

PROPOSED RULEMAKING

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 130e]

Commercial Manure Hauler and Broker Certification

The Department of Agriculture (Department), under the the Commercial Manure Hauler and Broker Certification Act (act) (3 P. S. §§ 2010.1—2010.12), and under the specific authority of section 3 of the act (3 P. S. § 2010.3), regarding commercial manure hauler and broker certification program, proposes to add Chapter 130e (relating to commercial manure hauler and broker certification).

Section 3(a)(1) of the act charges the Department, in consultation with the State Conservation Commission (Commission) and the Nutrient Management Advisory Board, with the duty of establishing, "... within 18 months of the effective date of this act . . . a commercial manure hauler and broker certification program . . . The department shall by regulation establish such terms, conditions and fees for certification as it deems appropriate." With regard to the certification program, the regulations are required, at a minimum, to address laws and regulations pertaining to manure application, information necessary for understanding and following a nutrient management plan and nutrient balance sheet, training in the development and filing of a nutrient balance sheet, best management practices with respect to manure hauling and application, safety procedures, calibration of application rates for various types of equipment, setback requirements, nutrient runoff concerns, incorporation techniques, recordkeeping requirements necessary to meet the act and 3 Pa.C.S. Chapter 3 and 5 (relating to local regulation; and nutrient management and odor management). In addition, the Department has the authority to approve training and education programs developed by The Pennsylvania State University and other educational institutions or entities that meet the requirements of the act and these regulations.

The regulations are required to establish a certification program through which all persons hauling or applying manure generated by an agricultural operator can obtain the certification required by the act. The regulations set forth procedures and requirements related to the certification of commercial manure haulers and brokers, establish fees and delineate course and certification requirements, provide for various levels of certification, denote application, approval and appeal procedures for persons seeking certification, set forth criteria for approval of training and education programs developed by The Pennsylvania State University and other educational institutions or entities and detail recordkeeping requirements necessary to meet the requirements of the Nutrient Management Act and the act. It must be noted that the Nutrient Management Act has been repealed and replaced by the act of July 6, 2005 (P. L. 112, No. 38) (Act 38), codified at 3 Pa.C.S. Chapters 3 and 5 (relating to local regulation; and nutrient management and odor management), which took effect July 6, 2005.

Background

The proposed regulations are made necessary by and are established under the authority of, and in accordance with, the act.

The major features and amendments to the proposed regulations are summarized as follows:

Summary of major features

§ 130e.1. Scope.

This section sets forth the scope of the regulation and gives a brief synopsis of what is covered in the regulations.

§ 130e.2. Definitions.

This section defines key terms that are utilized in the regulations.

§ 130e.3. Fees.

This section establishes the certification and examination fees that will be charged by the Department for each category (commercial manure hauler or commercial manure broker) and the level of certification.

§ 130e.4. Prohibitions.

This section reiterates the general premise of the act with regard to the prohibition regarding hauling or land applying manure without being properly certified and provides a general overview of the requirements that must be met prior to a commercial manure hauler or broker hauling or land applying manure.

§ 130e.5. Authority, duties and prohibitions.

This section delineates the general authority, duties and prohibitions established by the act and the regulations regarding each category (commercial manure hauler or commercial manure broker) and the level of certification.

§ 130e.6. Display of certification.

This section establishes the requirement that every commercial manure hauler or broker prominently display on every vehicle involved in transport or land application, or both, of manure the certification number assigned by the Department. It further establishes the size of the certification number and requires that the numbers contrast with the color of the vehicle and be displayed on both sides of the vehicle. This section also sets forth the requirement that every certified commercial manure broker and certified commercial manure hauler shall carry on their person or in the vehicle being utilized to transport or land apply manure, or both, a copy of their current certificate. In addition, this section creates the rule that the certification number of the commercial manure broker or commercial manure hauler shall be included in any contract or agreement entered into by that commercial manure broker or commercial manure hauler to transport or land apply manure, or both.

§ 130e.7. Notice of change in business certification.

This section sets forth the rule that all certified commercial manure brokers and certified commercial manure haulers notify the Department in writing within 15 days of a change in information regarding their level of certification or if that person is no longer engaged in or no longer intends to be engaged in the transport or land application of manure, or both.

§ 130e.11. Determination of competence.

This section sets forth the competency requirements which must be met for a person to attain a level 1 or level 2 commercial manure broker certification. This section establishes the topics that must be addressed in a level 1

and a level 2 commercial manure broker certification orientation training course, denotes that certification does require a class-room setting for both the certification orientation training courses and the written examinations required for both levels of certification and delineates the overall criteria for the level 1 and level 2 commercial manure broker certification written examinations.

§ 130e.12. Certification requirements.

This section sets forth the general requirement that all commercial manure brokers obtain certification as a commercial manure broker prior to assuming temporary control or ownership of manure from an agricultural operation or arranging for transportation to or utilization of manure at, or both, an importing operation or other location. This section also addresses the requirements established by the act with regard to a commercial manure broker acting as a contract agent for an agricultural operator required by section 5 of the act (3 P. S. § 2010.5) to use a certified commercial manure hauler or certified commercial manure broker. In addition, this section establishes the parameters of the certification application procedure and the time period for filing an application. Furthermore, this section details the review process and sets forth the criteria to be utilized by the Department in determining the competence of the applicant for a level 1 or level 2 commercial manure broker certificate. It also addresses the process to be followed in the event an applicant is rejected and denotes the process necessary for a level 1 certified commercial manure broker to attain a level 2 certification.

§ 130e.21. Determination of competence.

This section sets forth the competency requirements which must be met for a person to attain a level 1 commercial manure hauler certification. The section establishes the topics that must be addressed in a level 1 commercial manure hauler certification orientation-training course, denotes that certification does not require a class-room training course or class-room setting for the written examination, but instead will be done through a training manual and a proctored test at one of various locations in the regulations. The section specifically delineates the overall criteria for the level 1 commercial manure hauler training manual and written examination.

§ 130e.22. Certification requirements.

This section sets forth the general requirement that all commercial manure haulers obtain some level of certification prior to assuming temporary control or ownership of manure from an agricultural operation or arranging for transportation to or utilization of manure at, or both, an importing operation or other location. It establishes the authority and prohibitions of a level 1 commercial manure hauler. In addition, this section establishes the parameters of the certification application procedure and the time period for filing an application. Furthermore, this section details the review process and sets forth the criteria to be utilized by the Department in determining the competence of the applicant for a level 1 commercial manure hauler certificate. It also addresses the process to be followed in the event an applicant is rejected.

§ 130e.31. Determination of competence.

This section sets forth the competency requirements which must be met for a person to attain a level 2 commercial manure hauler certification. The section establishes the topics that must be addressed in a level 2 commercial manure hauler certification orientation-training course, denotes that such certification does not require a class-room training course or class-room setting

for the written examination, but instead will be done through a training manual and a proctored test at one of various locations in the regulations. The section specifically delineates the overall criteria for the level 2 commercial manure hauler training manual and written examination.

§ 130e.32. Certification requirements.

This section sets forth the general requirement that all commercial manure haulers obtain certification as a level 2 commercial manure hauler prior to land applying manure. It establishes the authority and prohibitions of a level 2 commercial manure hauler. In addition, this section establishes the parameters of the certification application procedure and the time period for filing an application. Furthermore, this section details the review process and sets forth the criteria to be utilized by the Department in determining the competence of the applicant for a level 2 commercial manure hauler certificate. It also addresses the process to be followed in the event an applicant is rejected.

§ 130e.41. Determination of competence.

This section sets forth the competency requirements which must be met for a person to attain a level 3 commercial manure hauler certification. The section establishes the topics that must be addressed in a level 3 commercial manure hauler certification orientation-training course, denotes that such certification does require a class-room setting for both the certification orientation-training course and the written examination. The section specifically delineates the overall criteria for the level 3 commercial manure hauler written examinations.

§ 130e.42. Certification requirements.

This section sets forth the general requirement that all commercial manure haulers obtain certification as a level 3 commercial manure hauler prior to land applying manure without direct supervision or supervising another certified commercial manure hauler. This section also addresses the requirements established by the act with regard to a level 3 certified commercial manure hauler acting as a contract agent for an agricultural operator or a commercial manure broker. In addition, this section establishes the parameters of the certification application procedure and the time period for filing an application. Furthermore, this section details the review process and sets forth the criteria to be utilized by the Department in determining the competence of the applicant for a level 3 commercial manure hauler certificate. It also addresses the process to be followed in the event an applicant is rejected.

§ 130e.51. Certification time frames and recertification requirements.

This section establishes the time frame of validity for the different levels of commercial manure broker and commercial manure hauler certifications and sets forth the requirements for recertification at each level.

§ 130e.52. Commercial manure broker and hauler continuing education requirements.

This section establishes the general requirement that all certified commercial manure brokers and commercial manure haulers obtain continuing education credits. It further establishes specific continuing education interval time frames and course requirements for each level of certification. This section also sets forth the requirements for continuing education courses and credits, including the rate of accrual, credit hours and additional factors

including the consequences of not meeting the continuing education requirements. In addition, this section addresses the process to be followed in the event a commercial manure broker or commercial manure hauler fails to obtain continuing education credits. Furthermore, this section details the criteria to be utilized by the Department in determining whether to revoke or suspend a certification and sets forth the process for a commercial manure broker and commercial manure hauler to obtain certification once again.

§ 130e.53. Continuing education credit course providers.

This section details the review process and sets forth the criteria to be utilized by the Department in determining the eligibility of an applicant to provide continuing education courses. It establishes the parameters of the application content and the procedure for filing an application. In addition, this section addresses the process to be followed in the event the Department revokes or denies approval of a continuing education course, course provider or credit hours. It also addresses the monitoring process for a continuing education course.

§ 130e.61. Denial, suspension and revocation of certificates.

This section establishes the general power and authority the Department has to deny, suspend or revoke the certification of a commercial manure broker or commercial manure hauler. It further establishes specific situations in which the Department can exercise this power and authority. In addition, this section delineates the procedure for a person to appeal an order, revocation or suspension issued by the Department under this section.

§ 130e.71. Recordkeeping.

This section sets forth the general rule that commercial manure haulers and commercial manure brokers shall maintain records, which shall be open to inspection by the Department or its agents during regular business hours and shall be maintained for 3 years after the date of transport or land application of the manure, whichever is later. It further delineates the specific records that must be maintained by commercial manure haulers and commercial manure brokers.

Fiscal Impact

Commonwealth

The proposed regulations will impose additional fiscal impacts upon the Commonwealth for administration and enforcement. The regulations will require the Department to commit an additional amount of time and manpower to the development or overview and approval, or both, of commercial manure broker and commercial manure hauler certification orientation-training courses, training manuals, in-classroom and out of classroom examinations, development and review of continuing education courses, oversight of certification and recertification course providers, oversight of continuing education credit course providers and oversight and enforcement of the recordkeeping, certification, recertification and other general provisions of the regulations.

Political subdivisions

The proposed regulations will impose no additional costs and have no fiscal impact upon political subdivisions. The regulations do not impose any additional burden of enforcement of review on political subdivisions.

Private sector

The proposed regulations will impose additional costs on the regulated community (commercial manure brokers

and haulers), which is part of the private sector. The additional costs to the regulated community will be certification and testing fees necessary to obtain the certification requirements required by the act and the proposed regulations. In addition, the regulated community will be subject to the additional costs of attending continuing education courses and attaining the proper amount of continuing education credits required to comply with the commercial manure hauler and broker certification regulations. The regulated community will also face costs associated with the additional recordkeeping requirements established by the act and these regulations.

General public

The proposed regulations will impose no costs and have no fiscal impact on the general public, except that agricultural operators or exporters of manure may be subject to increased costs charged by commercial manure haulers and brokers, as a result of the certification requirements imposed by the act and the regulations.

Paperwork requirements

The proposed regulations will result in a substantial increase of paperwork. The Department will have to develop new application forms, training courses and training course manuals, tests booklets for every level of certification, nutrient balance sheet scenarios, sign-in forms for certification orientation training courses and testing and continuing education credit courses, as well as, recordkeeping forms and notification letters and enforcement documents.

Public comment period

Interested persons are invited to submit written comments regarding the proposed regulations within 30 days following publication in the Pennsylvania Bulletin.

Regulatory review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on December 7, 2005, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Agriculture and Rural Affairs Committees. A copy of this material is available to the public upon request.

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

Contact person

Further information is available by contacting the Department of Agriculture, Commercial Manure Broker and Hauler Program, 2301 North Cameron Street, Harrisburg, PA 17110-9408; Attn: Johan Berger (717) 772-4189.

Effective date

This proposed regulations will be effective upon final form publication in the *Pennsylvania Bulletin*.

DENNIS C WOLFF,
Secretary

Fiscal Note: 2-150. (1) General Fund; (2) Implementing Year 2004-05 is \$0; (3) 1st Succeeding Year 2005-06 is \$43,000; 2nd Succeeding Year 2006-07 is \$43,000; 3rd Succeeding Year 2007-08 is \$44,300; 4th Succeeding Year 2008-09 is \$45,800; 5th Succeeding Year 2009-10 is \$47,500; (4) 2003-04 Program—\$N/A; 2002-03 Program—\$N/A; 2001-02 Program—\$N/A; (7) General Government Operations; (8) recommends adoption.

Annex A

TITLE 7. AGRICULTURE

PART V. BUREAU OF PLANT INDUSTRY

CHAPTER 130e. COMMERCIAL MANURE HAULER AND BROKER CERTIFICATION

Subch.

- A. GENERAL PROVISIONS
- B. CERTIFICATION
- C. RECORD KEEPING

Subchapter A. GENERAL PROVISIONS

Sec.

- 130e.1. Scope.
- 130e.2. Definitions.
- 130e.3. Fees.
- 130e.4. Prohibition.
- 130e.5. Authority, duties and prohibitions.
- 130e.6. Display of certification.
- 130e.7. Notice of change in business or certification.

§ 130e.1. Scope.

This chapter prescribes procedures relating to the certification of commercial manure haulers and brokers. It includes the establishment of fees, delineates the requirements for certification of commercial manure haulers and brokers, and sets forth criteria for approval of accredited certification programs.

§ 130e.2. Definitions.

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

Act—The Commercial Manure Hauler and Broker Certification Act (3 P. S. §§ 2010.1—2010.12).

Act 38—3 Pa.C.S. §§ 313—318 and Chapter 5 (relating to nutrient management and order management).

Act 38 of 2005 regulations—The regulations associated with Act 38 found at 25 Pa. Code Chapter 83, Subchapter D (relating to nutrient management).

Agricultural operation or operation—The management and use of farming resources for the production of crops, livestock or poultry.

Agricultural operator—A person that has management control of an agricultural operation.

BMP—Best management practice—

(i) A practice or combination of practices determined by the State Conservation Commission to be effective and practicable (given technological, economic and institutional considerations) to manage nutrients to protect surface and groundwater taking into account applicable nutrient requirements for crop utilization.

(ii) The term includes:

- (A) Conservation tillage.
- (B) Crop rotation.
- (C) Soil testing.
- (D) Manure testing.
- (E) Diversions.

(F) Manure storage facilities.

(G) Stormwater management practices.

(H) Nutrient application.

(I) Practices set forth in Chapter 130b (relating to nutrient management certification)

Board—The Nutrient Management Advisory Board created under section 10 of Act 38 of 2005, 3 Pa.C.S. § 510.

Certificate year—The period from January 1—December 31

Certification—The completion of all requirements of a commercial manure hauler or broker contained in this chapter and final approval of the Department.

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

Commercial manure broker—A person that is not working for or under the control of an agricultural operator and that assumes temporary control or ownership of manure from an agricultural operation and arranges for transport to and utilization at an importing operation or other location.

Commercial manure hauler—A person that transports or land applies manure as a contract agent for an agricultural operator or commercial manure broker under the direction of the operator or broker.

Commission—The State Conservation Commission established under the Conservation District Law (3 P. S. §§ 849—864).

Competency—Demonstrating a thorough level of knowledge and understanding of the requirements of the act and this chapter as evidenced by successfully meeting the applicable requirements of Subchapter B (relating to certification).

Concentrated animal feeding operation—An agricultural operation that meets the criteria established by the Department of Environmental Protection under authority of The Clean Streams Law.

Concentrated animal operation or CAO—An agricultural operation that meets the criteria established under the authority of Act 38 and Chapter 130b..

Conservation district—A county conservation district established under the Conservation District Law.

Department—The Department of Agriculture of the Commonwealth.

Importer or importing operation—A person who receives and utilizes or processes manure not produced by poultry or livestock under the management control of that person.

Nutrient—

(i) A substance or recognized plant nutrient, element or compound that is used or sold for its plant nutritive content or its claimed nutritive value.

(ii) The term includes livestock and poultry manures, compost used as fertilizer, commercially manufactured chemical fertilizers, sewage sludge or combinations thereof.

Nutrient balance sheet—A written, site-specific document, meeting the requirements established by the State Conservation Commission under the act and Act 38 used to determine appropriate manure, fertilizer and other nutrient source application rates on importing operations.

Nutrient management plan—A written site-specific plan that incorporates BMPs to manage the use of manure and

other plant nutrients for crop production and water quality protection consistent with the criteria established under Act 38 and Chapter 130b.

Nutrient management specialist—A person meeting the certification program requirements of section 8 of Act 38, 3 Pa.C.S. § 508 (relating to nutrient management certification program) and certified Chapter 130b to write or review, or both, a nutrient management balance sheet or nutrient management plan.

Person—An individual, sole proprietorship, partnership, association, firm, corporation, labor organization, trustee, receiver or other legal entity.

Recertification—The completion of all continuing education and training requirements and acquisition of the necessary continuing education credits in the manner and within the time frame set forth in this chapter.

Secretary—The Secretary of Agriculture of the Commonwealth.

Volunteer operation—An agricultural operation that voluntarily meets the requirements of Act 38.

§ 130e.3. Fees.

(a) *Certification fees.* Certification fees are nonrefundable. The following fees for each category and level of certification apply:

(1) *Level 1 commercial manure broker.* The triennial fee for a level 1 commercial manure broker certificate is \$375.

(2) *Level 2 commercial manure broker.* The triennial fee for a level 2 commercial manure broker certificate is \$450.

(3) *Level 1 commercial manure hauler.* The biennial fee for a level 1 commercial manure hauler certificate is \$125.

(4) *Level 2 commercial manure hauler.* The biennial fee for a level 2 commercial manure hauler certificate is \$185.

(5) *Level 3 commercial manure hauler.* The triennial fee for a level 3 commercial manure hauler certificate is \$375.

(b) *Examination fees.* Examination fees are nonrefundable. The following fees apply:

(1) Level 1 commercial manure broker—\$50

(2) Level 2 commercial manure broker—\$50

(3) Level 1 commercial manure hauler—\$40

(4) Level 2 commercial manure hauler—\$40

(5) Level 3 commercial manure hauler—\$50

(c) *Disposition of fees and penalties.* Fees and penalties collected under the act and this chapter will be utilized to pay for administration of the act and this chapter. Fees and penalties collected under the act and this chapter will be deposited into an account created within the Nutrient Management Fund established by section 512 of Act 38, 3 Pa.C.S. § 512 (relating to Nutrient Management Fund).

§ 130e.4. Prohibition.

(A) No commercial manure hauler or commercial manure broker may not transport or land apply manure in this Commonwealth on behalf of an agricultural operation, regardless of where the manure is generated, unless the hauler or broker has satisfied the following requirements:

(1) Successfully completed the certification requirements established by this chapter.

(2) Received the appropriate certification from the Department.

(3) Continued to maintain his certification as required by the act and in this chapter.

(4) Continues to have a valid certification, which has not been suspended or revoked by the Department.

(5) Continues to operate within the confines and authority of the level of certification he has received.

(b) A person who hauls or applies manure, generated by animals not under that person's management control, to land not under that person's management control, shall be certified at the proper certification level as a commercial manure hauler or broker.

§ 130e.5. Authority, duties and prohibitions.

(a) *Commercial manure broker.*

(1) *Authority.* A person certified as a commercial manure broker under this chapter is authorized to assume temporary control or assume ownership of manure from an agricultural operation and to perform the following duties and activities:

(i) *Level 1 commercial manure broker.* A person certified under this chapter as a level 1 commercial manure broker is authorized to arrange transport of manure to and utilization of manure at an importing operation or other location. Utilization of manure at an importing operation or other location includes land application of manure on an importing operation or other location. A level 1 certified commercial manure broker is authorized to direct a level 1 commercial manure hauler under contract with the broker with regard to transportation of manure. A level 1 commercial manure broker is authorized to directly supervise a level 2 commercial manure hauler, under contract with the broker, in the land application of manure.

(ii) *Level 2 commercial manure broker.* A person certified under this chapter as a level 2 commercial manure broker is authorized to arrange transport of manure to and utilization of the manure at an importing operation or other location. Utilization of manure at an importing operation or other location includes land application of manure on an importing operation or other location. A level 2 certified commercial manure broker is authorized to direct a level 1 commercial manure hauler under contract with the broker with regard to transportation of manure. A level 2 commercial manure broker is authorized to directly supervise a level 2 commercial manure hauler, under contract with the broker, in the land application of manure. A level 2 commercial manure broker is further authorized to develop a nutrient balance sheet for the importing operation in accordance with this chapter and in accordance with the standards established by the State Conservation Commission under Act 38 and 25 Pa. Code Chapter 83, Subchapter D (relating to nutrient management).

(iii) For purposes of this section, "supervise" means direct supervision. When a level 2 certified commercial manure hauler is land applying manure on behalf of a commercial manure broker, the commercial manure broker shall have at least a level 1 certified commercial manure broker on the site where the manure is being land applied. The commercial manure broker is responsible for assuring the proper application of the manure to that site and is jointly responsible for any misapplication or violations.

(2) *Duties.*

(i) A commercial manure broker shall, when land-applying manure on behalf of an agricultural operator

required under section 5 of the act (3 P. S. § 2010.5) to utilize a certified manure hauler or certified manure broker, do so only in accordance with an approved nutrient management plan or nutrient balance sheet.

(ii) A commercial manure broker shall provide, no later than the time of transfer of the manure, copies of the nutrient balance sheet to both the importing operation and to the county conservation districts in the counties in which the importing and exporting operations are located.

(3) *Prohibition.* Certification under this chapter does not bestow authority upon a commercial manure broker to develop a nutrient management plan for another person, review that plan or make recommendations with regard to manure application that are outside the manure application standards set forth in the approved nutrient management plan or nutrient balance sheet for the particular importing operation or other location.

(b) *Commercial manure hauler.*

(1) *Authority.* A person certified as a commercial manure hauler under this chapter is authorized to transport or land apply, or both, manure as a contract agent for an agricultural operator or commercial manure broker under the direction of the operator or broker and to perform the following duties and activities:

(i) *Level 1 commercial manure hauler.* A person certified under this chapter as a level 1 commercial manure hauler is authorized to transport manure as a contract agent for and under direction of an agricultural operator or a commercial manure broker.

(ii) *Level 2 commercial manure hauler.* A person certified under this chapter as a level 2 commercial manure hauler is authorized to transport manure as a contract agent for and under direction of an agricultural operator or a commercial manure broker. A level 2 commercial manure hauler is authorized to land apply manure at an importing operation or other location only under the following conditions:

(A) Under the direct supervision of a certified commercial manure broker, as set forth in subsection (a)(1).

(B) As an employee of and under the direct supervision of a level 3 certified commercial manure hauler, as set forth in subparagraph (iii).

(C) A level 2 commercial manure hauler may not land apply manure as a contract agent for an agricultural operator, unless the level 2 commercial manure hauler has entered into an agreement with and is directly supervised by a certified commercial manure broker.

(iii) *Level 3 commercial manure hauler.* A person certified under this chapter as a level 3 commercial manure hauler is authorized to transport and land apply manure as a contracted agent for and under the direction of an agricultural operator or commercial manure broker. A level 3 certified commercial manure hauler has the authority to directly supervise land application of manure by a level 2 commercial manure hauler. For purposes of this section, "directly" supervise means supervision on the site where the manure is being land applied. When a level 2 certified commercial manure hauler is land applying manure the level 2 certified commercial manure hauler shall be directly supervised by either a level 3 certified commercial manure hauler or a level 1 or level 2 certified commercial manure broker. The supervising entity shall be responsible for assuring the proper application of the manure to that site and shall be jointly responsible for any misapplication or violations.

(2) *Duties.* A commercial manure hauler shall, when land applying manure on behalf of an agricultural operator required under section 5 of the act to utilize a certified manure hauler or certified manure broker, do so only in accordance with the provisions of an approved nutrient management plan or nutrient balance sheet.

(3) *Prohibitions.* Certification under this chapter does not bestow authority upon a commercial manure hauler to develop a nutrient management plan for another person, review that plan or make recommendations with regard to manure application that are outside the manure application standards set forth in the approved nutrient management plan or nutrient balance sheet for the particular importing operation or other location.

§ 130e.6. Display of certification.

(a) *Vehicles.* Certified commercial manure brokers and certified commercial manure haulers shall prominently display on every vehicle involved in transport or land application, or both, of manure the certification number assigned by the Department. The certification number must be in figures at least 3 inches high, in contrasting color to the vehicle and be located on both sides of the vehicle at a readily visible location.

(b) *Possession of certificate.* Certified commercial manure brokers and certified commercial manure haulers shall carry on their person or in the vehicle being utilized to transport or landapply, or both, manure a copy of their current certificate.

(c) *Contracts.* The certification number of the commercial manure broker or commercial manure hauler shall be included in any contract or agreement entered into by that commercial manure broker or commercial manure hauler to transport or landapply, or both, manure.

§ 130e.7. Notice of change in business or certification.

Certified commercial manure brokers and certified commercial manure haulers shall notify the Department in writing within 15 days of a change in information regarding their level of certification or if that person is no longer engaged in or no longer intends to be engaged in the transport or landapplication, or both, of manure.

Subchapter B. CERTIFICATION

COMMERCIAL MANURE BROKERS

- Sec.
130e.11. Determination of competence.
130e.12. Certification requirements.

COMMERCIAL MANURE HAULER LEVEL 1

- 130e.21. Determination of competence.
130e.22. Certification requirements.

COMMERCIAL HAULER LEVEL 2

- 130e.31. Determination of competence.
130e.32. Certification requirements.

COMMERCIAL HAULER LEVEL 3

- 130e.41. Determination of competence.
130e.42. Certification requirements.

CERTIFICATION TIME FRAMES AND RECERTIFICATION REQUIREMENTS

- 130e.51. Certification time frames and recertification requirements.
130e.52. Commercial manure broker and hauler continuing education requirements.
130e.53. Continuing education credit course providers.

DENIAL, SUSPENSION AND REVOCATION OF COMMERCIAL MANURE BROKER OR HAULER CERTIFICATES

- 130e.61. Denial, suspension and revocation of certificates.

COMMERCIAL MANURE BROKERS**§ 130e.11. Determination of competence.**

(a) *Commercial manure broker certification.* Determination of competence for level 1 and level 2 commercial manure brokers shall be based on the successful completion of the certification orientation training course and a proctored written examination as set forth in this section. Certification requirements for a commercial manure broker include a Department-developed or approved certification orientation training course and proctored written examination, both of which shall be administered in a classroom setting. Commercial manure broker certification may also include other course work related to requirements set forth in this chapter, which are determined by the Department to be necessary and appropriate. The certification orientation-training course must cover these additional requirements or they may not be included in the written examination. The certification orientation-training course shall be completed prior to the applicant taking the written examination or the nutrient balance sheet writing course.

(b) *Additional requirements for a level 2 commercial manure broker certification.* In addition to completing the requirements for and attaining a level 1 commercial manure broker certification, an applicant for level 2 commercial manure broker certification shall be required to attend required nutrient management plan writing certification courses and then pass a proctored nutrient balance sheet examination administered or approved by the Department. The nutrient management plan writing courses have been developed under the Nutrient Management Certification Program in Chapter 130b (relating to nutrient management certification). The nutrient balance sheet examination will be developed or approved by the Department and shall be administered as a proctored classroom examination. The applicant for a level 2 commercial manure broker certification shall first complete the required nutrient management plan writing courses, before being eligible to take the Nutrient Balance Sheet Examination. The Nutrient Balance Sheet Examination must require the applicant for the level 2 commercial manure broker certification to develop a nutrient balance sheet based on an importing farm scenario developed or approved by the Department. The Department will have 30 days from the date of the examination to review and approve or reject the nutrient balance sheet developed by the level 2 commercial manure broker applicant. If the Department rejects the nutrient balance sheet the procedures in § 130e.12(e)(3)(ii) (relating to certification requirements) shall be followed.

(c) *Certification orientation training.* The certification orientation-training course must, at a minimum, address the applicant's understanding, competence and proficiency with regard to the following topics:

(1) Laws and regulations pertaining to manure application, including pertinent provisions Act 38 and its attendant regulations at 25 Pa. Code Chapter 83, Subchapter D (relating to nutrient management), the Clean Streams Law and applicable regulations in 25 Pa. Code Chapter 102 (related to erosion and sedimentation control), the manure management manual and the protection of agricultural operations from nuisance suits and ordinances under the act of June 10, 1982 (P. L. 454, No. 133) (3 P. S. §§ 951—957).

(2) Basic nutrient management and manure management protocols and requirements and soil fertility and management.

(3) Courses presenting information necessary for understanding and properly reading and applying the provisions of a nutrient management plan and nutrient balance sheet. The courses must cover manure handling and testing, land application information, manure application setback requirements and maps contained in nutrient balance sheets and nutrient management plans. The courses must include examples and hands on experience in reading, interpreting and properly applying the provisions of a nutrient management plan and nutrient balance sheet.

(4) BMPs with respect to manure hauling and land application of manure, such as the minimum legal setback requirements from water sources, including wells, groundwater, surface waters, wetlands, public water supplies, perennial and intermittent streams and property lines, controlling nutrient runoff, installing riparian buffers, updating and following erosion and sedimentation control plans, seasonal manure application concerns and incorporation and no-till farming techniques.

(5) Recordkeeping requirements necessary to meet the statutory and regulatory requirements of the act and Act 38.

(6) Courses teaching development and filing of a nutrient balance sheet and appropriate manure production application and testing information, manure application setback requirements and maps contained in a nutrient management plan. These courses must cover the filing requirements set forth in the act and require the applicant to display competence in reading and properly interpreting the provisions of a nutrient management plan and nutrient balance sheet and actual development of a nutrient balance sheet.

(7) Community relation and public image awareness, to encourage dialogue and promote cooperation.

(8) Basic awareness of safety issues related to manure management, manure handling and bio-security, as well as, transport safety procedures and highway and equipment safety.

(9) Understanding emergency action plans.

(10) Proper calibration techniques and requirements for all types of equipment normally utilized to land apply manure, to assure proper application rates.

(11) Understanding of land application issues, such as incorporation, compaction and winter application.

(12) Understanding the proper placement of stacking areas and temporary storage of manure.

(13) Other areas and course work related to proper transport and land application of manure and recordkeeping as determined appropriate by the Department.

(d) *Written examination.* The Department or its designee will proctor the written examination. The Department will administer the examination at least twice per year, or more often as deemed necessary by the Department. At a minimum, the successful completion of the examination will demonstrate applicant's understanding of transport and land application of manure on agricultural operations and the applicant's technical knowledge and proficiency relating to interpretation and implementation of nutrient management plans and nutrient balance sheets, as well as, the applicant's knowledge of recordkeeping requirements. The written examination must, at a minimum, address all topics and areas required to be addressed by the certification orientation training course, as set forth in subsection (c).

(e) *Other examinations.* The Department may approve the use of written examinations other than the Pennsylvania Commercial Manure Broker and Hauler Examination, if the written examinations meet the requirements in subsection (d).

§ 130e.12. Certification requirements.

(a) *General.* A person shall obtain certification as a commercial manure broker prior to assuming temporary control or ownership of manure from an agricultural operation or arranging for transportation to or utilization of manure at, or both, an importing operation or other location. When acting as a contract agent for an agricultural operator required by section 5 of the act (3 P. S. § 2010.5) to use a certified commercial manure hauler or certified commercial manure broker, the commercial manure broker shall land apply the manure in accordance with and based upon an approved nutrient management plan developed by a certified nutrient management specialist or a nutrient balance sheet developed by a certified nutrient management specialist or a level 2 certified commercial manure broker.

(b) *Application for certification.* Upon completion of the requirements in § 130e.11 (relating to determination of competence), a commercial manure broker may submit an application for certification as a level 1 commercial manure broker to the Department. The Department or its designee will provide an application to all applicants, upon completion of the proctored written examination. The application will include a verification form, which shall be signed by the applicant, attesting that the applicant has attended and successfully completed the certification orientation-training course.

(c) *Application for level 2 commercial manure broker certification.* When the applicant seeks a level 2 commercial manure broker certification, the applicant shall mark the appropriate box on the application. Upon a determination by the Department that the applicant has met the criteria to receive a level 1 commercial manure broker certification, the Department will mail the level 1 commercial manure broker certificate to the applicant and notify the applicant in writing of the times and locations of the required nutrient management plan writing courses and the times and locations of the proctored nutrient balance sheet examinations. The written notification will include a verification form which must be provided to the Department prior to the level 2 commercial manure broker applicant being approved to sit for the Nutrient Balance Sheet Examination. The verification form shall be signed by the level 2 commercial manure broker applicant attesting that the applicant has completed the required nutrient management plan writing courses.

(d) *Time period for submission of application.* Applicants shall have 10 calendar days from the date of the proctored written examination to submit the application to the Department. The appropriate fee shall accompany the application for certification as a level 1 commercial manure broker. When a level 2 commercial manure broker certification is sought, the applicant shall follow the requirements in subsection (c) and shall submit a level 2 application and the fee for a level 2 commercial manure broker certification upon the completion of the additional requirements for a level 2 certification. If the applicant fails to file the required application with the Department within the prescribed 10-calendar days, that person shall again satisfy the appropriate competency requirements established in § 130e.11.

(e) *Determination of competence and issuance of certification.* Within 30-days of receiving an administratively complete, verified and signed application, the Department will review the documents and score the written test, and when applicable, the nutrient balance sheet scenario. The Department will notify each applicant in writing of the results of the Department's review.

(1) An applicant who has successfully completed the certification orientation training course and passed the written examination will be issued a level 1 commercial manure broker certification.

(2) To obtain a level 2 commercial manure broker certification, the applicant shall have successfully completed the certification orientation training course, passed the written examination, received level 1 commercial manure broker certification, attended the required nutrient management plan writing courses, and taken and passed the nutrient balance sheet examination.

(3) If an applicant is rejected, the Department will notify the applicant, in writing and specifically set forth the reasons for the rejection.

(i) When a level 1 commercial manure broker applicant is rejected, that applicant shall be allowed to take the next available level 1 commercial manure broker written examination and submit an application, in the manner required by subsection (d), to the Department without having to repeat the certification orientation training course required by § 130e.11. If the applicant fails to pass the written examination for a second time, that applicant shall be required to again meet all of the requirements established under § 130e.11 and take the next available written examination, prior to resubmission of an application for certification as a level 1 commercial manure broker.

(ii) When an applicant seeks a level 2 commercial manure broker certification and fails the Nutrient Balance Sheet examination, the applicant shall be allowed to take the next available Nutrient Balance Sheet Examination. If the applicant fails to pass the nutrient balance sheet examination for a second time, the Department will again notify the applicant, in writing of the rejection and the reason for the rejection. To again be considered for a level 2 commercial manure broker certification again, the applicant shall be required to satisfy the requirements in § 130e.11(b). The Department will have 30 days to review and accept or reject the nutrient balance sheet submitted. If the nutrient balance sheet is once again determined to be inadequate, the Department will notify the applicant of the rejection in writing and the reason for the rejection. The applicant shall be required to complete all of the requirements of § 130e.11 to be eligible to apply for a level 2 commercial manure broker certification.

(f) *Level 1 commercial manure broker to level 2 commercial manure broker.*

(1) A level 1 certified commercial manure broker may attain a level 2 commercial manure broker certification by meeting the requirements established under § 130e.11(b). To be eligible to apply, the applicant shall be currently certified as a level 1 commercial manure broker and in good standing.

(2) The Department will notify an applicant in writing of approval or rejection of an application. If the nutrient balance sheet is determined to be adequate, the written notice will include the level 2 commercial manure broker certificate. If the Department rejects the application, the Department will notify the applicant in writing and set

forth the reasons for the rejection. When the applicant wishes to reapply for a level 2 commercial manure broker certification, the procedures and steps established under subsection (e)(3)(ii) apply and shall be followed.

COMMERCIAL MANURE HAULERS—LEVEL 1

§ 130e.21. Determination of competence.

(a) *Level 1 commercial manure hauler.* Determination of competence for a level 1 commercial manure hauler shall be based on the successful completion of certification training as set forth in this section. Certification requirements for a level 1 commercial manure hauler must include a nonclassroom certification orientation-training course developed or approved by the Department. The nonclassroom certification orientation-training course shall include a training manual and a written examination. The written examination will be available at and must be taken at one of the following locations: a county conservation district office, a location of the educational institution or entity that developed an approved course, the Department or a regional office location of the Department. The written examination shall be completed by the applicant without the aid or assistance of another person, written materials, notes, electronic devices (other than a calculator) or the training manual. Certification may also include other course work related to requirements in this chapter, which are determined by the Department to be necessary and appropriate. The course work must be included in the training manual, if it is to appear on the written examination.

(b) *Certification orientation training course.* A level 1 commercial manure hauler nonclassroom certification orientation-training course and the written examination must, at a minimum, address and determine the applicant's level of understanding, competence and proficiency with regard to the following topics:

(1) Laws and regulations pertaining to manure application, including pertinent provisions of Act 38 and its attendant regulations in 25 Pa. Code Chapter 83, Subchapter D (relating to nutrient management), The Clean Streams Law and 25 Pa. Code Chapter 102 (related to erosion and sedimentation control) and the manure management manual and protection of agricultural operations from nuisance suits and ordinances provisions of the act of June 10, 1982 (P. L. 454, No. 133) (3 P. S. §§ 951—957).

(2) Courses presenting information necessary for understanding and properly reading and applying the provisions of a nutrient management plan and nutrient balance sheet. The courses shall cover manure handling and testing results, land application information, setback requirements and maps contained in nutrient balance sheets and nutrient management plans. The courses must include examples and hands on experience in reading, interpreting and properly applying the provisions of a nutrient management plan and nutrient balance sheet.

(3) BMPs with respect to manure hauling such as the minimum legal setback requirements from water sources, including wells, groundwater, surface waters, wetlands, public water supplies, perennial and intermittent streams and property lines and controlling nutrient runoff.

(4) Recordkeeping requirements necessary to meet the statutory and regulatory requirements of the act and Act 38.

(5) The following matters pertaining to manure transport and land application:

(i) Community relation and public image awareness, to encourage dialogue and promote cooperation.

(ii) Basic awareness and understanding of safety issues related to manure management, manure handling and bio-security, as well as, transport safety procedures and highway and equipment safety.

(iii) Understanding emergency action plans.

(iv) Understanding the proper placement of stacking areas and temporary storage of manure.

(v) Other areas and course work related to proper transport and land application of manure and recordkeeping as determined appropriate by the Department.

§ 130e.22. Certification requirements.

(a) *General.* To obtain a level 1 commercial manure hauler certification, a person shall request and review the level 1 orientation training course training manual and take and pass the written examination. A person shall obtain certification as a level 1 commercial manure hauler prior to transporting manure. A person certified as a level 1 commercial manure hauler shall be qualified to transport manure only. The transportation of manure shall be done as a contract agent for an agricultural operator or a certified commercial manure broker. A level 1 certified commercial manure hauler, who is the employee of a level 3 certified commercial manure hauler, may transport manure as an employee of the certified hauler, so long as the certified level 3 commercial manure hauler is acting as a contract agent for an agricultural operator or certified commercial manure broker. A level 1 certified commercial manure hauler may not land apply manure.

(b) *Application for certification.* Upon completion of the requirements in § 130e.21 (relating to determination of competence) and subsection (a), an applicant for a level 1 commercial manure hauler certification shall submit a signed and verified application for certification as a level 1 commercial manure hauler to the Department. The application shall be signed and verified by the applicant, in the presence of the proctor, immediately after taking the written examination. The proctor shall also sign the application and verification. The signed and verified application along with the completed level 1 written examination shall be given to the designated proctor at the location where the written examination is taken. The signed verification shall attest to the fact the applicant completed the written examination on his own and did so without the aid or assistance of another person, written materials, notes, electronic devices (other than a calculator) or the training manual. The proctor shall submit the application packet, which must include the signed verification and application and the original written examination to the Department within 5 calendar days of the completion of the examination by the applicant. The appropriate fee shall accompany the application for certification as a level 1 commercial manure hauler.

(c) *Determination of competence and issuance of certification.* Within 15 days of receiving an administratively complete application, the Department will review the documents and score the written examination to determine whether the applicant has met the requirements to obtain a level 1 commercial manure hauler certification. The Department will then notify each applicant in writing of the results of the Department's review. An applicant who has successfully completed the requirements of this subchapter and passed the written examination will be issued a level 1 commercial manure hauler certification. If the applicant is rejected, the Department will

notify the applicant in writing and specifically set forth the reasons for the rejection. When an applicant is rejected, that applicant shall be required to meet the requirements established under § 130e.21 and subsection (a), prior to resubmission of an application for certification as a level 1 commercial manure hauler.

COMMERCIAL MANURE HAULERS—LEVEL 2

§ 130e.31. Determination of competence.

(a) *Level 2 commercial manure hauler.* Determination of competence for a level 2 commercial manure hauler shall be based on the successful completion of a certification orientation training course and a written examination as set forth in this section. Certification requirements for a level 2 commercial manure hauler must include a nonclassroom certification orientation-training course developed or approved by the Department. The nonclassroom certification orientation-training course shall include a training manual and a written examination. The written examination shall be available at and shall be taken at one of the following locations: a county conservation district office, a location of the educational institution or entity that developed an approved course, at the Department or a regional office location of the Department. The written examination shall be completed by the applicant without the aid or assistance of another person, written materials, notes, electronic devices (other than a calculator) or the training manual. Certification may also include other course work related to requirements in this chapter, which are determined by the Department to be necessary and appropriate. The course work shall be included in the training manual, if it is to appear on the written examination.

(b) *Certification orientation training course.* A level 2 commercial manure hauler nonclassroom certification orientation-training course and the written examination must, at a minimum, address and determine the applicant's level of understanding, competence and proficiency with regard to the following topics:

(1) Laws and regulations pertaining to manure application, including pertinent provisions of Act 38 and its attendant regulations in 25 Pa. Code Chapter 83, Subchapter D (relating to nutrient management), The Clean Streams Law and 25 Pa. Code Chapter 102 (related to erosion and sedimentation control), the manure management manual and protection of agricultural operations from nuisance suits and ordinances provisions of the act of June 10, 1982 (P. L. 454, No. 133) (3 P. S. §§ 951—957).

(2) Basic nutrient management and manure management protocols and requirements and soil fertility and management.

(3) Courses presenting information necessary for understanding and properly reading and applying the provisions of a nutrient management plan and nutrient balance sheet. The courses must cover manure handling and testing, land application information, manure application setback requirements and maps contained in nutrient balance sheets and nutrient management plans. The courses must include examples and hands on experience in reading, interpreting and properly applying the provisions of a nutrient management plan and nutrient balance sheet.

(4) BMPs with respect to manure hauling and land application of manure, such as the minimum legal setback requirements from water sources, including wells, groundwater, surface waters, wetlands, public water supplies, perennial and intermittent streams and property

lines, controlling nutrient runoff, installing riparian buffers, updating and following erosion and sedimentation control plans, seasonal manure application concerns and incorporation and no-till farming techniques.

(5) Recordkeeping requirements necessary to meet the statutory and regulatory requirements of the act and Act 38.

(6) The following matters pertaining to manure transport and land application:

(i) Courses teaching development and filing of a nutrient balance sheet and appropriate manure production application and testing information, manure application setback requirements and maps contained in a nutrient management plan. The courses must cover the filing requirements in the act and require the applicant to display competence in reading and properly interpreting the provisions of a nutrient balance sheet and nutrient management plan.

(ii) Community relation and public image awareness, to encourage dialogue and promote cooperation .

(iii) Basic awareness of safety issues related to manure management, manure handling and bio-security, as well as, transport safety procedures and highway and equipment safety.

(iv) Understanding emergency action plans.

(v) Proper calibration techniques and requirements for all types of equipment normally utilized to land apply manure to assure proper application rates.

(vi) Understanding of land application issues, such as incorporation, compaction and winter application.

(vii) Understanding the proper placement of stacking areas and temporary storage of manure.

(viii) Other areas and course work related to proper transport and land application of manure and recordkeeping as determined appropriate by the Department.

§ 130e.32. Certification requirements.

(a) *General.* To obtain a level 2 commercial manure hauler certification, a person shall request and review the level 2 certification orientation-training course training manual and take and pass the level 2 certification written examination. A person shall obtain certification as a commercial manure hauler level 2 prior to landapplying manure. Manure land applied by a level 2 certified commercial manure hauler shall only be applied under the direct supervision of a level 1 or level 2 certified commercial manure broker or a level 3 certified commercial manure hauler acting as a contract agent for an agricultural operator or commercial manure broker. All manure landapplied by a level 2 certified commercial manure hauler shall be applied in accordance with an approved nutrient management plan developed by a certified nutrient management specialist or a nutrient balance sheet developed by a certified nutrient management specialist or a level 2 certified commercial manure broker.

(b) *Application for certification.* Upon completion of the requirements in § 130e.31 (relating to determination of competence) and subsection (a), an applicant for a level 2 commercial manure hauler certification shall submit a signed and verified application for certification as a level 2 commercial manure hauler to the Department. The application shall be signed and verified by the applicant, in the presence of the proctor, immediately after taking the written examination. The proctor shall also sign the application and verification. The signed and verified application along with the completed level 2 written

examination shall be given to the designated proctor at the location where the written examination was taken. The signed verification shall attest to the fact the applicant completed and answered the questions on the written examination on his own and did so without the aid or assistance of another person, written materials, notes, electronic devices (other than a calculator) or the training manual. The proctor shall submit the application packet, which includes the signed verification and application and the original written examination to the Department within 5 calendar days of the completion of the examination by the applicant. The appropriate fee shall accompany the application for certification as a level 2 commercial manure hauler.

(c) *Determination of competence.* Within 15-days of receiving an administratively complete application, the Department will review the documents and score the written examination to determine whether the applicant has met the requirements to obtain a level 2 commercial manure hauler certification. The Department will then notify each applicant in writing of the results of the Department's review. An applicant who has successfully completed the requirements of this subchapter and passed the written examination shall be issued a level 2 commercial manure hauler certification. If the applicant is rejected, the Department will notify the applicant in writing and specifically set forth the reasons for the rejection. When an applicant is rejected, that applicant shall be required to meet the requirements under § 130e.31 and subsection (a), prior to resubmission of an application for certification as a level 2 commercial manure hauler.

COMMERCIAL MANURE HAULERS—LEVEL 3

§ 130e.41. Determination of competence.

(a) *Commercial manure hauler level 3 certification.* Determination of competence for a level 3 commercial manure hauler shall be based on the successful completion of a Department developed or approved certification orientation training course and a written examination meeting the requirements in this section. Both the certification orientation training course and the written examination shall be administered in a classroom setting. Certification may also include other course work related to requirements in this chapter, which are determined by the Department to be necessary and appropriate. The certification orientation-training course must cover the additional requirements or they may not be included in the written examination. The certification orientation-training course shall be completed prior to the applicant taking the written examination.

(b) *Certification orientation training.* The certification orientation-training course must, at a minimum, address the applicant's understanding, competence and proficiency with regard to the following topics:

(1) Laws and regulations pertaining to manure application, including pertinent provisions Act 38 and its attendant regulations in 25 Pa. Code Chapter 83, Subchapter D (relating to nutrient management), The Clean Streams Law and applicable regulations in 25 Pa. Code Chapter 102 (related to erosion and sedimentation control) and the manure management manual and protection of agricultural operations from nuisance suits and ordinances provisions of the act of June 10, 1982 (P. L. 454, No. 133) (3 P. S. §§ 951—957).

(2) Basic nutrient management and manure management protocols and requirements and soil fertility and management.

(3) Courses presenting information necessary for understanding and properly reading and applying the provisions of a nutrient management plan and nutrient balance sheet. The courses must cover manure handling and testing, land application information, manure application setback requirements and maps contained in nutrient balance sheets and nutrient management plans. The courses must include examples and hands on experience in reading, interpreting and properly applying the provisions of a nutrient management plan and nutrient balance sheet.

(4) BMPs with respect to manure hauling and land application of manure, such as the minimum legal setback requirements from water sources, including wells, groundwater, surface waters, wetlands, public water supplies, perennial and intermittent streams and property lines, controlling nutrient runoff, installing riparian buffers, updating and following erosion and sedimentation control plans, seasonal manure application concerns and incorporation and no-till farming techniques.

(5) Recordkeeping requirements necessary to meet the statutory and regulatory requirements of Act 38.

(6) The following matters pertaining to manure transport and land application:

(i) Courses teaching development and filing of a nutrient balance sheet and appropriate manure production application and testing information, manure application setback requirements and maps contained in a nutrient management plan. The courses must cover the filing requirements in the act and require the applicant to display competence in reading and properly interpreting the provisions of a nutrient balance sheet and nutrient management plan.

(ii) Community relation and public image awareness, to encourage dialogue and promote cooperation.

(iii) Basic awareness of safety issues related to manure management, manure handling and bio-security, as well as, transport safety procedures and highway and equipment safety.

(iv) Understanding emergency action plans.

(v) Proper calibration techniques and requirements for all types of equipment normally utilized to land apply manure to assure proper application rates.

(vi) Understanding of land application issues, such as, incorporation, compaction and winter application.

(vii) Understanding the proper placement of stacking areas and temporary storage of manure.

(viii) Other areas and course work related to proper transport and land application of manure and recordkeeping as determined appropriate by the Department.

(c) *Written examination.* The Department or its designee will proctor the written examination. The Department will administer the examination at least twice per year, or more often as deemed necessary by the Department. At a minimum, the successful completion of the examination will demonstrate an examinee's understanding of transport and land application of manure on agricultural operations and examinee's technical knowledge and proficiency relating to interpretation and implementation of nutrient management plans and nutrient balance sheets, as well as, examinee's knowledge of recordkeeping requirements. The written examination must, at a minimum, address the topics and areas required to be addressed by the certification orientation-training course, as set forth in subsection (b).

(d) *Other examinations.* The Department may approve the use of written examinations other than the Pennsylvania Commercial Manure Broker and Commercial Manure Hauler examination, if the written examinations meet the requirements in subsection (c).

§ 130e.42. Certification requirements.

(a) *General.* A person shall obtain certification as a commercial manure hauler level 3 prior to land applying manure without direct supervision and prior to supervising the land application of manure by another certified commercial manure hauler. A level 3 certified commercial manure hauler may transport or land apply, or both, manure as a contract agent for an agricultural operator or commercial manure broker and under the direction of that operator or broker. When acting as a contract agent for an agricultural operator required under section 5 of the act (3 P. S. § 2010.5) to use a certified commercial manure hauler or certified commercial manure broker, the commercial manure hauler shall land apply the manure in accordance with and based upon an approved nutrient management plan developed by a certified nutrient management specialist or nutrient balance sheet developed by a certified nutrient management specialist or a level 2 certified commercial manure broker. When acting as a contract agent for a certified commercial manure broker, that has assumed temporary control or ownership of manure from an agricultural operator required by section 5 of the act to use a certified commercial manure hauler or certified commercial manure broker, the commercial manure hauler shall land apply the manure in accordance with and based upon an approved nutrient management plan developed by a certified nutrient management specialist or nutrient balance sheet developed by a certified nutrient management specialist or a level 2 certified commercial manure broker.

(b) *Application for certification.* Upon completion of the requirements in § 130e.41 (relating to determination of competence), an applicant for a level 3 commercial manure hauler certification may submit an application to the Department. The Department or its designee will provide an application to all applicants, upon completion of the written examination. The application will include a verification form, which shall be signed by the applicant, attesting that the applicant has attended and successfully completed the appropriate certification orientation training course. The applicant shall check the box on the application indicating the level of certification sought. Applicants shall have 10 calendar days to submit the application to the Department. The appropriate fee accompany the application for certification as a level 3 commercial manure hauler.

(c) *Time period for filing application.* An application for certification shall be filed with the Department within 10-calendar days of completion of the written examination. If the applicant fails to file the application with the Department within the prescribed 10-calendar days, that person shall again satisfy the appropriate competency requirements established under § 130e.41.

(d) *Determination of competence and issuance of certification.* Within 30-days of receiving an administratively complete, verified and signed application, the Department will review the documents and score the written test. The Department will then notify each applicant in writing of the results of the Department's review.

(1) An applicant who has successfully completed the level 3 commercial manure hauler certification orienta-

tion training course and passed the written examination will be issued a level 3 commercial manure hauler certification.

(2) If an applicant is rejected, the Department will notify the applicant in writing and specifically set forth the reasons for the rejection. When a level 3 commercial manure hauler applicant is rejected, that applicant shall be allowed to take the next available written examination and submit an application, in the manner required under subsection (c), to the Department without having to repeat the certification orientation training course as required by § 130e.41. If the applicant fails to pass the written examination for a second time, that applicant shall be required to again meet the requirements established by § 130e.41 and take the next available written examination, prior to resubmission of an application for certification as a level 3 commercial manure hauler.

(e) *Level 3 commercial manure hauler to level 2 commercial manure broker.*

(1) A level 3 certified commercial manure hauler may attain a level 2 commercial manure broker certification by attending a Department-approved nutrient balance sheet writing course and then developing and submitting a nutrient balance sheet, based on a scenario generated or approved by the Department, to the Department for review and a determination of adequacy. To be eligible to apply, the applicant shall be currently certified as a level 3 commercial manure hauler and in good standing.

(2) The Department will notify an applicant in writing of approval or rejection of an application. If the nutrient balance sheet is determined to be adequate, the written notice will include the level 2 commercial manure broker certificate. If the Department rejects the application, the Department will notify the applicant in writing and set forth the reasons for the rejection. When the applicant wishes to reapply for a level 2 commercial manure broker certification, the procedures and steps related to reconsideration for a level 2 commercial manure broker certification, established under § 130e.12(d)(3)(ii) (relating to certification requirements) shall apply and shall be followed.

CERTIFICATION TIME FRAMES AND RECERTIFICATION REQUIREMENTS

§ 130e.51. Certification time frames and recertification requirements.

The following time frames apply to the different levels of commercial manure broker and commercial manure hauler certification. Recertification intervals and continuing education courses shall be based on the level of certification.

(1) *Level 1 and Level 2 commercial manure brokers.* Certification is valid for 3 years from the calendar year in which the certification was issued unless the certificate was issued in the last 2 months of the initial certificate year in which case the certificate is valid for an additional year. To attain the recertification required, a commercial manure broker shall again satisfy the applicable certification requirements in §§ 130e.11 and 130e.12 (relating to determination of competence; and certification requirements). The commercial manure broker shall satisfy the recertification requirements prior to the expiration of his 3 year certification. A commercial manure broker that is in good standing, meaning he has no current, pending or unsatisfied past violations of the act, Act 38 or the The Clean Streams Law and has satisfied the continuing education credit requirements established by this chapter, shall be allowed to take the

commercial manure broker written examination without having to attend the certification training course for that level of certification. A commercial manure broker not in good standing or that has not satisfied the continuing education credit requirements of this chapter, shall be required to attend the applicable certification training courses prior to sitting for the written examination. To retain a level 2 commercial manure broker certification, the level 2 commercial manure broker shall develop and have approved by the Department a nutrient balance sheet based on a scenario developed or approved by the Department. A level 2 commercial manure broker in good standing and current on the required continuing education credits shall be permitted to sit for the nutrient balance sheet examination without having to attend nutrient balance sheet writing courses. A level 2 commercial manure broker not in good standing or that has not satisfied the continuing education credit requirements of this chapter, shall be required to attend the applicable certification training courses and nutrient balance sheet writing courses prior to sitting for the level 1 written examination and then level 2 nutrient balance sheet examination.

(2) *Level 1 commercial manure hauler.* Certification is valid for 2 years from the calendar year in which the certification was issued unless the certificate was issued in the last 2 months of the initial certificate year in which case the certificate is valid for an additional year. To attain the recertification required, a level 1 commercial manure hauler shall again satisfy the applicable certification requirements in §§ 130e.21 and 130e.22 (relating to determination of competence; and certification requirements). The level 1 commercial manure hauler shall satisfy the requirements prior to the expiration of the hauler's 2-year certification. A level 1 commercial manure hauler shall be in good standing, meaning the hauler has no current, pending or unsatisfied past violations of the act, Act 38 or The Clean Streams Law and has satisfied the continuing education credit requirements established by this chapter, in order to be allowed to take the current level 1 commercial manure hauler written examination.

(3) *Level 2 commercial manure hauler.* Certification is valid for 2 years from the date of issuance from the calendar year in which the certification was issued unless the certificate was issued in the last 2 months of the initial certificate year in which case the certificate is valid for an additional year. To attain the recertification required, a level 2 commercial manure hauler shall again satisfy the certification requirements in §§ 130e.31 and 130e.32 (relating to determination of competence; and certification requirements). The level 2 commercial manure hauler shall satisfy these requirements prior to the expiration of the hauler's 2-year certification. A level 2 commercial manure hauler shall be in good standing, meaning the hauler has no current, pending or unsatisfied past violations of the act, Act 38 or The Clean Streams Law and has satisfied the continuing education credit requirements established by this chapter, to be allowed to take the current level 2 commercial manure hauler written examination.

(4) *Level 3 commercial manure hauler.* Certification is valid for 3 years from the calendar year in which the certification was issued unless the certificate was issued in the last 2 months of the initial certificate year in which case the certificate is valid for an additional year. To attain the recertification required, a level 3 commercial manure hauler shall again satisfy the applicable certification requirements in §§ 130e.41 and 130e.42 (relating to

determination of competence; and certification requirements). The level 3 commercial manure hauler shall satisfy the recertification requirements prior to the expiration of the hauler's 3-year certification. A level 3 commercial manure hauler that is in good standing, meaning the hauler has no current, pending or unsatisfied past violations of the act, Act 38 or The Clean Streams Law and has satisfied the continuing education credit requirements established by this chapter, shall be allowed to take the proctored level 3 commercial manure hauler written examination without having to attend the certification training course for that level of certification. A level 3 commercial manure hauler not in good standing or that has not satisfied the continuing education credit requirements of this chapter, shall be required to attend the applicable certification training courses prior to sitting for the level 3 commercial manure hauler written examination.

§ 130e.52. Commercial manure broker and hauler continuing education requirements.

(a) *Continuing education credit requirements.* Certified commercial manure brokers and commercial manure haulers shall be required to obtain continuing education credits. The number of continuing education credits required shall be based on the level of certification. The Department will develop or may approve continuing education credit courses for each level of certification.

(1) *Level 1 and 2 commercial manure brokers and level 3 commercial manure haulers.* Every 3 calendar years, level 1 and level 2 commercial manure brokers and level 3 commercial manure haulers, shall provide written documentation of completion of the required number of continuing education credits. Continuing education credits shall be received by attending and completing Department developed or approved training courses in the competency requirements set forth in the initial certification orientation training courses for the particular level at which the person is certified.

(i) Level 1 and level 2 certified commercial manure brokers shall receive continuing education training credits in the competency areas in § 130e.11 (relating to determination of competence). Level 2 certified commercial manure brokers shall be subject to at least one inspection and determination of competency per calendar year by the Department of any nutrient balance sheet prepared by the level 2 certified commercial manure broker.

(ii) Level 3 commercial manure haulers shall receive continuing education training credits in the competency areas established in § 130e.41 (relating to determination of competence).

(2) *Level 2 commercial manure haulers.* Every 2 calendar-years, level 2 commercial manure haulers shall provide written documentation of completion of the required number of continuing education credits. Continuing education credits shall be received by attending and completing Department-developed or approved training courses in the competency requirements for a level 2 commercial manure hauler, which are set forth in § 130e.31 (relating to determination of competence).

(3) *Level 1 commercial manure haulers.* Every 2 calendar-years, level 1 commercial manure haulers shall provide written documentation of completion of the required number of continuing education credits. Continuing education credits shall be received by attending and completing Department-developed or approved training courses in the competency requirements for a level 1

commercial manure hauler in § 130e.21 (relating to determination of competence).

(b) *Continuing education courses and credits.*

(1) *Continuing education.* Continuing education credits shall be obtained through attendance at Department developed or approved courses. The Department will develop or evaluate and approve continuing education courses for each level of commercial manure broker and commercial manure hauler. The Department will publish approved courses and the place, date and time for each course on the Department website and in the Department's quarterly newsletter. The Department will also notify certified commercial manure brokers and commercial manure haulers by e-mail or by fax, or both, if the commercial manure broker or commercial manure hauler has provided its contact information to the Department. The Department will endeavor to hold continuing education courses in various regions across this Commonwealth to assure reasonable access to certified commercial manure brokers and haulers across this Commonwealth.

(2) *Continuing education credits.*

(i) *Rate of accrual.* Continuing education credits accrue at the rate of 1 credit per hour of applicable instruction. Participants shall be required to sign in and sign out of each continuing education course. Participants will be asked to complete an evaluation of each session, as well as an evaluation of the course in general. Participants shall be required to attend the entire continuing education course. A participant leaving a continuing education course early shall receive no continuing education credits. The sign in and sign out sheets will be provided by the Department and shall be collected by the continuing education course provider at the end of each day of the continuing education course and mailed to the Department. The Department will record the name of each certified commercial manure broker and certified commercial manure hauler attending the continuing education course and assign the appropriate number of continuing education credits to the broker's or hauler's file. The evaluation sheet for each continuing education course shall be developed by the Department or developed by the approved course provider. Break periods such as coffee breaks, lunches, visits to exhibits, and the like will not be considered as part of the instruction period and shall be excluded from the applicable instruction hours. Question and answer sessions shall be considered part of the applicable instruction hours. Early dismissal is not allowed and credits will not accrue in any hour in which there was an early dismissal. Credits assigned shall be modified if either the content or length of the training substantially differs from the continuing education course originally approved by the Department.

(ii) *Number of continuing education credit hours required.* Certified commercial manure brokers and certified commercial manure haulers shall be required to obtain the following amount of continuing education credits in Department-approved continuing education courses:

(A) Level 1 certified commercial manure brokers and level 3 certified commercial manure haulers shall be required to attain 9 continuing education credits per certification period.

(B) Level 2 certified commercial manure brokers shall be required to attain a total of 12 continuing education credits per certification period, with 3 of those 12 continuing education credits pertaining to development of nutrient balance sheets.

(C) Level 1 and level 2 certified commercial manure haulers shall be required to attain 6 continuing education credits per certification period.

(c) *Additional recertification requirements.* To remain in good standing, certified commercial manure brokers and haulers shall comply with the following additional requirements:

(1) By January 15th of each year of certification, certified commercial manure brokers and commercial manure haulers shall send to the Department an annual summary of the amount of manure brokered, stored, transported, stacked and land applied. The summary shall be broken down by category and month.

(2) The Department may, if deemed necessary by a change in statute or regulation or when new science or technology makes it necessary, require other specific continuing education training and recertification requirements for certified commercial manure brokers or certified commercial manure haulers. If the continuing education training or recertification requirements are deemed necessary, the Department will provide written notification and educational materials to all currently certified commercial manure brokers and commercial manure haulers.

(d) *Failure to obtain continuing education credits.* If a commercial manure broker or commercial manure hauler allows his certification to expire and does not obtain the required number and types of continuing education credits in accordance with this chapter, the commercial manure broker's or commercial manure hauler's certification shall have lapsed and its privilege to broker or haul manure shall be suspended or revoked until the commercial manure broker or commercial manure hauler obtains the required continuing education credits and meets the recertification requirements of this chapter. If the commercial manure broker or hauler has failed to obtain any of the required continuing education credits, that person shall again satisfy the full certification requirements established by this chapter for the level of certification sought to be retained. The Department will send a written notice of the lapse and of suspension or revocation of certification to the commercial manure broker or hauler. The act requires certification and, therefore, a commercial manure broker or commercial manure hauler that has allowed his certification to lapse shall refrain from brokering, hauling or land applying manure until all delinquent continuing education credits are acquired or that person has again completed the appropriate certification requirements and received the Department's approval, has been removed from suspension and has been reissued a commercial manure broker or hauler certification. Failure to abide by the terms of this subsection is a violation of the act and this chapter and shall subject the violator and his employer to the penalties provisions in sections 6—9 of the act.

(e) *Revocation or suspension.* The Department's decision to revoke or suspend a commercial manure broker's or commercial manure hauler's certification shall be based on the gravity of the offense. The Department will consider the willfulness of the violation, previous violations and whether the person in question has continued to operate despite not acquiring the required continuing education credits or recertification, or both, prior to lapse of his current level of certification.

(1) *Suspended certification.* A commercial manure broker or commercial manure hauler whose certification has been suspended may not operate until all continuing

education credits or recertification requirements, or both, have been met and approved by the Department or that person has again completed the appropriate certification requirements and received the approvals, as set forth in subsection (d).

(2) *Revoked certification.* A commercial manure broker or commercial manure hauler whose certification has been revoked, may not operate until the Department has issued a new certification. To obtain certification again, the person whose certification has been revoked shall again satisfy the full certification requirements established by this chapter for the level of certification sought to be obtained.

§ 130e.53. Continuing education credit course providers.

(a) *Approval, denial, suspension and revocation to provide a continuing education credit course.*

(1) *Eligibility.* To be eligible to apply for approval to conduct a continuing education credit course, the applicant shall be the Pennsylvania State University or other education institution or entity.

(2) *Application content.* Persons developing and seeking approval of a continuing education credit course they have developed shall submit an application, containing details of the course components and topics, as well as the names of speakers, subject matter and topics and time allotted to each subject or topic. The application must include the name of the person developing and administering the course and a contact person, the specific locations and the proposed dates and times the course will be offered at each location. The application must state whether the courses will be open to the public and if a fee will be charged. The application must set forth which of the various levels of certification the course provider intends to address and the overall length of the program and credit hours sought to be approved.

(3) *Submission of application.* The application shall be submitted to the Department of Agriculture, Bureau of Plant Industry, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110-9408.

(4) *Department approval, disapproval or modification.* An applicant shall receive approval from the Department prior to offering or administering a continuing education credit course. The Department will review and approve, disapprove or modify a request for approval within 30 days of receipt of an administratively complete application. An approval, denial or modification will be in writing. A denial or modification request will state the specific reasons for the denial or the specific modifications required and the reason for the modifications. An application for continuing education credit course approval must be submitted to the Department and required to have gained the approval of the Department prior to the applicant advertising the course or setting a date, place and time for the course. Upon approval, the applicant may advertise the course and begin to take applications for the course. The Department will publish the approved course on the Department's website. The publication must include the course level, hours of credits to be received and the date, time and place the course will be offered.

(5) *Criteria for approval.* At a minimum, a continuing education credit course must address the areas of competence in § 130e.11, § 130e.21, § 130e.31 or § 130e.41, required for the level of certification the course intends to address.

(6) *Revocation of course or denial or revocation of credit hours.* The Department may revoke approval of a continu-

ing education credit course or deny or revoke credit hours, or both. When the Department revokes approval of a course, the Department may also notify the course provider it is ineligible to provide continuing education credit courses for 12 months, or longer, from the date of the revocation. The following are the grounds for revocation of a course or denial or revocation of continuing education credits offered through that course:

(i) The applicant or approved continuing education credit course provider falsified or failed to disclose required information on the application or falsified or failed to disclose information with regard to course hours given or attended, type or content of material presented, attendance records of certified commercial manure brokers or haulers seeking continuing education credits or a violation of other criteria required under this section.

(ii) The approved continuing education credit course provider has failed to update materials and course content in a manner necessary to keep the course current with updates in statutes, regulations, technology or practices. In this situation, the Department will notify the course provider, in writing, of deficiencies prior to issuing a revocation. The course provider shall correct the deficiencies within 30 days. Failure to correct the deficiencies will result in a revocation of the Department's approval.

(iii) The course provider has violated or assisted a person in violating a provision of the act or this chapter.

(b) *Course monitoring.* If the Department or its designee is unable to personally monitor a continuing education credit course, the approved course provider shall be responsible for verifying attendance, including credit hours actually attended, and shall compile a list of the names of the individual certified commercial manure brokers and commercial manure haulers in attendance and their certification number. The list shall be compiled on a form provided by the Department. The forms shall be returned to the Department within 10 working days following the date the continuing education credit course was conducted.

DENIAL, SUSPENSION AND REVOCATION OF COMMERCIAL MANURE BROKER OR HAULER CERTIFICATES

§ 130e.61. Denial, suspension and revocation of certificates.

(a) *General power and authority.* The Department may, after notice, including a statement of the reasons therefore, deny, suspend or revoke the certification of a commercial manure broker or commercial manure hauler for one or more following:

(1) A violation of the act or this chapter.

(2) Failure to obtain the required continuing education credits in § 130e.52(d) and (e) (relating to commercial broker and hauler continuing education requirement).

(3) Inconsistency and demonstration of a lack of knowledge or proficiency in the proper handling, transportation or land application of manure, including violations the act, Act 38 or The Clean Streams Law.

(4) Three or more occurrences within a 3-year period of noncompliance with recordkeeping requirements, including delay or noncommunication with an agricultural operator, a conservation district or the Department in providing requested or required information or recordkeeping documentation.

(5) Falsifying information.

(6) Allowing certification to lapse.

(b) *Notice of violation and orders.* The Department may issue notices of violation and orders necessary for the enforcement of the act and this chapter. An order will take effect upon notice unless the order specifies otherwise.

(c) *Procedure.* A person may appeal an action under this section to the Secretary as follows:

(1) The appeal shall be filed within 30 days of the date of receipt of the order, revocation or suspension.

(2) The Secretary will issue a decision on the appeal within 30 days of the filing of an appeal under paragraph (1). If the Secretary does not issue a decision within 30 days, the order, revocation or suspension will be deemed withdrawn.

(3) This subsection is subject to the Administrative Agency Law, 2 Pa.C.S. Chapter 5, Subchapter A and 2 Pa.C.S. Chapter. 7, Subchapter A.

(4) The appeal must be in writing and set forth the specific reasons for the appeal. The appeal shall be sent to the Bureau of Plant Industry, Agriculture Building, 2301 North Cameron Street, Harrisburg, Pennsylvania, 17110.

Subchapter C. RECORD KEEPING

Sec.

130e.71. Recordkeeping.

§ 130e.71. Recordkeeping.

(a) *Commercial manure hauler.* A commercial manure hauler shall maintain the following records, which shall be open to inspection by the Department or its agents during regular business hours and shall be maintained for 3 years after the date of transport or land application of the manure, whichever is later in time.

(1) *Agreement.* A copy of the agreement or contract between the commercial manure hauler and each agricultural operator or commercial manure broker for which the commercial manure hauler is transporting or land applying manure, or both.

(2) *Records.* The following records shall be maintained:

(i) Records setting forth the name and address of each agricultural operator or commercial manure broker for which the commercial manure hauler has or is currently transporting or land applying, or both, manure.

(ii) Records for each load of manure transported or land applied, which must detail:

(A) The name and location of the agricultural operator or commercial manure broker from which the manure was obtained or on whose behalf the manure was transported or land applied, and the date and time of the transport or application, or both, of the manure.

(B) The name and location of the agricultural operator, commercial manure broker, importing operation or facility, or all of the these entities if more than one is involved, to which the manure was transported or on whose property the manure was land applied, or both.

(C) The name, address and certification number and level of certification of each person involved in the transport or application, or both, of the manure. The record must include a verification statement and be signed by each person involved in the transport or application, or both, of the manure.

(iii) When the commercial manure hauler is land applying the manure the following additional recordkeeping requirements apply:

(A) The location of the field to which each load of manure was applied, as identified in an approved nutrient management plan or a nutrient balance sheet.

(B) The name, certification number and signature of each commercial manure hauler or broker that land applied the manure to each location.

(C) The date of the application.

(D) The total amount of manure applied to each field.

(E) The number of acres to which manure was applied.

(F) The rate of manure application for each field.

(G) The crop group or type of groundcover for each field to which manure was applied.

(H) The source—nutrient balance sheet or appropriate summary or nutrient application sections and maps of the approved nutrient management plan—followed to determine appropriate application rates for each field to which the manure was applied.

(I) When manure from a CAO, CAFO or volunteer operation is land applied on an importing operation, a copy of the nutrient balance sheet utilized for each land application.

(3) *Annual records.* A commercial manure hauler shall compile the recordkeeping information into an annual report detailing:

(i) The name and location of each agricultural operator or commercial manure broker for which it transported or land applied, or both, manure.

(ii) The total amount of manure transported or land applied for each agricultural operator or commercial manure broker, or both.

(iii) The total amount of manure transported.

(iv) The total amount of manure landapplied and the total acreage to which it was applied.

(b) *Commercial manure broker.* A commercial manure broker shall maintain the following records, which shall be open to inspection by the Department or its agents during regular business hours and be maintained for 3 years after the date of transport or land application of the manure, whichever is later in time:

(1) *Exporter agreement.* A copy of the agreement or contract between the commercial manure broker and each agricultural operator for which the commercial manure broker is transporting or land applying, or both, manure.

(2) *Importer agreement.* A copy of any agreement between the commercial manure broker and an agricultural operator to whose agricultural operation the manure will be applied.

(3) *Nutrient balance sheet.* A copy of the nutrient balance sheet required under section 5(1) of the act (3 P. S. § 2010.5(1)) to be provided to the importing operation and the date the nutrient balance sheet was provided to the importing operation.

(4) *Records.* The following records shall be maintained:

(i) Records setting forth the name and address of each agricultural operator or other person for which the commercial manure broker has or is currently transporting or land applying, or both, manure.

(ii) Records for each load of manure transported or landapplied, which details:

(A) The name and location of the agricultural operator or person from which the manure was obtained or on

whose behalf the manure was transported or land applied, or both, and the date and time of the transport or land application, or both, of the manure.

(B) The name and location of the agricultural operator or importing operation or person to which the manure was transported or on whose property the manure was land applied, or both.

(C) The name, address and certification number and level of certification of each person involved in the transport or application, or both, of the manure. The record must include a verification statement and be signed by each person involved in the transport or application, or both, of the manure.

(iii) When the certified commercial manure broker is land applying the manure or has contracted with another properly certified commercial manure broker or commercial manure hauler to land apply the manure, the following additional recordkeeping requirements apply:

(A) The field to which each load of manure was applied as identified in an approved nutrient management plan or a nutrient balance sheet.

(B) The name, certification number and signature of each commercial manure hauler or broker that land applied the manure to each location.

(C) The date of the application.

(D) The total amount of manure applied to each field.

(E) The number of acres to which manure was applied.

(F) The rate of manure application for each field.

(G) The crop group or type of groundcover for each field to which manure was applied.

(H) The source—nutrient balance sheet or appropriate summary or nutrient application sections and maps of the approved nutrient management plan—followed to determine appropriate application rates for each field to which the manure was applied.

(I) When manure from a CAO, CAFO or volunteer operation is land applied on an importing operation, a copy of the nutrient balance sheet utilized for each land application.

(5) *Annual records.* A commercial manure broker shall compile the daily recordkeeping information into an annual report detailing:

(i) The name and location of each agricultural operator or other person for which it transported or land applied manure, or both.

(ii) The total amount of manure transported or land applied for each agricultural operator or other person, or both.

(iii) The total amount of manure transported.

(iv) The total amount of manure land applied and the total acreage to which it was applied.

[Pa.B. Doc. No. 05-2313. Filed for public inspection December 16, 2005. 9:00 a.m.]

DEPARTMENT OF REVENUE

[61 PA. CODE CHS. 31 AND 46]

Revision of Construction Contractors; Sales Tax Requirements

The Department of Revenue (Department), under section 270 of the Tax Reform Code of 1971 (TRC) (72 P. S. § 7270), proposes to amend 61 Pa. Code §§ 31.11 and 31.12 (relating to definitions; and imposition of tax) and delete §§ 46.2, 46.3, 46.6 and 46.9, to read as set forth in Annex A.

Purpose of Proposed Rulemaking

During normal review of its regulations, the Department determined that deleting §§ 46.2, 46.3, 46.6 and 46.9 in their entirety not only rids 61 Pa. Code of duplicated regulations, it also alleviates any possible confusion to those who read Chapters 31 and 46 (relating to imposition; and construction contractors). This proposed rulemaking amends § 31.11 by transferring to it a specific list of financial institution security equipment from § 46.9 (relating to financial institution security equipment) whose installation constitutes a construction activity. The list of financial institution security equipment is now being properly placed in § 31.11 under construction activities. In addition, § 31.12(b)(1) is amended to include language transferred from § 46.6 (relating to contractors renting equipment to others) and will be properly placed in Chapter 31.

Explanation of Regulatory Requirements

When the Pennsylvania Sales and Use Tax regulations were originally adopted in 1972, 61 Pa. Code Part I, Subpart B., Article II (relating to sales and use tax), was divided into two divisions: regulations and rulings. At that time, regulations provided general guidance and rulings were issued to respond to specific questions. In 1993, the Department deleted the antiquated distinction between the two types of documents in Article II; however, the Department did not delete documents that had been classified as rulings even though the information contained in a ruling was also set forth in a regulation. In the case of § 46.9 (relating to financial institution security equipment), the rules governing all construction contracts including the sale, installation and repair of financial institution security equipment were already addressed in §§ 31.11—31.16 (relating to construction contractors).

The Department wants to avoid the duplication of information and believes that the guidelines that financial institutions (banks) and contractors need to know on the timing of the taxation of security equipment is set forth as it is for all other contractors in §§ 31.11—31.16.

Specifically, the sections to be deleted and their duplicated regulation are as follows:

<i>Section</i>	<i>Name</i>	<i>Duplicated in 61 Pa. Code</i>
46.2	Construction of exempt public utility facilities	§ 32.34(a)(3)(ii)
46.3	Construction contractor installing stained glass windows	§ 31.12(c)

<i>Section</i>	<i>Name</i>	<i>Duplicated in 61 Pa. Code</i>
46.6	Contractors renting equipment to others	§ 34.1 § 31.12(b)(1) proposed amendment
46.9	Financial institution security equipment	§§ 31.11—31.16 proposed amendments

Affected Parties

Parties who read Chapters 31 and 46, specifically, financial institutions that enter into agreements for the purchase and installation of financial institution security equipment that involve construction activities, may be affected by this proposed rulemaking.

Fiscal Impact

The Department has determined that the proposed rulemaking will have no fiscal impact on the Commonwealth.

Paperwork

The proposed rulemaking will not create significant additional paperwork for the public or the Commonwealth.

Effectiveness/Sunset Date

This proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*. The amendments are scheduled for review within 5 years of final publication. No sunset date has been assigned.

Contact Person

Interested persons are invited to submit in writing any comments, suggestions or objections regarding the proposed amendments to Mary R. Sprunk, Office of Chief Counsel, PA Department of Revenue, Dept. 281061, Harrisburg, PA 17128-1061, within 30 days after the date of the publication of this notice in the *Pennsylvania Bulletin*.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on December 2, 2005, the Department submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Finance and the Senate Committee on Finance.

The Committees may, at any time prior to the submittal of the final-form rulemaking, convey to the Department and IRRC, their comments, recommendations and objections to the proposed rulemaking. IRRC may, within 30 days of the close of the public comment period, submit to the Department and Committees any comments, recommendations and objections to the proposed rulemaking. The notification shall specify the regulatory review criteria that have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review of objections raised, prior to final-form publication of the amendments, by the Department, the General Assembly and the Governor.

GREGORY C. FAJT,
Secretary

Fiscal Note: 15-430. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 61. REVENUE

**PART I. DEPARTMENT OF REVENUE
Subpart B. GENERAL FUND REVENUES**

ARTICLE II. SALES AND USE TAX

**CHAPTER 31. IMPOSITION
CONSTRUCTION CONTRACTORS**

§ 31.11. Definitions.

The following words and terms, when used in this section and §§ 31.12—31.16, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Construction activities—An activity resulting from an agreement or contract under which a contractor attaches or affixes tangible personal property to real estate so as to become a permanent part thereof. Construction activities also include the service of repairing real estate even though tangible personal property is not transferred by a contractor in conjunction with the repairs which he makes. In the absence of satisfactory evidence to the contrary, the following items are presumed to become a permanent part of real estate:

* * * * *

Financial institution security equipment, including:

- Accelerated cash terminals or cash guards**
- Access control systems**
- After-hour depositories**
- Alarm systems (burglar, police, fire and the like)**
- Automatic banking systems**
- Bandit reserve barriers**
- Bulletproof windows**
- Customer convenience counters**
- Drive-in windows (bay, flush, counter and the like)**
- Fire doors**
- Quick depositories**
- Receiving lockers, heads or chests**
- Safes**
- Safety deposit boxes**
- Surveillance and security systems**
- Television banking systems**
- Teller rails and lockers**
- Vaults**
- Vault doors (automatic, manual, emergency and the like)**
- Vault ventilators**

* * * * *

§ 31.12. Imposition of tax.

* * * * *

(b) *Sales activities*. Imposition of tax on sales activities shall conform with the following:

(1) A contractor who, in addition to performing construction activities, makes sales at retail, as defined by the TRC, of tangible personal property is deemed to be a

vendor and is required to register with the Department for the collection and remission of tax upon the sales which he makes. **Construction contractors renting equipment to other contractors shall apply for a license under the act and collect tax with respect to these rentals.**

* * * * *

CHAPTER 46. CONSTRUCTION CONTRACTORS

(Editor's Note: As part of this proposed rulemaking, the Department is proposing to delete the text of §§ 46.2, 46.3, 46.6 and 46.9, 61 Pa. Code pages 46-1, 46-3 and 46-5—46-8, serial pages (265805) to (265807) and (265809) to (265812).)

- § 46.2. (Reserved).
- § 46.3. (Reserved).
- § 46.6. (Reserved).
- § 46.9. (Reserved).

[Pa.B. Doc. No. 05-2314. Filed for public inspection December 16, 2005, 9:00 a.m.]

DEPARTMENT OF TRANSPORTATION

[67 PA. CODE CH. 173]

Flashing or Revolving Lights on Emergency and Authorized Vehicles

The Department of Transportation (Department), under 75 Pa.C.S. §§ 4571, 4572 and 6103 (relating to visual and audible signals on emergency vehicles; visual signals on authorized vehicles; and promulgation of rules and regulations by department), proposes to amend Chapter 173 (relating to flashing or revolving lights on emergency and authorized vehicles) to read as set forth in Annex A.

Purpose of Chapter

This proposed rulemaking provides the limitations and requirements for flashing and revolving lighting on emergency and authorized vehicles. The purpose of Chapter 173 is to set forth the nature, display, color, standards and configuration for flashing, revolving and oscillating lights that may be displayed on emergency and authorized vehicles.

Purpose of the Proposed Rulemaking

The purpose of this proposed rulemaking is to provide greater flexibility and lighting options to ensure that emergency and authorized vehicles have adequate flashing or revolving lights. The proposed rulemaking allows the use of flashing and revolving lights which were not envisioned or available at the time the regulations were originally adopted. The proposed rulemaking also clarifies the flashing or revolving lighting options and requirements for an unmarked police car.

This proposed rulemaking reflects the joint effort of the State Police and the Department. The State Police also solicited advice and recommendations from local police departments and other law enforcement officials throughout this Commonwealth, as well as members of the emergency lighting industry.

Summary of Significant Amendments

Section 173.2 (relating to definitions) has been amended to include within the definition of "flashing light" lights that flash as a result of any other means providing an intermittent change in intensity to a viewer. This broader language is an acknowledgement that there are multiple different technologies for causing lights to flash. The broader language will allow the use of other kinds of flashing lights.

Section 173.3(a)(5) (relating to display requirements) has been amended to allow authorized vehicles to display one or more flashing or revolving yellow lights consistent with the language of 75 Pa.C.S. (relating to the Vehicle Code). Prior to its amendment in 2001, 75 Pa.C.S. § 4572(b) permitted authorized vehicles to display one or two flashing or revolving yellow lights. The 2001 amendment removed the two light maximum. Authorized vehicles are now permitted under 75 Pa.C.S. § 4572(b) to display one or more flashing or revolving yellow lights.

Section 173.3(a)(8), regarding utility lights, has been added. Examples of uses of utility lights include lights used to illuminate the blade of a snow plow. This is helpful to the driver of the plow because it helps him see the edge of the plow. It is also helpful for motorists who pass snow plows to insure that they also see the edge of the plow to ensure that they stay clear of it.

Section 173.3(b) was amended to remove the 360° flashing light visibility requirement for unmarked police cars. However, the proposed rulemaking requires unmarked police cars to provide visibility to vehicles approaching from the front and the rear.

Section 173.3(d) was amended to provide specific mounting locations for police vehicles, emergency vehicles other than police vehicles and authorized vehicles. The authorized locations have been broadened to allow for the use in previously unauthorized locations to ensure visibility of the lights.

Section 173.4 (relating to wiring) has been amended to be consistent with current industry standards for wiring.

Persons and Entities Affected

This proposed rulemaking affects owners of emergency and authorized vehicles who are qualified to display flashing or revolving lights.

Fiscal Impact

Implementation of this proposed rulemaking will not require the expenditure of any additional funds by the Commonwealth or local municipalities. This proposed rulemaking will not impose any additional costs on the regulated community and may reduce costs by providing more lighting options for emergency and authorized vehicles.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on December 6, 2005, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Transportation Committees. A copy of this material is available to the public upon request.

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

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

Sunset Provisions

The Department will make this proposed rulemaking effective upon final-form publication following appropriate evaluation of comments, suggestions or objections received during the period allowed for public comment. The Department is not establishing a sunset date for these regulations, since these regulations are needed to administer provisions required under 75 Pa.C.S. The Department, however, will continue to closely monitor these regulations for their effectiveness.

Public Comments

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to Raymond Rugh, Chief, Equipment Division, 17th and Arsenal Boulevard, Harrisburg, PA 17120 within 30 days of the publication of this proposed rulemaking in the Pennsylvania Bulletin.

Contact Person

The contact person for technical questions about this proposed rulemaking is Lawrence Allen, Equipment Division, 17th and Arsenal Boulevard, Harrisburg, PA 17120, (717) 787-2123.

ALLEN D. BIEHLER, P. E., Secretary

Fiscal Note: 18-404. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 67. TRANSPORTATION

PART I. DEPARTMENT OF TRANSPORTATION

Subpart A. VEHICLE CODE PROVISIONS

ARTICLE VII. VEHICLE CHARACTERISTICS

CHAPTER 173. FLASHING OR REVOLVING LIGHTS ON EMERGENCY AND AUTHORIZED VEHICLES

§ 173.1. Purpose.

This chapter pertains to the nature, display, color, minimum performance standards and configuration of flashing, oscillating or revolving lights that are permissible for display by emergency and authorized vehicles.

§ 173.2. Definitions.

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

* * * * *

Flashing light—A light designed to flash by current interruption, oscillation [of the lamp or current, or by revolution of the lamp] or by any other means providing an intermittent change in intensity when the light is observed from a fixed position.

* * * * *

Intersection light—A flashing red [light device, mounted on the upper portion of each front fender of an emergency vehicle, and used as a part of the flashing or revolving light system to enhance the visibility of an emergency vehicle as it approaches or travels through an intersection], blue, white or

clear light used as part of a flashing or revolving light system to enhance the visibility of an emergency vehicle as it approaches or travels through an intersection.

* * * * *

Light-bar assembly—A device designed and constructed to provide and display more than one steady burning, flashing, oscillating or revolving [beam of] light.

Oscillation—[ovement] Movement back and forth between two or more points, including the alternation between the maximum and minimum voltage.

* * * * *

Unmarked police vehicle—A police vehicle not equipped with a roof-mounted light-bar assembly. The vehicle may display graphics, markings or decals, identifying the agency or department.

§ 173.3. Display requirements.

(a) Color. White, clear, red, blue, amber or yellow are the only colors permitted for use in flashing or revolving lights.

(1) Chromaticity coordinates. A flashing [or], revolving or oscillating light [shall comply with] must meet or exceed the Chromaticity Coordinates, CIE 1931, Standard Colorimetric System as provided in SAE Standard J578d, Color Specification for Electrical Signal Lighting Devices, September 1978 or subsequent SAE Standards. This requirement does not apply to flashing headlamp systems.

(2) Red lights. A vehicle may display red lights [as follows:] as provided by 75 Pa.C.S. § 4571 (relating to visual and audible signals on emergency vehicles).

[(i) Under 75 Pa.C.S. § 4571 (relating to visual and audible signals on emergency vehicles), an emergency vehicle, as defined in 75 Pa.C.S. § 102 (relating to definitions), shall be equipped with one or more flashing or revolving red lights.

(ii) Under 75 Pa.C.S. § 4571, Pennsylvania Public Utility Commission vehicles used for the enforcement of 66 Pa.C.S. Chapters 23 and 25 (relating to common carriers; and contract carrier by motor vehicle and broker) may be equipped with flashing or revolving red lights.]

(3) Blue lights. [Under] A vehicle may display blue lights as provided for by 75 Pa.C.S. § 4572(a) (relating to visual signals on authorized vehicles)[, ambulance personnel, owners and handlers of dogs used in tracking humans, and volunteer firefighters may each equip one personal vehicle with no more than two flashing or revolving blue lights or one light-bar assembly containing no more than two blue lights. Only blue lights may be used on the light-bar assembly]. Vehicles described in 75 Pa.C.S. § 4572(a) may be equipped with a light-bar assembly using only blue lights. See Figure 3.1.

(4) Combination red-and-blue lights. [Under] Vehicles listed under 75 Pa.C.S. § 4571(b)[, police, sheriff, coroner, medical examiner or fire police vehicles may be equipped with flashing or revolving blue lights in addition to red lights—combination red-and-blue lights] may display combination

red-and-blue lights. The privately-owned vehicles [of a police chief, assistant police chief, fire police captain and fire police lieutenant] listed under 75 Pa.C.S. § 102 (relating to definitions of an emergency vehicle) shall be equipped under [paragraph (2)] 75 Pa.C.S. § 4571(a).

(5) *Yellow or amber lights.* A vehicle may display yellow or amber lights as follows:

(i) Under 75 Pa.C.S. § 4572(b), an authorized vehicle as defined in 75 Pa.C.S. § 102 and designated in Chapter 15 (relating to authorized vehicles and special operating privileges) may be equipped with [no more than two] flashing or revolving yellow or amber lights or one or more light-bar [assembly] assemblies containing [no more than two] only yellow or amber lights. [Only yellow or amber lights may be used on the light-bar assembly.] See Figure 3.1.

* * * * *

(ii) An authorized vehicle which is used in the construction, repair or maintenance of a bridge or highway may be equipped with traffic control emergency directional light assemblies.

(iii) Emergency vehicles may be equipped with [no more than two] yellow or amber lights, in addition to [one] traffic control emergency directional light [assembly] assemblies. Yellow or amber lights shall be mounted on the rear of the vehicle or shall face rearward.

(6) *White or clear lights.* In addition to flashing or revolving red or combination red-and-blue lights, an emergency vehicle may be equipped with a flashing headlamp system and no more than one flashing [or], revolving or oscillating white or clear light, except [that] an emergency vehicle may be equipped with a light-bar assembly containing no more than [two] three flashing [or], revolving or oscillating white or clear lights. This section does not include preemptive traffic control devices.

(i) When the light-bar assembly contains three flashing, revolving or oscillating white or clear lights, the center light must be mounted to flash white or clear light only to the front.

(ii) When the vehicle is stationary, the light-bar assembly may not display white or clear light to the rear.

(iii) Flashing [or], revolving or oscillating white or clear lights and flashing headlamp systems may only be used in conjunction with the flashing or revolving red or combination red-and-blue lights. Flashing [or], revolving or oscillating white or clear lights and flashing headlamp systems that are not used in conjunction with flashing or revolving red or combination red-and-blue lights do not constitute visual signals under 75 Pa.C.S. § [§] 3325 [and 4571] (relating to duty of driver on approach of emergency vehicle[; and visual and audible signals on emergency vehicles]) and 75 Pa.C.S. § 4571.

[(ii) Flashing headlamp systems are to be used under 75 Pa.C.S. § 4306 (relating to use of multiple-beam road lighting equipment).]

(7) *Steady burning lights.* [Unauthorized colored, white or clear] Red, blue, amber or yellow nonflashing or nonrevolving lights—steady burning lights—may [not] be used in conjunction with flashing or revolving lights[, except for steady burning lights used on emergency vehicles as specified in 75 Pa.C.S. § 4571(a) and (b)(3)]. [These lights, which include flood lights and other steady burning lights, may be used only while the vehicle is stationary, except that a police officer, sheriff or deputy sheriff operating a police or sheriff vehicle may use these lights while the vehicle is in motion, if the lights are used only for the purpose of an emergency, or for the safety of the public or in the enforcement of the law.]

(8) *Utility lights.* Clear or white forward or side facing steady burning utility lights (that is, take down, alley, spotlight) may not be used for emergency warning purposes. These lights may be used while the vehicle is in motion or stationary for the purpose of an emergency, for the safety of the public or in the enforcement of the law.

(9) *Other lights.* A vehicle, other than those identified in this [subsection] chapter, may not be equipped with lights or systems identical or similar to those specified by this subsection, except that school buses and urban mass transit buses which will be used for carrying school children may be equipped with flashing lights as permitted by 75 Pa.C.S. §§ 4552(b) and 4553(a) (relating to general requirements for school buses; and general requirements for other vehicles transporting school children), and Chapter 15 and Chapter 171 (relating to school buses and school vehicles).

[(9)] (10) * * *

(b) *360° visibility.* [When] Except for unmarked police vehicles, when flashing or revolving red, blue, yellow or amber lights are mounted on a vehicle, one or more of these lights shall be mounted to provide visibility to vehicles approaching from any direction (360° visibility), regardless of the method of mounting. [Emergency vehicles equipped with flashing or revolving red or blue lights mounted on or behind the grille are not exempt from this subsection.]

(1) When only one light is used to provide 360° visibility, this light shall be in compliance with SAE Standard J845, 360° Emergency Warning Lamps, [January 1984] May 1997 or subsequent SAE Standards.

* * * * *

(3) [For emergency vehicles, 360° visibility shall be provided by one or more red lights.

(4) Vehicles that are equipped with a light-bar assembly are presumed to have met the 360° visibility requirements when the flashing or revolving light configuration is visible to vehicles approaching from any direction.]

When the combination of lights are mounted on an unmarked police vehicle, these lights shall be mounted to provide visibility to vehicles approaching from the front and rear, regardless of the method of mounting.

(c) *Flash rate.* The flash rate, when observed from a fixed position, [shall] must be between 60 and [120] 260 flashes per minute. When the flash rate is produced

by the interruption of current, the period of illumination [**shall**] **must** be long enough to permit the bulb to come to full brightness.

(d) *Mounting location.* The following applies to mounting locations for flashing or revolving lights:

(1) *Emergency vehicles, except police vehicles.* Flashing or revolving lights, excluding flashing headlamp systems, may be permanently mounted on the vehicle or attached to a mounting device, in a workmanlike manner, in the following locations only:

* * * * *

(iii) [**On the front of a dump truck bed.**]

[(iv)] Behind, **in front of**, or on the grille of emergency vehicles. A flashing light may [**not**] be mounted so [**that it flashes through the grille, except that no more than two flashing red or blue lights, excluding light-bar assemblies, may be mounted so**] as to flash through or in front of the grille on emergency vehicles when the vehicle is also equipped with one or more flashing or revolving red lights that meet the 360° visibility requirements of subsection (b).

[(v) Close] (iv) **With respect to fender intersection lights, close** to the front upper edge of each front fender of an emergency vehicle and not protruding more than 2 inches from the fender[, **with respect to intersection lights**].

(v) **Inside of existing vehicular lighting modules/assemblies, such as headlights, parking lights and taillights. This does not include reverse lights.**

(A) **This subsection does not include private vehicles used for answering emergency calls as defined by 75 Pa.C.S. § 102.**

(B) **Vehicles mounting lights as outlined in this subsection shall also mount, in another location, flashing or revolving lights that meet the 360° visibility requirements. This does not include reverse lights.**

(2) [**Traffic control emergency directional light assemblies shall be rear-facing only and may not interfere with permanently installed lights. These assemblies**] *Police vehicles.* Flashing or revolving lights may be permanently mounted on the vehicle or attached to a mounting device, in a workmanlike manner, in the following locations only:

(i) [**Underneath or behind light-bar assemblies.**

(ii) **On the rear deck, inside or outside of the vehicle.**

(iii) **On the trunk lid.]**

(i) **On a cab or roof of the vehicle.**

(ii) **No more than 18 inches above the highest fixed point of the vehicle.**

(iii) **With respect to combination red-and-blue lights only, behind, in front of or on the grille. Police vehicles mounting lights as outlined in this subsection must also mount flashing or revolving lights in another location visible from the front of the vehicle.**

(iv) **Inside the passenger compartment, clearly visible through the front windshield. (See original equipment manufacturer for mounting locations.)**

(v) **Inside the passenger compartment, clearly visible through the rear window.**

(vi) **In or on the trunk lid.**

(vii) **Inside of existing vehicular lighting modules/assemblies, such as headlights, parking lights, taillights (not including reverse lights). Police vehicles mounting lights as outlined in this subsection must also mount, in another location, flashing or revolving lights visible from the front and rear of the vehicle.**

(viii) **With respect to flashing lights only, within the nondriver's compartment-side window.**

(ix) **With respect to combination red-and-blue lights, in a location visible from the front and rear of the vehicle.**

(x) **With respect to fender intersection lights, close to the front upper edge of each front fender of a police vehicle and not protruding more than 2 inches from the fender.**

(xi) **With respect to motorcycles, at a location in accordance with the manufacturer's specifications.**

(3) *Authorized vehicles.*

(i) **Flashing or revolving lights may be permanently mounted on the vehicle or attached to a mounting device, in the following locations only:**

(A) **On a cab, cab protector or roof of the vehicle.**

(B) **No more than 18 inches above the highest fixed point of the vehicle.**

(C) **On the front or rear of the bed or body of an authorized vehicle.**

(D) **On the tailgate of an authorized vehicle.**

(E) **In a location other than as set forth in subparagraphs (i)–(iv) as needed to comply with the 360° requirement in this section.**

(ii) **The installation or use of additional flashing or strobe lights in existing vehicular lighting modules/assemblies, such as headlights, parking lights, taillights, is expressly prohibited.**

(4) *Traffic control emergency directional light assemblies.* Traffic control emergency directional light assemblies may not interfere with permanently installed lights. These assemblies may be permanently mounted on the vehicle or attached to a mounting device, in a workmanlike manner, in the following locations only:

(i) **Underneath, behind or built in the light-bar assemblies.**

(ii) **Anywhere visible through the rear windshield, inside, or outside of the vehicle.**

(iii) **In or on the trunk lid.**

(iv) **At any other temporary location if a magnetic base is used.**

(v) **On the rear of emergency vehicles owned by a fire company.**

(vi) **On the roof, bed or gate of an authorized vehicle which is used in the construction, repair or maintenance of a bridge or highway.**

(e) *Mounting devices.* Flashing or revolving lights, excluding flashing headlamp systems, grille-mounted flashing lights and intersection lights, may be mounted on one of the following devices:

* * * * *

(4) Grommet mounting is acceptable for flush mounted flashing lights.

§ 173.4. Wiring.

Wiring shall be installed using the industry's best practices.

(1) Wiring shall be [permanently installed in the vehicle. Separate fuses shall be utilized for the flashing or revolving light system to prevent failure of the standard lighting equipment of the vehicle if the flashing or revolving lights fail] primary SAE rated and be of proper gauge to handle applied load. Ground wiring shall be of equal gauge.

(2) Wiring may not be loaded to more than 80% of its rated capacity.

(3) The wiring shall be permanently installed and routed through the vehicle in a manner to avoid short circuits or interfering with the operation of the vehicle.

(4) Grommets shall be used when wires pass through bulkheads and other sharp metal surfaces.

(5) Each accessory will be protected with the proper circuit protection as recommended by the manufacturer (that is, fuses or circuit breakers). The main circuit protection will be as close to the power source as possible.

(6) Additional wiring installed for emergency equipment may not impede or compromise the original equipment manufacturer circuits or original equipment manufacturer equipment functions as intended by the vehicle manufacturer.

(7) Tapping power off of original equipment manufacture circuits, such as in fuse blocks, shall be only as recommended by the vehicle manufacturer. Tapping power off air bag or ABS brake and brake light circuits is prohibited.

(8) These requirements do not apply to flashing or revolving lights that are attached to a vehicle with a magnetic base.

[Pa.B. Doc. No. 05-2315. Filed for public inspection December 16, 2005, 9:00 a.m.]

[67 PA. CODE CH. 105]

Mechanical, Electrical and Electronic Speed-Timing Devices

The Department of Transportation (Department), under 75 Pa.C.S. §§ 3368, 4571, 4572 and 6103, proposes to amend Chapter 105 (relating to mechanical, electrical and electronic speed-timing devices) to read as set forth in Annex A.

Purpose of Chapter

Chapter 105 governs the calibrating and testing of mechanical, electrical and electronic speed-timing devices by stations appointed by the Department.

Purpose of the Proposed Rulemaking

The purpose of this proposed rulemaking is to allow the State Police to use additional electronic speed-timing technologies and devices, that is, Moving Radar (Radio Detection and Ranging) and Lidar (Light Detection and

Ranging), to measure vehicle speed in the enforcement of speed limit restrictions throughout this Commonwealth.

Summary of Significant Amendments

Section 105.12a (relating to application of subchapter) has been amended to include both moving RADAR and LIDAR within the scope of this chapter. Subsequent sections have also been amended to include these new technologies.

Section 105.16 (relating to calibration and testing procedures for moving RADAR and LIDAR) has been added to provide standards and procedures for the calibration and testing of moving RADAR and LIDAR devices.

Sections 105.33, 105.34, 105.54, 105.55, 105.75 and 105.95 have also been amended to clarify that test results and other information is to be recorded on forms approved by the Department, but not necessarily provided by the Department.

Persons and Entities Affected

This proposed rulemaking affects the State Police, manufacturers of speed-timing devices and the businesses that service these devices.

Fiscal Impact

Implementation of this proposed rulemaking will not require the expenditure of any additional funds by the Commonwealth or local municipalities, although expenditure by the State Police to purchase the new technology is to be anticipated. This proposed rulemaking will not impose any additional costs on the regulated community and may reduce costs by providing more speed-timing options for use by the State Police.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on December 5, 2005, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Transportation Committees. A copy of this material is available to the public upon request.

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

Sunset Provisions

The Department will make this proposed rulemaking effective upon final-form publication following appropriate evaluation of comments, suggestions or objections received during the period allowed for public comment. The Department is not establishing a 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, however, will continue to closely monitor these regulations for their effectiveness.

Public Comments

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to Peter Gertz, Bureau of Motor Vehicles, 3rd Floor, Riverfront Office Center, 1101 South Front Street,

Harrisburg, PA 17104, pgertz@state.pa.us within 30 days of the publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

Contact Person

The contact person for technical questions about this proposed rulemaking is Douglas P. Cohn, Bureau of Motor Vehicles, 3rd Floor, Riverfront Office Center, 1101 South Front Street, Harrisburg, PA 17104, (717) 783-5845.

ALLEN D. BIEHLER, P. E.,
Secretary

Fiscal Note: 18-405. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 67. TRANSPORTATION

PART I. DEPARTMENT OF TRANSPORTATION

Subpart A. VEHICLE CODE PROVISIONS

ARTICLE VI. OPERATION OF VEHICLES

CHAPTER 105. MECHANICAL, ELECTRICAL AND ELECTRONIC SPEED-TIMING DEVICES

Subchapter B. ELECTRONIC DEVICES (RADAR, MOVING RADAR AND LIDAR)

§ 105.12a. Application of subchapter.

This subchapter governs the calibration and testing of electronic devices—RADAR, **Moving RADAR and LIDAR**—for use only by members of the State Police, under 75 Pa.C.S. § 3368(c)(2) (relating to speed timing devices).

§ 105.14. Required equipment.

The following equipment is required for the operation of a maintenance and calibration station. Suitable manufacturers and model numbers are listed, however, equivalent equipment or an alternative technique **is acceptable if it is approved by the [Communications Division] Bureau of Patrol, Patrol Services Division, State Police [is acceptable] or meets the requirements in the United States Department of Transportation, National Highway Traffic Safety Administration (NHTSA), Technical Report, Model Minimum Performance Specifications or any subsequent amendments to those specifications:**

* * * * *

§ 105.15. Calibration and testing procedure for RADAR.

(a) *General.* **[An electronic] A RADAR device shall be calibrated and tested as follows:**

* * * * *

(c) *Certificates of accuracy.* These forms, provided by the Department, shall be filed for each **[electronic] RADAR device calibrated and tested.**

* * * * *

(3) One duplicate copy shall be forwarded to the **[Communications Division] Bureau of Patrol, Patrol Services Division, State Police.**

* * * * *

(d) **[Electronic device—radar—] RADAR calibration.** Technical data forms provided by the State Police **[Communications Division]**, shall be filed for each **[electronic] RADAR device calibrated and tested.**

(1) One original shall be forwarded to the **[Communications Division] Bureau of Patrol, Patrol Services Division, State Police.**

* * * * *

§ 105.16. Calibration and testing procedure for moving RADAR and LIDAR.

(a) **A moving RADAR or LIDAR device shall be calibrated and tested as set forth in the United States Department of Transportation, National Highway Traffic Safety Administration (NHTSA), Technical Report, Model Minimum Performance Specifications for Police Traffic Radar Devices and Model Minimum Performance Specifications for Lidar Speed Measurement Devices and any subsequent amendments to those specifications.**

(b) *Maintenance work-order.* **A maintenance work-order containing the following information shall be completed and forwarded to the Bureau of Patrol, Patrol Services Division, State Police:**

- (1) Serial number of the electronic device.
- (2) Work performed and date of same.
- (3) Original complaint, if any.
- (4) Actual repairs performed, if any.
- (5) Amount of time taken to repair unit.
- (6) Manufacturer's stock number of all equipment replaced.
- (7) Total labor cost.
- (8) Individual part prices for all equipment replaced.
- (9) **The name and address, class, serial number, and expiration date of the operator's license of the individual conducting the test. The testing individual shall also sign and date the maintenance work order. Maintenance performed must conform with Federal Communications Commission rules and regulations pertaining to radio location devices.**

(c) *Certificates of accuracy.* These forms, provided by the Department, shall be filed for each moving RADAR or LIDAR device calibrated and tested.

(1) The original shall be filed at the State Police station.

(2) One duplicate copy shall be retained by the maintenance and calibration station for at least 2 years.

(3) One duplicate copy shall be forwarded to the Bureau of Patrol, Patrol Services Division, State Police.

(4) One duplicate copy shall accompany the electronic device.

(5) A duplicate copy, executed and signed in the same manner as the original, has the same force and effect as the original.

(d) *Moving RADAR and LIDAR calibration.* Technical data forms provided by the Bureau of Patrol, Patrol Services Division, shall be filed for each device calibrated and tested.

(1) One original shall be forwarded to the Bureau of Patrol, Patrol Services Division, State Police.

(2) One duplicate copy shall be retained by the maintenance and calibration station for at least 2 years.

(3) A duplicate copy, executed and signed in the same manner as the original, has the same force and effect as the original.

Subchapter C. SPEEDOMETERS

§ 105.33. Required equipment.

* * * * *

(b) Periodic testing of speedometer testing equipment. Periodic testing of equipment shall be conducted as follows:

* * * * *

(2) Forms. A form [provided] approved by the Department shall be completed by a certified speedometer inspection mechanic after each periodic test. The form shall be released to the State Police Inspection Station Supervisor or Department representatives, if verification of the test is necessary. A duplicate copy, executed and signed in the same manner as the original, has the same force and effect as the original.

§ 105.34. Manner of testing speedometers.

* * * * *

(b) Forms. The following forms are required:

* * * * *

(2) A Certificate of Speedometer Accuracy, a form [provided] approved by the Department, shall be completed after a speedometer test or repair and signed by the Department speedometer inspection mechanic. A copy of the certificate shall be kept on file at the [speedometer] speedometer testing station for at least [2] 3 years. A duplicate copy, executed and signed in the same manner as the original, has the same force and effect as the original.

Subchapter D. ELECTRONIC DEVICES (NONRADAR) WHICH MEASURE ELAPSED TIME BETWEEN TWO SENSORS

§ 105.54. Calibration forms.

Certificates of accuracy, [provided] approved by the Department, shall be filed for electronic devices calibrated and tested as follows:

* * * * *

(2) One duplicate copy shall be retained by the maintenance and calibration station for at least [2] 3 years.

* * * * *

§ 105.55. Testing forms.

Technical data forms, [provided] approved by the Department, shall be filed for electronic devices tested as follows:

* * * * *

(2) One duplicate copy shall be retained by the maintenance and calibration station for at least [2] 3 years.

* * * * *

Subchapter E. STOPWATCHES

§ 105.75. Manner of testing.

* * * * *

(b) Forms. Upon determining that a stopwatch is accurate, a stopwatch testing station shall issue a certificate of accuracy on a form [provided] approved by the Department. The certificate shall contain the date of the test and the signature of the person who conducted the test. The certificate shall be kept on file for at least [2] 3 years. A duplicate copy, executed and signed in the same manner as the original, has the same force and effect as the original.

Subchapter F. ELECTRONIC DEVICES (NONRADAR) WHICH CALCULATE AVERAGE SPEED BETWEEN ANY TWO POINTS

§ 105.95. Manner of calibration and testing.

* * * * *

(c) Calibration forms. Certificates of accuracy, [provided] approved by the Department, shall be filed for electronic devices calibrated and tested as follows:

* * * * *

(2) One duplicate copy shall be retained by the maintenance and calibration station for at least [2] 3 years.

* * * * *

(d) Testing forms. Technical data forms, [provided] approved by the Department, shall be filed for electronic devices tested as follows:

* * * * *

(2) Two duplicate copies shall be retained by the maintenance and calibration station for at least [2] 3 years.

* * * * *

[Pa.B. Doc. No. 05-2316. Filed for public inspection December 16, 2005, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 59]

[L-00050172]

Gas Service; Safety Code

The Pennsylvania Public Utility Commission, on February 3, 2005, adopted a proposed rulemaking order amending § 59.33(b) (relating to safety) so that future amendments to 49 CFR Parts 191—193 and 199 are automatically adopted by the Commission.

Executive Summary

By Order entered on February 8, 2005, at Docket No. L-00050172, the Commission adopted a Proposed Rulemaking Order to amend § 59.33(b). The purpose of the proposed rulemaking is to modify the current language of § 59.33(b) so that future amendments to 49 CFR Parts 191—193 and 199 can be automatically adopted by the Commission, unless the Commission determines that the amendments should not become effective.

Under the current language of § 59.33(b), the Commission is required to review, ratify and publish new Federal pipeline safety regulations prior to adopting the Federal safety standards for natural gas transmission and distribution facilities. The proposed amendment to § 59.33(b)

will eliminate the current burdensome review and ratification process that unnecessarily delays incorporation of amendments to the Federal safety standards. Specifically, the Commission's Gas Safety Division will eliminate several hundred hours from the amount of time it currently spends on regulatory review and approval.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on December 7, 2005, the Commission submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Committees. A copy of this material is available to the public upon request.

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

Public Meeting held
February 3, 2005

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

Proposed Rulemaking Amending 52 Pa. Code § 59.33(b)
(Gas Service; Safety Code); Doc. No. L-00050172

Proposed Rulemaking Order

By the Commission:

Through the instant rulemaking order, the Commission is soliciting comments concerning proposed amendments to § 59.33(b) of the Commission's regulations, 52 Pa. Code § 59.33(b). Section 59.33(b) sets forth the minimum safety standards for all gas transmission and distribution facilities in Pennsylvania. The purpose of the rulemaking is to modify the current language of § 59.33(b) so that future amendments to 49 CFR Parts 191—193 and 199 are automatically adopted by the Commission, unless the Commission determines that the amendments should not become effective.

Currently, § 59.33 (b) provides the procedure by which the Commission adopts, except as otherwise indicated, the Federal safety standards for natural gas transmission and distribution facilities. The Federal standards have been established by the United States Department of Transportation (DOT) as set forth in 49 U.S.C.A. §§ 60101, et seq., and as implemented in 49 CFR Parts 191, 192, 193 and 199. Section 59.33(b) provides, in pertinent part, that amendments to Title 49 will become effective in Pennsylvania upon the date of entry of a Commission ratification order when that order is served upon all jurisdictional natural gas companies or, alternatively, upon the date of such order's publication in the *Pennsylvania Bulletin*.

We now propose specific changes to § 59.33(b) in order to eliminate the requirements that the Commission review, ratify, and publish new Federal pipeline safety regulations or, alternatively, serve all jurisdictional gas utilities with a Commission order ratifying the new Federal regulations. Additionally, we propose to add language that automatically adopts future amendments to 49

CFR Parts 191—193 and 199, unless notice is provided in the *Pennsylvania Bulletin* that identifies specific amendments or modifications that shall not be adopted by the Commission.

Accordingly, under sections 501 and 1501 of the Public Utility Code, 66 Pa.C.S. §§ 501 and 1501, 45 P. S. §§ 1201—1202, and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2, and 7.5, section 204(b) of the Commonwealth Attorneys Act, 71 P. S. § 732.204(b), section 5 of the Regulatory Review Act, 71 P. S. § 745.5, and section 612 of The Administrative Code of 1929, 71 P. S. § 232, we propose to amend our regulations as set forth in Annex A; *Therefore,*

It Is Ordered That:

1. The proposed rulemaking be opened to consider the regulation set forth in Annex A.

2. The Secretary shall submit this order and Annex A to the Office of Attorney General for review as to form and legality.

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

4. The Secretary shall submit this order and Annex A for review and comment by the designated standing committees of both Houses of the General Assembly, and for review and comment by the Independent Regulatory Review Commission.

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

6. Within 30 days of this order's publication in the *Pennsylvania Bulletin*, an original and 15 copies of any comments concerning this order should be submitted to the Pennsylvania Public Utility Commission, Attention: Secretary, P. O. Box 3265, Harrisburg, PA, 17105-3265. Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Sherri Delbiondo, Regulatory Coordinator, Law Bureau, at (717) 772-4597 or through the AT&T Relay Center at (800) 654-5988.

7. The contact persons for this rulemaking are (technical) Paul J. Metro, Chief, Gas Safety Division, (717) 787-1063 and (legal) Jaime M. McClintock, Assistant Counsel, Law Bureau, (717) 783-2811.

JAMES J. MCNULTY,
Secretary

Fiscal Note: 57-238. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 59. GAS SERVICE

SERVICE AND FACILITIES

§ 59.33. Safety.

* * * * *

(b) *Safety code.* [**Unless otherwise authorized by the Commission, the**] **The** minimum safety standards for all gas transmission and distribution facilities in this Commonwealth shall be those issued under the pipeline safety laws as found [**at**] **in** 49 U.S.C.A. §§ 60101—

60503 and as implemented in 49 CFR Parts 191—193 and 199, including all subsequent amendments thereto [which have been reviewed by the Commission and ratified by an order published in the *Pennsylvania Bulletin* or alternatively served on all jurisdictional gas utilities. The date the Commission's order is entered, or in the case of publication, the date of publication in the *Pennsylvania Bulletin* shall serve as the effective date of the amendments]. Future Federal amendments to 49 CFR Parts 191—193 and 199, as amended or modified by the Federal government, shall have the effect of amending or modifying the Commission's regulations with regard to the minimum safety standards for all gas transmission and distribution facilities. The amendment or modification shall take effect 60 days after the effective date of the Federal amendment or modification, unless the Commission publishes a notice in the *Pennsylvania Bulletin* stating that the amendment or modification may not take effect.

* * * * *

[Pa.B. Doc. No. 05-2317. Filed for public inspection December 16, 2005, 9:00 a.m.]

[52 PA. CODE CH. 63]

[L-00050170]

Regulation of Interexchange Carriers and Services

The Pennsylvania Public Utility Commission, on March 23, 2005, adopted a proposed rulemaking order proposing to codify provisions of Act 138 of 2004, which enacts an amended version of the original Chapter 30 providing for regulatory reform of the telephone industry in this Commonwealth.

Executive Summary

Under 66 Pa.C.S. § 3018 (relating to interchange telecommunications carrier), jurisdictional interexchange telecommunications carriers (IXCs) have been excused from the traditional obligation to file tariffs, tariff supplements, or tariff revisions that contained the rates, provisions, rules and regulations governing the offering of their respective competitive services. This rulemaking eliminates regulations that require IXCs to file tariffs for intraState competitive services and establishes a permissive detariffing policy for the statutory categories of competitive services offered by IXCs.

The regulations ensure that the intraState, interexchange market more closely resembles a traditional unregulated market. IXCs are required to disclose to the public information about the rates, terms and conditions of all of their respective competitive services at their business location during regular business hours and at their Internet websites.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on December 7, 2005, the Commission submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Committees. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objec-

tions to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Commission, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Meeting held
March 23, 2005

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

Proposed Rulemaking for Revision of Chapter 63 of Title 52 of the Pennsylvania Code Pertaining to Regulation of Interexchange Telecommunications Carriers And Service; Doc. No. L-00050170

Proposed Rulemaking Order

By the Commission:

Introduction

On December 1, 2004, Act 183, P.L. 1398, 66 Pa.C.S. §§ 3011, et. seq. (Act 183) became effective. Act 183 enacts an amended version of the original Chapter 30, which provided for the regulatory reform of the telephone industry in Pennsylvania. This Proposed Rulemaking Order proposes to codify provisions of Act 183 related to IXCs. Through this rulemaking, we will eliminate regulations that require IXCs to file tariffs for intraState competitive services and will establish a permissive detariffing policy for the statutory categories of competitive services offered by IXCs. We will also clarify various terms, impose a new public notice requirement on IXCs, and change the jurisdictional forum relating to the processing of consumer complaints against IXCs.

Background

Historically, we had declined to exercise jurisdiction over resellers of intraState, interexchange telephone services as public utilities.¹ However, by a Final Rulemaking Order entered September 20, 1991, at L-00900054, we finalized regulations that codified our view that interexchange resellers are public utilities subject to our jurisdiction under Pennsylvania State law and modified the definition of "interexchange carrier" to include the subgroup of interexchange resellers. See 22 Pa.B. 1554. The regulations were codified at 52 Pa. Code §§ 63.111—63.118, and became effective April 4, 1992.

Since all IXCs were now considered jurisdictional public utilities, they have been under the traditional requirement of filing tariffs. See 66 Pa.C.S. § 1302. However, on July 8, 1993, the General Assembly enacted the original Chapter 30 of the Public Utility Code, 66 Pa.C.S. §§ 3001—3009, which, among other things, modified and streamlined our procedures related to the regulation of IXCs. The original Chapter 30 included a provision that gave us the option of requiring IXCs to file tariffs or price lists for their competitive services. 66 Pa.C.S. § 3008(b).

On December 28, 1993, we entered an Order at L-00940099 prescribing interim guidelines for the regulation of IXCs under the original Chapter 30. Despite the fact that we had been granted the option to discontinue

¹ The Commission had initially determined that resellers were not public utilities as defined in 66 Pa.C.S. § 102 because they did not own or operate facilities or equipment utilized to transmit messages. Nevertheless, the Commission determined that its initial view and interpretation of the statutory term "equipment and facilities" was too narrow. See 22 Pa.B. 1554. As a result, the Commission promulgated regulations so as to clarify and codify the policy that resellers of interexchange telephone services are subject to Commission jurisdiction as public utilities. Id. The above-mentioned regulations were codified at 52 Pa. Code §§ 63.111—63.118.

the tariff filing requirement for competitive services offered by IXCs, we directed all jurisdictional IXCs to continue to submit tariffs for all of their services until further notice.

Subsequently, we determined that it was necessary that our interim guidelines regarding the regulation of IXCs under the original Chapter 30 be permanently established in the context of a proposed rulemaking. Accordingly, by a Declaratory Order entered January 10, 1995, we adopted a revised set of interim guidelines and initiated a comprehensive rulemaking at the same L-docket proposing regulations to be codified at 52 Pa. Code §§ 63.101—63.107. The proposed regulations were published in the *Pennsylvania Bulletin* on April 15, 1995. See 25 Pa.B. 1418.

By a Final Order entered April 29, 1997, we promulgated final regulations to implement and codify the effect of the original Chapter 30 on our procedures related to the regulation of IXCs. See 27 Pa.B. 3217. The regulations contained streamlined procedures applicable to the statutory categories of existing competitive services, new competitive services and noncompetitive services. The regulations also established procedures related to reclassification of services offered by IXCs. Nevertheless, the final regulations did not definitively prescribe IXCs from continuing to file tariffs or tariff supplements for their competitive services. 52 Pa. Code §§ 63.103 and 63.104.

On December 1, 2004, Act 183 became effective. Act 183 enacted an amended version of the original Chapter 30 that had expired pursuant to a sunset provision. In particular, Act 183 addressed specifically regulation of IXC intraState services and operations. However, unlike the previous version of Chapter 30, Act 183 initiated a permissive detariffing policy for the competitive services of IXCs. See Act 183, P. L. 1398, 66 Pa.C.S. § 3018(B)(2). Essentially, IXCs have been excused from the traditional obligation to file tariffs, tariff supplements, or tariff revisions that contained the rates, provisions, rules and regulations governing the offering of their respective competitive services. Accordingly, we are initiating this comprehensive rulemaking in order to revise our existing regulations related to IXCs so that they are consistent with the provisions of Act 183.

Discussion

We seek to codify the effect of Act 183, which establishes a permissive detariffing policy for the competitive services offered by IXCs. *Id.* IXCs have been operating in an increasingly competitive economic environment and continuing to require IXCs to file tariffs for their competitive services is a regulatory burden that could impede the operation of a competitive intraState, interexchange market in Pennsylvania. Moreover, tariffs were originally required to protect consumers from unjust, unreasonable, and discriminatory rates in a virtually monopolistic market, but have become unnecessary for this purpose in an increasingly competitive market—if a consumer is of the opinion that the rates of a particular IXC are unreasonable, the consumer can simply switch to a competing provider that offers better rates to them.

Additionally, tariffs may have the effect of impeding competition and market efficiency because, pursuant to the filed-rate doctrine, the carrier can only charge the consumer the rate set forth in the tariff. See *Bell Tel. Co. of Pennsylvania v. Pennsylvania Public Utility Commission*, 417 A.2d 827 (Pa. Cmwlth. 1980); see also 66 Pa.C.S. § 1303. Consequently, a carrier is prohibited from offering a better competitive rate, term or condition to a consumer for a competitive service set forth in its tariff.

The carrier would have to go through the administrative process of modifying its tariff, which even under a streamlined form of regulation could take some time and the IXC could possibly lose the interest of that consumer in the meantime.

We also note that the Federal Communications Commission (FCC) recently adopted a complete detariffing policy under which it no longer requires nondominant interstate, domestic, interexchange carriers to file tariffs for their interstate, domestic interexchange services. See *Common Carrier Bureau Extends Transition Period for Detariffing of Consumer Domestic Long Distance Services*, CC Docket No. 96-61, Public Notice, DA 01-282 (rel. Feb. 5, 2001).

Accordingly, we believe that promulgating regulations that establish a detariffing regime IXC competitive services not only codifies the effect of the detariffing policy embodied in Act 183, but also ensures that the intraState, interexchange market more closely resembles a traditional unregulated market.

While we recognize the benefits of establishing a detariffing policy for the competitive services of IXCs, we acknowledge that consumers in the competitive marketplace, especially residential and small business customers, will need information in order to compare IXCs' competitive service offerings. We believe that the absence of sufficient information about competitive services may result in consumers not having the ability to choose the service offering that best suits their individual needs. Consumers must have information concerning the rates, terms and conditions of interexchange services in a detariffed regime and we are concerned about the disclosure of such information to consumers. In fact, the reason that we continued to mandate the filing of tariffs even after the enactment of the original Chapter 30 was because we were concerned about "the potential loss of benefits that will result from the complete absence of up-to-date information regarding the competitive services of IXCs that currently operate in the Commonwealth . . ." See December 28, 1993 Order at 6.

Under a detariffed regime, the public disclosure requirements set forth in the state consumer protection law will now govern the relationship between customers who use the competitive services of IXCs. However, in addition to these public disclosure requirements, we propose in our regulations that IXCs establish public disclosure locations where they will make information on current rates, terms, and conditions for all of their competitive service offerings available to the public. We propose that IXCs disclose to the public information about the rates, terms and conditions of all of their respective competitive services at their business location during regular business hours. Additionally, we propose to require that IXCs with Internet websites post information concerning the rates, terms and conditions of service of all their competitive services on their Internet websites. The information should be in an easy-to-understand format for the customer. Furthermore, we propose that IXCs should post their rate and service information at both places in a timely and easily accessible manner and update such information regularly. We believe that requiring such public disclosure is in the public interest and will provide important protections to consumers and we will enforce these public disclosure requirements.²

² We advise the IXC community that Act 183 has not superceded the applicability of section 1501 of the Code and, thus, our authority to resolve IXC-related complaints. See Act 183, P. L. 1398, 66 Pa.C.S. § 3018(D)(1); see also *AT&T v. Pa. PUC*, 568 A.2d 1362 (Pa. Cmwlth.) (Court held that quoting telephone rates to customers is a "service" under the Public Utility Code).

Conclusion

Through this proposed rulemaking, we propose comprehensive regulations that will govern the future regulation of interexchange carriers consistent with the mandate of Act 183.³ In particular, we propose to eliminate those regulations in Chapter 63 that require IXCs to file tariffs for their competitive services. During this rulemaking process and until such time as the proposed regulations receive final regulatory approval, we are granting a general waiver of our regulations in the *Pennsylvania Code* that require IXCs to file tariffs at the Commission for competitive services. In fact, we advise all IXCs that they may immediately cancel their respective competitive services tariffs and withdraw any pending tariff supplements during this rulemaking process. If any IXC chooses to cancel its tariffs and withdraw its pending tariff supplements, we advise them to file a letter with the Bureau of Fixed Utility Services that clearly indicates that the IXC has elected to detariff its competitive services.

Nevertheless, IXCs that choose to cancel their tariffs and withdraw tariff supplements will be under a legal obligation to disclose to their individual customers the respective rates, terms and conditions of service as their relationship will become governed by state contract law and the applicable public disclosure requirements set forth in the state consumer protection law.⁴ Accordingly, the Commission advises consumers to contact the Pennsylvania Office of Attorney General's Bureau of Consumer Protection Division in order to learn about the protections and remedies available under their state contract and consumer protection laws.

At this time, the Commission is proposing to amend Chapter 63 by deleting Subchapters H and I and creating one Subchapter that establishes regulations for all jurisdictional IXCs. This proposed rulemaking will set forth a single Subchapter H and regulations that specifically deal with, but are not limited to, the following:

- (1) clarification of definitions relating to IXCs as public utilities;
- (2) elimination of tariff requirements for all designated IXC competitive services;
- (3) implementation of public notice requirements relating to IXC competitive services and prices;
- (4) designation that consumer IXC complaints that contain allegations about notice requirements under state contract or state consumer protection laws will be transferred by Bureau of Consumer Services to the Office of Attorney General for enforcement.

IXC requirements appearing elsewhere in our regulations remain intact and are not amended, revised or affected by the newly proposed regulations presented herein as Annex A.

We seek input from participants in the intraState interexchange market and are requesting comments from them as well as from any other interested member of the public. Interested parties will have 30 days from the publication of this Order to file their initial comments. We advise those that will be submitting comments in this proceeding to include specific section references to the proposed regulations. Reply comments will be due 15 days from the last date of the 30-day comment period. We are committed to completing the revisions to our proce-

dural regulations in a timely fashion and, therefore, no extensions will be granted for the filing of comments. Accordingly, pursuant to sections 501 of the Public Utility Code, 66 Pa.C.S. § 501 and sections 201 and 202 of the act of July 31, 1968, P. L. 769 No. 240, 45 P. S. §§ 1201—1202, and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2 and 7.5, we amend the regulations as previously noted and as set forth in Annex A; *Therefore, It Is Ordered That:*

- 1. A rulemaking proceeding is hereby initiated at this docket to consider the revisions to regulations appearing in Chapter 63 as set forth in Annex A.
- 2. The Secretary shall submit a copy of this order and Annex A to the Office of Attorney General for preliminary review as to form and legality.
- 3. The Secretary shall submit a copy of this order, together with Annex A, to the Governor's Budget Office for review of fiscal impact.
- 4. The Secretary shall submit this order and Annex A for review and comments by the designated standing committees of both houses of the General Assembly, and for review and comments by Independent Regulatory Review Commission.
- 5. The Secretary shall certify this order and Annex A and deposit them with Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
- 6. A copy of this order and Annex A shall be served upon the Office of Consumer Advocate, the Office of Small Business Advocate, the Office of Trial Staff and all jurisdictional intraState interexchange carriers.
- 7. Interested persons may submit an original and 15 copies of written comments to the Office of the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg PA, 17105-3265 within 30 days from the date this order is published in the *Pennsylvania Bulletin*. Reply comments will be due 15 days from the last date of the 30-day comment period. One copy of a diskette containing the comments in electronic format should also be submitted. A courtesy copy of all written comments shall be served upon the Commission's Law Bureau, ATTN: Assistant Counsel David E. Screven. No extensions shall be granted for the filing of comments.
- 8. Comments should include, when appropriate, a numerical reference to the proposed regulation which the comment addressed, any proposed language for revision and a clear explanation for the recommendation.
- 9. Contact person for this matter is David E. Screven, Law Bureau (legal), (717) 787-2126 and Rhonda Stover, Bureau of Fixed Utility Services (technical), (717) 787 7703.

JAMES J. MCNULTY,
Secretary

Fiscal Note: 57-239. No fiscal impact; (8) recommends adoption.

Annex A
TITLE 52. PUBLIC UTILITIES
PART I. PUBLIC UTILITY COMMISSION
Subpart C. FIXED SERVICE UTILITIES
CHAPTER 63. TELEPHONE SERVICE
Subchapter H. [**INTEREXCHANGE**
TELECOMMUNICATIONS CARRIERS]
INTEREXCHANGE CARRIERS

³ See February 4, 2005 Secretarial Letter, *Re: Tariff Requirements Pursuant to Act 183*, 66 Pa.C.S. § 3018, Docket No. M-00051869.
⁴ See 73 P. S. §§ 201-1—201-9.2.

(*Editor's Note:* The Commission is proposing to delete the current version of §§ 63.101—63.107, which appear at 52 Pa. Code pages 63-42, 63-43 and 63-47—63-52, serial pages (246484), (246485) and (232271)—(232276), and replace them with the sections that follow.)

§ 63.101. Statement of purpose and policy.

On December 1, 2004, the General Assembly enacted sections 3011—3019 of the code (relating to alternative form of regulation of telecommunications services), which provided for the regulatory reform of the telephone industry in this Commonwealth. Sections 3018 and 3019(b) of the code (relating to interexchange telecommunications carrier; and additional powers and duties) have significant effect on the future regulation by the Commission of intraState interexchange telecommunications carriers, which include interexchange transporters and interexchange resellers. The purpose of this subchapter is to codify the application of Chapter 30 of the code (relating to alternative form of regulation of telecommunication services) to intraState, interexchange telecommunications carriers and to codify the modification of procedures to address the application of Chapter 30 of the code.

§ 63.102. Definitions.

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

Clear and conspicuous manner—Information that is legible, stated in plain language and printed in 10-point type or larger.

Code—The Public Utility Code, 66 Pa.C.S. §§ 101—3316.

Competitive services—Interexchange services other than noncompetitive services.

Interexchange facilities-based carrier—A person or entity whose facilities carry intraState interexchange service on a wholesale or retail basis through line, wire, cable, microwave, radio wave, satellite or other analogous facilities owned or operated by it. An interexchange transporter may also provide interexchange services as a reseller.

Interexchange reseller carrier—A person or entity which directly or indirectly acquires intraState interexchange service capacity and establishes rates to sell interexchange service through the use of technology to a residential or nonresidential subscriber or consumer and who is not an interexchange transporter.

Interexchange services—The transmission of interLATA or intraLATA toll messages or data outside the local calling area.

Interexchange telecommunications carrier—

(i) A public utility, including both interexchange reseller carrier and interexchange facilities-based carrier, as those terms are defined in this section, authorized by the Commission to provide intraState interexchange service on a wholesale or retail basis.

(ii) The term does not include a local exchange telecommunications company authorized by the Commission to provide intraState, interexchange services.

Noncompetitive services—The term only includes those interexchange services or business activities that have been determined expressly by the Commission to be noncompetitive under § 63.105 (relating to reclassification of services).

§ 63.103. Jurisdiction of interexchange resellers and transporters.

Under the definition of “public utility” in section 102 of the code (relating to definitions), a person or corporation now or hereafter owning or operating in this Commonwealth equipment or facilities for transmitting intraState interexchange services is subject to Commission jurisdiction as a public utility. Interexchange resellers and interexchange transporters own or operate equipment or facilities utilized for the transmission of interexchange services and therefore, under the statutory definition of “public utility” are jurisdictional.

§ 63.104. Disclosure requirements for competitive services.

(a) All services, new or existing, offered by interexchange telecommunications carriers are deemed competitive.

(b) An interexchange telecommunications carrier may maintain tariffs and file tariff supplements with the Commission that set forth the rates, charges and service description information relating to each of its competitive services. If an interexchange telecommunications carrier files a tariff or a tariff supplement with the Commission for its competitive services, it shall become effective on 1-day's notice.

(c) If an interexchange telecommunications carrier chooses to detariff its competitive services, it shall make available for public inspection information concerning the rates, charges, terms and conditions for its competitive services in an easily accessible and clear and conspicuous manner at the following locations:

(1) At the interexchange telecommunications carrier's principal office, if it is located within this Commonwealth, or the designated office of the utility during regular business hours.

(2) At the website of the interexchange telecommunications carrier.

(d) An interexchange telecommunications carrier shall update information concerning changes in rates, charges, terms and conditions for its competitive services at its principal office and its Internet website no later than 48 hours after the effective date of the change so it provides the current information concerning service offerings.

(e) An interexchange telecommunications carrier that chooses to detariff its competitive services shall disclose to customers their right to request information concerning the rates, charges, terms and conditions for its competitive services and shall provide contact information for this purpose.

(f) This section supersedes Chapter 53 (relating to tariffs for noncommon carriers) to the extent that Chapter 53 is inconsistent with this section.

§ 63.105. Reclassification of services.

(a) The Commission has authority, under section 3018(c) of the code (relating to interexchange telecommunications carrier), after notice and an opportunity for a hearing, to reclassify interexchange services as a noncompetitive service.

(b) The Commission will review whether a competitive service should be reclassified as a noncompetitive service within the scope of a Commission investigation conducted under section 331(a) of the code (relating to powers of commission and administrative law judges), or upon consideration of a complaint filed under section 701 of the code (relating to complaints).

(c) When reviewing whether a service should be reclassified, the Commission will consider the following factors:

(1) The ease of entry by potential competitors into the market for the specific service at issue.

(2) The presence of other existing interexchange telecommunications carriers in the market for the specific service at issue.

(3) The ability of other interexchange telecommunications carriers to offer the service at competitive prices, terms and conditions.

(4) The availability of like or substitute service alternatives in the relevant geographic area for the service at issue.

(5) Other factors deemed relevant by the Commission.

§ 63.106. Noncompetitive services and tariffs.

(a) A noncompetitive service, as defined in § 63.102 (relating to definitions), offered by an interexchange telecommunications carrier shall be included in a tariff filed in compliance with sections 1302 and 1303 of the Code (relating to tariff filing and inspection; and adherence to tariffs).

(b) Modifications to the rates, terms or conditions of the noncompetitive service set forth in the interexchange carrier's tariff shall be implemented through the filing of a tariff supplement and verified supporting documentation. The interexchange telecommunications carrier shall serve the tariff supplement on the Office of Consumer Advocate, the Office of Small Business Advocate and the Commission's Office of Trial Staff. The interexchange telecommunications carrier shall provide notice to the customer of the proposed change to the noncompetitive service within 45 days of the filing.

(c) The tariff supplement and verified supporting documentation must contain the following information:

(1) An indication on each page of the tariff supplement that the page pertains to the noncompetitive service.

(2) A description of the noncompetitive service.

(3) The rates proposed for the noncompetitive service.

(4) Supporting data justifying the proposed rates for the noncompetitive service.

(5) An executive overview summarizing the reason for the filing which includes relevant information regarding the safety, adequacy, reliability and privacy considerations related to the proposed service.

(6) Other reasonable justification or any relevant data that is requested by the Commission.

(d) The interexchange telecommunications carrier may not submit cost justification, cost-of-service or revenue data relating to the proposed change as directed in subsection (c)(4) if the following applies:

(1) The proposed change does not purport to increase an existing rate or surcharge.

(2) The proposed change to the noncompetitive service is designed to make the rates, terms or conditions for that service comparable to the rates, terms and conditions that have been approved by several other State commissions.

(e) The noncompetitive service tariff supplement shall be filed to become effective on 16-days' notice by the interexchange telecommunications carrier.

(f) Review of noncompetitive service tariff supplements shall be conducted consistent with the following procedures:

(1) Within 14 days of the date of filing, the Commission will issue a notice allowing the tariff supplement to become effective or issue a report which explains why the tariff supplement may not become effective without modification. The report must identify modifications which would eliminate inadequacies in the tariff supplement. The Commission will deliver or transmit the notice or report to the filing interexchange telecommunications carrier at the time of issuance.

(2) When the Commission issues a notice allowing the tariff supplement to go into effect, the tariff supplement shall become effective, without modification, 16 days after the filing date. If the Commission does not issue a notice or report on the tariff supplement within the 14-day period, the tariff supplement will go into effect by operation of law at the end of the 16-days' notice period.

(3) When the Commission prohibits a tariff supplement from going into effect and issues a report addressing the inadequacies in the tariff supplement, the tariff supplement shall be suspended pending consideration of the tariff supplement under paragraphs (4) and (5).

(4) The filing interexchange telecommunications carrier may file a response to the suspension of the carrier's tariff supplement. The response shall be filed within 7 days of the issuance of the report.

(5) In the alternative, the interexchange telecommunications carrier may withdraw the tariff supplement and file a new tariff supplement which adopts the modifications addressed in the report or which reflects a version of the tariff supplement that has been agreed to by the carrier and the Commission. When a modified tariff supplement is filed, the modified tariff supplement shall become effective on 1-day's notice.

(g) An interexchange telecommunications carrier requesting rate decreases for its existing noncompetitive services shall be permitted to put them into effect at the end of the specified 16-day notice period without further review or approval by the Commission.

(h) An interexchange telecommunications carrier requesting changes in the terms and conditions of its existing noncompetitive services, when the changes do not result in any rate changes, shall be permitted to put them into effect at the end of the specified 16-day notice period without further review or approval by the Commission.

(i) This section supersedes Chapter 53 (relating to tariffs for noncommon carriers) to the extent that Chapter 53 is inconsistent with this section.

§ 63.107. Applications for authority.

(a) An applicant shall specifically indicate in the application for authority to commence service that it is requesting authorization to provide interexchange services to the public and comply as closely as possible with § 3.551 (relating to official forms). The Commission may not make a distinction between certificates of public convenience for interexchange facilities-based carriers and interexchange reseller carriers.

(b) If an applicant is offering noncompetitive services to the public, it shall attach a proposed tariff to its application containing the proposed rates of the noncompetitive services and the rules and policies under which the interexchange telecommunications carrier intends to provide its service. Rates for noncompetitive services provided for in the proposed tariff may not exceed the reasonable charge for a noncompetitive interexchange call as defined in § 63.102 (relating to definitions).

(c) In addition to review of the general evidentiary criteria applicable to interexchange telecommunications carrier application proceedings, the Commission will review the proposed tariff to determine if it complies with subsection (b). The Commission will grant applications only upon a finding that the proposed tariff complies with subsection (b). If the proposed tariff complies with subsection (b), the Commission will presume that the rates for the noncompetitive services contained in the tariff are just and reasonable.

(d) Upon the grant of an application for authority to commence interexchange service, the applicant proposing to offer noncompetitive services shall file an initial tariff with the Commission for its noncompetitive services only. The initial tariff must contain the same rates, rules and policies for the noncompetitive services as set forth in the proposed tariff reviewed by the Commission. The initial tariff must become effective immediately upon filing. Initial tariffs must comply with §§ 53.1—53.10 and 53.21—53.26 (relating to filing regulations; and form and contents of tariffs).

(e) Upon the grant of an application for authority to commence interexchange service, a new interexchange telecommunications carrier may file or maintain with the Commission tariffs containing the rates, terms and conditions for its competitive services. If the new interexchange telecommunications carrier files a tariff with the Commission, the tariff shall become effective on 1-day's notice.

(f) If a new interexchange telecommunications carrier chooses to detariff its competitive services, the information regarding the rates, terms and conditions for its competitive services shall be made available at the public disclosure locations established in § 63.104(c) (relating to disclosure requirements for competitive services). The new carrier shall post the information at the public disclosure locations within 48 hours of the date that its application to commence interexchange service has been approved by the Commission.

(g) This section supersedes Chapter 53 (relating to tariffs for noncommon carriers) to the extent that Chapter 53 is inconsistent with this section.

§ 63.108. Reporting requirements.

(a) Interexchange telecommunications carriers shall file affiliated interest and affiliated transaction agreements with the Commission unless the agreements involve services declared to be competitive. The filings constitute notice to the Commission only. The Commission may use the filings to audit the accounting and reporting systems of interexchange telecommunications carriers for transactions with their affiliates.

(b) On or before May 31 of a calendar year, a certified interexchange telecommunications carrier, as defined in § 63.102 (relating to definitions), shall file with the Commission an annual report for the preceding calendar year. The annual report shall be filed with the Commission's Bureau of Fixed Utility Services.

(c) The annual report must contain aggregate total revenue and traffic volume data measured in minutes of use for the carrier's intraState operations during the preceding calendar year. Subject to data availability, some examples of the information that shall be disaggregated in the carrier's major service categories are:

(1) Message toll service (MTS) and associated services including operator assisted and calling card services.

(2) Services corresponding to outbound Wide Area Telecommunications Services (WATS).

(3) Services corresponding to inbound WATS or "800" type services.

(4) Private line or dedicated communication path services.

(5) Dedicated network type services, including virtual network type services.

§ 63.109. Enforcement.

(a) For the purpose of enforcement of consumer complaints regarding competitive services, the Commission will have jurisdiction to enforce consumer complaints that involve violations of the applicable public notice requirements established in this subchapter. Other consumer complaints, including those complaints involving violations that fall under the Unfair Trade Practices and Consumer Protection Law (73 P. S. §§ 201-1—209-6), will be referred by the Commission's Bureau of Consumer Services to the Office of Attorney General's Bureau of Consumer Protection.

(b) For the purpose of enforcement of consumer complaints related to noncompetitive services, the Commission will utilize the dispute and informal complaint procedures prescribed for residential billing disputes under Chapter 64 (relating to standards and billing practices for residential telephone service). The Bureau of Consumer Services will have primary jurisdiction over informal complaints arising under this subchapter for designated noncompetitive services.

Subchapter I. [INTEREXCHANGE RESELLERS] (Reserved)

(Editor's Note: The Commission is proposing to delete the current version of §§ 63.111—63.118, which appear at 52 Pa. Code pages 63-52—63-57, serial pages (232276) to (232280) and (244387).)

§ 63.111. (Reserved).

§ 63.112. (Reserved).

§ 63.112a. (Reserved).

§§ 63.113—63.118. (Reserved).

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