

RULES AND REGULATIONS

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF MEDICINE [49 PA. CODE CH. 16]

Medical Disciplinary Process and Procedures

The State Board of Medicine (Board) amends § 16.51 (relating to hearing examiners) and adds §§ 16.55—16.58 to read as set forth in Annex A.

A. *Effective Date*

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

B. *Statutory Authority*

Sections 8 and 9 of the Medical Practice Act of 1985 (act) (63 P. S. §§ 422.8 and 422.9) authorize the Board to promulgate regulations addressing procedures to be followed in proceedings before it consistent with the requirements of section 9 of the act.

C. *Background and Purpose*

The final-form rulemaking codifies the process and procedures that are currently followed in disciplinary matters before the Board. These procedures are derived from sections 901—905 of the Health Care Services Malpractice Act (formerly 40 P. S. §§ 1301.901—1301.905). On March 20, 2002, the Governor signed into law the Medical Care Availability and Reduction of Error (MCARE) Act (MCARE Act) (40 P. S. §§ 1303.101—1303.910). Section 5104 of the MCARE Act repealed sections 901—905 of the Health Care Services Malpractice Act. It is not clear what, if any, impact the repealer provisions have on the procedures followed by the Board. Because the Board's procedures have been effective, the Board has determined that codifying the process will maintain the status quo and avoid unnecessary and unintended confusion. The Board has also included language in § 16.55(c) (relating to complaint process) specifically provided for by the MCARE Act.

D. *Summary of Comments and Responses to Proposed Rulemaking*

Proposed rulemaking was published at 34 Pa.B. 1963 (April 10, 2004). The Board entertained public comment for 30 days during which time the Board received comments from the Pennsylvania Academy of Family Physicians (Academy). Following the close of the public comment period, the Board received comments from the Independent Regulatory Review Commission (IRRC) and the House Professional Licensure Committee (HPLC). The Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) did not comment. The following is a summary of the comments and the Board's response.

The Academy sought the specific statutory authority for the confidentiality provision of § 16.55(c). This language is specifically authorized by section 907 of the MCARE Act (40 P. S. § 1303.907). The Academy also questioned § 16.55(d) in regard to the prosecutor's ability, after failed settlement negotiations, to introduce other evidence to prove factual matters disclosed during negotiation. The Academy's position is that this practice impairs the

settlement and raises due process concerns. Respectfully, the Academy's position is mistaken. While statements made during the negotiation process are not admissible, it is common accepted practice to allow other evidence not disclosed during negotiations to be introduced.

The HPLC and IRRC raised similar questions regarding the proposed rulemaking. The HPLC and IRRC questioned whether § 16.58 (relating to appeal from the Board decision) could be interpreted as limiting a respondent's right of appeal. This was not the intent of the Board and the language creating the confusion has been deleted as suggested. IRRC also commented that § 16.55 could be clearer by simplifying the language to indicate that any person could file a complaint. The Board has clarified the language as suggested. Because of this change, the HPLC suggestion that a definition of "public officer" be added is moot. The HPLC also suggested that the language regarding the Board's sua sponte review of hearing examiner decisions in § 16.57 (relating to appeal from the hearing examiner's decision) could be clarified if the Board substituted the word "motion" for "notice." The document the Board issues when it reviews a matter is entitled "Notice of Review." The Board has adopted the suggestion.

E. *Description of Amendments*

Section 16.51 is amended to more accurately reflect that, consistent with the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506), attorneys, including hearing examiners, are assigned to agencies through the Office of General Counsel. The regulation also provides for the Board's current process that, absent an order of the Board otherwise, all matters would be heard by the Board's hearing examiner.

Section 16.55 is added to provide a description of the complaint process. Section 16.55(a) provides that a person may submit a written complaint to the complaints office. Section 16.55(b)—(d) describes the internal processing of complaints. Specifically, in keeping with the decision in *Lyness v. State Board of Medicine*, 605 A.2d 1204 (Pa. 1992), the Board prosecutor will cause to be conducted reasonable inquiry and will determine whether to initiate the filing of formal charges. Consistent with section 907 of the MCARE Act, § 16.55(c) reiterates that documents, materials or information obtained during the course of an investigation shall be confidential and privileged unless admitted as evidence during the course of a formal disciplinary proceeding. Section 16.55(d) provides for the Board prosecutor to enter negotiations to settle the case by consent agreement.

Section 16.56 (relating to formal hearings open to public) provides for formal hearings to be open to the public.

Section 16.57 provides for review of the hearing examiner's decision by the Board on the request of either party or on the Board's own motion. Section 16.57(b) provides that, unless otherwise ordered by the Board, neither the filing of an application for review nor the Board's own notice of intent to review would stay the hearing examiner's decision.

Section 16.58 provides for review of the Board's decision under 2 Pa.C.S. § 702 (relating to appeals).

F. *Fiscal Impact and Paperwork Requirements*

There is no adverse fiscal impact or paperwork requirement imposed on the Commonwealth, political subdivisions or the private sector.

G. *Sunset Date*

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

H. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 30, 2004, the Board submitted a copy of the notice of proposed rulemaking, published at 34 Pa.B. 1963, to IRRC and the Chairpersons of the HPLC and the SCP/PLC for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on March 15, 2005, this final-form rulemaking was approved by the HPLC. On April 13, 2005, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on April 14, 2005, and approved the final-form rulemaking.

I. *Contact Person*

Further information can be obtained by contacting Gerald S. Smith, Counsel, State Board of Medicine, P. O. Box 2649, Harrisburg, PA 17105-2649, gerasmith@state.pa.us.

J. *Findings*

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

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

(3) This final-form rulemaking does not enlarge the purpose of proposed rulemaking published at 34 Pa.B. 1963.

(4) This final-form rulemaking is necessary and appropriate for administering and enforcing the authorizing acts identified in Part B of this preamble.

K. *Order*

The Board, acting under its authorizing statutes, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 16, are amended by amending § 16.51 and by adding §§ 16.55—16.58 to read as set forth in Annex A.

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

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

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

CHARLES D. HUMMER, Jr., M.D.
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 35 Pa.B. 2703 (April 30, 2005).)

Fiscal Note: Fiscal Note 16A-4918 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 16. STATE BOARD OF MEDICINE

Subchapter E. MEDICAL DISCIPLINARY PROCESS AND PROCEDURES

HEARING EXAMINERS AND MEDICAL CONSULTANTS

§ 16.51. Hearing examiners.

Hearing examiners are appointed by the Governor's Office of General Counsel to hear matters before the Board. Unless otherwise ordered by the Board, disciplinary matters shall be heard by a hearing examiner.

§ 16.55. Complaint process.

(a) A person may submit a written complaint to the complaints office alleging a violation of the act or this chapter or Chapter 17 or 18 (relating to State Board of Medicine—medical doctors; and State Board of Medicine—practitioners other than medical doctors), specifying the grounds therefore.

(b) The complaints office will assign a complaint to the prosecution and investigatory staff who, together with medical consultants as may be required, will make a determination that the complaint merits consideration. The Board prosecutor will cause to be conducted reasonable inquiry or investigation that is deemed necessary to determine the truth and validity of the allegations in the complaint. The Board prosecutor will provide reports to the Board at its regular meetings on the number, nature, procedure and handling of the complaints received.

(c) Upon review of the complaint, documentation, records and other materials obtained during the course of an investigation, the Board prosecutor will determine whether to initiate the filing of formal charges. The documents, materials or information obtained during the

course of an investigation shall be confidential and privileged unless admitted as evidence during the course of a formal disciplinary proceeding. A person who has investigated or has access to or custody of documents, materials or information which are confidential and privileged under this subsection will not be required to testify in any judicial or administrative proceeding without the written consent of the Board.

(d) The Board prosecutor may enter into negotiations at any stage of the complaint, investigation or hearing process to settle the case by consent agreement.

(1) Consent agreements must be approved as to form and legality by the Office of General Counsel and adopted by the Board.

(2) Until the Board approves a consent agreement, the terms of the agreement are confidential.

(3) Admissions made by a respondent during the course of negotiations may not be used against the respondent in any formal disciplinary proceeding if a consent agreement cannot be reached.

(4) Admissions made by a respondent in a consent agreement that is ultimately rejected by the Board may not be used against the respondent in any formal disciplinary proceeding.

(5) This subsection does not preclude the Board prosecutor from offering, at a formal disciplinary hearing, other evidence to prove factual matters disclosed during the negotiation process.

§ 16.56. Formal hearings open to public.

Formal disciplinary proceedings are open to the public. Members of the press may request in advance of the hearing permission from the presiding officer for the electronic recording of the proceedings. Upon the consideration of objections by the parties, the hearing examiner may permit the electronic recording of the proceeding by members of the press if the presiding officer determines that the recording will not interfere with the efficient conduct or impartiality and fairness of the proceedings.

§ 16.57. Appeal from the hearing examiner's decision.

(a) Unless otherwise ordered by the Board, the decision of the hearing examiner becomes final 20 days after its issuance.

(1) Upon application for review by any party or upon the Board's own motion, the Board will review the hearing examiner's decision.

(2) The Board will review the entire record and, if it deems it advisable, may hear additional testimony from persons already deposed or from new witnesses as well as arguments of counsel to make a Board decision.

(3) Additional testimony will be taken as soon as practicable.

(4) The Board will issue its final decision, along with its findings of fact and conclusions of law, which will be sent by mail to the parties involved.

(b) Unless otherwise ordered by the Board, neither the filing of an application for review nor the Board's own notice of intent to review will stay the hearing examiner's decision.

§ 16.58. Appeal from the Board decision.

The respondent may, within 30 days from the date of the decision of the Board, appeal to the Commonwealth Court under 2 Pa.C.S. § 702 (relating to appeals).

[Pa.B. Doc. No. 05-988. Filed for public inspection May 20, 2005, 9:00 a.m.]

**STATE BOARD OF OSTEOPATHIC MEDICINE
[49 PA. CODE CH. 25]
Continuing Medical Education**

The State Board of Osteopathic Medicine (Board) amends §§ 25.1 and 25.271 (relating to definitions; and requirements for renewal) to read as set forth in Annex A.

Effective Date

The final-form rulemaking is effective upon publication in the *Pennsylvania Bulletin*.

Statutory Authority

Under section 910 of the Medical Care Availability and Reduction of Error (MCARE) Act (act) (40 P. S. § 1303.910), the Board is required to establish requirements for continuing medical education for physicians as a condition for renewal of their licenses.

Background and Purpose

The final-form rulemaking implements section 910 of the act, which requires completion of 100 credit hours of continuing education as a condition of biennial licensure renewal of physician licenses by the State Board of Medicine and the Board. Although the Board already required 100 credit hours of continuing medical education each biennium, the act imposed a requirement that the Board establish a minimum number of hours in the areas of patient safety and risk management.

Summary of Comments and Responses on Proposed Rulemaking

Notice of proposed rulemaking was published at 34 Pa.B. 563 (January 31, 2004). The Board received comments from the Independent Regulatory Review Commission (IRRC), the House Professional Licensure Committee (HPLC) and the Pennsylvania Medical Society (PMS).

IRRC questioned whether the definition of "approved course" in § 25.1 would allow the Board to accept courses accredited by other organizations such as state medical associations or the American Medical Association. The Board has determined that these courses would be acceptable for all credits except for 20 credit hours which, under § 25.271(c)(1), must be completed in American Osteopathic Association (AOA) category 1-A activities. The AOA has four categories: 1-A (formal educational programs and osteopathic medical teaching); 1-B (activities such as publications, preceptoring, passing a recertification examination, participating in non-AOA accredited institution activities, participating in nonosteopathic continuing medical education programs, journal reading, faculty development programs and test construction committee work); 2-A (formal educational programs that are Accreditation Council for Continuing Medical Education (ACCME) accredited, American Academy of Family Physicians approved or programs sponsored by AOA accredited Category 1 continuing medical education sponsors that do not meet the faculty/hours requirement for Category 1-A credit); and 2-B (activities that include these experiences

as preparation and presentation of scientific exhibits at professional meetings, home study and reading medical journals). IRRC also suggested that the definition of "approved course" include credits not formally accredited by the ACCME and the AOA or that the Board amend § 25.271 to allow other credits for the remaining credit hours. The PMS also noted that the ACCME and the AOA do not accredit sponsors of Category 2 continuing medical education and that much Category 2 continuing medical education is self-directed and has no sponsor. The PMS suggested removing the word "approval" and substituting "medical educational activities" to correct the problem. The Board agreed with the PMS and has changed the term "approved course" to "approved activity." The Board has also defined "approved activity" to mean a continuing medical education activity accepted for AOA credit, ACCME credit or American Medical Association Physician's Recognition Award credit.

The Board, in the final-form rulemaking, also considered Governor Rendell's recommendation made as part of his March 2004 medical malpractice liability proposal that physicians should be required to complete 12 hours of continuing medical education pertaining to patient safety each biennium period. The Board has agreed with this recommendation and has amended the regulations to require 12 hours rather than 10 hours in patient safety and risk management.

IRRC and the HPLC questioned whether licensees would have received sufficient notice to complete continuing education by the deadline for license renewal. The Board has amended § 25.217(c) to require proof of completion of the continuing education credits for the 2006 renewal period. Because the Board currently requires 100 hours of continuing education credits for renewal of licenses, the 2006 biennial renewal date will apply specifically to the requirement that 12 hours of continuing education must be completed in the area of patient safety and risk management. IRRC also asked whether the credit hours in patient safety and risk management are required to be completed in Category 1 or Category 2 courses. The Board has amended § 25.271(c)(1) to clarify that the 12 credit hours may be in either Category 1 or Category 2 approved activities.

IRRC, the HPLC and the PMS asked whether the reference to "remaining 75 credit hours" in § 25.271(c)(1) is a typographical error and should instead read as the "remaining 70 credit hours." The Board agrees that "75" is incorrect and has substituted "the remaining credit hours" in its place because the patient safety hours may be either Category 1 (and go toward the 20 required Category 1 credits) or Category 2. Therefore, it is not clear exactly how many credit hours will be remaining.

Fiscal Impact and Paperwork Requirements

The final-form rulemaking will require the Board to alter its license renewal forms to include data regarding the physician's compliance with the continuing education requirements and will also require physicians to maintain their own records of continuing education credits, but otherwise, will have no adverse fiscal impact on the Commonwealth or its political subdivisions.

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 January 31, 2004, the Board submit-

ted a copy of the notice of proposed rulemaking, published at 34 Pa.B. 563, to IRRC and the Chairpersons of the HPLC and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on March 30, 2005, the final-form rulemaking was approved by the HPLC. On April 13, 2005, the final-form rulemaking was deemed approved by SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on April 14, 2005, and approved the final-form rulemaking.

Contact Person

Interested persons may obtain information regarding the final-form rulemaking by contacting to Beth Sender Michlovitz, Board Counsel, State Board of Osteopathic Medicine, P. O. Box 2649, Harrisburg, PA 17105-2649, bmichlovit@state.pa.us.

Findings

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

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

(3) The final-form rulemaking is necessary and appropriate for administration and enforcement of the act.

(4) The amendments to the final-form rulemaking are necessary and appropriate for administration and enforcement of the act and do not enlarge the purpose of the proposed rulemaking published at 34 Pa.B. 563.

Order

The Board orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 25, are amended by amending §§ 25.1 and 25.271 to read as set forth in Annex A.

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

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

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

THOMAS R. CZARNECKI, D.O.,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 35 Pa.B. 2703 (April 30, 2005).)

Fiscal Note: Fiscal Note 16A-5313 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 25. STATE BOARD OF OSTEOPATHIC MEDICINE

Subchapter A. GENERAL PROVISIONS

§ 25.1 Definitions.

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

ACCME—The Accreditation Council on Continuing Medical Education.

AMA PRA—American Medical Association Physician's Recognition Award.

AOA—The American Osteopathic Association.

Act—The Osteopathic Medical Practice Act (63 P. S. §§ 271.1—271.18).

Agreement of affiliation—A written document evidencing the agreement between an approved hospital and an urgent care center, emergency center, surgicenter, office of a private practitioner or other health care facility for the training of osteopathic interns, residents or fellows.

Approved activity—A continuing medical education activity accepted for AOA credit, ACCME credit or AMA PRA credit.

Approved graduate osteopathic medical training—An approved internship or an approved residency.

Approved internship—An osteopathic rotating internship program approved by the AOA and the Board.

Approved residency—A training program approved by the AOA and the Board leading toward certification in a specialty or subspecialty.

Board—State Board of Osteopathic Medicine.

Bureau—Bureau of Professional and Occupational Affairs of the Department of State of the Commonwealth.

Category 1 activities—Continuing medical education activities approved for AOA Category 1-A credit, AOA Category 1-B credit, ACCME Category 1 credit or AMA PRA Category 1 credit.

Category 2 activities—Continuing medical education activities approved for AOA Category 2 credit, ACCME Category 2 credit or AMA PRA Category 2 credit.

Emergency medical services personnel—Individuals who deliver emergency medical services and who are regulated by the Department of Health under the Emergency Medical Services Act (35 P. S. §§ 6921—6938).

FLEX—The uniform written examination of the Federation of State Medical Boards of the United States, Inc.

Immediate family member—A parent, a spouse, a child or an adult sibling residing in the same household.

NBOME—The National Board of Osteopathic Medical Examiners.

National Board Examination—The uniform written examination of the NBOME.

Subchapter G. LICENSING, EDUCATION AND GRADUATE TRAINING

LICENSURE RENEWAL AND CONTINUING EDUCATION

§ 25.271 Requirements for renewal.

(a) A licensee shall biennially renew his license by completing a form obtained from the Board in advance of October 31 of every even-numbered year, and by paying the required fee. The application shall indicate the following:

(1) Other states where the applicant is licensed.

(2) Disciplinary action taken against the applicant by the licensing boards in other states.

(3) A verdict of guilty, guilty plea or plea of nolo contendere by the applicant to a felony, crime of moral turpitude or crime related to the practice of osteopathic medicine in this or another jurisdiction occurring within the 2 years immediately preceding renewal.

(b) A penalty fee as specified by § 25.231 (relating to schedule of fees) will be imposed on a licensee who continues to practice without having timely renewed his license. The licensee may also be subject to other criminal, civil or administrative penalties.

(c) Proof of completion of 100 credit hours of continuing medical education in the preceding biennial period will be required for licensure renewal for osteopathic physicians.

(1) Beginning with the licensure renewal period commencing November 1, 2006, at least 20 credit hours shall be completed in AOA category 1-A approved activities. At least 12 credit hours shall be completed in Category 1 or Category 2 approved activities in the area of patient safety and risk management. Approved activities in the area of patient safety and risk management may include topics such as improving medical records and recordkeeping, reducing medical errors, professional conduct and ethics, improving communications, preventative medicine and healthcare quality improvement. The remaining credit hours shall be completed in any Category 1 or Category 2 approved activities. Credit will not be granted for courses in office management or practice building.

(2) Physicians shall retain official documentation of attendance for 2 years after renewal, and shall certify completed activities on a form provided by the Board for that purpose, to be filed with the biennial renewal form. Official documentation proving attendance shall be produced, upon Board demand, pursuant to random audits of reported credit hours. Electronic submission of documentation is permissible to prove compliance with this subsection. Noncompliance may result in disciplinary proceedings under section 15(a)(6) of the act (63 P. S. § 271.15(a)(6)).

(3) The following exemptions apply for certain physicians:

(i) A physician applying for licensure in this Commonwealth for the first time shall be exempt from the continuing medical education requirement for the biennial renewal period following initial licensure.

(ii) A physician holding a current temporary training license shall be exempt from the continuing medical education requirement.

(iii) A retired physician who provides care only to immediate family members shall be exempt from the continuing medical education requirement.

(iv) A physician who is on inactive status shall be exempt from the continuing medical education requirement, except that a physician who is seeking to reinstate an inactive or lapsed license shall show proof of compliance with the continuing education requirement for the preceding biennium.

(4) A physician suspended for disciplinary reasons is not exempt from the requirements of this section.

(5) Waiver of the requirements may be permitted, as follows:

(i) The Board may grant a hardship waiver of all or a part of the continuing medical education requirement in cases of serious illness, military service or other good cause provided that the public's safety and welfare will not be jeopardized by the granting of the waiver.

(ii) Requests for waiver must be made in writing, with appropriate documentation, and include a description of circumstances sufficient to show why compliance is impossible.

(iii) Waiver requests will be evaluated by the Board on a case-by-case basis. The Board will send written notification of its approval or denial of a waiver request.

[Pa.B. Doc. No. 05-989. Filed for public inspection May 20, 2005, 9:00 a.m.]

Title 52—PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 53]

[L-00940096]

Updating and Revising Existing Filing Requirements Relating to Water and Wastewater Public Utilities

The Pennsylvania Public Utility Commission (Commission), on February 3, 2005, adopted a final rulemaking order to amend the regulations governing filing requirements for water and wastewater public utilities for general rate increase requests in excess of \$1 million.

Executive Summary

Section 53.53 requires a utility that is requesting a general increase in excess of \$1,000,000 to provide extensive information through the use of data requests in relation to the company's income, revenues, expenses, taxes, rate base, depreciation and rate of return. On October 24, 1994, the Commission issued an Advance Notice of Proposed Rulemaking to solicit comments from water and wastewater utility companies that will be the primary active participants in future rate cases of this nature for the purpose of providing input as to how these filing requirements may be modified to lessen the amount of information needed.

The proposed amendments significantly streamline filing requirements. The proposed amendments also lessen the regulatory burden on all jurisdictional water and wastewater public utilities that request a rate increase in excess of \$1,000,000.

On October 29, 2001, the Commission entered an order proposing to revise its existing tariff filing requirements relating to water and wastewater public utilities. This order was published at 33 Pa.B. 1106 (March 1, 2003). At

that time, the only entity to provide comments to the proposed regulations was the Independent Regulatory Review Commission (IRRC).

On September 26, 2004, the Commission entered a Tentative Final Rulemaking Order giving interested parties 20 days from the entry of the order to provide comments relating to this rulemaking. The Tentative Order further provided that if no comments were received, the Tentative Order was to become final and the regulations were to be submitted through the regulatory review process. If comments were received, the comments were to be reviewed by Staff.

Under the Commission's September 26, 2004, Order, the Office of Trial Staff (OTS), the Office of Small Business Advocate (OSBA) and the Office of Consumer Advocate (OCA) submitted comments to the proposed regulations. This Final Rulemaking Order addresses both the initial comments to the proposed regulations submitted by the IRRC, as well as those comments submitted by the OTS, the OSBA and the OCA in response to the September 26, 2004, Order.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 19, 2003, the Commission submitted a copy of the notice of proposed rulemaking, published at 33 Pa.B. 1106 (April 3, 2004), to IRRC and the Chairpersons of the House Committee on Consumer Affairs and the Senate Committee on Consumer Protection and Professional Licensure for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on April 13, 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 April 14, 2005, and approved the final-form rulemaking.

Public Meeting held
February 3, 2005

Commissioners Present: Wendell F. Holland, Chairperson; Robert K. Bloom, Vice Chairperson; Glen R. Thomas; Kim Pizzingrilli

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

Final Rulemaking Order

By the Commission:

On October 29, 2001, this Commission entered an order proposing to revise its existing tariff filing requirements relating to water and wastewater public utilities. These proposed regulations significantly streamline the filing requirements and lessen the regulatory burden of all jurisdictional water and wastewater utilities that request a rate increase in excess of \$1,000,000.

The October 29, 2001 Order was published March 1, 2003 at 33 Pa.B. 1106. The only entity to provide comments to the proposed regulations was the Independent Regulatory Review Commission (IRRC).

On September 26, 2004, this Commission entered a Tentative Final Rulemaking Order giving interested parties 20 days from the entry of the order to provide comments relating to this rulemaking. The Tentative Order further provided that if no comments were received, the Tentative Order was to become final and the regulations were to be submitted through the regulatory review process. If comments were received, such comments were to be reviewed by Staff.

Pursuant to this Commission's September 26, 2004 Order, the Office of Trial Staff (OTS), the Office of Small Business Advocate (OSBA), and the Office of Consumer Advocate (OCA) submitted comments to the proposed regulations. This Final Rulemaking Order addresses both the initial comments to the proposed regulations submitted by the IRRC as well as those comments submitted by the OTS, the OSBA, and the OCA in response to the September 26, 2004 Order.

IRRC Comments

The comments filed by IRRC do not address concerns relating to the sum and substance of the proposed regulations. Instead, they address primarily language and clarity issues.

IRRC's first comments express concern with regard to "Exhibit D" of the new regulations and the use of the term "test year." Specifically, IRRC was concerned that several different terms were used to reference time frames in Exhibit D. IRRC listed those instances where the term "test year" needed further clarification. In each instance noted by IRRC, with the exceptions of Data Requests VII.10 and VII.11, we have defined the term. Additionally, wherever the term "test year" is used, we have clarified it as either "future" or "historic." In Data Requests VII.10 and VII.11, we have further defined the term "test year" as the actual "Per Book" test year.

IRRC also stated in its comments that the Rulemaking contains terms that could be subject to misinterpretation. In particular, IRRC states that the term "significant" is not sufficiently defined so that the reader would know what is expected.

To address IRRC's concern, in each instance where the term "significant" appears, we have either provided specific parameters or eliminated the term "significant" altogether. In Section II.6, the term has been struck and language added requesting explanation for variances greater than 15%. In Section X.7 "significant" has been struck and language added requesting explanation for variances greater than 15% of the total current asset accounts listed on the balance sheet. In Section X.9, we have eliminated the reference to "significant" items and, instead, required a breakdown, by category, of accounts payable to associated companies. In Sections VI.1 and X.11 the word "significant" has been deleted. Though IRRC lists X.10 as one of the sections that requires clarity because of the term "significant," the word does not appear in this section.

IRRC also states that the term "major" needs clarification because it may be difficult to determine what distinguishes a "major" category from a minor one. We have deleted the term "major" in Sections III.8, III.9, III.12, IX.2a and IX.2b. In Section I.1 we have defined "major" as being any amount greater than 15%. In III.11 we have eliminated the term "by major components" and required that a schedule be submitted showing a breakdown by the expenditures associated with outside services employed, expenses, and miscellaneous general expenses associated with rate cases.

In its comments IRRC asserts that Section I., relating to Statement of Income, is not sufficiently clear. In particular, IRRC states that Data Request I.A.2 (now I.2), Columns 1 and 2 require a "book recorded statement" and that these requirements should specify "income statements" to be consistent with the other columns. To satisfy IRRC's concern about consistency, we have inserted the word "income" in Columns 1 and 2. For the purpose of clarification we have also changed the wording of Data Request I.A.2 (now I.2), so that that section now reads "Prepare an Income Statement..."

IRRC also expressed a concern that Data Request I.A.2. (now I.2), Column 5 includes the term "requested rates" whereas Data Request I.4.c contains the term "proposed rates." It was IRRC's position that one term should be used consistently. Pursuant to this comment, we deleted the word "requested" in Data Request I.A.2. (now I.2), Column 5 and inserted the word "proposed" so that the terms are consistent.

IRRC also commented that it was concerned with certain "clarity" issues relating to Operating Revenues (Section II). Specifically, IRRC stated that it was not clear what was meant by the term "customer forfeited discount" found in Section II.1.b. This term also appears in I.2.a. The account entry for "customer forfeited discount" is no longer utilized for ratemaking purposes because there are no longer such discounts in rate structures. Therefore, this term has been eliminated in both places.

With regard to Operating Revenues, IRRC was also concerned with the term "various" as it appears in Section II.3 where the regulation requires a utility to provide increases to customers at "various monthly uses." Pursuant to IRRC's comment, the term "various monthly uses" has been defined as "5,000 gallon consumption increments."

IRRC also commented that Data Request II.12 does not specify what rates should apply to the term "test year." As stated previously, we have inserted the term "historic" to define "test year." Also, the words "current rates" were added to this sentence to address IRRC's concern that the sentence should specify which current rates the PUC will require.

In relation to Operating Expense (Section III), IRRC's comments expressed a concern regarding clarity in Section III.3. IRRC stated that the term "sufficient supporting data" should specify what supporting data must be provided. In response to IRRC's comments, the phrase "such as explanation and breakdown of costs" was added to Section III.3.

IRRC also expressed a concern regarding Section III.7 because it appeared that there were some words missing in the second sentence of that section. To remedy this concern, this sentence has been restructured to avoid confusion.

Finally, IRRC stated that the phrase "regulatory commission expense" found in Section III.11 should be clarified or defined. In response to this comment we further defined "regulatory commission expense" by identifying rate case expense as a separate item within that category.

With regard to Section V, which addresses Rate Base, IRRC was concerned that the term "final completion data" found in Section V.3 is unclear and suggested that the Commission provide examples of what data is required. To address IRRC's concern we have eliminated the

term “final completion data” and, instead, stated the necessity that each project must be detailed and that this detail must include “a list of items needed to complete these projects (such as landscaping and fencing).”

IRRC’s comment on Section VI voiced a concern that this section was requesting virtually identical information to the information requested by Chapter 73 of 52 Pa. Code. Therefore, IRRC questioned whether a utility, that is required to file under Chapter 73, can incorporate its annual depreciation report, by reference, to comply with Section VI. To this end, we have added a statement in Section VI that states that if a question has been previously answered pursuant to 52 Pa. Code, Chapter 73, the utility should so note and that it is not necessary for the utility to answer previously answered questions.

IRRC also expressed a concern that VI.4 required a company to provide a comparison of the utility’s calculated depreciation reserve versus book reserve, by account, at the end of the test year. IRRC’s concern is that if a utility has been using a book reserve for ratemaking, there would be no purpose for a calculated depreciation reserve. In relation to this comment we have explained the information required by stating that the calculated depreciation reserve is for ratemaking purposes and that the book reserve, by account as of the end of the test year, must be compared, if they differ.

IRRC’s comments stated that with relation to Section VII (Rate of Return), Data Request VII.15.c requires companies to provide “all SEC 10Q reports issued within last year.” IRRC stated that the Commission should include a specific time period for these reports. Pursuant to IRRC’s comments, we have specified that those 10Q reports that must be provided should relate specifically to the latest 12 months.

IRRC was also concerned that Section VII.20 states that a response “should identify for each project issuance date ...” IRRC questioned whether any or all of those categories are optional and, if not, the Commission should replace the word “should” with the word “shall.” Section VII.20 has been changed so that the word “shall” now appears in this section.

With regard to Data Request VII.25, IRRC had two concerns. The first concern related to the method by which the Commission would treat documents in a confidential manner while the second concern questioned how a company could request confidentiality. In relation to both comments, IRRC stated that the regulation should include a cross-reference to the Commission’s confidentiality requirements.

To address IRRC’s concern, we have added language to the regulation stating that the information will be treated in a confidential manner if requested by the company in writing. We have also cross referenced 52 Pa. Code § 5.423, which sets forth PUC’s procedures for protective orders.

In reviewing Section VIII of Annex A, IRRC commented that Data Request VIII.2 should define the term “special rate contracts.” Pursuant to this comment, “special rate contracts” has been expressly defined in VIII.2 as any rate not contained in the tariff.

IRRC submitted three comments with relation to Section IX (Quality of Service). The first comment questioned whether the information required in Data Request IX.1 may already be in the PUC files under different venues and, if so, whether a utility could exercise 52 Pa. Code § 53.53(b) to fulfill these data requests. The information

requested in Data Request IX.1 is not specifically provided in any other venues. Therefore, these sections have remained unchanged.

The other two comments that were submitted by IRRC relating to Section IX related to citations in IX.1.a and IX.2. Regarding IX.1.a, IRRC stated that the Commission’s citation to 25 Pa. Code § 109.401 should read 25 Pa. Code § 109.407. IRRC also notes that in Data Request IX.2, 52 Pa. Code § 65.5(a) should read 52 Pa. Code § 65.6(a). Both citations have been corrected.

With regard to the title of Exhibit D, IRRC stated that the title “A. Water and Wastewater Utilities” appearing under the heading “I Statement of Income” is misplaced. This is because all of Exhibit D relates to water and wastewater utilities and, therefore, this title should be moved so that the regulation reads “Exhibit D—Water and Wastewater Utilities.” The Commission has reviewed this comment and changed the title of Exhibit D as suggested by IRRC.

IRRC also commented that, with regard to Section II, relating to Operating Revenues, Data Request II.6 requires an analysis of miscellaneous water revenues but is not clear as to what analysis could be done on miscellaneous water revenues. For the purposes of clarity, we have specified in Data Request II.6 that a detailed breakdown is to be provided of miscellaneous water revenues for the historic test year and the two years immediately preceding the historic test year.

In Section III, relating to Operating Expense, IRRC states that Data Request III.5.h requires “any deferred income and consultant fee.” IRRC queried whether the conjunction “or” should be used instead of “and.” After reviewing this comment, we have determined that the use of the word “and” is correct. However, to further clarify this section we have added the words “paid to both” to this section and have changed the phrase “officers or employees” to “officers and employees.”

IRRC also commented that the regulation should specify what information is required under Data Request III.9.c where the abbreviation “etc.” is used. We have further clarified III.9.c by eliminating “etc.” and inserting the words “rules and regulations.”

In Section IV of Exhibit D, relating to taxes, IRRC stated that Data Request IV.1 includes the phrase “PA Corporate Tax Report” and “PA Corporate Tax Settlement” while Data Request IV.15 contains the phrase “Pennsylvania Taxes.” According to IRRC, for consistency purposes, the term “Pennsylvania” should be used consistently throughout this section, as well as the rest of the regulation. To satisfy IRRC’s comment, we have spelled out “Pennsylvania” wherever it appears in this regulation.

With regard to Data Request IV.13, IRRC stated that it had four concerns. First, the word “thereunder” is repetitive and should be deleted; second, the closing sentence should not be in parenthesis; third, the phrase “so stated” should be replaced with “provide an explanation;” and, finally, the term “interrogatory” is inconsistent with § 53.53(a), which states the exhibits contain “data requests.”

After reviewing IRRC’s concerns with regarding to IV.13 we have made the changes suggested by IRRC in each of the four instances. Therefore, the word “thereunder” has been deleted; the closing sentence is no longer in parenthesis; the phrase “so stated” has been replaced with “provide an explanation;” and the term “interrogatory” has been replaced with the “data requests.”

In its comments IRRC stated that Data Requests V.2, 3, and 5 contain sentences and phrases in parentheses that are not needed and should be deleted. Additionally, IRRC noted that Data Request V.7(c), (d), and (e) contain the abbreviation "PA." To comply with IRRC's comments, we have eliminated the parentheses in V.2, 3, and 5. In regard to the abbreviation "PA," as stated *infra*, the word "Pennsylvania" has replaced all abbreviations.

Finally, regarding Rate Base, IRRC stated that the phrase "in providing water service" in Data Request V.15 appears to be incomplete since this regulation applies to water and wastewater and that the term "wastewater" should be added to this paragraph. To this end, we have inserted the word "wastewater" in V.15.

With regard to Section VII, relating to Rate of Return, IRRC expressed concern that Data Request VII.16 contains the phrase "month/quarter" and that it is not clear whether the "/" denotes the word "and" or the word "or." This concern has been addressed by our deleting the "/" and inserting the word "or."

IRRC also expressed concern that the term "and/or" is used in Data Requests VII.22 and 32 and that this construction should not be used and should be replaced with specific filing requirements. To address this concern we have deleted the "/or" in Data Request VII.22. Further, we have deleted the term "and/or" and inserted language that provides that in the appropriate instances, the company, its parent, or both, will supply financial data for the last five years.

In Section VIII.1, relating to Rate Structure and Cost of Service, IRRC stated that the term "approximately" is vague and that a definitive time frame should be included in the final form regulation. To comply with this suggestion, we have deleted the term "approximately" so that a definitive term of three years is set forth in VIII.1.

In addressing Section XI, relating to Other Data, IRRC questioned why the requirement for companies to submit balance sheets and income statements for each month were required in this section as opposed to elsewhere in the regulation, such as Section 1. The placement of this requirement was discussed by all parties concerned, including governmental agencies, associations and industry representatives. The result of those discussions and negotiations between the parties was a general consensus that the best placement of this requirement is in this section.

Lastly, in its comments IRRC listed a number of typographical and clerical issues that needed to be corrected. IRRC also expressed concern about acronyms that were used in Exhibit D but that were not defined. In each instance, we have reviewed the suggestion made by IRRC and made the necessary corrections. Therefore, all typographical and clerical errors have been corrected and all acronyms have been defined.

The following comments were filed to the Commission's Tentative Final Rulemaking Order and thus, some comments will refer to amendments shown in the tentative final order that were not present in the Proposed Rulemaking Order.

OTS Comments

In the OTS comments, two separate concerns were expressed. The first concern is that the various delineations of the terms "historic" and "future" in reference to test years included in the data requests are cumbersome and confusing. To this end the OTS, as well as the OCA,

supports the continued use of the term "test year" without qualifying whether the test year should be "historic" or "future."

To address these concerns, as well as the concerns of the IRRC (which supports the defining test years as "historic" or "future"), we have reviewed each reference to "historic" and "future" test years and determined whether it is appropriate to include either or both terms and, where relevant, have defined which test year data should be specified.

The OTS was also concerned with Exhibit D, Section I.1 that provides for a water/wastewater utility to supply a detailed explanation pertaining to the causes of variances between the historic test year and preceding test year that are greater than 15 percent. Both the OTS and the OCA prefer the use of the words "major" and "significant" in lieu of the 15 percent limitation. Both the OTS and the OCA assert that it is preferable to leave the decision concerning which data to include in the filing up to the discretion of the utility.

OCA Comments

As stated previously, the IRRC is concerned that the use of the terms "major" and "significant" does not provide sufficient clarification as to what is expected. So that this section provides some clarity, as well as to afford the utility some degree of discretion in terms of which variances need to be explained in their filings, we have added the words "limit the explanation to the differences of \$10,000 or greater" to the end of Section I.1. This provides a threshold for the utility to acknowledge and, at the same time, provides some degree of discretion as to when an explanation is needed.

The OCA also commented that, with regard to Section II.3 the phrase "various monthly uses" should be retained and the decision on the amount of data to be provided for each customer group should be left to the discretion of the utility. The OCA believes that the term "various monthly uses" is preferable to the 5000 gallon consumption increments. To the contrary, the IRRC recommended clarification of the term "various monthly uses."

So that the term "various monthly uses" is more precisely defined, we have retained the 5000 gallon consumption increments in Section II.3. Further, we have provided in II.3 that a copy of the proposed tariff or tariff supplement should be provided on a "red-line" basis to easily identify any changes. To require provision of this information on a red-line basis will simplify the process of identifying changes.

The OCA stated in its comments that the phrase "forfeited discounts" found in Sections II.1.b and II.2.a should not be stricken since this phrase is commonly understood in the industry. Additionally, the OCA states that this terminology is the terminology used in the National Association of Regulatory Commissioners Uniform System of Accounts that all water and wastewater utility must use.

This Commission now utilizes the term "penalty" and not "forfeited discounts." Discounts are no longer offered and the correct terminology as adopted by this Commission is "penalties."

The OCA states that Section II.12 should be changed so that the phrase "at current rates" should be deleted, as well as the word "historic." Additionally, the OCA would either eliminate the word "future" from the second sentence in Section II.12 or add the word "historic" to this sentence so that both historic and future test year data would be provided.

In reviewing the OCA's comments, we are of the opinion that historic test year data and the two prior years consumption data and billing data for the ten largest water customers at current rates is valuable information that should be reviewed in a rate filing. Therefore, the term "historic" should remain in the first sentence. We are also of the opinion that the OCA is correct and that the second sentence of II.12 should provide for historic, as well as future test year data and have added the words "historic and future" to this sentence.

The OCA states that in Section III.5.h words were inadvertently deleted and that the sentence should read "submit a schedule showing any deferred income and consultant fees to corporate officers and employees." After reviewing this section, the Commission has made this change.

The OCA states that in Section III.7 the phrase "if allocated from the parent company" should be deleted. According to the OCA, this would imply that utilities that are not part of a holding company system need not provide the explanation for calculating the monthly annual payments made pursuant to various leases.

After reviewing the OCA's comments, we are of the opinion that the phrase "if allocated from the parent company" should remain in the regulation but we have further clarified this section in a way that addresses the concerns stated in the comments. Specifically, we have inserted the words "provide the method of allocation" to Section III.7. Providing this method will allow parties to review these costs where allocated, and to determine to whom these costs were allocated.

The OCA's comments also address Section III.11 and its elimination of the phrase "regulatory commission" to modify the word "expenses" and state that the change limits the data requested to expenses relating to rate cases. The OCA states that the phrase "regulatory commission expense" encompasses not only the regulatory costs of the rate proceedings but also other types of proceedings such as tariff filings. The OCA also asserts that the phrase "by major components" should be reinserted into this section.

After reviewing the OCA's comments, we have changed Section III.11 so that companies are required to submit a schedule that will show expenses relating to rate cases separately from other expenses. This will address the OCA's concern since it will specifically define which expenses are related to rate cases expenses in addition to other regulatory expenses. With regard to reinserting the phrase "by major components" we, as well as the IRRRC, are of the opinion that this phrase is too vague and have not reinserted it.

The OCA states that in Section III.15 the word "historic" should be replaced by the word "future" or, in the alternative, deleted. Additionally, in Section III.20, the OCA states that the question mark "(?)" should be replaced by a period "(.)."

In addressing the OCA's concern relating to Section III.15, we have provided further clarification by stating at the end of that section that the company must "Provide any estimates for the future test year." In relation to the OCA's comments regarding Section III.20, we have replaced the question mark "(?)" with a period "(.)."

In its comments, the OCA states that the word "future" should be deleted from Section IV.4.a so that the requirement generates data from both the historic and future

test years. The OCA expresses the same concern in relation to Sections IV.7 and IV.12.

As stated previously, we have reviewed all "historic" and "future" test year references and, where appropriate, we have clarified the requirements. Specifically, with regard to Section IV.4.a, we have addressed the OCA's concern by adding a sentence at the end of IV.4.a. that reads "if based on the historic test year, justify." Similarly, we have addressed the OCA's concerns regarding Sections IV.7 and IV.12 by adding the words "historic and future" to both sections.

The OCA also expressed a concern with the term "data request," which was substituted for the term "interrogatory" in Section IV.13. According to the OCA, neither word is correct and the word "requirement" should be inserted.

After reviewing this comment, we have changed the wording by eliminating the word "data" and retaining the word "request." It is our opinion that this more accurately describes what is required.

In the OCA's comments, a concern is expressed regarding Section VII.16 in that the term "month and/or quarter" has been stricken in favor of "month or quarter." According to the OCA, large water utilities often submit monthly data and this data is critical to the rate of return analysis so that the utility should not have the option of providing only quarterly data. Therefore, the OCA submits that the requirement should read "for each month for the last two years." After reviewing this section, we are in agreement with the OCA. Therefore, we have eliminated "/or quarter" so that Section VII.16 now reads "... each month for the last two years."

In its comments, the OCA states that Section VII.32 should be changed so that a utility is not given the option of filing data for either the utility or the parent. According to the OCA, this requirement should apply to both the utility and the parent and should be changed to read "... supply financial data of the company and its parent, if any ..."

We agree that Section VII.32 should be restated. To this end, this Section will now read "... supply financial data of the company and its parent, if applicable ..."

Finally with regard to Section VIII.1, line 5, the OCA states that the insertion of the words "or wastewater" is not correct because there are no wastewater "users." The OCA recommends the substitution of the word "customers" for the word "users." Similarly, the OCA states that Section IX.2.a is not correct because water pressure is not an issue in wastewater systems.

After reviewing these comments, we have changed the wording in Section VIII.1, line 5, so that the word "customer" has replaced the word "users." Moreover, we have deleted the words "or wastewater" found in Section IX.2.a and substituted the words "transmission and" to address the OCA's comments.

OSBA Comments

The OSBA also filed comments to these proposed regulations. The OSBA's first comment states that Exhibit D Section VIII.1 implies that there could be more than the presently permitted 3-year lapse between the last required complete cost of service study and the future test year in the current filing. Additionally, the OSBA states that because the proposed regulations would drop the alternative requirement that a production-only cost of service study be filed, the filing of a complete cost of service study for major rate cases might end. As a consequence, the OSBA submits, if a utility were to

choose not to file a complete cost of service study, extensive discovery would be necessary to evaluate whether the utility is making progress in eliminating class subsidies and moving rates toward cost of service.

It is our opinion that the information required by Section VIII.1 will either be sufficient to obtain the information necessary to evaluate a company's rate structure position or major companies requesting an increase of \$1,000,000 or more will, in most cases, file a complete cost of service study since those companies also have an interest in moving rates toward cost of service. Furthermore, this matter was specifically addressed at the collaborative meetings between the interested parties. The OTS, the OSA and the OSBA were all present or invited to attend these meetings and Exhibit D Section VIII.1 is a result of that collaborative. Therefore, it is the Commission's position that Section VIII.1 should remain as proposed.

The OSBA also comments that the present Section 53.53, Exhibit A, IV(A)(1)(f) requires the filing of testimony and exhibits to explain the extent of shifting revenue burden between customer classes while the proposed regulations would drop this requirement. According to the OSBA, such testimony is adequately necessary in order for a utility to meet its burden of proof.

We agree with the OSBA's position in that submitting such testimony will, in all likelihood, be necessary in order for the utility to meet its burden of proof. In fact, the proposed regulations do not avoid the requirement of a utility submitting testimony and exhibits and, it is expected that large utilities such as the ones to which this regulation applies will continue to submit such testimony. If not, there will be a substantial risk that the burden of proof will not be met.

It should also be mentioned that much of the information about which the OSBA seems concerned is addressed in Section VIII.1.a-j. It is apparent that testimony on these issues and exhibits are a necessary part of the company's rate case. Therefore, we are of the opinion that the regulations, as proposed, address the OSBA's concern regarding this issue.

The OSBA's comments also state that Section II.3 does not require the filing of a company's current tariff but only the one that the company is proposing in its rate filing. According to the OSBA, relieving the utility of having to file a copy of the current tariff would shift the burden of retrieval to parties other than the company and, in the case of a utility that has multiple, non-continuous divisions, this burden could be unreasonable. The OSBA suggests that, as a compromise, a utility should be relieved of filing the current tariff but should be required to file the proposed tariff on a red-lined basis so that the changes could be readily identified.

After reviewing and considering the OSBA's comments relating to Section II.3, we are of the opinion that the OSBA's suggestion is a good one. Therefore, we have added to the end of Section II.3 the words "on a red-line basis, to easily identify any changes."

Section XI.5 requires the filing of a statement indicating unaccounted for water in the test year and the two prior years. In the current regulation, utilities are required to file a statement indicating unaccounted for water in the test year and the four prior years. The OSBA questions whether relaxing the filing requirement would be a significant benefit to the utility and whether it would simply increase the amount of discovery needed in cases involving utilities for which unaccounted for water has been a problem.

After reviewing the OSBA's comment relating to Section XI.5, we are of the opinion that Section XI.5 should remain as proposed. Unaccounted for water is calculated in annual reports and unaccounted for water schedules are now more detailed than they were when these regulations were originally written. Moreover, the calculations for unaccounted for water are rarely a problem as related to large water companies. Finally, this is an issue that was addressed at the collaborative meetings of all the parties herein and resolved through that method.

In the OSBA's comments, it is stated that proposed Section II.9 requires the filing of a statement showing the number of customers and water consumption by customer classification for the test year, two years prior to the historic test year, and two years after the historic test year. According to the OSBA, the requiring of the utility to file two years of projected data including the future test year would be more likely to increase the filing burden than to reduce it. The OSBA states that the current filing requirement under which a utility must file a statement showing the number of customers and water consumption by customer classification for the test year and four prior years should be retained.

Once again, this section, as the others mentioned herein, was drafted pursuant to collaborative meetings in which all the parties hereto were present or invited. After numerous meetings and discussions, the parties decided that Section II.9 is a fair and equitable resolution of data required to be filed.

The OSBA states in its comments that if a utility has customers being billed at a flat rate, it should continue to be required to provide a statement or feasibility study showing why the customers should not be metered pursuant to 52 Pa. Code § 65.7(d). The OSBA is apparently concerned that the elimination of Section 53.53(IV)(A)(2)(e) would affect a utility's requirement to provide such a statement.

After reviewing and considering the OSBA's comment regarding this matter, we are of the opinion that the retention of Section 53.53 IV, Exhibit A, (A)(2)(e) is not necessary, particularly for those companies that are of the size affected by the proposed regulations. When a problem may exist, 52 Pa. Code § 65.7(d) still may be applied.

Finally, the OSBA comments that Section II.4, as proposed, states that data must be filed "to support present and proposed rates by customer classification and tariff rate schedule." The OSBA states that this section is presumably intended to require proof of revenues and that the word "rates" should be deleted and replaced by the word "revenues."

We have considered the OSBA's comments in regard to this section and are of the opinion that the OSBA is correct. Therefore, we have changed the word "rates" to the word "revenues" in Section II.4.

Conclusion

Accordingly, under sections 501 and 503 of the Public Utility Code, 66 Pa.C.S. §§ 501 and 503; 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 at 1 Pa. Code §§ 7.1, 7.2 and 7.5; section 204(b) of the Commonwealth's Attorneys Act, 71 P. S. 732.204(b); section 745.5 of the Regulatory Review Act, 71 P. S. § 745.5; and section 612 of The Administrative Code of 1929, 71 P. S. § 232, and the regulations promulgated thereunder at 4 Pa. Code §§ 7.251—7.235, we find that the regulations at 52 Pa. Code § 53.53 should be amended as set forth in Annex A; *Therefore,*

It Is Ordered That:

1. The regulations of the Commission, 52 Pa. Code Chapter 53, are amended by amending § 53.53 to read as set forth in Annex A, with ellipses referring to the existing text of the regulation.

2. The Secretary shall certify this order and Annex A and deposit them with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3. The Secretary shall submit this order and Annex A to the Office of Attorney General for approval as to legality.

4. The Secretary shall submit this order and Annex A to the Governor's Budget Office for review of fiscal impact.

5. The Secretary shall submit this order and Annex A for review by the designated standing committees of both the Houses of the General Assembly and for review and approval by IRRC.

6. A copy of this order and Annex A shall be served upon the Office of Trial Staff, the Office of Consumer Advocate, the Office of Small Business Advocate and the National Association of Water Companies.

7. The final regulation in Annex A shall become effective upon publication in the *Pennsylvania Bulletin*.

JAMES J. MCNULTY,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 35 Pa.B. 2703 (April 30, 2005).)

Fiscal Note: Fiscal Note 57-223 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PENNSYLVANIA PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 53. TARIFFS FOR NONCOMMON CARRIERS

INFORMATION FURNISHED WITH THE FILING OF RATE CHANGES

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

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

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

(2) Exhibit B—Communications utilities.

(3) Exhibit C—Electric utilities.

(4) Exhibit D—Water and wastewater utilities.

(b) In providing responses to these data requests, if the requested data have been previously filed with the Com-

mission, they may be incorporated by reference. Also, the term "historic test year" as used in these exhibits refers to the test year chosen by the utility to support its filing, that is, presumably future test year data would be supplied in most cases. "Historic test year," as referred to in Exhibit D, is defined as book figures for the base test year. The term "future test year," as used in Exhibit D, refers to the adjusted historic test year for known and measurable changes 12 months beyond the book figures for the base year, or the utility's final claimed supporting data.

(c) Initial utility direct testimony of a witness who shall testify in support of the utility's position shall be provided as part of the filing materials. The testimony of the filing utility shall include a complete explanation and justification of claims which depart from the unadjusted test year results of operations, including the methodology and rationale. The testimony shall be accompanied by supporting worksheets, if necessary, and shall refer to supporting exhibits to which the testimony relates. The explanation and documentation of the proposed adjustments shall enable a reasonably informed party to determine how the amount was calculated and to understand why the amount is being claimed.

Exhibit A

I. VALUATION

* * * * *

E. (Reserved)

* * * * *

III. BALANCE SHEET AND OPERATING STATEMENT

* * * * *

C. (Reserved)

* * * * *

IV. RATE STRUCTURE

A. (Reserved)

* * * * *

Exhibit D

WATER AND WASTEWATER UTILITIES

I. STATEMENT OF INCOME

1. Provide comparative operating statements for the historic test year and the immediately preceding 12 months showing increases and decreases between the two periods. These statements should supply detailed explanation of the causes of the major (greater than 15%) variances between the historic test year and preceding year by detailed account number. Limit the explanation to differences of \$10,000 or greater.

2. Prepare an income statement for the various time frames of the rate proceeding including:

Col. 1—Book recorded income statement for the test year.

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

3—Income statement under present rates after adjustments in Col. 2.

4—Adjustments to Col. 3 for revenue increase requested.

5—Income statement under proposed rates.

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

4. Provide operating income claims under:
 - a. Present rates.
 - b. Pro forma present rates (annualized & normalized).
 - c. Proposed rates (annualized & normalized).
5. Provide rate of return on original cost under:
 - a. Present rates.
 - b. Pro forma present rates.
 - c. Proposed rates.

II. OPERATING REVENUES

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

- a. For each classification of customers:
 - (i) Number of customers as of year-end.
 - (ii) Gallons sold.
 - (iii) Revenues.
- b. Customers' penalties and miscellaneous water revenues.

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

- a. For each classification of customers and for customers' penalties and miscellaneous water or wastewater revenues:
 - (i) Revenues.
 - (ii) Annualizing and normalizing adjustments to arrive at adjusted operating revenues for ratemaking.
 - (iii) Proposed increase in operating revenues.
 - (iv) Percent increase in operating revenues.
 - (v) Operating revenues under proposed rates.

3. Provide a schedule of present and proposed tariff rates showing dollar change and percent of change by block. Provide increases to customers at various monthly uses (each 5,000 gallon consumption increment) showing billings at existing and proposed rates. Provide also an explanation of any change in block structure and the reason therefore. Provide a copy of the proposed tariff or tariff supplement on a red line basis, to easily identify any changes.

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

5. Provide detailed computations of the determination of accrued revenues as of historic test year-end and year-end immediately preceding the historic test year, together with a detailed explanation of the procedures and methods used in developing accrued revenues.

6. Provide a detailed breakdown of miscellaneous water revenues for the historic test year and the two years immediately preceding the historic test year. For the historic test year, provide a monthly breakdown and an explanation of monthly variances greater than 15%.

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

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

9. Provide by customer classification for the historic test year and for the 2 prior years the number of customers and consumption, and projected number of customers and consumption for the 2 subsequent years.

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

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

11. Provide a detailed schedule of sales for resale revenues for the historic test year and 2 preceding years showing revenues and units sold by customer.

12. Provide for the historic test year and the 2 prior years consumption and billings for the ten largest customers at current rates. Provide the historic and future test year consumption priced at proposed rates.

13. Provide for the historic test year and the 2 prior years consumption and billings for the ten largest sales for resale customers if such sales are not included in sales to the ten largest customers requested in Part II.12.

III. OPERATING EXPENSE

1. Prepare a summary of operating expenses by operating expense account for the historic test year and the 2 years preceding the test year.

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

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

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

5. Submit detailed computation of adjustments to operating expenses for salary, wage and fringe benefit increases (union and nonunion merit, progression, promotion and general) granted during the historic test year and during the 12 months subsequent to the historic test year. Supply data for the historic test year showing:

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

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

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

d. Total annual payroll increases in the historic and future test years.

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

f. Detailed list of employee benefits and cost thereof for union and nonunion personnel. Specific benefits for executives and officers should be included, and costs thereof.

g. Support the annualized pension cost figures by providing the following:

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

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

h. Submit a schedule showing any deferred income and consultant fee, paid to both, corporate officers and employees in historic and future test years.

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

- a. Supply a copy of contracts, if applicable.
- b. Explain the nature of the services provided.
- c. Explain the basis on which charges are made.
- d. If charges are allocated, identify allocation factors used.
- e. Supply the components and amounts comprising the expense in this account.
- f. Provide details of initial source of charge and reason thereof.

7. Describe costs relative to leasing equipment, computer rentals, and office space, including terms and conditions of the lease. Explain the method of calculating monthly or annual payments. If allocated from the parent company, provide the method of allocation.

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

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

- a. Public health and safety.
- b. Conservation of energy.
- c. Explanation of billing practices, rates, rules and regulations.
- d. Provision of factual and objective data programs in educational institutions.
- e. Other advertising programs.
- f. Total advertising expense.

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

11. Submit a schedule showing a breakdown by the expenditures associated with outside services employed, regulatory commission expenses, showing expenses relating to rate cases separately, and miscellaneous general expenses, for the historic test year and prior 2 comparable years.

12. Submit details of information covering research and development expenditures, by project, within the company and note forecasted company programs.

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

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

15. Identify the total pension expense under statement of accounting standards (SFAS 87) for the historic test year and the portion charged to operation and maintenance (O & M). Include an analysis showing the contribution to the pension plan and the amount deferred or expensed for each of the past 2 years and the historic test year. Also provide any estimates for the future year.

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

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

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

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

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

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

22. Provide a copy of all incentive compensation and bonus plans and provide the level of related bonus payments included in the cost of service. Provide information for the preceding 2 years and any changes since the last rate case.

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

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

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

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

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

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

IV. TAXES

1. Provide a copy of the latest Pennsylvania Corporate Tax report and the latest Pennsylvania Corporate Tax settlement.

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

3. Submit a schedule showing for the last 3 years the Income Tax refunds, plus interest, net of taxes, received from the Federal government due to prior years' claims.

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

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

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

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

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

7. Submit detailed calculations supporting historic and future taxable income before State and Federal Income Taxes where the income tax is subject to allocation due to operations in another state, or due to operation of other taxable utility or nonutility business, or by operating divisions or areas.

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

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

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

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

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

13. Under Section 1552 of the Internal Revenue Code and Regulations at 1.1552-1 if applicable, a parent company, in filing a consolidated Income Tax return for the group, must choose one of four options by which it must

allocate total income tax liability of the group to the participating members to determine each member's tax liability to the Federal government. If this request is not applicable, provide an explanation.

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

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

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

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

14. Provide a copy of the Corporate Federal Tax Returns and supporting schedules for the preceding 3 years and, if applicable, a copy of the calculation workpapers for the company's consolidated tax savings adjustment.

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

- a. Social Security.
- b. Unemployment.
- c. Capital Stock.
- d. Public Utility Realty.
- e. PUC assessment.
- f. Other property.
- g. Any other appropriate categories.

16. Submit a schedule showing a breakdown of the deferred Income Taxes by State and Federal per book, pro forma, existing rates, and under proposed rates.

17. With respect to determination of income taxes, Federal and State:

a. Show Income Tax results of the annualizing and normalizing adjustments to the historic test year before any rate increase.

b. Show Income Taxes for the annualized and normalized test year.

c. Show Income Tax effect of the rate increase requested.

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

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

- a. Actual per book test year.
- b. Annualized historic test year-end.
- c. Proposed future test year-end.

V. RATE BASE

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

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

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

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

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

5. If fuel stocks comprise part of the cash working capital claim, provide an exhibit showing the actual book balances, noting quantity and price for the fuel inventories by type of fuel for the 13 months prior to the end of the historic test year by location, station, etc. Explain the method of determining the claim if other than that described above.

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

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

- a. Prepayments-list and identify all items.
- b. Federal Income Tax accrued or prepaid.
- c. Pennsylvania State Income Tax accrued or prepaid.
- d. Pennsylvania Capital Stock Tax accrued or prepaid.
- e. Pennsylvania Public Utility Realty Tax accrued or prepaid.
- f. Payroll taxes accrued or prepaid.
- g. Any adjustments related to the above items for ratemaking purposes.

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

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

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

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

11. In reference to materials and supplies:

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

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

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

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

e. Provide the monthly level of materials and supplies for 3 years prior to the conclusion of the historic test year.

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

a. Description of the project.

b. Original budgeted cost broken down by allowance for funds used during construction (AFUDC) and non-AFUDC components.

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

d. Reason for change in budgeted cost.

e. Original estimated date of completion and in service.

f. Current estimated date of completion and in service.

g. Reason for change in completion date.

h. Anticipated retirement related to the plant addition.

i. Starting date of project.

j. Amount expended to date.

k. Percent of project currently complete.

l. The depreciation rate applicable.

m. Identify which projects are due to a Pennsylvania Department of Environmental Protection (PA-DEP) or Federal Environmental Protection Agency (EPA) requirement.

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

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

15. Is all plant included in rate base currently being used in providing water or wastewater service? If not, provide a schedule which presents those plant items

which are not, and indicate the corresponding amounts and account numbers. Further, provide a detailed narrative explaining the reason why such plant is not being used and the anticipated future disposition of the plant.

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

VI. DEPRECIATION

If any of the following questions under this section have been previously answered pursuant to 52 Pa. Code Chapter 73, please note in your response. It is not necessary to provide responses to questions previously answered.

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

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

3. Provide the surviving original cost at historic test year-end by vintage by account and include applicable depreciation reserves and accruals. These calculations should be provided for plant in service as well as other categories of plant, including contributions in aid of construction and customers' advances for construction.

4. Provide a comparison of the calculated depreciation reserve used for ratemaking purposes v. the book reserve by account at the end of the test year, if they differ.

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

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

6. Provide an exhibit showing gross salvage, cost of removal, and net salvage for the 5 most recent calendar or fiscal years by account.

VII. RATE OF RETURN

1. Provide capitalization and capitalization ratios for the last 5-year period and projected through the next 2 years (with short-term debt and without short-term debt) for the company, parent and consolidated system.

a. Provide year-end interest coverages before and after taxes for the last 3 years and at the latest date, including indenture and Securities and Exchange Commission (SEC) bases, for the company, parent and consolidated system.

b. Provide year-end preferred stock dividend coverages for the last 3 years and at latest date, including charter and SEC bases.

2. Provide latest prospectus for the company and the parent.

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

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

- a. Date of issue.
- b. Date of maturity.
- c. Amount issued.
- d. Amount outstanding.
- e. Amount retired.
- f. Amount required.
- g. Gain on reacquisition.
- h. Coupon rate.
- i. Discount or premium at issuance.
- j. Issuance expenses.
- k. Net proceeds.
- l. Sinking fund requirements.
- m. Effective interest rate.
- n. Dividend rate.
- o. Effective cost rate.
- p. Total average weighted effective cost rate.

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

- a. Earnings-price ratio (average).
- b. Earnings-book value ratio (per share basis) (average book value).
- c. Dividend yield (average).
- d. Earnings per share (dollar).
- e. Dividends per share (dollars).
- f. Average book value per share yearly.
- g. Average yearly market price per share (monthly high-low basis).
- h. Pre-tax funded debt interest coverage.
- i. Post-tax funded debt interest coverage.
- j. Market price-book value ratio.

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

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

8. Attach copies of the summaries of the company's projected revenues, expenses and capital budgets for the next 2 years.

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

- a. Reacquisitions by issue by year.
- b. Total gain on reacquisitions by issue by year.
- c. Accounting of gain for income tax and book purposes.

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

- a. Name of each bank.
- b. Address of each bank.
- c. Type of accounts with each bank (checking, savings, escrow, other services, etc.).
- d. Average daily balance in each account.
- e. Amount and percentage requirements for compensating bank balances at each bank.
- f. Average daily compensating bank balance at each bank.
- g. Documents from each bank explaining compensating bank balance requirements.
- h. Interest earned on each type of account.

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

- a. Line of credit at each bank.
- b. Average daily balances of notes payable to each bank, by name of bank.
- c. Interest rate charged on each bank note (prime rate, formula).
- d. Purpose of each bank note, (for example, construction, fuel storage, working capital, debt retirement).
- e. Prospective future need for this type of financing.

12. Submit details on company or parent common stock offerings for the past 5 years to present, as follows:

- a. Date of prospectus.
- b. Date of offering.
- c. Record date.
- d. Offering period including dates and number of days.
- e. Amount and number of shares of offering.
- f. Offering ratio, if rights offering.
- g. Percent subscribed.
- h. Offering price.
- i. Gross proceeds per share.
- j. Expenses per share.
- k. Net proceeds per share in (12.) i and j.
- l. Market price per share.
 - (1) At record date.
 - (2) At offering date.
 - (3) One month after close of offering.
- m. Average market price during offering.
 - (1) Price per share.
 - (2) Rights per share-average value of rights.
- n. Latest reported earnings per share at time of offering.
- o. Latest reported dividends at time of offering.

13. Attach a chart explaining company's corporate relationship to its affiliates showing system structure.

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

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

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

- a. Most recent annual report to shareholders including any statistical supplements.
- b. Most recent SEC form 10K.
- c. All SEC form 10Q reports issued within the preceding 12 months of the date of submittal of the rate increase request.

16. Supply copies of the company's balance sheets for each month for the last 2 years.

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

18. Provide copies of all bond rating reports relating to the company and, if applicable, its parent for the past 2 years.

19. Supply copies of all presentations by the company's and, if applicable, its parent's management and securities analysts during the past 2 years, including presentations of financial projections.

20. Provide a listing of all securities issuances for the company and, if applicable, its parent projected for the next 2 years. The response shall identify for each projected issuance the date, dollar amount, type of security, and effective cost rate.

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

22. Provide copies of all securities analysts' reports relating to the company and its parent, or both, issued within the past 2 years.

23. If applicable, supply a listing of all common equity infusions from the parent to the company over the past 5 years. In each case, identify date and dollar amount.

24. If applicable, identify the company's common dividend payments to its parent for each of the last 5 years.

25. Provide the latest year-by-year financial projections for the company for the next 5 years. Also, please indicate the date these projections were prepared; whether approved by management; and whether the projections have been submitted to bond rating agencies. The information will be treated in a confidential manner, if requested by the company in writing, as set forth in 52 Pa. Code § 5.423.

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

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

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

- a. Short-term debt balance.
- b. Short-term debt interest rate.
- c. Balance of construction work in progress.
- d. Balance of construction work in progress which is eligible for AFUDC accrual:

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

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

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

32. To the extent not provided elsewhere, supply financial data of the company, and its parent, if applicable, for the last 5 years.

- a. Times interest earned ratio—pre- and posttax basis.
- b. Preferred stock dividend coverage ratio—posttax basis.
- c. Times fixed charges earned ratio—pre tax basis.
- d. Dividend payout ratio.
- e. AFUDC as a percent of earnings available for common equity.
- f. Construction work in progress as a percent of net utility plant.
- g. Effective income tax rate.
- h. Internal cash generations as a percent of total capital requirements.

VIII. RATE STRUCTURE AND COST OF SERVICE

1. Provide a complete, fully allocated, cost of service study if an interval of 3 years has passed between a previous cost of service study and the historic test year date of the current filing. The cost of service study shall provide the necessary data to determine if the water or wastewater rate structure is fair and equitable to all classifications of water or wastewater customers (including public and private fire protection customers) and reflects, as nearly as possible, the cost of providing the service. The study shall correspond to the test year proposed revenue requirements (future test year only, if used). Summaries of conclusions and all back-up calculations shall be made part of the submission of the cost of service study, and shall include the following:

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

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

c. Supply the average day, the maximum day and the maximum hour deliveries to the system adjusted for storage for the historic test year and 2 prior years. Also provide workpapers, analyses, comparative data or other documentation supporting the estimated maximum day and peak hour demands by customer class reflected in the company's cost of service study.

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

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

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

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

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

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

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

2. Provide a listing of negotiated special rate contracts which includes a comparison of revenues under special rate contracts and under tariff rates. Provide the cost of service treatment of any deficiency in revenues resulting from the negotiated special rate contracts. Special rates are defined as rates not contained in the currently effective tariff.

IX. QUALITY OF SERVICE

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

a. Provide information indicating whether the company is in compliance with SDWA provisions at 25 Pa. Code § 109.407 regarding general public notification requirements:

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

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

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

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

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

(ii) Explain how these violations were resolved.

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

a. Provide details on any water pressure problems, lasting longer than 5 days, which had occurred since the last rate proceeding in any part of the water transmission and distribution system.

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

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

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

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

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

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

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

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

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

X. BALANCE SHEET

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

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

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

4. Describe the nature and amounts of notes receivable, accounts receivable from associated companies, and any other receivables, other than customers' accounts, greater than 15% of the total. Limit the explanation to variances greater than \$10,000.

5. Provide the amount of accumulated reserve for uncollectible accounts, method and rate of accrual, amounts accrued and amounts written-off in each of the last 3 years.

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

7. Break down and explain in detail any significant items, greater than 15% of the total, in the current assets account listed on the balance sheet. Limit the explanation to variances greater than \$10,000.

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

a. Origin of these accounts.

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

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

9. Explain the nature of accounts payable to associated companies. Provide a breakdown by category.

10. Provide breakdown and explanation of other deferred credits as to their origin and disposition policy, for example, amortization.

11. Provide an explanation and method of funding of any reserves, other than depreciation and bad debt appearing on historic balance sheet.

12. Provide an analysis of unappropriated retained earnings for the historic test year and 2 preceding years.

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

XI. OTHER DATA

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

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

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

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

5. Provide a schedule that shows the percentage of unaccounted for water for the test year and 2 prior years. Describe how this amount was determined and explain any steps taken to reduce unaccounted for water. Provide a similar analysis of infiltration for wastewater utilities.

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

[Pa.B. Doc. No. 05-990. Filed for public inspection May 20, 2005, 9:00 a.m.]

Title 67—TRANSPORTATION

DEPARTMENT OF TRANSPORTATION

[67 PA. CODE CH. 171]

School Buses and School Vehicles

The Department of Transportation, under the authority in 75 Pa.C.S. §§ 4551, 4552, 4553 and 6103 and in accordance with section 6(d) of the Regulatory Review Act (71 P. S. § 745.6(d)) and section 204 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204), amends Chapter 171 (relating to school bus and school vehicle equipment standards) to read as set forth in Annex A.

Purpose of Chapter 171

Chapter 171 sets forth equipment and safety requirements for school buses as provided for in 75 Pa.C.S. § 4552 (relating to general requirements for school buses) and for other vehicles transporting school children as provided for in 75 Pa.C.S. § 4553 (relating to general requirements for other vehicles transporting school children).

Purpose of this Rulemaking

The purpose of this rulemaking is to clarify existing provisions of the regulations, reflect innovations adopted by school bus manufacturers and to address concerns raised by the State Police and the Pupil Transportation Advisory Committee (PTAC). The 40 members of the PTAC represent various groups and associations responsible for, or concerned with, pupil transportation.

Significant Provisions of this Rulemaking

In addition to the numerous clarifying amendments throughout the chapter, this rulemaking proposes the following significant changes:

Section 171.18(b) (relating to color) has been amended to permit the service door frame to be painted black and the mirror brackets to be stainless steel with a satin finish.

Section 171.20(a) (relating to electrical system) has been amended to eliminate the requirement for the chassis manufacturer to temporarily mount the battery to the chassis and has been amended to provide that the battery be mounted on a sliding tray. Section 171.20(c) has been amended to eliminate the requirement that for every school bus to be equipped with a readily accessible terminal strip or plug.

Section 171.36 (relating to tires and rims) has been amended to clarify that hub caps that cover the lug nuts are prohibited because they could conceal loose lug nuts, a loose axle or wheel bearing fasteners or oil leaks.

Section 171.50(b) (relating to doors and emergency exits) has been amended to provide that hasps may not be used. If a hasp were to be inadvertently left in the locked position during student transportation it would

render an emergency exit useless. Section 171.50(b)(5)(i) has been amended to prohibit a school bus that is equipped with tinted windows to place the emergency exit labeling on the tinted glass as the tinted glass would make the label difficult to read.

Section 171.54(a) (relating to heaters) has been amended to eliminate specific heater requirements and to provide for the broader requirement that evenly distributed heat be provided throughout the bus body and to require defrosting for the windshield, driver's side sash and the entrance door. Language has been added to § 171.54(b) detailing minimum requirements relating to auxiliary fuel-fired heating systems.

Section 171.55(c) (relating to identification) has been amended to allow the dealer insignia to be placed on the rear of the vehicle. Section 171.55(c) is also being amended to update the certification/identification number information from the Interstate Commerce Commission (ICC) number to the United States Department of Transportation identification number, since the ICC no longer exists.

Section 171.59(b) (relating to lamps and signals) has been amended to allow strobe lights and light emitting diodes to be used in both the 8-way light system and the stopping arm. Section 171.59(d) is being amended to allow the turn signal lamps to be of a shape other than round, as long as they are a minimum of 38 square inches. The rulemaking also requires that the flash rate be between 60—120 flashes per minute.

Section 171.59(f) has been deleted because the provision is duplicative of § 171.83 (relating to portable emergency warning devices).

Section 171.86 (relating to fire axe) has been added to prohibit this dangerous piece of equipment. There are a sufficient number of emergency exits required on every school bus.

Since 171.68(b) (relating to seat belts) has been amended to include both the Type A1 and A2 school buses to be equipped with an integral Type 2 seat belt assembly for the driver. Section 171.68(c) has been being added to require every school bus that is equipped with passenger seat belts to also have at least one web cutter securely mounted in the driver's compartment. This will assist the driver in evacuating the school bus in an emergency.

Section 171.69(5) (relating to seats and crash barriers) has been amended to require school buses that are equipped with an integrated child restraint seat to have a crash barrier or a seat back of similar size or higher in front of it.

Section 171.73 (relating to sun shield) has been amended to allow smaller, Type A1 and Type A2 school buses to be equipped with a manufacturer's standard sun shield. New language also allows Type A school buses to also have an interior adjustable transparent sun shield.

Section 171.76 (relating to ventilation) has been amended to eliminate the requirement for a static-type nonclosable exhaust vent to be installed in a low pressure area of the roof. New language states that the body must be equipped with a ventilation system.

Section 171.78 (relating to windows) has been amended to allow the edges of glass to either be banded or have a finished edge.

Section 171.85 (relating to video equipment) is being added to clarify that video equipment is permitted and may be installed at the discretion of the school district or school bus contractor.

Section 171.92 (relating to aisles) has been amended to clarify that school vehicles may not be equipped with more than two wheelchair positions. New language has also been added to state that each wheelchair seating position is counted as four designated seating positions, in conformity with 49 CFR 571.3(b) (relating to definitions).

Section 171.99 (relating to restraining devices) has been amended to clarify that specially equipped school vehicles that transport children must comply with 75 Pa.C.S. § 4581 (relating to restraint systems).

Sections 171.107 and 171.126 (relating to web cutter) are added to require specially equipped school buses and school vehicles to have a least one web cutter securely mounted in the driver's compartment. This will assist the driver when evacuating the specially equipped school bus or school vehicle.

Section 171.125 (relating to seating) has been amended to require school vehicle seats to be forward facing and must comply with 75 Pa.C.S. § 4581.

Persons and Entities Affected

This rulemaking affects persons and entities responsible for the transportation of school children. This includes all 501 school districts in this Commonwealth as well as any organization contracted with to provide pupil transportation. In addition, the State Police will be affected in the performance of school bus vehicle inspections.

Fiscal Impact

This rulemaking may impose a cost of approximately \$10 for the purchase of a web cutter. Similarly, marginal savings may be anticipated from the elimination of equipment requirements currently in the regulations.

Regulatory Review

Under section 5.1 of the Regulatory Review Act (71 P. S. § 745.5a), on May 10, 2005, the Department submitted a copy of this rulemaking to the Office of Attorney General, the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Transportation Committees for review. In addition to the rulemaking, the Committees were provided with a copy of the certification of the Governor that the rulemaking is required to meet an emergency threatening the public health, safety or welfare, as well as a detailed Regulatory Analysis Form prepared by the Department. A copy of this material is available to the public upon request.

Sunset Date

The Department is not establishing sunset date for these regulations, since these regulations are needed to administer provisions required under 75 Pa.C.S. (relating to the Vehicle Code). The Department will, however, continue to closely monitor these regulations for their effectiveness.

Contact Person

The contact person for technical questions regarding this rulemaking is Chris Ann Miller, Manager, Special Driver Programs, Department of Transportation, Bureau of Driver Licensing, Riverfront Office Center, 1101 South Front Street, 3rd Floor, Harrisburg, PA 17104, (717) 787-6453.

Order

The Department orders that:

(a) The regulations of the Department, 67 Pa. Code Chapter 171, are amended by amending §§ 171.1, 171.2, 171.14, 171.18, 171.20, 171.21, 171.36, 171.37, 171.47, 171.50, 171.54, 171.55, 171.58, 171.59, 171.67—171.70, 171.73, 171.74a, 171.76, 171.78, 171.80, 171.81, 171.83, 171.91, 171.92, 171.94—171.97, 171.99, 171.102—171.105, 171.121, 171.125, 171.138 and 171.149, by adding §§ 171.85, 171.86, 171.107, 171.126 and 171.127 and by deleting § 171.64 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

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

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

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

ALLEN D. BIEHLER, P. E.,
Secretary

Fiscal Note: 18-400. No fiscal impact; (8) recommends adoption.

GOVERNOR'S OFFICE

Certification of Need for Emergency Regulation

Whereas, School districts in the Commonwealth and the school transportation providers with whom they contract are in constant need of replacing school buses and vehicles taken out of service because of age and need of repair; and

Whereas, innovations adopted by the school bus industry have been incorporated by school bus and vehicle manufacturers into school buses and vehicles now being marketed in Pennsylvania; and

Whereas, the innovations, in many instances, enhance the safety of the school buses and vehicles; and

Whereas, the innovations now included in new school buses and vehicles were not anticipated in current Department regulations; and

Whereas, without immediate amendment of the regulations, newly purchased school buses and vehicles cannot be certified for use by the school districts and school transportation providers who purchase them; and

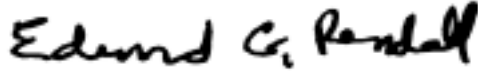
Whereas, some school districts and the school transportation providers with whom they contract will be unable to maintain a sufficient fleet of school buses and vehicles to provide adequate transportation for the school children of the Commonwealth; and

Whereas, the inability to replace vehicles taken out of service with vehicles certified for use under Department regulations poses a threat to the public safety and welfare of the school children of the Commonwealth.

Now Therefore, I do hereby certify that the regulatory amendments to 67 Pa. Code, Chapter 171, attached hereto as Annex A are required to meet the emergency conditions enumerated in the recitals above and to safeguard the public health, safety and welfare as described therein.

Further, I hereby authorize the Secretary of Transportation to publish these amendments in the *Pennsylvania Bulletin* as a Final Rulemaking consistent with the provisions of Section 6 of the Regulatory Review Act, as amended, 71 P. S. § 745.6(d).

Given under my hand and the Seal of the Governor, at the City of Harrisburg, on this 29th day of April in the year of our Lord two thousand and five, and of the Commonwealth the two hundred and twenty ninth.



Governor

Annex A

TITLE 67. TRANSPORTATION

PART I. DEPARTMENT OF TRANSPORTATION

Subpart A. VEHICLE CODE PROVISIONS

ARTICLE VII. VEHICLE CHARACTERISTICS

CHAPTER 171. SCHOOL BUS AND SCHOOL VEHICLES

Subchapter A. GENERAL PROVISIONS

§ 171.1. Applicability.

(a) *Scope.* This chapter applies to equipment and safety requirements for school buses as provided for in 75 Pa.C.S. § 4552 (relating to general requirements for school buses) and for other vehicles transporting school children as provided for in 75 Pa.C.S. § 4553 (relating to general requirements for other vehicles transporting school children).

(b) *Exemptions.* School buses manufactured or converted prior to September 14, 1996, must comply with the regulations in effect at the time they were manufactured or converted, except that Subchapter G (relating to operation standards for vehicles subject to this chapter) applies to vehicles subject to this chapter regardless of the date of manufacture or conversion.

(c) *FMVSS.* Vehicles manufactured as school buses are required to be in compliance with FMVSS as established by the National Highway Traffic Safety Administration (NHTSA) at 49 CFR 571 (relating to Federal Motor Vehicle Safety Standards).

(d) *Federal Motor Carrier Safety Regulations.* Vehicles manufactured as school buses and operating in interstate commerce are required to be in compliance with Federal Motor Carrier Safety Regulations as established by the Federal Highway Administration (FHWA) at 49 CFR Parts 393 and 396 (relating to parts and accessories necessary for safe operation; and inspection, repair and maintenance). See Appendix A.

§ 171.2. Definitions.

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

Bus—A motor vehicle designed to transport 16 or more passengers, including the driver; or a motor vehicle, other than a taxicab or limousine, designed to transport not more than 15 passengers, including the driver, and used for the transportation of persons for compensation. The term does not include a vehicle used in a ridesharing

arrangement, as defined in the act of December 14, 1982 (P. L. 1211, No. 279) (55 P. S. §§ 695.1—695.9), which provides for ridesharing arrangements and provides that certain laws are inapplicable to ridesharing arrangements, or a school bus.

Converted school bus—A vehicle not originally manufactured to be a school bus.

Convex mirror—A mirror having a curved reflective surface whose shape is the same as that of the exterior surface of a section of a sphere.

Department—The Department of Transportation of the Commonwealth.

Designated seating position—Under 49 CFR 571.3 (relating to definitions), a plain view location capable of accommodating a person at least as large as a 5th percentile adult female, if the overall seat configuration and vehicle design is of a type that the position is likely to be used as a seating position while the vehicle is in motion, except for auxiliary seating accommodations such as temporary or folding jump seats. A bench or split bench seat in a passenger car, truck or multipurpose passenger vehicle with a GVWR less than 10,000 pounds, having greater than 50 inches of hip room (measured in accordance with SAE Standard J1100(a)—See Appendix A) may not have less than three designated seating positions, unless the seat design or vehicle design is of a type that the center position cannot be used for seating.

FMVSS—Federal Motor Vehicle Safety Standards published in the *Code of Federal Regulations*.

Forward control—A configuration in which more than half of the engine length is rearward of the foremost point of the windshield base and the steering wheel hub is in the forward quarter of the vehicle length.

GVWR—*Gross vehicle weight rating*—The value specified on the Federal weight certification label by the manufacturer as the loaded weight of a single vehicle.

Insignia—Any identification statement, symbol, figure, logo or distinguishing sign, name or mark.

Mass transit pupil transportation bus—A bus, other than a school bus, that is operated by an urban mass transportation system and used exclusively for the transportation of children to and from school and school-related activities, even if used for other transportation purposes at other times.

Multifunction school activity bus—A school bus used to transport students on field trips, athletic trips or other curricular or extracurricular activities, but not used for to-and-from school transportation.

Pupil Transportation Section—The Pupil Transportation Section of the Bureau of Driver Licensing of the Department.

SAE—The Society of Automotive Engineers.

School—An institution for the education or training of children, including but not limited to kindergartens, rehabilitation centers, day care centers, Head Start centers, group day care homes, family day care homes and summer camps.

School bus—A motor vehicle designed to carry 11 passengers or more, including the driver, and used for the transportation of preprimary, primary or secondary school students to or from public, private or parochial schools or events related to these schools or school-related activities. The types of school buses are as follows:

(i) *Type A school bus.* A school bus converted from or having a body constructed upon a van-type truck or front-section vehicle chassis, with a left side driver's door and the entrance doors behind the front wheels. This definition includes two classifications: Type A1, with a Gross Vehicle Weight Rating (GVWR) less than or equal to 10,000 pounds; and Type A2, with a GVWR greater than 10,000 pounds.

(ii) *Type B school bus.* A school bus constructed utilizing a stripped chassis, with the entrance door behind the front wheels. This definition includes two classifications: Type B1, with a GVWR less than or equal to 10,000 pounds; and Type B2, with a GVWR greater than 10,000 pounds.

(iii) *Type C school bus.* A school bus constructed utilizing a chassis with a hood and front fender assembly without a left side driver's door and with the entrance door behind the front wheels.

(iv) *Type D school bus.* A school bus constructed utilizing a stripped chassis with the entrance door ahead of the front wheels.

School vehicle—A motor vehicle, except a motorcycle, designed for carrying no more than ten passengers, including the driver, and used for the transportation of preprimary, primary or secondary school students while registered by or under contract to a school district or private or parochial school. The term includes vehicles having chartered, group and party rights under the Pennsylvania Public Utility Commission and used for the transportation of school children.

Specially equipped school bus—A school bus used to transport children which, in addition to meeting the requirements for school buses as described in this chapter, contains special equipment as required in Subchapter D (relating to specially equipped school bus standards).

Stop signal arm—A device that can be extended outward from the side of the school bus to provide a signal to other motorists not to pass because the bus has stopped to load and discharge passengers.

Type 2 seat belt assembly—A combination of pelvic and upper torso restraints.

Unit magnification mirror—A plane or flat mirror with a reflective surface through which the angular height and width of the image of an object is equal to the angular height and width of the object when viewed directly at the same distance except for flaws that do not exceed normal manufacturing tolerances.

Upper torso restraint—A portion of a seatbelt assembly intended to restrain movement of the chest and shoulder regions.

Subchapter B. SCHOOL BUS CHASSIS STANDARDS

§ 171.14. Brakes.

(a) General rule.

(1) Unless otherwise provided for by this section, a school bus must be equipped with a chassis brake system which conforms with the provisions of FMVSS No. 105, No. 106 and No. 121, as applicable.

(2) The antilock brake system (ABS), provided in accordance with FMVSS No. 105 or No. 121, shall provide wheel speed sensors for each front wheel and for each wheel on at least one rear axle. The system shall provide antilock braking performance for each wheel equipped with sensors.

(3) Brake systems shall be designed to permit visual inspection of brake lining wear without removal of any chassis components.

(4) The brake lines, booster-assist lines and control cables shall be protected from excessive heat, vibration and corrosion and installed in a manner which prevents chafing.

(5) The parking brake system for either air or hydraulic service brake systems may be of a power assisted design. The power parking brake actuator shall be a push-pull device located on the instrument panel within seated reach of a 5th percentile female driver. As an option, the parking brake may be set by placing the automatic transmission shift control mechanism in the "park" position.

(6) The power-operated parking brake system may be interlocked to the engine key switch so that once the parking brake has been set and the ignition switch turned to the "off" position, the parking brake cannot be released until the key switch is turned back to the "on" position.

(b) *Hydraulic brakes.* A bus using a hydraulic-assist brake shall be equipped with audible and visible warning signals that provide a continuous warning to the driver of a loss of fluid flow from the primary source and of a failure of the back-up pump system.

(c) *Air brakes.* A bus equipped with air brakes shall conform to the following:

(1) The air pressure supply system shall include a desiccant-type air dryer installed according to the manufacturers' recommendations. The air pressure storage tank system may incorporate an automatic drain valve.

(2) The dashboard instrument panel of a bus equipped with an air brake system shall include an air pressure gauge of a type allowing the driver to comply with CDL pretrip inspection requirements.

(3) An air brake shall have both a visible and audible warning device whenever the air pressure falls below the level where warnings are required under FMVSS No. 121.

§ 171.18. Color.

(a) *General rule.* A school bus chassis, including wheels and bumpers, shall be black. A school bus hood, cowl and fender shall be National School Bus Yellow. See Appendix B.

(b) *Exceptions.* Exceptions to subsection (a) are as follows:

(1) Wheel rims shall be of a trim used by the rim manufacturer.

(2) School bus hoods may be nonreflective National School Bus Yellow—See Appendix A—or lusterless black matching National Institute of Standards and Technology (NIST) Federal Standard No. 595a, Color 37038. See Appendix A.

(3) The service door frame may be black.

(4) The mirror brackets and other body accessories may be stainless steel with a satin finish.

(c) *Multifunction school activity bus.* The color requirements in this section do not apply to multifunction school activity buses.

§ 171.20. Electrical system.

(a) *Battery.* The requirements for the battery are as follows:

(1) The battery shall have a minimum cold cranking capacity rating equal to the cranking current required for 30 seconds at 0° F (-17.8° C) and a minimum reserve capacity rating of 120 minutes at 25 amp. Higher capacities may be required dependent upon optional equipment and local environmental conditions.

(2) Batteries in Type B, C and D school buses shall be mounted on a sliding tray.

(b) *Generator or alternator.* Requirements for generators and alternators are as follows:

(1) Every Type A and B school bus up to 15,000 pounds GVWR shall have a minimum 60 ampere per hour alternator.

(2) Every Type B school bus over 15,000 pounds GVWR and every Type C and D school bus shall be equipped with an alternator meeting SAE Standard J180b—See Appendix A—with a minimum output rating of 100 amperes, capable of producing a minimum of 50% of its maximum rated output at the engine manufacturer's recommended idle speed.

(3) Every school bus equipped with an electrical power lift shall have a minimum 100 ampere per hour alternator.

(4) A direct drive generator or alternator is permissible in lieu of belt drive. Belt drive shall be capable of handling the rated capacity of the generator or alternator with no detrimental effect on other driven components.

(5) Refer to *SBMI Design Objectives Booklet*. See Appendix A—for required generator or alternator capacity.

(c) *Wiring.* Requirements for wiring are as follows: Wiring shall conform to current applicable SAE Standards. Wiring and circuits shall be of a standard color and number coding and each chassis shall have a wiring diagram and circuit that coincides with the wiring and circuitry of the chassis.

§ 171.21. Exhaust system.

(a) *General rule.* The exhaust pipe, muffler and tailpipe shall be outside the body compartment and securely attached to the chassis with clamps and hangers of a type and installed as recommended by the chassis manufacturer.

(b) *Tailpipe.* The tailpipe shall be constructed of a corrosion-resistant tubing material at least equal in strength and durability to 16 gauge steel tubing.

(c) *Tailpipe extension.* The exhaust system of a school bus powered by a gasoline engine shall discharge to the atmosphere at or within 6 inches forward of the rearmost part of the school bus.

(d) *Tailpipe extension for school buses using fuels other than gasoline.* The exhaust system for a school bus using fuels other than gasoline shall discharge to the atmosphere either at or within 15 inches forward of the rearmost part of the vehicle; or to the rear of all doors or windows designed to be opened, except windows designed to be opened solely as emergency exits.

(e) *Insulation.* The exhaust system on a gasoline powered chassis shall be properly insulated from fuel tank connections by a securely attached metal shield at any point where it is 12 inches or less from the tank or tank connections.

(f) *Muffler.* The muffler shall be constructed of corrosion resistant material.

(g) *Discharge lines and outlets.* The discharge lines and outlets on school buses equipped with compressed or liquefied gas fuel systems shall be installed in accordance with Chapter 175 (relating to vehicle equipment and inspection).

(h) *Exhaust system hangers.* Exhaust systems may be equipped with hangers that permit required movement due to expansion and contraction caused by heat of the exhaust and relative motion between the engine and chassis of a vehicle.

(i) *Exhaust system and discharge location.* Exhaust systems are not permitted to discharge to the atmosphere at a location immediately below the fuel tank or the fuel tank filler pipe. Exhaust systems shall also extend and discharge completely to the outside edge of the vehicle body.

(j) *Exception.* This section does not apply to auxiliary fuel-fired heating systems.

§ 171.36. Tires and rims.

The requirements for the tires and rims of a school bus are as follows:

(1) School buses shall be equipped with tires and rims which conform to the vehicle chassis manufacturer's specifications as to tire size, in that the tires and rims are not smaller than those that have been recommended by the chassis manufacturer. Tires and rims shall meet the requirements of FMVSS Nos. 119 and 120. See Appendix A.

(2) Dual rear tires shall be provided on Type A2, Type B, Type C and Type D school buses.

(3) Tires on the same axle shall be of the same size and type of construction—bias, belted or radial. Type A school bus tires shall be of same size and type of construction on all axles.

(4) If the vehicle is equipped with a spare tire and rim assembly for emergency use, it shall be of the same size as those mounted on the vehicle.

(5) Tube type tires and tubeless equivalent tires shall be provided on dual wheel vehicles.

(6) When tires are replaced, they shall be of a quality equivalent to the original equipment.

(7) Radial type tires at least equivalent in strength and size to the bias construction tire specified may be substituted; however, no mixing of radial type and bias construction type tires may be permitted on the same axle.

(8) Regrooved, recapped or retreaded tires shall comply with the following:

(i) Regrooved, recapped or retreaded tires may not be used on front wheels or on single rear wheels.

(ii) Regrooved tires shall comply with safety standards certified by the tire manufacturer as meeting 49 CFR 569 (relating to regrooved tires)—see Appendix A—and shall be stamped as "Regroovable."

(iii) Recapped or retreaded tires shall comply with FMVSS No. 117. See Appendix A.

(iv) Regroovable tires may be retreaded, recapped or regrooved.

(9) No tire may be used which is in an unsafe condition. Tread depth on tires may at no time be less than $4/32$ of an inch on the front and $2/32$ of an inch on the rear as measured on two adjacent treads by an acceptable gauge such as the Dill, or its equivalent.

(10) A spare tire, if used, shall be suitably mounted in an accessible location outside the passenger compartment. Types A and B school buses need not comply with this paragraph.

§ 171.37. Transmission.

(a) *Automatic.* An automatic or semiautomatic transmission shall have at least three forward speeds and one reverse speed.

(b) *Manual.* On manual transmissions, second and higher gears shall be synchronized except when incompatible with engine power. A minimum of three forward speeds and one reverse speed shall be provided.

Subchapter C. SCHOOL BUS BODY STANDARDS

§ 171.47. Color.

The requirements for the color of school bus bodies are as follows:

(1) The school bus body shall be painted a uniform National School Bus Yellow. See Appendix B.

(2) The roof of the school bus may be painted white.

(3) The body exterior trim, including the exterior mirrors, may be black. The bumper shall be black.

(4) If a school bus is equipped with reflective material, other than that required under §§ 171.50 and 171.59 (relating to doors and emergency exits; and lamps and signals), the reflective material shall be of automotive engineering grade or better. If additional reflective materials and markings are used, they may be applied as follows:

(5) The pilaster (vertical window post) may be black.

(6) The color requirements in this section do not apply to multifunction school activity buses.

§ 171.50. Doors and emergency exits.

(a) *Service doors.* The requirements for service doors are as follows:

(1) The service door shall be under the control of the driver, and designed so as to afford easy release and prevent accidental opening. When a hand lever is used, no part may come together so as to shear or crush fingers.

(2) The service door shall be located on the right side of the school bus opposite the driver and within direct view of the driver.

(3) The service door shall have a minimum horizontal opening of 24 inches and a minimum vertical opening of 68 inches. Type A school bus service doors shall have a minimum opening area of 1,200 square inches.

(4) The service door shall be of the split type, sedan type or jackknife type. Split-type door includes a sectioned door which divides and opens inward or outward. If one section of a split type door opens inward and the other opens outward, the front section shall open outward.

(5) Lower as well as upper windows shall have approved safety glazing. The bottom of the lower window may not be more than 35 inches from the ground when the bus is unloaded. The top of the upper window may not be more than 6 inches from the top of the door. Type

A school buses shall have an upper window with an area of at least 350 square inches of approved safety glazing.

(6) Vertical closing edges on split type or folding type entrance doors shall be equipped with flexible material to protect the passengers' fingers. Type A school buses may be equipped with the chassis manufacturer's standard entrance door.

(7) There may be no door to the left of the driver on Type C or D school buses. Type A and B school buses may be equipped with the chassis manufacturer's standard entrance door.

(8) Doors shall be equipped with padding at the top edge of each door opening. The padding shall be at least 3 inches wide and 1 inch thick and extend the full width of the door opening.

(b) *Emergency exits.* Each school bus shall comply with FMVSS No. 217. See Appendix A. The area of square centimeters of the unobstructed opening for emergency exits shall collectively amount to at least 432 multiplied times the number of designated seating positions in the bus. The area of an opening equipped with a wheel chair lift is counted toward meeting additional emergency area requirements only if the lift is designed to be folded or stored so that the area is available for use by persons not needing the lift.

(1) The requirements for emergency exit doors are as follows:

(i) The emergency exit door shall be hinged according to FMVSS No. 217. See Appendix A. Double emergency exit doors shall also be hinged according to FMVSS No. 217. See Appendix A.

(ii) The upper portion of the rear emergency exit door shall have a window equipped with approved safety glazing, the exposed area of which is at least 400 square inches. The lower portion of the rear emergency door on Type B, C and D school buses shall contain a window of approved safety glazing, measuring a minimum of 350 square inches. Type A school buses are exempt from this subparagraph.

(iii) Except as provided in subparagraph (iv), no portion of a seat or a restraining barrier may be installed within the area bounded by the opening of a side emergency exit door, a vertical transverse plane parallel to that plane at a distance of 30 centimeters (11 $3/4$ inches) forward of that plane, and a longitudinal vertical plane passing through the longitudinal centerline of the bus. See Figure 4.

(iv) A seat bottom may be located within the area described in subparagraph (iii) if the seat bottom pivots and automatically assumes and retains a vertical position when not in use, so that no portion of the seat bottom is within the area described in subparagraph (iii) when the seat bottom is vertical. See Figure 5.

(v) No portion of a seat or restraining barrier—located forward of the area described in subparagraph (iii) and between the door opening and a longitudinal vertical plane passing through the longitudinal centerline of the bus—may extend rearward of a vertical transverse plane tangent to the forwardmost portion of a latch mechanism on the door. See Figures 5 and 6.

(vi) Each emergency exit door of a school bus shall be equipped with a positive door opening device that, after the release mechanism has been operated:

- (A) Bears the weight of the door.
- (B) Keeps the door from closing past the point at which the door is perpendicular to the side of the bus body, regardless of the body's orientation.
- (C) Provides a means for release or override.
- (vii) The positive door opening device shall perform the functions specified in subparagraph (vi)(A) and (B) without the need for additional action beyond opening the door past the point at which the door is perpendicular to the side of the bus body.
- (viii) Emergency door exits shall be equipped with padding at the top edge of each door opening. The padding shall be at least 3 inches wide and 1 inch thick and extend the full width of the door opening.
- (ix) The emergency exit door opening may not be blocked with an obstruction higher than 1/4 inch across the bottom of the emergency exit door opening.
- (x) Each school bus emergency exit door shall allow manual release of the door by a single person, from both inside and outside the passenger compartment. The release mechanism shall operate without the use of remote controls or tools, and notwithstanding any failure of the vehicle's power system. When the release mechanism is not in the position that causes an emergency exit door to be closed, and the vehicle's ignition is in the "on" position, a continuous warning sound shall be audible at the driver's seating position.
- (xi) Two side emergency exit doors may not be located, in whole or in part, within the same post and roof bow panel space.
- (xii) Supplemental security locks installed on emergency doors shall be equipped with an ignition interlock system or an audiovisual alarm located in the driver's compartment. Hasps may not be used.
- (2) The requirements for emergency roof exits are as follows:
 - (i) Each emergency roof exit shall be hinged on its forward side, and shall be operable from both inside and outside the vehicle.
 - (ii) In a school bus equipped with a single emergency exit, the exit shall be located as near as practicable to the midpoint of the passenger compartment.
 - (iii) In a bus equipped with two emergency roof exits:
 - (A) One emergency roof exit shall be located as near as practicable to a point equidistant between the midpoint of the passenger compartment and the foremost limit of the passenger compartment.
 - (B) The other emergency roof exit shall be located as near as practicable to a point equidistant between the midpoint of the passenger compartment and the rearmost point of the passenger compartment.
 - (iv) In a bus equipped with three or more emergency roof exits, the roof exits shall be installed so that, to the extent practicable, the longitudinal distance between each pair of adjacent roof exits is the same and equal to:
 - (A) The distance from the foremost point of the passenger compartment to the foremost roof exit.
 - (B) The distance from the rearmost point of the passenger compartment to the rearmost roof exit.
 - (v) Except as provided in subparagraph (vi), each emergency roof exit shall be installed with its longitudinal

centerline coinciding with a longitudinal vertical plane passing through the longitudinal centerline of the school bus.

(vi) In a bus equipped with two or more emergency roof exits, for each roof exit offset from the longitudinal vertical plane specified in subparagraph (v), there shall be another roof exit offset from that plane an equal distance to the other side.

(vii) Each school bus emergency roof exit shall allow manual release of the exit by a single person, from both inside and outside the passenger compartment, using not more than two release mechanisms.

(viii) Each school bus emergency roof exit, after the release mechanism has been operated, shall be manually extendable by a single person to a position that permits an opening at least 41 centimeters—16 1/8 inches—high and 41 centimeters—16 1/8—wide.

(3) The requirements for emergency exit windows are as follows:

(i) A bus equipped with emergency exit windows shall have an even number of these windows, not counting a push-out rear window. Side emergency exit windows shall be evenly divided between the right and left sides of the bus.

(ii) Each school bus emergency exit window shall allow manual release of the exit by a single person, from inside the passenger compartment, using not more than two release mechanisms. Each release mechanism shall operate without the use of remote controls or tools, and notwithstanding a failure of the vehicle's power system. When the release mechanism is open and the vehicle's ignition is in the "on" position, a continuous warning shall be audible at the driver's seating position.

(4) The engine starting system of a bus may not operate if an emergency exit is locked from either inside or outside the bus. An emergency exit is considered locked if the release mechanism cannot be activated and the exit cannot be opened by a person at the exit without a key or other special device, or a combination or other special information.

(5) The requirements for emergency exit labeling are as follows:

(i) Each school bus emergency exit shall be labeled "Emergency Door" or "Emergency Exit," as appropriate, in letters at least 5 centimeters (2 inches) high, of a color that contrasts with its background. For emergency exit doors, the label shall be located at the top of, or directly above, the emergency exit door on both the inside and outside surfaces of the bus. The label for roof exits shall be located on an inside surface of the exit, or within 30 centimeters (11 3/4 inches) of the roof exit opening. For emergency exit windows, the label shall be located at the top of, or directly above, or at the bottom of the emergency exit window on both the inside and outside surfaces of the bus. If the school bus is equipped with tinted windows, the emergency exit labeling may not be placed on the glass, unless it is placed on both the inside and outside.

(ii) Concise operating instructions describing the motions necessary to unlatch and open the emergency exit shall be located within 15 centimeters (5 15/16 inches) of the release mechanism on the inside surface of the bus. These instructions shall be in letters at least 1 centimeter (3/8 inches) high and of a color that contrasts with its background—for example: "Lift to Unlatch, Push or Open;" or "Turn Handle, Push Out to Open."

(iii) Each opening for a required emergency exit shall be outlined around its outside opened perimeter with a minimum 3 centimeters—1 1/8 inches—wide retroreflective tape, either red, white or yellow in color, which meets the requirements of FMVSS No. 131. See Appendix A.

§ 171.54. Heaters.

(a) The requirements for heaters are as follows:

(1) Heaters shall provide evenly distributed heat throughout the interior of the bus.

(2) At least one heater shall provide defrosting for the windshield, driver's side sash and entrance door.

(3) Heater hoses shall be adequately supported to guard against excessive wear due to vibration. The hoses may not dangle or rub against the chassis or sharp edges and may not interfere with or restrict the operation of any engine function. Heater hoses shall conform to applicable SAE Standards. See Appendix A. Heater lines on the interior of the bus shall be shielded to prevent scalding of the driver or passengers.

(4) A hot water heater system shall include a shutoff valve installed in the pressure and return lines at the engine. There shall be a water flow regulating valve installed for convenient operation by the driver. Type A school buses are exempt from this paragraph.

(5) Accessible bleeder valves shall be installed to remove air from the heater lines. The valves shall be installed in an appropriate place in the return lines of the heater.

(6) Heater motors, cores and fans shall be readily accessible for service. Access panels shall be provided as needed.

(b) Auxiliary fuel-fired heating systems are permitted, provided they comply with the following:

(1) The auxiliary heating system fuel shall utilize the same type fuel as specified for the vehicle engine.

(2) The heaters may be either of a direct hot air type or connected to the engine's coolant system.

(3) An auxiliary heating system, when connected to the engine's coolant system, may be used to preheat the engine coolant or preheat and add supplementary heat to the bus's heating system.

(4) Auxiliary heating systems shall be installed pursuant to the manufacturer's recommendations and may not direct exhaust in a manner that will endanger bus passengers.

(5) Auxiliary heating systems which operate on diesel fuel shall be capable of operating on #1, #2 or blended diesel fuel without the need for system adjustment.

(6) Auxiliary heating systems shall be low voltage.

(7) Auxiliary heating systems shall comply with all applicable Federal Motor Vehicle Safety Standards, including FMVSS 301 as well as SAE test procedures.

§ 171.55. Identification.

(a) *Required.* Every school bus body shall bear the words "SCHOOL BUS" in black letters at least 8 inches high on both the front and the rear of the body, or on signs attached thereto. Lettering shall be placed as high as possible without impairment of its visibility. Lettering shall conform to "Series B" of Standard Alphabets for Highway Signs.

(b) *Identification number.* A school bus shall display an identification number consisting of no more than 4 black

numbers, letters or a combination of numbers and letters. The numbers or letters shall be a minimum 5 inches in height and shall be displayed in a prominent location on the front, rear and on both sides of the bus. On a school bus with a rounded front, the identification number displayed on the front of the bus may be displayed on the black front bumper in yellow numbers, letters, or a combination of numbers and letters, in lieu of black numbers, letters, or a combination of numbers and letters on the front of the yellow bus body.

(c) *School, bus company and manufacturer markings.* School buses shall have the name of the school district, private or parochial school, school bus contractor, or school bus owner clearly visible, lettered on each side of the school bus body in the upper body belt band area as close as practical to the bottom ledge of the bottom window sash in letters of not less than 4 inches in height. Lettering shall be in black or National School Bus Yellow, depending on the contrasting background color. See Appendix B. A paper or vinyl route identification number or symbols may be placed in the rear of the first right or left passenger window, or both. The bus contractor may have his name or the name of the company in letters no larger than 3 inches in height. The dealer identification insignia may be displayed, in an area not to exceed 6 inches in height by 12 inches in width. The manufacturer's insignias may be displayed. Pennsylvania Public Utility Commission certification number and the U.S. DOT identification number, and any other required commercial vehicle markings may be displayed.

(d) *Roof-top identification.* School buses may display the first eight digits of the title number on the roof in numbers of at least 12.75 inches and not more than 15 inches in height. Lettering shall be in black reflective material and placed in a longitudinal column with the first digit beginning at the front and the last digit ending towards the rear of the school bus as illustrated as follows:

* * * * *

(e) *Additional markings.* Except as set forth in this section, signs or lettering are not permitted.

§ 171.58. Interior.

The requirements for the interior of school buses are as follows:

(1) The interior of every school bus shall be free of unnecessary projections likely to cause injury. This standard requires inner lining on ceilings and walls. If the ceiling is constructed so as to contain lapped joints, the forward panel shall be lapped by the rear panel, and exposed edges shall be beaded, hemmed, flanged or otherwise treated to minimize sharp edges.

(2) Every school bus shall meet the requirements of FMVSS No. 302, as to the flammability of interior materials. See Appendix A.

(3) Book racks or luggage racks are not permitted.

(4) Interior radio/stereo speakers shall be of the flush mounted type. Exposed parts shall be treated to minimize sharp edges.

(5) The driver's area forward of the foremost padded barriers shall permit the mounting of required safety equipment and vehicle operating equipment.

(6) The requirements for air-conditioning units are as follows:

(i) Persons installing air-conditioning units in school buses after the vehicle's original manufacture date shall install the equipment in accordance with manufacturer's specification and applicable FMVSS.

(ii) Interior ceiling-mounted air-conditioning units, mounted above the seats within the head protection zone or at the rear of the bus, shall be padded with materials meeting FMVSS No. 302 to an extent to insure compliance with the head impact test requirements of FMVSS No. 222. See Appendix A.

(iii) This paragraph does not prohibit the installation of air-conditioning units in locations other than those described in subparagraph (ii). Air-conditioning units may be installed in other locations if labeled as described in subparagraph (i).

§ 171.59. Lamps and signals.

(a) *General rule.* All lamps, signals, reflectors and their installation must be in conformance with applicable FMVSS and SAE standards.

(b) *Exterior lamps.* Exterior lamps shall meet the requirements of FMVSS No. 108.

(c) *Flashing signal lamps and stop signal arm devices.* The requirements for flashing signal lamps and stop signal arm devices are as follows:

(1) *Signal lamps.* Every school bus shall be equipped with 8-way warning lamps consisting of two red and two amber alternately flashing signal lamps at the rear of the vehicle and two red and two amber alternately flashing signal lamps at the front of the vehicle.

(i) Each amber signal lamp shall be located near each red signal lamp, at the same level, but closer to the vertical centerline of the school bus.

(ii) The system shall be wired so that the amber signal lamps are activated manually, and if activated, are automatically deactivated and the red signal lamps automatically activated when the school bus service door is opened.

(iii) Amber and red warning lamps must alternate between left and right at a minimum rate of 60 flashes per minute.

(iv) LED and/or strobe lights may be used in the 8-way warning lamps system.

(v) If strobe lights are used, the strobe effect must appear as a flash of varying intensity and not separate flashes. All amber and red warning lamps must strobe in the same pattern. The same pattern is the same number of flashes per lamp before the system alternates to the other side.

(vi) The area around the lens of each alternately flashing signal lamp shall be of a black contrasting color. The use of visors or hoods with an appropriate black background to fit the shape of the visors or hoods and the roofcap is permitted.

(vii) Flashers for alternately flashing red and amber signal lamps shall be enclosed in the school bus body in a readily accessible location.

(2) *Stop signal arm devices.* A school bus may be equipped with strobe or LED flashing stop signal, or both. The signal may be equipped with two flashing strobe or LED lights, or both, at least 4 inches in diameter, red in color and double faced. Stop signal arm devices on school buses shall comply with FMVSS No. 131—See Appendix A—and the following requirements:

(i) The stop signal arm shall be a regular octagon which is at least 450 mm × 450 mm—17.72 inches × 17.72 inches—in diameter.

(ii) The stop signal arm shall be red on both sides, except as provided in subparagraphs (iii)—(v).

(iii) The stop signal arm shall have a white border at least 12 mm—0.47 inch—wide on both sides, except as provided in subparagraph (v).

(iv) The stop signal arm shall have the word “STOP” displayed in white upper-case letters on both sides, except as provided in subparagraph (v). The letters shall be at least 150 mm—5.9 inches—in height and have a stroke width of at least 20 mm—0.79 inch.

(v) If two stop signal arms are installed on a school bus, the rearmost stop signal arm may not contain lettering, symbols or markings on the forward side.

(vi) The stop signal arm shall comply with clause (A) or (B), or both.

(A) The entire surface of both sides of the stop signal arm shall be reflectorized with Type III reflectorized material that meets the minimum specific intensity requirements of FMVSS No. 125. See Appendix A. If two stop signal arms are installed on a school bus, the forward side of the rearmost stop signal arm may not be reflectorized.

(B) Each side of the stop signal arm shall have at least two red lamps that meet the requirements of SAE Standard J578. See Appendix A. The lamps shall be centered on the vertical centerline of the stop arm. One of the lamps shall be located at the extreme top of the stop arm and the other at its extreme bottom.

(vii) The stop signal arm shall be installed on the left side of the bus.

(viii) The stop signal arm shall be located so that, when in the extended position, the following requirements are met:

(A) The stop signal arm is perpendicular to the side of the bus, ±5°.

(B) The top edge of the sign is parallel to and within 6 inches of a horizontal plane tangent to the lower edge of the driver's window frame.

(C) The vertical centerline of the stop sign is at least 9 inches away from the side of the school bus.

(ix) If a rearmost stop signal arm is installed on a school bus, the stop signal arm shall comply with subparagraphs (vii) and (viii).

(x) The stop signal arm shall be automatically extended so that it complies with subparagraph (viii), at a minimum, whenever the red signal lamps required by FMVSS No. 108, S5.1.4—See Appendix A—are activated; except that a device may be installed that prevents the automatic extension of a stop signal arm. The mechanism for activating the device shall be within the reach of the driver. While the device preventing automatic extension is activated, a continuous or intermittent signal audible to the driver shall sound. The audible signal may be equipped with a timing device but shall require the signal to sound for at least 60 seconds. If a timing device is used, it shall automatically recycle each time the service entry door is opened while the engine is running and the manual override is engaged.

(xi) The lamps on each side of the stop signal arm, when operated at the manufacturer's design load, shall flash at a minimum rate of 60 flashes per minute.

(xii) The stop signal arm and components shall comply with SAE Standard J1133. See Appendix A.

(3) *Exception.* A multifunction school activity bus is exempt from the flashing signal lamps and stop arm device requirements of this section. However, a multifunction school activity bus which is not in compliance with the requirements of § 171.18 (relating to color) may not have 8-way warning lamps and stop arm devices.

(d) *Interior lamps.* Interior lamps shall adequately illuminate the aisle and step well.

(e) *Turn signal and stop lamps.* The rear turn signal lamps shall be at least 7 inches in diameter, or if in a shape other than round, a minimum of 38 square inches, and meet SAE Standards. These signals shall be connected to the chassis hazard warning switch to cause simultaneous flashing of the turn signal lamps when needed as vehicular traffic hazard warning. The turn signal lamps shall be placed as wide apart as practical and their centerline shall be approximately 8 inches below the rear windows. Type A school bus lamps shall be 21 square inches in lens area. Just inside the turn signal, there shall be installed at the same elevation, two 7 inch diameter stop lamps, or if in a shape other than round, a minimum of 38 square inches. The lamps shall flash at a rate of 60—120 flashes per minute.

(f) *Monitor.* If a school bus is equipped with indicators to monitor the front and rear lamps, it shall be mounted in full view of the driver. If the full circuit current passes through the indicator, each circuit shall be protected by a fuse, circuit breaker or multiplex electrical circuit technology.

§ 171.64. (Reserved).

§ 171.67. Traction assist devices.

School buses may be equipped with sanders and automatic tire chains. Sanders and automatic tire chains shall be installed in accordance with the manufacturer's installation procedures.

§ 171.68. Seat belts.

(a) *Seat belt for the driver.* A Type 2 seat belt meeting the requirements of FMVSS Nos. 208 and 209—See Appendix A—shall be provided for the driver. The belt shall be equipped with a retractor of sufficient quality and strength to keep the belt retracted and off the floor when not in use. The belt shall be anchored in accordance to FMVSS No. 210—See Appendix A.

(b) *Seat belts for the driver and all other designated seating positions.* Every Type A school bus shall be equipped with an integral Type 2 seat belt assembly at the driver's designated seating position and at the right front passenger's designated seating position, if any. All other designated seating positions shall have a Type 1 or Type 2 seat belt assembly. Seat belt assemblies shall comply with FMVSS Nos. 208, 209 and 210—See Appendix A.

(c) *Web cutters.* Every school bus equipped with passenger seat belts shall have at least one web cutter securely mounted in a visible location in the driver's compartment.

§ 171.69. Seats and crash barriers.

The requirements for seats and crash barriers are as follows:

(1) Seats shall have a minimum seating depth of 15 inches.

(2) A seating space at least 13 inches wide shall be provided for each passenger.

(3) Each seat, seat back cushion and crash barrier shall be covered with a material having at least a 42-ounce finished weight, 54 inches width, and finished vinyl coating of 1.06 broken twill, or other material with equal tensile strength, tear strength, seam strength, adhesion strength, resistance to abrasion, resistance to cold and flex separation. Seat materials shall comply with FMVSS No. 302. See Appendix A.

(4) Seats not designed to meet FMVSS No. 222—See Appendix A—are not permitted. Specially equipped school buses, flip seats which comply with FMVSS No. 217—See Appendix A—and school bus seats designed with an integrated child restraint seat which complies with FMVSS No. 213—See Appendix A—are exempt from this paragraph. Child safety seats which comply with FMVSS No. 213 are also exempt from this paragraph if they are used and secured at all times as designated by the manufacturer.

(5) Except as set forth in paragraphs (6)—(11), the backs of all seats of similar size shall be of the same width at the top, of the same height above the floor, and shall slant at the same angle with the floor. A school bus seat designed with an integrated child restraint seat, which complies with FMVSS No. 213, shall have a crash barrier or have a seat back of similar size or height in front of it.

(6) Each school bus passenger seat shall have a minimum seat back height of 24 inches measured from the top of the seat cushion.

(7) The horizontal distance between passenger seats may not be more than 28 inches measured from the front of the seat back cushion forward to the back of the restraining barrier.

(8) Seats shall be forward-facing.

(9) Seats shall be installed in a manner to prevent the seats from disengaging from the seat frame under extraordinary operating conditions. Seats may not have springs protruding and may not have tears greater than 1 inch.

(10) Seats and anchorages shall comply with FMVSS No. 222. See Appendix A.

(11) A padded barrier shall be placed in front of all forward-facing passenger seats that do not have another seat in front of them, as required by FMVSS No. 222. See Appendix A.

§ 171.70. Steps.

The requirements for steps are as follows:

(1) The lower step at the service door may be not less than 12 inches and not more than 16 inches from the ground, based on standard chassis specifications.

(2) The service door entrance may be equipped with at least a two-step stepwell. Risers in each case shall be approximately equal. When a plywood floor is used on steel, the differential may be increased by the thickness of the plywood used. When a three-step stepwell is used, the first step at the service door shall be approximately 10 to 14 inches from the ground when the school bus is empty, based on standard chassis specifications. Type D school buses shall have at least a three-step stepwell with the first step at the service door 12 to 16 inches from the ground.

(3) Steps shall be enclosed to prevent accumulation of ice and snow.

(4) Steps may not protrude beyond the side body line.

(5) A grab handle at least 20 inches in length shall be provided in an unobstructed location inside the doorway. The grab handle shall be designed or installed to prevent items of school children's clothing, personal items or an appendage from being snagged in the grab handle or door.

(6) Steps on Types A and B school buses may be the manufacturer's standard.

(7) Steps, including those in the floor line platform area, shall be covered with 3/16-inch rubber floor covering or other nonskid material that is equal in wear and abrasion resistance to top grade rubber.

(8) The step tread material shall be permanently bonded to a durable backing material that is resistant to corrosion.

(9) The step tread shall have a 1 1/2 inch white nosing as an integral piece without any joint.

(10) The requirements for the rubber portion of step treads are as follows:

(i) Special compounding shall be used to allow for good abrasion resistance and a high coefficient of friction.

(ii) The rubber shall be flexible enough to allow it to be bent around a 1/2 inch mandrel both at 130°F and 20°F, without breaking or cracking.

§ 171.73. Sun shield.

(a) An interior adjustable transparent sun shield, with a finished edge and at least 6 inches by 30 inches shall be installed in Types B, C and D school buses in a position convenient for use by the driver.

(b) A sun shield (visor) shall be installed according to manufacturers standard on all Type A school buses. Additionally, Type A school buses may use an interior adjustable transparent sun shield, at least than 6 inches by 16 inches.

§ 171.74a. Crossing control arm.

School buses shall be equipped with a crossing control arm which shall be automatically activated whenever the bus is stopped with the red warning signals in use.

(1) The crossing control arm shall meet or exceed SAE Standard J1133.

(2) The crossing control arm shall be mounted on the right side of the front bumper and may not open more than 90°.

(3) The crossing control arm shall extend a minimum of 60 inches from the front bumper when in the extended position.

(4) The crossing control arm shall extend simultaneously with the stop arm by means of the stop arm controls.

(5) The crossing control arm shall incorporate system connectors (electrical, vacuum or air) at the gate and shall be easily removable to allow for towing of the school bus.

(6) All components of the crossing control arm and all connections shall be waterproofed.

(7) If the crossing control arm is not constructed of noncorrosive or nonferrous material, it shall be zinc-coated or aluminum-coated or treated by equivalent process.

(8) There may not be sharp edges or projections on the crossing control arm that could cause hazard or injury to students.

(9) A multifunction school activity bus is not required to be in compliance with this section.

§ 171.76. Ventilation.

The requirements for the ventilating system are as follows:

(1) The school bus body shall be equipped with a ventilating system.

(2) If used, auxiliary fans for the left or right side of the bus shall be placed in a location where they can be adjusted by the driver for their maximum effectiveness. These fans shall be 6 inches in diameter. The fan blades shall be covered with a protective cage and each fan shall be controlled by a separate switch.

§ 171.78. Windows.

The following apply to windows:

(1) Each full side window shall provide an unobstructed emergency opening at least 9 inches high and 22 inches wide, obtained by lowering the window.

(2) School buses shall be equipped with split sash windows. Push-out type windows may be used.

(3) Glass in the windshield, windows and doors shall be of approved safety glazing so mounted that the identifying designation is visible, and of sufficient quality to prevent distortion of view in any direction. Glazing materials shall comply with FMVSS No. 205. See Appendix A. Glass may be mounted in a conventional rubber gasket or affixed to the body by a bonding process.

(4) Exposed edges of glass shall be banded or have a finished edge.

§ 171.80. Windshield wipers.

A windshield wiping system, two-speed or more, shall be installed and in safe operating condition. The wipers shall be operated by one or more air or electric motors of sufficient power to operate wipers.

§ 171.81. Wiring.

Wiring shall conform to the following:

(1) Wiring shall conform to current applicable recommended practices of SAE Standard J1292. See Appendix A.

(2) Circuits shall conform to the following specifications:

(i) Wiring shall be arranged in at least six regular circuits, as follows:

(A) Head, tail, stop (brake) and instrument panel lamps.

(B) Clearance, side-marker and stepwell lamps-step well lamp shall be actuated when service door is opened.

(C) Dome lamps.

(D) Ignition and emergency door signal.

(E) Turn signal lamps and hazard warning switch.

(F) Alternately flashing signal lamps.

(ii) Each circuit shall be protected by a fuse, circuit breaker or multiplex electrical circuit technology. A system of color coding shall be used.

(iii) A combination circuits listed in this paragraph may be subdivided into additional independent circuits.

(iv) At least one additional circuit shall be installed for heaters and defrosters.

(v) Whenever possible, other electrical functions, such as sanders and electric-type windshield wipers, shall be provided with independent and properly protected circuits.

(vi) Each body circuit shall be coded by number or letter on a diagram of circuits and shall be attached to the body in a readily accessible location.

(3) The entire electrical system of the body shall be designed for the same voltage as the chassis on which the body is mounted.

(4) A body wiring diagram of easy readable size shall be furnished or affixed in an area convenient to the electrical accessory control panel.

(5) Wiring shall have an amperage capacity equal to or exceeding the designed load. Wiring splices shall be done at an accessible location and noted as splices on the wiring diagram.

(6) Body power wire shall be attached to a special terminal on the chassis.

(7) Wires passing through metal openings shall be protected by grommets.

(8) Wires not enclosed within the body shall be fastened securely at intervals of not more than 18 inches. Joints shall be soldered or joined by equally effective connectors.

§ 171.83. Portable emergency warning devices.

Every bus shall carry at least three portable emergency reflective triangles, as specified by Chapter 167 (relating to portable emergency warning devices). They shall be mounted in an accessible place in the driver's compartment.

§ 171.85. Video equipment.

Installation of video equipment is at the discretion of the school district or the school bus contractor.

§ 171.86. Fire axe.

Fire axes are prohibited.

Subchapter D. ADDITIONAL STANDARDS FOR SPECIALLY EQUIPPED SCHOOL BUSES AND SCHOOL VEHICLES

§ 171.91. General requirement.

School buses used for transporting students with disabilities shall comply with Subchapters B, C, G and this subchapter. School vehicles used for the transportation of students with disabilities shall comply with Subchapter E and this subchapter.

§ 171.92. Aisles.

(a) School buses equipped with a power lift or a ramp shall have aisles a minimum of 30 inches wide leading from the wheelchair or other type of mobility device area to the emergency door, power lift or ramp special service entrance. Under § 171.42 (relating to aisle), school buses that are not equipped with a power lift or ramp shall have aisles with a minimum clearance of at least 30 centimeters—11 3/4 inches—wide leading to the emergency door and the service entrance door.

(b) School vehicles may not be equipped with more than two wheelchair positions. (Each wheelchair seating position is counted as four designated seating positions, under 49 CFR 571.3(b) (relating to definitions).

§ 171.94. Grab handles.

Grab handles shall be provided on the interior of school buses on each side of the right front service door.

§ 171.95. Heaters.

Additional heaters may be installed in the rear portion of a school bus.

§ 171.96. Power lift.

(a) *General.* A school bus or school vehicle that is used specifically for the transportation of school children who utilize wheelchairs or other types of mobility devices, or who require life support equipment which cannot use the regular service entrance shall be equipped with a power lift. A power lift system shall comply and be installed in accordance with any applicable FMVSS. If a power lift system is inadequate to load or unload school children having special or unique needs, a ramp device may be installed.

(b) *Specific requirements.* The requirements for power lifts are as follows:

(1) The power lift shall be located either in the rear or on the right side of the vehicle body, but confined within the perimeter of the vehicle body when not extended. The power lift may not be attached to the exterior sides of the vehicle.

(2) The lifting mechanism shall be able to lift a minimum payload of 800 pounds. A clear opening and platform to accommodate a 30-inch wide wheelchair shall be provided.

(3) When the platform is in the fully up position, it shall be locked in position mechanically by means other than a support or lug in the door.

(4) Controls shall be provided that enable the operator to activate the lift mechanism from either inside or outside of the school bus. There shall be a means of preventing the lift platform from falling while in operation due to a power failure.

(5) Power lifts shall be equipped so they may be manually operated in the event of a power failure.

(6) The lift travel shall allow the lift platform to rest securely on the ground.

(7) Edges of the platform shall be designed to prevent the wheelchair or other type of mobility device from slipping or rolling off the platform and to prevent the operator's feet from being entangled during the raising and lowering process.

(8) A self-adjusting, skid resistant plate shall be installed on the outer edge of the platform to minimize the incline from the lift platform to the ground level.

(9) A circuit breaker, fuse or an electronic device which provides protection against short circuits, thermal overloads and reversed polarity shall be installed between the power source and the lift motor, if electrical power is used.

(10) The lift mechanism shall be designed to prevent excessive pressure from building in the hydraulic system when the platform reaches the full up or full down position.

§ 171.97. Ramps.

(a) *General.* If a power lift system is inadequate to load and unload students having special or unique needs, a ramp device may be installed.

(b) *Requirements.* The requirements for ramps are as follows:

(1) Ramps shall be rigid and of sufficient strength to support the wheel chair or other type of mobility device, occupant and attendants without stress damage.

(2) Ramps shall be equipped with a protective flange on each longitudinal side to keep wheel chairs or other types of mobility devices on the ramp.

(3) Ramp floors shall be of a nonskid material.

(4) Ramps shall be equipped with a handle and constructed so as to permit one person to put the ramp in place and return it to its storage place.

(5) Ramps, during use, shall be connected to the school bus or school vehicle at floor level to permit easy access of wheel chairs or other types of mobility devices, and to be free of danger of detachment.

(6) A dustproof and waterproof enclosed container shall be provided if the ramp is stored under the floor.

§ 171.99. Restraining devices.

(a) Seat frames and seats may be equipped with belt restraint systems designed and installed in accordance with FMVSS Nos. 209 and 213 and used as designated by the manufacturer. Attachment framework and anchorage devices shall conform with FMVSS No. 210—See Appendix A.

(b) Drivers of school vehicles are required to comply with the requirements of 75 Pa.C.S. § 4581 (relating to child passenger restraints) and the Department's regulations implementing those requirements.

§ 171.102. Special light.

Lights shall be placed inside the school bus or school vehicle to sufficiently illuminate the lift area and shall be activated from the door area.

§ 171.103. Special service entrance.

(a) *General.* A special service entrance may be constructed to accommodate a wheelchair lift for the loading and unloading of passengers.

(b) *Requirements for school buses.* The following apply to the special service entrance on school buses:

(1) The special service entrance shall be located at a convenient point on the right—curb side—of the school bus and far enough to the rear to prevent the door, when open, from obstructing the right front service door—excluding a regular front service door lift.

(2) The opening may extend below the floor through the bottom of the body skirt. If such an opening is used, reinforcements shall be installed at the front and rear of the floor opening to support the floor and provide the same strength as other floor openings.

(3) With doors open, the minimum clear opening shall be 30 inches in width.

(4) A drip moulding shall be installed above the opening to effectively divert water from the entrance.

(5) The entrance shall be of sufficient width and depth to accommodate various mechanical lifts and related accessories as well as the lifting platform.

(6) Door posts and headers from the entrance shall be reinforced sufficiently to provide support and strength equivalent to the areas of the side of the school bus not used for service doors.

(c) *Requirements for school vehicles.* The following apply to the special service entrance on school vehicles:

(1) The special service entrance shall be located at a convenient point to the right—curb side or to the rear of the school vehicle.

(2) With doors open, the minimum clear opening shall be 30 inches in width.

(3) A drip molding shall be installed above the opening to effectively divert water from the entrance.

(4) The entrance shall be of sufficient width and depth to accommodate the mechanical lift and related accessories as well as the lifting platform.

(5) Door posts and headers from the entrance shall be reinforced sufficiently to provide support and strength equivalent to original manufacture.

§ 171.104. Special service entrance doors.

The requirements for special service entrance doors are as follows:

(1) Either a single door or double doors may be used for the special service entrance.

(2) Doors shall open outwardly.

(3) Doors shall have positive fastening devices to hold the doors in the open position.

(4) Doors shall be weather sealed. Double doors shall be so constructed that a flange on the outside of the forward door overlaps the edge of the rear door when closed.

(5) If optional power doors are installed, the design shall permit release of the doors for opening and closing from inside the school bus or school vehicle.

(6) If manually operated dual doors are provided, the rear door shall have at least a one point fastening device to the header.

(i) The forward mounted door shall have at least three fastening devices—one to the header, one to the floor line of the body and the other into the rear door.

(ii) These locking devices shall afford maximum safety when the doors are in the closed position.

(iii) The door and hinge mechanism shall be of sufficient strength to provide for the same type of use as a standard entrance door.

(7) Door materials, panels and structural strength shall be equivalent to the conventional service and emergency doors. Color, rub rail extensions, lettering and other exterior features shall match adjacent sections of the body.

(8) Each door shall have windows set in rubber compatible within 1 inch of the lower line of the adjacent sash.

(9) Doors shall be equipped with a device that will actuate an audible or visible signal located in the driver's compartment when the doors are not securely closed and the ignition is in the "on" position.

(10) The lifting mechanism switch shall be wired so as to prevent the lifting mechanism from operating when the lift platform door is closed.

(11) Supplemental security locks installed on special service entrance doors shall be equipped with an ignition interlock system or an audiovisual alarm located in the driver's compartment.

§ 171.105. Identification.

A specially equipped school bus or school vehicle may display the universal handicapped symbol on the rear of the vehicle below the window line. The emblem shall be white on blue, may not exceed 12 inches in height and width, and shall be of reflective material.

§ 171.107. Web cutter.

Every specially equipped school bus and school vehicle shall have at least one web cutter securely mounted in a visible location within the driver's compartment.

Subchapter E. SCHOOL VEHICLE STANDARDS**§ 171.121 Applicability.**

The requirements of this subchapter apply to motor vehicles used to transport preprimary, primary or secondary school students to or from public, private or parochial schools or events related to these schools or school-related activities, which are designed to carry 11 to 15 passengers, including the driver, and which are registered in this Commonwealth as a bus prior to March 1, 1993, or a motor vehicle which is designed to carry 11 to 15 passengers, including the driver, and which was titled to any public, private or parochial school on or before March 1, 1993, and which is registered to that public, private or parochial school in this Commonwealth as a bus prior to September 15, 1993 and school vehicles.

§ 171.125. Seating.

(a) *Vehicle seats.* Vehicle seats and seat belts shall be of a type and installed as recommended by the vehicle manufacturer.

(b) *Dividers.* Dividers may not be used to separate the seats.

(c) *Seating space.* A designated seating position of safe design and construction shall be provided for each passenger and a passenger may not be carried for which a safe designated seating position is not available. Seats shall be forward facing.

(d) *Child passenger restraints.* Drivers of school vehicles are required to comply with the requirements of 75

Pa.C.S. § 4581 (relating to child passenger restraints) and the Department's regulations implementing those requirements.

§ 171.126. Web cutter.

Every school vehicle shall have at least one web cutter securely mounted in a visible location within the driver's compartment.

§ 171.127. Certification.

A school vehicle shall be certified by the original manufacturer or final stage manufacturer to meet the Federal Motor Vehicle Safety Standards for a passenger car or a multipurpose passenger vehicle.

Subchapter F. MASS TRANSIT PUPIL TRANSPORTATION BUS STANDARDS**§ 171.138. Portable emergency warning device.**

Every bus shall carry at least three portable emergency reflective triangles, as specified by Chapter 167 (relating to portable emergency warning devices). They shall be mounted in an accessible place in the driver's compartment.

Subchapter G. OPERATION STANDARDS FOR VEHICLES SUBJECT TO THIS CHAPTER**§ 171.149. Unsafe operations.**

(a) *General.* Vehicles subject to this chapter may not be operated in a condition that is likely to cause an accident or a breakdown of the vehicle.

(b) *Exemption.* A vehicle subject to this chapter discovered to be in an unsafe condition while being operated on the highway may be continued in operation only to the nearest place where repairs can safely be effected. The operation shall be conducted only if it is less hazardous to the public than to permit the vehicle to remain on the highway.

(c) *Securing loose items.* Any items stored by the driver shall be secured, so that the items do not interfere with the operation of the accelerator or brake pedal, impede the loading or unloading process or any other operational control for the safe operation of the vehicle.

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