\$133,730	\$132,910.01	\$134,910
\$260.00	\$132,550.01	\$134,550	\$133,730.01	\$135,730	\$134,910.01	\$136,910
\$265.00	\$134,550.01	\$136,550	\$135,730.01	\$137,730	\$136,910.01	\$138,910
\$270.00	\$136,550.01	\$138,550	\$137,730.01	\$139,730	\$138,910.01	\$140,910
\$275.00	\$138,550.01	\$140,550	\$139,730.01	\$141,730	\$140,910.01	\$142,910
\$280.00	\$140,550.01	\$142,550	\$141,730.01	\$143,730	\$142,910.01	\$144,910
\$285.00	\$142,550.01	\$144,550	\$143,730.01	145,730	\$144,910.01	\$146,910
\$290.00	\$144,550.01	\$146,550	\$145,730.01	\$147,730	\$146,910.01	\$148,910
\$295.00	\$146,550.01	\$148,550	\$147,730.01	\$149,730	\$148,910.01	\$150,910
\$300.00	\$148,550.01	\$150,550	\$149,730.01	\$151,730	\$150,910.01	\$152,910
\$305.00	\$150,550.01	\$152,550	\$151,730.01	\$153,730	\$152,910.01	\$154,910
\$310.00	\$152,550.01	\$154,550	\$153,730.01	\$155,730	\$154,910.01	\$156,910
\$315.00	\$154,550.01	\$156,393	\$155,730.01	\$157,730	\$156,910.01	\$158,910
\$320.00			\$157,730.01	\$159,730	\$158,910.01	\$160,910

PROPOSED RULEMAKING

<i>Weekly Co-pay</i>	<i>Family Size: 19 Annual Income</i>		<i>Family Size: 20 Annual Income</i>		<i>Family Size: 21 Annual Income</i>	
\$325.00			\$159,730.01	\$161,730	\$160,910.01	\$162,910
\$330.00			\$161,730.01	\$163,730	\$162,910.01	\$164,910
\$335.00			\$163,730.01	\$163,866	\$164,910.01	\$166,910
\$340.00					\$166,910.01	\$168,910
\$345.00					\$168,910.01	\$170,910
\$350.00					\$170,910.01	\$171,339
	200% FPIG	\$133,100	200% FPIG	\$139,460	200% FPIG	\$145,820

[Pa.B. Doc. No. 04-1687. Filed for public inspection September 10, 2004, 9:00 a.m.]

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# STATEMENTS OF POLICY

## Title 67—TRANSPORTATION

### DEPARTMENT OF TRANSPORTATION

#### [67 PA. CODE CH. 214]

#### Highway Safety Corridors

The Department of Transportation (Department) adopts Chapter 214 (relating to highway safety corridors—statement of policy) in response to the requirements of the act of December 23, 2002 (P. L. 1982, No. 229) (Act 229). This statement of policy is designed to provide guidance regarding designation and signing of highway safety corridors under 75 Pa.C.S. § 3326 (relating to duty of driver in construction and maintenance areas or on highway safety corridors).

#### Effective Date

This statement of policy shall be effective upon publication in the *Pennsylvania Bulletin*.

#### Contact Person

The contact person for this statement of policy is R. Craig Reed, P. E., Director, Bureau of Highway Safety and Traffic Engineering, P. O. Box 2047, Harrisburg, PA 17105-2047, (717) 787-7350.

#### Authority

This statement of policy is adopted under the authority in section 21 of Act 229.

#### Order

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

(a) The regulations of the Department, 67 Pa. Code, are amended by adding a statement of policy in §§ 214.1—214.5 and Appendix A to read as set forth in Annex A.

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

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

ALLEN D. BIEHLER, P. E.,  
Secretary

**Fiscal Note:** 18-390 Statement of Policy. No fiscal impact; (8) recommends adoption.

#### Annex A

#### TITLE 67. TRANSPORTATION

#### PART I. DEPARTMENT OF TRANSPORTATION

#### Subpart A. VEHICLE CODE PROVISIONS

#### ARTICLE VIII. ADMINISTRATION AND ENFORCEMENT

#### CHAPTER 214. HIGHWAY SAFETY CORRIDORS—STATEMENT OF POLICY

Sec.	
214.1.	Purpose and application.
214.2.	Definitions.
214.3.	Traffic and engineering investigation.
214.4.	Traffic signs.
214.5.	Questions.

#### § 214.1. Purpose and application.

(a) This chapter is in response to the requirements of Act 229 of 2002 which added 75 Pa.C.S. § 6105.1 (relating to designation of highway safety corridors). Specifically, this chapter is designed to improve safety in

targeted high crash locations by designating as highway safety corridors those areas where motorists are exposed to increased levels of enforcement and increased penalties for moving violations relating to unsafe driving behavior.

(b) The signs specified in this chapter are in addition to the traffic-control devices required by Department regulations and apply to public highways within this Commonwealth.

#### § 214.2. Definitions.

The following phrase, when used in this chapter, has the following meaning unless the context clearly indicates otherwise:

*Highway safety corridor*—The portion of a highway determined by a traffic study to be targeted for the application of signs, increased levels of enforcement and increased penalties specifically for the purpose of eliminating or reducing unsafe driver behaviors that are known to result in crashes and fatalities.

#### § 214.3. Traffic and engineering investigation.

A segment of a highway may be designated as a highway safety corridor in which increased penalties will apply for violations identified in 75 Pa.C.S. § 3326(c) (relating to duty of driver in construction and maintenance areas or on highway safety corridors) if the following conditions are satisfied:

(1) A crash analysis of candidate locations indicates that, for the preceding 5 years, crashes related to targeted driving behaviors exceeds thresholds for the number of crashes or the rate of crashes for homogeneous roadways as determined by the Department.

(2) The corridor meets the geometric requirements needed to allow for safe patrolling by law enforcement officers as well as a safe area to stop violators for the issuance of a traffic citation or warning.

(3) The corridor has adequate space for the installation of the traffic signs specified in this chapter.

(4) There is a written commitment from the local and state law enforcement agencies responsible for highway patrol along the corridor to provide visible, sustained enforcement activity within the limits of the marked corridor.

#### § 214.4. Traffic signs.

(a) *Proper sign installations.* Signs shall be installed as follows:

(1) Sign (W35-1), SAFETY CORRIDOR—FINES DOUBLED NEXT XX MILES, shall be installed as close as practical to the beginning of the highway safety corridor and after each interchange along the corridor.

(2) Sign (W35-2), END FINES DOUBLED CORRIDOR, shall be installed immediately at the end of each highway safety corridor.

(b) Sign standards. Signs W35-1 and W35-2 shall be manufactured in accordance with the standards set forth in Appendix A for these signs.

#### § 214.5. Questions.

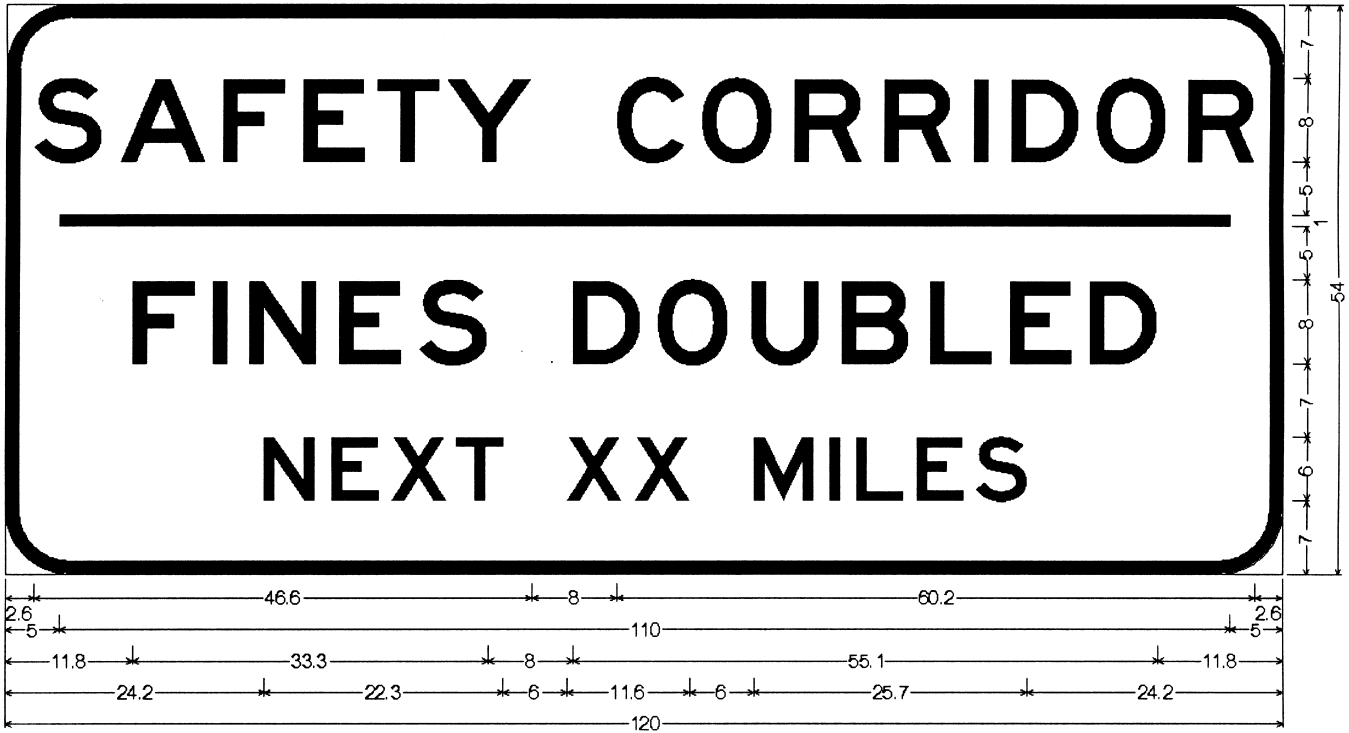
Inquiries about this chapter may be referred to:

Pennsylvania Department of Transportation  
Bureau of Highway Safety and Traffic Engineering  
P. O. Box 2407  
Harrisburg, PA 17105-2047  
717-787-6853  
Fax: 717-783-8012

Appendix A

W35-1

SAFETY CORRIDOR FINES DOUBLED SIGN



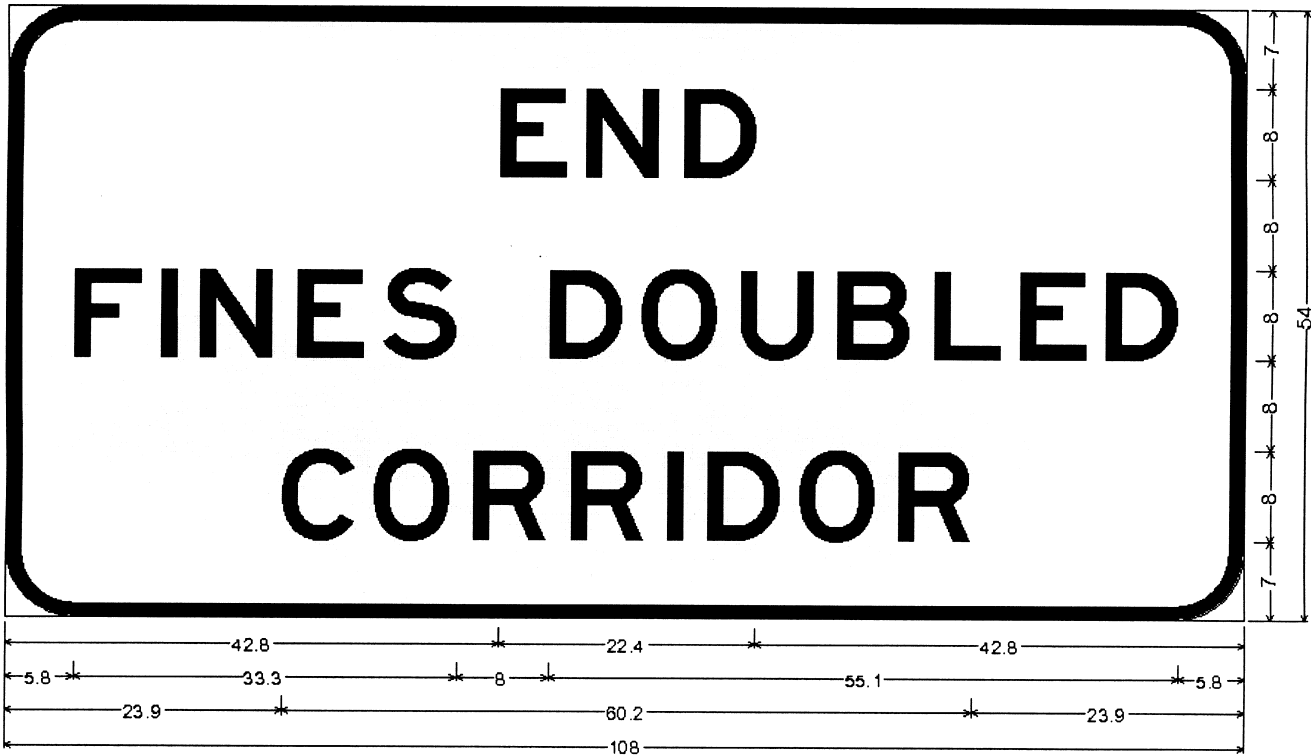
6.0" Radius, 1.3" Border, Black on Yellow;  
 "SAFETY CORRIDOR" E; "FINES DOUBLED" E; "NEXT XX MILES" E;  
 Table of widths and spaces.

S	A	F	E	T	Y	C	O	R	R	I	D	O	R	
2.6	3.0	1.6	1.6	1.1	8.0	8.0	6.6	2.1	2.1	6.4	2.0	1.7	2.1	2.6
6.4	1.7	5.9	5.9	5.9	0.5	8.0	6.6	6.3	6.4	2.0	6.3	6.6	6.4	
5.0	110.0	5.0												
F	I	N	E	S	D	O	U	B	L	E	D			
11.8	1.3	2.1	2.0	1.7	8.0	6.6	2.1	6.4	2.0	5.8	1.7	6.4	11.8	
5.9	1.7	6.4	5.9	6.3	8.0	6.6	2.1	6.4	2.0	5.8	1.7	6.4		
24.2	N	E	X	T	X	M	I	L	E	S				
4.8	4.8	1.5	5.1	4.4	5.2	5.5	1.6	4.5	4.4	4.8	24.2			



W35-2

END FINES DOUBLED CORRIDOR



6.0" Radius, 1.3" Border, Black on Yellow;  
 "END" E; "FINES DOUBLED" E; "CORRIDOR" E;

Table of widths and spaces.

42.8	E	5.9	1.7	N	6.3	2.1	D	6.4	42.8																											
5.8	F	5.9	1.7	I	1.3	2.1	N	6.4	2.0	E	5.9	1.7	S	6.3	8.0	D	6.4	1.7	O	6.6	2.1	U	6.3	2.1	B	6.4	2.0	L	5.9	1.7	E	5.8	1.7	D	6.4	5.8
23.9	C	6.4	1.7	O	6.6	2.1	R	6.3	2.1	R	6.4	2.0	I	1.4	2.1	D	6.3	1.7	O	6.6	2.1	R	6.4	23.9												

[Pa.B. Doc. No. 04-1688. Filed for public inspection September 10, 2004, 9:00 a.m.]

# NOTICES

## DEPARTMENT OF AGRICULTURE

### Dog Control Facility Bill Reimbursement Grant Program; Addition to Final Guidelines and Conditions

The Department of Agriculture makes a correction to the final guidelines and conditions for the Year 2005 Dog Control Facility Bill Reimbursement Program (program). The final guidelines and conditions were published at 34 Pa.B. 4472 (August 14, 2004). The notice omitted one of the eligibility criteria published in the proposed guidelines and conditions at 34 Pa.B. 3151 (June 19, 2004).

Paragraph 2 of the final guidelines and conditions is revised to add subparagraph (g), with ellipses referring to the existing text of the notice:

\* \* \* \* \*

#### 2. Eligibility.

A humane society or association for the prevention of cruelty to animals is eligible to apply to receive a grant under the program if that humane society or association for the prevention of cruelty to animals:

\* \* \* \* \*

g. Has a valid Pennsylvania 2005 "Nonprofit" kennel license, and operates only a nonprofit kennel at the facility for which grant reimbursement is requested. Facilities which house kennel operations other than a nonprofit facility (that is, boarding kennel and/or commercial kennel) at the same location are not eligible to participate in this program.

\* \* \* \* \*

DENNIS C WOLFF,  
*Secretary*

[Pa.B. Doc. No. 04-1689. Filed for public inspection September 10, 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 31, 2004.

#### BANKING INSTITUTIONS

##### Branch Applications

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
8-25-04	First CornerStone Bank King of Prussia Montgomery County	Ridley Shopping Center 160 Morton Avenue Ridley Park Delaware County	Filed
8-26-04	Citizens Bank of Pennsylvania Philadelphia Philadelphia County	205 Lancaster Avenue Devon Chester County	Filed
8-26-04	Citizens Bank of Pennsylvania Philadelphia Philadelphia County	Spring House Village Plaza Bethlehem Pike Spring House Montgomery County	Filed
8-26-04	Citizens Bank of Pennsylvania Philadelphia Philadelphia County	Giant Eagle 3701 SR 88 Finleyville Washington County	Filed
8-26-04	Citizens Bank of Pennsylvania Philadelphia Philadelphia County	Giant Eagle 1700 New Butler Road New Castle Lawrence County	Filed
8-26-04	Citizens Bank of Pennsylvania Philadelphia Philadelphia County	Giant Eagle 3230 Wilmington Road New Castle Lawrence County	Filed
8-26-04	Citizens Bank of Pennsylvania Philadelphia Philadelphia County	Giant Eagle 223 Grove City Road Slippery Rock Butler County	Filed

**SAVINGS INSTITUTIONS**

No activity.

**CREDIT UNIONS**

No activity.

A. WILLIAM SCHENCK, III,  
*Secretary*

[Pa.B. Doc. No. 04-1690. Filed for public inspection September 10, 2004, 9:00 a.m.]

**DEPARTMENT OF CONSERVATION AND NATURAL  
RESOURCES****Conservation and Natural Resources Advisory Council Meeting**

The Conservation and Natural Resources Advisory Council to the Department of Conservation and Natural Resources (Department) will hold a meeting on Wednesday, September 22, 2004, at 9 a.m. in the Bedford/Westmoreland Room, Holiday Inn, 250 Market Street, Johnstown, PA.

Questions concerning this meeting or agenda items should be directed to Kurt Leitholf at (717) 705-0031.

Persons in need of accommodations as provided for in the Americans With Disabilities Act of 1990 should contact Joan Dupes at (717) 705-0031 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

MICHAEL F. DIBERARDINIS,  
*Secretary*

[Pa.B. Doc. No. 04-1691. Filed for public inspection September 10, 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.

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

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

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

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

Persons wishing to comment on an NPDES application are invited to submit a statement to the 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

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

<i>NPDES Permit No. (Type)</i>	<i>Facility Name and Address</i>	<i>County and Municipality</i>	<i>Stream Name (Watershed No.)</i>	<i>EPA Waived Y/N?</i>
PA0061590	Little Washington Wastewater Company 762 West Lancaster Avenue Bryn Mawr, PA 19010	North Union Township Schuylkill County	Tomhicken Creek 5E	Y
PA0032590 Minor Sewage	Frieden Associates, L. P. 215 West Church Road, Suite 105 King of Prussia, PA 19406	Schuylkill County Wayne Township	Long Run 3A	Y

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

<i>NPDES Permit No. (Type)</i>	<i>Facility Name and Address</i>	<i>County and Municipality</i>	<i>Stream Name (Watershed No.)</i>	<i>EPA Waived Y/N?</i>
PA0088170 IW	Leffler Energy 225 East Main Street Richland, PA 17087	Lebanon County Richland Borough	UNT of Mill Creek 3-C	Y
PA0088161 IW	Leffler Energy 225 East Main Street Richland, PA 17087	Lancaster County New Holland Borough	UNT of Conestoga River 7-J	Y
PA0088099 IW	Leffler Energy 225 East Main Street Richland, PA 17087	Lancaster County Mount Joy Borough	UNT of Little Chickies Creek 7-G	Y
PA0088145 IW	Leffler Energy 225 East Main Street Richland, PA 17087	York County West Manchester Township	UNT of Codorus Creek 7-H	Y

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

<i>NPDES Permit No. (Type)</i>	<i>Facility Name and Address</i>	<i>County and Municipality</i>	<i>Stream Name (Watershed No.)</i>	<i>EPA Waived Y/N?</i>
PA0114286 Sewerage	New Albany Borough P. O. Box 67 New Albany, PA 18833-0067	New Albany Borough Bradford County	South Branch Towanda Creek 4-C	Y

*Northwest Region: Oil and Gas Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6860.*

<i>NPDES Permit No. (Type)</i>	<i>Facility Name and Address</i>	<i>County and Municipality</i>	<i>Stream Name (Watershed No.)</i>	<i>EPA Waived Y/N?</i>
PA0101508	Pennsylvania Brine Treatment, Inc. Franklin Facility 5148 US 322 Franklin, PA 16323	Venango County Cranberry Township	Allegheny River 16-G	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, (570) 327 3664.*

**PA0228842**, Sewerage SIC, 4952, **Muddy Run Regional Authority**, P. O. Box 474, Madera, PA 16661-0474. This proposed facility is in Bigler Township, **Clearfield County**.

Description of Proposed Activity: Issuance of an NPDES permit for a proposed discharge of treated sewage wastewater.

The receiving stream, Clearfield Creek, is in the State Water Plan watershed 8C and classified for WWF. The nearest downstream public water supply intake for Reliant Energy at Shawville is on the West Branch Susquehanna River, 34 miles below the point of discharge.

The proposed effluent limits for Outfall 001 based on a design flow of 0.4 MGD.

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Daily Maximum (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	25	40		50
TSS	30	45		60
Total Cl <sub>2</sub> Residual	0.50			1.6
Fecal Coliform (5-1 to 9-30)	200 col/100 ml as a geometric mean			
(10-1 to 4-30)	2,000 col/100 ml as a geometric mean			
pH	6.0 to 9.0 at all times			

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

**PA0096091**, Sewage, **Aleppo Township Authority**, P. O. Box 81, Sewickley, PA 15143-0081. This application is for renewal of an NPDES permit to discharge treated sewage from the I-79 North STP in Aleppo Township, **Allegheny County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as Kilbuck Run, which are classified as a CWF with existing and/or potential uses for aquatic life, water supply and recreation. The first downstream potable water supply intake from this facility is the Nova Chemicals Beaver Valley Plant.

*Outfall 001: existing discharge, design flow of 0.095 mgd.*

<i>Parameter</i>	<i>Concentration (mg/l)</i>			
	<i>Average Monthly</i>	<i>Average Weekly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
CBOD <sub>5</sub>	25			50
Suspended Solids	30			60
Ammonia Nitrogen (5-1 to 10-31)	2.5			5.0
(11-1 to 4-30)	7.5			15.0
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 in effect.

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

**PA0006343—Amendment No. 2**, Industrial Waste, **AK Steel Corporation—Butler Operations**, P. O. Box 832, 210 Pittsburgh Road, Butler, PA 16003-0832. The facility is in Butler Township and the City of Butler, **Butler County**.

Description of Proposed Activity: Discharge of treated industrial waste, noncontact cooling water and stormwater.

For the purpose of evaluating effluent requirements for TDS, NO<sub>2</sub>-NO<sub>3</sub>, fluoride, phenolics, sulfate and chloride, the existing/proposed downstream potable water supply (stream and public water supplier) considered during the evaluation is the Zelenople Water Works and the Connoquenessing Creek at Zelenople, approximately 20 miles below point of discharge.

The receiving streams, Connoquenessing Creek, Sawmill Run, Rocklick Run and Sullivan Run, are in watershed 20-C and classified for WWF, aquatic life, water supply and recreation.

The proposed effluent limits for Outfall 002.

Parameter	Loadings		Concentrations		
	Average Monthly (lb/day)	Maximum Daily (lb/day)	Average Monthly (mg/l)	Maximum Daily (mg/l)	Instantaneous Maximum (mg/l)
Flow (MGD)	XX				
TSS					150
Oil and Grease					30
pH	within limits of 6.0 to 9.0 standard units at all times				

The proposed effluent limits for Outfall 003.

Parameter	Loadings		Concentrations		
	Average Monthly (lb/day)	Maximum Daily (lb/day)	Average Monthly (mg/l)	Maximum Daily (mg/l)	Instantaneous Maximum (mg/l)
Flow (MGD)	XX				
TSS					150
Oil and Grease					30
pH	within limits of 6.0 to 9.0 standard units at all times				

The proposed effluent limits for Outfall 004 based on a design flow of 0.25 MGD.

Parameter	Loadings		Concentrations		
	Average Monthly (lb/day)	Maximum Daily (lb/day)	Average Monthly (mg/l)	Maximum Daily (mg/l)	Instantaneous Maximum (mg/l)
Flow (MGD)	XX				
Temperature					XX
pH	within limits of 6.0 to 9.0 standard units at all times				

The proposed effluent limits for Outfall 005 based on a design flow of 2.63 MGD.

Parameter	Loadings		Concentrations		
	Average Monthly (lb/day)	Maximum Daily (lb/day)	Average Monthly (mg/l)	Maximum Daily (mg/l)	Instantaneous Maximum (mg/l)
Flow (MGD)	XX				
Total Suspended Solids	1,495	3,479	XX	XX	170
Oil and Grease	498	1,492	15	XX	30
Chromium, Total	19.9	49.8	XX	XX	2.3
Nickel, Total	15	44.8	XX	XX	2.0
Iron, Total	55.7	111	2.54	5.08	6.35
Fluoride+	440		XX		
Nitrite and Nitrate (as Nitrogen)+	999		XX		
Sulfate (Interim)+	67,800		XX		
(Final)	18,000	36,000	800	1,640	2,500
Chloride (Interim)+	71,240		XX		
(Final)	22,526	45,053	1,027	2,055	2,570
pH	within limits of 6.0 to 9.0 standard units at all times				

+—Total for Outfalls 001 and 005.

The proposed effluent limits for Outfall 006.

Parameter	Loadings		Concentrations		
	Average Monthly (lb/day)	Maximum Daily (lb/day)	Average Monthly (mg/l)	Maximum Daily (mg/l)	Instantaneous Maximum (mg/l)
Flow (MGD)	XX				
TSS			30		60
Oil and Grease			15		30
pH	within limits of 6.0 to 9.0 standard units at all times				

XX—Monitor and report

Outfall 001—No proposed changes to the effluent requirements.

Outfall 005—The effluent limitations for Ammonia-Nitrogen are being removed based on the conversion of their pickling lines to hydrogen-peroxide pickling. Monthly temperature effluent limitations are no longer necessary due to the elimination of the major heat source to this outfall. The following wastewater sources are being removed as tributary to

this outfall: tandem mills, no. 3 cold rolling mill and sludge bed no. 5. Newly identified wastewater sources are being added: boiler blowdown, softener backwash and the overflow from the main plant water recycle system.

*Outfall 006*—The effluent limits were revised since the process wastewater has been permanently rerouted to the Outfall 005 treatment facilities. The remaining, nonprocess wastewater sources include: stormwater, boiler blowdown, softener backwash and the overflow from the main plant water recycle system.

*Outfall 007*—Identification of the following additional waste sources: titanium rolling (hot strip mill), stormwater, boiler blowdown and softener backwash.

*Outfalls 008, 017—022, 026 and 027*—Identification of an additional waste source: stormwater and low-volume discharges of treated recycle water from the main plant recycle system.

*Outfalls 009—017, 023, 024 and 028—045*—New and existing stormwater outfalls.

*Special Condition*: A monitoring waiver is granted for Outfall 005—Lead, Zinc, Tetrachloroethylene and Naphthalene and Outfall 007—Ammonia-N, Cyanide, Fluoride, Lead and Zinc in accordance with 40 CFR 122.44(a)(2).

The EPA waiver is not in effect.

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

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*Southeast Region: Water Management Program Manager, 2 East Main Street, Norristown, PA 19401.*

**WQM Permit No. 0904413**, Sewerage, **Hilltown Water & Sewer Authority**, P. O. Box 365, Sellersville, PA 18960. This proposed facility is in Hilltown Township, **Bucks County**.

Description of Proposed Action/Activity: Construction and operation of a wastewater treatment plant for a new 190 EDU residential development.

**WQM Permit No. 4604413**, Sewerage, **Harold and Flo Rae Booth**, 1000 Stony Lane, Gladwyne, PA 19035. This proposed facility is in Lower Merion Township, **Montgomery County**.

Description of Proposed Action/Activity: General Permit for the installation of a stream discharge wastewater treatment plant.

**WQM Permit No. 4604414**, Sewerage, **Frederick Mennonite Community**, 2849 Big Road, P. O. Box 498, Frederick, PA 19435-0498. This proposed facility is in Upper Frederick Township, **Montgomery County**.

Description of Proposed Action/Activity: Construction and operation of a sanitary sewer extension 8-inch PVC and pumping station to serve new housing units adjacent to existing unit.

**WQM Permit No. 1504411**, Sewerage, **John Stoltzfus**, 920 Pleasant View Road, Honey Brook, PA 19344. This proposed facility is in Honey Brook Township, **Chester County**.

Description of Proposed Action/Activity: Applicant is requesting for the construction and operation of a small flow treatment facility.

**WQM Permit No. 1504413**, Sewerage, **Atglen Borough Sewer Authority**, 120 West Main Street, P. O. Box 250, Atglen, PA 19310. This proposed facility is in Atglen Borough, **Chester County**.

Description of Proposed Action/Activity: Applicant is requesting approval to increase hydraulic design capacity to the wastewater treatment plant from 0.09 mgd to 0.155 mgd.

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

**WQM Permit No. 5204406**, **Pennsylvania Utility Company, Inc., Tamiment Resort**, Bushkill Falls Road, Bushkill, PA 18371. This proposed facility is in Lehman Township, **Pike County**.

Description of Proposed Action/Activity: This project involves the replacement of the LaBar Pump Station to serve existing interim and ultimate flows within the ultimate service area of the Tamiment Resort.

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

**WQM Permit No. 0603413 Amendment 04-1**, Sewerage, **Neighborhood Home Owners Association**, 6350 Daniel Boone Road, Birdsboro, PA 19508. This proposed facility is in Exeter Township, **Berks County**.

Description of Proposed Action/Activity: Construction of a small flow treatment facility to serve a single family.

**WQM Permit No. 2204408**, Sewerage, **Bright Hope Fellowship Brethren in Christ Church**, 180 Hershey Road, Elizabethtown, PA 17022. This proposed facility is in Londonderry Township, **Dauphin County**.

Description of Proposed Action/Activity: Construction of a small flow sewage treatment facility to serve a 600-seat church.

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

**WQM Permit No. 0804405**, Sewerage, **Charles Miller**, R. R. 2 Box 128G, Ulster, PA 18850. This proposed facility is in Sheshequin Township, **Bradford County**.

Description of Proposed Action/Activity: Construction and operation of a small flow treatment facility to serve a residence. The treatment facility will discharge to an unnamed tributary to Deer Lick Creek (WWF).

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

**WQM Permit No. 0204409, Sewerage, City of McKeesport**, 201 Lysle Boulevard, McKeesport, PA 15132. This proposed facility is in McKeesport City, **Allegheny County**.

Description of Proposed Action/Activity: Application for the construction and operation of the Hartman Street Sanitary Sewer Project.

The Pennsylvania Infrastructure Investment Authority, which administers the Commonwealth's State Revolving Fund, has been identified as a possible funding source. The Department's review of the sewage facilities plan revision has not identified any significant environmental impacts resulting from this proposal.

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#### IV. NPDES Applications for Stormwater Discharges from MS4

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

**WQM Permit No. 4904402**, Sewage 4952, **Mt. Carmel Borough**, P. O. Box 365, Mt. Carmel, PA 17851. This proposed facility is in Mt. Carmel Township, **Northumberland County**.

Description of Proposed Action/Activity: The applicant proposes to replace vacuum sludge dewatering with a sludge belt press.

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#### V. Applications for NPDES Waiver Stormwater Discharges from MS4

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#### 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
PAI011504061	James Mark Property P. O. Box 63 New London, PA 19360	Chester	East Nottingham Township	Big Elk Creek HQ-TSF-MF
PAI012304006	Sposato-Rayor Builders, Inc. Old Forge Road Subdivision 114 Black Bass Lane—West Media, PA 19063	Delaware	Middletown Township	Rocky Run HQ-CWF-MF

*Cambria District: Environmental Program Manager, 286 Industrial Park Road, Ebensburg, PA 15931-4119.*

NPDES Permit No.	Applicant Name and Address	County	Municipality	Receiving Water/Use
PAG2091004004	Bureau of Abandoned Mine Reclamation Cambria Office 286 Industrial Park Road Ebensburg, PA 15931-4119	Butler	Cherry Township	Slippery Rock Creek CWF

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#### 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. 6404501**, Public Water Supply.

Applicant **Aqua Pennsylvania, Inc.**  
 Township or Borough Canaan Township  
 County **Wayne**  
 Responsible Official Roswell McMullen, P. E.,  
 Manager, Northeast Operations  
 Aqua Pennsylvania, Inc.  
 HC 6, Box 6040  
 Hawley, PA 18428

Type of Facility PWS  
 Consulting Engineer Doug Berg, P. E.  
 Entech Engineering, Inc.  
 P. O. Box 268  
 East Stroudsburg, PA 18301

Application Received August 24, 2004  
 Date

Description of Action The applicant requests a major permit amendment for pH adjustment through the addition of caustic soda at well 2 and general corrosion control treatment through the addition of a sodium orthopolyphosphate blend at wells 1 and 2.

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

**Permit No. 5604502**, Public Water Supply.

Applicant **Somerset County General Authority**  
 146 West Main Street  
 Somerset, PA 15501

Township or Borough Jenner, Lincoln and Somerset Townships  
 Boswell Borough

Responsible Official Frederick R. Smith, Vice  
 Chairperson  
 Somerset County General Authority  
 146 West Main Street  
 Somerset, PA 15501

Type of Facility Water System  
 Consulting Engineer Crouse & Company  
 332 South Lynn Avenue  
 Somerset, PA 15501

Application Received May 26, 2004  
 Date

Description of Action Interconnection with the Quemahoning Reservoir, construction of a raw water pump station, raw water pipeline, 2 MGD water treatment plant, 2 MG water storage tank, two booster stations and interconnection with the Somerset system.

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

**Application No. 1004503**, Public Water Supply.

Applicant **Kennedy Mobile Home Park**  
 Township or Borough Marion Township, **Butler County**

Responsible Official G. Victor Kennedy, Owner  
 Type of Facility PWS  
 Application Received August 2, 2004  
 Date

Description of Action Construction of a public water system utilizing two existing water wells, the construction of a proposed new water well and water treatment plant.

### WATER ALLOCATIONS

#### Applications received under the act of June 24, 1939 (P. L. 842, No. 365) (35 P. S. §§ 631—641) relating to the Acquisition of Rights to Divert Waters of this Commonwealth

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

**WA56-1003**, Water Allocations, **Cambria Somerset Authority**, 224 Walnut Street, Johnstown, PA 15901, **Allegheny County**. The applicant is requesting to withdraw 71.0 MGD peak day from the Quemahoning Reservoir, 10 MGD peak day from the Hinckston Run Reservoir, 10 MGD peak day from the Wilmore Reservoir, 26 MGD peak day from the South Fork Dam Intake and 27 MGD peak day from the Border Dam Intake. All combined sources will not withdraw more than 71.0 MGD on a peak day average.

**WA56-1002**, Water Allocations, **Somerset County General Authority, Indiana County**. The applicant is requesting a subsidiary water allocation permit to purchase 4 million gallons per day for an average day from the Cambria Somerset Authority.

### 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:

*Northcentral Region: Environmental Cleanup Program, 208 West Third Street, Williamsport, PA 17701.*

**Sel-Lo Oil**, Muncy Creek Township, **Lycoming County**. Andres J. Sokol, P. G., 938 Lincoln Ave., Suite 203, Springfield, PA 19064 on behalf of Sean Alexander, Department of Transportation, 715 Jordan Avenue, Montoursville, PA 17754, has submitted a Notice of Intent to Remediate groundwater contaminated with benzene. This site is being remediated to meet the Site-Specific Standards.

*Northwest Region: Environmental Cleanup Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.*

**Honeywell Farmers Valley Wax Plant Main**, Keating Township, **McKean County**. Dayne M Crowley, P. G., MACTEC Eng. Consulting, on behalf of Shane Dunn,

Honeywell Specialty Materials has submitted a Notice of Intent to Remediate. Within certain portions of this site, historic refining activities have resulted in releases of petroleum products that have impacted soil and groundwater and separate phase liquid has accumulated on the water table, including weathered gasoline, naphtha, lubrication oil and other finished and crude petroleum products. Groundwater recovery will be continued until it is determined that further recovery is not necessary. Soil remedial measures will be implemented based on the development of site specific standards and the results of soil sampling to be completed at the site.

#### **OPERATE WASTE PROCESSING OR DISPOSAL AREA OR SITE**

**Application 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 regulations to operate solid waste processing or disposal area or site.**

*Northwest Region: Regional Solid Waste Manager, 230 Chestnut Street, Meadville, PA 16335-3481.*

**Permit Application No. 101678. Tri-County Landfill, Inc.**, 159 TCI Park Drive, Grove City, PA 16365, Liberty and Pine Townships, **Mercer County**. The application, originally submitted January 9, 2004, was to repermit and expand the Tri-County Landfill. Due to administrative incompleteness, the application was withdrawn, with the intention of resubmitting. The application was withdrawn by Tri-County Landfill, Inc. on July 28, 2004.

Comments concerning the application should be directed to Todd Carlson, Program Manager, Northwest Regional Office, 230 Chestnut Street, Meadville, PA 16335. Persons interested in obtaining more information about the general permit application should contact the Northwest Regional Office at (814) 332-6848. TDD users should contact the Department through the Pennsylvania Relay Service, (800) 654-5984.

#### **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.**

*Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Ronald Davis, New Source Review Chief, (717) 705-4702.*

**36-05135A: StyleCraft Corp.** (400 Broad Street, Terre Hill, PA 17581) for installation of four spray booths controlled by dry filters in their Terre Hill Borough, **Lancaster County**. The plan approval will include monitoring, recordkeeping, reporting and work practice standards designed to keep the facility operating within all applicable air quality requirements.

*Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701; David Aldenderfer, Program Manager, (570) 327-3637.*

**17-305-050A: Penfield Collieries, LLC** (301 Market Street, Kittanning, PA 16201) for construction of a clean coal stockpiling and railcar loading operation in Huston Township, **Clearfield County**.

*Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481; Devendra Verma, New Source Review Chief, (814) 332-6940.*

**10-171B: Butler Color Press** (119 Bonnie Drive, Butler, PA 16003) for plan approval to discontinue use of solvent recovery system and allow disposal of used solvent offsite as hazardous waste in the City of Butler, **Butler County**.

**10-338B: Superior Adsorbents—AC Valley Industrial Park** (3781 Oneida Valley Road, Emlenton, PA 16373) for plan approval to reactivate their resin bonded filter plant in Allegheny Township, **Butler County**.

**10-065A: Allegheny Mineral Corp.** (Camp Ground Road, Harrisville, PA 16038) for construction of a new limestone grinding mill and hot air generator controlled by a fabric collector at an existing facility in Mercer Township, **Butler County**. The facility is subject to New Source Performance Standards Subpart OOO—Standards of Performance for Nonmetallic Mineral Processing Plants.

*Department of Public Health, Air Management Services: 321 University Avenue, Philadelphia, PA 19104; Edward Braun, Chief, (215) 823-7584.*

**AMS 04108: Naval Surface Warfare Center—Carderock Division** (5001 South Broad Street, Code 357, Philadelphia, PA 19112) for modification of RACT plan approval for five 125 mmBtu/hr boilers in Building 23 burning natural gas and no. 6 oil in the City of Philadelphia, **Philadelphia County**. The modified RACT plan approval retroactively sets a NOx emission limit of 534 tons per year as the RACT requirement for these boilers. The boilers are shut down and there will be no emissions as a consequence of this action. This RACT modification is being done to establish a basis for emission reduction credits for the boilers' shut down.

**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.**

*Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401; Thomas McGinley, New Source Review Chief, (484) 250-5920.*

**23-0014E: Kimberly-Clark Pennsylvania, LLC** (Front and Avenue of the States, Chester, PA 19013) for installation of two low NOx burners in the drying hood system of paper machine no. 16 in City of Chester, **Delaware County**. The facility is a Title V facility. The new burners are rated at 18 mmBtu/hr each and will replace two 22.5 mmBtu/hr (each) burners. Natural gas is the only fuel used. The existing burners are currently permitted with NOx emission limits of: 0.1 lb/mmBtu/hr; 4.50 lb/hr (total); and 19.71 tons/yr (total). The NOx emission limits for the proposed new burners are: 0.035 lb/mmBtu; 1.26 lb/hr (total); and 5.52 tons/yr (total) on a 12-month rolling sum basis. The company shall keep records of fuel use on a monthly basis. The proposed Plan Approval also requires the company to perform stack tests for NOx and CO.

*Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790; Mark Wejkszner, New Source Review Chief, (570) 826-2531.*

**48-399-054: Spray-Tek LLC** (3010 Avenue B, Bethlehem, PA 18017) for construction of a spray dryer and associated air cleaning devices (venturi scrubber and fabric collector) at their facility in the City of Bethlehem, **Northampton County**. The facility is a non-Title V (State-only) facility. Particulate emissions from the venturi scrubber and the fabric collector will not exceed the Best Available Technology standard of 0.02 grain/dscf. The plan approval and operating permit will include emission restrictions, work practice standards and monitoring, reporting and recordkeeping requirements designed to keep the source operating within all applicable air quality requirements.

### OPERATING PERMITS

#### Intent to Issue Title V Operating Permits 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.*

**15-00022: Columbia Gas Transmission Corp.** (1700 MacCorkle Avenue, SE, Charleston, WV 25325-1273) for operation of a natural gas transmission facility in West Vincent Township, **Chester County**. This action is a renewal of the Title V Operating Permit. The initial permit was issued on August 22, 1997. The facility's major emission points include four reciprocating engine/internal compressors and one reciprocating engine/generator. As a result of potential emissions of VOCs and NOx, the facility is a major stationary source as defined in Title I, Part D of the Clean Air Act amendments and is therefore subject to the Title V permitting requirements adopted in 25 Pa. Code Chapter 127, Subchapter G. The proposed Title V Operating Renewal does not adopt any new regulations and does not reflect any change in air emissions from the facility. The renewal contains all applicable requirements including monitoring, recordkeeping and reporting.

**23-00051: Riddle Memorial Hospital** (1068 West Baltimore Pike, Media, PA 19063) for operation of a general medical hospital in Middletown Township, **Delaware County**. The permit is for a Title V facility. The facility's major emission points are three boilers, three emergency generators, one infectious waste incinerator and one natural gas-fired air conditioning system, which have the potential to emit major levels of NOx and hydrochloric acid. Additionally, the facility is subject to the NSPS requirements of 40 CFR 60, Subpart Ce.

*Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701; Muhammad Zaman, Facilities Permitting Chief, (570) 327-0512.*

**14-00003: The Pennsylvania State University** (101-P Physical Plant Building, University Park, PA 16802) for renewal of the Title V Operating Permit for their University Park campus in State College Borough, **Centre County**. The facility is currently operating under Title V Operating Permit 14-00003. The facility's main sources include 4 bituminous coal/natural gas/no. 2 fuel oil fired boilers, 3 natural gas/no. 2 fuel oil fired boilers, 1 natural gas/coal-water slurry/micronized coal fired boiler, 1 medium hazardous/medical/infectious waste incinerator and 46 natural gas/propane/diesel fuel fired emergency generators. The facility has the potential to emit major quantities of NOx, SOx, CO, PM10 and HAPs. The facility has the potential to emit VOCs below the major emissions threshold. The four bituminous coal/natural gas/no. 2 fuel oil fired boilers are subject to Compliance Assurance Monitoring requirements specified in 40 CFR 64.1—64.10. The proposed Title V operating permit contains all applicable requirements including Federal and State regulations. In addition, monitoring, recordkeeping and reporting conditions regarding compliance with all applicable requirements are included.

#### Intent to Issue Operating Permits under the Air Pollution Control Act and 25 Pa. Code Chapter 127, Subchapter F.

*Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Ronald Davis, New Source Review Chief, (717) 705-4702.*

**36-03135C: Shared Mail Acquisitions, LLC** (72 Industrial Circle, Leola, PA 17540-0129) for construction of a heatset printing press at their facility in Upper Leacock Township, **Lancaster County**. This printing facility is a non-Title V (State-only) facility. This construction will result in 1.43 tons per year of VOC emissions after control by the existing thermal oxidizer. Conditions for monitoring, recordkeeping and work practice standards are included to keep the facility operating within the applicable requirements.

*Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481; Eric Gustafson Facilities Permitting Chief, (814) 332-6940.*

**42-00172: Borden Chemical, Inc.** (Hutchins Road, Mount Jewett, PA 16740) for issuance of a Natural Minor Operating Permit to produce urea-formaldehyde resins in Sergeant Township, **McKean County**. The facility's primary emission sources include storage tanks and a resin kettle. The VOC and HAP emissions from this facility are well below major source levels.

### 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 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:

<i>Parameter</i>	<i>30-Day Average</i>	<i>Daily Maximum</i>	<i>Instantaneous Maximum</i>
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.

*Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, (814) 472-1900.*

**56040105 and NPDES Permit No. PA0249602. Berwind Coal Sales Company**, 509 15th Street, Windber, PA 15963, commencement, operation and restoration of a bituminous surface mine in Shade and Paint Townships, **Somerset County**, affecting 170.5 acres. Receiving streams: unnamed tributaries to/and Shade Creek (CWF). The first downstream potable water supply intake from the point of discharge is the Cambria Somerset Authority Border Dam SWI. Application received August 16, 2004.

*Knox District Mining Office: White Memorial Building, P. O. Box 669, Knox, PA 16232-0669, (814) 797-1191.*

**61040102 and NPDES Permit No. PA0242560. Ben Hal Mining Company** (389 Irishtown Road, Grove City, PA 16127). Commencement, operation and restoration of a bituminous surface strip operation in Irwin Township, **Venango County** affecting 58.0 acres. Receiving streams: two unnamed tributaries to Scrubgrass Creek (CWF). There are no potable surface water supply intakes within 10 miles downstream. Application received August 24, 2004.

**33693008 and NPDES Permit No. PA0604186. P. and N. Coal Co., Inc.** (P. O. Box 332, Punxsutawney, PA 15767). Renewal of and existing bituminous surface strip and auger operation in Gaskill Township, **Jefferson County** affecting 116.0 acres. Receiving streams: unnamed tributaries to Lost Run and East Branch Lost Run (HQ, CWF). There are no potable surface water supply intakes within 10 miles downstream. Application for reclamation only. Application received August 26, 2004.

**33010102 and NPDES Permit No. PA0241890. McKay Coal Company, Inc.** (P. O. Box 343, Punxsutawney, PA 15767). Revision to an existing bituminous

surface strip, auger and coal refuse disposal operation in Perry Township, **Jefferson County** affecting 56.4 acres. Receiving streams: two unnamed tributaries to Foundry Run, Foundry Run to Mahoning Creek (CWF). There are no potable surface water supply intakes within 10 miles downstream. Revision to include the request to disposal of coal refuse. Application received August 27, 2004.

*Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, (814) 342-8200.*

**17040109 and NPDES Permit No. PA0243841. Forcey Coal, Inc.** (P. O. Box 225, Madera, PA 16661). Commencement, operation and restoration of a bituminous surface mine-auger permit in Bigler Township, **Clearfield County** affecting 67 acres. Receiving streams: unnamed tributary to Muddy Run; Banian Run to Muddy Run (WWF). The first potable water supply intake from the point of discharge is: none. Application received August 17, 2004.

**17000107 and NPDES Permit No. PA0242951. Shud's Coal Hounds, Inc.** (5757 Green Acres Road, Houtzdale, PA 16651). Revision to an existing bituminous surface mine-auger permit for a change in permit acreage from 146.8 to 167.8 acres. The permit is in Woodward and Bigler Townships, **Clearfield County**. Receiving streams: Upper Morgan Run and Goss Run. Application received August 12, 2004.

*Pottsville District Mining Office: 5 W. Laurel Boulevard, Pottsville, PA 17901, (570) 621-3118.*

**54880201R3. Blaschak Coal Corp.** (P. O. Box 12, Mahanoy City, PA 17948), renewal of an existing coal refuse reprocessing and preparation plant operation in Pine Grove Township, **Schuylkill County** affecting 61.4 acres, receiving stream: none. Application received August 24, 2004.

**54880203T3 and R3. Rausch Creek Land, LP** (978 Gap Street, Valley View, PA 17983), renewal and transfer of an existing coal refuse reprocessing operation from Meadowbrook Coal Co., Inc. in Tremont Township, **Schuylkill County** affecting 15.8 acres, receiving stream: Rowe Tunnel to Lorberry Creek. Applications received August 24, 2004.

*California District Mining Office: 25 Technology Drive, Coal Center, PA 15423.*

**63921301. NPDES Permit No. PA0214434, UMC Energy, Inc.** (981 Route 917, Bentleyville, PA 15314), to revise the permit for the High Quality Mine in Fallowfield Township, **Washington County** to add surface acres to install the 8 East air shaft and sedimentation pond. Surface Acres Proposed 9.5. Receiving stream: unnamed tributary to Maple Creek (WWF). Application received July 7, 2004.

**56831601. NPDES Permit No. PA0213497, Reitz Coal Company** (509 15th Street, Windber, PA 15963-1603), to revise the permit for the Reitz No. 11 Coal Preparation Plant in Shade Township, **Somerset County** to change post-mining land use on 25.7 acres of the 33-acre site from forestland to industrial/commercial. No additional discharges. Application received July 21, 2004.

**63921301. NPDES Permit No. PA0214434, UMC Energy, Inc.** (981 Route 917, Bentleyville, PA 15314), to revise the permit for the High Quality Mine in Fallowfield Township, **Washington County** for stream remediation within the unnamed tributary to Maple Creek. No additional discharges. Application received July 28, 2004.

**63831302. NPDES Permit No. PA0213608, Eighty Four Mining Company** (1525 Pleasant Grove Road, P. O. Box J, Claysville, PA 15323), to revise the permit for Mine No. 84 in South Strabane Township, **Washington County** to add surface activity site acres for the installation of a ventilation borehole and a pressure relief borehole. Surface Acres Proposed 2.0. No additional discharges. Application received July 29, 2004.

**32981301. NPDES Permit No. PA0215180, Rox COAL, Inc.** (P. O. Box 149, Friedens, PA 15541), to renew the permit for the North Branch Mine in Green Township, **Indiana County** and related NPDES permit. No additional discharges. Application received August 4, 2004.

**32971302. NPDES Permit No. PA0215040, Rosebud Mining Company** (301 Market Street, Kittanning, PA 16201-9642), to revise the permit for the Dutch Run Mine in Washington and Armstrong Townships, **Indiana County** to add underground permit and subsidence control plan area acres. Underground Acres Proposed 1,229.0, SCP Acres Proposed 1,229.0. No additional discharges. Application received August 5, 2004.

**30841316. NPDES Permit No. PA0213535, Consol Pennsylvania Coal Company** (P. O. Box J, Claysville, PA 15323), to revise the permit for the Bailey Mine in Richhill Township, **Greene County** to perform evaluations of potential stream remediation area sites along unnamed tributary no. 3 Dunkard Fork and Wharton Run. No additional discharges. Application received August 9, 2004.

*Noncoal Permit Applications Received*

*Small Noncoal Permit—Final Bond Release*

*Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, (814) 342-8200.*

**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.

## 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

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

**E01-248: Robert Foehrkolb**, 7018 Greenbank Road, Baltimore, MD 21220 in Franklin Township, **Adams County**, ACOE Baltimore District.

To construct and maintain an access road to an existing home which will impact two wetlands with a de minimis impact of 0.01 acre and a 12-foot by 17-foot bridge across an unnamed tributary to Marsh Creek (CWF) (Caledonia Park, PA Quadrangle N: 0.4 inch; W: 0.4 inch) in Franklin Township, Adams County.

**E67-757: Homewood Retirement Centers**, P. O. Box 250, Williamsport, MD 21795 in Penn Township, **York County**, ACOE Baltimore District.

To remove an existing 4-foot by 5-foot metal tank road crossing, then construct and maintain: (1) a 27-foot 6-inch low arch metal culvert 85-foot long in Plum Creek

(WWF); (2) a 24-foot by 60-foot supercor metal box culvert in an unnamed tributary to Plum Creek (WWF); (3) one 18-inch sanitary sewer line crossing of Plum Creek (WWF); (4) two 18-inch sanitary sewer line crossings of unnamed tributaries to Plum Creek (WWF); (5) one 8-inch sanitary sewer line crossing of Plum Creek (WWF); (6) a 12-foot by 14-foot footbridge over Plum Creek (WWF) and associated wetlands; and (7) a 6-foot by 14-foot footbridge over Plum Creek (WWF) and associated wetlands all (Hanover, PA Quadrangle N: 6.0 inches; W: 17.1 inches) in Penn Township, York County. The 300 square feet of wetland impacts is de minimis and therefore mitigation is not required.

**E67-772: North Codorus Township**, 1986 Stoverstown Road, Spring Grove, PA 17362 in North Codorus Township, **York County**, ACOE Baltimore District.

To remove three existing culverts at three separate roadway crossings, then to construct and maintain: (1) a 16-foot by 5-foot 8-inch corrugated metal pipe arch and rip-rap rock bank protection at a point where Spangler's Road crosses an unnamed tributary to the South Branch Codorus Creek (WWF) (Seven Valleys, PA Quadrangle N: 16.5 inches; W: 7.7 inches); (2) a 16-foot by 5-foot 2-inch corrugated metal pipe arch and rip-rap rock bank protection at a point where Brush Valley Road crosses over an unnamed tributary to the South Branch Codorus Creek (WWF) (Seven Valleys, PA Quadrangle N: 15.6 inches; W: 9.2 inches); and (3) a 12-foot by 5-foot reinforced concrete box culvert with rip-rap rock bank protection at a point where Buffalo Valley Road crosses over an unnamed tributary to the South Branch Codorus Creek (WWF) (Seven Valleys, PA Quadrangle N: 13.8 inches; W: 11.6 inches) all in North Codorus Township, York County.

*Northcentral Region: Water Management Program Manager, 208 West Third Street, Williamsport, PA 17701, (570) 327-3636.*

**E08-416. Burlington Township**, R. R. 3, Box 118, Towanda, PA 18848. Bridge replacement in Burlington Township, **Bradford County**, ACOE Baltimore District (Ulster, PA Quadrangle N: 6.75 inches; W: 11.75 inches).

To: (1) remove the existing single span concrete steel bridge with steel I-beams, concrete abutments and wingwalls and steel pipe parapet. This structure has a 20-foot span, 7-foot rise and a hydraulic opening of 106 square feet; (2) construct and maintain a single span reinforced concrete rigid frame on a 57-degree skew left hand ahead with a span length of about 26 feet and an underclearance of about 9.4 feet; and (3) place approximately 50 linear feet of upstream and downstream left and right stream bank class R-7 and R-4 borrow excavation rock. The project is over Wallace Run (WWF) on T-558 about 0.2 mile north of the intersection of T-558 and Covered Bridge Road. The project will not impact wetlands while impacting approximately 170 feet of waterway and disturbing 0.4 acre of earth.

**E12-151. Seneca Resources Corporation**, P. O. Box 125, Kane, PA 16735. Seneca Resources 25,000-acre timbering tract in Shippen, Jones, Norwich and Sergeant Townships, **Cameron, Elk and McKean Counties**, ACOE Baltimore District (Rich Valley, PA Quadrangle N: 14 inches; W: 13.39 inches).

The applicant is applying for an after-the-fact permit for 172 stream crossings in North Creek, Cooks Run, Elk Fork, Driftwood Branch of the Sinnemahoning Creek, Bobby Run, Clear Creek, Havens Run and tributaries to

these streams in Cameron County. All streams in this tract have a Chapter 93 water quality use of either HQ-CWF or EV. Many of the stream crossings have been in for several years and they range from ford crossings to bridges.

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

**E63-563. Bobby Rahal Dealerships**, 6305 Carlisle Pike, Mechanicsburg, PA 17055. Bobby Rahal Land Rover dealership bridges and stream enclosure in North Strabane Township, **Washington County**, Pittsburgh ACOE District (Canonsburg, PA Quadrangle N: 1.5 inches; W: 6.2 inches—Latitude: 40° 15' 30" and Longitude: 80° 10' 10"). The applicant proposes to enclose and maintain 240 linear feet of an unnamed tributary to Little Chartiers Creek and to construct and maintain two bridges, one having a span of 16.0 feet with an underclearance of 5.0 feet and one having a span of 32.0 feet with an underclearance of 8.0 feet across an unnamed tributary to Little Chartiers Creek for the purpose of providing access to the proposed Land Rover dealership on the north side of Route 19, approximately 1,500 feet northeast from the intersection of Route 19 and Weavertown Road.

**E65-854. Westmoreland County Industrial Development Corporation**, Courthouse Square, Suite 601, 2 North Main Street, Greensburg, PA 15601. Five-span bridge in East Huntingdon Township, **Westmoreland County**, Pittsburgh ACOE District (Connellsville, PA Quadrangle N: 20.43 inches; W: 7.46 inches—Latitude: 40° 6' 45" and Longitude: 79° 33' 12"). The applicant proposes to remove the existing structure and to construct and maintain an 11.0-foot wide, five-span railroad bridge having normal spans of 11 feet, 12 feet, 14 feet, 14 feet and 13.0 feet and a minimum underclearance of 2.1 feet across Jacobs Creek (WWF). The project is off of SR 1027, 1 mile south of its intersection with SR 819.

**E65-855. Ligonier Township**, One Municipal Drive, Ligonier, PA 15658. Box culvert in Ligonier Township, **Westmoreland County**, Pittsburgh ACOE District (Wilpen, PA Quadrangle N: 0.4 inch; W: 7.56 inches—Latitude: 40° 15' 8" and Longitude: 79° 10' 45"). The applicant proposes to remove the existing structure and to construct and maintain a 24.5-foot long, 1.0-foot depressed, 7.0-foot by 5.0-foot concrete box culvert in an unnamed tributary to Mill Creek (CWF) for the purpose of improving transportation safety and roadway standards. The project is on Griffith Road.

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

**E37-163. Department of Transportation, District 11-0**, 45 Thoms Run Road, Bridgeville, PA 15017-2853. SR 4005, Section L02 over McClanahan Run in Pulaski Township, **Lawrence County**, ACOE Pittsburgh District (Edinburg, PA Quadrangle N: 17.75 inches; W: 5.06 inches).

To remove the existing structure and to construct and maintain an approximately 32.0-foot long, 24-foot wide by 11-foot high precast concrete pipe arch culvert in McClanahan Run (WWF) on SR 4005, Section L02, approximately 270 feet northwest of intersection T-605 (Heather Heights Road) and SR 4005. Project also includes widening and reconstruction of the roadway for approximately 260 feet.

**ENVIRONMENTAL ASSESSMENTS**

*Central Office: Bureau of Waterways Engineering, Rachel Carson State Office Building, Floor 3, 400 Market Street, Harrisburg, PA 17105.*

**D13-027EA. Bureau of Waterways Engineering,** P. O. Box 8460, Harrisburg, PA 17105-8460. Borough of Palmerton, **Carbon County,** ACOE Philadelphia District.

Project proposes to breach and remove Diversion Dam across the Lehigh River (TSF) to eliminate a threat to public safety and to restore the stream to a free flowing condition. The dam is adjacent to SR 248, approximately 1,000 feet downstream of Bowman Island, 1 mile southwest of the Town of Palmerton (Lehigh, PA Quad-range N: 7.6 inches; W: 1.4 inches).

**D46-245EA. Campbell, Edwards and Conroy,** 600 Lee Road, Suite 300, Wayne, PA 19087. Upper and Lower Providence Township, **Montgomery County,** ACOE Philadelphia District.

Project proposes to breach and remove Goodrich Dam across Perkiomen Creek (WWF, MF) for the purpose of eliminating a threat to public safety and restoring the stream to a free flowing condition to promote unobstructed fish passage. The dam is approximately 2,200 feet northeast of the intersection of Pawlings Road (SR 4004) and Wetherill Road (T605). The dam is approximately 1,400 feet upstream from the confluence of Perkiomen Creek and the Schuylkill River in Upper and Lower Providence Townships (Valley Forge, PA Quad-range N: 21.7 inches; W: 11.5 inches).

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

The Department of Environmental Protection (Department) has taken the following actions on previously received applications for new, amended and renewed NPDES and WQM permits, applications for permit waivers and Notices of Intent (NOI) for coverage under general permits. This notice is provided in accordance with 25 Pa. Code Chapters 91 and 92 and 40 CFR Part 122, implementing provisions of The Clean Streams Law (35 P. S. §§ 691.1—691.1001) and the Federal Clean Water Act.

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

Sections I—VI contain actions related to industrial, animal or sewage wastes discharges, discharges to groundwater and discharges associated with municipal separate storm sewer systems (MS4), stormwater associated with construction activities and concentrated animal feeding operations (CAFOs). Section VII contains notices for parties who have submitted 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**

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

<i>NPDES Permit No. (Type)</i>	<i>Facility Name and Address</i>	<i>County and Municipality</i>	<i>Stream Name (Watershed No.)</i>	<i>EPA Waived Y/N?</i>
PA0063045 IW	Polarized Meat Company, Inc. 107 Keystone Industrial Park Dunmore, PA 18512-0172	Lackawanna County Scott Township	South Branch Tunkhannock Creek 4F	Y

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

<i>NPDES Permit No. (Type)</i>	<i>Facility Name and Address</i>	<i>County and Municipality</i>	<i>Stream Name (Watershed No.)</i>	<i>EPA Waived Y/N?</i>
PA0003824 Industrial Waste	Nalco Company P. O. Box 391 Ellwood City, PA 16117	Franklin Township Beaver County	Unnamed tributary to Connoquenessing Creek and Connoquenessing Creek	Y
PA0031330 Sewage	Brownsville Area School District 1025 Lewis Street Brownsville, PA 15417	Fayette County Redstone Township	Unnamed tributary of Dunlap Creek	Y
PA0031402 Sewage	Brownsville Area School District 1025 Lewis Street Brownsville, PA 15417	Fayette County Luzerne Township	UNT of the Monongahela River	Y
PA0033626 Sewage	West Greene School District 1367 Hargus Creek Road Waynesburg, PA 15370	Greene County Center Township	Hargus Creek	Y
PA0093254 Sewage	Sugar Creek Rest, Inc. R. D. 2 Box 80 Worthington, PA 15262-9004	Armstrong County Sugarcreek Township	UNT of Patterson Run	Y
PA0098230 Sewage	Fort Cherry Area School District 110 Fort Cherry Road McDonald, PA 15057	Washington County Mt. Pleasant Township	Cherry Run	Y
PA0098973 Sewage	Conemaugh Township Supervisors 1120 Tire Hill Road Johnstown, PA 15905	Somerset County Paint Township	Stoney Creek	Y
PA0215945 Sewage	Trinity Area School District 231 Park Avenue Washington, PA 15301	Amwell Township Washington County	Little Tenmile Creek	Y
PA0216747 Sewage	Consol Pennsylvania Coal Company 172 Route 519 P. O. Box 355 Eighty Four, PA 15330	Washington County West Finley Township	Drainage swale of Robinson Fork	Y

**II. New or Expanded Facility Permits, Renewal of Major Permits and EPA Nonwaived Permit Actions**

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

**NPDES Permit No. PA0098761-A1**, Sewage, **NWL Company**, 1001 LaFayette Drive, Farmington, PA 15437. This proposed facility is in Wharton Township, **Fayette County**.

Description of Action/Activity: This amendment is to provide for the reuse of the Nemaocolin Woodlands sewage treatment plant effluent for snowmaking, golf course irrigation and wetland management.

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

*Southeast Region: Water Management Program Manager, 2 East Main Street, Norristown, PA 19401.*

**WQM Permit No. 1504410**, Sewerage, **London Grove Township Municipal Authority**, 372 Rosehill Road, Suite 300, West Grove, PA 19390. This proposed facility is in London Grove Township, **Chester County**.

Description of Proposed Action/Activity: Construction and operation of a sewage pumping station and force main.

**WQM Permit No. 1504402**, Sewerage, **Camp Hill Village—Kimberton Hills, Inc.**, P. O. Box 1045, Kimberton, PA 19442. This proposed facility is in West Vincent Township, **Chester County**.

Description of Proposed Action/Activity: Construction and operation of the Wetland Community Sewage Treatment System for a private residential development.

**WQM Permit No. 1595409**, Sewerage, **White Manor Country Club**, 831 Providence Road, Malvern, PA 19355. This proposed facility is in Willistown Township, **Chester County**.

Description of Proposed Action/Activity: Treatment lagoons with disinfection and spray irrigation.

**WQM Permit No. 1500421-E**, Sewerage, **Upper Uwchlan Township**, 140 Pottstown Pike, Chester Springs, PA 19425. This proposed facility is in Upper Uwchlan Township, **Chester County**.

Description of Proposed Action/Activity: Amending existing permit.

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

**WQM Permit No. 6704407**, Sewerage, **Jackson Township Sewer Authority**, 439 Roth's Church Road, Spring Grove, PA 17362. This proposed facility is in Jackson Township, **York County**.

Description of Proposed Action/Activity: Authorization for the construction of the Pahagaco Heights Pump Station and the Little Creek Road Sewer Extension.

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

**1404404**, Sewerage, SIC 4952, **Spring-Benner-Walker Joint Authority**, 170 Irish Hollow Road, Bellefonte, PA 16823. This proposed facility will be in Spring Township, **Centre County**.

Description of Proposed Action/Activity: Permit issued authorizing the construction and operation of a new suction lift pump station to (initially) serve 76 units in the Rosewood Cove Residential Subdivision. The project will also include the construction of a gravity sewer and force main.

**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: Issuance of a WQM permit authorizing 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).

**1804201**, Industrial Waste, SIC 2621, **First Quality Tissue, LLC**, 599 South Highland Street, Lock Haven, PA 17745-3431. This existing facility is in Castanea Township, **Clinton County**.

Description of Proposed Action/Activity: Permit is issued, authorizing the renovation and operation of the existing industrial waste treatment system serving the new papermaking process at the facility. Discharge will be to Bald Eagle Creek (WWF).

**WQM Permit No. 4704401**, Sewage 4952, **Doris F. Phillips**, 26 Strick Road, Danville, PA 17821. This proposed facility is in Limestone Township, **Montour County**.

Description of Proposed Action/Activity: The applicant proposes to construct and operate a single residence sewage plant. The sewage plant will be a septic tank, buried filter and chlorination.

**WQM Permit No. 1704402**, Sewerage 4952, **Woodward Township Sewage and Water Authority**, 131 Punkin Hollow Drive, Houtzdale, PA 16651. This proposed facility is in Woodward Township, **Clearfield County**.

Description of Proposed Action/Activity: The Nicholas Wolff Foundation, Inc. has been approved to convert the existing holding tank into an equalization tank at the Camp Victory Wastewater Treatment Plant. The proposed conversion will allow to plant to more effectively treat seasonal peak flows.

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

**WQM Permit No. 0303405**, Industrial Waste, **Kittanning Suburban Joint Water Authority**, R. R. 1, Box 23, Adrian, PA 16210-9712. This proposed facility is in East Franklin Township, **Armstrong County**.

Description of Proposed Action/Activity: Construction of wastewater treatment facilities.

**WQM Permit No. 0204405**, Sewage, **Ohio Township Sanitary Authority**, 1719 Roosevelt Road, Pittsburgh, PA 15237. This proposed facility is in Ohio Township and Sewickley Hills Borough, **Allegheny County**.

Description of Proposed Action/Activity: Construction of sewage treatment plant and intercepting sewers to serve the Kilbuck Run Sewage Treatment Plant.

**WQM Permit No. 0404403**, Sewerage, **Beaver County Corporation for Economic Development**, 250 Insurance Street, Suite 300, Beaver, PA 15009. This proposed facility is in Big Beaver Borough, **Beaver County**.

Description of Proposed Action/Activity: Construct approximately 2,300 feet of 8-inch diameter gravity sewers, approximately 660 feet of 4-inch diameter force main and a submersible type wastewater pump station to serve the proposed CED Route 18 Business Park.

**WQM Permit No. WQG016101**, Sewerage, **Mount Carmel Hermitage**, R. R. 1 Box 330-C, Bolivar, PA 15923. This proposed facility is in Fairfield Township, **Westmoreland County**.

Description of Proposed Action/Activity: To construct a small flow treatment facility to serve the Mount Carmel Hermitage.

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

**WQM Permit No. WQG018302**, Sewerage, **Barbara A. and John R. Miles**, 6366 Heidler Road, Fairview, PA 16415. This proposed facility is in Beaver Township, **Crawford County**.

Description of Proposed Action/Activity: Sewage discharge for a single residence.

**WQM Permit No. 6104403**, Sewerage, **Richard A. and Tambra W. Sabatini**, 349 Turkey Farm Road, Titusville, PA 16354. This proposed facility is in Cherrytree Township, **Venango County**.

Description of Proposed Action/Activity: Sewage discharge for a single residence.

**WQM Permit No. WQG018304**, Sewerage, **Kris Risto**, 9595 Donation Road, Waterford, PA 16441. 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**

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

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI041404007	Richard and Brooke Frautschi 214 Blackberry Hill Road Port Matilda, PA 16870	Centre	Patton Township	Buffalo Run HQ-CWF

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

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI063704001	D & D Development, LP 107 Taylor Street New Castle, PA 16101  Linton Industries, Inc. 2 George Street Ext. New Castle, PA 16101  Riverview Park Development US Route 422 New Castle, PA 16101	Lawrence	New Castle City	Shenango River WWF

#### **VII. Approvals to Use NPDES and/or Other General Permits**

The EPA Region III Administrator has waived the right to review or object to this permit action under the waiver provision 40 CFR 123.23(d).

#### **List of NPDES and/or Other General Permit Types**

PAG-1	General Permit for Discharges from Stripper Oil Well Facilities
PAG-2	General Permit for Discharges of Stormwater Associated with Construction Activities (PAR)
PAG-3	General Permit for Discharges of Stormwater from Industrial Activities
PAG-4	General Permit for Discharges from Single Residence Sewage Treatment 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*

<i>Facility Location and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office and Telephone No.</i>
Pocopson Township Chester County	PAG200150117-1	County of Chester Chester County Prison Expansion 14 East Biddle Street West Chester, PA 19380	Unnamed tributary Pocopson Creek TSF, MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
West Caln Township Chester County	PAG2001504066	Simmers Builders, Inc. 1035 West Lincoln Highway Coatesville, PA 19320	Rock Run TSF, MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Bethel Township Delaware County	PAG2002304044	Stephen Conrad P. O. Box 251 Chester Heights, PA 19017	East Branch Chester Creek TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Abington Township Montgomery County	PAG2004604117	Road-Con, Inc. St. Basil Academy 917 Old Fern Road Suite 5400 West Chester, PA 19380	Jenkintown Creek WWF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Lower Moreland Township Montgomery County	PAG2004604060	Nolan Brothers of Texas, Inc. Nolan Self Storage 57 Main Street P. O. Box 243 Fort Worth, TX 76109	Huntingdon Valley Creek TSF, MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Lower Salford Township Montgomery County	PAG2004604053	Lower Salford Township Authority Alderfer Road Pump Station Upgrade 57 Main Street P. O. Box 19451 Mainland, PA 19451	Skippack Creek TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Upper Providence Township Montgomery County	PAG2004604088	Iron Mountain, Inc. Iron Mountain Parking Addition 745 Atlantic Avenue Boston, MA 02111	Doe Run TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Lower Salford Township Montgomery County	PAG2004604014	Whitehall Homes, Inc. Detwiler Tract 1620 Bustard Road Kulpville, PA 19443	West Branch Skippack Creek TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Upper Gwynedd Township Montgomery County	PAG2004604107	Merck and Company, Inc. Merck Office Complex Expansion Phase 2 351 Sumneytown Pike North Wales, PA 19454	Doeworth Run TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Upper Hanover Township Montgomery County	PAG2004604046	Corrado Homes, Inc. Wild Run Road Subdivision 1021 Egypt Road Oaks, PA 19456	Perkiomen Creek CWF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Glenburn Township Lackawanna County	PAG2003504028	Frank Columbo P. O. Box O Clarks Summit, PA 18411	Ackerly Creek TSF	Lackawanna County Conservation District (570) 281-9495
Salem Township Luzerne County	PAG2004004017	Randall Rinehimer 1507 Salem Blvd. Berwick, PA 18603	Susquehanna River CWF	Luzerne County Conservation District (570) 674-7991

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<i>Facility Location and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office and Telephone No.</i>
Forks Township Northampton County	PAG2004804016	Gary Cleaver Segal & Morel at Forks Township X, LLC 991 Highway 22 West Bridgewater, NJ 08807	UNT Delaware River CWF	Northampton County Conservation District (610) 746-1971
Pine Grove Township Schuylkill County	PAG2005404018	Pine Grove Joint Treatment Authority P. O. Box 426 Pine Grove, PA 17963	Unnamed tributary to Swatara Creek CWF	Schuylkill County Conservation District (570) 622-3742
New Milford Township Susquehanna County	PAG2005804006	Andrew Steitz and Theresa Sullivan R. R. 4, Box 200 Walton, NY 13865	Nine Partners Creek CWF	Susquehanna County Conservation District (570) 278-4600
Greenwich Township Berks County	PAG2000604083	Fred Vertucci Land Development Plant 130 Rhoades Road Kutztown, PA 19530	Mill Creek into Sacony Creek WWF	Berks County Conservation District (610) 372-4657, Ext. 201
Indiana County Indiana Borough	PAG2003204012	Optimist Club of Indiana PA 724 Church Street Indiana, PA 15701	Marsh Run CWF	Indiana County Conservation District (724) 463-8547
Butler County Cranberry Township	PAG2001004010	Christopher J. Kaclik Future Dev. Group, LP Heritage Creek Phase II 141 Crowe Avenue Mars, PA 16046	UNT Kaufman Run WWF	Butler County Conservation District (724) 284-5270
Butler County Slippery Rock Township	PAG2001004016	Amerikohl Mining Inc. Branchton Act 181 Reclamation Site 202 Sunset Drive Butler, PA 16001	Tributaries to McMurray Run— Slippery Rock Creek CWF	Butler County Conservation District (724) 284-5270
Jefferson County Washington Township	PAG2003304003	Glenn O. Hawbaker 1952 Waddle Road State College, PA 16803	Horn Run CWF	Jefferson County Conservation District (814) 849-7463
Venango County Oil Creek and Allegheny Townships	PAG2006104005	Belden & Blake Corp. 22811 Titusville Road Pleasantville, PA 16341	UNT Pithole Creek CWF	Venango County Conservation District (814) 676-2832

*General Permit Type—PAG-3*

<i>Facility Location and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office and Telephone No.</i>
Lehigh Township Northampton County	PAR112217	Martin Sprocket & Gear, Inc. P. O. Box 267 3376 Delps Road Danielsville, PA 18038	Indian Creek CWF	NERO Water Management Program 2 Public Square Wilkes-Barre, PA 18711-0790 (570) 826-2511
Allegheny County Sharpsburg Township	PAR146103	International Paper 23rd Street Extension Sharpsburg, PA 15215	Guyasuta Creek to Allegheny River	Southwest Regional Office Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000

<i>Facility Location and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office and Telephone No.</i>
Beaver County Rochester Township	PAR156102	Valspar Coatings 372 Cleveland Street Rochester, PA 15074	UNT of Beaver River	Southwest Regional Office Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
Beaver County Ambridge Borough	PAR206112	CENTRIA 1005 Beaver Grade Road Moon Township, PA 15108-2944	Ohio River	Southwest Regional Office Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
<i>General Permit Type—PAG-4</i>				
<i>Facility Location and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office and Telephone No.</i>
Sheshequin Township Bradford County	PAG045184	Lowell Patton R. R. 1, Box 196A Towanda, PA 18848	Unnamed tributary to Susquehanna River WWF	Northcentral Regional Office Water Management Program 208 West Third Street Suite 101 Williamsport, PA 17701 (570) 327-3664
Limestone Township Montour County	PAG045183	Doris F. Phillips 26 Strick Road Danville, PA 17821	Storm Drain to County Line Branch WWF	Northcentral Regional Office Water Management Program 208 West Third Street Suite 101 Williamsport, PA 17701 (570) 327-3664
Morris Township Clearfield County	PAG045180	Department of Environmental Protection 186 Enterprise Drive Philipsburg, PA 16840-0209	Hawk Run CWF	Northcentral Regional Office Water Management Program 208 West Third Street Suite 101 Williamsport, PA 17701 (570) 327-3664
Conewango Township Warren County	PAG049002	Carol L. and James M. Lopez 191 Scott Run Road Warren, PA 16365	Scott Run	NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942
Summit Township Erie County	PAG048964	Kris Risto 9595 Donation Road Waterford, PA 16441	Unnamed tributary to Walnut Creek NWRO	Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942
Cussewago Township Crawford County	PAG049000	Thomas E. Mook P. O. Box 1077 Saegertown, PA 16433	Unnamed tributary to Cussewago Creek	NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942

*General Permit Type—PAG-5*

<i>Facility Location and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office and Telephone No.</i>
Third Street Office/Lycoming Gas & Oil Facility No. 41-12611 Loyalsock Township Centre County	PAG054834	Lycoming Gas & Oil Corporation 1450 East Third Street Williamsport, PA 17701	Miller's Run	Northcentral Regional Office Environmental Cleanup 208 W. Third St. Suite 101 Williamsport, PA 17701-6448 (570) 321-6550

*General Permit Type—PAG-13*

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

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>	<i>Department Protocol (Y/N)</i>
PAG132260	Pennsylvania State University 101P Office of Physical Plant University Park, PA 16802-1118	Lackawanna	Dunmore Borough	Unnamed tributary to Lackawanna River CWF	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.**

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

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<b>Permit No. 4189514-T2</b> , Public Water Supply.	
Applicant	<b>Livermore Family Trust</b>
Township or Borough	Armstrong Township
County	<b>Lycoming</b>
Responsible Official	Livermore Family Trust c/o Nelson Livermore, Trustee 1207 Hepburn Street Williamsport, PA 17701
Type of Facility	PWS—Operation.
Permit Issued Date	August 26, 2004
Description of Action	Operation of the Chad-Lee Mobile Home Park water system.
<b>Permit No. Minor Amendment</b> , Public Water Supply.	
Applicant	<b>Pennsylvania American Water Company</b>
Township or Borough	White Deer Township
County	<b>Union</b>
Responsible Official	Pennsylvania American Water Company c/o Steven Seidl, Vice President, Engineering 800 Hersheypark Drive Hershey, PA 17033
Type of Facility	PWS—Operation.
Consulting Engineer	Scott Thomas, P. E. Pennsylvania American Water Company 800 Hersheypark Avenue Hershey, PA 17033
Permit Issued Date	August 26, 2004
Description of Action	Operation of purification unit 1.

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

**Operations Permit** issued to **Cooperstown Water Company**, P. O. Box 397, Reno, PA 16343, PWS ID 6610017, Cooperstown Borough, **Venango County**, on August 25, 2004, for the operation of two 1,200-gallon polyethylene tanks, as approved under Construction Permit No. 6188503-MA1.

**SEWAGE FACILITIES ACT PLAN APPROVAL****Plan Approvals Granted under the Pennsylvania Sewage Facilities Act (35 P. S. §§ 750.1—750.20a)**

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

## Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Borough of Coaldale	P. O. Box 116 Coaldale, PA 18218	Schuylkill

**Plan Description:** The Department agrees with the conclusions/course of action proposed in the Corrective Action Plan Final Report (Report), dated February 2003 (received by the Department on March 12, 2003) with additional materials dated March 10, 2003 (received by the Department on March 17, 2003), and March 17, 2004 (received by the Department on March 22, 2004), as prepared by Edward J. Gaydos Inc., on behalf of the Borough of Coaldale (Borough).

The Report/Special Study is approved. The Borough should now complete implementation of the corrective tasks/activities outlined in the Report. The Department will continue its role in monitoring the Borough's final completion of the tasks/activities outlined in the Report. The Borough also needs to provide an update to the Department detailing the progress of the Borough's implementation of the tasks/activities outlined in the Report. This progress report should be included as part of the Borough's required, annual submission to the Coaldale-Lansford-Summit Hill Sewer Authority's Annual Municipal Wasteload Management Report.

## Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Foster Township	P. O. Box 465 Freeland, PA 18224	Luzerne

**Plan Description:** The approval of the Plan is conditioned, though, upon ultimate compliance with the provisions of the History Code (37 Pa.C.S. § 507). The costs of conducting any required survey work related to compliance with the History Code must be included in the cost of the proposed sewage facilities project. If recovery work or system redesign is required as a result of attaining compliance with the requirements of the Historical and Museum Commission, the Department's Northeast Regional Office must be notified immediately.

The Plan calls for the implementation of Alternative No. 1 as described in the Plan. Alternative No. 1 calls for the abandonment of the Hickory Hills and Ag-Mar Estates Wastewater Treatment Facilities currently owned by Foster Township (Township). The Hickory Hills Wastewater Treatment Facility will be replaced by a pump station, 6-inch force main and 8-inch gravity conveyance line that will convey the development's wastewater to the proposed Ag-Mar Estates Wastewater Pump Station. The existing Ag-Mar Estates Wastewater Treatment Facility will be abandoned and replaced by this proposed pump station, a 6-inch force main and an 8-inch gravity conveyance line. This pump station and force main will convey all of the wastewater received from the Hickory Hills and Ag-Mar Estates wastewater collection systems to a high point on SR 0940. At this high point, wastewater flow will transition from the 6-inch force main to an 8-inch gravity conveyance line. Wastewater will then flow through this

8-inch conveyance line to the existing pump station on Power House Road. The existing on-lot disposal systems servicing properties adjacent to SR 0940 along the route of the proposed 8-inch conveyance line will be abandoned and the structures on these properties will connect to the proposed conveyance line.

The existing Power House Road Pump Station will be upgraded to accommodate the additional wastewater flow conveyed to it from the proposed Hickory Hills, Ag-Mar Estates and SR 0940 service areas in the Township. Wastewater from the Power House Road Pump Station will be conveyed through the existing force main and White Haven Borough Wastewater Collection System. Portions of the gravity wastewater collection system serving White Haven Borough will be upgraded to accommodate the additional wastewater flow from the project area. Ultimate treatment of the project area's wastewater will occur at the Suburban Wastewater Company's (a/k/a Aqua Pennsylvania Inc.) Wastewater Treatment Facility in White Haven Borough. This existing facility's NPDES permitted capacity will be increased by 0.150 mgd from its current permitted capacity of 0.450 mgd. Treated wastewater will continue to be discharged to the Lehigh River.

The Plan also calls for the rehabilitation and repair of various portions of the existing wastewater collection systems within the Hickory Hills and Ag-Mar Estates developments. These actions are necessary to reduce the amount of excessive infiltration and inflow that is currently entering both wastewater collection systems.

Financing of the wastewater collection and conveyance systems is to be provided by the Pennsylvania Infrastructure Investment Authority.

Implementation of the proposed project will require an NPDES permit application submission for the 0.150 mgd increase in the discharge at Suburban Wastewater Company's (a/k/a Aqua Pennsylvania Inc.) Wastewater Treatment Facility in White Haven Borough. The proposed project will also require a Water Management Part II Permit for the construction and operation of the proposed sewage facilities. Issuance of a Part II Permit will be based upon a technical evaluation of the permit application and supporting documentation. Starting construction prior to obtaining a Part II Permit is a violation of The Clean Streams Law. Both permits shall be obtained by the appropriate owners of the wastewater disposal facilities.

Other Departmental permits may be required for construction if encroachment to streams or wetlands will result. The Department's review has also not identified any significant environmental impacts resulting from this proposal.

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

## Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Jackson Township	439 Roth's Church Road Spring Grove, PA 17362	York

**Plan Description:** Pahagaco Hills, A3-67931-192-3: The approved plan provides for a 64-lot single-family residential subdivision on 33.362 acres with 17,900 gpd tributary to the Jackson Township Wastewater Treatment Plant. The subdivision is on the north side of Pahagaco Road, approximately 500 feet west of Roth's Church Road in Jackson Township, York County. Any required NPDES



permits or WQM permits must be obtained in the name of the municipality or authority as appropriate.

### **BIOSOLIDS INDIVIDUAL PERMITS**

#### **(PABIG, SSN and PABIS)**

The Department of Environmental Protection has taken the following actions on the previously received individual permit applications for the land application of treated sewage sludge (biosolids).

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.

*Central Office: Water Management Program Manager, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA 17105, (717) 787-8184.*

**PABIG 9903. Synagro Mid-Atlantic, Inc.**, 7014 East Baltimore Street, Baltimore, MD is approved for an Individual Generator Permit for the beneficial use of biosolids by land application.

### **HAZARDOUS SITES CLEANUP UNDER THE ACT OF OCTOBER 18, 1988**

#### **Prompt Interim Response**

#### **Eastmont Dry Cleaners, Monroeville Borough, Allegheny County**

The Department of Environmental Protection (Department), under the authority of the Hazardous Sites Cleanup Act (HSCA) (35 P. S. §§ 6020.101—6020.1305), has initiated a prompt interim response at the Eastmont Dry Cleaner Site (Site), 4137 William Penn Highway, Borough of Monroeville, Allegheny County. This response has been initiated under sections 501(a) and 505(b) of the HSCA (35 P. S. §§ 6020.501(a) and 6020.505(b)).

The property has been the location of dry cleaning operations dating to 1970. Analytical data generated by Walnut Capital, a prospective buyer for the Site, indicates that groundwater onsite and offsite in the area of Kenmar Drive is contaminated with tetrachloroethene (PCE), trichloroethene (TCE) and other chlorinated hydrocarbons.

Due to concerns of vapor intrusion into residences on Kenmar Drive, the Department conducted an investigation in the area in May 2004. Indoor air samples were taken at eight homes along Kenmar Drive. The results of the indoor air analyses indicated that PCE was present in seven of the eight homes sampled. In addition, the levels of PCE detected exceeded the Act 2 indoor air standard in three of the eight homes sampled.

To protect the affected residents on Kenmar Drive against the inhalation of hazardous contaminants, the Department initiated a prompt interim response. The Department hired Shaw Environmental & Infrastructure, Inc. to install "reverse flow" radon remediation systems to address the indoor air problems at eight residences on Kenmar Drive. Installation of the systems took place in August 2004. Follow up sampling of the residences will be conducted to ensure that the systems are functioning as anticipated.

This notice is being provided under sections 505(b) and 506(b) of the HSCA. The administrative record, which contains the information that forms the basis and documents the selection of this response action, is available for public review and comment Monday through Friday from 8 a.m. to 4 p.m. at the Department of Environmental Protection, 400 Waterfront Drive, Pittsburgh, PA.

The administrative record will be open for comments from September 11, 2004, until December 11, 2004. Persons may submit written comments into the record, during this time only, by sending them to Paul Vogel, Department of Environmental Protection, 400 Waterfront Drive, Pittsburgh, PA 15222 or by delivering them to this office in person.

In addition, persons may present oral comments, for inclusion in the administrative record, at a public hearing on Thursday, October 21, 2004, at 6 p.m. at the Monroeville Municipal Building, 2700 Monroeville Blvd., Monroeville, PA. Persons wishing to present comments must register before October 21, 2004, with Helen Humphreys Short, 400 Waterfront Dr., Pittsburgh, PA 15222, (412) 442-4183.

Persons with a disability who wish to attend the hearing and require auxiliary aid, service or other accommodations to participate in the proceedings should call Helen Humphreys Short at (412) 442-4183 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

### **LAND RECYCLING AND ENVIRONMENTAL REMEDIATION**

#### **UNDER ACT 2, 1995**

#### **PREAMBLE 3**

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**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).**

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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:

*Northwest Region: Environmental Cleanup Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.*

**National Castings Former**, City of Sharon, **Mercer County**. Deborah Perry, Compliance Env. Services, 2700 Kirila Drive, Hermitage, PA 16148, on behalf of David Grande, Shenango Valley Industrial Development Corp., 41 Chestnut Street, Sharon, PA 16146 has submitted a Baseline Environmental Report concerning the remediation of site soil and groundwater contaminated with chlorinated solvents, diesel fuel, fuel oil nos. 1, 2, 4 and 6, inorganics, kerosene, leaded gasoline, lead, MTBE, new motor oil, other organics, PCB, unleaded gasoline and used motor oil. The Baseline Environmental Report was approved by the Department on August 25, 2004.

**Kathleen Kopta (Grace Church Secondary Property)**, Sandy Creek Township, **Mercer County**. Jeff Trotter, ECS&R, 3237 US Highway 19, Cochranton, PA 16314 on behalf of Kathleen Kopta, Owner, has submitted a Final Report concerning remediation of site soil and groundwater contaminated with no. 2 heating oil. The report is intended to document remediation of the site to meet the Residential Statewide Health Standards.

**Deluxe Storage Systems, Inc.**, City of Warren, **Warren County**. Mark A Spence, W J Smith & Assoc. Inc.,

P. O. Box 153, Corry, PA 16407 on behalf of Struthers Street Realty, 415 Madison Ave., 7th Floor, New York, NY 10017, has submitted a Final Report concerning remediation of site soil and groundwater contaminated with solvents. The report is intended to document remediation of the site to meet the Statewide Health Standards.

#### **OPERATE WASTE PROCESSING OR DISPOSAL AREA OR SITE**

**Permits Approved under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003), the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101—4000.1904) and regulations to operate solid waste processing or disposal area or site.**

*Northeast Region: Regional Solid Waste Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.*

**Permit No. 301304. Northeastern Power Company (NEPCO)**, P. O. Box 7, McAdoo, PA 18237-0007. Per 25 Pa. Code § 287.505, the Department hereby gives notice that NEPCO has submitted a Final Report regarding the Big Gorilla Demonstration Facility Permit for the demonstration of an innovative mine reclamation methodology (involving the placement of trucked coal ash into a water-filled strip pit for purposes of reclamation). This reclamation took place at the Big Gorilla Pit within Kline Township, **Schuylkill County**. The Department seeks public comment in regard to the Final Report. Copies of the Final Report are available for review at the Northeastern Regional Office, 2 Public Square, Wilkes-Barre, PA 18711-0790, (570) 826-2511 and the Mining & Reclamation Program, Pottsville District Office, 5 West Laurel Blvd., Pottsville, PA 17901, (570) 621-3118.

#### **AIR QUALITY**

**Plan Approvals Issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) 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.**

*Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481; Devendra Verma, New Source Review Chief, (814) 332-6940.*

**24-083F: Carbone of America Industrial Corp.** (215 Stackpole Street, Saint Mary's, PA 15857) on August 20, 2004, to construct carbon baking kiln no. 34 with a thermal oxidizer and connecting to an existing scrubber in St. Mary's City, **Elk County**. This is a Title V facility.

**16-132C: Aconcagua Timber Corp.** (143 Fiberboard Road, Box 340, Shippensburg, PA 16245) on August 24, 2004, to replace an existing prefilter with a Turbo Venturi Scrubber in Paint Township, **Clarion County**. The facility is a Title V Facility.

**Plan Approval Revisions Issued including Extensions, Minor Modifications and Transfers of Ownership under the Air Pollution Control Act and 25 Pa. Code §§ 127.13, 127.13a and 127.32.**

*Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401; Thomas McGinley, New Source Review Chief, (484) 250-5920.*

**09-0133: Webcraft, LLC** (250 W. Pratt Street, 18th Floor, Baltimore, MD 21201) on August 26, 2004, to operate four lithographic printing presses in Bristol Township, **Bucks County**.

**23-0066A: PyroPure, Inc. t/a Pyromet, Inc.** (5 Commerce Drive, Aston, PA 19014) on August 27, 2004, to operate a crucible and rotary furnace in Chester Township, **Delaware County**.

**46-0036A: Visteon Systems LLC** (2750 Morris Road, Lansdale, PA 19446) on August 24, 2004, to operate an area selective catalytic reduction in Worcester Township, **Montgomery County**.

**46-0062: Jefferson Smurfit Corp.—US** (500 Church Road, North Wales, PA 19454) on August 24, 2004, to operate a thermal oxidizer on printing press no. 502 in Upper Gwynedd Township, **Montgomery County**.

*Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745; William Charlton, New Source Review Chief, (412) 442-4174.*

**32-00365B: Rosebud Mining Co.** (301 Market Street, Kittanning, PA 16201) on August 27, 2004, to construct a coal preparation plant and air jig at their Dutch Run Deep M/Parker Mine in Washington Township, **Indiana County**. This plan approval was extended.

**03-00229D: Rosebud Mining Co.** (301 Market Street, Kittanning, PA 16201) on August 27, 2004, to construct a coal preparation plant in Bethel Township, **Armstrong County**. This plan approval was extended.

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**Operating Permits for Non-Title V Facilities Issued under the Air Pollution Control Act and 25 Pa. Code Chapter 127, Subchapter F.**

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*Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401; Edward Jurdones Brown, Facilities Permitting Chief, (484) 250-5920.*

**46-00177: Mass Lamination, Inc.** (2280-A Amber Drive, Hatfield, PA 19440) on August 25, 2004, to operate a facility natural minor operating permit in Hatfield Township, **Montgomery County**.

**09-00161: Giles and Ransome, Inc.** (2975 Galloway Road, Bensalem, PA 19020) on August 24, 2004, to operate a facility synthetic minor operating permit in Bensalem Township, **Bucks County**.

**23-00035: Community Light and Sound, Inc.** (333 East Fifth Street, Chester, PA 19013) on August 24, 2004, to operate a facility synthetic minor operating permit in City of Chester, **Delaware County**.

*Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Ronald Davis, New Source Review Chief, (717) 705-4702.*

**67-05101: Kinsley Construction, Inc.** (P. O. Box 2886, York, PA 17403) on August 25, 2004, to operate a drum mix asphalt plant in West Manchester Township, **York County**.

*Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745; Mark Wayner, Facilities Permitting Chief, (412) 442-4174.*

**63-00101: Maple Creek Mining, Inc.** (981 Route 917, Bentleyville, PA 15314) on August 24, 2004, to operate their coal preparation plant in New Eagle Borough, **Washington County**.

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**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.**

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*Department of Public Health, Air Management Services: 321 University Avenue, Philadelphia, PA 19104; Edward Braun, Chief, (215) 823-7584.*

**S04-005: Tasty Baking Co.** (2801 Hunting Park Avenue, Philadelphia, PA 19129-1392) on August 26, 2004, to administratively amend to add conditions for two boilers in the City of Philadelphia, **Philadelphia County**. The Synthetic Minor Operating Permit was originally issued July 2, 2004.

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**De Minimis Emissions Increases Authorized under 25 Pa. Code § 127.449.**

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*Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745; Mark Wayner, Facilities Permitting Chief, (412) 442-4174.*

**65-00061: RAM Terminals** (One Fifth Street, New Kensington, PA 15058-6537) on August 25, 2004, to operate a roll crusher in **Westmoreland County**. The crushed material from the roll crusher is transported by conveyor to the SECO screen. This operation is totally enclosed and it is estimated that less than .01 ton of PM emissions will be discharged from the roll crusher. The addition of the roll crusher is authorized as a de minimis emission increases specified under 25 Pa. Code § 127.449.

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**ACTIONS ON COAL AND NONCOAL MINING ACTIVITY APPLICATIONS**

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**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).**

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*Coal Permits Actions*

*Knox District Mining Office: P. O. Box 669, Knox, PA 16232, (814) 797-1191.*

**16990104 and NPDES Permit No. PA0241563. Original Fuels, Inc.** (P. O. Box 343, Punxsutawney, PA 15767). Renewal of an existing bituminous strip operation in Porter Township, **Clarion County** affecting 208.5 acres. This renewal is issued for reclamation only. Receiving streams: two unnamed tributaries to Leatherwood Creek and one unnamed tributary to West Fork Leatherwood Creek. Application received June 28, 2004. Permit issued August 23, 2004.

**61990102 and NPDES Permit No. PA0228036. Ben Hal Mining Company** (389 Irishtown Road, Grove City, PA 16127). Renewal of an existing bituminous strip operation in Clinton and Venango Townships, **Venango and Butler Counties** affecting 40.7 acres. This renewal is issued for reclamation only. Receiving streams: unnamed tributary to Scrubgrass Creek. Application received June 28, 2004. Permit issued August 23, 2004.

**16040101 and NPDES Permit No. PA0242489. Ben Hal Mining Company** (389 Irishtown Road, Grove City, PA 16127). Commencement, operation and restoration of a bituminous strip operation in Limestone Township, **Clarion County** affecting 29.5 acres. Receiving streams: Piney Creek. Application received November 17, 2003. Permit issued August 24, 2004.

*California District Mining Office: 25 Technology Drive, Coal Center, PA 15423, (724) 769-1100.*

**56001301. NPDES Permit No. PA0235393, Genesis, Inc. d/b/a Meadow Run Genesis, Inc.** (P. O. Box 552, Somerset, PA 15501-0552), to revise the permit for the Genesis No. 17 Mine in Lincoln Township, **Somerset County** to add acreage to the subsidence control plan area. SCP Acres Proposed 924.0. No additional discharges. Permit issued August 23, 2004.

**32991301. NPDES Permit No. PA0215228, AMFIRE Mining Company, LLC** (One Energy Place, Latrobe, PA 15650), to transfer the permit for the Nolo Mine in Buffington, Pine, Cherryhill and Brush Valley Townships, **Indiana County** and related NPDES permit from DLR Mining, Inc. No additional discharges. Permit issued August 25, 2004.

**32851302. NPDES Permit No. PA0213934, Helvetia Coal Company** (P. O. Box 219, 400 Overview Drive, Shelocta, PA 15774), to renew the permit for the Lucerne No. 6-E Mine in Black Lick Township, **Indiana County** and related NPDES permit. No additional discharges. Permit issued August 27, 2004.

*Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, (814) 342-8200.*

**17030108 and NPDES Permit No. PA0243507. Larry D. Baumgardner Coal Co., Inc.** (P. O. Box 186, Lanse, PA 16849). Commencement, operation and restoration of bituminous surface mine permit in Woodward Township, **Clearfield County** affecting 176 acres. Receiving streams: North Branch. Application received May 14, 2003. Permit issued August 19, 2004.

**17010106 and NPDES Permit No. PA0243086. AMFIRE Mining Co., LLC** (One Energy Place, Latrobe, PA 15850). Transfer of an existing bituminous surface mine-auger permit from Moravian Run Reclamation Co., Inc. The permit is in Woodward Township, **Clearfield County** and affects 286.7 acres. Receiving streams: unnamed tributary to Upper Morgan Run. Application received April 7, 2004. Permit issued August 19, 2004.

**17010105 and NPDES Permit No. PA0243078. AMFIRE Mining Co., LLC** (One Energy Place, Latrobe, PA 15850). Transfer of an existing bituminous surface mine permit from Moravian Run Reclamation Co., Inc. The permit is in Knox Township, **Clearfield County** and affects 29.9 acres. Receiving streams: unnamed tributary to Potts Run. Application received April 27, 2004. Permit issued August 19, 2004.

**17990901 and NPDES Permit No. PA0238295. AMFIRE Mining Co., LLC** (One Energy Place, Latrobe, PA 15850). Transfer of an existing bituminous surface mine permit from Moravian Run Reclamation Co., Inc. The permit is in Morris Township, **Clearfield County** and affects 22.6 acres. Receiving streams: unnamed tributaries to Moshannon Creek. Application received April 27, 2004. Permit issued August 19, 2004.

**17714022 and NPDES Permit No. PA0611034. A. W. Long Coal Company** (1203 Presqueisle Street, Philipsburg, PA 16866). Renewal of an existing bituminous surface mine permit in Morris Township, **Clearfield**

**County** affecting 149.6 acres. Receiving streams; Hawk Run to Moshannon Creek and Moshannon Creek to West Branch Susquehanna River to Susquehanna River. Application received May 10, 2004. Permit issued August 18, 2004.

*Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, (814) 472-1900.*

**56030106 and NPDES Permit No. PA0249513. Action Mining, Inc.**, 1117 Shaw Mines Road, Meyersdale, PA 15552, commencement, operation and restoration of a bituminous surface mine in Summit Township, **Somerset County**, affecting 370.0 acres. Receiving streams: Casselman River (WWF); unnamed tributaries (CWF); unnamed tributaries to/and Elk Lick Creek (CWF). There are no potable water supply intakes within 10 miles downstream. Application received August 7, 2003. Permit issued August 25, 2004.

#### *Noncoal Permits Actions*

*Knox District Mining Office: White Memorial Building, P. O. Box 669, Knox, PA 16232-0669, (814) 797-1191.*

**20042803. Meadville Land Service, Inc.** (10551 S. Watson Run Road, Meadville, PA 16335). Commencement, operation and restoration of small noncoal shale operation in Union Township, **Crawford County** affecting 5.0 acres. Receiving streams: unnamed tributary to Conneaut Outlet. Application received May 28, 2004. Permit issued August 20, 2004.

**37030305 and NPDES Permit No. PA0242543. Glacial Sand & Gravel Co.** (P. O. Box 1022, Kittanning, PA 16201). Commencement, operation and restoration of a large noncoal sand and gravel operation in Plain Grove Township, **Lawrence County** affecting 98.2 acres. Receiving streams: unnamed tributary to Jamison Run. Application received November 17, 2003. Permit issued August 20, 2004.

**4950-37030305-E-1. Glacial Sand & Gravel Co.** (P. O. Box 1022, Kittanning, PA 16201). Application for a stream encroachment to conduct mining activities within 100 feet but no closer than 50 feet to unnamed tributary no. 2 to Jamison Run in Plain Grove Township, **Lawrence County**. Receiving streams: unnamed tributary to Jamison Run. Application received November 17, 2003. Permit issued August 20, 2004.

*Pottsville District Mining Office: 5 W. Laurel Boulevard, Pottsville, PA 17901, (570) 621-3118.*

**6376SM2A1C3. York Building Products Co., Inc.** (P. O. Box 1708, York, PA 17405), depth correction for an existing quarry operation in Jackson Township, **York County** affecting 282.5 acres, receiving stream: Little Conewago Creek. Application received March 31, 2003. Correction issued August 23, 2004.

**6376SM2A1C4 and NPDES Permit No. PA0594474. York Building Products Co., Inc.** (P. O. Box 1708, York, PA 17405), NPDES Permit renewal for discharge of treated mine drainage from a quarry in Jackson Township, **York County**, receiving stream: Little Conewago Creek. Application received June 8, 2004. Renewal issued August 23, 2004.

**8074SM1C and NPDES Permit No. PA0013722. Glasgow, Inc.** (P. O. Box 1089, Glenside, PA 19038), renewal of NPDES Permit for discharge of treated mine drainage from a quarry operation in Montgomery Township, **Montgomery County**, receiving stream: Park Creek. Application received July 12, 2004. Renewal issued August 25, 2004.

**58040833. Dennis R. Bevin** (R. R. 2 Box 2406, Hallstead, PA 18822), commencement, operation and restoration of a quarry operation in Liberty Township, **Susquehanna County** affecting 5.0 acres, receiving stream: none. Application received May 24, 2004. Permit issued August 25, 2004.

**58040837. James E. Marcy, Jr.** (R. R. 2 Box 152A, New Milford, PA 18834), commencement, operation and restoration of a quarry operation in Lenox Township, **Susquehanna County** affecting 5.0 acres, receiving stream: none. Application received June 21, 2004. Permit issued August 25, 2004.

**58042802. Timothy Mark Smith** (R. R. 3 Box 329-E, Montrose, PA 18801), commencement, operation and restoration of a quarry operation in Oakland Township, **Susquehanna County** affecting 5.0 acres, receiving stream: none. Application received June 29, 2004. Permit issued August 25, 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.**

*Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, (814) 472-1900.*

**29044003. Sheehan Pipeline Construction**, P. O. Box 950, Waynesburg, PA 15370. Blasting activity permit issued for an oil pipeline project in Ayr Township, **Fulton County**. Expected duration of blasting is 180 days. Permit issued August 23, 2004.

*Pottsville District Mining Office: 5 W. Laurel Boulevard, Pottsville, PA 17901, (570) 621-3118.*

**39044014. Popple Contracting, Inc.** (202 Main Street, Laflin, PA 18702) and **D. C. Guelich Explosives Company** (P. O. Box 29, Bloomsburg, PA 17815), construction blasting at Advanced Auto Lot No. 4 Arcadia Industrial Park in Weisenberg Township, **Lehigh County** with an expiration date of September 24, 2005. Permit issued August 27, 2004.

**39041015. Schlouch Inc.** (Excelsior Industrial Park, P. O. Box 69, Blandon, PA 19510), construction blasting at Mill Run Lot No. 9 in Upper Macungie Township, **Lehigh County** with an expiration date of September 26, 2005. Permit issued August 27, 2004.

**35044012. Holbert Explosives, Inc.** (237 Masthope Plank Road, Suite, Lackawaxen, PA 18435), construction blasting at Covington Industrial Park in Covington Township, **Lackawanna County** with an expiration date of September 29, 2005. Permit issued August 27, 2004.

**36044079. Keystone Blasting Services** (381 Reifsnnyder Road, Lititz, PA 17543), construction blasting for Aaron Weaver's Basement in West Cocalico Township, **Lancaster County** with an expiration date of January 23, 2005. Permit issued August 27, 2004.

**50044002. Pavex, Inc.** (4400 Gettysburg Road, Camp Hill, PA 17011) and **Kesco, Inc.** (127 Oneida Valley Road, Butler, PA 16001), construction blasting for Perry County Development No. 2 in Penn Township, **Perry County** with an expiration date of November 30, 2004. Permit issued August 27, 2004.

**67044042. Thomas J. Angelozzi, Inc.** (7845 Kabik Court, Woodbine, MD 21797), construction blasting at Biscayne Woods in York Township, **York County** with an expiration date of August 31, 2005. Permit issued August 27, 2004.

**28044035. Charles E. Brake Company, Inc.** (6450 Lincoln Way West, St. Thomas, PA 17252), construction blasting at Creekwood Subdivision in Antrim Township, **Franklin County** with an expiration date of June 30, 2005. Permit issued August 27, 2004.

**21044064. Hall Explosives, Inc.** (2981 Elizabethtown Road, Hershey, PA 17033), construction blasting in Dickinson Township, **Cumberland County** with an expiration date of November 30, 2004. Permit issued August 27, 2004.

**36044080. Hall Explosives, Inc.** (2981 Elizabethtown Road, Hershey, PA 17033), construction blasting at Im Tree Properties, LLC in Rapho Township and Mt. Joy Borough, **Lancaster County** with an expiration date of September 30, 2005. Permit issued August 27, 2004.

**46044031. Eastern Blasting Company, Inc.** (1292 Street Road, New Hope, PA 18938), construction blasting at Lot No. 5 Montgomeryville Industrial Park in Montgomery Township, **Montgomery County** with an expiration date of May 23, 2005. Permit issued August 27, 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**

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

**E39-431. Lehigh Country Club**, 2319 South Cedarcrest Boulevard, Allentown, PA 18103. Lower Macungie and Salisbury Townships, **Lehigh County**, Army Corps of Engineers Philadelphia District, Subbasin 2C.

To construct and maintain a stream stabilization project in a 2,400-foot reach of the Little Lehigh Creek (HQ-CWF, perennial) using natural stream channel design with work consisting of floodway excavation, streambank grading, vegetative planting and the placement of in-stream structures such as rock cross vanes, log vanes and boulder clusters (Allentown West, PA Quadrangle N: 8.8 inches; W: 1.0 inch). The project proposes to directly affect, through grading, approximately 2,400 feet of stream bank and through excavation, approximately 1.5 acres in the right side floodway and 0.8 acre in the left side floodway. Maximum depth of excavation will be approximately 2 feet, grading down to the stream edge and back to existing grade, on average, 40 feet away from the stream.

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

**E26-319. Thomas Canigiani**, 916 Fayette Avenue, Belle Vernon, PA 15012. Bridge in Washington Township, **Fayette County**, Pittsburgh ACOE District (Fayette City, PA Quadrangle N: 20.0 inches; W: 6.6 inches—Latitude: 40° 6' 36" and Longitude: 79° 41' 49"). To construct and maintain a bridge having a clear span of 14 feet and an underclearance of 6.5 feet across Mill Run (WWF) for a proposed residential driveway. The project is along SR 4046 at a point approximately 2.1 miles from SR 51.

**E63-559. Ronald Romanetti**, 206 Agape Road, Hickory, PA 15340. Four arch culverts in Hopewell Township, **Washington County**, Pittsburgh ACOE District (Midway, PA Quadrangle N: 1.3 inches; W: 15.9 inches—Latitude: 40° 15' 26" and Longitude: 80° 21' 50"). To construct and maintain a low flow stream crossing consisting of four arch culverts each 20.0 feet in length and each having a span of 3.5 feet with an underclearance of 2.4 feet (one culvert will be depressed 1 foot below the streambed) in the channel of Cross Creek (HQ-WWF) for the purpose of providing cattle and tractor access to applicant's property. The project is on the south side of Lynn Portal Road (SR 4035), approximately 5,100 feet north from the intersection of T-653, LR 62041 and T-486. The project will impact 20.0 linear feet of stream channel.

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

**E10-385, Mercer Township**, P. O. Box 380, Harrisville, PA 16038. Shields Road (T-840) bridge replacement project in Mercer Township, **Butler County**, ACOE Pittsburgh District (Slippery Rock, PA Quadrangle N: 4.5 inches; W: 5.5 inches).

To remove the existing single lane reinforced concrete bridge having a clear span of 17.67 feet and an instream length of 18 feet and to construct and maintain a two-lane galvanized steel arch culvert having a clear span of 18.08 feet, a rise of 4.75 feet and an instream length of 42 feet at a point along Shields Road 1.75 miles west of the intersection of SR 0008 and within an unnamed tributary to Wolf Creek (CWF).

**E10-390, Key Properties Holdings, L. P.**, 939 Sheraton Drive, Mars, PA 16046. Summit Square of Cranberry Commercial Development in Cranberry Township, **Butler County**, ACOE Pittsburgh District (Mars, PA Quadrangle N: 12.6 inches; W: 14.1 inches).

The applicant proposes to fill 0.19 acre of PEM and PEM/PSS wetlands for the construction of commercial and office buildings approximately 0.6 mile north of the intersection of U. S. Route 19 and SR 228. The project includes filling and enclosing a total of 290 feet of stream channel of two unnamed tributaries to Brush Creek each with a drainage area less than 100 acres. Project includes wetland creation of 0.30 acre onsite. The project proposes to directly affect 0.19 acre of PEM and PEM/PSS wetlands and 290 linear feet of stream. Wetland creation of 0.30 acre is proposed.

**E24-234, Brockway Area Sewer Authority**, 501 Main Street, Brockway, PA 15824. Wastewater treatment and collection system improvements in Horton Township, **Elk County** and the Borough of Brockway and Snyder Township, **Jefferson County**, ACOE Pittsburgh District (Carman, PA Quadrangle N: 0.5 inch; W: 6.8 inches).

To construct and maintain an upgrade to the existing wastewater treatment plant and conveyance systems within the Borough of Brockway to address the hydraulic overload and to extend public sewage line to areas in Snyder Township and Horton Township. Upgrades include upgrading the new facility to 1.5 mgd with a instant peak capacity of 6.0 mgd, upgrading two main interceptors within the Borough of Brockway and installing a vacuum sewer collection system with some gravity collection for a total of approximately 169,000 lineal feet of 4-inch vacuum collection line, 6-inch vacuum collection line and gravity lines involving: (1) to fill 0.40 acre of PEM wetland for the construction of the upgrade of the wastewater treatment plant and to replace approximately 0.40 acre of wetland onsite; (2) to construct and maintain a 2-foot diameter PVC plastic sewage treatment plant effluent outfall pipe discharging to the 100-year of floodplain Little Toby Creek bored under the Brockway Flood Protection Project dike; (3) to temporarily affect 10.45 acres of PEM and riverine wetland with 39 crossings by sewer lines as described in the application; and (4) to temporarily affect Boggy Run (HQ-CWF), Curry Run (CWF), Little Toby Creek (CWF), unnamed tributaries to Little Toby Creek (CWF), Mead Run (CWF), unnamed tributaries to Mead Run (CWF), Oyster Run (CWF), Rattlesnake Creek (CWF), unnamed tributaries to Rattlesnake Creek (CWF), Walburn Run (CWF), an unnamed tributary to Whetstone Branch (CWF) and Whetstone Branch (CWF) with 28 crossings by sewer lines as described in the application. Thirteen of the stream crossings would be at a depth of less than 3 feet of cover and include varying protection measures including carrier

pipe and concrete encasement. Four of the stream crossings would be aerial crossings.

**E25-681, Whispering Woods Estates Subdivision, Whispering Woods, Inc.**, 4132 Stone Creek Drive, Erie, PA 16506-7006. Whispering Woods Estates subdivision and golf course in Millcreek Township, **Erie County**, ACOE Pittsburgh District.

To conduct the following activities impacting a total of 6,885 linear feet of the channels and floodways of tributaries to Walnut Creek classified by 25 Pa. Code Chapter 93 as CWF, MF and tributaries of Walnut Creek known as "Thomas Run" and "Zaun Run" both classified as HQ-CWF, MF and impact a de minimis amount of wetlands (total of 0.049 acre) associated with construction of additional phases of the Whispering Woods Estates residential subdivision and construction of an 18-hole golf course, on an approximate 367-acre tract between Thomas Road and Grubb Road south of Walnut Creek in Millcreek Township, Erie County. The impacts are broken down as follows:

1. Construct and maintain culverts and stream enclosures totaling 2,251 feet including:

a. A 188-foot-long open bottom corrugated metal arch stream enclosure having a span of 18 feet and a maximum rise of 8 feet in a tributary to Thomas Run (Zaun Run) (HQ-CWF, MF) for construction of Stonebridge Drive connecting Forest Crossing Drive to Thomas Road (Swanville, PA Quadrangle N: 7.5 inches; W: 4.0 inches).

b. A 108-foot-long, 36-inch diameter HDPE pipe stream enclosure in a tributary to Walnut Creek (Thomas Run) (HQ-CWF, MF) on Stonebridge Drive approximately 1,125 feet east of Thomas Road. This crossing also impacts 0.018 acre of wetland.

c. A 166-foot long 72-inch diameter stream enclosure having the invert buried approximately 3 feet into the stream bed of a tributary to Walnut Creek (CWF, MF) having a drainage area less than 100 acres on Stone Creek Drive approximately 0.9 mile west of Grubb Road.

d. A total of 1,789 feet of other culverts and stream enclosures on tributaries having less than 100-acre contributory drainage associated with 17 golf cart crossings, 8 residential roadway crossings, 4 fairways and 3 nonjurisdictional dams used as stormwater detention basins/irrigation ponds.

2. To construct and maintain a 5-foot long steel beam pedestrian bridge having a span of approximately 40 feet and an underclearance of 8 feet across a tributary to Walnut Creek (Zaun Run) (HQ-CWF, MF) approximately 850 feet downstream of Stonebridge Drive.

3. To construct and maintain an 8-foot wide by 107-foot long golf cart path impacting a total of 0.031 acre of wetland.

4. Impact a total of 4,634 linear feet of tributaries to Walnut Creek (HQ-CWF, MF and CWF, MF) (including both direct impact to the channels and other general clearing and grading within 50 feet of the channels) associated with construction of the golf course fairways, greens and three nonjurisdictional dams used as stormwater detention ponds/irrigation ponds.

**E25-686, Franklin Township**, 10411 Route 98, Edinboro, PA 16412. T-424 (Falls Road) bridge replacement in Franklin Township, **Erie County**, ACOE Pittsburgh District (Edinboro North, PA Quadrangle N: 13.5 inches; W: 13.7 inches).

The applicant proposes to remove the existing structure and to construct and maintain a single span prestressed concrete adjacent box beam bridge having a clear span of 28.5 feet and an average underclearance of 7.5 feet across Falk Run (CWF, MF, perennial) on T-424 (Falls Road) approximately 100 feet west of the intersection of SR 98 and T-424 (Falls Road). The project proposes to directly affect a total of approximately 50 linear feet of stream channel.

**E33-217, Brockway Area Sewer Authority**, 501 Main Street, Brockway, PA 15824. Wastewater treatment and collection system improvements in Horton Township, **Elk County** and the Borough of Brockway and Snyder Township, **Jefferson County**, ACOE Pittsburgh District (Carman, PA Quadrangle N: 0.5 inch; W: 6.8 inches).

To construct and maintain an upgrade to the existing wastewater treatment plant and conveyance systems within the Borough of Brockway to address the hydraulic overload and to extend public sewage line to areas in Snyder and Horton Townships. Upgrades include upgrading the new facility to 1.5 mgd with a instant peak capacity of 6.0 mgd, upgrading two main interceptors within the Borough of Brockway and installing a vacuum sewer collection system with some gravity collection for a total of approximately 169,000 lineal feet of 4-inch vacuum collection line, 6-inch vacuum collection line and gravity lines involving: (1) to fill 0.40 acre of PEM wetland for the construction of the upgrade of the wastewater treatment plant and to replace approximately 0.40 acre of wetland onsite; (2) to construct and maintain a 2-foot diameter PVC plastic sewage treatment plant effluent outfall pipe discharging to the 100-year of floodplain Little Toby Creek bored under the Brockway Flood Protection Project dike; (3) to temporarily affect 10.45 acres of PEM and riverine wetland with 39 crossings by sewer lines as described in the application; and (4) to temporarily affect Boggy Run (HQ-CWF), Curry Run (CWF), Little Toby Creek (CWF), unnamed tributaries to Little Toby Creek (CWF), Mead Run (CWF), unnamed tributaries to Mead Run (CWF), Oyster Run (CWF), Rattlesnake Creek (CWF), unnamed tributaries to Rattlesnake Creek (CWF), Walburn Run (CWF), an unnamed tributary to Whetstone Branch (CWF) and Whetstone Branch (CWF) with 28 crossings by sewer lines as described in the application. Thirteen of the stream crossings would be at a depth of less than 3 feet of cover and include varying protection measures including carrier pipe and concrete encasement. Four of the stream crossings would be aerial crossings.

**E43-312, John C. Oliver**, 1016 Oliver Building, 535 Smithfield Street, Pittsburgh, PA 15222. Cranberry Swamp habitat enhancement in Deer Creek Township, **Mercer County**, ACOE Pittsburgh District (Hadley, PA Quadrangle N: 16.25 inches; W: 2.0 inches).

To dredge a total of 6,275 linear feet of trapezoidal channel having a bottom width of approximately 15 feet and a depth of 4 feet to create shallow open-water access within the existing 186-acre wetland shown on the USGS Topographic Map as "Cranberry Swamp." Of the 6,275 feet, 1,525 linear feet is improvement of existing channel and 4,750 feet is the construction of new channel. Excavated or dredged materials will be side-cast within the existing wetland randomly on either side of the channels. The project proposes to impact a total of 4.75 acres of wetland.

**E43-313, Glenn R. Moore**, 167 Tieline Road, Grove City, PA 16127. Tieline Road driveway culvert in Pine



Township, **Mercer County**, ACOE Pittsburgh District (Grove City, PA Quadrangle N: 5.5 inches; W: 4.6 inches).

The applicant proposes to construct and maintain an approximately 14-foot long, 18-foot wide by 5.5-foot high pipe arch culvert in Swamp Run (CWF, perennial) in support of a private access driveway and a single family residence on Tieline Road approximately 1.7 miles north-west of the intersection of SR 8 and SR 58. Project includes a headwall and riprap rock protection of the structure. The project proposes to directly affect a total of approximately 30 linear feet of stream channel.

**E61-269, William T. Hufnagel**, 32 Agnes Street, Coraopolis, PA 15108. Hufnagel Cottage along Porcupine Run in President Township, **Venango County**, ACOE Pittsburgh District (President, PA Quadrangle N: 11.0 inches; W: 6.6 inches).

The applicant proposes to replace and maintain a recently existing seasonal residence having a length of approximately 48 feet and a width of approximately 30 feet within the floodway of the right bank of Porcupine Creek (EV, perennial) approximately 1.0 mile southeast of the intersection of U. S. Route 62 and SR 2023. This application is the result of a compliance action. This project proposes to directly affect a surface area of approximately 1,200 square feet within the floodway.

#### DAM SAFETY

*Central Office: Bureau of Waterways Engineering, 400 Market Street, Floor 3, P. O. Box 8554, Harrisburg, PA 17105-8554.*

**D40-079A. The Ice Lakes Limited**, 220 Pine Ridge Road, Tunkhannock, PA 18647. To modify, operate and maintain the Ice Pond Dam across a tributary to Little Wapwallopen Creek (CWF), impacting 0 acre of wetlands and 0 foot of stream for the purpose of modifying the existing spillway to manage stormwater from the proposed The Ice Lakes Subdivision (Wilkes-Barre West, PA Quadrangle N: 3.2 inches; W: 9.2 inches) in Rice Township, **Luzerne County**.

[Pa.B. Doc. No. 04-1692. Filed for public inspection September 10, 2004, 9:00 a.m.]

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.

#### *Final Technical Guidance—Substantive Revision*

DEP ID: 274-4000-004 Title: Compliance Assurance Policy for Continuous Emission Monitoring Systems (CEMS) on Fluid Catalytic Cracking Units. Description: This policy establishes uniform criteria for assessing monetary penalties for exceedances of visible emission (opacity) standards and exceedances of data availability requirements through agreements rather than criminal citations or civil penalty actions. Substantive changes were proposed to this guidance document, which were advertised for public comment at 33 Pa.B. 4980 (October 4, 2003). Changes made to the document include updates to ensure the guidance document is consistent with the three more recent Compliance Assurance Policies implemented by the Commonwealth since 1989. Other changes made to the guidance document include the following: adjustments to penalty amounts to reflect inflation; changes to increase the maximum penalty ceilings for both emission and data availability; modifications to lower the daily maximum forgiveness allowed before penalties are assessed; and changes to increase penalties for 60% opacity standard emission violations, beyond those penalties assessed for 20% opacity standard violations, to further recognize the more adverse environmental impacts of these violations. Effective Date: The Department will begin to apply the criteria established in this guidance beginning with the fourth quarter 2004 data, or October 1, 2004.

KATHLEEN A. MCGINTY,  
*Secretary*

[Pa.B. Doc. No. 04-1693. Filed for public inspection September 10, 2004, 9:00 a.m.]

#### Availability of Technical Guidance

Technical guidance documents are available on the Department of Environmental Protection's (Department) website: [www.dep.state.pa.us](http://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 final documents listed on the inventory by calling the Department at (717) 783-8727.

## HUMAN RELATIONS COMMISSION

### Public Hearing Opinions

The Human Relations Commission (Commission), under section 7(o) of the Pennsylvania Human Relations Act (act) (43 P. S. § 957(o)), announces the publication of the Findings of Fact, Conclusions of Law, Opinion and Final Order made after a public hearing under section 9(e)—(g) of the act (43 P. S. § 959(e)—(g)), in the following cases:

*Cynthia Erickson v. United States Steel Corp.*; Doc. Nos. E-82330-DH and E-95705-D (Human Relations Commission, July 27, 2004).

- Termination and refusal to reinstate because of her sex (female).

Ruling for Complainant, 10-0 decision  
50 pages

*Sterling Feeser and Leroy Jones as Executor of the Estate of Vilma Garcia-Jones v. Spanish Council of York,*



*Inc., d/b/a York Spanish American Center; Doc. Nos. E-78888-AD and E-81636-DH (Human Relations Commission, July 27, 2004).*

- Termination because of race and age discrimination relating to employment.

Ruling for Complainant, 5-3 decision  
46 pages

The final order in the cases is subject to appeal to Commonwealth Court, and if appealed is subject to being affirmed, reversed or modified, in whole or part.

A copy of an opinion listed in this notice can be obtained by mailing a request indicating the opinion desired, accompanied by a check or money order in the amount of 15¢ per page, to Laura J. Treaster, Communications Director, Human Relations Commission, 301 Chestnut Street, Suite 300, Pennsylvania Place, Harrisburg, PA 17101. The check or money order should be made payable to the "Commonwealth of Pennsylvania." Copies are also available on the Commission's website: [www.phrc.state.pa.us](http://www.phrc.state.pa.us) (choose "Legal" and "Public Hearing Opinions").

HOMER C. FLOYD,  
*Executive Director*

[Pa.B. Doc. No. 04-1694. Filed for public inspection September 10, 2004, 9:00 a.m.]

## INDEPENDENT REGULATORY REVIEW COMMISSION

### Actions Taken by the Commission

The Independent Regulatory Review Commission met publicly at 10:30 a.m., Thursday, August 26, 2004, and announced the following:

#### *Action Taken—Regulation Approved*

Department of Community and Economic Development # 4-72: Industrial Housing (amends 12 Pa. Code Chapter 145)

#### Approval Order

Public Meeting held  
August 26, 2004

*Commissioners Voting:* Alvin C. Bush, Vice Chairperson, by phone; Daniel F. Clark, Esq.; Arthur Coccodrilli; Murray Ufberg, Esq.

*Department of Community and Economic Development—Industrial Housing; Regulation No. 4-72*

On August 9, 2002, the Independent Regulatory Review Commission (Commission) received this proposed regulation from the Department of Community and Economic Development (Department). This rulemaking amends 12 Pa. Code Chapter 145. The proposed regulation was published in the October 12, 2002, *Pennsylvania Bulletin* with a 30-day public comment period. The Department resubmitted the proposed regulation on February 18, 2003, under section 5(e) of the Regulatory Review Act, which was in effect at the time the regulation was proposed. The final-form regulation was submitted to the Commission on July 20, 2004.

The final-form regulation updates and clarifies provisions related to Department and third-party inspections, definitions of terms and reporting requirements; adopts the International Codes Council's International Building Code; and increases fees charged by the Department for the industrialized housing program.

We have determined this regulation is consistent with the statutory authority of the Department (35 P.S. § 1651.5) and the intention of the General Assembly. Having considered all of the other criteria of the Regulatory Review Act, we find promulgation of this regulation is in the public interest.

*By Order of the Commission:*

This regulation is approved.

JOHN R. MCGINLEY, Jr.,  
*Chairperson*

[Pa.B. Doc. No. 04-1695. Filed for public inspection September 10, 2004, 9:00 a.m.]

### Notice of Filing of Final Rulemakings

The Independent Regulatory Review Commission (Commission) received the following regulation on the date indicated. To obtain the date and time of the meeting at which the Commission will consider this regulation, contact the Commission at (717) 783-5417 or visit its website: [www.irrc.state.pa.us](http://www.irrc.state.pa.us). To obtain a copy of the regulation, contact the promulgating agency.

<i>Final-Form Reg. No.</i>	<i>Agency/Title</i>	<i>Received</i>
17-64	Pennsylvania State Police Administration of the Bureau of Liquor Control Enforcement; Age Compliance Check Program	8/30/04

JOHN R. MCGINLEY, Jr.,  
*Chairperson*

[Pa.B. Doc. No. 04-1696. Filed for public inspection September 10, 2004, 9:00 a.m.]

## LIQUOR CONTROL BOARD

### Expiration of Leases

The following Liquor Control Board lease will expire:

Beaver County, Wine & Spirits Shoppe # 0405, 508 Midland Avenue, Midland, PA 15059-1313.

*Lease Expiration Date:* August 31, 2005

Lease retail commercial space to the Commonwealth. Proposals are invited to provide the Liquor Control Board with approximately 1,500 to 1,800 net useable square feet of new or existing retail commercial space in the central business district of Midland.

*Proposals due:* October 1, 2004, at 12 p.m.

**Department:** Liquor Control Board  
**Location:** Real Estate Division, State Office Building, Room 408, 300 Liberty Avenue, Pittsburgh, PA 15222  
**Contact:** George Danis, (412) 565-5130

The Liquor Control Board seeks the following new site:

Butler County, Wine & Spirits Shoppe #1010, Seven Fields.

Lease retail commercial space to the Commonwealth. Proposals are invited to provide the Liquor Control Board with approximately 6,000 net useable square feet of new or existing retail commercial space within 2 miles of the intersection of Route 228 and High Pointe Drive in Seven Fields. Free parking and tractor trailer delivery required.

*Proposals due:* October 1, 2004, at 12 p.m.

**Department:** Liquor Control Board  
**Location:** Real Estate Division, State Office Building, Room 408, 300 Liberty Avenue, Pittsburgh, PA 15222

**Contact:** Joseph Molhoek, (412) 565-5130

JONATHAN H. NEWMAN,  
*Chairperson*

[Pa.B. Doc. No. 04-1697. Filed for public inspection September 10, 2004, 9:00 a.m.]

## PENNSYLVANIA PUBLIC UTILITY COMMISSION

### 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 October 4, 2004. Documents filed in support of the applications are available for inspection and copying at the Office of the Secretary between 8 a.m. and 4:30 p.m., Monday through Friday, and at the business address of the respective applicant.

**Application of the following for approval to *begin operating as common carriers for transportation of persons as described under the application.***

**A-00121046. Gail Deetta Stevenson** (311 Kennard-Osgood Road, Greenville, Mercer County, PA 16125)—persons in paratransit service, between points in the Counties of Crawford and Mercer, and from points in said counties, to points in Pennsylvania, and return.

**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-00121043. Corporate Sedan Service, LLC** (660 Means Avenue, 2nd Floor, Pittsburgh, Allegheny County, PA 15202), a Pennsylvania limited liability company—persons in limousine service, between points in Pennsylvania, and between points in Allegheny County, which is to be a transfer of the rights authorized under the certificate issued at A-00117559 to Stephen J. Malik, Sr. t/d/b/a Corporate Sedan Service, subject to the same

limitations and conditions. *Attorney:* David M. O'Boyle, 1450 Two Chatham Center, Pittsburgh, PA 15219.

**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 household goods as described under the application.***

**A-00121042. Magic Trucking, Inc.** (111 N. 9th Street, Stroudsburg, Monroe County, PA 18360), a corporation of the Commonwealth—household goods in use, between points in the Counties of Lehigh, Carbon, Northampton and Monroe, and from points in said counties, to points in Pennsylvania, and vice versa. *Attorney:* Marshall Andres, 18 N. 8th Street, Stroudsburg, PA 18360.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 04-1698. Filed for public inspection September 10, 2004, 9:00 a.m.]

### Telecommunications

**A-311080F7002. The United Telephone Company of Pennsylvania d/b/a Sprint and Cricket Communications, Inc.** Joint petition of The United Telephone Company of Pennsylvania d/b/a Sprint and Cricket Communications, Inc. for approval of a commercial mobile radio services interconnection agreement under section 252(e) of the Telecommunications Act of 1996.

The United Telephone Company of Pennsylvania d/b/a Sprint and Cricket Communications, Inc., by its counsel, filed on August 18, 2004, at the Pennsylvania Public Utility Commission (Commission), a joint petition for approval of a commercial mobile radio services 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 The United Telephone Company of Pennsylvania d/b/a Sprint and Cricket Communications, 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. 04-1699. Filed for public inspection September 10, 2004, 9:00 a.m.]

### Telecommunications

**A-311328F7000. Verizon Pennsylvania Inc. and InterGlobe Communications.** Joint petition of Verizon Pennsylvania Inc. and InterGlobe Communications for approval of an interconnection agreement and amendment no. 1 under section 252(e) of the Telecommunications Act of 1996.

Verizon Pennsylvania Inc. and InterGlobe Communications, by its counsel, filed on August 18, 2004, at the

Pennsylvania Public Utility Commission (Commission), a joint petition for approval of an interconnection agreement and amendment no. 1 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 InterGlobe Communications 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. 04-1700. Filed for public inspection September 10, 2004, 9:00 a.m.]

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## STATE HARNESS RACING COMMISSION

### Evidentiary Hearing Regarding Bedford Downs Management Corporation Application

The State Harness Racing Commission (Commission) gives notice that an application for a license to conduct a harness horse race meeting with pari-mutuel wagering was filed on June 9, 2003, by Bedford Downs Management Corporation, in which the Corporation seeks approval to conduct live harness racing and pari-mutuel

wagering at a proposed facility to be built in Mahoning Township, Lawrence County. An evidentiary hearing concerning this matter will be held on October 25, 2004, at 9 a.m. at the Farm Show Complex, 2300 North Cameron Street, Harrisburg, PA 17110. The hearing will be held to receive evidence concerning the listed application.

The hearing will be conducted in accordance with 58 Pa. Code § 185.83 (relating to Commission hearing) and 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure). Testimony shall be under oath and witnesses may be cross-examined. The Commission will receive testimony from the applicant.

Individuals who believe they qualify as an intervenor must Petition to Intervene as provided under 1 Pa. Code §§ 35.27—35.32 (relating to intervention). Petitions to Intervene must be filed with Anton J. Leppler, Executive Secretary, State Harness Racing Commission, Agriculture Building, Room 301, 2301 N. Cameron Street, Harrisburg, PA 17110-9408 with a copy to Edward S. Finkelstein, Esq., 700 Green St., Harrisburg, PA 17102-3015, hearing examiner for the Commission, by 4:30 p.m. on September 20, 2004, and served on all participants by that date and time. Proof of service shall be attached to the Petition to Intervene. No Petition to Intervene will be accepted after September 20, 2004. Answers to a Petition to Intervene must be filed within 7 calendar days after date of service at the previous addresses.

Testimony will only be taken from the applicant and any intervenors. No one else will be entitled to testify.

ANTON J. LEPLER,  
*Executive Secretary*

[Pa.B. Doc. No. 04-1701. Filed for public inspection September 10, 2004, 9:00 a.m.]

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# STATE CONTRACTS INFORMATION

## DEPARTMENT OF GENERAL SERVICES

Act 266 of 1982 provides for the payment of interest penalties on certain invoices of "qualified small business concerns". The penalties apply to invoices for goods or services when payments are not made by the required payment date or within a 15 day grace period thereafter.


Act 1984-196 redefined a "qualified small business concern" as any independently owned and operated, for-profit business concern employing 100 or fewer employees. See 4 Pa. Code § 2.32. The business must include the following statement on every invoice submitted to the Commonwealth: "(name of business) is a qualified small business concern as defined in 4 Pa. Code 2.32."

A business is eligible for payments when the required payment is the latest of:  
 The payment date specified in the contract.  
 30 days after the later of the receipt of a proper invoice or receipt of goods or services.  
 The net payment date stated on the business' invoice.

A 15-day grace period after the required payment date is provided to the Commonwealth by the Act.

For more information: contact: Small Business Resource Center  
 PA Department of Community and Economic Development  
 374 Forum Building  
 Harrisburg, PA 17120  
 800-280-3801 or (717) 783-5700

### Reader's Guide



**Legal Services & Consultation**

① Service Code Identification Number

② Commodity/Supply or Contract Identification No.

**B-54137.** Consultant to provide three 2-day training sessions, covering the principles, concepts, and techniques of performance appraisal and standard setting with emphasis on performance and accountability, with a knowledge of State Government constraints.

Department: General Services  
 Location: Harrisburg, Pa.  
 Duration: 12/1/93-12/30/93  
 Contact: Procurement Division 787-0000

③ Contract Information  
 ④ Department  
 ⑤ Location  
 ⑥ Duration

⑦ (For Commodities: Contact: Vendor Services Section 717-787-2199 or 717-787-4705)

#### REQUIRED DATA DESCRIPTIONS

① Service Code Identification Number: There are currently 39 state service and contractual codes. See description of legend.

② Commodity/Supply or Contract Identification No.: When given, number should be referenced when inquiring of contract of Purchase Requisition. If more than one number is given, each number represents an additional contract.

③ Contract Information: Additional information for bid preparation may be obtained through the departmental contracting official.

④ Department: State Department or Agency initiating request for advertisement.

⑤ Location: Area where contract performance will be executed.

⑥ Duration: Time estimate for performance and/or execution of contract.

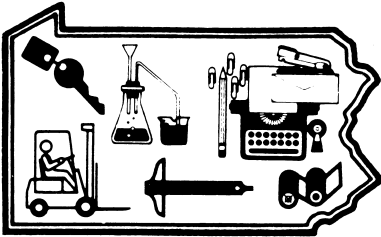
⑦ Contact: (For services) State Department or Agency where vendor inquiries are to be made.  
 (For commodities) Vendor Services Section (717) 787-2199 or (717) 787-4705

## PA TREASURY BUSINESS OUTLET—PLUG INTO IT!

The Treasury Department's Bureau of Contracts and Public Records can help you do business with state government agencies. Our efforts focus on guiding the business community through the maze of state government offices. The bureau is, by law, the central repository for all state contracts over \$5,000. Services are free except for the cost of photocopying contracts (15 cents per page); postage; redaction, and certified copies. The bureau may assess reasonable fees for labor and other expenses necessary to comply with the request. A free brochure explains how to take advantage of available services.

Contact: **Bureau of Contracts and Public Records**  
 Pennsylvania State Treasury  
 Room 201 Finance Building  
 Harrisburg, PA 17120  
 717-787-4586  
 1-800-252-4700  
 BizOutlet@ptreasury.org

BARBARA HAFER,  
*State Treasurer*

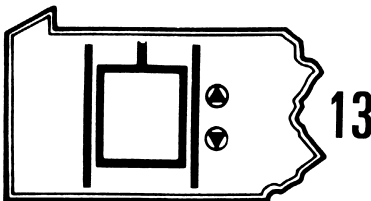


### Commodities

**SU-04-06** Shippensburg University is seeking a vendor interested in providing a Bailey Gas Kiln, Model Pro40 Front Loader and Shuttle (brand name or equal). Vendors interested in receiving a bid package must fax a request to Mona Holtry, Shippensburg University, 1871 Old Main Drive, Shippensburg, PA 17257; Fax (717) 477-1350 or email mmholt@wharf.ship.edu. Package will be available 8/30/04 and bid responses will be due 9/29/04 by 4:00 PM. All responsible bidders are invited to participate including MBE/WBE firms.

**Department:** State System of Higher Education  
**Location:** Shippensburg University, 1871 Old Main Drive, Shippensburg, PA 17257  
**Duration:** Delivery required as soon as possible.  
**Contact:** Mona M. Holtry, (717) 477-1386

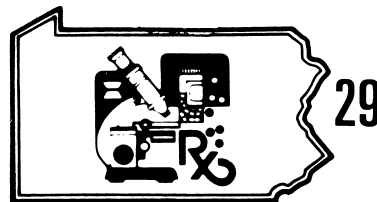
## SERVICES



### Elevator Maintenance

**FM 8828** Furnish all labor, materials and equipment to repair a "Potts Ash Lift" at the Pennsylvania State Police, Dunmore Headquarters.

**Department:** State Police  
**Location:** Troop R, Dunmore Headquarters, 85 Keystone Industrial Park, Dunmore, PA 18512  
**Duration:** When job complete no later than December 31, 2004.  
**Contact:** Helen M. Fuhrman, (717) 705-5952



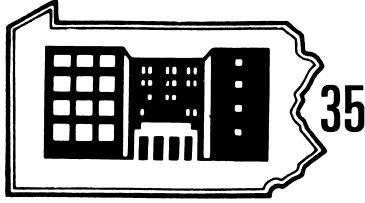
### Medical Services

**CN00010662** Contractor to provide in-house neurologist, five hours every other week, ten hours/month. To provide general neurological services to patients at Warren State Hospital. Specific terms of contract may be obtained by contacting the hospital.

**Department:** Public Welfare  
**Location:** Warren State Hospital, 33 Main Dr., N. Warren, PA 16365-5099  
**Duration:** Anticipated 10/15/04 - 10/14/05  
**Contact:** BD Muntz, PA III, (814) 726-4496

**CN00010702** Contractor to provide Outpatient Electro-Convulsive Therapy (ECT) (includes necessary monitoring) for single and multiple seizures including treatment professional fee, hospital facility charge, anesthesia for ECT treatment and drugs for Warren State Hospital patients. Complete specifications may be obtained from the hospital.

**Department:** Public Welfare  
**Location:** Warren State Hospital, 33 Main Dr., N. Warren, PA 16365-5099  
**Duration:** 11/01/04 - 10/31/05  
**Contact:** Ms. Bobbie D. Muntz, PA III, (814) 726-4496



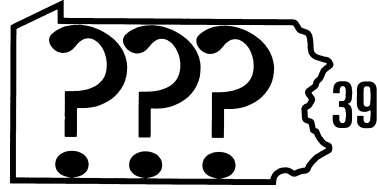
### Real Estate Services

**93741** Lease office space to the Commonwealth of PA. Proposals are invited to provide the Department of Labor and Industry with 21,510 useable square feet of office space with a minimum parking requirement for 6 ADA vehicles in Lancaster, Lancaster County, PA. Downtown locations will be considered. For more information on SFP #93741 which is due on October 25, 2004 visit [www.dgs.state.pa.us](http://www.dgs.state.pa.us) and click on "Real Estate" to download an SFP package or call (717) 787-7412.

**Department:** Labor and Industry

**Location:** 505 North Office Building, Harrisburg, PA 17125

**Contact:** Mr. Jennings K. Ward, (717) 787-7412



### Miscellaneous

**97** Request bids for a packaging machine for unit dose medication. All bid packets can be obtained by contacting the Purchasing Department of the Allentown State Hospital.

**Department:** Public Welfare

**Location:** Allentown State Hospital, 1600 Hanover Avenue, Allentown PA 18109-2498

**Contact:** Lois Kerbacher, (610) 740-3428

[Pa.B. Doc. No. 04-1702. Filed for public inspection September 10, 2004, 9:00 a.m.]

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## DESCRIPTION OF LEGEND

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| <p><b>1</b> Advertising, Public Relations, Promotional Materials</p> <p><b>2</b> Agricultural Services, Livestock, Equipment, Supplies &amp; Repairs: Farming Equipment Rental &amp; Repair, Crop Harvesting &amp; Dusting, Animal Feed, etc.</p> <p><b>3</b> Auctioneer Services</p> <p><b>4</b> Audio/Video, Telecommunications Services, Equipment Rental &amp; Repair</p> <p><b>5</b> Barber/Cosmetology Services &amp; Equipment</p> <p><b>6</b> Cartography Services</p> <p><b>7</b> Child Care</p> <p><b>8</b> Computer Related Services &amp; Equipment Repair: Equipment Rental/Lease, Programming, Data Entry, Payroll Services, Consulting</p> <p><b>9</b> Construction &amp; Construction Maintenance: Buildings, Highways, Roads, Asphalt Paving, Bridges, Culverts, Welding, Resurfacing, etc.</p> <p><b>10</b> Court Reporting &amp; Stenography Services</p> <p><b>11</b> Demolition—Structural Only</p> <p><b>12</b> Drafting &amp; Design Services</p> <p><b>13</b> Elevator Maintenance</p> <p><b>14</b> Engineering Services &amp; Consultation: Geologic, Civil, Mechanical, Electrical, Solar &amp; Surveying</p> <p><b>15</b> Environmental Maintenance Services: Well Drilling, Mine Reclamation, Core &amp; Exploratory Drilling, Stream Rehabilitation Projects and Installation Services</p> <p><b>16</b> Extermination Services</p> <p><b>17</b> Financial &amp; Insurance Consulting &amp; Services</p> <p><b>18</b> Firefighting Services</p> <p><b>19</b> Food</p> <p><b>20</b> Fuel Related Services, Equipment &amp; Maintenance to Include Weighing Station Equipment, Underground &amp; Above Storage Tanks</p> <p><b>21</b> Hazardous Material Services: Abatement, Disposal, Removal, Transportation &amp; Consultation</p> | <p><b>22</b> Heating, Ventilation, Air Conditioning, Electrical, Plumbing, Refrigeration Services, Equipment Rental &amp; Repair</p> <p><b>23</b> Janitorial Services &amp; Supply Rental: Interior</p> <p><b>24</b> Laboratory Services, Maintenance &amp; Consulting</p> <p><b>25</b> Laundry/Dry Cleaning &amp; Linen/Uniform Rental</p> <p><b>26</b> Legal Services &amp; Consultation</p> <p><b>27</b> Lodging/Meeting Facilities</p> <p><b>28</b> Mailing Services</p> <p><b>29</b> Medical Services, Equipment Rental and Repairs &amp; Consultation</p> <p><b>30</b> Moving Services</p> <p><b>31</b> Personnel, Temporary</p> <p><b>32</b> Photography Services (includes aerial)</p> <p><b>33</b> Property Maintenance &amp; Renovation—Interior &amp; Exterior: Painting, Restoration, Carpentry Services, Snow Removal, General Landscaping (Mowing, Tree Pruning &amp; Planting, etc.)</p> <p><b>34</b> Railroad/Airline Related Services, Equipment &amp; Repair</p> <p><b>35</b> Real Estate Services—Appraisals &amp; Rentals</p> <p><b>36</b> Sanitation—Non-Hazardous Removal, Disposal &amp; Transportation (Includes Chemical Toilets)</p> <p><b>37</b> Security Services &amp; Equipment—Armed Guards, Investigative Services &amp; Security Systems</p> <p><b>38</b> Vehicle, Heavy Equipment &amp; Powered Machinery Services, Maintenance, Rental, Repair &amp; Renovation (Includes ADA Improvements)</p> <p><b>39</b> Miscellaneous: This category is intended for listing all bids, announcements not applicable to the above categories</p> |
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DONALD T. CUNNINGHAM, Jr.  
*Secretary*

