

PROPOSED RULEMAKING

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 245]

Administration of the Storage Tank and Spill Prevention Act

The Environmental Quality Board (Board) proposes to amend Chapter 245 (relating to administration of the storage tank and spill prevention program) to read as set forth in Annex A. The proposed rulemaking represents both comprehensive and minor editorial amendments to the Department of Environmental Protection's (Department) existing regulations in Chapter 245, which includes Subchapters A—H. With the exception of Subchapter D (relating to corrective action process for owners and operators of storage tanks and storage tank facilities and other responsible parties), this proposed rulemaking represents the first major amendments to Chapter 245 since the final-form rulemaking published at 27 Pa.B. 5341 (October 11, 1997), which significantly amended Subchapter A (relating to general provisions), and initially established permitting and technical requirements in Subchapters C and E—G.

This order was adopted by the Board at its meeting of December 20, 2005.

A. Effective Date

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

B. Contact Persons

For further information, contact Charles M. Swokel, Chief, Division of Storage Tanks, P. O. Box 8763, Rachel Carson State Office Building, Harrisburg, PA 17105-8763, (717) 772-5806; or Kurt Klapkowski, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Information regarding submitting comments on this proposed rulemaking appears in Section J of this preamble. Persons with a disability may use the AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposed rulemaking is available on the Department's website at www.dep.state.pa.us.

C. Statutory Authority

The proposed rulemaking is being made under section 106 of the Storage Tank and Spill Prevention Act (Storage Tank Act) (35 P.S. § 6021.106), which authorizes the Board to adopt rules and regulations governing aboveground storage tanks (AST) and underground storage tanks (UST) to accomplish the purposes and carry out the provisions of the Storage Tank Act; sections 107(d) and 108 of the Storage Tank Act (35 P.S. §§ 6021.107(d) and 6021.108), which authorize the Department to establish a certification program by regulation for installers and inspectors of storage tanks; section 301(a) and (d) of the Storage Tank Act (35 P.S. § 6021.301(a) and (d)), which requires the Department to establish a regulatory program for ASTs and a simplified program for small ASTs; sections 301(b) of the Storage Tank Act and 501(b) of the Storage Tank Act (35 P.S. § 6021.501(b)), which authorize the Department to establish classes and categories of tanks by regulation; sections 302(a) and 303(a) of the Storage Tank Act (35 P.S. §§ 6021.302(a) and

6021.303(a)), which authorize the Department to establish registration and fee requirements for ASTs; section 501(a) of the Storage Tank Act, which requires the Department to establish a regulatory program for USTs; sections 502(a) and 503(a) of the Storage Tank Act (35 P.S. §§ 6021.502(a) and 6021.503(a)), which authorize the Department to establish registration and fee requirements for USTs; section 701(a) and (b) of the Storage Tank Act (35 P.S. § 6021.701(a) and (b)), which authorizes the Board to establish regulations necessary for maintaining financial responsibility and methods of coverage; and section 1920-A of The Administrative Code of 1929 (71 P.S. § 510-20), which authorizes the Board to formulate, adopt and promulgate rules and regulations that are necessary for the proper work of the Department.

D. Background and Purpose

The Board established the initial rulemaking governing administration of the storage tank and spill prevention program with its final-form publication of Chapter 245, Subchapter A and Subchapter B (relating to certification program for installers and inspectors of storage tanks and storage tank facilities), which was published at 21 Pa.B. 4345 (September 21, 1991). In that initial rulemaking, Federal requirements in 40 CFR Part 280 (relating to technical standards and corrective action requirements for owners and operators of underground storage tanks (UST)) were adopted by reference in Subchapter A. Later, in August 1993, the Board established comprehensive corrective action process regulations when it adopted Subchapter D, which the Board last amended at 31 Pa.B. 6615. With the exception of Subchapter D, these regulations have been in use without any significant changes since amendments to Subchapters A, C, E, F and G became final in 1997 and since the last substantial amendments of Subchapter B published at 26 Pa.B. 4735 (September 28, 1996). Through the operation of these regulations over the past several years, the Department has identified many changes that are necessary to provide clarity, improvements in storage tank operations and administrative processes, and to protect public health, safety and the environment.

The proposed amendments to Subchapter A would add two new definitional terms, change several existing terms and delete one term that is no longer needed. The proposed amendments provide needed clarifications on regulated tank systems and regulated substances. This includes the re-regulation of previously regulated and subsequently exempted large ASTs storing heating oil that is consumed on the premises. These tanks pose the same risk as other large ASTs and were unintentionally exempted when definitional terms from the UST requirements in 40 CFR Part 280 were previously codified in the Commonwealth's current regulations. The Department wants to correct this and re-regulate these large aboveground heating oil tanks. The regulated substance changes include the addition of several nonpetroleum oils, bio-diesel, synthetic fluids, gasoline additives and other hazardous substances that should be properly managed in regulated storage tank systems. The proposed amendments add clarity to existing tank handling and tightness testing provisions in Subchapter A, as well as recordkeeping, reporting requirements and appropriate release detection references. The proposed rulemaking also adds comprehensive storage tank registration provisions and references the statutory registration fees in Subchapter A.

The registration procedures are representative of long-standing Department policy on storage tank registration.

The proposed amendments to Subchapter B include changes to tank installer, inspector and company certification provisions. These proposed amendments pertain to qualifications, training, testing, education and renewal of certification. These proposed amendments would place increased emphasis on training and standards of performance and reduce the number of qualifying activities required to obtain certification. Certified entities have expressed significant interest in moving from current qualifications that are based more on activities to more training qualifications, as activities in the field have declined over the years. These proposed amendments are needed to help ensure that adequate numbers of qualified installers and inspectors are certified and available to perform tank handling and inspection activities in this Commonwealth. Certified companies already incur technical and safety training costs for their certified employees and should be able to use that training to meet the proposed certification requirements. Also, the Department provides administrative training and seminars at minimal or no cost.

This proposed rulemaking would change permitting provisions in Subchapter C (relating to permitting of underground and aboveground storage tank systems and facilities), by adding clarity, simplifying certain site specific installation permit (SSIP) requirements and addressing when construction design criteria or engineering specifications may be required with permit applications. The proposed amendments would reduce paperwork and administrative processes for many SSIP applicants and combines the operating permit application and tank registration application process. Construction design criteria and engineering specifications are a necessary part of tank construction. The Department currently reviews this information for permits that require specific plans to mitigate certain conditions at the site. The proposed amendments are needed to further clarify this requirement and does not place a new burden or cost on the tank owner or SSIP applicant.

The proposed rulemaking would also amend technical standards for UST systems in Subchapter E (relating to technical standards for underground storage tanks). The most significant changes in Subchapter E involve requirements for totally contained double-wall UST systems when new or replacement UST systems are installed, changes in monitoring for releases, the need for line leak detectors that automatically shut down the system when triggered and increases in UST inspection frequencies. These proposed amendments are more restrictive than Federal requirements in 40 CFR Part 280 that allow single-wall UST systems and additional or alternative monitoring methods for leak detection. The proposed rulemaking also clarifies recordkeeping requirements and addresses additional recordkeeping requirements that are necessary to support operational compliance with both the Commonwealth's regulations and Federal requirements in 40 CFR Part 280, but are not clearly stated in the current regulations. The proposed rulemaking also contains provisions that preclude future UST internal lining, and requires removal of UST systems with failed linings. These proposed amendments are necessary due to continuing problems with releases of regulated substances to the environment, particularly from single-wall USTs, from failed lined USTs and piping systems, and due to failure of many owners or operators to properly perform leak detection or to maintain operational records. The Department is concerned about the continuing releases

and the inadequacy of storage tank leak detection and current operations. The proposed rulemaking would also provide a phase-in period of temporary exclusions from certain technical requirements or equipment upgrades needed for existing tanks that become regulated due to the addition of new regulated substances in § 245.1 (relating to definitions). Proposed amendments to UST variance provisions would allow for additional variances and promote the development and implementation of new technologies.

The proposed rulemaking would also amend technical standards for AST systems and facilities in Subchapter F (relating to technical standards for aboveground storage tanks and facilities) and requirements for small AST systems in Subchapter G (relating to simplified program for small aboveground storage tanks). The proposed rulemaking provides a phase-in period of temporary exclusions from certain technical requirements and inspection schedules needed for existing tanks that become regulated due to the definitional changes and addition of new regulated substances in § 245.1. The proposed rulemaking also contains additional information on AST system design requirements, engineering specifications and inspection or testing criteria. This should be helpful in determining when tanks are properly constructed, modified and maintained, and how best to determine suitability for service or to resolve tank system deficiencies noted during construction or inspection. Proposed amendments to AST variance provisions would allow for additional variances and encourage the development and implementation of new technologies.

Lastly, the proposed amendments to Subchapter H (relating to financial responsibility requirements for owners and operators of underground storage tanks and facilities) clarifies financial responsibility requirements established in the Storage Tank Act for appropriate methods of meeting the UST indemnification fund deductible coverage and would correct other minor errors in Subchapter H.

The Department worked closely with informal technical workgroups and advisory subcommittees, as well as the Storage Tank Advisory Committee (STAC), during development of this proposed rulemaking. The Department also met with several organizations, associations and groups, such as the Electric Power Generator Association, the National Association of State Aboveground Storage Tank Programs and the Tank Installers of Pennsylvania, a State association. The STAC, which was established by section 105 of the Storage Tank Act (35 P. S. § 6021.105), consists of persons representing a cross-section of organizations having a direct interest in the regulation of storage tanks in this Commonwealth. As required by section 105 of the Storage Tank Act, the STAC has been given the opportunity to review and comment on this proposed rulemaking. At meetings on February 5, 2002, June 4, 2002, June 3, 2003, December 9, 2003, and December 7, 2004, the STAC reviewed and discussed this proposed rulemaking. At the December 7, 2004, meeting, the STAC voted on the proposed rulemaking, and the chairperson subsequently prepared a written report on the proposed rulemaking for presentation to the Board. The STAC supported all portions of the proposed rulemaking, except for the proposal to increase registration fees. The fee increases have subsequently been removed from this proposed rulemaking. A listing of STAC members and minutes of STAC meetings are available on the PA Power Port at www.state.pa.us (PA Keyword: DEP

Storage Tanks) and may also be obtained from Charles M. Swokel, whose contact information appears in Section B of this preamble.

E. Summary of Regulatory Requirements

Subchapter A. General Provisions

§ 245.1. Definitions.

This section is proposed to be amended by adding two new definitional terms, by amending several existing definitional terms and by deleting a definitional term that is no longer needed.

The term “nontank handling project activities” is being added to correlate with proposed standards of performance changes in § 245.132 (relating to standards of performance) and to clarify that certified companies are responsible for all of the work that their employees perform while conducting tank handling or inspection activities on a storage tank project, including the work on the project that does not constitute tank handling and may be performed by noncertified employees.

The term “pipeline facilities (including gathering lines)” is being amended to clarify which tanks located along coastal, interstate or intrastate pipelines are exempted and to clarify that storage tanks that may serve dual functions at complex facilities are to be regulated under Chapter 245.

The terms “aboveground storage tank,” “certified company,” “hazardous substance storage tank system,” “person,” “tightness testing activities” and “underground storage tank” are being amended to provide clarity and to correct errors in the existing definitions. For example, the current definition of “tightness testing activities” implies that these activities only apply to USTs. The proposed amendment clarifies that the term applies to entire UST systems, which would include both tanks and piping.

The definition of “consumptive use” is being amended to reestablish Department regulation of large ASTs greater than 30,000 gallons in capacity and storing heating oil that is consumed on the premises. These large ASTs were inadvertently exempted when Federal UST regulations and definitional terms in 40 CFR Part 280 were codified in Chapter 245 in 1997.

The definition of “regulated substance” is also being amended to provide clarity and to bring under regulation several nonpetroleum oils, bio-diesel, synthetic oils, silicone fluids, gasoline additives (such as ethanol and other oxygenates) and nonpetroleum substances in 34 Pa. Code Chapter 323 (relating to hazardous substance list). These are substances that present health, safety or environmental hazards and are not currently found on the hazardous substance list from section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C.A. § 9601(14)) or are not currently regulated as a petroleum substance.

Lastly, the term “new underground storage tank system” is to be deleted. This term was adopted in 1997 from the Federal definitions in 40 CFR Part 280 and was applicable to the December 22, 1998, deadline for upgrade or removal of then existing USTs. Since that date has passed and the proposed amendments to Subchapter E refer to new UST systems in a different context, the current regulatory term is not applicable or needed.

§ 245.21. Tank handling and inspection requirements.

The proposed amendment clarifies that certified installers must either perform tank handling activities or provide direct onsite supervision and control of these

activities. The proposed amendment adds clarity to this section and correlates with standards of performance requirements in § 245.132.

§ 245.31. Underground storage tank tightness testing requirements.

The proposed amendments to this section correlate with changes in the cross referenced sections of Subchapter E and add clarity to this section. The proposed amendments also prescribe a specific timeframe of 20 days for providing a complete report and test results that correspond with other leak detection reports by third parties, such as completed statistical inventory reconciliation reports (§ 245.444(8)(ii)(A) (relating to methods of release detection for tanks)), and establishes a 10-year period for tank tightness testers to retain records of the tightness testing activities they perform. This record retention period correlates with recordkeeping requirements for tank handling and inspection activities performed by other certified installers and inspectors (§ 245.132(a)(3)).

§ 245.41. Tank registration requirements.

This new section provides tank owners with the necessary information to properly register each regulated storage tank. These proposed requirements have been program policy for several years.

Subsection (a) states that proper tank registration consists of meeting the requirements of this section and paying the appropriate registration fee in accordance with § 245.42 (relating to tank registration fees).

Subsection (b) requires tank owners to register each storage tank, on a form provided by the Department, within 30 days after installation or taking ownership of a storage tank. The registration form is available on the Department’s website at www.dep.state.pa.us (DEP Keywords: storage tanks). A regulated substance is not to be placed in a storage tank, nor is a storage tank to be operated, until an operating permit is received.

The information that must be provided by tank owners for complete registration is listed in subsection (c).

Subsection (d) indicates that a registration form also serves as an application for an operating permit. The Department may register a tank and not issue an operating permit for the reasons cited in this subsection. Certain classes of storage tanks require an SSIP prior to beginning construction. These requirements are provided in Subchapter C. The registration form discussed in this section does not serve as an application for an SSIP.

Subsection (e) sets forth registration requirements for combination tanks operating as a single unit and compartmental tanks.

Subsection (f) provides instances when tank owners need to submit an amended registration form to the Department. The registration form needs to be submitted within 30 days of the change in previously submitted information.

Subsection (g) provides that the Department may require supporting documentation to exempt or exclude a tank from regulation.

§ 245.42. Tank registration fees.

This new section provides tank owners with current tank registration fees, billing information and related procedures. Subsections (c)—(g) represent existing program policy being codified into regulation.

Subsections (a) and (b) reference the statutory tank registration fees that were established in sections 302(a) and 502(a) of the Storage Tank Act and became effective on August 5, 1989. No changes or increases are proposed in the fee amounts.

Subsection (c) provides that the Department will issue an invoice to a tank owner upon receipt of a complete registration form.

Under proposed subsection (d), registration expiration dates for storage tanks will be established on a facility basis. Upon initial registration of a storage tank, the Department will prorate the registration fee based upon the percentage of time remaining in the registration year. For example, if a storage tank is registered 2/3 of the way through a registration year, the invoice will reflect payment for 1/3 of the registration fee for that year. If a storage tank is permanently closed or exempted after the appropriate registration fee has been paid for the registration year, the Department will not refund any registration fees.

Subsection (e) states that the Department will issue a certificate of registration to the tank owner upon payment of the required registration fee. The current, valid certificate of registration must be made available for inspection by the Department, a certified individual or product distributor. At retail facilities, the certificate of registration is to be displayed so that the public can see the certificate.

In accordance with subsection (f), the Department will issue an invoice to the tank owner for the annual registration renewal of the tanks at each facility. The invoice will be issued once per year, at least 60 days prior to the expiration date of the current certificate of registration.

Subsection (g) states that registration fees are payable no later than 60 days after the invoice date, and will be delinquent 90 days after the invoice date. Since a certificate of registration (which also serves as the operating permit) will not be issued by the Department until payment of the registration fee is received, the Department highly recommends that payment be made at least 3 weeks prior to the expiration date of the current certificate. This will allow the Department to verify that sufficient funds are available to cover the payment and issue a renewal certificate prior to expiration of the current certificate.

§ 245.43. Failure to pay registration fee.

This new section proposes that Commonwealth policy and guidelines will be implemented to collect delinquent registration fees. Subsections (b) and (c) state that operating permits for storage tanks may be withheld, denied or revoked for failure to pay registration fees.

Subchapter B. Certification Program for Installers and Inspectors of Storage Tanks and Storage Tank Facilities

§ 245.102. Requirement for certification.

The proposed amendments to this section incorporate editorial changes resulting from the proposed deletion of § 245.103(a)—(c) (relating to phase-in from interim certification) and the proposed transfer of § 245.103(d) to this section as subsection (e).

The proposed amendments to subsections (a)(4) and (b)(4) allow the Department to not issue certification if the applicant is in violation of the Storage Tank Act or Chapter 245. Currently, this section requires the revocation of the applicant's certification by the Department

under § 245.109 (relating to revocation of certification). Revocation is not appropriate for new applicants or applicants currently certified and under investigation for violations. The Department may withhold action on a certification application until an investigation is complete or violations are resolved.

§ 245.103. Phase-in from interim certification.

This section is proposed to be reserved. Subsections (a)—(c) are proposed for deletion, since these subsections are no longer relevant to the certification process. Subsection (d) is proposed to be added to § 245.102 (relating to requirement for certification) as subsection (e) and modified slightly.

§ 245.104. Application for installer or inspector certification.

The proposed amendments to this section include clarification that the applicant shall use the current application form, editorial changes resulting from the proposed deletion of § 245.103 and decreasing from 120 to 60 the number of days an application shall be submitted prior to the date of the certification examination.

§ 245.105. Certification examinations.

The proposed amendment to subsection (c) clarifies the examination eligibility interval and is consistent with current information provided to the applicant.

The proposed amendment to subsection (d) reduces the passing score for the technical examination modules to 80%. This creates similar passing scores for both the administrative and technical examination modules and correlates related industry training/testing requirements.

The proposed amendments to subsection (e) eliminate the requirement that an applicant who fails an examination module twice shall complete a training program and establish an eligibility interval or timeframe for retaking the examination.

§ 245.106. Conflict of interest.

The proposed amendment to this section clarifies that tank owners may not inspect their own tanks.

§ 245.108. Suspension of certification.

The proposed amendments to this section include editorial changes and provisions that violations of the Air Pollution Control Act (35 P. S. §§ 4001—4015) or failure to perform underground tightness testing activities in accordance with requirements can result in suspension of certification.

§ 245.109. Revocation of certification.

The proposed amendments to this section are editorial changes resulting in the consistent use of terms.

§ 245.110. Certification of installers.

The proposed amendments to this section combine the individual certification categories for underground storage tank removal (subsection (b)(2)) and aboveground manufactured storage tank removal (subsection (b)(6)) into a new manufactured storage tank removal category. The Department believes that the tank removal activities are similar, thereby allowing the certified individual to remove both underground and manufactured AST systems.

Proposed amendments to subsection (b)(7) allow individuals certified in the aboveground field constructed metallic storage tank installation, modification and removal category to modify tank components of aboveground manufactured storage tank systems. Indi-

viduals certified on field constructed ASTs have the qualifications and experience to modify manufactured ASTs.

Proposed amendments to subsection (b)(8) allow an individual certified in the aboveground field constructed storage tank removal category to remove manufactured ASTs.

Proposed amendments to subsection (b)(11) clarify that an individual certified in the storage tank liner (TL) category can install and modify internal linings for underground and ASTs and evaluate UST linings.

§ 245.111. Certified installer experience and qualifications.

The proposed amendments to this section place a greater emphasis on technical and safety training as a requirement for initial category certification. The total number of required activities is proposed to be reduced based on the decrease in the overall number of tank handling activities occurring in the industry. The proposed numbers are sufficient to verify that the applicant is experienced and competent in the category. Proposed amendments to subsection (b) reduce the period in which activities are completed from 7 years to 3 years immediately prior to the application submission.

§ 245.112. Certification of inspectors.

Proposed amendments to subsection (b)(3) allow an inspector certified in the aboveground field constructed category to also inspect manufactured AST systems.

§ 245.113. Certified inspector experience and qualifications.

The proposed amendments to this section change the requirements for initial inspector certification categories. Applicants will need to document safety training appropriate for the certification category. AST system inspectors will be required to have appropriate industry inspection certification such as American Petroleum Institute (API) or Steel Tank Institute (STI) inspection certification. UST system inspectors will be required to have UST installation and modification certification and corrosion protection training. Proposed subsection (h) clarifies that underground inspectors shall complete Department inspector training prior to conducting facility operation inspections.

§ 245.114. Renewal and amendment of certification.

The proposed amendments to this section create a uniform expiration date for all categories held by an installer/inspector and phase out certification category renewal based on the number of activities completed. Certification renewal will be based on appropriate technical and safety training or passing the category specific examination or industry certification, or both. The Department will maintain the certification examination and provide administrative and inspector training.

Proposed amendments to subsection (g) clarify the time period in which certification renewal application shall be submitted. Renewal applications received more than 60 days after the expiration date of the category must meet the initial application requirements in § 245.105 (relating to certification examinations) and § 245.111 or § 245.113 (relating to certified installer experience and qualifications; and certified inspector experience and qualifications).

§ 245.121. Certification of companies.

The proposed amendments to this section clarify that a company that employs certified installers/inspectors, including underground tightness testers, shall be certified by the Department.

§ 245.122. Applications for company certification.

The proposed amendments to this section prevent the Department from issuing company certification to a company that is to be found in violation of the Storage Tank Act or Chapter 245, or that has an officer who was involved in an individual or company certification revocation.

§ 245.123. Suspension of company certification.

The proposed amendments to this section broaden the reasons for suspension of company certification and provide consistency between the reasons for individual suspension in § 245.108 (relating to suspension of certification) and company certification suspension.

§ 245.124. Revocation of company certification.

The proposed amendments to this section broaden the reasons for revocation of company certification and provide consistency between the reasons for individual revocation in § 245.109 and company certification revocation.

§ 245.125. Renewal and amendment of company certification.

The proposed amendments to this section reduce the number of days, from 120 days to 60 days prior to the company certification expiration date, that a renewal application shall be submitted. The proposed amendment to subsection (b) provides that a company certification amendment form shall be submitted within 14 days of the change in information.

§ 245.132. Standards of performance.

The proposed amendments to subsection (a)(1) remove the list of referenced organizations and instead refer directly to lists located in Subchapters E, F and G.

The other proposed amendments to this section provide editorial changes and codify the current expectations and requests made by the Department in reference letters, reporting form instructions and guidance documents.

§ 245.141. Training approval.

The proposed amendments to this section reduce the number of days, from 120 days to 60 days prior to the expiration date, that a renewal application shall be submitted. The proposed amendments also allows the Department to approve industry-recognized training without the submission of an application.

Subchapter C. Permitting of Underground and Aboveground Storage Tank Systems and Facilities

§ 245.203. General requirements for permits.

The proposed amendments this section add appropriate references to the new registration requirements in Subchapter A and add provisions allowing the Department to preclude submission of general operating permit application and to deem approval of operating permits for existing tanks that meet permitting requirements.

§ 245.222. Application requirements.

The proposed amendments to this section add to the existing references the appropriate references to administrative and technical requirements in Subchapters A and G. The referenced sections have always been applicable to

storage tank owners and operators, but were inadvertently left out of the general operating permit provisions in the previous rulemaking.

§ 245.231. Scope.

The proposed amendments add clarity to this section and simplify the SSIP application process and specific requirements for installation of storage tanks at existing facilities, for replacement storage tanks or tanks located on the footprint of previous tanks and for small ASTs that constitute a new storage tank facility with greater than 21,000-gallon aggregate storage capacity. The proposed amendments also provide for excluding certain newly regulated large aboveground heating oil tanks from the SSIP process when the owner or operator has entered into contractual agreements for construction of tanks or facilities prior to the effective date of this proposed rulemaking.

§ 245.232. General requirements.

Proposed subsection (c) refers permit applicants to the appropriate permit fee sections in the Storage Tank Act that have been applicable to SSIP applications since Subchapter C was adopted in 1997.

§ 245.234. Siting requirements.

This rulemaking proposes to add subsections that provide for submission of appropriate construction design criteria and engineering specifications when it is necessary to mitigate certain conditions at the site. The Department will not issue an SSIP if it determines that the plans are not adequate or do not mitigate the site conditions, such as potential excessive settlement or unstable support for the tank system proposed in the permit application.

§ 245.235. Environmental assessment.

The proposed amendments to this section add clarity as to the Department's role in consulting with appropriate government agencies and potentially affected persons concerning potential environmental harm addressed in the environmental assessment associated with an SSIP application.

Subchapter D. Corrective Action Process for Owners and Operators of Storage Tanks and Storage Tank Facilities and Other Responsible Parties

§ 245.311. Remedial action plan.

The proposed amendment to this section is to correct a minor editorial error in the reference to remedial action plans that may differ from prior plans submitted with the site characterization report under § 245.310(a)(25) (relating to site characterization report).

Subchapter E. Technical Standards for Underground Storage Tanks

Throughout this subchapter, references are updated that the proposed rulemaking has changed, as appropriate. Certain terms are proposed to be amended in this subchapter for consistency with the definitions in Subchapter A. It is also proposed to correct minor typographical errors.

§ 245.403. Applicability.

The proposed amendment to this section allows owners of existing UST systems that become regulated because of definition changes 60 days to register their tank systems and 3 years to complete any applicable upgrades to meet the technical requirements in Subchapter E.

§ 245.404. Variances.

Proposed amendments to this section allow variances in situations when application of technical regulations may be impractical. The Department is also proposing to clarify the status of new technologies. New technologies properly documented by a professional engineer (PE) may be considered by the Department when making the decision to grant a variance under this section.

§ 245.405. Codes and standards.

Proposed amendments to this section name sources of codes and practices that may be used for meeting the requirements in Subchapter E, to add requirements that parallel Subchapter A and to clarify that these regulations take precedence over industry standards when there is a conflict.

§ 245.411. Inspection frequency.

Proposed amendments to this section change the routine facility inspection frequency from 5 years or 10 years to 3 years for all UST systems. This proposed amendment is consistent with proposed Federal legislation. It has been generally found that more frequent inspections lead to higher compliance rates and fewer releases to the environment. In addition, the United States General Accounting Office (GAO) report to Congress in May 2001, entitled "Environmental Protection-Improved Inspections and Enforcement Would Better Ensure the Safety of Underground Storage Tanks," addressed the effectiveness of the Federal UST program, state agencies' implementation and inspection frequencies. The GAO reported that ideally USTs and facility operations should be physically inspected on an annual basis to ensure that problems are being identified and resolved quickly. Where a state or region lacks resources, tanks should be inspected no less frequently than once every 3 years to confirm tanks are being properly operated and maintained. Federal requirements in 40 CFR 280.21 and 280.31 (relating to upgrading of existing UST systems; and operation and maintenance of corrosion protection) only establish inspection requirements or frequencies for internally lined UST systems and for corrosion protection systems. However, in its formal agreements with the Commonwealth, the United States Environmental Protection Agency (EPA) has requested that additional UST facility operations inspections be conducted by the Department certified third-party inspectors. Also, section 501(c) of the Storage Tank Act directs the Department to establish a certified inspector program and inspection frequencies for USTs.

It has been proposed to exclude the first 6 months of ownership from the time period during which a new owner may have the UST facility inspected. A large portion of the facility inspection is the examination of the operation of critical systems, such as release detection equipment. It is desirable that a minimum of 6 months of operating history be accumulated to adequately assess this part of the owner's responsibilities. To simplify the language of this paragraph, it is proposed that the date that this provision becomes effective be replaced by the term, "newly installed."

The proposed rulemaking strengthens the requirements for additional inspections and adds requirements for mandatory operator training under appropriate circumstances. A proposed wording change should eliminate the occasional misinterpretation that the Department cannot compel additional inspections. Owners and operators that have noncompliant inspection results often express the need for training to better understand their responsibilities. Mandatory training is proposed as one remedy to

help owners and operators come into and maintain their compliance with Chapter 245.

§ 245.421. Performance standards for new underground storage tank systems.

Proposed amendments to this section mandate total secondary containment (double-wall) systems and an upgraded form of line leak detection for new UST systems. Federal requirements in 40 CFR 280.20 (relating to performance standards for new UST systems) allow for single-wall UST systems. However, Department records indicate that 60% of UST systems and approximately 80% of piping systems installed since 1998 already meet the double-wall requirement. The additional containment will aid in early release detection and keeping releases from reaching the environment.

To aid the Department in overseeing installers, the proposed rulemaking adds a requirement to notify the Department 30 days prior to beginning installation activities. The Department may agree to another, reasonable time frame. This is similar to the current 30-day notice requirement for UST system closure or removals in § 245.452(a) (relating to permanent closure and changes-in-service).

Changing a tank system from unregulated to regulated service is considered an installation. A certified installer may not have installed this system. The Board proposes to amend this section to clarify what is required of the owner when the owner plans to change an unregulated system to regulated use.

Many of the technical requirements for new and previously installed UST systems are the same. The proposed rulemaking incorporates the redundant portions of § 245.422 (relating to upgrading of existing underground storage tank systems) into this section.

The Board proposes to amend this section to clarify corrosion protection requirements for tanks, piping and other metallic components (not just steel), including ancillary equipment when it routinely contains product. Proposed amendments also clarify that wrapping with tape or similar material alone does not constitute corrosion protection. Proposed amendments clarify that a corrosion expert shall design impressed current systems.

To help ensure older systems do not become a source of new releases, it is proposed that whenever more than 30% of a piping system is replaced, the entire piping portion of the system be upgraded to total secondary containment. The proposed rulemaking clarifies the extent of the piping system as including joints and flexible connectors.

To ensure UST systems are adequately designed and safe for intended use, the proposal requires piping and related components to be approved by Underwriters Laboratory (UL listed).

A common problem is for containment sumps to collect stormwater or groundwater and not be able to perform their required function. The proposed rulemaking requires containment sumps to be liquid tight. The proposed rulemaking should not be interpreted to mean vapor tight or requiring a totally sealed lid. Rather, the sump needs to be capable of holding and retaining liquids if a release of regulated substance occurs. The sump must prevent groundwater from entering or substantial surface water from routinely accumulating in the sump. The proposed rulemaking also requires testing of containment systems at installation to demonstrate tightness. These proposed amendments help ensure that product that was

caught by a containment sump would be identified through leak detection and would not enter the environment. The proposed rulemaking is consistent with manufacturer's recommendations for installation and maintenance of containment sumps.

Current regulations require devices to prevent overflow of UST systems. Inspections have found inoperative devices and devices that do not work as intended. The Board proposes to amend this section to restrict the use of certain overflow devices to systems that can function properly. In addition, the proposed rulemaking requires testing of the required overflow device at installation.

§ 245.422. Upgrading of existing underground storage tank systems.

Upgrading UST systems has not been as successful as originally intended. The Board proposes that lining and lining combined with corrosion protection no longer be allowed to meet corrosion protection standards. The proposed rulemaking allows systems that currently use these methodologies to continue to use them as long as they are operated and maintained properly. Federal requirements in 40 CFR 280.21 allowed this method of corrosion protection to meet the 1998 upgrade deadline. The upgrade deadline has since passed, and existing UST systems should already meet corrosion protection requirements.

Tanks that were upgraded by lining alone are required to be periodically inspected. The Board proposes to codify policy in Department guidance #257-3120-001 (relating to evaluation of underground storage tank liners) into this section. This policy states that evaluations are to be done by a certified TL or qualified PE; results of the evaluation are to be submitted to the Department on the form attached to the guidance document; after a lined system fails to meet required design criteria, the tank system can no longer be used for regulated storage.

To help detect releases on older tank systems, the Board proposes that tanks over 3,000 gallons capacity must upgrade to automatic tank gauging when release detection equipment is modified or replaced and the owner is not using interstitial monitoring. The proposed rulemaking also requires that line leak detection equipment must shut off the product delivery pump. Existing systems with interstitial monitors or electronic line leak detectors will be given 2 years to meet this requirement; systems over 3,000 gallons capacity that use a mechanical line leak detector will be given 5 years to meet this requirement. Federal requirements in 40 CFR 280.44 (relating to methods of release detection for piping) also allow for line leak detectors that may only alert the operator by restricting (or slowing) the flow of regulated substances or by triggering an alarm. In many instances, these options have been ineffective and have not prevented ongoing substance releases as intended.

§ 245.423. Registration requirements.

The proposed amendments move the majority of this section to Subchapter A to clarify the requirement to register all regulated storage tank systems. See proposed § 245.41 for additional information.

§ 245.425. Reuse of removed tanks.

Proposed amendments to this section reflect changes in other portions of this subchapter and improve clarity and readability.

§ 245.432. Operation and maintenance including corrosion protection.

The proposed rulemaking renumbers paragraphs as subsections to more clearly differentiate among the listed maintenance activities.

The proposed amendments also clarify maintenance and operational requirements for owners. Clarification is proposed concerning what needs to be inspected on impressed current systems and what equipment is required to be properly maintained.

Proposed additions to subsections detail maintenance of tank linings and system containment structures. Also proposed is an addition concerning the proper maintenance of water-free petroleum products to prevent corrosion problems with the tank system and to protect the product user. The proposed amendment is consistent with Nationally recognized association and equipment manufacturer's standards.

§ 245.434. Repairs allowed.

Proposed amendments to this section include containment systems in the portion of the tank system that must be tested after a repair and to expand the recordkeeping requirements to all repairs.

§ 245.435. Reporting and recordkeeping.

The proposed rulemaking renumbers and rearranges subsections to clearly differentiate between records that shall be maintained for the operational life of a storage tank system (permanent records) and those that are required to be maintained for a limited time (temporary records). The proposed rulemaking includes extending the maintenance of permanent records to 1 year beyond permanent system closure.

The proposed rulemaking includes adding the current registration certificate as a temporary record. Further, it proposes to clarify corrosion protection operation recordkeeping requirements by splitting the entry into two detailed paragraphs. The proposed rulemaking also adds paragraphs for temporary records that were found in other parts of this subchapter, but not in this section. Specifically, these temporary records are release detection certifications, performance claims and maintenance records. It is also proposed that records of suspected release investigations be added to the temporary record category, to be maintained for 12 months.

§ 245.441. General requirements for underground storage tank systems.

§ 245.442. Requirements for petroleum underground storage tank systems.

These sections contain provisions for the phase-in of release detection requirements for older UST systems. The deadlines for upgrading have all passed. It is proposed that these sections be updated to remove the phase-in information and eliminate inventory control by 2008 and manual tank gauging for tanks greater than 1,000 gallons capacity within 10 years of the effective date of the final-form rulemaking.

In addition, a requirement is proposed to monitor interstitial spaces for releases at least once every 30 days, when practical for older systems and for all new systems, and maintain records of monitoring results for 12 months.

§ 245.444. Methods of release detection for tanks.

Proposed amendments to this section clarify the meaning of "portions of the tank that routinely contain prod-

uct" for tightness tests performed by an automatic tank gauge, as that portion of the tank up to the overfill set point.

The proposed amendments also require the replacement or certification of automatic tank gauges that do not currently have a valid third-party certification.

To meet the requirements of the Engineer, Land Surveyor and Geologist Registration Law (63 P. S. §§ 148—158.2), the proposed rulemaking adds requirements for professional geologists to perform site evaluations related to release detection methods. It is further proposed that when site evaluations are required for release detection, that the evaluation be maintained for the entire time that method is in use at the site.

§ 245.445. Methods of release detection for piping.

This section is proposed to be amended to be consistent with the upgrade requirements in § 245.422. For new and upgraded systems, the line leak detection device must shut off the flow of regulated substance when a release is detected. Federal requirements in 40 CFR 280.44 also allow for line leak detectors that may only alert the operator by restricting (or slowing) the flow of regulated substances or by triggering an alarm. In many instances, these options have been ineffective and have not prevented ongoing regulated substance releases as intended.

§ 245.451. Temporary closure.

The proposed amendments to this section include the more familiar industry term "temporary out-of-service" and narrow the definition of "temporary closure" to tanks that are empty.

Further, the proposed amendments clarify the inspection, reporting and recordkeeping requirements when a UST system is in temporary closure: corrosion protection records must be maintained as for an in-use system; suspected release investigation and release reporting must be performed as for an in-use system; facilities must continue to be inspected as for an in-use facility; and the most recent 12 months of operating release detection records must be maintained.

Finally, the proposed rulemaking limits the period of temporary closure for fully compliant UST systems to 3 years, after which the system must be permanently closed (unless the Department grants an extension).

Subchapter F. Technical Standards for Aboveground Storage Tanks and Facilities

§ 245.503. Variances.

The proposed amendments to this section are intended to allow variances in situations when application of the technical regulations may be impractical. The Department is also proposing to clarify the status of new technologies. New technologies properly documented by a PE may be considered by the Department when making the decision to grant a variance under this section.

§ 245.504. Referenced organizations.

The proposed amendments to this section reflect editorial changes to referenced organization names (titles) in subsection (a), which changed since this subchapter was originally adopted in 1997, and adds manufacturer's specifications to the Nationally recognized codes and standards referenced in subsection (c).

§ 245.505. Applicability.

This new section is intended to provide temporary exclusions for existing tanks that become regulated due to

the addition of newly regulated substances or certain reregulated heating oil tanks due to changes in the "consumptive use" and "regulated substance" terms in § 245.1. The temporary exclusions will provide phase-in periods to comply with monitoring requirements and inspection schedules that are similar to the phase-in periods provided for other existing tanks when this subchapter was originally adopted in 1997.

§ 245.514. Security.

The proposed rulemaking adds monitoring as an element of security that the tank owner or operator may include in appropriate security measures.

§ 245.522. New aboveground tank installations and reconstructions.

The proposed rulemaking adds references to STI practices or applicable engineering specifications and sound engineering practices during design, construction or reconstruction of tanks. Additional language provides that the Department may require the tank owner to submit documentation of construction design criteria and engineering specifications for review.

§ 245.523. Aboveground storage tanks in underground vaults.

The proposed amendments to this section require that underground piping distribution systems (such as piping from the tank to the product dispenser) for certain aboveground tanks in underground vaults be provided with release detection equivalent to methods of release detection provided for piping associated with UST systems in Subchapter E.

§ 245.524. Aboveground tank modifications.

The proposed rulemaking adds two additional references to Nationally recognized associations for tank modification design and the authority for the Department to require the tank owner to submit documentation of design criteria and engineering specifications for review.

§ 245.534. Interior linings and coatings.

The proposed rulemaking adds subsection (c) to address inspection requirements for tank interior linings or coatings, which correlate with the lining manufacturer or design engineer recommendations.

§ 245.541. Overfill prevention requirements.

The proposed rulemaking contains minor edits and provisions for upgrading existing tanks with high-level alarms within 3 years of the effective date of the final form rulemaking. This change is necessary because the current rules only require upgrades when tanks are taken out of service for inspection or major modification and many tanks that need high-level alarms do not require these out-of-service activities.

§ 245.542. Containment requirements for aboveground storage tank systems.

The proposed rulemaking contains minor edits, clarifications and a deadline for upgrading or meeting requirements for emergency containment structures. Reference to the Department's technical document for verification of emergency containment structures, and information on how long verification of the containment structure is valid, are also added.

§ 245.543. Leak detection requirements.

The proposed rulemaking contains clarifications and adds subsection (d) to address requirements for third-

party tank test for tightness methods and procedures consistent with industry practices and applicable National associations.

§ 245.552. In-service inspections.

§ 245.553. Out-of-service inspections.

The proposed rulemaking adds the requirement that appropriate engineering criteria and the current referenced National association standards shall be followed when conducting inspections and includes evaluation of tank system integrity and suitability for service during inspections. Additional language is proposed for determining tank service life and projecting the next inspection interval. This information specifically identifies the factors that most frequently affect service life and should, therefore, be considered when projecting the next inspection interval. Also, language is proposed to appropriately remedy inspection recommendations or findings, as well as clarification on documenting and reporting tank system modifications necessary to correct deficiencies. Additionally, § 245.553(c) (relating to out-of-service inspections) is proposed to address evaluation of the tank bottom during out-of-service inspections.

§ 245.554. Installation and modification inspections.

The proposed amendments to this section contain similar language as proposed to be added in § 245.552(e) (relating to in-service inspections) and § 245.553(f), with the same intention of clarifying actions that shall be taken in response to inspection findings involving modification inspections.

§ 245.561. Permanent closure or change-in-service.

Proposed paragraph (3) is intended to assist owners in the closure notification process by directing them to follow the process outlined in the Department's technical document entitled "Closure Requirements for Aboveground Storage Tank Systems." This is similar to the current reference in Subchapter E to UST closure requirements. Proposed language in paragraphs (6) and (8) is intended to provide clarification to existing wording and require notification to other agencies or jurisdictions when removing tanks when they have permit jurisdiction.

Subchapter G. Simplified Program for Small Aboveground Storage Tanks

§ 245.604. Referenced organizations.

§ 245.611. Testing requirements for new and substantially modified small aboveground storage tanks.

§ 245.614. Requirements for closure.

The proposed amendments to these sections reflect minor editorial changes or referenced title changes since this subchapter was originally adopted in 1997 and specific requirements for closure of piping systems.

§ 245.605. Applicability.

This proposed section is intended to provide temporary exclusions for existing tanks that become regulated due to the addition of new regulated substances in § 245.1. The temporary exclusions will provide phase-in periods to comply with containment requirements, leak detection and inspection schedules that are similar to the phase-in periods provided for other existing tanks when this subchapter was originally adopted in 1997.

§ 245.612. Performance and design standards.

The proposed amendments to this section are in response to frequent misunderstandings of the current regulations by the regulated community. The proposed

rulemaking addresses the requirement to use certified installers to accomplish tank handling activities on small ASTs and provides direction consistent with industry standards and EPA guidelines on the use of double-walled tanks to satisfy containment requirements.

§ 245.616. Inspection requirements.

The proposed amendments to this section provide additional clarity on inspection standards, determining future inspection intervals, remedies to correct deficiencies noted during inspection and reporting to the Department on corrections of deficiencies found during inspection.

Subchapter H. Financial Responsibility Requirements for Owners and Operators of Underground Storage Tanks and Storage Tank Facilities

§ 245.704. General requirements.

§ 245.707. Coverage amounts for financial responsibility.

The proposed amendments to these sections make editorial corrections and clarify appropriate methods for meeting the Underground Storage Tank Indemnification Fund (USTIF) deductible coverage for owners and operators of USTs.

F. Benefits, Costs and Compliance

Benefits

Subchapter A

The proposed amendments to definitional terms will provide clearer interpretations of current and amended regulations and will help to ensure that several hazardous and nonpetroleum substances not previously addressed, are regulated and treated like other similar (currently regulated) substances to protect public health, safety and the environment. These amendments include newly developed fuels or alternatives such as bio-diesel, synthetic fuels and potential additives such as ethanol, which may be used to replace oxygenates, such as methyl-tertiary-butyl-ether (MTBE), and could pose some risks similar to MTBE. The reregulation of many large ASTs holding heating oil will help to ensure that these tanks are operated, inspected and eventually upgraded to meet the same protective standards that other currently regulated oil tanks must meet.

The new registration provisions will provide tank owners and the Department a much needed and comprehensive publication of tank registration requirements. These requirements are currently only available through several publications such as fact sheets, program guidance and registration form instructions, and are fractionalized in several sections of the current technical and permitting rules and interim requirements in the Storage Tank Act.

Subchapter B

The proposed amendments to the installer and inspector certification provisions will provide much more flexibility for new certification candidates and renewal applicants. The increased reliance on continued training will help to ensure that certified individuals stay current with changes in industry practices, and take advantage of available recognized industry training. Proposed amendments to the company certification provisions will help to ensure that companies are held to the same standards the certified individuals are held to and provides incentive for certified companies to continue investing in training for their certified employees. The proposed amendments to standards of performance provisions will help to ensure the quality, proper verification and reporting of work by installers and inspectors.

Subchapter C

The proposed amendments to permitting provisions will help simplify the SSIP process for many applicants, while ensuring that appropriate design criteria and engineering considerations are used to mitigate specific conditions that pose potential problems at some tank sites. The proposed amendments will also clarify that the tank registration process and single application also serve as the operating permit application.

Subchapter E

The proposed amendments to UST technical requirements will help to reduce the number and significance of releases from UST systems. The proposed amendments will help to ensure that best practices and state-of-the-art storage tank systems and ancillary equipment are used, while encouraging new technologies and providing more flexibility through variance provisions. The temporary exclusions for newly regulated tanks will provide owners additional time to plan for and to meet all of the UST technical requirements. The use of totally contained (double-wall) tank systems for new or replacement systems and phase-in of specific release detection methods will significantly aid in preventing future releases and will help to identify and capture leaks before they enter the environment. Fewer and less serious releases should help lower USTIF fees in years to come. More frequent inspections will help to ensure that operational and compliance problems are identified and resolved more quickly, which should also reduce the frequency and severity of releases. Recordkeeping changes will help tank owners to substantiate compliance with current and proposed Commonwealth requirements, and current Federal UST requirements which are not as clear as they should be.

Subchapters F and G

The proposed amendments to the AST technical requirements will add clarity, needed references and increase the reliance on appropriate industry practices and publications to achieve the standards in the regulations. The additional information on AST system design requirements, engineering specifications and inspection or testing criteria should be helpful in determining when tanks are properly constructed, modified and maintained, and how best to determine suitability for service or to resolve tank system deficiencies noted during construction or inspection. The references to program guidance documents will lead persons to proven technical processes and procedures that will help them to comply with the regulatory requirements, similar to the current guidance reference in Subchapter E.

Compliance Cost

Subchapter E

The cost of the average UST facility third-party operations inspection is approximately \$350 per inspection. UST owners or operators will incur this cost every 3 years under the proposed rulemaking, rather than every 5 years or 10 years under the current inspection frequencies. The cost of installation of total secondary containment (double-wall) UST systems is approximately 15% to 30% greater than the cost of installation of single-wall UST systems. Costs will vary depending on the types of tank systems and materials used (fiberglass, steel or composite tank wall and hard or flexible piping). These costs are only incurred when new or replacement systems are installed. Approximately 150 UST systems were installed annually during the past 4 years. Department records indicate that 60% of the UST systems and

approximately 80% of piping systems installed since 1998 already meet the double-wall requirement. Costs for testing containment sumps for tightness could range from \$50 to \$100. The cost of upgrading a line leak detector that only slows product flow or sounds an alarm, to a line leak detector with an automatic pump shut-off device ranges from \$100 to \$500 depending on availability of electric service and circuitry in the current system. This cost is only incurred on existing piping systems already using an interstitial monitor or an electronic line leak detector within 2 years, and UST systems with a capacity greater than 3,000 gallons within 5 years of the effective date of the proposed rulemaking or when a line leak detector is replaced.

Generally, certified companies and tank owners should not incur significant new costs for certified individual training requirements, technical requirements to perform tests on ancillary equipment or to follow industry standards or applicable engineering practices when operating, modifying, installing or inspecting storage tank systems. These are costs that should already be incurred and industry practices that should be currently adhered to. These requirements are reinforced in several areas throughout the proposed rulemaking, but they are not new to the industry. Finally, the Department does not anticipate that it will need any new staff resources or incur significant expenditures as a result of the proposed rulemaking.

Compliance Assistance Plan

At this time, it is not anticipated that the Commonwealth will provide sources of financial assistance to aid in compliance with this proposed rulemaking.

As for technical and educational assistance, the Department currently operates a fairly extensive program of outreach activities designed to assist owners and operators of storage tanks as well as individuals. This program includes the *Storage Tank Monitor* (a periodic newsletter); a series of fact sheets that focus on single issues in the storage tank program (for example, Leak Detection: Meeting the Requirements); periodic seminars and conferences focusing on storage tank technical and administrative issues; training sessions presented by regional and central office training teams on a variety of issues; many guidance documents addressing technical and policy issues; and a great deal of information available on the Department's website. The Department will revise and update applicable fact sheets, guidance documents, forms and publications to reflect changes necessary when the proposed rulemaking is adopted.

The Department expects these efforts to continue and to intensify after adoption of this rulemaking and as phase-in deadlines approach. The Department will also communicate directly with individuals, companies, associations, organizations and groups to assist in the understanding and implementation of the final-form rulemaking.

Paperwork Requirements

Generally, there are very few new paperwork requirements established by the proposed rulemaking. The paperwork requirements addressed with the new registration provisions in Subchapter A follow current processes established by policy and ongoing routine procedures under the Storage Tank Act. By further clarifying in Subchapter C that the new storage tank registration provisions and application form will also serve as the tank operating permit application form, the proposed rulemaking precludes two separate applications. Addition-

ally, the proposed SSIP process in Subchapter C for replacement tanks, tanks located on the footprint of previous tanks and new small ASTs at facilities with an aggregate capacity greater than 21,000 gallons, includes a shortened application and less paperwork.

The certification proposals in Subchapter B will slightly reduce the application requirements for UST removers and aboveground manufactured storage tank removers, by consolidating the requirements into a single certification category. The proposed rulemaking also attempt to recognize current and ongoing industry training in certification qualifications for all installer and inspector certification categories. Most certified companies already maintain records on their employees training and will welcome recognition of the training for certification. The proposed rulemaking will also shorten the timeframe for submission of applications for approval of training providers and will allow the Department to recognize industry training without the submission of an application. For example, the Department will readily recognize training provided by equipment manufacturers and National associations or organizations such as the API, the STI and the Petroleum Equipment Institute.

The UST provisions in Subchapter E contain some new recordkeeping requirements and further clarification of current requirements. However, most of the proposed amendments are necessary to demonstrate operational compliance with current regulations and the Federal requirements in 40 CFR Part 280 and represent National association and manufacturer's recommendations for installation or operation of UST systems and ancillary equipment.

Finally, there are proposed provisions in Subchapters C, F and G that indicate the Department may request or require the tank owner to submit documentation of construction design criteria and engineering specifications for review. The provisions are addressed in the context of mitigating certain conditions at the storage tank site or correcting inspection findings or deficiencies on AST systems. Tank owners should already be consulting with tank manufacturers, certified companies and design engineers on these issues. The Department anticipates its use of these provisions will be very limited.

G. Pollution Prevention

Generally speaking, the term "pollution prevention" refers to the minimization of waste generated in a commercial process by altering that process. The storage tank program has a slightly different approach. The goal is to keep regulated substances from being released at all. The programs in this proposed rulemaking and in the current regulations are designed to halt the release and spread of regulated substances from storage tanks in this Commonwealth. They create a program similar to the cradle-to-grave process with the goal of making sure that the storage tank is installed, maintained, operated, closed and removed in a manner that will minimize the likelihood of a release occurring. If a release does occur, these amendments and the current regulations are designed to detect the release quickly, contain it if possible, and make sure that corrective action is carried out expeditiously, minimizing exposure to the public and the environment.

In this proposed rulemaking, the Department is attempting to reach or improve upon these goals through a combination of performance standards, with built-in flexibility (including the possibility of a variance) as to how the regulated community achieves the goals, and reliance on industry standards, and trained industry profession-

als. By taking this approach, the Department hopes to reduce pollution, lower the number of corrective actions that must eventually be performed, decrease the amounts of contaminated soil and groundwater that must be dealt with, and do so in a manner that is flexible, reasonable and cost effective.

H. *Sunset Review*

The regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 7, 2006, 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 Environmental Resources and Energy 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.

J. *Public Comments*

Written Comments—Interested persons are invited to submit comments, suggestions or objections regarding the proposed rulemaking to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 15th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by June 29, 2006. Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by June 29, 2006. The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final-form rulemaking will be considered.

Electronic Comments—Comments may be submitted electronically to the Board at RegComments@state.pa.us and must also be received by the Board by (within 60 days following publication in the *Pennsylvania Bulletin*). A subject heading of the proposed rulemaking and a return name and address must be included in each transmission. If an acknowledgement of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

KATHLEEN A. MCGINTY,
Chairperson

Fiscal Note: 7-395. No fiscal impact; (8) recommends adoption.

Annex A

**TITLE 25. ENVIRONMENTAL PROTECTION
PART I. DEPARTMENT OF ENVIRONMENTAL
PROTECTION**

**Subpart D. ENVIRONMENTAL HEALTH AND
SAFETY**

ARTICLE VI. GENERAL HEALTH AND SAFETY

**CHAPTER 245. ADMINISTRATION OF THE
STORAGE TANK AND SPILL PREVENTION
PROGRAM**

**Subchapter A. GENERAL PROVISIONS
GENERAL**

§ 245.1. Definitions.

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

Aboveground storage tank— One or a combination of stationary tanks with a capacity in excess of 250 gallons, including the underground pipes and dispensing systems connected thereto within the emergency containment area, which is **used, will be used** or was used to contain an accumulation of regulated substances, and the volume of which, including the volume of piping within the storage tank facility, is greater than 90% above the surface of the ground. The term includes tanks which can be visually inspected, from the exterior, in an underground area. The term does not include the following, or pipes connected thereto:

* * * * *

***Air Pollution Control Act*—The Air Pollution Control Act (35 P. S. §§ 4101—4106)**

* * * * *

Certification categories—Individual certification categories issued to certified installers or certified inspectors to perform tank handling, tightness testing or inspection activities on aboveground or underground storage tank systems and facilities. The term includes category specific certifications in one or more of the following:

(i) Storage tank inspector certification categories:

(A) IAF—Inspection of aboveground field constructed and aboveground manufactured storage tank systems and facilities.

(B) IAM—Inspection of aboveground manufactured storage tank systems and facilities.

(C) IUM—Inspection of underground storage tank systems and facilities.

(ii) Storage tank installer certification categories:

(A) ACVI—Aboveground storage tank civil installation and modification.

(B) AFMX—Aboveground field constructed metallic storage tank installation, modification and removal, and aboveground manufactured metallic storage tank modification.

(C) AFR—Aboveground field constructed storage tank removal.

(D) AMEX—Aboveground storage tank mechanical installation, modification and removal.

(E) AMMX—Aboveground manufactured metallic storage tank installation and modification.

(F) AMNX—Aboveground nonmetallic storage tank installation and modification.

(G) MTR—Manufactured storage tank removal.

(H) TL—Storage tank liner installation and modification.

(I) UMX—Underground storage tank system installation and modification.

(J) UTT—Underground storage tank tightness tester.

Certified company—An entity, including, but not limited to, a sole proprietorship, a partnership or a corporation, which is [authorized by this title] certified by the Department and employs certified installers or certified inspectors to conduct tank handling activities, tightness testing activities or inspection activities [using certified installers or certified inspectors, or both].

* * * * *

Consumptive use—The term means, with respect to heating oil, that which is stored in an aboveground storage tank of 30,000 gallons or less capacity or that which is stored in an underground storage tank and is consumed on the premises.

* * * * *

Hazardous substance storage tank system—

(i) A storage tank system that contains a hazardous substance defined in section 101(14) of CERCLA (42 U.S.C.A. § [101] 9601(14)).

(ii) The term does not include a storage tank system that contains a substance regulated as a hazardous waste under Subtitle C of CERCLA, or mixture of the substances and petroleum, and which is not a petroleum system.

* * * * *

[*New underground storage tank system*—An underground storage tank system that will be used to contain an accumulation of regulated substances and for which installation has commenced after December 22, 1988. (See the definition of “existing underground storage tank system.”)]

* * * * *

Nontank handling project activities—Activities performed by a certified company or employee of a certified company on a project that may not be tank handling activities, but are part of the certified company’s responsibility while completing tank handling or inspection activities on a storage tank system project.

* * * * *

Person— An individual, partnership, corporation, association, joint venture, consortium, institution, trust, firm, joint-stock company, cooperative enterprise, municipality, municipal authority, Federal Government or agency, Commonwealth Department, agency, board, commission or authority, or other legal entity which is recognized by law as the subject of rights and duties. In provisions of the act prescribing a fine, imprisonment or penalty, or a combination thereof, the term includes the officers and directors of a corporation or other legal entity having officers and directors.

* * * * *

Pipeline facilities (including gathering lines)—New and existing pipe rights-of-way and associated equipment,

facilities or buildings regulated under the Hazardous Liquid Pipeline Safety Act of 1979 or the Natural Gas Pipeline Safety Act of 1968, codified without substantive change in 1994 by Pub. L. No. 103-272, 108 Stat. 1371 (49 U.S.C.A. §§ 60101–60125) which may include coastal, interstate or intrastate pipelines and tanks essential to the operation of the pipeline, such as tanks used to hold substances that operate compressors or pumps directly connected to the pipeline and breakout tanks used solely to relieve pressure surges from the pipeline and then re-inject substances from the pipeline back into the pipeline, but does not include dual purpose tanks or tanks at complex facilities which may serve both as breakout tanks and as storage tanks or feed stock tanks for the purposes of this chapter.

* * * * *

Regulated substance—

(i) An element, compound, mixture, solution or substance that, when released into the environment, may present substantial danger to the public health, welfare or the environment which is one of the following:

(A) A substance defined as a hazardous substance in section 101(14) of the [Comprehensive Environmental Response, Compensation, and Liability Act of 1980] CERCLA (42 U.S.C.A. § 9601), including hazardous substances that are liquid or gaseous, or suspended therein regardless of holding temperature, but not including a substance regulated as a hazardous waste under Subtitle C of the Resource Conservation and Recovery Act of 1976 (42 U.S.C.A. §§ 6921–6931).

(B) Petroleum, including crude oil or a fraction thereof and petroleum hydrocarbons which are liquid at standard conditions of temperature and pressure (60°F and 14.7 pounds per square inch absolute), including, but not limited to, oil, petroleum, fuel oil, oil sludge, oil refuse, oil mixed with other nonhazardous wastes and crude oils, gasoline and kerosene.

(C) Other substances determined by the Department by regulation whose containment, storage, use or dispensing may present a hazard to the public health and safety or the environment, but not including gaseous substances used exclusively for the administration of medical care. This includes the following other regulated substances:

(I) Nonpetroleum oils including bio-diesel; synthetic fuels and oils, such as silicone fluids; tung oils and wood-derivative oils, such as resin/rosin oils; and inedible seed oils from plants, which are liquid at standard conditions of temperature and pressure. When requirements between hazardous and petroleum substances differ, the requirements for petroleum tanks apply for this group of substances.

(II) Compounds for use as additives in gasoline and not already found on the list from section 101(14) of CERCLA. The requirements for hazardous substances apply to this group of compounds in their unblended condition, and the requirements for petroleum tanks apply after blending with gasoline reduces their concentration to less than 15% by volume of the stored substance.

(III) Nonpetroleum substances listed in 34 Pa. Code Chapter 323 (relating to hazardous substance list) that are environmental hazards and are liquid

or gaseous, or suspended therein regardless of holding temperature. Substances that appear on this list and do not have a CERCLA reportable quantity assigned must have a 1-pound reportable quantity for the purposes of this chapter. The requirements for hazardous substance apply to this group of compounds, except when they are already included in a group of substances classified as petroleum or regulated as a highly hazardous substance.

* * * * *

Tightness testing activities—Testing activities which are designed and intended to detect leaks when performing precision tests, volumetric and [non-volumetric] nonvolumetric tests on underground storage [tanks] tank systems.

* * * * *

Underground storage tank—One or a combination of tanks (including underground pipes connected thereto) which are used, were used or will be used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10% or more beneath the surface of the ground. The term does not include:

* * * * *

TANK HANDLING ACTIVITIES

§ 245.21. Tank handling and inspection requirements.

(a) Tank handling activities shall be conducted by a certified installer except in the case of modification to an aboveground nonmetallic storage tank, which may be modified by the tank manufacturer. Storage tank facility owners and operators may not use persons who are not Department-certified to conduct tank handling activities except as noted in this subsection. **The certified installer shall perform the tank handling activity or provide direct onsite supervision and control of the activity.**

* * * * *

TIGHTNESS TESTING ACTIVITIES

§ 245.31. Underground storage tank tightness testing requirements.

(a) Tightness testing activities shall be conducted by a Department-certified underground tightness testing (UTT) installer, except when performed by an owner or operator using installed automatic tank gauging or monitoring equipment **meeting requirements in § 245.444(3) and (4) (relating to methods of release detection for tanks).**

(b) Tightness testing is required to be conducted when it is:

(1) Used as a method of release (leak) detection as prescribed in [§§ 245.442(1) and 245.443(1) (relating to requirements for petroleum underground storage tank system; and requirements for hazardous substance underground storage tank systems)] § 245.444(3) and § 245.445(2) (relating to methods of release detection for piping).

* * * * *

(e) A **complete** written test report shall be provided to the tank owner as documentation of test results **within 20 days of the test.** The test methodology, a certification

that the test meets the requirements of § 245.444(3) [relating to methods of release detection for tanks] or § 245.445(2) and sufficient test data, which were used to conclude that the tank passed or failed the tightness test, shall be included in the test report.

(f) **Certified underground tightness testing (UTT) installers shall maintain complete records of tightness testing activities for a minimum of 10 years as provided in § 245.132(a)(3) (relating to standards of performance).**

TANK REGISTRATION AND FEES

§ 245.41. Tank registration requirements.

(a) **Tank owners shall properly register each storage tank by meeting the requirements of this section and paying the appropriate registration fee required by § 245.42 (relating to tank registration fees).**

(b) **Tank owners shall register each aboveground storage tank and each underground storage tank with the Department, except as specifically excluded by Department policy or this chapter, on a form provided by the Department, within 30 days after installation or acquisition of an ownership interest in the storage tank. Unless otherwise approved by the Department, a regulated substance may not be placed in the tank and the tank may not be operated until the tank is properly registered and the Department approves an operating permit for the tank.**

(c) **A form for registration of a storage tank shall be complete upon submission to the Department and provide the following:**

- (1) **Tank owner, operator and contact information.**
- (2) **General facility, site and location information.**
- (3) **Specific tank description and usage information.**
- (4) **Specific tank construction, system components and installation information.**
- (5) **Owner or owner's representative certification validating the registration information and operating permit application.**
- (6) **Certified tank installer information and signature.**
- (7) **Certified tank inspector information and signature for certain classes of tanks addressed in § 245.21 (relating to tank handling and inspection requirements).**
- (8) **Other applicable information that may be required by the Department.**

(d) **The owner's registration form shall also serve as an operating permit application. The Department may register a tank and not approve an operating permit for the tank if the application, tank system or the storage tank facility does not meet the requirements of this chapter or the permit applicant is in violation of the act. Tank owners may not store, dispense from or place a regulated substance in a storage tank that does not have an operating permit unless otherwise agreed upon by the Department. Additionally, certain classes of tanks require a site specific installation permit prior to beginning construction of a new or replace-**

ment storage tank in accordance with Subchapter C (relating to permitting of underground and aboveground storage tank systems and facilities). Submission of a site specific installation permit application is a separate requirement for these tanks that is not satisfied by the registration form submission.

(e) A combination of tanks that operate as a single unit requires registration of each tank unless otherwise agreed upon by the Department. A tank that has separate compartments within the tank shall be registered separately and charged a separate tank fee for each compartment unless the compartments are connected in a manner that fills, dispenses and operates as a single unit maintaining the same regulated substance at the same operating level in each compartment.

(f) Tank owners shall submit a registration form to amend registration information previously submitted to the Department within 30 days of a change in the previously submitted information. These changes include, but are not limited to, the following:

- (1) Removal or relocation of a storage tank to a new facility.
 - (2) Temporary or permanent closure or removal from service of a storage tank.
 - (3) Change in use of a storage tank to or from regulated or nonregulated status, for example, changing a storage tank to use as a process vessel.
 - (4) Change in substance stored in the tank, unless otherwise agreed upon by the Department.
 - (5) Change of ownership or change of operator—new and previous owner.
 - (6) Change of contact, mailing address or telephone number.
 - (7) Installation of a new or replacement storage tank at an existing facility.
- (g) The Department may require submission of supporting documentation and process information for exemption or exclusion from regulation for a tank change in status or use from a regulated to a nonregulated status.

§ 245.42. Tank registration fees.

(a) Annual registration fees to be paid by owners of aboveground storage tanks are established under section 302 of the act (35 P. S. § 6021.302) as follows:

- (1) \$50 for each aboveground storage tank with a capacity less than or equal to 5,000 gallons.
- (2) \$125 for each aboveground storage tank with a capacity of more than 5,000 gallons and less than or equal to 50,000 gallons.
- (3) \$300 for each aboveground storage tank with a capacity of more than 50,000 gallons.

(b) Annual registration fees to be paid by owners of underground storage tanks are established under section 502 of the act (35 P. S. § 6021.502) as \$50 for each underground storage tank.

(c) The Department will issue an invoice to the tank owner after receipt of a complete registration form under § 245.41(c) (relating to tank registration

requirements). A tank owner filing a registration shall remit the appropriate fee upon receipt of the invoice.

(d) Registration expiration dates are established for storage tanks according to facility location. The Department will prorate the registration fee established by this section to reflect the percentage of time remaining in the registration year from the date of initial registration of a storage tank. The Department will not refund registration fees if an owner permanently closes a storage tank or exempts a storage tank through a change-in-service or change-in-status prior to the expiration of the storage tank's registration.

(e) The Department will issue a certificate of registration to an owner upon payment of the required registration fee. The tank owner shall have the current valid certificate of registration available for inspection by the Department, certified storage tank inspector or installer and product distributor. At facilities where a regulated substance is sold at retail to the public, the certificate of registration or an exact copy shall be publicly displayed in a noticeable area at the facility.

(f) The Department will issue an annual invoice to the tank owner for the annual renewal of all regulated tanks at the owner's facility once per year, at least 60 days prior to the expiration of the certificate of registration.

(g) Fees are payable no later than 60 days after the invoice date, and will be considered delinquent 90 days after the invoice date.

§ 245.43. Failure to pay registration fee.

(a) An owner who fails to pay the required registration fee shall be subject to Commonwealth policy and guidelines for collection of delinquent debts due the Commonwealth.

(b) Failure to pay registration fees could result in Departmental actions against the storage tank owner and the operator, including, but not limited to, revocation of operating permits issued by the Department under this chapter.

(c) The Department may register a tank, but may withhold or deny the operating permit for the tank if the owner has a delinquent registration debt for any regulated storage tank.

Subchapter B. CERTIFICATION PROGRAM FOR INSTALLERS AND INSPECTORS OF STORAGE TANKS AND STORAGE TANK FACILITIES

GENERAL CERTIFICATION REQUIREMENTS

§ 245.102. Requirement for certification.

(a) A person may not conduct tank handling or tightness testing activities unless that person holds a current installer certification issued by the Department for the applicable certification category as indicated in § 245.110 (relating to certification of installers), except as provided in § 245.31 (relating to underground storage tank tightness testing requirements). [Except as provided in § 245.103 (relating to phase-in from interim certification), installer] Installer certification will only be issued by the Department to a person who:

* * * * *

(4) Is not found to be in violation of the act or this chapter [and], or has not had a certification revoked by the Department under § 245.109 (relating to revocation of certification).

* * * * *

(b) A person may not conduct inspection activities at a storage tank system or storage tank facility required by the Department under the act and this part unless that person holds a current inspector certification issued by the Department for the applicable inspector certification category. [Except as provided in § 245.103, inspector] Inspector certification will only be issued by the Department to a person who:

* * * * *

(4) Is not found to be in violation of the act or this chapter [and], or has not had a certification revoked by the Department under § 245.109.

* * * * *

(e) If the EQB deletes or consolidates certification categories or amends qualifications for certification prior to the expiration date of an installer or inspector's category certification, the category certification may still be used until the expiration date of that category certification.

§ 245.103. [Phase-in from interim certification] (Reserved).

[(a) The Department may issue an installer certification or inspector certification on a temporary basis for the applicable certification category to any person who meets the minimum experience requirements under § 245.111 or § 245.113 (relating to certified installer experience and qualifications; and certified inspector experience and qualifications).

(b) A person certified as an installer or inspector on an interim basis under section 108 of the act (35 P. S. § 6021.108) who meets the minimum experience and qualification requirements under § 245.111 or § 245.113 may request temporary installer certification or temporary inspector certification on or before January 21, 1992. Failure to be granted temporary installer certification or temporary inspector certification on or before March 23, 1992, will result in revocation of interim certification.

(c) To be granted permanent installer certification or permanent inspector certification, a person who obtains temporary installer certification or temporary inspector certification under this section, shall, on or before September 21, 1994, achieve a passing grade on a certification examination administered or approved by the Department for one or more of the certified installer or inspector categories described in § 245.110 or § 245.112 (relating to certification of installers; and certification of inspectors). Failure to achieve a passing grade within this time will result in expiration of the temporary installer certification or temporary inspector certification.

(d) If the EQB deletes or consolidates certification categories or amends qualifications for certification prior to the expiration date of an installer or inspector's permanent certification, the permanent certification may still be used until the expiration date of the certification.]

§ 245.104. Application for installer or inspector certification.

* * * * *

(b) An application for installer or inspector certification shall be submitted to the Department on current forms provided by the Department and [shall] must contain the following information:

* * * * *

(c) An application for certification shall be received by the Department no later than [120] 60 days prior to the announced date of the certification examination.

* * * * *

(e) An applicant meeting the requirements of §§ 245.102(a)(4) or (b)(4) [and 245.103] (relating to requirement for certification[; and phase-in from interim certification]) will be granted admission to the certification examinations for which the applicant has requested certification and is qualified.

§ 245.105. Certification examinations.

* * * * *

(c) Only applicants who have been authorized by the Department, in accordance with this chapter, to take an examination will be admitted to an examination or issued a certification as a result of passing an examination. Authorization to take an examination will be based on compliance with [the requirements of] this chapter. Applicants who are authorized to take an examination are eligible to take the examination for up to 1 year from the date of authorization.

(d) To receive a passing grade on the examinations, the applicant for certification shall achieve a minimum score of [90] 80% on each technical section and a minimum score of 80% on the administrative section of the examination.

(e) [An applicant who fails two examinations for the same certification may not retake the examination until the applicant has successfully completed a training program that is administered or approved by the Department and focuses on those areas of the examination in which the applicant is deficient. Successful completion means attendance at all sessions of training and attainment of the minimum passing grade established by the Department in the approval of the training course under § 245.141 (relating to training approval), for all sections of all qualifying tests given as part of the training program.] An applicant who fails an examination is eligible to retake the examination for up to 1 year from the failed examination test date, but no later than 18 months from date of authorization.

§ 245.106. Conflict of interest.

(a) Except as provided in subsection (b), a certified inspector may not be one or more of the following:

(1) An [employe] employee of the tank owner or the tank owner.

* * * * *

§ 245.108. Suspension of certification.

(a) The Department may suspend the certification of a certified installer or certified inspector for good cause which includes, but is not limited to:

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

* * * * *

(4) In the case of a certified inspector's failure to:

(i) Inform the owner or operator and the Department of conditions or procedures that are not in accordance with the manufacturer's technical and procedural specifications for installation, construction, modification or operation of the storage tank system or storage tank facility **and not in compliance with the act or this chapter.**

(ii) Conduct, review or observe a test or inspection activity required by the act or this [part] chapter.

* * * * *

(5) In the case of a certified installer's failure to:

(i) Be present during tank handling activities at the storage tank system or storage tank facility as required by the act [and] or this [part] chapter.

(ii) Conduct tank handling activities in accordance with [the requirements of] the act [and] or this [part] chapter.

* * * * *

(9) A violation of The Clean Streams Law, **Air Pollution Control Act** or the Solid Waste Management Act or regulations promulgated under those statutes by the certified individual which results in the following:

* * * * *

(10) Failure to perform underground tightness testing activities and documentation in accordance with § 245.31 (relating to underground storage tank tightness testing requirements).

* * * * *

§ 245.109. Revocation of certification.

(a) The Department may revoke the certification of a certified installer or certified inspector if the certified installer or certified inspector has done one or more of the following:

(1) Demonstrated a willful disregard of, or willful or repeated violations of the act or [regulations promulgated thereunder or] this [part] chapter.

* * * * *

§ 245.110. Certification of installers.

* * * * *

(b) Installer certifications may be issued for the following categories:

(2) [**Underground storage tank-removal {UMR}. Removal from service of underground storage tank systems or storage tank facilities.**

(3) *Underground storage tank-tightness tester {UTT}*. Tightness testing activities involved in conducting and interpreting results of volumetric and nonvolumetric tests on underground storage tank systems or storage tank facilities.

(3) **Manufactured storage tank-removal {MTR}. Removal from service of underground storage tank systems and manufactured aboveground storage tank systems or storage tank facilities.**

* * * * *

(6) [**Aboveground manufactured storage tank-removal {AMR}. Removal from service of aboveground manufactured storage tank systems or storage tank facilities.**

(7) *Aboveground field constructed metallic storage tank-installation, modification and removal {AFMX}*. Installation, modification and removal of aboveground field constructed metallic storage tanks and corrosion protection systems. **This category also covers the modification of tank components of an aboveground manufactured storage tank system.**

[(8)] (7) *Aboveground field constructed storage tank-removal {AFR}*. Removal from service of aboveground field constructed **and manufactured aboveground** storage tank systems or storage tank facilities.

[(9)] (8) * * *

[(10)] (9) * * *

[(11)] (10) *Storage tank-liner {TL}*. Activities involved in [**installing**] **installation or modification of** internal linings for underground and aboveground storage tank systems or storage tank facilities **and the evaluation of underground storage tank linings as required in § 245.422(b)(1)(ii) (relating to upgrading of existing underground storage tank systems).**

§ 245.111. Certified installer experience and qualifications.

(a) An applicant shall meet the following minimum experience [or], education **and training** requirements [, or both,] and have completed the required number of activities in the appropriate category for an **initial installer category** certification:

Category	[Total] <i>Experience [or], Education [plus Experience] and Training</i>	<i>Total Number of Activities Completed</i>
UMX	2 years, or college degree and 1 year Technical training	[15] 9 installations
[UMR	2 years, or college degree and 1 year	15 removals]
UTT	Department approved training with testing equipment manufacturer's certification	None
MTR	2 years, or college degree and 1 year Technical training	6 removals
AMMX	2 years, or college degree and 1 year Technical training	[15] 9 installations

<i>Category</i>	[Total] Experience [or], Education [plus Experience] and Training	<i>Total Number of Activities Completed</i>
	or UMX Certification Technical training	None
	or AFMX Certification	None
AMNX	2 years, or college degree and 1 year Technical training	[15] 9 which may be installations or major modifications
	or AMMX certification	6 AST installations
[AMR	2 years, or college degree and 1 year	15 removals
	or UMR Certification	None
	or AFR Certification	None]
AFMX	3 years, or college degree and 2 years Technical training	[20] 12 which may be installations or major modifications
AFR	2 years, or college degree and 1 year Technical training	[15] 6 removals
AMEX	3 years, or college degree and 2 years Technical training	[20 (10 installations and 10 modifications)] 12 installations or modifications (at least 6 installations)
ACVL	3 years, or college degree and 2 years Technical training	[20 (10 installations and 10 modifications)] 12 installations or modifications (at least 6 installations)
TL	2 years Manufacturer's certification	[15] 9 tank linings

(b) The total number of activities completed required by subsection (a) shall have been completed within the [7] 3-year period immediately prior to submitting the application for certification. The activities shall have been completed in compliance with Federal and State requirements and the applicant shall have had substantial personal involvement at the storage tank site in the activities. Noncertified individuals may work at the site but the certified installer is directly responsible to assure that the activities are conducted properly. This work qualifies toward the total number of activities completed requirements.

* * * * *

(g) [Six months experience may be accredited to an installer applicant who successfully completes a Department approved training program applicable to the certification category being requested. The 6 months experience shall be accredited to the total years of experience required by subsection (a), except for applicants who are substituting a college degree for experience.] Category-specific technical training required by subsection (a) shall be completed during the experience interval unless otherwise determined by the Department. The requirement for category-specific technical training is effective _____ (Editor's Note: The blank

refers to a date 1 year after the effective date of adoption of this proposal).

(h) The applicant shall document current safety training which is appropriate for the certification category. Training must be in accordance with regulatory requirements and industry standards and procedures such as Occupational Safety and Health Administration requirements in 29 CFR 1910 (relating to occupational and health standards for industry).

§ 245.112. Certification of inspectors.

* * * * *

(b) Inspector certifications may be issued for the following categories:

* * * * *

(3) IAF aboveground field constructed and aboveground manufactured storage tank systems and storage tank facilities.

§ 245.113. Certified inspector experience and qualifications.

(a) An initial applicant shall meet the following minimum experience [or education requirements, or both,] and qualifications and have completed the required number of activities in the appropriate category of an inspector category certification:

<i>Category</i>	[Total] Experience and Qualifications [or Education plus Experience]	<i>Total Number of Activities Completed</i>
IUM	<p>[1.] 4 years, or college degree and 2 years</p> <p>[2.] Department approved tank tightness testing familiarization course or UTT certification</p> <p>[or]</p> <p>[IAM certification and Department approved tank tightness testing familiarization course or UTT certification]</p> <p>UMX certification</p> <p>Corrosion protection training</p>	<p>[20 (10 installations and 10 major modifications) or (20 operations inspections for certification renewal applicants)] None</p> <p>[None]</p>
IAM	<p>[1.] 4 years, or college degree and 2 years</p> <p>[2. Nondestructive testing level 2 certification using current ASNT recommended practice (SNT-TC-1A) or Department approved aboveground tank inspector training course or] API 653 Certification</p> <p>or</p> <p>[IAF Certification]</p> <p>STI Inspector Certification</p> <p>or</p> <p>Department-approved aboveground tank inspector certification</p>	<p>[20 (which may be any combination of installations, major modifications or service inspections)] None</p> <p>[None]</p>
IAF	<p>[1.] 4 years, or college degree and 2 years</p> <p>[2. Nondestructive testing level 2 certification using current ASNT recommended practice (SNT-TC-1A) or Department approved API 653 training course or]</p> <p>API 653 certification.</p> <p>or</p> <p>Department-approved aboveground tank inspector certification</p>	<p>[20 (which may be any combination of installations, major modifications or inspections under API 653 standards)] 12 integrity or construction inspections</p>

(b) The total number of activities completed required by subsection (a) shall have been completed within the **[7]** 3-year period immediately prior to submitting the application for certification. The activities shall have been completed in compliance with Federal and State requirements and the applicant shall have had substantial personal involvement at the storage tank site in the activities.

* * * * *

(d) The total number of activities completed required by subsection (a) may be met through the conducting of **[tank handling or]** inspection activities. Noncertified individuals may work at the site but the certified inspector is directly responsible to assure that the activities are conducted properly. This work qualifies toward the total number of activities completed requirements.

* * * * *

(g) **The applicant shall document current safety training which is appropriate for the certification category. Training must be in accordance with regulatory requirements and industry standards and procedures such as Occupational Safety and Health Administration requirements in 29 CFR 1910 (relating to occupational and health standards for industry).**

(h) Certified inspectors of underground storage tanks (IUM) shall complete Department inspector training prior to conducting UST facility operation inspections required in § 245.411 (relating to inspection frequency).

§ 245.114. Renewal and amendment of certification.

(a) **[Except as provided in § 245.103 (relating to phase-in from interim certification), certification shall be for 3 years from the date of issuance unless suspended or revoked. The date of certification expiration for amended certification applications shall coincide with the expiration dates of other certification categories for which the same certification examination modules were administered and passing grades were received. An applicant for renewal shall:]** Certification categories renewed after _____ *(Editor's Note: The blank refers to a date 60 days after the effective date of adoption of this proposal.)* will have a uniform expiration date of 3 years from the issuance date of the first category renewed after _____ *(Editor's Note: The blank refers to the effective date of adoption of this proposal.)*

(b) After the conversion to a uniform expiration date as provided in subsection (a), the issued certification will be valid for 3 years from the previous expiration date, unless suspended or revoked before that date.

(c) An applicant shall meet the following minimum training requirements or number of activities in the appropriate category for renewal of installer certification:

<i>Category</i>	<i>Training</i>	<i>Total Number of Activities Completed (Renewal by activities to be phased out _____ (Editor's Note: The blank refers to the effective date of this proposed rulemaking.))</i>
UMX	Examination or Technical Training Administrative Training	12 installations or major modifications
UTT	Testing equipment manufacturer's certification Administrative Training	None
MTR	Examination or Technical Training Administrative Training	6 removals
AMMX	Examination or Technical Training Administrative Training	12 installations or major modifications
AMNX	Examination or Technical Training Administrative Training	12 installations or major modifications
AFMX	Examination or Technical Training Administrative Training	12 installations or major modifications
AFR	Examination or Technical Training Administrative Training	6 removals
AMEX	Examination or Technical Training Administrative Training	12 installations or major modifications
ACVL	Examination or Technical Training Administrative Training	12 installations or major modifications
TL	Manufacturer's certification Administrative Training	12 tank linings

(d) An applicant shall meet the following requirements in the appropriate category for renewal of inspector certification:

<i>Category</i>	<i>Qualifications and Training</i>
IUM	Department Inspector Training
IAM	API 653 Certification or STI Inspector Certification or Department approved inspector certification and Department Inspector Training
IAF	API 653 certification or Department approved inspector certification and Department Inspector Training

(e) Renewal of categories based on number of activities completed without technical training or examination as provided in subsection (c) will be a method of renewal until _____ (Editor's Note: The blank refers to a date 2 years after the effective date of adoption of this proposal.).

(f) Technical and administrative training shall be obtained within 2 years prior to application submission. Administrative training will be provided by the Department.

(g) An applicant for renewal shall:

(1) Submit a completed application for renewal to the Department [at least] 60 to 120 days prior to the [renewal] expiration date or examination test date. Applicants who fail to submit a renewal application within 60 days following the expiration date shall meet the experience, qualifications and examination requirements for initial certification as required in § 245.111 or § 245.113 (relating to certified installer experience and qualifications; and certified inspector experience and qualifications) and the requirements in § 245.105 (relating to certification examinations).

(2) The applicant shall document current safety training which is appropriate for the certification category. Training must be in accordance with regulatory requirements and industry standards and procedures such as Occupational Safety and Health Administration requirements in 29 CFR 1910 (relating to occupational and health standards for industry).

[(2)] (3) * * *

[(3) Have been actively involved in tank handling or inspection activities in each individually certified category during the previous 3-year pe-

riod immediately prior to submitting the renewal application for certification or take the technical module examinations again for all inactive certification categories and achieve a passing grade as described in § 245.105(d) (relating to certification examinations).]

[(b)] (h) * * *

* * * * *

[(c)] (i) Certified installers or certified inspectors required to amend their certifications in accordance with subsection [(b)](h)(1) or (3) shall apply for amendment on a form provided by the Department.

[(d)] (j) Certified installers or certified inspectors required to amend their certifications in accordance with subsection [(b)](h)(2) shall comply with the applicable requirements of this chapter related to application, experience, qualifications and examination.

COMPANY CERTIFICATION

§ 245.121. Certification of companies.

After March 23, 1992, a company may not [perform or] employ a certified installer or certified inspector to perform tank handling, tightness testing or inspection activities unless the company holds a valid certification issued by the Department under this chapter and the company verifies that the certified installer or certified inspector holds a valid certification issued under this chapter for the appropriate category.

§ 245.122. Applications for company certification.

(a) Applications for certification shall be submitted to the Department on forms provided by the Department and [shall] include information that will enable the Department to determine if issuance of the certification [shall conform] conforms to [the requirements of] the act and this chapter. The following information shall be included:

* * * * *

(3) [A summary of the previous tank handling and inspection activities performed by the company and the officers of the company over the 7-year period immediately preceding the application.] Information on previous certification revocations under §§ 245.109 and 245.124 (relating to revocation of certification; and revocation of company certification) of company officers, the company and the company under a previous or fictitious name.

* * * * *

(c) The Department may not issue company certification if one or more of the following apply:

(1) The company is found to be in violation of the act or this chapter.

(2) The company certification was previously revoked under § 245.124.

(3) An officer of the company has had their individual certification revoked under § 245.109.

(4) An officer of the company was an officer in a company whose company certification was revoked under § 245.124 at the time the conduct resulting in revocation occurred.

§ 245.123. Suspension of company certification.

(a) The Department may suspend the certification of a certified company for good cause, which includes, but is not limited to:

* * * * *

(4) A violation of The Clean Streams Law, Air Pollution Control Act or the Solid Waste Management Act or regulations promulgated thereunder by the company or a certified installer or a certified inspector employed by the company which results in the following:

* * * * *

(6) Failure to provide oversight of employee certification applications, tank handling and inspection reports.

(7) Submission of false information to the Department or tank owner.

(8) Failure to have a properly certified installer in direct onsite supervision and control of a tank handling activity.

(b) A certified company shall surrender certification documents to the Department upon notification of suspension.

(c) The Department may reinstate the certification if the following apply:

* * * * *

[(c)](d) Suspension of a certification by the Department shall prevent a company from conducting tank handling, tightness testing or inspection activities during the suspension.

§ 245.124. Revocation of company certification.

(a) The Department may revoke the certification of a certified company for one or more of the following conditions:

* * * * *

(4) Willfully submitting false information to the Department.

(b) Revocation of a certification by the Department shall prevent a company from conducting tank handling, tightness testing or inspection activities.

(c) A certified company shall surrender certification documents to the Department upon notification of revocation.

§ 245.125. Renewal and amendment of company certification.

(a) Company certification shall be for 3 years from the date of issuance unless suspended or revoked before that date. An applicant for renewal shall submit a completed application for renewal to the Department [at least] 60 to 120 days prior to the [renewal] expiration date.

(b) A certified company shall notify the Department and file an amendment to its company certification on a form approved by the Department whenever there is a change in the information provided in the application for the certification. This form shall be submitted within 14 days of the date of a change in information.

STANDARDS FOR PERFORMANCE

§ 245.132. Standards of performance.

(a) Certified companies, certified installers and certified inspectors shall:

(1) Maintain [manufacturers, American Society of Nondestructive Testing (ASNT), American Petroleum Institute (API), American Society of Mechanical Engineers (ASME), Underwriters Laboratory (UL), Petroleum Equipment Institute (PEI), EPA and Department] current technical and administrative specifications and manuals, **Nationally recognized codes and standards, and State and Federal regulations** which pertain to the categories for which certification was issued. [**This material is available from the following sources:**] **Nationally recognized organizations are identified in §§ 245.405, 245.505 and 245.604 (relating to codes and standards; applicability; and referenced organizations).**

[(i) American Society of Nondestructive Testing, 1711 Arlingate Lane, Post Office Box 28518, Columbus, Ohio 43228-0518.

(ii) American Petroleum Institute, 2535 One Main Place, Dallas, TX 75202-3904.

(iii) American Society of Mechanical Engineers, 345 East 47th Street, New York, NY 10017.

(iv) Underwriters Laboratory, Suite 400, 818 Eighteenth Street, N.W., Washington D.C. 20006.

(v) Petroleum Equipment Institute, Post Office Box 2380, Tulsa, Oklahoma 74101.

(vi) Environmental Protection Agency, Region III, UST/LUST Section (3HW63), 841 Chestnut Building, Philadelphia, Pennsylvania 19107.

(vii) Department of Environmental Protection, Division of Storage Tanks, 400 Market Street, Post Office Box 8762, Harrisburg, Pennsylvania 17105-8762.]

(2) Complete and [file with] submit, within **60 days of the activity**, to the Department [on] a form, provided by the Department, [a certification] certifying that the tank handling activity or inspection activity conducted by the certified installer or certified inspector meets the requirements of the act and this [part] chapter and accurately describes the conditions of the storage tank system and facility.

(3) Maintain complete records of tank handling and inspection activities, **nondestructive examination and testing results and tightness testing records** for a minimum of 10 years.

* * * * *

(6) Not affix the certified installer's or certified inspector's signature or certification number to documentation concerning the installation or inspection of a component of a storage tank system project or to documentation concerning tank handling or inspection activity, unless:

* * * * *

(iii) **Installation or modification inspection activities were conducted on a large or field constructed aboveground storage tank and the certified inspector was involved prior to the initiation of the project and was present at critical times, so that the inspector can reliably determine that the following requirements were met:**

(A) **Industry standards and project specifications were followed throughout the tank handling activity.**

(B) **Appropriate testing and nondestructive examinations were properly conducted.**

(C) **The tank is suitable for operational service.**

(7) Not certify to an owner or operator or the Department that a storage tank system project or component thereof is complete unless it complies with the act or this chapter. **Project certification applies to both certified activities and nontank handling activities that may have been performed as part of the project.**

(8) Adhere to equipment manufacturer's instructions, accepted industry standards and applicable industry codes of practice when performing tank handling, tightness testing or inspection activities or other nontank handling activities on the project.

(9) **Provide requested records and documentation to the Department under section 107(c) of the act (35 P. S. § 6201.107(c)).**

(b) A certified installer or certified inspector shall display [his] a certification identification card or certificate upon request.

(c) **A certified company is responsible for employees having appropriate safety and technical training. Certified companies, certified installers and certified inspectors shall adhere to health and safety procedures, such as those required by the Federal Occupational Safety and Health Administration (OSHA) and the National Institute for Occupational Safety and Health (NIOSH).**

TRAINING APPROVAL

§ 245.141. Training approval.

* * * * *

(c) Training approval shall be for 3 years from the date of issuance. An applicant for renewal shall submit a completed application for renewal to the Department [at least] **60 to 120 days** prior to the [renewal] expiration date.

(d) **The Department may approve industry recognized training without the submission of an application as provided in subsection (a).**

Subchapter C. PERMITTING OF UNDERGROUND AND ABOVEGROUND STORAGE TANK SYSTEMS AND FACILITIES

GENERAL

§ 245.203. General requirements for permits.

* * * * *

(b) A person is not required to submit [an] a separate application for a permit if the storage tank system is subject to a permit-by-rule[, if the person maintains and operates the]. **The storage tank system must be registered with the Department in accordance with Subchapter A (relating to general provisions) and be maintained and operated in compliance with the standards and requirements of the Department under the act and this chapter. Failure to comply with standards could result in administrative or other Departmental actions against the storage tank owner/operator.**

(c) A person may continue to operate an existing storage tank system, **registered with the Department on or before October 11, 1997, when the tank system is operated** for its intended use, until the Department notifies the person to submit a permit application under this subchapter or the Department notifies the per-

son the tank system is deemed permitted, if the person maintains and operates the storage tank system in compliance with the act and this chapter.

(d) Operation of existing storage tank systems will be allowed to continue until the Department takes final action on the permit application requested in subsection (c) or the Department notifies the owner/operator that the tank system is deemed permitted.

(e) Operating permits will be renewed automatically on an annual basis concurrent with registration. There will be no additional fee or paperwork required beyond the registration requirements established in Subchapter A.

GENERAL OPERATING PERMITS

§ 245.222. Application requirements.

Applications for a general operating permit shall be submitted on a Department form. The application [shall] must certify the following:

(1) General requirements for all storage tank systems are as follows:

* * * * *

(ii) Tank handling and inspection activities are performed by Department certified individuals, as specified in § 245.21 (relating to tank handling and inspection requirements) and Subchapter B (relating to certification program for installers and inspectors of storage tanks and storage tank facilities).

(iii) The storage tank system is in compliance with applicable administrative, technical and operational requirements as specified in Subchapter E [or], Subchapter F or Subchapter G (relating to technical standards for underground storage tanks; [and] technical standards for aboveground storage tanks and facilities; and simplified program for small aboveground storage tanks).

* * * * *

SITE SPECIFIC INSTALLATION PERMITS

§ 245.231. Scope.

(a) Site specific installation permits are required prior to the construction, reconstruction or installation of one or more of the following:

* * * * *

(3) New highly hazardous substance tank systems.

(4) New underground field constructed storage tank systems.

(b) Site specific installation [permits] permit applications meeting the requirements in §§ 245.232(a)(1) and (2) and 245.236 (relating to general requirements; and public notice) are required to be approved prior to [the] construction, reconstruction or installation [of one or more of the following;]. Additional application requirements include the following:

(1) [New underground field constructed storage tank systems.] Large aboveground storage tank system at a new facility or existing small aboveground tank facility requires compliance with § 245.232(a)(3) and (4) and (b) (relating to general requirements).

(2) [New underground highly hazardous substance tanks.] Large aboveground storage tank

system at an existing large aboveground storage tank facility on new location requires compliance with § 245.232(a)(3) and (b).

(3) [New small aboveground highly hazardous substance tanks.] Large aboveground storage tank system at an existing large aboveground storage tank facility on the footprint of previous aboveground storage tank system requires compliance with § 245.232(b) and § 245.234(b) (relating to siting requirements).

(4) Small aboveground storage tank systems at a new large aboveground storage tank facility require compliance with § 245.232(a)(3) and (b).

(c) If the facility owner or operator can demonstrate that, on [October 11, 1997, either construction has commenced or the owner/operator has entered into contractual agreements for construction of a new storage tank or facility covered by this section] or before _____ (Editor's Note: The blank refers to the effective date of adoption of this proposal.), construction has commenced on an aboveground storage tank with a capacity greater than 30,000 gallons used or to be used for storing heating oil for consumptive use on the premises, the requirements of this section will not apply.

§ 245.232. General requirements.

* * * * *

(c) Applications for site specific installation permits shall be accompanied by the proper fee required by section 304(c) of the act (35 P. S. § 6021.304(c)) for aboveground storage tanks and section 504(c) of the act (35 P. S. § 6021.504(c)) for underground storage tanks.

§ 245.234. Siting requirements.

(a) The Department will not issue a site specific storage tank system or facility installation permit if:

* * * * *

(3) The Department determines that construction design criteria or engineering specifications submitted by a professional engineer are not in accordance with generally accepted sound engineering practices or existing conditions at the site require mitigation to properly support the tank systems and the applicant's proposed mitigation actions are not deemed adequate.

(b) The applicant shall provide the following additional information if appropriate:

* * * * *

(3) A professional engineer's construction design criteria and engineering specifications necessary to mitigate surface or subsurface conditions which may result in excessive tank system settlement or unstable support of the applicant's proposed tank systems.

§ 245.235. Environmental assessment.

* * * * *

(b) An environmental assessment in a permit application [shall] must include detailed analysis of the potential impact of the proposed facility on the environment, public health and public safety, including air quality, water quality, threatened or endangered species and water uses. The applicant shall consider environmen-

tal features such as recreational river corridors, State and Federal parks, historic and archaeological sites, National wildlife refuges, State and Federal natural areas, prime farmland, wetlands, special protection watersheds designated under Chapter 93 (relating to water quality standards), public water supplies and other features deemed appropriate by the Department or the applicant.

(c) The Department [, after consultation with appropriate governmental agencies and potentially affected persons,] will evaluate the assessment provided under subsection (a) to determine whether the proposed operation has the potential to cause environmental harm. The Department will consult with appropriate governmental agencies and potentially affected persons concerning potential environmental harm. If the Department determines that the proposed operation has that potential, it will notify the applicant in writing.

* * * * *

Subchapter D. CORRECTIVE ACTION PROCESS FOR OWNERS AND OPERATORS OF STORAGE TANKS AND STORAGE TANK FACILITIES AND OTHER RESPONSIBLE PARTIES

§ 245.311. Remedial action plan.

(a) Unless a site characterization report is submitted in accordance with § 245.310(b) (relating to site characterization report), the responsible party shall prepare and submit to the Department within 45 days of submission of a site characterization report required by § 245.310(a) selecting the background or Statewide health standard, within 45 days of deemed approval or receipt of a written approval of a site characterization report selecting the site-specific standard or within an alternative time frame as determined by the Department, two copies of a remedial action plan prior to implementation of the remedial action plan. The remedial action plan [shall] must be complete and concisely organized and [shall] contain the following elements, as necessary, based on the nature, extent, type, volume or complexity of the release:

* * * * *

(2) A copy of the plans relating to worker health and safety, management of wastes generated and quality assurance/quality control procedures, as they relate to the remedial action, if different from the plans submitted in accordance with § 245.310(a) [(27)] (25).

* * * * *

Subchapter E. TECHNICAL STANDARDS FOR UNDERGROUND STORAGE TANKS

GENERAL

§ 245.403. Applicability.

* * * * *

(c) *Temporary exclusions.* Existing tanks that become regulated due to the addition of new regulated substances in § 245.1 ((relating to definitions) (See the definition of "regulated substance" (i)(C)(I)–(III))) are subject to this subsection and shall be registered with the Department by _____ (*Editor's Note:* The blank refers to a date 60 days after the effective date of adoption of this proposal.). In addition, these tanks are temporarily excluded from the requirements in §§ 245.421, 245.422, 245.431, 245.432 and 245.441–446, respectively, until _____ (*Editor's Note:*

The blank refers to a date 3 years after the effective date of adoption of this proposal.)

§ 245.404. Variances.

When unique or peculiar circumstances make compliance with this subchapter technically **impractical**, infeasible or unsafe, the Department may, upon written application from the owner/operator of a storage tank system subject to this subchapter, grant a variance from one or more specific provisions of this subchapter:

* * * * *

(2) A written application for a variance shall be submitted to the Department and provide the following information:

* * * * *

(iii) The unique or peculiar conditions which make compliance with the sections identified in subparagraph (ii) technically **impractical**, infeasible or unsafe.

* * * * *

(3) **New technologies may be granted a variance. New technologies shall be reviewed and appropriately documented by a professional engineer and documentation provided to the Department with the variance request.**

(4) When granting the variance, the Department may impose specific conditions necessary to ensure the adequate protection of human health and the environment.

[(4)] (5) * * *

[(5)] (6) * * *

§ 245.405. Codes and standards.

[All regulated underground storage tank systems shall comply with applicable industry codes. By policy, the Department can recognize industry codes and practices which can be used to comply with this chapter. A list of industry codes and practices which may be used to comply with this subchapter may be obtained from the Department.]

(a) The following listed associations and their codes and standards shall be used in conjunction with manufacturer's specifications to comply with this subchapter:

- (1) American Concrete Institute (ACI)
- (2) American National Standards Institute (ANSI)
- (3) American Petroleum Institute (API)
- (4) American Society for Testing and Materials (ASTM)
- (5) Association of Composite Tanks (ACT)
- (6) Fiberglass Petroleum Tank and Pipe Institute
- (7) NACE International—The Corrosion Society (NACE)
- (8) National Fire Protection Association (NFPA)
- (9) National Leak Prevention Association (NLPA)
- (10) Petroleum Equipment Institute (PEI)
- (11) Steel Tank Institute (STI)
- (12) Underwriters Laboratory (UL)

(b) The most current or latest edition of the codes and standard shall be applied when used to meet the technical standards and requirements of

this subchapter. Other Nationally recognized associations and their codes and standards not referenced in this part may also be used to comply with this subchapter, when appropriate.

(c) When Nationally recognized codes and standards or manufacturer's specifications are updated, facilities or storage tank systems installed to previously existing standards prior to the update will not automatically be required to be upgraded to meet the new standards.

(d) Regulatory requirements prevail over codes and standards whenever there is a conflict.

FACILITY INSPECTIONS

§ 245.411. Inspection frequency.

(a) Inspection of tanks. Underground storage tank owners or operators shall have their underground storage tank facility inspected by a certified inspector at the frequency established in subsections (b)—(d). The inspection shall include, but not be limited to, [leak] release detection, assessment of the underground storage tank system and ancillary equipment, operation of overflow and spill prevention equipment where practicable, corrosion protection testing, or verification that corrosion protection is functional, and release prevention measures.

(b) Initial inspections.

(1) [Tank] Storage tank facilities with tank systems installed prior to December 1989, shall be inspected prior to October 11, 1999[, whichever date is later].

(2) [Tank] Newly installed storage tank systems [installed after October 11, 1997,] shall be inspected [within] between 6 to 12 months [of] after installation. If the facility ownership changes, an inspection of the facility shall be completed [within] between the first 6 to 12 months of operation unless another time frame is agreed to by the Department.

* * * * *

(c) Subsequent routine facility inspections.

[(1)] Subsequent facility inspections shall be conducted at least once every [5] 3 years (36 months) commencing after the last inspection[, except as provided in paragraph (2)].

[(2) Facilities with total secondary containment of both piping and the tank shall be inspected at least once every 10 years commencing from the date of the last inspection.]

(d) Additional inspections and mandatory training. Inspections in addition to those in subsections (b) and (c) may be [requested in writing] required by the Department when the prior inspection determined release detection or corrosion protection violation(s) occurred, or when the Department determines the inspections are necessary to verify compliance with this subchapter. The Department may require facility owners and operators to successfully complete a release detection or operator maintenance training course when related violations are documented through an inspection.

UNDERGROUND STORAGE TANK SYSTEMS: DESIGN, CONSTRUCTION, INSTALLATION AND NOTIFICATION

§ 245.421. Performance standards for [new] underground storage tank systems.

(a) New underground storage tank systems.

(1) Underground storage tank systems installed after _____ (Editor's Note: The blank refers to the effective date of adoption of this proposal.) must have total secondary containment, which consists of double-walled tanks, double-walled piping and liquid-tight containment sumps, tank manway riser sumps and dispenser pan sumps that allow for release detection monitoring of the system. Also, tank systems installed with pressurized piping systems must be equipped with automatic line leak detectors that meet the requirements of § 245.445(1) (relating to methods of release detection for piping).

(2) At least 30 days prior to the installation of a new tank or a new underground storage tank system, or within another reasonable time agreed upon by the Department, owners and operators shall notify the Department of the proposed installation on a form provided by the Department.

(3) An owner or operator of a tank system changing from unregulated to regulated service shall provide certification or documentation that the tank system meets new tank system requirements.

(b) To prevent releases due to structural failure, corrosion or spills and overfills for as long as the underground storage tank system is used to store regulated substances, owners and operators of new and existing underground storage tank systems shall ensure that the system meets the following requirements:

(1) Tanks. A tank [shall] must be properly designed, and constructed. A tank or portion of a tank including the outer metallic wall of a double-walled tank that is underground and routinely contains product shall be protected from corrosion in accordance with a code of practice developed by a Nationally recognized association or independent testing laboratory, using one of the following methods:

* * * * *

(ii) The tank is constructed of steel and cathodically protected in the following manner:

* * * * *

(C) Impressed current systems are designed [to] by a corrosion expert and allow determination of current operating status as required in § 245.432(a)(3) (relating to operation and maintenance including corrosion protection).

* * * * *

(2) Piping. The piping and ancillary equipment that routinely [contains] contain regulated substances shall be protected from corrosion and deterioration. [Piping] New piping that routinely contains regulated substances must be double walled with liquid tight containment sumps and dispenser pan sumps installed in accordance with paragraph (4)(ii). Whenever more than 30% of the system piping is replaced, the entire piping for the tank system shall be replaced meeting the requirements of this sub-

section. The portions of the piping system, including joints, flexible connectors and ancillary equipment that [is] are in contact with the ground [shall] must be properly designed, constructed and protected from corrosion in accordance with a code of practice developed by a Nationally recognized association or independent testing laboratory using one of the following methods:

(i) The piping or component is constructed of nonmetallic material such as fiberglass reinforced plastic or other noncorrodible and UL listed material.

(ii) The piping or component is constructed of [steel] metal and cathodically protected in the following manner:

(A) The piping is coated with a suitable dielectric material. The wrapping of piping with tape or similar material alone does not meet this requirement.

* * * * *

(C) Impressed current systems are designed [to] by a corrosion expert and allow determination of current operating status as required in § 245.432(a)(3).

* * * * *

(3) Spill and overfill prevention equipment.

(i) Except as provided in subparagraph [(iii)] (iv), to prevent spilling and overflowing associated with product transfer to the underground storage tank system, owners and operators shall ensure that their systems have the following spill and overfill prevention equipment:

(A) Spill prevention equipment that will prevent release of product to the environment when the transfer hose is detached from the fill pipe—for example, a spill catchment basin or spill containment bucket.

(B) Overfill prevention equipment that will do one or more of the following:

* * * * *

(II) Alert the transfer operator when the tank is no more [more] than 90% full by restricting the flow into the tank or triggering a high-level alarm.

* * * * *

(iii) Ball float valves may not be used on suction pump systems having an air eliminator, or on any system having coaxial stage-1 vapor recovery systems or receiving pressurized pump deliveries.

(iv) Owners and operators are not required to use the spill and overfill prevention equipment specified in subparagraph (i) if the underground storage tank system is filled by transfers of no more than 25 gallons at one time.

(4) Installation.

(i) Tanks and piping shall be properly installed and system integrity tested in accordance with a code of practice developed by a Nationally recognized association or independent testing laboratory such as API 1615 and PEI RP100, and in accordance with the manufacturer's instructions.

(ii) Newly installed spill containment buckets, tank riser sumps, dispenser pans and containment sumps must be constructed to be liquid-tight, and shall be tested prior to use of the system to confirm liquid-tight construction using a hydrostatic test, vacuum test or other appropriate testing procedure.

(iii) Overfill prevention equipment shall be properly installed and tested in accordance with a code of practice developed by a Nationally recognized association, and in accordance with manufacturer's instructions. When ball float valves are used, the valve shall be installed with extractor fitting and ball floats must be readily accessible (not requiring excavation) for removal and operational verification.

[(5)](c) * * *

§ 245.422. Upgrading of existing underground storage tank systems.

* * * * *

(b) Tank upgrading requirements. Steel tanks shall be upgraded to meet one of the following requirements in accordance with a code of practice developed by a Nationally recognized association or independent testing laboratory:

(1) Interior lining. A tank may only be upgraded by internal lining [if the] prior to _____ (Editor's Note: The blank refers to the effective date of adoption of this proposal.). The following conditions [are] of existing lined tanks shall be met:

(i) The lining [is] was installed in accordance with § 245.434 (relating to repairs allowed).

(ii) Within 10 years after lining, and every 5 years thereafter, the lined tank is internally [inspected] evaluated by, or under the direct onsite supervision of, a certified tank liner (TL) or by a professional engineer adhering to the evaluation process developed by a National association and found to be structurally sound with the lining still performing in accordance with original design specifications. The evaluation findings shall be documented on a form approved by the Department and shall be maintained at the facility for the duration of the tank's operating life.

(iii) Lined tank systems that do not meet original design specifications or have not been evaluated as required in subparagraph (ii) shall be emptied immediately, removed from service and permanently closed in accordance with §§ 245.451 and 245.452 (relating to temporary closure, and permanent closure; and changes-in-service).

* * * * *

(3) Internal lining combined with cathodic protection. A tank [may be] upgraded [by] prior to _____ (Editor's Note: The blank refers to the effective date of adoption of this proposal.) having both internal lining and cathodic protection [if] must meet the following [apply]:

(i) The lining [is] was installed in accordance with [the requirements of] § 245.434.

(ii) The cathodic protection system meets § 245.421 (b)(1)(ii)(B)—(D).

(c) Piping upgrading requirements. Metal piping and fittings that routinely contain regulated substances and are in contact with the ground [shall] must be one or more of the following:

(1) Replaced with piping meeting the requirements of new piping in § 245.421(b)(2)(i) and (ii).

(2) Cathodically protected in accordance with a code of practice developed by a Nationally recognized association or independent testing laboratory and meets the requirements of § 245.421(b)(2)(ii)(B)—(D).

(3) Installed at a site that is determined to not be corrosive enough to cause a release due to corrosion for the remaining operating life of the piping under § 245.421(b)(2)(iii).

(d) *Spill and overflow prevention equipment.* To prevent spilling and overflowing associated with product transfer to the underground storage tank system, existing underground storage tank systems [shall] must comply with new underground storage tank system spill and overflow prevention equipment requirements in § 245.421(b)(3) and (4).

(e) *Release detection equipment.*

(1) When release detection equipment is modified or replaced on an underground storage tank system greater than 3,000 gallons capacity, an automatic tank gauge certified in accordance with § 245.441(a) (referring to general requirements for underground storage tank systems) must be installed as the release detection method unless interstitial monitoring is used for release detection in accordance with § 245.444(7).

(2) Underground storage tank systems using an interstitial monitor or an electronic line leak detection system in accordance with § 245.445(1) (relating to methods of release detection for piping), must upgrade from an alarm to a automatic pump shut-off device before _____ (*Editor's Note: The blank refers to a date 2 years following the effective date of adoption of this proposal.*)

(3) On an underground storage tank system, with a capacity greater than 3,000 gallons, a mechanical line leak detection device that alerts the operator to the presence of a leak by slowing or restricting the flow of regulated substance to the dispenser, must be upgraded with an automatic line leak detection system with an automatic pump shut-off device meeting the requirements of § 245.445(1) before _____ (*Editor's Note: The blank refers to a date 5 years following the effective date of adoption of this proposal.*)

§ 245.423. Registration requirements.

* * * * *

(f) Every owner, including a new owner of an existing tank system, shall [complete an amended registration form, provided by the Department, when one or more of the following conditions occur:] comply with tank registration requirements in Subchapter A (relating to general provisions).

- [(1) Change of tank ownership—new owner only.
- (2) Installation of a new tank.
- (3) Closure of a tank system or component.
- (4) Change in tank system service such as, but not limited to, temporary closure or change to an unregulated substance.]

§ 245.425. Reuse of removed tanks.

A storage tank removed from the ground may be reused as a regulated underground storage tank under the following circumstances:

(1) [The tank is installed by a certified installer.

(2)] The tank [has been] was properly closed in accordance with § 245.452 (relating to permanent closure and changes-in-service) at the site where previously used.

(2) The tank is installed at the new site by a certified installer.

(3) The new installation meets the requirements of § [245.422 (relating to the upgrading of existing underground storage tank systems)] 245.421 (relating to performance standards for underground storage tank systems).

* * * * *

(5) Either the manufacturer, a person certified by the manufacturer or a registered professional engineer warrants that the tank meets the requirements of § 245.421 [(1)](a) [(relating to performance standards for underground storage tank systems)].

GENERAL OPERATING REQUIREMENTS

§ 245.432. Operation and maintenance including corrosion protection.

(a) Owners and operators of steel underground storage tank systems with corrosion protection shall comply with the following requirements to ensure that releases due to corrosion are prevented for as long as the underground storage tank system is used to store regulated substances:

* * * * *

(3) Underground storage tank systems with impressed current cathodic protection systems shall be inspected or checked by the operator every 60 days to ensure the equipment is running properly. As a minimum, the operator shall document the date checked, annotate the system's functioning status, and for systems equipped with a direct current readout meter, record the amount of current indicated on the meter.

* * * * *

[(5)] (b) * * *

[(6) Line] (c) Required equipment, including but not limited to, line leak detectors, product sensors and probes, dispenser pans, containment sumps, measuring devices (including gauge sticks), gauges, corrosion protection, spill prevention, overflow prevention and other appurtenances whose failure could contribute to a release of product, shall be maintained in a good state of repair [and shall] to ensure they function as designed.

(d) Tanks which have been lined and have not had corrosion protection added in accordance with § 245.422(b)(2) shall have the lining evaluated under the direct, onsite supervision of a TL certified tank installer or by a professional engineer.

(1) Evaluations must adhere to an evaluation process developed by a National association identified in § 245.405 (relating to codes and standards) as follows:

- (i) Ten years after lining installation.
- (ii) Every 5 years after the preceding evaluation.

(2) Each evaluation finding shall be documented on a form approved by the Department and shall be maintained at the facility for the duration of the tank's operating life.

(e) Lined tank systems that do not meet original design specifications or have not been evaluated as required in subsection (d)(1) and (2) shall be emptied immediately, removed from service and permanently closed in accordance with §§ 245.451 and 245.452 (relating to temporary closure, and permanent closure; and changes-in-service).

(f) Primary and secondary containment structure must be maintained in a leak free condition. If infiltration or a release is detected in an interstice, the defective component shall be repaired in accordance with § 245.434 (relating to repairs allowed). Repairs, including those performed to stop infiltration, shall be tested in accordance with § 245.434(5).

(g) A check for water in petroleum tanks shall be performed monthly and excess water shall be promptly removed as necessary. Water may not exceed the tank manufacturer's recommendations or more than 2 inches of accumulation in the bottom of the tank, whichever is less. Excess water shall be properly disposed in accordance with applicable State and Federal requirements.

§ 245.434. Repairs allowed.

Owners and operators of underground storage tank systems shall ensure that repairs will prevent releases due to structural failure or corrosion as long as the underground storage tank system is used to store regulated substances. The repairs [shall] must meet the following requirements:

* * * * *

(5) Tanks, **containment sumps** and piping repaired in response to a release shall be tightness tested in accordance with §§ 245.444(3), **245.421(b)(4)(ii)** and 245.445(2) (relating to methods of release detection for tanks; **performance standards for underground storage tank systems**; and methods of release detection for piping), **respectively**, prior to placing the system back into service except as provided as follows:

* * * * *

(7) Underground storage tank system owners and operators shall maintain records of each repair **including those** in response to a release, for the remaining operating life of the underground storage tank system [**that demonstrate compliance with this section**].

§ 245.435. Reporting and recordkeeping.

(a) Owners and operators of underground storage tank systems shall cooperate fully with inspections, monitoring and testing conducted by the Department, certified installers or certified inspectors, as well as requests for document submission, testing and monitoring by the owner or operator under section 107(c) of the act (35 P. S. § 6201.107(c)).

(b) Owners and operators shall maintain required records. If records are maintained offsite, the records shall be easily obtained and provided upon request.

(1) *Reporting.* Owners and operators shall submit the following applicable information to the Department:

(i) Notification in accordance with § 245.41 (relating to tank registration requirements) for underground storage tank systems [(§ 245.423 (relating to registration requirements)), which includes], including, but not limited to, change of ownership, closure of a tank system, change of substance stored and change of tank status, and certification of installation for new underground storage tank systems (§ 245.421[(5)](c) (relating to performance standards for [new] underground storage tank systems)).

* * * * *

(2) [*Recordkeeping*] **Permanent recordkeeping.** Owners and operators shall maintain records for new systems and available records for existing systems for the operational life of the tank system and retain the records for a minimum of 1 year after the tank system has been removed. Permanent records include the following [information]:

(i) A corrosion expert's analysis of site corrosion potential if corrosion protection equipment is not used (§ 245.421(b)(1)(iv) and (2)(iii) and § 245.422(b)(2)(iv) and (c)(3) (relating to upgrading of existing underground storage tank systems)).

(ii) The corrosion expert's design of an impressed current system in accordance with §§ 245.421(b)(2)(ii)(B) and 245.422(b)(2) and (c)(2).

(iii) Documentation of tank system installation, system modification and tank upgrade activities.

(iv) Tank system assessment records prior to upgrading in accordance with § 245.422(b).

(v) Documentation of [operation of corrosion protection equipment] the installation testing and commissioning reports required for corrosion protection systems by manufacturers and National standards in accordance with [(§ 245.432 (relating to operation and maintenance including corrosion protection))] .

[(iii)](vi) Documentation of underground storage tank system repairs **including those** in response to a release (§ 245.434(6) (relating to repairs allowed)).

(vii) Documentation to demonstrate that containment sumps and dispenser pans installed or repaired after _____ (*Editor's Note: The blank refers to the effective date of adoption of this proposal.*) were tested and verified to be liquid tight in accordance with §§ 245.421(b)(4) and 245.434(5).

(viii) Tank lining evaluation reports (§ 245.432(d) and (e)).

(ix) Documentation showing Department approval for a variance or alternate leak detection method (§§ 245.404 and 245.443 (relating to variances; and requirements for hazardous substance underground storage tank systems)).

(3) Temporary records shall be maintained as follows:

(i) The current Storage Tank Registration/Permit Certificate.

[(iv) Current compliance with] (ii) Tank and pipe release detection [requirements] records for the past 12 months, including written certifications

or performance claims for the release detection methods in use and documentation of investigations of suspected releases (§§ 245.446 and 245.304 (relating to release detection recordkeeping; and investigation of suspected releases)).

(iii) The last annual check/testing, and maintenance records of leak detection equipment including probes, monitors, line leak detectors, and automatic tank gauges that verify they are working properly and tested as required by the equipment manufacturers.

(iv) Documentation of the last two impressed current cathodic protection system inspection checks for each 60 day test period (§ 245.432 (relating to operation and maintenance including corrosion protection)).

(v) The last cathodic protection survey, done at 3 year intervals, on impressed current and galvanic cathodic protection systems in accordance with (§ 245.432).

[(v)] (vi) * * *

[(vi)] (vii) A properly completed closure report required under [() § 245.452(f)] .

[(3) *Availability of records.* Owners and operators shall keep the records required at one of the following:

(i) At the underground storage tank site and immediately available for inspection by the Department and certified inspectors.

(ii) At a readily available alternative site and be provided for inspection to the Department upon request.]

RELEASE DETECTION

§ 245.441. General requirements for underground storage tank systems.

* * * * *

(c) Owners and operators of underground storage tank systems shall comply with the release detection requirements of this [subpart by December 22 of the year listed in the following table:] subchapter.

[SCHEDULE FOR PHASE-IN RELEASE DETECTION

Year System Was Installed	Year When Release Detection is Required (by December 22 of the year indicated)				
	1989	1990	1991	1992	1993
Before 1965 or date unknown	RD	P			
1965-69		P/RD			
1970-74		P	RD		
1975-79		P		RD	
1980-88		P			RD

New tanks (after December 22, 1988) immediately upon installation.

P = Shall begin release detection for all pressurized piping in accordance with § 245.442(2)(i) (relating to requirements for petroleum underground storage tank systems).

RD = Shall begin release detection for tanks and suction piping in accordance with §§ 245.442(1), (2)(ii) and 245.443 (relating to requirements for petroleum underground storage tank systems; and requirements for hazardous substance underground storage tank systems).]

(d) An existing tank system that cannot apply a method of release detection that complies with [the requirements of] this subchapter [shall] must immediately complete the closure procedures in §§ 245.451—245.455 (relating to out-of-service underground storage tank systems and closure) [by the date on which release detection is required for that underground storage tank system under subsection (c)].

(e) For existing tank systems equipped with double-walled piping that routinely contains regulated substance, and containment sumps at the piping junctures and dispensers, the containment sumps, dispenser pan sumps and piping interstices of these systems shall be monitored monthly when practicable and monthly records maintained for the last 12 months of monitoring.

§ 245.442. Requirements for petroleum underground storage tank systems.

(a) Owners and operators of underground storage tank systems installed after _____ (*Editor's Note:* The blank refers to the effective date of adoption of this proposal.) shall perform interstitial

monitoring, at least once every 30 days, in accordance with § 245.444(7) (relating to methods of release detection for tanks) of both the tank and underground piping that routinely contains a product (regulated substance). In addition, pressurized piping for these systems must be equipped and operated with an automatic line leak detector with an automatic pump shut off device in accordance with § 245.445(1) (relating to methods of release detection for piping).

(b) Owners and operators of petroleum underground storage tank systems installed on or before _____ (*Editor's Note:* The blank refers to the effective date of adoption of this proposal.) shall provide release detection for tanks and piping as follows:

(1) *Tanks.* Tanks shall be monitored at least every 30 days for releases using one of the methods listed in § 245.444(4)—(9) [(relating to methods of release detection for tanks)] except that:

(i) Underground storage tank systems that meet the performance standards in § 245.421 [or § 245.422] (relating to performance standards for [new] underground storage tank systems [; and upgrading of exist-

ing underground storage tank systems]), [and the] may use monthly inventory control requirements in § 245.444(1) or (2), [may use] and tank tightness testing (conducted in accordance with § 245.444(3)) [at least every 5 years until December 22, 1998, or] until 10 years after the tank [is] was first installed or upgraded under § 245.422(b), [whichever is later] but not later than December 22, 2008.

(ii) Underground storage tank systems [that do not meet the performance standards in § 245.421 or § 245.422 may use monthly inventory controls (conducted in accordance with § 245.444(1) or (2)) and annual tank tightness testing (conducted in accordance with § 245.444(3)) until December 22, 1998, when the tank shall be upgraded under § 245.422 or permanently closed under § 245.452 (relating to permanent closure and changes-in-service)] with a capacity of 1,001 to 2,000 gallons may use manual tank gauging, conducted in accordance with § 245.444(2) and a tank tightness test at least every 5 years until _____ (Editor's Note: The blank refers to a date 10 years from the effective date of adoption of this proposal).

(iii) Tanks with a capacity of 550 gallons or less may use manual tank gauging, conducted in accordance with § 245.444(2) as long as they continue to meet requirements of this subchapter.

(iv) Tanks with a capacity of 551 to 1,000 gallons using the longer test times specified may use manual tank gauging, conducted in accordance with § 245.444(2) as long as they continue to meet requirements of this subchapter.

(v) Tank systems must meet the upgrade requirements of § 245.422(e) as appropriate.

* * * * *

§ 245.444. Methods of release detection for tanks.

Each method of release detection for tanks used to meet the requirements of § 245.442 (relating to requirements for petroleum underground storage tank systems) shall be conducted in accordance with the following:

* * * * *

(3) Tank tightness testing. Tank tightness testing, or another test of equivalent performance, [shall] must be capable of detecting a 0.1 gallon per hour leak rate from any portion of the tank that routinely contains product while accounting for the effects of thermal expansion or contraction of the product, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table. When an appropriate automatic tank gauge is used to meet this requirement, the tank must be filled to the overfill set point.

(4) Automatic tank gauging. Equipment for automatic tank gauging that tests for the loss of product and conducts inventory control [shall] must meet one of the following requirements:

* * * * *

(ii) For tank gauges installed prior to December 22, 1990, that do not meet the requirements of subparagraph (i), inventory control, or another test of equivalent performance, shall also be conducted in accordance with paragraph (1). Tank gauges shall be replaced or be certified by _____ (Editor's Note: The

blank refers to a date 1 year after the effective date of adoption of this proposal).

(5) Vapor monitoring. Testing or monitoring for vapors within the soil gas of the excavation zone [shall] must meet the following requirements:

* * * * *

(vi) In the underground storage tank excavation zone, the site is evaluated by a professional geologist to ensure compliance with [the requirements in] subparagraphs (i)—(iv) and to establish the number and positioning of monitoring wells that will detect releases within the excavation zone from any portion of the tank that routinely contains product. The written site evaluation report authenticated by the person completing the evaluation shall be maintained at the facility for the duration of the leak detection method.

* * * * *

(6) Groundwater monitoring. Testing or monitoring for liquids on the groundwater [shall] must meet the following requirements:

* * * * *

(vii) Within and immediately below the underground storage tank system excavation zone, the site is evaluated by a professional geologist to ensure compliance with subparagraphs (i)—(v) and to establish the number and positioning of monitoring wells or devices that will detect releases from any portion of the tank that routinely contains product. The written site evaluation report authenticated by the person completing the evaluation shall be maintained at the facility for the duration of the leak detection method.

* * * * *

§ 245.445. Methods of release detection for piping.

Each method of release detection for piping used to meet the requirements of § 245.442 (relating to requirements for petroleum underground storage tank systems) shall be conducted in accordance with the following:

(1) Automatic line leak detectors. Methods which alert the operator to the presence of a leak by [restricting or] automatically shutting off the flow of regulated substances through piping [or triggering an audible or visual alarm] may be used only if they detect leaks of 3 gallons per hour at 10 pounds per square inch line pressure within 1 hour. An annual test of the operation of the leak detector shall be conducted in accordance with the manufacturer's requirements. Systems installed after _____ (Editor's Note: The blank refers to the effective date of adoption of this proposal.) must meet this requirement at installation. Systems installed on or before _____ (Editor's Note: The blank refers to the effective date of adoption of this proposal.) that do not meet this requirement must upgrade to line leak detectors with an automatic pump shut-off device within the time frame specified in § 245.422(e) (relating to upgrading of existing underground storage tank systems).

* * * * *

OUT-OF-SERVICE UNDERGROUND STORAGE TANK SYSTEMS AND CLOSURE

§ 245.451. Temporary closure (out-of-service).

(a) When an underground storage tank system is temporarily closed [, owners] (out-of-service), the owner

shall complete and submit an amended registration form to the Department within 30 days in accordance with § 245.41 (tank registration requirements).

(b) Owners and operators shall continue operation and maintenance of corrosion protection in accordance with § 245.432 (relating to operation and maintenance including corrosion protection) [, and release detection in accordance with §§ 245.441—245.446 (relating to release detection). Subchapter D (relating to corrective action process for owners and operators of storage tanks and storage tank facilities and other responsible parties) shall be complied with if a release is suspected or confirmed] while the tank system is temporarily out-of-service. Records shall continue to be kept in accordance with § 245.435 (relating to recordkeeping).

(c) Owners and operators shall immediately empty a tank being placed temporarily out-of-service. Removed contents shall be reused, treated or disposed of in accordance with State and Federal requirements. Release detection is not required as long as the underground storage tank system is empty. The underground storage tank system is empty when all materials have been removed using commonly employed practices so that no more than 2.5 centimeters (1 inch) of residue, or 0.3% by weight of the total capacity of the underground storage tank system, remain in the system. Owners and operators shall maintain release detection records in accordance with § 245.446(2) (relating to release detection recordkeeping) for the most recent 12 month period of active operation.

(d) Subchapter D (relating to corrective action process for owners and operators of storage tanks and storage tank facilities and other responsible parties) shall be complied with if a release is suspected or confirmed.

(e) Inspection requirements shall be maintained as specified in § 245.411 (relating to inspection frequency).

[(b)] (f) * * * *

* * * * *

[(c)] (g) When an underground storage tank system is temporarily closed for more than 12 months, owners and operators shall [permanently]:

(1) Permanently close the underground storage tank system if it does not meet either performance standards in § 245.421 (relating to performance standards for new underground storage tank systems) for new underground storage tank systems or the upgrading requirements in § 245.422 (relating to upgrading of existing underground storage tank systems), except that the spill and overflow equipment requirements do not have to be met.

(2) Owners and operators shall permanently close the substandard underground storage tank systems at the end of this 12 month period in accordance with §§ 245.452—245.455, unless the Department provides an extension of the 12-month temporary closure period.

(3) Owners and operators shall complete a site assessment in accordance with § 245.453 (relating to assessing the site at closure or change-in-service) before an extension may be applied for.

(h) Underground storage tank systems that meet performance standards in § 245.421 or the upgrading requirements in § 245.422 shall be permanently closed within 3 years of being placed temporarily out-of-service unless the Department grants an extension to this temporary closure period.

Subchapter F. TECHNICAL STANDARDS FOR ABOVEGROUND STORAGE TANKS AND FACILITIES

GENERAL

§ 245.503. Variances.

When unique or peculiar circumstances make compliance with this subchapter technically impractical, infeasible or unsafe, the Department may, upon written application from the owner/operator of a storage tank system subject to this subchapter, grant a variance from one or more specific provisions of this subchapter.

* * * * *

(2) A written application for a variance shall be submitted to the Department and provide the following information:

* * * * *

(iii) The unique or peculiar conditions which make compliance with the sections identified in subparagraph (ii) technically impractical, infeasible or unsafe.

* * * * *

(3) New technologies may be granted a variance. New technologies shall be reviewed and appropriately documented by a professional engineer and documentation provided to the Department with the variance request.

(4) The Department will not grant a variance which would result in regulatory controls less stringent than other applicable Federal or State regulations, such as 37 Pa. Code Part I, Subpart B (relating to flammable and combustible liquids) and 40 CFR Part 112 (relating to oil pollution prevention).

[(4)] (5) * * *

[(5)] (6) * * *

§ 245.504. Referenced organizations.

(a) Nationally recognized associations which are referenced throughout this subchapter are as follows:

* * * * *

(7) [National Association of Corrosion Engineers] NACE International—The Corrosion Society (NACE).

* * * * *

(10) [Steel Structures Painting Council] SSPC—The Society for Protective Coatings (SSPC).

* * * * *

(c) When Nationally recognized codes and standards or manufacturer's specifications are updated, facilities or storage tank systems installed to previously existing standards prior to the update, will not automatically be required to be upgraded to meet the new standard.

§ 245.505. Applicability.

Existing tanks that became regulated due to the addition of new regulated substances as defined in § 245.1 (relating to definitions) (See definition of

“regulated substance” (i)(C)(I)—(III)), and the regulation of aboveground tanks greater than 30,000 gallons capacity, storing heating oil that is consumed on the premises (See definition of “consumptive use” in § 245.1) are subject to the requirements of this subsection and shall be registered with the Department by _____ (*Editor’s Note:* The blank refers to a date 60 days after the effective date of adoption of this proposal.). In addition, these tanks are temporarily excluded from the following requirements:

(1) Monitoring requirements in § 245.541(c) (relating to overflow prevention requirements) until _____ (*Editor’s Note:* The blank refers to a date 3 years after the effective date of adoption of this proposal.).

(2) In-service inspection requirements in § 245.552 (relating to in-service inspections) until within 5 years of the date of construction or the date of the last inspection or by _____ (*Editor’s Note:* The blank refers to a date 3 years after the effective date of adoption of this proposal.) whichever is greater.

(3) Out-of-service inspection requirements in § 245.553 (relating to out-of-service inspections) until _____ (*Editor’s Note:* The blank refers to a date 3 years after the effective date of adoption of this proposal.) for tanks not previously inspected or 10 years after construction for tanks without known corrosion rates, whichever is greater, or within projected inspection intervals based on corrosion rates determined at the last out-of-service inspection, but not to exceed 20 years from the date of the last inspection.

OPERATIONS AND MAINTENANCE

§ 245.514. Security.

An owner/operator is responsible to assure that appropriate security measures and procedures based on the facility location are established and implemented to protect the environment and the public. These security measures and procedures may include, but are not limited to, **monitoring**, fencing, lighting, access control, locked entrances and securing of valves and dispensers.

DESIGN, CONSTRUCTION AND INSTALLATION

§ 245.522. New aboveground tank installations and reconstructions.

(a) Tanks [**shall**] **must** be designed and constructed in accordance with an appropriate current code of practice developed by Nationally recognized associations such as UL, ACI, API, ASME, ASTM, STI or NACE **and will follow applicable engineering specifications.**

* * * * *

(d) Reconstruction of tanks [**shall**] **must** follow the current codes of practice developed by Nationally recognized associations **and be accomplished in accordance with sound engineering practices.** Reconstructed tanks [**shall**] **must** be inspected and hydrostatically tested before being placed into service. Reconstructed tanks [**shall**] **must** meet or exceed requirements specified in § 245.521 (relating to performance standards for aboveground storage tanks). Hydrostatic test fluids shall be discharged or disposed of in accordance with State and Federal requirements.

* * * * *

(f) The Department may require the tank owner to submit documentation of construction design criteria and engineering specifications for review.

§ 245.523. Aboveground storage tanks in underground vaults.

The following requirements shall be met when an owner or operator chooses to install an aboveground storage tank in an underground vault.

* * * * *

(11) Underground piping distribution systems for each tank system used to dispense class I or class II motor fuels for resale **must** be provided with release detection equivalent to underground piping release detection addressed in § 245.445 (relating to methods of release detection for piping) and be appropriately monitored.

§ 245.524. Aboveground tank modifications.

(a) Modifications shall be designed and implemented in accordance with current codes of practice developed by Nationally recognized associations such as API, ACI, ASME, ASTM, NACE, STI or UL.

* * * * *

(d) The Department may require the tank owner to submit documentation of construction modification design criteria and engineering specifications for review.

CORROSION AND DETERIORATION PREVENTION

§ 245.534. Interior linings and coatings.

* * * * *

(c) Interior linings or coatings shall be inspected by a third-party, Department-certified, aboveground storage tank inspector at installation, when undergoing a major modification and at least every 10 years or as warranted or recommended by the manufacturer or design engineer.

RELEASE PREVENTION AND LEAK DETECTION

§ 245.541. Overflow prevention requirements.

(a) [**Owner/operators**] An owner/operator shall ensure that releases from overfills do not occur. Transfer of stored substance may not exceed the volume available in the receiving tank and the transfer shall be adequately monitored. Immediate action shall be taken to stop the flow of regulated substance prior to exceeding tank capacity or in the event that an equipment failure occurs.

(b) Tanks [**installed after October 11, 1997, shall**] **must** be installed with the following:

* * * * *

(2) A high-level alarm [**and**] **with** an automatic high-level cut-off device or a high-level alarm [**and**] **with** a manned operator shutdown procedure in operation.

* * * * *

(d) An existing tank system which is taken out of service to perform a scheduled out-of-service inspection or a major modification to the tank shall be upgraded with a high-level alarm [**and**] **with** a cut-off device or a high-level alarm [**and**] **with** a manned operator shutdown procedure prior to being put back in service.

(e) An existing tank system which has not been required to be taken out of service to perform a scheduled inspection or modification shall be upgraded with a high-level alarm with a cut-off device or a high-level alarm with a manned operator shutdown procedure by _____ (Editor's Note: The blank refers to a date 3 years after the effective date of adoption of this proposal).

§ 245.542. Containment requirements for above-ground storage tank systems.

* * * * *

(c) Secondary containment under the tank bottom and around underground piping [shall] must be designed to direct any release to a monitoring point to meet leak detection requirements. Secondary containment shall be provided on a new tank at installation, and shall be provided on an existing tank at reconstruction or relocation of the tank or when the tank floor is replaced. Permeability of the secondary containment [shall] must be less than [1 x 10⁻⁷] 1 x 10⁻⁷ cm/sec at anticipated hydrostatic head and be verified at the time of installation.

(d) Aboveground tanks [shall] must have emergency containment structures, such as dike fields, curbing and containment collection systems, which contain releases from overfills, leaks and spills, when a new tank system is installed or at the next out-of-service inspection for existing tank systems as established in § 245.553 (d) (relating to out-of-service inspections) or by _____ (Editor's Note: The blank refers to a date 3 years after the effective date of adoption of this proposal), whichever occurs first.

(1) Permeability of [new] newly installed or replacement emergency containment structures [installed after October 11, 1997, shall] must be less than 1 x 10⁻⁶ cm/sec at anticipated hydrostatic head and be of sufficient thickness to prevent the released substance from penetrating the containment structure for a minimum of 72 hours, and until the release can be detected and recovered.

(2) Emergency containment structures for existing aboveground storage tanks shall meet one of the following standards by _____ (Editor's Note: The blank refers to a date 3 years after the effective date of adoption of this proposal.) or at the next out-of-service inspection, prior to the tank being placed back into service, whichever occurs first.

* * * * *

(ii) Verification by a professional engineer that the emergency containment structure, coupled with the tank monitoring program and response plan is capable of detecting and recovering a release and is designed to prevent contamination of the waters of this Commonwealth. Verification shall be conducted in a manner consistent with the Department's technical document entitled "Verification of Emergency Containment Structures for Aboveground Storage Tanks" and should include determination of the containment structure permeability.

(3) Verification of the containment structure is valid until conditions at the site, monitoring program, response plan or procedures change.

(4) All transfers of regulated substances to a tank within the emergency containment shall be monitored by designated personnel for the duration of the transfer.

* * * * *

§ 245.543. Leak detection requirements.

(a) Aboveground tank systems [installed after October 11, 1997,] shall [provide] be provided a method of leak detection at installation that is capable of detecting a release. The leak detection method shall be monitored at least monthly and shall be installed, calibrated, operated and maintained in accordance with industry practices and manufacturer's specifications.

* * * * *

(c) Existing aboveground storage tanks without secondary containment under the bottom of the tank that are in contact with the soil, such as vertical flat bottom tanks, and do not have cathodic protection or an internal lining shall be tested for tightness at the next scheduled service inspection [after October 11, 1997,] consistent with subsection (d) and continue testing for tightness at each service inspection thereafter, until the tank is upgraded.

(d) Tank test for tightness shall be based on a scientific or statistical method and procedure. The test method and procedure shall be third-party certified with a specific leak detection rate or a method and procedure that is recognized by a National association, such as API Publication 334 Guide to Leak Detection in Aboveground Storage Tanks. The test shall be performed by a third-party expert qualified in the test procedure and not an employee of the tank owner.

(e) * * *

ABOVEGROUND STORAGE TANK INSPECTIONS

§ 245.552. In-service inspections.

(a) The in-service inspection shall follow the guidelines of a Nationally recognized association such as API 653 [and], API 570 and applicable engineering criteria.

(b) The in-service inspection shall evaluate the following:

* * * * *

(9) Tank system integrity and suitability for service.

(c) Inspection information shall be submitted to the Department on a form provided by the Department and shall include the results of the evaluation in subsection (b) and the following:

* * * * *

(3) The next inspection schedule based on the API 653 calculated service life method or 1/4 of the corrosion rate life with a maximum of 5 years. Other site specific conditions, for example, maintenance practices, previous repairs, the nature of the substance stored or soil conditions that may affect corrosion rate life or tank system integrity and should be considered when projecting tank service life and the next inspection interval.

* * * * *

(e) Inspection recommendations shall be addressed and remedied as appropriate. When substantial modifications are necessary to correct deficiencies, they shall be made in accordance with manufacturer's specifications and engineering design criteria. The Department may require submission and review of all documentation relating to these remedies. Required tank handling activities are reported to the

Department by the certified installer. Tank handling activities involving major modifications shall also be inspected by a certified aboveground storage tank inspector and reported to the Department.

* * * * *

§ 245.553. Out-of-service inspections.

(a) Inspections shall follow the guidelines of a Nationally recognized association such as *API 653*, *API 570* or ASME and applicable engineering criteria.

(b) The out-of-service inspection shall evaluate the following:

* * * * *

(11) Tank system integrity and suitability for service.

(c) The tank bottom evaluation shall be based on a scientific or statistical procedure encompassing appropriate methods of nondestructive examination. The evaluation must be representative of the whole floor when practicable, excluding removal of liners, heating coils or other appurtenances.

(d) Inspection information shall be submitted to the Department on a form provided by the Department and shall include the results of subsection (b) and the following:

* * * * *

(3) The schedule for next out-of-service inspection, based on the *API 653* calculated service life method or 1/2 of the corrosion rate life, with a maximum of 20 years between inspections. Other site specific conditions, for example, maintenance practices, previous repairs, internal linings, the nature of the substance stored or soil conditions that may affect corrosion rate life and should be considered when projecting tank service life and the next inspection interval.

* * * * *

[(d)] (e) * * *

* * * * *

(2) Existing tanks shall be initially inspected as follows:

* * * * *

(ii) If corrosion rates can be determined or are known, tanks shall be inspected at their *API 653* calculated service life method or 1/2 the corrosion rate life, from installation or previous out-of-service inspection or by October 11, 2000, whichever is later.

(3) Tanks shall have an out-of-service inspection at their *API 653* calculated service life method or 1/2 of the corrosion rate life, with a maximum of 20 years from the last out-of-service inspection.

[(e)](f) Deficiencies shall be remedied before the tank is returned to service. When substantial modifications are necessary to correct deficiencies, they shall be made in accordance with manufacturer's specifications and engineering design criteria. The Department may require submission and review documentation relating to these remedies. Required tank handling activities are reported to the Department by the certified installer. Tank handling activities involving major modifications shall also be inspected by a certified aboveground storage tank inspector and reported to the Department.

[(f)](g) * * *

[(g)](h) * * *

§ 245.554. Installation and modification inspections.

* * * * *

(b) Major modifications shall be inspected by a Department certified inspector at the time of modification under § 245.524 (relating to aboveground tank modifications) and a current codes of practice developed by Nationally recognized associations prior to being put back in service. The inspection report shall be kept for the operational life of the tank. When substantial modifications are made to the tank floor, the next inspection date projections shall be determined based on the condition of the floor subsequent to those modifications and reported to the Department by the certified inspector on the appropriate inspection form provided by the Department. Other site specific conditions, for example, maintenance practices, previous repairs, the nature of the substance stored or soil conditions that may affect corrosion rate life or tank system integrity should be considered when projecting tank service life and the next inspection interval.

* * * * *

CLOSURE AND REMOVAL FROM SERVICE REQUIREMENTS

§ 245.561. Permanent closure or change-in-service.

Before permanent closure or change-in-service is completed, the owner/operator shall comply with the following:

* * * * *

(3) The [owner/operators] owner/operator shall complete a site assessment to measure for the presence of any release from the storage tank system and a closure report. The assessment of the site shall be made after the notification to the Department and shall be conducted in a manner consistent with the Department's technical document entitled "Closure Requirements for Aboveground Storage Tank Systems" unless otherwise agreed upon or waived by the Department. The results of the site assessment and the closure report shall be retained for 3 years.

* * * * *

(6) Tank systems shall be cleaned, rendered free of hazardous vapors and ventilated if left onsite or tank systems shall be emptied and removed from the site in a manner consistent with current industry practices and Bureau of Land Recycling and Waste Management requirements such as Chapters [263] 263a and 299 (relating to [reserved] transporters of hazardous waste; and storage and transportation of residual waste).

* * * * *

(8) The [State Fire Marshal] appropriate State agency, county and local jurisdiction shall be notified if the tank is under a fire marshal, flammable and combustible liquids or other State agency, county or local jurisdiction permit.

* * * * *

Subchapter G. SIMPLIFIED PROGRAM FOR SMALL ABOVEGROUND STORAGE TANKS

GENERAL

§ 245.604. Referenced organizations.

(a) Nationally recognized associations which are referenced throughout this subchapter are as follows:

* * * * *

(5) [National Association of Corrosion Engineers] NACE International—The Corrosion Society (NACE).

* * * * *

(8) [Steel Structures Painting Council] SSPC—The Society for Protective Coatings (SSPC).

* * * * *

§ 245.605. Applicability.

Existing tanks that become regulated due to the addition of new regulated substances as defined in § 245.1 ((relating to definitions) (See “regulated substance” (i)(C)(I)—(III)) are subject to the requirements of this subsection and shall be registered with the Department by _____ (Editor’s Note: The blank refers to a date 60 days after the effective date of adoption of this proposal). In addition, these tanks are temporarily excluded from the following technical requirements:

(1) Emergency and secondary containment requirements in § 245.612(e) (relating to performance and design standards) until _____ (Editor’s Note: The blank refers to a date 3 years after the effective date of adoption of this proposal).

(2) A method of leak detection as required in § 245.613(a) (relating to monitoring standards) until _____ (Editor’s Note: The blank refers to a date 1 year after the effective date of adoption of this proposal).

(3) In-service inspections required in § 245.616 (c)(3) (relating to inspection requirements) until _____ (Editor’s Note: The blank refers to a date 3 years after the effective date of adoption of this proposal).

TECHNICAL REQUIREMENTS

§ 245.611. Testing requirements for new and substantially modified small aboveground storage tanks.

(a) Tanks [installed after October 11, 1997,] shall be tested for tightness at installation in accordance with current codes of practice developed by Nationally recognized associations and manufacturer’s specifications, except for manufactured, shop built tanks that meet the requirements of subsection (b). The testing shall be completed, as part of the installation process, prior to putting the tank in service.

* * * * *

§ 245.612. Performance and design standards.

(a) Tanks shall be designed, constructed and installed or modified in accordance with current codes of practice developed by Nationally recognized associations such as API, ASME, ASTM, ANSI, STI and UL and the manufacturer’s specifications. Tank handling activities shall

be accomplished by a Department certified aboveground storage tank installer or under the installer’s direct, onsite supervision and control.

* * * * *

(d) Tanks [installed after October 11, 1997,] shall be installed with secondary containment in or under the tank bottom to provide monitoring capability to satisfy leak detection requirements in § 245.613 (relating to monitoring standards) and emergency containment to contain possible releases, such as overfills, leaks and spills. Emergency containment shall be sufficiently impermeable to contain any potential release for a minimum of 72 hours and until the release can be detected and fully recovered in an expeditious manner. Double walled tanks may meet both emergency and secondary containment requirements when the tank system is operated with spill and overflow protection controls, including, but not limited to, the following:

(1) A spill containment bucket at the tank fill point or containment at the remote fill point.

(2) An overflow alarm and automatic cutoff device or shut down procedure.

(3) Block valves on product lines.

(4) Solenoid valve or anti-siphon device, if appropriate.

* * * * *

§ 245.614. Requirements for closure.

(a) Tank systems shall be cleaned, rendered free from hazardous vapors and ventilated if left onsite or shall be emptied and removed from the site in a manner consistent with current industry practices and Bureau of [Land Recycling and] Waste Management requirements such as Chapters [263] 263a and 299 (relating to [reserved] transporters of hazardous waste; and storage and transportation of residual waste). Piping shall be removed or capped and fill ports shall be secured, capped or dismantled.

* * * * *

§ 245.616. Inspection requirements.

(a) Required inspections of small aboveground storage tanks shall be conducted by Department certified aboveground storage tank inspectors according to a current Nationally recognized association’s code of practice such as API [and], STI or ASME [and] or according to manufacturer’s specifications and applicable engineering criteria. Deficiencies noted during the inspection shall be addressed and remedied as appropriate. When substantial modifications are necessary to correct deficiencies, they shall be made in accordance with manufacturer’s specifications and applicable engineering design criteria. The Department may require submission and review of documentation relating to these remedies. The associated tank handling activities are reported to the Department by a certified installer.

(b) [After October 11, 1997, small] Small aboveground field constructed storage tanks shall be inspected at installation, reconstruction or relocation and when a major modification activity is performed on the tank shell or the tank bottom plates.

(c) The owner/operator of small aboveground storage tanks storing regulated substances with a capacity greater than 5,000 gallons and owner/operator of small

aboveground storage tanks storing highly hazardous substances with a capacity greater than 1,100 gallons shall have in-service inspections conducted every 10 years or **[at 1/4 of the] more often when corrosion [rate life with a maximum of 10 years between inspections], deterioration or other specific conditions necessitate. Other specific conditions may include, but are not limited to, maintenance practices, previous repairs, the nature of the substance stored and coatings or linings that should be considered when projecting tank service life and the next inspection interval. Internally lined tanks and flat bottom tanks without an interstice or external access to the tank bottom may require further evaluation or internal examination.** Inspections shall be phased in for tanks without a previous inspection as follows:

* * * * *

(d) In-service inspections shall evaluate the following:

* * * * *

(9) Tank system integrity and suitability for service.

Subchapter H. FINANCIAL RESPONSIBILITY REQUIREMENTS FOR OWNERS AND OPERATORS OF UNDERGROUND STORAGE TANKS AND FACILITIES

§ 245.704. General requirements.

* * * * *

(b) An owner or operator of an underground storage tank shall have sufficient financial resources available to continuously meet the USTIF deductibles for both corrective action and third party liability as determined in accordance with § 245.707 (relating to coverage amounts for financial responsibility). **The deductible coverage must be in a method approved under section 701(b) of the act (35 P. S. § 6021.701(b)) including a guarantee, surety bond, qualification as a self-insurer, insurance or risk retention coverage, letter of credit, indemnity contract, trust fund, standby trust fund or other method approved by the Department.**

(c) **[Upon request of the Department, an owner or operator of an underground storage tank shall submit a written certification or provide other written evidence] The owner or operator shall have written documentation of the USTIF deductible coverage readily available and provide this documentation to the Department upon request to demonstrate that the owner or operator has sufficient financial resources to meet the USTIF deductible for both corrective action and third party liability as determined in accordance with § 245.707. [The certification shall be made on a form provided by the Department.]**

§ 245.707. Coverage amounts for financial responsibility.

The owner or operator of an underground storage tank, other than an exempt underground storage tank, shall comply with the financial responsibility requirements of this subchapter by maintaining sufficient financial resources to provide the coverage for both corrective action and third party liability, in the amounts set forth in paragraphs (1) and (2) for the applicable number of tanks:

* * * * *

(2) *For third party liability:*

<i>Number of tanks</i>	<i>Amount of required coverage</i>
1—100	1 × USTIF deductible
over [101] 100	2 × USTIF deductible

[Pa.B. Doc. No. 06-656. Filed for public inspection April 21, 2006, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 63]

[L-00050173]

Extended Area Service

The Pennsylvania Public Utility Commission, on October 27, 2005, adopted a proposed rulemaking order setting forth changes to regulations governing extended area service in the telecommunications industry.

Executive Summary

Periodically the Commission reevaluates its rules governing the process for changing a customer's local calling area to ensure that the Commission's regulations reflect the current state of the law as well as technology and demographic changes in telecommunications services.

On April 1, 2003, the Commission created an Extended Area Service (EAS) Task Force at Docket No. M-00031703 and charged the EAS Task Force with evaluating the Commission's regulations for EAS. EAS is a technical term referring to changes in local calling areas, typically expansions, which convert local toll calls to local calls. EAS changes typically reflect technological, economic, and demographic changes in this Commonwealth's local telecommunications markets.

The Commission's Task Force was able to reach a consensus on some, though not all, draft language revising the current regulations. Staff reviewed the parties' proposals and the Commission adopted the proposed regulation reflecting areas of disagreement and agreement among the parties.

The proposed amendments accomplish a number of Commission objectives. First, the amendments replace some outmoded definitions and propose new definitions. Second, the proposed amendments replace the current requirement of a mandatory biennial traffic study conducted by local and interexchange carriers with the option to conduct a traffic study on a case-by-case or biennial basis. Third, the proposed amendments transfer the responsibility for compiling customer responses to EAS Polls from industry to the Commission. This transfer was necessary given the reluctance of some competitive carriers to provide their traffic study to the incumbent, formerly monopoly, carrier that had traditionally compiled the traffic study. Fourth, the proposed amendments permit carriers to petition the Commission to recover any revenue shortfall or cost incurred for the implementation of EAS. Taken together, the proposed revisions should provide for better management of EAS proceedings before the Commission.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 11, 2006, 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 must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Commission, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Meeting held
October 27, 2005

Commissioners Present: Wendell F. Holland, Chairperson; James H. Cawley, Vice Chairperson, concurring statement follows; Bill Shane; Kim Pizzingrilli; Terrance J. Fitzpatrick

Rulemaking Re: Proposed Revision to Commission Regulations Governing Extended Area Service (EAS) at 52 Pa. Code §§ 63.71—63.77; Doc. No. L-00050173

Report and Recommendation of the Extended Area Service Task Force; Doc. No. M-00031703

Proposed Rulemaking Order*By the Commission:*

Before the Commission for disposition is a staff recommendation and proposed rulemaking prepared in response to the Commission's Secretarial Letter of April 1, 2003 at M-00031703 regarding Extended Area Service (EAS).¹

History of the Proceeding

On June 30, 1999, the Commission entered an Order at I-00940035 (*June 1999 Order*) adopting the Extended Area Service (EAS) Report of the Monitoring and Reporting/Subscribership Subcommittee (Monitoring Subcommittee) of the Universal Telephone Service Task Force.

The *June 1999 Order*, in addition to suspending the biennial traffic usage study requirement of §§ 63.71—63.77 (the EAS Regulations), required the Monitoring Subcommittee to review the pertinent regulations for possible revisions and report its findings to the Commission.

By Secretarial Letter dated April 1, 2003 at M-00031703, the Commission created an EAS Task Force to evaluate the EAS regulations. Furthermore, the Commission separated the EAS Task Force from the Universal Telephone Service Task Force, effectively eliminating the Monitoring Subcommittee from the process. The Commission directed the EAS Task Force to focus on how to make the current regulations more reflective of the realities existing in the current marketplace. Subsequently, Commission staff convened a collaborative, including representatives of industry² and the Office of Consumer Advocate (OCA) to review and develop an EAS recom-

mendation. During the ensuing meetings, the Task Force members conducted a section-by-section review of our existing EAS regulations.

The Task Force was able to reach a consensus on some of the proposed changes; however, it could not reach a consensus on every section of the regulations. Differing viewpoints came from the Pennsylvania Telephone Association (PTA) and the OCA. Notably, the Competitive Local Exchange Carriers (CLECs) and Interexchange Carriers (IXCs) posed neither consensus nor contradictory positions. The PTA argues that the EAS regulations are no longer necessary because local and long distance competition provides customers with enough calling options to eliminate the need for a Commission-mandated extension of calling areas. Regulations are still necessary in the OCA's opinion. The OCA believes that this is particularly true for rural areas with little or no competition.

Staff reviewed the consensus language, as well as the alternative language that was proposed by the OCA and the PTA. The result of this effort, reflected in the Bureau of Fixed Utility Services (FUS) recommendation prepared in consultation with the Law Bureau, Office of Special Assistants, and Bureau of Consumer Services, is before us today.

Discussion

The proposed rulemaking recognizes that regulations are still necessary but suggests some revisions that better reflect the current environment, e.g., the advent of intraLATA³ competition and presubscription, the recent classification of optional calling plans as competitive, and the proliferation of local telephone choice in certain local markets. Staff is particularly concerned about the cost, complexity and administrative feasibility of attempting to aggregate traffic data in highly competitive areas where multiple CLECs and IXCs exist.

Although the emergence of wireless and more recent innovations such as Voice over Internet Protocol (VoIP) provides customers with expanded choice, the relatively uneven deployment of these innovative technologies and services warrants the continuation of some form of EAS. This is particularly true for those rural areas where there is less deployment of these technologies than may be the case at a future time. Moreover, section 3014(b)(7) of Chapter 30 grants some rural carriers a continuous suspension from certain interconnection requirements with alternative service providers under TA-96 through December 31, 2008.

Significant low-cost alternatives to traditional long distance programs are also not widely available in rural and urban areas. It appears that the unlimited statewide calling plans of some IXCs or local phone companies with long distance service affiliates continue to cost considerably more than an expanded local calling area. Finally, the continuing existence of customer complaints seeking EAS warrants continuation of a revised form of EAS regulations to provide these customers with an opportunity to obtain EAS as a remedy in appropriate circumstances.

³ LATA is a term of art referring to the Local Access and Transport Areas identifying the 196 local geographical areas in the US in which a local telephone company provides telecommunications services-local or long distance. The definition differentiates between "local" companies who could not provide service between LATAs and "long-distance" companies that provided service between LATAs under the Modified Final Judgment of 1984, which divested the Bell Telephone operations. The Telecommunications Act of 1996 (TA-96) allowed local companies to petition the FCC for authority to provide long-distance service under section 271 of the TA-96. Verizon Pennsylvania, Inc., as a successor Bell Operation company, has section 271 authority in Pennsylvania. Nevertheless, calls within a LATA are "intraLATA" calls and calls between LATAs are "interLATA" calls. The EAS regulations address conversion of intraLATA or interLATA toll calls to local calls.

¹ This Secretarial Letter created the Extended Area Service (EAS) Task Force for the purpose of evaluating the Commission's regulations governing EAS as set forth at 52 Pa. Code §§ 63.71—63.77

² The industry representatives included MCI, AT&T, Verizon, the Pennsylvania Telephone Association, North Pittsburgh, D&E Communications, Sprint, and Frontier.

§ 63.71. Definitions.

This section modifies several of the existing definitions, creates new definitions, and eliminates some outdated definitions. These proposed changes make the definitions match the nomenclature used in other existing Commission regulations and reflect market changes.

There are two proposed replacements and one new definition. "Basic Local Calling Area" replaces "Local Calling Area" to make it consistent with other sections of our regulations. "Customer" replaces "Subscriber" for the same reason.

There is a new definition for "Interexchange Telecommunications Carrier" for clarity. There are also new definitions of Administrative costs and Facility costs reflecting the regulations proposal to allow the recovery of one-time and on-going EAS implementation costs including the recovery of lost revenues.

The current regulations contain definitions of "Optional Calling Plans" and "Interexchange Toll Rates." The proposed rulemaking eliminates "Optional Calling Plans" and "Interexchange Toll Rates" due to the level of competition with interexchange carriers.

§ 63.72. Traffic Usage Studies.

The current regulation in § 63.72 govern traffic usage studies. The proposed § 63.72 regulation continue to govern traffic usage studies. However, the current requirements governing the general filing requirements for biennial studies would is no longer required.

The current § 63.72 regulation required all local exchange carriers to conduct traffic usage studies on a biennial basis and specified the methods for measuring calling frequency for exchanges, contiguous or noncontiguous, within 16 miles of a toll center. The Commission's *June 1999 Order* suspended this requirement. That suspension is currently in force and effect.

The proposed rulemaking for § 63.72 eliminates the biennial traffic study. This elimination continues our process of ensuring that our regulations are consistent with section 3015(e) of the Public Utility Code. *PUC Filing and Reporting Requirements on Local Exchange Carriers*, Docket No. M-00041857 (Order Entered October 5, 2005). The proposed regulations do provide, however, that in the course of a specific formal complaint proceeding, the presiding Administrative Law Judge may direct the local and long distance carriers serving a specific calling route to produce traffic studies. These proposed regulations are consistent with the recently enacted Chapter 30 legislation set forth at 66 Pa.C.S. § 3001 et seq.

The proposed regulations also permit a local exchange carrier to undertake a voluntary biennial traffic study instead of conducting studies on a case-by-case basis. The proposed regulations do not require a study if the carrier conducted a study within the previous two years or if the route obtained EAS. The proposed regulations also eliminate detailed provisions on call measurement methodology for interLATA and intraLATA calls.

Finally, the proposed regulations require the Commission to prepare a report containing the aggregated results of traffic studies within 90 days of its receipt of the study data. The report is proprietary and filed under protective seal. Participating local exchange carriers, interexchange telecommunications carriers, petitioning customers, the Office of Trial Staff, the Office of Consumer Advocate, and the Office of Small Business Advocate would receive the results.

The local exchange carrier has the responsibility for compiling the information and making an estimate of the increase in the charge for local service from EAS in the current regulation in § 63.72. Under the proposed regulation in § 63.72(e) and (f), the Commission staff assumes these responsibilities in § 63.72(e). This revision addresses market developments that make it more appropriate for the Commission staff to do this work instead of an incumbent LEC on behalf of itself and its competitors. The appropriate Commission staff compiling the results is a witness in any proceeding and is subject to cross-examination in § 63.72(f) of the proposed regulations.

The Commission recognizes that this is a significant change in process. The Commission expressly seeks comment on this proposal as well as any suggested language addressing this proposal.

§ 63.72a. Reserved.

The current regulation in § 63.72a governs the conduct of interLATA traffic studies. Those existing regulations require a local carrier to identify the interexchange carriers operating in its service territory based upon access charge levels from the most recent 12-month period. The existing regulations also contain detailed requirements for interexchange carrier submittals to a local exchange carrier. The existing regulations require the local exchange carrier analyze and aggregate the traffic data.

The proposed regulations revise these requirements and move them to a newly revised § 63.72. Section 63.72a is reserved.

The proposed regulation in § 63.72 incorporates some of the detailed provisions of the current § 63.72a. The revisions respond to market developments, EAS Task Force suggestions, the proposal to allow an ALJ to require a study in a proceeding, and an alternative that permits a local exchange carrier to conduct voluntarily a biennial traffic study in lieu of case-by-case studies.

The Commission seeks comment on these revisions, as reflected in a revised § 63.72, given market developments in the telecommunications market including but not limited to the possible merger of local exchange carriers and interexchange telecommunications carriers.

§ 63.73. Customer Polls.

The existing EAS regulation in § 63.72 governs Optional Calling Plans. The current regulations details the circumstances and procedures for the implementation of Optional Calling Plans by a local exchange carrier based on the required, though currently suspended, biennial traffic usage study.

The current regulation requires the local exchange carrier to provide a subscriber with options. The local exchange carrier must offer a subscriber the option to purchase a block of time for a flat fee or another alternative. This is required whenever the mandatory biennial traffic study shows an interexchange calling frequency of 2.00 or more calls per access line and where at least 25% of the access lines have been used for 1.00 or more calls.

The current regulation also requires each traffic study interexchange carrier to provide a subscriber with an option to purchase a block of time for a flat fee and a continuing discount for calls in excess of that block of time. This is required whenever toll traffic usage studies reveal an average monthly calling frequency of more than 2.00 calls per access line from one exchange to another exchange over an interLATA route. In both cases, a local

exchange carrier must notify subscribers of the existence of the required Optional Calling Plan within 60 days and file the requisite tariff.

The proposed regulation eliminates Optional Calling Plan requirements. The proposed deletion addresses the advent of competition in the interLATA and intraLATA toll calling markets in Pennsylvania. The Commission recognizes a view that Optional Calling Plans may retain their validity for customers that lack competitive choices or where the customers' carrier is exempt from local wireline telecommunications competition under Chapter 30 or section 251(f) of the Telecommunications Act of 1996. See generally 66 Pa.C.S. § 3014(b)(7). The Commission seeks comment on this issue and suggested language addressing how the final regulations should resolve the matter.

The proposed regulation also moves the EAS poll requirements currently set forth in § 63.74 to a revised § 63.73. These proposed regulations provide detailed procedures governing customer polls.

The proposed regulation in § 63.73(b) governs when a local exchange qualifies for EAS. The proposed regulation specifies that a local exchange will qualify for EAS when the route has an average monthly calling frequency of 5.50 or more calls per access line from one exchange to the target exchange and at least 50% of the access lines in the originating exchange have been used to make 1.00 or more calls per month. The proposed regulation in § 63.73(c) does not require a poll when customers affirmatively rejected EAS from the originating exchange to the terminating exchange during the preceding 2 years. Section 63.73(d) requires a carrier to implement one-way EAS without a customer poll over a qualifying route when usage standards are met and there is no increase in the local service charge for EAS. Conversely, § 63.73(d) will require a carrier to conduct a customer poll of the originating exchange if rates will increase to determine whether to grant EAS.

This continues the practice set forth in § 63.74 of the current regulations. Some members of the EAS Task Force wanted an increase in the calling frequency standard before a route qualifies for EAS. The proposed regulations reject that suggestion in light of the elimination of Optional Calling Plans and the absence of any valid reason to adjust the current qualifying number.

The proposed regulation in § 63.73 eliminates the current requirements in § 63.74(4) and (5) addressing two-way EAS balloting. The proposed regulation eliminates the two-way balloting provisions in response to market conditions and the EAS Task Force discussions.

The proposed regulations contain detailed procedures for mailing and counting ballots in a customer poll. These detailed revisions facilitate the Commission's obligation to tally the ballot results from a customer poll.

The proposed regulations retain the current requirements of § 63.74 that a poll is not required if one was rejected within the previous 2 years or if the usage standards are met but there will be no increase in the local service charge for implementing extended area service. The Commission also retains the authority to specify additional conditions for a customer poll.

The proposed regulation in § 63.73(e) continues provisions addressing the conduct of balloting on EAS routes if there would be an increase in local service rates due to increasing the size of the local calling area. This ensures consideration of customer responses in EAS matters.

§ 63.74. Cost Recovery.

The existing § 63.74 regulations contain detailed provisions governing the conduct of one-way and two-way EAS ballots. The proposed regulations revise the one-way ballot provisions, eliminate two-way ballot provisions, and move these revisions to a new § 63.73. The new § 63.74 contains detailed cost recovery provisions.

Under current practice, a local exchange carrier may recover the costs to implement EAS although this typically excludes any revenue shortfall recovery. The Commission took this approach in light of the increased revenue derived from expansions in the local calling areas and the delivery of new services. However, the Commission did allow for the recovery of some implementation costs. The Commission generally viewed expansions in local calling areas as a necessary response to changed circumstances and a means of ensuring reasonable service to Pennsylvanians. *Vincent P. Golden v. Bell-Atlantic, Inc. and GTE North, Inc.*, Docket No. C-00981878 (Order entered January 24, 2001); *Warthman v. GTE North, Inc.*, Docket No. C-00924416, Slip Op., p. 7, (Order entered March 20, 1995) and *Pa. P.U.C. v. ALLTEL Pennsylvania, Inc.*, Docket Nos. P-00940801 and P-00940807 (Orders entered October 19, 1994).

The Commission does consider recovery of some EAS costs, but not lost revenue, where a carrier does not have rate groups. The Commission also prohibits the substitution of noncompetitive service revenues to recover revenues from lost competitive service. *Jeb Billet et al. v. The United Telephone Company of Pennsylvania*, Docket No. C-00014854 (Order entered April 8, 2005). The Commission had taken this approach to ensure compliance with longstanding Commission-approved tariff-based local rate structures for regulated or noncompetitive services. However, the Commission has approved increases in the \$2.00 range for some local exchange calling area rates when EAS is implemented. Compare *Haines Township, Milnes Township, Penn Township, and the Borough of Millheim v. Bell Atlantic-Pennsylvania, Inc.* Docket No. C-00970430, (Opinion and Order entered February 2, 2000) with *Jeb Billet*.

The proposed regulation in § 63.74 outlines a new approach to EAS cost recovery. The proposed revisions allow local exchange carriers to petition the Commission to recover revenue shortfall as well as on-going and/or one-time costs incurred to implement EAS. The petition must also propose a method for cost recovery.

The proposed regulation presents a list of items for cost recovery. These are administration, facilities, and lost revenues. Any claimed cost must be prudently incurred and reasonable in amount. In situations where customers are responsible for cost recovery, customers receive notice of the LEC's cost recovery proposal and are provided an opportunity to vote in a customer poll.

The proposed regulation recognizes that section 3016(f)(1) of the Public Utility Code prohibits a local exchange telecommunications company from using revenues earned or expenses incurred in conjunction with noncompetitive service to subsidize competitive services. Previous declarations by some carriers that toll services are competitive may implicate section 3016(f)(1) and limit the recovery of lost revenues as reflected in the proposed § 63.74. The Commission seeks legal analysis and policy comment and suggested language addressing this issue. This is necessary because the proposed revision may encompass compensation for competitive lost toll revenues from a surcharge or other increase in noncompetitive service.

One issue that may arise if the Commission adopts the proposed cost recovery provisions concerns the interplay of cost recovery and price-cap regulated carriers. In those instances, the proposed recovery of on-going and/or one-time costs associated with the implementation of EAS routes involves the periodic annual revenue and rate increases implemented by LECs that have approved Amended Network Modernization Plans (Amended NMPs) under the new Chapter 30 law, Act 183 of 2004, P.L. 1398, 66 Pa.C.S. §§ 3011—3019. Whether the costs incurred to establish EAS routes are recovered via a surcharge in a particular affected exchange or increase a LEC's basic local exchange service rate, EAS costs will be accounted as revenues for the purpose of the LEC's calculation of the annual price stability mechanism (PSM) revenue and rate increases. See generally 66 Pa.C.S. § 3015(a). Therefore, over time, there is the potential for over-recovery of EAS costs if revenues from an EAS surcharge or other increase designed to cover on-going and/or one-time costs are included in the baseline used to calculate an incumbent local exchange carrier's PSM and associated rate increase opportunities.

Another issue that may arise if the Commission adopts the proposed cost recovery provisions concerns the potential incremental over-recovery of on-going and/or one-time EAS costs. Specifically, the Commission seeks comment on whether the PSM exogenous factors of LECs with the appropriate Amended NMPs can be utilized for that purpose to the extent that the Amended NMPs permit it, and whether other methods would be more appropriate and easier to follow and implement. Commenting parties are encouraged to submit appropriate and concise calculation examples that accurately explain their respective proposals. Commenting parties should also include proposed language reflecting resolution of this issue.

A further issue that could arise if the Commission adopts the proposed cost recovery provision concerns the customers responsible for cost recovery and the Public Utility Code. The proposed regulations do not address the issue of cost recovery of non-recurring and recurring EAS route costs and lost revenues from end-user customers of a LEC with an approved Amended NMP where such customers purchase "service bundles" from the LEC. These "service bundles" typically include protected (e.g., basic local exchange service), non-competitive, and competitive services, and are offered as competitively priced "service bundle packages." See generally 66 Pa.C.S. § 3016(e)(2).

The Commission solicits comments on whether end-user customers with "service bundles" should shoulder the burden of the cost and lost revenue recovery for a LEC's establishment of an EAS route in one or more exchanges in the same manner as the end-users who do not subscribe to the LEC's "service bundles." This is an important consideration given inter alia the provisions of sections 1304 and 3016(f)(1) of the Public Utility Code. If appropriate, the Commission seeks comment on whether on-going and/or one-time EAS costs and lost revenue recovered from end-user customers with "service bundles" should be accomplished through the rates charged for the protected and noncompetitive services portion of the "service bundle" when one or more EAS routes provides those customers with one or more expanded local calling areas.

The commenting parties should address this issue and provide specific language suggesting how the final regulations can address this concern with particular attention paid to the avoidance of undue and unlawful rate discrimination. See generally 66 Pa.C.S. § 1304.

The commenting parties should also address EAS cost and revenue recovery in situations where a rural LEC⁴ has implemented differentiated prices for its protected and non-competitive services in a particular exchange to meet the presence of a local exchange services alternative provider, and the establishment of one or more EAS routes affect this particular exchange. See generally 66 Pa.C.S. § 3016(e)(3). The comments should propose a solution and suggested language addressing EAS cost recovery on a per-specific exchange basis, as well as rationales and methods of resolving potential undue and unlawful rate discrimination situations.

Finally, the proposed regulations would allow the recovery of lost revenues. As noted, the Commission's earlier decision in *Jeb Billet* suggests a contrary approach. *Jeb Billet*. The Commission seeks comment on whether the LEC should be compensated for lost revenues, including suggested language reflecting how the final regulations should resolve the matter.

§ 63.75. EAS Complaints.

The current § 63.75 governs the conduct of subscriber polls required of a local exchange carrier based on submitted traffic usage data indicating that a route qualifies for expanded area service. The current § 63.75 contains detailed provisions regarding Commission approval of a transmittal letter and ballot to subscribers. The current § 63.75 also contains detailed provisions regarding the mailing, tabulation, and evaluation of results from subscriber polls.

The proposed regulation revises these § 63.75 provisions and then moves them to a new § 63.73. The proposed regulation in § 63.75(a) continues the Commission's requirement to evaluate EAS complaints according to criteria set forth in § 63.77 of the current regulations although the § 63.77 criteria are now set forth as § 63.76 of the proposed regulation.

The revised § 63.75 in the proposed rulemaking is virtually identical to the existing section on EAS complaints set forth in § 63.76. The only major revision is one that requires a customer to file a formal complaint to have EAS considered for a particular route. This revised criterion in the new § 63.76 complaint continues to govern evaluation of EAS.

The proposed regulations for § 63.75 do contain some new requirements. The Commission must evaluate a formal complaint using the revised evaluation criteria set forth in a revised § 63.76 (specifying the criteria for evaluating EAS complaints). The proposed regulation continues the requirement that each local exchange carrier and interexchange telecommunications carrier shall be an indispensable party in any EAS proceeding where multiple local exchange carriers and interexchange telecommunications carriers provide service in the exchanges that are the subject of the EAS proceeding.

§ 63.76. Evaluation Criteria.

The current regulation in § 63.76 allows the filing of formal EAS Complaints. The current provisions permit the filing of a formal complaint seeking extended area service. The current regulation in § 63.76 requires that any formal complaint be evaluated according to the criteria set forth in § 63.77 of the existing regulation.

⁴ As the term "rural LEC" is defined in 66 Pa.C.S. § 3012 and TA-96.

The current regulation also provides that each affected utility shall be an indispensable party if multiple telephone utilities are involved.

The proposed regulations for § 63.76 contain a revised version of the EAS evaluation criteria now set forth in § 63.77. The § 63.76 criteria determine when EAS relief is appropriate.

The proposed regulation revises the current § 63.77(2) provisions governing cost recovery by including revenue shortfall and expense items as new considerations in addressing the revised criteria for evaluating a formal EAS complaint in § 63.76(a)(2) of the proposed regulation. The proposed items eligible for consideration include administrative costs, facility costs, and lost revenue based on definitions set forth in § 63.71. These revisions reflect views of the EAS Task Force that specific and detailed cost recovery allowances are necessary. The revisions also reflect the proposed cost recovery provisions in § 63.74.

As with § 63.74, the Commission recognizes that section 3016(f)(1) of the Public Utility Code prohibit a local exchange telecommunications company from using revenues earned or expenses incurred in conjunction with noncompetitive service to subsidize competitive services. The declaration that toll services are competitive may implicate section 3016(f)(1) and the recovery of lost revenues proposed by these revisions.

The Commission expressly seeks legal analysis and policy comment on this proposed revision and § 63.74. The prohibition in section 3016(f)(1) may limit the scope and applicability of these proposed revisions.

§ 63.77. *Reserved.*

The current regulation in § 63.77 specifies the criteria used to evaluate formal complaints concerning any expansion of a local calling area. The proposed regulation revises these criteria, places this provision in a new § 63.76, and solicits comments on those proposed changes. The proposed regulation preserves this section for future use.

The Impact of Act 183, 66 Pa.C.S. §§ 3001—3019.

The General Assembly's recent enactment of revisions to Chapter 30 of the Public Utility Code addresses the delivery of telephone to Pennsylvanians. Consistent with section 3016(e), the proposed regulations eliminate the mandatory biennial traffic study. We tentatively conclude that no other provisions of Act 183, 66 Pa.C.S. §§ 3001—3019, limits our ability to propose these EAS regulations. However, we expressly seek comment on this tentative conclusion as well as any matter with the purview of this proposed revision to 52 Pa. Code §§ 63.71—63.77.

Conclusion

Upon consideration, we conclude that the proposed rulemaking, as set forth in this order, should be adopted. Our action begins the process needed to consider promulgation of revised EAS regulations that reflect the uneven development of customer choice and the deployment of telephony technology in Pennsylvania. Accordingly, under section 501 of the Public Utility Code, 66 Pa.C.S. § 501, and the act of July 31, 1968 (P. L. 769, No. 240), known as the Commonwealth Documents Law, and regulations promulgated thereunder at 1 Pa. Code §§ 7.1—7.4, we amend the regulations at 52 Pa. Code §§ 63.71—63.77 as previously noted and as set forth in Annex A;

Therefore,

It Is Ordered That:

1. A proposed rulemaking be opened to consider the amendments 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 and to the Governor's Budget Office for review for fiscal impact.

3. The Secretary shall submit this order and Annex A for review and comment to the Independent Regulatory Review Commission and Legislative Standing Committees.

4. The Secretary shall certify this order and Annex A, and deposit them with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*. The Secretary shall specify publication of the order in accordance with 45 Pa.C.S. § 727.

5. An original and 15 copies of any comments to the proposed rulemaking be submitted within 45 days of publication in the *Pennsylvania Bulletin* to the Pennsylvania Public Utility Commission, Attn: Secretary, P. O. Box 3265, Harrisburg, PA 17105-3265. The comments should reference the docket number of the proposed rulemaking. In addition, electronic copies of the comments should be submitted to the following referenced contacts on disk in Word format and by e-mail, and submitted electronically to Cyndi Page, of the Commission's Communications Office, (717) 787-5722, cypage@state.pa.us.

6. The contact persons for this rulemaking are Joseph K. Witmer, Law Bureau, (717) 787-3663, joswitmer@state.pa.us, and Anthony J. Rametta, Bureau of Fixed Utility Services, (717) 787-2359, arametta@state.pa.us.

7. A copy of this order and Annex A be served upon the Office of Trial Staff, the Office of Consumer Advocate, the Office of Small Business Advocate, the Pennsylvania Telephone Association and all jurisdictional telecommunications utilities.

JAMES J. MCNULTY,
Secretary

Fiscal Note: 57-242. No fiscal impact; (8) recommends adoption.

Concurring Statement of Vice Chairperson James H. Cawley

Rulemaking Re: Proposed Revision to Commission Regulations Governing Extended Area Service (EAS) at 52 Pa. Code §§ 63.71—63.77; Public Meeting: October 27, 2005; SEPT-2005-L-0056-REV; Docket No. L-00050173*

Report and Recommendation of the Extended Area Service Task Force; Docket No. M-00031703

Before us is the Staff recommendation for changes to this Commission's Extended Area Service (EAS) regulations, with the associated Proposed Rulemaking Order, and Annex A with the currently proposed EAS regulations. I appreciate the efforts that have been put into this matter by the various Commission Staff Bureaus and Offices, other statutory agencies, and the members of the telecommunications industry that this Commission regulates. However, the proposed regulations of an independent regulatory administrative agency such as this Commission must first reflect its existing policy that traditionally has governed its own individual case adjudications.

A. "Lost Revenue" Recovery

Existing Commission precedent strongly suggests that the Commission traditionally has not permitted local exchange carriers (LECs) implementing EAS routes to recover "lost revenues" from their customers that benefit from expanded local calling areas. For example, the Commission has not considered the recovery of "lost revenues" where the LEC in question does not have rate groups for its basic local exchange services. More recently, the Commission addressed the issue of "lost toll revenue" recovery in situations where a LEC has had its long-distance services classified as "competitive" under the pertinent provisions of the past and current version of Chapter 30, now codified at 66 Pa.C.S. §§ 3011—3019. The Commission has ruled that the potential recovery of "lost toll revenues" through EAS-related rate increases to a LEC's "non-competitive services," where the LEC's long-distance services had been classified as "competitive," would violate Chapter 30's statutory prohibition against the cross-subsidization of "competitive services" with revenues from "non-competitive services." *Jeb Billet, et al. v. The United Telephone Company of Pennsylvania, et al.*, Docket No. C-00014854, Order entered April 8, 2005, at 12-13.

Since a set of proposed Commission rules should reflect existing Commission policy, my preference would have been that references to "lost revenues" should be eliminated from the proposed rules in Annex A. However, because this issue may be of importance, especially to smaller rural incumbent LECs (ILECs) that can be called to establish EAS routes, the Commission could still solicit comments on this issue and suggested amendments to our proposed EAS regulations. These comments and suggested amendments could specifically address the issue of "lost revenue" recovery when and where EAS routes are established, and the interrelationship and reconciliation of "lost revenue" recovery mechanisms with:

1. The annual ILEC Chapter 30 price stability mechanism (PSM) revenue and rate increase submissions (66 Pa.C.S. § 3015);
2. The recovery of "lost revenues" from end-users who benefit from the EAS expansion in local calling areas and where the ILEC provides such end-users with "bundled packages of services" that can include "protected," "non-competitive," "competitive," and non-tariffed services (66 Pa.C.S. § 3016(e)); and
3. The recovery of "lost revenues" in situations where a rural ILEC may have established the differentiated pricing of its regulated services in a particular exchange under 66 Pa.C.S. § 3016(e)(3) in order to meet the competitive presence of an alternative service provider, and the same exchange is affected by the establishment of an EAS route.

B. EAS Balloting

The Commission could also solicit comment and suggested amendments to our proposed regulations on whether uniform guidelines should apply to the conduct of balloting activities associated with the establishment of EAS routes. These comments should address whether customer-specific EAS ballots should be proportionately weighted, e.g., by the number of access lines or accounts of the particular customer, or by some other method.

For these reasons and with this Statement I concur in the overall recommendation of the Proposed Rulemaking Order and Annex A with the proposed EAS regulations.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 63. TELEPHONE SERVICE

Subchapter F. EXTENDED AREA SERVICE

§ 63.71. Definitions.

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

Administrative costs—The costs of EAS balloting, traffic studies, consultant fees, documentation, billing and clerical costs to provide EAS for the routes added.

Basic local calling area—The area, consisting of one or multiple telephone exchanges consistent with 66 Pa.C.S. (relating to the Public Utility Code) and this title as they exist or may come to exist, and as set forth in the incumbent local exchange carrier's tariff, within which calls may be completed without having additional interexchange calling rates apply.

Customer—A person or entity that contracts directly with a local exchange carrier for telephone service.

EAS—extended area service—The expansion of a local calling area to include additional exchanges.

Exchange—An area served by one or more central offices which has a [unique] basic local calling area and a defined rate center from which toll distances are measured.

Facility costs—The costs of all leased or purchased plant, equipment and computer software necessary to provide EAS for the routes added.

[**Full billing and collection agreement**—An agreement under which an interexchange carrier contracts with the local exchange carrier to bill and collect the revenues for message toll service calls placed by end users through the interexchange carrier as the presubscribed carrier.]

Interexchange telecommunications carrier—A carrier, other than a local exchange carrier, authorized by the Commission to provide interexchange telephone services to the public.

[**Interexchange toll rates**—Telephone rates, usually based in part on the length of a telephone call, which are applied to calls between exchanges that are not in the same local calling area.]

LATA—A local access and transport area [as designated by] set forth in Federal [law] regulations (47 CFR 53.3 (relating to terms and definitions)).

[**Local calling area**—The area, consisting of one or multiple telephone exchanges, between which calls may be completed without having interexchange toll rates applied.]

Local exchange carrier—A competitive or incumbent public utility [which] that is [certificated] authorized to provide intraexchange telephone service.

[*Optional calling plan*—A tariff provision which establishes the rate option to be offered to residential and business subscribers in exchanges which qualify for alternatives to EAS under § 63.73 (relating to optional calling plans).]

Qualified noncontiguous exchanges—Exchanges with toll rate centers within 16 miles of each other [which] that do not geographically border each other but [which] that meet the following criteria:

(i) The call-frequency standards between the exchanges established under [§ 63.74 (relating to EAS polls)] § 63.73 (relating to customer polls) are met in at least one direction.

(ii) The basic local calling area of the [calling] originating exchange is contiguous to the receiving exchange.

[*Subscriber*—A person or entity which contracts directly with a telephone utility for telephone service.]

Traffic study interexchange carriers—The [five most active] interexchange telecommunications carriers [in the service territory of a local exchange carrier as determined by a biennial review of interLATA access charge levels] that serve customers in the exchange for which a traffic study is conducted. § 63.72. Traffic usage studies.

[A local exchange carrier shall conduct a biennial interexchange toll traffic usage study. The study shall measure traffic over both intraLATA and interLATA routes. The study shall measure the average calling frequency between contiguous exchanges and between each exchange and each noncontiguous exchange having a toll rate center within 16 miles. On intraLATA routes only, the study shall also measure the percentage of total access lines within the exchange over which the calls are placed. In measuring calling frequency, all calling classes shall be considered collectively, including those who have elected optional calling plans under § 63.73 (relating to optional calling plans). The study shall measure usage in a representative 30-day period within the 12-month period preceding the study. The local exchange carrier shall prepare a report containing results of the study. The report is required to address only routes which equal or exceed 1.50 calls per access line per month. The report shall be filed with the Commission with a copy to the Office of Consumer Advocate on or before October 1 of each survey year. The report will be treated as proprietary and shall be filed under protective seal. The Commission and the Office of Consumer Advocate will release the results of the report, upon request, on a route specific basis to customers or customer representatives. Traffic usage data for routes with less than 1.50 calls per access line per month shall be submitted by local exchange carriers upon request by the Commission or the Office of Consumer Advocate.]

(a) A local exchange carrier and interexchange telecommunications carrier serving the originating exchange shall conduct traffic usage studies at the direction of an administrative law judge in connection with a formal EAS complaint proceeding. Traffic usage studies shall be conducted according to the following:

(1) The traffic study must measure traffic over both IntraLATA and InterLATA routes, and include all traffic originating from the calling exchange. The study must measure the average calling frequency between the originating and the target exchanges.

(2) In measuring calling frequency, all classes and methods of making wireline calls including customers with optional calling plans, direct dialed tolls, calling cards (prepaid or otherwise), operator-handled, directory assistance call completion or through text telephone (TTY/TDD), must be considered collectively.

(3) Each local exchange carrier and interexchange telecommunications carrier that is ordered to conduct a traffic usage study shall produce a study that has the following information:

(i) The total number of presubscribed access lines served in the exchange involved.

(ii) The number of presubscribed access lines in the originating exchange that makes at least one call to the target exchange during the study month.

(iii) The total number of calls placed from the originating exchange to the target exchange.

(4) The traffic usage study must measure calling in March or October preceding the date on which an administrative law judge directs that a traffic usage study be conducted. The local exchange carriers and interexchange telecommunications carriers shall provide the results of the traffic usage studies to the Commission, or to an entity designated by the Commission, within 60 days of the administrative law judge's order that a traffic usage study be conducted.

(b) A local exchange carrier or interexchange telecommunications carrier may elect to conduct a single traffic usage study for its entire service territory instead of conducting a route-specific toll usage study in connection with an EAS proceeding. A single traffic usage study shall be conducted according to the following:

(1) The study must be performed at least once every 24 months.

(2) The study must measure the calling frequency in the month of March or October.

(3) The study must measure traffic over intraLATA and interLATA routes.

(4) The study must measure the average calling frequency between contiguous exchanges and between each exchange and each noncontiguous exchange having a toll rate center within 16 miles.

(5) The local exchange carrier or interexchange telecommunications carrier shall file the results of this study with the Commission.

(c) A local exchange carrier or interexchange telecommunications carrier that chooses to conduct a single traffic usage study as set forth in subsection (b) may use the results of that study to provide route specific traffic usage data in connection with an EAS complaint proceeding and is not required to perform an additional traffic usage study for the route on which EAS has been requested unless unique circumstances exist with respect to that route or unless specifically ordered to do so.

(d) A local exchange carrier or an interexchange telecommunications carrier is not required to conduct a traffic usage study for a particular exchange if a study on the same toll route has been performed within the preceding 2 years and the results of the study did not require the implementation of EAS or a customer poll for EAS, or if the local exchange carrier already has implemented EAS on that same route.

(e) The Commission staff will prepare a report for any route-specific toll usage study ordered in connection with an EAS proceeding or for any local exchange carrier or interexchange telecommunications carrier that conducts a single traffic usage study. The Commission staff report will contain the aggregated results of the studies submitted. The Commission staff will issue the report within 90 days from receipt of the study data. The Commission staff will treat the report as proprietary and will file it under protective seal. The Commission staff will provide the results of the report to participating local exchange carriers, interexchange telecommunications carriers, petitioning customers, the Office of Trial Staff, the Office of Consumer Advocate and the Office of Small Business Advocate. Upon request, the Office of Trial Staff, the Office of Consumer Advocate and the Office of Small Business Advocate may release the aggregated results for a specific route to a customer or to a customer's legal representative.

(f) In accordance with 66 Pa.C.S. § 308(g) (relating to bureaus and officer), the appropriate Commission staff shall appear as witnesses in a proceeding to present the compiled results of the traffic usage study or studies for the record and shall be subject to cross-examination.

§ 63.72a. [InterLATA traffic studies] (Reserved).

[(a) By January 31 of each year in which a biennial traffic study is due, each local exchange carrier will identify and formally notify the Commission of the traffic study interexchange carriers in its service territory. The identity of the traffic study interexchange carriers shall be based upon review of the access charge levels from the most recent 12-month period available. Each local exchange carrier shall concurrently notify each traffic study interexchange carrier of the following:

(1) That the interexchange carrier's traffic will be included in the local exchange carrier's traffic study under this subchapter.

(2) The format which the local exchange carrier will utilize in its traffic usage study.

(3) The representative month the local exchange carrier will use in its study.

(b) Each traffic study interexchange carrier shall provide the local exchange carrier with data which identifies the relevant interexchange traffic completed by the interexchange carrier and which originated in the local exchange carrier's service territory for the representative month used by the local exchange carrier. The data shall be submitted to the local exchange carrier by June 1 of each year in which a biennial traffic usage study is due. The data submitted by traffic study interexchange carriers may not include traffic for which the

interexchange carrier bills through the local exchange carrier under a full billing and collection agreement.

(c) The data submitted by each traffic study interexchange carrier shall be organized consistent with the following:

(1) The data shall be in the format specified by the local exchange carrier for the traffic usage study.

(2) The data shall identify the total number of calls completed by the traffic study interexchange carrier and which originated in each exchange in the local exchange carrier's service territory for each interLATA route which requires study under § 63.72 (relating to traffic usage studies) for the representative month.

(3) The data shall identify the total number of access lines presubscribed to the traffic study interexchange carrier in each exchange for which data is submitted under paragraph (2).

(4) Data submitted by a traffic study interexchange carrier to a local exchange carrier shall be considered proprietary to the traffic study interexchange carrier and may not be used by the local exchange carrier for a purpose other than preparing its traffic usage study.

(5) Each traffic study interexchange carrier may petition the Commission to waive the submission of a portion of the data required to be submitted under this section. Each waiver petition shall include the estimated costs of submitting the data and the relative amount of traffic which the data represents. The Commission will approve a waiver petition only if it finds that the costs to the interexchange carrier outweigh the value of the data to the traffic usage study.

(d) Upon receiving the traffic study interexchange carrier data, each local exchange carrier shall complete the following in preparing the interLATA component of the traffic usage study:

(1) Collect and analyze the traffic data for each traffic study interexchange carrier for calls completed by the interexchange carrier which are billed through the local exchange carrier under a full billing and collection agreement.

(2) Aggregate the traffic data it collects and analyzes under full billing and collection agreements with the traffic data it receives from each traffic study interexchange carrier. Each local exchange carrier shall report the aggregate interexchange carrier. Each local exchange carrier shall report the aggregate results of the interLATA traffic study to the Commission in its biennial traffic usage study filed under § 63.72.]

§ 63.73. [Optional calling plans] Customer polls.

[(a) When biennial interexchange toll traffic usage studies reveal an average monthly calling frequency of 2.00 or more calls per access line from one exchange to another and where at least 25% of the access lines in the calling exchange have been used for 1.00 or more calls per month to the receiving exchange over a route for which a local

exchange carrier provides toll service, a local exchange carrier shall offer one of the following rate options to each residential and business subscriber within the calling exchange:

(1) The ability to purchase for a flat fee a block of time for calls and a continuing discount for all usage exceeding the initial block of time to the receiving exchange during each billing period.

(2) Another alternative rate option approved by the Commission.

(b) When an exchange qualifies for an optional calling plan over a route served by a local exchange carrier, the local exchange carrier shall notify each residential and business subscriber within 60 days of the availability of the optional calling plan and shall provide to each subscriber a general description of the rates and benefits of the optional calling plan.

(c) When biennial interexchange toll traffic usage studies reveal an average monthly calling frequency of 2.00 or more calls per access line from one exchange to another over an interLATA route, each traffic study interexchange carrier serving the route shall offer one of the following rate options to each residential and business subscriber to whom the traffic study interexchange carrier provides toll service within the calling exchange:

(1) The ability to purchase a block of time for calls for a flat fee and a continuing discount for usage exceeding the initial block of time to the receiving exchange during each billing period.

(2) Another alternative rate option approved by the Commission.

(d) When an exchange qualifies for an optional calling plan over an interLATA route, each traffic study interexchange carrier serving the route shall notify each residential and business subscriber it serves in the exchange within 60 days of the availability of the optional calling plan and shall provide a description of the rates and benefits of the optional calling plan.

(e) A local exchange carrier and a traffic study interexchange carrier, serving a route which qualifies for an optional calling plan under a traffic usage study shall maintain in its tariff a provision which provides for establishment of an optional calling plan. The optional calling plan shall be consistent with subsection (a) or (b) and may establish flat fees to be charged for the installation of the optional calling plan.

(f) A local exchange or traffic study interexchange carrier may not terminate an optional calling plan to an exchange without express Commission approval.]

(a) When a traffic usage study qualifies for EAS or EAS is determined to be appropriate, the local exchange carriers in the exchange or exchanges subject to extended area service shall conduct a customer poll of the originating exchange in accordance with this section, with oversight by the Commission, to determine if the basic local calling area of the exchange should be extended. Customer polls shall be conducted using only balloting materials approved by the Commission.

(b) A route qualifies for EAS if it has an average monthly calling frequency of 5.50 or more calls per access line from an originating exchange to the target exchange, and if at least 50% of the access lines in the originating exchange have been used to make 1.00 or more calls per month to the target exchange.

(c) A poll is not required if customers have affirmatively rejected the implementation of EAS from the originating exchange to the target exchange during the preceding 2 years.

(d) A poll is not required when usage standards are met on a specific route and there will be no increase in the local service charge for extending the basic local calling area. In those cases, the local exchange carrier shall implement one-way EAS over the qualifying route.

(e) The local exchange carrier shall mail one ballot to each customer in the originating exchange. Ballots must be preaddressed, postage prepaid postcards, returnable directly to the Commission. The Commission will tabulate the ballots. At the time the ballots are mailed, the local exchange carrier shall provide the Commission with a list of customers polled, together with their addresses and telephone numbers.

(f) The poll is valid when at least 50% of the ballots mailed to customers in a polled exchange are returned.

(g) The local exchange carrier shall implement EAS when greater than 50% of the returned ballots in a valid poll are in favor of EAS.

(h) The Commission may specify additional conditions under which customer polls shall be conducted when circumstances require.

(i) A local exchange carrier or interexchange telecommunications carrier may petition the Commission for waiver of a provision of this section to address unique circumstances, such as a local exchange carrier that already has EAS from the originating exchange to the target exchange.

§ 63.74. [EAS polls] Cost recovery.

[Whenever a traffic usage study between contiguous exchanges or between qualified noncontiguous exchanges qualifies for EAS under paragraphs (1) and (2), a subscriber poll of the calling exchange shall be conducted by the local exchange carrier serving the calling exchange to determine if the local calling area should be extended.

(1) For intraLATA routes, a route qualifies for extended area service if it has an average monthly calling frequency of 5.50 or more calls per access line from one exchange to another and where at least 50% of the access lines in the calling exchange have been used for 1.00 or more calls per month to the receiving exchange.

(2) For interLATA routes, a route qualifies for EAS if it has an average monthly calling frequency of 5.50 or more calls per access line from one exchange to another.

(3) A subscriber request for polling will not be considered a legal pleading and will not be subject to response by a utility or another party.

(4) A poll is not required if subscribers have affirmatively rejected the implementation of EAS from the calling exchange to the receiving exchange during the preceding 2 years.

(5) Two-way balloting will not be required unless usage standards are met in both directions.

(6) If two-way balloting is required and if the same telephone utility serves each exchange, the utility shall poll subscribers in each exchange for EAS into the other exchange. If different telephone utilities serve each exchange, each utility shall poll its own subscribers.

(7) A poll is not required when usage standards are met on a specific route and there will be no increase in the local service charge for extending the local calling area of an exchange. In this instance, one-way EAS shall be implemented over the qualifying route.

(8) When usage standards are met in both directions, two-way balloting is not required if there will be no increase in the local service charge for extending the local calling area for one of the two exchanges. If one of the two exchanges will receive an increase, than that exchange shall be polled and, if the exchange polled adopts EAS two-way EAS shall be implemented. Otherwise, one-way EAS shall be implemented on the route where there will be no increase.

(9) If circumstances require, the Commission may specify additional conditions under which polls shall be conducted.

(10) A local exchange carrier may petition the Commission for waiver of a provision of this section to address unique circumstances.]

(a) A local exchange carrier may petition the Commission to recover revenues lost and costs incurred in connection with the implementation of EAS, under the provisions of this section, beginning on the date on which EAS is implemented. To qualify for recovery, the costs must be prudently incurred and reasonable in amount. The items that may be recoverable include:

- (1) Administrative costs.
- (2) Facility costs.
- (3) Lost revenues.

(b) The claim set forth in the petition shall be the net of any revenue increases and cost decreases experienced as a result of the implementation of EAS.

(c) The local exchange carrier shall include the proposed method of recovery in its petition. The customer poll must identify the rates and method utilized when the recovery shortfall is to be collected from customers.

§ 63.75. [Subscriber polls] EAS complaints.

[The following rules apply to EAS subscriber polls:

(1) Within 180 days of the submission of traffic usage data indicating that a route qualifies for EAS under § 63.74 (relating to EAS polls), a local exchange carrier shall file a petition with the Commission requesting approval of a proposed transmittal letter and ballot which includes an estimate of the increase in the charge for local service to the Commission as a result of extending the local calling area. The Commission will approve a transmittal letter and ballot which shall include an estimate of the increase in the charge for local service, if any, due to the expansion of the local calling area.

(2) The local exchange carrier shall mail one approved ballot to each subscriber in the calling exchange. The local exchange carrier may tabulate the ballots itself but shall submit to the Bureau of Safety and Compliance a list of customers to be polled and their telephone numbers prior to sending out ballots. Upon completion of tabulation by a local exchange carrier, the local exchange carrier shall submit the original returned ballots to the Bureau of Safety and Compliance and shall submit a verified report to the Commission detailing the results of the poll. If the local exchange carrier does not tabulate the ballots itself, the ballots sent by the local exchange carrier to the subscribers shall be preaddressed, postage prepaid postcards to be returned to the Commission for tabulation.

(3) At least 50% of the ballots from an exchange shall be returned for a poll to be considered valid.

(4) In a valid poll, if 50% of the ballots returned from an exchange are in favor of EAS, the affected local exchange carriers shall implement EAS to the receiving exchange.

(5) In cases where interLATA EAS is implemented, telephone service between the calling exchange and the receiving exchange shall be transferred from the interexchange carriers serving the calling exchange to the local exchange carrier serving the calling exchange.

(6) In cases where the local exchange carrier is prohibited from providing service between the calling exchange and the receiving exchange by Federal antitrust consent decree restrictions and a waiver is necessary to implement EAS, the local exchange carrier shall apply for a waiver of Federal antitrust restrictions to allow it to implement EAS. The request for waiver will be made within 60 days of a Commission order or Secretarial Letter approving EAS. The Commission will file a statement affirmatively supporting the waiver application.]

The Commission will evaluate a formal complaint seeking the implementation of EAS according to the criteria in § 63.76 (relating to evaluation criteria). When multiple local exchange carriers and interexchange telecommunications carriers are involved, each shall be an indispensable party to the proceeding. Local exchange carriers and interexchange telecommunications carriers shall be required to perform a traffic usage study under § 63.72 (relating to traffic usage studies) when an administrative law judge concludes that a traffic usage study is necessary to determine if EAS should be implemented.

§ 63.76. [EAS complaints] Evaluation criteria.

[A formal complaint may be filed seeking the implementation of EAS. A complaint will be evaluated according to the criteria in § 63.77 (relating to evaluation criteria). If multiple telephone utilities are involved, each affected utility shall be an indispensable party to the proceeding. An administrative law judge may, as part of an initial decision, recommend the conduct of subscriber polls under § 63.75 (relating to subscriber polls) to determine if EAS should be implemented. The provisions of this subchapter do not prohibit the filing of complaints seeking the implementation of EAS between noncontiguous exchanges.]

(a) The Commission will consider the following criteria when evaluating a formal complaint seeking EAS under § 63.75 (relating to EAS complaints):

(1) The amount of traffic between the originating exchange and the target exchange, as measured in accordance with the provisions of § 63.72 (relating to traffic usage studies).

(2) The revenue shortfall and expense to the local exchange carrier of implementing extended area service. Revenue shortfall and expense items to be reviewed include:

- (i) Administrative costs.
- (ii) Facility costs.
- (iii) Lost revenues.

(3) Cost recovery shall be net of revenue increases and cost decreases experienced by the local exchange carrier as a result of the implementation of EAS.

(4) The potential increase in local service charge due to implementation of EAS versus the current cost to customers for interexchange calls.

(5) The demographics and proximity of the exchanges involved as indicating community of interest between the originating and target exchanges.

(6) The availability of adequate and reasonably priced alternatives to EAS.

(7) The economic effect on the community when the basic local calling area is not extended.

(b) The criteria in subsection (a) shall be evaluated based on the majority of the customers in the exchange under consideration for EAS.

§ 63.77. [Evaluation criteria] (Reserved).

[The Commission will consider the following criteria in evaluating EAS complaints:

(1) The amount of toll charge traffic between the two exchanges.

(2) The cost to the utility of implementing extended area service.

(3) The potential increase in local service charge due to implementation of EAS versus the current cost to subscribers for interexchange toll calls.

(4) The demography and the proximity of the exchanges as indicating community of interest.

(5) The availability of alternatives to EAS.

(6) The economic effect on the community if the local service area is not extended.]

[Pa.B. Doc. No. 06-657. Filed for public inspection April 21, 2006, 9:00 a.m.]

[52 PA. CODE CHS. 63, 64, 71 AND 73]

[L-00050176]

PUC Filing and Reporting Requirements on Local Exchange Carriers

The Pennsylvania Public Utility Commission, on December 15, 2005, adopted a proposed rulemaking order which eliminates certain filing and reporting requirements for local exchange carriers (LEC).

Executive Summary

By Order entered on January 3, 2006, at Docket No. L-00050176, the Commission adopted a Proposed Rulemaking Order to amend §§ 63.11, 64.23(a) and (b), 64.41, 64.201(a) and (b), 71.3(b), 73.3(a) and (b), 73.5(b) and 73.7(b). The purpose of the proposed rulemaking is to eliminate or modify the current language of the previously-mentioned regulations to reflect the Commission's action in its Final Implementation Order in *PUC Filing and Reporting Requirements on Local Exchange Carriers* at Docket No. M-00041857 entered October 5, 2005. At Docket No. M-00041857, the Commission determined that certain LEC reporting requirements should be maintained, streamlined or eliminated in accordance with the provisions of Chapter 30 of the Public Utility Code, 66 Pa.C.S. Chapter 30, and the submitted comments in the docket. In addition, the proposed deletion of § 63.11 is in accordance with the Commission's action in its Final Order in *Section 3015(f) Review Regarding the Lifeline Tracking Report, Accident Report and Service Outage Report* at Docket No. M-00051900 entered December 30, 2005.

Under the current language of § 63.11, a public utility providing telecommunications service is required to file an accident report involving its facilities or operations resulting in injury or death to a person or public utility employee. The proposed amendment to § 63.11 is to eliminate this regulation since this report can no longer be required in accordance with sections 3015(e) and (f)(1) of the Public Utility Code, 66 Pa.C.S. § 3015(e) and (f)(1).

Also, § 64.23 provides that LECs report instances of unauthorized charges and changes to customers' bills known as cramming and slamming. The Commission's regulation in § 64.41 also requires LECs to pay interest on customers' deposits and, subsequently, report the paid interest rate to the Commission. In addition, § 64.201(a) and (b) require LECs to file residential account information reflecting billing and collection practices including customer disputes on a quarterly or annual basis depending upon the size of the LEC. In Chapter 64, the Commission proposes to change the regulations to require LECs to maintain records documenting instances of slamming and cramming but to eliminate the quarterly requirement to report the unauthorized activity to the Commission. Also, the Commission is modifying the interest rate to be paid on customers' deposits to reflect current practice by the telecommunications industry. The Commission further proposes to reduce the filing of residential account information to an annual reporting

requirement for all LECs regardless of the number of residential accounts that the companies serve.

In Chapter 71 of the Commission's regulations, LECs with annual intraState gross revenues in excess of \$10 million currently are required to file financial reports on an annual basis. The Commission is proposing to delete § 71.3 because Chapter 30 of the Public Utility Code does not permit the filing of a separate financial earnings report of the type required by this regulation.

In Chapter 73 of the Commission's regulation, LECs are required to submit an annual depreciation report (§ 73.3), a triennial service life study report (§ 73.5) and a triennial capital investment plan report (§ 73.7). The Commission proposes to eliminate all of these filings because Chapter 30 of the Public Utility Code no longer permits the reporting of this type of information as required by these regulations.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on April 11, 2006, 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 must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Commission, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Meeting held
December 15, 2005

Commissioners Present: Wendell F. Holland, Chairperson; James H. Cawley, Vice Chairperson; Bill Shane; Kim Pizzingrilli; Terrance J. Fitzpatrick

Rulemaking Re: PUC Filing and Reporting Requirements on Local Exchange Carriers; Doc. No. L- 00050176

Proposed Rulemaking Order

By the Commission:

On October 5, 2005, the Commission entered a Final Implementation Order¹ at Docket No. M-00041857 regarding the filing and reporting requirements for Local Exchange Carriers (LECs) in compliance with the new Chapter 30.² In that Order, the Commission determined that certain LEC reporting requirements should be maintained, streamlined or eliminated in accordance with the provisions of Chapter 30 and the submitted comments in the matter. Under the October 5, 2005 Final Implementation Order, the Commission formally commences this rulemaking to eliminate certain LEC reports. The Commission seeks comment from all interested parties on these proposed revisions to our regulations, which are found at Annex A of this Order, and any other applicable Commission documents, Orders, Secretarial Letters, etc., referenced in this Order.

¹ *PUC Filing and Reporting Requirements on Local Exchange Carriers*, Docket No. M-00041857 (Order entered October 5, 2005).

² 66 Pa.C.S. §§ 3011–3019.

Background

In December 2004, the General Assembly enacted Act 183 which substantially amends the Public Utility Code relating to alternative forms of regulation for LECs and, in particular, contains provisions designed to reduce the present level of annual, quarterly and other periodic reporting requirements for LECs. Act 183 or Chapter 30 provides that the general filing and reporting requirements for LECs are limited to the nine reports specified in the statute, to be "submitted in the form determined by the Commission." 66 Pa.C.S. § 3015(e).

Section 3015(e) provides that the Commission's filing and audit requirements for a LEC that is operating under an amended network modernization plan are limited to the following: 1) network modernization reports filed under section 3014(f); 2) an annual financial report consisting of a balance sheet and income statement; 3) an annual deaf, speech-impaired and hearing-impaired relay information report; 4) an annual service report; 5) universal service reports; 6) an annual access line report; 7) an annual statement of gross intrastate operating revenues for purposes of calculating assessments for regulatory expenses; 8) an annual state tax adjustment computation for years in which a tax change has occurred, if applicable; and 9) for those companies with a bona fide retail request program, a bona fide retail request report under section 3014(c)(9).

Chapter 30 also provides for exceptions to this limitation. In particular, section 3015(f)(1) of Chapter 30 provides that "no report, statement, filing or other document or information, except as specified in subsection (e), shall be required unless the Commission, upon notice to the affected LEC and an opportunity to be heard, has first made specific written findings supporting conclusions in an entered order that:

(i) the report is necessary to ensure that the LEC is charging rates that are in compliance with the chapter and its effective alternative form of regulation;

(ii) the benefits of the report substantially outweigh the attendant expense and administrative time and effort required by the LEC to prepare it."

Section 3015(f)(2) also provides that nothing should be construed to impede the ability of the Commission to require the submission of further information to support the accuracy or to seek an explanation of the reports in subsection(e). Further, section 3019 retains the Commission's power to seek information necessary to review and revise its quality of service standards and establish customer protection requirements.³

On April 15, 2005, in accordance with the newly-enacted Chapter 30, the Commission entered a Tentative Implementation Order⁴ directing the continuation, consolidation, and/or elimination of the general filing and reporting requirements presently imposed on LECs operating in Pennsylvania. In its Tentative Order, the Commission sought comments on its initial determinations to maintain, streamline or eliminate certain LEC reports. Upon review of Chapter 30 and the submitted comments, the Commission entered a Final Implementation Order⁵ on October 5, 2005 determining which LEC reporting requirements should be maintained, streamlined or eliminated. Also, in the Final Implementation Order, the

³ 66 Pa.C.S. §§ 3019(b)(2) and (3).

⁴ *PUC Filing and Reporting Requirements on Local Exchange Carriers*, Docket No. M-00041857 (Order entered April 15, 2005).

⁵ *PUC Filing and Reporting Requirements on Local Exchange Carriers*, Docket No. M-00041857 (Order entered October 5, 2005).

Commission found that the Lifeline tracking reports and the accident and service outage reports are not within the scope of reports listed in section 3015(e). Therefore, the Commission directed that a new proceeding be opened to address the issue of whether these reports can meet the exception standard set forth in section 3015(f)(1).⁶ In its 3015(f)(1) review, the Commission determined on December 15, 2005 that accident reports are no longer required for telecommunications companies.⁷

Prior to the enactment of Act 183, in June 2004, the Pennsylvania House of Representatives passed House Resolution 786, that directed the Legislative Budget and Finance Committee (LB & FC) to conduct a study of the filing and reporting requirements imposed on LECs operating in Pennsylvania and to report its findings. On November 17, 2004, the LB & FC adopted its report (LB & FC Report) entitled *PUC Filing and Reporting Requirements on Local Exchange Carriers*.⁸ The LB & FC identified and analyzed the following 30 reports, filings and other documents: Annual Financial Report, Annual Report of Certificated Interexchange Transporter (IXCs), Annual Report of Residential Account Information, Financial Earnings Report, Annual Depreciation Report, Universal Service Fund contributions, Assessment Report, Annual Tracking of Telecommunications Relay Service Surcharges, Annual Access Line Report, Lifeline Tracking Report, State Tax Adjustment Surcharge, Physical and Cyber Security Planning Self Certification, State Certification of Universal Service Support, Chapter 30 Annual Price Stability Mechanism, Annual Assessment Bill, Interest Rate on Deposit, Monthly Universal Service Fund Carrier Worksheet, Quarterly Slamming Report, Quarterly Cramming Report, Accident Reports, Standard Service Surveillance Level Report, Traffic Usage Studies, Service Outages, Service Life Study Report, Capital Investment Plan Report, Service Records, Affiliated Interest Agreements, Network Modernization Plans, Supplemental Assessment, and Collocation Report.

This inventory of reports became the framework for the Commission's analysis of current LEC reporting requirements in light of the provisions of the new Chapter 30.

Discussion

Chapter 30 sets forth reporting requirements for LECs. Although various sections of Chapter 30 provide the Commission with the authority to require information from LECs, as stated previously, section 3015(e) provides that the Commission's filing and audit requirements for a LEC that is operating under an amended network modernization plan are limited to nine enumerated reports, subject to the previously mentioned exceptions.

Based on these provisions, the Commission, in its Final Implementation Order at Docket No. M-00041857, determined that certain LEC reporting requirements are to be eliminated. The Commission offers for public consideration this proposed rulemaking to eliminate certain reports currently filed by LECs. The reports proposed for elimination include the Financial Earnings Report (52 Pa. Code § 71.3); Annual Depreciation Report (52 Pa. Code § 73.3); Interest Rate on Deposits Report (52

Pa. Code § 64.41 and Order entered November 5, 1998 at Docket No. P-00981357); Service Life Study Report (52 Pa. Code § 73.5); Capital Investment Report (52 Pa. Code § 73.7); Quarterly Cramming Report (52 Pa. Code § 64.23); Quarterly Slamming Report (52 Pa. Code § 64.23) and the Collocation Report.⁹ In addition, the Commission is proposing to amend its regulations to require the filing of residential account information on an annual basis rather than on a quarterly basis as currently prescribed by § 64.201(b).

In a companion order addressing section 3015(f)(1) of Chapter 30, the Commission also determined that accident reports are no longer required because there is no adequate nexus relating to whether rates are just and reasonable as prescribed by Chapter 30 and Title 66. Accordingly, the Commission found that telecommunications companies do not have to file accident reports as required by our regulations at § 63.11.

1. Financial (Earnings) Report

The Commission's regulations at § 71.3¹⁰ currently require that certain LECs with annual intrastate gross revenue in excess of \$1 million file financial earnings reports. Companies with annual intrastate gross revenue in excess of \$1 million but less than \$10 million are currently required to file annually. Companies with annual intrastate gross revenue in excess of \$10 million must file semiannually. In 2001, the Commission streamlined the reporting requirements for financial earnings information by reducing the filing intervals as described above.¹¹

In its Tentative Implementation Order, the Commission decided to continue to waive the financial earnings report as required in our regulations at § 71.3¹² as set forth in the March 11, 2005 Secretarial Letter at Docket No. M-00041857. At the same time, the Commission directed staff to immediately initiate a rulemaking proceeding to eliminate this regulation, for telecommunications carriers only, in accordance with the discussion in the Tentative Implementation Order. Further, in accordance with section 703(g) of Title 66,¹³ the Commission concluded that it would rescind its December 4, 2001 Order that streamlined the reporting requirements for financial earnings information filed by LECs, subject to consideration of any comments to the contrary.

The Commission affirmed in its October 5, 2005 Final Implementation Order that the list of reports permitted by Chapter 30 does not include a separate financial earnings report of the type required by § 71.3 of our regulations. Therefore, the Commission proposes that this regulation be eliminated. On a going-forward basis, the Commission can rely on the income statement data in the

⁹ Presently, the collocation report requires ILECs or CLECs that collocate switches in Verizon Pennsylvania Inc.'s central offices to report such activity in accordance with the Commission's September 4, 2001 Order, *Bell-Atlantic Supplement to Pa. P.U.C. No. 216 and Pa. P.U.C. No. 218 to become effective July 27, 1999 regarding the FCC's New Requirements on Incumbent Local Exchange Carriers for the Provision of Collocation Service used for Exchange Access and Mandated Compliance via State Tariffs, SGATS and/or Individual Interconnection Agreements*, Docket No. R-00994697 (Order entered September 4, 2001). On February 14, 2005, the Commission eliminated this reporting requirement through a Secretarial Letter to all ILECs and CLECs. In the Final Implementation Order, we affirmed our determination concerning collocation reports and concluded that no further action is necessary. Since there is no current regulation concerning this reporting requirement, the elimination of this reporting requirement is in accordance with section 703(g) of Title 66 as discussed in our Tentative and Final Implementation Orders at Docket No. M-00041857.

¹⁰ Section 71.3 requires that LECs with annual intrastate gross revenue in excess of \$1 million file financial earnings reports. 52 Pa. Code § 71.3.

¹¹ *Adequacy and Interpretation of Existing Accounting Procedures and Financial Reporting Regulations for all Telecommunications Carriers*, Docket No. L-00010153 (Order entered December 4, 2001).

¹² 52 Pa. Code § 71.3.

¹³ 66 Pa.C.S. § 703(g).

⁶ Section 3015(f) Review regarding the Lifeline Tracking Report, Accident Report and Service Outage Report, Docket No. M-00051900 (Order entered October 5, 2005).

⁷ Section 3015(f) Review regarding the Lifeline Tracking Report, Accident Report and Service Outage Report, Docket No. M-00051900 (Order adopted December 15, 2005).

⁸ In its Report, the LB & FC had five primary recommendations. Overall, the LB & FC Report recommended that the Commission begin the process of eliminating regulations requiring reports to reduce the regulatory requirements for LECs in Pennsylvania. The LB & FC recommended that this process be performed in several ways including updating the Commission's current computer capability, consolidating similar information in various reports, and eliminating regulations requiring reports that have been temporarily waived, suspended or otherwise no longer required. LB & FC Report at S-3-4.

annual financial report¹⁴ permitted by section 3015(e)(1) to monitor the earnings and financial health of LECs.

2. Annual Depreciation Report

Section 73.3¹⁵ of the Commission's regulations requires LECs to file an annual depreciation report. This reporting requirement applies to all telecommunications carriers with over 50,000 access lines that have annual gross intrastate operating revenues in excess of \$20 million. Currently, eight telecommunications companies are required to file this annual report.¹⁶

The Commission determined, in its Tentative Implementation Order, that the annual depreciation report required at § 73.3¹⁷ of our regulations is waived and subject to elimination through the rulemaking process. The Commission determined that sections 3014(f)(1) and 3015(e)(1) require the filing of depreciation reports in the form specified by §§ 73.3 and 73.4 with NMP biennial reports. At the same time, the Commission directed staff to determine whether a streamlined form of the information specified in §§ 73.3 and 73.4 can be adequate to verify LEC compliance with its NMP obligations.

In its October 5, 2005 Final Implementation Order, the Commission concluded that the list of reports permitted by Chapter 30 does not include a separate annual depreciation report of the type required by § 73.3 of our regulations. Nevertheless, depreciation information must be submitted in a LEC's NMP biennial report in accordance with section 3014(f)(1)¹⁸ in the format required as of July 1, 2004. Because the list of reports permitted by section 3015(e) does not include a separate annual depreciation report and the LECs' NMP reports will include the appropriate annual depreciation information needed to verify the companies' NMP obligations, we propose that the annual depreciation report required by our regulations be eliminated.

3. Interest Rate on Deposits

Section 64.41 of the Commission's regulations¹⁹ currently require, that LECs pay interest rates on customer deposits on a yearly basis. This information is required to be reported to the Commission by its 1998 Order at Docket No. P-00981357.²⁰ The purpose of the reporting is to compare customer deposits taken for the current year with that of prior years.

In the Tentative Implementation Order, the Commission found that the interest rate on deposits report is no longer needed as a separate filing with the Commission. Therefore, we concluded that this reporting requirement should be eliminated for telecommunications carriers.

No comments were filed concerning the Commission's tentative determination that the interest rate on deposits report was no longer needed. Therefore, the Commission

¹⁴ LECs continue to be required to file annual financial reports in accordance with the Commission's regulations at section 63.36, 52 Pa. Code § 63.63. The form of the annual financial report for LECs has been determined by our Final Implementation Order regarding LEC reporting requirements. *PUC Filing and Reporting Requirements on Local Exchange Carriers*, Docket No. M-00041857 (Order entered October 5, 2005).

¹⁵ 52 Pa. Code § 73.3.
¹⁶ Alltel, Commonwealth Telephone Company, Conestoga Telephone Company, D&E Telephone Company, North Pittsburgh Telephone Company, United Telephone Company, Verizon North Inc. and Verizon Pennsylvania Inc. LB & FC Report at 11.

¹⁷ 52 Pa. Code § 73.3.
¹⁸ The Commission notes that sections 3014(f)(1) and 3015(e)(1) continue to require the filing of biennial reports in the detail and form required by the Commission as of July 1, 2004, unless the Commission reduces such reporting requirements. The Commission's reporting requirements for biennial updates currently include a requirement to file depreciation reports in the form specified by sections 73.3—73.4. However, we note that the Commission staff remains obligated to review and explore means to streamline, where appropriate, the annual depreciation information submitted in the LECs' NMP reports.

¹⁹ 52 Pa. Code § 64.41.
²⁰ *Petition of the Pennsylvania Telephone Association for Waiver of the Pennsylvania Public Utility Commission's Regulation at 52 Pa. Code § 64.41*, Docket No. P-00981357 (Order entered November 5, 1998).

affirmed its decision in the Final Implementation Order that this reporting requirement is no longer needed as a separate filing with the Commission. The Commission rescinded its Order at Docket No. P-00981357 in accordance with section 703(g) of the Public Utility Code²¹ to eliminate this reporting requirement.

At this juncture, we propose to modify our regulation at § 64.41 to reflect that the LECs are no longer required to pay an interest rate of 9% per annum on customer deposits. In the Commission's Order at Docket No. P-00981357, we determined that all jurisdictional LECs must calculate interest rates on customer deposits based on the rates of the interest posted for 1-year U.S. Treasury bills for the months of September, October, and November of the previous year. However, this standard, the 1-year Treasury bill, is no longer issued by the United States Treasury Department.²² Therefore, we propose to update § 64.41 of our regulations to incorporate the interest rate for customer deposits as set forth in Chapter 14 of the Public Utility Code.²³

4. Service Life Study Report

Section 73.5 of our regulations²⁴ requires telephone utilities providing telephone service with over 50,000 access lines or having gross operating revenues in excess of \$20 million per year to file service life study reports triennially to reflect estimates for each depreciable group of utility plant used in determining annual depreciation expense. Currently, this reporting requirement applies to the eight largest incumbent local exchange carriers (ILECs) but has been waived since 2001.²⁵

In our Tentative Implementation Order, the Commission determined that the list of reports permitted by Chapter 30 does not include a separate service life study report of the type required by § 73.5 of our regulations. We also concluded that this reporting requirement should be waived and staff should commence a rulemaking proceeding to eliminate the regulation. In addition, the Commission concluded that each LEC remains obligated to file service life study information in the form specified by § 73.5 of our regulations as part of the NMP biennial report consistent with sections 3014(f)(1) and 3015(e)(1) of Chapter 30.²⁶

In the Commission's Final Implementation Order, we affirmed that, based upon our review of Chapter 30 at section 3015(e), the list of reports did not include a separate service life study report of the type required by § 73.5 of our regulations. In addition, we noted that this reporting requirement has been waived since 2001. At the same time, we noted that sections 3014(f)(1) and 3015(e)(1) continue to require the filing of biennial reports in the detail and form required by the Commission as of July 1, 2004,²⁷ unless the Commission reduces such reporting requirements.²⁸ Because the list of reports

²¹ 66 Pa.C.S. § 703(g).

²² See www.treas.gov.

²³ 66 Pa.C.S. § 1404(c)(6). This section states that the interest rate on customer deposits for electric, gas and water utilities is set at the legal rate of interest under section 202 of the act of January 30, 1974 (P.L. 13, No. 6), referred to as the Loan Interest and Protection Law. Currently, this interest rate is approximately 6 percent.

²⁴ 52 Pa. Code § 73.5.

²⁵ *Petition of Alltel Pennsylvania, Inc. Commonwealth Telephone Co., Conestoga Telephone and Telegraph Co., D & E Telephone Co. and North Pittsburgh Telephone Co. for a Temporary Waiver of Service Life Study Reporting Requirements Pursuant to 52 Pa. Code § 73.5(b)*, Docket No. P-00011885 (Order entered June 21, 2001).

²⁶ 66 Pa.C.S. §§ 3014(f)(1) and 3015(e)(1).

²⁷ *Implementation of Chapter 30 of the Public Utility Code: Reporting Requirements for Biennial Updates of Network Modernization Plans Filed Pursuant to 66 Pa.C.S. § 3003(b)(6)*, Docket No. M-00930441 (Order entered May 17, 1999).

²⁸ The Commission's reporting requirements for biennial updates currently includes a requirement to file service life study reports in the form specified by section 73.5. However, we note that the Commission staff remains obligated to review and explore means to streamline, where appropriate, the service life information submitted in the LECs' NMP reports.

permitted by section 3015(e) does not include a separate service life study report and the LECs' NMP reports will include the appropriate service life information needed to verify the companies' NMP obligations, we propose that the service life study report required by our regulations be eliminated.

5. Capital Investment Plan Report

Section 73.7 of our regulations²⁹ requires a telephone utility having gross intrastate revenues in excess of \$20 million per year or in excess of 50,000 access lines to file a capital investment plan report every three years.³⁰ Currently, this requirement applies to the eight largest ILECs but has been waived since 2001.³¹ The report provides an overview of plans for major project expansion, modification or other alteration of current and proposed facilities.³² This report documents the companies' plans for future plant investment so that any imprudent plant expenditures could be detected. This report provides information regarding investment in the Commonwealth infrastructure and is reviewed in conjunction with the utilities' NMPs.³³

In our Tentative Implementation Order, the Commission determined that the list of reports permitted by Chapter 30 does not include a separate capital investment plan report of the type required by § 73.7 of our regulations. We also concluded that this reporting requirement should be waived and staff should commence a rulemaking proceeding to eliminate the regulation. However, we concluded that each LEC remains obligated to file a capital investment plan report in the form specified by § 73.7 of our regulations as part of the NMP biennial report consistent with sections 3014(f)(1) and 3015(e)(1).

In the Final Implementation Order, the Commission affirmed that the list of reports permitted by Chapter 30 does not include a capital investment plan report of the type required by § 73.7 of our regulations. As stated previously, the Commission noted that sections 3014(f)(1) and 3015(e)(1) continue to require the filing of biennial reports in the detail and form required by the Commission as of July 1, 2004,³⁴ unless the Commission reduces such reporting requirements. The Commission's reporting requirements for biennial updates currently includes a requirement to file capital investment plan reports in the form specified by § 73.7. Indeed, the specific information contained in such capital investment plan reports will be critical to the Commission's ability to evaluate compliance with broadband deployment commitments.³⁵ Because the list of reports permitted by section 3015(e) does not include a separate capital investment plan report and the LECs' NMP reports will include the appropriate capital investment information needed to verify the companies' NMP obligations, we propose that the capital investment plan report required by our regulations be eliminated.

6. Quarterly Cramming Reports

The Commission's regulation in § 64.23(a)(6)³⁶ requires ILECs to file quarterly cramming reports. The Commission previously granted waivers of this requirement to ILECs having fewer than 50,000 access lines,³⁷ however, all ILECs regardless of access line counts must retain records of customer complaints alleging cramming for three years.³⁸ These quarterly reports have provided the Commission with data to monitor cramming complaints received by ILECs with 50,000 or more residential accounts and by CLECs.

In the Tentative Implementation Order, we concluded that the quarterly cramming reports should be discontinued because the Commission does not have jurisdiction over the entities that are primarily responsible for cramming.³⁹ Therefore, in our Tentative Order, we directed staff to immediately initiate a rulemaking to revise § 64.23(a)(6) to eliminate this reporting requirement. In addition, the Commission waived the filing of cramming reports until such time as our revised regulations receive final regulatory approval.

In our Final Implementation Order, the Commission agreed with comments filed by the Office of Consumer Advocate (OCA) that the Commission retains jurisdiction over cramming charges that appear on LEC bills by IXC or non-IXC carriers. Chapter 30 at section 3018(b) clearly retains the Commission's authority to regulate the ordering, installation, restoration and disconnection of interexchange service to customers. In addition, section 3018(d) also provides authority to the Commission to resolve complaints regarding the quality of IXC service.⁴⁰ Further, we agree with the PTA and the OCA that the Commission retains additional authority under section 3019(b)(2) of Chapter 30 to review and revise quality of service standards addressing the ordering, installation, suspension, termination and restoration of any telecommunications service.⁴¹

However, upon our review of Chapter 30, we continue to conclude that we do not retain jurisdiction over many of the entities that may cram charges on LECs bills to customers. Because of this determination, we propose that the quarterly cramming reporting requirement at § 64.23(a)(6) be eliminated consistent with the discussion in our Tentative and Final Implementation Orders.

7. Quarterly Slamming Reports

Quarterly slamming⁴² reports are required by Commission regulation in § 64.23(b)(7) and Commission order.⁴³ Waivers of this requirement have been granted to ILECs having fewer than 50,000 access lines,⁴⁴ however, all ILECs regardless of access line counts must retain records of customer allegations of slamming for three years.⁴⁵ In the past, these reports have provided the Commission with data to monitor local and long

²⁹ 52 Pa. Code § 73.7.

³⁰ The affected ILECs are as follows: Alltel, Commonwealth Telephone Company, Conestoga Telephone Company, D & E Telephone Company, North Pittsburgh Telephone Company, United Telephone Company, Verizon North Inc., and Verizon Pennsylvania Inc.

³¹ *Petition of Alltel Pennsylvania, Inc., Commonwealth Telephone Co., Conestoga Telephone and Telegraph Co., D & E Telephone Co. and North Pittsburgh Telephone Co. for a Temporary Waiver of the Capital Investment Plan Reporting Requirement Pursuant to 52 Pa. Code § 73.7*, Docket No. P-00011917 (Order entered December 5, 2001).

³² LB&FC Report at 34.

³³ *Id.*

³⁴ *Implementation of Chapter 30 of the Public Utility Code: Reporting Requirements for Biennial Updates of Network Modernization Plans Filed Pursuant to 66 Pa.C.S. § 3003(b)(6)*, Docket No. M-00930441 (Order entered May 17, 1999).

³⁵ However, as with the annual depreciation and service life information, we note that Commission staff remains obligated to review and develop means to streamline, where appropriate, the capital investment plan information for the LECs' NMP reports.

³⁶ 52 Pa. Code § 64.23(a)(6).

³⁷ *Petition of PA Telephone Association for Waiver of Requirements at 52 Pa. Code § 64.23(a)(6) and (b)(7)*, Docket No. P-00032050 (Order entered September 18, 2003).

³⁸ See 52 Pa. Code § 64.23(a)(6).

³⁹ Cramming is unauthorized charges added to the customer's bill. 52 Pa. Code § 64.23(a). The three year record keeping requirement and quarterly reporting requirement to the Commission is set forth at 52 Pa. Code § 64.23(a)(6).

⁴⁰ 66 Pa.C.S. § 3018(b) and (d).

⁴¹ 66 Pa.C.S. § 3019(b)(2).

⁴² Slamming is an unauthorized change to the customer's long distance carrier. 52 Pa. Code § 64.23(b).

⁴³ *Proposed Rulemaking and Final Interim Guidelines for Standardizing Local Exchange Company Responses to Customer Contacts Alleging Unauthorized Changes to Customers' Telecommunications Service Providers and Unauthorized Charges to Customers' Bills*, Docket Nos. L-00990140 and M-00981063 (Order entered January 14, 1999).

⁴⁴ *Petition of PA Telephone Association for Waiver of Requirements at 52 Pa. Code § 64.23(a)(6) and (b)(7)*, Docket No. P-00032050 (Order entered September 18, 2003).

⁴⁵ See 52 Pa. Code § 64.23(b)(7).

distance slamming complaints received by ILECs with 50,000 or more residential accounts and CLECs.⁴⁶

In its Tentative Implementation Order, the Commission determined that LECs are no longer required to file long distance slamming reports. Since the FCC is responsible for administering and enforcing its slamming liability rules at 47 CFR 64.1140—1180 for interexchange carriers, the Commission found that there is no public need to require reporting in this area. Concurrently, the Commission determined, in the Tentative Order, that information documenting the occurrence of local slamming⁴⁷ remains vital to monitoring the quality of local telephone service, particularly the quality of customer service and consumer protection. Therefore, the Commission concluded that section 3015(e)(4) allows the Commission to require information regarding customer service to be filed in an annual service report so that the Commission can fulfill its statutory duties of service quality and consumer protection.

In reviewing the comments submitted and the provisions of Chapter 30, the Commission affirmed in its Final Implementation Order that LECs are no longer required to report long distance slamming under the discussion in that Order. Concerning local slamming, the Commission agreed with the participants that urged the Commission to eliminate the local slamming report. Although the Commission determined that section 3019(b)(2) clearly retains the authority to address service standards and consumer protection, we found that the local slamming report should be eliminated with the caveat that incidents of local slamming should continue to be maintained by the LECs for a minimum of three years as required by our regulations at § 64.23(b)(7). In addition, in the event that the Commission requests slamming information for inspection and review, we ordered that the LECs continue to be required to furnish such information to the Commission upon request in accordance with sections 505 and 506 of Title 66. Therefore, the Commission ordered that a rulemaking be initiated to revise its regulations to eliminate reporting as required by our regulations at § 64.23(b)(7) for long distance and local slamming complaints. The Commission further determined that a waiver of the quarterly report filing will remain in effect until such time as regulations revised in accordance with this discussion receive final regulatory approval.

Therefore, the Commission proposes to eliminate the quarterly reporting obligation for both long distance and local slamming as required by our regulations at § 64.23(b)(7). In addition, the Commission initiates this rulemaking to eliminate the LECs' obligation to report incidents of long distance slamming under the discussion in this Order. However, the 3-year maintenance requirement for all records of customer allegations of slamming in § 64.23(b)(7) is a recordkeeping requirement and not a reporting requirement and as such, remains in effect for all LECs pending further regulatory action.

8. Residential Account Information

The Commission's regulation in § 64.201(a) and (b)⁴⁸ requires LECs to file residential account information reflecting billing and collection practices including customer disputes. Section 64.201(a) requires LECs that have less than 50,000 residential accounts to file an annual report by March 31 containing information about

their residential accounts as prescribed by § 64.201(c)⁴⁹ of the regulation. Section 64.201(b) requires that LECs with more than 50,000 residential accounts file quarterly and annual reports containing information about their residential accounts as prescribed by § 64.201(c) of the regulation.⁵⁰

In the Tentative Implementation Order, the Commission determined that, in accordance with Chapter 30, the information currently required at § 64.201(a) and (b) is to be filed on an annual basis as part of the annual service report listed in section 3015(e)(4).⁵¹ The Commission based its tentative conclusion on section 3019(b)(2) of Chapter 30 that retains the Commission's authority to review and revise its regulations concerning the ordering, installation, suspension and termination of any telecommunication service. Also, the Commission determined that our regulation in § 64.201(b) that requires quarterly filings be waived to reduce the filing to an annual basis to comply with Chapter 30. Thus, we directed Commission staff to begin a rulemaking to eliminate the quarterly filings of the information required at § 64.201(b) if no adverse comments were received.

In the Final Implementation Order, the Commission determined that both incumbent and competitive LECs will continue to provide information in accordance with our current regulation in § 64.201 but on an annual basis. Also, the Commission found that the use of standardized data permits the Commission to compare companies on service quality issues over time as permitted by section 3019 of Chapter 30 so that it can review and revise its regulations to address and update service quality standards.

Therefore, we propose to change the quarterly filings requirement at § 64.201 to annual reporting consistent with the provisions of Chapter 30 and the discussion in our previous orders.

9. Accident Reports

Accident reports, as required by the Commission's regulation in § 63.11 and section 1508 of Title 66,⁵² require all public utilities, including LECs, to file reports following an accident resulting in the death of a person or an occurrence of an unusual nature. The purpose of the report is to have information provided to the Commission so that it can monitor serious accidents involving facilities or operations of all public utilities.⁵³

In its Final Order addressing section 3015(f) of Chapter 30, the Commission determined that accident reports do not have a direct nexus to the rates charged by LECs in accordance with Chapter 30 and their alternative forms of regulation sufficient to satisfy section 3015(f)(1)(i). Ac-

⁴⁹ 52 Pa. Code § 64.201(c) requires that LECs include information regarding the average number of residential accounts per month, the average monthly residential customer bill, the average number of overdue residential accounts per month, the average overdue residential customer bill per month, the average number of residential basic service suspension notices and suspensions per month, LECs' gross revenues from residential accounts, LECs' gross and net write-offs of uncollectible residential accounts, and the total number of Chapter 64 disputes.

⁵⁰ The LB & FC Report states that the Commission uses these reports to monitor all LECs billing and collection practices and billing dispute volumes to determine trends in customer service including problem areas and corrective actions. The LB&FC Report also indicates that this information is used by the Commission for operational audits and measuring residential telecommunications competition. LB&FC Report at 7.

⁵¹ 66 Pa.C.S. § 3014(e)(4).

⁵² Pa. Code § 63.11 and 66 Pa.C.S. § 1508. Specifically, section 1508 provides that every public utility give immediate notice to the Commission of any accident in or about, or in connection with, the operation of its service and facilities, when a person has been killed or injured.

⁵³ LB & FC Report at 28.

⁴⁶ LB & FC Report at 25.

⁴⁷ Slamming is an unauthorized change to the customer's long distance carrier. 52 Pa. Code § 64.23 (b).

⁴⁸ 52 Pa. Code §§ 64.201(a) and (b).

cordingly, the Commission found that accident reports are no longer required under our regulation in § 63.11 and section 1508 of Title 66.⁵⁴

Therefore, we propose to eliminate the accident reporting obligation, on a per occurrence basis, for telecommunications companies as required by our regulation in § 63.11.

Conclusion

The Commission seeks comment regarding the proposed changes in our regulations from the telecommunications industry and the statutory advocates, 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 comments. We advise those that will be submitting comments in this proceeding to include specific section references to the proposed regulations. We are committed to completing the revisions to our procedural regulations in a timely fashion and, therefore, absent good cause, no extensions will be granted for the filing of comments. Accordingly, under section 501 of the Public Utility Code, 66 Pa.C.S. § 501, and the act of July 31, 1968 (P. L. 769, No. 240), known as the Commonwealth Documents Law, and regulations promulgated there under at 1 Pa. Code §§ 7.1—7.4, 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 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 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 comments by the Independent Regulatory Review Commission and the designated Legislative Standing Committees.

5. The Secretary shall certify this order and Annex A and deposit them with the Legislative Reference Bureau to be published 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 upon all jurisdictional local exchange carriers.

7. Interested persons may submit an original and 15 copies of any comments referencing the docket number of the proposed rulemaking within 30 days of publication in the *Pennsylvania Bulletin* to the Pennsylvania Public Utility Commission, Attn: Secretary, P. O. Box 3265, Harrisburg, PA 17105-3265. One copy of a diskette containing the comments in electronic format should also be submitted. A courtesy copy of written comments shall be served upon the Commission's Law Bureau, ATTN: Assistant Counsel Lois Burns.

8. Comments should include, when appropriate, a numerical reference to the proposed regulations that the comment addresses, any proposed language for revision, and a clear explanation for the recommendation.

9. The contact person for this rulemaking is Lois Burns, Assistant Counsel, Law Bureau, (717) 787-5000. Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Sherri DelBiondo, Regulatory Coordinator, Law Bureau, (717) 772-4579.

JAMES J. MCNULTY,
Secretary

Fiscal Note: 57-247. 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 B. SERVICES AND FACILITIES

§ 63.11. [Accident reports] (Reserved).

[(a) General. A public utility shall submit a report of a reportable accident involving the facilities or operations of the public utility in this Commonwealth. The report shall be addressed to the Secretary of the Commission.

(b) Reportable accidents. Reportable accidents are those involving utility facilities or operations which result in one or more of the following circumstances:

(1) The death of a person.

(2) Injury to an employe on duty sufficient to incapacitate him from performing his ordinary duties for a period longer than 3 days.

(3) Injury to a person other than an employe on duty sufficient to incapacitate the injured person from following his customary vocation, or mode of life, for a period of more than 1 day.

(4) An occurrence of an unusual nature, whether or not death or injury of a person results, which apparently will result in a prolonged and serious interruption of normal service.

(c) Telegraphic reports. A report by telephone or telegraph shall be made at once in the event of the occurrence of a reportable accident resulting in the death of a person, or in the event of an occurrence of an unusual nature.

(d) Written reports. A written report shall be made on Form UCTA-8 immediately following the occurrence of a reportable accident as defined in subsection (b). Accidents reportable to the Commission, which reports are also required by the Bureau of Workmen's Compensation, Department of Labor and Industry, may be reported by transmitting a copy of the reports in lieu of a report on Form UCTA-8.]

⁵⁴ 52 Pa. Code § 63.11 and 66 Pa.C.S. § 1508. Section 3015(f) Review regarding the Lifeline Tracking Report, Accident Report and Service Outage Report, Docket No. M-00051900 (Order adopted December 15, 2005).

CHAPTER 64. STANDARDS AND BILLING PRACTICES FOR RESIDENTIAL TELEPHONE SERVICE

Subchapter B. PAYMENT AND BILLING STANDARDS

§ 64.23. Standardizing LEC responses to customer contacts alleging unauthorized charges added to the customer's bill (cramming) and unauthorized changes to the customer's long distance carrier (slamming).

(a) *Cramming.* Upon contact from a customer alleging that cramming has occurred on the bill rendered to the customer by the LEC, the LEC shall do the following:

* * * * *

(6) Maintain for a minimum of 3 years records of all customer complaints of cramming in order to monitor adherence to the terms of the billing contract the LEC has with the service provider or billing agent, or both, relating to cancellation of the contract for excessive cramming complaints. **[Submit quarterly reports summarizing the records to the Commission's Office of Trial Staff and Bureau of Consumer Services in a format prescribed by those bureaus.]**

(b) *Slamming.* Upon contact from a customer alleging that slamming has occurred on one or both of the past two bills rendered to the customer by the LEC, regardless of dates of charges, the LEC shall do the following:

* * * * *

(7) Maintain for a minimum of 3 years records of all customer allegations of slamming **[and submit quarterly reports summarizing the records to the Commission's Office of Trial Staff and Bureau of Consumer Services in a format prescribed by those bureaus].**

Subchapter C. CREDIT AND DEPOSIT STANDARDS POLICY

§ 64.41. Interest.

Interest **[at the rate of 9% per annum]** calculated under section 202 of the act of January 30, 1974 (P. L. 13, No. 6) (41 P. S. § 202), known to as the **Loan Interest and Protection Law**, shall be payable on deposits without deductions for taxes thereon. Interest shall be paid annually to the customer or, at the option of either the LEC or the customer, shall be applied to the customer's bill.

Subchapter J. ANNUAL LEC REPORTING REQUIREMENTS

§ 64.201. Reporting requirements.

(a) **[Utilities with less than 50,000 residential accounts.] Annual report.** Within 90 days after the end of each calendar year, each LEC with **[less than 50,000]** residential accounts shall file with the Commission an annual report containing residential account information as listed in subsection **[(c)] (b)** for the previous calendar year.

(b) **[Utilities with more than 50,000 residential accounts.]** Within 90 days after the end of each of the first 3 quarters of the calendar year, each LEC with **50,000** or more residential accounts shall file with the Commission a quarterly report containing residential account information as listed in subsec-

tion (c)(1)—(7) and (11). The LEC shall also file an annual report containing residential account information as listed at subsection (c) within 90 days after the end of the calendar year.

(c) *Elements of periodic reporting.* The following **[shall]** must be included in periodic reporting as required under this section:

* * * * *

CHAPTER 71. FINANCIAL REPORTS

§ 71.3. Filing requirements.

* * * * *

(b) **[Incumbent local exchange telecommunications utilities with annual intraState gross revenues in excess of \$10 million shall file a financial report for the 12-month period ending each June 30 and December 31.]**

(c) The following public utilities shall file a financial report for the 12-month period ending each December 31:

* * * * *

(2) **[Incumbent local exchange telecommunications utilities with annual intraState gross revenues in excess of \$1 million but which do not exceed \$10 million.]**

(3) Gas distribution utilities having annual intraState gross revenues in excess of \$1 million but which do not exceed \$10 million.

[(4)] (3) * * *

[(d)] (c) * * *

[(e)] (d) * * *

CHAPTER 73. ANNUAL DEPRECIATION REPORTS, SERVICE LIFE STUDIES AND CAPITAL INVESTMENT PLANS

§ 73.3. Annual depreciation reports.

(a) A public utility providing electric service, gas service or water service which has gross **[intrastate] intraState** revenues in excess of \$20 million per year, except telecommunications interexchange carriers and gas and petroleum transportation pipeline companies, shall file an annual depreciation report with the Office of Special Assistants under this chapter. **[Public utilities providing telephone service with over 50,000 access lines or which have gross operating revenues in excess of \$20 million per year shall also be required to file an annual depreciation report.]**

(b) The due dates for the annual depreciation report are as follows:

(1) Electric, water **[, telephone]** and gas public utilities reports are due on or before June 30.

* * * * *

§ 73.5. Service life study report.

* * * * *

(b) **[A telephone utility having gross intrastate revenues in excess of \$20 million per year, except telecommunications interexchange carriers, resellers' of telecommunication services and radio common carriers, shall file a service life study report every 3 years. Public utilities providing telephone service with over 50,000 access lines or having**

gross operating revenues in excess of \$20 million per year shall also be required to file a service life study report. The first service life study report shall be filed with the Office of Special Assistants by August 31, 1998.

(c)] The due dates for the service life study report are as follows:

(1) Electric, water[, telephone] and gas public utilities are due on or before August 31.

* * * * *

§ 73.7. Capital investment plan report.

* * * * *

(b) [A telephone utility having gross intrastate revenues in excess of \$20 million per year or access

lines in excess of 50,000, except telecommunications interexchange carriers, resellers' of telecommunication services and radio common carriers, shall file a capital investment plan report every 3 years. The first capital investment plan report shall be filed with the Office of Special Assistants by August 31, 1998.

(c)] Thereafter, the capital investment plan report for electric, water[, telephone] and gas public utilities shall be filed with the Office of Special Assistants on or before August 31 of the year in which the report is due.

[(d)] (c) * * *

[Pa.B. Doc. No. 06-658. Filed for public inspection April 21, 2006, 9:00 a.m.]
