

# PENNSYLVANIA BULLETIN

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Pages 2377—2590

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Personal Care Home Regulations

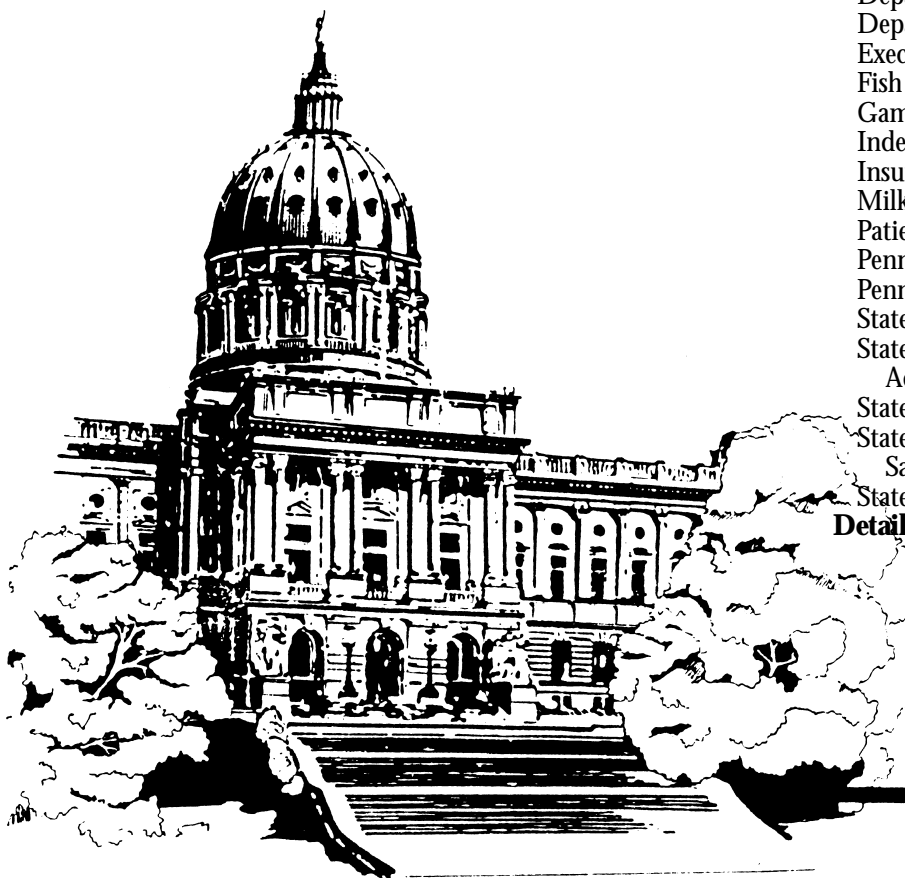
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# READER'S GUIDE TO THE PENNSYLVANIA BULLETIN AND PENNSYLVANIA CODE

## ***Pennsylvania Bulletin***

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

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

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

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

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

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

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

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

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

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

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

## ***Pennsylvania Code***

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

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

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

## **How to Find Documents**

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

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

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

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### Printing Format

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

### Fiscal Notes

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

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

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# List of Pa. Code Chapters Affected

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# THE GOVERNOR

## GOVERNOR'S OFFICE

### Amendment to Proclamation

April 12, 2005

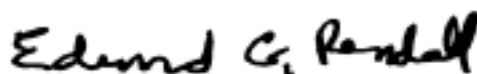
*Whereas*, On April 3, 2005, I declared a State of Disaster Emergency in Bradford, Bucks, Columbia, Erie, Luzerne, Monroe, Northampton, Pike, Wayne, and Wyoming Counties due to widespread flooding and severe, unseasonable winter storm conditions across large regions of Pennsylvania; and

*Whereas*, information provided by local officials finds that additional Pennsylvania counties were also adversely impacted by the same heavy rains, which caused localized flooding to occur in certain creeks and streams and caused extensive road closures, damage to roads, streets, private homes, businesses, and continued adverse life-safety impacts for the general population of Susquehanna and Lackawanna Counties.

*Now Therefore*, Pursuant to the provisions of Subsection 7301(c) of the Emergency Management Services Code (35 Pa.C.S.A. Section 7101 et seq. as amended), I do hereby amend my Proclamation of April 3, 2005, as follows:

1. The Counties of Susquehanna and Lackawanna are now declared to be in a state of disaster emergency and are added to the previously designated disaster emergency area.
2. This Amendment to Proclamation shall take effect immediately.

*Given* under my hand and the Seal of the Governor, at the City of Harrisburg, this twelfth day of April in the year of our Lord two thousand and five, and of the Commonwealth the two hundred and twenty-ninth.



*Governor*

[Pa.B. Doc. No. 05-756. Filed for public inspection April 22, 2005, 9:00 a.m.]

# THE COURTS

## Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

### PART V. PROFESSIONAL ETHICS AND CONDUCT [204 PA. CODE CH. 81]

Amendments to Rule 221 of the Pennsylvania Rules of Disciplinary Enforcement and Rule 1.15 of the Pennsylvania Rules of Professional Conduct; No. 41 Disciplinary Rules; Doc. No. 1

#### Order

*Per Curiam:*

*And Now*, this 5th day of April, 2005, Rule 1.15 of the Pennsylvania Rules of Professional Conduct is amended to read as set forth in Annex A hereto and Rule 221 of the Pennsylvania Rules of Disciplinary Enforcement is amended to read as set forth in Annex B hereto.

This Order shall be processed in accordance with Rule 103(b) of the Pennsylvania Rules of Judicial Administration, shall take effect upon publication of this Order in the *Pennsylvania Bulletin* and shall govern matters thereafter commenced and, insofar as just and practicable, matters then pending.

#### Annex A

### TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

#### PART V. PROFESSIONAL ETHICS AND CONDUCT

##### Subpart A. PROFESSIONAL RESPONSIBILITY

#### CHAPTER 81. RULES OF PROFESSIONAL CONDUCT

##### Subchapter A. RULES OF PROFESSIONAL CONDUCT

#### § 81.4. Rules of Professional Conduct.

The following are the Rules of Professional Conduct:

##### CLIENT-LAWYER RELATIONSHIP

#### Rule 1.15. Safekeeping Property.

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a **[representation] client-lawyer relationship** separate from the lawyer's own property. **[Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other]** Such property shall be identified **[as such]** and appropriately safeguarded. Complete records of **[such account funds and other property]** the receipt, maintenance and disposition of such property shall be preserved for a period of five years after termination of the **[representation] client-lawyer relationship or after distribution or disposition of the property, whichever is later.**

(b) Upon receiving **[funds or other property]** in which a client or third person has an interest **[property of a client or third person in connection**

**with a client-lawyer relationship,** a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client or third person, a lawyer shall promptly deliver to the client or third person any **[funds or other]** property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(c) When in **[the course of representation] connection with a client-lawyer relationship** a lawyer is in possession of property in which **[both the lawyer and another person] two or more persons, one of whom may be the lawyer,** claim an interest, the property shall be kept separate by the lawyer until **[there is an accounting and severance of their interests] the dispute is resolved. [If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.]** The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

(d) **[Notwithstanding paragraphs (a), (b) and (c), and except as provided below in paragraph (e), a lawyer shall place all funds of a client or of a third person in an interest bearing account. All qualified funds received by the lawyer shall be placed in an interest On Lawyer Trust Account in a depository institution approved by the Supreme Court of Pennsylvania. All other funds of a client or a third person received by the lawyer shall be placed in an interest bearing account for the benefit of the client or third person or in an other investment vehicle specifically agreed upon by the lawyer and the client or third party.]** In those parts of this Rule dealing with funds of clients or third persons which the lawyer receives in connection with a client-lawyer relationship, excluding funds which the lawyer receives while acting as fiduciary for an estate, trust, guardianship or conservatorship, the following definitions are applicable:

(1) **Trust Account** means an interest-bearing account in a financial institution, as defined in Rule of Disciplinary Enforcement 221, in which the lawyer deposits such funds.

(2) **Qualified funds [are monies received by a lawyer in a fiduciary capacity that, in the good faith judgment of the lawyer,] means such funds when they are nominal in amount or are reasonably expected to be held for such a short period of time that sufficient interest income will not be generated to justify the expense of administering a segregated account.**

**[(2) Depository institutions are financial institutions approved by the Supreme Court of Pennsylvania pursuant to Rule 221 of the Pennsylvania Rules of Disciplinary Enforcement.]**

(3) **Nonqualified Funds** means all other such funds.

(4) An Interest On Lawyer Trust Account (IOLTA Account) is an unsegregated **[interest-bearing deposit**

account with a depository institution ] Trust Account for the deposit of [ qualified funds ] Qualified Funds by a lawyer.

(5) The IOLTA Board means the Pennsylvania Interest on Lawyers Trust Account Board.

(e) The responsibility for identifying an account as a Trust Account shall be that of the lawyer in whose name the account is held. A lawyer shall not deposit the lawyer's own funds in a Trust Account except for the sole purpose of paying bank services charges on that account, and only in an amount necessary for that purpose. A lawyer shall deposit into a Trust Account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred, unless the client gives informed consent, confirmed in writing, to the handling of fees and expenses in a different manner. At all times while a lawyer holds funds of a client or third person in connection with a client-lawyer relationship, the lawyer shall also maintain another account that is not used to hold such funds.

(f) All Nonqualified Funds shall be placed in a Trust Account or in another investment vehicle specifically agreed upon by the lawyer and the client or third person which owns the funds.

(g) All Qualified Funds shall be placed in an IOLTA Account. The rate of interest payable on an IOLTA Account shall not be less than the highest rate or dividend generally available from the financial institution to its non-IOLTA Account customers when the IOLTA Account meets or exceeds the same minimum balance and other account eligibility qualifications applicable to those other accounts. In no event shall the rate of interest payable on an IOLTA Account be less than the rate paid by the [ depository ] financial institution on negotiable order of withdrawal accounts (NOW) or super negotiable order of withdrawal accounts. An account shall not be considered an IOLTA Account unless the [ depository ] financial institution at which the account is maintained shall:

[ (i) ] (1) Remit at least quarterly any interest earned on the account to the IOLTA Board [ (as hereinafter defined) ].

[ (ii) ] (2) Transmit to the IOLTA Board with each remittance and to the lawyer who maintains the IOLTA Account a statement showing at least the name of the account, service charges or fees deducted, if any, [ and ] the amount of interest remitted from the account and the average daily balance, if available.

[ (iii) ] Transmit to the lawyer who maintains the IOLTA Account a statement showing at least the name of the account, service charges or fees deducted, if any, and the amount of interest remitted from the account.

(e) [ (h) ] A lawyer shall be exempt from the [ provisions of paragraph (d) ] requirement that all Qualified Funds be placed in an IOLTA Account only upon exemption requested and granted by the IOLTA Board. If an exemption is granted, the lawyer must hold Qualified Funds in a Trust Account. Exemptions shall be granted if: [ (i) ] (1) the nature of the lawyer's practice does not require the routine maintenance of a [ trust account ] Trust Account in Pennsylvania; [ (ii) ] (2)

compliance with this paragraph [ (d) ] would work an undue hardship on the lawyer or would be extremely impractical, based either on the geographical distance between the lawyer's principal office and the closest [ depository ] financial institution [ which is described in paragraph (d)(2) ], or on other compelling and necessitous factors; or [ (iii) ] (3) the lawyer's historical annual [ trust account ] Trust Account experience, based on information from the [ depository ] financial institution in which the lawyer deposits [ trust ] funds, demonstrates [ that ] the service charges on the account would significantly and routinely exceed any interest generated.

[ (f) ] (i) A lawyer shall not be liable in damages or held to have breached any fiduciary duty or responsibility because monies are deposited in an IOLTA Account pursuant to the lawyer's judgment in good faith that the monies deposited were [ qualified funds ] Qualified Funds.

[ (g) ] (j) There is hereby created the Pennsylvania Interest On Lawyers Trust Account Board [ (herein called the IOLTA Board) ], which shall administer the IOLTA program. The IOLTA Board shall consist of nine members who shall be appointed by the Supreme Court. Two of the appointments shall be made from a list provided to the Supreme Court by the Pennsylvania Bar Association in accordance with its own rules and regulations. With respect to these two appointments, the Pennsylvania Bar Association shall submit three names to the Supreme Court, from which the Court shall make its final selections. The term of each member shall be three years and no member shall be appointed for more than two consecutive three year terms. The Supreme Court shall appoint a Chairperson. In order to administer the IOLTA program, the IOLTA Board shall promulgate rules and regulations consistent with this Rule for approval by the Supreme Court. Additionally, upon approval of the Supreme Court, the IOLTA Board shall distribute and/or expend IOLTA funds for the purpose set forth in this Rule. The IOLTA Board shall comply with the following:

\* \* \* \* \*

(2) Disbursement and allocation of IOLTA Funds shall be subject to the prior approval of the Supreme Court [ , thus the ]. The IOLTA Board shall submit to the Supreme Court for its approval a copy of its audited statement of financial affairs, clearly setting forth in detail all funds previously approved for disbursement under the IOLTA program. Additionally, a copy of the IOLTA Board's proposed annual budget [ will ] shall be provided to the Court, designating the uses to which IOLTA Funds are recommended.

[ (h) ] (k) \* \* \*

\* \* \* \* \*

[ (i) ] (l) \* \* \*

Comment:

(1) A lawyer should hold property of others with the care required of a professional fiduciary. The obligations of a lawyer under this Rule apply when the lawyer has come into possession of property of clients or third persons because the lawyer is acting or has acted as a lawyer in a client-lawyer relationship with some person. Securities should be kept in a safe

deposit box, except when some other form of safekeeping is warranted by special circumstances. All property which is the property of clients or third persons [ **should** ], including prospective clients, must be kept separate from the lawyer's business and personal property and, if monies, in one or more [ **trust accounts** ] **Trust Accounts**. [ **Separate trust accounts may be warranted when administering estate monies or acting in similar fiduciary capacities.** ] The responsibility for identifying an account as a Trust Account shall be that of the lawyer in whose name the account is held. Whenever a lawyer holds funds of a client or third person, the lawyer must maintain at least two accounts: one in which those funds are held and another in which the lawyer's own funds may be held. A lawyer should maintain on a current basis books and records in accordance with sound accounting practices consistently applied and comply with any recordkeeping rules established by law or court order.

(2) The following books and records shall be maintained for each Trust Account:

(i) bank statements and check registers (which shall include the payee, date, amount and the client matter involved);

(ii) all transaction records returned by the financial institution, including canceled checks in whatever form and records of electronic transactions;

(iii) records of deposits and a ledger separately listing each deposited item and the client or third person for whom the deposit is being made.

(3) The records required by this Rule may be maintained in electronic or other form if they can be retrieved in printed hard copy. Electronic records must be regularly backed up by an appropriate storage device.

(4) While normally it is impermissible to commingle the lawyer's own funds with client funds, paragraph (e) provides that it is permissible when necessary to pay bank service charges on that account. Accurate records must be kept regarding that part of the funds which are the lawyer's.

(5) Lawyers often receive funds from [ **third parties from** ] which the lawyer's fee will be paid. [ **If there is risk that the client may divert the funds without paying the fee, the** ] The lawyer is not required to remit [ **the portion from which the fee is to be paid** ] to the client funds that the lawyer reasonably believes represent fees owed. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds [ **should be kept in trust** ] must be kept in a Trust Account and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be promptly distributed.

[ **Third** ] (6) Paragraph (c) also recognizes that third parties [ **, such as a client's creditors,** ] may have [ **just** ] lawful claims against specific funds or other property in a lawyer's custody such as a client's creditor who has a lien on funds recovered in a personal injury action. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client [ **, and ac-**

**cordingly, may refuse to surrender the property to the client. However, a** ]. In such cases, when the third party claim is not frivolous under applicable law, the lawyer must refuse to surrender the property to the client unless the claims are resolved. A lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party. When there are substantial grounds for dispute as to the person entitled to the funds, the lawyer may file an action to have a court resolve the dispute.

[ **The obligation of a lawyer under this Rule are independent of those arising from activity other than rendering legal services.** ] (7) Other applicable law may impose pertinent obligations upon a lawyer independent of any obligations arising from this Rule. For example, a lawyer who serves only as an escrow agent is governed by the [ **applicable** ] law relating to fiduciaries even though the lawyer does not render legal services in the transaction and is not governed by this Rule. A lawyer who receives funds while serving as an executor or trustee remains subject to the formal accounting procedures and other supervision of the Orphans Court; when such funds are nominal in amount or reasonably expected to be held for such a short period that sufficient interest will not be generated to justify maintaining a segregated account such funds may, in the discretion of the lawyer, be deposited into the IOLTA Account of the lawyer even though such deposit is not required.

[ **A "client's security fund" provides a means through the collective efforts of the bar to reimburse persons who have lost money or property as a result of dishonest conduct of a lawyer. Where such a fund has been established, a lawyer should participate.** ] (8) A lawyer must participate in the Pennsylvania Lawyers Fund for Client Security. It is a means through the collective efforts of the bar to reimburse persons who have lost money or property as a result of dishonest conduct of a lawyer.

(9) Paragraphs (g) through (l) provide for the Interest on Lawyer Trust Account (IOLTA) program, and the definitions in paragraph (d) distinguish two types of funds of clients and third persons held by a lawyer: Qualified Funds, which must be placed in an IOLTA account, and Nonqualified Funds, which are to be placed in an interest bearing account unless the client or third person specifically agrees to another investment vehicle for the benefit of the client or third person. There are further instructions in Rules 219 and 221 of the Pennsylvania Rules of Disciplinary Enforcement and in the Regulations of the Interest on Lawyers Trust Account Board, 204 Pa. Code, § 81.1 et seq., which are referred to as the IOLTA Regulations.

#### Annex B

#### Subpart B. DISCIPLINARY ENFORCEMENT

#### CHAPTER 83. PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT

#### Subchapter B. MISCONDUCT

Rule 221. Funds of clients and third persons. Mandatory overdraft notification.

(a) [ **For purposes of this rule, a fiduciary account of an attorney is:**

(1) an IOLTA Account as defined in Rule 1.15(d)(3) of the Pennsylvania Rules of Professional Conduct; or

(2) any other account maintained in a financial institution in which or with respect to which an attorney holds funds:

(i) of a client;

(ii) in a fiduciary capacity customary to the practice of law, such as administrator, executor, trustee or an express trust, guardian or conservator; or

(iii) as an escrow agent or other fiduciary, having been so selected as a result of a client-attorney relationship. ]

For purposes of this rule, a Trust Account of an attorney is an account in which an attorney, in accordance with Rule 1.15 of the Pennsylvania Rules of Professional Conduct, deposits funds received from a client or a third person in connection with a client-lawyer relationship, excluding funds which the attorney receives while acting as fiduciary for an estate, trust, guardianship or conservatorship.

(b) An attorney shall maintain a [ fiduciary account ] Trust Account with respect to his/her practice in this Commonwealth only in a financial institution approved by the Supreme Court of Pennsylvania for the maintenance of such accounts. Subject to the provisions set forth herein, the Disciplinary Board shall establish regulations governing approval and termination of approval for financial institutions, shall make appropriate recommendations to the Supreme Court of Pennsylvania concerning approval and termination, and shall periodically publish a list of approved financial institutions.

(c) A financial institution shall be approved as a depository for [ fiduciary accounts ] Trust Accounts of attorneys if it shall file with the Disciplinary Board an agreement (in a form provided by the Board) to make a prompt report to the Lawyers Fund for Client Security Board whenever any check or similar instrument is presented against [ an account described in paragraph (a) above ] a Trust Account when such account contains insufficient funds to pay the instrument, regardless of

\* \* \* \* \*

(d) For purposes of this Rule, [ an account ] a Trust Account shall not be deemed to contain insufficient funds to pay a check or similar instrument solely because it contains insufficient collected funds to pay the instrument, and no report shall be required in the case of an instrument presented against uncollected or partially uncollected funds. This provision shall not be deemed an endorsement [ of the propriety ] of the practice of drawing checks against uncollected funds.

\* \* \* \* \*

(f) The responsibility for identifying an account as a [ fiduciary account ] Trust Account shall be that of the attorney in whose name the account is held.

(g) The following books and records shall be maintained for each Trust Account:

(1) bank statements and check registers (which shall include the payee, date, amount and the client matter involved);

(2) all transaction records returned by the financial institution, including canceled checks in whatever form and records of electronic transactions;

(3) records of deposits and a ledger separately listing each deposited item and the client or third person for whom the deposit is being made.

(h) The records required by this rule may be maintained in electronic or other form if they can be retrieved in printed hard copy. Electronic records must be regularly backed up by an appropriate storage device.

(i) The records required by this rule may be subject to subpoena in connection with an investigation or hearing pursuant to these rules. Failure to produce such records may result in the initiation of proceedings pursuant to Rule 208(f) (relating to emergency temporary suspension orders and related relief), which permits disciplinary counsel to commence a proceeding for the temporary suspension of a respondent-attorney who refuses to comply with a valid subpoena.

(j) For purposes of this rule, funds deposited in an account prior to the close of business on the calendar date of presentation of an instrument shall be considered to be in the account at the close of business on that date notwithstanding the financial institution's treatment of such funds, for other purposes, as being received at the opening of the next banking day pursuant to 13 Pa.C.S. § [ 4107(b) ] 4108(b) (relating to items [ of ] or deposits received after cutoff hour).

[ (h) ] (k) For purposes of this rule, a check or draft against [ an escrow account ] a Trust Account shall be deemed to be presented at the close of business on the date of presentation.

[ (i) When ] (l) No report need be made when the financial institution determines that the instrument presented against insufficient funds had been issued in reliance on a deposited instrument that was ultimately dishonored [ , no report need be made ]. This provision shall not be deemed an endorsement [ of the propriety ] of the practice of drawing checks against uncollected funds.

[ (j) ] (m) \* \* \*

[ (k) ] (n) \* \* \*

[ (l) ] (o) \* \* \*

[ (m) ] (p) \* \* \*

[ (n) ] (q) \* \* \*

[ (o) ] (r) \* \* \*

[Pa.B. Doc. No. 05-757. Filed for public inspection April 22, 2005, 9:00 a.m.]

# Title 255—LOCAL COURT RULES

## CUMBERLAND COUNTY

### Arbitration Rules; Civil Term; Civil 96-1335

#### Order of Court

*And Now*, this 30th day of March, 2005, and effective March 30, 2005, or thirty (30) days after publication in the *Pennsylvania Bulletin*, Cumberland County Local Rule of Court 1301.1 regarding Arbitration Rules is amended as follows:

All civil cases which are at issue in which the total amount in controversy is **Thirty Five Thousand Dollars (\$35,000)** or less, exclusive of interest and costs, except those cases involving the title to real estate, shall be submitted for hearing and award to three members of the Bar of Cumberland County to be designated as a Board of Arbitrators.

**Note:** These rules are adopted pursuant to the authority of sec. 7361 of the Judicial Code of July 9, 1976, 42 Pa.C.S. sec. 7361. (Rules 450 et seq. for requirements of admission and membership in the Bar of Cumberland County).

Formerly Local Rule 401-1.

Adopted May 15, 1981; effective May 15, 1981;

Amended December 21, 1992; effective February 1, 1993;

Amended March 30, 2005; effective March 30, 2005.

Pursuant to Pa. R.C.P. 239, the Court Administrator is directed to forward seven (7) certified copies of this order

to the Administrative Office of Pennsylvania Courts, two (2) certified copies to the Legislative Reference Bureau, for publication in the *Pennsylvania Bulletin* together with a diskette, formatted in Microsoft Word for Windows reflecting the text in hard copy version, one (1) copy to the Supreme Court Civil Procedural Rules Committee and/or the Supreme Court Domestic Relations Committee, and one (1) copy to the *Cumberland Law Journal*.

*By the Court*

GEORGE E. HOFFER,  
*President Judge*

[Pa.B. Doc. No. 05-758. Filed for public inspection April 22, 2005, 9:00 a.m.]

## DISCIPLINARY BOARD OF THE SUPREME COURT

### Notice of Suspension

Notice is hereby given that by Order of the Supreme Court of Pennsylvania issued April 6, 2005, Brian P. Raney is suspended from the practice of law for a period of five years, effective May 6, 2005. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside of the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

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

[Pa.B. Doc. No. 05-759. Filed for public inspection April 22, 2005, 9:00 a.m.]

# RULES AND REGULATIONS

## Title 58—RECREATION

### FISH AND BOAT COMMISSION

[58 PA. CODE CH. 65]

#### Fishing

The Fish and Boat Commission (Commission) amends Chapter 65 (relating to special fishing regulations). The Commission is publishing this final-form rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The changes relate to the elimination of the Selective Harvest and All-Tackle Selective Harvest Programs.

#### A. *Effective Date*

The final-form rulemaking will go into effect upon publication in the *Pennsylvania Bulletin*.

#### B. *Contact Person*

For further information on the final-form rulemaking, contact Laurie E. Shepler, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7815. This final-form rulemaking is available on the Commission's website: [www.fish.state.pa.us](http://www.fish.state.pa.us).

#### C. *Statutory Authority*

The amendments to §§ 65.1 and 65.4b are published under the statutory authority of section 2307 of the code (relating to waters limited to specific purposes).

#### D. *Purpose and Background*

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

#### E. *Summary of Changes*

(1) *Section 65.1.* At the July 1994 meeting, the Commission adopted regulations for the Selective Harvest Program. These regulations went into effect beginning with the 1995 season. The Selective Harvest Program was designed to enhance wild trout populations while providing an opportunity for limited harvest of some larger trout. Selective Harvest regulations provided an alternative to Trophy Trout management on wild trout waters where habitat limitations may preclude the stockpiling of older and larger trout as intended under the 14-inch minimum length limit that is applied to Trophy Trout waters. Selective Harvest regulations also were designed to reflect differences in longevity and growth rates, particularly between brown and brook trout. Under these regulations, species specific minimum length limits apply with a 12-inch minimum length limit for brown trout and a 9-inch minimum for other trout species. Angling is permitted on a year-round basis with a two trout per day creel limit (combined species) during the harvest season. On the waters managed under the Selective Harvest Program, gear is restricted to the use of artificial lures, flies and streamers.

Based on data collected from follow-up examinations, the trout populations did not always respond as the Commission intended on some of the waters managed under the Selective Harvest Program. Therefore, to consolidate the number of special regulations used in managing trout populations, the Commission moved the remain-

ing four waters in the program to other special regulations programs, effective January 1, 2005. Thus, there is no need to retain the regulations for the Selective Harvest Program. The Commission accordingly deleted § 65.1 to read as set forth in the notice of proposed rulemaking.

(2) *Section 65.4b.* At the January 1998 meeting, the Commission adopted regulations for the All-Tackle Selective Harvest Program. These regulations went into effect beginning with the 1999 season. All-Tackle Selective Harvest regulations were designed to enhance wild trout populations and provide the opportunity for limited harvest of some larger trout. As with the Selective Harvest Program, species specific minimum length limits apply with a 12-inch minimum for brown trout and a 9-inch minimum for all other trout species. Angling is permitted on a year-round basis with a two trout per day creel limit (combined species) during the harvest season. However, in contrast to the Selective Harvest Program where angling is restricted to the use of artificial lures, flies and streamers, the All-Tackle Selective Harvest Program was designed to appeal to a broader angling base by allowing the use of natural bait, baitfish and fishbait in addition to artificial lures, flies and streamers.

Based on information from follow-up inventories, the trout populations did not always respond as the Commission intended on the waters managed under the All-Tackle Selective Harvest Program. Therefore, to consolidate the number of special regulations programs used in managing trout populations, the Commission moved the remaining four waters in the program to other special regulations programs, effective January 1, 2005. Thus, there is no need to retain the regulations for the All Tackle Selective Harvest Program. The Commission accordingly deleted § 65.4b to read as set forth in the notice of proposed rulemaking.

(3) *Section 65.24.* As part of the proposed rulemaking package, the Commission also proposed imposing a catch and release/no harvest fishery for all species on waters located in the Wyoming State Forest, Columbia and Northumberland Counties. The Commission previously adopted this amendment at 34 Pa.B. 6418 (December 4, 2004).

#### F. *Paperwork*

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

#### G. *Fiscal Impact*

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

#### H. *Public Involvement*

A notice of proposed rulemaking was published at 34 Pa.B. 5162 (September 18, 2004). The Commission did not receive any public comments concerning the proposed amendments to §§ 65.1 and 65.4b.

#### *Findings*

The Commission finds that:

(1) Public notice of intention to adopt the amendments adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45

P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

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

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

#### Order

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

(a) The regulations of the Commission, 58 Pa. Code Chapter 65, are amended by deleting §§ 65.1 and 65.4b to read as set forth at 34 Pa. B. 5162.

(b) The Executive Director will submit this order and 34 Pa.B. 5162 to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director shall certify this order and 34 Pa.B. 5162 and deposit them with the Legislative Reference Bureau as required by law.

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

DOUGLAS J. AUSTEN, Ph.D.,  
*Executive Director*

**Fiscal Note:** Fiscal Note 48A-160a remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 05-760. Filed for public inspection April 22, 2005, 9:00 a.m.]

## FISH AND BOAT COMMISSION

### [58 PA. CODE CH. 111]

#### Boating

The Fish and Boat Commission (Commission) amends Chapter 111 (relating to special regulations counties). The Commission is publishing this final-form rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The final-form rulemaking creates a slow, no wake zone in the Kernsville Pool of the Schuylkill River, Berks County, converts the 8 mph zones on the McKean County portion of Willow and Sugar Bays, Allegheny River Reservoir, to slow, no wake and removes the 8 mph restriction on the Warren County portion of the bays.

#### A. Effective Date

The final-form rulemaking will go into effect immediately upon publication in the *Pennsylvania Bulletin*.

#### B. Contact Person

For further information on the final-form rulemaking, contact Laurie E. Shepler, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7815. This final-form rulemaking is available on the Commission's website: [www.fish.state.pa.us](http://www.fish.state.pa.us).

#### C. Statutory Authority

The amendments to §§ 111.6, 111.42 and 111.62 (relating to Berks County; McKean County; and Warren County) are published under the statutory authority of section 5124 of the code (relating to particular areas of water).

#### D. Purpose and Background

The final-form rulemaking is designed to update, modify and improve the Commission's boating regulations. The specific purpose of the amendments is described in more detail under the summary of changes. The Commission's Boating Advisory Board considered the proposed amendments and recommended that the Commission finally adopt them as set forth in the notice of proposed rulemaking.

#### E. Summary of Changes

(1) *Section 111.6.* The Commission received a petition from Blue Mountain Wildlife, Inc. (BMW) to amend this section to prohibit the operation of internal combustion motors on boats using the Schuylkill River behind the Kernsville Dam to encourage the preservation of the peacefulness and beauty of the impoundment. The Kernsville Dam is located in Berks County, near Hamburg, PA. The dam is owned by the Commonwealth and is managed by the Department of Environmental Protection (Department). BMW holds a lease to manage and develop the area around the impoundment for passive recreational use. The Department maintains an access area at the impoundment that has been closed because it falls within a 200-foot restricted area near this dam. Only hand-carry access is currently available.

Commission staff reviewed BMW's petition to ensure that it met the requirements of § 51.6 (relating to petitions or requests for regulations) and determined that it was appropriate for further consideration. In accordance with the Commission's regulations, BMW was afforded an opportunity to make a presentation at a Commission meeting. The Commission accepted the petition for further review and directed staff to prepare a report and recommendations.

The staff completed its report and based upon the recommendations contained in the report, the Commission created a slow, no wake zone in the Kernsville Pool. The Commission adopted the amendment to § 111.6 to read as set forth in the notice of proposed rulemaking.

(2) *Sections 111.42 and 111.62.* In 1980, the Commission adopted regulations to control the speed of boats on the various bays of the Kinzua Reservoir. All of the larger bays were restricted to 8 mph while the smaller ones were made slow, no wake. These regulations were subsequently modified in 1989 and 1994. Boat speed was restricted to slow, no wake in most of the coves, but in Willow Bay and Sugar Bay, an 8 mph speed limit was retained. This speed was selected because the size of the bays was too large for slow, no wake but not large enough for unrestricted operation.

The Commission reviewed these restrictions and determined that the regulations could be further improved and provide additional boating opportunities by converting the 8 mph zones on the McKean County portion of Willow and Sugar Bays to slow, no wake and by removing the 8 mph restriction on the Warren County portion of these bays. The Commission adopted the amendments to §§ 111.42 and 111.62 to read as set forth in the notice of proposed rulemaking.

#### F. Paperwork

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

#### G. Fiscal Impact

The final-form rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions.



The final-form rulemaking will impose no new costs on the private sector or the general public.

*H. Public Involvement*

A notice of proposed rulemaking was published at 34 Pa.B. 6546 (December 11, 2004). Prior to the formal public comment period, the Commission received two public comments, one supporting the proposed amendment to § 111.6 and the other opposing it. The Commission did not receive any public comments pertaining to the proposed amendment to this section during the formal public comment period.

Prior to the formal public comment period, the Commission received 17 public comments concerning the proposed amendments to §§ 111.42 and 111.62. Eleven supported the proposal and six opposed it. The Commission received two comments concerning the proposed rulemaking during the formal public comment period. Both comments supported the proposed rulemaking. After the formal public comment period, the Commission received one comment favoring the proposed rulemaking. Copies of all public comments were provided to the Commissioners.

*Findings*

The Commission finds that:

- (1) Public notice of intention to adopt the amendments adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided, and the comments that were received were considered.
- (3) The adoption of the amendments of the Commission in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statutes.

*Order*

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

(a) The regulations of the Commission, 58 Pa. Code Chapter 111, are amended by amending §§ 111.6, 111.42 and 111.62 to read as set forth at 34 Pa.B. 6546.

(b) The Executive Director will submit this order and 34 Pa.B. 6546 to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director shall certify this order and 34 Pa.B. 6546 and deposit them with the Legislative Reference Bureau as required by law.

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

DOUGLAS J. AUSTEN, Ph.D.,  
*Executive Director*

**Fiscal Note:** Fiscal Note 48A-163 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 05-761. Filed for public inspection April 22, 2005, 9:00 a.m.]

**GAME COMMISSION  
[58 PA. CODE CH. 141]**

[Correction]

**Use of Cable Restraints for Taking Certain Furbearers**

The Fiscal Note notation was missing from a document which appeared at 35 Pa.B. 2304 (April 16, 2005).

The correct version of the Fiscal Note is as follows:

**Fiscal Note:** Fiscal Note 48-196 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 05-705. Filed for public inspection April 15, 2005, 9:00 a.m.]

# PROPOSED RULEMAKING

## FISH AND BOAT COMMISSION

[58 PA. CODE CH. 111]

### Boating; Special Regulations Counties

The Fish and Boat Commission (Commission) proposes to amend Chapter 111 (relating to special regulations counties). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The proposed rulemaking corrects a minor discrepancy in the description of the slow, no wake zone on the Beaver River in Beaver County and removes a 10 horsepower restriction at the former Connoquenessing Creek Dam in Beaver County. The proposed rulemaking also establishes a 45 mph speed limit from sunrise to sunset on weekends and holidays from the Saturday before Memorial Day through Labor Day on Harveys Lake in Luzerne County.

#### A. *Effective Date*

The proposed rulemaking, if approved on final-form, will go into effect on January 1, 2006.

#### B. *Contact Person*

For further information on the proposed rulemaking, contact Laurie E. Shepler, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7815. This proposed rulemaking is available on the Commission's website: [www.fish.state.pa.us](http://www.fish.state.pa.us).

#### C. *Statutory Authority*

The proposed amendments to §§ 111.4 and 111.40 (relating to Beaver County; and Luzerne County) are published under the statutory authority of section 5124 of the code (relating to particular areas of water).

#### D. *Purpose and Background*

The proposed rulemaking is designed to update, modify and improve the Commission's boating regulations. The specific purpose of the proposed rulemaking is described in more detail under the summary of proposal. The Commission's Boating Advisory Board considered the proposed amendments and recommended that the Commission publish a notice of proposed rulemaking containing the proposed amendments.

#### E. *Summary of Proposals*

(1) *Section 111.4.* A review of the Commission's regulations uncovered a minor discrepancy in the description of the special regulation for the Beaver River. The section establishes a slow no wake zone for a length of 2 miles, but the section also references River Mile 0.0 and River Mile 2.3, a distance of 2.3 miles. The proposed amendments correct this discrepancy to clarify that the slow no wake zone extends for 2.3 miles.

The Connoquenessing Creek Dam was a wicket dam located near Ellwood City. The dam was originally built by the Country Club Colony in 1942 to provide water for its golf course. It was made of sheet steel that could be raised to make a small pool about 3 feet deep. In its early life, the pool was used by locals for waterskiing under very strict regulations. These regulations were removed in the mid-1980s, and a 10 horsepower restriction was applied to allow limited use. However, the permit for this

dam issued by the Department of Environmental Protection specifically prohibited the operation of motorboats on the impoundment. As a result, Commission regulations allowing waterskiing and motorboat operations were in conflict with this permit.

Currently, the dam no longer exists as an operational structure. If the regulation is removed, the creek will revert to general unlimited horsepower, but because the unimpounded depth of the river is insufficient to support power boats, the amendment will have no impact on current or potential motor boating activities. Without the dam creating an impoundment, there is no reason to retain the current 10 horsepower restriction.

The Commission proposes that § 111.4 be amended to read as set forth in Annex A.

(2) *Section 111.40.* The Commission received a petition from the Harveys Lake Protective Association to amend its regulations to establish a 45 mph speed limit from sunrise to sunset on weekends and holidays from the Saturday before Memorial Day through Labor Day. The Commission reviewed the petition to ensure that it met the requirements of § 51.6 (relating to petitions or requests for regulations) and determined that it was appropriate for further consideration. In accordance with the Commission's regulations, the petitioner was afforded an opportunity to make a presentation at a Commission meeting. The Commission accepted the petition for further review and directed staff to prepare the appropriate report and recommendations for further Commission consideration.

At the October 2004 Commission meeting, the Commission granted staff an additional period of 90 days to gather information regarding the use of radar to enforce speed limits on Commonwealth waters. Commission staff therefore polled other states and found that relatively few states use radar extensively. The states that do, Maryland, Florida and Missouri, primarily use radar on waters with narrow channels or rivers where the boat traffic is relatively constrained. All admit to the limitations for use of radar on open waters with heavy boat traffic.

A speed limit on Harveys Lake may be difficult to enforce using radar. Nonetheless, speed limits often act as a social and psychological deterrent and thus may have some value. Accordingly, the Commission decided to seek public comments and approved the publication of a notice of proposed rulemaking containing the amendments to read as set forth in Annex A.

#### F. *Paperwork*

The proposed rulemaking will not increase paperwork and will create no new paperwork requirements.

#### G. *Fiscal Impact*

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

#### H. *Public Comments*

Interested persons are invited to submit written comments, objections or suggestions about the proposed rulemaking to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000 within 30 days after publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically by completing the form at [www.state.pa.us/Fish/regcomments](http://www.state.pa.us/Fish/regcomments). If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

DOUGLAS J. AUSTEN, Ph.D.,  
*Executive Director*

**Fiscal Note:** 48A-165. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 58. RECREATION**

**PART II. FISH AND BOAT COMMISSION**

**Subpart C. BOATING**

**CHAPTER 111. SPECIAL REGULATIONS  
COUNTIES**

**§ 111.4. Beaver County.**

(a) *Beaver River.* Boats are limited to slow, no wake speed from the mouth [ **of the Beaver River (Mile 0.0) to a point 2 miles upstream (Mile 2.3) upstream to Mile 2.3.** ]

(b) [ *Connequenessing Creek Dam.*

**(1) The use of motors in excess of 10 horsepower is prohibited.**

**(2) The speed of boats is restricted to slow, no wake speed upstream from a marked point 8/10 of a mile above the Route 65 bridge.**

(c) ] \* \* \*

[ (d) ](c) \* \* \*

**§ 111.40. Luzerne County.**

\* \* \* \* \*

(f) *Harveys Lake.*

**(1) The speed of boats is limited to 45 miles per hour from sunrise to sunset on weekends and holidays from the Saturday before Memorial Day through Labor Day.**

**(2) The speed of boats is limited to slow, no wake speed between sunset and sunrise.**

[Pa.B. Doc. No. 05-762. Filed for public inspection April 22, 2005, 9:00 a.m.]

**[58 PA. CODE CHS. 61, 65 AND 69]**

**Fishing**

The Fish and Boat Commission (Commission) proposes to amend Chapters 61, 65 and 69 (relating to seasons, sizes and creel limits; special fishing regulations; and fishing in Lake Erie and boundary lakes). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The proposed rulemaking relates to seasons, sizes and creel limits for various species on the Delaware River and River Estuary, the West Branch of the Delaware River in Wayne County and the Conowingo Reservoir. The proposed rulemaking also reduces the size limit and increases the number of walleye that may be taken from Lake Erie and its tributaries.

*A. Effective Date*

The proposed rulemaking, if approved on final-form, will go into effect on January 1, 2006.

*B. Contact Person*

For further information on the proposed rulemaking, contact Laurie E. Shepler, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7815. This proposed rulemaking is available on the Commission's website: [www.fish.state.pa.us](http://www.fish.state.pa.us).

*C. Statutory Authority*

The proposed amendments to §§ 61.2, 61.4 and 69.12 (relating to Delaware River and River Estuary; Conowingo Reservoir; and seasons sizes and creel limits—Lake Erie and Lake Erie tributaries) are published under the statutory authority of section 2102 of the code (relating to rules and regulations). The proposed amendment to § 65.24 (relating to miscellaneous special regulations) is published under the statutory authority of section 2307 of the code (relating to waters limited to specific purposes). The proposed amendment to § 69.33 (relating to use of trap nets) is published under the statutory authority of section 2903 of the code (relating to boats and net licenses for boundary lakes).

*D. Purpose and Background*

The proposed rulemaking is designed to update, modify and improve the Commission's fishing regulations. The specific purpose of the proposed rulemaking is described in more detail under the summary of proposals.

*E. Summary of Proposals*

(1) *Sections 61.2 and 65.24.* Three jurisdictions, New York, New Jersey and the Commonwealth, work in a cooperative fashion in setting regulations for the Delaware River and the West Branch because both are border waters. Differences in the rulemaking processes, license years and fisheries within different reaches may result in regulations being out of synchrony for a year or so. However, the jurisdictions attempt to provide consistency for the anglers on these waterways. In the past few months, Commission staff have worked with fisheries personnel from New York and New Jersey regarding changes for 2006. These changes include:

*Northern Pike.* In the past few years, there have been occasional catches of northern pike from the Delaware River. These fish most likely originate from a few naturalized populations occurring in the drainage. Currently, regulations on northern pike do not exist. While the Commission does not intend to foster increases of this esocid in the river, it is likely that a low density northern pike population will persist requiring regulation. The Commission proposes a 24-inch minimum length limit, a two fish daily creel limit and a year-round season. This change will provide consistency with New Jersey's regulations. For simplification, the Commission proposes a river wide approach.

*Trout.* New York is seeking a 15-day extension to the trout season as part of refining trout regulations State-wide. Currently, the season on the main stem and the West Branch closes at midnight September 30 when a catch-and-release artificial-lures-only begins on the West Branch. The Commission proposes that the regular season be extended 15 days on both waterways. This will provide additional angling opportunity with harvest of one trout per day upstream of I-84, five per day downstream of I-84 and two per day on the West Branch.

*Black Bass (largemouth and smallmouth).* Currently a year-round season with a 12-inch minimum length limit and five bass per day applies to the Delaware River and Estuary. Regulation changes recently adopted and effective January 2005 by New Jersey for the Delaware River are similar to Commonwealth inland regulations and are more conservative with respect to harvest during the black bass spawning period. The Commission proposes that the New Jersey/Pennsylvania portion of the river (downstream of I-84) be regulated: (1) to impose a catch-and-immediate release season that begins on the first Saturday after April 11 and extends through 12:01 a.m. the first Saturday after June 11; and (2) to provide an opportunity for competitive anglers to have "paper" or catch-measure- immediate release tournaments during the catch-and-release season. This change will provide consistency with New Jersey's regulations.

*Striped Bass.* The upstream point of tidal influence at Trenton Falls is used as the boundary for separating freshwater and marine regulations. Use of a more readily identifiable descriptor would be easier for both anglers and law enforcement personnel. The Commission proposes the Calhoun Street Bridge as a more recognizable limit. The extension is approximately 0.5 mile upstream. The Commission proposes that §§ 61.2 and 65.24 be amended to read as set forth in Annex A.

(2) *Section 61.4.* By virtue of an agreement between Maryland and the Commonwealth, the Commonwealth will establish regulations for the Youghiogheny River Lake and Maryland will do the same for the Conowingo Reservoir, being that waters from both occur in both jurisdictions. Maryland's fisheries staff recently notified Commission staff that the Commonwealth regulations for Conowingo Reservoir are not current with ones promulgated by Maryland over the past few years. Thus, the Commission proposes to amend § 61.4 to read as set forth in Annex A so that the Commonwealth's regulations are consistent with those of Maryland.

(3) *Sections 69.12 and 69.33.* Currently, an 18-inch minimum length and four per day creel limit are in effect for walleye taken from the Commonwealth waters of Lake Erie, Presque Isle Bay and peninsular waters. This regulation went into effect on January 1, 2004, and was designed to rebuild Lake Erie walleye populations, which had dipped to the lowest levels since the late 1970s. A relatively strong year class in 2001 was followed by a very poor year class in 2002, and protection was needed to ensure that walleye numbers did not reach dangerously low levels.

In 2003, the largest year class of walleyes in 2 decades was produced and those fish will be 2 years old and reaching average lengths of between 15 and 18 inches in 2006. This will result in a large number of walleyes that would not be harvestable under current regulations and

would be subject to increased mortality due to culling. The purpose of the current (2004) increased size and lowered creel limit was to promote the rehabilitation of the walleye fishery. Based on the strength of the 2001 and 2003 year classes and the sacrifices made by anglers in 2004 and 2005, that objective will have been met. Lowering the minimum length to 15 inches and restoring the creel limit to six per day will allow Pennsylvania Lake Erie anglers to participate fully in the improving walleye fishery. Therefore, the Commission proposes that §§ 69.12 and 69.33 be amended to read as set forth in Annex A.

F. *Paperwork*

The proposed rulemaking will not increase paperwork and will create no new paperwork requirements.

G. *Fiscal Impact*

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

H. *Public Comments*

Interested persons are invited to submit written comments, objections or suggestions about the proposed rulemaking to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000 within 30 days after publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically by completing the form at [www.state.pa.us/Fish/regcomments](http://www.state.pa.us/Fish/regcomments). If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

DOUGLAS J. AUSTEN, Ph.D.,  
*Executive Director*

**Fiscal Note:** 48A-166. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 58. RECREATION**

**PART II. FISH AND BOAT COMMISSION**

**Subpart B. Fishing**

**CHAPTER 61. SEASONS, SIZES AND CREEL LIMITS**

**§ 61.2. Delaware River and River Estuary.**

\* \* \* \* \*

(d) The following seasons, sizes and creel limits apply to the Delaware River and to Delaware River tributaries from the mouths of the tributaries upstream to the first dam in Easton, Pennsylvania:

<i>SPECIES</i>	<i>SEASONS</i>
TROUT	8 a.m., first Saturday after April 11 to midnight, [ <b>September 30</b> ] <b>October 15</b>

\* \* \* \* \*

<i>MINIMUM SIZE</i>	<i>DAILY LIMIT</i>
North of I-84: 14 inches	North of I-84: 1 (combined species)
South of I-84: no minimum	South of I-84: 5 (combined species)
West Branch Delaware River: *12 inches	West Branch Delaware River: *2 (combined species)

<i>SPECIES</i>	<i>SEASONS</i>	<i>MINIMUM SIZE</i>	<i>DAILY LIMIT</i>
BASS Largemouth Smallmouth	<b>North of I-84:</b> Open year-round	12 inches	5 (combined species)
	<b>South of I-84:</b> <b>January 1 to midnight the day before the opening day of trout season in April and October 1 to midnight December 31</b>	<b>12 inches</b>	<b>5 (combined species)</b>
	<b>12:01 a.m. the opening day of trout season in April to 12:01 a.m. the first Saturday after June 11</b>	<b>NO HARVEST - Catch and immediate release only</b>	
	<b>12:01 a.m. the first Saturday after June 11 to midnight September 30</b>	<b>12 inches</b>	<b>5 (combined species)</b>
MUSKELLUNGE and MUSKELLUNGE HYBRIDS	<b>Open year-round</b>	30 inches	2 (combined species)
	* * * * *		
STRIPED BASS and HYBRID STRIPED BASS	From Pennsylvania line upstream to <b>[ Trenton Falls ] Calhoun Street Bridge</b> : March 1 until March 31, and June 1 until December 31	28 inches	2
	From <b>[ Trenton Falls ] Calhoun Street Bridge</b> upstream: open year-round		
	* * * * *		
<b>PIKE Northern</b>	<b>Open year-round</b>	<b>24 inches</b>	<b>2</b>

**§ 61.4. Conowingo Reservoir.**

\* \* \* \* \*

(d) The following seasons, sizes and creel limits apply to the Conowingo Reservoir, which includes the Susquehanna River from the Maryland State Line upstream to Holtwood Dam:

<i>SPECIES</i>	<i>SEASONS</i>	<i>MINIMUM SIZE</i>	<i>DAILY LIMIT</i>
	* * * * *		
PIKE Northern	Open year-round	<b>[ 24 inches ] 30 inches</b>	2 (combined species)
	* * * * *		
STRIPED BASS and STRIPED BASS/WHITE BASS HYBRIDS	Open year-round	<b>[ 20 inches ] 18 inches</b>	2 (combined species), <b>only one of which may exceed 30 inches in length</b>
	* * * * *		
SUNFISH[ , YELLOW PERCH, CRAPPIES, ROCK BASS, CATFISH, SUCKERS, EELS, CARP ] (BLUE GILL and ROCK BASS)	Open year-round	No minimum	<b>[ No daily limit ] 15 (combined species)</b>
CRAPPIES	Open year-round	No minimum	15
CARP	Open year-round	No minimum	15
CHANNEL CATFISH	Open year-round	No minimum	5
SUCKERS	Open year-round	No minimum	30
EELS	Open year-round	6 inches	25
YELLOW PERCH	Open year-round	No minimum	No daily limit
BAIT FISH		No minimum	No daily limit
FISH BAIT, <b>except</b> MADTOMS MADTOMS		No minimum	35

**CHAPTER 65. SPECIAL FISHING REGULATIONS**

**§ 65.24. Miscellaneous special regulations.**

The following waters are subject to the following miscellaneous special regulations:

<i>County</i>	<i>Name of Water</i>	<i>Special Regulations</i>
		* * * * *
Wayne	West Branch Delaware River	Trout: From the Pennsylvania/New York border downstream to the confluence with the East River Branch of the Delaware River: no-harvest artificial lures only season on trout from October [ 1 ] 16 until midnight of the Friday before opening day of trout season. During the no-harvest artificial lures only season:
		* * * * *

**CHAPTER 69. FISHING IN LAKE ERIE AND BOUNDARY LAKES**

**Subchapter B. SPORT FISHING AND ANGLING**

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

\* \* \* \* \*

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

<i>SPECIES</i>	<i>SEASONS</i>	<i>MINIMUM SIZE</i>	<i>DAILY LIMIT</i>
		* * * * *	
WALLEYE	January 1 to midnight March 15 and 12:01 a.m. the first Saturday in May to December 31	[ 18 inches ] 15 inches	[ 4 ] 6
		* * * * *	

**Subchapter D. COMMERCIAL FISHING, SEASONS AND NETS**

**§ 69.33. Use of trap nets.**

\* \* \* \* \*

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

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

[Pa.B. Doc. No. 05-763. Filed for public inspection April 22, 2005, 9:00 a.m.]

**[58 PA. CODE CH. 75]  
Fishing; Endangered Species**

The Fish and Boat Commission (Commission) proposes to amend Chapter 75 (relating to endangered species). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The proposed rulemaking adds the eastern spadefoot toad and eastern pearlshell to the list of endangered species, moves the rough green snake from the list of threatened species to the list of endangered species and updates the scientific names of certain listed species.

**A. Effective Date**

The proposed rulemaking, if approved on final-form, will go into effect immediately upon publication of an order in the *Pennsylvania Bulletin*.

**B. Contact Person**

For further information on the proposed rulemaking, contact Laurie E. Shepler, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7815. This proposed rulemaking is available on the Commission's website: [www.fish.state.pa.us](http://www.fish.state.pa.us).

**C. Statutory Authority**

The proposed amendments to §§ 75.1—75.3 (relating to endangered species; threatened species; and candidate species) are published under the statutory authority of section 2305 of the code (relating to threatened and endangered species).

**D. Purpose and Background**

The proposed rulemaking is designed to update, modify and improve the Commission's regulations pertaining to endangered, threatened and candidate species. The specific purpose of the proposed rulemaking is described in more detail under the summary of proposals.

### E. Summary of Proposals

(1) Eastern Spadefoot Toad (*Scaphiopus holbrookii*): The eastern spadefoot toad is an inhabitant of sandy soils along the floodplains of streams and rivers and in temporary depressions in agricultural fields. Reproduction occurs within 1 or 2 nights during and after heavy rain events, concentrated in vernal pools, rain-filled depressions in farm fields and along streams.

Two extant breeding populations of eastern spadefoot toads are currently reported in this Commonwealth in Northumberland and Bucks Counties. Several years of herpetological inventory in this Commonwealth have failed to turn up additional records of the toads. Reports of occasional encounters in Franklin County remain unconfirmed. According to Hulse (2003), there were historical unvouchered reports of spadefoot toads in the Delaware Valley from Philadelphia to Monroe County, but these areas have since been heavily developed and industrialized.

The species ranges from southern New England to the Florida Keys and west to eastern Louisiana, but this Commonwealth forms a break between the New England populations and Maryland. The status of the spadefoot toad in the states surrounding this Commonwealth is as follows: it is listed as endangered in Ohio, considered a species of concern in New York, "declining" in New Jersey, rare in West Virginia, threatened in Massachusetts and endangered in Connecticut.

Given that spadefoot toads occur in floodplains and valleys, they are threatened by habitat destruction from residential and industrial development, as well as habitat alteration and changes in water chemistry from agricultural practices. The water in which they breed can be temporary pools, which are not necessarily delineated wetlands. Thus, wetland regulations cannot be relied upon to provide sufficient protection for this species.

The Pennsylvania Biological Survey (PABS) Amphibian and Reptile Technical Committee recommended the eastern spadefoot toad be listed as a State endangered species in 2002. Because there are only two known occurrences of this species in this Commonwealth and current survey efforts have failed to find additional occurrences, the Commission proposes that the eastern spadefoot toad be added to the Pennsylvania list of endangered species.

(2) Eastern Pearlshell (*Margaritifera margaritifera*): The eastern pearlshell is a freshwater mussel found in cold water trout streams and small rivers in softwater (acidic) conditions that have low levels of calcium. This is the only species of Pennsylvania mussel that is distributed beyond the North American continent. It occurs in the northeast from this Commonwealth north to Canada, as well as northern Europe.

Historically in the early 1900s, the eastern pearlshell occurred in several tributaries of the Little Schuylkill River, including Locust Creek, Panther Creek, Indian Run and Cold Run. However, impacts to water quality from coal mining in the Little Schuylkill drainage have eradicated the eastern pearlshell from all but Locust Creek, based on Statewide surveys from 1991 to 1995. While the population in Locust Creek is locally abundant, based on a 2003 survey, two dams on the creek restrict the pearlshell to 7 miles of stream with little likelihood of dispersal.

Two large eastern pearlshell mussels were collected in the Delaware River in recent years as part of extensive mussel surveys in the Upper Delaware. This species is documented to live over 100 years, and these specimens

were determined to be extremely old. Based on the failure to find additional specimens during the ongoing collection efforts in the Upper Delaware or its tributaries, these specimens appear to represent a remnant population that is no longer reproducing.

The eastern pearlshell is listed as a species of concern in New York, Rhode Island and Connecticut, while it is threatened in Vermont. Additionally, the International Union for Conservation of Nature and Natural Resources has given it endangered status primarily due to threats to the European populations. Primary threats to the persistence of the eastern pearlshell are degradation of water quality, alteration of pH, eutrophication and temperature increases in the streams.

The PABS Bivalve Subcommittee of the Invertebrate Technical Committee recommended the eastern pearlshell be listed as a State endangered species in 2003. The restriction of a reproducing population of the eastern pearlshell mussel to only one small stream in this Commonwealth makes it very vulnerable to extirpation from activities that could adversely impact Locust Creek. Therefore, the Commission proposes that the eastern pearlshell be added to the Pennsylvania list of endangered species.

(3) Rough Green Snake (*Opheodrys aestivus*): The rough green snake is an arboreal species most often associated with wetland and riparian areas. The rough green snake is common in southern states from Texas to Florida, with this Commonwealth being the northern limit of its range. It has been known from only two isolated locations in this Commonwealth in Greene and Chester Counties. Thus, the Commission listed the rough green snake as a threatened species in 1979.

Several historic specimens or reports of this species are known from other counties. However, the only known locality of this species that has been confirmed as a reproducing population since 1939 is one in Chester County. The Greene County occurrence has not been seen since 1924 and is presumed extirpated. One additional sighting has been recorded from Lancaster County near the Maryland line, but the identification was not confirmed and no evidence of a population was documented. A Statewide Herpetological Atlas project failed to find any additional populations.

The rough green snake is a species of concern in Ohio and is rare in Delaware and West Virginia. This snake species is threatened primarily by habitat alteration from residential and industrial development.

The PABS Amphibian and Reptile Technical Committee recommended the rough green snake be listed as a State endangered species in 2002. Because there is only one known occurrence of this species in this Commonwealth and current survey efforts have failed to find additional occurrences, the Commission proposes that the rough green snake be moved from the list of Pennsylvania threatened species to the list of endangered species.

(4) Update Scientific Names: The Commission proposes that § 75.1 be amended to change the name of *Clemmys muhlenbergii* (bog turtle) to *Glyptemys muhlenbergii*. Recent molecular data and genetic studies have resulted in a split in the genus *Clemmys*. Based on morphological data, Holman and Fritz (2001) split *Clemmys* as follows: *Clemmys guttata* was retained as the only member of the genus; *Clemmys insculpta* and *C. muhlenbergii* were placed in the genus *Glyptemys*. An independent analysis by Feldman and Parham (2002) supported this conclusion. Therefore, the species formerly named *Clemmys muhlenbergii* is now assigned to *Glyptemys muhlenbergii*.

The name change has been adopted by NatureServe, an international biological conservation group that tracks rare and endangered species, as well as the Center for North American Herpetology (CNAH), the National herpetological group that tracks name changes.

The Commission also proposes that § 75.3 be amended to change the name of *Emydoidea blandingii* (Blandings Turtle) to *Emys blandingii*. Recent molecular and genetic studies (Feldman and Parham (2002)) have resulted in a rearrangement of several turtle groups, including the grouping of *Emydoidea blandingii* with *Emys orbicularis* in the genus *Emys*. The name change has been adopted by NatureServe and the CNAH.

The Commission further proposes that § 75.1 be amended to change the name of *Rana utricularia* (Coastal Plain Leopard Frog) to *Rana sphenoccephala*. Literature referring to this species from 1974 to 1992 used the old name *Rana utricularia* based on a morphological study by Pace (1974). However, in 1992 the International Commission on Zoological Nomenclature ruled that the name of this frog would return to *Rana sphenoccephala*, which it had been given in more recent references.

The Commission proposes that §§ 75.1–75.3 be amended to read as set forth in Annex A.

F. Paperwork

The proposed rulemaking will not increase paperwork and will create no new paperwork requirements.

G. Fiscal Impact

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

H. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about the proposed rulemaking to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000 within 30 days after publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically by completing the form at [www.state.pa.us/Fish/regcomments](http://www.state.pa.us/Fish/regcomments). If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

DOUGLAS J. AUSTEN, Ph.D.,  
Executive Director

**Fiscal Note:** 48A-167. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 58. RECREATION**

**PART II. FISH AND BOAT COMMISSION**

**Subpart B. FISHING**

**CHAPTER 75. ENDANGERED SPECIES**

**§ 75.1. Endangered species.**

\* \* \* \* \*

(b) *Fish*. The following species are endangered:

\* \* \* \* \*

**(32) Eastern pearlshell mussel, *Margaritifera margaritifera*.**

(c) *Reptiles and amphibians*. The following species are endangered:

(1) Bog Turtle, [***Clemmys***] *Glyptemys muhlenbergii*.

\* \* \* \* \*

(3) Coastal Plain Leopard Frog, *Rana* [***utricularia***] *sphenoccephala*.

\* \* \* \* \*

**(7) Eastern Spadefoot Toad, *Scaphiopus holbrookii*.**

**(8) Rough Green Snake, *Opheodrys aestivus*.**

**§ 75.2. Threatened species.**

\* \* \* \* \*

(c) *Amphibians and reptiles*. The following species are threatened:

\* \* \* \* \*

**[ (3) Rough Green Snake, *Opheodrys aestivus*. ]**

**§ 75.3. Candidate species.**

\* \* \* \* \*

(c) *Amphibians and reptiles*.

(1) Blandings Turtle, [***Emydoidea***] *Emys blandingii*.

\* \* \* \* \*

[Pa.B. Doc. No. 05-764. Filed for public inspection April 22, 2005, 9:00 a.m.]

**STATE BOARD OF  
COSMETOLOGY**

[49 PA. CODE CH. 7]

**Biennial Renewal Fee Increase**

The State Board of Cosmetology (Board) proposes to amend § 7.2 (relating to fees) to read as set forth in Annex A. The proposed rulemaking would increase the biennial license renewal fee for all classes of licenses issued by the Board.

*Effective Date*

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*. The new fees will take effect for the biennial period beginning February 1, 2006.

*Statutory Authority*

The proposed rulemaking is authorized under section 16 of the act of May 3, 1933 (P. L. 242, No. 86) (Act 86) (63 P. S. § 522). It requires the Board to fix fees by regulation for the biennial renewal of licenses and to increase fees by regulation to meet or exceed projected expenditures if the revenues raised by fees, fines and civil penalties are not sufficient to meet Board expenditures.

*Background and Need for Amendment*

The Board is required by law to support its operations from the revenue it generates from fees, fines and civil penalties. In accordance with section 16 of Act 86, if the



revenue raised by fees, fines and civil penalties is not sufficient to meet expenditures over a 2-year period, the Board must increase fees by regulation so that its projected revenues will meet or exceed projected expenditures.

The Board raises virtually all of its operating revenue (except application and services fees) through biennial renewal fees. The biennial license renewal fee is the most substantial revenue-generating fee of all the fees charged by the Board. The Board's current biennial license renewal fees for cosmetologists, manicurists, teachers, cosmetology shops and cosmetology schools were established by regulation in 1986, while the current biennial renewal fees for cosmeticians and cosmetician or manicurist shops were established by regulation in 1991.

At the Board's December 6, 2004, meeting, the Bureau of Finance and Operations (BFO) presented a summary of the Board's revenue and expenses for Fiscal Years (FY) 2001-2002 through 2003-2004 and projected revenue and expenses for FYs 2004-2005 through 2010-2011. The summary, presented in the following table, demonstrated that the Board must raise fees to meet or exceed projected expenditures to comply with section 16 of Act 86. The BFO projected a deficit of \$286,531.06 in FY 2007-2008, a deficit of \$1,073,531.06 in FY 2008-2009, a deficit of \$1,662,531.06 in FY 2009-2010 and a deficit of \$2,606,531.06 in FY 2010-2011. Therefore, the BFO recommended that the Board raise fees to meet projected expenditures, in compliance with section 16 of Act 86.

2001-2002 beginning balance	\$1,718,075.05
FY 01-02 revenue	2,229,690.06
Prior year returned funds	146,300.49
FY 01-02 expenses	2,376,000.00
Remaining balance	1,718,065.60
2002-2003 beginning balance	1,718,065.60
FY 02-03 revenue	1,959,902.11
Prior year returned funds	0.00
FY 02-03 expenses	2,583,000.00
Remaining balance	1,094,967.71
2003-2004 beginning balance	1,094,967.71
FY 03-04 revenue	2,199,623.23
Prior year returned funds	0.00
FY 03-04 expenses	2,533,000.00
Remaining balance	761,590.94
2004-2005 beginning balance	761,590.94
FY 04-05 projected revenue	1,950,000.00
Prior year returned funds (estimated)	902,878.00
FY 04-05 projected expenses	2,569,000.00
Remaining balance	1,045,468.94
2005-2006 beginning balance	1,045,468.94
FY 05-06 projected revenue	2,230,000.00
FY 05-06 projected expenses	2,505,000.00
Remaining balance	770,468.94
2006-2007 beginning balance	770,468.94
FY 06-07 projected revenue	1,950,000.00
FY 06-07 projected expenses	2,580,000.00
Remaining balance	140,468.94
2007-2008 beginning balance	140,468.94
FY 07-08 projected revenue	2,230,000.00
FY 07-08 projected expenses	2,657,000.00
Remaining balance	(286,531.06)
2008-2009 beginning balance	(286,531.06)
FY 08-09 projected revenue	1,950,000.00
FY 08-09 projected expenses	2,737,000.00
Remaining balance	(1,073,531.06)

2009-2010 beginning balance	(1,073,531.06)
FY 09-10 projected revenue	2,230,000.00
FY 09-10 projected expenses	2,819,000.00
Remaining balance	(1,662,531.06)
2010-2011 beginning balance	(1,662,531.06)
FY 10-11 projected revenue	1,950,000.00
FY 10-11 projected expenses	2,904,000.00
Remaining balance	(2,616,531.06)

As the previous table indicates, the BFO estimates that at the close of FY 2007-2008, the Board's expenses will exceed its revenues by \$286,531.06. The BFO anticipates that in subsequent FYs, the deficit will increase proportionally. Without an increase, the projected deficit in FY 2010-2011 would be \$2,616,531.06.

The increases in the Board's biennial expenses occurred primarily in the area of investigative and inspection costs, attributable to increased numbers of complaints being filed and the accompanying increased number of investigations and enforcement actions (citations for minor violations under the act of July 2, 1993 (P. L. 345, No. 48)) initiated by inspectors and investigators on behalf of the Board. For example, investigative expenditures increased from \$808,769.05 in FY 2002-2003 to approximately \$977,912.05 in FY 2003-2004. Because investigative and inspection costs are largely driven by the number of complaints received and the number of inspections performed (a number dependent in part on the number of new applications filed with the Board), the Board has little control over these expenses.

There were also increases in Legal Office costs related to prosecuting and adjudicating many more cases than in prior years, which contribute to the need to raise biennial renewal fees. In FY 2003-2004, the Board imposed 632 disciplinary sanctions, which was significantly more than in any prior FY. The FY 2003-2004 figure is in comparison to 386 disciplinary sanctions imposed in FY 2002-2003, 370 in FY 2001-2002, 393 in FY 2000-2001 and 310 in FY 1999-2000. Additionally, the Board imposed more serious sanctions than in any prior year, 17 in FY 2003-2004, as opposed to 9 in FY 2002-2003, 11 in FY 2001-2002, 3 in FY 2000-2001 and 3 FY 1999-2000. Finally, the Board closed more cases in FY 2003-2004 than in any prior year, closing 962 cases as compared with 580 cases in FY 2002-2003, 675 in FY 2001-2002, 740 in FY 2000-2001 and 529 in FY 1999-2000. As of December 9, 2004, there were 395 cases currently open, as opposed to 220 cases open as of December 9, 2003.

The Board carefully reviewed several options in fee increases to ensure the most reasonable fee increase possible while keeping the Board out of a long run deficit. Additionally, in developing this proposed rulemaking, the Board reviewed fees of other states. It found that the proposed fees are comparable to the renewal fees charged in surrounding states and should cause no competitive disadvantage to the Commonwealth. The Board also determined that making fees uniform across comparable license classes would be more equitable and would promote ease of administration. Consequently, the Board made the renewal fees for all individual license classes equal, with the exception of cosmetology teacher licenses, as it did with the renewal fees for the various shop licenses.

*Description of Proposed Amendments*

Based upon the previous expense and revenue estimates provided to the Board, the Board proposes to amend its fee schedule in § 7.2(c) to increase the fee for biennial renewal of licenses for cosmeticians from \$21 to

\$35; for cosmetologists from \$23 to \$35; for cosmetology teachers from \$36 to \$55; for manicurists from \$21 to \$35; for cosmetician shops from \$25 to \$60; for cosmetology shops from \$41 to \$60; for manicurist shops from \$25 to \$60; and for cosmetology schools from \$66 to \$150.

The proposed rulemaking also deletes a reference in § 7.2 to a cosmetology manager's license, based on the amendments to Act 86 made by the section 3 of the act of June 29, 2002 (P. L. 645, No. 98) (63 P. S. § 510.4), which removed the requirement that a cosmetology shop owner employ a licensed manager if the owner does not manage his own shop.

*Fiscal Impact*

The proposed rulemaking will increase the biennial renewal fee for all classes of Board licensees. The proposed rulemaking should have no other fiscal impact on the private sector, the general public or political subdivisions.

*Paperwork Requirements*

The proposed rulemaking will require the Board to alter some of its forms to reflect the new biennial renewal fees. However, the proposed rulemaking should not create additional paperwork for the private sector.

*Sunset Date*

Act 86 requires that the Board monitor its revenue and expenses on an FY and biennial basis. Therefore, no sunset date has been assigned.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 13, 2005, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

*Public Comment*

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Linda Dinger, Administrator, State Board of Cosmetology, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

SUSAN E. RINEER,  
*Chairperson*

**Fiscal Note:** 16A-4512. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

**PART I. DEPARTMENT OF STATE**

**Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

**CHAPTER 7. STATE BOARD OF COSMETOLOGY GENERAL PROVISIONS**

**§ 7.2. Fees.**

Fees charged by the Board are as follows:

	* * * * *
Biennial renewal of manicurist's license . . . . .	\$ [ 21 ] 35
Biennial renewal of cosmetician's license . . . . .	\$ [ 21 ] 35
Biennial renewal of cosmetologist's license . . . . .	\$ [ 23 ] 35
Biennial renewal of [ <b>cosmetology shop manager's or</b> ] cosmetology teacher's license	\$ [ 36 ] 55
Biennial renewal of cosmetology shop's license . . . . .	\$ [ 41 ] 60
Biennial renewal of cosmetician or manicurist shop's license . . . . .	\$ [ 25 ] 60
Biennial renewal of cosmetology school's license . . . . .	\$ [ 66 ] 150
	* * * * *

[Pa.B. Doc. No. 05-765. Filed for public inspection April 22, 2005, 9:00 a.m.]

**STATE BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS**

**[49 PA. CODE CH. 39] Biennial Renewal Fees**

The State Board of Examiners of Nursing Home Administrators (Board) proposes to amend § 39.72 (relating to fees) to read as set forth in Annex A. The proposed rulemaking would increase the biennial license renewal fee for nursing home administrators from \$108 to \$297.

*Effective Date*

The new fees will be effective upon final-form publication in the *Pennsylvania Bulletin* and will apply to the biennial renewal beginning July 1, 2006.

*Statutory Authority*

Section 7.1(a) of the Nursing Home Administrators License Act (act) (63 P. S. § 1107.1(a)) requires the Board to increase fees by regulation to meet or exceed projected expenditures if the revenues raised by fees, fines and civil penalties are not sufficient to meet Board expenditures.

*Background and Need for Amendments*

The Board's current biennial license renewal fee for nursing home administrators was established by regulation at 24 Pa.B. 6564 (December 31, 1994). Under section 7.1(a) of the act, the Board is required by law to support

its operations from the revenue it generates from fees, fines and civil penalties. In addition, the act provides that the Board must increase fees if the revenue raised by fees, fines and civil penalties is not sufficient to meet expenditures over a 2-year period. The biennial renewal fees fund nearly all of the Board's costs.

At Board meetings in July and December 2004, the Department of State's Bureau of Finance and Operations (BFO) presented a summary of the Board's revenue and expenses for Fiscal Years (FY) 2001-2002 through 2003-2004, and projected revenue and expenses through FY 2010-2011. The BFO projected a deficit of \$128,711.53 in FY 2004-2005, a deficit of \$125,711.53 in FY 2005-2006, a deficit of \$319,711.53 in FY 2006-2007, a deficit of \$331,711.53 in FY 2007-2008, a deficit of \$541,711.53 in FY 2008-2009, a deficit of \$569,711.53 in FY 2009-2010 and a deficit of \$795,711.53 in FY 2010-2011. The BFO recommended that the Board raise fees to meet or exceed projected expenditures, in compliance with section 7.1(a) of the act.

The Board's review of its actual and projected expenses for the past 5 years revealed significant shortfalls in the areas of enforcement and investigation, legal office expenses and legislative and regulatory analysis. For example, despite annual increases in projected expenses, actual enforcement and investigation costs were \$13,242.21 from FY 2002-2003 to 2003-2004. The actual expenses for the legal office and legislative and regulatory analysis increased \$18,879.37 and \$7,975.38, respectively, from FY 2002-2003 to 2003-2004. Overall increased expenditures in these program areas have resulted from a steady increase in the number of complaints opened each year regarding nursing home administrators and, therefore, greater investigative, enforcement and legal activity. At the same time, the Board's licensee population has declined by 400 licensees over the past 5 years, decreasing the Board's biennial revenue. The BFO anticipates that the proposed new biennial renewal fees will enable the Board to recapture the current deficit and meet its estimated expenditures for at least 10 years. Biennial renewal fees were last raised from \$85 to \$108 at 24 Pa.B. 6564. The 1994 increase was first applied to the 1996 biennial renewal.

In determining the fee, the Board also considered the renewal fees charged to nursing home administrators in the six surrounding states. The Board found that the proposed increase to \$297 would be lower than two fees and higher than four fees charged by contiguous states, and therefore consistent with the renewal fees charged in the surrounding states.

*Description of Proposed Amendments*

The proposed rulemaking would increase the biennial renewal fee for all nursing home administrators from \$108 to \$297. The BFO anticipates that the proposed new fees will enable the Board to recapture the current deficit and meet its estimated expenditures through the 2010-2011 biennial cycle.

The proposed fees will affect a total licensee population of approximately 1,826 nursing home administrators. The Board estimates these fees will generate \$572,322 in biennial revenue. If the proposed rulemaking is effectuated for the July 1, 2006, renewal, the revenue would be used to recapture projected deficits totaling \$795,711.53 by the end FY 2010-2011 and to fund anticipated expenditures from FY 2005-2006 through at least FY 2010-2011.

*Fiscal Impact*

The proposed rulemaking will increase the biennial renewal fee for nursing home administrators. The proposed rulemaking should have no other fiscal impact on the private sector, the general public or political subdivisions.

*Paperwork Requirements*

The proposed rulemaking will require the Board to alter some of its forms to reflect the new biennial renewal fee. However, the proposed rulemaking should not create additional paperwork for the private sector.

*Sunset Date*

The act requires that the Board monitor its revenue and costs on a FY and biennial basis. Therefore, no sunset date has been assigned.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 29, 2005, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

*Public Comment*

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Christina Stuckey, Administrator, State Board of Examiners of Nursing Home Administrators, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference No. 16A-6210 (Biennial Renewal Fees) when submitting comments.

BARRY S. RAMPER, II,  
*Chairperson*

**Fiscal Note:** 16A-6210. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

**PART I. DEPARTMENT OF STATE**

**Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

**CHAPTER 39. STATE BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS**

**RENEWAL**

**§ 39.72. Fees.**

The following is a schedule of fees charged by the Board:

Biennial renewal of nursing home administrators license ..... § [ 108 ] 297

\* \* \* \* \*

[Pa.B. Doc. No. 05-766. Filed for public inspection April 22, 2005, 9:00 a.m.]

# STATE BOARD OF LANDSCAPE ARCHITECTS

## [49 PA. CODE CH. 15] General Revisions

The State Board of Landscape Architects (Board) proposes to amend §§ 15.2, 15.11, 15.14, 15.16, 15.18, 15.23, 15.32—15.34, 15.36, 15.41, 15.54, 15.56, 15.72, 15.73, 15.76 and 15.79 and to delete §§ 15.19, 15.20 and 15.37 (relating to consideration and approval of application; Recording Board action; and public information) to read as set forth in Annex A. The proposed rulemaking amends registration without examination provisions and makes general editorial changes.

### Effective Date

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

### Statutory Authority

The proposed rulemaking is authorized under section 4(9) of the Landscape Architects' Registration Law (act) (63 P. S. § 904(9)).

### Background and Purpose

The purpose of the proposed rulemaking is to amend the existing regulations to do the following: delete references to the specific Board approved licensure examination; amend provisions regarding Board procedures to conform to actual Board procedures; delete unnecessary provisions and clarify existing provisions; and clarify the Board's process regarding issuing licenses without examination.

### Description of Proposed Amendments

Section 15.2 (relating to Board proceedings and meetings) would be amended by making the conduct of Board meetings according to Roberts' Rules of Order permissive rather than mandatory.

Section 15.11(a) (relating to filing procedures) would be amended by deleting the reference to the Board's address. The Board's address has changed recently and including the address in the regulations is unnecessary since the application itself will provide the Board's address.

Section 15.14 (relating to retention of documents) would be amended to delete the option of an applicant to submit copies of documents rather than the original documents. To evaluate an applicant for licensure, the Board believes that the original document is the best display of the applicant's work product.

Section 15.16(b) (relating to references) would add a sentence clarifying that the references should be sent to the Board by the individual writing the reference rather than by the applicant. Subsection (d) would delete the requirement that a reference attest to the applicant's moral character since the accuracy of an individual attesting to one's moral character is hard to measure.

Section 15.18 (relating to certification) would be amended to delete the temporary certification process, as it is no longer necessary. Currently, once a license is approved, it is automatically considered active and notification of the approval is listed on the Board's website. In addition, the licensee receives the permanent certificate in about 2 weeks following approval.

The Board is proposing to delete §§ 15.19 and 15.20 because, under 65 Pa.C.S. Chapter 7 (relating to Sunshine Act), all formal action is required to be voted on in public session. Also, all formal action is required to be recorded in the Board's minutes. Therefore, these provisions are unnecessary.

Section 15.23(a) (relating to practice by out-of-State landscape architects) would be amended by reflecting the exact language of the act.

Section 15.32 (relating to change of name or address; fee) would delete the reference to "fee" in the title because this section does not address a fee.

Section 15.33(c) and (d) (relating to seals) would be amended by deleting the requirement that a registrant provide the Board with an imprint of the stamp or an impression of the seal. The Board has found that this requirement is difficult to enforce. Rather, the Board will provide a sample seal, as part of this rulemaking, to use as an example of the kind of stamp or seal to be used by registrants.

Subsection 15.34(b) (relating to biennial registration, inactive status and expired certificates) would be amended by deleting the requirement that an applicant who wishes to return to active status after being inactive must provide a notarized affidavit of nonpractice. The Board has not been requiring a notarized affidavit. Instead, the Board's application requires the applicant to indicate whether the applicant has practiced landscape architecture in this Commonwealth during inactive status.

Section 15.36 (relating to permitted practices) would be amended by deleting the procedures for filing papers regarding establishing a corporation. Because subsection (a) already states that a landscape architect may practice with other persons through the formation of an association or corporation so long as the arrangement is permitted by law, and because the Corporation Law dictates the requirements for filing these arrangements, the Board's regulations are unnecessary.

Section 15.37 would be deleted because the act of June 21, 1957 (P. L. 390, No. 212) (65 P. S. §§ 66.1—66.9), known as the Right-to-Know Law, already covers what information is considered to be public.

Section 15.41(d) (relating to general requirements) would clarify that professional experience gained while pursuing an undergraduate degree in landscape architecture or first professional degree will not be considered acceptable experience for purposes of becoming licensed. The Board adds the term "first professional degree" because some landscape architect programs are a combination of undergraduate and master's degree programs.

Section 15.54(a) (relating to registration by examination) would be deleted because it merely restates the requirement in the act. Also, subsection (b) would be amended to make the provision more readable.

Section 15.56(b) (relating to registration without examination) would be amended to provide notice to applicants for registration without examination as to what the Board is looking for by way of an interview. The Board has

developed a list of work samples that an applicant would be required to bring to the interview. The Board believes that this list would allow the Board to determine whether an applicant has a sufficiently well-rounded background in landscape architecture so that he would be able to perform all aspects of landscape architecture permitted through licensure.

Section 15.72 (relating to requirement for biennial renewal) would be amended to permit the Board to exempt from the continuing education requirement a licensee who received a license within 2 years preceding the licensee's first application for biennial renewal because the licensee may not have adequate time to complete the continuing education. Subsection (c) would be added to require a licensee who wishes to reactivate a lapsed license or who has been on inactive status to have completed 10 hours of continuing education in the 2-year period immediately prior to reactivation.

Section 15.73(c) (relating to acceptable continuing education courses) would be amended by permitting up to 5 clock hours per biennium of continuing education courses to be acquired through correspondence courses.

Section 15.76 (relating to sources of continuing education courses) would be amended by clarifying that the Board's list of acceptable entities for providing continuing education courses are those entities where the courses are provided, approved, sponsored or co-sponsored by the entity. This list would be amended to reflect the accurate names of these entities and that the chapters of these entities would also be approved. Paragraph (9) would be amended to clarify that the only courses in accredited landscape architect programs or programs in fields related to landscape architecture in colleges and universities would be deemed approved. The Council of Landscape Architects Registration Board or its successor would also be added to the list of sources of continuing education courses.

Section 15.79 (relating to reporting of hours spent in continuing education) would be amended by deleting the reference to "Board-provided forms" pertaining to submission of continuing education hours.

*Fiscal Impact*

The proposed rulemaking will have no fiscal impact on the Board or its licensees. The proposed rulemaking should have no fiscal impact on the private sector, the general public or political subdivisions.

*Paperwork Requirements*

The proposed rulemaking should not create additional paperwork for the private sector.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 29, 2005, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory

Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

*Public Comment*

Interested persons are invited to submit written comments, recommendations or objections regarding the proposed rulemaking to Shirley Klinger, Administrative Assistant, State Board of Landscape Architects, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days of publication of this proposed rulemaking. Reference No. 16A-618 (General Revisions) when submitting comments.

RICHARD G. STAUFFER,  
*Chairperson*

**Fiscal Note:** 16A-618. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

**PART I. DEPARTMENT OF STATE**

**Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

**CHAPTER 15. STATE BOARD OF LANDSCAPE ARCHITECTS**

**GENERAL PROVISIONS**

**§ 15.2. Board proceedings and meetings.**

\* \* \* \* \*

(b) Five members of the Board constitute a quorum. Board meetings [ **will** ] **may** be conducted according to Roberts' Rules of Order.

\* \* \* \* \*

**APPLICATION PROCEDURES**

**§ 15.11. Filing procedures.**

(a) An application for registration shall be submitted to the State Board of Landscape Architects [ , **Box 2649, Harrisburg, Pennsylvania 17105-2649** ].

\* \* \* \* \*

**§ 15.14. Retention of documents.**

The Board reserves the right to retain as a permanent part of the application documents submitted which shall be properly marked for identification and ownership. [ **Photocopies of original documents may be submitted for documentary evidence if notarized as true copies.** ]

**§ 15.16. References.**

\* \* \* \* \*

(b) The applicant shall provide three references on the application and shall forward forms to the references to be completed and mailed directly to the Board by the references. **The Board will return completed reference forms sent by the applicant.**

\* \* \* \* \*

(d) A reference shall attest that [ **he** ] **the reference is familiar with the applicant's professional work [ and the applicant's moral character. The Board will accept additional references pertaining to the applicant's moral character from individuals who are**

not design professionals if the professional references do not have personal knowledge of the applicant's moral character ]

§ 15.18. Certification.

[ (a) ] An applicant granted registration will be issued a permanent certificate of registration.

[ (b) Prior to issuance of a permanent certificate, the letter from the Board advising the landscape architect that he has been granted registration will serve as a temporary certificate of registration. ]

§ 15.19. [ Consideration and approval of application ] (Reserved).

[ Applications shall be considered individually by the Board and passed or rejected on a roll call vote. Approval of an application shall be by a majority vote of the Board. ]

§ 15.20. [ Recording Board action ] (Reserved).

[ The action taken by the Board on an application will be recorded in the minutes. ]

§ 15.23. Practice by out-of-State landscape architects.

(a) An out-of-State landscape architect may [ obtain approval from the Board to ] practice landscape architecture in this Commonwealth for a period not exceeding 30 days in the aggregate in 1 calendar year by submitting proof that:

\* \* \* \* \*  
ADMINISTRATION

§ 15.32. Change of name or address [ ; fee ].

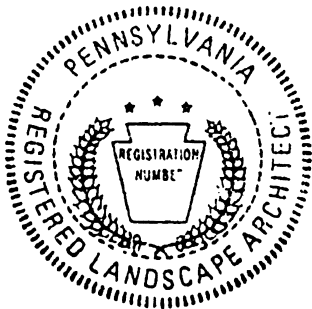
\* \* \* \* \*

§ 15.33. Seals.

\* \* \* \* \*

(c) A registrant shall be required to obtain the authorized seal or a rubber stamp [ and to furnish the Board with an imprint of the stamp or an impression of the seal ]. A sample seal is as follows:

[ (d) Renewal of a license will not be granted unless this requirement is fulfilled. ]



Landscape Architect

§ 15.34. Biennial registration, inactive status and expired certificates.

\* \* \* \* \*

(b) *Inactive status and registration renewal.* A landscape architect who is not engaged in the practice of landscape architecture may request the Board, in writing, to place the landscape architect's name on inactive status. The landscape architect shall notify the Board, in writing, of the landscape architect's desire to reregister. The landscape architect shall comply with the requirements for the renewal of a license that exist at the time the landscape architect applies to become currently registered. There is no fee or penalty for preceding biennial periods in which the landscape architect did not engage in practice in this Commonwealth. The landscape architect applying to return to active status shall submit to the Board an application form prescribed by the Board [ , a notarized affidavit ] stating that the applicant has not practiced landscape architecture in this Commonwealth during inactive status [ , ] and the current renewal fee.

\* \* \* \* \*

§ 15.36. Permitted practices.

\* \* \* \* \*

(b) [ When landscape architecture is practiced through a corporation, a copy of the articles of incorporation and registry statement of the proposed corporation shall be filed with the Board at the time of filing with the Corporation Bureau of the Department of State.

(1) If a name is chosen which does not contain the names of all the licensed professionals with an ownership interest in the practice, the Board shall be supplied with the list of these persons.

(2) A landscape architect incorporating under the terms of this section shall notify the Board of any changes in the name or ownership of the corporation ]

[ (c) ] A landscape architect, partnership, professional corporation, association or other group practice may do business under a fictitious name and advertise in any medium if the name and the advertisement are not misleading, deceptive or fraudulent [ on their face by inference or by actual effect.

(1) A copy of the fictitious name registration shall be filed with the Board at the time of submission to the Corporation Bureau.

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

(3) A landscape architect practicing under the terms of this section shall notify the Board of changes in the name or ownership of the business, and shall seek Board approval of these changes prior to practicing under a new name or ownership structure.

(d) A landscape architect shall sign documents which arise out of the rendering of professional services. If the landscape architect practices in association with others, his name shall appear with the name of the association on documents not signed by him. ]

§ 15.37. [ Public information ] (Reserved).

[ The following information may be released by the Board:

(1) Whether or not a person is registered and in good standing, and the date of original registration of each person.

(2) The address of record of the registrant.

(3) Whether registration was granted by examination, reciprocity or by statutory exemption.

(4) Information the Board determines is required to release under the act of June 21, 1957 (P. L. 390, No. 212) (65 P. S. §§ 66.1—66.4), known as the Right-to-Know Act.

(5) Grades as requested by CLARB, other state registration boards or by examinees requesting their own test results. ]

EXPERIENCE

§ 15.41. General requirements.

\* \* \* \* \*

(d) Professional experience gained while pursuing an undergraduate degree in landscape architecture or first professional degree will not be considered by the Board as an acceptable experience.

EXAMINATIONS

§ 15.54. Registration by examination.

[ (a) Registration may be granted to an applicant who has successfully passed the examination as prescribed by the Board.

(b) ] An applicant who meets one or more of the following requirements is eligible [ to sit for the ] for licensure by written examination:

\* \* \* \* \*

§ 15.56. Registration without examination.

\* \* \* \* \*

(b) Procedure.

(1) Prior to issuing a license without examination, the Board will require the applicant to appear before representatives of the Board for an interview. The applicant will be required to submit the following work samples to the representatives during the interview:

- (i) Site and development plans.
- (ii) Specifications and drawings.
- (iii) Grading and drainage plans.
- (iv) Layout plans.
- (v) Planting plans.
- (vi) Stormwater management plans and calculations.
- (vii) Site construction details and specifications.
- (viii) Photographs of completed projects.

(ix) Evidence of cost estimating and supervision of construction.

(x) A variety of project types including experience with residential subdivision, commercial land developments, environmental projects and park and recreation projects.

(2) Prior to issuing a license without examination, the Board will review the applicant's qualifications, and by a majority vote approve or disapprove the application.

[ (2) ](3) \* \* \*

CONTINUING EDUCATION

§ 15.72. Requirement for biennial renewal.

(a) As a condition of biennial renewal commencing with the 2003 biennium and continuing thereafter, licensees shall have completed during the preceding biennium 10 clock hours of continuing education in acceptable courses approved under this subchapter.

(b) The Board will exempt from the continuing education requirement a licensee who received a license within 2 years preceding the licensee's first application for biennial renewal.

(c) A licensee who wishes to reactivate a lapsed license or who has been on inactive status shall have completed 10 hours of continuing education in the 2-year period immediately prior to reactivation.

§ 15.73 Acceptable continuing education courses.

\* \* \* \* \*

(c) A maximum of 5 clock hours per biennium will be accepted in courses consisting of satellite seminars [ and ], electronic presentations and correspondence courses.

§ 15.76. Sources of continuing education courses.

The Board finds the courses provided, approved, sponsored or co-sponsored by the following entities meet the standards of the act and this subchapter:

(1) The American Society of Landscape Architects and its [ affiliates ] chapters.

(2) [ The American Nurserymen's Association ] The American Nursery & Landscape Association and its [ affiliates ] chapters.

(3) The American Planning Association and its [ affiliates ] chapters.

(4) The American Institute of Architects and its [ affiliates ] chapters.

(5) The National Society of Professional Engineers and its [ affiliates ] chapters.

(6) The National Recreation and Parks Association and its [ affiliates ] chapters.

\* \* \* \* \*

(9) Accredited landscape architect programs or programs in fields related to landscape architecture in colleges and universities [ which offer courses in landscape architecture or related fields ].

\* \* \* \* \*

(11) The Council of Landscape Architects Registration Boards (CLARB) or its successor.

**§ 15.79. Reporting of hours spent in continuing education.**

An applicant for license renewal shall provide the following information for each course attended [on Board-provided forms ]:

\* \* \* \* \*

[Pa.B. Doc. No. 05-767. Filed for public inspection April 22, 2005, 9:00 a.m.]

## STATE BOARD OF VEHICLE MANUFACTURERS, DEALERS AND SALESPERSONS

[49 PA. CODE CH. 19]

Protest Proceedings

The State Board of Vehicle Manufacturers, Dealers and Salespersons (Board) proposes to amend § 19.3 (relating to applicability of general rules) and to add §§ 19.31—19.38 (relating to protest proceedings) to read as set forth in Annex A.

*Effective Date*

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

*Statutory Authority*

The proposed rulemaking is authorized under sections 4(a)(9), 8, 11, 13 and 27 of the Board of Vehicles Act (act) (63 P. S. §§ 818.4(a)(9), 818.8, 818.11, 818.13 and 818.27).

*Background and Need for the Amendment*

The act authorizes a dealer holding a franchise with a manufacturer or distributor to file a protest with the Board of the manufacturer/distributor's termination of the dealer's franchise under section 13 of the act, the establishment or relocation of a franchise for the same line-make within the dealer's relevant market area under section 27 of the act or any alleged violation of the act by the manufacturer/distributor under section 8(d) of the act. Section 8(b) of the act requires the Board to follow 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) (GRAPP) in conducting hearings and existing § 19.3 incorporates the GRAPP into all proceedings before the Board. Because the GRAPP cannot completely set forth all procedures that are appropriate for the Board to follow in protest matters, the orderly administration of justice requires that the Board set forth rules of procedure. Currently, the Board's protest counsel issues an order setting forth procedures in each protest matter that is filed with the Board. The adoption of regulations regarding protest proceedings will provide uniform rules of procedure and give needed guidance to affected dealers and their representatives who anticipate filing protests with the Board and to manufacturers, distributors and their representatives.

*Description of the Proposed Amendments*

Under current practice, because of the strict time limitation in adjudicating protest matters under section 8(a) of the act, all papers are filed with the Board's protest counsel. By contrast, all papers in all other

matters that the Board adjudicates are filed with the prothonotary for the Department of State. Because the parties generally waive that time limitation until a date certain to permit timely adjudication by the Board, the Board has found that any time saved by filing papers in a protest matter with protest counsel is negligible. Therefore, to be consistent and to provide for greater assurance of the integrity of filed papers, proposed § 19.31 (relating to filing of papers) would require that all papers to be filed in a protest matter be filed with the prothonotary and that a copy be served upon the Board's protest counsel.

Because a protest by definition is a complaint by a dealer about an action taken by the manufacturer/distributor, proposed § 19.32 (relating to initiation of a protest) would require the dealer to append to its protest petition a copy of any notice of the manufacturer's/distributor's action and to serve a copy of the protest on the representative of the manufacturer/distributor who provided that notice. In general and in the absence of an entry of appearance by counsel, the Board will serve its order for stay and mediation under section 11(a)(3) of the act upon the person who provided the notice and upon whom the protesting dealer served a copy of the protest.

In matters protesting the establishment or relocation of a franchise, the dealer who is to be awarded the franchise or relocate generally has an interest in the outcome of that protest that would qualify that dealer for intervenor status. Proposed § 19.33 (relating to intervention) would permit that dealer to intervene upon the filing of a notice of intervention. All other parties seeking to intervene will have to continue to follow the procedures of the GRAPP in 1 Pa. Code §§ 35.27—35.32 (relating to intervention).

Section 11(a) of the act requires a dealer to demand mediation prior to bringing a protest matter, except for dealers of motorcycles, and the Board must stay proceedings in a protest matter for the parties to engage in mediation. Because the majority of protest matters are resolved during mediation, the Board has not required a manufacturer/distributor to answer the protest during mediation. Instead, unless mediation is not required, the Board has waited until it is notified by the parties that mediation has been unsuccessful before issuing a scheduling order. Proposed § 19.34 (relating to time for adjudication) would continue this practice, with the Board setting the scheduling order so that it will be able to issue its adjudication within the time limitations of section 8 of the act. The parties may waive these time limitations, and the Board will treat a waiver as a request for a continuance. Proposed § 19.34 will also require a party requesting a continuance or extension of time to file a waiver of the time limitations sufficient to permit the Board to adjudicate the matter consistent with the requested extension. Because the time limitations are for the benefit of the manufacturer/distributor, the Board cannot grant a request for extension of time or continuance for which the manufacturer does not sign the waiver, but the Board may grant a request for which the protesting dealer does not sign the waiver.

Additionally, while the parties engage in mediation, there is no need for the respondent to file an answer to the protest. Under proposed § 19.35 (relating to subsequent pleadings), the Board's scheduling order will direct the respondent, and an intervenor on behalf of the respondent, when to file an answer. The protestant, and an intervenor on behalf of the protestant, may reply to the new matter within 10 days of service of the answer.



Because protest matters are quite complex and involve many documents and expert witnesses, in every case to be heard the Board will schedule a prehearing conference and require the parties to file prehearing statements. Proposed § 19.36 (relating to prehearing statements) would set forth the requirements for prehearing statements, including statements of facts and relevant law, as well as identification of all anticipated witnesses, including a report and curriculum vitae of any expert witness who is to testify, and copies of all anticipated exhibits. A party will be permitted to supplement its prehearing statement any time prior to the prehearing conference, but may not present any documentary exhibit or the testimony of any witness not listed in its prehearing statement, as supplemented, except upon good cause shown. Additionally, a party that failed to timely file a prehearing statement in accordance with § 19.36 would be subject to sanctions. These sanctions may include preclusion from offering evidence that should have been presented in the prehearing statement.

Proposed § 19.37 (relating to prehearing conference) would follow the current practice of conducting the prehearing conference by telephone initiated by protest counsel. Additionally, because a prehearing conference is a legal proceeding under the direction of protest counsel without members of the Board present, proposed § 19.37 would confirm that protest counsel has all authority of a presiding officer at a prehearing conference under 1 Pa. Code § 35.114 (relating to authority of presiding officer at conference).

Finally, proposed § 19.38 (relating to posthearing briefs) would require posthearing briefs to conform to the requirements of the GRAPP in 1 Pa. Code § 35.192 (relating to content and form of briefs). Because the Board must reproduce for all its members for their review the entire transcript and all exhibits, as well as the briefs, § 19.38 would prohibit posthearing briefs from including copies of the transcript or exhibits. Consistent with the GRAPP in 1 Pa. Code § 35.191 (relating to proceedings in which briefs are to be filed), the general practice of the Board has been to require the simultaneous filing of posthearing briefs, and § 19.38 would permit parties to file a reply brief within 7 days of the filing of an opposing party's posthearing brief.

#### *Public Input*

The Board solicited input from and provided an exposure draft of this proposed rulemaking to industry organizations, including those involved in prior protest matters before the Board. In addition, the Board considered the impact the regulations would have on the regulated community and on public health, safety and welfare. The Board finds that the proposal addresses a compelling public interest as described in this preamble.

#### *Fiscal Impact and Paperwork Requirements*

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

#### *Sunset Date*

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

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 29, 2005, the Board submitted

a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

#### *Public Comment*

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Teresa Woodall, Administrator, State Board of Vehicle Manufacturers, Dealers and Salespersons, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference No. 16A-608 (protest proceedings), when submitting comments.

EDWIN K. GALBREATH, Jr.,  
*Chairperson*

**Fiscal Note:** 16A-608. No fiscal impact; (8) recommends adoption.

#### **Annex A**

### **TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

#### **PART I. DEPARTMENT OF STATE**

#### **Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

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

#### **GENERAL PROVISIONS**

#### **§ 19.3. Applicability of general rules.**

Under 1 Pa. Code § 31.1 (relating to scope of part), 1 Pa. Code Part II (relating to general rules of administrative practice and procedure) (**general rules**), is applicable to the activities of and proceedings before the Board. **Sections 19.31—19.38 (relating to protest proceedings) supplement the general rules.**

#### **PROTEST PROCEEDINGS**

#### **§ 19.31. Filing of papers.**

(a) *Place of filing.* Every pleading and other paper in a protest matter shall be filed with the prothonotary for the Department of State at One Penn Center, 2601 North Third Street, P. O. Box 2649, Harrisburg, PA 17105-2649.

(b) *Copies.* An original and one copy of each paper shall be filed with the prothonotary. A copy of each paper shall be served on each party to the protest. An additional copy of each paper shall be served on the Board's counsel for protest matters (protest counsel) at One Penn Center, 2601 North Third Street, P. O. Box 2649, Harrisburg, Pennsylvania 17105-2649.

#### **§ 19.32. Initiation of a protest.**

(a) *Protest petition.* The protest must be in petition form and set forth in numbered paragraphs the material

facts sufficient to justify relief to the protestant, in accordance with 1 Pa. Code § 35.17 (relating to petitions generally).

(1) The protest shall have appended to it a copy of any demand for mediation required by section 11(a) of the act (63 P. S. § 818.11(a)).

(2) A protest filed under section 8(d) of the act (63 P. S. § 818.8(d)) shall have appended to it a copy of any notice of the action that is being protested.

(3) A protest filed under section 13 of the act (63 P. S. § 818.13) shall have appended to it a copy of any notice of intent to terminate a franchise.

(4) A protest filed under section 27 of the act (63 P. S. § 818.27) shall have appended to it a copy of any notice of establishment or relocation of a franchise.

(b) *Service of the protest.* A copy of the protest shall be served on the representative of the manufacturer or distributor (respondent) who provided any notice, as set forth in subsection (a), of the action that is being protested. If notice was not provided, a copy of the protest shall be served on a managerial representative of the respondent whose responsibilities include the subject of the protest.

#### § 19.33. Intervention.

(a) *Intervention as of right.* In any protest matter filed under section 27 of the act (63 P. S. § 818.27), the existing dealer who seeks to relocate a franchise or the additional dealer to whom the respondent seeks to award a franchise may intervene on behalf of the respondent upon the filing of a notice of intervention setting forth its right to intervene under this subsection. Any party intervening as of right on behalf of the respondent under this subsection shall file an answer to the protest contemporaneously with the filing of the notice of intervention or as directed in the scheduling order, whichever is later.

(b) *Intervention by permission.* Any other person seeking to intervene shall petition to intervene in accordance with 1 Pa. Code §§ 35.27—35.32 (relating to intervention).

#### § 19.34. Time for adjudication.

(a) *Scheduling order.* Upon receipt from one or more parties of notice that mediation required by section 11(a) of the act (63 P. S. § 818.11(a)) was not successful, protest counsel will prepare and issue a scheduling order. The scheduling order will set forth the dates by which the answer, requests for subpoenas, prehearing statements and posthearing briefs shall be filed, as well as the date and time for the prehearing conference and the location and beginning date and time of the hearing. The dates will be determined to permit the Board to issue its adjudication in compliance with the time requirements of section 8 of the act (63 P. S. § 818.8).

(b) *Waiver.* The parties may waive the time for adjudicating a protest matter in section 8 of the act (63 P. S. § 818.8). A waiver must be in writing, specifying the time period that is to be waived, and signed on behalf of all parties joining in the waiver. Unless otherwise specified in the filing, the Board will treat the filing of any waiver as a request for a continuance through that time period and will issue an amended scheduling order accordingly.

(c) *Extension of time.* Any request for an extension of time or continuance that would delay the filing of posthearing briefs shall be accompanied by a waiver through the second monthly meeting of the Board following the date posthearing briefs are to be filed as if the

request were to be granted. The Board may grant a request for extension of time or continuance for which the protestant, or an intervenor on behalf of the protestant, does not also sign the waiver.

#### § 19.35. Subsequent pleadings.

(a) *Answer.* The respondent, and any intervenor on behalf of the respondent, may not file an answer to a protest until directed to do so by a scheduling order issued by the Board. An answer must either admit or deny each numbered paragraph of the protest, in accordance with 1 Pa. Code § 35.35 (relating to answers to complaints and petitions), and may contain averments of new matter.

(b) *Reply to new matter.* The protestant, and any intervenor on behalf of the protestant, may reply within 10 days to an answer that sets forth new matter.

#### § 19.36. Prehearing statements.

(a) *Filing of prehearing statement.* Each party to a protest shall file a prehearing statement in accordance with the scheduling order.

(b) *Content of prehearing statement.* A prehearing statement must contain:

(1) A concise statement of the facts that will be offered by oral or documentary evidence at the hearing and a statement of any unusual questions of evidence anticipated with respect to the proof of such facts.

(2) A statement of any questions of law anticipated with respect to the issues in the case. The questions shall be presented with a statement of authority supporting the position taken.

(3) The names and addresses of all persons who may be called as witnesses. The identification of a witness does not create any obligation to call the witness or to procure the witness's attendance at the hearing.

(4) The report and curriculum vitae of any expert whose opinion will be offered into evidence at the time of hearing. The report must include the findings and conclusions of the expert.

(5) A list of all exhibits and copies of the exhibits that a participant intends to use at the hearing.

(6) An estimate of the length of time that will be required to present the party's case in chief.

(c) *Sanctions.* Failure to file a prehearing statement as required by this section and within the time specified in the scheduling order may subject a party to sanctions, including being precluded from presenting evidence.

(d) *Supplement.* A party may supplement its prehearing statement at any time prior to the prehearing conference. A party may not present any documentary evidence or the testimony of any witness not listed in its prehearing statement, as supplemented, except upon good cause shown.

#### § 19.37. Prehearing conference.

(a) *Prehearing conference.* A representative of each party to a protest shall participate in a prehearing conference under 1 Pa. Code § 35.111 (relating to conferences to adjust, settle or expedite proceedings) as directed by the scheduling order. Unless otherwise ordered by the Board, the prehearing conference will be telephonic and will be initiated by protest counsel.

(b) *Authority of protest counsel.* In connection with the prehearing conference, protest counsel shall have all

authority of a presiding officer under 1 Pa. Code § 35.114 (relating to authority of presiding officer at conference).

**§ 19.38. Posthearing briefs.**

(a) *Posthearing briefs.* Posthearing briefs must conform to 1 Pa. Code § 35.192 (relating to content and form of briefs), except that a brief may not have appended to it any copy of an exhibit or any notes of testimony.

(b) *Reply briefs.* A party may file a reply brief no later than 7 days after an opposing party's filing of a posthearing brief.

[Pa.B. Doc. No. 05-768. Filed for public inspection April 22, 2005, 9:00 a.m.]

**STATE REAL ESTATE  
COMMISSION**

**[49 PA. CODE CH. 35]**

**Biennial Renewal Fee Increases**

The State Real Estate Commission (Commission) proposes to amend § 35.203 (relating to fees) to read as set forth in Annex A. The proposed rulemaking would increase the following renewal fees:

- Biennial renewal for brokers, cemetery brokers, branch offices, rental listing referral agents, brokers of record and partners or offices for a partnership association or corporation from \$84 to \$126.
- Biennial renewal for cemetery companies, associate brokers, salespersons, cemetery associate brokers, cemetery salespersons or campground membership salespersons from \$64 to \$96.
- Annual renewal of registration of promotional property from \$75 to \$113.
- Annual renewal of approval of real estate education providers from \$250 to \$375 plus an increase from \$10 to \$15 for each satellite location, course or instructor.

*Effective Date*

The final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin*. The new fees will take effect for the biennial period beginning June 1, 2006.

*Statutory Authority*

The proposed rulemaking is authorized under section 407 of the Real Estate Licensing and Registration Act (RELRA) (63 P. S. § 455.407). It requires the Commission to increase fees by regulation to meet or exceed projected expenditures if the revenues raised by fees, fines and civil penalties are not sufficient to meet Commission expenditures.

*Background and Need for Amendment*

Fees to renew real estate licenses were last increased in 1994. The Commission is required by law to support its operations from the revenue it generates from fees, fines and civil penalties. In accordance with section 407(a) of the RELRA, if the revenue raised by fees, fines and civil penalties is not sufficient to meet expenditures over a 2-year period, the Commission must increase its revenue.

The Commission raises virtually all of its operating revenue (exclusive of application and services fees) through renewal fees. The license renewal fees are the most substantial revenue-generating fee of all the fees

charged by the Commission. The Commission's current license renewal fees were established by regulation at 24 Pa.B. 2613 (May 21, 1994).

At its January 25-26, 2005, Commission meeting, the Bureau of Finance and Operations (BFO) presented a summary of the Commission's revenue and expenses for Fiscal Years (FY) 2001-2002 and 2003-2004 and projected revenue and expenses for FYs 2003-2004 through 2010-2011. The summary, presented in the following table, demonstrated that the Commission must raise fees to meet or exceed projected expenditures to comply with section 407(a) of the RELRA through FY 2004-2005. The Offices of Revenue and Budget projected a deficit of \$30,802.97 in FY 2004-2005 and continuing thereafter. The BFO recommended that the Commission raise fees 50% to meet or exceed projected expenditures in compliance with section 407(a) of the RELRA.

2001-2002 beginning balance	\$95,833.32
FY 01-02 revenue	3,130,883.12
Adjusted for prior year expenses	140,136.82
Prior year returned funds	0.00
FY 01-02 expenses	2,223,000.00
Remaining balance	863,579.62
2002-2003 beginning balance	\$863,579.62
FY 02-03 revenue	1,387,457.66
Prior year returned funds	0.00
FY 02-03 expenses	2,312,000.00
Remaining balance	(60,962.72)
2003-2004 beginning balance	\$(60,962.72)
FY 03-04 revenue	3,559,203.99
FY 03-04 expenses	2,372,000.00
Remaining balance	1,126,241.27
2004-2005 beginning balance	\$1,126,241.27
FY 04-05 projected revenue	1,400,000.00
Prior year returned funds	697,359.12
Adjusted for prior year expenses	322,403.36
FY 04-05 projected expenses	2,932,000.00
Remaining balance	(30,802.97)
2005-2006 beginning balance	(30,802.97)
FY 05-06 projected revenue	3,500,000.00
FY 05-06 projected expenses	2,900,000.00
Remaining balance	479,197.03
2006-2007 beginning balance	479,197.03
FY 06-07 projected revenue	1,400,000.00
FY 06-07 projected expenses	3,080,000.00
Remaining balance	(1,200,802.97)
2007-2008 beginning balance	(1,200,802.97)
FY 07-08 projected revenue	3,500,000.00
FY 07-08 projected expenses	3,172,000.00
Remaining balance	(872,802.97)
2008-2009 beginning balance	(872,802.97)
FY 08-09 projected revenue	1,400,000.00
FY 08-09 projected expenses	3,267,000.00
Remaining balance	(2,739,802.97)
2009-2010 beginning balance	(2,739,802.97)
FY 09-10 projected revenue	3,500,000.00
FY 09-10 projected expenses	3,365,000.00
Remaining balance	(2,604,802.97)
2010-2011 beginning balance	(2,604,802.97)
FY 10-11 projected revenue	1,400,000.00
FY 10-11 projected expenses	3,466,000.00
Remaining balance	(4,670,802.97)

Under the current fee structure, the BFO estimates that at the close of FY 2004-2005, the Commission's

expenses will exceed its revenues by \$30,522.66. By FY 2010-2011, BFO anticipates that the deficit will increase to \$4,670,802.97.

The increases in the Commission's biennial expenses occurred primarily in the Bureau of Enforcement and Investigation (BEI) and Board Administration. Nontravel BEI expenditures were budgeted at \$799,500 in FY 2003-2004 but will increase to a projected expense of \$1,043,399.34, a difference of \$243,899.34 from budgeted. Board administration was budgeted at \$580,000 in FY 2003-2004 but increased to a projected 664,651.95, a difference of \$84,651.95.

The BEI projected expense increase occurred as a result of the increased number of investigations and inspections in FY 2003-2004. Based on an average of the BEI's expenditures for the past 3 years, the BEI was allocated 1,559.33 investigative and inspection activities with 9,942.31 hours in performance time for FY 2003-2004. In actuality, 1,761 investigative and inspection activities were performed, totaling about 11,840.5 hours, putting the BEI over the projection by 201.67 activities and 1,898.19 hours. In 2002-2003, the BEI spent 9,354.92 hours on investigations and inspections. In FY 2001-2002, the BEI spent 10,603.3 hours on investigations and inspections. In FY 2000-2001, the BEI spent 9,868.70 hours on investigations and inspections.

The increase in the Commission's administration costs can be attributed to the following:

1. Wages increased by approximately \$27,000 due to overtime costs to process renewal applications.

2. FY 2003-2004 health benefits increased \$68.35 per employee. Also, each agency was assessed a one-time charge of \$942 per employee to be deposited into the Pennsylvania Employees Benefit Trust Fund (PEBTF). The Commission's share of the increased benefit costs and the one-time PEBTF payment was approximately \$30,000.

3. The Commission's share of FY 2003-2004 rent of real estate costs increased approximately \$19,000. This increase is a result of a full year of rent paid at a higher rate for Penn Center that at the Pine Street location. In FY 2002-2003, only 2 months rent was paid at the higher rate.

4. The Commission's FY 2003-2004 share of the Bureau of Professional and Occupational Affairs' (BPOA) data powerhouse costs (servers for License 2000) increased by approximately \$12,000. This is a result of the increase in the BPOA's FY 2003-2004 monthly data powerhouse assessment and for a one-time balloon payment of approximately \$50,000. The Commission's share of these assessments is based on licensee population.

The Commission reviewed various alternative fee structures to ensure the lowest fee increase possible while at the same time insuring the Commission's solvency. Although the Commission is looking at ways to streamline procedures to cut costs, the fee increases are still necessary to maintain a positive balance in the Commission account. Finally, in developing the proposed rulemaking, the Commission reviewed fees of other states. It found that the proposed fees are comparable to the renewal fees charged in surrounding states and should cause no competitive disadvantage to the Commonwealth.

#### *Description of Proposed Rulemaking*

Based upon the previous expense and revenue estimates provided to the Commission, the Commission proposes to amend § 35.203 to increase the fee for biennial

renewal of licenses for brokers, cemetery brokers, branch offices, rental listing referral agents, brokers of record and partners or officers for a partnership association or corporation from \$84 to \$126 and cemetery companies, associate brokers, salespersons, cemetery associate brokers, cemetery salespersons or campground membership salespersons from \$64 to \$96 as well as increase the annual renewal registration of promotional property from \$75 to \$113 and the renewal of approval of real estate education provider from \$250 to \$375 plus \$15 for each satellite location, course and instructor instead of \$10. By this increase, the Commission will recoup the FY 2004-2005 projected deficit and enable the Commission's account to carry a positive balance by FY 2005-2006.

#### *Fiscal Impact*

The proposed rulemaking will increase the renewal fees for brokers, cemetery brokers, branch offices, rental listing referral agents, brokers of record and partners or officers of a partnership association or corporation, cemetery companies, associate brokers, salespersons, cemetery associate brokers, cemetery salespersons, campground membership salespersons, promotional property registration, approval of real estate education providers, satellite locations, courses and instructors. The proposed rulemaking should have no other fiscal impact on the private sector, the general public or political subdivisions.

#### *Paperwork Requirements*

The proposed rulemaking will require the Commission to alter some of its forms to reflect the new renewal fees; however, the proposed rulemaking should not create additional paperwork for the private sector.

#### *Sunset Date*

The RELRA requires that the Commission monitor its revenue and expenses on an FY and biennial basis. Therefore, no sunset date has been assigned.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 13, 2005, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

#### *Public Comment*

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Debi Sopko, Administrator, State Real Estate Commission, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

BEVERLY BROOKS,  
Chairperson

**Fiscal Note:** 16A-5612. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

**PART I. DEPARTMENT OF STATE**

**Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

**CHAPTER 35. STATE REAL ESTATE COMMISSION**

**Subchapter B. GENERAL PROVISIONS**

**§ 35.203. Fees.**

The following fees are charged by the Commission:

\* \* \* \* \*

Biennial renewal of license of broker, cemetery broker, branch office, rental listing referral agent[ , ] or broker of record, partner or officer for a partnership, association or corporation ..... \$[ **84** ] **126**

Biennial renewal of cemetery company registration or license of associate broker, salesperson, cemetery associate broker, cemetery salesperson or campground membership salesperson ..... \$[ **64** ] **96**

\* \* \* \* \*

Annual renewal of registration of promotional real estate ..... \$[ **75** ] **113**

\* \* \* \* \*

Annual renewal of approval of real estate education provider ..... \$[ **250** ] **375** plus \$[ **10** ] **15** for each satellite location, course and instructor

\* \* \* \* \*

[Pa.B. Doc. No. 05-769. Filed for public inspection April 22, 2005, 9:00 a.m.]

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# STATEMENTS OF POLICY

## Title 4—ADMINISTRATION

### PART II. EXECUTIVE BOARD

#### [4 PA. CODE CH. 9]

#### Reorganization of the Department of General Services

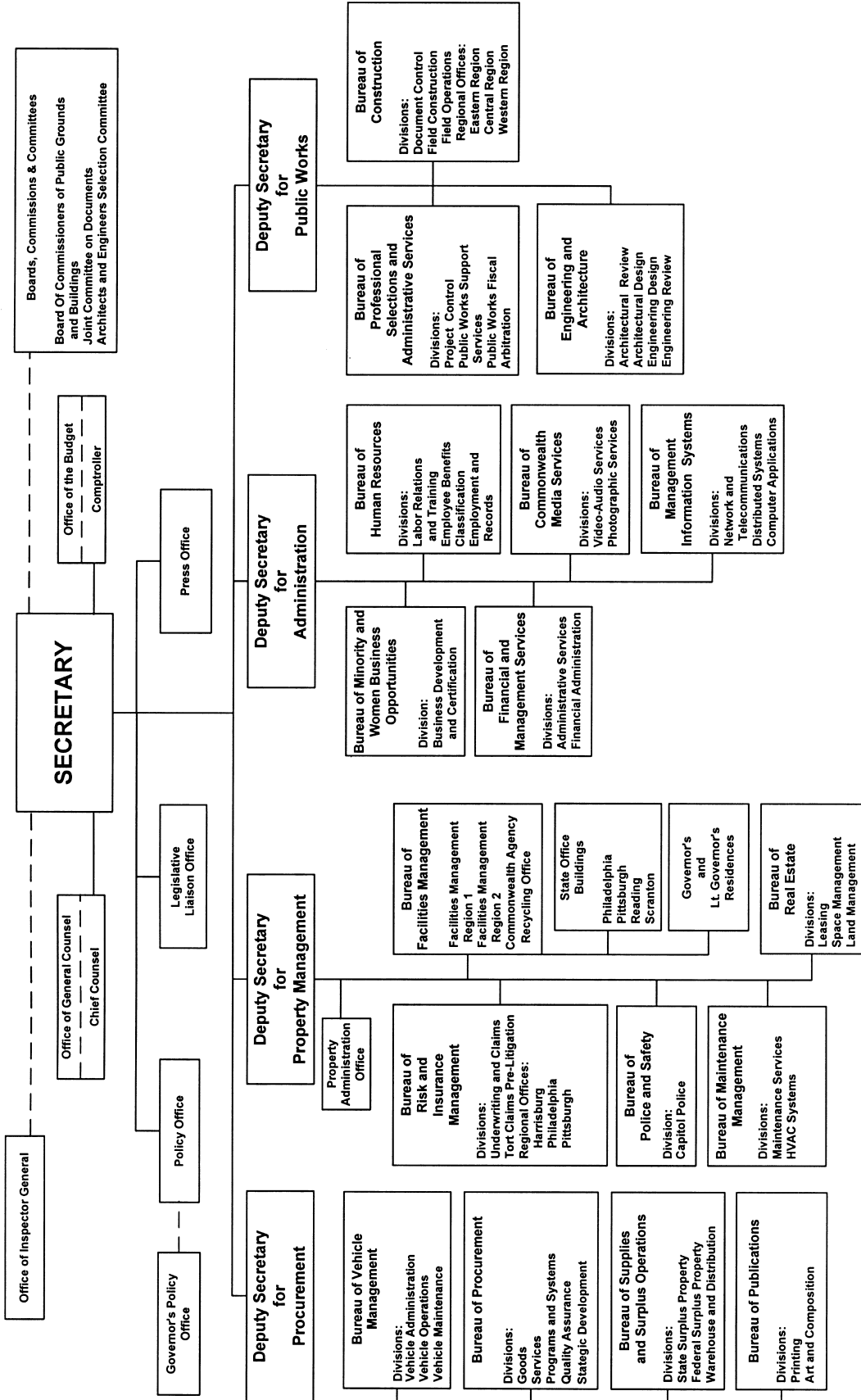
The Executive Board approved a reorganization of the Department of General Services effective April 6, 2005.

The organization chart at 35 Pa.B. 2415 is published at the request of the Joint Committee on Documents under 1 Pa. Code § 3.1(a)(9) (relating to contents of Code).

*(Editor's Note: The Joint Committee on Documents has found organization charts to be general and permanent in nature. This document meets the criteria of 45 Pa.C.S. § 702(7) (relating to contents of Pennsylvania Code) as a document general and permanent in nature which shall be codified in the Pennsylvania Code.)*

[Pa.B. Doc. No. 05-770. Filed for public inspection April 22, 2005, 9:00 a.m.]

DEPARTMENT OF GENERAL SERVICES



## Title 58—RECREATION

### FISH AND BOAT COMMISSION

[58 PA. CODE CH. 57]

#### Publicizing Stocking of Fish

The Fish and Boat Commission (Commission) adopts a statement of policy in Chapter 57 (relating to statements of policy). The statement of policy relates to publicizing the stocking of fish. The Commission is publishing the statement of policy under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code).

#### A. *Effective Date*

The amendment will go into effect upon publication in the *Pennsylvania Bulletin*.

#### B. *Contact Person*

For further information on the statement of policy, contact Laurie E. Shepler, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7815. This statement of policy is available on the Commission's website: [www.fish.state.pa.us](http://www.fish.state.pa.us).

#### C. *Statutory Authority*

The amendment to the statement of policy is published under the statutory authority of section 321 of the code (relating to administration and enforcement) that provides that the Commission administer and enforce the code and other laws of the Commonwealth regarding the protection, propagation and distribution of fish.

#### D. *Purpose and Background*

At the April 18, 1997, meeting, the Commission formally adopted modifications to its policy for publicizing the stocking of legal-size trout. That policy provided that:

- (1) All stockings are publicly announced.
- (2) Announcements of preseason and winter stockings may include the date, time and a description of the waters to be stocked.
- (3) Announcements of in-season stockings will include the week of stocking and the name of the waters to be stocked. The Executive Director may announce the date and time of certain in-season stocking on Saturdays on publicly owned or controlled lakes, with the owners' consent, when the announcement will enhance fishing opportunities and will not cause undue congestion and crowd control and traffic problems.
- (4) The Executive Director may announce the day of in-season stocking on publicly owned or controlled waters on a phased basis by establishing pilot sites and test announcements.

Because there is increased interest among the public to announce stocking to the fullest extent practicable, the Commission has changed its policy as more fully described herein. The Commission will use field reviews by its staff, as well as responses from landowners, to identify waters where the announcement of stocking is advisable.

#### E. *Summary of Change*

The Commission has adopted an amendment to the statement of policy in § 57.9a (relating to publicizing

stocking of fish) under which all stockings will be publicly announced. Under the new amendment, the Executive Director may announce the date, time, location, number or weight, or both, of all fish stockings. The Executive Director may withhold announcements based on certain factors, including safety.

#### F. *Paperwork*

The amendment will not increase paperwork and will create no new paperwork requirements.

#### G. *Fiscal Impact*

The amendment will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The statement of policy will impose no new costs on the private sector or the general public.

#### H. *Public Involvement*

Although not required to publish a notice of proposed rulemaking to adopt a statement of policy, the Commission published the proposed statement of policy at 34 Pa.B. 6655 (December 18, 2004) and sought public comments because of the heightened public interest in this issue. The Commission received two public comments opposing the announcement of in-season stockings. Copies of all public comments were provided to the Commissioners.

#### *Findings*

The Commission finds that:

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

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

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

#### *Order*

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

(a) The regulations of the Commission, 58 Pa. Code Chapter 57, are amended by amending § 57.9a to read as set forth at 34 Pa.B. 6655.

(b) The Executive Director will submit this order and 34 Pa.B. 6655 to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director shall certify this order and 34 Pa.B. 6655 and deposit them with the Legislative Reference Bureau as required by law.

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

DOUGLAS J. AUSTEN, Ph.D.,  
*Executive Director*

**Fiscal Note:** Fiscal Note 48A-164 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 05-771. Filed for public inspection April 22, 2005, 9:00 a.m.]



# FISH AND BOAT COMMISSION

[58 PA. CODE CH. 57]

## Allocation and Stocking of Trout

The Fish and Boat Commission (Commission) proposes changes to a statement of policy in Chapter 57 (relating to statements of policy) that relates to publicizing the stocking of fish. Although not required to publish a notice of proposed rulemaking to adopt a statement of policy, the Commission is publishing the proposed statement of policy in this manner and is seeking public comments because of the heightened public interest in this issue. The Commission is publishing this proposed statement of policy under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code).

### A. Effective Date

The proposed statement of policy, if approved, will go into effect upon publication of an order adopting the statement of policy in the *Pennsylvania Bulletin*.

### B. Contact Person

For further information on the proposed statement of policy, contact Laurie E. Shepler, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7815. This proposed statement of policy is available on the Commission's website: [www.fish.state.pa.us](http://www.fish.state.pa.us).

### C. Statutory Authority

The proposed amendment is published under the statutory authority of section 321 of the code (relating to administration and enforcement) that provides that the Commission shall administer and enforce the code and other laws of this Commonwealth regarding the protection, propagation and distribution of fish.

### D. Purpose and Background

At the November 8, 1985, meeting, the Commission formally adopted a statement of policy for the allocation and stocking of adult trout. That statement of policy provides that trout are allocated to individual waters on a classification basis without regard to county lines and that the assignment of waters to stocking categories is based on biological and social factors. Eight stocking categories were identified, including "wild trout: no stocking," high yield, basic yield I, basic yield II, basic yield III, low yield, rivers and lakes. Although the statement of policy utilized the general term "wild trout," the term in practice included only Class A and wilderness trout streams. The names of the other categories were changed over the years.

The Commission's fisheries staff are committed to reengineering the Commission's trout management approach. Allocation of legal-size stocked trout is a major part of the agency's trout management plans. Adjusting this statement of policy will allow staff initiative without the burden of the eight resource categories identified in the original policy and will increase flexibility for consideration of public interests in the stocking of individual waters.

### E. Summary of Proposal

The Commission proposes an amendment to the statement of policy under which the Commission will allocate trout, except fingerlings, to individual waters with the rate and frequency to be determined by the assignment of

each water to a resource category. Under the proposal, the Commission will assign waters areas to resource categories based on appropriately weighted biological and social factors.

### F. Paperwork

The proposal will not increase paperwork and will create no new paperwork requirements.

### G. Fiscal Impact

The proposal will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed statement of policy will impose no new costs on the private sector or the general public.

### H. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about the proposal to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000 within 30 days after publication of this proposal in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically by completing the form at [www.state.pa.us/Fish/recomments](http://www.state.pa.us/Fish/recomments). If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

DOUGLAS J. AUSTEN, Ph.D.,  
*Executive Director*

**Fiscal Note:** 48A-168. No fiscal impact; (8) recommends adoption.

## Annex A

### TITLE 58. RECREATION

#### PART II. FISH AND BOAT COMMISSION

##### Subpart A. GENERAL PROVISIONS

#### CHAPTER 57. STATEMENTS OF POLICY

##### Subchapter A. FISHERIES POLICIES

#### § 57.2. Allocation and stocking of legal-size trout.

(a) [ Trout stocked will be allocated to individual water areas with no consideration of county lines. The rates and frequencies of stocking will be determined by assignment of each water area to an appropriate resource-based stocking category.

(b) Assignment of water areas to stocking categories will be based on consideration and rating of biological and social factors including: status of wild trout population; stream width or lake surface areas; recreational potential as indicated by public access, parking spaces and ownership; and proximity to urban areas.

(c) Stocking categories include:

- (1) Wild trout: no stocking.
- (2) High yield.
- (3) Basic yield I.
- (4) Basic yield II.
- (5) Basic yield III.
- (6) Low yield.
- (7) Rivers.

(8) Lakes. ] The Commission will allocate trout, except fingerlings, to individual waters with the

rate and frequency to be determined by the assignment of each water to a resource category.

**(b) The Commission will assign water areas to resource categories based on appropriately weighted biological and social factors, including the status of wild trout populations, stream width or lake area and recreational use potential as indicated by public access, parking spaces, ownership, proximity to roads, proximity to urban areas and activities of resource adoption organizations.**

**(c) The Division of Fisheries Management will maintain a current list of resource categories, trout allocation processes and trout allocations.**

\* \* \* \* \*

[Pa.B. Doc. No. 05-772. Filed for public inspection April 22, 2005, 9:00 a.m.]

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# NOTICES

## DEPARTMENT OF BANKING

### Action on Applications

The Department of Banking, under the authority contained in the act of November 30, 1965 (P. L. 847, No. 356), known as the Banking Code of 1965; the act of December 14, 1967 (P. L. 746, No. 345), known as the Savings Association Code of 1967; the act of May 15, 1933 (P. L. 565, No. 111), known as the Department of Banking Code; and the act of December 19, 1990 (P. L. 834, No. 198), known as the Credit Union Code, has taken the following action on applications received for the week ending April 12, 2005.

### BANKING INSTITUTIONS

#### Consolidations, Mergers and Absorptions

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
4-2-05	The Legacy Bank Harrisburg Dauphin County  Purchase of assets/assumption of liabilities of one branch office of The Harleysville National Bank and Trust Co., Harleysville  Located at: 25 North Kennedy Drive McAdoo Schuylkill County	Harrisburg	Effective

#### Branch Applications

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
12-13-04	First CornerStone Bank King of Prussia Montgomery County	Ridley Shopping Center 160 Morton Avenue Ridley Park Delaware County	Opened
4-4-05	CSB Bank Curwensville Clearfield County	BILO Supermarket Route 255 (Million Dollar Highway) St. Marys Elk County	Opened
4-12-05	Woodlands Bank Williamsport Lycoming County	1146 Allegheny Street Jersey Shore Lycoming County	Approved

#### Branch Relocations/Consolidations

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
3-28-05	Lebanon Valley Farmers Bank Lebanon Lebanon County	<i>To:</i> 901 East Main Street (Outparcel) Palmyra Lebanon County  <i>From:</i> Palmyra Shopping Center 901 East Main Street Palmyra Lebanon County	Effective
3-31-05	Irwin Bank & Trust Company Irwin Westmoreland County	<i>Into:</i> 4580 Broadway Boulevard Monroeville Allegheny County  <i>From:</i> 4548 Broadway Boulevard Monroeville Allegheny County	Effective
4-4-05	Premier Bank Doylestown Bucks County	<i>To:</i> 736 Street Road Southampton Upper Southampton Township Bucks County	Effective

## NOTICES

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
		<i>From:</i> 516 Second Street Pike Southampton Upper Southampton Township Bucks County	

**Branch Discontinuances**

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
3-31-05	Community Bank and Trust Company Clarks Summit Lackawanna County	97 College Avenue Factoryville Wyoming County	Effective

**SAVINGS INSTITUTIONS**

No activity.

**CREDIT UNIONS**

No activity.

A. WILLIAM SCHENCK, III,  
*Secretary*

[Pa.B. Doc. No. 05-773. Filed for public inspection April 22, 2005, 9:00 a.m.]

**Maximum Lawful Rate of Interest for Residential Mortgages for the Month of May 2005**

The Department of Banking (Department), under the authority contained in section 301 of the act of January 30, 1974 (P. L. 13, No. 6) (41 P. S. § 301), hereby determines that the maximum lawful rate of interest for residential mortgages for the month of May 2005 is 7 1/4%.

The interest rate limitations under the State's usury statute were preempted to a great extent by Federal law, the Depository Institutions Deregulation and Monetary Control Act of 1980 (Pub. L. No. 96-221). Further preemption was instituted with the signing of Pub. L. No. 96-399, which overrode State interest rate limitations on any individual who finances the sale or exchange of residential real property which the individual owns and which the individual occupies or has occupied as a principal residence.

Each month the Department is required by State law to compute and announce the ceiling rate on residential mortgages in this Commonwealth. This maximum rate is determined by adding 2.50 percentage points to the yield rate on long-term government bonds as published by the Federal Reserve Board and/or the United States Treasury. The latest yield rate on long-term government securities is 4.70 to which was added 2.50 percentage points for a total of 7.20 that by law is rounded off to the nearest quarter at 7 1/4%.

A. WILLIAM SCHENCK, III,  
*Secretary*

[Pa.B. Doc. No. 05-774. Filed for public inspection April 22, 2005, 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**

*Southeast Region: Water Management Program Manager, 2 East Main Street, Norristown, PA 19401.*

<i>NPDES No. (Type)</i>	<i>Facility Name and Address</i>	<i>County and Municipality</i>	<i>Stream Name (Watershed#)</i>	<i>EPA Waived Y/N ?</i>
PA0024066	West Grove Borough Authority P. O. Box 61 117 Rosehill Avenue West Grove, PA 19390-0061	Chester County London Grove Township	Middle Branch White Clay Creek	Y

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

<i>NPDES No. (Type)</i>	<i>Facility Name and Address</i>	<i>County and Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA0061697 Industrial Waste Renewal	Gilberton Power Company 50 Eleanor Avenue Frackville, PA 17931-2301	West Mahanoy Township, Schuylkill County	Mahanoy Creek 06B	Y
PA0030139 Sewage Minor Renewal	Department of Corrections P. O. Box 598 Camp Hill, PA 17001-0598	Jackson Township, Luzerne County	East Fork Harvey's 05B Creek	Y

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

<i>NPDES No. (Type)</i>	<i>Facility Name and Address</i>	<i>County and Municipality</i>	<i>Stream Name (Watershed#)</i>	<i>EPA Waived Y/N ?</i>
PA0088323 (IW)	Calpine Construction Finance Company LP	Berks County Ontelaunee Township	Schuylkill River/3-B	Y
PA0247723 (SEW-SFR)	LeRoy and Mary Musser 1901 Cider Press Road Manheim, PA 17545	Lancaster County Rapho Township	UNT Little Chickies Creek/7-G	Y

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

<i>NPDES No. (Type)</i>	<i>Facility Name and Address</i>	<i>County and Municipality</i>	<i>Stream Name (Watershed#)</i>	<i>EPA Waived Y/N ?</i>
PA0024627	McClure Municipal Authority	Snyder County, McClure Borough	Penns—Middle Creek (6A)	Y

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

<i>NPDES No. (Type)</i>	<i>Facility Name and Address</i>	<i>County and Municipality</i>	<i>Stream Name (Watershed#)</i>	<i>EPA Waived Y/N ?</i>
PA0002038	OMG Americas P. O. Box 111 Franklin, PA 16323-0111	Sugarcreek Township Venango County	Race Run Allegheny River Two Mile Run 16-E	Y

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

*Southeast Region: Water Management Program Manager, 2 East Main Street, Norristown, PA 19401.*

**PA0244007**, Sewage, SIC 562, **Edward and Jane Bacon**, 1900 Fairview Road, Glenmoore, PA 19343. This proposed facility is located in East Nantmeal Township, **Chester County**.

Description of Proposed Activity: Issuance of an NPDES permit to discharge 400 gpd of treated sewage into a UNT of Beaver Run from small flow sewage treatment plant.

The receiving stream, a UNT of Beaver Run, is in the State Water Plan watershed 3D-Manatawny and is classified as a HQ stream.

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

<i>Parameters</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>		<i>Instantaneous Maximum (mg/l)</i>
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Average Monthly</i>	<i>Maximum Daily</i>	
CBOD <sub>5</sub>			10		20
Total Suspended Solids			10		20
Fecal Coliform			200#/100 ml		
Total Residual Chlorine			Monitor		
pH			6.0 STU		9.0 STU

**PA0058556 Amendment No. 1**, Industrial Waste, NAICS 221310, **Downingtown Municipal Water Authority**, 100 Water Plant Way, Downingtown, PA 19335. This proposed facility is located in Downingtown Borough, **Chester County**.

Description of Proposed Activity: Discharge of filter backwash, clarifier backwash and sludge drying beds filtrate from the sludge thickening/holding tank of the water filtration plant to a UNT to Beaver Creek.

The receiving stream, Beaver Creek, is in the State Water Plan watershed 3H and is classified for: TSF.

The proposed technology based effluent limits for Outfall 001 are based on an annual average flow of 50,000 gpd:

<i>Parameters</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>		<i>Instantaneous Maximum (mg/l)</i>
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Average Monthly</i>	<i>Maximum Daily</i>	
Flow			Monitor	Monitor	
Total Suspended Solids			30	60	75
Total Residual Chlorine			0.5	1.0	1.25
Iron, Total			2.0	4.0	5.0
Aluminum, Total			4.0	8.0	10
Manganese, Total			1.0	2.0	2.5
pH (STD)			6.0 min.		9.0

In addition to the effluent limits, the permit contains the following major special conditions:

1. Remedial Measures.
2. BAT/ELG Reopener.
3. TMDL/WLA Analysis.
4. Laboratory Certification.
5. Sludge Disposal.
6. Change of Ownership.

**PA0243990**, Industrial Waste, **Hershey Foods Corporation, Pennsburg Plant**, 2452 Quakertown Road, Pennsburg, PA 18073. Mailing address for Hershey Foods is: 1025 Reese Avenue, P. O. Box 805, Hershey, PA 17033. This proposed facility is located in Upper Hanover, **Montgomery County**.

Description of Proposed Activity: This application is for renewal of an NPDES permit to discharge treated process and sanitary wastewater and stormwater runoff from the Pennsburg manufacturing plant to Macoby Creek Branch.

The receiving stream, Macoby Creek Branch, is in the State Water Plan watershed 3E-Perkiomen and is classified for: TSF, aquatic life, water supply and recreation. The nearest downstream public water supply intake for Suburban Water Company located on Perkiomen Creek, approximately 15 miles below the point of discharge.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.02 mgd.

Parameters	Mass (lb/day)		Concentration (mg/l)		Instantaneous Maximum (mg/l)
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	
CBOD <sub>5</sub>	4	8	25	50	62
Total Suspended Solids	3	7	20	40	50
Total Dissolved Solids	167	334	1,000	2,000	2,500
Ammonia as N	0.3	0.7	2	4	5
Phosphorus as P	0.3	0.7	2	4	5
Oil and Grease			15	50	30
Fecal Coliform			200#/100 ml		
Dissolved Oxygen			5 (Inst. Min)		
Color, True (Pt/Cobalt scale)					100
pH (STD Unit)			Within limits of 6.0 to 9.0 at all times		

In addition to the effluent limits, the permit contains the following major special conditions:

1. Discharge must not cause nuisance or health hazard.
2. Stormwater outfall monitoring once per year.

**PA0057380**, Sewage, SIC 4952, **Steven and Heidi Whitney**, 3815 Chatham Place, Media, PA 19063. This proposed facility is located in Upper Providence Township, **Delaware County**.

Description of Proposed Activity: NPDES Permit renewal for a single residence sewage treatment plant in Upper Providence Township, Delaware County.

The receiving stream, UNT to Ridley Creek, is in the State Water Plan watershed 3G and is classified for: HQ, TSF. The nearest downstream public water supply intake for Media Borough Water Treatment Plant is located on Ridley Creek and is 3.3 miles below the point of discharge.

The proposed effluent limits for Outfall 001 are based on a design flow of 500 gpd.

Parameter	Average Monthly (mg/l)	Instantaneous Maximum (mg/l)
CBOD <sub>5</sub>		
(5-1 to 10-31)	10	20
(11-1 to 4-30)	20	40
Suspended Solids	10	20
Ammonia (as N)		
(5-1 to 10-31)	1.5	3.0
(11-1 to 4-30)	4.5	9.0
Total Residual Chlorine	Monitor and Report	Monitor and Report
Fecal Coliform	200 colonies/100 ml as a geometric average	
Dissolved Oxygen	minimum of 6.0 mg/l at all times	
pH	Within limits of 6.0 to 9.0 Standard Units at all times	

In addition to the effluent limits, the permit contains the following Other Requirements:

Other Requirements:

1. AMR to DEP.
2. Abandon STP when Municipal Sewers Available.
3. Remedial Measures if Unsatisfactory Effluent.
4. No Stormwater.
5. Acquire Necessary Property Rights.
6. Dry Swale Discharge.
7. Change in Ownership.
8. Sludge Disposal.
9. Laboratory Certification.

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

**Application No. PA0247634**, Sewage, **There's Room in the Inn WWTF**, 444 Plessinger Road, Warfordsburg, PA 17627. This facility is located in Brush Creek Township, **Fulton County**.

Description of activity: The application is for issuance of an NPDES permit for new discharge of treated sewage.

The receiving stream, UNT Little Tonoloway Creek, is in Watershed 13-B and classified for CWF, water supply, recreation and fish consumption. The nearest downstream public water supply intake for The R.C. Wilson Water Treatment Plant is located on the Potomac River, approximately 33 miles downstream. The discharge is not expected to affect the water supply.

The proposed effluent limits for Outfall 001 for a design flow of 0.0045 mgd are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	25	30
Total Suspended Solids	30	60
Total Residual Chlorine	1.5	2.5
Dissolved Oxygen	Minimum of 5.0 at all times	
pH	From 6.0 to 9.0 inclusive	
Fecal Coliform	200/100 ml as a geometric average	
(5-1 to 9-30)	200/100 ml as a geometric average	
(10-1 to 4-30)		

Persons may make an appointment to review the Department of Environmental Protection's files on this case by calling the file review coordinator at (717) 705-4732.

The EPA waiver is in effect.

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*Northcentral Region: Water Management Program Manager, 208 West Third Street, Williamsport, PA 17701 (570) 327 3664.*

**PA0228893**, Sewerage SIC, 4952, **Liberty Area Municipal Authority**, P. O. Box 73, Liberty, PA 16930. This proposed facility is located in Liberty Township, **Tioga County**.

Description of Proposed Activity: This proposed action is for issuance of an NPDES permit for a proposed discharge of treated sewage wastewater.

The receiving stream, Blockhouse Creek, is in the State Water Plan watershed 9A and classified for: CWF. The nearest downstream public water supply intake for PA American is located on West Branch Susquehanna River, 72 miles below the point of discharge.

The proposed effluent limits for Outfall 001 based on a design flow of 0.06 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>				
(6-1 to 10-31)	20	30		40
(11-1 to 5-31)	25	40		50
TSS				
(6-1 to 10-31)	10	15		20
(11-1 to 5-31)	30	45		60
Ammonia-n				
(6-1 to 10-1)	6	9		12
(11-1 to 5-31)	18	27		36
Total Cl <sub>2</sub> Residual Dechlorinate				0.05
Fecal Coliform:				
(5-1 to 9-30)	200 col/100 ml as a geometric mean			
(10-1 to 4-30)	200 col/100 ml as a geometric mean			
pH	6.0 to 9.0 at all times			

*Southwest Regional Office: Regional Manager, Water Management, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4000.*

**PA0001937-A1**, Industrial Waste, SIC, 3612, **Cooper Power Systems, Cooper US**, 600 Travis, Suite 5800, Houston, TX 77002 and **Pennsylvania Transformer Technology**, 201 Carolina Drive, Raeford, NC 28376. This application is for amendment of an NPDES permit to discharge treated process water, stormwater, untreated stormwater from Canonsburg Plant in Cecil Township, **Washington County**.

The following effluent limitations are proposed for discharge to the receiving waters, Chartiers Creek and UNT to Chartiers, classified as a WWF with existing and/or potential uses for aquatic life, water supply and recreation. The first existing/proposed downstream potable water supply is West View Municipal Authority, 210 Perry Highway, Pittsburgh, PA 15229, 33 miles below the discharge point.



Outfall 001: existing discharge, interim effluent limits.

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
PCB-1260	Not Detectable using EPA Method 608				
Oil and Grease	Monitor and Report				
Tetrachloroethylene	Monitor and Report				
Trichloroethylene	Monitor and Report				
Vinyl Chloride	Monitor and Report				
Chlordane	Monitor and Report				
pH	not less than 6.0 nor greater than 9.0				

Other Conditions:

Outfall 001: existing discharge, final effluent limits

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
PCB-1260	Not Detectable Using EPA Method 608				
Oil and Grease	Monitor and Report				
Tetrachloroethylene	Monitor and Report				
Trichloroethylene	Monitor and Report				
Vinyl Chloride	Monitor and Report				
Chlordane	Not Detectable Using EPA Method 608				
pH	not less than 6.0 nor greater than 9.0				

Outfall 002: existing discharge, interim effluent limits.

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
PCB-1260	Not Detectable Using EPA Method 608				
Oil and Grease	Monitor and Report				
Arsenic	Monitor and Report				
Copper	Monitor and Report				
Selenium	Monitor and Report				
Zinc	Monitor and Report				
Cyanide free	Monitor and Report				
total	Monitor and Report				
Tetrachloroethylene	Monitor and Report				
Trichloroethylene	Monitor and Report				

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
Vinyl Chloride	Monitor and Report				
Fecal Coliforms	Monitor and Report				
Total Suspended Solids	Monitor and Report				
Chlordane	Monitor and Report				
trans-1, 2 Dichloroethylene	Monitor and Report				
cis-1, 2 Dichloroethylene	Monitor and Report				
Chloroform	Monitor and Report				
pH	not less than 6.0 nor greater than 9.0				

Outfall 102: new discharge.

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
PCB-1260	Not Detectable Using EPA Method 608				
Oil and Grease	Monitor and Report				
Arsenic	Monitor and Report				
Copper	Monitor and Report				

## NOTICES

<i>Parameter</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
Selenium			Monitor and Report		
Zinc			Monitor and Report		
Cyanide free			Monitor and Report		
total			Monitor	and Report	
Tetrachloroethylene			Monitor and Report		

<i>Parameter</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
Trichloroethylene			Monitor and Report		
Vinyl Chloride			Monitor and Report		
Fecal Coliforms			Monitor and Report		
Total Suspended Solids			Monitor and Report		
Chlordane			Monitor and Report		
trans-1, 2 Dichloroethylene			Monitor and Report		
cis-1, 2 Dichloroethylene			Monitor and Report		
Chloroform			Monitor and Report		
pH	not less than 6.0 nor greater than 9.0				

*Outfall 202: new discharge.*

<i>Parameter</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
PCB-1260			Not Detectable Using EPA Method 608		
Tetrachloroethylene			Monitor and Report		
Trichloroethylene			Monitor and Report		
Vinyl Chloride			Monitor and Report		
Chlordane			Monitor and Report		
trans-1, 2 Dichloroethylene			Monitor and Report		
cis-1, 2 Dichloroethylene			Monitor and Report		
Chloroform			Monitor and Report		
Fecal Coliforms			Monitor and Report		
Oil and Grease			Monitor and Report		
pH	Monitor and Report				

*Outfall 002: existing discharge.*

<i>Parameter</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
PCBs			Not Detectable Using EPA Method 608		
Chlordane			Not Detectable Using EPA Method 608		
pH	not less than 6.0 nor greater than 9.0				

*Outfall 003: existing discharge.*

<i>Parameter</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
PCB-1260			Not Detectable Using EPA Method 608		
Oil and Grease			Monitor and Report		
Tetrachloroethylene			Monitor and Report		
Trichloroethylene			Monitor and Report		
Vinyl Chloride			Monitor and Report		
Chlordane			Monitor and Report		
pH	not less than 6.0 nor greater than 9.0				

Outfall 104: new discharge.

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
PCB-1260			Not Detectable Using EPA Method 608		
Oil and Grease			Monitor and Report		
Total Suspended Solids			Monitor and Report		
VOCs			Monitor and Report		
Chlordane			Monitor and Report		
pH	not less than 6.0 nor greater than 9.0				

Outfall 204: new discharge.

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
PCB-1260			Not Detectable Using EPA Method 608		
Oil and Grease			Monitor and Report		
Chlordane			Monitor and Report		

Outfall 004: existing discharge.

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
PCB-1260			Not Detectable Using EPA Method 608		
Chlordane			Not Detectable Using EPA Method 608		
pH	not less than 6.0 nor greater than 9.0				

Outfall 005: existing discharge, interim effluent limits.

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
PCB-1260			Not Detectable Using EPA Method 608		
Chlordane			Monitor and Report		
Oil and Grease			Monitor and Report		
Fecal Coliform			Monitor and Report		
Arsenic			Monitor and Report		
Chromium, tot			Monitor and Report		
Sulfate			Monitor and Report		
Lead			Monitor and Report		
Nickel			Monitor and Report		

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
Zinc			Monitor and Report		
Cyanide			Monitor and Report		
tot			Monitor and Report		
free			Monitor and Report		
Iron			Monitor and Report		
tot			Monitor and Report		
dis			Monitor and Report		
Manganese			Monitor and Report		
Aluminum			Monitor and Report		
Fluoride			Monitor and Report		
Mercury			Monitor and Report		
pH	not less than 6.0 nor greater than 9.0				

*Outfall 005: existing discharge, final effluent limits.*

<i>Parameter</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
PCB-1260					Monitor and Report
Total Suspended Solids					Monitor and Report
Oil and Grease					Monitor and Report
VOCs					Monitor and Report
Chlordane					Monitor and Report
pH	not less than 6.0 nor greater than 9.0				

The EPA waiver is 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. 4605405**, Sewerage, **Limerick Township Municipal Authority**, 529 King Road, Royersford, PA 19468. This proposed facility is located in Limerick Township, **Montgomery County**.

Description of Action/Activity: Construction and operation of a 75 lot single family residential subdivision on a 53 acre parcel and a 10 foot gravity sanitary sewer extension.

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

**WQM Permit No. 3605405**, Sewerage, **LeRoy and Mary Musser**, 1901 Cider Press Road, Manheim, PA 17545. This proposed facility is located in Rapho Township, **Lancaster County**.

Description of Proposed Action/Activity: Construction/Operation of a small flow treatment facility to serve their single family residence at 1878 Cider Press Road, Manheim.

**WQM Permit No. 3605202**, CAFO, **David Martin Farm**, 420 Nottingham Road, Nottingham, PA 19362. This proposed facility is located in Little Britain Township, **Lancaster County**.

Description of Proposed Action/Activity: Existing crop farm, pullet house and heifer raising facility, proposing to construct one 4,400 head swine barn. This barn will utilize a concrete manure storage located below the animal living space.

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

**WQM Permit No. WQG016109**, Sewerage, **Robert Luthultz**, 277 Valley Road, Wexford, PA 15090. This proposed facility is located in Marshall Township, **Allegheny County**.

Description of Proposed Action/Activity: Application for the construction and operation of a small flow treatment facility to service a single-family dwelling.

**WQM Permit No. WQG016110**, Sewerage, **Walter Sadauskus**, 815 Ponderosa Drive, Imperial, PA 15126. This proposed facility is located in North Fayette Township, **Allegheny County**.

Description of Proposed Action/Activity: Application for the construction and operation of a small flow treatment facility to service a single-family dwelling.

**WQM Permit No. 1169401-A2**, Sewerage, **Johnstown Redevelopment Authority**, 4th Floor Public Safety Building, 401 Washington Street, Johnstown, PA 15901. This proposed facility is located in West Taylor Township, **Cambria County**.

Description of Proposed Action/Activity: Application for the replacement of two nonoperational channel monsters with a mechanically cleaned bar screen.

**WQM Permit No. 0205406**, Sewerage, **Woodville Associates, LTD.**, 5020 Thoms Run Road, Oakdale, PA 15071. This proposed facility is located in Collier Township, **Allegheny County**.

Description of Proposed Action/Activity: Application for the construction and operation of a sanitary sewer system to service a 569 lot single and multifamily home development.

**WQM Permit No. 0273424-A4**, Sewerage, **Plum Borough Municipal Authority**, 4555 New Texas Road, Pittsburgh, PA 15239-1197. This proposed facility is located in Plum Borough, **Allegheny County**.

Description of Proposed Action/Activity: Application for the replacement and modifications of existing facilities.

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### IV. NPDES Applications for Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4)

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*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>DEP Protocol (Y/N)</i>
PAI132241	Vandling Borough 634 Hillside St. Vandling, PA 18421	Lackawanna	Vandling Borough	Lackawanna River, HQ-CWF	Y
PAI32242	Scott Township R. R. 1, Box 438 Olyphant, PA 18447	Lackawanna	Scott Township	Lackawanna River, HQ-CWF; Hull Creek, CWF	Y

**V. Applications for NPDES Waiver Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4)**

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

*Southeast Region: Water Management Program Manager, 2 East Main Street, Norristown, PA 19401.*

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI010905010	Jeff Markley Jeff Markley Subdivision 100 Hafers Road Sellersville, PA 18960	Bucks	West Rockhill Township	Ridge Valley Creek (HQ-TSF)
PAI011505014	Wallace Township Alice Park Development P. O. Box 96 Glenmoore, PA 19343	Chester	Wallace Township	East Branch Brandywine Creek (HQ)
PAI011505019	East Whiteland Township Valley Creek Park 209 Conestoga Road Frazer, PA 19355	Chester	East Whiteland Township	Valley Creek (EV)
PAI011505020	BFD Partnership Reagent Information Storage 704 Haywood Drive Exton, PA 19341	Chester	East Whiteland Township	Valley Creek (EV)
PAI011505021	D'Agostino Builders, Inc. Lillmars Tract 319 East Conestoga Road Wayne, PA 19087	Chester	West Pikeland Township	Pine Creek (HQ-TSF)

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

*Wayne County Conservation District: Ag Service Center, 470 Sunrise Ave., Honesdale, PA 18431, (570) 253-0930.*

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI026405001	Wayne Economic Development Corporation 303 Commercial St. Suite 109 Honesdale, PA 18431	Wayne	Sterling Township	Wallenpaupack Creek, HQ-CWF

*Monroe County Conservation District: 8050 Running Valley Rd., Stroudsburg, PA 18360, (570) 629-3060.*

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI024505002	Fern Partners 257 Rimrock Rd. Stroudsburg, PA 18360	Monroe	Hamilton Township	Appenzell Creek, HQ-CWF

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

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI030604007	East Penn Self Storage	York	Richmond Township	Moselem Creek/ HQ-CWF

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

*Clearfield Conservation District: 650 Leonard St., Clearfield, PA 16830, (814) 765-2629.*

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI041705001	Muddy Run Regional Authority P. O. Box 474 Madera, PA 16661	Clearfield	Bigler, Beccaria and Gulich Townships Ramey Borough	Clearfield Creek, Main Stem-WWF UNT Clearfield Creek-CWF Muddy Run-CWF UNT Muddy Run-CWF Little Muddy Run, Dam of Janesville-HQ-CWF Little Muddy Run, Janesville to Mouth-CWF Little Muddy Run, E. Br.-CWF UNT Little Muddy Run-CWF Morgan Run-CWF UNT Morgan Run-CWF Japling Run-CWF Alexander Run-CWF UNT Alexander Run-CWF

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

*Westmoreland County Conservation District: Center for Conservation Education, 211 Donohoe Road, Greensburg, PA 15601, (724) 837-5271.*

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI056505002	Valley School of Ligonier 153 Lupine Lane Rector, PA 15677	Westmoreland	Ligonier Township	Linn Run and Loyalhanna Creek (HQ-CWF)

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

PAG-12	Concentrated Animal Feeding Operations (CAFOs)
PAG-13	Stormwater Discharges from Municipal Separate Storm Sewer Systems (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 may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

**SAFE DRINKING WATER**

**Applications Received under the Pennsylvania Safe Drinking Water Act**

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

**Permit No. 6705504, Public Water Supply.**

Applicant	<b>Delta Borough</b>
Municipality	Peach Bottom Township
County	<b>York</b>
Responsible Official	Timothy A Haller, Borough Council President 101 College Avenue P. O. Box 278 Delta, PA 17314

Type of Facility	Public Water Supply
Consulting Engineer	Charles A Kehew II, P. E. James R. Holley & Assoc., Inc. 18 South George St. York, PA 17401
Application Received Date	3/10/2005
Description of Action	Construction of Well No. 9.
	<b>Permit No. 2205504</b> , Public Water Supply.
Applicant	<b>United Water Pennsylvania</b>
Municipality	Hummelstown Borough
County	<b>Dauphin</b>
Responsible Official	Nancy J Trushell, Engineering Manager 4211 East Park Circle Harrisburg, PA 17111
Type of Facility	Public Water Supply
Consulting Engineer	Gary W. Snyder, P. E. Black & Veatch Curtis Center Philadelphia, PA 19106
Application Received Date	3/24/2005
Description of Action	Construction of a new microfiltration treatment plant.
	<i>Northcentral Region: Water Supply Management Program Manager, 208 West Third Street, Williamsport, PA 17701.</i>
	<b>Permit No. 5905501—Construction</b> , Public Water Supply.
Applicant	<b>United States Army Corps of Engineers</b>
Township or Borough	Middlebury Township
County	<b>Tioga</b>
Responsible Official	Marilyn K. Jones Operations Project Manager United Army Corps of Engineers R. R. 1, Box 65 Tioga, PA 16946
Type of Facility	Public Water Supply—Construction
Consulting Engineer	George A. Bielen United States Army Corps of Engineers 306 Railroad Street Danville, PA 17821
Application Received Date	April 6, 2005
Description of Action	Construct EPD pressure sand filter at the Ives Run Recreation Area 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 the Commonwealth**

*Southcentral Region: Water Supply Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110-8200.*

**WA 28-1022**, Water Allocations. **Shippensburg Borough Authority, Franklin County**. Subsidiary water allocation permit application for the right to purchase an average of 650,000 gallons of raw water per day, based on 30 days, from Franklin County General Authority. Consulting Engineer: Peter Lusardi, CET Engineering Services Date Application Received: 3/10/2005.

## LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

UNDER ACT 2, 1995

### PREAMBLE 1

**Acknowledgment of Notices of Intent to Remediate Submitted under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).**

Sections 302—305 of the Land Recycling and Environmental Remediation Standards Act (act) require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* an acknowledgment noting receipt of Notices of Intent to Remediate. An acknowledgment of the receipt of a Notice of Intent to Remediate is used to identify a site where a person proposes to, or has been required to, respond to a release of a regulated substance at a site. Persons intending to use the Background Standard, Statewide Health Standard, the Site-Specific Standard or who intend to remediate a site as a special industrial area must file a Notice of Intent to Remediate with the Department. A Notice of Intent to Remediate filed with the Department provides a brief description of the location of the site, a list of known or suspected contaminants at the site, the proposed remediation measures for the site and a description of the intended future use of the site. A person who demonstrates attainment of one, a combination of the cleanup standards or who receives approval of a special industrial area remediation identified under the act will be relieved of further liability for the remediation of the site for any contamination identified in reports submitted to and approved by the Department. Furthermore, the person shall not be subject to citizen suits or other contribution actions brought by responsible persons not participating in the remediation.

Under sections 304(n)(1)(ii) and 305(c)(2) of the act, there is a 30-day public and municipal comment period for sites proposed for remediation using a Site-Specific Standard, in whole or in part and for sites remediated as a special industrial area. This period begins when a summary of the Notice of Intent to Remediate is published in a newspaper of general circulation in the area of the site. For the sites identified, proposed for remediation to a Site-Specific Standard or as a special industrial area, the municipality within which the site is located may request to be involved in the development of the remediation and reuse plans for the site if the request is made within 30 days of the date specified. During this comment period, the municipality may request that the person identified as the remediator of the site develop and implement a public involvement plan. Requests to be involved and comments should be directed to the remediator of the site.

For further information concerning the content of a Notice of Intent to Remediate, contact the environmental cleanup program manager in the Department regional office before which the notice appears. If information concerning this acknowledgment is required in an alternative form, contact the community relations coordinator

at the appropriate regional office. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following Notices of Intent to Remediate:

*Southeast Region: Environmental Cleanup Program Manager, 2 East Main Street, Norristown, PA 19401.*

**Pier 60 Prop.**, City of Philadelphia, **Philadelphia County**. Paul Martino, P.G. Pennoni Assoc., Inc., 3001 Market St., Philadelphia, PA 19102 has submitted a Notice of Intent to Remediate. Soil at the site was contaminated with lead and PAH. Groundwater at the site was impacted with inorganics and PAH.

**440 Monastery Ave. Site**, City of Philadelphia, **Philadelphia County**. Richard S. Werner, Environmental Consulting, Inc., 500 E. Washington St., Suite 375, Philadelphia, PA 19401 on behalf of Phillip J. Aiello, Phillip Aiello Builders & General Contractor, Inc., 467 Lyceum Ave., Philadelphia, PA 19128 has submitted a Notice of Intent to Remediate. Soil at the site was contaminated with unleaded gasoline. The anticipated future use of the subject property is as a commercial contractor's office, supplies warehouse and company vehicle garage.

**Warminster General Hospital**, Warminster Township, **Bucks County**. Joseph Farrell, Environmental Solutions Group, 302 Lea Blvd., Wilmington, DE 19802 on behalf of Charles Morrison, Allegheny Health, Education & Research Foundation, One Allegheny Center, Suite 230, Pittsburgh, PA 15212 and Chuck McClinton, Warminster General Hospital, 255 Newtown Rd., Warminster, PA 18974 has submitted a Notice of Intent to Remediate. Soil and groundwater at the site were contaminated with PAH and No. 4 fuel oil. A summary of the Notice of Intent to Remediate was reported to have been published in the *Bucks County Intelligencer* on July 2, 2004.

**Park Town West**, City of Philadelphia, **Philadelphia County**. Jamey A. Stynchula, P.G., Pennoni Assoc., Inc., 3001 Market St., Philadelphia, PA 19104 on behalf of Colin Jones, The Goldenberg Group, Inc. & WPFPSI, 650 Pkwy, Suite 300, Blue Bell, PA 19422 has submitted a Notice of Intent to Remediate. Soil and groundwater at the site were contaminated with chlorinated solvents, inorganics, other organics and PCB. A summary of the Notice of Intent to Remediate was reported to have been published in the *Philadelphia Daily News* on March 16, 2005.

**Devon Self-Storage**, City of Philadelphia, **Philadelphia County**. Charlene Drake, React Environmental Svc. Inc., 6901 Kingsessing Ave., Philadelphia, PA 19142 on behalf of Kim Johnson, Devon Self-Storage, 2000 Powell St., Suite 1240, Emeryville, CA 94608 has submitted a Notice of Intent to Remediate. Soil at the site was contaminated with No. 2 fuel oil and No. 4 fuel oil. A summary of the Notice of Intent to Remediate was reported to have been published in the *Philadelphia Daily News* on February 24, 2005.

**Thyseen Krupp Budd Co, Die Storage Yard Site**, City of Philadelphia, **Philadelphia County**. Justin Lauterbach, RT Environmental Svc, Inc., on behalf of Joe DePascale, Hunting Fox Assoc., LP, c/o PREI, 1001 E. Hector St., Suite 100, Conshohocken, PA 19428 has submitted a Notice of Intent to Remediate. Soil and groundwater at the site were contaminated with VOCs, PCBs, PAH and inorganics. The proposed future use of the property will be nonresidential.

**318 W. Lancaster Ave. Prop.**, Lower Merion Township, **Montgomery County**. Darryl Borrelli, Manko, Gold, Katcher & Fox, LLP 401 City Ave., Suite 500, Bala Cynwyd, PA 19004 on behalf of Andrew Talone, 318 W. Lancaster Ave. Corp., 202 Grouse Lane, Radnor, PA 19087 has submitted a Notice of Intent to Remediate. Soil and groundwater at the site were contaminated with No. 2 fuel oil. The proposed future use of the property will be nonresidential for commercial purposes. A summary of the Notice of Intent to Remediate was reported to have been published in the *Philadelphia Daily News* on March 24, 2005.

**7-Eleven, Inc., Store No. 21218**, City of Philadelphia, **Philadelphia County**. Richard C. Firely, Jr., ENSR Intl, 2005 Cabot Blvd., West, Suite 100, Langhorne, PA 19047 has submitted a Notice of Intent to Remediate. Groundwater at the site was contaminated with leaded gasoline. The current and intended future use of the property is a commercially viable (nonresidential) industrial property. A summary of the Notice of Intent to Remediate was reported to have been published in the all editions of the *News Gleaner* on December 22, 2004.

**Ashwood Dev.**, Plymouth Township, **Montgomery County**. Jan Peter Ilves, P.G., JPI Assoc., Inc., 1532 Haddonfield-Berlin Road, Cherry Hill, NJ 08003 on behalf of Carmen Salamone, Ashwood Land Development, Inc., 545 W. Germantown Pike, No. 200, Plymouth Meeting, PA 19462 has submitted a Notice of Intent to Remediate. Soil at the site was contaminated with arsenic (pesticide). The future use of the site is residential redevelopment. A summary of the Notice of Intent to Remediate was reported to have been published in the *Times Herald* on April 5, 2005.

*Northwest Region: Environmental Cleanup Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.*

**Castle Brand Former**, City of New Castle, **Lawrence County**. J. Scott Whipkey, RAR Eng Group, 1135 Butler Ave., New Castle, PA 16101, on behalf of Leonard L. Lastoria, New Castle Area Transit Authority, 311 Mahoning Ave., New Castle, PA 16102, has submitted a Notice of Intent to Remediate. Site is a former maintenance garage and warehouse for a meat packing company that has been contaminated with boron and lead which are present in soils at the site and dissolved Lead, Pentachlorophenol and Trichlorethene which are present in site groundwater. Future use of the property is nonresidential for commercial and industrial use.

#### MUNICIPAL WASTE GENERAL PERMITS

**Application Received Under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003); the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101—4000.1904); and Municipal Waste Regulations for a General Permit to Operate Municipal Waste Processing Facilities and the Beneficial Use of Municipal Waste.**

*Central Office: Division of Municipal and Residual Waste, Rachel Carson State Office Building, 14th Floor, 400 Market Street, Harrisburg, PA 17105-8472.*

**General Permit Application No. WMGM033. Bethlehem Renewable Energy, LLC**, 1300 N. 17th Street, Suite 1600, Arlington, VA 22209.

The Department of Environmental Protection (Department), Bureau of Land Recycling and Waste Management has received an application for General Permit No.



WMGM033. The application is for the processing and beneficial use of landfill gas, generated at Bethlehem Landfill in Northampton County, as an alternate fuel for a potential five power generators to be installed at this landfill. The electric produced will be transmitted to the local electric utility grid for consumers use. The Department determined the application to be administratively complete on April 6, 2005.

Comments concerning the application should be directed to Ronald C. Hassinger, Chief, General Permits and Beneficial Use Section, Division of Municipal and Residual Waste, Bureau of Land Recycling and Waste Management, P. O. Box 8472, Harrisburg, PA 17105-8472. Persons interested in obtaining more information about the general permit application may contact the Division at (717) 787-7381. TDD users may contact the Department through the Pennsylvania Relay service, (800) 654-5984. Public comments must be submitted within 60 days of this notice and may recommend revisions to and approval or denial of the application.

#### RESIDUAL WASTE GENERAL PERMITS

**Application Received Under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003); the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101—4000.1904); and Residual Waste Regulations for a General Permit to Operate Residual Waste Processing Facilities and the Beneficial Use of Residual Waste other than Coal Ash.**

*Central Office: Division of Municipal and Residual Waste, Rachel Carson State Office Building, 14th Floor, 400 Market Street, Harrisburg, PA 17105-8472.*

**General Permit Application No. WMGR106. Lafarge North America, Inc.**, 5160 Main Street, Whitehall PA 18052-1827. The application proposed processing of Types 4—7 plastics from municipal recycling facilities and industrial sources prior to beneficial use as plastic-derived fuel. The processing is limited to separation of Type 3 plastic (PVC) using infrared/air or X-ray/air sorting technology and shredding. The application was found to be administratively complete by Central Office on April 8, 2005.

Comments concerning the application should be directed to Ronald C. Hassinger, Chief, General Permits/Beneficial Use Section, Division of Municipal and Residual Waste, Bureau of Land Recycling and Waste Management, P. O. Box 8472, Harrisburg, PA 17105-8472, (717) 787-7381. TDD users may contact the Department through the Pennsylvania Relay service, (800) 654-5984. Public comments must be submitted within 60 days of this notice and may recommend revisions to, and approval or denial of the application.

### AIR QUALITY

#### PLAN APPROVAL AND OPERATING PERMIT APPLICATIONS

##### NEW SOURCES AND MODIFICATIONS

The Department of Environmental Protection (Department) has developed an "integrated" plan approval, State operating permit and Title V operating permit program. This integrated approach is designed to make the permitting process more efficient for the Department, the regulated community and the public. This approach allows the owner or operator of a facility to complete and submit all the permitting documents relevant to its application one

time, affords an opportunity for public input and provides for sequential issuance of the necessary permits.

The Department has received applications for plan approvals and/or operating permits from the following facilities.

Copies of the applications, subsequently prepared draft permits, review summaries and other support materials are available for review in the regional office identified in this notice. Persons interested in reviewing the application files should contact the appropriate regional office to schedule an appointment.

Persons wishing to receive a copy of a proposed plan approval or operating permit must indicate their interest to the Department regional office within 30 days of the date of this notice and must file protests or comments on a proposed plan approval or operating permit within 30 days of the Department providing a copy of the proposed document to that person or within 30 days of its publication in the *Pennsylvania Bulletin*, whichever comes first. Interested persons may also request that a hearing be held concerning the proposed plan approval and operating permit. Comments or protests filed with the Department regional offices must include a concise statement of the objections to the issuance of the Plan approval or operating permit and relevant facts which serve as the basis for the objections. If the Department schedules a hearing, a notice will be published in the *Pennsylvania Bulletin* at least 30 days prior the date of the hearing.

Persons with a disability who wish to comment and require an auxiliary aid, service or other accommodation to participate should contact the regional office identified before the application. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

Final plan approvals and operating permits will contain terms and conditions to ensure that the source is constructed and operating in compliance with applicable requirements in 25 Pa. Code Chapters 121—143, the Federal Clean Air Act (act) and regulations adopted under the act.

#### PLAN APPROVALS

**Plan Approval Applications Received under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter B that may have special public interest. These applications are in review and no decision on disposition has been reached.**

*Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401, Thomas McGinley, New Source Review Chief, (484) 250-5920.*

**PA 23-00014: Sunoco, Inc.—R and M** (P. O. Box 426, 100 Green Street, Marcus Hook, PA 19061-0426) for converting VOCs emission reduction credits (ERCs) into NOx ERCs and use for future project at Marcus Hook in Delaware County.

*Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, Ronald Davis, New Source Review Chief, (717) 705-4702.*

**22-05050A: Dauphin Meadows Inc.** (R. D. No. 1 Box 68, Route 209, Millersburg, PA 17061) for a phased landfill expansion (Western Expansion) and construction of a landfill gas fired engine-generator plant with one to six engines, capacity approximately 800 kilowatt each to convert the waste landfill gas into electrical energy at

their landfill site in Washington and Upper Paxton Townships, **Dauphin County**.

*Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701, David Aldenderfer, Program Manager, (570) 327-3637.*

**12-399-013A: GKN Sinter Metals** (15420 Route 120, P. O. Box 493, Emporium, PA 15834) for construction of an induction hardener and draw furnace and installation of an electrostatic precipitator to control emissions at their Barton Street facility in Emporium Borough, **Cameron County**.

**Intent to Issue Plan Approvals and Intent to Issue or Amend Operating Permits under the Air Pollution Control Act (35 P. S. §§ 4001—4015) 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.*

**46-0198J: Blommer Chocolate Company** (1101 Blommer Drive, Lansdale, PA) for installation of a baghouse on a high fat shell bin, which replaces two existing filters in Upper Hanover Township, **Montgomery County**. This modification will raise the particulate matter emissions limit from 0.71 tpy to 2.25 tpy from the source located in Upper Hanover Township, Montgomery County. This facility is a Major for VOC. The Plan approval will contain recordkeeping and operating restriction designed to keep the facility operating within the allowable emissions and all applicable air quality requirements.

**15-0010: ISG Plate, LLC** (139 Modena Road, Coatesville, PA 19320) for modification of a Vertical Grit Blast Machine (identified as Source ID 176 in the facility's Title V Operating Permit, 15-00010) and a Horizontal Grit Blast Machine (identified as Source ID 258 in the facility's Title V Operating Permit), to correct emissions of PM. This facility is a Title V facility in the City of Coatesville, **Chester County**. Each grit blast machine is controlled by a baghouse, with a removal efficiency of 99%. The new allowable emission rates for the Vertical Grit Blast Machine will be 1.09 lbs/hr and 4.09 tons per 12-month rolling period. The new allowable emission rates for the Horizontal Grit Blast Machine will be 1.15 lbs/hr and 4.31 tons per 12-month rolling period. The Plan Approval will contain monitoring and recordkeeping requirements designed to keep Sources 176 and 258 operating within the allowable emissions and all applicable air quality requirements.

**PA 23-00014: Sunoco, Inc.—R and M** (P. O. Box 426, 100 Green Street, Marcus Hook, PA 19061-0426) for converting 426.59 tons per year (tpy) of VOCs emission reduction credits (ERCs) into 328.15 tpy of NOx ERCs and use for emission offsets for future project under 25 Pa. Code § 127.208(2) at Marcus Hook in **Delaware County**. The 426.59 tpy of VOC ERCs are generated from the over control of VOC emissions at the Marcus Hook Refinery from the Middle Creek Abatement Project. These VOC ERCs were certified on April 19, 2002. The Environmental Protection Agency has approved a request from the Commonwealth for interpollutant trading of VOC ERCs for NOx ERCs using a substitution ratio in the Philadelphia ozone nonattainment area. Sunoco Inc. is a major facility subject to the emission offset requirements of 25 Pa. Code Chapter 127, Subchapter E (relating

to new source review). Plan Approval No. 23-00014 does not authorize the construction, modification, reactivation or installation of any source at this facility.

*Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790, Mark Wejkszner, New Source Review Chief, (570) 826-2531.*

**48-318-137: Victaulic Co. of America** (4901 Kesslersville Road, Easton, PA 18040) for modification of a surface coating operation (replacement and modernization of Paint Dip System) at their facility in Forks Township, **Northampton County**. This facility is a Title V facility. The VOC emissions associated with this project will be less than 1.0 tpy (emissions will not change). The particulate emissions will be less than 0.02 grain per dry standard cubic foot. The company shall comply with 25 Pa. Code § 123.31 for malodorous emissions. The company shall comply with 25 Pa. Code § 123.41 for opacity. The company will operate the facility and maintain the system in accordance with the good engineering practices to assure proper operation of the system. The Plan Approval and amended Title V Operating Permit (No. 48-00009) will maintain the current recordkeeping and operating restrictions 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.*

**18-315-002: First Quality Products, Inc.** (P. O. Box 331, McElhattan, PA 17748) for construction of 22 absorbent products manufacturing (converting) lines, 21 of which already exist, in Wayne Township, **Clinton County**.

The particulate matter emissions from Lines 2—6 and 8 are controlled by a drum filter (1 per line) and a fabric collector (1 per 3 lines) operating in series. The particulate matter emissions from Lines 9, 11-23, JP1 and JP2 either are, or will be, controlled by an "Osprey" unit (1 per line) which incorporates a drum filter, a cartridge filter and a HEPA filter operating in series. The resultant total combined particulate matter emissions from all 22 lines are not expected to exceed .085 ton per year. The VOC and volatile hazardous air pollutant emissions from the use of hot melt adhesives, inks and cleanup solvents are not expected to exceed 6.94 and 1.33 tons per year, respectively.

The Department of Environmental Protection's (Department) review of the information submitted by First Quality Products, Inc. indicates that the respective converting lines will comply with all Air Quality regulations pertaining to air contamination sources and the emission of air contaminants, including the best available technology requirement of 25 Pa. Code §§ 127.1 and 127.12. Based on this finding, the Department proposes to issue plan approval for the construction of the converting lines.

The following is a summary of the conditions the Department proposes to place in the plan approval to be issued to ensure compliance with all applicable regulatory requirements:

1. The particulate matter emissions from Lines 2—4 shall be controlled by a drum filter (1 per line) and a fabric collector (common to all 3 lines) operating in series. The concentration of particulate matter in the exhaust of the fabric collector shall not exceed .000010 grain per dry standard cubic foot and there shall be no visible emissions from the collector exhaust (other than water vapor or steam).

2. The particulate matter emissions from Lines 5, 6 and 8 shall be controlled by a drum filter (1 per line) and a fabric collector (common to all 3 lines) operating in series. The concentration of particulate matter in the exhaust of the fabric collector shall not exceed .0000065 grain per dry standard cubic foot and there shall be no visible emissions from the collector exhaust (other than water vapor or steam).

3. The particulate matter emissions from Lines 9, 11—23, JP1 and JP2 shall be controlled by an Osprey unit (1 per line) consisting of a drum filter, a cartridge filter and a HEPA filter operating in series. The concentration of particulate matter in each of the Osprey units shall not exceed .0000044 grain per dry standard cubic foot and there shall be no visible emissions from the exhaust of any Osprey unit (other than water vapor or steam).

4. Each of the drum filters and fabric collectors associated with Lines 2—6 and 8 shall be equipped with instrumentation to monitor pressure differential across the drum filter or fabric collector on a continuous basis. Each of the Osprey units shall be equipped with instrumentation to monitor the pressure differential across each of its three component sections on a continuous basis.

5. Spare drum filters, filter bags, cartridge filters and HEPA filters shall be kept on hand.

6. The bags in the fabric collector associated with Lines 2—4 shall be cleaned at least once every 12 hours of operation. During those periods of time when the bags are being cleaned, the converting lines controlled by the collector shall not be operated.

7. Any air compressors supplying compressed air to any drum filter, fabric collector or Osprey unit shall be equipped with an air dryer and oil trap.

8. The total combined VOC emissions resulting from the adhesive, ink and cleanup solvent usage associated with the converting lines shall not exceed 6.94 tons in any 12 consecutive month period and the total volatile hazardous air pollutant emissions shall not exceed 1.33 tons in any 12 consecutive month period.

9. The adhesives used on, or in association with, the converting lines shall be restricted to hot melt adhesives which do not contain, as an intentionally-added ingredient, any VOC or volatile hazardous air pollutant. The hot melt adhesives may however result in the emission of VOC provided that the emissions do not exceed .003 pound per pound of adhesive used.

10. No ink used shall contain more than 5.92 pounds of VOCs and zero pounds of volatile hazardous air pollutants per gallon except that up to 15 gallons of ink with a VOC and volatile hazardous air pollutant content of up to 7.25 pounds per gallon may be used in any 12 consecutive month period.

11. No more than 1,800 gallons of cleanup solvent shall be used in any 12 consecutive month period. No more than 400 gallons of this 1,800 gallons may contain any volatile hazardous air pollutant and the maximum volatile hazardous air pollutant content shall be 6.69 pounds per gallon.

All containers of VOC-containing materials, volatile hazardous air pollutant-containing materials and acetone-containing materials shall be kept closed except when in actual use. All used cleaning rags shall be stored in closed containers and the rags shall never be treated in any manner which would unnecessarily promote the evapora-

tive loss of any contained VOC, volatile hazardous air pollutant or acetone to the atmosphere.

12. Records shall be maintained of the identity and amount of each adhesive, ink and cleaning solvent used each month. The records shall be retained for a minimum of 5 years and shall be made available to the Department upon request.

*Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, George Monasky, New Source Review Chief, (814) 332-6940.*

**10-062C: Slippery Rock University** (1 Marow Way, Slippery Rock, PA 16057) for retrofitting of a coal fired boiler to fire natural gas in the Borough of Slippery Rock, **Butler County**.

Under 25 Pa. Code §§ 127.44(a) and 127.424(b), the Department of Environmental Protection (Department) intends to issue a Plan Approval for their plant located in the Borough of Slippery Rock, Butler County. This plan approval will authorize the applicant to retrofit an existing coal fired boiler to fire natural gas. The 26.34 mmBtu/hr boiler will have the stoker removed and a new packaged low-NOx burner with induced flue gas recirculation installed. The Plan Approval will subsequently be incorporated into the company's State Only Operating Permit through an administrative amendment in accordance with 25 Pa. Code § 127.450.

Based on the information provided by the applicant and Department's own analysis, the natural gas fired boiler will emit 1.22 tons of NOx per year and 3.21 tons of CO per year. Actual emissions will decrease for both pollutants with the retrofit. The boiler is limited to natural gas usage of 76.35 MMCF per 12-month rolling period and will only operate during low load or when maintenance is being done on other boilers.

Persons who wish to provide the Department with additional information they believe should be considered may submit the information to the noted address. Comments must be received by the Department, within 30 days of the last day of publication. Written comments should include the following:

1. Name, address and telephone number of the person submitting comments.

2. Identification of the proposed Plan Approval; No. PA-10-062C.

3. Concise statement regarding the relevancy of the information or any objections to issuance of the Plan Approval.

A public hearing may be held, if the Department, in its discretion, decides that the hearing is warranted on the comments received during the public comment period. Persons submitting comments or requesting a hearing will be notified of the decision to hold a hearing by publication in a local newspaper of general circulation or the *Pennsylvania Bulletin* or by telephone, the Department determines notification by telephone is sufficient. Written comments or requests for a public hearing should be directed to John F. Guth, Regional Air Quality Manager, Department of Environmental Protection, Northeast Regional Office, 230 Chestnut Street, Meadville, PA 16335, (814) 332-6940.

**24-131I: SGL Carbon LLC** (900 Theresia Street, St. Marys, PA 15857) for modifying conditions currently included in their Title V OP for Machining Operations (Source 110), for Purification Furnaces (Source 7000), for Graphite Purification Furnaces (Source 7100) and for

Vacuum Out Gas Furnace (Source 7101) at SGL in Saint Marys City, **Elk County**. This is a Title V facility. The public notice is required for sources required to obtain a Plan Approval at Title V facilities in accordance with 25 Pa. Code § 127.44. This plan approval will, in accordance with 25 Pa. Code § 127.450, be incorporated into the Title V operating permit through an administrative amendment at a later date. The source shall comply with the following conditions, which will satisfy the requirements of 25 Pa. Code § 127.12b (pertaining to plan approval terms and conditions) and will demonstrate Best Available Technology for the source:

- Source 110: Maintain 10% of each style cartridge/bag that is required of the largest collector using that style of cartridge/bag for all nine collectors under this source.
- Source 7000, 7100 and 7101: Tower scrubber pH shall be recorded hourly when a furnace is in the chlorination phase or while Freon is flowing and the pH shall be maintained at 10 or greater.
- Sources 7000, 7100 and 7101: The water gauge pressure drop across the tower scrubber shall be greater than 0" and less than 4" when in operation.
- Sources 7000, 7100 and 7101: No more than 2 furnaces shall be in the chlorination phase at any time per scrubber.

*Department of Public Health, Air Management Services: 321 University Avenue, Philadelphia, PA 19104, Edward Braun, Chief, (215) 823-7584.*

**AMS 05037: Naval Surface Warfare Center—Carderock Division—Ship Systems Engineering Station** (5001 South Broad Street, Code 357, Philadelphia, PA 19112-1403) for a marine gas turbine test facility (DD(X)) in Philadelphia, **Philadelphia County**. Emissions from the test cell are limited to 203.4 tons of NO<sub>x</sub>, 36.94 tons of SO<sub>2</sub>, 8.89 tons of CO, 3.12 tons of VOC and 2.06 tons of PM/PM<sub>10</sub>, all on a 12-month rolling basis. This source will be incorporated into a proposed plan approval for a plant-wide applicability limit (PAL) and a Federally enforceable emission cap (FEEC) through an administrative amendment at a later date. The amendment action will be published as a notice in the *Pennsylvania Bulletin*. The emissions from the project will remain below the PSD and NA NSR trigger levels because the facility will maintain the total facility emissions below the PAL and FEEC limits in the proposed PAL/FEEC permit. Copies of the application, AMS's analysis and other documents used in the evaluation of the application are available for public review. Persons who wish to review the documents, during normal business hours, should contact the AMS, 321 University Avenue, Philadelphia, PA 19104, (215) 685-7572.

Persons who wish to provide AMS with additional information they believe should be considered prior to the issuance of this permit, should submit the information to the previous address. Written comments must contain the name, address and telephone number of the person submitting the comments, identification of the proposed permit (05037) and a concise statement regarding the relevancy of the information or objections to the issuance of the permit.

A public hearing may be held, if AMS, in its discretion, decides that a hearing is arranged based on the comments received. Persons submitting comments or requesting a hearing will be notified of the decision to hold a hearing by publication in a newspaper or by telephone, when the Department determines notification by telephone is sufficient. Written comments or requests for a public hearing

should be directed within 30 days after the publication date to Edward Braun, Chief, Source Registration, AMS, 321 University Avenue, Philadelphia, PA 19104.

### OPERATING PERMITS

#### **Intent to Issue Title V Operating Permits under the Air Pollution Control Act (35 P. S. §§ 4001—4015) 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.*

**09-00150: Rotoflex Technologies, Inc.** (180 Penn Am Drive, Quakertown, PA 18951) for operation of a chromium, copper and nickel electroplating facility located in Richland Township, **Bucks County**. The permit is for a Title V facility. The chromium plating operation is an area source subjected to National Emission Standards for Hazardous Air Pollutants, 40 CFR 63 Subpart N. Administrative Amendment of Title V Operating Permit issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code § 127.450. The amendment excludes the site level requirement to submit AIMS reports due to minimal emissions. The permit will include monitoring, recordkeeping and reporting requirements designed to keep the plant operating within all applicable air quality requirements.

*Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790, Mark Wejkszner, New Source Review Chief, (570) 826-2531.*

**39-00005: Bouras Acquisition Inc.—Prior Coated Metals** (2233 26th Street SW, Allentown, PA 18103) in the city of Allentown, **Lehigh County**. The facility consists of a coil coating operation. As a result of the levels of VOC emissions from the coil coating operations, the facility is considered a major stationary source subject to Title V Operating Permit requirements. This is a renewal of their Title V Operating Permit issued in January 2002.

**13-00001: Horsehead Corp.** (900 Delaware Avenue, Palmerton, PA 18071) for inorganic pigment manufacturing processes and associated air pollution control devices in Palmerton Borough, **Carbon County**. This action is a renewal of the Title V Operating Permit issued in 2000.

**35-00010: MACTac** (802 East Corey St., Scranton, PA 18505-3595) for coated and laminated paper manufacturing processes and associated air pollution control devices in Moosic Borough, **Lackawanna County**. This action is a renewal of the Title V Operating Permit issued in 2000.

**35-00011: Alliance Sanitary Landfill, Inc.** (398 S. Keyser Avenue, Taylor, PA 18517) for a municipal solid waste landfill gas recovery system and associated air pollution control devices in Taylor Borough, **Lackawanna County**. This action is a renewal of the Title V Operating Permit issued in 1998.

**39-00003: Apollo Metals, Ltd.** (1001 Fourteenth Ave., Bethlehem, PA 18018-2207) for manufactured metal plating and polishing processes and associated air pollution control devices in the City of Bethlehem, **Lehigh County**. This action is a renewal of the Title V Operating Permit issued in 2000.

**39-00040: Carpenter Co.** (P. O. Box 519, Fogelsville, PA 18051) for plastic foam and nonwoven fabrics manufacturing processes and boilers located in Upper Macungie Township, **Lehigh County**. This action is a renewal of the Title V Operating Permit issued in 2000.

**40-00004: Silgan Closures, LLC** (Valmont Industrial Park, 350 Jaycee Drive, West Hazleton, PA 18202) for coated metal cap manufacturing processes and associated air pollution control devices in Hazle Township, **Luzerne County**. This action is a renewal of the Title V Operating Permit issued in 2000.

**40-00005: Hunlock Creek Energy Ventures** (P. O. Box 224, Hunlock Creek, PA 18621) for an electric generating plant and associated air pollution control devices in Hunlock Township, **Luzerne County**. This action is a renewal of the Title V Operating Permit issued in 1998.

**40-00007: Bemis Co.** (Valmont Industrial Park, 20 Jaycee Drive, West Hazleton, PA 18202) for a commercial printing operation and associated air pollution control devices in Hazle Township, **Luzerne County**. This action is a renewal of the Title V Operating Permit issued in 1998.

**40-00021: Williams Generating Co.** (Humboldt Industrial Park, 10 Maplewood Drive, Hazleton, PA 18201) for a natural gas turbine, a boiler and various combustion processes in Hazle Township, **Luzerne County**. This action is a renewal of the Title V Operating Permit issued in 2000.

**45-00005: Aventis Pasteur, Inc.** (Discovery Drive, Swiftwater, PA 18370-0187) for pharmaceutical manufacturing processes, boilers and associated air pollution control devices in Pocono Township, **Monroe County**. This action is a renewal of the Title V Operating Permit issued in 2000.

**48-00006: Reliant Energy Mid-Atlantic Power Holdings, LLC** (121 Champion Way, Canonsburg, PA 15317) for an electric generating plant and associated air pollution control devices in Upper Mt. Bethel Township, **Northampton County**. This action is a renewal of the Title V Operating Permit issued in 2000.

**48-00016: Lehigh University** (461 Webster Street, Bethlehem, PA 18015) for steam heating boilers and miscellaneous small combustion sources in the City of Bethlehem, **Northampton County**. This action is a renewal of the Title V Operating Permit issued in 1999.

**48-00037: Chrin Bros. Sanitary Landfill** (635 Industrial Drive, Easton, PA 18042) for a municipal solid waste landfill gas recovery system and associated air pollution control devices located in Williams Township, **Northampton County**. This action is a renewal of the Title V Operating Permit issued in 1999.

**48-00071: Green Knight Economic Development Group** (2147 Pen Argyl Road, Pen Argyl, PA 18072) for an electric generating plant in Plainfield Township, **Northampton County**. The facility's main sources include three landfill gas-fired combustion turbines. These sources have the potential to emit major quantities of regulated pollutants above Title V emission thresholds. 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.

**48-00076: Conectiv Bethlehem, LLC** (P. O. Box 6066, Newark, DE 19714-6066) for an electric generating plant in Lower Saucon Township, **Northampton County**. The facility's main sources include six combustion turbines, two steam turbine generators and six heat recovery steam generators. These sources have the potential to emit major quantities of regulated pollutants above Title V

emission thresholds. 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.

*Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701, Muhammad Zaman, Facilities Permitting Chief, (570) 327-0512.*

**08-00003: CraftMaster Manufacturing, Inc.** (Shiner Road, P. O. Box 311, Towanda, PA 18848) for their facility in Wysox Township, **Bradford County**. The respective facility is a major facility for which a Title V operating permit (TVOP 08-00003) has been issued. Under 25 Pa. Code §§ 127.521 and 127.541, the Department of Environmental Protection intends to issue a revised Title V operating permit incorporating the requirements of the following plan approvals: 08-302-039, 08-00004A, 08-316-014, 08-318-024A and 08-316-013A. The revision also incorporates the following insignificant emissions sources exempted from the Department's plan approval requirements: two-side sander, trim surface coating brush machine and associated fabric collector, a die form coating wetting booth, an A-1 tool machine and associated brush machine. There is no increase in air contaminant emissions as a result of this significant operating permit modification.

Copies of the application are available for public review between 8 a.m. and 4 p.m. at the Department's Northcentral Regional Office, 208 West Third Street, Suite 101, Williamsport, PA 17701. Appointments for scheduling a review may be made by calling Kathy Arndt at (570) 327-3693. Written comments or requests for a public hearing should be directed to Muhammad Q. Zaman, Chief, Facilities Permitting Section, Department of Environmental Protection, Air Quality Program, Northcentral Regional Office, 208 West Third Street, Suite 101, Williamsport, PA 17701, (570) 327-0512.

*Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, Mark Wayner, Facilities Permitting Chief, (412) 442-4174.*

**03-00027: Reliant Energy Northeast Management Company** (121 Champion Way, Suite 200, Canonsburg, PA 15317) for operation of Keystone Power Plant in Plumcreek Township, **Armstrong County**. This is a Title V Renewal.

**32-00040: Reliant Energy Seward, LLC** (121 Champion Way, Suite 200, Canonsburg, PA 15317) for operation of Seward Station in East Wheatfield Township, **Indiana County**. This is a Title V Renewal.

*Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, Eric Gustafson, Facilities Permitting Chief, (814) 332-6940.*

**25-00541: Penn-Union Corp.** (229 Waterford Street, Edinboro, PA 16412-2381) for reissuance of their Title V Operating Permit facility is in Edinboro Borough, **Erie County**. The facility manufactures current-carrying wiring devices. The facility's major emission sources include boilers, a batch cold cleaning degreaser, shot blast, grinding machines, electric induction furnaces, rotary casting unit, manual casting line, push out furnace, sand return/mixing unit, deslagging ladles and miscellaneous natural gas usage. The facility is a major facility due to its potential to emit of perchloroethylene and VOCs. This facility is not subject to compliance assurance monitoring because individual source's precontrolled emission does not exceed the Title V emission threshold.

**43-00310: Dufferco Farrell** (15 Roemer Blvd, Farrell, PA 16121) for the renewal of their Title V Operating Permit in Farrell Township, **Mercer County**. The initial permit was originally issued on May 4, 2000. Dufferco owns 2 steam boilers, 3 slab reheat furnaces, 60 foot hot strip mill, 60 foot hot strip hand scarfing, No. 21 slitter, No. 2 shot blast (ES971), No. 7 pickle line, No. 4 tandem mill, 12 anneal furnaces, No. 28 tamper mill, No. 2 shear, No. 26 slitter, No. 1 tension leveler, slab cutting torch, emergency diesel engine, No. 35 temper mill and IT building standby generator. As a result of potential emissions of NOx and VOC, the facility is minor for NOx but is major for VOC and is therefore subject to Reasonable Available Control Technology. The facility is subject to Title V permitting requirements adopted in 25 Pa. Code Chapter 127, Subchapter G. No sources at the facility are subject to Compliance Assurance Monitoring under 40 CFR Part 64. The proposed Title V operating permit contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

**42-00011: Honeywell Specialty Wax and Additives** (45 Route 446, Intersection of Routes 46 and 446, Smethport, PA 16749) for renewal of their Title V Operating Permit in Keating Township, **McKean County**. The initial permit was originally issued on December 22, 1999. Honeywell owns four boilers, rerun unit charger heater, crude unit vacuum heater, resin heater, No. 2 earth burner, diesel fire pump, seven different fuel storage tank, propane dresner wastewater treatment plant and flue gas holder. As a result of potential emissions of NOx, the facility is a major source and is therefore subject to Reasonable Available Control Technology. The facility is subject to Title V permitting requirements adopted in 25 Pa. Code Chapter 127, Subchapter G. Boilers Nos. 1—3 are subject to Compliance Assurance Monitoring under 40 CFR Part 64. The proposed Title V operating permit contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

**Intent to Issue Operating Permits under the Air Pollution Control Act (35 P. S. §§ 4001—4015) 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.*

**06-05020: Craft Maid Kitchens, Inc.** (501 South Ninth Street, Reading, PA 19602) for operation of a wooden furniture manufacturing facility in the City of Reading, **Berks County**. The facility is a non-Title V (State only) facility. The facility will be required to limit the emissions to less than the Title V thresholds during any consecutive 12-month period. The surface coatings will be limited to the amount of VOC they contain. The permit will include restriction, monitoring, testing, work practices, recordkeeping and reporting designed to keep the facility operating within all applicable air quality requirements.

**06-05098: Troutman Industries, Inc.** (2201 Reading Avenue, West Lawn, PA 19609) for operation of a hard and decorative chrome plating operation in Spring Township, **Berks County**. The facility is a non-Title V (State only) facility. The facility will be required to limit the emissions from the facility to less than the Title V thresholds. The facility will have a production limit based on power consumption by the plating operation. The permit will include restrictions, monitoring, testing, work

practices, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

*Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, Eric Gustafson Facilities Permitting Chief, (814) 332-6940.*

**37-00008: Ellwood City Forge**, (800 Commercial Avenue, Ellwood City, PA) for a Synthetic Minor Permit to operate a steel forging operation in Ellwood City Borough, **Lawrence County**. This plant was previously permitted as a major source Title V facility but is taking restrictions on NOx emissions to obtain a Synthetic Minor Permit.

**25-00052: Ames True Temper Inc.—Union City Borough** (55 Pleasant Street, Union City, PA 16438) for issuance of a Natural Minor Operating Permit to operate their Wood Mill Plant located in Union City, **Erie County**.

**37-00271: Quality Aggregates Inc.—Slippery Rock Township** (Mt. Hope Furnace Road, Slippery Rock, PA 16051) for issuance of Natural Minor Operating Permit to operate their Limestone Crushing Plant in Slippery Rock Township, **Lawrence County**.

**24-00062: Metal Powder Products Co.** (879 Washington Street, Saint Marys, PA 15857-3644) for a Natural Minor Permit to operate a fabricated metal products located in Saint Marys City, **Elk County**. The significant sources are natural gas fired boiler (3), sizing operation, vapor degreasing, sintering ovens (13), parts washer and rust inhibitors. The facility was previously a Title V facility and has reduced the potential to emit VOCs to a level that is below the Title V emission threshold by changing the solvents and through modifications.

**27-00018: National Fuel Gas Supply Corporation** (Queen Road, East Hickory, PA 16923) for re-issuance of a Natural Minor Permit to perform natural gas transmission at their Queen compressor station in Hickory Township, **Forest County**.

**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 <sup>1</sup>		greater than 6.0; less than 9.0	

alkalinity greater than acidity<sup>1</sup>  
<sup>1</sup>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.

*California District Mining Office: 25 Technology Drive, Coal Center, PA 15423, 724-769-1100.*

**32051601 and NPDES Permit No. NA, Rosebud Mining Company**, (301 Market Street, Kittanning, PA 16201), to operate the Crooked Creek Preparation Plant in Washington Township, **Indiana County**, a new coal preparation plant and related NPDES surface runoff discharge points. Surface Acres Proposed 50.0. Receiving stream: UNT to Crooked Creek, classified for the following use: CWF. Application received February 15, 2005.

**63831302. Eighty Four Mining Company**, (P. O. Box J, 1525 Pleasant Grove Road, Claysville, PA 15323), to revise the permit for the Mine No. 84 in South Strabane Township, **Washington County**, ACOE Pittsburgh District. (Washington East Quadrangle, from N: 5.3", W: 6.9" to N: 5.0", W: 7.0").

This is a Chapter 105 Water Obstruction and Encroachment permit application (Stream Module 15) and 401 Water Quality Certification request, if applicable, submitted as part of the mining permit revision application to authorize the stream restoration to UNT to Little Chartiers Creek.

Written comments or objections on the request for Section 401 Water Quality Certification or to the issuance of the Water Obstruction and Encroachment Permit,

(Stream Module 15) may be submitted to the Department of Environmental Protection within 30 days of the date of this notice to the listed district mining office. Comments should contain the name, address and telephone number of the person commenting, identification of the request for 401 Water Quality Certification and Chapter 105 permit application (Stream Module 15) to which the comments or objections are addressed and a concise statement of comments, objections or suggestions including relevant facts upon which they are based.

The Water Obstruction and Encroachment permit application is available for review at the California District Mining Office by appointment. Application received February 22, 2005

*Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, (814) 472-1900.*

**Permit No.11950101 and NPDES No. PA0213080. L & J Energy Company Inc.**, P. O. Box J, Grampian, PA 16838, permit renewal for reclamation only of a bituminous surface and auger mine in Susquehanna Township, **Cambria County**, affecting 9.0 acres. Receiving streams: UNT to Moss Creek, classified for the following uses: CWF. There are no potable water supply intakes within 10 miles downstream. Application received April 5, 2005.

**56000102 and NPDES No. PA0235237. Action Mining, Inc.**, 1117 Shaw Mines Road, Meyersdale, PA 15552, permit renewal for the continued operation and restoration of a bituminous surface and auger mine in Brothersvalley Township, **Somerset County**, affecting 197.6 acres. Receiving streams: Piney Run and its UNTs and UNTs to Buffalo Creek classified for the following

use: CWF. There are no potable water supply intakes within 10 miles downstream. Application received March 30, 2005.

*Knox District Mining Office: P. O. Box 669, Knox, PA 16232, (814) 797-1191.*

**33950105 and NPDES Permit No. PA0227021. Swisher Contracting, Inc.** (P. O. Box 1223, Clearfield, PA 16830). Renewal of an existing bituminous surface strip and auger operation in Snyder Township, **Jefferson County** affecting 105.0 acres. Receiving streams: Three UNTs to Walburn Run and Walburn Run, classified for the following use: CWF. There are no potable surface water supply intakes within 10 miles downstream. Application for reclamation only. Application received: April 4, 2005.

**10000103 and NPDES permit No. PA0241776. Seneca Landfill, Inc.** (P. O. Box 1080, Mars, PA 16046). Renewal of an existing bituminous surface strip operation in Jackson and Lancaster Townships, **Butler County** affecting 281.1 acres. Receiving streams: UNT to Connoquenessing Creek, classified for the following use: WWF. There are no potable surface water supply intakes within 10 miles downstream. Application received: April 4, 2005.

**10990104 and NPDES Permit No. PA0241644. Ben Hal Mining Company** (389 Irishtown Road, Grove City, PA 16127). Revision to an existing bituminous surface strip operation in Clay and Center Townships, **Butler County** affecting 68.8 acres. Receiving streams: UNTs to Muddy Creek, classified for the following use: HQ CWF.

There are no potable surface water supply intakes within 10 miles downstream. Revision to include a land use change from forestland and abandoned surface mine (previously forestland) to unmanaged natural habitat on the lands of Chad T. Hemphill and Robert D. Neal, Jr. Application received: April 5, 2005.

**10813005 and NPDES Permit No. PA0615218. Lucas Coal Company, Inc.** (c/o Beazer East, Inc., Suite 3000, One Oxford Centre, 310 Grant Street, Pittsburgh, PA 15219). Renewal of an existing bituminous surface strip and tiple refuse disposal operation in Washington Township, **Butler County** affecting 222.5 acres. Receiving streams: two UNTs to Slippery Rock Creek, classified for the following use: CWF. There are no potable surface water supply intakes within 10 miles downstream. Application for reclamation only. Application received: April 8, 2005.

*Pottsville District Mining Office: 5 W. Laurel Boulevard, Pottsville, PA 17901, (570) 621-3118.*

**54813224R4. Richard E. Tallman**, (31 Schwalm Road, Tower City, PA 17980), renewal of an existing coal refuse reprocessing operation in Butler Township, **Schuylkill County** affecting 9.6 acres, receiving stream: none. Application received March 25, 2005.

*Noncoal Applications Received*

*Effluent Limits*

The following noncoal mining applications that include an NPDES permit application will be subject to, at a minimum, the following technology-based effluent limitations for discharges of wastewater to streams:

<i>Parameter</i>	<i>30-day Average</i>	<i>Daily Maximum</i>	<i>Instantaneous Maximum</i>
suspended solids	35 mg/l	70 mg/l	90 mg/l
Alkalinity exceeding acidity <sup>1</sup>			
pH <sup>1</sup>		greater than 6.0; less than 9.0	

<sup>1</sup>The parameter is applicable at all times.

A settleable solids instantaneous maximum limit of 0.5 ml/l applied to surface runoff resulting from a precipitation event of less than or equal to a 10-year 24-hour event. If coal will be extracted incidental to the extraction of noncoal minerals, at a minimum, the technology-based effluent limitations identified under coal applications will apply to discharges of wastewater to streams.

*Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, (814) 472-1900.*

**32000301. Penn Run Quarry**, 456 Weston Road, Penn Run, PA 15765, revision of an existing large noncoal surface mine to add blasting in Cherryhill Township, **Indiana County**, affecting 34.2 acres. Receiving stream: UNT to Penn Run classified for the following use: CWF. There are no potable water supply intakes within 10 miles downstream. Application received April 1, 2005.

*Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, (814) 342-8200.*

**08980809. Peck Hill Farm** (R. R. 3, Box 3188, Rome, PA 18837), transfer of an existing small industrial minerals (bluestone) permit from Jesse Finch, Sr. The permit is located in Windham Township, **Bradford County** and affects 3 acres. Receiving streams: UNT, tributary to Wysox Creek. Application received: February 3, 2005.

**08050802. Steven C. Tewell** (R. R. 1, Box 102D, Sugar Run, PA 18846). Commencement, operation and restoration of a small industrial minerals (flagstone) permit in Wilmot Township, **Bradford County** affecting 5 acres. Receiving streams: UNT, tributary to Panther Lick Creek. Application received: February 10, 2005.

**17050801. Jody L. Thompson** (R. R. 1, Box 11-2, West Decatur, PA 16878). Commencement, operation and restoration of a small industrial minerals (clay) permit in Decatur Township, **Clearfield County** affecting 5 acres. Receiving streams: UNT to Coal Run, tributary to Moshannon Creek. Application received: February 14, 2005.

**08010818. Brian M. Edsall** (R. R. 2, Box 94A, Towanda, PA 18848), transfer of an existing small industrial minerals (bluestone) permit from Kenneth Shedden. The permit is located in Asylum Township, **Bradford County** and affects 2 acres. Receiving streams: tributary to Durell Creek. Application received: February 24, 2005.

*Pottsville District Mining Office: 5 W. Laurel Boulevard, Pottsville, PA 17901, (570) 621-3118.*

**58990818. Larry A. Lee**, (R. R. 2 Box 2642, Nicholson, PA 18445), Stage I and II bond release for a quarry operation in Brooklyn Township, **Susquehanna County** affecting 1.0 acre on property owned by Helen Kozlowski. Application received March 30, 2005.



**58020815. Larry A. Lee**, (R. R. 2 Box 2642, Nicholson, PA 18445), Stages I and II bond release for a quarry operation in Brooklyn Township, **Susquehanna County** affecting 1.0 acre on property owned by Helen Kozlowski. Application received March 30, 2005.

**6277SM1A1C5 and NPDES Permit No. PA0595080. Compass Quarries, Inc. dba Independence Construction Materials**, (47 McIlvaine Road, Paradise, PA 17562), renewal of NPDES Permit for discharge of treated mine drainage from a quarry operation in Paradise Township, **Lancaster County**, receiving stream: Londonland Run, classified for the following use: CWF. Application received March 31, 2005.

**4873SM3C2 and NPDES Permit No. PA0595021. Kinsley Construction, Inc.**, (2700 Water Street, P. O. Box 2886, York, PA 17405), renewal of NPDES Permit for discharge of treated mine drainage from a quarry operation in Springettsbury Township, **York County**, receiving stream: Codorus Creek, classified for the following use: WWF. The first downstream potable water supply intake from the point of discharge is Red Lion Water System. Application received April 4, 2005.

## 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 may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

**Applications received under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1–693.27) and section 302 of the Flood Plain Management Act (32 P. S. § 679.302) and requests for certification under section 401 of the FWPCA (33 U.S.C.A. § 1341(a)).**

### WATER OBSTRUCTIONS AND ENCROACHMENTS

*Southeast Region: Water Management Program Manager, 2 East Main Street, Norristown, PA 19401.*

**E46-971. MRA Inc**, 500 West Lancaster Avenue, Stratford, PA 19087, East Norriton Township, **Montgomery County**, ACOE Philadelphia District.

To place fill and to construct and maintain a retaining wall along the 100-year floodway of an UNT to Stony Creek for the purpose of constructing a car wash and parking lot facility. The site is located at 18-22 West Germantown Pike, on the corner of Dekalb Pike (US RT 202) and Germantown Pike. (Lansdale, PA USGS Quadrangle, N: 3.18 inches; W: 8.25 inches).

**E15-735. James DiGiuseppe**, 7743 Woody Avenue, Van Nuys, CA 91406, East Coventry Township, **Chester County**, ACOE Philadelphia District.

To modify and maintain an existing nonjurisdictional dam and to construct and maintain an outfall structure within the 100-year floodplain of an UNT of Pigeon Creek (HQ-TSF). Work will include partial dewatering; raising the berm height by 2 feet to provide maximum depth of 9.22 feet; constructing a new 20-foot wide concrete rectangular weir at east side and lowering the height of an existing 8-inch diameter riser pipe at north side for stormwater outfall. The proposed modification will provide stormwater management for an eight-lot residential subdivision.

The application includes a request for an environmental assessment approval to modify a nonjurisdictional dam.

The site is located about 1,600 feet northwest of intersection of Ellis Woods Road and Kulp Road (Phoenixville, PA USGS Quadrangle N: 11.0 inches W: 16.5 inches).

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

**E34-114: Department of Transportation, Engineering District 2-0**, 1924 Daisy Street Extension, Clearfield, PA 16830 in Delaware Township, **Juniata County**, ACOA Baltimore District.

To remove the existing structure and then to construct and maintain a single span bridge of 70 feet with an under clearance of 9.5 feet across Cocolamus Creek (TSF) and associated improvements on SR 2010, Section A01 to improve the traffic safety condition of the road located about 1 mile south of the Village of Cocolamus (Beaver Springs, PA Quadrangle N: 1.4 inches; W: 11.2 inches) in Delaware Township, Juniata County.

**E31-201: Department of Transportation, Engineering District 9-0**, 1620 North Juniata Street, Hollidaysburg, PA 16648 in Miller Township, **Huntingdon County**, ACOE Baltimore District.

To construct and maintain a total of 835-foot long rock protection along the right bank of Standing Stone Creek (HQ-CWF) and related improvements for the purpose of improving the traffic safety condition of SR 0026, Section 016 located north of Jackson Corner Village (Allensville, PA Quadrangle N: 18.9 inches; W: 14.98 inches) in Miller Township, Huntingdon County.

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

**E12-154. Bucktail Rod and Gun Club**, 590 Old N. Creek Road, Emporium, PA 15834. Pedestrian Bridge, in Shippen Township, **Cameron County**, ACOE Baltimore District (Emporium, PA Quadrangle N: 14.1 inches; W: 11.4 inches).

The permit application proposes to remove the existing footbridge and replace it with a new 25-foot by 5-foot plank bottom footbridge. This proposed bridge is to be constructed on 32-foot long beams with wooden railings to secure the bridge. The total acreage involved is less than 0.5 acre of earthen disturbance and 200 square feet of stream impact. This project is proposed on Sizer Run, which carries a Water Quality designation of CWF.

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

**E04-309. John P. Keppel**, 3074 Legionville Road, Baden, PA 15005. To construct a bridge in Harmony Township, **Beaver County**, Pittsburgh ACOE District. (Ambridge, PA Quadrangle N: 22.3 inches; W: 12.7 inches and Latitude: 40° 37' 21"—Longitude: 80° 12' 55"). The applicant proposes to construct and maintain a bridge having a span of 38.0 feet with an under clearance of 7.5 feet across the channel of South Branch Legionville Run (WWF) for the purpose of providing access to applicant's property. The project is located approximately 800 feet southeast from the intersection of Legionville Road and North Legionville Road, on the south side of Legionville Road and will impact 17.0 linear feet of stream channel.

**E65-872. DeMill Development, LLC**. 281 Wolf Lake Road, New Alexandria, PA 15670. To construct an arch

culvert and fill wetlands in Unity Township, **Westmoreland County**, Pittsburgh ACOE District. (Latrobe, PA Quadrangle N: 4.5 inches; W: 9.2 inches and Latitude: 40° 16' 29"—Longitude: 79° 26' 28"). The applicant proposes to construct and maintain a 10' by 4.4' multiplate arch culvert approximately 85' long over Fourmile Run (WWF), to place and maintain fill in 0.17 acre of wetlands (PEM), to temporarily impact Fourmile Run and 0.018 acre of wetlands (PEM) for a utility line crossing and to construct and maintain 0.17 acre of replacement wetlands. The encroachments are part of a proposed residential subdivision to be known as Foxfield Knoll located along Omega Road approximately 0.5 mile south of its intersection with Sand Hill Road. The proposed project will impact 85' of Fourmile Run, permanently impact 0.17 acre of wetlands and temporarily impact 0.018 acre of wetlands.

#### ENVIRONMENTAL ASSESSMENTS

*Central Office: Bureau of Waterways Engineering, Rachel Carson State Office Building, Floor 3, 400 Market Street, Harrisburg, PA 17105.*

**EA33-004CO. William Weaver**, 129 Smith Hill Road, Punxsutawney, PA 15767. Bell Township, **Jefferson County**, ACOE Pittsburgh District.

Project proposes to breach and remove Weaver Dam located across a tributary to Mahoning Creek (CWF) for the purpose of restoring the stream to a free flowing condition and eliminating a threat to public safety. The dam is located adjacent to Smith Hill Road (T429) approximately 400 feet Northeast of the intersection of SR36 and Smith Hill Road (T429) (Punxsutawney, PA Quadrangle N: 11.55 inches; W: 6.55 inches).

## STORAGE TANKS

### SITE-SPECIFIC INSTALLATION PERMITS

The following Storage Tank Site-Specific Installation Permit application has been received by the Department of Environmental Protection (Department) and is currently under review. Persons wishing to comment on the proposed permit are invited to submit a statement to the Bureau of Land Recycling and Waste Management, Division of Storage Tanks, P. O. Box 8763, Harrisburg, PA 17105-8763, within 30 days from the date of this publication. Comments received within this 30-day period will be considered in the formulation of the final determinations regarding this application. Responses should include the name, address and telephone number of the writer and a concise statement to inform the Department of the exact basis of the comment and the relevant facts upon which it based.

**The following applications have been received for Storage Tank Site-Specific Installation Permits under the authority of the Storage Tank Spill Prevention Act (35 P. S. §§ 6021.304, 6021.504 and 6021.1101—6021.1102) and under 25 Pa Code Chapter 245, Subchapter C.**

#### SSIP

<i>Application No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Tank Type</i>	<i>Tank Capacity</i>
05006	Scott W. Welsh Penn Mar Ethanol, LLC 140 Roosevelt Avenue York, PA 17404	Franklin	Greene and Letterkenny Townships	9 ASTs	1,946,000 gallons total

## 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**

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

<i>NPDES No. (Type)</i>	<i>Facility Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA0088307	Snyder's, LLP Eagles Crossing Golf Course 501 Conodoguinet Avenue Carlisle, PA 1713	Cumberland County North Middleton Township	Conodoguinet Creek/7B	Y

*Dauphin County Conservation District, 1451 Peters Mountain Road, Dauphin, PA 17108, (717) 921-8690.*

<i>NPDES No. (Type)</i>	<i>Facility Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PAR10I234R	Richard E. Wright 13 Para Avenue Hershey, PA 17033	Dauphin County Londonderry Township	Swatara Creek/WWF	Y

*York County Conservation District, 118 Pleasant Acres Road, 118 Pleasant Acres Road, York, PA 17402, (717) 840-7430.*

<i>NPDES No. (Type)</i>	<i>Facility Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PAR10Y593	Gregory Condon Susquehanna Ridings, Inc. 60 Maplewood Drive Etters, PA 17319	York County Newberry Township	Susquehanna River/WWF	Y

<i>NPDES No. (Type)</i>	<i>Facility Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PAR10Y467R	Carriage Crossings Cornerstone Development Group 1 Marketway East York, PA 17401	York County York Township	UNT to Mill Creek/WWF	Y

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

**PA0005061**, Industrial Waste, **Orion Power Midwest L.P., New Castle Plant**, 121 Champion Way, Canonsburg, PA 15317-5817. This proposed facility is located in Taylor Township, **Lawrence County**.

Description of Proposed Activity: existing discharge of noncontact cooling water, treated industrial waste, miscellaneous wastewaters and stormwater runoff.

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 Beaver Falls Municipal Authority—Eastvale plant on the Beaver River located approximately 16 miles below point of discharge.

The receiving stream, Beaver River (Outfalls 001—006, 009, 010 and 101) and McKee Run (Outfalls 007, 008 and 011—013), is in watershed 20-A and classified for: WWF, aquatic life, water supply and recreation.

The proposed effluent limits for Outfall 001 based on a design flow of 139.3 mgd.

<i>Parameter</i>	<i>Loadings</i>		<i>Concentrations</i>		
	<i>Average Monthly (lb/day)</i>	<i>Maximum Daily (lb/day)</i>	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
(MO) Flow (mgd)	XX	XX			
(BAT) Total Residual Chlorine (WQ-93) Temperature					0.2
January 1-31				49,096	
February 1-29				46,516	
March 1-31				41,096	
April 1-15				46,465	
April 16-30				41,959	
May 1-15				20,610	
May 16-30				38,334	
June 1-15				48,413	
June 16-30				39,078	
July 1-31				43,303	
August 1-15				35,490	
August 16-31				39,749	
September 1-15				38,451	
September 16-30				40,548	
October 1-15				43,866	
October 16-31				41,778	
November 1-15				44,114	
November 16-30				44,114	
December 1-31				42,367	
(BPJ) Copper (Interim)	XX	XX	0.026	0.052	0.065
(CH-16) Copper (Final)	10.4	22.0	0.009	0.019	0.024
(BPJ) Lead (Interim)	XX	XX	0.008	0.016	0.020
(CH-16) Lead (Final)	6.9	13.9	0.006	0.012	0.015
(CH-95) pH			6.0 to 9.0 standard units at all times		

The proposed effluent limits for Outfall 101 based on a design flow of 0.006 mgd.

<i>Parameter</i>	<i>Concentrations</i>		
	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Flow	XX	XX	
Total Suspended Solids	30	100	
Oil and Gas	15	20	30
pH	6.0 to 9.0 standard units at all times		

The proposed effluent limits for Outfall 002 based on a design flow of 0.42 mgd.

<i>Parameter</i>	<i>Concentrations</i>		
	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>

This discharge shall consist solely of intake screen backwash.

The proposed effluent limits for Outfall 003 based on a design flow of 0.26 mgd.

<i>Parameter</i>	<i>Concentrations</i>		
	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Flow	XX	XX	
Total Suspended Solids	30	100	
Oil and Gas	15	20	30
pH	6.0 to 9.0 standard units at all times		

The proposed effluent limits for Outfall 004 based on a design flow of 1.0 mgd.

<i>Parameter</i>	<i>Concentrations</i>		
	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Flow	XX	XX	
Total Suspended Solids	30	100	
Oil and Gas	15	20	30
Iron	3.0	7.0	8.75
pH	6.0 to 9.0 standard units at all times		

The proposed effluent limits for Outfall 005 based on a design flow of 1.0 mgd.

<i>Parameter</i>	<i>Concentrations</i>		
	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Flow	XX	XX	
Total Suspended Solids	30	100	
Oil and Gas	15	20	30
Iron	3.0	7.0	8.75
pH	6.0 to 9.0 standard units at all times		

The proposed effluent limits for Outfall 006 based on a design flow of n/a mgd.

<i>Parameter</i>	<i>Concentrations</i>		
	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Flow	XX	XX	
Total Suspended Solids	30	100	
Oil and Gas	15	20	30
Dissolved Iron	XX		7

Any untreated overflow from facilities designed, constructed and operated to treat the ash pile runoff which results from a 10-year/24-hour rainfall event shall not be subject to the above Total Suspended Solids limitations.  
pH 6.0 to 9.0 standard units at all times

The proposed effluent limits for Outfall 007 based on a design flow of 0.71 mgd.

<i>Parameter</i>	<i>Concentrations</i>		
	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Flow	XX	XX	
Total Suspended Solids	30	100	

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<i>Parameter</i>	<i>Concentrations</i>		
	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Oil and Gas	15	20	30
pH	6.0 to 9.0 standard units at all times		

The proposed effluent limits for Outfall 008 based on a design flow of 0.08 mgd.

<i>Parameter</i>	<i>Concentrations</i>		
	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Flow	XX	XX	
Total Suspended Solids	30	100	

Any untreated overflow from facilities designed, constructed and operated to treat the ash pile runoff which results from a 10-year/24-hour rainfall event shall not be subject to the above Total Suspended Solids limitations.  
pH 6.0 to 9.0 standard units at all times

The proposed effluent limits for Outfall 009 based on a design flow of n/a mgd.

<i>Parameter</i>	<i>Concentrations</i>		
	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Flow	XX	XX	
Total Suspended Solids	30	100	

Any untreated overflow from facilities designed, constructed and operated to treat the ash pile runoff which results from a 10-year/24-hour rainfall event shall not be subject to the above Total Suspended Solids limitations.  
pH 6.0 to 9.0 standard units at all times

The proposed effluent limits for Outfall 010 based on a design flow of n/a mgd.

<i>Parameter</i>	<i>Concentrations</i>		
	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Flow	XX	XX	
Total Suspended Solids	30	100	

This discharge shall consist solely of stormwater runoff.  
Area Contributing Stormwater Runoff: Outfall 010—#10 Building Drain

The proposed effluent limits for Outfall 011 based on a design flow of n/a mgd.

<i>Parameter</i>	<i>Concentrations</i>		
	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Flow	XX	XX	
Total Suspended Solids	30	100	

This discharge shall consist solely of stormwater runoff.  
Area Contributing Stormwater Runoff: Outfall 011—Coal Truck Parking Area

The proposed effluent limits for Outfall 012 based on a design flow of n/a mgd.

<i>Parameter</i>	<i>Concentrations</i>		
	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Flow	XX	XX	
Total Suspended Solids	30	100	

This discharge shall consist solely of stormwater runoff.  
Area Contributing Stormwater Runoff: Outfall 012—138 KV Substation Area

The proposed effluent limits for Outfall 013 based on a design flow of n/a mgd.

Parameter	Concentrations		
	Average Monthly (mg/l)	Maximum Daily (mg/l)	Instantaneous Maximum (mg/l)

This discharge shall consist solely of stormwater runoff.  
Area Contributing Stormwater Runoff: Outfall 013—69 KV Substation Area

XX—Monitor and Report.

The EPA waiver is not in effect.

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## II. New or Expanded Facility Permits, Renewal of Major Permits and EPA Nonwaived Permit Actions

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

**NPDES Permit No. PA0247103**, Sewage, **Northeastern York County Sewer Authority, Saginaw WWTP**, 175 Chestnut Street, P. O. Box 516, Mount Wolf, PA 17347. This proposed facility is located in East Manchester Township, **York County**.

Description of Proposed Action/Activity: Authorization to discharge from a facility to the Susquehanna River in Watershed 7-F.

**NPDES Permit No. PA0032093**, Sewage, **Department of Conservation and Natural Resources, Shawnee State Park**, 132 State Park Road, Schellsburg, PA 15559-7300. This proposed facility is located in Napier Township, **Bedford County**.

Description of Proposed Action/Activity: Authorization to discharge from a facility to the Shawnee Branch in Watershed 11-C.

**NPDES Permit No. PA0081647**, Sewage, **White Run Regional Municipal Authority**, 2001 Baltimore Pike, Gettysburg, PA 17325-7015. This proposed facility is located in Mount Joy Township, **Adams County**.

Description of Proposed Action/Activity: Authorization to discharge from a facility to White Run in Watershed 13-D.

**NPDES Permit No. PA0083178**, Sewage, **Robert Baker, Applied Water Management, Inc.**, 453 Boot Road, Downingtown, PA 17335. This proposed facility is located in West Pennsboro Township, **Cumberland County**.

Description of Proposed Action/Activity: Termination of Permit, connected to the West Pennsboro Township Sewage Treatment Plant.

**NPDES Permit No. PA0010677**, Industrial Waste, **Veeder-Root Company**, Sixth Avenue at Burns Crossing, P. O. Box 1673, Altoona, PA 16603-1673. This proposed facility is located in Allegheny Township, **Blair County**.

Description of Proposed Action/Activity: Authorization to discharge from a facility to an UNT to Spencer Run in Watershed 11-A.

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## III. WQM Industrial Waste and Sewerage Actions 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. 4604411**, Sewerage, **Upper Moreland Hatboro Joint Sewer Authority**, P. O. Box 535, 2875 Terwood Road, Willow Grove, PA 19090. This proposed facility is located in Upper Moreland Township, **Montgomery County**.

Description of Action/Activity: Construction and operation of an effluent pump station, 48-inch sewer line and expansion of an existing ultraviolet disinfection unit.

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

**WQM Permit No. 4004406**, Sewerage, **Hanover Township**, Hanover Township Municipal Building, 1267 Sans Souci Parkway, Hanover Township, PA 18706. This proposed facility is located in Hanover Township, **Luzerne County**.

Description of Proposed Action/Activity: Issuance of Water Quality Management Permit.

**WQM Permit No. 5405401**, Sewerage, **West Mahanoy Township Supervisors**, 190 Pennsylvania Avenue, Shenandoah, PA 17976. This proposed facility is located in West Mahanoy Township, **Schuylkill County**.

Description of Proposed Action/Activity: Issuance of Water Quality Management Permit.

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

**WQM Permit No. 6703408**, Sewerage, **Northeastern York County Sewer Authority**, 175 Chestnut Street, P. O. Box 516, Mount Wolf, PA 17347. This proposed facility is located in East Manchester Township, **York County**.

Description of Proposed Action/Activity: Construction of a wastewater treatment facility, a pump station and approximately 10,500 LF of 8-inch PVC gravity sewers and approximately 2,685 LF of 8-inch PVC force main.

**WQM Permit No. 2204411**, Sewerage, **South Hanover Township Authority**, 111 West Third Street, Hershey, PA 17033. This proposed facility is located in South Hanover Township, **Dauphin County**.

Description of Proposed Action/Activity: Modification of sewage facilities consisting of the removal of three existing wastewater pumps and the installation of the three large capacity wastewater pumps with associated motors, variable frequency drive and appurtenances.

**WQM Permit No. 2805401**, Sewerage, **Greene Township Municipal Authority**, 4182 Sunset Pike, Chambersburg, PA 17201. This proposed facility is located in Greene Township, **Franklin County**.

Description of Proposed Action/Activity: Modification of sewerage facilities consisting of an upgrade of the existing Culbertson pump station. The upgraded pump station is designed to meet present and anticipated future growth.

**WQM Permit No. 3177401, Amendment 05-1**, Sewerage, **Donald Shaffer, Jesus Ministries, Inc.**, R. R. 1, Box 58B, Shirleysburg, PA 17260. This proposed facility is located in Cromwell Township, **Huntingdon County**.

Description of Proposed Action/Activity: Upgrade of the sewage facilities at the Agape Farms Campground Sewage Treatment Plant.

**WQM Permit No. 2193407**, Sewerage, **Applied Water Management, Inc.**, 453 Boot Road, Downingtown, PA 17335. This proposed facility is located in West Pennsboro Township, **Cumberland County**.

Description of Proposed Action/Activity: Termination of Permit, connected to West Pennsboro Township Sewage Treatment Plant.

**WQM Permit No. 3804402**, Sewerage, **Palmyra Borough**, 325 S. Railroad Street, Palmyra, PA 17078-2400. This proposed facility is located in Palmyra Borough, **Lebanon County**.

Description of Proposed Action/Activity: Construction/operation of Pumping Station #3.

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

**WQM Permit No. WQG018358**, Sewerage, **John Testi**, 8271 Slade Road, Harborcreek, PA 16421. This proposed facility is located in Harborcreek Township, **Erie County**.

Description of Proposed Action/Activity: Sewage discharge for a single residence.

**WQM Permit No. WQG018330**, Sewerage, **Terry Emery**, P. O. Box 10, Volant, PA 16156. This proposed facility is located in Wilmington Township, **Lawrence County**.

Description of Proposed Action/Activity: Sewage discharge for a single residence.

**WQM Permit No. 3702406, Sewerage Amendment No. 1, Pulaski Township Municipal Authority**, R. D. 1, Box 1043, Pulaski, PA 16143. This proposed facility is located in Pulaski Township, **Lawrence County**.

Description of Proposed Action/Activity: This project is for the relocation of a pump station to serve the New Bedford, Pine Glenn and Frizzleburg Village service areas.

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#### **IV. NPDES Stormwater Discharges from MS4 Permit Actions**

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#### **V. NPDES Waiver Stormwater Discharges from MS4 Actions**

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#### **VI. NPDES Discharges of Stormwater Associated with Construction Activities Individual Permit Actions**

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*Southeast Region: Water Management Program Manager, 2 East Main Street, Norristown, PA 19401.*

<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI010904023	Commerce Bank, NA Commerce Bank Proposed Dev. 11000 Atrium Way Mount Laurel, NJ 08054	Bucks	Upper Southampton Township	Mill Creek (TSF)
PAI011504051	157 Pottstown Pike, LLP 157 Pottstown Pike Development P. O. Box 315 Sewell, NJ 08080	Chester	Upper Uwchlan Township	Pickering Creek (HQ-TSF)
PAI011504073	Francis and Kathryn Segner Segner Property 2094 Flowing Springs Road Birchrunville, PA 19421	Chester	West Vincent Township	Birch Run (EV)
PAI011504078	James Twaddle Twaddel Subdivision 1434 Hill Top Road Chester Springs, PA 19425	Chester	East Nantmeal Township	Beaver Run (HQ-TSF-MF)
PAI011504088	Landview Property Group, LLC Landview Property Development 256 Eagleview Boulevard Suite 302 Exton, PA 19341	Chester	Uwchlan Township	Shamona Creek (HQ-TSF-MF)



<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI011505007	United Building & Dev. Corp Taylor Road Subdivision 911 South Concord Road West Chester, PA 19380	Chester	Shamona Creek (HQ-TSF-MF)	Shamona Creek (HQ-TSF-MF)

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

<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI024803028	Dolores Grunstra P. O. Box 82 Hellertown, PA 18055-0082	Northampton	Lower Saucon Township	Tributaries to Cooks Creek, EV
PAI024804032	Nic Zawarski & Sons Developers, Inc. 1441 Linden St Bethlehem, PA 18018-2695	Northampton	Forks Township	Bushkill Creek, HQ-CWF

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

<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI030604008	Donald Kuser	Berks	Cumru and Springs Townships	Wyomissing Creek HQ-WWF

*Central Office: Bureau of Abandoned Mine Reclamation, 400 Market Street, Floor 5, P. O. Box 8476, Harrisburg, PA 17105-8476.*

<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI106504001	BAMR P. O. Box 8476 Harrisburg, PA 17105-8476 (717) 783-1311	Westmoreland County	Mount Pleasant Township	Sewickley Creek to Youghiogheny River (HQ-CWF)

## **VII. Approvals to Use NPDES and/or Other General Permits**

The EPA Region III Administrator has waived the right to review or object to this permit action under the waiver provision 40 CFR 123.23(d).

### **List of NPDES and/or Other General Permit Types**

PAG-1	General Permit for Discharges from Stripper Oil Well Facilities
PAG-2	General Permit for Discharges of Stormwater Associated with Construction Activities (PAR)
PAG-3	General Permit for Discharges of Stormwater from Industrial Activities
PAG-4	General Permit for Discharges from Single Residence Sewage Treatment 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 &amp; Municipality</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
East Brandywine Township Chester County	PAG2001504013	Southdown Homes Lyndell Pointe 55 Country Club Drive Suite 204 Downingtown, PA 19335	UNT Beaver Creek (TSF, MF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
West Whiteland Township Chester County	PAG2001504111	United Stor-All-Centers 1787 Sentry Parkway West Building 16, Suite 400 Blue Bell, PA 19422	Valley Creek (CWF, MF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Springfield Township Delaware County	PAG2002305007	DB Enterprises, Developers and Builders, Inc. P. O. Box 81 Prospect Park, PA 19076	UNT Stony Creek (WWF, MF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Springfield Township Delaware County	PAG2002305011	DB Enterprises, Developers and Builders, Inc. P. O. Box 81 Prospect Park, PA 19076	UNT Crum Creek (WWF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Upper Dublin Township Montgomery County	PAG2004604189	Sunrise Development, Inc. Sunrise at Dresher 771 East Lancaster Avenue Villanova, PA 19087	UNT Sandy Run (TSF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Lower Salford Township Montgomery County	PAG2004604235	Alcom Printing Group, Inc. 140 Christopher Lane Harleysville, PA 19438	UNT Skippack Creek	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
City of Philadelphia Philadelphia County	PAG2015104025	Philadelphia University Campus Revitalization Schoolhouse Lane and Henry Ave. Philadelphia, PA 19144-5497	Wissahickon Creek (TSF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
City of Philadelphia Philadelphia County	PAG2015105009	University of Pennsylvania Health Systems Convention Hall and Museum Demolition 21 Penn Tower 399 South 34th Street Philadelphia, PA 19104	Schuylkill River (WWF, MF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Olyphant Borough Lackawanna County	PAG2003505008	Bill Letwinsky 100 Baltimore Drive Wilkes-Barre, PA 18702	Sterry Creek, CWF	Lackawanna Co. Cons. Dist. (570) 281-9495
Dallas Township Luzerne County	PAG2004005005	Jay Naparolo 423 N. Boundary St. Williamsburg, VA 23185	UNT to Huntsville Creek, CWF	Luzerne Co. Cons. Dist. (570) 674-7991
Southampton Township Franklin County	PAG2002805009	John and Pauline Diehl 1300 Roxbury Road Shippensburg, PA 17257	Middle Spring Creek CWF	Franklin County Conservation District 100 Sunset Boulevard West Chambersburg, PA 17201 (717) 264-8074, Ext. 5

## NOTICES

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<i>Facility Location &amp; Municipality</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Borough of Waynesboro Franklin County	PAG2002805028	Wayne Gardens Park 57 East Main Street Waynesboro, PA 17268	East Branch Antietam Creek CWF	Franklin County Conservation District 100 Sunset Boulevard West Chambersburg, PA 17201 (717) 264-8074, Ext. 5
Antrim Township Franklin County	PAI032805004	KJS Properties 9156 Molly Pitcher Highway Greencastle, PA 17225	Muddy Run HQ-CWF	Franklin County Conservation District 100 Sunset Boulevard West Chambersburg, PA 17201 (717) 264-8074, Ext. 5
Guilford Township Franklin County	PAI032805005	Spring Valley Estates, LLC P. O. Box 701 Maugansville, MD 21767	Falling Spring- HQ-CWF	Franklin County Conservation District 100 Sunset Boulevard West Chambersburg, PA 17201 (717) 264-8074, Ext. 5
Greene Township	PAG2002804043	Village Green The Rachuba Group 946-A Marimich Ct. Eldersburg, MD 21784	Rowe Run-CWF	Franklin County Conservation District 100 Sunset Boulevard West Chambersburg, PA 17201 (717) 264-8074, Ext. 5
South Hanover Township, Dauphin County	PAG2002205011	Members' 1st Federal Credit Union 5000 Louise Drive Mechanicsburg, PA 17055	Swatara Creek WWF	Dauphin County Conservation District 1451 Peters Mountain Road Dauphin, PA 17018 (717) 921-8100
East Hanover Township, Dauphin County	PAG2002203037	Penn National Turf Club P. O. Box 32 Grantville, PA 17028	Swatara Creek WWF	Dauphin County Conservation District 1451 Peters Mountain Road Dauphin, PA 17018 (717) 921-8100
West Hanover Township, Dauphin County	PAG2002205014	Edward W Martin 7943 Red Top Road Hummelstown, PA 17036	Swatara Creek WWF	Dauphin County Conservation District 1451 Peters Mountain Road Dauphin, PA 17018 (717) 921-8100
Fairview Township York County	PAG2006704114	DDSP-OP Building 1-1 New Cumberland PA 17070	Marsh Run Creek WWF	York County Conservation District 118 Pleasant Acres Road York, PA 17402 (717) 840-7430
Paradise Township York County	PAG2006704125	Northridge Section 2 Carnie Fryfogle Jr. Inc. 1650 Kempton Road Oakland, MD 21550	UNT to Paradise Run WWF	York County Conservation District 118 Pleasant Acres Road York, PA 17402 (717) 840-7430

<i>Facility Location &amp; Municipality</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Manchester Township York County	PAG2006704103	York County SPCA 66 Big Mount Road Thomasville, PA 17364	UNT to Codorus Creek/WWF	York County Conservation District 118 Pleasant Acres Road York, PA 17402 (717) 840-7430
Dover Township York County	PAG2006704142	Fred Barton Faire Wynd Assoc. 4400 Deer Path Road Harrisburg, PA 17110	Fox Run/TSF	York County Conservation District 118 Pleasant Acres Road York, PA 17402 (717) 840-7430
West Manheim Township York County	PAG2006704117	Oakwood Stoneridge Development Corp. 330 Dubs Church Road Hanover, PA 17331	UNT to WB Codorus Creek/WWF	York County Conservation District 118 Pleasant Acres Road York, PA 17402 (717) 840-7430
Newberry Township York County	PAG2006704140	Fox Farm Interceptor Newberry Township Municipal Auth. 400 Cly Road York Haven, PA 17370	Fishing Creek WWF	York County Conservation District 118 Pleasant Acres Road York, PA 17402 (717) 840-7430
York Township York County	PAG2006705007	New Sheetz Store Sheetz Inc. 5700 Sixth Ave. Altoona, PA 16602	Codorus Creek WWF	York County Conservation District 118 Pleasant Acres Road York, PA 17402 (717) 840-7430
Springettsbury Township York County	PAG2006705012	Waverly Court Kenn Smith Waverly Court Apartment Assoc. 325 Church Street Lancaster, PA 17602	Kreutz Creek WWF	York County Conservation District 118 Pleasant Acres Road York, PA 17402 (717) 840-7430
Silver Spring Township, Cumberland County	PAG2002105007	Fry Communications, Inc. Raymond Bell 800 West Church Road Mechanicsburg, PA 17055	Hogestown Run/CWF	Cumberland County Conservation District 43 Brookwood Ave. Carlisle, PA 17013 (717) 240-7812
Centre County Ferguson Township	PAG2001403038-1	David Modricker Ferguson Township 3147 Research Dr. State College, PA 16801	Spring Creek CWF	Centre County Conservation District 414 Holmes Ave. Suite 4 Bellefonte, PA 16823 (814) 355-6817
Lycoming County City of Williamsport	PAG2004105004	Pa. College of Technology 1 College Ave. Williamsport, PA 17701	W. Branch Susquehanna River WWF	Lycoming County Conservation District 542 County Farm Road Suite 202 Montoursville, PA 17754 (570) 433-3003
Snyder County Monroe Township	PAG2005505001	Penn Valley Airport Authority 100 Airport Road Selinsgrove, PA 17870	Penns Creek WWF	Snyder County Conservation District 403 W. Market St. Middleburg, PA 17842 (570) 837-0007, Ext.112

<i>Facility Location &amp; Municipality</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Tioga County Richmond Township	PAG2005905001	Department of Transportation Engineer Dist. 3-0 P. O. Box 218 Montoursville, PA 17754	Corey Creek, Tioga County CWF	Tioga County Conservation District 50 Plaza Lane Wellsboro, PA 16901 (570) 724-1801, Ext.101
Fayette County Menallen Township	PAG2002605006	Dominic DeFrank 27 Salem Avenue New Salem, PA 15468	Dunlap Creek (WWF) Redstone Creek (WWF)	Fayette County CD (724) 438-4497
Indiana County West Wheatfield Township	PAG2003205003	George Sulkosky Highridge Water Auth. 17 Maple Avenue Blairsville, PA 15717	Richards Run, UNT to Richards Run, UNT to Conemaugh River (CWF)	Indiana County CD (724) 463-8547
Lawrence County Neshannock Township	PAR103729(2)	Staph-DeCarbo & Associates LLC Bil DeCarbo Castle Realty 2911 Wilmington Road Hearthstone Acres Furiside Dr. New Castle PA 16105	UNT to Shenango River-WWF	Lawrence County Conservation District (724) 652-4512
Mercer County Springfield Township	PAG2004305001	Borough of Grove City 123 West Main St. P. O. Box 110 Grove City, PA 16127	Black Run Tributary-CWF	Mercer County Conservation District (724) 662-2242

*General Permit Type—PAG-3*

<i>Facility Location: Municipality &amp; County</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Weisenberg Township Lehigh County	PAR802208	Waste Management of PA, Inc. 2710 Golden Key Road Kutztown, PA 19530	UNT of Mill Creek	DEP—NERO Water Mgmt. Program 2 Public Square Wilkes-Barre, PA 18711-0790 (570) 826-2511
Northampton Borough Northampton County	PAR702213	Northampton Generating Co. 1 Horwith Drive Northampton, PA 18067-9728	Hokendaqua Creek CWF	DEP—NERO Water Mgmt. Program 2 Public Square Wilkes-Barre, PA 18711-0790 (570) 826-2511
Susquehanna County Harford Township	PAR212233	B & D Stone Co. R. R. 1, Box 157B Kingsley, PA 18826	Nine Partners Creek CWF	DEP—NERO Water Mgmt. Program 2 Public Square Wilkes-Barre, PA 18711-0790 (570) 826-2511
Susquehanna County Harford Township	PAR212231	Harford Stone Co. R. R. 1, Box 157A Kingsley, PA 18826	Nine Partners Creek CWF	DEP—NERO Water Mgmt. Program 2 Public Square Wilkes-Barre, PA 18711-0790 (570) 826-2511
Mifflin County Lewistown Borough	PAR213520	Juniata Concrete Company R. R. 3, Box 325 Mifflintown, PA 17059	Juniata River WWF	DEP—SCRO 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707
Juniata County Walker Township	PAR213541	Juniata Concrete Company R. R. 3, Box 325 Mifflintown, PA 17059	UNT to Cedar Run to Doe Run TSF	DEP—SCRO 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707

*Facility Location:  
Municipality &  
County*

<i>Facility Location: Municipality &amp; County</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Perry County Oliver Township	PAR213537	Juniata Concrete Company R. R. 3, Box 325 Mifflintown, PA 17059	Little Buffalo Creek CWF	DEP—SCRO 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707
Old Lycoming Township	PAR124812	Pepsi Bottling Group, LLC 1450 Dewey Avenue Williamsport, PA 17701	Lycoming Creek (WWF)	NorthCentral Regional Office 208 West Third Street Williamsport, PA 17701-6448 (570) 327-3664

*General Permit Type—PAG-4**Facility Location:  
Municipality &  
County*

<i>Facility Location: Municipality &amp; County</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Harborcreek Township, Erie County	PAG049150	John Testi 8271 Slade Road Harborcreek, PA 16421	Eightmile Creek	DEP—NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942
Jefferson Township, Mercer County	PAG048372	James L. and Margaret V. Starkey 59 Reno Road Hermitage, PA 16148-5105	UNT to Magargee Run	DEP—NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942
Wilmington Township, Lawrence County	PAG049123	Terry Emery P. O. Box 10 Volant, PA 16156	UNT to Neshannock Creek	DEP—NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942

*General Permit Type—PAG-8**Facility Location:  
Municipality &  
County*

<i>Facility Location: Municipality &amp; County</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Site Name &amp; Location</i>	<i>Contact Office &amp; Phone No.</i>
Meadville City Crawford County	PAG088306	Meadville Area Sewer Authority 1320 Park Avenue Meadville, PA 16335-3114	Meadville Area Sewer Treatment Plant Meadville City	DEP—NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942

*General Permit Type—PAG-8 (SSN)**Facility Location:  
Municipality &  
County*

<i>Facility Location: Municipality &amp; County</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Site Name &amp; Location</i>	<i>Contact Office &amp; Phone No.</i>
Cumberland County South Middleton Township	PAG083570	Borough of Carlisle 53 West South Street Carlisle, PA 17013	Harold Swarner Farm S. Middleton Township, Cumberland County	DEP—SCRO 909 Elmerton Avenue Harrisburg, PA 17110-8200 (717) 705-4707
Cumberland County Dickinson Township	PAG083570	Borough of Carlisle 53 West South Street Carlisle, PA 17013	Lewis Fink Farm Dickinson Township, Cumberland County	DEP—SCRO 909 Elmerton Avenue Harrisburg, PA 17110-8200 (717) 705-4707

*Facility Location:*

<i>Municipality &amp; County</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Site Name &amp; Location</i>	<i>Contact Office &amp; Phone No.</i>
Cumberland County Dickinson Township	PAG083570	Borough of Carlisle 53 West South Street Carlisle, PA 17013	John Mckeehon Alexander Spring Farm Dickinson Township, Cumberland County	DEP—SCRO 909 Elmerton Avenue Harrisburg, PA 17110-8200 (717) 705-4707

*General Permit Type—PAG-13*

<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>DEP Protocol (Y/N)</i>
PAG136359	Fayette City Borough 2nd and Cook Street R. D. 1, Box 544 Fayette City, PA 15438	Fayette	Fayette City Borough	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 (35 P. S. §§ 721.1—721.17).**

*Southeast Region: Water Supply Management Program Manager, 2 East Main Street, Norristown, PA 19401.*

**Operations Permit** issued to: **The Carlyle Group Inc.**, 10006 Hammock Bend, Chapel Hill, NC (PWSID #1150069) East Coventry Township, **Chester County** on April 11, 2005, for the operation of facilities approved under Construction Permit No. 1503505.

**Operations Permit** issued to: **Philadelphia Water Department**, 1101 Market Street, 2nd Floor, Philadelphia, PA 19107 (PWSID #1510001) City of Philadelphia Township, **Philadelphia County** on April 11, 2005, for the operation of facilities approved under Construction Permit No. 5104501.

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

**Permit No. 2205501 MA, Minor Amendment, Public Water Supply.**

Applicant	<b>United Water Pennsylvania</b>
Municipality	Susquahanna Township
County	<b>Dauphin</b>
Type of Facility	This permit approves construction of a washwater storage tank at the Sixth Street Water Treatment Plant.
Consulting Engineer	Arthur Saunders, P. E. United Water Pennsylvania 4211 East Park Circle Harrisburg, PA 17111
Permit to Construct Issued:	3/31/2005

**Permit No. 2204509, Public Water Supply.**

Applicant	<b>United Water Pennsylvania</b>
Municipality	Susquahanna Township
County	<b>Dauphin</b>
Type of Facility	Construction of three Infilco Degremont DensaDeg high-rate clarifier/thickener units to replace the existing Trident upflow clarifiers.
Consulting Engineer	Gary W. Snyder, P. E. Black & Veatch Curtis Center Philadelphia, PA 19106
Permit to Construct Issued:	4/8/2005

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

**Permit No. 6504501**, Public Water Supply.  
 Applicant **Municipal Authority of the City of New Kensington**  
 P. O. Box 577  
 New Kensington, PA 15068

Borough or Township New Kensington  
 County **Westmoreland**

Type of Facility Pump station and tanks

Consulting Engineer Gibson-Thomas Engineering Co.  
 Inc.  
 1004 Ligonier Street  
 P. O. Box 853  
 Latrobe, PA 15650

Permit to Construct Issued March 29, 2005

**Permit No. 5604504**, Public Water Supply.  
 Applicant **Municipal Water Authority of the Township of Jenner**  
 124 West Street  
 Jenners, PA 15546

Borough or Township Jenner Township  
 County **Somerset**

Type of Facility North Star Industrial/Business  
 Park Water Storage Tank

Consulting Engineer EADS Group  
 450 Aberdeen Drive  
 P. O. Box 837  
 Somerset, PA 15501

Permit to Construct Issued March 29, 2005

**Permit No. 2604501**, Public Water Supply.  
 Applicant **Bruderhof Communities in Pa., Inc.**  
 101 New Meadow Run Drive  
 Farmington, PA 15437

Borough or Township Wharton Township  
 County **Fayette**

Type of Facility New Meadow Run Bruderhof  
 Water System and Well No. 1

Consulting Engineer McMillen Engineering  
 115 Wayland Smith Drive  
 Uniontown, PA 15401

Permit to Construct Issued April 7, 2005

**Operations Permit** issued to: **Hastings Municipal Authority**, P. O. Box 559, Hastings, PA 16646 (PWSID #4110013) Hastings Borough, **Cambria County** on April 5, 2005, for the operation of facilities approved under Construction Permit No. 1196502.

**Operations Permit** issued to: **Beaver Falls Municipal Authority**, 1425 8th Avenue, P. O. Box 400, Beaver Falls, PA 15010, (PWSID #5040012) Eastvale Borough, **Beaver County** on April 7, 2005, for the operation of facilities approved under Construction Permit No. 0403502.

**Operations Permit** issued to: **Indian Creek Valley Water Authority**, P. O. Box 486, Indian Head, PA 15446, (PWSID #5260011) Saltlick Township, **Fayette County** on April 7, 2005, for the operation of facilities approved under Construction Permit No. 6849-T1-A3.

**Operations Permit** issued to: **Municipal Authority of the City of New Kensington**, P. O. Box 577, 920 Barnes Street, New Kensington, PA 15068, (PWSID #5650070) City of New Kensington, **Westmoreland County** on April 7, 2005, for the operation of facilities approved under Construction Permit No. 6591505-A1.

#### SEWAGE FACILITIES ACT PLAN APPROVAL

#### Plan Approvals Granted under the Pennsylvania Sewage Facilities Act (35 P. S. §§ 750.1—750.20a)

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

#### Plan Location:

Borough or Township	Borough or Township Address	County
Carroll Township	555 Chestnut Grove Road Dillsburg, PA 17019	York

*Plan Description:* The approved plan provides for the replacement of the Ore Band Road Pump Station to a new location with increased capacity to serve an estimated 359,200 gpd (898 EDUs). The proposal also includes the construction of a new force main from the pump station to the Dillsburg Area Authority Wastewater Treatment Plant, where final disposal of the sewage flows will occur. The new pump station will be located on the west side of Ore Bank Road across from Spend-A-Buck Lane in Carroll Township, York County. Any required NPDES Permits or WQM Permits must be obtained in the name of the authority as appropriate.

## LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

### UNDER ACT 2, 1995

#### PREAMBLE 2

**The following plans and reports were submitted under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).**

Provisions of Chapter 3 of the Land Recycling and Environmental Remediation Standards Act (act) require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* a notice of submission of plans and reports. A final report is submitted to document cleanup of a release of a regulated substance at a site to one of the act's remediation standards. A final report provides a description of the site investigation to characterize the nature and extent of contaminants in environmental media, the basis for selecting the environmental media of concern, documentation supporting the selection of residential or nonresidential exposure factors, a description of the remediation performed and summaries of sampling analytical results which demonstrate that remediation has attained the cleanup standard selected. Submission of plans and reports, other than the final report, shall also be published in the *Pennsylvania Bulletin*. These include the remedial investigation report, risk assessment report and cleanup plan for a site-specific standard remediation. A remedial investigation report includes conclusions from the site investigation, concentration of regulated substances in environmental media; benefits of refuse of the property and, in some circumstances, a fate and transport analysis. If required, a risk assessment report describes potential adverse effects caused by the presence of regulated



substances. If required, a cleanup plan evaluates the abilities of potential remedies to achieve remedy requirements.

For further information concerning plans or reports, contact the Environmental Cleanup Program manager in the Department regional office after which the notice of receipt of plans or reports appears. If information concerning plans or reports is required in an alternative form, contact the Community Relations Coordinator at the appropriate regional office. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following plans and reports:

*Southeast Region: Environmental Cleanup Program Manager, 2 East Main Street, Norristown, PA 19401.*

**Ashwood Dev.**, Plymouth Township, **Montgomery County**. Jan Peter Ilves, P. G., JPI Assoc., Inc., 1532 Haddonfield-Berlin Road, Cherry Hill, NJ 08003 on behalf of Carmen Salamone, Ashwood Land Dev., Inc., 545 W. Germantown Pike, No. 200, Plymouth Meeting, PA 19462 has submitted a Final Report concerning remediation of site soil contaminated with pesticide. The report is intended to document remediation of the site to meet the Statewide Health Standard.

**7-Eleven, Inc., Store No. 21218**, City of Philadelphia, **Philadelphia County**. Richard C. Firely, Jr., ENSR Intl, 2005 Cabot Blvd., West, Suite 100, Langhorne, PA 19047 has submitted a Final Report concerning remediation of site groundwater contaminated with leaded gasoline. The report is intended to document remediation of the site to meet the Statewide Health Standard.

**148 East State St. Site**, Doylestown Borough, **Bucks County**. John Walker, INTEX Env. Group, Inc., 6205 Easton Rd., Pipersville, PA 18947 on behalf of Naomi Plakins, Esq., Plakins Rieffel & Ray PC, 140 E. State St., P. O. Box 1287, Doylestown, PA 18901 has submitted a Final Report concerning remediation of site soil contaminated with no. 2 fuel oil. The report is intended to document remediation of the site to meet the Statewide Health Standard.

**1201 West Chester Pike Site**, West Goshen Township, **Chester County**. Jason Free, RT Env. Svc., Inc., Pureland Ind. Complex, 510 Heron Dr., Suite 306, P. O. Box 521, Bridgeport, NJ 08014 on behalf of Wayne DiFrancesco, White Horse Farms, 184 W. London Grove, Rd., West Grove, PA 19390 has submitted a Final Report concerning remediation of site soil contaminated with BTEX. The report is intended to document remediation of the site to meet the Statewide Health Standard.

*Northcentral Region: Environmental Cleanup Program Manager, 208 West Third Street, Williamsport, PA 17701.*

**Dillon Floral, Fifth St. Hollow Rd. Property**, Scott Township, **Columbia County**, EarthRes Group, Inc., P. O. Box 468, Pipersville, PA 18947 has submitted a Final Report concerning soil contaminated with (pesticides) dieldrin. This Final Report is intended to demonstrate attainment of the Site-Specific Standard for soils.

*Northwest Region: Environmental Cleanup Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.*

**Michael Mancuso Heating Oil Spill**, Pulaski Township, **Lawrence County**. Duane L. Statzer, The GeoEnvironmental Consortium, 701 Freeport Rd., South Bldg., Pittsburgh PA 15238 on behalf of Michael Mancuso, 494 Deer Creek Rd., West Middlesex, PA 16159 has

submitted a Final Report concerning remediation of site soil contaminated with Heating Oil. The report is intended to document remediation of the site to meet the Statewide Health Standards.

## LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

UNDER ACT 2, 1995

PREAMBLE 3

**The Department has taken action on the following plans and reports under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).**

Provisions of 25 Pa. Code § 250.8, administration of the Land Recycling and Environmental Remediation Standards Act (act), require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* a notice of final actions on plans and reports. A final report is submitted to document cleanup of a release of a regulated substance at a site to one of the remediation standards of the act. A final report provides a description of the site investigation to characterize the nature and extent of contaminants in environmental media, the basis of selecting the environmental media of concern, documentation supporting the selection of residential or nonresidential exposure factors, a description of the remediation performed and summaries of sampling methodology and analytical results which demonstrate that the remediation has attained the cleanup standard selected. Plans and reports required by provisions of the act for compliance with selection of remediation to a site-specific standard, in addition to a final report, include a remedial investigation report, risk assessment report and cleanup plan. A remedial investigation report includes conclusions from the site investigation, concentration of regulated substances in environmental media, benefits of refuse of the property and, in some circumstances, a fate and transport analysis. If required, a risk assessment report describes potential adverse effects caused by the presence of regulated substances. If required, a cleanup plan evaluates the abilities of potential remedies to achieve remedy requirements. A work plan for conducting a baseline remedial investigation is required by provisions of the act for compliance with selection of a special industrial area remediation. The baseline remedial investigation, based on the work plan, is compiled into the baseline environmental report to establish a reference point to show existing contamination, describe proposed remediation to be done and include a description of existing or potential public benefits of the use or reuse of the property. The Department may approve or disapprove plans and reports submitted. This notice provides the Department's decision and, if relevant, the basis for disapproval.

For further information concerning the plans and reports, contact the Environmental Cleanup Program manager in the Department regional office before which the notice of the plan or report appears. If information concerning a final report is required in an alternative form, contact the Community Relations Coordinator at the appropriate regional office. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following plans and reports:

*Southeast Region: Environmental Cleanup Program Manager, 2 East Main Street, Norristown, PA 19401.*

**ACME Store No. 7721 Site**, Phoenixville Borough, **Chester County**. David Volz, Sovereign Consulting, Inc., 111-A North Gold Dr., Robbinsville, NJ 08691 on behalf of Doug Kasefang, Albertsons, Inc., 250 Parkcenter Blvd., Boise, ID 83726 has submitted a Final Report concerning the remediation of site soil contaminated with chlorinated solvents. The Final report demonstrated attainment of the Statewide Health Standard and was approved by the Department on April 1, 2005.

**Richter Residence**, Plumstead Township, **Bucks County**. Richard D. Trimpi, CHMM, P. G., Trimpi Assoc., Inc., 1635 Old Plains Rd., Pennsburg, PA 18073 on behalf of Stephen Richter, 5404 Nicholas Ct, Pipersville, PA 19847 has submitted a Final Report concerning the remediation of site soil contaminated with no. 2 fuel oil. The Final report demonstrated attainment of the Statewide Health Standard and was approved by the Department on April 7, 2005.

**Dial North Prop. B**, Bristol Borough, **Bucks County**. Jeffrey Goudsward, Penn Env. & Remediation, 2755 Bergey Rd., Hatfield, PA 19440 on behalf of Larry Wygant, Island View Crossing II, LP, 1001 E. Hector St., Suite 100, Conshohocken, PA 19428 has submitted a Remedial Investigation and Cleanup Plan Report concerning the remediation of site soil and groundwater contaminated with chlorinated solvents and no. 2 fuel oil. The Remedial Investigation and Cleanup Plan Report was approved by the Department on April 6, 2005.

**Mill Creek**, City of Philadelphia, **Philadelphia County**. Michael Edelman, P.G., Roux Assoc., Inc., 1222 Forest Pkwy, Suite 190, West Deptford, NJ 08066 on behalf of Thomas Kuhar, Mill Creek Phase I, LP, 12 S. 23rd St., 6th Floor, Philadelphia, PA 19103 has submitted a Final Report concerning the remediation of site soil contaminated with no. 2 fuel oil. The Final report demonstrated attainment of the Statewide Health Standard and was approved by the Department on March 30, 2005.

*Northcentral Region: Environmental Cleanup Program Manager, 208 West Third Street, Williamsport, PA 17701.*

**Former Rockwell Plant No. 2**, City of Dubois, **Clearfield County**. Blasland, Bouck & Lee, Inc., 500 North Gulph Road, Suite 401, King of Prussia, PA 19406 has submitted a Final Report concerning soil contaminated with chlorinated solvents and metals. This Final Report demonstrated attainment of the Site-specific Standard and was approved by the Department on April 1, 2005.

**Charles Cole Memorial Hospital**, Eulalia Township, **Potter County**. Converse Consultants, 2738 West College Avenue, State College, PA 16801 has submitted a Final Report concerning soil & groundwater contaminated with lead, heavy metals and solvents. This Final Report demonstrated attainment of the Statewide Health Standard and was approved by the Department on April 7, 2005.

**Pennsylvania American Water-White Deer Cleanup**, White Deer Township, **Union County**. Black Rock Environmental, LOLC on behalf of Pennsylvania American Water, has submitted a final Report concerning soil contaminated with diesel fuel. This Final Report demonstrated attainment of the Statewide Health Standard and was approved by the Department on August 31, 2004. (This is being resubmitted at this time because when checking the archives it was discovered this was never submitted.)

**Dominion Transmission (Leidy Compressor Station)**, Leidy Township, **Clinton County**, SE Technolo-

gies, 98 Vanadium Road, Bldg. D, 2nd Floor, Bridgeville, PA 15017 has submitted a Final Report concerning soil contaminated with BTEX and groundwater contaminated with PCBs and BTEX. This Final Report demonstrated attainment of the Site-specific Standard for soils and the Statewide Health Standard for groundwater and was approved by the Department on March 18, 2005.

#### **HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES**

**Proposed action on an application for a permit under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003) and regulations to operate a hazardous waste treatment, storage, or disposal facility.**

*Intent to Issue a Hazardous and Residual Waste Storage Permit*

*Regional Office: Regional Manager, Waste Management, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

**PAD980707087, Envirotrol, Inc., Beaver Falls Facility**. Operation of a hazardous and residual waste storage and treatment facility (carbon regeneration) located in Beaver Falls, **Beaver County**. The application for a permit for storage and treatment at the Beaver Falls facility was considered for intent to issue by the Regional Office on April 15, 2005.

Persons wishing to comment on the proposed action are invited to submit a statement to the regional office indicated as the office responsible, within 45 days from the date of this public notice. Comments received within this 45-day period will be considered in the formulation of the final determination regarding this application. Responses should include the regional office of the exact basis of any comment and the relevant facts upon which it is based. A public hearing may be held if the regional office considers the public response significant.

A public meeting has been scheduled for May 19, 2005, at the City of Beaver Falls Municipal Building, located at 715 15th Street in Beaver Falls, PA. The meeting will start at 7 p.m. The purpose of this meeting is to discuss this intended permit action.

Following the 45-day comment period and/or public hearing, the Department will make a final determination regarding the proposed permit action. Notice of this determination will be published in the *Pennsylvania Bulletin*, at which time this determination may be appealed to the Environmental Hearing Board.

#### **OPERATE WASTE PROCESSING OR DISPOSAL AREA OR SITE**

**Permit revoked 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.**

*Southeast Region: Regional Solid Waste Manager, 2 East Main Street, Norristown, PA 19401.*

**Permit No. 400667. Wyeth Pharmaceuticals**, P. O. Box 8299, Philadelphia, PA, Upper Providence Township, **Montgomery County**. The waste incineration facility has been closed and the permit has expired. At the permittee's request, the waste permit is being revoked and the bond will be released. The permit was revoked by the Southeast Regional Office on April 6, 2005.

## AIR QUALITY

**General Plan Approval and Operating Permit Usage Authorized under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127 to construct, modify, reactivate or operate air contamination sources and associated air cleaning devices.**

*Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481; George Monasky, New Source Review Chief, (814) 332-6940.*

**GP-61-209: Belden and Blake Corp.—Cherrytree Compressor** (Pioneer Road, Titusville, PA 16354) on March 10, 2005, to operate a natural gas fired compressor engine in Cherrytree Township, **Venango County**.

**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.**

*Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790; Mark Wejkszner, New Source Review Chief, (570) 826-2531.*

**48-399-049B: Alcan Packaging Pharmaceutical and Personal Care, Inc.** (2400 Baglyos Circle, Bethlehem, PA 18020) on April 4, 2005, to construct five blister packaging lines at their facility in Bethlehem Township, **Northampton County**.

*Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Ronald Davis, New Source Review Chief, (717) 705-4702.*

**06-05100D: Calpine Construction Finance Co., LP** (5115 Pottsville Pike, Reading, PA 19605) on April 5, 2005, for modification of their electric generating plant controlled by SCR in Ontelaunee Township, **Berks County**.

**22-05034C: Pennsy Supply, Inc.** (1001 Paxton Street, Harrisburg, PA 17105) on April 5, 2005, for replacement of an existing fabric collector with a new fabric collector for their pulverized mineral processing operation, Hummelstown Quarry, South Hanover Township, **Dauphin County**.

**36-05026B: RR Donnelley and Sons Company** (1375 Harrisburg Pike, Lancaster, PA 17601) on April 5, 2005, for installation of a new heatset web offset printing press and regenerative thermal oxidizer at their Lancaster West facility in Lancaster City, **Lancaster County**.

*Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701; David Aldenderfer, Program Manager, (570) 327-3637.*

**19-00026A: Haddon Craftsmen, Inc.** (4411 Old Berwick Road, Bloomsburg, PA 17815) on March 11, 2005, to construct two book binding lines, two heatset web offset lithographic printing presses, and air cleaning device (regenerative thermal oxidizer) associated with the printing presses in South Centre Township, **Columbia County**.

**14-00002F: Graymont (PA) Inc.** (965 East College Avenue, Pleasant Gap, PA 16823) on April 6, 2005, to construct a pulverized limestone system and associated air cleaning devices (two fabric collectors) at their Pleasant Gap Plant in Spring Township, **Centre County**.

*Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481; George Monasky, New Source Review Chief, (814) 332-6940.*

**25-025G: General Electric Transportation Systems—Erie Plant** (2901 East Lake Road, Room 9-201, Erie, PA 16531) on April 4, 2005, to modify monitoring conditions in their Title V permit for several sources/control devices, to add a new source called the Commutator Lathes (Source 620), and to add two shot blast booths under Miscellaneous Machining and Grinding (Source 942) in Lawrence Park Township, **Erie County**. This is a Title V facility.

**Plan Approval Revisions Issued including Extensions, Minor Modifications and Transfers of Ownership under the Air Pollution Control Act (35 P. S. §§ 4001—4015) 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.*

**23-0012: Epsilon Product Co., LLC** (Post Road and Blueball Avenue, P. O. Box 432, Marcus Hook, PA 19061) on April 1, 2005, to operate a plant 2 and thermal oxidizer in Marcus Hook Borough, **Delaware County**.

**46-0234: Conshohocken Steel Products, Inc.** (301 Randolph Avenue, Ambler, PA 19002) on April 1, 2005, to operate a Spray Booth in Upper Dublin Township, **Montgomery County**.

*Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790; Mark Wejkszner, New Source Review Chief, (570) 826-2531.*

**48-328-003A: PPL Generation LLC** (Two North Ninth Street, Allentown, PA 18101) on March 31, 2005, to modify four combustion turbines at Martins Creek SES, Lower Mt. Bethel Township, **Northampton County**. The Plan Approval has been extended.

*Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701; David Aldenderfer, Program Manager, (570) 327-3637.*

**55-399-006: APEX Homes, Inc.** (247 US Highway 522 North, Middleburg, PA 17842) on April 7, 2005, to authorize the use of three spray booths instead of two in a modular home wood parts surface coating operation and to authorize the use of an alternate coating in Middlecreek Township, **Snyder County**.

**49-00010A: Fleetwood Motor Homes of Pennsylvania, Inc.** (Route 487, P. O. Drawer No. 5, Paxinos, PA 17860) on March 16, 2005, to extend the authorization to construct a recreational vehicle surface coating operation identified in the respective plan approval on a temporary basis, until May 4, 2005, at their Paxinos facility in Ralpho Township, **Northumberland County**.

*Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481; George Monasky, New Source Review Chief, (814) 332-6940.*

**25-006A: Russell Standard Corp.—Wheelertown Road** (Wheelertown Road, Union City, PA 16438) on April 30, 2005, to replace their existing asphalt plant in Leboeuf Township, **Erie County**.

**Title V Operating Permits Issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter G.**

*Northeast Region: Air Quality Program, 2 Public Square, Wilkes Barre, PA 18711-0790; Michael Safko, Facilities Permitting Chief, (570) 826-2531.*

**54-00004: Gilberton Power Co.** (50 Eleanor Avenue, Frackville, PA 17931) on April 12, 2005, to operate a power generation plant in West Mahanoy Township, **Schuylkill County**.

*Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Yasmin Neidlinger, Facilities Permitting Chief, (717) 705-4702.*

**06-05078: FR and S, Inc.** (727 Red Lane Road, Birdsboro, PA 19508) on April 11, 2005, to operate Pioneer Landfill in Exeter Township, **Berks County**. This is a renewal of the Title V operating permit. Plan approvals 06-05078D and 06-05078E were incorporated into the permit.

**67-05016: R. H. Sheppard Company, Inc.** (101 Philadelphia Street, P. O. Box 877, Hanover, PA 17331-0877) on April 4, 2005, to operate their ductile and gray iron foundry in Hanover Borough, **York County**. This is a renewal of the Title V operating permit.

**Operating Permits for Non-Title V Facilities Issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter F.**

*Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790; Mark Wejkszner, New Source Review Chief, (570) 826-2531.*

**40-00090: Bridon American Corp.** (P. O. Box 6000, Wilkes-Barre, PA 18706) on April 12, 2005, to install a fabric collector to collect soap dist at their facility in Hanover Township, **Luzerne County**.

**40-00072: Genova Products, Inc.** (502 Forest Road, Hazleton, PA 18202) on April 12, 2005, to manufacture plastic and PVC products in Hazle Township, **Luzerne County**.

*Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Ronald Davis, New Source Review Chief, (717) 705-4702.*

**28-03044: Tarco Roofing Materials, Inc.** (8650 Molly Pitcher Highway North, Greencastle, PA 17225) on April 5, 2005, for their asphalt saturated felt operations in Antrim Township, **Franklin County**.

*Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701; David Aldenderfer, Program Manager, (570) 327-3637.*

**17-00019: Waroquier Coal Co.** (P. O. Box 128, Clearfield, PA 16830) on March 21, 2005, to issue a State Only operating permit for their coal processing facility in Lawrence Township, **Clearfield County**. The facility's main sources include a coal processing operation and coal rail car load-out operation. The State Only operating permit contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

**19-00018: Catawissa Lumber and Specialty Co.** (P. O. Box 176, Catawissa, PA 17820) on March 22, 2005, to issue a State Only operating permit, for their wood-working facility in the Borough of Catawissa, **Columbia County**. The facility's main sources include one woodwaste No. 2 fuel oil fired boiler, one No. 2 fuel oil fired boiler and various woodworking equipment. The

State Only operating permit contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

**41-00062: Wheeland Lumber Co., Inc.** (R. R. No.1, Box 220B, Liberty, PA 16930) on March 9, 2005, to issue a State Only operating permit for their lumber mill facility in Jackson Township, **Lycoming County**. The facility's main source includes two stoker wood-fired boilers for producing steam for lumber-drying kilns. Other sources at the facility include a two emergency generators, one parts cleaning station and one oil-fired office furnace. The State Only operating permit contains all applicable regulatory requirements including monitoring, recordkeeping and report conditions.

**53-00016: Tennessee Gas Pipeline Co.** (P. O. Box 2511, Houston, TX 77252-2511) on March 11, 2005, to issue a State Only operating permit for their Ellisburg Booster Station in Genesee Township, **Potter County**. The facility's sources include two reciprocating internal combustion engines, one auxiliary generator, and associated pipeline flanges and valves. The State Only operating permit contains all applicable regulatory requirements including monitoring, recordkeeping, and report conditions.

*Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481; Eric Gustafson, Facilities Permitting Chief, (814) 332-6940.*

**61-00034: The Franklin Investment Corp.—d/b/a Franklin Industries Co.** (600 Atlantic Avenue, Franklin, PA 16323) on March 30, 2005, a Natural Minor operating permit to manufacture and surface coat steel posts in the City of Franklin, **Venango County**.

**25-00999: Riley Power, Inc.** (1420 Cascade Street, Erie, PA 16502) on April 6, 2005, a Natural Minor Permit to operate surface coating operations in the City of Erie, **Erie County**.

**Operating Permit Revisions Issued including Administrative Amendments, Minor Modifications or Transfers of Ownership under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code §§ 127.412, 127.450, 127.462 and 127.464.**

*Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Ronald Davis, New Source Review Chief, (717) 705-4702.*

**36-03141: Kellogg USA Inc.** (2050 State Road, Caller Box 3006, Lancaster, PA 17604) on April 7, 2005, to operate a breakfast cereal manufacturing facility in East Hempfield Township, **Lancaster County**. This Operating Permit was administratively amended to include plan approval 36-03141A. This is revision No. 1.

*Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701; David Aldenderfer, Program Manager, (570) 327-3637.*

**41-00064: Glenn O. Hawbaker, Inc.** (711 East College Avenue, Bellefonte, PA 16823) on April 1, 2005, via administrative amendment, to incorporate conditions established in Plan Approval 41-00064A for a sandstone processing plant feeder, jaw crusher and two conveyors at Hagerman's Run Plant No. 12 in Armstrong Township, **Lycoming County**.

**18-00024: Excel Homes LLC** (P. O. Box 420, Avis, PA 17721) on April 4, 2004, via administrative amendment, to reflect a change in ownership for a modular home

manufacturing facility from XL Acquisition Corporation to Excel Homes LLC in Pine Creek Township, **Clinton County**.

**49-00054: Meckley's Limestone Products** (R. R. No. 1 Box 1682, Herndon, PA 17830) on March 8, 2005, to issue a revised State Only (Synthetic Minor) operating permit through an administrative amendment to incorporate terms and conditions from Plan Approval 49-00054A for the addition of a bin vent filter and modification of an existing dust bunker storage building (Source ID P106) to control the particulate matter (PM/PM10) emissions from the operation. This facility is in Lower Mahoney Township, **Northumberland County**. This revised State Only operating permit contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

*Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481; Eric Gustafson, Facilities Permitting Chief, (814) 332-6940.*

**24-00016: Keystone Powdered Metal Co.** (1935 State Street, St Marys, PA, 15857) on April 5, 2005, was administratively amended to incorporate a change of Responsible Official and to delete process equipment that has been removed in St. Marys Borough, **Elk County**.

**De Minimis Emissions Increases Authorized under 25 Pa. Code § 127.449.**

*Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745; Mark Wayner, Facilities Permitting Chief, 412-442-4174.*

**TV-04-00471: Marathon Ashland Petroleum, LLC** (P. O. Box 308, Midland, PA 15059-0308) for their Midland Terminal in Industry Borough, **Beaver County** shall increase VOC emissions by 0.001 tons per year (tpy), at this facility. This increase in emissions has been approved by the Department as a de minimis emission increase in accordance with 25 Pa. Code § 127.449.

## **ACTIONS ON COAL AND NONCOAL MINING ACTIVITY APPLICATIONS**

**Actions on applications under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. §§ 3301—3326); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66); and The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21). The final action on each application also constitutes action on the request for 401 Water Quality Certification and the NPDES permit application. Mining activity permits issued in response to the applications will also address the application permitting requirements of the following statutes: the Air Quality Control Act (35 P. S. §§ 4001—4015); the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27); and the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003).**

### *Coal Permits Actions*

*Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, (814) 472-1900.*

**56010104 and NPDES Permit No. PA0249041. Godin Brothers, Inc.**, 128 Colton Drive, Stoystown, PA 15563, surface mining permit revision for a stream

variance and deletion of acreage in Lincoln and Jenner Townships, **Somerset County**, affecting 136.4 acres. Receiving streams: UNTs to/and Quemahoning Creek classified for the following use: cold water fishery. The first downstream potable water supply intake from the point of discharge is Cambria-Somerset Authority Quemahoning Surface Water Withdrawal. Application received August 30, 2004. Permit issued: March 29, 2005.

*Greensburg District Mining Office: R. R. 2, Box 603-C, Greensburg, PA 15601, (724) 925-5500.*

**26030102 and NPDES Permit No. PA0250457. Steve Patterson Excavating** (170 Yasenosky Road, Smithfield, PA 15478). Permit revised to allow removal of the Benwood Limestone at a bituminous surface mining site located in Dunbar Township, **Fayette County**, affecting 75.5 acres. Receiving streams: UNT to Gist Run, Dunbar Creek, Youghioghney River. Application received: January 28, 2005. Revision issued: April 6, 2005.

**03030107. Amerikohl Mining, Inc.** (202 Sunset Drive, Butler, PA 16001). Permit issued for commencement, operation and reclamation of a bituminous surface mining site located in Boggs Township, **Armstrong County**, affecting 138 acres. Receiving streams: North Fork of Pine Creek. Application received: November 26, 2003. Permit issued: April 8, 2005.

*Knox District Mining Office: P. O. Box 669, Knox, PA 16232, (814) 797-1191.*

**24980106 and NPDES Permit No. PA0227919. Fairview Coal Company** (P. O. Box R, Ridgway, PA 15853). Revision to an existing bituminous surface strip, auger and coal ash placement operation to add 5.7 acres to the permit in Horton Township, **Elk County**, affecting 228.8 acres. Receiving streams: UNTs to Johnson Run; UNTs to Brandy Camp Creek; all to Little Toby Creek. Applications received: December 23, 2004. Permit Issued: April 5, 2005.

**1316-24980106-E-1. Fairview Coal Company** (P. O. Box R, Ridgway, PA 15853). Application for a stream encroachment to conduct mining activities within 100 feet of Johnson Run in Horton Township, **Elk County**, affecting 228.8 acres. Receiving streams: UNTs to Johnson Run; UNTs to Brandy Camp Creek; all to Little Toby Creek. Applications received: December 23, 2004. Permit Issued: April 5, 2005.

**43850105 and NPDES Permit No. PA0208758. Grove City Materials, L.P.** (R. D. 6, Box 344, New Castle, PA 16101). Transfer of an existing bituminous surface strip operation from C & K Coal Company in Pine and Mercer Townships, **Mercer and Butler Counties** affecting 96.0 acres. Receiving streams: two UNTs to Swamp Run. Application received: December 11, 2003. Permit Issued: April 6, 2005.

*Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, (814) 342-8200.*

**17820129 and NPDES Permit No. PA0610623. Kasubick Brothers Coal Company** (501 David Street, Houtzdale, PA 16651). Renewal of an existing bituminous surface mine-auger permit in Woodward Township, **Clearfield County** affecting 161.8 acres. Receiving streams: UNT to Upper Morgan Run and North Branch to Morgan Run to Clearfield Creek to West Branch Susquehanna River. Application received: October 14, 2004. Permit issued: April 4, 2005.

**17990110 and NPDES Permit No. PA0238333. AMFIRE Mining Company, LLC** (One Energy Place, Latrobe, PA 15650). Transfer of an existing bituminous

surface mine permit from M. B. Energy, Inc. The permit is located in Chest Township, **Clearfield County** and affects 350 acres. Receiving streams: Chest Creek to West Branch of the Susquehanna River. Application received: September 13, 2004. Permit issued: March 2, 2005.

**17040105 and NPDES Permit No. PA0243795. W. Ruskin Dressler** (P. O. Box 39, Rockton, PA 15856). Commencement, operation and restoration of a bituminous surface mine permit in Brady Township, **Clearfield County** affecting 63.9 acres. Receiving stream: East Branch Mahoning Creek. Application received: July 24, 2004. Permit issued: April 6, 2005.

*Pottsville District Mining Office: 5 W. Laurel Boulevard, Pottsville, PA 17901, (570) 621-3118.*

**54773017R4 and NPDES Permit No. PA0118770. K & K Coal Company** (133 Valley Furnace Avenue, Port Carbon, PA 17965), renewal of an existing anthracite surface mine operation in East Norwegian and Blythe Townships, **Schuylkill County** affecting 243.1 acres, receiving stream: East Branch Schuylkill River. Application received October 18, 2004. Renewal issued April 8, 2005.

**49860102T2 and NPDES Permit No. PA0224413. Farragut Anthracite Company** (100 Lehigh Avenue, Mt. Carmel, PA 17851), transfer of an existing anthracite surface mine and refuse reprocessing operation in Coal Township, **Northumberland County** affecting 814.6 acres, receiving stream: Shamokin Creek. Application received June 24, 2004. Transfer issued April 8, 2005.

*Noncoal Permits Actions*

*Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, (814) 342-8200.*

**08042801. Frank Bach, IV** (R. R. 1, Box 1450, Laceyville, PA 18623). Commencement, operation and restoration of a small industrial minerals (bluestone) permit in Tuscarora Township, **Bradford County** affecting 3 acres. Receiving stream: Tuscarora Creek, tributary to Susquehanna River. Application received: June 16, 2004. Application returned: March 10, 2005.

*Pottsville District Mining Office: 5 W. Laurel Boulevard, Pottsville, PA 17901, (570) 621-3118.*

**58040862. Randall J. Chapel** (R. R. 2, Box 190-D, Montrose, PA 18801), commencement, operation and restoration of a bluestone quarry operation in Jessup Township, **Susquehanna County** affecting 5.0 acres. Receiving Stream: Tributary to South Branch Wyalusing Creek. Application received: September 22, 2004. Permit issued April 4, 2005.

**58040850. Jeremy Choplosky** (R. R. 2 Box 2015, Nicholson, PA 18466), commencement, operation and restoration of a bluestone quarry operation in Lenox Township, **Susquehanna County** affecting 5.0 acres. Receiving Stream: Tributaries to Martin Creek and Tunkhannock Creek. Application received: August 9, 2004. Permit issued April 5, 2005.

**58050804. Catherine and Stanley Rezykowski** (P. O. Box 4, Route 29, Dimock PA 18816), commencement, operation and restoration of a bluestone quarry operation in Dimock Township, **Susquehanna County** affecting 5.0 acres. Receiving Stream: Meshoppen Creek. Application received: January 31, 2005. Permit issued April 5, 2005.

**ABANDONED MINE RECLAMATION**

*Cambria Office: 286 Industrial Park Road, Ebensburg, PA 15931-4119, (814) 472-1800.*

Bond Forfeiture Contract Awarded	<b>BF 504-101.1</b>
Location	Mt. Pleasant Township, <b>Westmoreland County</b>
Description	Abandoned Mine Land Reclamation Project, Royal Reclamation, Inc., Mining Permit No. 65920202
Contractor	12th Congressional Region Equipment Co., Inc. Blairsville, PA 15717
Amount	\$48,719.13
Date of Award	April 6, 2005

**ACTIONS ON BLASTING ACTIVITY APPLICATIONS**

**Actions on applications under the Explosives Acts of 1937 and 1957 (43 P.S. §§ 151—161) and 25 Pa. Code § 211.124. Blasting activity performed as part of a coal or noncoal mining activity will be regulated by the mining permit for that coal or noncoal mining activity.**

*Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, (814) 342-8200.*

**14054006. Tom K. Associates** (Box 726, Lamont, PA 16851), for construction blasting, located in Benner Township, **Centre County**, with an expected duration of 120 days. Permit issued: April 5, 2005.

*Pottsville District Mining Office: 5 W. Laurel Boulevard, Pottsville, PA 17901, (570) 621-3118.*

**23054004. Eastern Blasting Co., Inc.**, (1292 Street Road, New Hope, PA 18938), construction blasting at Greystone Housing Development in Bethel Township, **Delaware County** with an expiration date of August 1, 2005. Permit issued April 4, 2005.

**67054009. Warren's Excavating & Drilling, Inc.**, (P. O. Box 189, Bowmansville, PA 17507-0189), construction blasting at Pleasant View Subdivision in Fairview Township, **York County** with an expiration date of March 31, 2006. Permit issued April 4, 2005.

**21054118. Brubacher Excavating, Inc.**, (P. O. Box 528, Bowmansville, PA 17507), blasting for Longs Dorf Cemetery in Silver Spring Township, **Cumberland County** with an expiration date of April 5, 2006. Permit issued April 4, 2005.

**40054103. Hayduk Enterprises**, (P. O. Box 554, Dalton, PA 18414), construction blasting for Chris Urbanski Project in Pittston Township, **Luzerne County** with an expiration date of December 31, 2005. Permit issued April 4, 2005.

**40054104. Austin Powder Company**, (25800 Science Park Drive, Cleveland, OH 44122), construction blasting for Crestwood Industrial Park in Wright Township, **Luzerne County** with an expiration date of April 1, 2006. Permit issued April 4, 2005.

**21054119. Brubacher Excavating, Inc.**, (P. O. Box 528, Bowmansville, PA 17507), construction blasting for Annendale Development in Dickinson Township, **Cumberland County** with an expiration date of April 6, 2006. Permit issued April 6, 2005.

**28054104. R & M Excavating**, (403 Hilltop Road, Newburg, PA 17240), construction blasting for Rine Home

in Guilford Township, **Franklin County** with an expiration date of April 1, 2006. Permit issued April 6, 2005.

**48054004. Schlouch Inc.**, (Excelsior Industrial Park, P. O. Box 69, Blandon, PA 19510), construction blasting at Eagles Landing in Upper Nazareth Township, **Northampton County** with an expiration date of April 29, 2006. Permit issued April 7, 2005.

**01054105. Hall Explosives, Inc.**, (2981 Elizabethtown Road, Hershey, PA 17033), construction blasting for Adams Commerce Center in Straban Township, **Adams County** with an expiration date of April 30, 2006. Permit issued April 8, 2005.

**46054107. Horst Drilling & Blasting, Inc.**, (141 Rancks Church Road, New Holland, PA 17557), construction blasting for Regency at Providence in Upper Providence Township, **Montgomery County** with an expiration date of April 11, 2006. Permit issued April 8, 2005.

## 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

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

**E50-227: Department of Transportation District 8-0**, 2140 Herr Street, Harrisburg, PA 17103-1699 in Carroll Township, **Perry County**, ACOE Baltimore District.

To remove the existing structure and then to construct and maintain a two span bridge with each span of 86 feet with an average underclearance of 13 feet across Sherman Creek (WWF) and associated improvements on SR 2003, Section 004, Segment 0060, Offset 0185 to improve the traffic safety condition located about 0.90 mile northeast of Shermans Dale Village (Shermans Dale, PA Quadrangle N: 17.2 inches; W: 4.0 inches) in Carroll Township, Perry County.

**E44-125: Department of Transportation District 2-0**, 1924 Daisy Street Extension, Clearfield, PA 16830 in Decatur Township, **Mifflin County**, ACOE Baltimore District.

To remove the existing structure and then to construct and maintain a 11-foot by 5-foot concrete box culvert at the channel of Wagner Run (CWF) and associated improvements on SR 0522, Section A02 to improve the alignment and safety of the road located in Wagner Village (Alfarata, PA Quadrangle N: 10.4 inches; W: 1.65 inches) in Decatur Township, Mifflin County.

**E36-785: Caernarvon Township**, 2147 Main Street, Narvon, PA 17555 in Caernarvon Township, **Lancaster County**, ACOE Baltimore District

To construct and maintain a twin box culvert with dimensions of 6 feet by 15 feet and 6.5 feet by 15 feet on Red School Road over the Conestogo River (WWF) located on the Morgantown, PA Quadrangle (N: 2.5 inches, W: 5.5 inches) in Caernarvon Township, Lancaster County.

**E01-252: Jeffrey W. Cooke**, 290 Schwartz Road, Gettysburg, PA 17325 in Mount Joy Township, **Adams County**, ACOE Baltimore District.

To construct and maintain: 1) a 36-inch by 20-foot culvert pipe to access Lot 2; 2) a 3.5-foot by 20-foot open bottom concrete box culvert to access Lot 6; and 3) a 3.5-foot by 22-foot by 20-foot open bottom concrete box culvert all in an UNT to Rock Creek (WWF) (Taneytown, PA Quadrangle N: 10.5 inches; W: 12.5 inches) in Mount Joy Township, Adams County.

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

**E59-464. Ben and JoAnn Eshleman**, 70 Conrad Road, Auburtis, PA 18011-2010, private driveway bridge in Chatham Township, **Tioga County**, ACOE Baltimore District (ASAPH, PA Quadrangle N: 22.35 inches; W: 7.84 inches).

To construct and maintain a steel I-beam bridge with wood decking 30 feet long by 13 feet wide on concrete abutments over Hornby Hollow off SR 4012 about 1/2 mile southwest of the intersection of SR 4012 with Route 249. The project will not impact wetlands while impacting about 25 feet of waterway and disturbing about 0.02 acre of earth. Hornby Hollow is a warm water fisheries trout stocked fishery.

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

**E02-584 Hanson Aggregates PMA, Inc.**, 2200 Springfield Pike, Connellsville, PA 15425. To amend permit for sand and gravel dredging in Conway, Economy, Midland and Shippingport Boroughs and Greene Township, **Beaver County**, Pittsburgh ACOE District (Baden, PA Quadrangle N: 5.1 inches; W: 16.0 inches and Latitude: 40° 39' 11"—Longitude: 80° 14' 25") and (Hookstown, PA Quadrangle N: 22.5 inches; W: 10.8 inches and Latitude: 40° 37' 26" and Longitude: 80° 27' 10"). To amend Permit E02-584, which authorizes commercial sand and gravel dredging in select areas of the Allegheny River (WWF) and Ohio River (WWF), subject to review of mussel surveys and prescribed setbacks in Allegheny, Armstrong, Beaver and Westmoreland Counties, to include Ohio River Mile Points 20.6 to 21.6 right descending bank in Conway and Economy Boroughs, Beaver County, and Ohio River Mile Points 35.5 to 36.0.

**E02-919 TriState River Products, Inc.**, Box 218, Beaver PA 15009-0218. To amend permit for sand and gravel dredging in Conway, Economy, Midland and Shippingport Boroughs, and Greene Township, **Beaver County**, Pittsburgh ACOE District (Baden, PA Quadrangle N: 5.1 inches; W: 16.0 inches and Latitude: 40° 39' 11"—Longitude: 80° 14' 25") and (Hookstown, PA Quadrangle N: 22.5 inches; W: 10.8 inches and Latitude: 40° 37' 26"—Longitude: 80° 27' 10"). To amend Permit E02-919, which authorizes commercial sand and gravel dredging in select areas of the Allegheny River (WWF) and Ohio River (WWF), subject to review of mussel surveys and prescribed setbacks in Allegheny, Armstrong, Beaver and Westmoreland Counties, to include Ohio River Mile Points 20.6 to 21.6 right descending bank in Conway and Economy Boroughs, Beaver County, and Ohio River Mile Points 35.5 to 36.0 in Midland and Shippingport Boroughs and Greene Township, Beaver County.

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

**E61-271, Cherrytree Township Supervisors**, 1311 Cherrytree Road, Titusville, PA 16354. T-649 Bridge, in Cherrytree Township, **Venango County**, ACOE Pittsburgh District (Dempseytown, PA Quadrangle N: 16.1 inches; W: 0.1 inch).

The applicant proposes to remove the existing structure and to construct and maintain a single span, composite, steel I-beam having a normal clear span of 33.05 feet and an underclearance of 5.9 feet across an UNT to Prather Creek on T-649 (Fairview Road) approximately 0.7 miles West of the intersection of T-649 and S.R. 4011. Project includes wing walls, rock riprap protection, drainage ditch energy dissipator and permanent PSS wetland impact of 0.02 acre (de minimis). The UNT to Prather Run is a perennial stream classified as a cold water fishery. Project proposes permanent PSS wetland impact of 0.02 acres (de minimis) and to directly affect a total of approximately 60 linear feet of stream channel.

## SPECIAL NOTICES

### Plan Revision Approvals under the Municipal Waste Planning, Recycling and Waste Reduction Act of 1988, Act 101

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

The Department of Environmental Protection (Department) approved the Municipal Waste Plan Revisions on February 24, 2005, for Armstrong and Beaver Counties.

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.

The plan revision is a public document and may be viewed at the Department regional office previously noted.

Questions concerning this approval should be directed to Sally Lohman, Chief, Waste Planning Section, Department of Environmental Protection, Bureau of Land Recycling and Waste Management, Division of Waste Minimization and Planning, P. O. Box 8472, Harrisburg, PA 17105-8472; or to Mark Vottero, Regional Planning and Recycling Coordinator, Bureau of Land Recycling and Waste Management at the previously noted regional office.

### Planning Grant Awards under section 901 of the Municipal Waste Planning Recycling and Waste Reduction Act of 1988, Act 101

The Department of Environmental Protection (Department) announces the following grants to counties under the Pennsylvania Municipal Waste Planning, Recycling and Waste Reduction Act of 1988, Act 101, section 901 and section 208 of the Waste Tire Recycling Act/Small Business and Household Pollution Prevention Act (Act 190).

Planning grants are awarded to counties for 80% of approved costs for preparing municipal waste management plans as required by Act 101 for carrying out related studies, surveys, investigations, inquiries, research and analysis, including those related to siting,



environmental mediation, education programs on pollution prevention and household hazardous waste and providing technical assistance to small businesses for pollution prevention. Grants may be awarded for feasibility studies and project development for municipal waste processing or disposal facilities, except for facilities for the combustion of municipal waste that are not proposed to be operated for the recovery of energy. All grant awards are predicated on the receipt of recycling fees required by

sections 701 and 702 of Act 101 and the availability of moneys in the Recycling Fund.

Inquiries regarding the grant offerings should be directed to Sally Lohman, Chief, Waste Planning Section, Department of Environmental Protection, Bureau of Land Recycling and Waste Management, Division of Waste Minimization and Planning, P. O. Box 8472, Harrisburg, PA 17105-8472.

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### Act 101, Section 901 Planning Grant

<i>Region</i>	<i>County</i>	<i>Applicant</i>	<i>Project Description</i>	<i>Grant Award</i>
Southwest	Beaver	Beaver County	Plan Revision	\$53,844

[Pa.B. Doc. No. 05-775. Filed for public inspection April 22, 2005, 9:00 a.m.]

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### Coastal Zone Advisory Committee Meeting

The Coastal Zone Advisory Committee will hold a meeting on June 15, 2005, from 9:30 a.m. to 12 p.m. in the 10th Floor Conference Room, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA.

Questions concerning this meeting should be directed to Andy Zemba, Water Planning Office, (717) 772-4785 or [azemba@state.pa.us](mailto:azemba@state.pa.us). The agenda and meeting materials for this meeting will be available by June 1, 2005, on the Department of Environmental Protection's (Department) website at [www.dep.state.pa.us](http://www.dep.state.pa.us) (DEP Keyword: Participate).

Persons with a disability who require accommodations to attend this meeting should contact the Department at (717) 772-4785 or through the Pennsylvania AT&T Relay Services at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

KATHLEEN A. MCGINTY,  
*Secretary*

[Pa.B. Doc. No. 05-776. Filed for public inspection April 22, 2005, 9:00 a.m.]

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## DEPARTMENT OF HEALTH

### Application of Allegheny General Hospital for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Allegheny General Hospital has requested an exception to the requirements of 28 Pa. Code §§ 101.4 and 107.23 (relating to definitions; and clinical department chairperson).

The request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, [paexcept@health.state.pa.us](mailto:paexcept@health.state.pa.us).

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division and address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Division at the previously listed address or phone number, for speech and/or hearing impaired persons V/TT (717) 783-6154 or the Pennsylvania AT&T Relay Services at (800) 654-5984.

CALVIN B. JOHNSON, M.D., M.P.H.,  
*Secretary*

[Pa.B. Doc. No. 05-777. Filed for public inspection April 22, 2005, 9:00 a.m.]

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### Application of Evangelical Ambulatory Surgical Center for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Evangelical Ambulatory Surgical Center has requested an exception to the requirements of 28 Pa. Code § 551.21 (relating to criteria for ambulatory surgery).

The request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, [paexcept@health.state.pa.us](mailto:paexcept@health.state.pa.us).

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division and address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation

to do so should contact the Division at the previously listed address or phone number, for speech and/or hearing impaired persons V/TT (717) 783-6154 or the Pennsylvania AT&T Relay Services at (800) 654-5984.

CALVIN B. JOHNSON, M.D., M.P.H.,  
Secretary

[Pa.B. Doc. No. 05-778. Filed for public inspection April 22, 2005, 9:00 a.m.]

### Decisions on Requests for Exceptions to Health Care Facility Regulations

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), effective June 6, 1998, the Department of Health (Department) has published in the *Pennsylvania Bulletin* all requests by entities licensed under the Health Care Facilities Act (35 P.S. §§ 448.101—448.904b) for exceptions to regulations in 28 Pa. Code Part IV Health Facilities, Subparts B—G.

Section 51.33(d) of 28 Pa. Code provides that the Department will publish notice of all approved exceptions on a periodic basis. The Department has determined that it will publish notice of all exceptions, both approved and denied. The following list contains the decisions made on exception requests published in the *Pennsylvania Bulletin* from October 1, 2004, through March 30, 2005. Future publications of decisions on exception requests will appear on a quarterly basis.

Requests for additional information on the exception requests and the Department's decision should be made to the relevant division of the Department. Inquiries regarding hospitals and ambulatory surgical facilities shall be addressed to the Division of Acute and Ambulatory Care, Sandra Knoble, Director, P. O. Box 90, Harrisburg, PA 17108. Inquiries regarding long-term care facilities shall be addressed to the Division of Nursing Care Facilities, William Bordner, Director, P. O. Box 90, Harrisburg, PA 17108. Persons requiring special assistance for speech and/or hearing impairment should call V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Services at (800) 654-5984 (TT).

#### Exception Requests—Hospitals

<i>Facility Name</i>	<i>Regulation</i>	<i>Relating to</i>	<i>Request Published</i>	<i>Decision</i>
Elk Regional Health	28 Pa. Code § 51.6	identification of personnel	11/20/04	granted
Milton S. Hershey Medical Center	28 Pa. Code § 51.6	identification of personnel	02/05/05	granted
Brookville Hospital	28 Pa. Code § 51.6(b)	staff identification	08/21/04	granted
Community Medical	28 Pa. Code § 51.22	cardiac catheterization	07/31/04	granted w/conditions
UPMC Northwest—Seneca	28 Pa. Code § 51.23	PET scanning services	12/11/04	granted
Altoona Regional Health System	28 Pa. Code § 107.2	medical staff membership podiatrists	01/22/05	granted
Healthsouth Nittany Valley Rehabilitation	28 Pa. Code § 107.2	medical staff membership podiatrists	01/22/05	granted
Evangelical Community Hospital	28 Pa. Code § 107.2	medical staff membership podiatrists	02/05/05	granted
Children's Hospital of Pittsburgh	28 Pa. Code § 107.2	medical staff membership psychologists	10/30/04	not necessary
Roxborough Memorial Hospital	28 Pa. Code § 107.2	medical staff membership podiatrists	12/11/04	granted
Hahneman University Hospital	28 Pa. Code § 107.2	medical staff membership podiatrists	12/11/04	granted
Brandywine Hospital	28 Pa. Code § 107.2	medical staff membership podiatrists	03/19/05	granted
Altoona Regional Health System	28 Pa. Code § 107.26(b)(2)	tissue committee meetings	01/22/05	granted
Indiana Regional Medical Center	28 Pa. Code § 107.26(b)(2)	tissue committee meetings	01/22/05	granted
Highlands Hospital	28 Pa. Code § 107.26(b)(2)	tissue committee meetings	02/26/05	granted
Altoona Regional Health System	28 Pa. Code § 107.32	medical staff meetings	01/22/05	denied
Roxborough Memorial Hospital	28 Pa. Code § 107.32	medical staff meetings	01/22/05	granted

<i>Facility Name</i>	<i>Regulation</i>	<i>Relating to</i>	<i>Request Published</i>	<i>Decision</i>
Hamot Medical Center	28 Pa. Code § 107.62(a)	oral orders—dietitians	02/05/05	granted
Indiana Regional Medical Center	28 Pa. Code § 107.62(a)	oral orders—laboratory medical techs	10/26/04	not necessary
WVHCS Hospital	28 Pa. Code § 107.62(a)	oral orders	12/18/04	denied
Clarion Hospital	28 Pa. Code § 107.64	administration of drugs	07/31/04	granted
Hospital of the Univeristy of Pennsylvania	28 Pa. Code § 107.64	administration of drugs paramedics	12/18/04	granted in part
Clarion Hospital	28 Pa. Code § 117.30	emergency paramedic services	07/31/04	granted
Alle-Kiski Medical Center	28 Pa. Code § 117.30	function of paramedics in hospitals	10/30/04	granted
Butler Memorial Hospital	28 Pa. Code § 127.32	written orders	02/12/05	denied
WVHCS	28 Pa. Code § 137.21(b)(9)	clean gynecology patients	01/22/05	granted in part
Hospital of the University of Pennsylvania	28 Pa. Code § 138.1	cardiac cath	10/16/04	not necessary
Mercy Hospital of Philadelphia	28 Pa. Code § 138.2	high-risk cardiac catheterization	02/26/05	denied
Mercy Hospital of Philadelphia	28 Pa. Code § 138.15	high-risk cardiac cath	02/26/05	denied
Mercy Hospital of Philadelphia	28 Pa. Code § 138.18(b)	high-risk cardiac cath	02/26/05	denied
Chester County Hospital	28 Pa. Code § 139.12(c)	neonatal care units	03/19/05	granted
Moses Taylor Hospital	28 Pa. Code § 139.17	neonatal intensive care	01/22/05	granted
Lewistown Hospital	28 Pa. Code § 143.5	medical supervision of podiatric patients	03/19/05	denied
UPMC Presbyterian Shadyside	28 Pa. Code § 153.1 (7.7.A1)	general operating rooms	01/22/05	granted
Good Samaritan Hospital Lebanon	28 Pa. Code § 153.1 (7.2.B10)	exam/treatment rooms	01/22/05	granted
Doylestown Hospital	28 Pa. Code § 153.1 (10.15.A2)	rehab patient room	01/22/05	granted
UPMC Northwest	28 Pa. Code § 153.1	9.2A.2(c) waiting space 9.2.A2(d) public toilets 9.2.B7 clean storage 9.2.B8 soiled holding	02/05/05	granted
St. Clair Hospital	28 Pa. Code § 153.1	7.7B1 preoperative holding 7.7B2 postanesthesia care units 7.7.B2 handwashing stations 7.5 medical gases related to postanesthesia care unit	11/06/04	granted in part
Crozer Chester Medical Center—Upland	28 Pa. Code § 153.1	7.2A1 patient rooms	11/20/04	granted
Elk Regional Health	28 Pa. Code § 153.1	7.10H1 cardiac cath lab	11/20/04	denied
Sunbury Community Hospital	28 Pa. Code § 153.1	7.6B12 and 7.6B13	12/11/04	granted
Alle-Kiski Medical Center	28 Pa. Code § 153.1	7.9.D7 table 7.5 medical air in ER examination	12/18/04	granted
Good Samaritan Hospital	28 Pa. Code § 153.1	7.9.D8 trauma/cardiac room	12/18/04	granted
St. Luke's Hospital—Bethlehem	28 Pa. Code § 153.1	7.2.A4 handwashing stations	02/26/05	granted

<i>Facility Name</i>	<i>Regulation</i>	<i>Relating to</i>	<i>Request Published</i>	<i>Decision</i>
Crozer Chester Medical Center	28 Pa. Code § 153.1	7.2.A1 maximum room capacity	02/12/05	granted
Magee-Womens Hospital	28 Pa. Code § 153.1	7.7.A1 general operating room size	02/26/05	granted

#### Exception Requests—Ambulatory Surgical Facilities

Ephrata Community Hospital	28 Pa. Code § 551.3	definition of ASF	01/22/05	denied
Four Seasons Endoscopy Center	28 Pa. Code § 551.3	definitions, classification levels (ii) Class B	03/19/05	denied
Center for Reproductive Surgery	28 Pa. Code § 551.21(d)(2)	criteria for ambulatory surgery	01/22/05	granted
Geisinger Medical Center ASF	28 Pa. Code §§ 553.1—553.4	ownership, governance management—governing body	01/08/05	granted
Geisinger Medical Staff Center ASF	28 Pa. Code § 553.31(b)	administrative policies and procedures	01/08/05	granted
Geisinger Medical Center	28 Pa. Code §§ 555.1—555.4	medical staff	01/08/05	granted
Geisinger Medical Center ASF	28 Pa. Code §§ 557.2—557.4	quality assurance and improvement—Plan, program, committee	01/08/05	granted
Geisinger Medical Center ASF	28 Pa. Code § 567.2(1)	quality assurance committee responsibilities	01/08/05	granted
Pennsylvania Eye Surgery Center	28 Pa. Code § 571.1	9.2.B3, 9.5.F2j and 9.5.F3	12/18/04	granted
The Surgery Center at Briton Lake, LLC	28 Pa. Code § 571.1	9.5F3(c) recovery bays	01/08/05	granted
Blake Gastroenterology Associates	28 Pa. Code § 571.1	9.5.C parking	08/14/04	granted
Mainline Surgery Center	28 Pa. Code § 571.1	9.5.F4 step down area	03/19/05	not necessary

#### Exception Requests—Nursing Care Facilities

The Lutheran Home at Topton	28 Pa. Code § 201.3	definitions	10/30/04	granted
Luther Crest Nursing Facility	28 Pa. Code § 201.3	definitions	10/30/04	granted
Penn Lutheran Village	28 Pa. Code § 201.3	definitions	10/30/04	granted
Pennknoll Village	28 Pa. Code § 201.3	definitions (nurse aides)	11/06/04	granted
Homewood at Plum Creek	28 Pa. Code § 201.3	definitions	11/20/04	granted
Church of the Brethren Home	28 Pa. Code § 201.3	definitions	12/11/04	granted
Lutheran Home at Kane	28 Pa. Code § 201.3	definitions	12/18/04	granted
The Mennonite Home	28 Pa. Code § 201.3	definitions	01/22/05	granted
Saunders House	28 Pa. Code § 201.3	definitions	01/22/05	granted
Manatawny Manor	28 Pa. Code § 201.3	definitions	02/05/05	granted
Saint Mary Manor	28 Pa. Code § 201.3	definitions	02/05/05	granted
The Patriot, A Choice	28 Pa. Code § 201.3	definitions	02/12/05	granted
Oil City Presbyterian Home	28 Pa. Code § 201.3	definitions	02/26/05	granted
Manchester Presbyterian Lodge	28 Pa. Code § 201.3	definitions	02/26/05	granted
Presbyterian Lodge	28 Pa. Code § 201.3	definitions	02/26/05	granted
Birchwood Nursing and Rehab Center	28 Pa. Code § 201.3	definitions	02/26/05	granted

<i>Facility Name</i>	<i>Regulation</i>	<i>Relating to</i>	<i>Request Published</i>	<i>Decision</i>
UPMC Northwest Transitional Care Unit	28 Pa. Code § 201.18(e)	management	11/06/04	temp granted
St. Joseph's Manor	28 Pa. Code § 201.18(e)	management	11/06/04	temp granted
HRH Transitional Care Unit	28 Pa. Code § 201.18(e)	management	11/06/04	temp granted
Scranton Health Care Center	28 Pa. Code § 205.6(a)	function of building	10/30/04	granted
Huntingdon Nursing & Rehab Center	28 Pa. Code § 205.6(a)	function of building	12/11/04	granted
Cumberland Crossings Retirement Community	28 Pa. Code § 205.6(a)	function of building	12/11/04	granted
Tandem Health Care of North Strabane	28 Pa. Code § 205.6(a)	function of building	12/18/04	granted
Bradford County Manor	28 Pa. Code § 205.6(a)	function of building	12/18/04	granted
West Shore Health and Rehab Center	28 Pa. Code § 205.6(a)	function of building	01/22/05	denied
Heartland Health Care Center	28 Pa. Code § 205.6(a)	function of building	01/22/05	denied
Sky Vue Terrace	28 Pa. Code § 205.6(a)	function of building	01/22/05	denied
The Shadyside Nursing and Rehab Center	28 Pa. Code § 205.6(a)	function of building	01/22/05	granted
Pine Run Health Care Center	28 Pa. Code § 205.6(a)	function of building	02/05/05	granted
Elm Terrace Gardens	28 Pa. Code § 205.17	stairways	11/06/04	granted
Pennswood Village	28 Pa. Code § 205.20(a)(c)	resident bedrooms	01/22/05	temp granted
Beverly Healthcare—Shipperville	28 Pa. Code § 205.27	lounge and recreation rooms	02/26/05	granted
Beverly Healthcare—Shipperville	28 Pa. Code § 205.33(a)	utility room	10/30/04	denied
Beverly Healthcare—Waynesburg	28 Pa. Code § 205.33(a)	utility room	10/30/04	denied
Sycamore Manor Health Center	28 Pa. Code § 205.33(a)	utility room	12/11/04	denied
The Jewish Home of Eastern Pennsylvania	28 Pa. Code § 205.36(h)	bathing facilities	02/05/05	granted
Mercy Jeannette Hospital	28 Pa. Code § 211.12(b)	nursing services	12/11/04	temp granted

CALVIN B. JOHNSON, M.D., M.P.H.,  
*Secretary*

[Pa.B. Doc. No. 05-779. Filed for public inspection April 22, 2005, 9:00 a.m.]

### **Integrated Human Immunodeficiency Virus (HIV) Planning Council Public Meeting**

The Statewide Integrated HIV Planning Council, established by the Department of Health (Department) under sections 301(a) and 317(b) of the Public Health Service Act (42 U.S.C.A. §§ 241(a) and 247(b)), will hold a public meeting on Tuesday, May 3, 2005, from 10 a.m. to 3 p.m. at the Best Western Inn and Suites, 815 South Eisenhower Boulevard, Middletown, PA 17057.

The Department reserves the right to cancel this meeting without prior notice.

For additional information or persons with a disability who wish to attend the meeting and require an auxiliary aid, service or other accommodation to do so, contact Joseph Pease, Department of Health, Bureau of Communicable Diseases, P. O. Box 90, Room 1010, Health and Welfare Building, Harrisburg, PA 17108, (717) 783-0572,

for speech and/or hearing impaired persons, V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Services at (800) 654-5984.

CALVIN B. JOHNSON, M.D., M.P.H.,  
*Secretary*

[Pa.B. Doc. No. 05-780. Filed for public inspection April 22, 2005, 9:00 a.m.]

### **Metabolic Screening Technical Advisory Committee Meeting**

The Newborn Screening and Follow-Up Program (Program), established under the Newborn Child Testing Act (35 P.S. §§ 621—625), will hold a public meeting on Tuesday, May 10, 2005, from 9 a.m. to 3 p.m. at the Richards Hall Conference Room, Dixon Center, 2986

North Second Street, Harrisburg, PA. Please R.S.V.P. by May 3, 2005, to Louise Banks at (717) 783-8143.

For additional information or persons with a disability who wish to attend the meeting and require an auxiliary aid, service or other accommodation to do so, contact Karen Espenshade, Director, Division of Newborn Disease Prevention and Identification, (717) 783-8143, for speech and/or hearing impaired persons, V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Services at (800) 654-5984.

CALVIN B. JOHNSON, M.D., M.P.H.,  
*Secretary*

[Pa.B. Doc. No. 05-781. Filed for public inspection April 22, 2005, 9:00 a.m.]

**Requests for Exception; Long-Term Care Nursing Facilities**

The following long-term care nursing facility is seeking an exception to 28 Pa. Code §§ 201.17, 201.18(e), 205.24, 205.25(a) and (b), 205.26(c) and (d), 205.27, 205.28(a), 205.33(a) and (b) and 205.36(h).

HealthSouth Transitional Rehabilitation Unit  
1850 Normandie Drive  
York Pa, 17404

The following long-term care nursing facility is seeking an exception to 28 Pa. Code §§ 205.6(a), 205.24 and 205.27 (relating to function of building; dining room; and lounge and recreation rooms):

Jameson Memorial Hospital Transitional Care Unit  
1211 Wilmington Avenue  
New Castle, PA 16105

The following long-term care nursing facility is seeking an exception to 28 Pa. Code § 205.27 (relating to lounge and recreation rooms):

UPMC, Transitional Care Unit  
200 Lothrop Street  
Pittsburgh, PA 15213

These requests are on file with the Department of Health (Department). Persons may receive a copy of a request for exception by requesting a copy from the Division of Nursing Care Facilities, Room 526, Health and Welfare Building, Harrisburg, PA 17120, (717) 787-1816, fax (717) 772-2163, paexcept@health.state.pa.us.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division and address listed previously.

Comments received by the Department within 15 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who require an alternative format of this document or who wish to comment in an alternative format (for example, large print, audiotape or Braille) should contact the Division of Nursing Care Facilities at the address or phone number listed previ-

ously, for speech and/or hearing impaired persons, V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

CALVIN B. JOHNSON, M.D., M.P.H.,  
*Secretary*

[Pa.B. Doc. No. 05-782. Filed for public inspection April 22, 2005, 9:00 a.m.]

**Traumatic Brain Injury Advisory Board Meeting**

The Traumatic Brain Injury Advisory Board, established under the Federal Traumatic Brain Injury Act of 1996 (42 U.S.C.A. § 300d-52), will hold a public meeting on Thursday, May 19, 2005, from 10 a.m. to 3 p.m. in the Richards Recital Hall, Dixon Center, 2986 North Second Street, Harrisburg, PA.

For additional information, or persons with a disability who wish to attend the meeting and require an auxiliary aid, service or other accommodation to do so, contact Carolyn S. Cass, Director, Division of Child and Adult Health Services, (717) 783-5436. For speech and/or hearing impaired persons, contact V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Services at (800) 654-5984.

This meeting is subject to cancellation without notice.

CALVIN B. JOHNSON, M.D., M.P.H.,  
*Secretary*

[Pa.B. Doc. No. 05-783. Filed for public inspection April 22, 2005, 9:00 a.m.]

**DEPARTMENT OF PUBLIC WELFARE**

**Fee Increase for Emergency Room, Clinic and Medical School Clinic Visits**

The Department of Public Welfare (Department) announces that the fees for emergency room, clinic and medical school clinic visits provided under 55 Pa. Code Chapter 1221 (relating to clinic and emergency room services) are increased effective with dates of service on and after January 1, 2005.

<i>Procedure Code</i>	<i>Description</i>	<i>Current Fee</i>	<i>Increased Fee Effective January 1, 2005</i>
W9046	Emergency room support services, basic, nonemergency services	\$21	\$30
W9048	Emergency room support services, basic, emergency services	\$65	\$100
W9045	Emergency room support services, special, nonemergency services	\$24	\$35

<i>Procedure Code</i>	<i>Description</i>	<i>Current Fee</i>	<i>Increased Fee Effective January 1, 2005</i>
W9047	Emergency room support services, special, emergency services	\$70	\$105
W9051	Basic hospital outpatient clinic visit	\$35	\$53
W9049	Hospital outpatient clinic visit	\$40	\$60
W9064	Medical school clinic visit	\$40	\$60

#### *Fiscal Impact*

The cost of these increases is estimated at \$2.824 million (\$1.303 million in State funds) in Fiscal Year (FY) 2004-2005. The FY 2005-2006 cost is estimated at \$8.471 million (\$3.833 million in State funds).

#### *Public Comment*

Interested persons are invited to submit written comments to this notice within 30 days of this publication to the Department of Public Welfare, Office of Medical Assistance Programs, c/o Deputy Secretary's Office, Attention: Regulations Coordinator, Room 515 Health and Welfare Building, Harrisburg, PA 17120. Comments received within 30 days will be reviewed and considered for any subsequent revision of this notice.

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

ESTELLE B. RICHMAN,  
*Secretary*

**Fiscal Note:** 14-NOT-413. (1) General Fund; (2) Implementing Year 2004-05 is \$1,303,000; (3) 1st Succeeding Year 2005-06 is \$3,833,000; 2nd Succeeding Year 2006-07 is \$3,843,000; 3rd Succeeding Year 2007-08 is \$3,843,000; 4th Succeeding Year 2008-09 is \$3,843,000; 5th Succeeding Year 2009-10 is \$3,843,000; (4) 2003-04 Program—\$727,979,000; 2002-03 Program—\$666,832,000; 2001-02 Program—\$705,750,000; (7) Medical Assistance—Outpatient; (8) recommends adoption. The costs outlined for FY 2004-05 have been included in the General Appropriation Act of 2004 (Act 7A). Fiscal Year 2005-06 costs are reflected in the proposed budget for the Department.

[Pa.B. Doc. No. 05-784. Filed for public inspection April 22, 2005, 9:00 a.m.]

## DEPARTMENT OF REVENUE

### Pennsylvania Fast \$50 Instant Lottery Game

Under the State Lottery Law (72 P. S. §§ 3761-101—3761-314) and 61 Pa. Code § 819.203 (relating to notice of instant game rules), the Secretary of Revenue hereby provides public notice of the rules for the following instant lottery game:

1. *Name:* The name of the game is Pennsylvania Fast \$50.

2. *Price:* The price of a Pennsylvania Fast \$50 instant lottery game ticket is \$1.

3. *Play Symbols:* Each Pennsylvania Fast \$50 instant lottery game ticket will contain one play area containing six prize play symbols and a "BONUS BOX." The prize play symbols and their captions located in the play area are: FREE (TICKET), \$2<sup>00</sup> (TWO DOL), \$4<sup>00</sup> (FOR DOL), \$5<sup>00</sup> (FIV DOL), \$10<sup>00</sup> (TEN DOL), \$20\$ (TWENTY), \$50\$ (FIFTY), \$100 (ONE HUN) and \$5,000 (FIV THO). The Play symbols located in the "BONUS BOX" are: FREE (TICKET) Symbol, Star Symbol (STAR), Coin Symbol (COIN), Moneybag Symbol (MNYBAG), Diamond Symbol (DMND), Gold Bar Symbol (GOLD) and BILL Symbol (WIN \$50).

4. *Prizes:* The prizes that can be won in this game are: Free Ticket, \$2, \$4, \$5, \$10, \$20, \$50, \$100 and \$5,000.

5. *Approximate Number of Tickets Printed for the Game:* Approximately 9,600,000 tickets will be printed for the Pennsylvania Fast \$50 instant lottery game.

#### 6. *Determination of Prize Winners:*

(a) Holders of tickets with three matching play symbols of \$5,000 (FIV THO) in the play area on a single ticket, shall be entitled to a prize of \$5,000.

(b) Holders of tickets with three matching play symbols of \$100 (ONE HUN) in the play area on a single ticket, shall be entitled to a prize of \$100.

(c) Holders of tickets with three matching play symbols of \$50\$ (FIFTY) in the play area on a single ticket, shall be entitled to a prize of \$50.

(d) Holders of tickets with a BILL Symbol (WIN \$50) in the "BONUS BOX", on a single ticket, shall be entitled to a prize of \$50.

(e) Holders of tickets with three matching play symbols of \$20\$ (TWENTY) in the play area on a single ticket, shall be entitled to a prize of \$20.

(f) Holders of tickets with three matching play symbols of \$10<sup>00</sup> (TEN DOL) in the play area on a single ticket, shall be entitled to a prize of \$10.

(g) Holders of tickets with three matching play symbols of \$5<sup>00</sup> (FIV DOL) in the play area on a single ticket, shall be entitled to a prize of \$5.

(h) Holders of tickets with three matching play symbols of \$4<sup>00</sup> (FOR DOL) in the play area on a single ticket, shall be entitled to a prize of \$4.

(i) Holders of tickets with three matching play symbols of \$2<sup>00</sup> (TWO DOL) in the play area on a single ticket, shall be entitled to a prize of \$2.

(j) Holders of tickets with three matching play symbols of FREE (TICKET) in the play area on a single ticket, shall be entitled to a prize of one Pennsylvania Fast \$50 instant game ticket or one Pennsylvania Lottery instant game ticket of equivalent sale price which is currently on sale.

(k) Holders of tickets with a FREE (TICKET) Symbol in the "BONUS BOX," on a single ticket, shall be entitled to a prize of one Pennsylvania Fast \$50 instant game ticket or one Pennsylvania Lottery instant game ticket of equivalent sale price which is currently on sale.

7. *Number and Description of Prizes and Approximate Odds:* The following table sets forth the approximate

number of winners, amounts of prizes and approximate odds of winning:

<i>Get</i>	<i>Win</i>	<i>Approximate Odds of 1 In:</i>	<i>Approximate No. of Winners Per 9,600,000 Tickets</i>
3—FREE's	TICKET	20	480,000
FREE (BONUS BOX)	TICKET	20	480,000
3—\$2's	\$2	16.67	576,000
3—\$4's	\$4	37.50	256,000
3—\$5's	\$5	75	128,000
3—\$10's	\$10	300	32,000
3—\$20's	\$20	300	32,000
3—\$50's	\$50	792.08	12,120
BILL (BONUS BOX)	\$50	800	12,000
3—\$100's	\$100	240,000	40
3—\$5,000's	\$5,000	1,920,000	5

BILL=In BONUS BOX win \$50 automatically.

Prizes, including top prizes, are subject to availability at the time of purchase.

8. *Retailer Incentive Awards:* The Lottery may conduct a separate Retailer Incentive Game for retailers who sell Pennsylvania Fast \$50 instant lottery game tickets. The conduct of the game will be governed by 61 Pa. Code § 819.222 (relating to retailer bonuses and incentives).

9. *Unclaimed Prize Money:* For a period of 1 year from the announced close of Pennsylvania Fast \$50, prize money from winning Pennsylvania Fast \$50 instant lottery game tickets will be retained by the Secretary for payment to the persons entitled thereto. If no claim is made within 1 year of the announced close of the Pennsylvania Fast \$50 instant lottery game, the right of a ticket holder to claim the prize represented by the ticket, if any, will expire and the prize money will be paid into the State Lottery Fund and used for purposes provided for by statute.

10. *Governing Law:* In purchasing a ticket, the customer agrees to comply with and abide by the State Lottery Law, 61 Pa. Code Part V (relating to State Lotteries) and the provisions contained in this notice.

11. *Termination of the Game:* The Secretary may announce a termination date, after which no further tickets from this game may be sold. The announcement will be disseminated through media used to advertise or promote Pennsylvania Fast \$50 or through normal communications methods.

GREGORY C. FAJT,  
Secretary

[Pa.B. Doc. No. 05-785. Filed for public inspection April 22, 2005, 9:00 a.m.]

## Pennsylvania Roulette Riches Instant Lottery Game

Under the State Lottery Law (72 P. S. §§ 3761-101—3761-314) and 61 Pa. Code § 819.203 (relating to notice of instant game rules), the Secretary of Revenue hereby provides public notice of the rules for the following instant lottery game:

1. *Name:* The name of the game is Pennsylvania Roulette Riches.

2. *Price:* The price of a Pennsylvania Roulette Riches instant lottery game ticket is \$5.

3. *Play Symbols:* Each Pennsylvania Roulette Riches instant lottery game ticket will contain one play area featuring a "ROULETTE NUMBERS" area and a "YOUR NUMBERS" area. The play symbols and their captions located in the "ROULETTE NUMBERS" area are: 1 (ONE), 2 (TWO), 3 (THREE), 4 (FOUR), 5 (FIVE), 6 (SIX), 7 (SEVEN), 8 (EIGHT), 9 (NINE), 10 (TEN), 11 (ELEVN), 12 (TWLV), 13 (THRTN), 14 (FORTN), 15 (FIFTN), 16 (SIXTN), 17 (SVNTN), 18 (EGHTN), 19 (NINTN), 20 (TWENTY), 21 (TWYONE), 22 (TWY TWO), 23 (TWYTHR) and 24 (TWYFOR). The play symbols and their captions located in the "YOUR NUMBERS" area are: 1 (ONE), 2 (TWO), 3 (THREE), 4 (FOUR), 5 (FIVE), 6 (SIX), 7 (SEVEN), 8 (EIGHT), 9 (NINE), 10 (TEN), 11 (ELEVN), 12 (TWLV), 13 (THRTN), 14 (FORTN), 15 (FIFTN), 16 (SIXTN), 17 (SVNTN), 18 (EGHTN), 19 (NINTN), 20 (TWENTY), 21 (TWYONE), 22 (TWY TWO), 23 (TWYTHR), 24 (TWYFOR) and a Moneybag Symbol (MNY-BAG).

4. *Prize Symbols:* The prize symbols and their captions located in the "YOUR NUMBERS" area are: \$2.<sup>00</sup> (TWO DOL), \$5.<sup>00</sup> (FIV DOL), \$10.<sup>00</sup> (TEN DOL), \$15\$ (FIFTN), \$20\$ (TWENTY), \$50\$ (FIFTY), \$100 (ONE HUN), \$500 (FIV HUN), \$1,000 (ONE THO), \$50,000 (FTY THO) and \$100,000 (ONEHUNTHO).

5. *Prizes:* The prizes that can be won in this game are \$2, \$5, \$10, \$15, \$20, \$50, \$100, \$500, \$1,000, \$50,000 and \$100,000. A player can win up to ten times on a ticket.

6. *Approximate Number of Tickets Printed for the Game:* Approximately 4,800,000 tickets will be printed for the Pennsylvania Roulette Riches instant lottery game.

7. *Determination of Prize Winners:*

(a) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "ROULETTE NUMBERS" play symbols and a prize symbol of \$100,000 (ONEHUNTHO) appears under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$100,000.

(b) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the



“ROULETTE NUMBERS” play symbols and a prize symbol of \$50,000 (FTY THO) appears under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$50,000.

(c) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “ROULETTE NUMBERS” play symbols and a prize symbol of \$1,000 (ONE THO) appears under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$1,000.

(d) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a Moneybag Symbol (MNY-BAG), and a prize symbol of \$1,000 (ONE THO) appears under the Moneybag Symbol (MNY-BAG) on a single ticket, shall be entitled to a prize of \$1,000.

(e) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “ROULETTE NUMBERS” play symbols and a prize symbol of \$500 (FIV HUN) appears under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$500.

(f) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a Moneybag Symbol (MNY-BAG), and a prize symbol of \$500 (FIV HUN) appears under the Moneybag Symbol (MNY-BAG) on a single ticket, shall be entitled to a prize of \$500.

(g) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “ROULETTE NUMBERS” play symbols and a prize symbol of \$100 (ONE HUN) appears under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$100.

(h) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a Moneybag Symbol (MNY-BAG), and a prize symbol of \$100 (ONE HUN) appears under the Moneybag Symbol (MNY-BAG) on a single ticket, shall be entitled to a prize of \$100.

(i) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “ROULETTE NUMBERS” play symbols and a prize symbol of \$50 (FIFTY) appears under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$50.

(j) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a Moneybag Symbol (MNY-BAG), and a prize symbol of \$50 (FIFTY) appears under the Moneybag Symbol (MNY-BAG) on a single ticket, shall be entitled to a prize of \$50.

(k) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “ROULETTE NUMBERS” play symbols and a prize sym-

bol of \$20 (TWENTY) appears under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$20.

(l) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a Moneybag Symbol (MNY-BAG), and a prize symbol of \$20 (TWENTY) appears under the Moneybag Symbol (MNY-BAG) on a single ticket, shall be entitled to a prize of \$20.

(m) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “ROULETTE NUMBERS” play symbols and a prize symbol of \$15 (FIFTN) appears under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$15.

(n) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a Moneybag Symbol (MNY-BAG), and a prize symbol of \$15 (FIFTN) appears under the Moneybag Symbol (MNY-BAG) on a single ticket, shall be entitled to a prize of \$15.

(o) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “ROULETTE NUMBERS” play symbols and a prize symbol of \$10 (TEN DOL) appears under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$10.

(p) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a Moneybag Symbol (MNY-BAG), and a prize symbol of \$10 (TEN DOL) appears under the Moneybag Symbol (MNY-BAG) on a single ticket, shall be entitled to a prize of \$10.

(q) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “ROULETTE NUMBERS” play symbols and a prize symbol of \$5 (FIV DOL) appears under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$5.

(r) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a Moneybag Symbol (MNY-BAG), and a prize symbol of \$5 (FIV DOL) appears under the Moneybag Symbol (MNY-BAG) on a single ticket, shall be entitled to a prize of \$5.

(s) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “ROULETTE NUMBERS” play symbols and a prize symbol of \$2 (TWO DOL) appears under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$2.

8. *Number and Description of Prizes and Approximate Odds:* The following table sets forth the approximate number of winners, amounts of prizes and approximate odds of winning:

*When Any of Your Numbers Match Any of the Roulette Numbers, Win With Prize(s) of:*

\$5  
 \$5 w/Moneybag  
 \$2 × 5  
 \$5 × 2  
 \$10  
 \$10 w/Moneybag  
 \$5 × 3  
 \$10 + \$5

*Win:*  
 \$5  
 \$5  
 \$10  
 \$10  
 \$10  
 \$10  
 \$15  
 \$15

*Approximate Odds 1 In:*  
 15  
 15  
 75  
 150  
 150  
 150  
 300  
 300

*Approximate No. of Winners Per 4,800,000 Tickets*

320,000  
 320,000  
 64,000  
 32,000  
 32,000  
 32,000  
 16,000  
 16,000

When Any of Your Numbers  
Match Any of the Roulette  
Numbers, Win With Prize(s)  
of:

	Win:	Approximate Odds 1 In:	Approximate No. of Winners Per 4,800,000 Tickets
\$15	\$15	200	24,000
\$15 w/Moneybag	\$15	200	24,000
\$5 × 4	\$20	300	16,000
\$10 × 2	\$20	600	8,000
\$20	\$20	200	24,000
\$20 w/Moneybag	\$20	150	32,000
\$5 × 10	\$50	200	24,000
\$10 × 5	\$50	300	16,000
\$50	\$50	200	24,000
\$50 w/Moneybag	\$50	300	16,000
\$10 × 10	\$100	480	10,000
\$20 × 5	\$100	480	10,000
\$100	\$100	480	10,000
\$100 w/Moneybag	\$100	480	10,000
\$50 × 10	\$500	20,000	240
\$100 × 5	\$500	24,000	200
\$500	\$500	24,000	200
\$500 w/Moneybag	\$500	24,000	200
\$100 × 10	\$1,000	480,000	10
\$1,000	\$1,000	480,000	10
\$1,000 w/Moneybag	\$1,000	480,000	10
\$50,000	\$50,000	960,000	5
\$100,000	\$100,000	960,000	5

Moneybag—Win prize automatically

Prizes, including the top prizes, are subject to availability at the time of purchase.

9. *Retailer Incentive Awards:* The Lottery may conduct a separate Retailer Incentive Game for retailers who sell Pennsylvania Roulette Riches instant lottery game tickets. The conduct of the game will be governed by 61 Pa. Code § 819.222 (relating to retailer bonuses and incentives).

10. *Unclaimed Prize Money:* For a period of 1 year from the announced close of Pennsylvania Roulette Riches, prize money from winning Pennsylvania Roulette Riches instant lottery game tickets will be retained by the Secretary for payment to the persons entitled thereto. If no claim is made within 1 year of the announced close of the Pennsylvania Roulette Riches instant lottery game, the right of a ticket holder to claim the prize represented by the ticket, if any, will expire and the prize money will

be paid into the State Lottery Fund and used for purposes provided for by statute.

11. *Governing Law:* In purchasing a ticket, the customer agrees to comply with and abide by the State Lottery Law, 61 Pa. Code Part V (relating to State Lotteries) and the provisions contained in this notice.

12. *Termination of the Game:* The Secretary may announce a termination date, after which no further tickets from this game may be sold. The announcement will be disseminated through media used to advertise or promote Pennsylvania Roulette Riches or through normal communications methods.

GREGORY C. FAJT,  
Secretary

[Pa.B. Doc. No. 05-786. Filed for public inspection April 22, 2005, 9:00 a.m.]

## INDEPENDENT REGULATORY REVIEW COMMISSION

### Notice of Comments Issued

Section 5(g) of the Regulatory Review Act (71 P. S. § 745.5(g)) provides that the Independent Regulatory Review Commission (Commission) may issue comments within 30 days of the close of the public comment period. The Commission comments are based upon the criteria contained in section 5.2 of the Regulatory Review Act (71 P. S. § 745.5b).

The Commission has issued comments on the following proposed regulation. The agency must consider these comments in preparing the final-form regulation. The final-form regulation must be submitted within 2 years of the close of the public comment period or it will be deemed withdrawn.

<i>Reg. No.</i>	<i>Agency/Title</i>	<i>Close of the Public Comment Period</i>	<i>IRRC Comments Issued</i>
16A-4919	State Board of Medicine Registration and Practice of Acupuncturists 35 Pa.B. 1210 (February 12, 2005)	3/14/05	4/13/05
16A-698	State Board of Social Workers, Marriage and Family Therapists and Professional Counselors Supervised Clinical Experience 35 Pa.B. 1221 (February 12, 2005)	3/14/05	4/13/05
16A-5120	State Board of Nursing Dietitian-Nutritionists 35 Pa.B. 1213 (February 12, 2005)	3/14/05	4/13/05
#16A-4814	State Board of Funeral Directors Unprofessional Conduct 35 Pa.B. 1208 (February 12, 2005)	3/14/05	4/13/05

**State Board of Medicine #16A-4919 (IRRC #2455)  
Registration and Practice of Acupuncturists  
April 13, 2005**

We submit for your consideration the following comments that include references to the criteria in the Regulatory Review Act (71 P. S. § 745.5b) which have not been met. The State Board of Medicine (Board) must respond to these comments when it submits the final-form regulation. The public comment period for this regulation closed on March 14, 2005. If the final-form regulation is not delivered within two years of the close of the public comment period, the regulation will be deemed withdrawn.

**1. Section 18.11. Definitions.—Clarity; Protection of the public health.**

*Acupuncture examination*

This definition states, in part, the following: “The Board recognizes the combination of the NCCAOM examinations in acupuncture and sterilization procedures as an acupuncture examination.” This proposal expands the definition of “acupuncture” to include “supplemental techniques.” It is our understanding that the NCCAOM offers five examinations that cover various aspects of the field of acupuncture, including “supplemental techniques.” Did the Board consider adding any of these additional examinations, such as the examination in Chinese Herbology, to the acupuncture examination requirements?

*NCCAOM*

This definition is an acronym for the National Certification Commission for Acupuncture and Oriental Medicine. The final-form regulation should be amended to reflect the correct acronym, NCCAOM.

**2. Section 18.13. Requirements for registration as an acupuncturist.—Protection of the public health.**

Subsection (a)(2) states that if an acupuncture examination was not taken in English, the Board will accept a passing score if the applicant has also secured a score of 550 on the test of English as a Foreign Language (TOEFL). The Association for Professional Acupuncture in Pennsylvania (Association) has suggested that applicants be required to take the Test for Spoken English (TSE) in addition to the TOEFL. The Association’s comments noted the following: “The TSE is an inexpensive and reasonable test and we feel the issue of being able to verbally

communicate with the patient is important in regards to public safety.” Has the Board considered requiring the TSE for applicants who took the acupuncture examination in a language other than English?

**State Board of Social Workers, Marriage and  
Family Therapists and Professional  
Counselors Regulation #16A-698 (IRRC #2458)  
Supervised Clinical Experience  
April 13, 2005**

We submit for your consideration the following comments that include references to the criteria in the Regulatory Review Act (71 P. S. § 745.5b) which have not been met. The State Board of Social Workers, Marriage and Family Therapists and Professional Counselors (Board) must respond to these comments when it submits the final-form regulation. The public comment period for this regulation closed on March 14, 2005. If the final-form regulation is not delivered within two years of the close of the public comment period, the regulation will be deemed withdrawn.

**Section 47.12c. Licensed clinical social worker.**

**Section 48.13. Licensed MFT [ marriage and family therapist ].**

**Section 49.13. Licensed professional counselor.—Clarity.**

*Subsection (b) Supervised clinical experience.*

This subsection sets forth the requirements and procedures for supervised experience for applicants for licensure. The proposed regulation adds identical language to Subsection (b)(6) in Sections 47.12c, 48.13 and 49.13. Currently, Subsection (b)(6) limits a licensee, qualified to act as a supervisor, to supervising no more than six supervisees at the same time. The proposed regulation states that this limitation “does not apply to supervised experience obtained in group sessions within an educational, institutional or agency setting.” We have two concerns.

First, the terminology is used inconsistently. The proposed regulation uses the term “group sessions” while existing regulations use the term “group setting” for what appears to be the same purpose. Under existing language in Subsection (b)(5), a supervisor must meet for two hours with a supervisee during each 40-hour period of supervised experience. The supervisor must meet individually

with a supervisee for at least one of the two hours. Subsection (b)(5) also states that the supervisor "may" meet with supervisees in a "group setting" for one of the required two hours. Are the terms "group setting" and "group sessions" synonymous? If so, the Board should use one term consistently. Further, the exception to the limit of six supervisees should be specifically linked to the option of meeting with a group of supervisees for one hour during every 40-hour period.

Second, the term "educational, institutional or agency setting" is not defined. It is our understanding that this term includes schools, universities, hospitals and nursing homes. If this term means an accredited school or university, or licensed health care facility, this should be clearly indicated in a definition for this term in the final-form regulation.

**State Board of Funeral Directors Regulation  
#16A-4814 (IRRC #2459)**

**Unprofessional Conduct**

**April 13, 2005**

We submit for your consideration the following comments that include references to the criteria in the Regulatory Review Act (71 P. S. § 745.5b) which have not been met. The State Board of Funeral Directors (Board) must respond to these comments when it submits the final-form regulation. The public comment period for this regulation closed on March 14, 2005. If the final-form regulation is not delivered within two years of the close of the public comment period, the regulation will be deemed withdrawn.

**Section 13.202. Unprofessional conduct.—Consistency with existing federal regulations; Reasonableness; Clarity.**

*Subparagraph (11)(i)*

We have two concerns with this subparagraph.

First, it contains language that is not found in the Federal Trade Commission's (FTC) Funeral Rule (16 CFR 453.5(a)). The language in this subparagraph expands the scope of this provision beyond the Funeral Rule by including "other services." The Board should use language that is consistent with the Funeral Rule, add a citation to the appropriate section of the Funeral Rule or explain why it has included "other services."

If the final-form regulation retains this phrase, it should clearly state what "other services" a funeral director may provide without permission if there is a "legitimate need" to provide those services.

Also, the Board needs to clarify what it considers to be a "legitimate need" to provide services without obtaining prior permission.

Second, it does not appear that the Board sought an exemption from the FTC, as required by the provisions of 16 CFR 453.9 (relating to State exemptions). This federal regulation provides a procedure for states to apply to the FTC for an exemption when the state's requirements, relating to the Funeral Rule, would be more stringent than the FTC regulations. The House Professional Licensure Committee (House Committee) questioned whether the Board should seek an exemption from the FTC on these provisions. We share this concern. Has the Board applied for an exemption or considered doing so?

*Paragraph (13)*

Commentators have indicated that this paragraph, if applied to pre-need contracts, is contrary to contract law

and would negate a substantial portion of their business. Also, the House Committee questioned if this provision will be applied to pre-need contracts. The Board's counsel has indicated that the Board did not intend to apply this provision to pre-need contracts. For reasonableness and clarity, the Board should insert language into this section that excludes pre-need contracts and clearly delineates the circumstances under which this provision will be applied.

*Paragraph (14)*

This paragraph contains the phrase "funeral entity." The Board's counsel has indicated that this is not the same as the presently defined term "funeral establishment." For clarity, the Board should add a definition for "funeral entity" to the appropriate section.

*Paragraph (16)*

We have two concerns with this paragraph.

First, it would require a funeral director to permit an immediate family member of a decedent to have the opportunity to pay last respects when the wishes of the decedent, or the person with the right of final disposition of the remains, state otherwise.

The House Committee asked the Board to "consider the circumstances in which a decedent's will conflicts with the provision of this paragraph" and suggests that an exception be included. We agree. We also note that 20 Pa.C.S. § 305 (relating to right to dispose of a decedent's remains) provides for the legal right to control the final disposition of a deceased person's remains.

The Board should insert language that will give clear guidance to funeral directors in the situation where a legally executed will, or the request of the person with the right of final disposition, conflicts with the proposed language in this paragraph.

Second, this paragraph contains a vague reference to "funeral services or merchandise." Other portions of this regulation use the phrase "funeral goods and services." Neither of these phrases is defined. Therefore, for clarity, one phrase should be used consistently throughout the regulation and it should be defined in Section 13.1 (relating to definitions).

*Paragraph (17)*

The provisions in this paragraph are similar to an existing requirement in Section 13.202(1) (relating to unprofessional conduct). Therefore, this paragraph is duplicative and should be deleted from the final-form regulation.

**State Board of Nursing Regulation #16A-5120  
(IRRC #2457)**

**Dietitian-Nutritionists**

**April 13, 2005**

We submit for your consideration the following comments that include references to the criteria in the Regulatory Review Act (71 P. S. § 745.5b) which have not been met. The State Board of Nursing (Board) must respond to these comments when it submits the final-form regulation. The public comment period for this regulation closed on March 14, 2005. If the final-form

regulation is not delivered within two years of the close of the public comment period, the regulation will be deemed withdrawn.

**1. Section 21.701. Definitions.—Protection of the public safety and welfare; Clarity.**

*Sexual impropriety, sexual violation*

The Board's proposed provisions on sexual misconduct for licensed dietitian-nutritionists (LDNs) differ from the parallel provisions in existing regulation for Registered Nurses (RNs) and Licensed Practical Nurses (LPNs). (See 49 Pa. Code §§ 21.1, 21.18, 21.141 and 21.148.) While we recognize that the scope of practice of nurses differs from that of LDNs, we note the following:

- The definition of "sexual impropriety" for LDNs differs from the definition of this term for RNs and LPNs in 49 Pa. Code §§ 21.1 and 21.141. Paragraph (iv) lists the offense of discussing or commenting on a "patient's potential sexual history." It is not clear what this offense entails. Another difference is that Paragraph (iv) does not include the phrase "potential sexual performance" as used in the RN and LPN regulations.

- The definition of "sexual impropriety" lists in Paragraph (iii) the offense of "examining or touching genitals or breasts of a patient." This differs from the RN and LPN definitions in three ways. First, this offense is listed in the definition of "sexual violation" in both 49 Pa. Code §§ 21.1 and 21.141. Second, the proposed definition omits the phrase "or other body part" as used in the definition of "sexual violation" in 49 Pa. Code §§ 21.1 and 21.141. Third, the RN and LPN definitions also contain qualifiers including "for any purpose other than appropriate examination or treatment. . . ."

The Board should amend these LDN definitions to parallel the definitions used for RNs and LPNs. The Board should also ensure that the level of detail in the regulation is sufficient to enforce the regulation and prosecute actions that constitute sexual misconduct by LDNs.

Finally, the definition of "sexual impropriety" includes a substantive provision in the last sentence of Paragraph (iv). Substantive provisions in definitions are not enforceable. We recommend deleting this sentence from this definition because its content is in the last sentence of Section 21.704(c).

*Patient*

The term "patient" is defined in this section. However, the term "client" is also used in the regulation. If these terms have the same meaning, the Board should use the term "patient" consistently in the regulation and delete use of the term "client." If there is a distinction between the two terms, the Board should add a definition of "client."

*Professional relationship*

This term is used to set limitations on interaction between a licensee and a patient, particularly relating to the definition of "sexual violation." A definition of "professional relationship" is needed to establish when the provisions of the regulation that use this term apply. It should clearly state when the professional relationship is established and when it is terminated.

**2. Section 21.721. Education and examination of applicants.—Reasonableness; Clarity.**

*Initial licensure*

The proposed regulation addresses Board-approved educational programs and examinations, license renewal and continuing education. However, the regulation is silent on initial licensure requirements. Act 99 of 2002 (Act) (63 P. S. § 216(b)) establishes initial licensure requirements which include:

- A baccalaureate or higher degree with a major course of study in human nutrition, food and nutrition, dietetics or food systems management;
- At least 900 hours of preprofessional experience under the supervision of a registered dietitian, a licensed dietitian-nutritionist or an individual with a doctoral degree in this discipline; and
- Completion of a Board-approved examination.

We recommend that the Board add a section to the final-form regulation which sets forth these initial licensure requirements and the application process.

*Equivalent education programs and licensure without examination.*

The Act (63 P. S. §§ 215(b) and (c)) authorizes the Board to admit to examination a person who has completed an education program in another state, territory or country which is equivalent to that required in Pennsylvania. The Act (63 P. S. § 217) also authorizes the Board to issue a license without examination to a person who has graduated from a dietetics-nutrition program with a course of study equivalent to that required in Pennsylvania and who is registered or licensed by examination in another state or territory of the United States or Canada. The final-form regulation should include or cross-reference these statutory provisions. The regulation should also include the procedures an individual must follow to apply for consideration under these provisions.

*Denial of licensure*

The Act (63 P. S. § 216(c)) precludes the Board from issuing a license to "an applicant who has been convicted of a felonious act prohibited by . . . 'The Controlled Substance, Drug, Device and Cosmetic Act' . . . or convicted of a felony relating to a controlled substance" unless certain conditions are met. The final-form regulation should include or cross-reference these statutory provisions.

**3. Section 21.722. License renewal.—Statutory Authority; Need; Reasonableness; Clarity.**

Subsection (b) states that a license will be renewed if the licensee performs certain actions, including disclosure of disciplinary action or criminal convictions. In its comments, the House Professional Licensure Committee (Committee) notes that as written, the regulation appears to guarantee license renewal regardless of criminal convictions or other behavior that subjects the licensee to disciplinary action simply upon disclosure. Since the Board has discretion in granting license renewals, the Committee suggests that Subsection (b) be rewritten to state, "When applying for a renewal of a license, the licensee shall: . . ." followed by the listing of actions and disclosures the licensee must make. We agree and suggest that the Board make this change.

Subsection (b)(4) requires a licensee applying for renewal to disclose "criminal charges pending." We question the Board's statutory authority for this provision. If the Board does justify its statutory authority, it should explain why this information is needed and how it intends to act on this information.

**4. Section 21.723. Continuing education.—Statutory Authority; Reasonableness; Clarity.**

*Subsection (b)*

This subsection lists the entities which the Board will recognize as accepted continuing professional education (CPE) providers. The Pennsylvania Dietetic Association commented that there are other reputable groups which provide CPE but are not listed in the regulation. These groups include medical centers, Amerinet, Nutrition Dimension, Renfrew Center for Eating Disorders and certain private practitioners.

We agree that further clarification on CPE providers is needed. Subsection (b) refers to continuing education "sponsored by . . . approved college or dietetic programs." The final-form regulation should specify what is an "approved college or dietetic program."

Additionally, we recommend that the final-form regulation establish a process by which an organization or individual can apply to become a Board-approved CPE provider. The application process and the substantive requirements for obtaining CPE provider status should be included in the final-form regulation.

Subsections (b)(1)(i) through (iv) list non-lecture-based activities for which "the Board will accept documentation" of attendance. Based on discussions with Board staff, we understand that an LDN who engages in one of these activities will not automatically be awarded CPE credit. Rather, the LDN will have to apply to the Board to request CPE credit. The Board will review requests on a case by case basis and, at its discretion, may award CPE credit.

Subsection (b)(1) should be amended in the final-form regulation to clearly state that an LDN may apply to the Board for CPE credit for attending a program listed in Paragraphs (i) through (iv) and that the Board will review the request and determine if CPE credit will be given. The final-form regulation should also list the criteria the Board will use in deciding whether or not to give CPE credit.

*Subsection (d)*

This subsection provides that an LDN who can demonstrate a verified hardship may request that the Board grant a waiver of CPE requirements. Did the Board consider allowing LDNs to apply for additional time to meet the CPE requirements, instead of a waiver?

The Act (63 P. S. § 221(c)) states:

A dietetics-nutrition license issued under this act shall not be renewed unless the licensee applying for renewal submits proof to the Board that during the two (2) calendar years immediately preceding the application for renewal the licensee has satisfactorily completed a minimum of thirty (30) hours of continuing dietetic-nutrition education approved by the Board by regulation.

In light of this statutory mandate, what is the Board's authority to waive the CPE requirements?

JOHN R. MCGINLEY, Jr.,  
*Chairperson*

[Pa.B. Doc. No. 05-787. Filed for public inspection April 22, 2005, 9:00 a.m.]

**Notice of Filing of Final Rulemakings**

The Independent Regulatory Review Commission (Commission) received the following regulations on the dates indicated. To obtain the date and time of the meeting at which the Commission will consider these regulations, contact the Commission at (717) 783-5417 or visit its website at [www.irrc.state.pa.us](http://www.irrc.state.pa.us). To obtain a copy of a regulation, contact the promulgating agency.

*Final-Form*

<i>Reg. No.</i>	<i>Agency/Title</i>	<i>Received</i>
14-489	Department of Public Welfare Subsidized Child Care Eligibility	4/7/05
18-395	Department of Transportation Ignition Interlock	4/12/05

*Final-Omit*

54-62	Pennsylvania Liquor Control Board Numerous Revisions	4/13/05
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JOHN R. MCGINLEY, Jr.,  
*Chairperson*

[Pa.B. Doc. No. 05-788. Filed for public inspection April 22, 2005, 9:00 a.m.]

**INSURANCE DEPARTMENT**

**Children's Health Insurance Program; Children's Health Advisory Council Meeting**

The Insurance Department (Department) has scheduled a meeting of the Children's Health Advisory Council (Council) on Monday, May 9, 2005, at 1 p.m. in Room 327, Health and Welfare Building, Seventh and Forster Streets, Harrisburg, PA. The Children's Health Care Act (40 P. S. §§ 991.2301—991.2361) charges the Council with the responsibilities of overseeing outreach activities and evaluating access and quality of service provided to children enrolled in the Children's Health Insurance Program.

The public is invited to attend. Persons who need accommodations due to a disability who wish to attend the meeting should contact Jeffrey Wallace, Insurance Department, 1300 Strawberry Square, Harrisburg, PA 17120, (717) 787-4298 at least 24 hours in advance so that arrangements can be made.

M. DIANE KOKEN,  
*Insurance Commissioner*

[Pa.B. Doc. No. 05-789. Filed for public inspection April 22, 2005, 9:00 a.m.]

### HealthAmerica; Employer Group Size Two+ Demographic Methodology; Rate Filing

On April 4, 2005, the Insurance Department (Department) received a filing from HealthAmerica to demographically rate all new employer groups with two or more eligible employees and all renewing groups with two or more enrolled subscribers, with the exception of those groups eligible for Group Specific Community Rating or Experience Rating. The proposed rating factors include industry factors, age/gender member factors and area factors (zip code). The proposed effective date is July 1, 2005, for groups of size 51+. Groups of size 2 to 50 will be subject to the rating methodology at a later date.

Unless formal administrative action is taken prior to July 6, 2005, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Department's website at [www.ins.state.pa.us](http://www.ins.state.pa.us). Under the Quick Links section, click on the link "Rate Filings Published in the PA Bulletin."

Copies of the filing are also available for public inspection, by appointment, during normal working hours at the Department's regional office in Harrisburg.

Interested parties are invited to submit written comments, suggestions or objections to Cherri Sanders-Jones, Insurance Department, Insurance Product Regulation and Market Enforcement, Room 1311, Strawberry Square, Harrisburg, PA 17120, [csandersjo@state.pa.us](mailto:csandersjo@state.pa.us) within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,  
*Insurance Commissioner*

[Pa.B. Doc. No. 05-790. Filed for public inspection April 22, 2005, 9:00 a.m.]

### Highmark Blue Cross Blue Shield; ClassicBlue Medical Surgical Plan (Western Region); Rate Filing

By Filing No. 1A-DPMS-05-HBCBS, Highmark, Inc. d/b/a Highmark Blue Cross Blue Shield requests approval to increase the premium rates for its Direct Pay ClassicBlue Medical Surgical plan (Western Region). The filing requests an average increase of 0.0% for Plan C and 9.9% for UCR 100 or \$0.00 and \$13.85 per contract per month, respectively. This will affect about 1,100 Plan C and 2,900 UCR 100 contract holders and will produce additional annual premium income of about \$0 and \$492,000, respectively. For HIPAA and HCTC eligibles, the filing requests an average increase of 8.2% for UCR 100, or \$13.46 per contract per month. This will affect about 900 UCR 100 contract holders and produce additional annual premium income of about \$144,000. The filing also adjusts the relativities between contract types to be consistent with Highmark's other programs; thus some contract holders may receive rate adjustments that are less than or greater than the average. The requested effective date of these changes is September 1, 2005.

A copy of the filing is available on the Insurance Department's (Department) website at [www.ins.state.pa.us](http://www.ins.state.pa.us). Under the Quick Links section, click on the link "Rate Filings Published in the PA Bulletin."

Copies of the filing are also available for public inspection, by appointment, during normal working hours at the Department's regional office in Harrisburg.

Interested parties are invited to submit written comments, suggestions or objections to Rashmi Mathur, Actuary, Bureau of Accident and Health Insurance, Insurance Department, 1311 Strawberry Square, Harrisburg, PA 17120 within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,  
*Insurance Commissioner*

[Pa.B. Doc. No. 05-791. Filed for public inspection April 22, 2005, 9:00 a.m.]

### Highmark Blue Cross Blue Shield; Direct Pay ClassicBlue Hospital Plan (Western Region); Rate Filing

By Filing No. 1A-CPE-05-HBCBS, Highmark Inc. d/b/a Highmark Blue Cross Blue Shield requests approval to increase its premium rates for its Direct Pay ClassicBlue Hospital Plan (Western Region). The filing requests an average increase of about 9.9% or \$32.12 per contract per month. This will affect about 4,100 contract holders and produce additional annual premium income of about \$1.572 million. For HIPAA and HCTC eligibles, the filing requests an average increase of about 1.5% or \$6.60 per contract per month. This will affect an estimated 900 contract holders and produce additional annual premium income of about \$72,000. The filing also adjusts the relativities between contract types to be consistent with Highmark's other programs; thus some contract holders may receive rate adjustments that are less than or greater than the average. The requested effective date of the change is September 1, 2005.

A copy of the filing is available on the Insurance Department's (Department) website at [www.ins.state.pa.us](http://www.ins.state.pa.us). Under the Quick Links section, click on the link "Rate Filings Published in the PA Bulletin."

Copies of the filing are also available for public inspection, by appointment, during normal working hours at the Department's regional office in Harrisburg.

Interested parties are invited to submit written comments, suggestions or objections to Rashmi Mathur, Actuary, Bureau of Accident and Health Insurance, Insurance Department, 1311 Strawberry Square, Harrisburg, PA 17120 within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,  
*Insurance Commissioner*

[Pa.B. Doc. No. 05-792. Filed for public inspection April 22, 2005, 9:00 a.m.]

### Highmark Blue Cross Blue Shield; Direct Pay Special Care Hospital Plan (Western Region); Rate Filing

By Filing No. 1A-SSC-05-HBCBS, Highmark Inc. d/b/a Highmark Blue Cross Blue Shield requests approval to increase its premium rates for its Direct Pay Special Care Hospital Plan (Western Region). The filing requests an

average increase of 9.9% or \$8.09 per contract per month. This will affect about 14,700 contract holders and produce additional premium income about \$1.420 million per year. The filing also adjusts the relativities between contract types to be consistent with Highmark's other programs; thus some contract holders may receive rate adjustments that are less than or greater than the average. The requested effective date of the change is September 1, 2005.

A copy of the filing is available on the Insurance Department's (Department) website at [www.ins.state.pa.us](http://www.ins.state.pa.us). Under the Quick Links section, click on the link "Rate Filings Published in the PA Bulletin."

Copies of the filing are also available for public inspection, by appointment, during normal working hours at the Department's regional office in Harrisburg.

Interested parties are invited to submit written comments, suggestions or objections to James Laverty, Actuary, Insurance Department, Insurance Product Regulation and Market Enforcement, Room 1311, Strawberry Square, Harrisburg, PA 17120, [jlaverty@state.pa.us](mailto:jlaverty@state.pa.us) within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,  
*Insurance Commissioner*

[Pa.B. Doc. No. 05-793. Filed for public inspection April 22, 2005, 9:00 a.m.]

### Highmark Blue Cross Blue Shield—Western Pennsylvania; 65 Plus-I Prescription Drug; Rate Filing

On April 8, 2005, the Insurance Department (Department) received a filing from Highmark Blue Cross Blue Shield to increase the premium rate for its Western Pennsylvania 65 Plus-I prescription drug plan by 9.9%. The proposed effective date is September 1, 2005. This filing will impact approximately 12,000 members and generate additional revenue of \$2 million.

Unless formal administrative action is taken prior to July 6, 2005, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Department's website at [www.ins.state.pa.us](http://www.ins.state.pa.us). Under the Quick Links section, click on the link "Rate Filings Published in the PA Bulletin."

Copies of the filing are also available for public inspection, by appointment, during normal working hours at the Department's regional office in Harrisburg.

Interested parties are invited to submit written comments, suggestions or objections to Cherri Sanders-Jones, Insurance Department, Insurance Product Regulation and Market Enforcement, Room 1311, Strawberry Square, Harrisburg, PA 17120, [csandersjo@state.pa.us](mailto:csandersjo@state.pa.us) within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,  
*Insurance Commissioner*

[Pa.B. Doc. No. 05-794. Filed for public inspection April 22, 2005, 9:00 a.m.]

### Highmark Blue Shield; Direct Pay Special Care Hospital Plan (Central Region); Rate Filing

By Filing No. 1A-SSC-05-HBS, Highmark Inc. d/b/a Highmark Blue Shield requests approval to increase its premium rates for its Direct Pay Special Care Hospital Plan (Central Region). The filing requests an increase of 9.9% or \$8.20 per contract per month. This will affect about 2,800 contract holders and produce additional premium income of about \$276,000 per year. The filing also adjusts the relativities between contract types to be consistent with Highmark's other programs; thus some contract holders may receive rate adjustments that are less than or greater than the average. The requested effective date of the change is September 1, 2005.

A copy of the filing is available on the Insurance Department's (Department) website at [www.ins.state.pa.us](http://www.ins.state.pa.us). Under the Quick Links section, click on the link "Rate Filings Published in the PA Bulletin."

Copies of the filing are also available for public inspection, by appointment, during normal working hours at the Department's regional office in Harrisburg.

Interested parties are invited to submit written comments, suggestions or objections to James Laverty, Actuary, Insurance Department, Insurance Product Regulation and Market Enforcement, Room 1311, Strawberry Square, Harrisburg, PA 17120, [jlaverty@state.pa.us](mailto:jlaverty@state.pa.us) within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,  
*Insurance Commissioner*

[Pa.B. Doc. No. 05-795. Filed for public inspection April 22, 2005, 9:00 a.m.]

### Highmark Inc. d/b/a Highmark Blue Cross Blue Shield; Attained Age Nongroup MedigapBlue Plans for the Western Pennsylvania Region Providing Standardized Benefit Packages E and I; Rate Filing

By Filing No. 1-MGP(AA)-05-HBCBS, Highmark Inc. has filed for approval revised rates for its nongroup MedigapBlue program. The aggregate rate increase requested is 9.9%. The requested effective date of the revised rates is September 1, 2005. The current rates for Plan E took effect on September 1, 2004; the current rates for Plan I were effective July 26, 2001. The current and requested rates for 65-69 years of age issues and the requested rate adjustments are as follows:

<i>Standardized Benefit Plan</i>	<i>Policy Number</i>	<i>Current Rate</i>	<i>Proposed Rate</i>	<i>Rate Adjustment</i>
Plan E—Region 1	S65/E	\$119.60	\$131.45	9.9%
Plan E—Region 2	S65/E	\$106.95	\$117.55	9.9%



<i>Standardized Benefit Plan</i>	<i>Policy Number</i>	<i>Current Rate</i>	<i>Proposed Rate</i>	<i>Rate Adjustment</i>
Plan I—Region 1	S65/I	\$182.03	\$200.05	9.9%
Plan I—Region 2	S65/I	\$162.81	\$178.95	9.9%

Region 1 consists of the following counties: Allegheny, Armstrong, Beaver, Butler, Cambria, Fayette, Greene, Indiana, Lawrence, Washington and Westmoreland. All other counties in the Western Pennsylvania Region are in Region 2.

These rate adjustments would affect approximately 8,368 members and would produce approximately \$1.55 million in additional premium annually.

Effective January 1, 2006, Plan I participants will have the option of eliminating the Rx benefit from their coverage. Those choosing to do so would receive the following reduction in rates (65-69 years of age rate shown):

<i>Standardized Benefit Plan</i>	<i>Proposed Plan I Rate With Rx Benefit Effective September 1, 2005</i>	<i>Proposed Plan I Rate Without Rx Benefit Effective January 1, 2006</i>	<i>Rate Adjustment Due to Elimination of Rx Benefit</i>
Plan I without Rx—Region 1	\$200.05	\$143.65	-28.2%
Plan I without Rx—Region 2	\$178.95	\$128.50	-28.2%

Unless formal administrative action is taken prior to July 7, 2005, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's (Department) website at [www.ins.state.pa.us](http://www.ins.state.pa.us). Under the Quick Links section, click on the link "Rate Filings Published in the PA Bulletin."

Copies of the filing are also available for public inspection, by appointment, during normal working hours at the Department's regional offices in Harrisburg and Pittsburgh.

Interested parties are invited to submit written comments, suggestions or objections to Michael Gurgiolo, Insurance Department, Insurance Product Regulation and Market Enforcement, Room 1311, Strawberry Square, Harrisburg, PA 17120, [mgurgiolo@state.pa.us](mailto:mgurgiolo@state.pa.us) within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,  
Insurance Commissioner

[Pa.B. Doc. No. 05-796. Filed for public inspection April 22, 2005, 9:00 a.m.]

### Highmark Inc. d/b/a Highmark Blue Cross Blue Shield; Issue Age Nongroup MedigapBlue Plans for the Western Pennsylvania Region Providing Standardized Benefit Packages A, B, C and H; Rate Filing

By Filing No. 1-MGP(IA)-05-HBCBS, Highmark Inc. has filed for approval revised rates for its nongroup MedigapBlue program. The aggregate rate increase requested is about 7.7%. The requested effective date of the revised rates is September 1, 2005. The most recent prior rate adjustment for this program took effect on January 1, 2002, for the hospital component of the filing and January 1, 2004, for the medical/surgical component. The current and requested rates for First Eligible issues and the requested rate adjustments are as follows:

<i>Standardized Benefit Plan</i>	<i>Policy Number</i>	<i>Current Rate</i>	<i>Proposed Rate</i>	<i>Rate Adjustment</i>
Plan A	S65/A	\$106.60	\$106.60	0%
Plan B	S65/B	\$125.40	\$133.70	6.6%
Plan C	S65/C	\$150.70	\$165.60	9.9%
Plan H with Rx	S65/H	\$199.35	\$208.30	4.5%

These rate adjustments would affect approximately 63,460 members and would produce approximately \$8.58 million in additional premium annually.

Effective January 1, 2006, Plan H participants will have the option of eliminating the Rx benefit from their coverage. Those choosing to do so would receive the following reduction in rates (First Eligible rate shown):

<i>Standardized Benefit Plan</i>	<i>Proposed Plan H Rate With Rx Benefit Effective September 1, 2005</i>	<i>Proposed Plan H Rate Without Rx Benefit Effective January 1, 2006</i>	<i>Rate Adjustment Due to Elimination of Rx Benefit</i>
Plan H without Rx	\$208.30	\$147.20	-29.3%

Unless formal administrative action is taken prior to July 7, 2005, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's (Department) website at [www.ins.state.pa.us](http://www.ins.state.pa.us). Under the Quick Links section, click on the link "Rate Filings Published in the PA Bulletin."

Copies of the filing are also available for public inspection, by appointment, during normal working hours at the Department's regional offices in Harrisburg and Pittsburgh.

Interested parties are invited to submit written comments, suggestions or objections to Michael Gurgiolo, Insurance Department, Insurance Product Regulation and Market Enforcement, Room 1311, Strawberry Square, Harrisburg, PA 17120, mgurgiolo@state.pa.us within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,  
Insurance Commissioner

[Pa.B. Doc. No. 05-797. Filed for public inspection April 22, 2005, 9:00 a.m.]

### Highmark Inc. d/b/a Highmark Blue Shield; Attained Age Nongroup MedigapBlue Plans for the Central Pennsylvania Region Providing Standardized Benefit Packages E and I; Rate Filing

By Filing No. 1-MGP(AA)-05-HBS Highmark Inc. has filed for approval revised rates for its non-group MedigapBlue program. The aggregate rate increase requested is about 1.3%. The requested effective date of the revised rates is September 1, 2005. The most recent prior rate adjustment for this program took effect on September 1, 2004. The current and requested rates for 65-69 years of age issues and the requested rate adjustments are as follows:

<i>Standardized Benefit Plan</i>	<i>Policy Number</i>	<i>Current Rate</i>	<i>Proposed Rate</i>	<i>Rate Adjustment</i>
Plan E	MB/E	\$92.65	\$92.65	0%
Plan I	MB/I	\$149.00	\$154.10	3.4%

These rate adjustments would affect approximately 14,209 members and would produce approximately \$0.27 million in additional premium annually.

Effective January 1, 2006, Plan I participants will have the option of eliminating the Rx benefit from their coverage. Those choosing to do so would receive the following reduction in rates (65-69 years of age rate shown):

<i>Standardized Benefit Plan</i>	<i>Proposed Plan I Rate With Rx Benefit Effective September 1, 2005</i>	<i>Proposed Plan I Rate Without Rx Benefit Effective January 1, 2006</i>	<i>Rate Adjustment Due to Elimination of Rx Benefit</i>
Plan I without Rx	\$154.10	\$99.90	-35.2%

Unless formal administrative action is taken prior to July 7, 2005, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's (Department) website at [www.ins.state.pa.us](http://www.ins.state.pa.us). Under the Quick Links section, click on the link "Rate Filings Published in the PA Bulletin."

Copies of the filing are also available for public inspection, by appointment, during normal working hours at the Department's regional office in Harrisburg.

Interested parties are invited to submit written comments, suggestions or objections to Michael Gurgiolo, Insurance Department, Insurance Product Regulation and Market Enforcement, Room 1311, Strawberry Square, Harrisburg, PA 17120, mgurgiolo@state.pa.us within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,  
Insurance Commissioner

[Pa.B. Doc. No. 05-798. Filed for public inspection April 22, 2005, 9:00 a.m.]

### Highmark Inc. d/b/a Highmark Blue Shield; Classic Blue Comprehensive Major Medical Plan (Central Region); Rate Filing

By Filing No. 1A-CMM-05-HBS, Highmark Inc. d/b/a Highmark Blue Shield requests approval to increase the premium rates for its ClassicBlue Comprehensive Major Medical Plan (Central Region). The filing requests an average increase of about 9.9% or \$31.91 per contract per month. This will affect about 3,650 contract holders and produce additional annual premium income of about \$1.392 million. For HIPAA and HCTC eligibles, the filing requests an average increase of about 8.4% or \$47.42 per contract per month. This will affect an estimated 400

contract holders and produce additional annual premium income of about \$240,000. The filing also adjusts the relativities between contract types to be consistent with Highmark's other programs; thus some contract holders may receive rate adjustments that are less than or greater than the average. The requested effective date of the change is January 1, 2005.

A copy of the filing is available on the Insurance Department's (Department) website at [www.ins.state.pa.us](http://www.ins.state.pa.us). Under the Quick Links section, click on the link "Rate Filings Published in the PA Bulletin."

Copies of the filing are also available for public inspection, by appointment, during normal working hours at the Department's regional office in Harrisburg.

Interested parties are invited to submit written comments, suggestions or objections to Rashmi Mathur, Actuary, Bureau of Accident and Health Insurance, Insurance Department, 1311 Strawberry Square, Harrisburg, PA 17120 within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,  
*Insurance Commissioner*

[Pa.B. Doc. No. 05-799. Filed for public inspection April 22, 2005, 9:00 a.m.]

**Highmark Inc. d/b/a Highmark Blue Shield; Classic Blue Hospital, Medical Surgical and Major Medical Plans (Central Region); Rate Filing**

By Filing No. 1A-TRAD-05-HBS, Highmark Inc. d/b/a Highmark Blue Shield requests approval to increase the premium rates for its ClassicBlue Hospital, ClassicBlue Medical/Surgical and ClassicBlue Major Medical Plans (Central Region). The filing requests an average increase of 9.9% or \$64.15 per contract per month for all three plans combined. This will affect about 500 contract holders and produce additional annual premium income of about \$360,000. The filing also adjusts the relativities between contract types to be consistent with Highmark's other programs; thus some contract holders may receive rate adjustments that are less than or greater than the average. The requested effective date of the change is September 1, 2005.

A copy of the filing is available on the Insurance Department's (Department) website at [www.ins.state.pa.us](http://www.ins.state.pa.us). Under the Quick Links section, click on the link "Rate Filings Published in the PA Bulletin."

Copies of the filing are also available for public inspection, by appointment, during normal working hours at the Department's regional office in Harrisburg.

Interested parties are invited to submit written comments, suggestions or objections to Rashmi Mathur, Actuary, Bureau of Accident and Health Insurance, Insurance Department, 1311 Strawberry Square, Harrisburg, PA 17120 within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,  
*Insurance Commissioner*

[Pa.B. Doc. No. 05-800. Filed for public inspection April 22, 2005, 9:00 a.m.]

**Highmark Inc. d/b/a Highmark Blue Shield; Direct Pay Medical/Surgical Products (Blue Cross of Northeastern PA and Independence Blue Cross Areas); Rate Filing**

On April 7, 2005, the Insurance Department (Department) received from Highmark Blue Shield Filing No. 1-DPMS(MIDA)-05-HBS for a rate increase for Direct Pay Medical/Surgical Products (Blue Cross of Northeastern PA and Independence Blue Cross Areas).

The company requests an overall 9.9% increase amounting to \$1,889,664 annually, to be effective September 1, 2005.

Effective January 1, 2006, Highmark Inc. is also implementing changes to the benefit design including the addition of a deductible of \$250 individual/\$750 family nonaggregate per contract year as well as a lifetime maximum, calendar year maximum and coverage for routine neonatal circumcision.

Unless formal administrative action is taken prior to July 6, 2005, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Department's (Department) website at [www.ins.state.pa.us](http://www.ins.state.pa.us). Under the Quick Links section, click on the link "Rate Filings Published in the PA Bulletin."

Copies of the filing are also available for public inspection, by appointment, during normal working hours at the Department's regional office in Harrisburg.

Interested parties are invited to submit written comments, suggestions or objections to James Sabater, Insurance Department, Insurance Product Regulation and Market Enforcement, Room 1311, Strawberry Square, Harrisburg, PA 17120, [jsabater@state.pa.us](mailto:jsabater@state.pa.us) within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,  
*Insurance Commissioner*

[Pa.B. Doc. No. 05-801. Filed for public inspection April 22, 2005, 9:00 a.m.]

**Highmark Inc. d/b/a Highmark Blue Shield; Direct Pay Medicare Supplement (Security65) Programs for the Blue Cross of Northeastern Pennsylvania and Independence Blue Cross Plan Areas Providing Medical/Surgical Coverage under Standardized Benefit Packages A, B, C and H; Rate Filing**

By Filing No. 1-DPMG(MIDA)-05-HBS, Highmark Inc. has filed for approval revised rates for its Direct Pay Medicare Supplement Medical/Surgical program. The aggregate rate increase requested is 9.9%. The requested effective date of the revised rates is September 1, 2005. The most recent prior rate adjustment for this program took effect on September 1, 2004. The current and requested rates for First Eligible issues and the requested rate adjustments are as follows:

<i>Standardized Benefit Plan</i>	<i>Policy Number</i>	<i>Current Rate</i>	<i>Proposed Rate</i>	<i>Rate Adjustment</i>
Plan A—IBC	5450	\$94.75	\$104.15	9.9%
Plan B—IBC	5451	\$94.75	\$104.15	9.9%
Plan C—IBC	5452	\$102.75	\$112.95	9.9%
Plan H with Rx—IBC	5453	\$94.75	\$104.15	9.9%
Plan A—BCNP	MDGAP-A	\$63.80	\$63.80	0%
Plan B—BCNP	MDGAP-B	\$63.80	\$70.15	9.9%
Plan C—BCNP	MDGAP-C	\$71.60	\$78.70	9.9%
Plan H with Rx—BCNP	MDGAP-H	\$63.80	\$70.15	9.9%

These rate adjustments would affect approximately 91,350 members and would produce approximately \$9.36 million in additional premium annually.

Unless formal administrative action is taken prior to July 7, 2005, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's (Department) website at [www.ins.state.pa.us](http://www.ins.state.pa.us). Under the Quick Links section, click on the link "Rate Filings Published in the PA Bulletin."

Copies of the filing are also available for public inspection, by appointment, during normal working hours at the Department's regional offices in Harrisburg and Philadelphia.

Interested parties are invited to submit written comments, suggestions or objections to Michael Gurgiolo, Insurance Department, Insurance Product Regulation and Market Enforcement, Room 1311, Strawberry Square, Harrisburg, PA 17120, [mgurgiolo@state.pa.us](mailto:mgurgiolo@state.pa.us) within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,  
Insurance Commissioner

[Pa.B. Doc. No. 05-802. Filed for public inspection April 22, 2005, 9:00 a.m.]

### Highmark Inc. d/b/a Highmark Blue Shield; Issue Age Nongroup MedigapBlue Plans for the Central Pennsylvania Region Providing Standardized Benefit Packages A, B, C and H; Rate Filing

By Filing No. 1-MGP(IA)-05-HBS Highmark Inc. has filed for approval revised rates for its nongroup MedigapBlue program. The aggregate rate increase requested is about 8.1%. The requested effective date of the revised rates is September 1, 2005. The most recent prior rate adjustment for this program took effect on September 1, 2004. The current and requested rates for First Eligible issues and the requested rate adjustments are as follows:

<i>Standardized Benefit Plan</i>	<i>Policy Number</i>	<i>Current Rate</i>	<i>Proposed Rate</i>	<i>Rate Adjustment</i>
Plan A	22241	\$72.95	\$80.15	9.9%
Plan B	22242	\$100.75	\$110.70	9.9%
Plan C	22243	\$124.50	\$136.85	9.9%
Plan H with Rx	22244	\$192.85	\$200.30	3.9%

These rate adjustments would affect approximately 34,745 members and would produce approximately \$4.36 million in additional premium annually.

Effective January 1, 2006, Plan H participants will have the option of eliminating the Rx benefit from their coverage. Those choosing to do so would receive the following reduction in rates (First Eligible rate shown):

<i>Standardized Benefit Plan</i>	<i>Proposed Plan H Rate With Rx Benefit Effective September 1, 2005</i>	<i>Proposed Plan H Rate Without Rx Benefit Effective January 1, 2006</i>	<i>Rate Adjustment Due to Elimination of Rx Benefit</i>
Plan H without Rx	\$200.30	\$139.55	-30.3%

Unless formal administrative action is taken prior to July 7, 2005, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's (Department) website at [www.ins.state.pa.us](http://www.ins.state.pa.us). Under the Quick Links section, click on the link "Rate Filings Published in the PA Bulletin."

Copies of the filing are also available for public inspection, by appointment, during normal working hours at the Department's regional office in Harrisburg.

Interested parties are invited to submit written comments, suggestions or objections to Michael Gurgiolo, Insurance Department, Insurance Product Regulation and Market Enforcement, Room 1311, Strawberry Square, Harrisburg, PA 17120, mgurgiolo@state.pa.us within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,  
Insurance Commissioner

[Pa.B. Doc. No. 05-803. Filed for public inspection April 22, 2005, 9:00 a.m.]

### Highmark Inc.; Special Care Medical Surgical Plans; Rate Filing

By Filing No. 1A-SCMS-05-HI, Highmark Inc. d/b/a Highmark Blue Cross Blue Shield and Highmark Blue Shield requests approval to revise premium rates for its Special Care Medical/Surgical programs in the Central Region, Independence Blue Cross Region, Western Pennsylvania Region and Blue Cross of Northeastern Pennsylvania Region.

<i>Region</i>	<i>Percentage Increase</i>	<i>Additional Premium per Month</i>	<i>Number of Contracts</i>
Central Region	0.0%	\$0	2,800
Independence Blue Cross	9.9%	\$720,000	10,300
Western Region	9.9%	\$864,000	14,700
Blue Cross of Northeastern PA	9.9%	\$216,000	4,200
All Regions Combined	9.0%	\$1,800,000	32,100

The filing requests an average increase of 9.0% or \$4.66 per contract per month. This will affect about 32,100 contract holders and produce additional premium income of about \$1.8 million per year. For the Central and Highmark Blue Cross Blue Shield Regions only, the filing also adjusts the relativities between contract types to be consistent with Highmark's other programs; thus some contract holders may receive rate adjustments that are less than or greater than the average. The requested effective date of the change is September 1, 2005.

A copy of the filing is available on the Insurance Department's (Department) website at [www.ins.state.pa.us](http://www.ins.state.pa.us). Under the Quick Links section, click on the link "Rate Filings Published in the PA Bulletin."

Copies of the filing are also available for public inspection, by appointment, during normal working hours at the Department's regional office in Harrisburg.

Interested parties are invited to submit written comments, suggestions or objections to James Laverty, Actuary, Insurance Department, Insurance Product Regulation and Market Enforcement, Room 1311, Strawberry Square, Harrisburg, PA 17120, jlaverty@state.pa.us within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,  
Insurance Commissioner

[Pa.B. Doc. No. 05-804. Filed for public inspection April 22, 2005, 9:00 a.m.]

### Highmark Inc.—Western Pennsylvania; ClassicBlue Major Medical Plan No. 1A-PMM-05-HBCBS; Rate Filing

On April 8, 2005, the Insurance Department (Department) received a filing from Highmark Inc. to increase the premium rate for its Direct Pay ClassicBlue Major Medical Plan (Western Pennsylvania) by an average of 9.9% for non-HIPAA and non-HCTC eligibles and 8.9% for HIPAA and HCTC eligibles. The proposed effective date is September 1, 2005. This filing will impact approximately 2,600 non-HIPAA and non-HCTC contract holders and 800 HIPAA and HCTC contract holders. The increase will generate additional annual revenue of \$300,000 and \$132,000, respectively.

Effective January 1, 2006, the Plan will implement the following drug exclusions: weight control drugs; smoking cessation products; hair growth stimulants; fertility drugs; pharmacological or hormonal treatment used in conjunction with assisted fertilization; impotency treat-

ment drugs; any drugs used to abort a pregnancy when purchased from a pharmacy provider; and any drugs prescribed for cosmetic purposes only.

Highmark Inc. has also requested to move the contract type relativities to a six-tier structure.

Unless formal administrative action is taken prior to July 6, 2005, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Department's website at [www.ins.state.pa.us](http://www.ins.state.pa.us). Under the Quick Links section, click on the link "Rate Filings Published in the PA Bulletin."

Copies of the filing are also available for public inspection, by appointment, during normal working hours at the Department's regional office in Harrisburg.

Interested parties are invited to submit written comments, suggestions or objections to Cherri Sanders-Jones, Insurance Department, Insurance Product Regulation and

Market Enforcement, Room 1311, Strawberry Square, Harrisburg, PA 17120, csandersjo@state.pa.us within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,  
*Insurance Commissioner*

[Pa.B. Doc. No. 05-805. Filed for public inspection April 22, 2005, 9:00 a.m.]

### Review Procedure Hearings; Cancellation or Refusal of Insurance

The following insureds have requested a hearing as authorized by the act of June 17, 1998 (P. L. 464, No. 68) (Act 68) in connection with the termination of the insureds' automobile policies. The hearings will be held in accordance with the requirements of Act 68, 1 Pa. Code Part II (relating to the General Rules of Administrative Practice and Procedure) and 31 Pa. Code §§ 56.1—56.3 (relating to Special Rules of Administrative Practice and Procedure). The administrative hearings will be held in the Insurance Department's regional offices in Harrisburg and Philadelphia, PA. Failure by an appellant to appear at a scheduled hearing may result in dismissal with prejudice.

The following hearing will be held in the Administrative Hearings Office, Capitol Associates Building, Room 200, 901 N. Seventh Street, Harrisburg, PA 17102.

Appeal of Elaine Francen; The Motorists Insurance Group; doc. no. P05-03-041; May 17, 2005, 2 p.m.

The following hearings will be held in the Philadelphia Regional Office, Room 1701, State Office Building, 1400 Spring Garden Street, Philadelphia, PA 19130.

Appeal of Stephen Cipolla and Jake Aryeh Marcus; Liberty Mutual Fire Insurance Company; doc. no. PH05-03-043; June 21, 2005, 9 a.m.

Appeal of Helen Bulman; Geico Insurance Company; doc. no. PH05-03-033; June 21, 2005, 10 a.m.

Parties may appear with or without counsel and offer relevant testimony or evidence. Each party must bring documents, photographs, drawings, claims files, witnesses, and the like, necessary to support the party's case. A party intending to offer documents or photographs into evidence shall bring enough copies for the record and for each opposing party.

In some cases, the Insurance Commissioner (Commissioner) may order that the company reimburse an insured for the higher cost of replacement insurance coverage obtained while the appeal is pending. Reimbursement is available only when the insured is successful on appeal and may not be ordered in all instances. If an insured wishes to seek reimbursement for the higher cost of replacement insurance, the insured must produce documentation at the hearing which will allow comparison of coverages and costs between the original policy and the replacement policy.

Following the hearing and receipt of the stenographic transcript, the Commissioner will issue a written order resolving the factual issues presented at the hearing and stating what remedial action, if any, is required. The Commissioner's Order will be sent to those persons

participating in the hearing or their designated representatives. The Order of the Commissioner may be subject to judicial review by the Commonwealth Court.

Persons with a disability who wish to attend an administrative hearing and require an auxiliary aid, service or other accommodation to participate in the hearing should contact Jeffrey Wallace, Agency Coordinator at (717) 787-4298.

M. DIANE KOKEN,  
*Insurance Commissioner*

[Pa.B. Doc. No. 05-806. Filed for public inspection April 22, 2005, 9:00 a.m.]

### Review Procedure Hearings under the Unfair Insurance Practices Act

The following insureds have requested a hearing as authorized by section 8 of the Unfair Insurance Practices Act (40 P. S. § 1171.8) in connection with their companies' termination of the insureds' policies. The administrative hearings will be held in the Insurance Department's regional offices in Harrisburg, PA. Failure by an appellant to appear at a scheduled hearing may result in dismissal with prejudice.

The following hearings will be held in the Administrative Hearings Office, Capitol Associates Building, Room 200, 901 N. Seventh Street, Harrisburg, PA 17102.

Appeal of James S. and Hollie A. Hairston; file no. 05-188-01110; Shelby Insurance Company; doc. no. P05-03-031; May 12, 2005, 9:30 a.m.

Appeal of A. Ronald Stiscia; United Services Automobile Association; doc. no. P05-03-030; May 24, 2005, 10 a.m.

Appeal of Mary Kemps; file no. 05-182-02071; Erie Insurance Exchange; doc. no. P05-03-042; May 25, 2005, 2 p.m.

Each party may appear with or without counsel and offer relevant testimony and/or other relevant evidence. Each party must bring documents, photographs, drawings, claims files, witnesses, and the like, necessary to support the party's case. A party intending to offer documents or photographs into evidence shall bring enough copies for the record and for each opposing party.

Following the hearing and receipt of the stenographic transcript, the Insurance Commissioner (Commissioner) will issue a written order resolving the factual issues presented at the hearing and stating what remedial action, if any, is required. The Commissioner's Order will be sent to those persons participating in the hearing or their designated representatives. The Order of the Commissioner may be subject to judicial review by the Commonwealth Court.

Persons with a disability who wish to attend an administrative hearing and require an auxiliary aid, service or other accommodation to participate in the hearing should contact Jeffrey Wallace, Agency Coordinator, (717) 787-4298.

M. DIANE KOKEN,  
*Insurance Commissioner*

[Pa.B. Doc. No. 05-807. Filed for public inspection April 22, 2005, 9:00 a.m.]

**Review Procedure Hearings under the Unfair Insurance Practices Act**

The following insurer has requested a hearing as authorized by section 8 of the Unfair Insurance Practices Act (40 P. S. § 1171.8) in connection with the company's termination of the insured's policy. The administrative hearing will be held in the Insurance Department's regional offices in Harrisburg, PA. Failure by an appellant to appear at a scheduled hearing may result in dismissal with prejudice.

The following hearing will be held in the Administrative Hearings Office, Capitol Associates Building, Room 200, 901 N. Seventh Street, Harrisburg, PA 17102.

Appeal of Farmers Fire Insurance Company; file no. 05-188-01570; Brian Labar; doc. no. P05-03-029; May 19, 2005, 10 a.m.

Each party may appear with or without counsel and offer relevant testimony and/or other relevant evidence. Each party must bring documents, photographs, drawings, claims files, witnesses, and the like, necessary to support the party's case. A party intending to offer documents or photographs into evidence shall bring enough copies for the record and for each opposing party.

Following the hearing and receipt of the stenographic transcript, the Insurance Commissioner (Commissioner) will issue a written order resolving the factual issues presented at the hearing and stating what remedial action, if any, is required. The Commissioner's Order will be sent to those persons participating in the hearing or their designated representatives. The Order of the Commissioner may be subject to judicial review by the Commonwealth Court.

Persons with a disability who wish to attend an administrative hearing and require an auxiliary aid, service or other accommodation to participate in the

hearing should contact Jeffrey Wallace, Agency Coordinator, (717) 787-4298.

M. DIANE KOKEN,  
*Insurance Commissioner*

[Pa.B. Doc. No. 05-808. Filed for public inspection April 22, 2005, 9:00 a.m.]

**Top Star, Inc.; Hearing**

**Appeal of Top Star, Inc. under the Storage Tank and Spill Prevention Act; Underground Storage Tank Indemnification Fund; USTIF File No. 04-186(F); Doc. No. UT05-03-022**

The proceedings in this matter will be governed by 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law), 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) and any other relevant procedure provisions of law.

A prehearing telephone conference shall be held on April 25, 2005. A hearing shall occur on May 17, 2005, at 10 a.m. in the Administrative Hearings Office, Room 200, Capitol Associates Building, 901 North Seventh Street, Harrisburg, PA 17102. Motions preliminary to those at hearing, protests, petitions to intervene, notices of appearance or notices of intervention, if any, must be filed with the Hearings Administrator at the previously listed address on or before April 13, 2005. Answers to petitions to intervene, if any, shall be filed on or before April 21, 2005.

Persons with a disability who wish to attend the previously referenced administrative hearing and require an auxiliary aid, service or other accommodation to participate in the hearing should contact Jeffrey Wallace, Agency Coordinator at (717) 787-4298.

M. DIANE KOKEN,  
*Insurance Commissioner*

[Pa.B. Doc. No. 05-809. Filed for public inspection April 22, 2005, 9:00 a.m.]

**MILK MARKETING BOARD**

**Sunshine Meeting Dates for 2005-2006**

In accordance with 65 Pa.C.S. §§ 701—716 (relating to Sunshine Act), the Milk Marketing Board has established the following meeting dates for Fiscal Year 2005-2006:

<i>Date</i>	<i>Room</i>	<i>Time</i>
July 6, 2005	Room 202, Agriculture Building Harrisburg, PA 17110-9408	8 a.m. to 4 p.m.
August 3, 2005	Room 202, Agriculture Building Harrisburg, PA 17110-9408	8 a.m. to 4 p.m.
September 7, 2005	Room 202, Agriculture Building Harrisburg, PA 17110-9408	8 a.m. to 4 p.m.
October 5, 2005	Room 202, Agriculture Building Harrisburg, PA 17110-9408	8 a.m. to 4 p.m.
November 2, 2005	Room 202, Agriculture Building Harrisburg, PA 17110-9408	8 a.m. to 4 p.m.
December 7, 2005	Room 202, Agriculture Building Harrisburg, PA 17110-9408	8 a.m. to 4 p.m.
January 4, 2006	Room 202, Agriculture Building Harrisburg, PA 17110-9408	8 a.m. to 4 p.m.

<i>Date</i>	<i>Room</i>	<i>Time</i>
February 1, 2006	Room 202, Agriculture Building Harrisburg, PA 17710-9408	8 a.m. to 4 p.m.
March 1, 2006	Room 202, Agriculture Building Harrisburg, PA 17110-9408	8 a.m. to 4 p.m.
April 5, 2006	Room 202, Agriculture Building Harrisburg, PA 17110-9408	8 a.m. to 4 p.m.
May 3, 2006	Room 202, Agriculture Building Harrisburg, PA 17110-9408	8 a.m. to 4 p.m.
June 7, 2006	Room 202, Agriculture Building Harrisburg, PA 17110-9408	8 a.m. to 4 p.m.

BOYD E. WOLFF,  
*Chairperson*

[Pa.B. Doc. No. 05-810. Filed for public inspection April 22, 2005, 9:00 a.m.]

## PATIENT SAFETY AUTHORITY

### Public Meeting

The Patient Safety Authority (Authority), established by section 303 of the Medical Care Availability and Reduction of Error (MCARE) Act (40 P. S. § 1303.303), enacted on March 20, 2002, will hold a meeting of the Authority's Board of Directors at 10:30 a.m. on Monday, May 2, 2005, at the Wildwood Conference Center, Harrisburg Area Community College, One HACC Drive, Harrisburg, PA.

Individuals having questions regarding this meeting, which is open to the public, should contact the Authority at (717) 346-0469.

ALAN B.K. RABINOWITZ,  
*Administrator*

[Pa.B. Doc. No. 05-811. Filed for public inspection April 22, 2005, 9:00 a.m.]

## PENNSYLVANIA PUBLIC UTILITY COMMISSION

### Continuation of Fuel Cost Recovery Surcharge

Public Meeting held  
April 7, 2005

*Commissioners Present:* Wendell F. Holland, Chairperson;  
Robert K. Bloom, Vice Chairperson; Kim Pizzingrilli  
*Continuation of Fuel Cost Recovery Surcharge; S.P. 28208*

### Order

*By the Commission:*

The Pennsylvania Public Utility Commission (Commission) by its Fuel Cost Recovery Surcharge Order at Special Permission Number 28208, ratified June 10, 2004, authorized call or demand, paratransit and airport transfer carriers under the jurisdiction of this Commission to adjust rates and fares to offset significant increases in the cost of fuel. The Order was amended by this Commission at the Public Meeting of November 18, 2004 in response

to a petition presented by The Brotherhood of Unified Taxi Drivers/Owners, in which this Commission was requested to increase the amount of the surcharge in consideration of higher prices in the vicinity of Philadelphia.

Initially, all call or demand carriers were authorized a fuel surcharge of thirty cents (\$.30) per trip for each paying passenger, and all paratransit and airport transfer carriers were authorized a fuel surcharge of seventy cents (\$.70) per trip for each paying customer. Medallion taxicabs were authorized to charge fifty cents (\$.50) per trip (including trips to and from Philadelphia International Airport) for each paying customer as a result of the amendment of the Public Meeting of November 18, 2004. The fuel surcharge is to be in addition to officially filed tariff rates. The fuel surcharge became effective on June 14, 2004, and is scheduled to terminate on June 12, 2005.

The order required the Bureau of Transportation and Safety to investigate the merits of the fuel surcharge on a quarterly basis, beginning September 30, 2004. As a result of the previous quarterly evaluations, this Commission ordered the continuation of the fuel surcharge. Furthermore, data gathered by the Bureau of Transportation and Safety in the course of evaluating the petition of The Brotherhood of Unified Taxi Drivers/Owners indicated that it was reasonable to consider amending the order for an increased surcharge for Medallion Taxicabs serving the Philadelphia area.

In the process of conducting the final quarterly investigation, the Bureau analyzed current information available from the Energy Information Administration of the Department of Energy, the American Automobile Association, and OPIS Energy Group.

At the time of approval of the fuel surcharge the average retail cost of regular gasoline was \$2 per gallon. In the interval of January through March of 2005, the average retail price of regular gasoline on the East Coast of the United States was \$1.95 per gallon. Although this figure indicates lower prices than those at the time of initiation of this surcharge, it is not an accurate representation of what has been happening with fuel prices.

This winter's extremely cold temperatures in the northern portion of the United States have resulted in greater demand for fuel oil. In response to this increased demand for fuel oil, the nation's refineries have concentrated on heating oil production, thereby reducing the supply of gasoline. As supplies have started to decrease, the prices at the pumps have increased significantly starting in



February of 2005. Although spring approaches and demand for heating oil will decrease, projections for the ensuing months are not optimistic.

Reports from the Energy Information Administration of the Department of Energy, as well as the Oil Price Information service indicate continued increases. The price of crude is still unstable as prices rise above \$55 per barrel, with no evidence of relief. Additionally, U.S. refineries are still expected to produce lower amounts of gasoline as the plants are temporarily closed for system modifications required for compliance with new government clean air requirements going into effect in 2006.

After due consideration, we have determined that fuel costs have not substantially decreased. Based upon the evidence available, we are of the opinion that the passenger motor carrier industry continues to have a need for the fuel surcharge to permit the recovery of unanticipated fuel expenditures; *Therefore*,

*It Is Ordered That:*

1. The fuel surcharge established at Special Permission No. 28208 be continued.

2. The Secretary of this Commission shall duly certify this order and deposit same with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 05-812. Filed for public inspection April 22, 2005, 9:00 a.m.]

### Default Order

Public Meeting held  
April 7, 2005

*Commissioners Present:* Wendell F. Holland, Chairperson;  
Robert K. Bloom, Vice Chairperson; Kim Pizzingrilli

*Pennsylvania Public Utility Commission Law Bureau  
Prosecutory Staff v. North American Telephone Network,  
Inc. (2004.0268); Doc. No. C-20054242; A-310682*

### Default Order

*By the Commission:*

On January 20, 2005, Law Bureau Prosecutory Staff instituted a complaint against North American Telephone Network, Inc. (NATN), a telecommunications interexchange reseller certificated at A-310682. In the complaint, Prosecutory Staff alleged that the Commission sent by certified mail a notice to NATN that its 2004-2005 General Assessment of \$167 was overdue. The complaint charged that NATN's failure to pay the General Assessment violates 66 Pa.C.S. § 510(c).

The complaint sought an order from the Commission canceling NATN's certificate of public convenience for failure to pay these assessments. The complaint was mailed by the Secretary's Bureau on February 17, 2005, to NATN's last known business address and service was perfected on February 22, 2005. To date, more than 20 days since service was perfected, no answer has been filed to the complaint and the assessment has still not been paid.

The Commission puts the industry on notice that we will not hesitate to invoke our authority under the Public Utility Code to ensure timely compliance with our regula-

tions and orders including the ordering of such other remedy as the Commission may deem appropriate. 66 Pa.C.S. §§ 504—506 and 3301. Based on the previous and because of NATN's failure to pay its General Assessment for 2004-2005, we believe it is appropriate to revoke NATN's certificate of public convenience as being in the public interest. Furthermore, the Commission may take other appropriate action, including the imposition of penalties under section 3301, in lieu of cancellation, if NATN seeks relief from this Default Order; *Therefore, It Is Ordered That:*

1. The allegations in the Law Bureau Prosecutory Staff's complaint are deemed admitted and the complaint is thereby sustained.

2. The Secretary serve a copy of this Default Order upon the Office of Consumer Advocate, the Office of Small Business Advocate, the Office of Trial Staff and the Attorney General's Bureau of Consumer Protection, and also cause a copy of this Default Order to be published in the *Pennsylvania Bulletin* with a 30-day comment period.

3. Absent the filing of adverse public comment, 30 days after publication in the *Pennsylvania Bulletin* and without further action by the Commission, the certificate held by North American Telephone Network, Inc. at Docket No. A-310682 shall be canceled, and the company's name stricken from all active utility lists maintained by the Tariff and Annual Report Section of the Commission's Bureau of Fixed Utility Services and the Assessment Section of the Bureau of Administrative Services.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 05-813. Filed for public inspection April 22, 2005, 9:00 a.m.]

### Extension of the Fuel Cost Recovery Surcharge Special Permission 28207

Public Meeting held  
April 7, 2005

*Commissioners Present:* Wendell F. Holland, Chairperson;  
Robert K. Bloom, Vice Chairperson; Kim Pizzingrilli

*Extension of the Fuel Cost Recovery Surcharge Special  
Permission 28207*

### Order

*By the Commission:*

Tristate Household Goods Conference, Inc., (Tristate) a tariff publishing agency, represents approximately 275 PUC household good carriers. Substantially large increases in the cost of diesel fuel, which were unanticipated, motivated Tristate to request the implementation of the Fuel Cost Recovery Surcharge. The Fuel Cost Recovery Surcharge Special Permission 28207 was approved in Public Meeting held April 17, 2003 and was extended in Public Meeting held April 15, 2004. The extension was approved for a duration of one year unless changed, cancelled or extended. The current surcharge grants approval to temporarily increase the Tristate tariff to recover temporarily increased fuel costs when transporting household goods for moves more than forty (40) miles (weight and distance) and moves that are forty (40) miles or less (hourly) by the use of a Fuel Cost Recovery Surcharge.

The surcharge is determined by a formula which attempts to approximate the amount of fuel used on a particular trip and multiplies that amount by the increased cost of fuel, allowing the carrier to recover only the additional fuel charges incurred. The formula includes the following constant factors: (1) base price per gallon of fuel<sup>1</sup>; (2) average vehicle fuel consumption of 5 miles per gallon; and (3) a terminal factor which allows the carrier to recover the additional cost of fuel used in traveling to and from the carrier's terminal to the origin point of the move. The formula also includes one variable factor, the current month's diesel fuel price.<sup>2</sup>

Moves of 40 miles or less will be divided into 4 categories according to average mileage: 5 mile average for trips ranging from 1 to 10 miles, 15 mile average for trips ranging from 10 to 20 miles, 25 mile average for trips ranging from 20 to 30 miles, and 35 mile average for trips ranging from 30 to 40 miles. An example calculation for an 8 mile move is as follows<sup>3</sup>:

Origin of move to destination 8 miles	= 5 miles average
Terminal factor	= 40 miles
Total miles	= 45 miles
Average miles per gallon	= 5
Fuel used	= 9 gallons
DOE current Fuel Price as of 3/17/03	= \$1.949
Base fuel Price	= \$1.267
Fuel price difference	= \$ .682
Gallons × Fuel price difference	= 9 × .682 =
	\$6.14

Moves of more than 40 miles will be calculated using actual mileage from the move's origin to destination and return. An example calculation for a 100 mile move is as follows:

Origin of move to destination	= 100 miles
Empty Return (dest. to origin)	= 100 miles
Terminal factor	= 40 miles
Total miles	= 240 miles
Average miles per gallon	= 5
Fuel used	= 48 gallons
DOE current Fuel Price as of 3/17/03	= \$1.949
Base fuel Price	= \$1.267
Fuel price difference	= \$ .682
Gallons × Fuel price difference	= 48 × .682 =
	\$32.75

On February 14, 2005 Tristate filed a request to extend the Fuel Cost Recovery Surcharge. The request was filed in response to the volatile nature of the petroleum market, which continues to produce unanticipated increases in diesel fuel prices.

In support of the request for extension, Tristate has submitted data from the Department of Energy for the Central Atlantic Region. The March 2005 diesel prices are \$2.28, which is 68% higher than the price of \$1.355 charged in March 2002, and 31% higher than the price of \$1.736 charged in March 2004.

Additional support for an extension can be found in the March 2, 2005 edition of *This Week in Petroleum*, in

<sup>1</sup> The proposed base price is \$1.267, which was the price of a gallon of diesel fuel according to the Department of Energy report of Retail On-Highway Diesel Prices for the Central Atlantic Region as of February 15, 2002. Tristate proposes this as a base price since fuel prices have steadily increased from that date.

<sup>2</sup> This figure is determined by the Department of Energy's report of Retail On-Highway Diesel Prices for the Central Atlantic Region. The current month's diesel fuel price will be effective beginning the 15th day of each month through the 14th day of the subsequent month.

<sup>3</sup> All fuel surcharges shall be calculated and provided to the customer as part of the Estimate of Charges.

which the Department of Energy reported that seasonal demand for heating oil resulted in higher diesel prices, due to both being derived from the same type of distillate. The Department of Energy also projected destabilizing effects on prices in the immediate future as a result of increased global diesel demand.

The Federal Department of Transportation has responded to the escalating fuel costs for interstate transportation by approving a fuel surcharge on a similar sliding scale. The Federal Fuel Surcharge became effective May 15, 2000 and continues in effect.

Pursuant to 66 Pa.C.S. § 1301, the Commission is required to ensure that all rates charged by a public utility are just and reasonable. Additionally, the Commission is obligated to address industry-wide problems "without creating a chaotic rate structure impossible to manage or police." *Emergency Fuel Surcharge*, 47 Pa. P.U.C. 389,391 (1974). The current surcharge addresses the problem of rising fuel costs, while being just and reasonable in that carriers are compensated only for the additional cost of the fuel used.

Based on the foregoing, it appears that the extension of the Fuel Cost Recovery Surcharge for transportation of household goods is just and reasonable. In order to prevent financial hardship it is imperative that Pennsylvania household goods carriers be afforded an opportunity to temporarily adjust rates to offset escalating fuel costs using the proposed extended Fuel Cost Recovery Surcharge and, accordingly, we shall allow the proposed extended surcharge to become effective for a period of one (1) year unless changes, cancelled or further extended. *Therefore,*

*It Is Ordered That:*

1. Tristate members rendering service under authority of this Commission shall charge a Fuel Cost Recovery Surcharge on transportation provided for over 40 mile charges and for 40 miles or less hourly charge in accordance with all other tariff rules of this Commission. The Fuel Recovery Surcharge is to be extended effective April 18, 2005.

2. The Extended Fuel Recovery Surcharge shall be in effect for 1 year to April 18, 2006 unless changed, cancelled or further extended by the Commission.

3. Copies of this order shall be served by the Secretary to the Office of Consumer Advocate and Office of Small Business Advocate. The Secretary shall forward this Order to the *Pennsylvania Bulletin* for publication.

4. Each carrier shall post a copy of this Extended Fuel Cost Recovery Surcharge along with the original Fuel Cost Recovery Surcharge dated April 17, 2003, in a conspicuous place. In addition, each carrier shall include the surcharge as a separate line item of the Estimate of Charges provided to prospective shippers.

5. The rates collected to the Extended Fuel Cost Recovery Surcharge are subject to refund in the event that any formal complaints are filed, within thirty (30) days of the date of publication of this order, and are successful in challenging the surcharge.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 05-814. Filed for public inspection April 22, 2005, 9:00 a.m.]

### Service of Notice of Motor Carrier Applications

The following temporary authority and/or permanent authority applications for the right to render service as a common carrier or contract carrier in this Commonwealth have been filed with the Pennsylvania Public Utility Commission. Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities). A protest shall indicate whether it applies to the temporary authority application, the permanent authority application, or both. Filings must be made with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant by May 16, 2005. Documents filed in support of the applications are available for inspection and copying at the Office of the Secretary between 8 a.m. and 4:30 p.m., Monday through Friday, and at the business address of the respective applicant.

#### Applications of the following for approval to *begin operating as common carriers for transportation of persons as described under each application.*

**A-00121649. Michael G. Heckman** (4 Sycamore Drive, Malvern, Chester County, PA 19355)—persons in paratransit service, between points in the Townships of West Whiteland, East Whiteland, Tredyffrin, Willistown and Charlestown and the Borough of Malvern, Chester County, and from points in said territory, to points in Chester County and the Borough of King of Prussia, Montgomery County, and return.

**A-00121669. Ruth T. and Clarence N. Kauffman, Tenants by Entirety** (R. R. 2, Box 110, McAlisterville, Juniata County, PA 17049)—persons in paratransit service, limited to persons whose personal convictions prevent them from owning or operating motor vehicles, between points in the Counties of Juniata and Mifflin, and from points in said counties, to points in Pennsylvania, and return.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 05-815. Filed for public inspection April 22, 2005, 9:00 a.m.]

### Telecommunications

**A-310189F7000. Verizon Pennsylvania Inc. (f/k/a Bell Atlantic-Pennsylvania, Inc.) and Qwest Communications Corporation.** Joint petition of Verizon Pennsylvania Inc. (f/k/a Bell Atlantic-Pennsylvania, Inc.) and Qwest Communications Corporation for approval of amendment no. 1 to an interconnection agreement under section 252(e) of the Telecommunications Act of 1996.

Verizon Pennsylvania Inc. (f/k/a Bell Atlantic-Pennsylvania, Inc.) and Qwest Communications Corporation, by its counsel, filed on April 11, 2005, at the Pennsylvania Public Utility Commission (Commission), a joint petition for approval of amendment no. 1 to an interconnection agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the Verizon Pennsylvania Inc. (f/k/a Bell Atlantic-Pennsylvania, Inc.) and Qwest Communications Corpora-

tion 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. 05-816. Filed for public inspection April 22, 2005, 9:00 a.m.]

### Telecommunications

**A-310437F7000. Verizon Pennsylvania Inc. (f/k/a Bell Atlantic-Pennsylvania, Inc.) and Qwest Interprise America, Inc. (f/k/a US West Interprise America, Inc.).** Joint petition of Verizon Pennsylvania Inc. (f/k/a Bell Atlantic-Pennsylvania, Inc.) and Qwest Interprise America, Inc. (f/k/a US West Interprise America, Inc.) for approval of amendment no. 4 to an interconnection agreement under section 252(e) of the Telecommunications Act of 1996.

Verizon Pennsylvania Inc. (f/k/a Bell Atlantic-Pennsylvania, Inc.) and Qwest Interprise America, Inc. (f/k/a US West Interprise America, Inc.), by its counsel, filed on April 11, 2005, at the Pennsylvania Public Utility Commission (Commission), a joint petition for approval of amendment no. 4 to an interconnection agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the Verizon Pennsylvania Inc. (f/k/a Bell Atlantic-Pennsylvania, Inc.) and Qwest Interprise America, Inc. (f/k/a US West Interprise America, 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. 05-817. Filed for public inspection April 22, 2005, 9:00 a.m.]

### Wastewater Service

**A-230040F2000 and A-230102. Cecil Wastewater Treatment Company, Inc. and L & S Wastewater, Inc.** Joint application of Cecil Wastewater Treatment Company, Inc. and L & S Wastewater, Inc. for approval of: 1) the right of Cecil Wastewater Treatment Company, Inc. to transfer all of its assets to L & S Wastewater, Inc.; 2) the right of Cecil Wastewater Treatment Company, Inc. to abandon its certificate of public convenience as a wastewater treatment company in this Commonwealth; and 3) the right of L & S Wastewater, Inc. to begin to offer, render, furnish or supply wastewater service to the public in Cecil Township, Washington County.

Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities). Filings must be made with the Secretary, Pennsylv-

vania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant, on or before May 9, 2005. The documents filed in support of the application are available for inspection and copying at the Office of the Secretary between 8 a.m. and 4:30 p.m., Monday through Friday, and at the applicant's business address.

*Applicants:* Cecil Wastewater Treatment Company, Inc. and L & S Wastewater, Inc.

*Through and By Counsel:* Donald J. Balsley, Jr., 535 Smithfield Street, Suite 619, Pittsburgh, PA 15222-2302, and Jesse White, 2301 Millers Run Road, P. O. Box 384, Cecil, PA 15321

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 05-818. Filed for public inspection April 22, 2005, 9:00 a.m.]

### Wastewater Service

**A-230073F0010. Pennsylvania-American Water Company.** Application of Pennsylvania-American Water Company for approval of: 1) the transfer, by sale, of the assets, properties and rights of Blue Mountain Lakes Associates, L. P. related to its wastewater system to Pennsylvania-American Water Company; and 2) the beginning by Pennsylvania-American Water Company of wastewater service to the public in the service territory, of Blue Mountain Lakes Associates, L. P. located in portions of Stroud and Smithfield Townships, Monroe County.

Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities). Filings must be made with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant, on or before May 9, 2005. The documents filed in support of the application are available for inspection and copying at the Office of the Secretary between 8 a.m. and 4:30 p.m., Monday through Friday, and at the applicant's business address.

*Applicant:* Pennsylvania-American Water Company—Wastewater Division

*Through and By Counsel:* Velma A. Redmond, Esquire, Susan Simms Marsh, Esquire, 800 West Hersheypark Drive, Hershey, PA 17033

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 05-819. Filed for public inspection April 22, 2005, 9:00 a.m.]

### Water Service

**A-212285F0123. Pennsylvania-American Water Company.** Application of Pennsylvania-American Water Company for approval of: 1) the transfer, by sale, of the assets, properties and rights of the Blue Mountain Lakes

Associates, L. P. related to its water system to Pennsylvania-American Water Company; and 2) the beginning by Pennsylvania-American Water Company, of water service to the public in the service territory of Blue Mountain Lakes Associates, L. P. located in portions of Stroud and Smithfield Townships, Monroe County, PA.

Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities). Filings must be made with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant, on or before May 9, 2005. The documents filed in support of the application are available for inspection and copying at the Office of the Secretary between 8 a.m. and 4:30 p.m., Monday through Friday, and at the applicant's business address.

*Applicant:* Pennsylvania-American Water Company

*Through and By Counsel:* Velma A. Redmond, Esquire, Susan Simms Marsh, Esquire, 800 West Hersheypark Drive, Hershey, PA 17033

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 05-820. Filed for public inspection April 22, 2005, 9:00 a.m.]

## STATE BOARD OF VEHICLE MANUFACTURERS, DEALERS AND SALESPERSONS

**Bureau of Professional and Occupational Affairs v. Ron T. Moreno; Doc. No. 0886-60-00; File No. 99-60-03677**

On February 14, 2005, the State Board of Vehicle Manufacturers, Dealers and Salespersons (Board) issued an adjudication and order in which it revoked the vehicle salesperson license of Ron T. Moreno, license No. MV-130267-L and levied a \$2,000 civil penalty.

Individuals may obtain a copy of the adjudication by writing to Thomas A. Blackburn, Board Counsel, State Board of Vehicle Manufacturers, Dealers and Salespersons, P. O. Box 2649, Harrisburg, PA 17105-2649.

This adjudication and order represent the final Board decision in this matter. It may be appealed to the Commonwealth Court of Pennsylvania by the filing of a petition for review with that court in accordance with the Pennsylvania Rules of Appellate Procedure. Individuals who take an appeal to the Commonwealth Court must serve the Board with a copy of the petition for review. The Board contact for receiving service of appeals is the previously named Board counsel.

EDWIN K. GALBREATH, Jr.,  
*Chairperson*

[Pa.B. Doc. No. 05-821. Filed for public inspection April 22, 2005, 9:00 a.m.]

# STATE CONTRACTS INFORMATION

## DEPARTMENT OF GENERAL SERVICES

Act 266 of 1982 provides for the payment of interest penalties on certain invoices of "qualified small business concerns". The penalties apply to invoices for goods or services when payments are not made by the required payment date or within a 15 day grace period thereafter.


Act 1984-196 redefined a "qualified small business concern" as any independently owned and operated, for-profit business concern employing 100 or fewer employees. See 4 Pa. Code § 2.32. The business must include the following statement on every invoice submitted to the Commonwealth: "(name of business) is a qualified small business concern as defined in 4 Pa. Code 2.32."

A business is eligible for payments when the required payment is the latest of:  
 The payment date specified in the contract.  
 30 days after the later of the receipt of a proper invoice or receipt of goods or services.  
 The net payment date stated on the business' invoice.

A 15-day grace period after the required payment date is provided to the Commonwealth by the Act.

For more information: contact: Small Business Resource Center  
 PA Department of Community and Economic Development  
 374 Forum Building  
 Harrisburg, PA 17120  
 800-280-3801 or (717) 783-5700

### Reader's Guide



**Legal Services & Consultation**

① Service Code Identification Number

② Commodity/Supply or Contract Identification No.

**B-54137.** Consultant to provide three 2-day training sessions, covering the principles, concepts, and techniques of performance appraisal and standard setting with emphasis on performance and accountability, with a knowledge of State Government constraints.

Department:	General Services	③ Contract Information
Location:	Harrisburg, Pa.	④ Department
Duration:	12/1/93-12/30/93	⑤ Location
Contact:	Procurement Division 787-0000	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

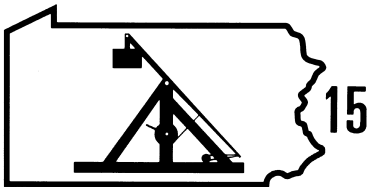
## PA TREASURY BUSINESS OUTLET—PLUG INTO IT!

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@patreasury.org

ROBERT P. CASEY, Jr.,  
*State Treasurer*

## SERVICES



Environmental Maintenance Service

**DMF 010-102.1** Abandoned Mine Land Reclamation Project, LV Coal Company and Sky High Coal Company, Mining Permit Nos. 54881302 and 54931106. The principal items of work and approximate quantities include Mobilization and Demobilization, Removal and Disposal of Structures, 1,500 cubic yards of Backfilling Mine Shafts (Grading) and 3 Acres of Seeding. This project issues on April 22, 2005 and bids will be opened on May 17, 2005 at 2:00 p.m. Bid documents cost \$10.00 per set and will not be mailed until payment has been received.

**Department:** Environmental Protection  
**Location:** Porter Township, Schuylkill County  
**Duration:** 180 calendar days after the official starting date.  
**Contact:** Construction Contracts Section, (717) 787-7820



Janitorial Services

**FM 8884** Furnish materials, equipment, and labor to perform janitorial services three (3) visits per week at the location listed below. The detailed work schedule and bid Specifications must be obtained from the Facility Management Division at 717-705-5952.

**Department:** State Police  
**Location:** Pennsylvania State Police, Troop H, Gettysburg Station, 3033 Old Harrisburg Pike, Gettysburg, PA 17325  
**Duration:** July 1, 2005 through June 30 2008  
**Contact:** Helen Fuhrman, (717) 705-5952

**FM 8882** Furnish materials, equipment, and labor to perform janitorial services three (3) visits per week at the location listed below. The detailed work schedule and bid Specifications must be obtained from the Facility Management Division at 717-705-5952.

**Department:** State Police  
**Location:** Pennsylvania State Police, Troop C, Kane Station, 3178 Route 219, Kane, PA 16735  
**Duration:** July 1, 2005 through June 30 2008  
**Contact:** Helen Fuhrman, (717) 705-5952

**FM 8888** Furnish materials, equipment, and labor to perform janitorial services three (3) visits per week at the location listed below. The detailed work schedule and bid Specifications must be obtained from the Facility Management Division at 717-705-5952.

**Department:** State Police  
**Location:** Pennsylvania State Police, Troop F, Emporium, 12921 Route 20, Emporium, PA 15834  
**Duration:** July 1, 2005 through June 30 2008  
**Contact:** Helen Fuhrman, (717) 705-5952

**FM 8885** Furnish materials, equipment, and labor to perform janitorial services three (3) visits per week at the location listed below. The detailed work schedule and bid Specifications must be obtained from the Facility Management Division at 717-705-5952.

**Department:** State Police  
**Location:** Pennsylvania State Police, Troop D, Beaver Station, 1400 Brighton Rd., Beaver, PA 15009  
**Duration:** July 1, 2005 through June 30 2008  
**Contact:** Helen Fuhrman, (717) 705-5952



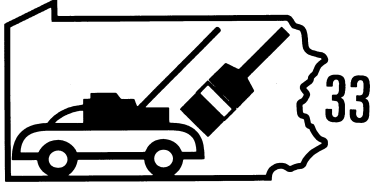
Financial and Insurance Consulting

**105-I-193603000** The services of a certified public accountant or certified public accounting firm are required for the auditing of campaign finance statements and reports for the Bureau of Commissions, Elections and Legislation.

**Department:** State  
**Location:** Bureau of Finance and Operations, Room 308, North Office Building, Harrisburg, PA 17120  
**Duration:** 2 years  
**Contact:** Monna J. Accurti, (717) 787-3945

**FM 8881** Furnish materials, equipment, and labor to perform janitorial services three (3) visits per week at the location listed below. The detailed work schedule and bid Specifications must be obtained from the Facility Management Division at 717-705-5952.

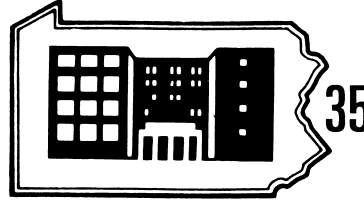
**Department:** State Police  
**Location:** Pennsylvania State Police, Troop A, Indiana, 4221 Route 286, Highway West, Indiana, PA 15701  
**Duration:** July 1, 2005 through June 30 2008  
**Contact:** Helen Fuhrman, (717) 705-5952



### Property Maintenance

**MI-869-R** Millersville, PA - Hull and Hobb Roof Replacement. Two three-story residence halls, each building approximately 13,500 SF. Remove existing EDPM system and associated material to roof deck surface and replace with new EDPM roofing system including aluminum coping. 15 year warranty. Contractors must provide manufacturers certifications with proposal. Pre-Bid Meeting - April 25, 2005, at 1:30 p.m., Room 203, Dilworth Hall, Millersville University.

**Department:** State System of Higher Education  
**Location:** <http://marauder.millersville.edu/~circlek/directions.html>  
**Duration:** 70 calendar days upon Notice to Proceed. Anticipated start June 27, 2005.  
**Contact:** Ruth Sheetz, (717) 872-3829



### Real Estate Services

**93810** Lease office space to the Commonwealth of PA. Proposals are invited to provide the Department of Labor and Industry with 1,667 useable square feet of office space in Montgomery County, PA. with a minimum parking for 2 ADA vehicles, within Fort Washington or Dresher. Downtown locations will be considered. For more information on SFP #93810 which is due on 6/6/05 visit [www.dgs.state.pa.us](http://www.dgs.state.pa.us) and click on Real Estate to download an SFP document or call (717) 787-7412.

**Department:** Labor and Industry  
**Location:** 505 North Office Building, Harrisburg, PA 17125  
**Contact:** Jennings Ward, (717) 787-7412

[Pa.B. Doc. No. 05-822. Filed for public inspection April 22, 2005, 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*



# RULES AND REGULATIONS

## Title 55—PUBLIC WELFARE

### DEPARTMENT OF PUBLIC WELFARE

#### [55 PA. CODE CHS. 2600 AND 2620]

#### Personal Care Homes

##### *Statutory Authority*

The Department of Public Welfare (Department) adopts Chapter 2600 (relating to personal care homes) and rescinds Chapter 2620 to read as set forth in Annex A under the authority of section 211 and Articles IX and X of the Public Welfare Code (62 P. S. §§ 211, 901—922 and 1001—1087).

Notice of proposed rulemaking was published at 32 Pa.B. 4939 (October 5, 2002).

##### *Purpose of the Final-Form Rulemaking*

The purpose of this final-form rulemaking is to protect the health, safety and well-being of personal care home residents. Personal care homes are designed to provide safe, humane, comfortable and supportive residential settings for adults who do not require the services in or of a licensed long-term care facility, but who do require assistance or supervision with activities of daily living (ADL) or instrumental activities of daily living (IADL), or both. Residents who live in personal care homes that meet the requirements in this chapter will receive the encouragement and assistance they need to develop and maintain maximum independence and self-determination.

This final-form rulemaking is needed to protect the health, safety and well-being of adults who receive services in personal care homes away from their families and advocates. The final-form rulemaking strengthens health and safety protections based on current information and research and incorporates state-of-art program concepts. The final-form rulemaking addresses the increasing complexity of the needs and services of the personal care home residents. Due to this Commonwealth's rapidly growing population of older adults, as well as the desire of many consumers to stay out of nursing homes, the demand for residential care options is increasing.

##### *Background*

During the public comment period, the Department received a total of 776 letters, faxes and e-mails submitting recommendations for changes to the proposed rulemaking. The Department prepared and distributed a summary of the major commentator issues to personal care homes and other interested persons. Five workgroups were formed to review the sections of the regulations with the most disparate comments. The five work groups included: medications, resident rights, small homes versus large homes, staffing and assessments/support plans. The work groups were co-chaired by personal care home stakeholders and Department staff, and reported to the Department's Personal Care Home Advisory Committee (Committee), which is comprised of personal care home residents, providers, provider associations, advocates and advocacy associations. The goal of each workgroup was to recommend guidelines for the final-form rulemaking relating to the workgroup's specific topic of interest.

The Department considered the 776 public comments, the Committee workgroup recommendations, comments

from other State agencies, Departmental research, comments from legislators and recommendations of the Independent Regulatory Review Commission (IRRC) in developing the final-form rulemaking.

Throughout the regulatory process, including the various public forums and the public comment period, many valuable comments and suggestions were received from the external stakeholders who participated in the process. The Department has carefully reviewed and considered each comment and incorporated many of the recommendations into the final-form rulemaking. The Department appreciates the time and expertise external stakeholders have given to make the final-form rulemaking an effective regulatory tool to protect the vulnerable adults served in personal care homes.

##### *Affected Organizations and Individuals*

The residents receiving care and services in these licensed facilities are directly affected by this final-form rulemaking since they are the consumers that the final-form rulemaking aims to protect. Families and friends of the residents receiving care and services are affected in their interest to protect the health, safety and well-being of their loved ones.

Personal care homes must comply with this final-form rulemaking to operate in this Commonwealth. This final-form rulemaking applies equally to profit and nonprofit facilities. As of October 2004, there are 1,689 licensed personal care homes in this Commonwealth, with a resident capacity of 75,958. Of this total, 1,293 homes (77%) are operated for profit and 396 homes (23%) are operated as nonprofit. There are 317 homes serving 8 or fewer residents (19%), with 1,372 homes serving 9 or more residents (81%). Of the 53,240 residents in personal care homes, a total of 10,425 residents (19.6%) receive Supplemental Security Income (SSI) benefits that are accepted as full payment towards the residents' monthly care.

##### *Accomplishments and Benefits*

The final-form rulemaking benefits 53,240 residents served in licensed personal care homes in this Commonwealth by providing comprehensive health, safety and well-being protections, while requiring that a resident's needs be met on an individualized basis. The final-form rulemaking supports resident-centered care, resident choice and resident privacy.

The final-form rulemaking includes many new and strengthened requirements from the current regulations, including unannounced Departmental inspections, fire safety protections, reportable incidents and conditions, resident-home contract, quality management, refunds, resident rights, complaint procedures, administrator qualifications, administrator and staff training, approval of training courses and instructors, emergency preparedness, emergency medical plan, smoking safety, medications, medication administration training, safe management techniques, preadmission screening tool, initial and annual assessment, support plan, notification of termination, secured dementia care and enforcement.

Families and friends of the residents also benefit by this final-form rulemaking in their interest to assure the health, safety and well-being of their friends and family members.

*Fiscal Impact*

IRRC and many commentators recommended that the Department consider the fiscal impact of the final-form rulemaking on smaller personal care homes and reassess its cost estimates for the final-form rulemaking. In drafting the final-form rulemaking, the Department carefully researched and considered the effect the new requirements will have on the cost of providing or receiving services. The following requirements will have most influence on the cost of implementing the final-form rulemaking. A discussion of new costs, as well as fiscal relief for small homes, is addressed.

1. *Small versus large homes.*

In accordance with section 211(b)(1) of the Public Welfare Code, the Department added several exemptions for small personal care homes serving eight or fewer residents. The Public Welfare Code requires that the Department distinguish between the requirements for homes serving nine or more residents versus homes serving eight or fewer residents.

The exemptions for small homes are based on existing residential licensing regulations for community homes (§§ 6400.231—6400.245 (relating to homes serving nine or more residents)) and child residential facilities (§§ 3800.251—3800.257 (relating to secure care)) and the cost impact for small homes. The exemptions for small homes include the requirements regarding administrator qualifications (§ 2600.53(a)(5) (relating to qualifications and responsibilities of administrators)), sewage system approval (§ 2600.85(f) (relating to sanitation)), communication systems (§ 2600.90(b) (relating to communication system)), posting of emergency evacuation diagrams (§ 2600.123(d) (relating to emergency evacuation)), interconnected fire alarms (§ 2600.130(d) (relating to smoke detectors and fire alarms)) and exit signs (§ 2600.133 (relating to exit signs)). These requirements were proposed to apply to all homes regardless of size.

These exemptions respond to IRRC and the public comments requesting fiscal relief for small homes and support a more “home-like” setting for the smaller homes, again in response to public comment.

2. *Physical site.*

Many public comments were received regarding the costs of some of the new physical site requirements. Some homes will incur reasonable and necessary additional costs to meet new health and safety protections such as water safety testing (§ 2600.89(c) (relating to water)), a communication system (§ 2600.90) and safe landings at stairwells (§ 2600.94 (relating to landings and stairs)).

The new requirement for water safety testing in § 2600.89(c) applies only to a home that is not connected to a public water system, but instead has a private water source such as a well. These homes will need to test their well water every 3 months for coliforms to be certain that the water does not contain contaminants and is safe to drink. The quarterly cost for coliform testing at a Department of Environmental Protection (DEP) certified laboratory is only \$30 per test. The benefit of assuring that residents have safe drinking water and are not exposed to harmful contaminants outweighs this reasonable cost.

The new requirement for an internal communication system in § 2600.90 applies only to a home serving nine or more residents. In a large home, it is critical that staff persons be able to quickly and efficiently contact other staff persons in the event of an emergency or if they need assistance with a resident. The cost of installing a

communication system will vary greatly based on the size and lay out of the home. If a home is physically structured so that staff persons can call out for assistance and be heard throughout the home, a system is not required. Many large homes already have internal communication systems in place and will not incur additional costs. Types of communication systems that may be used include walkie-talkies, pagers, cell phones and intercom systems. The Department estimates that a two-way walkie-talkie system for two staff persons will cost between \$20 and \$100. The benefit of being able to contact other staff persons in the event of an emergency outweighs this reasonable cost for a large home.

The new requirement for safe landings at stairwells in § 2600.94 will be a one-time cost for an existing home that does not currently have a safe landing at the top of a stairwell. The requirement applies to a home that has a downward stairwell with a door that opens into the stairwell with no landing at the top as the door is opened. This requirement is a major safety protection to prevent accidents and injuries and is intended to prevent a resident from falling down a stairwell. Many homes already meet this requirement and no changes to the home will be needed. Often this requirement can be met by reversing the door swing so that a resident must step back to open the door before proceeding down the stairwell. Since there could be many physical lay out variations to a home and the risks may vary, the Department will entertain a waiver request if the home believes that a particular stairwell is safe. The cost to comply with this requirement will vary depending on the physical site correction that is required. The benefit of preventing serious injuries due to falls outweighs the cost.

The new requirement for nonskid surfaces on stairs, steps and ramps in § 2600.94 will be a one time cost for a home that has surfaces that are likely to cause slips, falls and resulting injuries to the residents. Most homes already have acceptable nonskid surface coverings such as carpet on interior stairs, rubber coverings or strips on ramps and textured concrete on outside steps. The estimated average cost per foot for installing a nonskid strip on a stairs or ramp is \$4 per yard. The benefit of preventing falls and injuries outweighs this reasonable cost.

3. *Fire safety.*

Many public comments were received regarding the costs of some of the new fire safety requirements. Some homes will incur reasonable and necessary additional costs to meet new fire protections such as fire safety exits (§ 2600.122 (relating to exits)), fire alarms for residents and staff persons with a hearing impairment (§ 2600.130(e)), fire alarms connected to the local fire department (§ 2600.130(i)), exit signs for large homes (§ 2600.133) and smoking safety (§ 2600.144 (relating to use of tobacco)).

The new requirement for two independent and accessible fire safety exits per floor in § 2600.122 will be a one-time cost for an existing home that does not have two exits. The Department has a delayed implementation of this requirement. Existing homes will be required to have two exits from each floor of the home within 18 months after the effective date of the final-form rulemaking. This requirement is critical to provide for safe evacuation in the event of a fire. In many cases of an actual fire, an interior stairwell may be blocked by fire or smoke making egress impossible. A second exit is often necessary to escape the fire. The second exit may be an interior stairwell. Installation of a fire escape may be required for

a multistory home. The fire escape may be of any sturdy construction material including wood. The cost of installing a new fire door and fire escape is estimated at \$5,000. The benefit of providing an alternate escape route for resident in the event of a fire outweighs the cost.

There is a new requirement in § 2600.130(e) requiring that an individual or staff person with a hearing impairment must be alerted in the event of a fire. This applies to all homes regardless of size. The estimated cost of installing a full strobe light and bed vibrator system is \$170 per person. The bed vibrator system would be required only for a resident with a hearing impairment. A personal body device, estimated to cost \$100, that is portable and the possession of the individual is also an option. The benefit of providing equal fire protection for a person with a hearing impairment outweighs this cost.

The current requirement in § 2620.55(j) (relating to fire protection and safety) requires the home's fire alarm system to be directly connected to the local fire department, or maintain a 24-hour monitoring service, if the home serves ten or more residents with mobility needs. The Department has strengthened this fire safety protection to lower the threshold of application to a home serving five or more residents with mobility needs in § 2600.130(i). This is a new requirement only for a home serving more than four but less than ten residents with mobility needs. By immediately alerting the fire department, the risk of injury and death in the event of a fire in a home serving five or more residents with mobility needs is reduced. The estimated annual cost of a digital communicator or a monitoring service is \$500. The benefit of this strengthened fire protection outweighs the costs.

The requirement in § 2600.133 requires exit signs for a large home. This is necessary to mark the path of egress in the event of a fire or other emergency. Many homes already have exit signs. The cost of installing exits signs is reasonable compared to the benefit of providing increased fire safety protections.

The new requirements regarding smoking safety in § 2600.144 requires that if smoking occurs on the premises, the smoking room inside the home or the exterior area where smoking occurs will be fire safe. There have been several recent fires in personal care homes caused by careless smoking practices. These smoking safety requirements are necessary to prevent fires and associated fire injuries and deaths, as well as to protect the health of nonsmokers from second-hand smoke. However, this new requirement is optional by the home. A home may choose to have a nonsmoking policy in the home and avoid these potential costs. The benefits of providing the increased fire and health protections and the protection of residents from second-hand smoke outweighs the costs.

#### 4. *Staffing.*

There are increased qualifications for an administrator in § 2600.53 that will apply to a new home. There is no cost to existing homes since they are exempt from the new qualification requirements. There is also a special qualification option for a small home to permit a person to qualify as an administrator with a high school diploma or general education development (GED) diploma. Increased qualifications for a new home are essential to assure that qualified persons are in the top management position to provide the increasingly complex services provided by a person care home. There are no costs to existing homes or to small homes.

Staff training has been increased both in the number of hours required for administrators and direct care staff

and in the types of training required. Strengthening of the training requirements is necessary to provide better health and safety protections for the residents as well as improved care and services based on the needs of the individual resident. Costs to provide the training will vary across this Commonwealth and for each staff person, but are estimated at \$180 per year per administrator. The benefit of providing the improved training outweighs the costs.

#### 5. *Services.*

There are new costs for the development of the resident assessment in § 2600.225 (relating to initial and annual assessment) and support plan in § 2600.227 (relating to development of the support plan). The Department will provide forms for ease of administration by the home. The assessment is necessary to determine if the individual's needs can be met by the home. The support plan is necessary for the resident to receive the individual services specific to his needs such as behavioral health care, vision care or dental care. There will be minimal costs and paper work for the home since the functions can be absorbed by existing staff persons. The benefit to residents of providing services based on an individual assessment and support plan outweighs the costs.

#### 6. *Administration.*

There are a few new costs associated with administrative requirements required by the final-form rulemaking, such as the development of policies and procedures, incident reporting and quality management. The Department will develop model policies and procedures so that the impact on the home will be negligible. The benefit of providing effective administrative policies for areas such as incident reporting and quality management outweighs the costs.

The Department anticipates that this final-form rulemaking will have no impact on State revenues. Personal care home residents who meet eligibility requirements can use government funds to pay to live in a personal care home. A total of 10,425 low-income residents over 65 years of age, who have a disability or are blind, receive monthly payments from the SSI Program. In addition, the Commonwealth provides a supplement to recipients of SSI.

There will be no costs to the general public or to local government as a result of this final-form rulemaking.

#### *Paperwork Requirements*

The final-form rulemaking does require some additional paperwork by the Commonwealth and personal care homes. However, there is no reasonable alternative to the increased paperwork.

The homes will not be required to develop their own forms, but rather the Department will develop the forms in cooperation with the providers. The preadmission screening tool and assessment form were developed with stakeholder input prior to the final-form rulemaking. Additional Departmental forms that are required, such as the reportable incident and condition form, will be shared in draft form with external stakeholders for review and comment prior to implementation. With respect to the annual assessment form (§ 2600.225) and the support plan (§ 2600.227), the home may use its own form as long as all the required information in the Department's standard form is included. The Department will also work with stakeholders to develop sample policies and procedures, to assist all personal care homes to comply with the final-form rulemaking.

In response to public comment, the paperwork requirements have been reduced from the proposed rulemaking. Paperwork reductions include the elimination of requirements for some policies and procedures such as independent audits, hiring practices, personnel records and job descriptions.

#### *Public Comment*

Written comments, suggestions and objections regarding the proposed rulemaking were requested within a 30-day period following publication of the proposed rulemaking. As mentioned previously, a total of 776 comment letters, including e-mails and faxes, were received by the Department in response to the proposed rulemaking. The Department received comments from every sector of the community that will be affected by the final-form rulemaking including consumers, family members, advocates, personal care home employees, service providers, trade associations, local government and other State agencies, as well as from IRRC and the majority and minority chairpersons and members of the Senate Public Health and Welfare Committee and House Health and Human Services Committee. Of the 776 comment letters, 323 were form letters of 32 differing varieties.

#### *Discussion of Major Comments and Major Changes*

Following is a summary of the major comments received within the public comment period following publication of proposed rulemaking and the Department's responses to the comments. A summary of the major changes from the proposed rulemaking is also included.

#### *General—Services and Quality of Care*

IRRC and several commentators raised concern that homes may divert staff persons from direct care to administrative functions to complete the development of forms and procedures such as emergency management and incident reporting.

#### *Response*

The Department will continue to work with the Committee and other interested parties in developing standardized forms and model policies and procedures to assist all personal care homes to comply with the final-form rulemaking.

#### *General—Cost*

Many commentators suggested that the rulemaking will create a significant financial burden on providers of service, particularly related to staff training and physical site changes. Some commentators suggested that the regulations are cost-prohibitive for small homes and that they will be forced out of business.

#### *Response*

While there are some additional requirements regarding staffing, physical site and fire safety, many providers are already meeting higher standards than currently required. The cost of meeting the new final-form rulemaking is outweighed by the benefits to the residents. The Fiscal Impact section of this preamble provides a detailed fiscal review and discussion.

### **GENERAL PROVISIONS**

#### *§ 2600.1. Purpose*

One commentator suggested deleting the reference to skilled or intermediate nursing care. Two commentators proposed that the regulation does not assure a supportive residential setting and that the regulation is moving toward a medical versus a homelike model of care. Several commentators suggested retention of current

§ 2620.1 (relating to introduction) that addresses unnecessary deinstitutionalization and the use of placement services of local assessment agencies. Two commentators commended the Department for using "dependent adults" versus the terms "aged, blind and disabled."

#### *Response*

The Department deleted the reference to skilled or intermediate nursing care and clarified the scope of care and services in a personal care home. Commonwealth law prohibits a personal care home from housing and serving residents whose care needs would qualify them for nursing facility care. This distinction is made in the statutory definition of "personal care home" in section 1001 of the Public Welfare Code (62 P.S. § 1001), which provides that an individual who needs the level of care of a long-term care facility, or nursing home, cannot be served in a personal care home. Personal care homes serve adults who require assistance beyond the basic necessities of food and shelter, but who do not require the services in or of a nursing care facility.

The Department disagrees that the regulation is moving toward a medical model of care. A homelike, or social, model of care focuses on supporting the wellness of the whole individual, not only their physical condition, but also their emotions and intellect. The individual's choices, unique differences, privacy and social support system are paramount. The physical setting compares to living in the comfort of a family home. This model of care can positively affect both residents and staff.

A medical model focuses on disease and providing treatment. Individuals are in a passive, receptive role. Physical site is arranged to ensure efficient, sanitary and even mobile care. Individuals are likely housed according to treatment needs, with staff and equipment resources assigned accordingly. The individual's support system of family and friends is de-emphasized.

The final-form rulemaking provides new and enhanced requirements that seek to assure a supportive, community-based environment for the resident to be fully informed and involved in making decisions about his care and services. These requirements include new provisions such as reportable incidents and conditions, waivers, resident-home contract, resident rights, complaint procedures, direct care staff training, administrator training, emergency preparedness, medication administration training, safe management techniques, preadmission screening tool, initial assessment and the annual assessment and support plan. The final-form rulemaking supports resident-centered care, choice and privacy.

Personal care homes are not licensed as medical facilities and are not required to hire licensed, certified or registered medical professionals. Although some personal care homes employ doctors, registered nurses, certified nursing assistants, certified registered nurse practitioners and licensed practical nurses to assist in service provision for the residents, this is not mandated.

The requirements in current § 2620.1 are addressed in other sections of the final-form rulemaking. Section 2600.224 (relating to preadmission screening tool) requires a determination within 30 calendar days prior to admission that the resident's needs can be met by the services provided by the personal care home and referral of an applicant whose personal care service needs cannot be met to a local appropriate assessment agency. Section 2600.225 requires a comprehensive written assessment of a resident within 5 calendar days of admission and annually thereafter.

The Department deleted the term “dependent” since the revised description of the residents’ needs for assistance and supervision is sufficient and more appropriate than the label of “dependent.”

*§ 2600.2(b). Scope*

Two commentators suggested clarifying that the exemption for facilities operated by a religious organization for the care of clergy or other persons in the religious profession only applies if they provide care solely for that group.

*Response*

In response to public comment, this clarification was made.

*§ 2600.3. Inspections and licenses or certificates of compliance (redesignated as Inspections and licenses)*

One commentator requested clarification about the use of the two terms “license” and “certificate of compliance.” Two commentators objected to the issuance of a license as a result of an acceptable plan of correction. Eight commentators suggested that annual inspections should be required. One commentator did not support the requirement for annual inspections, stating that this might allow the Department to focus resources on personal care homes that require the most supervision. One commentator noted the potential conflict with the proposed requirement to conduct inspections in 75% of the homes every 2 years as proposed in § 2600.11 (relating to procedural requirements for licensure or approval of personal care homes). In response to proposed § 2600.11, the Department received many comments for and against unannounced inspections. Nineteen commentators supported unannounced inspections, while 17 commentators supported announced inspections. IRRC requested clarification of whether the Department’s inspections will be announced or unannounced.

*Response*

The final-form rulemaking was changed to use only the term “license” since it is the term used in Article X of the Public Welfare Code. When the Department finds a regulatory violation, Chapter 20 (relating to licensure or approval of facilities and agencies) requires the legal entity to submit an acceptable written plan of correction, including timeframes, to correct each regulatory violation and assure compliance. Upon submission of an acceptable written plan of correction, a provisional license may be issued.

The Department revised this section to require an annual inspection of each home. Proposed § 2600.11 was revised to eliminate the conflict regarding the frequency of the Department’s inspections.

The Department added a requirement for its annual inspections to be unannounced. Beginning with the effective date of this final-form rulemaking, a personal care home will not be notified in advance of the date of the annual inspection. The Department finds that unannounced inspections give a truer picture of the status of the home’s compliance with the regulations. Section 2600.2 (relating to scope) requires personal care homes to be in regulatory compliance at all times. This is a change in the inspection process. Under Chapter 2620, annual inspections were announced and scheduled in advance of the inspection.

In 2001, the National Association for Regulatory Administration conducted a survey of 150 licensing agencies of the United States and Canada. Four licensing areas

were surveyed: assisted living, child care, developmental disability and child residential. The results were published and entitled “A Comparative Report on the Frequency and Types of Human Service Licensing Inspections.” Survey results showed that while the majority of state licensing agencies across all four program types conduct announced inspections for new facilities, over 60% conduct unannounced renewal inspections.

The Department added the requirement to post the home’s license inspection summary and a copy of this final-form rulemaking so that residents, families and advocates have the information available to assist in the monitoring of the home.

*§ 2600.4. Definitions—ADL and IADL*

IRRC requested clarification of whether “securing health care” should be added as an IADL. One commentator expressed concern that use of this term depicts a nursing home perspective. One commentator recommended retaining the term “tasks of daily living” and using ADL to reference basic hygiene and care functions. Another commentator commended the Department for use of the terms “ADL” and “IADL.”

*Response*

Securing health care, managing health care, personal hygiene, self-administering medications and proper turning and positioning were added to ADL as critical self-care tasks of everyday life. In a personal care home, these functions can be performed independently or with supervision or assistance.

The terms “ADL” and “IADL” are widely used in the health care field. Additionally, both ADL and IADL are used by the Department of Aging in regulations for older adult daily living centers in 6 Pa. Code Chapter 11 (relating to older adult daily living centers) and ADL is used in regulations for protective services for older adults in 6 Pa. Code Chapter 15 (relating to protective services for older adults). The term “IADL” was expanded to add additional support functions.

*§ 2600.4. Definitions—Abuse*

Two commentators asked for further clarification of “abuse.” One commentator asked for clarification of “informed consent.” Another commentator suggested that a resident’s informed consent is often invalid because of his cognitive abilities. Thirteen comments suggested consideration of the employee’s intent to harm the resident, the weight of the resident’s statements in determining the outcome of the investigation and the personal care home’s burden of proof.

*Response*

The definition of “abuse” was modified only slightly to clarify the meaning of “caretaker.” As to the comments regarding informed consent and whether it is valid when the resident is cognitively impaired, those issues go beyond the scope of the definition. The home will have to make determinations about whether, and to what extent, a resident is capable of giving informed consent. Substantive issues are not appropriately included in the definitions section. The definition of “sexual harassment, rape or abuse” in paragraph (iii) of the definition was revised to strike the reference to the Older Adult Protective Services Act (OAPSA) (35 P. S. §§ 10225.101—10225.5102). The inclusion of the reference to the OAPSA was unnecessary because the OAPSA definition incorporates by reference the 23 Pa.C.S. Chapter 61 (relating to protection from abuse) definition of the term in 23 Pa.C.S. § 6102 (relating to definitions). Thus, only the reference

to 23 Pa.C.S. Chapter 61 remains. As to the issues of the intent of the employee, the weight to be given the resident's statements and the home's burden of proof, these issues are substantive and not appropriate for inclusion in the definition of "abuse."

*§ 2600.4. Definitions—Agent*

One commentator requested a more specific definition and another commentator suggested that only one agency hold a personal care home accountable.

*Response*

The definition was revised to include only individuals authorized to act on behalf of the Department.

*§ 2600.4. Definitions—Advocate, designee, designated contact person, designated person and responsible person*

IRRC and six commentators recommended defining these terms. IRRC asked about the legal authority for these individuals.

*Response*

The definitions of the terms "designee" and "designated person" have been added to the final-form rulemaking. The terms "designated contact person" and "responsible person" are no longer used in the final-form rulemaking and therefore are not defined. The term "advocate" has not been defined since it is used once in the definition of "designated person."

The legal authority for the designated person is based on the relationship to the resident. The legal authority for the designee is the same as the administrator under this chapter.

*§ 2600.4. Definitions—Ancillary staff person*

IRRC and two commentators requested clarification of whether ancillary staff may assist with IADLs, but not provide assistance with ADLs. Four commentators suggested expanding this definition. One commentator supported the separate categories of "ancillary staff" and "direct care staff."

*Response*

This clarification was made. Ancillary staff may provide assistance with IADL, but not ADL.

*§ 2600.4. Definition—Complaint*

Two commentators suggested including to whom the complaint must be submitted.

*Response*

The definition was clarified to provide that the complaint should be submitted to the Department.

*§ 2600.4. Definitions—Day and Dementia*

The Department added definitions of "day" and "dementia."

*§ 2600.4. Definitions—Direct care staff persons*

IRRC requested clarification of whether direct care staff may assist with IADL. Seven commentators asked for a clearer definition. One commentator suggested that this is a term used in nursing homes. Another suggested that direct care staff perform assistance with all ADL activities. Eight commentators disagreed with the inclusion of volunteers, due to training requirements or because volunteers do not conduct staff responsibilities. One commentator disagreed with the inclusion of temporary employees, due to training requirements. Several commentators expressed concern that if volunteers were required to meet direct care staff training requirements,

homes would lose volunteers who engage in social activities with residents. Direct care staff, whether employed on a temporary, full-time or part-time basis, must meet the applicable requirements for direct care staff.

*Response*

The definition was clarified to add IADLs and it no longer includes volunteers.

*§ 2600.4. Definitions—Emergency medical plan*

Two commentators suggested a more complete definition of emergency medical plan.

*Response*

Emergency medical plan was further clarified in § 2600.143 (relating to emergency medical plan).

*§ 2600.4. Definitions—Financial management*

Two commentators requested clarification of the definition of "financial management." Two others suggested that this definition needs to be consistent with personal care services being provided.

*Response*

The definition was clarified so it does not include solely storing funds in a safe place as a convenience for a resident. The personal care home provides this optional service for residents who may not be able to manage their finances without assistance. Financial management is included in the definition of "IADL—instrumental activities of daily living." This ensures proper safeguards to prevent improper handling of resident funds. Residents who need financial management services are often those least able to oversee the handling of their funds, providing the potential for fraud and exploitation.

For SSI recipients, a State supplement (SSP) is available to help pay for their care. The SSI check, as well as the SSP, is turned over to the personal care home. The recipient is entitled to receive \$60 per month for personal needs, as well as half of the rent rebate issued annually from the Commonwealth.

*§ 2600.4. Definitions—Fire safety expert*

One commentator recommended removal of local volunteer fire company members from this definition, as often the members differ on what action is appropriate, causing confusion for providers and residents.

*Response*

Department of Labor and Industry building code inspectors and construction code officials were added to the list of options in the definition of fire safety expert to offer the personal care home flexibility to choose its fire safety expert. With a more expansive list, a home may elect not to use a member of a local volunteer fire company as a fire safety expert. However, the Department supports the use of volunteer fire companies as a viable option.

*§ 2600.4. Definitions—Immobile resident (redesignated as Resident with mobility needs)*

Five comments were received. One commentator indicated that the definition implies that an individual with mobility needs must be accompanied by a staff person or nurse 24 hours a day. Others suggested that the definition is overly broad.

*Response*

The reference to medication administration was deleted. The term was redesignated as "resident with mobility needs" to reflect a more person-centered descrip-

tion of the resident's needs. Since the definition is based on the statutory definition of "immobile person" in section 1001 of the Public Welfare Code, the Department is unable to narrow its scope. The Department amended this definition to use the word "continued" rather than "continual and" to coincide with section 1001 of the Public Welfare Code.

*§ 2600.4. Definitions—Life care contract/guarantee*

One commentator suggested adding clarifying language that lifetime care will be provided subject to certain terms and conditions stated in the agreement.

*Response*

This definition was relocated to § 2600.25(f) (relating to resident-home contract) since it is the only section that refers to a life care contract/guarantee. Life care contract refers to a long-term legal agreement between a consumer and a continuing care retirement community, which generally secures housing, services and nursing care, usually all in one location. Continuing care communities are licensed and regulated by the Insurance Department, which examines the financial books and records of a continuing care provider at least once every 5 years to monitor the financial status of the facilities. In addition, the Insurance Commissioner is empowered to take steps to protect the interests of the residents.

*§ 2600.4. Definitions—Long term care nursing facility*

This definition was deleted. The term used in the final-form rulemaking is "licensed long-term care facility" based upon section 1001 of the Public Welfare Code. As used in this chapter, a definition is not necessary.

*§ 2600.4. Definitions—Long-term care ombudsman*

IRRC noted that some commentators suggested replacing "older individuals" with "residents," since ombudsmen serve anyone in certain categories of need, regardless of age. One commentator also suggested limiting the role of the ombudsman to the resolution of complaints, allowing the ombudsman access to the home only if invited by the resident or a representative of the home and having the Department handle all complaint investigations.

*Response*

The change to replace "older individuals" with "residents" was not made. This definition is similar to the definition in 6 Pa. Code § 11.3 (relating to definitions) of the Department of Aging's regulation for older adult daily living centers. The Department clarified that the scope of the ombudsman responsibility is for adults who are 60 years of age or older. The Office of the State Long-Term Care Ombudsman, established by the Older Americans Act of 1965 (42 U.S.C.A. §§ 3001—3057g), is charged with the Statewide reporting and investigative system for complaints made by or on behalf of adults who age 60 years of age or older and who are consumers of a long-term care service. The Department of Aging designates the local area agencies on aging to be the local providers of ombudsman services, and coordinates the efforts of all area agencies on aging statewide. Ombudsmen may enter a facility at any time as necessary to advocate on behalf of a resident, must obtain consent from the consumer/complainant before proceeding with the investigation and must work with all parties such as facility staff, family members and regulatory agencies in seeking a resolution to verified complaints.

*§ 2600.4. Definitions—Mobile resident*

One commentator recommended adding that a mobile resident must be able to exit to point of safety.

*Response*

Evacuation of the building is addressed in more detail in the fire safety section.

*§ 2600.4. Definitions—Neglect*

IRRC suggested referencing the definition of "neglect" in section 103 of the OAPSA (35 P. S. § 10225.103) rather than copying it verbatim. Seven commentators suggested revising or clarifying this statutory definition, with most recommending that the definition fit into the context of a personal care home and explain further what constitutes neglect.

*Response*

The Department retained the statutory definition of "neglect" in section 103 of the OAPSA. The statutory language was kept in this chapter to make this information readily accessible to the home. The Department clarified that neglect includes the failure or omission to provide care, supervision or services and that neglect may be repeated conduct or a single incident.

*§ 2600.4. Definitions—Personal care home*

IRRC requested consistent use of one term of "personal care home." IRRC requested clarification of the entity responsible, rather than a global reference to the "home," by using the specific actor, such as "legal entity" or "direct care staff." One commentator expressed concern that the definition of "personal care home" does not permit individuals in need of a licensed long-term care facility, which eliminates consumer choice and negotiated risk for those individuals who wish to age in place and not reside in a nursing home.

*Response*

The Department uses the term "home" to emphasize the place where the residents live. Where it was necessary to name a specific responsible party, this was done. Where it was not necessary to name a specific responsible party, this was not done, to give the home flexibility in facility management. The definition of "personal care home" is established in section 1001 of the Public Welfare Code and precludes the admission of individuals who require the services in or of a licensed long-term care facility.

The Department also clarified that a premises in which four or more adults who need personal care services but who are not receiving such services, reside is a personal care home under this chapter.

*§ 2600.4. Definitions—Personal care resident (redesignated as Resident)*

Three commentators indicated that many personal care home residents are independent and fully capable of self-care and recommended deleting these individuals from the definition by deleting the word "may."

*Response*

This change was made. The definition is intended to apply to individuals who require personal care services.

*§ 2600.4. Definitions—Personal care services*

Three commentators recommended adding the terms "ADL—activities of daily living" and "IADL—instrumental activities of daily living" to this definition.

*Response*

In response to public comment, this change was made.

*§ 2600.4. Definitions—Protective services unit*

The Department added a definition of "protective services unit."

*§ 2600.4. Definitions—Relative*

One commentator recommended adding the word “cousin” to this definition.

*Response*

This change was not made. This statutory definition in section 1001 of the Public Welfare Code does not include the word “cousin.”

*§ 2600.4. Definitions—Restraint and manual restraint*

IRRC and one commentator recommended compatibility between §§ 2600.4 and 2600.202 (relating to definitions; and prohibitions). IRRC and two commentators asked for consideration that a resident may have an assistive device that he cannot remove independently, and that the resident may have moved to the personal care home to obtain assistance with removal of the device. Three commentators asked for clarification in the definition of chemical restraint, to exclude drugs prescribed by a physician for a psychiatric condition or episodic behavior. One commentator asked for clarification in the definition of restraint, so that locked exit doors are not considered to be a form of restraint.

*Response*

The definition of restraint was revised to include only a broad definition and not details about the specific types of restraints. The definitions of specific types of restraints were removed from the definition section and appropriately placed in the section on safe management techniques in § 2600.202. Personal care homes may not use restraints, due to the health, safety and emotional risks to the residents. The negative behavioral effects and health and safety risks of restraint usage are supported by research. Use of restraints is so dangerous that hospitals require stringent safety measures and physician oversight when restraints are used. It is unlikely that any personal care home can offer comparable medical oversight. The use of restraints for chronic conditions has been discredited among knowledgeable medical professionals, because they often result in serious injury or death even when properly applied, and when improperly applied, the risk of a serious adverse outcome, including death, escalates.

In response to comments, the definition of “chemical restraint” was clarified in § 2600.202.

Only a secured dementia care unit may have locked exit doors, and only through the use of an electronic or magnetic system (see § 2600.233 (relating to doors, locks and alarms)). Locking of exit doors under any other conditions is considered to be a restraint and is prohibited.

*§ 2600.4. Definitions—Support plan*

Two commentators expressed concern about the timeliness of securing a visiting nurse to conduct an assessment and develop a support plan. Two commentators recommended requiring development and implementation of support plans for only the most frail residents.

*Response*

These changes were not made. Editorial changes were made in the definition to ensure the support plan will be based on the assessment of the individual. Preparation of accurate resident assessments and support plans help to assure quality service and care for all residents. Ongoing assessments of each resident’s service and care needs and updating each resident’s support plan when service and care needs change is essential to providing continuous care. A support plan identifies the resident’s needs and

preferences and outlines how they will be achieved. The plan is developed by the home in collaboration with the resident and the resident’s designated person. The goal of the support plan is to promote positive outcomes for the resident.

The assessment is conducted annually, upon significant change in the resident’s condition and upon the Department’s request. After each assessment of a resident, the support plan is updated to ensure that services being provided are adequate to meet the resident’s needs. The support plan includes both the services provided by or contracted by the personal care home and also identifies services arranged by the resident or designated person from outside agencies, health care providers or family members.

*§ 2600.4. Definitions—Staff person*

The Department added a definition of “staff person” to clarify that individuals who work under contract are included.

*§ 2600.4. Definitions—Volunteer*

IRRC recommended placing subparagraphs (i) and (ii) in the Staffing section. A commentator asked for clarification of whether volunteers and temporary staff who serve 1 day per year must receive the same training as full-time staff persons. Another commentator suggested that requiring training for volunteers who perform the duties of direct care staff persons will prohibit residents from being entertained by volunteers.

*Response*

The change requested by IRRC was made. The definition of “volunteer” was revised to exclude individuals who provide nondirect services or occasional entertainment. Section 2600.54 (relating to qualifications for direct care staff persons) clarifies that volunteers used in the home as staff persons shall meet staff qualifications and training requirements, as they would perform the same duties, whether they receive compensation or not.

*§ 2600.5—Access requirements (redesignated as Access)*

IRRC and three commentators asked the Department’s intent as to the time of day it will conduct its inspections. Four commentators recommended that the Department should have free and full access at any time of the day without notice. IRRC asked the Department to clarify its intent to inspect the personal space and property of residents and if residents have the right to object. IRRC questioned the Department’s statutory authority to conduct administrative inspections without time, place and scope restrictions. IRRC questioned who will provide access to the records if the staff person responsible for the records in § 2600.254(b) (relating to record access and security) is not available.

*Response*

The Department eliminated proposed subsection (a) regarding the Department’s free and full access to the home. The proposed requirement simply restated the Department’s existing statutory authority in section 1016 of the Public Welfare Code (62 P. S. § 1016) and therefore it is not necessary to repeat it in this chapter.

The Department received questions from IRRC and other commentators regarding the Department’s intent as to the time of day during which it will conduct its inspections and the Department’s authority for full and free access under the Fourth Amendment to the United States Constitution, which prohibits unreasonable searches and seizures. In particular, IRRC questioned



whether there are time, place, and scope restrictions on the Department's access to the home consistent with *New York v. Burger*, 482 U. S. 691 (1987).

As with any Fourth Amendment issue, the Department's inspections will be governed by a general reasonableness standard. The Department will apply section 1016 of the Public Welfare Code and conduct its inspections in a manner consistent with the constitutional reasonableness requirement. The Department has a substantial interest in the inspection of the home in order to protect the health, safety and well-being of the residents and periodic inspections are necessary to serve this interest. Inspections will be conducted within the constitutional boundaries regarding time, place and scope. Inspections will normally be conducted during waking hours. However, if warranted by an emergency, complaint or suspected jeopardy to the residents' health, safety or well-being, an inspection may occur during sleeping hours only as necessary to address the emergency, complaint or jeopardy. The place of the inspection includes the entire licensed premises. The scope of the inspection may require review and inspection of the premises as well as the records and interviews with the staff persons and the residents who live in the home in order to assess compliance with this chapter and Article X of the Public Welfare Code. The inspection may cover any area relating to regulatory and statutory compliance or a situation affecting the residents' health, safety or well-being.

The Department will continue its current practice of requesting permission of the resident before inspecting a resident's bedroom or property, if the resident is available and able to provide permission. Because the inspection of a resident's bedroom or property is sometimes necessary to protect the resident or other residents in accordance with the requirements of this chapter, there may be rare occasions where an inspection of a resident's bedroom or property may be necessary without the express permission of the resident. If a resident expressly denies access to the Department, in no case will the Department enter and inspect a resident's bedroom or property.

Section 2600.254 requires the home to have a policy addressing access to records. The administrator or designee must always be available to provide access, as specified in § 2600.57(a) (relating to direct care staffing).

§ 2600.5(b). *Access requirements (redesignated as Access)*

IRRC questioned the authority for the Department of Aging and other State agencies to have access to the home and stated this violates the resident's right to confidentiality. Two commentators clarified that Pennsylvania Protection and Advocacy has Federal statutory authority to investigate complaints in homes where residents with disabilities reside. One commentator suggested providing access to local mental health and mental retardation agencies. Four commentators opposed Department access to confidential personnel records.

*Response*

The Department has amended the section to eliminate the broad authority for other State agencies to have access to the home. The Department has, however, maintained access to the Department of Aging's Older Adults Protective Services Program and the Long-Term Care Ombudsman Program based on its authority under section 304 of the OAPSA (35 P. S. § 10225.304), section 711 of the Older Americans Act of 1965 (42 U.S.C.A. § 3058f) and section 2203-A(24.2) of The Administrative Code of 1929 (71 P. S. § 581-3(24.2)). This authority exists in the current regulation as well in § 2620.62 (relating to access

requirements) and has been applied effectively and without incident for over a decade. This authority provides protection from abuse to adults who are older, which the Department does not intend to limit or curtail. Section 306 of the OAPSA (35 P. S. § 10225.306) mandates the protection of the resident's right to confidentiality.

The Department agrees with the commentators that Pennsylvania Protection and Advocacy has Federal authority to investigate complaints in homes where residents with disabilities reside. The specific citations of the Federal authority have been added to the final-form rulemaking.

The Department agrees that county mental health and mental retardation agencies have the right to access homes to provide protection to individuals with mental illness or mental retardation in accordance with section 205(7) of the Mental Health and Mental Retardation Act of 1966 (50 P. S. § 4305(7)). These particular agencies are not listed specifically in the final-form rulemaking since they have long-standing independent authority and their jurisdiction only reaches those homes providing services to individuals with these specific needs.

The Department has authority to inspect staff personnel records at the home to determine compliance with the requirements of this chapter in accordance with section 1016 of the Public Welfare Code. The Department maintains strict confidentiality of all information contained in the personnel records.

Clarification was added to state that a resident may decline the services of the community service organization or community legal services.

*GENERAL REQUIREMENTS*

§ 2600.11(b). *Procedural requirements for licensure or approval of personal care homes*

The Department added a requirement that the Department will reinspect each new home within 3 months of the date of the initial inspection to assure compliance with the regulations for new homes.

The Department relocated proposed § 2600.30 (relating to fees) to this section.

§ 2600.13(a). *Maximum capacity*

Two commentators requested clarification of the personal care section.

*Response*

The Department clarified that maximum capacity applies to the entire home, meaning all the areas of the building used as a personal care home. If the home provides services in addition to personal care, such as nursing care, or if parts of the home are used by the operator for private use, this section applies only to the areas of the home in which personal care home services are provided.

The Department eliminated the proposed requirement regarding the limitation of capacity based on local zoning requirements, since zoning is not a health and safety protection for the residents and it is not the scope of this final-form rulemaking. The enforcement of local zoning ordinances is the responsibility of local municipalities.

§ 2600.14(a). *Fire safety approval*

Nine commentators recommended deletion of this subsection, citing that the Department of Labor and Industry has fire safety standards. Three commentators recommended that local fire safety authorities provide a written fire safety approval.

*Response*

The Department clarified applicability of the Pennsylvania Construction Code Act (35 P.S. §§ 7210.101—7210.1103) that established the Uniform Construction Code (UCC) as the Statewide building code for this Commonwealth. The final UCC administration and enforcement regulation was published at 34 Pa.B. 319 (January 10, 2004). Under the UCC, occupancy permits are issued by the appropriate enforcement agency, whether the Department of Labor and Industry or the local building authority.

Fire safety is a major health and safety concern, as many residents have died in fires in personal care homes. From 1983 to 2003, there were 275 fires in personal care homes Statewide, resulting in 55 deaths. The causal agents for the fires included careless smoking by residents (79 fires and 32 deaths), arson caused by outside person (5 fires and 0 deaths), arson caused by resident (33 fires and 11 deaths), dryer fire (41 fires and 1 death), other electrical fire (50 fires and 1 death), undetermined cause (20 fires and 10 deaths), kitchen fires (24 fires and 0 deaths) and accidental (23 fires and 0 deaths).

All fire safety protections required in this final-form rulemaking must be in effect at all times to protect residents, especially those who require significant assistance for evacuation, in the event of a fire. Fire safety is a key concern for all residents, as many residents require significant assistance for evacuation due to frailty, medical vulnerability, cognitive limitations and the use of assistive devices for purposes of mobility. A home operating without the required fire safety approval places the residents at grave risk of harm or possible death.

*§ 2600.14(b). Fire safety approval*

Four commentators recommended the inclusion of actions that the Department will take if a personal care home's fire safety approval is withdrawn or restricted.

*Response*

The Department's actions regarding regulatory violations can be found in the responses to comments for the enforcement section (§§ 2600.261—2600.270). Oral notification within 24 hours was changed to "immediately," clarifying any question of possible delay in the oral notification process.

*§ 2600.14(c). Fire safety approval*

Five commentators asked for clarification of what constitutes a reportable structural renovation or alteration and suggested shortening the 30-day reporting time frame.

*Response*

The Department's intent is to ensure that any structural renovation or alteration to a building in which a personal care home operates meets the approval of the appropriate building authority. The new Statewide UCC requires that the appropriate building authority approve structural changes and renovations, unless cosmetic in nature. Questions about what specific structural change or renovation requires approval should be referred to the appropriate building authority for the municipality in which the personal care home is located.

In response to public comment, the time frame for reporting structural renovations or alterations to a building was shortened to 15 calendar days.

*§ 2600.14(d). Fire safety approval*

One commentator expressed concern that individuals who are not the Department's representatives can require a personal care home to have additional fire safety inspections.

*Response*

The Department's intent is to assure that personal care homes are housed in buildings that comply with fire safety protections to safeguard all residents in the event of a fire. This subsection was revised to add that the Department's representatives will request additional fire safety inspections from the appropriate fire safety agency if possible fire safety violations are observed during an inspection.

*§ 2600.15. Abuse reporting covered by statute (redesignated as Abuse reporting covered by law)*

Seventeen commentators recommended inclusion of a specific timeframe for reporting. One commentator requested definitions for "suspected abuse" and "allegation of abuse." Seven commentators suggested the addition of "neglect." Fifteen commentators suggested specifying penalties for failure to report abuse and neglect. Nine commentators suggested requirements regarding the suspension of the perpetrator. One commentator suggested providing the reports to both residents and designated persons.

*Response*

In response to public comments, several changes were made. The Department added clarification in the definition of neglect in § 2600.4. The Department added a new requirement for immediate notification of the resident and the resident's designated person of a report of suspected abuse or neglect involving the resident. The Department added a subsection regarding section 704 of the OAPSA (35 P.S. § 10225.704), regarding restrictions on employees, that requires the personal care home to immediately submit to the Department's personal care home regional office a plan of supervision or, when appropriate, notice of suspension, if there is an allegation of abuse involving the home's staff persons.

The remaining recommendations were not added, as they fall under the auspices of the OAPSA and its regulation in 6 Pa. Code Chapter 15 (relating to protective services for older adults), which addresses the administration and provision of protective services for older adults, mandatory reporting of abuse and required criminal history record information reports for applicants, employees and administrators of facilities. The terms "suspected abuse" and "allegation of abuse" are not further defined in the OAPSA or its regulation.

Employees and administrators of personal care homes, nursing homes, domiciliary care homes, adult day care centers and home health care are mandated by the OAPSA to immediately report to the area agency on aging any suspected abuse of an individual of any age who receives care, services or treatment from these facilities. If the abuse involves serious injury, sexual abuse or suspicious death, mandated reporters must also call the police and the Department of Aging at (717) 783-6207. In addition, the reporter may also call the personal care home complaint hotline at (800) 254-5164.

Failure of a mandated reporter to make a report can result in administrative or criminal penalties, see section 706 of the OAPSA (35 P.S. § 10225.706), regarding penalties, and the Department of Aging's regulation for protective services for older adults in 6 Pa. Code § 15.158

(relating to penalties). This section specifies that violations and penalties for failure to comply or for obstructing compliance shall be determined by the Commonwealth agency that regulates the facility, and may include civil and criminal penalties. The civil penalty includes a fine of not more than \$2,500. The criminal penalty may include a third degree misdemeanor, which upon conviction, may result in a fine of up to \$2,500, imprisonment for not more than 1 year, or both.

*§ 2600.16(a). Reportable incidents (redesignated as Reportable incidents and conditions)*

Many public comments were received asking for both an expansion of the list of reportable incidents and conditions and a reduction of the list. IIRC asked if a resident's designee or responsible person will be notified of reportable incidents and if an individual other than the Department's representatives will be notified in the event of certain incidents. IIRC noted that some advocates contend that certain third parties, such as the area agencies on aging, should be notified. IIRC asked whether the Department will conduct investigations of reportable incidents and under what circumstances. Twelve commentators suggested providing the reports to both residents and designated persons and mandating that receipt of a report triggers an immediate on-site investigation by the Department.

Ten commentators suggested adding injury of unknown origin, lawsuits, sexual contact between staff and residents and refusal of resident to eat or drink for 48 hours. IIRC noted that some advocates contend that a resident's death, regardless of the reason, should be reported, because a requirement such as this would eliminate the need for an administrator to judge whether the death resulted from unusual circumstances. Four commentators requested clarification of "attempted suicide." Ten commentators suggested a change to report only a serious injury which requires hospitalization.

IIRC questioned whether elopement from a secured unit for any period of time should be added to the list of reportable incidents, as recommended by four commentators. One commentator suggested adding the misuse of a resident's funds to the list of reportable incidents. Ten commentators suggested clarifying that assault must be significant or willful to be reportable. Three commentators proposed excluding false alarms.

Seven commentators suggested reporting of neglect and exploitation, as defined by the OAPSA. Four commentators advocated adding the reporting of inadequate staff to supervise or provide care in the home. Six commentators recommended reporting only a final termination notice from a utility.

*Response*

The primary goal of an incident management system is to ensure that when an incident occurs, the investigation and corrective action will protect the health, safety and well-being of the resident. The Department will review all reportable incidents and conditions and investigate as appropriate. The final-form rulemaking also requires personal care homes to develop and implement written policies and procedures for reportable incidents and conditions.

Reportable incidents and conditions that the Department determines to be regulatory violations will be classified as required by section 1085 of the Public Welfare Code (62 P. S. § 1085) and assessed a penalty as required by section 1086 of the Public Welfare Code (62 P. S. § 1086). The final-form rulemaking also requires

notification of the resident's designated person and the Department's personal care home regional office or the personal care home complaint hotline in a manner designated by the Department.

The Department added the following to the list of incidents and conditions: complaints of abuse, sexual assault, the use of emergency procedures, the unscheduled closure of the home and a violation of health and safety laws. Refusal of a resident to eat or drink over a 24-hour period is covered in § 2600.164(c) (relating to withholding or forcing of food prohibited), which requires reporting to the resident's primary care physician and designated person or family member. The suggested change to report all resident deaths was made. As suggested, the Department clarified the meaning of attempted suicide. In response to a suggestion by the State Board of Nursing, the Department added prescription medication errors to the list of reportable incidents and conditions. Reporting of prescription medication errors is critical so the Department can monitor the effectiveness of the new medications administration training program option in § 2600.190 (relating to medication administration training).

The change regarding the limiting reports to only a serious injury that requires hospitalization was not made. The Department must be notified of any bodily injury or trauma requiring treatment at a hospital or medical facility, including outpatient care. Since many significant illnesses and injuries are now treated on an outpatient basis, reporting is necessary to track and monitor incidents.

An absence of a resident from a secured dementia care unit for any period of time was added to the list of reportable incidents and conditions. Residents who live in secured dementia care units may be more vulnerable to existing weather conditions and any absence could result in the resident's health and safety being jeopardized.

Misuse of a resident's funds, whether managed by the home or not, will be reportable. Section 2600.20 (relating to financial management) was included in the reportable incident and conditions section to ensure all misuse of funds be reported. Assault on a resident must be reported, whether it is significant or willful, or not. The Department revised the reporting of fire department call to exclude false alarms.

The addition of reports of neglect and abuse is addressed in § 2600.15 (relating to abuse reporting covered by law). A violation of the staffing requirements of this chapter will be addressed through the enforcement provisions of the final-form rulemaking. The final-form rulemaking requires that any termination notice be reported. It is necessary for the Department to receive reports of a termination notice from a utility to allow time for a proactive response. A home's inability to meet financial obligations, such as utility payments, may be a sign of fiscal distress, which may negatively impact the health, safety and well-being of the residents. If uncorrected, this could lead to resident harm or relocation.

*§ 2600.16(b). Reportable incidents (redesignated as Reportable incidents and conditions)*

IIRC questioned whether the Department is developing a standard procedure that may be used by all homes to report incidents. IIRC suggested that a model would enhance consistency of reporting, give reasonable assurance to providers that they are meeting the Department's objectives and save providers time and money. Fourteen

commentators recommended adding language to reflect that the written policies and procedures are in accordance with applicable State laws.

*Response*

The Department is developing a standard incident and condition reporting form that must be used by all homes. The Department will also develop model procedures that may be used by all personal care homes to provide effective practices for reportable incidents and conditions. The review of reportable incidents and conditions will serve to enhance timely and appropriate corrective actions in response to incidents and conditions, if needed, to prevent recurrence.

Language was not added to require that the written policies and procedures comply with applicable State laws. A personal care home's compliance with applicable Federal, State and local statutes, ordinances and regulations is required in § 2600.18 (relating to applicable health and safety laws).

*§§ 2600.16(c)–(e). Reportable incidents (redesignated as Reportable incidents and conditions)*

IRRC noted the concern of many providers with the addition of burdensome paperwork. IRRC questioned whether the Department considered listing reportable incidents, along with corresponding levels of reporting requirements for each. Eight commentators suggested defining "designee" and adding "to the responsible party or legal representative of the resident." Five commentators suggested changing requirement in § 2600.16(c)–(e) to state "administrator," rather than "home," using language from § 2620.63(a)–(b), and not requiring issuance of three reports for incidents not covered by the OAPSA. Three commentators recommended that the Department provide personal care homes with the necessary training and assistance on conducting investigations.

*Response*

The Department agrees that there should be a balance between reporting, investigation and paperwork requirements. Requiring more reports than are necessary could create a paperwork backlog that does not serve residents. The term "designated person" was added in § 2600.4. A subsection was added requiring the reporting of an incident to the resident and the resident's designated person. The recommended change to designate the "administrator" rather than the "home" was not made. It is not necessary for the Department to dictate these internal reporting procedures, as long as reporting is timely. The Department will provide training and technical assistance to providers on incident and condition reporting and investigation. The Departmental incident and condition report form will be developed with input from external stakeholders prior to implementation.

*§ 2600.17. Confidentiality of records*

IRRC referenced comments for § 2600.5 (relating to access) and noted that this section should be consistent with § 2600.254. Over 20 commentators opposed requiring the home to obtain a written consent to release information when transporting a resident to the emergency room or to a doctor and recommended specifying which staff persons may examine resident records.

*Response*

Resident records are confidential and private. The Department revised the final-form rulemaking to clarify that a home may not release the resident's record to anyone other than the resident, the resident's designated

person, the resident's power of attorney, staff persons for the purposes of providing services, agents of the Department and the long-term care ombudsman. Section 2600.143, regarding emergency medical plan, specifies the information that must accompany a resident who needs emergency medical attention.

*§ 2600.18. Applicable health and safety laws*

Eleven commentators recommended requiring that a personal care home be in compliance with these applicable laws before a license will be granted. IRRC requested that applicable laws be listed in the final-form rulemaking.

*Response*

Compliance with applicable laws is required. At the recommendation of the legislative committees, the Department has not included a list of applicable laws. The list of applicable laws is unnecessary since applicable laws apply independently of this final-form rulemaking.

*§ 2600.19. Waivers*

IRRC suggested alternate language to clarify that the home cannot guarantee the absence of jeopardy. IRRC suggested that subsection (a)(1) and (3) are duplicative. Eleven commentators requested more flexibility in obtaining waivers. Two commentators suggested allowing waivers of scope, definitions, applicability and resident's rights. Six commentators suggested notice of waiver requests to the resident's designated person and the local ombudsman, as well as to the residents as proposed. Five commentators requested that waivers be reviewed annually. IRRC questioned the intent to grandfather existing facilities. Six commentators recommended permanent waivers of existing physical site conditions of existing homes.

*Response*

The Department may, within its discretion and for good cause and sufficient reason, grant a waiver to a specific section. A waiver will be granted only when the health, safety or well-being of the residents are not negatively affected. Waivers are subject to review by the Department at any time to determine compliance with conditions required by the waiver. The Department reserves the right to revoke a waiver if the conditions required by the waiver are not met.

This section is in place to reduce risk and the likelihood of jeopardy. If a home requests a waiver they must show why the waiver of the regulation will not jeopardize the residents. The home must indeed show the absence of jeopardy to receive an exemption from the regulation. Subsection (a)(1) and (3) are not duplicative. The requirement to show an alternative for providing an equivalent level of protection is to assure that by waiving the regulation the resident's are not exposed to added risk. The requirement to show how the residents will benefit from the waiver goes above and beyond the equivalency requirement and is intended to show why it is best to meet the alternate standard rather than the regulation. The standards for granting a waiver are intentionally set at a high, but doable level to protect the residents.

A waiver to the scope, definitions, applicability or resident's rights sections of the final-form rulemaking is not permitted as these are the core foundations for the protection of the resident's health and safety protection. In the case of scope, applicability and definitions, much of these requirements are governed by statute.

Discussion with, and notification of, the resident and the resident's designated person was added in response to

comment. The requirement to review waivers annually was also added in response to public comment.

The Department has provided exemptions or delayed implementation for many of the new requirements such as fire exits, bathrooms, qualifications for staff persons and staff training. The Department deleted the proposed language regarding denial of structural waivers for a new facility, new construction or renovations. An existing home may submit a request for a waiver. All waivers previously granted are void 1 year after the effective date of this final-form. Thereafter, a new waiver request is required.

*§ 2600.20. Resident funds (redesignated as Financial management)*

Nineteen commentators opposed this section, stating that it is not appropriate for the level of financial assistance that a home provides and recommended retaining current § 2620.35 (relating to financial management). IRRC inquired who may access a resident's records and funds if the home assumes responsibility for maintaining a resident's financial resources. IRRC asked whether "maintaining" means the same as "managing," as defined in subparagraph (i) under "financial management" in § 2600.4.

*Response*

The Department revised, but retained, this section. The Department's intent is to ensure accountability and tracking of resident funds and expenditures and prevent theft and exploitation. Access to financial and other resident records is governed by § 2600.254. The Department is unable to respond to IRRC's question about terms, since the term "managing" is not found under the definition of financial management in § 2600.4(i). Subsection (b) was clarified to apply even if a home simply maintains or holds the resident's funds.

*§ 2600.20(a) and (b). Resident funds (redesignated as § 2600.20(b). Financial management)*

Five commentators suggested that a separate record of each resident's financial resources, including the dates, amounts of deposits, amounts of withdrawals and current balance, be kept. Six commentators suggested that withdrawals be documented with dated receipts. Four commentators suggested that the requirement for a home to keep a record of gifts and other funds received by or deposited with the home on behalf of the resident is duplicated.

IRRC contested the requirement for documentation of counseling sessions, concerning the use of funds and property since this goes beyond financial management. Many homes indicated they are not qualified to provide financial counseling. IRRC asked whether a professional financial advisor would conduct this counseling.

Eight commentators suggested deleting the requirement that a home may not prohibit the resident's right to manage their own finances.

IRRC questioned the meaning of "if available," whether it means cash on hand in the personal care home or in the resident's bank account. IRRC indicated concern about the possible need to store large amounts of cash in the home and suggested limiting this service to business hours. IRRC noted that some providers were distressed regarding possible theft and recordkeeping errors and staff handling cash when an administrator is not present. Thirty commentators recommended that money should be available during regular business hours only.

Eight commentators objected to paperwork and suggested that the home maintain receipts only for all expenditures over \$15. Eight commentators suggested requiring interest bearing savings accounts in the residents' names only.

Six commentators requested clarification to prohibit the owners of the home, its administrators and employees from being assigned power of attorney or appointed guardian of resident or resident's estate.

Thirteen commentators suggested that an annual written account be provided only at the request of the resident or designated person.

*Response*

This section was revised and clarified. A record of financial transactions is required in § 2600.20(b)(1). A separate record for each resident is not required since it may be an unnecessary, administrative burden on the home. The requirement for a written receipt of disbursements is found in § 2600.20(b)(3). The Department clarified that disbursement must only be made during business hours. The duplicative requirement regarding gifts and other funds was deleted.

The requirement for financial counseling was deleted. The Department does not intend for a home to secure a professional financial advisor for residents. The requirement regarding the resident's right to manage his own financial affairs was clarified. The suggestion to include receipts for only disbursements of more than \$15 was not made since this lack of documentation could result in theft of resident funds. All deposits and expenditures must be documented with written receipts to ensure accurate accounts of all expenditures. As suggested, interest bearing accounts must be in the resident's name. The clarification was made identifying the legal entity, administrator and staff persons to be prohibited from being assigned power of attorney or guardianship of a resident or a resident's estate.

The Department did not change the requirement for a written account to be provided only upon the request of the resident or designated person. This requirement was changed to quarterly so that the resident's funds may be closely monitored by the resident and his designated person.

The requirement relating to refunds was deleted from this section and clarified in § 2600.28 (relating to refunds).

*§ 2600.22. Legal entity*

The Department deleted this proposed section since it is not necessary. Compliance with the final-form rule-making by the legal entity is required under § 2600.2 and § 2600.3 (relating to inspections and licenses).

*§ 2600.23. Personnel management*

In response to general comments relating to unnecessary paperwork and recordkeeping the Department deleted this proposed section.

*§ 2600.23. Admission (new designation)*

A section on admission was added to clarify the documents necessary upon admission to the home.

*§ 2600.24. Tasks of daily living (redesignated as § 2600.23. Activities)*

Thirteen commentators recommended adding assistance with IADLs to their assessment and support plan.

*Response*

This change was made.

*§ 2600.25. Personal hygiene (redesignated as § 2600.24)*

The Department added undressing, nail care, foot care and skin care to the list of personal hygiene items.

*§ 2600.26. Resident-home contract: information on resident rights (redesignated as § 2600.25. Resident-home contract)*

Twenty-nine commentators requested deletion of this proposed section, as the current contract under the current regulation works well and does not need to be changed.

*Response*

The Department's intent is full disclosure in the contract to give prospective and current residents and family members the key information they need to identify whether a personal care home can meet their individual needs. Searching for a personal care home is difficult for prospective residents and family members, especially when a decision must be made quickly, such as when a person is no longer safe living alone. Because personal care homes vary, it is important that residents and family members understand what specific services a personal care home will provide or arrange, what services cannot be provided, how much it charges, when and how the services and residency in the home can be terminated and the rights and responsibilities of the resident.

This upfront disclosure in the contract serves to avoid or resolve conflicts between a resident and the home. The contract sets forth the agreement between the parties. The contract is the legal basis for the enforcement of the resident's rights.

*§ 2600.26(a). Resident-home contract: information on resident rights (redesignated as § 2600.25(a). Resident-home contract)*

Four commentators suggested requiring the personal care home to complete, review and explain the contract's contents with the resident and the resident's designated person, if any, in a language or mode of communication which they can understand.

*Response*

The home is required to review and explain the contract's content to the resident and the resident's designated person, if any, prior to signature.

*§ 2600.26(a)(1). Resident-home contract: information on resident rights (redesignated as § 2600.25(c). Resident-home contract)*

Three comments received suggested deletion of proposed subparagraphs (ii), (iii), (xi) and (xii) as unnecessary.

*Response*

These changes were not made, because they relate to full disclosure of the services a resident would receive, which will assist a resident and his family to make an informed decision, and clarifies the arrangements between the resident and the home. The Department's intent is full disclosure in the contract.

*§ 2600.26(a)(1). Resident-home contract: information on resident rights (redesignated as § 2600.25(c). Resident-home contract)*

Four commentators recommended prohibiting staff from accepting any portion of the resident's personal needs allowance as a gift or in exchange for providing services.

*Response*

This change was not made. Subsection (c)(1) requires that each resident shall retain, at a minimum, the current personal needs allowance as the resident's own funds for personal expenditure and that a contract to the contrary is not valid. In addition, § 2600.20, regarding financial management, prohibits any commingling of the resident's personal needs allowance with the home's or staff person's funds or the home's operating accounts.

*§ 2600.26(a)(1). Resident-home contract: information on resident rights (redesignated as § 2600.25(c). Resident-home contract)*

IRRC questioned whether, in addition to the "the actual amount of allowable resident charges for each service or item," additional or optional services, which are not included in the basic contract, must be itemized. IRRC questioned whether the list of services included in the contract must be listed, along with the charge to the resident for each of these items. IRRC asked for clarification of whether personal care homes that "bundle" services covered by an agreed-to contract price must list a price for each ADL and IADL. Sixteen commentators offered clarifying language.

*Response*

The intent of the section is to clarify what services the resident will receive and the cost, to assist an individual in need of long-term care to negotiate his care and services. This requirement will also serve providers, by disclosing this information up front.

*§ 2600.26(a)(1). Resident-home contract: information on resident rights (redesignated as § 2600.25(c). Resident-home contract)*

Ten commentators suggested adding information about refunds for a voluntary departure from the home.

*Response*

This change was not made. Refunds as a result of a resident's voluntary departure from the home are covered in § 2600.29.

*§ 2600.26(a)(1). Resident-home contract: information on resident rights (redesignated as § 2600.25(c). Resident-home contract)*

Eleven commentators requested clarifying language for "financial arrangements."

*Response*

"Financial arrangements" relates to the arrangements for the resident's funds if the home provides assistance with financial management. The conditions must be consistent with § 2600.20 and also specify the handling of the rent rebate, if any.

*§ 2600.26(a)(1). Resident-home contract: information on resident rights (redesignated as § 2600.25(c). Resident-home contract)*

IRRC asked how home rules are enforced. In conjunction with §§ 2600.42(u) and 2600.228 (relating to specific rights; and notification of termination), IRRC asked whether a resident's breaking of the rules in the contract constitute a breach of contract, for which the personal care home may discharge the resident. IRRC inquired what the personal care home may do to protect the health and welfare of other residents if one resident continues to smoke in a nonsmoking facility or continually violates the civil rights of other residents. IRRC requested examples of "requirements of home services."

*Response*

The intent of home rules is to facilitate a harmonious living environment in the home. Home rules are incorporated into the resident-home contract. A home is required to inform the resident of the home rules and to give 30 days' written notice prior to the effective date of a new rule. The home rules must specify, for example, whether the home permits pets on the premises. A resident has the right to recommend changes in home rules, without intimidation, retaliation or threat of discharge.

*§ 2600.26(a)(1). Resident-home contract: information on resident rights (redesignated as § 2600.25(c). Resident-home contract)*

IRRC asked what recourse a home has to make immediate changes to the contract if needed for the health and welfare of the resident.

*Response*

Providers may use addenda to the original contract to cover immediate changes in the contract.

*§ 2600.26(a)(1). Resident-home contract: information on resident rights (redesignated as § 2600.25(c). Resident-home contract)*

Fourteen commentators recommended adding "based on needs identified in the assessment" to subsection (a)(1)(xi). Two commentators suggested deleting subsection (a)(1)(xi) and (xii). Three commentators recommended referencing § 2600.42 and requiring an actual list of resident rights as it appears in the proposed regulation.

*Response*

The Department deleted proposed subsection (a)(1)(xii) and added information about charges to the resident for holding a bed.

*§ 2600.26(a)(3). Resident-home contract: information on resident rights (redesignated as § 2600.25(e). Resident-home contract)*

The proposed rulemaking gives a new resident 72 hours to rescind a contract. IRRC questioned whether a similar right-of-rescission should be extended to the personal care home, in the event that further information indicates the placement might be inappropriate. Nineteen commentators suggested permitting the administrator to require a 30-day prior written notice from a resident who chooses to leave the home.

*Response*

This section was clarified to require a resident to pay only for the services he receives. Section 2600.228, regarding notification of termination, requires the home to provide a 30-calendar day advance written notice to the resident, the designated person and the referral agent if the home initiates a discharge or transfer of a resident, or if the legal entity chooses to close the home. A 30-calendar day advance written notice is not required if a delay in discharge or transfer would jeopardize the health or safety of the resident or others in the home, as certified by a physician or the Department. This section also requires that a resident may not be made to leave the home prior to 30 calendar days following the resident's receipt of a written notice from the home regarding the intended closure of the home, except when the Department determines that removal of the resident at an earlier time is necessary for the protection of the health and safety of the resident.

*§ 2600.26(c). Resident-home contract: information on resident rights (redesignated as § 2600.25(g). Resident-home contract)*

Seven commentators suggested adding that the resident, the resident's power of attorney, guardian of estate, guardian of person and party responsible for payment, if applicable, received a copy of the signed admission contract.

*Response*

This change was not made. Those signing the contract are entitled to a copy of it and may share the copy as they choose.

*§ 2600.26(d). Resident-home contract: information on resident rights (redesignated as § 2600.25(h). Resident-home contract)*

Ten commentators suggested that the basic, in-house needs addressed in resident's support plan shall be available to the resident 365 days a year. IRRC asked whether "personal care" or "ADL" should be inserted prior to "service needs," as some optional services and IADLs might be occasionally unavailable, such as on holidays. IRRC suggested that the Department give guidance in addressing the protection of residents from unforeseen changes in the food choices and menus at the personal care home.

*Response*

These changes were not made. Only services necessary for the resident's health, safety and well-being must be provided on a holiday. Section 2600.162 (relating to meals) requires the posting of menu changes in a conspicuous and public place in the home in advance of the meal. Meal substitutions must meet the requirements for nutritional adequacy.

*§ 2600.27. Quality management (redesignated as § 2600.26)*

Three commentators suggested defining quality assessment and management plans and plan review. Commentators also recommended that homes decide their own quality management tasks, based on facility size and levels of care. Two commentators suggested removal of councils and addition of scheduled open door meetings between the resident, his designated person and the administrator or his designee. The commentators noted that open door meetings are a more effective and affordable alternative.

*Response*

This section was revised. Each home will establish and implement a quality plan that reviews and evaluates reportable incident and condition reporting, complaint procedures, staff training, licensing violations and plans of correction and resident or family councils. The quality management plan will include the development and implementation of measures to address the areas in need of improvement.

The Department's intent is to have the home review and resolve systemic issues. A quality review of resident and family councils only applies if the home has one or both. Councils typically provide residents and families the opportunity to periodically meet and discuss concerns about the home's policies and services and to talk with the home management about implementing change. Homes that wish to adhere to a substitute requirement that meets the intent of the regulation may submit a request for a waiver in accordance with § 2600.19 (relating to waivers).

*§ 2600.28(d) and (e). Supplemental Security Income (SSI) recipients (redesignated as § 2600.27 (d) and (e). SSI recipients)*

Six commentators stated that the section prohibits third party billing for personal care services. Eight commentators suggested allowing third party billing for everything. Commentators requested allowing personal care homes to seek private third party payment for a service that is not funded by public dollars.

*Response*

Third-party payments made on behalf of an SSI recipient and paid directly to the home are permitted in § 2600.27 (relating to SSI recipients).

*§ 2600.29. Refunds (redesignated as § 2600.28)*

IRRC questioned how to determine the due date of a refund in the event of the death of a resident when the room is vacated and within 30 days of death. Several commentators suggested refunds in the event of a resident's death be made within 30 working days after the resident's death or upon request of resident's estate. Several commentators requested deletion of this requirement.

*Response*

This section was revised to clarify the time frames for refunds upon the death of a resident. If a resident is under 60 years of age, the refund shall be made within 30 calendar days of the resident's room being cleared of personal property. If the resident is over 60 years of age, the refund shall be made in accordance with the Elder Care Payment Restitution Act (35 P. S. §§ 10226.101—10226.107).

*§ 2600.29(a). Refunds (redesignated as § 2600.28(a))*

Fifteen commentators suggested replacing "discharge" with "upon departure" and replacing "within 1 week" to "upon departure."

*Response*

"Discharge" was not replaced with "upon departure"; however, "within 1 week" was replaced with "2 business days." The refund was not changed to upon departure because the funds may not be available if the discharge or transfer is not on a business day.

*§ 2600.29(e). Refunds. (redesignated as § 2600.28(e))*

Twenty-five commentators suggested a 30-day billing cycle, and stating in the contract that refunds upon death are at the personal care home's discretion.

*Response*

Clarification was made that if the deceased resident is over 60 years of age, Commonwealth law requires the refund to be made in accordance with the Elder Care Payment Restitution Act.

*§ 2600.29. Hospice care and services (new section)*

This section was added to confirm that provisions can be made to allow residents to bring in additional end-of-life care and services as needed, such as hospice, to supplement the services and staff of the home. Hospice provides patient-focused care options, pain and symptom management and a range of psychosocial services to patients and their families through the duration of life-limiting illness.

*RESIDENT RIGHTS*

*§ 2600.41. Notification of rights and complaint procedures*

Commentators noted that some residents do not maintain family ties or that they have no family. IRRC questioned whether "family" was the correct term in subsection (a) and suggested deleting "fear or" in subsections (a) and (e). The Department received 37 comments requesting the addition of a resident's designated person in addition to family members. Three commentators suggested addressing proposed subsections (a)—(d) and (h) within the contract. Several commentators suggested deletion of subsections (a) and (b).

*Response*

Throughout the final-form rulemaking, "family" was replaced with "designated person," as appropriate. Fear of retaliation was deleted since this is subjective and difficult to measure. The items specified on rights remain in this section to clearly delineate the rights of the resident. The resident's rights should be placed in the resident-home contract as well.

*§ 2600.41(c). Notification of rights and complaint procedures*

Six commentators suggested adding resident's power of attorney, guardian of person or estate and designated person, if applicable.

*Response*

The subsection was changed to state that the Department's poster of the list of resident's rights shall be posted in the home. Subsection (d) was changed to state that the rights and complaint procedures shall be given to the resident and their designated person upon admission to the home. Subsection (e) was revised to provide for the resident and the resident's designated person to acknowledge receipt of the information regarding the resident's rights and complaint procedures.

*§ 2600.41(f). Notification of rights and complaint procedures*

Ten commentators requested that subsection (f) address all complaints, not just complaints regarding a violation of resident rights.

*Response*

This subsection was deleted and is addressed in new in § 2600.44 (relating to complaint procedures), which addresses all complaints, as suggested by the commentators.

*§ 2600.41(g). Notification of rights and complaint procedures*

Fourteen commentators requested that the home render a decision within 72 hours upon receipt of a complaint, as opposed to the proposed 14-day period.

*Response*

This subsection was deleted and is addressed in a new § 2600.44(e) and (f). The Department shortened the time period within which a decision on the complaint is rendered to 48 hours for an initial status report and 7 days for a written decision.

*§ 2600.41(h). Notification of rights and complaint procedures*

Four commentators requested informing the resident of his right to file a complaint to Pennsylvania Protection and Advocacy, Inc.



*Response*

This subsection, as well as subsections (i) and (j), were deleted and are addressed in a new § 2600.44. The right to file a complaint with Pennsylvania Protection and Advocacy, Inc. was added as suggested by commentators.

*§ 2600.42(a). Specific rights*

IRRC questioned whether it is considered discrimination if a resident is discharged due to the development of a disability that a home is not equipped to handle, either because of the design of the physical plant or lack of qualified staff. IRRC asked whether the Department considered using the Pennsylvania Human Relations Act (PHRA) (43 P. S. §§ 951—963) as guidance for protected classes.

*Response*

This would depend largely upon the burden on the home that would be necessary to accommodate the resident. If it would be an undue financial burden on the home, or if the resident's protection needs cannot be reasonably met by the home, there would be no discrimination if the home helped the resident to find more appropriate services to meet his individual needs.

As to IRRC's question regarding protected classes under the PHRA, the Department has incorporated the PHRA, as well as the Americans With Disabilities Act of 1990 (42 U.S.C.A. §§ 12101—12213), into the list of applicable laws in § 2600.18.

*§ 2600.42(b). Specific rights*

Five commentators requested including the right to be free from intimidation. One commentator suggested adding that residents may not be disciplined in any way.

*Response*

In response to this comment, the addition of the right to lodge a complaint without intimidation was added in § 2600.41(a) (relating to notification of rights and complaint procedures). The language in § 2600.42(b) was revised to add intimidation, the prohibition of discipline and to clarify that abuse includes both physical and verbal abuse.

*§ 2600.42(e). Specific rights*

IRRC questioned whether requiring free local telephone calls prohibits a home from providing telephone service with pay phones or charging residents for basic telephone service. Fifteen commentators suggested deletion of subsection (e).

*Response*

This subsection was revised to specify that the home must provide residents with free nontoll telephone calls. Charges for toll calls are acceptable.

*§ 2600.42(f). Specific rights*

Three commentators requested clarifying that the residents must pay for postage and mailing costs.

*Response*

This change was not made. This does not imply that the home must pay the resident's postage or mailing costs. The resident's responsibility to pay for their own postage and mailing should be addressed in the resident-home contract.

*§ 2600.42(g). Specific rights*

Fourteen commentators requested deletion of the requirement that the home be open 365 days per year.

*Response*

While the proposed subsection was deleted, § 2600.25(h) requires that requires the service needs addressed in the resident's support plan shall be available every day of the year. Since this is a resident's home and not a public hotel or lodging site it may not be closed during holidays or other times during the year. An exception may be made if all residents in the home choose to leave the home to visit family or for other reasons for a specific period of time.

A new provision was added to this subsection to require the right of the resident to communicate privately with the ombudsman. This is an important right of a resident to protect his right to inquire about services or file a complaint privately.

*§ 2600.42(i) and (j). Specific rights*

IRRC requested clarification of assistance, accessing and attaining, and asked who is responsible to pay for and provide these services. Thirty commentators requested deletion of subsection (i), and retention of § 2620.33 (relating to tasks of daily living). Thirty-nine commentators requested revising subsection (j) to selecting clothing.

*Response*

Subsection (i) was clarified to use the term "health services" rather than list a few specific health services.

In response to public comment, subsection (j) was changed to require assistance in obtaining and keeping clean, seasonal clothing. The home is not responsible for payment of health services or for purchase of a resident's clothing. The Department clarified that the resident's clothing may not be shared with other residents.

The terms "assistance" and "accessing" are not defined since the normal dictionary definitions apply.

*§ 2600.42(l). Specific rights*

IRRC questioned whether the availability of personal storage space may be taken into account with the resident's right to purchase, receive and use personal property.

*Response*

This subsection was changed to clarify that the resident has the right to furnish his room and purchase, receive, use and retain personal clothing and possessions. Personal storage space is addressed in § 2600.101(q) (relating to resident bedrooms).

*§ 2600.42(n). Specific rights*

IRRC asked for clarification of the nature and extent of the assistance that a home must provide if a resident wishes to relocate to another facility.

*Response*

The Department clarified assistance to include the following: helping the resident get information about living arrangements, making telephone calls and transferring records.

*§ 2600.42(o). Specific rights*

The Department clarified that the resident has the right not only to freely associate, but also to organize groups of residents within the home.

*§ 2600.42(q). Specific rights*

IRRC asked if residents are required to perform house-keeping tasks in their personal spaces, if they may

perform volunteer tasks if they choose and who will monitor compliance.

*Response*

This subsection was clarified in response to IRRC's question. The intent is not to require the resident to perform housekeeping tasks in their personal space, but to allow the resident to voluntarily perform tasks. Monitoring of compliance with this requirement, as with all the requirements of this chapter, is the Department's responsibility.

The number of hours the home must be opened to visitors was increased from 8 to 12 hours per day to provide greater opportunity for the resident to entertain family and friends, since this is the resident's home. The Department strongly encourages homes to have an open, 24-hour per day visitation policy, if at all possible.

*§ 2600.42(u). Specific rights*

IRRC questioned that in conjunction with proposed §§ 2600.26(a)(1)(viii) and 2600.228, what course may a personal care home pursue if a resident violates rules agreed to in the contract, such as smoking in a nonsmoking facility or violating the civil rights of other residents.

*Response*

This subsection was amended to include a reference to § 2600.228. In this section, the reasons for discharge were expanded to include documented, repeated noncompliance with the home rules.

*§ 2600.42(w). Specific rights*

IRRC asked to whom the resident appeals a discharge, if the resident remains in the home while his discharge decision is being appealed and if the Department reviews appeal policies and procedures.

*Response*

This subsection was amended to clarify the resident right to use both the home's procedures and external procedures, if any, to appeal involuntary discharge. The placement of the resident during an appeal process depends on the individual circumstances and the safety needs of the resident. The Department will review the home's appeal procedures during its annual inspection of the home.

*§ 2600.42(x). Specific rights*

IRRC questioned the intent and meaning of the term "mismanaged."

*Response*

This subsection was revised to clarify the intent that a resident has the right to a system to safeguard the resident's money or property.

*§ 2600.42(y). Specific rights*

This section was revised to eliminate the right for the resident to manage his own financial affairs since this is addressed § 2600.20. A new right related to the resident's right to choose his own health care providers was added.

*§ 2600.42(z). Specific rights*

IRRC requested clarification of the home's role in protecting a resident's right to be free from excessive medication. Commentators noted that the level of medication is either by the resident's choice or under a physician's supervision.

*Response*

In response to public comment, subsection (z) was deleted. Medication prescription and management is under the purview of the resident's physician and not the home.

*§ 2600.44. Complaint procedures (new section)*

Several commentators requested clarification of the complaint procedures for a resident or a resident's designated person to file a complaint.

*Response*

The Department added a section to address notification of the resident and his designated person of their right to file a complaint and the procedure and timelines for filing and responding to a complaint.

*STAFFING*

*§ 2600.51. Resident abuse and criminal history checks (redesignated as Criminal history checks)*

Three commentators strongly supported this requirement. Four commentators suggested allowing the hiring of convicted felons who have not had an additional felony conviction in the past 5 years.

*Response*

This change was not made. The OAPSA governs the criminal history record checks and hiring procedures.

*§ 2600.53(a). Staff titles and qualifications for administrators (redesignated as § 2600.53. Qualifications and responsibilities of administrators)*

Three commentators strongly supported the proposed administrator qualifications. Some commentators indicated that not all prospective administrators meet the qualifications, yet may do well in that capacity. IRRC and other commentators suggested adding an additional level of qualification for a person who has either graduated from high school or obtained a GED and has a specified amount of direct care experience.

*Response*

The Department agrees that the enhanced qualifications are critical to assure that administrators are equipped to manage the duties and responsibilities of an administrator as required by this section, as well as the increasingly complex needs of residents in personal care homes. However, the Department understands that the duties and responsibilities of an administrator in a small personal home (serving eight or fewer residents) are not as burdensome as in a large home. Therefore, the Department has added a new qualification for a small home to permit a qualification option of a GED or high school diploma and 2 years of direct care or administrative experience in the human services field.

*§ 2600.53(d). Staff titles and qualifications for administrators (redesignated as § 2600.53. Qualifications and responsibilities of administrators)*

Ten commentators suggested allowing the legal entity to assume these administrative and supervisory duties.

*Response*

This change was not made. The function of managing and supervising the administration of personal care services is the primary job of the administrator.

*§ 2600.54. Staff titles and qualifications for direct care staff (redesignated as § 2600.54. Qualifications for direct care staff persons)*

Three commentators strongly supported this section as proposed. Forty-three commentators indicated that re-

quiring qualifications is not appropriate. Forty-one commentators suggested replacing requirement for high school diploma or GED with merit based on training or skill. One commentator suggested replacing requirement for good moral character with the criminal background check under the OAPSA. Forty-three commentators requested allowing the hiring of direct care staff at 16 and 17 years of age, but prohibiting performance of tasks related to medication management. Eleven commentators suggested setting minimum age at 16 years of age.

*Response*

The Department appreciates and carefully considered the numerous comments received. The Department included a "grandfather provision" in § 2600.55 for staff persons hired or promoted prior to the effective date of the final-form rulemaking. The Department added the option for a certified nurse aide to qualify as a direct care staff person if the minimum age and training requirements are met. The minimum educational standard is critical since staff must be able to read and write in the resident's record and read and follow health and safety procedures. The Department will consider a waiver of the educational requirement, in accordance with § 2600.19, if the home demonstrates the staff person's literacy through a standardized testing method or the home provides an alternate means of assuring resident safety. The requirement to measure character was deleted since this is not measurable.

The amendments permit an individual who is 16 or 17 years of age to be a staff person at a home, but does not permit them to perform tasks related to medication administration. A staff person who is 16 or 17 years of age may perform tasks related to incontinence care, bathing or dressing of residents with supervision.

The Department also clarified the role of volunteers.  
*§ 2600.55(a). Exceptions for staff qualifications*

Three commentators strongly supported the proposed section to "grandfather" current administrators. Eleven commentators noted that almost all licensed professionals, such as nursing home administrators, doctors and attorneys, retain their credentials as long as continuing education requirements are met. Thirteen commentators suggested allowing the grandfathering of an administrator even with a break in service of more than 1 year. IRRC questioned whether persons 16 or 17 years of age may work as direct care staff and suggested adding "direct care" in front of "staff" in subsection (c). Nine commentators suggested clarification that persons under 18 years of age may not be the sole direct care staff on duty in the home.

*Response*

The Department kept the grandfathering provision for current administrators, those administrators who have less than a 1 year break in service and direct care staff persons. The requirement for the age of direct care staff persons in § 2600.54(a) and (b) continue to apply for current and new direct care staff persons.

*§ 2600.56. Administrator staffing (new sections added in § 2600.57 (related to direct care staffing); § 2600.58 (related to awake staff persons); § 2600.59 (related to multiple buildings); § 2600.60 (relating to additional staffing based on the needs of the residents); § 2600.61 (relating to substitute personnel); § 2600.62 (relating to list of staff persons) and § 2600.63 (relating to first aid, CPR and obstructed airway training))*

Three commentators strongly supported the proposed staffing requirements. One hundred commentators re-

quested retention of current § 2620.74 (relating to staffing), indicating that the change in staff ratio is not appropriate and that the section should specify only that sufficient staff are required to assure that care and services are provided to meet the needs of all residents. IRRC asked whether the Department intends to require an administrator or his designee to be present at the home 24 hours per day. IRRC suggested a further breakdown of proposed subsections (c) and (d). Ten commentators suggested deletion of the requirement to allow the Department to require additional staff if there is objective data demonstrating that resident needs are not being met. IRRC requested clarification of a resident special needs. Eleven commentators suggested that there is no need to arrange for substitute coverage if a home is still meeting staffing requirements.

*Response*

This section was revised to break out and clarify the requirements for staffing. Specific staffing ratios and requirements are necessary to measure and enforce the minimum staffing requirements for the safe and adequate care of the residents. The enforcement of minimum staffing ratios is absolutely essential to assure that personal care services are provided to residents in a timely and proper manner, that residents are safe and protected from health and safety risks and that all requirements of this chapter are met. The Department clarified the circumstances when an administrator must be present in the home.

In response to IRRC's question about special needs, the Department eliminated the language about a resident's special needs and clarified that the additional staffing hours in § 2600.57(c) are based on the resident's mobility needs.

The Department retained but clarified the requirement for additional staffing based on the needs of the resident as identified in the resident's assessment and support plan in § 2600.60 (relating to additional staffing based on the needs of the residents). This is necessary to address the individual health and safety needs of the residents.

Substitute personnel coverage is essential in the event a staff person calls off sick or cannot make it to work in an emergency. The intent of the requirement for substitute personnel is to ensure staff coverage by qualified individuals at all times, not to require substitute personnel that are not needed.

The Department relocated and revised § 2600.63 (relating to first aid, CPR and obstructed airway training), redesignated from proposed § 2600.57 (final-form § 2600.64) (relating to administrator training and orientation), to require that a staff person trained in first aid, CPR and obstructed airway techniques is present in the home at all times. This is critical so that residents receive proper and immediate emergency treatment in the event of an emergency such as an injury that results in bleeding, a bone fracture, choking or respiratory failure.

*§ 2600.57. Administrator training and orientation (redesignated as § 2600.64)*

Three commentators strongly supported the proposed section. Forty-two commentators requested retention of the current regulation, stating that additional administrator training is not required. Forty-eight commentators requested requiring that the Department-approved training be provided by an appropriately trained person or agency and deleting the requirement for the 80-hour

internship. IRRC asked what constitutes successful completion of the 80 hours of competency-based internship.

Suggestions were received to add additional training components, such as: the requirements of this chapter, ethics, abuse and neglect, accessing health care services, incident reporting and cultural competency.

Nine commentators suggested requiring that certain training be required only if a home serves residents with these needs.

*Response*

Additional training of administrators is needed to ensure they are trained to manage and supervise staff persons to provide personal care services to address the increasingly complex needs of residents. The requirement for the 80-hour internship was deleted. However, the number of training hours was changed from 60 hours to 100 hours. This is a reduction from 140 combined training hours as proposed to 100 combined training hours. Administrators must take and pass a 100-hour standardized Department-approved administrator training course and competency-based training test. A "grandfather" provision was added for administrators hired or promoted prior to the effective date of the final-form rulemaking.

Training in universal precautions, medication effects and side effects, personal care services, gerontology, cultural competency, abuse and neglect prevention and reporting and the requirements of this chapter were added as required administrator training topics to adequately address the needs of residents to protect their health and safety and to properly train an administrator for key duties and responsibilities of his position.

*§ 2600.57. Administrator training and orientation (redesignated as § 2600.64)*

Thirteen commentators suggested deleting either all or portions of this proposed subsection about the internship.

*Response*

In response to public comment, the proposed requirement for an internship was deleted.

*§ 2600.57(e). Administrator training and orientation (redesignated as § 2600.64(c) and(d))*

IRRC asked how the Department determined the 24-hour training requirement and if an administrator must have annual training for each of the subject areas. Sixty-four commentators requested reduction of annual training hours for administrators to 12 hours per year or 24 hours every 2 years. These commentators noted that registered nurses are required to obtain 15 hours of annual training to maintain certification and nursing home administrators are required to obtain 24 hours of continuing education annually.

*Response*

The requirement for an administrator to have 24 hours of annual training was kept. Annual training may be in any subject area related to the administrator's job duties. This allows the administrator to customize his training to the needs of the residents and to his personal level of experience and education. The Department-approved administrator training specified in § 2600.64(a) fulfills the annual training requirement for the first year. Annual training must be provided by Department-approved training sources listed in the Department's personal care home training resource directory or by an accredited college or university. Annual training is required versus 24-month

training to support that training should occur on a regular, ongoing basis and not at the end of a 2-year period.

*§ 2600.57(f). Administrator training and orientation (redesignated as 2600.64(e))*

Ten commentators suggested requiring the Department to conduct random audits, in addition to regulator licensing inspections, to ensure that annual training requirements are met. Two commentators suggested requiring a home to keep a record of training.

*Response*

The Department will assure compliance with these requirements through annual inspections and complaint investigations. In response to comment, subsection (f) was added to require a home to keep a record of training including the person trained, date, source, content, length of each course and copies of any certificates received to provide for easy audit and tracking of training internally by the home, as well as by the Department.

*§ 2600.57(g). Administrator training and orientation (redesignated as § 2600.64(g))*

Fifteen commentators requested clarification that the requirements for a personal care home administrator should not be greater than those for a nursing home administrator.

*Response*

Because a licensed nursing home administrator must meet the ongoing training requirements by the Department of State, they are exempt from the annual training requirements of this chapter.

*§ 2600.58(a). Staff training and orientation (redesignated as § 2600.65(a) and (b). Direct care staff person training and orientation)*

Three commentators strongly supported the proposed requirements for direct care staff person training and orientation. Fourteen commentators opposed the training requirements as unnecessary and cost prohibitive.

Commentators suggested that temporary staff, part-time staff and volunteers do not need to complete the training. Fifty-eight commentators suggested that volunteers be trained appropriate to their roles and functions in the home. Thirty-one commentators requested that training of volunteers be the responsibility of the facility director and include job descriptions for volunteers. Commentators recommended revising subsection (a) to "prior to working with residents unsupervised." Two commentators suggested deletion of training in personnel policies and general home operation.

*Response*

Direct care staff training is essential so that health and safety protections and adequate personal care services are provided to residents. This is especially important given that there are no educational or experience qualifications for direct care staff persons.

Clarification was added that orientation regarding fire safety and emergency preparedness must occur prior to or during the first work day. This initial and immediate orientation training is important for all staff, including volunteers and ancillary staff, so that they can provide emergency assistance.

Subsection (b) clarifies that within 40 scheduled working hours, all staff persons must have an orientation to additional specific training areas such as resident rights, emergency medical treatment, abuse reporting and inci-

dent reporting. The areas of orientation were revised to add the critical areas of abuse and incident reporting for all staff persons, including volunteers and ancillary staff. Orientation to general operation of the home was deleted.

*§ 2600.58(c). Staff training and orientation (redesignated as § 2600.65(d). Direct care staff person training and orientation)*

IRRC suggested adding “unsupervised” before “contact.” Forty commentators suggested 16 hours of shadowing before providing resident care and a 6-month period to accomplish this training. Three commentators requested deletion of training in safety management and prevention. Four commentators requested deletion of training in medications and purpose and side effects of medications.

*Response*

This subsection was clarified to require that direct care staff hired after the effective date of the final-form rulemaking may not provide unsupervised ADL services until completion of training that includes a demonstration of job duties, followed by supervised practice and successful completion and passing the Department-approved training course and competency test.

The Department deleted the requirement for training in medication procedures, medical terminology and the use, purpose and side effects of medications since these areas are addressed in §§ 2600.181–2600.191 (relating to medications). Training in safety management and hazard prevention is essential to protect the health and safety of the residents and this training was not deleted.

The Department added the following training components: safe management techniques; IADLs; dementia; mental retardation; the aging-cognitive, psychological and functional abilities of individuals who are older; socialization; community resources; social services; activities in the community; the requirements of this chapter; infection control and, if applicable, care for individuals with mobility needs. These training components are essential to protect the health, safety and well-being of the residents.

*§ 2600.58(d). Staff training and orientation (redesignated as § 2600.65. Direct care staff person training and orientation)*

Two commentators requested deletion of the requirement for training of ancillary staff.

*Response*

This subsection was revised and relocated to § 2600.65(c). In response to public comment, the requirement for annual training was deleted. The requirement for orientation was retained.

*§ 2600.58(e). Staff training and orientation (redesignated as § 2600.65(e). Direct care staff person training and orientation)*

Commentators indicated that increasing the continuing education requirements to 24 hours annually is unnecessary, excessive and that direct care staff are trained on the job. IRRC indicated that this requirement is more prescriptive than continuing education requirements for hospital nursing staff in the Department of Health regulation in 28 Pa. Code § 109.52 (relating to orientation and continuing education), which does not set a minimum number of hours for continuing education. IRRC recommended that the Department consider reducing the required number of training hours.

*Response*

In response to public and IRRC comments, the annual training requirement for direct care staff persons was reduced from 24 to 12 hours. On the job training may count for 6 of the 12 hours annually.

*§ 2600.58(f). Staff training and orientation (redesignated as § 2600.65(f). Direct care staff person training and orientation)*

Twenty-four commentators suggested keeping all required topics, but requiring only training that pertains to a staff person’s specific job duties. Five commentators suggested that training should be completed within a reasonable time following employment. Four commentators suggested adding “if applicable” to the requirement for training regarding individuals with mobility needs. Four commentators suggested adding a qualification so that training for personal care services and safe management techniques apply only as it applies to the resident population of the home. Two commentators suggested requiring staff education in managing depression.

*Response*

The requirements for training for first aid, obstructed airway techniques and cardio-pulmonary resuscitation was revised and relocated to § 2600.63.

The proposed requirement regarding assessment and support plan training was revised to include the medical evaluation as well.

The requested clarification that not all training is required for all staff persons and all resident populations was not made. Since dementia, cognitive impairments and immobility are common in the older adult population, it is important that all direct care staff persons have annual training in these areas. Training in managing depression was not added since this is a clinical function of behavioral health professionals.

*§ 2600.58(g). Staff training and orientation (redesignated as § 2600.65(g). Direct care staff person training and orientation)*

IRRC asked for clarification as to why volunteers must meet the annual 24-hour training requirement when a volunteer does not perform direct care tasks. Five commentators requested clarification of temporary staff. Three commentators requested a definition of “fire safety expert.” Two commentators requested deletion of the requirement for training in personnel policies.

*Response*

Regularly scheduled volunteers, direct care staff persons, ancillary staff persons and substitute personnel must meet the annual training requirement since these are critical emergency components (such as fire safety, emergency preparedness, resident rights and abuse reporting). In response to comment, the requirement to train temporary staff was removed. Fire safety expert is defined in § 2600.4. In response to comment, the requirement for training in personnel policies was removed.

*§ 2600.58(h) and (i). Staff training and orientation (redesignated as § 2600.65(h) and (i). Direct care staff person training and orientation)*

IRRC asked for clarification regarding the timeframe for completion of training. Five commentators requested requiring the training at another home to be with in the past year. One commentator requested deletion of subsection (i).

*Response*

In response to comment, the Department clarified that the transfer of training from one home to another must have occurred within the past year. Subsection (h) was revised to clarify that only the initial direct care staff training may be transferred. In response to comment, subsection (i) was deleted.

*§ 2600.59. Staff training plan (redesignated as § 2600.66)*

Three commentators strongly supported this section. Fourteen commentators suggested that this section is unnecessary and cost prohibitive. Seventeen commentators suggested retaining current regulation in current § 2620.73(e) (relating to qualifications and training for staff), but adding the training topics from the proposed rulemaking. Forty-eight commentators suggested deleting all the specific requirements of the content of the training plan. The Personal Care Home Advisory Committee Staffing Workgroup and eight commentators recommended deletion of the annual assessment of training needs, the overall plan for addressing needs and the annual evaluation.

*Response*

In response to comment, the Department deleted the specific training plan process and monitoring requirements and instead developed pared-down requirements for an annual staff-training plan that includes training aimed at improving the knowledge and skills of the home's direct care staff in carrying out their job responsibilities. Documentation requirements for the plan are also added.

*§ 2600.60. Individual staff training plan*

Three commentators strongly supported this section. Over 50 commentators found this requirement unnecessary, burdensome, cost prohibitive and already covered in the staff training plan and the annual performance reviews. Eight commentators requested deletion of portions of this requirement. Seventeen commentators suggested retaining the current regulation in current § 2620.73(e). IRRC suggested consideration of the time and fiscal impact.

*Response*

In response to public comment, proposed § 2600.60 was deleted.

*§§ 2600.67 and 2600.68. Training institution registration and Instructor approval (new sections)*

Two sections were added to address the requirements for the staff training program. This is critical to assure proper monitoring of training institutions and the instructor certification process.

*PHYSICAL SITE**§ 2600.81. Physical accommodations and equipment*

Twenty-one commentators recommended reference to applicable laws.

*Response*

Although this requirement will be applied by the Department under the guidance of applicable laws, such as the Americans with Disabilities Act of 1990, this is a licensing requirement of this chapter and will be applied and enforced by the Department under this section. A new requirement regarding the condition of ambulation devices was added.

*§ 2600.82(a) and (c). Poisons*

Five commentators requested deletion of the requirement to keep poisons in their original container, as long as poisonous materials are properly labeled and stored. Four commentators requested an exemption for house-keeping substances while in use.

*Response*

Removal of poisons from their original containers is never safe. This practice can lead to misidentification of the substance and unsafe storage in a container not equipped to provide the proper insulation of the substance. If a household cleaning product is in use and supervised by a staff person, this meets the requirement in subsection (c) to be inaccessible to residents.

*§ 2600.83. Temperature*

Several commentators indicated that a constant temperature above 80°F may be too warm for some residents due to their medical conditions or medication regimen. They suggested requiring that air conditioning be required to maintain the temperature at or below 80°F for bedrooms and other living areas. Six commentators suggested that only areas used by the resident need to be at 70°F. IRRC questioned whether the Department should require a maximum indoor temperature.

*Response*

The Department carefully considered adding a requirement that indoor temperature be kept below 80°F through the use of air conditioning. However, due to the high cost of installing air conditioning in each home, the Department decided that the use of fans to circulate air during the summer months is the most cost-effective alternative.

In response to comments, the Department clarified that the requirement regarding heating applies to areas used by the residents.

*§ 2600.85. Sanitation*

This proposed section raised many questions from IRRC and others about the presence of pets in homes. Twelve commentators suggested requiring a pest control program on an as-needed basis. Twenty-nine commentators expressed concern that some elderly persons will not be able to work covered containers. Fourteen commentators requested deletion of the requirement for the sewage system approval since this is often a local requirement.

*Response*

The Department clarified that it did not intend to disallow pets in homes. The requirement for a pest control program was not added since this will not be necessary in most homes.

Covered trash receptacles are an important sanitation protection. There are types of covered trash receptacles that elderly persons are able to operate, such as foot pedal trash receptacle. The staff persons should provide assistance to a resident who needs assistance in opening containers.

Sewage systems are indeed regulated by the local sewage enforcement officer. The Department will look for the required written local approval. This requirement was revised so that it applies only to a large home serving nine or more residents.

*§ 2600.86. Ventilation*

Nine commentators asked for clarification of sufficient ventilation.

*Response*

Acceptable types of ventilation are included in subsection (a). The section was clarified that the requirement for ventilation in subsection (a) applies to bathrooms that do not have an operable, outside window.

*§ 2600.87. Lighting*

Nine commentators asked for clarification of sufficient lighting.

*Response*

In response to comment, this section was clarified to require that the specified areas be lighted and marked to ensure that residents, including those with vision impairments, can safely move through the home and safely evacuate.

*§ 2600.88. Surfaces*

Eleven commentators suggested regulation of the use of asbestos and proper remediation activities.

*Response*

Asbestos is no longer used in home construction or building materials. In some cases, removal of asbestos products from an existing building is more dangerous to residents than covering over the asbestos or keeping it intact. The Department will regulate any unsafe existence or removal of asbestos under § 2600.88 (a) (relating to surfaces). Section 2600.88(b) does not permit the use of asbestos products in renovations or new construction.

*§ 2600.89. Water*

Eight commentators requested deletion of the requirement for quarterly coliform water tests since this is regulated by the DEP. One commentator suggested adding an option to make provisions for a safe supply of drinking water to subsection (d).

*Response*

The Department did not eliminate the requirement for water testing for a home that is not connected to a public water system, since this is not regulated by the DEP. The DEP only regulates public water systems.

At the recommendation of the DEP, the Department clarified that the laboratory will report that water is above or below the maximum contaminant level, rather than that water is safe for drinking.

In response to comment and at the suggestion of the DEP, the Department revised subsection (d) to require that an alternate water source be provided during remediation activities.

The new requirement for water safety testing applies only to a home that is not connected to a public water system, but instead has a private water source, such as a well. The quarterly cost for coliform testing at a DEP-certified laboratory is \$30 per test. The benefit of assuring that residents have safe drinking water and are not exposed to harmful contaminants outweighs this minimal cost.

*§ 2600.90. Communication system*

Fifteen commentators requested deletion of the requirement for an internal communication system. IRRRC recommended clarifying the language to reflect the Department's intention.

*Response*

The Department's intent is to ensure that staff persons can immediately communicate with and summon assistance from one another in the event of an emergency. In

response to comment, the new requirement for an internal communication system will apply only to a home serving nine or more residents. In a large home, it is critical that staff persons be able to quickly and efficiently contact other staff persons in the event of an emergency or if they need assistance with a resident. The cost of installing a communication system will vary greatly based on the size and lay out of the home. If a home is physically structured so that staff persons can call out for assistance and be heard throughout the home, a system is not required. Many large homes already have internal communication systems in place and will not incur additional costs. Types of communication systems that may be used include walkie-talkies, pagers, cellular phones and intercom systems. The Department estimates that a two-way walkie-talkie system for two staff persons will cost between \$20 and \$100. The benefit of being able to contact other staff persons in the event of an emergency outweighs this reasonable cost for a large home.

*§ 2600.91. Emergency telephone numbers*

Twenty-one commentators suggested requiring posting of telephone numbers only for telephones in common areas or for general staff or resident use, not for a resident's personal telephone.

*Response*

This change was not made. It is important to post emergency telephone numbers by all telephones with an outside line so that anyone, including a resident, may call for emergency assistance. The telephone number for the local emergency management agency has also been added.

*§ 2600.93. Handrails and railings*

Several commentators, including a 40-bed personal care home, two provider agencies and two advocacy organizations requested deletion of the exemption for outside steps with one or two steps and for a porch with over a 30-inch drop.

*Response*

In response to public comment, these changes were made. All steps and porches must have a handrail or railing.

*§ 2600.94. Landings and stairs*

Nine commentators requested deletion of the requirement for nonskid surfaces on walkways. Fourteen commentators suggested adding the requirement for contrast strips for those with vision impairments.

*Response*

In response to public comment, the change regarding walkways was made. The new requirement for nonskid surfaces on stairs, steps and ramps will be a one time cost for a home that has surfaces that are likely to cause slips, falls and resulting injuries to the residents. Most homes already have acceptable nonskid surface coverings such as carpet, rubber coverings on ramps and textured concrete on outside steps. The estimated average cost per foot for installing a nonskid strip on a stairs or ramp is \$4 per yard. The benefit of preventing falls and injuries outweighs the minimal cost.

In response to comment, the requirement relating to contrast strips for residents with a vision impairment was added in § 2600.87 (relating to lighting).

*§ 2600.95. Furniture and equipment*

Three commentators suggested adding that furniture must be functional, comfortable and home-like.

*Response*

While the Department supports these concepts, these descriptions are subjective based on the varied individual preferences of the resident and not measurable for purposes of licensing enforcement.

*§ 2600.96. First aid supplies (redesignated as First aid kit)*

Twenty-one commentators suggested requiring one set of first aid supplies on every floor or wing of each building. IRRC indicated that depending on the size of the building, the response time to reach the other side of the building may not be beneficial to aiding the resident in a timely manner. IRRC recommended that the Department consider requiring that a first aid kit be kept on each floor or for a designated number of rooms.

*Response*

Many large homes already have multiple first aid kits so that staff persons can respond quickly to an emergency. However, a first aid kit on each floor of the home is not necessary for many small and medium homes. Since a first aid kit is used to treat only minor injuries, the cost to purchase additional first aid kits outweighs the benefit to the residents.

The Department eliminated syrup of ipecac and added tweezers to remove splinters from the contents of the first aid kit. The use of syrup of ipecac is no longer recommended by the American Academy of Toxicology and the United States Food and Drug Administration in response to the ingestion of a poison.

*§ 2600.97. Elevators and stair glides*

Three commentators suggested requiring completion of repair within 48 hours of the time that the elevator or stair glide was found to be inoperative and development of emergency procedures that will be immediately implemented until the equipment is operable.

*Response*

The Department added a citation to the Department of Labor and Industry regulation of elevators and stair guides in 34 Pa. Code Chapter 405 (relating to elevators and other lifting devices). In the event of temporary inoperability, the Department will apply § 2600.81(a) (relating to physical accommodations and equipment) that requires the home to provide for the safe movement of the resident within the home. The home will need to provide an alternate means of movement during the temporary period of inoperability.

*§ 2600.98. Indoor activity space*

Nine commentators suggested that indoor space should be provided according to the needs of the residents. Fifteen commentators suggested applying the current regulation in § 2620.52(q) (relating to living/sleeping quarters).

IRRC recommended relocating the requirements for program activities and activity calendar to § 2600.221 (relating to activities program). Twenty-eight commentators suggested replacing proposed subsections (c)—(e) with a requirement for an activities program designed to promote residents active involvement with other residents, the residents families and the community.

Twelve commentators suggested requiring that the television viewing room be sufficiently large so residents can enjoy watching television in comfort. IRRC recommended deleting the language in subsection (f), since it is written in nonregulatory language.

*Response*

In response to IRRC and public comment, the program activity and activity calendar requirements were deleted. These areas are addressed sufficiently in § 2600.221. Subsection (f) was deleted, in part based on IRRC's suggestion, as well as because waivers are already addressed in § 2600.19. The other suggested changes were not made since the language is subjective, not measurable and nonregulatory in nature.

*§ 2600.99. Recreation space*

Seventeen commentators suggested adding that equipment and supplies must be suited for physical, mental, artistic, spiritual and social fulfillment.

*Response*

This change was not made as it is subjective and not measurable. The section was reworded to give examples of recreational items instead of specifying the recreational items the home must have available.

*§ 2600.100. Exterior conditions*

Six commentators requested a definition of "hazard" in subsection (a). Five commentators suggested modifying subsection (b) to allow a home to restrict access to the recreational areas when snow and ice are present.

*Response*

The definition of "hazard" as found in the dictionary applies. Although no revision to the section was made, a home may temporarily restrict access to exterior recreational areas when extreme weather conditions prevent the prompt removal of snow and ice.

*§ 2600.101(a)—(d). Resident bedrooms*

Eight commentators supported the flexibility offered by the rulemaking in setting requirements for resident bedrooms. Some commentators indicated that the square footage requirements could hinder their ability to keep some current residents. Twenty-eight commentators requested exempting existing personal care homes from the square footage requirements. IRRC asked for clarification of whether the Department considered grandfathering current facilities.

*Response*

No substantive changes were made to these four subsections. A "grandfather provision" was added in subsection (c) for existing bedrooms serving a resident with mobility needs. The prior allowance for a home licensed as a personal care home before the effective date of this final-form rulemaking to count up to 9 square feet of built-in closet space will be honored.

*§ 2600.101(e)—(g). Resident bedrooms*

Four commentators suggested changing the ceiling height to 8 feet. Four commentators suggested requiring that a window must be able to be opened from inside with normal ease. Two commentators suggested "grandfathering" existing homes in subsection (g).

*Response*

Ceiling height for resident bedrooms in homes licensed after the effective date of this final-form rulemaking was changed to an average of 7 feet, to permit the use of bedrooms with irregular or sloped ceilings or dormer windows. Eight foot ceilings are not required, because the Commonwealth's new Uniform Construction Code requires ceiling height in new buildings to be a minimum of 7 1/2 feet in occupied spaces and corridors and a mini-



mum of 7 feet in bathrooms, toilet rooms, kitchens and storage rooms. Many homes in this Commonwealth do not have 8-foot ceilings.

Clarification was added that windows do not need to be operable to permit the use of buildings that have controlled ventilation systems. Windows are required for the purpose of providing direct lighting and visual exposure and stimulation.

The Department did not grandfather existing homes in subsection (g). The requirement for a resident's bedroom to be used only as a bedroom and not as a common area is critical to assure privacy and dignity, as well as to assure the safety and health of residents. This does not preclude the sharing of bedrooms by more than one resident.

*§ 2600.101(i) and (j). Resident bedrooms*

Thirteen commentators recommended requiring curtains or partitions to insure the resident's privacy. Three commentators suggested deletion of subsection (j) and indicated that resident access to bedrooms cannot be guaranteed at all times.

*Response*

The requirement for privacy within a bedroom was deleted as it was not the Department's intent to require that partitions or curtains be installed in all shared bedrooms. Subsection (j) was not changed, but this requirement will be applied with reason to afford flexibility to assure the privacy of a roommate while the roommate is dressing or completed other private personal hygiene activities.

*§ 2600.101(k). Resident bedrooms (redesignated as § 2600.101(j))*

Forty-six commentators requested deletion of the requirements for a fire retardant and plastic covered mattress, stating that type of mattress should be determined by needs of resident served. IRRC requested the Department's consideration of costs of replacing current mattresses with fire retardant mattresses. IRRC asked if it is necessary for every resident to use a plastic-covered mattress if they are not incontinent. Two commentators suggested adding the requirement for an operable lamp.

*Response*

In response to public and IRRC comment, and based on the cost of replacing mattresses, the requirement for a plastic covered mattress was removed. Existing homes will be exempt from the requirement for a fire-retardant mattress. In response to comment, an addition was made to require each bedroom to have an operable lamp or other source of lighting that can be turned on at bedside. The Department also added the requirement for a bedside table and mirror since these are reasonable and basic bedroom furnishings. The Department clarified that many of the bedroom furnishings may be shared with another resident.

*§ 2600.101(r). Resident bedrooms (redesignated as § 2600.101(q))*

Commentators noted that requiring homes to purchase any chair that the resident deems comfortable will be costly. IRRC questioned who is responsible for determining what is comfortable and who is responsible for supplying the chair.

*Response*

This requirement was revised to require a chair that meets the resident's needs. It was relocated to subsection

(j)(2). In response to comment, the Department added a requirement for storage space for personal property.

*§ 2600.101(t). Resident bedrooms (redesignated as § 2600.101(r))*

Two commentators suggested deleting this requirement indicating that window treatments that cover the entire window may be unnecessary or not desirable for very tall windows, skylights or other similar windows.

*Response*

The Department's intent is to assure the resident's privacy. In the unusual cases mentioned by the two commentators, a home may request a waiver of this requirement in accordance with § 2600.19.

*§ 2600.102(a)–(c). Bathrooms*

Fifty commentators suggested clarification to count only residents or other household members when determining the ratios. Twelve commentators suggested increasing the shower/bathtub ratio from 15 to 6. IRRC requested the Department's rationale for increasing the shower/bathtub ratio from the current 8 to 15.

*Response*

In response to comment, the Department clarified that only the residents, staff persons and other household members who use the bathroom facilities will be counted. This is necessary to assure there are enough toilets for the residents if staff persons and other individuals living in the home also use the toilet. Visitors will not be counted in determining the ratios. The current ratio for showers/bathtubs is one for every 15 or less users in § 2620.52(l)(3). In response to public comment and based on research of other states licensing regulations, the Department increased the number of showers/bathtubs required to one for every ten users. Existing homes are permanently grandfathered from the new shower/bathtub ratio.

*§ 2600.102(d). Bathrooms.*

The Department clarified that in addition to slip-resistant surfaces, toilet and bath areas must have grab bars.

*§ 2600.102(e). Bathrooms*

Three commentators suggested allowing curtains for privacy at toilets and showers/bathtubs.

*Response*

This change was not made. Curtains do not provide privacy.

*§ 2600.102(f) and (g) Bathrooms*

Thirty-three commentators suggested clarifying that the home may charge the resident for these items, unless the resident is on SSI.

*Response*

The Department clarified that the home may charge a resident, who is not an SSI recipient, for individual toiletry items. These charges must be indicated in the resident-home contract. If the resident is a recipient of SSI, toiletry items must be provided in accordance with § 2600.27(d)(1).

*§ 2600.102(h)–(j). Bathrooms*

Three commentators suggested revising subsection (h) to require paper towels and toilet paper for all public toilets in the home. Fifteen commentators suggested rewording subsection (i) to require a soap dispenser in all public or shared bathrooms. Nine commentators sug-

gested revising subsection (j) to require that toiletries and linens shall be made available on request or accessible to the resident.

*Response*

The suggestion to require the stocking of public bathrooms was not added. The purpose of the final-form rulemaking is to protect the health, safety and well-being of the residents and to regulate the resident areas, not the public areas. Subsection (i) was revised to require that the soap dispenser be within reach of each sink. In addition, the Department added clarification that unmarked bar soap is allowed if a resident has a private bathroom. Subsection (j) was amended to allow for towels and washcloths to be stored in a space other than the resident's living space as long as the resident has access to the home's linen supply. The Department clarified that use of a common towel is not allowed. The Department added that shelves or hooks for the resident's towel and clothing must be provided.

*§ 2600.103(b) and (c). Kitchen areas (redesignated as Food service)*

Four commentators stated that it is costly to sanitize a kitchen after every meal. Three commentators suggested deleting the term "transported" in subsection (c), stating that food is carried a few feet from stove to table.

*Response*

Sanitization is important to reduce the spread of disease. This does not have to be a costly expense to the home. Thoroughly washing the area with soap and water or some other type of kitchen cleaner is acceptable. In subsection (c), the term "transported" is intended to mean transported from outside the home such as from another building on the premises or if the kitchen and dining areas are not in close proximity to each other.

Clarification was added to permit the use of a service kitchen in another building on the grounds, as long as there is a kitchen area for storage and preparation of beverages and snacks in each home.

*§ 2600.103(d)–(f). Kitchen areas (redesignated as Food service)*

Five commentators stated that high quality food storage bins designed to sit on the floor should not be excluded in subsection (d). Nineteen commentators suggested deletion of the requirement to date, rotate and inventory foods.

*Response*

In response to public comments, the Department clarified that food must be stored off the floor. The use of quality, tightly sealed, plastic food bins is acceptable. Also in response to comment, the Department deleted the requirement for dating, rotating and inventorying food items. The Department relocated the requirement from proposed § 2600.162(b) to this section.

*§ 2600.103(h)–(j). Kitchen areas (redesignated as Food service)*

Seven commentators suggested deletion of the requirements for holding temperatures and dishwashing, stating that these are nursing home requirements.

*Response*

The requirement for holding temperatures was deleted in response to comment. The dishwashing requirement was retained to assure proper protections during dishwashing. The Department relocated a portion of the requirement from proposed § 2600.162(d) to this section.

*§ 2600.103(k) and (l). Kitchen areas (redesignated as Food service)*

Two commentators requested deletion of subsection (k). Ten commentators suggested deleting subsection (l), stating that personal care homes are residential environments that may include pets.

*Response*

These subsections were deleted in response to public comment. Trash is appropriately regulated in § 2600.85. Pets are permitted in the kitchen and food service areas of the home.

*§ 2600.104(a)–(c). Dining room*

Four commentators suggested replacing "maximum" in subsection (a) with "seating." Seven commentators requested modification of subsection (b) to allow use of nondisposable plastic glasses. Nine commentators suggested deleting "at the dining table" in subsection (c).

*Response*

Subsection (b) was clarified to permit the use of plastic and paper plates, utensils and cups on an irregular basis. The dining room must accommodate all residents.

The requirement to place condiments at the dining table is reasonable.

*§ 2600.104(d)–(g). Dining room*

Nine commentators suggested requiring special provisions, if necessary, to assist residents in eating at the table. Nine commentators suggested permitting pets, stating that a pet can be very important to residents.

*Response*

These changes were made in response to comment.

*§ 2600.105(a) and (b). Laundry*

Twenty-one commentators requested deletion of the second sentence in subsection (a), stating that this is addressed in subsections (b)–(e).

*Response*

This change was made in response to comment.

*§ 2600.105(d), (f) and (g). Laundry*

Three commentators suggested revising subsection (d) to require that clean linens and towels be offered to the resident at least once every week. Three commentators requested clarifying subsection (f) to require that resident clothing is not lost or misplaced in the process of laundering. Thirty-four commentators requested deletion of subsection (g) regarding the cleaning of lint traps and drums. IRRC asked for clarification of subsection (g).

*Response*

The change to subsection (d) was not made. It is important for health and sanitation purposes that linens and towels actually be replaced with clean linens and towels every week and not just offered or available. In fact, due to the needs of many residents, the Department clarified that linens and towels must be changed more often than once a week as needed to maintain sanitary conditions.

A change to subsection (f) was made in response to the concern about resident clothing being lost or misplaced in the process of laundering.

The intent of subsection (g) is that lint be removed not only the lint trap and drum of the clothes dryer after each use, but also from vent duct and ductwork according

to the manufacturer's instructions. This is necessary to prevent a fire hazard. This subsection was clarified.

*§ 2600.106. Swimming areas*

Three commentators suggested deleting this section and deferring to State regulations for swimming pools. Four commentators suggested adding that staff certified as Red Cross life saving staff must be present when residents are using the pool or another body of water and that all pools and ponds shall be fenced and have automatic latched gate.

*Response*

The Department clarified that applicable laws and regulations will govern the construction, safety and sanitation of swimming pools. Specific requirements for life saving staff, fencing and latched gates were not included, but are examples of requirements that may be applied by other State or local authorities.

*§ 2600.107(a) and (b). Internal and external disasters (redesignated as Emergency preparedness)*

IRRC asked whether qualified fire, safety and local emergency management offices were intended to be the same as a fire safety expert. IRRC recommended that the Department describe who is "qualified" to make these judgments. Sixteen commentators suggested requiring approval by qualified local emergency management offices.

*Response*

Subsection (a) was revised to require the home to have a copy and be familiar with the local municipal emergency preparedness plan. Subsection (b) was revised to clarify what is included in the written emergency procedures. In accordance with § 2600.107(d), the emergency plan and procedures must be submitted to the local emergency management agency, instead of having the plans or procedures developed and approved by qualified fire, safety and local emergency management offices. The local emergency management agency supports the community in civil defense, disaster mitigation and preparedness, planning and response to and recovery from man-made or natural disasters.

*§ 2600.107(c). Internal and external disasters (redesignated as Emergency preparedness)*

IRRC asked for clarification of the term "contact names" and whether it is intended to be the resident's designated person. Fourteen commentators requested clarification of the requirement for an alternate means of utilities. Sixteen commentators suggested that the disaster plan include a plan to obtain nonperishable food and drinking water. Four commentators requested deletion the requirement to maintain a supply of medications, since the personal care home does not supply the medication and the availability of medication is determined by the resident's physician, pharmacist and insurance plan. Twenty commentators suggested requiring a plan for emergency medication delivery.

*Response*

This section was revised and clarified based on public comment and relocated to subsection (b). The requirement to maintain a 3-day supply of medications was deleted in response to comment.

*§ 2600.108. General health and safety*

The Department deleted this section as it is not necessary based on all the other requirements of this chapter.

*§ 2600.109. Firearms and weapons (redesignated as § 2600.108)*

Eighteen commentators requested clarification of weapons.

*Response*

The dictionary definition of "weapon" applies.

*§ 2600.109. Pets (new section)*

A section was added to address whether pets are permitted by the home, the health condition of the pet as it relates to the health and safety of the residents and the additional charge for pets, if applicable.

**FIRE SAFETY**

*§ 2600.121. Unobstructed egress*

Seven commentators requested clarification of the purpose and permissibility of locking exit doors, how to provide security for residents if exit doors cannot be locked from the outside and how to provide unimpeded evacuation route in an emergency. Commentators noted that the Department should defer fire safety approval to occupancy and fire safety authorities.

*Response*

Fire safety is a key concern as many residents have died in fires. The intent of the section is to permit residents to quickly exit the building in the event of a fire. Doors may be locked from the outside to provide security to the residents. The Department clarified that a home is permitted to use special emergency locking devices on exit doors if they have a written approval from the Department of Labor and Industry, the Department of Health or the appropriate local building authority. IRRC submitted no comments.

*§ 2600.122. Exits*

Eight commentators noted that the Department should defer fire safety approval to occupancy and fire safety authorities. Commentators suggested requiring this provision only to new construction or significant renovation, or both. Commentators requested clarification of the term "accessible" and expressed concern about the cost of retrofitting personal care homes for exits. IRRC submitted no comments.

*Response*

The Department included a provision in the order to this final-form rulemaking to give existing homes 18 months after the effective date of this final-form rulemaking to comply. The requirement for two independent and accessible fire safety exits per floor is a one-time cost for an existing home that does not have two exits. This requirement is critical to provide for safe evacuation in the event of a fire. In many cases of an actual fire, the interior stairwell may be blocked by fire or smoke making egress impossible. A second exit is often necessary to escape the fire. A second exit may be an interior stairwell. For a multistory home installation of a fire escape may be required. The fire escape may be of any sturdy construction material, including wood. The cost of installing a new fire door and fire escape is estimated at \$5,000. The benefit of providing an alternate escape route for resident in the event of a fire outweighs the cost.

*§ 2600.123. Emergency evacuation*

Commentators suggested requiring this provision only to new construction or significant renovation, or both. Nine commentators noted that occupancy requirements should be the purview of occupancy and fire safety

authorities. Commentators expressed concerns about the cost and availability of 24-hour monitoring systems. Four commentators recommended that all homes be connected to a 24-hour monitoring system or have provide additional staff. One commentator suggested deletion of subsection (b), as it duplicates § 2600.87 and § 2600.121 (relating to unobstructed egress). Four commentators noted that subsection (c) conflicts with section on secured dementia care units. IRRC asked for clarification of the emergency evacuation plan in subsection (d).

*Response*

These requirements are critical for residents and staff persons to be alerted in the event of a fire. Although some of these requirements are regulated by the Department of Labor and Industry or other local fire safety authorities, it is critical that the Department complete an inspection of these requirements during its annual inspection, since fire safety authorities do not conduct regular inspections. An exemption for existing homes was not added since these requirements are critical for the protection of the residents in the event of a fire.

The requirement to have the home's fire system connected to the local fire department was deleted, since it is addressed in § 2600.130(i).

The Department deleted proposed subsection (b) since, as the commentator suggests, it duplicates other requirements of this chapter.

For a secure dementia unit, special locking devices may be used on exit doors if the home has a written approval from the Department of Labor and Industry, the Department of Health or the appropriate local building authority.

The term "emergency evacuation plan" was deleted from subsection (d) and was replaced with emergency procedures which are defined in § 2600.107 (relating to emergency preparedness).

The Department exempted small homes from the requirement to post an emergency evacuation diagram. An emergency diagram is not needed in a small home where exits are well known and visible. The Department added a subsection to clarify that if the home chooses to serve residents with mobility needs above or below the grade level of the home, there must be a fire safe area to which the residents may safely evacuate.

*§ 2600.125. Flammable and combustible materials*

Two commentators requested clarification of combustible materials.

*Response*

The Department clarified the references to flammable and combustible.

*§ 2600.126. Furnaces*

Twelve commentators suggested revising that furnaces be inspected and cleaned annually or as often as recommended by manufacturer. Fourteen commentators expressed concern about cost.

*Response*

This change was not made. The annual furnace inspection and cleaning may be conducted by a trained home maintenance person at no cost to the home. An annual furnace inspection and cleaning is important to prevent fires or other dangerous conditions.

*§ 2600.128. Supplemental heating sources*

The Department clarified language in this section and added that wood and coal burning stoves must be

screened or otherwise equipped so that residents are not burned by contact with the stove.

*§ 2600.129. Fireplaces*

Eight commentators recommended requiring cleaning only of fireplaces that are regularly used, due to cost. Two commentators recommended allowing residents to sit by the fire in subsection (c).

*Response*

Subsection (b) was amended to state that cleanings need to occur when there is an accumulation of creosote. This will reduce the cost to the homes as a cleaning is no longer required annually. Subsection (c) was deleted. Nothing in this section precludes a resident from sitting by the fireplace.

*§ 2600.130(a). Smoke detectors and fire alarms*

Commentators suggested requiring this provision only to new construction or significant renovation, or both. Forty commentators noted that occupancy requirements should be the purview of occupancy and fire safety authorities.

*Response*

This requirement is critical for residents and staff persons to be alerted in the event of a fire. Although the smoke detectors are regulated by the Department of Labor and Industry or other local fire safety authorities, it is critical that the Department complete an inspection of the smoke detectors during its annual inspection, since fire safety authorities do not conduct regular inspections. An exemption for existing homes was not added since this is critical for the protection of the residents in the event of a fire.

*§ 2600.130(d). Smoke detectors and fire alarms*

In response to fiscal concerns of small homes, the Department added an exemption for a small home serving eight or fewer residents. A large home must continue to meet this existing requirement so that residents and staff persons are able to hear the smoke detector or fire alarm no matter where they are in the home. This requirement is already required by the Department of Labor and Industry for a home serving nine or more residents.

*§ 2600.130(e). Smoke detectors and fire alarms*

Commentators suggested requiring this provision only to new construction or significant renovation, or both. Commentators noted that occupancy requirements should be the purview of occupancy and fire safety authorities. Forty-one commentators stated that these requirements are cost prohibitive. IRRC asked whether the Department considered allowing alternatives to subsection (e), such as permitting a home to install a fire alarm for an individual with a hearing impairment only in areas that would be utilized by that person.

*Response*

A resident or staff person with a hearing impairment must be alerted in the event of a fire. This applies to all homes regardless of size. The required signaling device is required only in areas that would be utilized by that individual. The estimated cost of installing a full strobe light and bed vibrator system is \$170 per person. The bed vibrator system would of course be required only for a resident with a hearing impairment. The Department revised this requirement to allow the use of a personal body device that is portable and the possession of the

individual. The benefit of providing equal fire protection for a person with a hearing impairment outweighs the cost.

*§ 2600.130(i). Smoke detectors and fire alarms*

Nine commentators expressed concern about cost for a 24-hour monitoring system. See comments received in § 2600.123.

*Response*

In response to comments, the Department added the clarification that a fire connection service or 24-hour monitoring service is required only if it is available in the community.

*§ 2600.131. Fire extinguishers*

Commentators suggested requiring this provision only to new construction or significant renovation, or both. Commentators noted that occupancy requirements should be the purview of occupancy and fire safety authorities. Six commentators recommended deleting requirement for locked fire extinguishers at subsection (e), which could pose a safety hazard in an emergency.

*Response*

These requirements are critical for residents and staff persons in the event of a fire. Although some of these requirements are regulated by the Department of Labor and Industry or other local fire safety authorities, it is critical that the Department complete an inspection of these requirements during its annual inspection, since fire safety authorities do not conduct regular inspections. An exemption for existing homes was not added since these requirements are critical for the protection of the residents in the event of a fire.

Locking of fire extinguishers is required in subsection (e) only if access to the extinguisher could cause a safety risk to the resident. If extinguishers are locked, staff must be able to open them in an emergency.

*§ 2600.132(a). Fire drills*

Four commentators suggested not requiring unannounced fire drills, as this may upset residents.

*Response*

This change was not made. Unannounced fire drills are necessary to provide a realistic scenario for residents and staff persons to practice how they will respond in the event of an actual fire.

*§ 2600.132(d). Fire drills*

Thirty-five commentators recommended that fire safety authorities should decide evacuation times, based on building construction, fire suppression equipment, staff and evacuation plans. Commentators asked for consideration that sometimes residents are not evacuated from the building, but are evacuated to fire-safe zones within the building. Commentators also noted that evacuating residents completely out of the building in certain weather conditions could also lead to injuries and stress. Commentators suggested different evacuation times for small versus large homes.

IRRC recommended maintaining the current 5-minute standard. IRRC noted that the regulations for fire drills in long-term care facilities in 28 Pa. Code § 209.8 (relating to fire drills) do not require complete evacuation of the facility. IRRC asked for clarification of whether the fire safe area could be a location within the home.

*Response*

The requirement to evacuate the home within 2 1/2 minutes was deleted from the final-form rulemaking. Instead, as suggested by commentators, the evacuation time will be established by a fire safety expert. A fire safe area may be within the home, such as an approved fire tower or area.

A comparison to long-term care nursing facilities is not appropriate since long-term care nursing facilities must comply with a more stringent fire safety occupancy code than most personal care homes.

*§ 2600.132(e). Fire drills*

Thirteen commentators recommended not requiring fire drills at night and to follow simulated fire drills that nursing care facilities conduct for night shift. Commentators recommended requiring fire drills during sleeping hours only once a year.

*Response*

The intent of subsection (e) is to ensure that residents have practiced a fire drill during different times of the day and night, such as at meal time, during various activities and while sleeping. Since most fire deaths occur at night while people are sleeping and since reaction time is slower and people are disoriented when waking abruptly, fire drills during sleeping are critical to protect the residents in the event of an actual fire.

*§ 2600.132(h) and (j). Fire drills*

Seven commentators suggested adding an exemption during inclement weather for resident protection.

*Response*

The home may select a day of each month when the weather is suitable for the fire drill. Even during winter months, there are usually a few days during which evacuation is possible.

*§ 2600.133. Exit signs*

The Department revised this section to exempt small homes since the exit paths in a small home are likely well known and visible.

**RESIDENT HEALTH**

*§ 2600.141(a). Resident health exam and medical care (redesignated as Resident medical evaluation and health care)*

IRRC indicated that the section should identify who is responsible for paying for the health examination. IRRC noted that residents may have health coverage plans that pay for health examinations, and would not want to pay higher rates for a different health care provider or a home's doctor. IRRC notes that section 1057.3(a)(2) of the Public Welfare Code (62 P.S. § 1057.3(a)(2)) allows a 30-day period for obtaining an examination after admission, but does not set a time period for examinations before admission. IRRC requested clarification of the 60-day period for examinations before admission.

Twenty-nine commentators support using a standard form, including the MA-51 form. IRRC asked whether the "standardized form" referenced in subsection (a) is the same as the current MA-51 form, and suggested referencing the specific form. Commentators recommended updating the medical evaluation every 6 months or when there is a significant change in the resident's medical condition.

IRRC noted that commentators recommended deletion of the requirements for body positioning, health status, communicable disease and mobility assessment. IRRC

requested clarification of the need for communicable disease precautions and two commentators expressed concern that this violates resident confidentiality. IRRC and one commentator recommended rewording of subsection (a)(11).

*Response*

The intent of the section is not to make residents or prospective residents have a medical exam by the home's physician. The section does not state that the home determines who conducts the exam. Subsection (a) was reworded to clarify that the exam should be documented on a form specified by the Department. Although the MA-51 form is acceptable, the Department does not want to specify the MA-51 as this form may change or stop being used. The time frame of the 60 calendar days before admission was to give the prospective resident more flexibility in scheduling the medical exam. In addition, if a resident had a medical exam within the 2 months prior to admission this prevents them from paying for a repeat medical exam.

The change to require an updated medical evaluation when there is a significant change in the resident's medical condition was made to subsection (b)(2).

The requirements for body positioning and health status were kept since they are important to provide appropriate medical and personal care services to the resident. The requirement regarding communicable disease was deleted since the home must be trained in and apply universal precautions. As noted by the commentators, confidentiality of some specific types of communicable disease is protected by applicable laws.

The Department made the suggested clarification regarding mobility assessment.

*§ 2600.141(b). Resident health exam and medical care (redesignated as Resident medical evaluation and health care)*

IRRC requested clarification of the intent of this subsection. Sixteen commentators suggested adding that the home should assist residents in accessing medical, dental and psychiatric care. Commentators had concerns that this subsection makes the home responsible for ensuring access to medical, dental and psychiatric care, when the home can only assist in arranging appointments.

*Response*

This subsection is intended to clarify the frequency and conditions under which a new medical evaluation is required. In response to public comment, a change to require an updated medical evaluation when there is a significant change in the resident's medical condition was made.

In response to comment, a requirement was added in § 2600.142(a) (relating to assistance with health care) to require the home to assist the resident in securing access to medical care if the resident's health declines.

*§ 2600.142. Physical and behavioral health (redesignated as Assistance with health care)*

Thirty-three commentators expressed concern about the home's responsibility to convince residents to access medical or dental care. IRRC recommended either moving subsection (a) to § 2600.227 or cross-referencing § 2600.227. IRRC recommended requiring the home to discuss health care services with the resident or the resident's responsible person and documenting the services in the support plan. IRRC recommended that the resident's physician determine the necessity of health

care services. IRRC suggested that the section direct the home to work with the responsible authorities for health care services, such as a case manager from a mental health service provider, to make decisions and referrals.

IRRC suggested identifying the party responsible to educate and inform the resident. IRRC recommended clarifying who is responsible for making reasonable efforts to obtain consent. If the administrator has this responsibility, IRRC suggested requiring documentation of these efforts in the resident's record. IRRC requested clarification of the applicable laws.

*Response*

The home is not responsible to convince a resident to seek medical or dental care, but to educate and inform the resident and to document the refusal.

As suggested, proposed subsection (a) was relocated to § 2600.227. Subsections (a) and (d) were added in response to comments to address the efforts made to obtain care if the resident's health status declines and to obtain preventive medical, dental, vision and behavioral health care.

Documentation of medical services is required in the support plan in § 2600.227. The requirement for the home to discuss health care services with the resident is addressed in subsection (b). The Department clarified that the home must educate and inform the resident about the need for health care. The Department did not require the resident's physician to determine the necessity of health care services or direct the home to work with the responsible authorities for health care services. These duties are beyond the scope of the home's responsibilities.

The Department did not specify the staff person at the home who is responsible to train the resident about the need for health care or to make efforts to obtain consent. This is unnecessary and overly prescriptive. The reference to applicable laws was deleted as unnecessary.

*§ 2600.143(a). Emergency medical plan*

Seventeen commentators recommended requiring staff to be aware of emergency plan and applicable laws for mental health emergencies. IRRC noted that there are many factors beyond the control of a home that affects the availability of emergency care. IRRC requested clarification of the Department's intent or deletion of this subsection.

*Response*

Staff training should include training in the emergency medical plan. This subsection was revised to clarify the intent for the home have a plan to follow if a resident has a health emergency. Specific components of the plan are relocated from subsection (c).

*§ 2600.143(d). Emergency medical plan (redesignated as § 2600.143(b))*

Several commentators suggested that confidentiality of medical information be provided. Four commentators requested deletion of the resident's age. Three commentators suggested adding "and other diagnosis" in subsection (d)(3). Twelve commentators suggested adding health care proxy in subsection (d)(9). IRRC noted commentator suggestions for clarification of subsection (d)(9), including "if applicable" in the event that a resident may not have a designated power of attorney. Two commentators suggested adding "if applicable" in subsection (d)(10). Six commentators recommended adding "if applicable" in subsection (d)(11). IRRC requested clarification of subsection (d)(9), (10) and (12).

*Response*

Confidentiality restrictions at the emergency medical site are the responsibility of the medical treatment facility. The resident's date of birth will be requested upon emergency medical treatment. Medical diagnosis is intended to be broadly interpreted to include behavioral diagnoses. This section was clarified to add "if applicable" at several of the locations suggested. Health care proxy was added. Several paragraphs were revised and clarified as requested.

*§ 2600.143(e). Emergency medical plan*

IRRC and one commentator recommended a review of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191, 110 Stat. 1936) to ensure that subsection (e) does not conflict.

*Response*

Subsection (e) was deleted as it is unnecessary to call out transfer to a long-term care facility for purposes of this section on emergency care.

*§ 2600.144. Use of tobacco and tobacco-related products (redesignated as Use of tobacco).*

IRRC and seven commentators recommended requiring disclosure of smoking policies to prospective residents at admission. IRRC recommended indicating what specific steps a home should implement to protect nonsmoking residents. IRRC requested clarification of the need for subsections (d) and (e).

One commentator requested clarification of subsections (f) and (g). IRRC recommended deleting subsection (g) or incorporating it into subsection (f). IRRC requested clarification of how the designated smoking area is to be addressed in the fire safety procedures in subsection (f).

*Response*

This section was revised to require that the home rules specify whether the home permits smoking on the grounds of the building. Subsection (c) includes provisions to protect nonsmokers from second hand smoke. Subsections (d) and (e) are retained but revised and relocated. These provisions are important to prohibit smoking during transportation and outside of the smoking room. Subsections (f) and (g) are deleted as unclear and unnecessary.

*§ 2600.145. Supervised care (deleted on final-form)*

Commentators suggested including a reference to the resident's physician. IRRC and commentators recommended identifying the types of assessment agencies to which a resident is to be referred. PANPHA noted, for example, that the area agency on aging is the appropriate assessment agency for elderly persons who receive public funding.

*Response*

This section was deleted, as it duplicates information from other sections.

**NUTRITION**

*§ 2600.161(a) and (b). Nutritional adequacy*

Six commentators supported requiring nutritionally balanced meals. Seven commentators recommended allowing for family style meals and requiring at least two daily snacks. IRRC recommended using the word "offered" in subsections (a) and (b) since residents may choose to dine out.

*Response*

This section was clarified by changing subsection (a) to state meals shall meet the recommended dietary allowances established by the United States Department of Agriculture (USDA), as the USDA is National authority on the topic of nutrition. As suggested by IRRC, in subsection (b) "provided" was replaced by "offered." Two daily snacks were not added as this would be cost prohibitive for the home. Family style meals are permitted, but not required.

*§ 2600.161(b)–(d). Nutritional adequacy*

Commentators suggested requiring nutritionally balanced meals, following dietary restrictions and deleting reference to food groups. IRRC requested clarification of the need for subsection (d).

*Response*

As suggested by IRRC and commentators, subsection (d) was deleted since the revised requirement for meals to meet the USDA recommended dietary allowances in subsection (a) is appropriate. Based on comments, the Department added a requirement to ensure that a resident's special dietary needs as prescribed by a physician, physician's assistant, certified registered nurse practitioner or dietitian must be met.

*§ 2600.161(d) and (e). Nutritional adequacy*

Two commentators suggested reasonable accommodation for a resident with personal dietary preferences. Seven commentators requested deletion of the requirement to provide dietary alternatives based on special health needs, religious beliefs and vegetarian preferences, due to cost. IRRC indicated that subsection (e), which requires dietary alternatives, conflicts with subsection (d), which requires items from all four food groups. IRRC noted that many commentators remarked that many homes do not have the resources available to offer alternative diets. IRRC suggested requiring that a home discuss food preferences or dietary requirements with prospective residents and inform them of whether the home can meet their dietary needs.

*Response*

The Department appreciates the cost and food service issues for a home to provide for a variety of food alternatives to meet the preferences of each resident. The Department agrees that the issue of food service should be discussed up front with the resident prior to admission. In response to comment, the Department has revised the section to eliminate the requirement to honor vegetarian preferences and require the home to make available dietary alternatives only for special health needs such as food allergies and religious beliefs.

As discussed previously, subsection (d) was added to ensure that a resident's special dietary needs as prescribed by a physician, physician's assistant, certified registered nurse practitioner or dietitian will be met. If the home cannot accommodate a resident's special dietary needs, the resident will be referred to the appropriate assessment agency or to a more appropriate level of care.

*§ 2600.161(f). Nutritional adequacy*

Twenty commentators requested deleting this requirement as not every home can offer therapeutic diets, due to cost and lack of staff dietitian. IRRC noted that in homes where most residents are SSI recipients, providing therapeutic diets may be cost prohibitive. IRRC recommended deleting subsection (f) or amending to apply only to homes which offer this type of service. IRRC recom-

mended requiring homes that do not offer therapeutic diets to disclose this information to prospective residents, agencies or parties seeking to place an individual at a home.

*Response*

In response to comment, this proposed requirement was deleted.

*§ 2600.161(g). Nutritional adequacy*

Many commentators found this requirement expensive and unnecessary, as many residents are capable of getting their own beverages. Commentators suggested making drinking water available at all times, and making other beverages available upon request during waking hours and at resident cost. IRRC recommended deleting subsection (g) or justifying its need.

*Response*

In response to comment, this proposed requirement was deleted.

*§ 2600.162(a) and (b). Meal preparation (eliminated on final-form)*

One commentator indicated that requiring the preparation of foods in a consistency that meets resident needs would be costly for a home serving SSI recipients. IRRC suggested that the availability or lack of this type of service should be disclosed to prospective residents before they move in and included in the contract.

*Response*

In response to comment, this proposed requirement regarding food consistency was deleted. The requirement in proposed subsection (b) regarding uneaten foods was relocated to § 2600.103(e) (relating to food service).

*§ 2600.162(c). Meal preparation (redesignated as § 2600.162(a). Meals)*

Commentators observed that this requirement would allow a home to serve the evening meal at 8 p.m. and wait until 12 p.m. the next day to serve breakfast. Eight commentators suggested adjusting the time frame to 12 to 14 hours, or requiring an evening snack. IRRC suggested reducing the time period to 14 hours or require a snack be offered between the evening meal and breakfast.

*Response*

In response to comment, this requirement was changed to 15 hours, to allow for a 5 p.m. supper and an 8 a.m. breakfast. The Department also clarified that there may not be more than 6 hours between breakfast and lunch and lunch and supper.

*§ 2600.162(d). Meal preparation (eliminated on final-form)*

Five commentators were concerned that this would prohibit home grown vegetables, and requested clarification of "sources approved or considered satisfactory." IRRC requested clarification of "satisfactory" and which agencies are included in "Federal, state or local authorities."

*Response*

In response to comment, the proposed requirement for Federal, State or local approval was deleted. The requirement regarding spoiled foods was relocated to § 2600.103(i).

*§ 2600.162(e). Meal preparation (redesignated as § 2600.162(b). Meals)*

Commentators indicated this requirement is unreasonable and impractical for many homes. Eleven commenta-

tors recommended adding "when a resident misses a meal for an unavoidable reason" and recommended that resident notify the home if he will be missing meal time. IRRC suggested that instead of mandating substitute food, that all homes be required to inform residents of their policies concerning missed meals.

*Response*

The intent of the subsection is to ensure that a resident who misses a meal is offered food that meets daily nutritional requirements. A resident may miss a meal because of delayed transportation or a lengthy medical appointment. A resident on a low income, such as an SSI recipient, who misses a meal may not be able to afford to use part of his monthly personal needs allowance to buy additional food. A resident with mobility needs may not be able to access a substitute meal. For a resident with health concerns, missing a meal may pose a health risk.

*§ 2600.162(f) and (g). Meal preparation (eliminated on final-form)*

Twelve commentators and IRRC recommended amending proposed subsection (f) to allow menu adjustments for hot and cold foods based on resident preferences.

*Response*

In response to comment, proposed subsection (f) was deleted. The Department also eliminated proposed subsection (g) as unnecessary.

*§ 2600.162(h) and (i). Meal preparation (eliminated on final-form)*

Six commentators recommended deletion of subsection (h) or adding that residents may be charged for adaptive equipment. IRRC found that subsection (h) is duplicative of § 2600.104(d) (relating to dining room). IRRC recommended moving the words "and utensils" to § 2600.104(d) and deleting § 2600.162(h). One commentator recommended deleting subsection (i).

*Response*

In response to comment, the proposed subsections were deleted.

*§ 2600.163. Personal hygiene for food service workers*

Seven commentators requested clarification of the differences between subsections (a) and (b). Thirteen commentators indicated that subsection (d) may be too costly to enforce.

*Response*

Subsection (a) relates to hand washing and (b) relates to sanitary practices, such as not serving food that has dropped on the floor and using a separate, clean cutting surface for the preparation of meats and vegetables. Subsection (d) must be enforced to protect the health of the residents.

*§ 2600.164. Withholding or forcing of food prohibited*

One commentator recommended adding a requirement that if a home has a resident with a cognitive impairment that affects his ability to eat and drink adequate amounts of food and water, the staff must provide proper cueing and feeding techniques. Three commentators recommended requiring appropriate cueing to encourage and remind residents to eat and drink. IRRC indicated that if staff cannot do this, referrals to medical personnel and transfer to an appropriate facility should be done. One commentator suggested allowing that food or drink may be withheld when necessary due to scheduled medical or dental procedures.



One commentator noted that it would be very difficult to verify that all residents in a large independent living facility are eating, because residents are free to come and go, and may go out for meals. Nine commentators requested recognition of the resident's right to fast for religious reasons. Commentators recommended requiring reporting of unexplained weight loss to the resident's physician. IRRC recommended that the Department determine whether it needs to include observations of other symptoms to include situations when the staff is unable to observe a resident at each meal.

*Response*

The allowance to withhold food or drink in accordance with prescribed medical or dental procedures was added at subsection (a). The addition relates to encouraging and reminding a resident to eat and drink was made in new subsection (d). In accordance with subsection (c), if the resident refuses to eat or drink for 24 hours, the home must immediately notify the resident's primary care physician and resident's designated person.

**TRANSPORTATION**

*§ 2600.171. Transportation*

IRRC recommended instructing homes to utilize the Medical Assistance Transportation Program (MATP) for SSI recipients. IRRC also suggested that the Department assist homes in linking SSI recipients with the MATP. IRRC requested clarification of subsection (a)(1). IRRC recommended considering existing staff in subsection (a)(5).

*Response*

This change was not made. The MATP is an entitlement program for eligible residents who do not have other transportation options available to them. Residents should not be required to use the program if they choose not to.

Subsection (a)(1) applies only to transportation provided by staff persons or the home's volunteers.

The suggested change regarding existing staff was not made. If a staff person has completed the required training, this meets the intent of this section.

To assure the safe transportation of the residents, the Department added a requirement for an assistant to be present when necessary.

**MEDICATIONS**

*§ 2600.181(b) and (c). Self-administration*

Eight commentators recommended that the resident's medical exam indicate the ability to self-administer medications. IRRC recommended amending subsection (c) to recognize that the resident's physician determines whether the resident can self-administer medications.

*Response*

Proposed subsection (b) was revised and relocated to § 2600.182 (relating to medication administration). New subsection (b) clarifies that if a resident needs assistance with his medication schedule, staff persons shall remind him of the prescribed schedule.

In response to comment, subsection (c) was revised to require an assessment for self-administration by the resident's physician. Also in response to comment, § 2600.141(a)(7) (relating to resident medical evaluation and health care) was amended to add the requirement for the physician to assess the resident's ability to self-administer medications as part of the medical evaluation.

*§ 2600.181(e). Self-administration*

Fifteen commentators requested deletion of this subsection, as many independent individuals who live alone would not be classified as capable of self-administration of medications under this stringent definition. IRRC requested clarification that the ability of a person to self-administer medication is determined based on the clinical experience, observations and judgment of a health care professional, such as a physician or certified nurse practitioner, not by home staff persons.

*Response*

This section was revised to address the comments and clarify in lay terms the three key components of knowledge for self-administration.

Subsection (f) was added to require a record of all medications for a resident who self-administers his medication.

*§ 2600.182. Medication administration (added on final form)*

Forty-three commentators requested the development of a program to permit, and properly train, personal care home staff persons to administer prescription medications. Many commentators noted the existence of medication administration training programs for staff persons in other Departmental licensed residential settings and suggested that these programs be used as models for a medications training program for personal care home staff. IRRC recommended the development of a medications administration program modeled after programs used in other residential settings. IRRC recommended an amendment to the final-form rulemaking to include medication administration training and certification of home staff persons.

*Response*

In response to overwhelming recommendations from many public commentators and IRRC, the Department added a subsection to address medication administration provided by the home. Medication administration is an optional service that may be provided by the home. If the home does not provide medication administration and a resident develops the need for medication administration, the home must refer the resident to an appropriate assessment agency.

New subsection (b)(4) permits medication administration of oral and topical prescription medications by trained staff persons. The injection of insulin for diabetes and epinephrine for insect bites and other allergies is also permitted by trained staff persons. The new requirement is consistent with the regulations for medications administration training for community homes for individuals with mental retardation under § 6400.168 (relating to medication administration training) and child residential facilities under § 3800.188 (relating to medications administration training). The Department has developed a medications training program similar to the program used in these two residential programs.

The State Board of Nursing regulation in 49 Pa. Code § 21.14 (relating to administration of drugs), published at 33 Pa.B. 6219 (December 20, 2003), no longer limits drug administration to a licensed registered nurse, thereby eliminating any uncertainty about this matter.

Proposed subsection (b), regarding the list of medical professionals who may administer medications, was relocated to this section. In addition to medical personnel

listed in proposed subsection (b), two additional nurse trainee program options were added to subsection (b)(2) and (3).

In subsection (c), the Department has clarified the activities included in medication administration.

*§ 2600.182(a) and (b). Storage and disposal of medications and medical supplies (redesignated as § 2600.183(a) and (b))*

Seven commentators suggested that complementary and alternative medications (CAM) do not need to be kept in their original containers or in locked areas.

*Response*

No change was made to this subsection. Storage of CAM is important since some CAM, if taken improperly, may cause illness or death.

*§ 2600.182(d). Storage and disposal of medications and medical supplies (redesignated as § 2600.183(d))*

Commentators noted that because medications are packaged separately, storing prescription, over the counter (OTC) medications and CAM in separate areas is problematic. Several commentators noted that it is safer and more efficient to store medications for the same resident together.

*Response*

The Department agrees and has deleted this requirement. A new requirement that the home may keep only current medications for individuals living in the home was added.

*§ 2600.182(f). Storage and disposal of medications and medical supplies (redesignated as § 2600.183(f))*

Five commentators requested deleting "medications shall be given to the resident" and inserting "shall be offered their medications upon discharge."

*Response*

This change was not made. The medications belong to the resident and must be returned to the resident upon departure.

*§ 2600.182(g) and (e). Storage and disposal of medications and medical supplies (deleted on final-form)*

Six commentators requested revision of proposed subsection (g), commenting that hospitals and nursing homes do not require storing antiseptics and external use medications separately. Seven commentators suggested requiring storage as directed by a pharmacy.

*Response*

These proposed subsections were deleted. The Department agrees with the commentator that there is no need for separate storage. Subsections (a)—(c) and (e) regulate storage of medications, making subsection (h) unnecessary.

*§ 2600.183. Labeling of medications (redesignated as § 2600.184)*

One commentator asked if the use "bubble packs" provided by pharmacies is allowed. Six commentators suggested deleting the requirement for labeling of CAM and sample medications. Commentators questioned the need to identify sample medications to a particular resident's use and accompany with a physician's order. Commentators noted that many residents receive sample medications from physicians outside of the home, who do not always inform the home of the reasons for these sample medications. IRRC requested clarification of the

application of subsection (d) for residents who administer their own medications and store their medications in their rooms. IRRC suggested taking into consideration that not all residents receive assistance from the home in arranging medical care.

*Response*

Bubble packs are allowed. Bubble packs are considered the same as the original container as long as the bubble pack is labeled in accordance with this section.

The Department clarified the content required on the medication label. These items are consistent with the content found on a pharmacy label.

Proposed subsection (b) was deleted, however the requirement for labeling of CAM remains in § 2600.183(a) (relating to storage and disposal of medications and medical supplies). Proper labeling is necessary since inappropriate use of CAM may cause adverse reaction with the resident's other medications, or may cause medications to be less effective.

The Department clarified that subsection (d) only applies to sample prescription medications. Sample prescription medications must include the items identified in subsection (a) to protect the resident and other residents from misadministration.

*§ 2600.184. Accountability of medication and controlled substances (redesignated as § 2600.185)*

Five commentators suggested requiring homes to obtain medications for residents and to keep an adequate supply of medications on hand at all times. Four commentators requested requiring storage of controlled substances to be locked with limited access.

*Response*

The Department clarified the meaning of "safekeeping" and added reference to medical equipment in subsection (a).

The Department did not require a home to keep a supply of medication on hand since the supply of prescription medication is governed by the resident's physician and pharmacist.

The Department did not add a specific requirement to lock controlled substances, since all medications must be kept locked. In subsection (b)(1), the policies of the home must address the receipt of controlled substances.

The Department added a provision to document the administration of medications for residents who are non-self-administering and for those residents for whom assistance with medications administration is provided.

*§ 2600.185. Use of medications (redesignated as § 2600.186. Prescription medications)*

Three commentators requested deletion of subsection (a) as repetitive. Eight commentators requested clarification in subsection (b) of the word "help" and deletion of "OTC" and "CAM." IRRC asked that the section be amended to allow for flexibility in emergency situations. Three commentators and IRRC asked for an amendment that requires the administration of medication only to the resident for whom the medication was prescribed. Three commentators asked for deletion of subsection (c), as the original prescriber may be unavailable, and common practice is for oral changes to be made by any practitioner licensed to prescribe medications.

*Response*

In response to comment, proposed subsections (a) and (b) were deleted. In response to comment, the Department added that prescription medications must be prescribed by an authorized prescriber and that they be used only by the resident for whom the medication was prescribed. Subsection (c) was revised to allow emergency changes by an alternate prescriber. The Department clarified that a home staff person may not take oral orders from a physician. In accordance with medical practice, only written orders from the prescriber are permitted. Under certain circumstances as regulated by the Department of State, a registered nurse is permitted to take oral orders from a prescriber.

*§ 2600.186. Medication records (redesignated as § 2600.187)*

IRRC asked for clarification of what types of medications are covered in subsection (a), and how subsection (a) is consistent with the storage requirements in proposed § 2600.182. Thirty-eight commentators requested deletion of subsection (b)(2) and (3) and suggested use of a drug reference book instead. Three commentators suggested deletion of subsection (b)(6) because the information is available in the resident file and on the emergency transfer sheet. Nine commentators opposed subsection (b)(7) because it conflicts with the definition of "self-administration." Twenty-four commentators suggested replacing "by the end of the shift" with "within reasonable time" in subsection (d). IRRC questioned whether the home is responsible for the proper storage of medications that a resident keeps in his room.

*Response*

The Department revised subsection (a) to apply only to medications administered by the home and to clarify the content of the medication record. This includes prescription medications, OTC medications and CAM.

In response to comment, proposed subsection (b) was deleted.

In response to comment, the Department deleted "by the end of the shift" to "within 24 hours unless otherwise instructed by the prescriber."

The Department added subsection (d) to require the home to follow the instructions of the prescriber.

In response to IRRC's question, if the resident does not need assistance with medication, medication may be locked in a resident's room for self-administration.

*§ 2600.187. Medication errors (redesignated as § 2600.188)*

Four commentators requested deletion of this section, stating that residents have the right to refuse medication and treatment. Fifteen commentators requested deletion of subsection (a), stating that resident refusal of medication should not be considered a medication error, and suggested that documentation occur at the end of the shift. Eight commentators suggested requiring a system in place to identify and document prescriptions not filled.

*Response*

The Department agrees that a resident has the right to refuse medication and treatment. This provision was added in § 2600.191 (relating to resident education). In accordance with § 2600.187(c) (relating to medication records), refusals will be reported to the prescriber within 24 hours, unless otherwise instructed by the prescriber.

Refusal of medication is not considered a medication error. The Department clarified the definition of "medication error" in subsection (a).

In subsection (b), the Department clarified that a medication error must be immediately reported to the resident, the resident's designated person and the prescriber. New subsection (c) was added to require the home to keep documentation of errors and the prescriber's response.

*§ 2600.190. Medication administration training (new section on final-form)*

Forty-three commentators requested the development of a program to permit, and properly train, personal care home staff persons to administer prescription medications. Many commentators noted the existence of medication administration training programs for staff persons in other Departmental licensed residential settings, and suggested that these programs be used as models for a medications training program for personal care home staff. IRRC recommended the development of a medications administration program modeled after programs used in other residential settings. IRRC recommended an amendment to the final-form rulemaking to include medication administration training and certification of home staff persons.

*Response*

In response to overwhelming recommendations from many public commentators and IRRC, the Department has added a section to address medication administration provided by the home. Medications administration is an optional service that may be provided by the home. If the home does not provide medication administration and a resident develops the need for medication administration, the home must refer the resident to an appropriate assessment agency.

The new section permits medications administration of oral and topical prescription medications by trained staff persons. The injection of insulin for diabetes and epinephrine for insect bites and other allergies is also permitted by trained staff persons. The new requirement is consistent with the regulations for medications administration training for community homes for individuals with mental retardation under § 6400.168 and child residential facilities under § 3800.188. The Department will develop a medications training program similar to the program used in these other two residential programs.

*§ 2600.191. Resident education*

The Department added a requirement regarding resident education and refusal of a medication in response to discussions with the State Board of Nursing.

*SAFE MANAGEMENT TECHNIQUES*

*§ 2600.201. Safe management techniques*

Forty-five commentators requested deletion of this section, stating that residents whose behavior endangers others belong in treatment centers, not personal care homes.

*Response*

The Department concurs that a resident whose behavior endangers himself or others should receive appropriate supports and treatment in a living situation other than a personal care home. This does not negate the need for a home to have effective positive behavior approaches in place to respond appropriately to unanticipated, rare incidents.

*§ 2600.202. Prohibition on the use of seclusion and restraints (redesignated as Prohibitions).*

Four commentators requested deletion of this section, stating that it duplicates resident right that prohibits the use of restraints. Four commentators requested clarification of aversive conditioning. Five commentators suggested that drugs ordered by a physician and part of a resident's ongoing support plan to treat symptoms of a specific mental, emotional or behavioral condition should be construed as a chemical restraint. One commentator requested clarifying the difference between a mechanical and a manual restraint.

*Response*

This section was maintained and clarified. A drug ordered by a licensed physician or dentist as part of ongoing medical treatment, or as pretreatment prior to a medical or dental examination or treatment, is not a chemical restraint. When a physician orders a drug that is part of the resident's ongoing support plan, and has documented as such for treating the symptoms of mental, emotional or behavioral condition, the drug is not considered as a chemical restraint. This is necessary to allow a physician to effectively treat behavioral health conditions. The differences between a manual and mechanical restraint was defined.

**SERVICES**

*§ 2600.222. Community social services*

Fifteen commentators suggested defining the role of community social service agencies and describing the services that they offer so homes can encourage and assist residents to use community social services.

*Response*

The Department will provide training to assist homes in community social service options. The intent of this section is for a home to have readily available contacts and phone numbers to assist residents.

*§ 2600.223. Description of services*

Twenty-six commentators requested deletion of the entire section or individual subsections. In subsection (a), six commentators requested reference to the services provided in the resident contract.

*Response*

As noted by the commentators, specific services provided and not provided to each resident are required in § 2600.25. This section regarding description of services requires the home to have a broad, home-wide description of services and activities that the home provides. This description of services may cover the same items in the individual resident-home contracts, but in a broad sense to apply to the entire home.

*§ 2600.224. Preadmission screening tool*

Seven commentators recommended that the preadmission screening tool be provided by the Department and include a mobility assessment. One commentator requested deletion of subsection (a), stating that this will force homes to admit all residents who meet the screening criteria. Eight commentators asked whether subsection (b) means that if a home cannot meet an applicant's needs, the home must notify the area agency on aging. Several commentators suggested that current regulatory language about requirements for admission be kept.

*Response*

In collaboration with home providers and interested persons, the Department will develop and provide the preadmission screening tool as requested. The intent is not to force a home to admit all residents who meet screening criteria. The section requires that if a home cannot meet an applicant's needs, the home must notify the local appropriate assessment agency, such as the area agency on aging. Subsection (c) was added in response to comments to keep current language about requirements for admission in the final-form rulemaking.

*§ 2600.225(a). Initial assessment and the annual assessment (redesignated as Initial and annual assessment)*

Several advocacy organizations supported the requirement for an assessment within 72 hours. Several trade associations stated that it is unreasonable and unnecessary to require an assessment within 72 hours of admission and that the time period be increased to 30 days following admission. Several commentators opposed assessments altogether, stating that assessments push toward a medical model, which is not appropriate for personal care homes.

Twenty-one commentators opposed having the administrator or designee complete assessments. Some homes recommended that this assessment should be the responsibility of the referring agency. IRRC asked for clarification of the content of the assessment areas, the qualifications of the individuals who will complete the annual assessments, who will pay for these assessments and how this requirement will be implemented. Twenty-five commentators and IRRC suggested defining the term "human service agency."

*Response*

In response to concerns from the trade associations and upon review of the initial assessment requirements in other Departmental licensing regulations, the Department increased the time period for completion of the initial assessment to within 15 days following admission. This allows a reasonable time period for completion of the assessment and allows the home to observe the resident in his new setting to make an appropriate assessment of his service and protection needs.

The Department does not intend to mandate completion of the initial assessment by an outside professional or source, so as not to put an undue financial burden on the home. The initial assessment form will be able to be completed by an administrator who is qualified and trained under this chapter. The term "human service agency" is left undefined as it is meant to be broad and all inclusive to permit the home maximum flexibility.

*§ 2600.225(b). Initial assessment and the annual assessment (redesignated as Initial and annual assessment)*

Several commentators requested deletion or clarification of subsection (b), stating that this should be decided by the home. Several commentators asked for the addition of a mobility assessment.

*Response*

This subsection was deleted in response to comments. The Department's initial assessment form will include the content of the assessment and will be developed in collaboration with stakeholders. In developing the standard assessment form, the Department will consider the recommendation to add a mobility assessment.

§ 2600.225(c) and (d). *Initial assessment and the annual assessment (redesignated as Initial and annual assessment)*

One commentator requested allowing the home to use its own form if it contains the same information. Two commentators suggested changing “materially” to “significantly” in subsection (d)(1). Eight commentators suggested revising subsection (d)(2) to require a new updated assessment to be completed and put into the resident’s record. Fourteen commentators requested deletion of subsection (d)(3) and (4). IRRC suggested defining the term “state agency” in subsection (d)(3).

*Response*

In response to comment, the Department revised this requirement to allow the home to use its own form if it contains the same information as the Department’s form. The term “materially” was changed as suggested. Assessment are required to be kept in the resident record in § 2600.252 (relating to content of resident records). “State agency” was clarified as the Department. The Department deleted the requirement to complete a new assessment at the time of a hospital discharge.

§ 2600.225(e) and (g). *Initial assessment and the annual assessment (redesignated as Initial and annual assessment)*

One commentator requested deletion of subsection (e), stating that this should be decided by the home. Commentators suggested that subsection (g) should provide that if a resident is determined to be immobile, assessment requirements shall be met immediately. In subsection (g), ten commentators requested deletion of “continually” and insertion of “mobility annually or upon a substantial change” at the end of the sentence.

*Response*

The Department deleted proposed subsections (e) and (g) in response to comments and questions. The assessment of the resident’s mobility will be addressed in the content of the assessment form and in the support plan. Mobility criteria is addressed in new § 2600.226 (relating to mobility criteria).

§ 2600.226. *Development of the support plan (redesignated as § 2600.227)*

Two commentators asked to retain current regulation. One commentator opposed this section, stating that a medical model is not appropriate for personal care homes.

*Response*

This section was revised and relocated to § 2600.227. § 2600.228. *Notification of termination*

Commentators expressed concerns with subsection (b), explaining that a home would need to immediately remove a resident who threatens the health and safety of other residents or staff persons. IRRC recommended addressing situations when a resident needs to be moved quickly to protect both the resident and others at the home or for other reasons that impact the other residents. IRRC noted that the amendment should be consistent with proposed §§ 2600.26(a)(1)(viii) and (ix) and 2600.42(u).

*Response*

In response to public comments, clarifications to this section were made. The 30-day advance notice is not required if a delay in discharge or transfer would jeopardize the health, safety or well being of the resident or others in the home. These changes are consistent with

§ 2600.42(u) and § 2600.26(a)(1)(viii) and (ix) (redesignated § 2600.25(a)(1)(8) and (9)).

Clarification was added to subsection (h) to require consultation with an appropriate assessment agency or a physician if the resident disagrees with the home’s decision to discharge or transfer based on a change in functional level. Subsection (h) was clarified to state that a fundamental alteration includes a change that would create an undue financial or programmatic burden on the home and to include documented, repeated violation of this chapter. The reference to “efforts to obtain public funding” was deleted.

*SECURED UNIT REQUIREMENTS (redesignated as SECURED DEMENTIA CARE UNITS)*

§§ 2600.231—2600.241 (redesignated as §§ 2600.231—2600.238)

Community Legal Services and the Office of the State Ombudsman suggested further development of the requirements for admission, resident care and program, staffing and notification to the Department for secured care dementia units.

*Response*

The consumer demand for secure care dementia units has increased the development of secure care dementia units in this Commonwealth. The Department has responded to the public service demand with increased protection standards for this special type of care. In response to public comment, the Department has strengthened and expanded the proposed rulemaking to strengthen the requirements for admission criteria, fire safety, resident care, program, staff training and notification to the Department for secured care dementia units.

§ 2600.231. *Doors, locks and alarms. (redesignated as § 2600.233)*

Fifteen commentators suggested enhancing the protection of the rights of residents residing in secured units. Some commentators requested continuance of their waivers for existing secure units and exempting current homes from compliance. Four commentators and IRRC noted the duplication of paragraph (10) with § 2600.87 (relating to lighting). Five commentators recommended deletion of paragraph (11). IRRC requested clarification of the applicability of this section in conjunction with § 2600.42(p) regarding the right to be free of restraints.

*Response*

As specified in § 2600.19(g), existing waivers for current secured dementia care units will no longer be in effect 1 year after the effective date of this final-form rulemaking. This means that a home has 18 months to comply with the new requirements in this section. The health and safety needs of the residents in secure dementia care are so intensive that the Department cannot permanently grandfather existing homes. The Department will however, consider new waiver requests under § 2600.19 for a specific section of this chapter.

Proposed paragraphs (10) and (11) were deleted in response to comment. This section is not in conflict with the resident’s right to be free of restraints. The locking of doors to prevent resident injury or death in secure care is not a restraint.

The Department has added clarification of the type of locking devices permitted, the manufacturer’s statement verifying the nature of the locking system and the posting of directions for operating locking devices.

*§ 2600.232. Environmental standards (redesignated as Environmental protection)*

Five commentators requested clarification of “adequate” in paragraph (1). Four commentators requested deletion of paragraph (2). Six commentators requested clarification of paragraph (4) to enhance environmental awareness.

*Response*

These suggested changes were made. The term “adequate” was deleted since it is subjective and not measurable.

*§ 2600.233. Admission standards (redesignated as § 2600.231. Admission)*

Commentators requested definitions of “geriatric assessment team” and “legal representative.” Nine commentators suggested adding how, by whom, when and with what frequency services will be provided.

*Response*

The Department has defined “geriatric assessment team” as suggested. The term “legal representative” was not defined in the final-form rulemaking, but means an individual who has been authorized by law to represent the resident with respect to a particular matter.

The Department has specified additional detail about the services, as suggested by the commentators.

In response to general comments to improve and expand the section on secure dementia care, the Department has clarified the definition of a “secure dementia care unit,” clarified the proposed requirements regarding the medical evaluation and cognitive assessment and further clarified the admission requirements for a secure dementia care unit.

*§ 2600.234. Care standards (redesignated as Resident care)*

Nine commentators suggested adding how, by whom, when and with what frequency services will be provided.

*Response*

In response to public comment, this section was revised.

*§ 2600.235. Discharge standards (redesignated as Discharge)*

Seventeen commentators suggested replacing 60-day written discharge notice with 30-day written discharge notice to assure that residents receive appropriate care.

*Response*

In response to comment, this change was made.

*§ 2600.236. Administrator training (redesignated as Training)*

Four commentators suggested requiring a specific number of hours of training and orientation. Seven commentators suggested requiring 8 additional hours of annual training regarding dementia for administrators and direct care staff. Two commentators suggested requiring 12 additional hours of annual training in dementia. Seven commentators suggested deleting the competency-tested training.

*Response*

The proposed section was deleted and replaced with a requirement that each direct care staff person must have an additional 6 hours of annual training related to dementia care and services.

*§ 2600.237. Staff training on dementia (redesignated as Program)*

In response to general comments to improve and expand the section on secure dementia care, the proposed section on training was deleted and replaced with requirements for activities.

*§ 2600.238. Additional staffing (redesignated as Staffing)*

Five commentators suggested that the Department establish minimum staffing standards for secure dementia care units, subject to public review and comment.

*Response*

Based on discussions with and recommendations of the Committee, this change was not made. The Department will consider increased staffing requirements for secure dementia care units for a future rulemaking. The Department clarified that for purposes of applying the staffing requirements in § 2600.57(c), the residents in secure dementia care are considered to be residents with mobility needs.

*§ 2600.239. Programming standards (deleted on final-form)*

Five commentators requested deletion of paragraph (1) because it is subjective and not measurable. One commentator recommended deleting “general activity programming, which shall” in paragraph (2), deleting paragraph (3) and renumbering subparagraphs (i)-(iv) as paragraphs. Three commentators suggested deleting “and social status” and inserting “and cognitive limitations” in subparagraph (iii) and deleting “taking advantage of the” and inserting “should promote the” in subparagraph (iv).

*Response*

This proposed section was deleted in response to public comment.

*§ 2600.240. Notification to Department (redesignated as § 2600.239)*

Many commentators suggested clarifying that the home must submit a request for approval of secured unit and that the Department must inspect and approve the unit prior to operation. Commentators also suggested many technical and clarification changes throughout this section.

*Response*

In response to comment the Department revised this section on final-form rulemaking. As suggested, the Department clarified that the home must submit a request for approval of a secure care dementia unit, and be inspected and approved by the Department, prior to operation or a change in the secured care dementia unit.

*§ 2600.241. Mobility standards (deleted on final-form)*

Eight commentators suggested that this standard should be expanded to include the three levels of independently mobile, mobile with assistance and immobile. Four commentators requested clarification of “specific requirements” in subsection (b). Five commentators requested deletion of subsection (c) as unnecessary.

*Response*

This section was deleted since any special requirements related to mobility are addressed in the appropriate section of this chapter.

*RESIDENT RECORDS*

*§ 2600.251. Resident records*

Eight commentators requested deletion of this section, suggesting that there is no documented need to increase recordkeeping requirements.

*Response*

These are basic recordkeeping requirements that must be met to provide a separate record for each resident, accurate recording of resident information and availability to appropriate individuals. The Department clarified that the record is also available to the resident's designated person.

*§ 2600.252(a) and (b). Content of records (redesignated as Content of resident records)*

Nine commentators requested deletion of this section, suggesting that there is no documented need to increase recordkeeping requirements. A suggestion was received to make the recent photograph optional. Eight commentators suggested deleting race. Eleven commentators suggested requiring a photograph only if the resident agrees, and allowing photographs up to 5 years old. Three commentators suggested adding a requirement for information on a resident's dentist and other medical specialists, if applicable. Eight commentators suggested clarifying that only incident reports that are reportable to the Department must be kept in resident files. Two commentators suggested deleting the record of incident reports with the medical record since it is contrary to legal advice and makes the home vulnerable to potential legal action.

Seven commentators suggested eliminating emergency medical plan. Four commentators requested deletion of proposed subsection (d)(5), due to difficulty in obtaining the information. Five commentators suggested deleting proposed subsection (d)(12), because homes are not medical facilities. Four commentators requested deletion of subsection (d)(14) because services are listed in the contract.

*Response*

The majority of these record content items are found at other locations within this chapter. In most cases, these are not new requirements, with the exception of the resident descriptive data in paragraphs (1)–(3), which is important for identification purposes. Although incident reports must be kept in the resident's record, information that includes confidential identifying information relating to the resident or another resident should be redacted before release or review of this information. Information about the resident's source of health care is found on the resident's physical evaluation.

A photograph and the resident's race is important to identify the resident in the case a resident is missing or needs to be identified for emergency medical services. Identification of the resident's race is also important for protection of the resident's civil rights. Religious affiliation was added so that appropriate end-of-life services may be provided, if appropriate.

In response to comment, the requirements for notice of grievance procedures, consent to treatment protection and individual services were deleted.

*§ 2600.253. Record retention and disposal*

Twenty commentators requested deletion of proposed paragraphs (2) and (3).

*Response*

The Department needs information regarding residents who have been discharged from the home to verify compliance with this chapter and to investigate a complaint. The Department also added that the general records of the home required in this chapter, such as fire drill records and menus, must be kept for 3 years. Again, this is necessary for regulatory administration and enforcement purposes.

*§ 2600.254. Record access and security*

Six commentators recommended deletion of this section, indicating that these records do not contain highly confidential information and do not need to have restricted access. Seven commentators suggested deleting "solely" and "at all times" and inserting "during normal business hours." Ten commentators requested clarification of subsection (c).

*Response*

Resident records must be kept confidential and private because they contain resident-identifying information, which must be protected. The term "solely" was not deleted to ensure that records are kept in a separate and confidential location. The enclosed area does not need to be a separate room and could be a locked file cabinet. The records contain important health and service information and must be available and able to be accessed at all times, including after business hours. Subsection (c) was clarified.

*ENFORCEMENT*

*§§ 2600.261–2600.264. Enforcement (redesignated as §§ 2600.261–2600.270)*

The Department received many comments requesting stronger enforcement provisions. IRRC, personal care homes, advocates, the City of Philadelphia and the Committee recommended the implementation of the current classification system of violations, bans on admissions for homes without a full license, increased requirements for plans of correction, quicker appeal decisions by the Department, better disclosure of public information and establishment of a complaint investigation team. Commentators suggested adding a fourth classification for violations that have no adverse effect on the health, safety or well-being of residents. Commentators suggested that multidisciplinary teams should conduct all inspections of homes. Commentators suggested adding a section regarding voluntary and involuntary home closures.

*Response*

The Department is very pleased that many providers and other stakeholders have supported strengthened enforcement protections. Many of the enforcement recommendations of the public commentators have been adopted in this final-form rulemaking. The Department's implementation of the current classification system of violations has been underway for almost 2 years. In response to the request for enhanced enforcement, the Department strengthened the proposed provisions and added several new sections in §§ 2600.268–2660.270 (relating to notice of violations; ban on admissions; and correction of violations).

Section 2600.268 is added to conform to section 1057.3(a)(4) of the Public Welfare Code.

New § 2600.269 is necessary because a home that cannot care for its current residents in compliance with this chapter should not be allowed to take new residents and expose them to the risks resulting from the regulatory violations.

New § 2600.270 addresses the issue of the large difference of timeframes between the statutory requirements for the correction of a violation to avoid a fine and the duration of a provisional license. In 1988, under section 1086 of the Public Welfare Code and section 1087 of the Public Welfare Code (62 P. S. § 1087), licensing enforcement of personal care homes was strengthened through the implementation of a system of fines for regulatory violations based on the seriousness of the violation. However, in section 1087 of the Public Welfare Code, the Department is permitted to continue to use traditional licensing enforcement methods, such as the use of a provisional license under section 1008 of the Public Welfare Code (62 P. S. § 1008). The timeframe for correction of a violation under traditional enforcement methods in section 1008 of the Public Welfare Code allows up to 6 months; however, the timeframe under the system of fines in section 1086 of the Public Welfare Code allows a correction period of up to 15 days. Correction of a violation under section 1086 of the Public Welfare Code does not necessarily qualify a home for a regular license. To qualify for a regular license, the home must demonstrate compliance over a sufficient period of time so that the correction is shown to be permanent and not temporary.

A classification for violations that have no adverse effect on the health, safety or well-being of residents was not added because it would be inconsistent with section 1085 of the Public Welfare Code. Also, a violation of any section of this chapter endangers residents to some degree.

The Department's licensing inspectors work in conjunction with other special investigators, such as the Department of Aging ombudsman, advocacy organizations and police, as appropriate, to investigate complaints.

The Department supports the need for more timely appeal decisions by the Department; however, the appeal workload includes more than just personal care home licensing appeals and must be balanced to meet the needs of all appellants and parties.

*§ 2600.261. Classification of violations*

Fifteen commentators recommended including classification guidelines, adding definitions and language to control subjective application of classifications and penalties, and listing routine Class I, Class II and Class III violations. Five commentators found the criteria for Class I violations outdated, punitive and unreasonable.

*Response*

The Department reviews the determinations of Class I, Class II and Class III violations made by the personal care home regional offices to ensure the uniformity and consistency of the classification process. The Department continues to refine the standard guidelines for the classification of violations and evaluates the use of these guidelines to ensure the uniformity and consistency of the classification process. Penalties for Class I violations are designed to be punitive because they have a substantial probability of resulting in death or serious mental or physical harm to a resident.

*§ 2600.262(a) and (b). Penalties*

Fourteen commentators suggested changing the legal base. Commentators indicated that there should be no penalty for violations that do not affect health, safety and well-being of residents or for violations that are corrected in a reasonable time. Commentators recommended that there be no penalties for administrative errors corrected

within 24 hours of discovery that do not have an adverse effect upon the health, safety or well-being of residents.

*Response*

The Department semiannually reviews its classification guidelines for the classification of violations and evaluates the use of these guidelines. This review is to ensure the uniformity and consistency of the classification process. Many minor violations are classified as Class III violations. There is no monetary penalty for Class III violations unless the home fails to correct the violation within 15 calendar days.

The Department added Class III violations in subsection (b) to conform to section 1086(b) of the Public Welfare Code.

*§ 2600.262(c). Penalties*

Four commentators suggested that fines should not be levied if the Department has accepted the plan of correction or if a vendor delays action. Commentators suggested adding that the Department shall establish a formal process to enable each home to file for an extension. Several commentators requested deletion of "this time period may be extended for good cause."

*Response*

A Class II violation is defined as having a substantial adverse effect upon the health, safety or well-being of a resident. The law permits the Department to consider whether a home has a substantial reason, such as extenuating circumstances beyond the home's control, for failing to correct a violation on a timely basis. The Department may permit a longer time for correction if for good cause. The retroactive fine is included in subsection (c).

The Department clarified that if the home fails to provide proof of correction of the violation to the Department within the 5-day period, the fine will be retroactive to the date of the citation. It is necessary for the home to demonstrate correction of the violation to the Department.

*§ 2600.262(g). Penalties (redesignated as § 2600.262(f))*

Seven commentators suggested longer time frames for correction.

*Response*

The time frames specified are set in law, but the Department may permit a longer time for correction if for good cause in the case of Class II violations.

*§ 2600.262(j). Penalties (redesignated as § 2600.263(a))*

Three commentators suggested adding language regarding expungement from the Department's records and from the Department's website when available. Five commentators suggested that fines collected by the Department should be used to educate facilities that were cited and fined.

*Response*

Expungement is not permitted because patterns of violations over time are legally significant. See section 1057.1(b) of the Public Welfare Code (62 P. S. § 1057.1(b)).

As specified in § 2600.264 (relating to use of fines), fines collected by the Department are placed in a special restricted account. Money collected is used first to defray the expenses incurred by residents being relocated, and then used to assist with paying for enforcement of this chapter.



§ 2600.263. *Revocation or nonrenewal of licenses (redesignated as § 2600.263. Appeals of penalty; § 2600.264. Use of fines; § 2600.265. Review of classifications)*

Twenty-one commentators recommended revoking licenses only for uncorrected violations that affect health, safety and well-being of residents. Commentators recommended the time period for operation following a revocation to 2 to 3 years, but reserving 5 year revocation or nonrenewal for multiple noncompliance issues. One commentator requested a ban on admissions for homes with a provisional license and posting information about homes with a provisional license due to regulatory violations on the Department's website.

*Response*

Correction of violations prior to the expiration of the license will result in the issuance of a license. Section 2600.269 was added regarding bans on admissions. The time period for operation following a revocation will remain at 5 years to conform to section 1087(a)(4) of the Public Welfare Code. The Department website lists licensing information about homes on its website and will consider including information about a home's provisional license status in the future.

§ 2600.264. *Policies, plans and procedures of the personal care home (deleted on final-form)*

Fourteen commentators expressed concern about the amount of time that developing policies, plans and procedures will take from resident care. Commentators expressed concern about cost. Commentators suggested listing the required policies, plans and procedures.

*Response*

The proposed § 2600.264 was deleted. The Department will develop sample policies and procedures to assist homes to comply with requirements for policies and procedures.

**ADDITIONAL CHANGES**

In addition to the major changes previously discussed, the Department made additional changes in preparation of the final-form rulemaking to correct typographical errors, reformat to enhance readability, revise language to improve clarity and conform to the changes previously discussed.

*Contact Person*

For additional information on this final-form rulemaking, contact Karen E. Kroh, Department of Public Welfare, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-2800.

*Regulatory Review Act*

Under section 5.1(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 23, 2002, the Department submitted a copy of the notice of proposed rulemaking, published at 32 Pa.B. 4939, to IRRC and the Chairpersons of the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare for review and comment.

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

Under section 5.1(j.1) and (j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.1) and (j.2)), on February 23,

2005, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on February 24, 2005, and approved the final-form rulemaking.

*Findings*

The Department finds that:

(1) The public notice of intention to adopt the administrative regulations by this order has been given under sections 201 and 202 of the Commonwealth Documents Law (45 P. S. §§ 1201 and 1202) and the regulations promulgated hereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of these regulations in the manner provided in this order is necessary and appropriate for the administration and enforcement of section 211 and Articles IX and X of the Public Welfare Code (62 P. S. § 211, §§ 901—922 and §§ 1001—1087).

*Order*

The Department, acting under the Public Welfare Code, orders that:

(a) The regulation of the Department, 55 Pa. Code Chapter 2600 and 2620, are amended by adding §§ 2600.1—2600.5, 2600.11—2600.29, 2600.41—2600.44, 2600.51—2600.68, 2600.81—2600.109, 2600.121—2600.133, 2600.141—2600.144, 2600.161—2600.164, 2600.171, 2600.181—2600.191, 2600.201, 2600.202, 2600.221—2600.228, 2600.231—2600.239, 2600.251—2600.254 and 2600.261—2600.270; and by deleting §§ 2620.1—2620.3, 2620.5, 2620.11—2620.14, 2620.21—2620.24, 2620.24a, 2620.25—2620.28, 2620.31—2620.40, 2620.51—2620.55, 2620.61—2620.74 and 2620.81—2620.83, to read as set forth in Annex A.

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

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

(d) This Order shall take effect on October 24, 2005, with the exception of § 2600.65(d) that shall take effect on April 24, 2005, § 2600.19(g) that shall take effect on October 24, 2006, and §§ 2600.122, 2600.130(e) and 2600.182 that shall take effect on April 24, 2007.

ESTELLE B. RICHMAN,  
*Secretary*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 35 Pa.B. 1734 (March 12, 2005).)*

**Fiscal Note:** Fiscal Note 14-475 remains valid for the final adoption of the subject regulations.

**Annex A**

**TITLE 55. PUBLIC WELFARE  
PART IV. ADULT SERVICES MANUAL  
Subpart E. RESIDENTIAL  
AGENCIES/FACILITIES/SERVICES  
CHAPTER 2600. PERSONAL CARE HOMES  
GENERAL PROVISIONS**

Sec.	
2600.1.	Purpose.
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2600.3.	Inspections and licenses.
2600.4.	Definitions.
2600.5.	Access.

**GENERAL REQUIREMENTS**

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- 2600.12. Appeals.
- 2600.13. Maximum capacity.
- 2600.14. Fire safety approval.
- 2600.15. Abuse reporting covered by law.
- 2600.16. Reportable incidents and conditions.
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- 2600.21. Offsite services.
- 2600.22. Admission.
- 2600.23. Activities.
- 2600.24. Personal hygiene.
- 2600.25. Resident-home contract.
- 2600.26. Quality management.
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- 2600.29. Hospice care and services.

**RESIDENT RIGHTS**

- 2600.41. Notification of rights and complaint procedures.
- 2600.42. Specific rights.
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**STAFFING**

- 2600.51. Criminal history checks.
- 2600.52. Staff hiring, retention and utilization.
- 2600.53. Qualifications and responsibilities of administrators.
- 2600.54. Qualifications for direct care staff persons.
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- 2600.56. Administrator staffing.
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- 2600.64. Administrator training and orientation.
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- 2600.66. Staff training plan.
- 2600.67. Training institution registration.
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**PHYSICAL SITE**

- 2600.81. Physical accommodations and equipment.
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- 2600.84. Heat sources.
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- 2600.89. Water.
- 2600.90. Communication system.
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- 2600.128. Supplemental heating sources.
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**RESIDENT RECORDS**

- 2600.251. Resident records.
- 2600.252. Content of resident records.
- 2600.253. Record retention and disposal.
- 2600.254. Record access and security.

**ENFORCEMENT**

- 2600.261. Classification of violations.
- 2600.262. Penalties.
- 2600.263. Appeals of penalty.
- 2600.264. Use of fines.
- 2600.265. Review of classifications.
- 2600.266. Revocation or nonrenewal of licenses.
- 2600.267. Relocation of residents.
- 2600.268. Notice of violations.
- 2600.269. Ban on admissions.
- 2600.270. Correction of violations.

**GENERAL PROVISIONS****§ 2600.1. Purpose.**

(a) The purpose of this chapter is to protect the health, safety and well-being of personal care home residents.

(b) Personal care homes are designed to provide safe, humane, comfortable and supportive residential settings for adults who do not require the services in or of a licensed long-term care facility, but who do require assistance or supervision with activities of daily living, instrumental activities of daily living, or both. Residents who live in personal care homes that meet the requirements in this chapter will receive the encouragement and assistance they need to develop and maintain maximum independence and self-determination.

**§ 2600.2. Scope.**

(a) This chapter applies to personal care homes as defined in this chapter, and contains the minimum requirements that shall be met to obtain a license to operate a personal care home.

(b) This chapter does not apply to commercial boarding homes or to facilities operated by a religious organization exclusively for the care of clergy or other individuals in a religious profession.

**§ 2600.3. Inspections and licenses.**

(a) The Department will annually conduct at least one onsite unannounced inspection of each personal care home.

(b) A license will be issued to the legal entity by the Department if, after an investigation by an authorized agent of the Department, the requirements for a license are met.

(c) The personal care home shall post the current license, a copy of the current license inspection summary issued by the Department and a copy of this chapter in a conspicuous and public place in the personal care home.

**§ 2600.4. Definitions.**

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

*ADL—Activities of daily living*—The term includes eating, drinking, ambulating, transferring in and out of a bed or chair, toileting, bladder and bowel management, personal hygiene, securing health care, managing health care, self-administering medication and proper turning and positioning in a bed or chair.

*Abuse*—The occurrence of one or more of the following acts:

(i) The infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish.

(ii) The willful deprivation by the personal care home or its staff persons of goods or services which are necessary to maintain physical or mental health.

(iii) Sexual harassment, rape or abuse, as defined in 23 Pa.C.S. Chapter 61 (relating to protection from abuse).

(iv) Exploitation by an act or a course of conduct, including misrepresentation or failure to obtain informed consent which results in monetary, personal or other benefit, gain or profit for the perpetrator, or monetary or personal loss to the resident.

(v) Neglect of the resident, which results in physical harm, pain or mental anguish.

(vi) Abandonment or desertion by the personal care home or its staff persons.

*Adult*—An individual who is 18 years of age or older.

*Ancillary staff person*—An individual who provides services for the residents other than activities of daily living.

*Agent*—An individual authorized by the Department to enter, visit, inspect or conduct an investigation of a personal care home.

*Appropriate assessment agency*—An organization serving adults who are older or adults with disabilities, such as a county mental health/mental retardation agency, a drug and alcohol agency, an area agency on aging or another human service agency or an individual in an occupation maintaining contact with adults who are older and adults with disabilities, such as medicine, nursing or rehabilitative therapies.

*CAM—Complementary and alternative medications*—Practices, substances and ideas used to prevent or treat illness or promote health and well-being outside the realm of modern conventional medicine. Alternative medicine is used alone or instead of conventional medicine. Complementary medicine is used along with or in addition to conventional medicine.

*CPR*—Cardiopulmonary resuscitation.

*Commercial boarding home*—A type of residential living facility providing only food and shelter, or other services normally provided by a hotel, for payment, for individuals who require no services beyond food, shelter and other services usually found in hotel or apartment rental.

*Complaint*—A written or oral criticism, dispute or objection presented by or on behalf of a resident to the Department regarding the care, operations or management of a personal care home.

*Day*—Calendar day.

*Dementia*—A clinical syndrome characterized by a decline of long duration in mental function in an alert individual. Symptoms of dementia may include memory loss, personality change, chronic wandering and the loss or diminishing of other cognitive abilities, such as learning ability, judgment, comprehension, attention and orientation to time and place and to oneself.

*Department*—The Department of Public Welfare of the Commonwealth.

*Designated person*—An individual who may be chosen by the resident and documented in the resident's record, to be notified in case of an emergency, termination of service, personal care home closure or other situations as indicated by the resident or as required by this chapter. A designated person may be the resident's legal representative or an advocate.

*Designee*—A staff person authorized in writing to act in the administrator's absence.

*Direct care staff person*—A staff person who directly assists residents with activities of daily living, and instrumental activities of daily living and provides services or is otherwise responsible for the health, safety and well-being of the residents.

*Emergency medical plan*—A plan that ensures immediate and direct access to medical care and treatment for serious injury or illness, or both.

*Financial management*—

(i) A personal care service provided whenever the administrator serves as representative payee or as a guardian or power of attorney assigned prior to December 21, 1988, for a resident, or when a resident requests and receives assistance in budgeting and spending of the personal needs allowance.

(ii) The term does not include solely storing funds in a safe place as a convenience for a resident.

*Fire safety expert*—A member of a local fire department, fire protection engineer, Commonwealth-certified fire protection instructor, college instructor in fire science, county or Commonwealth fire school, volunteer trained and certified by a county or Commonwealth fire school, an insurance company loss control representative, Department of Labor and Industry building code inspector or construction code official.

*IADL—Instrumental activities of daily living*—The term includes the following activities when done on behalf of a resident:

- (i) Doing laundry.
- (ii) Shopping.
- (iii) Securing and using transportation.
- (iv) Managing finances.
- (v) Using a telephone.
- (vi) Making and keeping appointments.
- (vii) Caring for personal possessions.
- (viii) Writing correspondence.
- (ix) Engaging in social and leisure activities.
- (x) Using a prosthetic device.
- (xi) Obtaining and keeping clean, seasonal clothing.

*Legal entity*—A person, society, corporation, governing authority or partnership legally responsible for the administration and operation of a personal care home.

*License*—A certificate of compliance issued by the Department permitting the operation of a personal care home, at a given location, for a specific period of time, for a specified capacity, according to Chapter 20 (relating to licensure or approval of facilities and agencies).

*Long-term care ombudsman*—A representative of the Office of the State Long-Term Care Ombudsman in the Department of Aging who investigates and seeks to resolve complaints made by or on behalf of individuals who are 60 years of age or older who are consumers of long-term care services. These complaints may relate to action, inaction or decisions of providers of long-term care services, of public agencies, of social service agencies or their representatives, which may adversely affect the health, safety, well-being or rights of these consumers.

*Mobile resident*—

(i) A resident who is physically and mentally capable of vacating the personal care home on the resident's own power or with limited physical or oral assistance in the case of an emergency, including the capability to ascend or descend stairs if present on the exit path.

(A) Physical assistance means assistance in getting to one's feet or into a wheelchair, walker or prosthetic device.

(B) Oral assistance means giving instructions to assist the resident in vacating the personal care home.

(ii) The term includes an individual who is able to effectively operate an ambulation device required for moving from one place to another, and able to understand and carry out instructions for vacating the personal care home.

*Neglect*—The failure of a personal care home or its staff persons to provide goods or services essential to avoid a clear and serious threat to the physical or mental health

of a resident. The failure or omission to provide the care, supervision and services that the personal care home has voluntarily, or by contract, agreed to provide and that are necessary to maintain the resident's health, safety and well-being, including personal care services, food, clothing, medicine, shelter, supervision and medical services. Neglect may be repeated conduct or a single incident.

*OTC*—Over the counter or nonprescription.

*Personal care home or home*—

(i) A premise in which food, shelter and personal assistance or supervision are provided for a period exceeding 24 hours, for four or more adults who are not relatives of the operator, who do not require the services in or of a licensed long-term care facility, but who do require assistance or supervision in activities of daily living or instrumental activities of daily living.

(ii) The term includes a premise that has held or presently holds itself out as a personal care home and provides food and shelter to four or more adults who need personal care services, but who are not receiving the services.

*Personal care home administrator or administrator*—An individual who is charged with the general administration of a personal care home, whether the individual has an ownership interest in the personal care home, and whether functions and duties are shared with other individuals.

*Personal care services*—Assistance or supervision in ADL or IADL, or both.

*Premises*—The grounds and buildings on the same grounds, used for providing personal care services.

*Protective services unit*—The local area agency on aging unit designated by the Department of Aging to investigate allegations of abuse of adults who are 60 years of age or older and assess the need for protective interventions.

*Referral agent*—An agency or individual who arranges for or assists, or both, with placement of a resident into a personal care home.

*Relative*—A spouse, parent, child, stepparent, stepchild, grandparent, grandchild, brother, sister, half-brother, half-sister, aunt, uncle, niece or nephew.

*Resident*—An individual, unrelated to the legal entity, who resides in a personal care home, and who requires personal care services, but who does not require the level of care provided by a hospital or long-term care facility.

*Resident with mobility needs*—An individual who is unable to move from one location to another, has difficulty in understanding and carrying out instructions without the continued full assistance of other individuals or is incapable of independently operating an ambulation device, such as a wheelchair, prosthesis, walker or cane to exit a building.

*Restraint*—A manual, chemical or mechanical device used to limit or restrict the movement or normal function of an individual or a portion of the individual's body.

*SSI*—Supplemental Security Income.

*Secretary*—The Secretary of the Department.

*Staff person*—An individual who works for the personal care home for compensation either on payroll or under contract.

*Support plan*—A written document that describes for each resident the resident's care, service or treatment

needs based on the assessment of the resident, and when the care, service or treatment will be provided, and by whom.

*Volunteer—*

(i) An individual who, of his own free will, and without monetary compensation, provides direct care services for residents in the personal care home.

(ii) The term does not include visitors or individuals who provide nondirect services or entertainment on an occasional basis.

**§ 2600.5. Access.**

(a) The administrator or a designee shall provide, upon request, immediate access to the home, the residents and records to:

- (1) Agents of the Department.
- (2) Representatives of the area agency on aging.
- (3) Representatives of the Long-Term Care Ombudsman Program.
- (4) Representatives of the protection and advocacy system for individuals with disabilities designated under the Protection and Advocacy for Individual Rights Program of the Vocational Rehabilitation and Rehabilitation Services Act (29 U.S.C.A. § 794e), the Protection and Advocacy for Individuals with Mental Illness Act (42 U.S.C.A. §§ 10801—10851) and the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C.A. §§ 15041—15043).

(b) The administrator or a designee shall permit community service organizations and representatives of community legal services programs to have access to the home during visitation hours or by appointment for the purpose of assisting or informing the residents of the availability of services and assistance. A resident or a resident's designated person may decline the services of the community service organization or the community legal service program.

**GENERAL REQUIREMENTS**

**§ 2600.11. Procedural requirements for licensure or approval of personal care homes.**

(a) Except for § 20.32 (relating to announced inspections), the requirements in Chapter 20 (relating to licensure or approval of facilities and agencies) apply to personal care homes.

(b) Before a home is initially licensed and permitted to open, operate or admit residents, it will be inspected by the Department and found to be in compliance with applicable laws and regulations. The Department will reinspect newly licensed homes within 3 months of the date of initial licensure.

(c) After the Department determines that a home meets the requirements for a license, the Department's issuance or renewal of a license to a home is contingent upon receipt by the Department of an application fee based on the number of beds in the home, as follows:

- (1) 0-20 beds—\$15.
- (2) 21-50 beds—\$20.
- (3) 51-100 beds—\$30.
- (4) 101 beds and over—\$50.

**§ 2600.12. Appeals.**

Appeals related to the licensure or approval of the personal care home shall be made in accordance with 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

**§ 2600.13. Maximum capacity.**

(a) The maximum capacity is the total number of residents who are permitted to reside in the home at any time. A request to increase the capacity shall be submitted to the Department and other applicable authorities and approved prior to the admission of additional residents. The maximum capacity is limited by physical plant space and other applicable laws and regulations.

(b) The maximum capacity specified on the license may not be exceeded.

**§ 2600.14. Fire safety approval.**

(a) Prior to issuance of a license, a written fire safety approval from the Department of Labor and Industry, the Department of Health or the appropriate local building authority under the Pennsylvania Construction Code Act (35 P. S. §§ 7210.101—7210.1103) is required.

(b) If the fire safety approval is withdrawn or restricted, the home shall notify the Department orally immediately, and in writing, within 48 hours of the withdrawal or restriction.

(c) If a building is structurally renovated or altered after the initial fire safety approval is issued, the home shall submit the new fire safety approval, or written certification that a new fire safety approval is not required, from the appropriate fire safety authority. This documentation shall be submitted to the Department within 15 days of the completion of the renovation or alteration.

(d) The Department will request additional fire safety inspections by the appropriate agency if possible fire safety violations are observed during an inspection by the Department.

**§ 2600.15. Abuse reporting covered by law.**

(a) The home shall immediately report suspected abuse of a resident served in the home in accordance with the Older Adult Protective Services Act (35 P. S. §§ 10225.701—10225.707) and 6 Pa. Code § 15.21—15.27 (relating to reporting suspected abuse) and comply with the requirements regarding restrictions on staff persons.

(b) If there is an allegation of abuse of a resident involving a home's staff person, the home shall immediately develop and implement a plan of supervision or suspend the staff person involved in the alleged incident.

(c) The home shall immediately submit to the Department's personal care home regional office a plan of supervision or notice of suspension of the affected staff person.

(d) The home shall immediately notify the resident and the resident's designated person of a report of suspected abuse or neglect involving the resident.

**§ 2600.16. Reportable incidents and conditions.**

(a) A reportable incident or condition includes the following:

- (1) The death of a resident.
- (2) A physical act by a resident to commit suicide.
- (3) A serious bodily injury or trauma requiring treatment at a hospital or medical facility. This does not include minor injuries such as sprains or minor cuts.

(4) A violation of a resident's rights in §§ 2600.41—2600.44 (relating to resident rights).

(5) An unexplained absence of a resident for 24 hours or more, or when the support plan so provides, a period of less than 24 hours, or an absence of a resident from a secured dementia care unit.

(6) Misuse of a resident's funds by the home's staff persons or legal entity.

(7) An outbreak of a serious communicable disease as defined in 28 Pa. Code § 27.2 (relating to specific identified reportable diseases, infections and conditions).

(8) Food poisoning of residents.

(9) A physical or sexual assault by or against a resident.

(10) Fire or structural damage to the home.

(11) An incident requiring the services of an emergency management agency, fire department or law enforcement agency, except for false alarms.

(12) A complaint of resident abuse, suspected resident abuse or referral of a complaint of resident abuse to a local authority.

(13) A prescription medication error as defined in § 2600.188 (relating to medication errors.)

(14) An emergency in which the procedures under § 2600.107 (relating to emergency preparedness) are implemented.

(15) An unscheduled closure of the home or the relocation of the residents.

(16) Bankruptcy filed by the legal entity.

(17) A criminal conviction against the legal entity, administrator or staff that are subsequent to the reporting on the criminal history checks under § 2600.51 (relating to criminal history checks).

(18) A termination notice from a utility.

(19) A violation of the health and safety laws listed in § 2600.18 (relating to applicable health and safety laws).

(b) The home shall develop and implement written policies and procedures on the prevention, reporting, notification, investigation and management of reportable incidents and conditions.

(c) The home shall report the incident or condition to the Department's personal care home regional office or the personal care home complaint hotline within 24 hours in a manner designated by the Department. Abuse reporting shall also follow the guidelines in § 2600.15 (relating to abuse reporting covered by law).

(d) The home shall submit a final report, on a form prescribed by the Department, to the Department's personal care home regional office immediately following the conclusion of the investigation.

(e) If the home's final report validates the occurrence of the alleged incident or condition, the affected resident and other residents who could potentially be harmed or his designated person shall also be informed immediately following the conclusion of the investigation.

(f) The home shall keep a copy of the report of the reportable incident or condition.

#### § 2600.17. Confidentiality of records.

Resident records shall be confidential, and, except in emergencies, may not be accessible to anyone other than the resident, the resident's designated person if any, staff persons for the purpose of providing services to the resident, agents of the Department and the long-term

care ombudsman without the written consent of the resident, an individual holding the resident's power of attorney for health care or health care proxy or a resident's designated person, or if a court orders disclosure.

#### § 2600.18. Applicable health and safety laws.

A home shall comply with applicable Federal, State and local laws, ordinances and regulations.

#### § 2600.19. Waivers.

(a) A home may submit a written request for a waiver of a specific requirement contained in this chapter. The waiver request must be on a form prescribed by the Department. The Secretary, or the Secretary's appointee, may grant a waiver of a specific requirement of this chapter if the following conditions are met:

(1) There is no jeopardy to the residents.

(2) There is an alternative for providing an equivalent level of health, safety and well-being protection of the residents.

(3) Residents will benefit from the waiver of the requirement.

(b) The scope, definitions, applicability or residents' rights under this chapter may not be waived.

(c) At least 30 days prior to the submission of the completed written waiver request to the Department, the home shall provide a copy of the completed written waiver request to the affected resident and designated person to provide the opportunity to submit comments to the Department. The home shall provide the affected resident and designated person with the name, address and telephone number of the Department staff person to submit comments.

(d) The home shall discuss the waiver request with the affected resident and designated person upon the request of the resident or designated person.

(e) The home shall notify the affected resident and designated person of the approval or denial of the waiver. A copy of the waiver request and the Department's written decision shall be posted in a conspicuous and public place within the home.

(f) The Department will review waivers annually to determine compliance with the conditions required by the waiver. The Department may revoke the waiver if the conditions required by the waiver are not met.

(g) A waiver granted prior to October 24, 2005, is no longer in effect as of October 24, 2006.

#### § 2600.20. Financial management.

(a) A resident may manage his personal finances unless he has a guardian of his estate.

(b) If the home provides assistance with financial management or holds resident funds, the following requirements apply:

(1) The home shall keep a record of financial transactions with the resident, including the dates, amounts of deposits, amounts of withdrawals and the current balance.

(2) Resident funds shall be disbursed during normal business hours within 24 hours of the resident's request.

(3) The home shall obtain a written receipt from the resident for cash disbursements at the time of disbursement.

(4) Resident funds and property shall only be used for the resident's benefit.

(5) Commingling of resident funds and home funds is prohibited.

(6) If a home is holding more than \$200 for a resident for more than 2 consecutive months, the administrator shall notify the resident and offer assistance in establishing an interest-bearing account in the resident's name at a local Federally-insured financial institution. This does not include security deposits.

(7) The legal entity, administrator and staff persons of the home are prohibited from being assigned power of attorney or guardianship of a resident or a resident's estate.

(8) The home shall give the resident and the resident's designated person, an itemized account of financial transactions made on the resident's behalf on a quarterly basis.

(9) A copy of the itemized account shall be kept in the resident's record.

(10) The home shall provide the resident the opportunity to review his own financial record upon request during normal business hours.

**§ 2600.21. Offsite services.**

If services or activities are provided by the home at a location other than the premises, the home shall ensure that the residents' support plans are followed and that resident health and safety needs are met.

**§ 2600.22. Admission.**

The following admission documents shall be completed for each resident:

(1) Preadmission screening completed prior to admission on a form specified by the Department.

(2) Medical evaluation completed 60 days prior to or 30 days after admission on a form specified by the Department.

(3) Personal care home assessment completed within 15 days after admission on a form specified by the Department.

(4) Support plan developed and implemented within 30 days after admission.

(5) Resident-home contract completed prior to admission or within 24 hours after admission.

**§ 2600.23. Activities.**

(a) A home shall provide each resident with assistance with ADLs as indicated in the resident's assessment and support plan.

(b) A home shall provide each resident with assistance with IADLs as indicated in the resident's assessment and support plan.

**§ 2600.24. Personal hygiene.**

A home shall provide the resident with assistance with personal hygiene as indicated in the resident's assessment and support plan. Personal hygiene includes one or more of the following:

- (1) Bathing.
- (2) Oral hygiene.
- (3) Hair grooming and shampooing.
- (4) Dressing, undressing and care of clothes.

(5) Shaving.

(6) Nail care.

(7) Foot care.

(8) Skin care.

**§ 2600.25. Resident-home contract.**

(a) Prior to admission, or within 24 hours after admission, a written admission contract between the resident and the home shall be in place. The administrator or a designee shall complete this contract and review and explain its contents to the resident and the resident's designated person if any, prior to signature.

(b) The contract shall be signed by the administrator or a designee, the resident and the payer, if different from the resident, and cosigned by the resident's designated person if any, if the resident agrees.

(c) At a minimum, the contract must specify the following:

(1) Each resident shall retain, at a minimum, the current personal needs allowance as the resident's own funds for personal expenditure. A contract to the contrary is not valid. A personal needs allowance is the amount that a resident shall be permitted to keep for his personal use.

(2) A fee schedule that lists the actual amount of allowable resident charges for each of the home's available services.

(3) An explanation of the annual assessment, medical evaluation and support plan requirements and procedures, which shall be followed if either the assessment or the medical evaluation indicates the need of another and more appropriate level of care.

(4) The party responsible for payment.

(5) The method for payment of charges for long distance telephone calls.

(6) The conditions under which refunds will be made, including the refund of admission fees and refunds upon a resident's death.

(7) The financial arrangements if assistance with financial management is to be provided.

(8) The home's rules related to home services, including whether the home permits smoking.

(9) The conditions under which the agreement may be terminated including home closure as specified in § 2600.228 (relating to notification of termination).

(10) A statement that the resident is entitled to at least 30 days' advance notice, in writing, of the home's request to change the contract.

(11) A list of personal care services to be provided to the resident based on the outcome of the resident's support plan, a list of the actual rates that the resident will be periodically charged for food, shelter and services and how, when and by whom payment is to be made.

(12) Charges to the resident for holding a bed during hospitalization or other extended absence from the home.

(13) Written information on the resident's rights and complaint procedures as specified in § 2600.41 (relating to notification of rights and complaint procedures).

(d) A home may not seek or accept payments from a resident in excess of one-half of any funds received by the resident under the Senior Citizens Rebate and Assistance Act (72 P. S. §§ 4751-1—4751-12). If the home will be

assisting the resident to manage a portion of the rent rebate, the requirements of § 2600.20 (relating to financial management) may apply. There may be no charge for filling out this paperwork.

(e) The resident, or a designated person, has the right to rescind the contract for up to 72 hours after the initial dated signature of the contract and pay only for the services received. Rescission of the contract must be in writing addressed to the home.

(f) The home may not require or permit a resident to assign assets to the home in return for a life care contract/guarantee. A life care contract/guarantee is an agreement between the legal entity and the resident that the legal entity will provide care to the resident for the duration of the resident's life. Continuing care communities that have obtained a Certificate of Authority from the Insurance Department and provide a copy of the certificate to the Department are exempt from this requirement.

(g) A copy of the signed admission contract shall be given to the resident and a copy shall be filed in the resident's record.

(h) The service needs addressed in the resident's support plan shall be available to the resident every day of the year.

#### § 2600.26. Quality management.

(a) The home shall establish and implement a quality management plan.

(b) The quality management plan shall address the periodic review and evaluation of the following:

(1) The reportable incident and condition reporting procedures.

(2) Complaint procedures.

(3) Staff person training.

(4) Licensing violations and plans of correction, if applicable.

(5) Resident or family councils, or both, if applicable.

(c) The quality management plan shall include the development and implementation of measures to address the areas needing improvement that are identified during the periodic review and evaluation.

#### § 2600.27. SSI recipients.

(a) If a home agrees to admit a resident eligible for SSI benefits, the home's charges for actual rent and other services may not exceed the SSI resident's actual current monthly income reduced by the current personal needs allowance.

(b) The administrator or staff persons may not include funds received as lump sum awards, gifts or inheritances, gains from the sale of property, or retroactive government benefits when calculating payment of rent for an SSI recipient or for a resident eligible for SSI benefits.

(c) The administrator or staff persons may seek and accept payments from funds received as retroactive awards of SSI benefits, but only to the extent that the retroactive awards cover periods of time during which the resident actually resided in the home and for which full payment has not been received.

(d) The administrator shall provide each resident who is a recipient of SSI, at no charge beyond the amount determined in subsection (a), the following items or services as needed:

(1) Necessary personal hygiene items, such as a comb, toothbrush, toothpaste, soap and shampoo. Cosmetic items are not included.

(2) Laundry services for personal laundry, bed linens and towels, but not including dry cleaning or other specialized services.

(3) Personal care services.

(e) Third-party payments made on behalf of an SSI recipient and paid directly to the home are permitted. These payments may not be used for food, clothing or shelter because to do so would reduce SSI payments. See 20 CFR 416.1100 and 416.1102 (relating to income and SSI eligibility; and what is income). These payments may be used to purchase items or services for the resident that are not food, clothing or shelter.

#### § 2600.28. Refunds.

(a) If, after the home gives notice of discharge or transfer in accordance with § 2600.228(b) (relating to notification of termination), and the resident moves out of the home before the 30 days are over, the home shall give the resident a refund equal to the previously paid charges for rent and personal care services for the remainder of the 30-day time period. The refund shall be issued within 30-days of discharge or transfer. The resident's personal needs allowance shall be refunded within 2 business days of discharge or transfer.

(b) After a resident gives notice of the intent to leave in accordance with § 2600.228(b) and if the resident moves out of the home before the expiration of the required 30 days, the resident owes the home the charges for rent and personal care services for the entire length of the 30-day time period for which payment has not been made.

(c) If no notice is required, as set forth in subsection (d), the resident shall be required to pay only for the nights spent in the home.

(d) If the home does not require a written notice prior to a resident's departure, the administrator shall refund the remainder of previously paid charges to the resident within 30 days of the date the resident moved from the home.

(e) In the event of a death of a resident under 60 years of age, the administrator shall refund the remainder of previously paid charges to the resident's estate within 30 days from the date the room is cleared of the resident's personal property. In the event of a death of a resident 60 years of age and older, the home shall provide a refund in accordance with the Elder Care Payment Restitution Act (35 P. S. §§ 10226.101—10226.107). The home shall keep documentation of the refund in the resident's record.

(f) Within 30 days of either the termination of service by the home or the resident's leaving the home, the resident shall receive an itemized written account of the resident's funds, including notification of funds still owed the home by the resident or a refund owed the resident by the home. Refunds shall be made within 30 days of discharge.

(g) Upon discharge of the resident or transfer of the resident to a higher level of care, the administrator shall return the resident's funds being managed or stored by the home to the resident within 2 business days from the date the room is cleared of the resident's personal property.

#### § 2600.29. Hospice care and services.

Hospice care and services that are licensed by the Department of Health as a hospice may be provided in a personal care home.



**RESIDENT RIGHTS**

**§ 2600.41. Notification of rights and complaint procedures.**

(a) Upon admission, each resident and, if applicable, the resident's designated person, shall be informed of resident rights and the right to lodge complaints without intimidation, retaliation, or threats of retaliation of the home or its staff persons against the reporter. Retaliation includes discharge or transfer from the home.

(b) Notification of rights and complaint procedures shall be communicated in an easily understood manner and in a language understood by or mode of communication used by the resident and, if applicable, the resident's designated person.

(c) The Department's poster of the list of resident's rights shall be posted in a conspicuous and public place in the home.

(d) A copy of the resident's rights and complaint procedures shall be given to the resident and, if applicable, the resident's designated person upon admission.

(e) A statement signed by the resident and, if applicable, the resident's designated person acknowledging receipt of a copy of the information specified in subsection (d), or documentation of efforts made to obtain signature, shall be kept in the resident's record.

**§ 2600.42. Specific rights.**

(a) A resident may not be discriminated against because of race, color, religious creed, disability, handicap, ancestry, sexual orientation, national origin, age or sex.

(b) A resident may not be neglected, intimidated, physically or verbally abused, mistreated, subjected to corporal punishment or disciplined in any way.

(c) A resident shall be treated with dignity and respect.

(d) A resident shall be informed of the rules of the home and given 30 days' written notice prior to the effective date of a new home rule.

(e) A resident shall have access to a telephone in the home to make calls in privacy. Nontoll calls shall be without charge to the resident.

(f) A resident has the right to receive and send mail.

(1) Outgoing mail may not be opened or read by staff persons unless the resident requests.

(2) Incoming mail may not be opened or read by staff persons unless upon the request of the resident or the resident's designated person.

(g) A resident has the right to communicate privately with and access the local ombudsman.

(h) A resident has the right to practice the religion or faith of the resident's choice, or not to practice any religion or faith.

(i) A resident shall receive assistance in accessing health services.

(j) A resident shall receive assistance in obtaining and keeping clean, seasonal clothing. A resident's clothing may not be shared with other residents.

(k) A resident and the resident's designated person, and other individuals upon the resident's written approval shall have the right to access, review and request corrections to the resident's record.

(l) A resident has the right to furnish his room and purchase, receive, use and retain personal clothing and possessions.

(m) A resident has the right to leave and return to the home at times consistent with the home rules and the resident's support plan.

(n) A resident has the right to relocate and to request and receive assistance, from the home, in relocating to another facility. The assistance shall include helping the resident get information about living arrangements, making telephone calls and transferring records.

(o) A resident has the right to freely associate, organize and communicate with others privately.

(p) A resident shall be free from restraints.

(q) A resident shall be compensated in accordance with State and Federal labor laws for labor performed on behalf of the home. Residents may voluntarily and without coercion perform tasks related directly to the resident's personal space or common areas of the home.

(r) A resident has the right to receive visitors for a minimum of 12 hours daily, 7 days per week.

(s) A resident has the right to privacy of self and possessions. Privacy shall be provided to the resident during bathing, dressing, changing and medical procedures.

(t) A resident has the right to file complaints with any individual or agency and recommend changes in policies, home rules and services of the home without intimidation, retaliation or threat of discharge.

(u) A resident has the right to remain in the home, as long as it is operating with a license, except as specified in § 2600.228 (relating to notification of termination).

(v) A resident has the right to receive services contracted for in the resident-home contract.

(w) A resident has the right to use both the home's procedures and external procedures, if any, to appeal involuntary discharge.

(x) A resident has the right to a system to safeguard a resident's money or property.

(y) A resident has the right to choose his own health care providers without limitation by the home. This includes the right to select the resident's own pharmacist provided that the pharmacy agrees to supply medications in a way that is compatible with the home's system for handling and assisting with the self-administration of resident medications.

**§ 2600.43. Prohibition against deprivation of rights.**

(a) A resident may not be deprived of his rights.

(b) A resident's rights may not be used as a reward or sanction.

**§ 2600.44. Complaint procedures.**

(a) Prior to admission, the home shall inform the resident and the resident's designated person of the right to file and the procedure for filing a complaint with the Department's personal care home regional office, local ombudsman or protective services unit in the area agency on aging, Pennsylvania Protection & Advocacy, Inc. or law enforcement agency.

(b) The home shall permit and respond to oral and written complaints from any source regarding an alleged violation of resident rights, quality of care or other matter without retaliation or the threat of retaliation.

(c) If a resident indicates that he wishes to make a written complaint, but needs assistance in reducing the complaint to writing, the home shall assist the resident in writing the complaint.

(d) The home shall ensure investigation and resolution of complaints. The home shall designate the staff person responsible for receiving complaints and determining the outcome of the complaint.

(e) Within 2 business days after the submission of a written complaint, a status report shall be provided by the home to the complainant. If the resident is not the complainant, the resident and the resident's designated person shall receive the status report unless contraindicated by the support plan. The status report must indicate the steps that the home is taking to investigate and address the complaint.

(f) Within 7 days after the submission of a written complaint, the home shall give the complainant and, if applicable, the designated person, a written decision explaining the home's investigation findings and the action the home plans to take to resolve the complaint. If the resident is not the complainant, the affected resident shall receive a copy of the decision unless contraindicated by the support plan. If the home's investigation validates the complaint allegations, a resident who could potentially be harmed or his designated person shall receive a copy of the decision, with the name of the affected resident removed, unless contraindicated by the support plan.

(g) The telephone number of the Department's personal care home regional office, the local ombudsman or protective services unit in the area agency on aging, Pennsylvania Protection & Advocacy, Inc., the local law enforcement agency, the Commonwealth Information Center and the personal care home complaint hotline shall be posted in large print in a conspicuous and public place in the home.

#### STAFFING

##### § 2600.51. Criminal history checks.

Criminal history checks and hiring policies shall be in accordance with the Older Adult Protective Services Act (35 P. S. §§ 10225.101—10225.5102) and 6 Pa. Code Chapter 15 (relating to protective services for older adults).

##### § 2600.52. Staff hiring, retention and utilization.

Hiring, retention and utilization of staff persons shall be in accordance with the Older Adult Protective Services Act (35 P. S. §§ 10225.101—10225.5102) and 6 Pa. Code Chapter 15 (relating to protective services for older adults) and other applicable regulations.

##### § 2600.53. Qualifications and responsibilities of administrators.

(a) The administrator shall have one of the following qualifications:

(1) A license as a registered nurse from the Department of State.

(2) An associate's degree or 60 credit hours from an accredited college or university.

(3) A license as a licensed practical nurse from the Department of State and 1 year of work experience in a related field.

(4) A license as a nursing home administrator from the Department of State.

(5) For a home serving 8 or fewer residents, a general education development diploma or high school diploma and 2 years direct care or administrative experience in the human services field.

(b) The administrator shall be 21 years of age or older.

(c) The administrator shall be responsible for the administration and management of the home, including the health, safety and well-being of the residents, implementation of policies and procedures and compliance with this chapter.

(d) The administrator shall have the ability to provide personal care services or to supervise or direct the work to provide personal care services.

(e) The administrator shall have knowledge of this chapter.

(f) The administrator shall have the ability to comply with applicable laws, rules and regulations, including this chapter.

(g) The administrator shall have the ability to maintain or supervise the maintenance of financial and other records.

(h) The administrator shall be free from a medical condition, including drug or alcohol addiction, that would limit the administrator from performing duties with reasonable skill and safety.

##### § 2600.54. Qualifications for direct care staff persons.

(a) Direct care staff persons shall have the following qualifications:

(1) Be 18 years of age or older, except as permitted in subsection (b).

(2) Have a high school diploma, GED or active registry status on the Pennsylvania nurse aide registry.

(3) Be free from a medical condition, including drug or alcohol addiction, that would limit direct care staff persons from providing necessary personal care services with reasonable skill and safety.

(b) An individual who is 16 or 17 years of age may be a staff person at a home, but may not perform tasks related to medication administration. A staff person who is 16 or 17 years of age may not perform tasks related to incontinence care, bathing or dressing of residents without supervision.

(c) A volunteer who performs ADLs shall meet the staff person qualifications and training requirements specified in this chapter.

(d) A resident receiving personal care services who voluntarily performs tasks in the home will not be considered a volunteer under this chapter.

##### § 2600.55. Exceptions for staff qualifications.

(a) The staff qualification requirements for administrator and direct care staff persons do not apply to individuals hired or promoted to the specified positions prior to December 1, 2004.

(b) A staff person who transfers to another licensed home, with no more than a 1 year break in service, may continue to work in the same capacity as long as the staff person meets the conditions specified in subsection (a).

##### § 2600.56. Administrator staffing.

The administrator shall be present in the home an average of 20 hours or more per week, in each calendar month.

**§ 2600.57. Direct care staffing.**

(a) At all times one or more residents are present in the home a direct care staff person who is 21 years of age or older and who serves as the designee, shall be present in the home. The direct care staff person may be the administrator if the administrator provides direct care services.

(b) Direct care staff persons shall be available to provide at least 1 hour per day of personal care services to each mobile resident.

(c) Direct care staff persons shall be available to provide at least 2 hours per day of personal care services to each resident who has mobility needs.

(d) At least 75% of the personal care service hours specified in subsections (b) and (c) shall be available during waking hours.

**§ 2600.58. Awake staff persons.**

(a) If a home serves 16 or more residents, all direct care staff persons on duty in the home shall be awake at all times one or more residents are present in the home.

(b) If a home serves one or more but less than 16 residents with mobility needs, at least one direct care staff person shall be awake at all times residents are present in the home.

**§ 2600.59. Multiple buildings.**

(a) For a home with multiple buildings on the same premises that are within 300 feet of one another, the direct care staff person required in § 2600.57 (relating to direct care staffing) shall be on the premises and available by a two-way communication system at all times one, two or three mobile residents are present in the home.

(b) For a home with multiple buildings on the same premises regardless of the distance between buildings, the direct care staffing requirements in § 2600.57 apply at all times four or more mobile residents, or one or more residents with mobility needs, are present in the home.

**§ 2600.60. Additional staffing based on the needs of the residents.**

(a) Staffing shall be provided to meet the needs of the residents as specified in the resident's assessment and support plan.

(b) The Department may require additional staffing as necessary to protect the health, safety and well-being of the residents. Requirements for additional staffing will be based on the resident's assessment and support plan, the design and construction of the home and the operation and management of the home.

(c) Additional staff hours, or contractual hours, shall be provided as necessary to meet the laundry, food service, housekeeping and maintenance needs of the home.

**§ 2600.61. Substitute personnel.**

When regularly scheduled direct care staff persons are absent, the administrator shall arrange for coverage by substitute personnel who meet the direct care staff qualifications and training requirements as specified in §§ 2600.54 and § 2600.65 (relating to qualifications for direct care staff persons; and direct care staff person training and orientation).

**§ 2600.62. List of staff persons.**

The administrator shall maintain a current list of the names, addresses and telephone numbers of staff persons including substitute personnel and volunteers.

**§ 2600.63. First aid, CPR and obstructed airway training.**

(a) At least one staff person for every 50 residents who is trained in first aid and certified in obstructed airway techniques and CPR shall be present in the home at all times.

(b) Current training in first aid and certification in obstructed airway techniques and CPR shall be provided by an individual certified as a trainer by a hospital or other recognized health care organization.

(c) Licensed, certified and registered medical personnel meet the qualifications in subsection (a) and are exempt from the training requirements in subsections (a) and (b).

(d) A staff person who is trained in first aid or certified in obstructed airway techniques or CPR shall provide those services in accordance with his training, unless the resident has a do not resuscitate order.

**§ 2600.64. Administrator training and orientation.**

(a) Prior to initial employment as an administrator, a candidate shall successfully complete the following:

(1) An orientation program approved and administered by the Department.

(2) A 100-hour standardized Department-approved administrator training course.

(3) A Department-approved competency-based training test with a passing score.

(4) Paragraphs (1), (2) and (3) do not apply to an administrator hired or promoted prior to October 24, 2005.

(b) The standardized Department-approved administrator training course specified in subsection (a)(2) shall include the following:

(1) Fire prevention and emergency preparedness.

(2) Medication procedures, medication effects and side effects, universal precautions and personal hygiene.

(3) Certification in CPR and obstructed airway techniques and training in first aid.

(4) Personal care services.

(5) Local, State and Federal laws and regulations pertaining to the operation of a home.

(6) Nutrition, food handling and sanitation.

(7) Recreation.

(8) Care for residents with mental illness.

(9) Resident rights.

(10) Care for residents with dementia, cognitive impairments and other special needs.

(11) Care for residents with mental retardation.

(12) Community resources, social services and activities in the community.

(13) Staff supervision and staff person training including developing orientation and training guidelines for staff.

(14) Budgeting, financial recordkeeping and resident records including:

(i) Writing, completing and implementing initial assessments, annual assessments and support plans.

(ii) Resident-home contracts.

(15) Gerontology.

- (16) Abuse and neglect prevention and reporting.
- (17) Cultural competency.
- (18) The requirements of this chapter.

(c) An administrator shall have at least 24 hours of annual training relating to the job duties. The Department-approved administrator training course specified in subsection (a) fulfills the annual training requirement for the first year.

(d) Annual training shall be provided by Department-approved training sources listed in the Department's personal care home training resource directory or by an accredited college or university.

(e) An administrator who has successfully completed the training in subsections (a)—(d) shall provide written verification of successful completion to the Department's personal care home regional office.

(f) A record of training including the individual trained, date, source, content, length of each course and copies of certificates received shall be kept.

(g) A licensed nursing home administrator who is employed as an administrator prior to October 24, 2006, is exempt from the training and educational requirements of this chapter if the administrator continues to meet the requirements of the Department of State. A licensed nursing home administrator hired as an administrator after October 26, 2006, shall complete and pass the Department-approved personal care home administrator competency-based training test.

**§ 2600.65. Direct care staff person training and orientation.**

(a) Prior to or during the first work day, all direct care staff persons including ancillary staff persons, substitute personnel and volunteers shall have an orientation in general fire safety and emergency preparedness that includes the following:

- (1) Evacuation procedures.
- (2) Staff duties and responsibilities during fire drills, as well as during emergency evacuation, transportation and at an emergency location if applicable.
- (3) The designated meeting place outside the building or within the fire-safe area in the event of an actual fire.
- (4) Smoking safety procedures, the home's smoking policy and location of smoking areas, if applicable.
- (5) The location and use of fire extinguishers.
- (6) Smoke detectors and fire alarms.
- (7) Telephone use and notification of emergency services.

(b) Within 40 scheduled working hours, direct care staff persons, ancillary staff persons, substitute personnel and volunteers shall have an orientation that includes the following:

- (1) Resident rights.
- (2) Emergency medical plan.
- (3) Mandatory reporting of abuse and neglect under the Older Adult Protective Services Act (35 P. S. §§ 10225.101—10225.5102).
- (4) Reporting of reportable incidents and conditions.

(c) Ancillary staff persons shall have a general orientation to their specific job functions as it relates to their position prior to working in that capacity.

(d) Direct care staff persons hired after April 24, 2006, may not provide unsupervised ADL services until completion of the following:

(1) Training that includes a demonstration of job duties, followed by supervised practice.

(2) Successful completion and passing the Department-approved direct care training course and passing of the competency test.

(3) Initial direct care staff person training to include the following:

- (i) Safe management techniques.
- (ii) ADLs and IADLs.
- (iii) Personal hygiene.
- (iv) Care of residents with dementia, mental illness, cognitive impairments, mental retardation and other mental disabilities.
- (v) The normal aging-cognitive, psychological and functional abilities of individuals who are older.
- (vi) Implementation of the initial assessment, annual assessment and support plan.
- (vii) Nutrition, food handling and sanitation.
- (viii) Recreation, socialization, community resources, social services and activities in the community.
- (ix) Gerontology.
- (x) Staff person supervision, if applicable.
- (xi) Care and needs of residents with special emphasis on the residents being served in the home.
- (xii) Safety management and hazard prevention.
- (xiii) Universal precautions.
- (xiv) The requirements of this chapter.
- (xv) Infection control.
- (xvi) Care for individuals with mobility needs, such as prevention of decubitus ulcers, incontinence, malnutrition and dehydration, if applicable to the residents served in the home.

(e) Direct care staff persons shall have at least 12 hours of annual training relating to their job duties.

(1) Staff person orientation shall be included in the 12 hours of training for the first year of employment.

(2) On the job training for direct care staff persons may count for 6 out of the 12 training hours required annually.

(f) Training topics for the annual training for direct care staff persons shall include the following:

- (1) Medication self-administration training.
- (2) Instruction on meeting the needs of the residents as described in the preadmission screening form, assessment tool, medical evaluation and support plan.
- (3) Care for residents with dementia and cognitive impairments.
- (4) Infection control and general principles of cleanliness and hygiene and areas associated with immobility, such as prevention of decubitus ulcers, incontinence, malnutrition and dehydration.
- (5) Personal care service needs of the resident.
- (6) Safe management techniques

(g) Direct care staff persons shall have at least 12 hours of annual training relating to their job duties.

(1) Staff person orientation shall be included in the 12 hours of training for the first year of employment.

(2) On the job training for direct care staff persons may count for 6 out of the 12 training hours required annually.

(f) Training topics for the annual training for direct care staff persons shall include the following:

- (1) Medication self-administration training.
- (2) Instruction on meeting the needs of the residents as described in the preadmission screening form, assessment tool, medical evaluation and support plan.
- (3) Care for residents with dementia and cognitive impairments.
- (4) Infection control and general principles of cleanliness and hygiene and areas associated with immobility, such as prevention of decubitus ulcers, incontinence, malnutrition and dehydration.
- (5) Personal care service needs of the resident.
- (6) Safe management techniques

(7) Care for residents with mental illness or mental retardation, or both, if the population is served in the home.

(g) Direct care staff persons, ancillary staff persons, substitute personnel and regularly scheduled volunteers shall be trained annually in the following areas:

(1) Fire safety completed by a fire safety expert or by a staff person trained by a fire safety expert. Videos prepared by a fire safety expert are acceptable for the training if accompanied by an onsite staff person trained by a fire safety expert.

(2) Emergency preparedness procedures and recognition and response to crises and emergency situations.

(3) Resident rights.

(4) The Older Adult Protective Services Act (35 P. S. §§ 10225.101—10225.5102).

(5) Falls and accident prevention.

(6) New population groups that are being served at the home that were not previously served, if applicable.

(h) If a staff person has completed the required initial direct care staff person training within the past year as a direct care staff person at another home, the requirement for initial direct care staff person training in this section does not apply if the staff person provides written verification of completion of the training.

(i) A record of training including the staff person trained, date, source, content, length of each course and copies of any certificates received, shall be kept.

**§ 2600.66. Staff training plan.**

(a) A staff training plan shall be developed annually.

(b) The plan must include training aimed at improving the knowledge and skills of the home's direct care staff persons in carrying out their job responsibilities. The staff training plan must include the following:

(1) The name, position and duties of each direct care staff person.

(2) The required training courses for each staff person.

(3) The dates, times and locations of the scheduled training for each staff person for the upcoming year.

(c) Documentation of compliance with the staff training plan shall be kept.

**§ 2600.67. Training institution registration.**

(a) An institution and the course of study offered by an educational institution, association, professional society or organization for the purpose of educating and qualifying applicants for certification as personal care home administrators shall be registered and approved by the Department prior to offering the course of study.

(b) An application for registration of an institution and approval of a course of study shall be submitted to the Department on a form provided by the Department and include the following information:

(1) The full name, address, telephone number, facsimile number and electronic mail address of the prospective training provider, each instructor and the program coordinator.

(2) The training objectives, instructional materials, content and teaching methods to be used and the number of clock hours.

(3) The recommended class size.

(4) The attendance certification method.

(5) Proof that each course instructor is certified by the Department to conduct administrator training.

(6) The subject that each instructor will teach and documentation of the instructor's academic credentials, instructional experience and work experience to teach the subject.

(7) The location of the training site, which shall accommodate the number of anticipated participants.

(c) A request to amend a Department-approved course of study shall be submitted for the Department's review and approval prior to implementation of a change in the course of study.

(d) The training institution shall issue a training certificate to each participant who successfully completes the Department-approved course and passes the competency test. Each training certificate must indicate the participant's name, the name of the training institution, the date and location of the training and the number of clock hours completed for each training topic.

**§ 2600.68. Instructor approval.**

(a) Training for personal care home administrators provided by an individual who is not certified as an instructor by the Department will not be considered valid training.

(b) To receive the Department's certification as an approved instructor for personal care home administrators, an instructor shall successfully complete the Department's train-the-trainer course. The train-the-trainer course is designed to provide and reinforce basic training skills, including the roles and responsibilities of the trainer, training methodology, the use of instructional aids and recordkeeping.

(c) An instructor shall demonstrate competent instructional skills and knowledge of the applicable topic and meet the Department's qualifications for the topic being taught.

(d) An instructor is subject to unannounced monitoring by the Department while conducting training.

(e) The Department will establish approval standards that include the following:

(1) The mechanism to measure the quality of the training being offered.

(2) The criteria for selecting and evaluating instructors, subject matter and instructional materials.

(3) The criteria for evaluating requests to amend a course.

(4) The criteria for evaluating the effectiveness of each course.

(5) The instructor qualifications for each subject being taught.

(f) The Department may withdraw approval under the following conditions:

(1) Failure to follow the approved curriculum.

(2) Lack of trainer competency.

(3) A pattern of violations of this chapter by a home conducting the training.

**PHYSICAL SITE**

**§ 2600.81. Physical accommodations and equipment.**

(a) The home shall provide or arrange for physical site accommodations and equipment necessary to meet the

health and safety needs of a resident with a disability and to allow safe movement within the home and exiting from the home.

(b) Wheelchairs, walkers, prosthetic devices and other apparatus used by residents must be clean, in good repair and free of hazards.

**§ 2600.82. Poisons.**

(a) Poisonous materials shall be stored in their original, labeled containers.

(b) Poisonous materials shall be stored separately from food, food preparation surfaces and dining surfaces.

(c) Poisonous materials shall be kept locked and inaccessible to residents unless all of the residents living in the home are able to safely use or avoid poisonous materials.

**§ 2600.83. Temperature.**

(a) The indoor temperature, in areas used by the residents, must be at least 70°F when residents are present in the home.

(b) If a home does not provide air conditioning, fans shall be made available to residents when the indoor temperature exceeds 80°F.

**§ 2600.84. Heat sources.**

Heat sources, such as steam and hot heating pipes, water pipes, fixed space heaters, hot water heaters and radiators exceeding 120°F that are accessible to the resident must be equipped with protective guards or insulation to prevent the resident from coming in contact with the heat source.

**§ 2600.85. Sanitation.**

(a) Sanitary conditions shall be maintained.

(b) There may be no evidence of infestation of insects or rodents in the home.

(c) Trash shall be removed from the premises at least once a week.

(d) Trash in kitchens and bathrooms shall be kept in covered trash receptacles that prevent the penetration of insects and rodents.

(e) Trash outside the home shall be kept in covered receptacles that prevent the penetration of insects and rodents.

(f) For a home serving 9 or more residents that is not connected to a public sewer system there shall be a written sanitation approval for its sewage system by the sewage enforcement official of the municipality in which the home is located.

**§ 2600.86. Ventilation.**

(a) All areas of the home that are used by the resident shall be ventilated. Ventilation includes an operable window, air conditioner, fan or mechanical ventilation that ensures airflow.

(b) A bathroom that does not have an operable, outside window shall be equipped with an exhaust fan for ventilation.

**§ 2600.87. Lighting.**

The home's rooms, hallways, interior stairs, outside steps, outside doorways, porches, ramps, evacuation routes, outside walkways and fire escapes shall be lighted and marked to ensure that residents, including those with vision impairments, can safely move through the home and safely evacuate.

**§ 2600.88. Surfaces.**

(a) Floors, walls, ceilings, windows, doors and other surfaces must be clean, in good repair and free of hazards.

(b) The home may not use asbestos products for renovations or new construction.

**§ 2600.89. Water.**

(a) The home must have hot and cold water under pressure in each bathroom, kitchen and laundry area to accommodate the needs of the residents in the home.

(b) Hot water temperature in areas accessible to the resident may not exceed 120°F.

(c) A home that is not connected to a public water system shall have a coliform water test at least every 3 months, by a Department of Environmental Protection-certified laboratory, stating that the water is below maximum contaminant levels. A public water system is a system that provides water to the public for human consumption, which has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year.

(d) If the water is found to be above maximum contaminant levels, the home shall conduct remediation activity to reduce the level of contaminants to below the maximum contaminant level. During remediation activity, an alternate source of drinking water shall be provided to the residents.

(e) The home shall keep documentation of the laboratory certification, in addition to the results and corrections made to ensure safe water for drinking.

**§ 2600.90. Communication system.**

(a) The home shall have a working, noncoin operated, landline telephone that is accessible in emergencies and accessible to individuals with disabilities.

(b) For a home serving 9 or more residents, there shall be a system or method of communication that enables staff persons to immediately contact other staff persons in the home for assistance in an emergency.

**§ 2600.91. Emergency telephone numbers.**

Telephone numbers for the nearest hospital, police department, fire department, ambulance, poison control, local emergency management and personal care home complaint hotline shall be posted on or by each telephone with an outside line.

**§ 2600.92. Windows and screens.**

Windows, including windows in doors, must be in good repair and securely screened when doors or windows are open.

**§ 2600.93. Handrails and railings.**

(a) Each ramp, interior stairway and outside steps must have a well-secured handrail.

(b) Each porch must have a well-secured railing.

**§ 2600.94. Landings and stairs.**

(a) Interior and exterior doors that open directly into a stairway and are used for exit doors, resident areas and fire exits must have a landing, which is a minimum of 3 feet by 3 feet.

(b) Interior stairs, exterior steps and ramps must have nonskid surfaces.

**§ 2600.95. Furniture and equipment.**

Furniture and equipment must be in good repair, clean and free of hazards.

**§ 2600.96. First aid kit.**

(a) The home shall have a first aid kit that includes nonporous disposable gloves, antiseptic, adhesive bandages, gauze pads, thermometer, adhesive tape, scissors, breathing shield, eye coverings and tweezers.

(b) Staff persons shall know the location of the first aid kit.

(c) The first aid kit must be in a location that is easily accessible to staff persons.

**§ 2600.97. Elevators and stair glides.**

Each elevator and stair glide must have a certificate of operation from the Department of Labor and Industry or the appropriate local building authority in accordance with 34 Pa. Code Chapter 405 (relating to elevators and other lifting devices).

**§ 2600.98. Indoor activity space.**

(a) The home shall have indoor activity space for activities such as reading, recreation and group activities.

(b) The home shall have at least one furnished living room or lounge area for residents, their families and visitors. The combined living room or lounge areas shall accommodate all residents at one time. These rooms or areas shall contain tables, chairs and lighting to accommodate the residents, their families and visitors.

(c) The home shall have a working television and radio available to residents in a living room or lounge area.

**§ 2600.99. Recreation space.**

The home shall provide regular access to outdoor and indoor recreation space and recreational items, such as books, newspapers, magazines, puzzles, games, cards and crafts.

**§ 2600.100. Exterior conditions.**

(a) The exterior of the building and the building grounds or yard must be in good repair and free of hazards.

(b) The home shall ensure that ice, snow and obstructions are removed from outside walkways, ramps, steps, recreational areas and exterior fire escapes.

**§ 2600.101. Resident bedrooms.**

(a) Each single bedroom must have at least 80 square feet of floor space measured wall to wall, including space occupied by furniture.

(b) Each shared bedroom must have at least 60 square feet of floor space per resident measured wall to wall, including space occupied by furniture.

(c) Each bedroom for one or more residents with a mobility need must have at least 100 square feet per resident, to allow for easy passage between beds and other furniture, and for comfortable use of a resident's assistive devices, including wheelchairs, walkers, special furniture or oxygen equipment. This requirement does not apply if there is a medical order from the attending physician that states the resident can maneuver without the necessity of the additional space. A legal entity with a personal care home license for the home as of October 24, 2005, that has one or more bedrooms serving a resident with physical mobility needs as of October 24, 2005, shall be exempt from the requirements specified in this subsection for the bedroom. If a bedroom is exempt in accord-

ance with this subsection, additional square footage may be required sufficient to accommodate the assistive devices of the resident with mobility needs.

(d) No more than four residents may share a bedroom.

(e) Ceiling height in each bedroom must be an average of at least 7 feet.

(f) Each bedroom must have a window with direct exposure to natural light.

(g) A resident's bedroom shall be used only by the occupying resident and not for activities common to other residents.

(h) A resident shall be able to access toilet, hand washing and bathing facilities without having to pass through another resident's bedroom.

(i) A resident shall have access to his bedroom at all times.

(j) Each resident shall have the following in the bedroom:

(1) A bed with a solid foundation and fire retardant mattress that is in good repair, clean and supports the resident. A legal entity with a personal care home license for the home as of October 24, 2005, shall be exempt from the requirement for a fire retardant mattress.

(2) A chair for each resident that meets the resident's needs.

(3) Pillows, bed linens and blankets that are clean and in good repair.

(4) A storage area for clothing that includes a chest of drawers and a closet or wardrobe space with clothing racks or shelves accessible to the resident.

(5) A bedside table or a shelf.

(6) A mirror.

(7) An operable lamp or other source of lighting that can be turned on at bedside.

(8) If a resident shares a bedroom with other residents, the items specified in paragraphs (4)—(7) may be shared with one other resident.

(k) Cots and portable beds are prohibited.

(l) Bunk beds or other raised beds that require residents to climb steps or ladders to get into or out of bed are prohibited.

(m) A bedroom may not be used as an exit from or used as a passageway to another part of the home unless in an emergency situation.

(n) A resident may not be required to share a bedroom with an individual of the opposite sex.

(o) The bedrooms must have walls, floors and ceilings, which are finished, clean and in good repair.

(p) There must be doors on the bedrooms.

(q) Space for storage of personal property shall be provided in a dry, protected area.

(r) There must be drapes, shades, curtains, blinds or shutters on the bedroom windows. Window coverings must be clean, in good repair, provide privacy and cover the entire window when drawn.

**§ 2600.102. Bathrooms.**

(a) There shall be at least one functioning flush toilet for every six or fewer users, including residents, staff persons and household members.

(b) There shall be at least one sink and wall mirror for every six or fewer users including residents, staff persons and household members.

(c) There shall be at least one bathtub or shower for every ten or fewer users, including residents, staff persons and household members.

(d) Toilet and bath areas must have grab bars, hand rails or assist bars. Bathtubs and showers must have slip-resistant surfaces.

(e) Privacy shall be provided for toilets, showers and bathtubs by partitions or doors.

(f) An individual towel, washcloth and soap shall be provided for each resident.

(g) Individual toiletry items including toothpaste, toothbrush, shampoo, deodorant, comb and hairbrush shall be made available to residents who are not recipients of SSI. If the home charges for these items, the charges shall be indicated in the resident-home contract. Availability of toiletry items for residents who are recipients of SSI is specified in § 2600.27(d)(1) (relating to SSI recipients).

(h) Toilet paper shall be provided for every toilet.

(i) A dispenser with soap shall be provided within reach of each bathroom sink. Bar soap is not permitted unless there is a separate bar clearly labeled for each resident who shares a bathroom.

(j) Towels and washcloths shall be in the possession of the resident in the resident's living space unless the resident has access to the home's linen supply.

(k) Use of a common towel is prohibited.

(l) Shelves or hooks for the resident's towel and clothing shall be provided.

(m) A legal entity with a personal care home license for the home as of October 24, 2005, shall be exempt from the requirements specified in subsection (c). If a home is exempt in accordance with this subsection, there shall be at least one bathtub or shower for every 15 or fewer users.

#### § 2600.103. Food service.

(a) A home shall have access on the grounds to an operable kitchen with a refrigerator, sink, stove, oven, cooking equipment and cabinets or shelves for storage. If the kitchen is not in the home, the home shall have a kitchen area with a refrigerator, cooking equipment, a sink and food storage space.

(b) Kitchen surfaces must be of a nonporous material and cleaned and sanitized after each meal.

(c) Food shall be protected from contamination while being stored, prepared, transported and served.

(d) Food shall be stored off the floor.

(e) Food served and returned from an individual's plate may not be served again or used in the preparation of other dishes. Leftover food shall be labeled and dated.

(f) Food requiring refrigeration shall be stored at or below 40°F. Frozen food shall be kept at or below 0°F. Thermometers are required in refrigerators and freezers.

(g) Food shall be stored in closed or sealed containers.

(h) Food shall be thawed either in the refrigerator, microwave, under cool water or as part of the cooking process.

(i) Outdated or spoiled food or dented cans may not be used.

(j) Eating, drinking and cooking utensils shall be washed, rinsed and sanitized after each use by a method specified in 7 Pa. Code Chapter 46, Subchapter D (relating to equipment, utensils and linen).

#### § 2600.104. Dining room.

(a) A dining room area shall be equipped with tables and chairs and able to accommodate the maximum number of residents scheduled for meals at any one time.

(b) Dishes, glassware and utensils shall be provided for eating, drinking, preparing and serving food. These utensils must be clean, and free of chips and cracks. Plastic and paper plates, utensils and cups for meals may not be used on a regular basis.

(c) Condiments shall be available at the dining table.

(d) Adaptive eating equipment or utensils shall be available, if needed, to assist residents in eating at the table.

(e) Breakfast, midday and evening meals shall be served to residents in a dining room except in the following situations:

(1) Service in the resident's room shall be available at no additional charge when the resident is unable to come to the dining room due to illness.

(2) When room service is available in a home, a resident may choose to have a meal served in the resident's room. This service shall be provided at the resident's request and may not replace daily meals in a dining room.

#### § 2600.105. Laundry.

(a) Laundry service for bed linens, towels and personal clothing shall be provided by the home, at no additional charge, to residents who are recipients of or eligible applicants for SSI benefits. Laundry service does not include dry cleaning.

(b) Laundry service for bed linens, towels and personal clothing for the residents who are not recipients of SSI shall be provided by the home unless otherwise indicated in the resident-home contract.

(c) The supply of bed linens and towels shall be sufficient to ensure a complete change of bed linen and towels at least once per week.

(d) Bed linens and towels shall be changed at least once every week and more often as needed to maintain sanitary conditions.

(e) Clean linens and towels shall be stored in an area separate from soiled linen and clothing.

(f) Measures shall be implemented to ensure that residents' clothing are not lost or misplaced during laundering or cleaning. The resident's clean clothing shall be returned to the resident within 24 hours after laundering.

(g) To reduce the risks of fire hazards, lint shall be removed from the lint trap and drum of clothes dryers after each use. Lint shall be cleaned from the vent duct and internal and external ductwork of clothes dryers according to the manufacturer's instructions.

#### § 2600.106. Swimming areas.

If a home operates a swimming area, the following requirements apply:

(1) Swimming areas shall be operated in accordance with applicable laws and regulations.



(2) Written policy and procedures to protect the health, safety and well-being of the residents shall be developed and implemented.

**§ 2600.107. Emergency preparedness.**

(a) The administrator shall have a copy and be familiar with the emergency preparedness plan for the municipality in which the home is located.

(b) The home shall have written emergency procedures that include the following:

(1) Contact information for each resident's designated person.

(2) The home's plan to provide the emergency medical information for each resident that ensures confidentiality.

(3) Contact telephone numbers of local and State emergency management agencies and local resources for housing and emergency care of residents.

(4) Means of transportation in the event that relocation is required.

(5) Duties and responsibilities of staff persons during evacuation, transportation and at the emergency location. These duties and responsibilities shall be specific to each resident's emergency needs.

(6) Alternate means of meeting resident needs in the event of a utility outage.

(c) The home shall maintain at least a 3-day supply of nonperishable food and drinking water for residents.

(d) The written emergency procedures shall be reviewed, updated and submitted annually to the local emergency management agency.

**§ 2600.108. Firearms and weapons.**

Firearms, weapons and ammunition shall be permitted on the licensed premises of a home only when the following conditions are met:

(1) Firearms and weapons shall be contained in a locked cabinet located in a place other than the residents' room or in a common living area.

(2) Ammunition shall be contained in a locked area separate from firearms and weapons, and located in a place other than the residents' room or in a common living area.

(3) The key to the locked cabinet containing the firearms, weapons and ammunition shall be in the possession of the administrator or a designee.

(4) The administrator or a designee shall be the only individual permitted to open the locked cabinet containing the firearms and weapons and the locked area containing the ammunition.

(5) If a firearm, weapon or ammunition is the property of a resident, there shall be a written policy and procedures regarding the safety, access and use of firearms, weapons and ammunition. A resident may not take a firearm, weapon or ammunition out of the locked cabinet into living areas.

**§ 2600.109. Pets.**

(a) The home rules shall specify whether the home permits pets on the premises.

(b) Cats and dogs present at the home shall have a current rabies vaccination. A current certificate of rabies vaccination from a licensed veterinarian shall be kept.

(c) Pets that are accessible to the residents shall be in good health and nonaggressive to the residents.

(d) If a home has additional charges for pets, the charges shall be included in the resident-home contract.

**FIRE SAFETY**

**§ 2600.121. Unobstructed egress.**

(a) Stairways, hallways, doorways, passageways and egress routes from rooms and from the building must be unlocked and unobstructed.

(b) Doors used for egress routes from rooms and from the building may not be equipped with key-locking devices, electronic card operated systems or other devices which prevent immediate egress of residents from the building, unless the home has written approval or a variance from the Department of Labor and Industry, the Department of Health or the appropriate local building authority.

**§ 2600.122. Exits.**

Unless otherwise regulated by the Department of Labor and Industry, the Department of Health or the appropriate local building authority, all buildings must have at least two independent and accessible exits from every floor, arranged to reduce the possibility that both will be blocked in an emergency situation.

**§ 2600.123. Emergency evacuation.**

(a) Exit doors must be equipped so that they can be easily opened by residents from the inside without the use of a key or other manual device that can be removed, misplaced or lost.

(b) Copies of the emergency procedures as specified in § 2600.107 (relating to emergency preparedness) shall be posted in a conspicuous and public place in the home and a copy shall be kept.

(c) For a home serving nine or more residents, an emergency evacuation diagram of each floor showing corridors, line of travel to exit doors and location of the fire extinguishers and pull signals shall be posted in a conspicuous and public place on each floor.

(d) If the home serves one or more residents with mobility needs above or below grade level of the home, there shall be a fire-safe area, as specified in writing within the past year by a fire safety expert, on the same floor as each resident with mobility needs.

**§ 2600.124. Notification of local fire officials.**

The home shall notify the local fire department in writing of the address of the home, location of the bedrooms and the assistance needed to evacuate in an emergency. Documentation of notification shall be kept.

**§ 2600.125. Flammable and combustible materials.**

(a) Combustible and flammable materials may not be located near heat sources or hot water heaters.

(b) Combustible materials shall be inaccessible to residents.

**§ 2600.126. Furnaces.**

(a) A professional furnace cleaning company or trained maintenance staff person shall inspect furnaces at least annually. Documentation of the inspection shall be kept.

(b) Furnaces shall be cleaned according to the manufacturer's instructions. Documentation of the cleaning shall be kept.

**§ 2600.127. Space heaters.**

(a) Portable space heaters are prohibited.

(b) Nonportable space heaters must be well vented and installed with permanent connections and protectors.

**§ 2600.128. Supplemental heating sources.**

(a) The use of kerosene burning heaters is prohibited.

(b) Wood and coal burning stoves shall be used only if a local fire department or other municipal fire safety authority, professional cleaning company or trained maintenance staff person inspects and approves them annually. Wood and coal burning stoves that are used as a regular heating source shall be cleaned every year according to the manufacturer's instructions. Documentation of wood and coal burning stove inspections and cleanings shall be kept.

(c) Wood and coal burning stoves must be securely screened or equipped with protective guards while in use.

**§ 2600.129. Fireplaces.**

(a) A fireplace must be securely screened or equipped with protective guards while in use.

(b) A fireplace chimney and flue shall be cleaned when there is an accumulation of creosote. Written documentation of the cleaning shall be kept.

**§ 2600.130. Smoke detectors and fire alarms.**

(a) There shall be an operable automatic smoke detector located within 15 feet of each bedroom door.

(b) The smoke detectors specified in subsection (a) shall be located in hallways.

(c) Smoke detectors and fire alarms must be of a type approved by the Department of Labor and Industry, the appropriate local building authority or local fire safety expert, or listed by Underwriters Laboratories.

(d) If the home serves nine or more residents, there shall be at least one smoke detector on each floor interconnected and audible throughout the home or an automatic fire alarm system that is interconnected and audible throughout the home.

(e) If one or more residents or staff persons are not able to hear the smoke detector or fire alarm system, a signaling device approved by a fire safety expert shall be used and tested so that each resident and staff person with a hearing impairment will be alerted in the event of a fire.

(f) Smoke detectors and fire alarms shall be tested for operability at least once per month. A written record of the monthly testing shall be kept.

(g) If a smoke detector or fire alarm becomes inoperative, repair shall be completed within 48 hours of the time the detector or alarm was found to be inoperative.

(h) The home's emergency procedures shall indicate the procedures that will be immediately implemented until the smoke detector or fire alarms are operable.

(i) In homes housing five or more residents with mobility needs, the fire alarm system shall be directly connected to the local fire department or 24-hour monitoring service approved by the local fire department, if this service is available in the community.

**§ 2600.131. Fire extinguishers.**

(a) There shall be at least one operable fire extinguisher with a minimum 2-A rating for each floor, including the basement and attic.

(b) If the indoor floor area on a floor including the basement or attic is more than 3,000 square feet, there

shall be an additional fire extinguisher with a minimum 2-A rating for each additional 3,000 square feet of indoor floor space.

(c) A fire extinguisher with a minimum 2A-10BC rating shall be located in each kitchen. The kitchen extinguisher must meet the requirements for one floor as required in subsection (a).

(d) Fire extinguishers must be listed by Underwriters Laboratories or approved by Factory Mutual Systems.

(e) Fire extinguishers shall be accessible to staff persons. Fire extinguishers shall be kept locked if access to the extinguisher by a resident could cause a safety risk to the resident. If fire extinguishers are kept locked, each staff person shall be able to immediately unlock the fire extinguisher in the event of a fire emergency.

(f) Fire extinguishers shall be inspected and approved annually by a fire safety expert. The date of the inspection shall be on the extinguisher.

**§ 2600.132. Fire drills.**

(a) An unannounced fire drill shall be held at least once a month.

(b) A fire safety inspection and fire drill conducted by a fire safety expert shall be completed annually. Documentation of this fire drill and fire safety inspection shall be kept.

(c) A written fire drill record must include the date, time, the amount of time it took for evacuation, the exit route used, the number of residents in the home at the time of the drill, the number of residents evacuated, the number of staff persons participating, problems encountered and whether the fire alarm or smoke detector was operative.

(d) Residents shall be able to evacuate the entire building to a public thoroughfare, or to a fire-safe area designated in writing within the past year by a fire safety expert within the period of time specified in writing within the past year by a fire safety expert. For purposes of this subsection, the fire safety expert may not be a staff person of the home.

(e) A fire drill shall be held during sleeping hours once every 6 months.

(f) Alternate exit routes shall be used during fire drills.

(g) Fire drills shall be held on different days of the week, at different times of the day and night, not routinely held when additional staff persons are present and not routinely held at times when resident attendance is low.

(h) Residents shall evacuate to a designated meeting place away from the building or within the fire-safe area during each fire drill.

(i) A fire alarm or smoke detector shall be set off during each fire drill.

(j) Elevators may not be used during a fire drill or a fire.

**§ 2600.133. Exit signs.**

The following requirements apply for a home serving nine or more residents:

(1) Signs bearing the word "EXIT" in plain legible letters shall be placed at all exits.

(2) If the exit or way to reach the exit is not immediately visible, access to exits shall be marked with readily visible signs indicating the direction to travel.

(3) Exit sign letters must be at least 6 inches in height with the principal strokes of letters at least 3/4 inch wide.

**RESIDENT HEALTH**

**§ 2600.141. Resident medical evaluation and health care.**

(a) A resident shall have a medical evaluation by a physician, physician's assistant or certified registered nurse practitioner documented on a form specified by the Department, within 60 days prior to admission or within 30 days after admission. The evaluation must include the following:

- (1) A general physical examination by a physician, physician's assistant or nurse practitioner.
- (2) Medical diagnosis including physical or mental disabilities of the resident, if any.
- (3) Medical information pertinent to diagnosis and treatment in case of an emergency.
- (4) Special health or dietary needs of the resident.
- (5) Allergies.
- (6) Immunization history.
- (7) Medication regimen, contraindicated medications, medication side effects and the ability to self-administer medications.
- (8) Body positioning and movement stimulation for residents, if appropriate.
- (9) Health status.
- (10) Mobility assessment, updated annually or at the Department's request.

(b) A resident shall have a medical evaluation:

- (1) At least annually.
- (2) If the medical condition of the resident changes prior to the annual medical evaluation.

**§ 2600.142. Assistance with health care.**

(a) The home shall assist the resident to secure medical care if a resident's health status declines. The home shall document the resident's need for the medical care, including updating the resident's assessment and support plan.

(b) If a resident refuses routine medical or dental examination or treatment, the refusal and the continued attempts to educate and inform the resident about the need for health care shall be documented in the resident's record.

(c) If a resident has a serious medical or dental condition, reasonable efforts shall be made to obtain consent for treatment from the resident or the resident's designated person.

(d) The home shall assist the resident to secure preventative medical, dental, vision and behavioral health care as requested by a physician, physician's assistant or certified registered nurse practitioner.

**§ 2600.143. Emergency medical plan.**

(a) The home shall have a written emergency medical plan that includes the following:

- (1) The hospital or source of health care that will be used in an emergency. This shall be the resident's choice, if possible.
- (2) Emergency transportation to be used.
- (3) An emergency-staffing plan.

(b) The following current emergency medical and health information shall be available at all times for each resident and shall accompany the resident when the resident needs emergency medical attention:

- (1) The resident's name and birth date.
- (2) The resident's Social Security number.
- (3) The resident's medical diagnosis.
- (4) The resident's physician's name and telephone number.
- (5) Current medication, including the dosage and frequency.
- (6) A list of allergies.
- (7) Other relevant medical conditions.
- (8) Insurance or third party payer and identification number.
- (9) The power of attorney for health care or health care proxy, if applicable.
- (10) The resident's designated person with current address and telephone number.
- (11) Personal information and related instructions regarding advance directives, do not resuscitate orders or organ donation, if applicable.

**§ 2600.144. Use of tobacco.**

(a) A home may permit smoking tobacco in a designated smoking room of the home.

(b) The home rules shall specify whether the home is designated as smoking or nonsmoking.

(c) A home that permits smoking inside or outside of the home shall develop and implement written fire safety policy and procedures that include the following:

- (1) Proper safeguards inside and outside of the home to prevent fire hazards involved in smoking, including providing fireproof receptacles and ashtrays, direct outside ventilation, no interior ventilation from the smoking room through other parts of the home, extinguishing procedures, fire resistant furniture both inside and outside the home and fire extinguishers in the smoking rooms.
- (2) Location of a smoking room or outside smoking area a safe distance from heat sources, hot water heaters, combustible or flammable materials and away from common walkways and exits.
- (3) Prohibition of the use of tobacco during transportation by the home.
- (d) Smoking outside of the smoking room is prohibited.

**NUTRITION**

**§ 2600.161. Nutritional adequacy.**

(a) Meals shall be offered that meet the recommended dietary allowances established by the United States Department of Agriculture.

(b) At least three nutritionally well-balanced meals shall be offered daily to the resident. Each meal shall include an alternative food and drink item from which the resident may choose.

(c) Additional portions of meals and beverages at meal-times shall be available for the resident.

(d) A resident's special dietary needs as prescribed by a physician, physician's assistant, certified registered nurse

practitioner or dietitian shall be met. Documentation of the resident's special dietary needs shall be kept in the resident's record.

(e) Dietary alternatives shall be available for a resident who has special health needs or religious beliefs regarding dietary restrictions.

(f) Drinking water shall be available to the residents at all times.

**§ 2600.162. Meals.**

(a) There may not be more than 15 hours between the evening meal and the first meal of the next day. There may not be more than 6 hours between breakfast and lunch, and between lunch and supper. This requirement does not apply if a resident's physician has prescribed otherwise.

(b) When a resident misses a meal, food adequate to meet daily nutritional requirements shall be available and offered to the resident.

(c) Menus, stating the specific food being served at each meal, shall be prepared for 1 week in advance and shall be followed. Weekly menus shall be posted 1 week in advance in a conspicuous and public place in the home.

(d) Past menus of meals that were served, including changes, shall be kept for at least 1 month.

(e) A change to a menu shall be posted in a conspicuous and public place in the home and shall be accessible to a resident in advance of the meal. Meal substitutions shall be made in accordance with § 2600.161 (relating to nutritional adequacy).

**§ 2600.163. Personal hygiene for food service workers.**

(a) Staff persons, volunteers and residents involved in the storage, preparation, serving and distributing of food shall wash their hands with hot water and soap prior to working in the kitchen areas and after using the bathroom.

(b) Staff persons, volunteers and residents shall follow sanitary practices while working in the kitchen areas.

(c) Staff persons, volunteers and residents involved with the storage, preparation, serving and distributing of food shall be in good health.

(d) Staff persons, volunteers and residents who have a discharging or infected wound, sore, lesion on hands, arms or any exposed portion of their body may not work in the kitchen areas in any capacity.

**§ 2600.164. Withholding or forcing of food prohibited.**

(a) A home may not withhold meals, beverages, snacks or desserts as punishment. Food and beverages may be withheld in accordance with prescribed medical or dental procedures.

(b) A resident may not be forced to eat food.

(c) If a resident refuses to eat or drink continuously during a 24-hour period, the resident's primary care physician and the resident's designated person shall be immediately notified.

(d) If a resident has a cognitive impairment that affects the resident's ability to consume adequate amounts of food and water, a staff person shall encourage and remind the resident to eat and drink.

**TRANSPORTATION**

**§ 2600.171. Transportation.**

(a) A home may not be required to provide transportation.

(b) The following requirements apply whenever staff persons or volunteers of the home provide transportation for the resident:

(1) The occupants of the vehicle shall be in an appropriate safety restraint at all times the vehicle is in motion.

(2) The driver of a vehicle shall be 18 years of age or older and possess a valid driver's license.

(3) The driver of the home vehicle cannot be a resident.

(4) At least one staff member transporting or accompanying the residents shall have completed the initial new hire direct care staff person training as specified in § 2600.65 (relating to direct care staff training and orientation).

(5) The vehicle must have a first aid kit with the contents as specified in § 2600.96 (relating to first aid kit).

(6) During vehicle operations, the driver may only use a hands-free cellular telephone.

(7) Transportation shall include, when necessary, an assistant to the driver who assists the driver to escort residents in and out of the home and provides assistance during the trip.

(c) The home shall maintain current copies of the following documentation for each of the home's vehicles used to transport residents:

(1) Vehicle registration.

(2) Valid driver's license for vehicle operator.

(3) Vehicle insurance.

(4) Current inspection.

(5) Commercial driver's license for vehicle operator if applicable.

(d) The home shall assist a resident with the coordination of transportation to and from medical appointments, if requested by the resident, or if indicated in the resident's support plan.

**MEDICATIONS**

**§ 2600.181. Self-administration.**

(a) A home shall provide residents with assistance, as needed, with medication prescribed for the resident's self-administration. This assistance includes helping the resident to remember the schedule for taking the medication, storing the medication in a secure place and offering the resident the medication at the prescribed times.

(b) If assistance includes helping the resident to remember the schedule for taking the medication, the resident shall be reminded of the prescribed schedule.

(c) The resident's assessment shall identify if the resident is able to self-administer medications as specified in § 2600.227(e) (relating to development of the support plan). A resident who desires to self-administer medications shall be assessed by a physician, physician's assistant or certified registered nurse practitioner regarding the ability to self-administer and the need for medication reminders.

(d) If the resident does not need assistance with medication, medication may be stored in a resident's room for self-administration. Medications stored in the resident's room shall be kept locked in a safe and secure location to protect against contamination, spillage and theft.

(e) To be considered capable to self-administer medications, a resident shall:

- (1) Be able to recognize and distinguish his medication.
- (2) Know how much medication is to be taken.
- (3) Know when medication is to be taken.

(f) The resident's record shall include a current list of prescription, CAM and OTC medications for each resident who is self-administering his medication.

**§ 2600.182. Medication administration.**

(a) A home may provide medication administration services for a resident who is assessed to need medication administration services in accordance with § 2600.181 (relating to self-administration) and for a resident who chooses not to self-administer medications. If a home does not provide medication administration services, the resident shall be referred to an appropriate assessment agency.

(b) Prescription medication that is not self-administered by a resident shall be administered by one of the following:

- (1) A physician, licensed dentist, licensed physician's assistant, registered nurse, certified registered nurse practitioner, licensed practical nurse or licensed paramedic.
- (2) A graduate of an approved nursing program functioning under the direct supervision of a professional nurse who is present in the home.

(3) A student nurse of an approved nursing program functioning under the direct supervision of a member of the nursing school faculty who is present in the home.

(4) A staff person who has completed the medication administration training as specified in § 2600.190 (relating to medication administration training) for the administration of oral; topical; eye, nose and ear drop prescription medications; insulin injections and epinephrine injections for insect bites or other allergies.

(c) Medication administration includes the following activities, based on the needs of the resident:

- (1) Identify the correct resident.
- (2) If indicated by the prescriber's orders, measure vital signs and administer medications accordingly.
- (3) Remove the medication from the original container.
- (4) Crush or split the medication as ordered by the prescriber.
- (5) Place the medication in a medication cup or other appropriate container, or in the resident's hand.
- (6) Place the medication in the resident's hand, mouth or other route as ordered by the prescriber, in accordance with the limitations specified in subsection (b)(4).
- (7) Complete documentation in accordance with § 2600.187 (relating to medication records).

**§ 2600.183. Storage and disposal of medications and medical supplies.**

(a) Prescription medications, OTC medications and CAM shall be kept in their original labeled containers and may not be removed more than 2 hours in advance of

the scheduled administration. Assistance with insulin and epinephrine injections and sterile liquids shall be provided immediately upon removal of the medication from its container.

(b) Prescription medications, OTC medications, CAM and syringes shall be kept in an area or container that is locked. This includes medications and syringes kept in the resident's room.

(c) Prescription medications, OTC medications and CAM stored in a refrigerator shall be kept in an area or container that is locked.

(d) Only current prescription, OTC, sample and CAM for individuals living in the home may be kept in the home.

(e) Prescription medications, OTC medications and CAM shall be stored in an organized manner under proper conditions of sanitation, temperature, moisture and light and in accordance with the manufacturer's instructions.

(f) Prescription medications, OTC medications and CAM that are discontinued, expired or for residents who are no longer served at the home shall be destroyed in a safe manner according to the Department of Environmental Protection and Federal and State regulations. When a resident permanently leaves the home, the resident's medications shall be given to the resident, the designated person, if any, or the person or entity taking responsibility for the new placement on the day of departure from the home.

(g) Subsections (a) and (e) do not apply to a resident who self-administers medication and stores the medication in his room.

**§ 2600.184. Labeling of medications.**

(a) The original container for prescription medications shall be labeled with a pharmacy label that includes the following:

- (1) The resident's name.
- (2) The name of the medication.
- (3) The date the prescription was issued.
- (4) The prescribed dosage and instructions for administration.
- (5) The name and title of the prescriber.

(b) If the OTC medications and CAM belong to the resident, they shall be identified with the resident's name.

(c) Sample prescription medications shall have written instructions from the prescriber that include the components specified in subsection (a).

**§ 2600.185. Accountability of medication and controlled substances.**

(a) The home shall develop and implement procedures for the safe storage, access, security, distribution and use of medications and medical equipment by trained staff persons.

(b) At a minimum, the procedures must include:

- (1) Documentation of the receipt of controlled substances and prescription medications.
- (2) A process to investigate and account for missing medications and medication errors.
- (3) Limited access to medication storage areas.

(4) Documentation of the administration of prescription medications, OTC medications and CAM for residents who receive medication administration services or assistance with self-administration. This requirement does not apply to a resident who self-administers medication without the assistance of a staff person and stores the medication in his room.

**§ 2600.186. Prescription medications.**

(a) Each prescription medication must be prescribed in writing by an authorized prescriber. Prescription orders shall be kept current.

(b) Prescription medications shall be used only by the resident for whom the prescription was prescribed.

(c) Changes in medication may only be made in writing by the prescriber, or in the case of an emergency, an alternate prescriber, except for circumstances in which oral orders may be accepted by nurses in accordance with regulations of the Department of State. The resident's medication record shall be updated as soon as the home receives written notice of the change.

**§ 2600.187. Medication records.**

(a) A medication record shall be kept to include the following for each resident for whom medications are administered:

- (1) Resident's name.
- (2) Drug allergies.
- (3) Name of medication.
- (4) Strength.
- (5) Dosage form.
- (6) Dose.
- (7) Route of administration.
- (8) Frequency of administration.
- (9) Administration times.
- (10) Duration of therapy, if applicable.
- (11) Special precautions, if applicable.
- (12) Diagnosis or purpose for the medication, including pro re nata (PRN).
- (13) Date and time of medication administration.
- (14) Name and initials of the staff person administering the medication.

(b) The information in subsection (a)(13) and (14) shall be recorded at the time the medication is administered.

(c) If a resident refuses to take a prescribed medication, the refusal shall be documented in the resident's record and on the medication record. The refusal shall be reported to the prescriber within 24 hours, unless otherwise instructed by the prescriber. Subsequent refusals to take a prescribed medication shall be reported as required by the prescriber.

(d) The home shall follow the directions of the prescriber.

**§ 2600.188. Medication errors.**

- (a) Medication errors include the following:
- (1) Failure to administer a medication.
  - (2) Administration of the wrong medication.
  - (3) Administration of the wrong amount of medication.
  - (4) Failure to administer a medication at the prescribed time.

(5) Administration to the wrong resident.

(6) Administration through the wrong route.

(b) A medication error shall be immediately reported to the resident, the resident's designated person and the prescriber.

(c) Documentation of medication errors and the prescriber's response shall be kept in the resident's record.

(d) There shall be a system in place to identify and document medication errors and the home's pattern of error.

(e) There shall be documentation of the follow-up action that was taken to prevent future medication errors.

**§ 2600.189. Adverse reaction.**

(a) If a resident has a suspected adverse reaction to a medication, the home shall immediately consult a physician or seek emergency medical treatment. The resident's designated person shall be notified, if applicable.

(b) The home shall document adverse reactions, the prescriber's response and any action taken in the resident's record.

**§ 2600.190. Medication administration training.**

(a) A staff person who has successfully completed a Department-approved medications administration course that includes the passing of the Department's performance-based competency test within the past 2 years may administer oral; topical; eye, nose and ear drop prescription medications and epinephrine injections for insect bites or other allergies.

(b) A staff person is permitted to administer insulin injections following successful completion of a Department-approved medications administration course that includes the passing of a written performance-based competency test within the past 2 years, as well as successful completion of a Department-approved diabetes patient education program within the past 12 months.

(c) A record of the training shall be kept including the staff person trained, the date, source, name of trainer and documentation that the course was successfully completed.

**§ 2600.191. Resident education.**

The home shall educate the resident of the right to question or refuse a medication if the resident believes there may be a medication error. Documentation of this resident education shall be kept.

**SAFE MANAGEMENT TECHNIQUES**

**§ 2600.201. Safe management techniques.**

The home shall use positive interventions to modify or eliminate a behavior that endangers the resident himself or others. Positive interventions include improving communications, reinforcing appropriate behavior, redirection, conflict resolution, violence prevention, praise, deescalation techniques and alternative techniques or methods to identify and defuse potential emergency situations.

**§ 2600.202. Prohibitions.**

The following procedures are prohibited:

(1) Seclusion, defined as involuntary confinement of a resident in a room from which the resident is physically prevented from leaving, is prohibited. This does not include the admission of a resident in a secured dementia care unit in accordance with § 2600.231 (relating to admission).

(2) Aversive conditioning, defined as the application of startling, painful or noxious stimuli, is prohibited.

(3) Pressure point techniques, defined as the application of pain for the purpose of achieving compliance, is prohibited.

(4) A chemical restraint, defined as use of drugs or chemicals for the specific and exclusive purpose of controlling acute or episodic aggressive behavior, is prohibited. A chemical restraint does not include a drug ordered by a physician or dentist to treat the symptoms of a specific mental, emotional or behavioral condition, or as pretreatment prior to a medical or dental examination or treatment.

(5) A mechanical restraint, defined as a device that restricts the movement or function of a resident or portion of a resident's body, is prohibited. Mechanical restraints include geriatric chairs, handcuffs, anklets, wristlets, camisoles, helmet with fasteners, muffs and mitts with fasteners, poseys, waist straps, head straps, papoose boards, restraining sheets, chest restraints and other types of locked restraints. A mechanical restraint does not include a device used to provide support for the achievement of functional body position or proper balance that has been prescribed by a medical professional as long as the resident can easily remove the device.

(6) A manual restraint, defined as a hands-on physical means that restricts, immobilizes or reduces a resident's ability to move his arms, legs, head or other body parts freely, is prohibited. A manual restraint does not include prompting, escorting or guiding a resident to assist in the ADLs or IADLs.

**SERVICES**

**§ 2600.221. Activities program.**

(a) The administrator shall develop a program of activities designed to promote each resident's active involvement with other residents, the resident's family and the community.

(b) The program must provide social, physical, intellectual and recreational activities in a planned, coordinated and structured manner.

(c) A current weekly activity calendar shall be posted in a conspicuous and public place in the home.

**§ 2600.222. Community social services.**

Residents shall be encouraged and assisted in the access to and use of social services in the community which may benefit the resident, including a county mental health and mental retardation program, a drug and alcohol program, a senior citizens center, an area agency on aging or a home health care agency.

**§ 2600.223. Description of services.**

(a) The home shall have a current written description of services and activities that the home provides including the following:

(1) The scope and general description of the services and activities that the home provides.

(2) The criteria for admission and discharge.

(3) Specific services that the home does not provide, but will arrange or coordinate.

(b) The home shall develop written procedures for the delivery and management of services from admission to discharge.

**§ 2600.224. Preadmission screening.**

(a) A determination shall be made within 30 days prior to admission and documented on the Department's preadmission screening form that the needs of the resident can be met by the services provided by the home.

(b) An applicant whose personal care service needs cannot be met by the home shall be referred to a local appropriate assessment agency.

(c) The preadmission screening shall be completed by the administrator or designee. If the resident is referred by a State-operated facility, a county mental health and mental retardation program, a drug and alcohol program or an area agency on aging, a representative of the referral agent may complete the preadmission screening.

**§ 2600.225. Initial and annual assessment.**

(a) A resident shall have a written initial assessment that is documented on the Department's assessment form within 15 days of admission. The administrator or designee, or a human service agency may complete the initial assessment.

(b) A home may use its own assessment form if it includes the same information as the Department's assessment form.

(c) The resident shall have additional assessments as follows:

(1) Annually.

(2) If the condition of the resident significantly changes prior to the annual assessment.

(3) At the request of the Department upon cause to believe that an update is required.

(d) If the resident's physician or appropriate assessment agency determines that the resident requires a higher level of care, a plan for placement shall be made as soon as possible by the administrator in conjunction with the resident or designated person, or both.

**§ 2600.226. Mobility criteria.**

(a) The resident shall be assessed for mobility needs as part of the resident's assessment.

(b) If a resident is determined to have mobility needs as part of the initial or annual assessment, specific requirements relating to the care, health and safety of the resident shall be met immediately.

(c) The administrator shall notify the Department's personal care home regional office within 30 days after a resident with mobility needs is admitted to the home or the date when a resident develops mobility needs.

**§ 2600.227. Development of the support plan.**

(a) A resident requiring personal care services shall have a written support plan developed and implemented within 30 days of admission to the home. The support plan shall be documented on the Department's support plan form.

(b) A home may use its own support plan form if it includes the same information as the Department's support plan form.

(c) The support plan shall be revised within 30 days upon completion of the annual assessment or upon changes in the resident's needs as indicated on the current assessment.

(d) Each home shall document in the resident's support plan the medical, dental, vision, hearing, mental health or other behavioral care services that will be made

available to the resident, or referrals for the resident to outside services if the resident's physician, physician's assistant or certified registered nurse practitioner, determine the necessity of these services. This requirement does not require a home to pay for the cost of these medical and behavioral care services.

(e) The resident's support plan must document the ability of the resident to self-administer medications or the need for medication reminders or medication administration.

(f) A resident may participate in the development and implementation of the support plan. A resident may include a designated person in making decisions about services.

(g) Individuals who participate in the development of the support plan shall sign and date the support plan.

(h) If a resident or designated person is unable or chooses not to sign the support plan, a notation of inability or refusal to sign shall be documented.

(i) The support plan shall be accessible by direct care staff persons at all times.

(j) The home shall give a copy of the support plan to the resident and the resident's designated person upon request.

**§ 2600.228. Notification of termination.**

(a) At the resident's request, the home shall provide assistance in relocating to the resident's own home or to another residence that meets the needs of the resident.

(b) If the home initiates a discharge or transfer of a resident, or if the legal entity chooses to close the home, the home shall provide a 30-day advance written notice to the resident, the resident's designated person and the referral agent citing the reasons for the discharge or transfer. This shall be stipulated in the resident-home contract. A 30-day advance written notice is not required if a delay in discharge or transfer would jeopardize the health, safety or well-being of the resident or others in the home, as certified by a physician or the Department. This may occur when the resident needs psychiatric or long-term care or is abused in the home, or the Department initiates closure of the home.

(c) A home shall give the Department written notice of its intent to close the home, at least 60 days prior to the anticipated date of closing.

(d) A home may not require a resident to leave the home prior to 30 days following the resident's receipt of a written notice from the home regarding the intended closure of the home, except when the Department determines that removal of the resident at an earlier time is necessary for the protection of the health, safety and well-being of the resident.

(e) The date and reason for the discharge or transfer, and the destination of the resident, if known, shall be recorded in the resident record.

(f) If the legal entity chooses to voluntarily close the home or if the Department has initiated legal action to close the home, the Department working in conjunction with appropriate local authorities, will offer relocation assistance to the residents. Except in the case of an emergency, each resident may participate in planning the transfer, and shall have the right to choose among the available alternatives after an opportunity to visit the alternative homes. These procedures shall apply even if the resident is placed in a temporary living situation.

(g) Within 30 days of the home's closure, the legal entity shall return the license to the Department's personal care home regional office.

(h) The only grounds for discharge or transfer of a resident from a home are for the following conditions:

(1) If a resident is a danger to himself or others.

(2) If the legal entity chooses to voluntarily close the home, or a portion of the home.

(3) If a home determines that a resident's functional level has advanced or declined so that the resident's needs cannot be met in the home. If a resident or the resident's designated person disagrees with the home's decision to discharge or transfer, consultation with an appropriate assessment agency or the resident's physician shall be made to determine if the resident needs a higher level of care. A plan for other placement shall be made as soon as possible by the administrator in conjunction with the resident and the resident's designated person, if any. If assistance with relocation is needed, the administrator shall contact appropriate local agencies, such as the area agency on aging, county mental health/mental retardation program or drug and alcohol program, for assistance. The administrator shall also contact the Department's personal care home regional office.

(4) If meeting the resident's needs would require a fundamental alteration in the home's program or building site, or would create an undue financial or programmatic burden on the home.

(5) If the resident has failed to pay after reasonable documented efforts by the home to obtain payment.

(6) If closure of the home is initiated by the Department.

(7) Documented, repeated violation of the home rules.

**SECURED DEMENTIA CARE UNITS**

**§ 2600.231. Admission.**

(a) This section and §§ 2600.232—2600.239 apply to secured dementia care units. These provisions are in addition to the other provisions of this chapter. A secured dementia care unit is a home or portion of a home that provides specialized care and services for residents with Alzheimer's disease or other dementia.

(b) A resident shall have a medical evaluation by a physician, physician's assistant or certified registered nurse practitioner, documented on a form provided by the Department, within 60 days prior to admission. Documentation shall include the resident's diagnosis of Alzheimer's disease or other dementia and the need for the resident to be served in a secured dementia care unit.

(c) A written cognitive preadmission screening completed in collaboration with a physician or a geriatric assessment team and documented on the Department's preadmission screening form shall be completed for each resident within 72 hours prior to admission to a secured dementia care unit.

(d) A geriatric assessment team is a group of multidisciplinary specialists in the care of adults who are older that conducts a multidimensional evaluation of a resident and assists in developing a support plan by working with the resident's physician, designated person and family to coordinate the resident's care.

(e) Each resident record must have documentation that the resident and the resident's designated person have not objected to the resident's admission or transfer to the secured dementia care unit.



(f) In addition to the requirements in § 2600.225 (relating to initial and annual assessment), the resident shall also be assessed annually for the continuing need for the secured dementia care unit.

(g) An individual who does not have a primary diagnosis of Alzheimer's disease or other dementia may reside in the secured dementia care unit if desired by the resident.

(1) The individual shall have a medical evaluation by a physician, physician's assistant or certified registered nurse practitioner, documented on a form provided by the Department, within 60 days prior to residence or 30 days after residence.

(2) If the medical evaluation shows that personal care services are needed, the requirements of this chapter apply.

(3) The individual shall have access to and be able to follow directions for the operation of the key pads or other lock-releasing devices to exit the secured dementia care unit.

(h) The resident-home contract specified in § 2600.25 (relating to resident-home contract) must also include a disclosure of services, admission and discharge criteria, change in condition policies, special programming and costs and fees.

**§ 2600.232. Environmental protection.**

(a) The home shall provide exercise space, both indoor and outdoor.

(b) No more than two residents may occupy a bedroom regardless of its size. A bedroom shall meet the requirement in § 2600.101(a), (b) or (c) (relating to resident bedrooms), as applicable. Section 2600.101(d) does not apply to a secured dementia care unit.

(c) The home shall provide space for dining, group and individual activities and visits.

(d) The home shall provide a full description of the measures taken to enhance environmental awareness and maximize independence of the residents. The measures to enhance environmental awareness and maximize independence of the residents shall be implemented.

**§ 2600.233. Doors, locks and alarms.**

(a) Doors equipped with key-locking devices, electronic card operated systems or other devices that prevent immediate egress are permitted only if there is written approval from the Department of Labor and Industry, Department of Health or appropriate local building authority permitting the use of the specific locking system.

(b) A home shall have a statement from the manufacturer, specific to that home, verifying that the electronic or magnetic locking system will shut down, and that all doors will open easily and immediately when one of more of the following occurs:

(1) Upon a signal from an activated fire alarm system, heat or smoke detector.

(2) Power failure to the home.

(3) Overriding the electronic or magnetic locking system by use of a key pad or other lock-releasing device.

(c) If key-locking devices, electronic cards systems or other devices that prevent immediate egress are used to lock and unlock exits, directions for their operation shall be conspicuously posted near the device.

(d) Doors that open onto areas such as parking lots, or other potentially unsafe areas, shall be locked by an electronic or magnetic system.

(e) Fire alarm systems shall be interconnected to the local fire department, when available, or a 24-hour monitoring service approved by the local fire department.

**§ 2600.234. Resident care.**

(a) Within 72 hours of the admission, or within 72 hours prior to the resident's admission to the secured dementia care unit, a support plan shall be developed, implemented and documented in the resident record.

(b) The support plan must identify the resident's physical, medical, social, cognitive and safety needs.

(c) The support plan must identify the individual responsible to address the resident's needs.

(d) The support plan shall be revised at least annually and as the resident's condition changes.

(e) The resident or the resident's designated person shall be involved in the development and the revisions of the support plan.

**§ 2600.235. Discharge.**

If the home initiates a discharge or transfer of a resident, or the legal entity chooses to close the home, the administrator shall give a 30-day advance written notice to the resident, the resident's designated person and the referral agent citing the reasons for the discharge or transfer. This requirement shall be stipulated in the resident-home contract signed prior to admission to the secured dementia care unit.

**§ 2600.236. Training.**

Each direct care staff person working in a secured dementia care unit shall have 6 hours of annual training related to dementia care and services, in addition to the 12 hours of annual training specified in § 2600.65 (relating to direct care staff person training and orientation).

**§ 2600.237. Program.**

(a) The following types of activities shall be offered at least weekly:

(1) Gross motor activities, such as dancing, stretching and other exercise.

(2) Self-care activities, such as personal hygiene.

(3) Social activities, such as games, music and holiday and seasonal celebrations.

(4) Crafts, such as sewing, decorations and pictures.

(5) Sensory and memory enhancement activities, such as review of current events, movies, story telling, picture albums, cooking, pet therapy and reminiscing.

(6) Outdoor activities, as weather permits, such as walking, gardening and field trips.

(b) Resident participation in general activity programming shall:

(1) Be voluntary.

(2) Respect the resident's age and cognitive abilities.

(3) Support the retention of the resident's abilities.

**§ 2600.238. Staffing.**

Each resident in a secured dementia care unit shall be considered to be a resident with mobility needs under § 2600.57(c) (relating to direct care staffing).

**§ 2600.239. Notification to Department.**

(a) The legal entity shall submit a written request to the Department's personal care home regional office at least 60 days prior to the following:

- (1) Opening a secured care dementia unit.
- (2) Adding a secured dementia care unit to an existing home.
- (3) Increasing the maximum capacity in an existing unit.
- (4) Changing the locking system, exit doors or floor plan of an existing unit.

(b) The Department will inspect and approve the secured care dementia unit prior to operation or change. The requirements of this chapter shall be met prior to operation.

(c) The following documents shall be included in the written request specified in subsection (a):

- (1) The name, address and legal entity of the home.
- (2) The name of the administrator of the home.
- (3) The maximum capacity of the home.
- (4) The requested resident population of the secured dementia care unit.
- (5) A building description.
- (6) A unit description.
- (7) The type of locking system.
- (8) Policy and procedures to be implemented for emergency egress and resident elopement.
- (9) A sample of a 2-week staffing schedule.
- (10) Verification of completion of additional training requirements.
- (11) The operational description of the secured dementia care unit locking system of the doors.
- (12) The manufacturer's statement regarding the secured dementia care unit locking system.
- (13) A written approval or a variance permitting locked exit doors from the Department of Labor and Industry, the Department of Health or the appropriate local building authority.
- (14) The name of the municipality or 24-hour monitoring service maintaining the interconnection with the home's fire alarm system.
- (15) A sample plan of care and service for the resident addressing the resident's physical, medical, social, cognitive and safety needs for the residents.
- (16) The activity standards.
- (17) The complete medical and cognitive preadmission assessment, that is completed upon admission and reviewed and updated annually.
- (18) A consent form agreeing to the resident's placement in the secured unit, to be signed by the resident or the resident's designated person.
- (19) A written agreement containing full disclosure of services, admission and discharge criteria, change in condition policies, services, special programming, costs and fees.
- (20) A description of environmental cues being utilized.
- (21) A general floor plan of the entire home.

(22) A specific floor plan of the secured dementia care unit, outside enclosed area and exercise space.

**RESIDENT RECORDS****§ 2600.251. Resident records.**

- (a) A separate record shall be kept for each resident.
- (b) The entries in a resident's record must be permanent, legible, dated and signed by the staff person making the entry.
- (c) The home shall use standardized forms to record information in the resident's record.
- (d) Separate resident records shall be kept on the premises where the resident lives.
- (e) Resident records shall be made available to the resident and the resident's designated person during normal working hours.

**§ 2600.252. Content of resident records.**

Each resident's record must include the following information:

- (1) Name, gender, admission date, birth date and Social Security number.
- (2) Race, height, weight, color of hair, color of eyes, religious affiliation, if any, and identifying marks.
- (3) A photograph of the resident that is no more than 2 years old.
- (4) Language or means of communication spoken or used by the resident.
- (5) The name, address, telephone number and relationship of a designated person to be contacted in case of an emergency.
- (6) The name, address and telephone number of the resident's physician or source of health care.
- (7) The current and previous 2 years' physician's examination reports, including copies of the medical evaluation forms.
- (8) A list of prescribed medications, OTC medications and CAM.
- (9) Dietary restrictions.
- (10) A record of incident reports for the individual resident.
- (11) A list of allergies.
- (12) The documentation of health care services and orders, including orders for the services of visiting nurse or home health agencies.
- (13) The preadmission screening, initial intake assessment and the most current version of the annual assessment.
- (14) A support plan.
- (15) Applicable court order, if any.
- (16) The resident's medical insurance information.
- (17) The date of entrance into the home, relocations and discharges, including the transfer of the resident to other homes owned by the same legal entity.
- (18) An inventory of the resident's personal property as voluntarily declared by the resident upon admission and voluntarily updated.
- (19) An inventory of the resident's property entrusted to the administrator for safekeeping.

(20) The financial records of residents receiving assistance with financial management.

(21) The reason for termination of services or transfer of the resident, the date of transfer and the destination.

(22) Copies of transfer and discharge summaries from hospitals, if available.

(23) If the resident dies in the home, a copy of the official death certificate.

(24) Signed notification of rights, grievance procedures and applicable consent to treatment protections specified in § 2600.41 (relating to notification of rights and complaint procedures).

(25) A copy of the resident-home contract.

(26) A termination notice, if any.

**§ 2600.253. Record retention and disposal.**

(a) The resident's entire record shall be maintained for a minimum of 3 years following the resident's discharge from the home or until any audit or litigation is resolved.

(b) Records shall be destroyed in a manner that protects confidentiality.

(c) The home shall keep a log of resident records destroyed on or after October 24, 2005. This log must include the resident's name, record number, birth date, admission date and discharge date.

(d) Records required under this chapter that are not part of the resident records shall be kept for a minimum of 3 years or until any audit or litigation is resolved.

**§ 2600.254. Record access and security.**

(a) Records of active and discharged residents shall be maintained in a confidential manner, which prevents unauthorized access.

(b) Each home shall develop and implement policy and procedures addressing record accessibility, security, storage, authorized use and release and who is responsible for the records.

(c) Resident records shall be stored in locked containers or a secured, enclosed area used solely for record storage and be accessible at all times to the administrator or the administrator's designee, and upon request, to the Department or representatives of the area agency on aging.

**ENFORCEMENT**

**§ 2600.261. Classification of violations.**

(a) The Department will classify each violation of this chapter into one of three categories as described in paragraphs (1)—(3). A violation identified may be classified as Class I, Class II or Class III, depending upon the severity, duration and the adverse effect on the health and safety of residents.

(1) *Class I.* Class I violations have a substantial probability of resulting in death or serious mental or physical harm to a resident.

(2) *Class II.* Class II violations have a substantial adverse effect upon the health, safety or well-being of a resident.

(3) *Class III.* Class III violations are minor violations, which have an adverse effect upon the health, safety or well-being of a resident.

(b) The Department's guidelines for determining the classification of violations are available from the Department's personal care home regional office.

**§ 2600.262. Penalties.**

(a) The Department will assess a penalty for each violation of this chapter.

(b) Penalties will be assessed on a daily basis from the date on which the citation was issued until the date the violation is corrected, except in the case of Class II and Class III violations.

(c) In the case of a Class II violation, assessment of the penalty will be suspended for 5 days from the date of citation to permit sufficient time for the home to correct the violation. If the home fails to provide proof of correction of the violation to the Department within the 5-day period, the fine will be retroactive to the date of citation. The Department may extend the time period for good cause.

(d) The Department will assess a penalty of \$20 per resident per day for each Class I violation. Each Class I violation shall be corrected within 24 hours.

(e) The Department will assess a minimum penalty of \$5 per resident per day, up to a maximum penalty of \$15 per resident per day, for each Class II violation.

(f) There is no monetary penalty for Class III violations unless the home fails to correct the violation within 15 days. Failure to correct a Class III violation within the 15-day period may result in a penalty assessment of up to \$3 per resident per day for each Class III violation retroactive to the date of the citation.

(g) If a home is found to be operating without a license, a penalty of \$500 will be assessed. After 14 days, if the home operator cited for operating without a license fails to file an application for a license, the Department will assess an additional \$20 for each resident for each day during which the home operator fails to apply.

(h) A home charged with a violation of this chapter or Chapter 20 (relating to licensure or approval of facilities and agencies) has 30 days to pay the assessed penalty in full.

**§ 2600.263. Appeals of penalty.**

(a) If the home that is fined intends to appeal the amount of the penalty or the fact of the violation, the home shall forward the assessed penalty, not to exceed \$500, to the Secretary for placement in an escrow account with the State Treasurer. A letter appealing the penalty shall be submitted with the assessed penalty. This process constitutes an appeal.

(b) If, through an administrative hearing or judicial review of the proposed penalty, it is determined that no violation occurred or that the amount of the penalty shall be reduced, the Secretary will, within 30 days, remit the appropriate amount to the legal entity together with interest accumulated on these funds in the escrow deposit.

(c) Failure to forward payment of the assessed penalty to the Secretary within 30 days will result in a waiver of the right to contest the fact of the violation or the amount of the penalty.

(d) After an administrative hearing decision that is adverse to the legal entity, or a waiver of the administrative hearing, the assessed penalty amount will be made payable to the "Commonwealth of Pennsylvania." It will be collectible in a manner provided by law for the collection of debts.

(e) If a home liable to pay the penalty neglects or refuses to pay the penalty upon demand, the failure to

pay will constitute a judgment in favor of the Commonwealth in the amount of the penalty, together with the interest and costs that may accrue on these funds.

**§ 2600.264. Use of fines.**

(a) Money collected by the Department under this section will be placed in a special restricted receipt account.

(b) Money collected will be used first to defray the expenses incurred by residents relocated under this chapter.

(c) The Department will use money remaining in this account to assist with paying for enforcement of this chapter. Fines collected will not be subject to 42 Pa.C.S. § 3733 (relating to deposits into account).

**§ 2600.265. Review of classifications.**

(a) The Department will review the determinations of Class I, Class II and Class III violations made by the Department's personal care home regional offices.

(b) Semiannually, the Department will review the standard guidelines for the classification of violations and evaluate the use of these guidelines. This review is to ensure the uniformity and consistency of the classification process.

**§ 2600.266. Revocation or nonrenewal of licenses.**

(a) The Department will temporarily revoke the license of a home if, without good cause, one or more Class I violations remain uncorrected 24 hours after the home has been cited for the violation.

(b) The Department will temporarily revoke the license of a home if, without good cause, one or more Class II violations remain uncorrected 15 days after the citation.

(c) Upon the revocation of a license in the instances described in subsections (a) and (b), or if the home continues to operate without applying for a license as described in § 2600.262(h) (relating to penalties), residents shall be relocated.

(d) The revocation of a license may terminate upon the Department's determination that its violation is corrected.

(e) If, after 3 months, the Department does not issue a new license for a home, the prior license is revoked under section 1087 of the Public Welfare Code (62 P. S. § 1087).

(1) Revocation or nonrenewal under this section will be for a minimum of 5 years.

(2) A home, which has had a license revoked or not renewed under this section, will not be allowed to operate, staff or hold an interest in a home which applies for a license for 5 years after the revocation or nonrenewal.

(f) If a home has been found to have Class I violations on two or more separate occasions during a 2-year period without justification, the Department will revoke or refuse to renew the license of the home.

(g) The power of the Department to revoke or refuse to renew or issue a license under this section is in addition to the powers and duties of the Department under section 1026 of the Public Welfare Code (62 P. S. § 1026).

**§ 2600.267. Relocation of residents.**

(a) If the relocation of residents is due to the failure of the home to apply for a license, the Department will offer relocation assistance to the residents. This assistance will include each resident's involvement in planning the relocation, except in the case of an emergency. Each resident

shall have the right to choose among the available alternatives after an opportunity to visit the alternative homes. These procedures will occur even if the residents are placed in a temporary living situation.

(b) A resident will not be relocated if the Secretary determines in writing that the relocation is not in the best interest of the resident.

**§ 2600.268. Notice of violations.**

(a) The administrator shall give each resident and the resident's designated person written notification of a Class I violation within 24 hours of the citation.

(b) The administrator shall give each resident and the resident's designated person oral or written notification of a Class I or Class II violation, as defined in § 2600.261 (relating to classification of violations), which remains uncorrected for 5 days after the date of citation.

(c) If a Class II violation remains uncorrected within 5 days following the citation, the administrator shall give written notice of the violation to each resident and the resident's designated person on the 6th day from the date of the citation.

(d) The Department will provide immediate written notification to the appropriate long-term care ombudsman of Class I violations, and notification of Class II violations which remain uncorrected 5 days after the date of citation.

**§ 2600.269. Ban on admissions.**

(a) The Department will ban new admissions to a home:

(1) That has been found to have a Class I violation.

(2) That has been found to have a Class II violation that remains uncorrected without good cause 5 days after being cited for the violation.

(3) Whose license has been revoked or nonrenewed.

(b) The Department may ban new admissions to a home that has been found to have a repeated Class II violation within the past 2 years.

(c) A ban on admissions will remain in effect until the Department determines that the home has corrected the violation, and after the correction has been made, has maintained regulatory compliance for a period of time sufficient to permit a conclusion that the compliance will be maintained for a prolonged period.

**§ 2600.270. Correction of violations.**

The correction of a violation cited under section 1086 of the Public Welfare Code (62 P. S. § 1086) does not preclude the Department from issuing a provisional license based upon the same violation.

**CHAPTER 2620. (Reserved).**

**§§ 2620.1—2620.5. (Reserved).**

**§§ 2620.11—2620.15. (Reserved).**

**§§ 2620.21—2620.28. (Reserved).**

**§§ 2620.31—2620.42. (Reserved).**

**§§ 2620.51—2620.55. (Reserved).**

**§§ 2620.61—2620.74. (Reserved).**

**§§ 2620.81—2620.83. (Reserved).**

[Pa.B. Doc. No. 05-823. Filed for public inspection April 22, 2005, 9:00 a.m.]

# PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CHS. 401, 403, 407, 421, 423, 427,  
431, 433, 435, 451, 461, 471, 481, 491, 495, 497  
AND 499]

## Draft Temporary Regulations

The Pennsylvania Gaming Control Board (Board), under authority in 4 Pa.C.S. § 1202 (relating to general and specific powers), has drafted temporary regulations to facilitate the prompt implementation of 4 Pa.C.S. Part II (relating to gaming), enacted by the act of July 5, 2004 (P. L. 572, No. 71). Upon adoption of the regulations by the Board, the Board's temporary regulations will be added in Part VII (relating to Gaming Control Board). By publishing these temporary regulations in draft form, the Board seeks public comment prior to the adoption of the regulations.

### Contact Person

Interested persons are invited to submit written comments, suggestions or objections to the draft temporary regulations to the Pennsylvania Gaming Control Board, Office of Communications, P. O. Box 69060, Harrisburg, PA 17106-9060. Comments must be postmarked by May 3, 2005.

THOMAS A. DECKER,  
*Chairperson*

## Annex A

### TITLE 58. RECREATION

#### PART VII. GAMING CONTROL BOARD

##### Subpart

- A. GENERAL PROVISIONS
- B. LICENSING
- C. RECORDKEEPING
- D. SLOT MACHINE TESTING AND CERTIFICATION
- E. FEES
- F. MINORITY AND WOMEN'S BUSINESS ENTERPRISES
- G. PRACTICE AND PROCEDURE

##### Subpart A. GENERAL PROVISIONS

##### Chap.

- 401. PRELIMINARY PROVISIONS
- 403. BOARD OPERATIONS AND ORGANIZATION
- 407. PUBLIC ACCESS TO BOARD RECORDS

#### CHAPTER 401. PRELIMINARY PROVISIONS

##### Sec.

- 401.1. Purpose.
- 401.2. Scope.
- 401.3. Construction.
- 401.4. Definitions.
- 401.5. Jurisdiction.

##### § 401.1. Purpose.

The purpose of this part is to facilitate the implementation of the act.

##### § 401.2. Scope.

(a) This subpart governs the practice and procedure before the Board.

(b) This subpart is intended to supersede the applicability of 1 Pa. Code Part II (relating to the General Rules of Administrative Practice and Procedure) to practice and procedure before the Board.

##### § 401.3. Construction.

(a) This part shall be liberally construed to secure the just, speedy and inexpensive determination of every ac-

tion or proceeding to which it is applicable. The Board at any stage of an action or proceeding may disregard an error or defect of procedure which does not affect the substantive rights of the parties.

(b) The Board at any stage of an action or proceeding may waive a requirement of this part when necessary or appropriate, if the waiver does not adversely affect a substantive right of a participant as determined by the Board.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 31.2 (relating to liberal construction).

##### § 401.4. Definitions.

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

*Act*—The Pennsylvania Race Horse Development and Gaming Act, 4 Pa.C.S. §§ 1101—1904.

*Affiliate or affiliated company*—A person that directly or indirectly, through one or more intermediaries or controls, is controlled by or is under common control with a specified person.

*Applicant*—A person, officer, director or key employee, who on his own behalf or on behalf of another, is applying for permission to engage in an act or activity which is regulated under this part. In cases in which the applicant is a corporation, foundation, organization, business trust, estate, limited liability company, trust, partnership, limited partnership, association or a form of legal business entity, the Board will determine the associated persons whose qualifications are necessary as a precondition to the licensing of the applicant.

*Application*—A written request, in a form approved by the Board, for permission to engage in an act or activity which is regulated under the act. The term includes supplements, reports, documentation or other information requested by the Board as part of the application process.

*Application fee*—The amount of nonrefundable money required to be paid for an application submitted to the Board.

*Approved, approval or approve*—When used in reference to an application submitted to the Commissions to conduct harness or thoroughbred race meetings or the Board to authorize and regulate the placement and operation of slot machines, the terms refer to the date that an application to the Commissions or the Board is granted regardless of the pendency of administrative or judicial appeals or other legal action challenging the decision of either Commission or the Board.

*Associated equipment*—Any equipment or mechanical, electromechanical or electronic contrivance, component or machine used in connection with gaming, including linking devices which connect to progressive slot machines or slot machines, replacement parts, equipment which affects the proper reporting of gross revenue, computerized systems for controlling and monitoring slot machines, including the central control computer and devices for weighing or counting money.

*Authority*—An authority created by the Commonwealth which purchases State gaming receipts under section 1202 of the act (relating to general and specific powers).

*Authorized personnel*—A member or designated employee of the Board or a designated employee or agent of the Bureau.

*Background investigation*—A security, criminal, credit and suitability investigation of a person as provided for in this part. The investigation shall include the status of taxes owed to the United States and to the Commonwealth and its political subdivisions.

*Backside area*—Areas of the racetrack facility that are not generally accessible to the public and which include facilities commonly referred to as barns, track kitchens, recreation halls, backside employee quarters and training tracks, and roadways providing access thereto. The term does not include areas of the racetrack facility which are generally accessible to the public, including the various buildings commonly referred to as the grandstand or the racing surfaces, paddock enclosures and walking rings.

*Board*—The Pennsylvania Gaming Control Board established under section 1201 of the act (relating to Pennsylvania Gaming Control Board established).

*Bonds*—Bonds, notes, instruments, refunding notes and bonds and other evidences of indebtedness or obligations, which an authority issues to fund the purchase of State gaming receipts.

*Bureau*—The Bureau of Investigations and Enforcement of the Board.

*Central control computer*—A central site computer controlled by the Department and accessible by the Board to which all slot machines communicate for the purpose of auditing capacity, real-time information retrieval of the details of a financial event that occurs in the operation of a slot machine, including coin in, coin out, ticket in, ticket out, jackpots, machine door openings and power failure, and remote machine activation and disabling of slot machines.

*Cheat*—

(i) To alter without authorization the elements of chance, method of selection or criteria which determine:

- (A) The result of a slot machine game.
- (B) The amount or frequency of payment in a slot machine game.
- (C) The value of a wagering instrument.
- (D) The value of a wagering credit.

(ii) The term does not include altering for required maintenance and repair.

*Clerk*—The Clerk to the Board.

*Commission or Commissions*—The State Horse Racing Commission or the State Harness Racing Commission, or both, as the context may require.

*Complainants*—Persons who complain to the Board or Bureau of an act or omission by an applicant licensee, permittee or person, or claimed violation of the act, or of this part, or of an order of the Board.

*Confidential information*—

(i) Background investigation information, including all information provided under section 1310(a) of the act (relating to slot machine license application character requirements), submitted in connection with an application required for the issuance of a license or permit under this part, Board rules, discovery procedures, or cross-examination or that is provided as a courtesy to a party in a formal proceeding received by the Board or the Department as well as records obtained or developed by the Board or the Department as part of an investigation related to an applicant or licensee containing the following:

(A) Personal information, including home addresses, telephone numbers, Social Security numbers, educational records, memberships, medical records, tax returns and declarations, actual or proposed compensation, financial account records, credit-worthiness, or financial condition relating to an applicant or permittee or the immediate family thereof.

(B) Business information shall be documents and information relating to proprietary information, trade secrets, patents or exclusive licenses, architectural and engineering plans, security information, and information relating to competitive marketing materials and strategy which may include customer-identifying information or customer prospects for services subject to competition.

(C) Security information, including risk prevention plans, detection and countermeasures, emergency management plans, security and surveillance plans, equipment and usage protocols, and theft and fraud prevention plans and countermeasures.

(D) Information with respect to which there is a reasonable possibility that public release or inspection of the information would constitute an unwarranted invasion into personal privacy as determined by the Board.

(E) Record or information that is designated confidential by statute or the Board.

(F) Records of an applicant or licensee not required to be filed with the United States Securities and Exchange Commission by issuers that either have securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C.A. § 781) or are required to file reports under section 15D of the act (15 U.S.C.A. § 78o-6) of that act.

(G) Records considered nonpublic matters or information by the United States Securities and Exchange Commission as provided by 17 CFR 200.80 (relating to Commission records and information).

(ii) The following information is exempted from the definition of confidential information:

(A) Records containing information received by the Board or the Department or information obtained or developed as part of an investigation related to the applicant or licensee may be disclosed to state or Federal law enforcement agencies or entities when the Attorney General or a court of competent jurisdiction determines that the information contains evidence of a possible violation of laws, rules or regulations enforced by those agencies or entities.

(B) Records from an applicant may be disclosed to the applicant, licensee or permittee upon written request. Records from an applicant may be disclosed to a person with the written consent of the applicant, licensee or permittee.

(C) Records containing information from an applicant that is already in the public domain or subsequently becomes a part of the public domain by an action by the applicant.

*Controlling interest*—A person shall be deemed to have the ability to control a publicly traded corporation, or to elect one or more of the members of its board of directors, if the holder owns or beneficially holds 5% or more of the securities of the publicly traded domestic or foreign corporation, partnership, limited liability company or other form of legal entity, unless the presumption of control or ability to elect is rebutted by clear and convincing evidence. A person who is a holder of securities

of a privately held domestic or foreign corporation, partnership, limited liability company or other form of legal entity shall be deemed to possess a controlling interest unless the presumption of control is rebutted by clear and convincing evidence.

*Conviction*—A finding of guilt or a plea of guilty or nolo contendere, whether or not a judgment of sentence has been imposed as determined by the law of the jurisdiction in which the prosecution was held. The term does not include a conviction that has been expunged or overturned or for which an individual has been pardoned or an order of Accelerated Rehabilitative Disposition.

*Department*—The Department of Revenue of the Commonwealth.

*Federal tax identification number*—The Social Security number of an individual or the Employer Identification Number of a business, fiduciary or other person.

*Final order*—Includes the following:

(i) An order by the Board which approves, issues, renews, revokes, suspends, conditions, denies issuance or renewal of a license,

(ii) An action by the Board which affects personal or property rights, privileges, immunities, duties, liabilities or obligations, disposes of all claims and of all parties before the Board.

(iii) An action by the Board which is designated by the Board as final.

*Financial backer*—An investor, mortgagee, bondholder, note holder or other sources of equity or capital provided to an applicant or licensed entity.

*Formal record*—The pleadings in a matter or proceeding, a notice or Board order initiating the matter or proceeding, and if a hearing is held, the following shall be included in the formal record: transcript of hearing, exhibits received in evidence, exhibits offered but not received in evidence, offers of proof, motions, stipulations, subpoenas, proofs of service, determinations made by the Board thereon, and certifications to the Board.

*Fund*—The State Gaming Fund established under section 1403 of the act (relating to establishment of State Gaming Fund and net slot machine revenue distribution).

*Gaming employee*—

(i) An employee of a slot machine licensee, including:

- (A) Cashiers.
- (B) Change personnel.
- (C) Counting room personnel.
- (D) Slot attendants.
- (E) Hosts or other persons authorized to extend complimentary services.
- (F) Machine mechanics or computer machine technicians.
- (G) Security personnel.
- (H) Surveillance personnel.
- (I) Supervisors and managers.

(ii) The term includes employees of a person holding a supplier's license whose duties are directly involved with the repair or distribution of slot machines and associated equipment sold or provided to the licensed facility within this Commonwealth as determined by the Board. The term does not include bartenders, cocktail servers or other persons engaged solely in preparing or serving food

or beverages, clerical or secretarial personnel, parking attendants, janitorial, stage, sound and light technicians and other nongaming personnel as determined by the Board under section 1322(c) of the act (relating to slot machine accounting controls and audits).

*Gross terminal revenue*—The total of wagers received by a slot machine minus the total of:

(i) Cash or cash equivalents paid out to patrons as a result of playing a slot machine which are paid to patrons either manually or paid out by the slot machine.

(ii) Cash paid to purchase annuities to fund prizes payable to patrons over a period of time as a result of playing a slot machine.

(iii) Personal property distributed to a patron as the result of playing a slot machine. This does not include travel expenses, food, refreshments, lodging or services.

(iv) The term does not include counterfeit money or tokens, coins or currency of other countries which are received in slot machines, except to the extent that they are readily convertible to United States currency, cash taken in fraudulent acts perpetrated against a slot machine licensee for which the licensee is not reimbursed or cash received as entry fees for contests or tournaments in which the patrons compete for prizes.

*Horsemen of this Commonwealth*—A thoroughbred or standardbred horse owner or trainer who enters and runs his horse at a licensed racing entity in the current or prior calendar year and meets the requirements of the horsemen's organization of which he is a member to participate in the receipt of benefits therefrom. The term includes an employee of a trainer who meets the requirements of the horsemen's organization of which he is a member to participate in the receipt of benefits therefrom.

*Horsemen's organization*—A trade association which represents the majority of owners and trainers who own and race horses at a licensed racetrack.

*IRS*—The Internal Revenue Service of the United States.

*Institutional investor*—A retirement fund administered by a public agency for the exclusive benefit of Federal, state or local public employees, investment company registered under the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1—80a-64), collective investment trust organized by banks under Part Nine of the Rules of the Comptroller of the Currency, closed end investment trust, chartered or licensed life insurance company or property and casualty insurance company, banking and other chartered or licensed lending institution, investment advisor registered under the Investment Advisors Act of 1940 (15 U.S.C.A. §§ 80b-1—80b-21), and other persons as the Board may determine consistent with this part.

*Issued, issuance or issue*—When used in reference to an application submitted to the State Horse Racing Commission or the State Harness Racing Commission to conduct harness or thoroughbred race meetings or the Board to authorize the placement and operation of slot machines, the terms refer to the date when a determination by the Commissions or the Board approving an application brought before the agencies becomes final, binding and nonappealable and is not subject to a pending legal challenge.

*Key employee*—An individual who is employed in a director or department head capacity and who is empowered to make discretionary decisions that regulate slot

machine operations, including the general manager and assistant manager of the licensed facility, director of slot operations, director of cage and credit operations, director of surveillance, director of marketing, director of management information systems, director of security, comptroller and any employee who supervises the operations of these departments or to whom these department directors or department heads report and other positions which the Board will determine based on detailed analyses of job descriptions as provided in the internal controls of the licensee as approved by the Board under section 1322(c) of the act. All other gaming employees unless otherwise designated by the Board, will be classified as non-key employees.

*Key employee qualifier*—An individual employed by a person who is a slot machine licensee, manufacturer licensee or supplier licensee who holds a management or supervisory position or who controls the operations of the licensee. The term includes: officers; directors; persons who directly or indirectly hold any beneficial interest in or ownership of the securities of a licensee; a person who has the ability to control the licensee, has a controlling interest in the licensee, elects a majority of the board of directors of the licensee, or otherwise has the ability to control the licensee; a lender, other than a bank or lending institution which makes a loan or holds a mortgage or other lien acquired in the ordinary course of business; an underwriter; and an employee of a slot machine licensee, manufacturer licensee or supplier licensee required to be licensed by the Board.

*Licensed entity*—A slot machine licensee, manufacturer licensee, supplier licensee or other person licensed by the Board under this part.

*Licensed facility*—The physical land-based location and associated areas at which a licensed gaming entity is authorized to place and operate slot machines.

*Licensed gaming entity or slot machine licensee*—A person that holds a slot machine license under this part.

*Licensed racetrack or racetrack*—The term includes the physical facility and grounds where a person has obtained a license from either the State Horse Racing Commission or the State Harness Racing Commission to conduct live thoroughbred or harness race meetings respectively with pari-mutuel wagering.

*Licensed racing entity*—A legal entity that has obtained a license to conduct live thoroughbred or harness horse race meetings respectively with pari-mutuel wagering from either the State Horse Racing Commission or the State Harness Racing Commission under the Race Horse Industry Reform Act.

*License fee*—The amount of money required to be paid for the application, issuance or renewal of any type of license required by the act, this part, or as directed by the Board.

*Manufacturer*—A person who manufactures, builds, rebuilds, fabricates, assembles, produces, programs, designs or otherwise makes modifications to slot machines or associated equipment for use or play of slot machines in this Commonwealth for gaming purposes.

*Manufacturer license*—A license issued by the Board authorizing a manufacturer to manufacture or produce slot machines or associated equipment for use in this Commonwealth for gaming purposes.

*Manufacturer licensee*—A manufacturer that obtains a manufacturer license.

*Manufacturer's serial number*—The unique number permanently assigned to a slot machine by a slot machine manufacturer for identification and control purposes, which number shall be affixed to the outside of the slot machine cabinet in a location as approved by the Board.

*Municipality*—A city, borough, incorporated town or township.

*Net terminal revenue*—The amount of the gross terminal revenue less the tax and assessments imposed by sections 1402, 1403, 1405 and 1407 of the act.

*Nonprimary location*—A facility in which pari-mutuel wagering is conducted by a licensed racing entity other than the racetrack where live racing is conducted.

*Occupation permit*—A permit authorizing an individual to be employed or work as a gaming employee at a licensed facility.

*Permit fee*—The amount of money required to be paid for the application, issuance or renewal of any type of permit required by the act, this part, or as directed by the Board.

*Permittee*—A holder of a permit issued under this part.

*Person*—A natural person, corporation, foundation, organization, business trust, estate, limited liability company, licensed corporation, trust, partnership, limited liability partnership, association or a form of legal business entity.

*Progressive payout*—A slot machine wager payout that increases in a monetary amount based on the amounts wagered in a progressive system.

*Progressive system*—A computerized system linking slot machines in one or more licensed facilities within this Commonwealth and offering one or more common progressive payouts based on the amounts wagered.

*Qualified majority*—A vote by the Board consisting of at least one member of the Board who is a gubernatorial appointee and each of the four legislative appointees.

*Race Horse Industry Reform Act*—45 P. S. §§ 325.101—325.402.

*Respondents*—Persons subject to the jurisdiction of the Board, who are required to respond to an order or notice issued by the Board or the Bureau instituting a proceeding or investigation.

*Revenue- or tourism-enhanced location*—A location within this Commonwealth determined by the Board, which will maximize net revenue to the Commonwealth or enhance year-round recreational tourism within this Commonwealth, in comparison to other proposed facilities and is otherwise consistent with this part and its declared public policy purposes.

*SEC*—The United States Securities and Exchange Commission.

*Securities*—As defined in the Pennsylvania Securities Act of 1972 (70 P. S. §§ 1-101—1-703).

*Slot machine*—

(i) A mechanical or electrical contrivance, terminal, machine or other device approved by the Board which, upon insertion of a coin, bill, ticket, token or similar object therein or upon payment of consideration, including the use of an electronic payment system, except a credit card or debit card, is available to play or operate, the play or operation of which, whether by reason of skill or application of the element of chance, or both, may deliver or entitle the person playing or operating the



contrivance, terminal, machine or other device to receive cash, billets, tickets, tokens or electronic credits to be exchanged for cash or to receive merchandise or anything of value, whether the payoff is made automatically from the machine or manually. A slot machine:

- (A) May utilize spinning reels or video displays, or both.
- (B) May or may not dispense coins, tickets or tokens to winning patrons.
- (C) May use an electronic credit system for receiving wagers and making payouts.
- (ii) The term includes associated equipment necessary to conduct the operation of the contrivance, terminal, machine or other device.

*Slot machine license*—A license issued by the Board authorizing a person to place and operate slot machines under this part.

*Slot machine licensee*—A person that holds a slot machine license.

*State gaming receipts*—Revenues and receipts required by this part to be paid into the State Gaming Fund, the Pennsylvania Race Horse Development Fund and the Pennsylvania Gaming Economic Development and Tourism Fund, and all rights, existing on \_\_\_\_\_ (*Editor's Note:* The blank refers to the effective date of adoption of these temporary regulations.) or coming into existence after \_\_\_\_\_, (*Editor's Note:* The blank refers to the effective date of adoption of these temporary regulations) to receive any of those revenues and receipts.

*State Treasurer*—The State Treasurer of the Commonwealth.

*Supplier*—A person that sells, leases, offers or otherwise provides, distributes or services slot machines or associated equipment for use or play of slot machines in this Commonwealth at a licensed gaming facility.

*Supplier license*—A license issued by the Board authorizing a supplier to provide products or services related to slot machines or associated equipment to licensed gaming entities.

*Supplier licensee*—A supplier that holds a supplier license.

*Trade secret*—A private formula, pattern, device, cost study or compilation of information which is used in a business and which, if disclosed, would provide the opportunity to obtain an advantage over competitors who do not know or use it.

**§ 401.5. Jurisdiction.**

The Board will have exclusive jurisdiction over all matters within the scope of its powers under the act.

**CHAPTER 403. BOARD OPERATIONS AND ORGANIZATION**

- Sec. 403.1. Participation at meetings and voting.
- 403.2. Meetings.
- 403.3. Board office hours.
- 403.4. Public communication.

**§ 403.1. Participation at meetings and voting.**

(a) *Qualified majority vote.* Action by the Board including the approval, issuance, denial or conditioning of a license or the making of an order or the ratification of a permissible act done or order made by one or more of the members of the Board shall require a qualified majority vote.

(b) *Majority vote.* Action by the Board to suspend, revoke, not renew, void or require forfeiture of a license or permit previously issued by the Board, to impose an administrative fine or penalty or to issue cease and desist orders under section 1201 of the act (relating to Pennsylvania Gaming Control Board established), shall require a majority vote of all the Board members.

(c) *Member abstention.* If a Board member has a disqualifying interest in a voting matter, a member shall disclose the nature of his disqualifying interest, disqualify himself and abstain from voting in a proceeding in which his impartiality may be reasonably questioned, including instances when he knows that he possesses a substantial financial interest in the subject matter of the proceeding or an interest that could be substantially affected by the outcome of the proceeding. If it is a legislative appointee member that has disqualified himself, the qualified majority shall consist of the remaining three legislative appointees and at least two gubernatorial appointees.

(d) *Disqualifying interest.* When a member has disqualified himself, his abstention from voting shall apply only to the singular voting matter that led to his disqualification and not apply to other matters under consideration by the Board for which he is otherwise qualified.

**§ 403.2. Meetings.**

(a) *Public sessions.* The proceedings of all public sessions shall be conducted in accordance with 65 Pa.C.S. Chapter 7 (relating to Sunshine Act) and the act of June 21, 1957 (P. L. 390, No. 212) (65 P. S. §§ 66.1—66.9), known as the Right-to-Know Law.

(b) *Regularly scheduled meetings.* The Board will meet in Harrisburg once a month, and on other dates, times and locations as the Chairperson of the Board determines.

(c) *Record of proceedings.* The Board will cause to be kept a record of all proceedings held at public meetings of the Board. A verbatim transcript of those proceedings will be prepared by the Board.

**§ 403.3. Board office hours.**

Board offices will be open from 9 a.m. to 5 p.m. on business days except Saturdays, Sundays and legal holidays or unless otherwise directed by the Chairperson.

**§ 403.4. Public communication.**

Requests for information regarding the Board may be directed to:

Office of Communications  
Pennsylvania Gaming Control Board  
P. O. Box 69060  
Harrisburg, Pennsylvania 17106-9060

**CHAPTER 407. PUBLIC ACCESS TO BOARD RECORDS**

- Sec. 407.1. Case files.
- 407.2. Minutes of public meeting and annual report.
- 407.3. Extensions of time to review folders.

**§ 407.1. Case files.**

(a) *Records.* Formal records in proceedings before the Board or the Bureau shall contain a file for nonconfidential records and a file for confidential records.

(b) *Contents.* Contents of folders containing records relating to a particular proceeding shall conform to the following:

(1) A nonconfidential file shall contain formal records, complaints, petitions, answers, replies, motions, briefs, orders and opinions that are subject to disclosure. The file shall also include correspondence, reports and other materials that are subject to disclosure.

(2) A confidential folder shall contain confidential information, as defined in § 401.4 (relating to definitions), which may include formal records, complaints, petitions, answers, replies, motions, briefs, orders and opinions. The file shall also include correspondence, reports and other materials that are not subject to disclosure.

(c) *Access.* Access to formal records shall conform to the following:

(1) Nonconfidential formal records shall be available for inspection upon request made during normal Board business hours.

(2) Requests for confidential formal records shall be made to determine if the material may be released for inspection. The Board or the Bureau will review the request and provide its determination and notice to the requestor within 30 days of the request.

#### **§ 407.2. Minutes of public meeting and annual report.**

Minutes of public meetings and annual reports shall be available for public inspection and copying upon request to the Office of the Clerk during normal Board business hours and for a certain cost for copying as the Board may determine through a schedule published in the *Pennsylvania Bulletin*.

#### **§ 407.3. Extensions of time to review folders.**

For good cause, the Board may extend the time limits applicable to requests for access to documents. In the case of documents displaying no need for confidentiality, or, conversely, documents containing information which the Board considers improper for public inspection, the Board may direct the appropriate treatment thereof.

### **Subpart B. LICENSING**

<b>Chap.</b>	
<b>421.</b>	<b>GENERAL PROVISIONS</b>
<b>423.</b>	<b>APPLICATIONS</b>
<b>427.</b>	<b>MANUFACTURER LICENSES</b>
<b>431.</b>	<b>SUPPLIER LICENSES</b>
<b>433.</b>	<b>LICENSE RENEWAL</b>
<b>435.</b>	<b>EMPLOYEES</b>

### **CHAPTER 421. GENERAL PROVISIONS**

<b>Sec.</b>	
<b>421.1.</b>	General requirements.
<b>421.2.</b>	Licensed entities.
<b>421.3.</b>	Disqualification criteria.
<b>421.4.</b>	Investigations; supplementary information.

#### **§ 421.1. General requirements.**

(a) A license issuance, renewal or other licensing approval issued by the Board is deemed a revocable privilege. No person holding a license, renewal, or other licensing approval is deemed to have any rights therein.

(b) An application submitted under the act constitutes the seeking of a privilege, and the burden of proving qualification is on the applicant.

(c) An application for license, renewal or other licensing approval from the Board will constitute a request to the Board for a decision on the applicant's general suitability, financial suitability, character, integrity, and ability to engage in, or be associated with, gaming activity in this Commonwealth. By filing an application with the Board, the applicant specifically consents to investigation to the extent deemed appropriate by the

Board. The investigation may include a background investigation of the applicant, employees of the applicant, all persons having a controlling interest in the applicant and other persons as determined by the Board.

(d) By applying for a license, renewal or other licensing approval from the Board, the applicant agrees to abide by all provisions of the act.

(e) An applicant shall waive liability as to the Board, its members, its employees, the Commonwealth and its instrumentalities for damages resulting from disclosure or publication in any manner, other than a willfully unlawful disclosure or publication, or material or information acquired during an investigation of the individual.

(f) The applicant agrees to consent to executing all releases required by the Board.

#### **§ 421.2. Licensed entities.**

Licenses that may be issued by the Board include:

(1) Manufacturer's license, which authorizes the approved licensee to manufacture, build, rebuild, fabricate, assemble, produce, program, design or otherwise make modifications to slot machines or associated equipment for use or play of slot machines in this Commonwealth in accordance with the act.

(2) Supplier's license, which authorizes the approved licensee to sell, lease, offer or otherwise provide, distribute or service slot machines or associated equipment for use or play of slot machines in this Commonwealth in accordance with the act.

(3) Slot machine license, which authorizes the approved licensee to place and operate slot machines in this Commonwealth in accordance with the act.

(4) Key employee qualifier license, which authorizes the approved key employee qualifier, as defined in § 401.4 (relating to definitions), to be employed in a designated position by an applicant or holder of a manufacturer license, a supplier license or a slot machine license.

(5) Key employee license, which authorizes the approved key employee, as defined in § 401.4, to be employed in a designated position by an applicant or holder of a manufacturer license, supplier license or slot machine license.

#### **§ 421.3. Disqualification criteria.**

A manufacturer license, a supplier license or a slot machine license or a renewal thereof, may be denied, suspended or revoked to or from a person or applicant who has failed to provide to the satisfaction of the Board that the person or applicant or any of the persons required to be qualified, are in fact qualified in accordance with the act and with this part, who has violated the act or this part, who is disqualified under the criteria set forth in the act, who has materially departed from representation made in the application for licensure, or who has failed to comply with applicable Federal or state laws or regulations. A suspension, nonrenewal or denial of a license or license application may be made for a sufficient cause consistent with the act and the public interest.

#### **§ 421.4. Investigations; supplementary information.**

The Board may make an inquiry or investigation concerning an applicant, licensee or any person involved with an applicant or licensee as it may deem appropriate either at the time of the initial application and licensure or at any time thereafter. It shall be the continuing duty

of all applicants and licensees to provide full cooperation to the Board in the conduct of the inquiry or investigation and to provide supplementary information requested by the Board.

## CHAPTER 423. APPLICATIONS

Sec.	
423.1.	General requirements.
423.2.	Application processing.
423.3.	License issuance.
423.4.	Incomplete applications.
423.5.	Application withdrawal.

### § 423.1. General requirements.

(a) Every application shall be submitted on forms supplied or approved by the Board and shall contain all information and documents as required by the Board.

(b) The applicant shall file with the application all supplemental forms provided by the Board. The forms require full disclosure of all details relative to the applicant's suitability to conduct business in this Commonwealth.

(c) Upon request of the Board, the applicant shall further supplement any information provided in the application. The applicant shall provide all requested documents, records, supporting data and other information within the time period specified in the request, or if no time is specified, within 30 days of the date of the request. If the applicant fails to provide the requested information within the required time period as set forth in the request, the Board may deny the application.

(d) An applicant shall submit evidence to the Board of the applicant's financial stability, integrity and responsibility. In determining an applicant's financial fitness, the Board's review will include, but not be limited to: the applicant's bank references, business and personal income and disbursement schedules, annual financial statements and tax returns, whether the applicant has adequate financing available to pay all current obligations, and whether the applicant is likely to be able to adequately cover all existing and foreseeable obligations in the future.

(e) All information provided to the Board shall be true and complete. If there is any change in the information provided to the Board, the applicant shall promptly file a written amendment in a form prescribed by the Board.

(f) The application and any amendments or supplements shall be sworn to or affirmed by the applicant before a notary public.

(g) The Board will automatically deny the application of an applicant that refuses to submit to a background investigation or provide requested information as required under the act.

(h) Neither the Commonwealth, the Board, Pennsylvania State Police, any agency or authorized designee or agent of the Board that the Board requests to conduct background investigations, nor the employees of any of the foregoing, may be held liable for any inaccurate or incomplete information obtained through an investigation.

(i) An applicant that submits a document which is in a language other than English to the Board with an application or in response to a request for information from the Board or the Board's agents shall also submit an English translation of the non-English language document. The translation shall include the signature, printed

name, address and telephone number of the translator and a verification by the translator of the truth and accuracy of the translation.

### § 423.2. Application processing.

(a) Upon a determination that all prerequisites for filing have been met, the Board will:

(1) Accept the application for filing and cause it to be docketed.

(2) Notify the applicant or the applicant's attorney, if any, in writing of the fact that the application has been accepted for filing and docketed, the date of the acceptance for filing and the docket number assigned to the applicant. The Board will also notify the applicant that the acceptance for filing and docketing of the application will not constitute evidence that any requirement of the act has been satisfied.

(3) Obtain and evaluate information as may be necessary to determine the qualifications of the applicant and a matter relating to the application.

(4) Request the Bureau to promptly conduct an investigation and provide the information necessary to determine the qualifications of the applicant and a matter relating to the application.

(5) Request the Pennsylvania State Police to provide criminal history background investigations, determine employee eligibility consistent with § 435.1 (relating to general provisions), conduct fingerprinting, receive handwriting exemplars, photograph applicants and perform duties as directed by the Board.

(6) Request the Department to promptly conduct a tax clearance review.

(7) Request the Department of Labor and Industry to perform an unemployment compensation tax clearance review and a workers compensation tax clearance review.

(8) Make requests of any agencies, entities or persons to conduct investigations or evaluations on behalf of the Board or the Bureau or to provide information, as deemed necessary by the Board.

(b) The Board will keep and maintain a list of all applicants for licenses under this part together with a record of all actions taken with respect to applicants.

### § 423.3. License issuance.

(a) In addition to criteria provided under the act, the Board will not issue or renew a license to an applicant or licensee unless the Board finds that the applicant has established it has met the following criteria:

(1) The applicant has developed and implemented or agreed to develop and implement a diversity plan to assure that all persons are accorded equality of opportunity in employment and contracting by the applicant, its contractors, subcontractors, assignees, lessees, agents, vendors and suppliers.

(2) The applicant has paid all required fees.

(3) The applicant has fulfilled any conditions required by the Board or provided by the act.

(4) The applicant in all other respects is found suitable consistent with the laws of the Commonwealth and is otherwise qualified to be issued a license or permit.

(b) Nothing contained in the act is intended or may be construed to create an entitlement to a license by any person.

**§ 423.4. Incomplete applications.**

(a) The Board will not consider an application that is incomplete. An application will be deemed incomplete if it fails to include one or more of the following requirements:

- (1) Applicable fees paid.
- (2) Information and accompanying documentation required by the Board.

(b) If an application is deemed incomplete, the Board will notify the applicant of the deficiencies in the application and permit the applicant to revise the application and resubmit the application to the Board within a time period prescribed by the Board.

(c) Refusal to provide information as requested by the Board, its designees or agents or the Pennsylvania State Police shall result in the immediate denial of a license or permit.

**§ 423.5. Application withdrawal.**

(a) Except as provided in subsection (e), a written notice of withdrawal of application may be filed by an applicant at any time prior to the Board's final decision.

(b) No application will be permitted to be withdrawn unless the applicant first establishes to the satisfaction of the Board that withdrawal of the application would be consistent with the public interest and the policies of the act.

(c) The Board has the authority to direct that an applicant permitted to withdraw his application is not eligible to apply again for licensure, permit or registration until a designated time as the Board determines.

(d) Unless the Board otherwise directs, no fee or other payment relating to an application shall become refundable by reason of withdrawal of the application.

(e) When a hearing on an application has been requested by a party or directed by the Board, the Board will not permit withdrawal of the application after either of the following:

- (1) The application matter has been assigned to a hearing examiner authorized by law to hear a matter.
- (2) The Board has made a determination to hear the application matter directly.

**CHAPTER 427. MANUFACTURER LICENSES**

Sec.

- 427.1. Manufacturer license requirements.  
 427.2. Manufacturer licensing standards and application.  
 427.3. Alternative manufacturer licensing standards.

**§ 427.1. Manufacturer license requirements.**

(a) In determining whether an applicant shall be licensed as a manufacturer under this section, the Board will consider whether the person satisfies one or more of the criteria listed in this section, whether the applicant manufactures devices, machines, or equipment, which are or have one of the following:

- (1) Specifically designed for use in the operation of a slot machine licensee.
- (2) Needed to conduct an authorized game.
- (3) The capacity to affect the outcome of the play of a game.
- (4) The capacity to affect the calculation, storage, collection, or control of gross revenue.

(b) An applicant for or holder of a manufacturer license shall have a continuing duty to:

(1) Notify the Board of a material change in the information, materials, and documents submitted in the license application or renewal application submitted by the applicant or licensee or a change in circumstances that may render the applicant or licensee ineligible, unqualified or unsuitable to hold the license under the licensing standards and requirements of the act of this part.

(2) Provide information requested by the Board or the Bureau relating to licensing or regulation; cooperate with the Board in investigations, hearings, and enforcement and disciplinary actions; and comply with all conditions, restrictions, requirements, orders and rulings of the Board in accordance with the act.

(c) In accordance with section 1317 of the act (relating to supplier and manufacturer licenses application), a person, its affiliates, intermediary, subsidiary or holding companies, who has applied for or who is applying for or holds a manufacturer's license or a slot machine license is not eligible to apply for or hold a supplier license.

**§ 427.2. Manufacturer licensing standards and application.**

(a) The standards and requirements for qualification for a manufacturer license are set forth as follows and in section 1317 of the act (relating to supplier and manufacturer licenses applications). The applicant shall submit:

- (1) A nonrefundable application fee.
- (2) An original and seven copies of the Manufacturer/Supplier Application and Disclosure Information Form for the applicant that has applied for the license under this part.
- (3) A plan of the diversity goals in the ownership, participation and operation of licensed entities in this Commonwealth, as set forth in section 1212 of the act (relating to diversity goals of board) and Chapter 481 (relating to general provisions), signed by the chief executive officer of the applicant.
- (4) An application from every key employee qualifier as specified by the Manufacturer/Supplier Application and Disclosure Form or as determined by the Board, which shall consist of the following:
  - (i) An original and one copy of the Multi-Jurisdictional Personal History Disclosure Form with a nonrefundable deposit of \$5,000 per application for each key employee qualifier, as defined in § 401.4 (relating to definitions).
  - (ii) The applicant may be subject to additional charges based on the actual expenses incurred by the Board in conducting the background investigation.

(5) Copies of all filings required by the United States Securities and Exchange Commission including all annual reports filed with the United States Securities Exchange Commission, under section 13 or 15D of the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78m and 78o-6), quarterly reports filed with the United States Securities Exchange Commission, under sections 13 or 15D of the Securities Exchange Act of 1934, current reports filed with the United States Securities Exchange Commission, under sections 13 or 15D of the Securities Exchange Act of 1934, proxy statements issued by the applicant during the 2 immediately preceding fiscal years.

(6) Properly executed forms for Consents to Inspections, Searches and Seizures; Waivers of Liability for Disclosures of Information and Consents to Examination of Accounts and Records in forms as prescribed by the Board.

(7) The applicant, or its affiliate, intermediary, subsidiary or holding company shall affirm that it does not hold a direct or indirect ownership interest in a supplier applicant or licensee, or employs, directly or indirectly, an officer, director, supervisory or principal employee of a supplier applicant or licensee.

(8) Other information or documentation required by the Board.

(b) Each application for manufacturer's license will include the production of financial books, records, information, documentation and assurances to satisfy the Board of the following:

(1) The financial stability, good character, honesty, integrity and responsibility of the applicant.

(2) That all key employee qualifiers individually qualify under the standards of section 1317 of the act.

(3) The integrity of all financial backers, investors, mortgagees, bondholders, and holders of indentures, notes or other evidences of indebtedness, either in effect or proposed, which bears any relationship to the applicant.

(4) The suitability of the applicant and all key employee qualifiers of the applicant based on the satisfactory results of:

(i) A background investigation of all owners, officers, board of directors and key employees or their equivalent in other jurisdictions.

(ii) A current tax clearance review performed by the Department.

(iii) A current unemployment compensation tax clearance review and a workers compensation tax clearance review performed by the Department of Labor and Industry.

(c) The applicant, licensee, holding affiliate, intermediary or subsidiary company thereof, or an officer, director or key employee thereof, is prohibited from making a contribution of money or in-kind contribution to a candidate for nomination or election to a public office in this Commonwealth or to a political committee or State party in this Commonwealth or to a group, committee or association organized in support of a candidate, political committee or State party, as set forth in section 1513 of the act (relating to political influence).

(d) Neither the applicant nor a person directly related to the applicant may be a party in an ongoing civil proceeding in which the applicant is seeking to overturn or otherwise challenge a decision or order of the Board or Commissions, pertaining to the approval, denial or conditioning of a license to conduct thoroughbred or harness horse race meetings respectively with pari-mutuel wagering, or to operate slot machines in this Commonwealth.

#### **§ 427.3. Alternative manufacturer licensing standards.**

(a) The Board may, upon written request of a manufacturer license applicant, issue a manufacturer license to an applicant who holds a similar license in another jurisdiction within the United States if:

(1) The Board determines, after investigation, that the licensing standards in a jurisdiction in which the applicant is licensed are similarly comprehensive, thorough and provide equal, if not greater, safeguards as provided in the act and that granting the petition is in the public interest.

(2) A completed application has been filed by the applicant.

(3) The applicant has otherwise met all statutory requirements for licensure.

(4) The applicant has provided current, updated information to the Board associated with a similar license in a jurisdiction related to its financial viability and suitability.

(5) The applicant has no administrative or enforcement actions pending in another jurisdiction.

(6) There are no pending or ongoing investigations of possible material violations by the applicant in another jurisdiction.

(b) This section may not be construed to waive fees associated with obtaining a license through the application process in this Commonwealth.

### **CHAPTER 431. SUPPLIER LICENSES**

Sec.

431.1. Supplier license requirements.

431.2. Supplier licensing standards and application.

431.3. Supplier requirements and prohibitions.

#### **§ 431.1. Supplier license requirements.**

(a) In determining whether an applicant will be licensed as a supplier under this section, the Board will consider whether the person satisfies the criteria listed in this section, whether the person sells, leases, offers or otherwise provides, distributes or services slot machines or associated equipment at a licensed gaming facility which:

(1) Are specifically designed for use in the conduct of slot machine gaming.

(2) Are needed to conduct slot machine gaming.

(3) Have the capacity to affect the outcome of the play of a slot machine.

(4) Have the capacity to affect the calculation, storage, collection or control of gross receipts.

(b) An applicant for or holder of a supplier license shall have a continuing duty to do all of the following:

(1) Notify the Board of a material change in the information, materials, and documents submitted in the license application or renewal application submitted by the applicant or licensee or a change in circumstances that may render the applicant or licensee ineligible, unqualified or unsuitable to hold the license under the licensing standards and requirements of the act.

(2) Provide information requested by the Board or the Bureau relating to licensing or regulation; cooperate with the Board in investigations, hearings, and enforcement and disciplinary actions; and comply with all conditions, restrictions, requirements, orders, and rulings of the Board in accordance with the act.

(c) In accordance with section 1317 of the act (relating to supplier and manufacturer licenses application), a person, its affiliates, intermediary, subsidiary or holding companies, who has applied for or who holds a manufacturer's license or a slot machine license is not eligible to apply for or hold a supplier license.

(d) Slot monitoring computer systems, casino management computer systems, player tracking computer systems, slot accounting computer systems, ticket-in/ticket-out computer systems, bonusing computer systems, wide-area progressive computer systems, and all computer systems and associated computer system equipment are excluded from a requirement that they be provided through a licensed supplier as set forth in this part. Persons or entities providing these computer systems to

slot machine licensees, including manufacturers, may employ individuals to service and repair computer systems and associated computer system equipment.

**§ 431.2. Supplier licensing standards and application.**

(a) The standards and requirements for qualification for a supplier license are set forth as follows and in section 1317 of the act (relating to supplier and manufacturer licenses application). The applicant shall submit:

- (1) A nonrefundable application processing fee.
- (2) An original and seven copies of the Manufacturer/Supplier Application and Disclosure Information Form for the applicant that has applied for the license under this part.
- (3) A plan of the diversity goals in the ownership, participation and operation of licensed entities in this Commonwealth, as set forth in section 1212 of the act (relating to diversity goals of board) and Chapter 481 (relating to general provisions), signed by the chief executive officer of the applicant.
- (4) An application from every key employee qualifier as specified by the Manufacturer/Supplier Application and Disclosure Form or as determined by the Board, which shall consist of the following:
  - (i) An original and one copy of the Multi-Jurisdictional Personal History Disclosure Form with a nonrefundable deposit of \$5,000 per application for each key employee qualifier, as defined in § 401.4 (relating to definitions).
  - (ii) The applicant may be subject to additional charges based on the actual expenses incurred by the Board in conducting the background investigation.
  - (5) Copies of all filings required by the United States Securities and Exchange Commission including all annual reports filed with the United States Securities Exchange Commission, under sections 13 or 15D of the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78m and 78o-6), quarterly reports filed with the United States Securities Exchange Commission, under sections 13 or 15D of the Securities Exchange Act of 1934, current reports filed with the United States Securities Exchange Commission, under sections 13 or 15D of the Securities Exchange Act of 1934, proxy statements issued by the applicant during the 2 immediately preceding fiscal years.
- (6) All properly executed forms for Consents to Inspections, Searches and Seizures; Waivers of Liability for Disclosures of Information and Consents to Examination of Accounts and Records in forms as prescribed by the Board.
- (7) The applicant, or its affiliate, intermediary, subsidiary or holding company shall affirm that it does not hold a direct or indirect ownership interest in a manufacturer or slot machine license applicant or licensee, or employs, directly or indirectly, an officer, director, supervisory or principal employee of a manufacturer or slot machine license applicant or licensee.
- (8) Other information or documentation required by the Board.

(b) Each application for a supplier's license shall include the production of financial books, records, information, documentation and assurances to satisfy the Board of:

- (1) The financial stability, good character, honesty, integrity and responsibility of the applicant.

(2) That all key employee qualifiers individually qualify under the standards of section 1317 of the act.

(3) The integrity of all financial backers, investors, mortgagees, bondholders, and holders of indentures, notes or other evidences of indebtedness, either in effect or proposed, which bears a relationship to the applicant.

(4) The suitability of the applicant and all key employee qualifiers of the applicant based on the satisfactory results of:

- (i) A background investigation of all owners, officers, board of directors and key employees or their equivalent in other jurisdictions.
- (ii) A current tax clearance review performed by the Department.
- (iii) A current unemployment compensation tax clearance review and a workers compensation tax clearance review performed by the Department of Labor and Industry.

(c) The applicant, licensee, holding affiliate, intermediary or subsidiary company thereof, or an officer, director or key employee thereof, is prohibited from making a contribution of money or in-kind contribution to a candidate for nomination or election to a public office in this Commonwealth or to a political committee or State party in this Commonwealth or to a group, committee or association organized in support of a candidate, political committee or state party, as set forth in section 1513 of the act (relating to political influence).

(d) Neither the applicant nor a person directly related to the applicant may be a party in an ongoing civil proceeding in which the applicant is seeking to overturn or otherwise challenge a decision or order of the Board or Commissions, pertaining to the approval, denial or conditioning of a license to conduct thoroughbred or harness horse race meetings respectively with pari-mutuel wagering, or to operate slot machines in this Commonwealth.

**§ 431.3. Supplier requirements and prohibitions.**

A licensed supplier shall be the sole and exclusive authorized source of slot machines or associated equipment, as provided in section 1317 of the act (relating to supplier and manufacturer licenses application), that are sold, leased, offered or otherwise provided for use or play, distributed, serviced or repaired at a licensed gaming entity. Every licensed supplier shall:

- (1) Establish a principal place of business in this Commonwealth within 1 year of the Board's approval of the supplier license and maintain a principal place of business throughout the period during which the license is held.
- (2) Only employ technicians that have been approved by a licensed manufacturer.
- (3) Maintain at all times an adequate inventory of replacement parts and supplies for slot machine operation and support.
- (4) At the time of licensure, have assets or available lines of credit to support the sale, financing, servicing and repair of all slot machines to be placed in service by the supplier. The assets and available lines of credit shall be from sources independent of slot machine manufacturers and licensed gaming entities.
- (5) Upon request of the Board, submit to the Board for review an agreement with a licensed manufacturer or with a licensed gaming entity and detailed business plans. The Board's review may include all financing

arrangements, inventory requirements, warehouse requirements, warehouse space, technical competency, compensative agreements and other terms or conditions to ensure the financial independence of the licensed supplier from the licensed manufacturer and licensed gaming entity.

#### CHAPTER 433. LICENSE RENEWAL

Sec.  
433.1. Renewal of manufacturer and supplier license.

##### § 433.1. Renewal of manufacturer and supplier license.

(a) A license issued under this part shall be valid for 1 year and for all subsequent renewals. An application for renewal shall be filed by a licensed entity, conducting business on a regular or continuing basis, no later than 60 days prior to the expiration of the license.

(b) The licensed entity shall complete and file an original and seven copies of a Manufacturer/Supplier License Renewal Application Form which shall, without limitation, disclose all changes in ownership of the licensed entity, and the new owner shall be required to submit an application for licensure and evidence that he is qualified for licensure.

(1) The licensed entity shall disclose all changes in personnel who are to be qualified by the Board.

(2) The licensed entity shall pay a license renewal fee when the Renewal Application Form is filed.

(3) Once a Renewal Application Form has been filed and the renewal fee has been paid, the original license shall remain in effect until the Board has determined that the licensed entity has complied with all conditions of licensure as originally provided by the Board, or the Board has determined that an adverse material change in a condition of the original license has occurred which shall result in the nonrenewal of the license.

#### CHAPTER 435. EMPLOYEES

Sec.  
435.1. General provisions.  
435.2. Key employee qualifier license.  
435.3. Key employee license.  
435.4. Occupation permit.

##### § 435.1. General provisions.

(a) The issuance or renewal of a license or permit by the Board is a revocable privilege. No individual holding a license or permit under this part will be deemed to have a property interest in the license or permit.

(b) It shall be the affirmative responsibility of each individual applying for a license or permit under this part to establish his individual qualifications. All information provided to the Board must be true and complete. If there is a change in the information provided to the Board, an applicant shall promptly file a written amendment in a manner prescribed by the Board. An individual who fails to cooperate with the Board in its review of an application under this part will not be granted a license or permit.

(c) An individual applying for a license or permit under this part shall provide all information required by the act and this part and satisfy all requests for information pertaining to qualification in a form required by the Board. An individual who fails to provide information, documentation and disclosures required by this part or the Board or who fails to reveal a fact material to qualification will not be granted a license or permit under this part. An applicant shall waive liability as to the Board, its employees, the Commonwealth and its instrumentalities for damages resulting from disclosure or

publication in a manner, other than a willfully unlawful disclosure or publication, or material or information acquired during an investigation of the individual.

(d) An individual applying for a license or permit under this part shall have the continuing duty to provide assistance or information required by the Board or the Bureau, and to cooperate in an inquiry, investigation or hearing conducted by the Board or the Bureau. If, upon issuance of a formal request for information, evidence or testimony, an applicant, licensee or permittee refuses to comply with requests for assistance or information, the application, license or permit will be denied or revoked by the Board.

(e) An individual who receives a license or permit under this part shall have the continuing duty to report an arrest or conviction for an offense under 18 Pa.C.S. (relating to Crimes and Offenses), of an offense under 75 Pa.C.S. § 3802 (relating to driving under influence of alcohol or controlled substance) or of a comparable offense in other United States or foreign jurisdictions to the Board.

(f) An individual may not be employed by a slot machine licensee, manufacturer licensee or supplier licensee in any capacity unless the individual is a citizen of the United States or can demonstrate that he holds a current and valid work authorization and is not restricted from working in the capacity for which employment is sought or held. Authorization to work in the United States may be demonstrated by submitting one of the following:

(1) A permanent resident alien card.

(2) A temporary employment authorization card.

(3) A document which the Board deems to be sufficient evidence or authorization.

(g) No applicant, licensee or permittee may give or provide, or offer to give or provide, compensation or reward or a percentage or share of the money or property played or received through gaming in consideration for obtaining a license or permit to participate in gaming operations.

(h) An individual regulated by this part shall have a duty to inform the Board and the Bureau of an action which the individual believes would constitute a violation of the act. No person who so informs the Board or the Bureau will be discriminated against by an applicant, licensee or person for supplying the information.

(i) An individual who submits a document under this part in a language other than English to the Board or the Pennsylvania State Police with an application for a license or permit or in response to a request for information from the Board or the Pennsylvania State Police shall also submit an English translation of the non-English language document. The translation shall include the signature, printed name, address and telephone number of the translator and a verification by the translator of the truth and accuracy of the translation.

(j) Sixty days prior to the expiration of a license or permit under this part, a licensee or permittee may submit a renewal application to the Board. If the renewal application meets all the requirements of this part, the Board may renew the license. A new background investigation is not required unless ordered by the Board. All licensees and permittees shall provide an updated photograph at least every 2 years.

(k) If the Board receives a complete renewal application but fails to act upon the application prior to the

expiration of the license or permit, the license or permit shall continue in effect until acted upon by the Board.

(l) A reference to a slot machine licensee, manufacturer licensee or supplier licensee under this chapter includes an applicant for a slot machine license, manufacturer license or supplier license in addition to a person who is already licensed.

(m) The Board will maintain a list of all individuals who have applied for a license or permit under this part as well as a record of all actions taken with respect to each applicant.

**§ 435.2. Key employee qualifier license.**

(a) An individual employed by a person who is a slot machine licensee, a manufacturer licensee, or a supplier licensee as a key employee qualifier, as defined in § 401.4 (relating to definitions), shall obtain a key employee qualifier license from the Board.

(b) An application for licensure as a key employee qualifier shall be on a form prescribed by the Board and include the following:

(1) The name and address of the individual to include the home address and history of residence and all current business addresses.

(2) Daytime and evening telephone numbers.

(3) Date of birth.

(4) Physical description.

(5) Social Security number.

(6) Citizenship, resident alien status or authorization to work in the United States.

(7) Marital history.

(8) Military history.

(9) Employment history, including gaming-related employment.

(10) Verification of an applicant's employment or an offer of employment from a slot machine licensee or a supplier.

(11) A description of the employment responsibilities of the individual and their relationship to the operation of the slot machine licensee, manufacturer licensee or supplier licensee and of all education, training and experience that qualifies the individual for the position.

(12) Consent to a background investigation, including a signed, dated and notarized release authorization necessary to obtain information from governmental agencies and other institutions.

(13) The individual's criminal history records information and arrests or criminal charges brought against the individual.

(14) A photograph from the Commonwealth Photo Imaging Network.

(15) A set of fingerprints consistent with section 1802 of the act (relating to submission of fingerprints).

(16) A list of civil judgments consistent with section 1310(b) of the act (relating to slot machine license application character requirements).

(17) Details relating to a similar license obtained in another jurisdiction.

(18) A tax clearance certificate from the Department.

(19) The appropriate filing fee.

(20) Information required by the Board.

(c) In addition to the information under subsection (b), the Board may require letters of reference under section 1310(b) of the act.

(d) After review of the information submitted under subsection (b), including the background investigation, the Board may issue a key employee qualifier license if the individual applicant has proven by clear and convincing evidence that he is a person of good character, honesty and integrity and is qualified to hold a key employee qualifier license.

(e) A license under this chapter will be nontransferable.

(f) An individual who receives a license under this chapter need not obtain an additional license as a key employee.

**§ 435.3. Key employee license.**

(a) An individual employed by a slot machine licensee, manufacturer licensee or supplier licensee as a key employee as defined by the act shall obtain a key employee license from the Board.

(b) An application for licensure as a key employee shall be on a form prescribed by the Board and include the following:

(1) The name and address of the individual, to include the home address and history of residence and all business addresses.

(2) Daytime and evening telephone numbers.

(3) Date of birth.

(4) Physical description.

(5) Social Security number.

(6) Citizenship, resident alien status or authorization to work in the United States.

(7) Marital history.

(8) Military history.

(9) Employment history, including gaming related employment.

(10) Verification of an applicant's employment or an offer of employment from a slot machine licensee, manufacturer licensee or a supplier licensee.

(11) A description of the employment responsibilities of the individual and a statement of all education, training and experience that qualifies the individual for the position.

(12) Consent to a background investigation, including a signed, dated and notarized release authorization necessary to obtain information from governmental agencies and other institutions.

(13) The individual's criminal history records and arrests or criminal charges brought against the individual.

(14) A photograph from the Commonwealth Photo Imaging Network.

(15) A set of fingerprints consistent with section 1802 of the act (relating to submission of fingerprints).

(16) A list of civil judgments consistent with section 1310(b) of the act (relating to slot machine license application character requirements).

(17) Details relating to a similar license obtained in another jurisdiction.



- (18) A tax clearance certificate from the Department.
- (19) The appropriate filing fee.
- (20) Information required by the Board.

(c) In addition to the information under subsection (b), the Board may require letters of reference from law enforcement agencies under section 1310(b) of the act.

(d) After review of the information submitted under subsection (b), including the background investigation, the Board may issue a key employee license if the individual applicant has proven by clear and convincing evidence that he is a person of good character, honesty and integrity and is qualified to hold a license as a key employee.

(e) A license under this chapter will be nontransferable.

#### **§ 435.4. Occupation permit.**

(a) An individual employed by a slot machine licensee or a supplier licensee as a gaming employee as defined by section 1103 of the act (relating to definitions) and § 401.4 (relating to definitions) shall apply for and receive an occupation permit from the Board.

(b) An application for an occupation permit shall be on a form prescribed by the Board and include the following:

(1) The name and address of the individual, to include the home address and residence history and all business addresses.

(2) Daytime and evening telephone numbers.

(3) Date of birth.

(4) Physical description.

(5) Social security number.

(6) Citizenship, and, if applicable, resident alien status, including employment authorization.

(7) Marital history.

(8) Military history.

(9) Employment history, including gaming-related employment.

(10) Verification of an applicant's employment or an offer of employment from a slot machine licensee or a supplier licensee.

(11) A description of the employment responsibilities of the individual and a statement of all education, training and experience that qualifies the individual for the position.

(12) Consent to a background investigation by the Board, including a signed, dated and notarized release authorization necessary to obtain information from governmental agencies and other institutions.

(13) The individual's criminal history record, and arrests or criminal charges brought against the individual.

(14) A photograph from the Commonwealth Photo Imaging Network.

(15) Fingerprints consistent with section 1802 of the act (relating to submission of fingerprints).

(16) Details relating to a similar license obtained in another jurisdiction.

(17) A tax clearance certificate from the Department.

(18) The appropriate filing fee.

(19) Information required by the Board.

(c) In addition to the information under subsection (b), the Board may require letters of reference from law enforcement agencies under section 1310(b) of the act (relating to slot machine license application character requirements).

(d) After review of the information submitted under subsection (b), including a background investigation, the Board may issue a permit if the individual has proven that he is a person of good character, honesty and integrity and is qualified to hold an occupation permit.

(e) An individual who wishes to receive an occupation permit under this chapter may provide the slot machine licensee or supplier with written authorization to file the application on the individual's behalf.

(f) A license under this chapter will be nontransferable.

### **Subpart C. RECORDKEEPING**

#### **Chap.**

#### **451. LICENSEE RECORDKEEPING REQUIREMENTS**

### **CHAPTER 451. LICENSEE RECORDKEEPING REQUIREMENTS**

#### **Sec.**

#### **451.1. Recordkeeping generally.**

#### **§ 451.1. Recordkeeping generally.**

(a) All manufacturer, supplier and slot machine licensees shall maintain in a place secure from theft, loss or destruction, adequate records of business operations which shall be made available to the Board upon request. These records shall include:

(1) All correspondence with the Board and other governmental agencies on the local, state and Federal level.

(2) All correspondence concerning gaming equipment with a licensed slot machine operator or other licensed entity.

(3) Copies of all promotional material and advertising.

(4) A personnel file on each employee of the licensee, including sales representatives.

(5) Financial records of all transactions concerning gaming equipment with a licensed slot machine operator or other licensed entity.

(6) Copies of all tax returns, reports and other tax documents filed with a taxing entity of the Federal government as well as a state or local taxing entity for 7 years or a longer period as prescribed by the taxing entity.

(b) Except as provided in subsection (a)(6) (relating to tax documents), the records listed in subsection (a) will be held for at least 5 years.

### **Subpart D. SLOT MACHINE TESTING AND CERTIFICATION**

#### **Chap.**

#### **461. SLOT MACHINE TESTING AND CERTIFICATION REQUIREMENTS**

### **CHAPTER 461. SLOT MACHINE TESTING AND CERTIFICATION REQUIREMENTS**

#### **Sec.**

#### **461.1. Protocol requirements.**

#### **461.2. Testing and certification generally.**

#### **§ 461.1. Protocol requirements.**

In accordance with section 1324 of the act (relating to protocol information), all licensed slot machine manufacturers and suppliers shall be required to enable all slot machine terminals to communicate with the Department's Central Control Computer for the purpose of transmitting

auditing program information and activating and disabling slot machine terminals.

**§ 461.2. Testing and certification generally.**

(a) In accordance with section 1320 of the act (relating to slot machine testing and certification standards), all slot machine terminals to be deployed in this Commonwealth shall be tested and certified prior to operation and use in a licensed facility in this Commonwealth.

(b) All slot machines operated in this Commonwealth must be approved by the Board.

(c) The Board has the authority to require either of the following procedures with respect to testing and certifying a slot machine:

(1) Accept other gaming jurisdiction certification under section 1320 of the act.

(2) Utilize the services of a slot machine testing and certification facility to conduct the testing.

(d) Within 3 years, the Board will establish a slot machine testing and certification facility, through an assessment paid by manufacturer licensees.

(e) The Board will require payment of all costs for the testing and certification of all slot machines through procedures prescribed by the Board.

(f) The Board will require the licensee seeking approval of the slot machine to pay all costs of transportation, inspection and testing.

**Subpart E. FEES**

**Chap. 471. FILING FEES**

**CHAPTER 471. FILING FEES**

Sec.	
471.1.	Fees generally.
471.2.	Obligation to pay fees; nonrefundable nature of fees.
471.3.	Schedule of fees for manufacturer and supplier licenses.

**§ 471.1. Fees generally.**

(a) In accordance with section 1208 of the act (relating to collection of fees and fines), the Board has the power and duty to levy and collect fees from various applicants, licensees and permittees to fund the operations of the Board.

(b) A pleading or other document for which a filing fee is required to be charged will be received, but will not be deemed filed, until the filing fee, bond letter of credit or other cost that may be required by statute or regulation has been paid.

(c) The fees collected by the Board will be deposited into the State Gaming Fund as established in section 1403 of the act (relating to establishment of State Gaming Fund and net slot machine revenue distribution).

(d) Fees shall be paid by money order or check made payable to the "Commonwealth of Pennsylvania." Cash will not be accepted by the Board.

**§ 471.2. Obligation to pay fees; nonrefundable nature of fees.**

(a) A fee obligation arising in accordance with the act or this part shall be due and payable notwithstanding the withdrawal or abandonment of an application or the termination in a manner of an existing license.

(b) Except as otherwise provided in section 1209 of the act (relating to slot machine license fee), amounts actually paid by the applicant, licensee or permittee in accordance with the act and this part are not refundable.

**§ 471.3. Schedule of fees for manufacturer and supplier licenses.**

(a) In accordance with section 1208 of the act (relating to collection of fees and fines), the Board has the power and duty to levy and collect fees from applicants for manufacturer's licenses and supplier's licenses. The licensing fee schedule shall be as follows:

(1) *Manufacturer's license fee schedule.* The fees for obtaining and renewing a manufacturer's license are as follows:

(i) Initial application fee: \$2,500.

(ii) License issuance fee: \$50,000.

(iii) Annual renewal fee: \$25,000.

(2) *Supplier's license fee schedule.* The fees for obtaining and renewing a supplier's license are as follows:

(i) Initial application fee: \$2,500.

(ii) License issuance fee: \$25,000.

(iii) Annual renewal fee: \$10,000.

(b) To recover the cost of the investigation and consideration of license and permit applications by manufacturers and suppliers, each application for a manufacturer license or a supplier license must be accompanied by a nonrefundable fee of \$5,000 per key employee and key employee qualifier. If the cost of the background investigations exceeds \$5,000, the Board will require the manufacturer or supplier applicant to pay additional costs associated with the investigations.

(c) On or after July 5, 2006, and annually thereafter, the Board may increase the fees imposed under this section by an amount not to exceed an annual cost-of-living adjustment calculated as set forth in section 1208(2) of the act.

**Subpart F. MINORITY AND WOMEN'S BUSINESS ENTERPRISES**

**Chap. 481. GENERAL PROVISIONS**

**CHAPTER 481. GENERAL PROVISIONS**

Sec.	
481.1.	Statement of purpose and policy.
481.2.	Definitions.
481.3.	Diversity participation.
481.4.	Establishment of diversity plan required.
481.5.	Report of participation.

**§ 481.1. Statement of purpose and policy.**

(a) This part establishes and prescribes the procedures for promoting and ensuring that licensed entities, licensed facilities, and applicants for licensure foster participation and diversity in all aspects of their gaming operations in this Commonwealth.

(b) It is the policy of the Board to promote and ensure that licensed entities, licensed facilities and applicants for licensure conduct all aspects of their operations in a manner that assures diversity of opportunity as follows:

(1) In the ownership, participation and operation of licensed entities and licensed facilities in this Commonwealth.

(2) Through the ownership, participation and operation of business enterprises associated with or utilized by licensed entities and licensed facilities.

(3) Through the provision of goods and services utilized by licensed entities and licensed facilities.

(c) It is further the policy of the Board to promote and ensure diversity in employment and contracting by a licensed entity, licensed facility or an applicant for a license and its contractors, subcontractors, assignees, lessees, agents, vendors and suppliers.

**§ 481.2. Definitions.**

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

*Diversity plan*—A plan developed by a licensed entity, licensed facility or an applicant for a license which promotes and ensures diversity in ownership, participation and operation of licensed facilities or licensed entities; and in employment and contracting by a licensed facility and licensed entity.

*Minority*—The ethnic/racial categories identified in employer survey reports that are required by the United States Equal Opportunity Commission and the Office of Federal Contract Compliance Programs of the United States Department of Labor under section 709 of Title VII of the Civil Rights Act of 1964 (42 U.S.C.A. § 2000(e)-8) or by subsequent amendments to that Federal act.

*Participation plan*—An obligation imposed by a licensed entity, licensed facility or applicant as part of its contract with a contractor that requires the contractor to perform the contract through the utilization of minority or women owned business enterprises for a specified minimum percentage of the value of the contract.

**§ 481.3. Diversity participation.**

(a) The Board will compile a list of the minority and women's business enterprises that are certified by the Bureau of Minority and Women's Business Enterprises of the Department of General Services under 68 Pa.C.S. Part I (relating to Commonwealth Procurement Code) and will make the list available to all licensed entities, licensed facilities and applicants for licensure. The list developed by the Board will be reviewed annually to determine that each minority business enterprise and women's business enterprise continue to remain eligible for participation as minority and women's business enterprises.

(b) The list of minority business enterprises and women's business enterprises compiled by the Board may be relied upon by a licensed entity, licensed facility or applicant to establish the eligibility of the enterprise as a minority or women's business enterprise for the purpose of promoting and ensuring minority and women's business participation.

**§ 481.4. Establishment of diversity plan required.**

(a) Each licensed entity, licensed facility or applicant in its application for licensure, shall include a diversity plan that establishes a separate goal of diversity in the ownership, participation, and operation of, and employment at, the licensed entity or licensed facility or by the applicant. The Board will determine whether the stated goals set forth in each diversity plan are reasonable and represent a good faith effort to assure that all persons are accorded equality of opportunity in contracting and employment by a licensed entity, licensed facility or an applicant for a license, and its contractors, subcontractors, assignees, lessees, agents, vendors and suppliers.

(b) A licensed entity, licensed facility or applicant may achieve its diversity goals through one of the following:

(1) Contracting or transacting directly with minority and women's business enterprises.

(2) Contracting with a nonminority business enterprise under terms and conditions that establish a participation plan.

(c) Onsite audits may be performed on an annual basis or at the discretion of the Board to ensure compliance with this subpart.

**§ 481.5. Report of participation.**

(a) As part of an application to renew a license under the act and this part, each licensed entity or licensed facility shall file a report with the Board concerning the performance of its diversity plan. The report shall contain all of the following:

(1) Employment data, including information on minority and women representation in the workforce in all job classifications; salary information; and information on recruitment and training, including executive and managerial level recruitment and training; and retention and outreach efforts.

(2) The total number and value of all contracts or transactions awarded for goods and services.

(3) The total number and value of all contracts or transactions awarded to minority and women's business enterprises.

(4) The total number and value of all contracts awarded that contain a participation plan.

(5) The total number and value of all subcontracts to be awarded to minority and women's business enterprises under contracts containing a participation plan.

(6) An identification of each subcontract actually awarded to a minority or women's business enterprise under contracts containing a participation plan during each calendar quarter and the actual value of each such subcontract.

(7) An identification of each contract or transaction awarded to a minority or women's business enterprise.

(8) A comprehensive description of all efforts made by the licensed entity, licensed facility or applicant to monitor and enforce the participation plan.

(9) Information on minority and women investment, equity ownership, and other ownership or management opportunities initiated or promoted by the licensed entity or licensed facility.

(10) Other information deemed necessary by the Board to ensure compliance with the act and this part.

(b) The Board will use the report required under subsection (a) to monitor compliance with this part. The Board may request that the Bureau of Minority and Women's Business Enterprises, of the Department of General Services, assist the Board in determining whether the licensed entity, licensed facility or applicant complies with the requirements of this part.

**Subpart G. PRACTICE AND PROCEDURE**

<b>Chap.</b>	
<b>491.</b>	<b>GENERAL RULES OF PRACTICE</b>
<b>495.</b>	<b>DOCUMENTARY FILINGS</b>
<b>497.</b>	<b>TIME</b>
<b>499.</b>	<b>REPRESENTATION BEFORE THE BOARD</b>

**CHAPTER 491. GENERAL RULES OF PRACTICE**

<b>Sec.</b>	
<b>491.1.</b>	<b>Office of the Clerk.</b>
<b>491.2.</b>	<b>Filing generally.</b>

**§ 491.1. Office of the Clerk.**

(a) The Board will have within its organization an Office of the Clerk whose duties will be as follows:

(1) Provide information as to practice and procedure before the Board, under this subpart.

(2) Receive and docket applications and pleadings and other documents filed with the Board. Receipt and transmission of the information may be by electronic means, only under a policy established by the Board.

(b) All filings and requests for practice and procedure information should be directed to:

Office of the Clerk  
Pennsylvania Gaming Control Board  
P. O. Box 69060  
Harrisburg, Pennsylvania 17106-9060

(c) The Clerk will maintain a docket of all proceedings, and each proceeding as initiated will be assigned an appropriate designation. The docket will be available for inspection and copying by the public during the Board's office hours.

**§ 491.2. Filing generally.**

(a) Pleadings and other documents filed with the Board must clearly designate the docket number or similar identifying symbols, if any, employed by the Board, and set forth a short title. The identity of the individual making the submission, including name, mailing address, and status (for example—party, attorney for a party, and the like) shall appear on the document.

(b) Pleadings, including documents filed under this chapter, must also comply with Chapter 495 (relating to documentary filings).

(c) In a proceeding when, upon inspection, the Board is of the opinion that a pleading tendered for filing does not comply with this subpart or this title or, if it is an application or similar document, does not sufficiently set forth required material or is otherwise insufficient, the Board may decline to accept it for filing and may return it without filing, or the Board may accept it for filing and advise the person tendering it of the deficiency and require that the deficiency be corrected.

(d) The Board may order redundant, immaterial, obscene or otherwise inappropriate comments stricken from documents filed with it.

**CHAPTER 495. DOCUMENTARY FILINGS**

Sec.

495.1.	Form of documentary filings generally.
495.2.	Form of documents.
495.3.	Incorporation by reference.
495.4.	Single pleading covering more than one matter.
495.5.	Execution of documents.
495.6.	Verification.
495.7.	Number of copies.

**§ 495.1. Form of documentary filings generally.**

(a) Applications, petitions, complaints, answers or similar documents shall be divided into numbered paragraphs.

(b) Copies of contracts, agreements, permits or other writings referred to in the application or petition may be attached as exhibits. Copies of writings or orders already of record with the Board need not be attached to the application or petition if reference by docket number is made to the proceeding in which they were filed.

(c) Pleadings or other documents filed with the Board in a proceeding shall clearly show the docket number or similar identifying symbols, if any, and title of the proceeding before the Board. They shall also show, in the title of a particular pleading or other document filed, the name of the person on whose behalf the filing is made. If more than one person is involved, a single name only need be included in the title.

(d) Subsections (a)—(c) supersede 1 Pa. Code § 31.5 (relating to communications and filings generally).

**§ 495.2. Form of documents.**

(a) The method of receipt and transmission of information will be under a policy established by the Board.

(b) Subsection (a) supersedes 1 Pa. Code § 33.2 (relating to form).

**§ 495.3. Incorporation by reference.**

(a) Except as otherwise provided in subsection (b), documents on file with the Board may be incorporated by reference into a subsequently filed pleading or other document. A document may be so incorporated only by reference to the specific document and to the prior filing and docket number at which it was physically filed.

(b) No document which has been on file with the Board for more than 7 years may be incorporated by reference in a current document unless the person filing the current document first makes inquiry to the Office of the Clerk and ascertains that the earlier document continues to be readily available in the active records of the Board.

**§ 495.4. Single pleading covering more than one matter.**

(a) Except as otherwise provided under this chapter, a single pleading may be accepted for filing with respect to a particular transaction and one or more related transactions and shall be deemed to be a single filing for purposes of the computation of fees under Chapter 471 (relating to filing fees).

(b) If, upon review, the Board determines that the transactions are not closely related or otherwise properly joined, the Board will direct that the single pleading be refiled as two or more separate pleadings, each subject to a separate filing fee.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 33.4 (relating to single pleading or submittal covering more than one matter).

**§ 495.5. Execution of documents.**

(a) *Signature.* Except as may be otherwise ordered or requested by the Board, the original copy of a pleading, or other document shall be signed in ink by the party in interest, or by his attorney, as required by subsection (b), and show the office and post office address of the party or attorney. Other copies filed shall conform thereto.

(b) *Subscription.*

(1) A pleading or other document filed with the Board shall be subscribed by one of the following:

(i) The person filing the documents, and severally if there is more than one person so filing.

(ii) An officer if it is a corporation, trust, association or other organized group.

(iii) An officer or employee thereof if it is another agency, a political subdivision, or other governmental authority, agency or instrumentality.

(iv) An attorney having authority with respect thereto.

(2) A document filed by a corporation, trust, association or other organized group, may be required to be supplemented by appropriate evidence of the authority of the officer or attorney subscribing the documents.

(c) *Effect.*

(1) The signature of the person subscribing a document filed with the Board constitutes a certificate by the individual that:

(i) The person has read the document being subscribed and filed, and knows the contents thereof.

(ii) The document has been subscribed and executed in the capacity specified upon the document with full power and authority to do so, if executed in a representative capacity.

(iii) The document is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, to the best of the person's knowledge, information and belief formed after reasonable inquiry.

(iv) The document is not interposed for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(2) If a document is signed in violation of this subsection, the Board, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include striking the document, dismissal of the proceeding or the imposition of civil penalties under section 1518 of the act (relating to prohibited acts; penalties).

(d) *Supersession.* Subsections (a) and (b) are identical to 1 Pa. Code § 33.11 (relating to execution). Subsection (c) supersedes 1 Pa. Code § 33.11.

**§ 495.6. Verification.**

(a) Applications, petitions, formal complaints, motions and answers thereto containing an averment of fact not appearing of record in the action or containing a denial of fact shall be personally verified by a party thereto or by an authorized officer of the party if a corporation or association. Verification means a signed written statement of fact supported by oath or affirmation or made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities). If verification is required, notarization is not necessary.

(b) The verification form should comply substantially with the following:

**VERIFICATION**

I, \_\_\_\_\_, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the facts. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to Unsworn Falsification to Authorities)

Date: \_\_\_\_\_ (Signature)

(c) When an affidavit is used, the form should comply substantially with the following:

**AFFIDAVIT**

I, \_\_\_\_\_ (Affiant) being duly sworn (affirmed) according to law, depose and say that (I am authorized to make this affidavit on behalf of \_\_\_\_\_ corporation, being the holder of the office of \_\_\_\_\_ with that corporation,) and that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and (I or corporation) expect to be able to prove the facts.

\_\_\_\_\_  
(Signature of Affiant)

Sworn and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Signature of official administering oath)

(d) An individual who executes a pleading or other document knowing that it contains a false statement and who causes it to be filed with the Board shall be subject to prosecution of a misdemeanor of the second degree in violation of 18 Pa.C.S. § 4904(a).

(e) Subsections (a)—(d) supersede 1 Pa. Code § 33.12 (relating to verification).

**§ 495.7. Number of copies.**

(a) An original and seven copies of pleadings or documents other than correspondence shall be furnished to the Board at the time of filing, except as may be otherwise required by statute or ordered or requested by the Board.

(b) In the case of applications and petitions, one of the copies filed with the Board may be filed without exhibits.

(c) In the case of complaints or petitions, when more than one respondent is named, an additional copy of the complaint or petition shall be filed for each additional respondent.

(d) Subsections (a)—(c) supersede 1 Pa. Code § 33.15 (relating to number of copies).

**CHAPTER 497. TIME**

- Sec. 497.1. Date of filing.
- 497.2. Computation of time.
- 497.3. Issuance of Board orders.
- 497.4. Effective dates of Board orders.
- 497.5. Extensions of time and continuances.

**§ 497.1. Date of filing.**

(a) Whenever a pleading or other document is required or permitted to be filed under this part or by statute, it will be deemed to be filed on one of the following dates:

(1) On the date actually received in the Office of the Office of the Clerk.

(2) On the date deposited with an overnight express package delivery service as shown on the express delivery receipt attached to or included within the envelope containing the document.

(3) On the date deposited in the United States mail as shown by the United States Postal Service stamp on the envelope or on a United States Postal Service Form 3817 certificate of mailing. A mailing envelope stamped by an in-house postage meter is insufficient proof of the date of mailing.

(b) Failure to include a legible delivery receipt with the document may result in an untimely filing.

(c) Except as otherwise permitted by the Board, a document transmitted by facsimile or electronically to the Board will not be accepted for filing within the meaning of this section.

(d) Subsections (a)—(c) supersede 1 Pa. Code § 31.11 (relating to timely filing required).

#### § 497.2. Computation of time.

(a) Except as otherwise provided by statute, in computing a period of time prescribed or allowed by this title or by statute, the day of the act, event or default after which the designated period of time begins to run is not included. The last day of the period is included, unless it is Saturday, Sunday or a legal holiday in this Commonwealth, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday nor a holiday. Intermediate Saturdays, Sundays and legal holidays shall be included in the computation.

(b) Except as otherwise provided by statute, in computing a period of time prescribed or allowed by this title or by statute which is measured by counting a specified number of days backward from a scheduled future act, event or default, the day of the scheduled future act, event or default is not included. The day on which the prescribed or allowed action is to occur shall be included, unless it is a Saturday, Sunday or a legal holiday in this Commonwealth, in which event the day of the prescribed or allowed action shall run until the next preceding day which is neither a Saturday, Sunday nor a holiday. A part-day holiday shall be considered as a holiday. Intermediate Saturdays, Sundays and legal holidays are included in the computation.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 31.12 (relating to computation of time).

#### § 497.3. Issuance of Board orders.

(a) In computing a period of time involving the date of the issuance of an order by the Board, the day of issuance of an order will be the date the Office of the Clerk enters the order. An order will not be made public prior to its entry except when, in the Board's judgment, the public interest so requires. The date of entry of an order may or may not be the day of its adoption by the Board. The Clerk will clearly indicate on each order the date of its adoption by the Board and the date of its entry.

(b) The date of entry of an order which is subject to review by the Supreme Court of Pennsylvania is governed by 2 Pa.C.S. Chapter 7, Subchapter A (relating to judicial review of Commonwealth agency action). The date of issuance of an order shall be deemed to be the date of entry for the purposes of computing the time for appeal under an applicable statute relating to judicial review of Board action.

(c) Subsections (a) and (b) are identical to 1 Pa. Code § 31.13 (relating to issuance of agency orders).

#### § 497.4. Effective dates of Board orders.

(a) An order of the Board promulgating regulations shall be effective upon publication in the *Pennsylvania Bulletin* unless otherwise specially provided in the order.

(b) Except as provided in subsection (a), an order of the Board will be effective as of the date of entry unless otherwise specially provided in the order.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 31.14 (relating to effective dates of agency orders).

#### § 497.5. Extensions of time and continuances.

(a) Extensions of time shall be governed by the following:

(1) Except as otherwise provided by statute, whenever under this part or by order of the Board, or notice given thereunder, an act is required or allowed to be done at or within a specified time, the time fixed or the period of time prescribed may, by the Board, for good cause be extended upon motion made before expiration of the period originally prescribed or as previously extended. Upon motion made after the expiration of the specified period, the act may be permitted to be done where reasonable grounds are shown for the failure to act.

(2) Requests for the extension of time in which to file briefs shall be filed at least 5 days before the time fixed for filing the briefs unless the Board, for good cause shown allows a shorter time.

(b) Except as otherwise provided by statute, requests for continuance of hearings or for extension of time in which to perform an act required or allowed to be done at or within a specified time by this title or by order of the Board, shall be by motion in writing, timely filed with the Board, stating the facts on which the application rests, except that during the course of a proceeding, the requests may be made by oral motion in the hearing before the Board. Only for good cause shown will requests for continuance be considered. The requests shall be submitted at least 5 days prior to the hearing date.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 31.15 (relating to extensions of time).

### CHAPTER 499. REPRESENTATION BEFORE THE BOARD

Sec.	
499.1.	Appearance in person.
499.2.	Appearance by attorney.
499.3.	Other representation prohibited at hearings.
499.4.	Notice of appearance or withdrawal.
499.5.	Form of notice of appearance.
499.6.	Contemptuous conduct.
499.7.	Suspension and disbarment.

#### § 499.1. Appearance in person.

(a) Individuals may represent themselves.

(b) In adversarial proceedings, partnerships, corporations, trusts, associations, agencies, political subdivisions and government entities shall be represented only under § 499.2 (relating to appearance by attorney). For purposes of this section, without limitation, a request for licensure under sections 1302, 1304, 1305, 1315 and 1317 of the act or a license or permit determined by the Board, shall be considered to be an adversarial proceeding.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 31.21 (relating to appearance in person).

**§ 499.2. Appearance by attorney.**

(a) Individuals, partnerships, associations, corporations or governmental entities may be represented in a proceeding by an attorney at law admitted to practice before the Supreme Court of Pennsylvania.

(b) An attorney licensed in a jurisdiction which does not accord like privileges to members of the bar of this Commonwealth may appear before the Board with the permission of the Board consistent with Pa.B.A.R. 301 (relating to admission pro hac vice).

(c) Subsections (a) and (b) supersede 1 Pa. Code § 31.22 (relating to appearance by attorney).

**§ 499.3. Other representation prohibited at hearings.**

(a) Participants, individuals, partnerships, associations, corporations or governmental entities may not be represented at a hearing before the Board except as:

(1) Stated in §§ 499.1 and 499.2 (relating to appearance in person; and appearance by attorney).

(2) Otherwise permitted by the Board in a specific case.

(b) Subsection (a) supersedes 1 Pa. Code § 31.23 (relating to other representation prohibited at hearings).

**§ 499.4. Notice of appearance or withdrawal.**

(a) An individual appearing without representation before the Board shall file with the Office of the Clerk an address for service of a notice or other written communication. A change in address which occurs during the course of the proceeding shall be reported to the Office of the Clerk promptly.

(b) An attorney whose name and address appears in a representative capacity on an initial pleading filed with the Office of the Clerk shall be considered to have entered an appearance in that proceeding. An attorney who enters the matter at a later stage of the proceeding shall file with the Office of the Clerk a written notice of the appearance, which shall state his name, address and telephone number and the name and address of the person on whose behalf he appears. The notice shall be served on the participants in the proceeding. A change in address which occurs during the course of the proceeding shall be reported to the Office of the Clerk promptly.

(c) A person appearing or practicing before the Board in a representative capacity may be required to file a power of attorney with the Board showing his authority to act in that capacity.

(d) An attorney who wishes to withdraw an appearance shall file with the Office of the Clerk a written notice of withdrawal. The notice shall be served on the participants.

(e) Subsections (a)—(d) supersede 1 Pa. Code § 31.24 (relating to notice of appearance).

**§ 499.5. Form of notice of appearance.**

(a) The form of notice of appearance is as follows:

COMMONWEALTH OF PENNSYLVANIA BEFORE THE  
PENNSYLVANIA GAMING CONTROL BOARD

In the Matter of:  
[File, Docket or other identifying No.:]

NOTICE OF APPEARANCE

Please enter my appearance in the above-designated matter on behalf of \_\_\_\_\_.

I am authorized to accept service on behalf of said participant in this matter.

[CHECK ONE]

[ ] On the basis of this notice, I request a copy of each document hereafter issued by the Board in this matter.

[ ] I am already receiving or have access to a copy of each document issued by the Board in this matter and do not on the basis of this notice require an additional copy.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Attorney Identification Number

\_\_\_\_\_  
Name (Printed)

\_\_\_\_\_  
P. O. address

\_\_\_\_\_  
City, state and zip code

\_\_\_\_\_  
Telephone Number  
(including area code)

(b) Subsection (a) supersedes 1 Pa. Code § 31.25 (relating to form of notice of appearance).

**§ 499.6. Contemptuous conduct.**

(a) Contemptuous conduct at a hearing before the Board shall be grounds for exclusion from the hearing and for summary suspension without a hearing for the duration of the hearing.

(b) Subsection (a) is identical to 1 Pa. Code § 31.27 (relating to contemptuous conduct).

**§ 499.7. Suspension and disbarment.**

(a) The Board may deny, temporarily or permanently, the privilege of appearing or practicing before it to a person who is found by the Board, after notice and opportunity for hearing in the matter, to have done one or more of the following:

(1) Lacked the requisite qualifications to represent others.

(2) Engaged in unethical, contemptuous or improper conduct before the Board.

(3) Repeatedly failed to follow Board directives.

(b) For the purpose of subsection (a), practicing before the Board shall include:

(1) Transacting business with the Board.

(2) The preparation of a statement, opinion or other paper by an attorney, accountant, engineer or other expert, filed with the Board in a pleading or other document with the consent of the attorney, accountant, engineer or other expert.

(3) Appearances at a hearing before the Board.

(c) Subsections (a) and (b) are identical to 1 Pa. Code § 31.28 (relating to suspension and disbarment).

*(Editor's Note: The following Proposed Regional Supplier Amendments were introduced but not acted upon by the Board at its April 12, 2005, meeting. The following is printed for public comment.)*

### **Proposed Regional Supplier Amendments**

*Add to § 427.2*

(e) Preference will be given to applicants for manufacturer licenses who can demonstrate that they either have established or will establish within 60 days after licensure, a bona fide place of business in the Commonwealth and is or will, within such timeframe, be capable of performing all functions required of a manufacturer licensee.

*Add to § 431.2(a)*

(9) submit a detailed business plan including, without limitation, the type of good to be supplied and services to be provided through purchase, lease, contract, or otherwise; projected economic benefit to the region in which it is seeking to be licensed; projected number of jobs to be created; opportunities to be created for minority and women owned businesses; and its intended principal place of business to be located within this Commonwealth within one year of issuance of its license;

(10) A statement setting forth whether the applicant has an existing place of business in the Commonwealth; the location of any such business; and the nature of any such business.

(11) a notarized statement, attesting that the applicant is qualified to be issued a comparable license in any jurisdiction in the United States that licenses gaming and gaming related activities. The statement shall be subject to review, investigation and verification by the Board. Inability to meet the qualifications for issuance of a comparable license in any jurisdiction in the United States shall disqualify the applicant from receiving a supplier license.

(12) a notarized statement, attesting that neither the applicant, nor its affiliate, intermediary, subsidiary or holding company holds any direct or indirect ownership interest in any licensed manufacturer or any slot machine license applicant or licensee, or employs, directly or indirectly, any officer, director, key employee, supervisory or principal employee of a licensed manufacturer or slot machine licensee, signed by the chief executive officer of the applicant.

*Add to § 431.3(1)*

Preference will be given to applicants for supplier licenses who can demonstrate that they either have established or will establish within 60 days after licensure, a bona fide place of business in the Commonwealth and is, or within such timeframe, will be capable of performing all functions required of a supplier licensee.

*Add to § 431.3 by replacing current paragraph (5) and adding:*

(5) A manufacturer may only sell, or otherwise provide, slot machines, progressive slot machines, parts or associated equipment to a licensed supplier and a licensed slot machine facility may only purchase, lease, contract for or agree to receive slot machines, progressive slot machines, parts or associated equipment from a licensed supplier.

(6) A licensed slot machine facility may not purchase, lease, contract for, agree to receive or in any way transfer into or out of the Commonwealth a slot machine or associated equipment to or from its affiliated company or companies except through a licensed supplier.

(7) A licensed manufacturer may not apply for and is ineligible to receive a supplier license.

(8) The Board will establish five distinct supplier regions within the Commonwealth taking into consideration relevant demographic and market information.

(9) No less than five and no more than 10 supplier licenses shall be issued within each region. In determining the number of supplier licenses to be issued within a region, the Board will consider the potential market area within the region, the level of supplier services projected to be required in the region and the impact of the number of supplier licenses to be issued on the financial viability of each supplier operation within the specified region.

(10) The Board shall cause to be published in the Pennsylvania Bulletin a description of each supplier region in the Commonwealth and the number of supplier licenses to be issued within each region.

(11) A licensed supplier may only sell, lease, offer or otherwise provide, distribute, market, maintain, repair or service slot machines, progressive slot machines, parts or associated equipment and perform slot machine related services within its designated region.

(12) Licensed slot machine facilities may only purchase, lease, contract for or agree to receive slot machines, progressive slot machines, parts or associated equipment and slot machine related services from a licensed supplier within its designated region.

(13) All agreements between a licensed manufacturer and a licensed supplier shall be subject to review and approval of the Board. The Board will not recognize nor approve any agreement between a manufacturer and a supplier entered into prior to Board approval of the manufacturer and supplier for licensure under the act and this subpart. Review of any agreement between a licensed manufacturer and a licensed supplier shall include, but not be limited to, all financing arrangements, inventory requirements, warehouse space requirements and technical training requirements. Such agreements:

(i) may or may not prohibit the licensed supplier from selling or leasing slot machines or slot machine replacement parts of other licensed manufacturers; Provided, however, that a licensed supplier may not be the exclusive supplier for more than one licensed manufacturer.

(ii) shall not extend beyond the term of the supplier license in effect on the date the agreement is entered into or one year, whichever is longer.

(14) All agreements between a licensed supplier and a licensed slot machine facility shall be subject to review and approval of the Board. This review shall include, but not be limited to, the proposed method of financing the purchase or lease of slot machines, progressive slot machines, parts or associated equipment and the method used to determine the compensation to be received by the licensed slot machine supplier.

(15) A licensed slot machine facility shall not dispose, sell or deliver of a slot machine or associated equipment to anyone other than a licensed supplier. A licensed slot machine facility shall not sell, deliver or dispose of a slot machine or associated equipment without the prior written approval of the Board. A slot machine facility licensee



shall not request approval to sell, deliver or dispose of a slot machine or associated equipment to a licensed supplier unless the devices have been marked for such activity. Applications for approval to sell, deliver or dispose of a slot machine or associated equipment must be made, processed and determined in such manner and using such forms as the Board may prescribe.

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