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**Latest Pennsylvania Code Reporter
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No. 379, June 2006

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READER'S GUIDE TO THE PENNSYLVANIA BULLETIN AND PENNSYLVANIA CODE

Pennsylvania Bulletin

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

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

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

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

Adoption, Amendment or Repeal of Regulations

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

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

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

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

Citation to the *Pennsylvania Bulletin*

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

Pennsylvania Code

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

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

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

How to Find Documents

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

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

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

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Printing Format

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

Fiscal Notes

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

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

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List of Pa. Code Chapters Affected

The following numerical guide is a list of the chapters of each title of the *Pennsylvania Code* affected by documents published in the *Pennsylvania Bulletin* during 2006.

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THE GENERAL ASSEMBLY

Recent Actions during the 2006 Regular Session of the General Assembly

The following is a summary of recent actions of the General Assembly during the 2006 Regular Session.

<i>Doc. No.</i>	<i>Date of Action</i>	<i>Bill Number</i>	<i>Printer's Number</i>	<i>Effective Date</i>	<i>Subject Matter</i>
2006 GENERAL ACTS ENACTED—ACT 046					
046	May 15	SB0723	PN1772	Immediately	Agricultural Area Security Law—omnibus amendments
2006 VETOES OF BILLS—VETO 004					
004	May 16	SB0997	PN1629	Immediately	Public Welfare Code—medical assistance payments for institutional care

* denotes an effective date with exceptions

Effective Dates of Statutes

The effective dates specified above for laws and appropriation acts were contained in the applicable law or appropriation act. Where no date is specified or where the effective date specified is prior to the date of enactment, the effective date is 60 days after final enactment except for statutes making appropriations or affecting budgets of political subdivisions. See 1 Pa.C.S. §§ 1701—1704 (relating to effective dates of statutes).

Advance Copies of Statutes

Section 1106 of Title 1 of the *Pennsylvania Consolidated Statutes* provides that the prothonotaries of each county shall file advance copies of statutes in their offices for public inspection until the *Laws of Pennsylvania* are generally available. Section 2406(h) of The Administrative Code of 1929 provides that the Department of General Services shall distribute advance sheets of the *Laws of Pennsylvania* to each law judge of the courts, to every county and public library of this Commonwealth and to each member of the General Assembly. These copies shall be furnished without charge. The Department shall also mail one copy of each law enacted during any legislative session to any person who pays to it the sum of \$20.

Requests for annual subscriptions for advance copies of statutes should be sent to the State Bookstore, Commonwealth Keystone Building, 400 North Street, Harrisburg, PA 17120, accompanied by a check or money order in the sum of \$20, payable to the "Commonwealth of Pennsylvania."

ROBERT W. ZECH, Jr.,
Director
Legislative Reference Bureau

[Pa.B. Doc. No. 06-967. Filed for public inspection June 2, 2006, 9:00 a.m.]

THE COURTS

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 1300]

Amendment of Rule 1311.1 Governing an Appeal from an Award in Compulsory Arbitration; No. 455 Civil Procedural Rules; Doc. No. 5

Order

Per Curiam:

And Now, this 16th day of May, 2006, Pennsylvania Rule of Civil Procedure 1311.1 is amended as follows.

This order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective on July 1, 2006.

Annex A

TITLE 231. RULES OF CIVIL PROCEDUREc

PART I. GENERAL

CHAPTER 1300. ARBITRATION

Subchapter A. COMPULSORY ARBITRATION

Rule 1311.1. Procedure on Appeal. Admission of Documentary Evidence.

(a) The plaintiff may stipulate to [\$15,000.00] \$25,000.00 as the maximum amount of damages recoverable upon the trial of an appeal from the award of arbitrators. The stipulation shall be filed and served upon every other party at least thirty days from the date the appeal is first listed for trial.

* * * * *

(e) The stipulation required by subdivision (a) shall be substantially in the following form:

(Caption)

Stipulation to Limitation of Monetary Recovery Pursuant to Rule 1311.1

To: _____ :
(Name of Party/Parties)

_____, plaintiff, stipulates to [\$15,000.00] \$25,000.00 as the maximum amount of damages recoverable upon the trial of the appeal from the award of arbitrators in the above captioned action.

(Name of Plaintiff)

(Attorney for Plaintiff)

(Date)

* * * * *

Explanatory Comment

Rule 1311.1 governing the admission of documentary evidence upon the trial de novo of an appeal from the award of arbitrators in compulsory arbitration became effective September 1, 2003. The rule as originally promulgated applied to appeals in which the plaintiff stipulated to \$15,000.00 as the maximum amount of recoverable damages in the appeal. In light of the favorable

reception to the rule, the maximum amount of recoverable damages has been increased to \$25,000.00.

By the Civil Procedural Rules Committee

R. STANTON WETTICK, Jr.,
Chair

[Pa.B. Doc. No. 06-968. Filed for public inspection June 2, 2006, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CH. 1910]

Order Amending Rule 1910.19; No. 456 Civil Procedural Rules; Doc. No. 5

Order

Per Curiam:

And Now, this 19th day of May, 2006, Rule 1910.19 of the Pennsylvania Rules of Civil Procedure is amended as follows.

This order shall be processed in accordance with Pa. R.J.A. 103(b) and shall be effective immediately.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1910. ACTIONS FOR SUPPORT

Rule 1910.19. Support. Modification. Termination. Guidelines as Substantial Change in Circumstances.

(a) A petition for modification or termination of an existing support order shall specifically aver the material and substantial change in circumstances upon which the petition is based. A new guideline amount resulting from new or revised support guidelines may constitute a material and substantial change in circumstances. The existence of additional income, income sources or assets identified through automated methods or otherwise may also constitute a material and substantial change in circumstances.

(b) The procedure upon the petition shall be in accordance with Rule 1910.10 et seq.

(c) Pursuant to a petition for modification, the trier of fact may modify or terminate the existing support order in any appropriate manner based upon the evidence presented.

(d) All charging orders for spousal support and alimony pendente lite shall terminate upon the death of the payee spouse.

(e) Within one year of the date a child who is the subject of a child support order reaches eighteen (18) years of age, the domestic relations section shall issue an emancipation inquiry and notice to the obligee, with a copy to the obligor, seeking the following information:

(1) confirmation of the child's date of birth, date of graduation or withdrawal from high school;

(2) whether the child has left the obligee's household and, if so, the date of departure;

(3) the existence of any agreement between the parties requiring payments for the benefit of the child after the child has reached age eighteen (18) or graduated from high school; and

(4) any special needs of the child which may be a basis for continuing support for that child beyond the child's eighteenth birthday or graduation from high school, whichever is last to occur

The notice shall advise the obligee that if the inquiry is not returned within thirty (30) days of mailing or if there is no agreement or the child does not have any special needs, the charging order may be modified or terminated by the court. When no other children are subjects of the child support order and the obligee either does not return the emancipation inquiry within thirty (30) days of its mailing or does not assert grounds for continuing support for the child, then the court shall have the authority to administratively terminate the child support charging order without further proceedings at any time on or after the last to occur of the date the last child reaches age eighteen (18) or graduates from high school. Termination of the charging order shall not affect any arrears accrued through the date of termination. The court shall have the authority to enter an order requiring the obligor to pay on arrears in an amount equal to the amount of the charging order until all arrears are paid.

If the order applies to another child or children and/or the obligee asserts that there is an agreement between the parties or that a child has special needs requiring continued support, then the domestic relations section may schedule a conference to determine if the charging order should be modified.

(f) Upon notice to the obligee, with a copy to the obligor, explaining the basis for the proposed modification or termination, the court may modify or terminate a charging order for support and remit any arrears, all without prejudice, when it appears to the court that:

(1) the order is no longer able to be enforced under state law; or

(2) the obligor is unable to pay, has no known income or assets and there is no reasonable prospect that the obligor will be able to pay in the foreseeable future.

The notice shall advise the obligee to contact the domestic relations section within 60 days of the date of the mailing of the notice if the obligee wishes to contest the proposed modification or termination. If the obligee objects, the domestic relations section shall schedule a conference to provide the obligee the opportunity to contest the proposed action. If the obligee does not respond to the notice or object to the proposed action, the court shall have the authority to modify or terminate the order and remit any arrears, without prejudice.

Explanatory Comment—1993

Existence of Guidelines as Substantial Change in Circumstances. In its opinion in *Newman v. Newman*, 409 Pa. Super. Ct. 108, 597 A.2d 684 ([Pa. Super.] 1991), the Superior Court held that enactment of the guidelines does not constitute a substantial change in circumstance which could serve as the basis for modification of a support order. The amended rule allows the trier of fact to consider new or revised rules as a change in circumstances where the change in the guidelines, either by itself or in combination with other factors, is material and substantial.

Explanatory Comment—2000

The Pennsylvania Child Support Enforcement System ("PACES") is electronically linked to a variety of govern-

mental and private agencies and institutions. This linkage enables PACSES to immediately locate and identify an obligor's income, income sources and assets. Rule 1910.19 is amended to provide that their identification through these automated methods provides a basis for modifying both the current support obligation and the rate of repayment on either past due or overdue support. Identification through means other than PACSES continues to provide the same basis for modification.

While identification of income sources or assets provides a basis for modification, this rule is not intended to prevent a court from ordering that the income or assets be frozen and seized under Rule 1910.26 pending the hearing on the petition for modification. Such relief remains available under Rule 1910.26 governing appropriate interim or special relief. See Rule 1910.1 Explanatory Comment. Nor is this rule intended to affect the court's ability to seize income or assets under Rule 1910.20 to secure an overdue support obligation.

Explanatory Comment—2002

Although support orders do not terminate automatically, many obligors are unaware of the necessity of filing a petition to terminate a child support order when the child becomes emancipated. As a result, old orders have continued to charge long after the subject child has become an adult. New subdivision (e) is intended to address this problem by giving the obligee notice of a proposed modification or termination of the order and the opportunity to object. If no objection is made, or if the obligee fails to respond with a reason to continue the order, the rule gives the court the authority to terminate or modify the charging order, depending upon whether or not other children are covered under the order.

Explanatory Comment—2006

New subdivision (f) addresses an increasing multiplicity of circumstances in which the continued existence of a court-ordered obligation of support is inconsistent with rules or law. An obligor with no known assets whose sole source of income is Supplemental Security Income or cash assistance cannot be ordered to pay support under Rule 1910.16-2. Likewise, an obligor with no verifiable income or assets whose institutionalization, incarceration or long-term disability precludes the payment of support renders the support order unenforceable and uncollectible, diminishing the perception of the court as a source of redress and relief. Often, the obligor is unable or unaware of the need to file for a modification or termination, or the parties abandon the action. In those circumstances, the courts are charged with managing dockets with no viable outcomes. Both the rules and the federal guidelines for child support under Title IV-D of the Social Security Act provide for circumstances under which a support order shall not be entered or under which a child support case may be closed. Subdivision (f) expands the authority of the courts to respond to case management issues brought about by changes in circumstances of the parties of which the courts become aware through the expansion of automated interfaces and data exchanges.

[Pa.B. Doc. No. 06-969. Filed for public inspection June 2, 2006, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CHS. 5 AND 10]

Order Amending Rules 529, 543 and 1011; No. 344
Criminal Procedural Rules; Doc. No. 2

Order

Per Curiam:

Now, this 19th day of May, 2006, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 33 Pa.B. 6410 (December 27, 2003), and in the *Atlantic Reporter* (Second Series Advance Sheets, Vol. 740), and a Final Report to be published with this *Order*:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rules of Criminal Procedure 529, 543, and 1011 are amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective August 1, 2006.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES

PART C(1). Release Procedures

Rule 529. Modification of Bail Order Prior to Verdict.

(A) [A bail order may be modified by an issuing authority at any time before the preliminary hearing upon the request of the defendant with the consent of an attorney for the Commonwealth, or at the preliminary hearing upon the request of either party.] The issuing authority who is the magisterial district judge who was elected or assigned to preside over the jurisdiction where the crime occurred, upon request of the defendant or the attorney for the Commonwealth, or by the issuing authority sua sponte, and after notice to the defendant and the attorney for the Commonwealth and an opportunity to be heard, may modify a bail order at anytime before the preliminary hearing.

(B) A bail order may be modified by an issuing authority at the preliminary hearing.

(C) The existing bail order may be modified by a judge of the court of common pleas:

(1) at any time prior to verdict upon motion of counsel for either party with notice to opposing counsel and after a hearing on the motion; or

(2) at trial or at a pretrial hearing in open court on the record when all parties are present.

[(C)] (D) Once bail has been set or modified by a judge of the court of common pleas, it shall not [thereafter] be modified except

(1) by a judge of a court of superior jurisdiction, or

(2) by the same judge or by another judge of the court of common pleas either at trial or after notice to the parties and a hearing.

[(D)] (E) When bail is modified pursuant to this rule, the modification shall be explained to the defendant and stated in writing or on the record by the issuing authority or the judge.

Comment

In making a decision whether to modify a bail order, the issuing authority or judge should evaluate the information about the defendant as it relates to the release criteria in Rule 523 and the types of release on bail set forth in Rule 524.

In Municipal Court cases, the Municipal Court judge may modify bail in the same manner as a common pleas [court] judge may under this rule. See Rule 1011.

The procedures for modification of a bail order by the issuing authority were amended in 2006 to permit the issuing authority to modify bail at any time before the preliminary hearing on the issuing authority's own motion or request of a party when, for example, new information becomes available concerning the defendant that would affect the issuing authority's decision concerning the type of release and the conditions of release imposed at the preliminary arraignment. The 2006 amendments to paragraph (A) are not intended to affect bail procedures in the Philadelphia Municipal Court.

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

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

See Pa.R.A.P. 1762[(a)] (b)(2) for the procedures to obtain appellate court review of an order of a judge of the court of common pleas granting or denying release, or modifying the conditions of release.

Official Note: Former Rule 4008 adopted July 23, 1973, effective 60 days hence; rescinded September 13, 1995, effective January 1, 1996, and replaced by Rule [530] 4010. Present Rule 4008 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; the April 1, 1996 effective dates extended to July 1, 1996; renumbered Rule 529 and amended March 1, 2000, effective April 1, 2001; Comment revised August 24, 2004, effective August 1, 2005; amended May 19, 2006, effective August 1, 2006.

Committee Explanatory Reports:

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Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. [1477] 1478 (March 18, 2000).

* * * * *

Final Report explaining the May 19, 2006 amendments concerning "pre-preliminary hearing" modification of bail by the issuing authority published with the Court's Order at 36 Pa.B. 2633 (June 3, 2006).

PART D. Proceedings in Court Cases Before Issuing Authorities

Rule 543. Disposition of Case at Preliminary Hearing.

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

(B) If the Commonwealth establishes a prima facie case of the defendant's guilt, the issuing authority shall hold the defendant for court. Otherwise, the defendant shall be discharged.

(C) When the defendant has been held for court, the issuing authority shall:

(1) set bail as permitted by law if the defendant did not receive a preliminary arraignment; or

(2) continue the existing bail order, unless the issuing authority modifies the order as permitted by Rule 529[(A)].

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

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

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

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

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

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

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

(a) the arraignment occurs; or

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

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

(E) If the Commonwealth does not establish a prima facie case of the defendant's guilt, and no application for a continuance is made and there is no reason for a continuance, the issuing authority shall dismiss the complaint.

(F) In any case in which a summary offense is joined with misdemeanor, felony, or murder charges:

(1) If the Commonwealth establishes a prima facie case pursuant to paragraph (B), the issuing authority shall not adjudicate or dispose of the summary offenses, but shall forward the summary offenses to the court of common pleas with the charges held for court.

(2) If the Commonwealth does not establish a prima facie case pursuant to paragraph (B), upon the request of the Commonwealth, the issuing authority shall dispose of the summary offense as provided in Rule 454 (Trial In Summary Cases).

(3) If the Commonwealth withdraws all the misdemeanor, felony, and murder charges, the issuing authority shall dispose of the summary offense as provided in Rule 454 (Trial In Summary Cases).

Comment

Paragraph (C) reflects the fact that a bail determination will already have been made at the preliminary arraignment, except in those cases in which, pursuant to a summons, the defendant's first appearance is at the preliminary hearing. See Rules 509 and 510.

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

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

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

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

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

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

a common pleas judge's bench warrant. See Rule 150 for the procedures in a court case after a bench warrant is executed.

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

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

Rule 542(D) specifically prohibits an issuing authority at a preliminary hearing from proceeding on any summary offenses that are joined with misdemeanor, felony, or murder charges, except as provided in paragraph (F) of this rule. Paragraph (F) sets forth the procedures for the issuing authority to handle these summary offenses at the preliminary hearing. These procedures include the issuing authority (1) forwarding the summary offenses together with the misdemeanor, felony, or murder charges held for court to the court of common pleas, or (2) disposing of the summary offenses as provided in Rule 454 by accepting a guilty plea or conducting a trial whenever (a) the misdemeanor, felony, and murder charges are withdrawn, or (b) a prima facie case is not established at the preliminary hearing and the Commonwealth requests that the issuing authority proceed on the summary offenses.

Under paragraph (F)(2), in those cases in which the Commonwealth does not intend to refile the misdemeanor, felony, or murder charges, the Commonwealth may request that the issuing authority dispose of the summary offenses. In these cases, if all the parties are ready to proceed, the issuing authority should conduct the summary trial at that time. If the parties are not prepared to proceed with the summary trial, the issuing authority should grant a continuance and set the summary trial for a date and time certain.

In those cases in which a prima facie case is not established at the preliminary hearing, and the Commonwealth does not request that the issuing authority proceed on the summary offenses, the issuing authority should dismiss the complaint, and discharge the defendant unless there are outstanding detainers against the defendant that would prevent the defendant's release.

Nothing in this rule would preclude the refiling of one or more of the charges, as provided in these rules.

See Rule 313 for the disposition of any summary offenses joined with misdemeanor or felony charges when the defendant is accepted into an ARD program on the misdemeanor or felony charges.

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

Official Note: Original Rule 123, adopted June 30, 1964, effective January 1, 1965, suspended January 31, 1970, effective May 1, 1970. New Rule 123 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 143 September 18, 1973, effective January 1, 1974; amended January 28, 1983, effective July 1, 1983; amended August 9, 1994, effective January 1, 1995; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; renumbered Rule 142 October 8, 1999, effective January 1, 2000; renumbered Rule 543 and amended March 1, 2000, effective April 1, 2001; amended August 24, 2004, effective August 1, 2005; amended December 30, 2005, effective August 1, 2006; amended March 9, 2006, effective September 1, 2006; **amended May 19, 2006, effective August 1, 2006.**

Committee Explanatory Reports:

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Final Report explaining the May 19, 2006 amendments correcting cross-references to Rule 529 published with the Court's Order at 36 Pa.B. 2633 (June 3, 2006).

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

PART A. Philadelphia Municipal Court Procedures Rule 1011. Bail.

(A) Prior to verdict, an existing bail order may be modified by a Municipal Court judge in a Municipal Court case in the same manner as a judge of the court of common pleas may modify a bail order pursuant to Rule 529[(B), (C), and (D)] (C), (D), and (E).

(B) In all cases in which a sentence is imposed, the execution of sentence shall be stayed and the bail previously set shall continue, except as provided in this rule.

(1) If a notice of appeal or a petition for a writ of certiorari is not filed within 30 days, the judge shall direct the defendant to appear before the judge for the execution of sentence.

(2) If a notice of appeal is filed within 30 days, the bail previously set shall continue.

(3) If a petition for a writ of certiorari is filed within 30 days, bail shall be determined as provided in Rule 521(B)(1) and (2).

(C) The attorney for the Commonwealth may make application to the Court of Common Pleas to increase the amount of bail upon cause shown.

Comment

Paragraph (A) was added in 1995 to conform the practice for Municipal Court judges modifying a bail order before verdict in Municipal Court cases with the practice set forth in Rule 529 for judges of the common pleas court.

Official Note: Rule 6011 adopted December 30, 1968, effective January 1, 1969; amended July 1, 1980, effective August 1, 1980; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; amended February 21, 1996, effective July 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; renumbered Rule 1011 and amended March 1, 2000, effective April 1, 2001; **amended May 19, 2006, effective August 1, 2006.**

Committee Explanatory Reports:

* * * * *

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. [1477] 1478 (March 18, 2000).

Final Report explaining the May 19, 2006 amendments correcting cross-references to Rule 529 published with the Court's Order at 36 Pa.B. 2633 (June 3, 2006).

FINAL REPORT¹

Amendments to Pa.Rs.Crim.P. 529, 543, and 1011

Modification of Bail by Magisterial District Judges

On May 19, 2006, effective August 1, 2006, upon the recommendation of the Criminal Procedural Rules Com-

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

mittee, the Court amended Rules 529, 543, and 1011. The changes provide that an issuing authority may modify a bail order at anytime following the preliminary arraignment through the preliminary hearing.

These amendments were developed following the Committee's extensive review of correspondence and inquiries received from several individuals concerning a Delaware County case in which a police officer was shot and killed during a routine traffic stop. The defendant had a criminal record and was on parole, and was released on \$1,000/10% bail in a prior weapons case because the magisterial district judge setting the bail was not provided with the defendant's criminal history nor did the magisterial district judge have any other access to the defendant's criminal history.

The Committee considered several suggested solutions to this problem, such as a modification of the complaint form providing a check off box for the police to indicate that they had done a criminal history check and had provided/would provide the information to the magisterial district judge. The Committee also explored the possibility of requiring the bail authority to complete a form indicating the release criteria considered in determining the type of release under Rule 523. After considering the merits of these options, however, the Committee agreed that simply requiring a box be checked or the completion of a form would not resolve the problem. Rather, we agreed these approaches would be more of a superficial "quick-fix," and feared the result would appear to be a knee-jerk reaction to the Delaware County case rather than a solution to the real problem—the systemic problem concerning magisterial district judges' access to a defendant's criminal history when setting bail. Ordinarily, at the preliminary arraignment when bail is to be determined, the magisterial district judge does not have access to criminal history and only has the information that is available from the police officer or if the magisterial district judge knows the individual. The result is the magisterial district judge sets bail either too high or, as in the Delaware County case, too low given the actual circumstances. In view of these considerations, the Committee concluded a reasonable solution would be for the magisterial district judges to have the authority to modify bail at any time up to the preliminary hearing once information that could affect the defendant's bail status becomes known to the issuing authority.

The Committee reviewed the history of Rule 529. When the rule originally was adopted it provided, "Bail may be modified by the issuing authority at the preliminary hearing when counsel for either party makes known to him facts relating to the standards set forth in Rule 4004² which were not known or which were misrepresented when bail was originally set, or which have changed since the setting of bail."³ However, the Committee history revealed that despite the literal wording of the rule, magisterial district judges would occasionally reset bail at a time before the preliminary hearing. Furthermore, at least in some judicial districts, the district attorneys would closely monitor the practice because of the concerns of "magisterial district judge shopping" and that the "non-sanctioned practice" provided a means for collusion between a bondsman and a magisterial district

judge or for a bondsman to obtain a bail reduction unbeknownst to a defendant and charge a premium based on the higher bail amount.

In 1983, paragraph (A) of Rule 4005 (present Rule 529) was amended to address concerns about magisterial district judges modifying bail before the preliminary hearing. See the Committee Explanatory Report 13 Pa.B. 125 (January 8, 1983). The Committee had considered permitting magisterial district judges to modify bail without imposing any limitations, but rejected the idea because of potential problems, including concerns that ex parte proceedings would result unless a notice and hearing requirement was included, an unsatisfactory option in view of the necessary delay that would result from serving notice and scheduling a hearing. The Committee at that time considered:

(1) the parties should be aware of any bail modification request;

(2) the defendant's attorney and the attorney for the Commonwealth often agree that bail should be reduced and then request the court to sign an order, and in these instances, the notice and hearing requirements would be unnecessary, and would reduce the amount of time the defendant is detained;

(3) there are instances when issuing authorities set inappropriate or excessive bail at preliminary arraignment with the result that the defendant frequently remains in jail until the preliminary hearing, especially in those cases in which the defendant is not represented by counsel; and

(4) there are times when the defendant is under the auspices of the bail agency, and the bail agencies are often precluded by local rules or practice from requesting a bail reduction before the court of common pleas, and the defendant would have to wait until the preliminary hearing to have bail reset.

Accordingly, the Committee agreed to include the consent requirement to allow an issuing authority to modify bail following the preliminary arraignment and before the preliminary hearing upon request of the defendant with the consent of the attorney for the Commonwealth. The consent requirement also was intended to address the magisterial district judge shopping and collusion concerns, apprise the defendant and the attorney for the Commonwealth of any bail-related changes in the case, and avoid the delay incurred in waiting for a modification hearing to be scheduled.

Notwithstanding the considerations of the Committee in developing the 1983 proposal, on reflection, in view of the serious issues arising due to lack of access to relevant bail-related information, the Committee noted there are legitimate reasons why an issuing authority should be able to modify bail between the preliminary arraignment and preliminary hearing. For example, there often are cases in which a defendant, who would be considered "a good bail risk," has a high bail set because of the lack of adequate information about the defendant, or a "duty" magistrate who is not familiar with the defendant sets a high bail and the "proper" issuing authority who knows the defendant would have set a lower bail. In these situations, the present "defendant request/Commonwealth consent" requirement is an inadequate provision for allowing the issuing authority to modify the amount of bail because it results in unnecessary detention until 1) the defendant makes the request to modify bail and the attorney for the Commonwealth gives consent, 2) a

² Rule 4004 was renumbered as Rule 525 on March 1, 2000, effective April 1, 2001.

³ The Committee also reviewed statutes and rules in other jurisdictions to find out whether they address similar procedures in their criminal procedures. We found that some jurisdictions allow the court sua sponte to modify bail, see, e.g., Arizona Rule of Criminal Procedure 7.4(b) and Ohio Rule of Criminal Procedure 46(E), but that most jurisdictions require a motion by the defendant or prosecuting attorney, see, e.g., Connecticut Rule of Criminal Procedures 38-14 and New Jersey Rule of Criminal Procedure 46.1(b)(2).

motion is heard in the court of common pleas, or 3) the time of the preliminary hearing.⁴

In view of the rule's history, the procedures in other jurisdictions that permit their courts to modify bail "on their own motion," the problems concerning the lack of authorization for the issuing authorities to modify bail, and the Committee's position that the issuing authorities should be able to modify bail during the time period between the preliminary arraignment and the preliminary hearing, the Committee proposed the amendment of Rule 529.

DISCUSSION

Having agreed to change Rule 529 to permit an issuing authority to modify a bail order at anytime following the preliminary arraignment and before the preliminary hearing, the problem was how effectively to incorporate the new procedure into Rule 529.

First, to emphasize the changes, the provision for the modification of bail during the time period subsequent to the preliminary arraignment and prior to the preliminary hearing is set forth in a separate section. New paragraph (A) highlights the new procedure by only addressing the issue of permitting the issuing authority to modify bail prior to the preliminary hearing.

The Committee initially considered including in the proposal an "additional information" requirement—that is, the issuing authority could modify the bail when in receipt of additional information about the defendant that would affect the defendant's bail status. We also noted that there are a variety of ways in which the additional information could be made known to the issuing authority: from the Commonwealth, the defense attorney, a third party, the court system, other judges, or other people in the system, electronically, or from the newspapers. Upon reconsideration, however, the Committee agreed that the issuing authority should be able to modify bail up or down, and be able to do this without the requirement of the receipt of additional information, such as when bail is originally set by a "duty" or "on-call" issuing authority who does not know the defendant and the "proper issuing authority," when he or she later becomes aware of the case, concludes the bail should be modified.

The amendments also include the requirement of notice to the defendant⁵ and the attorney for the Commonwealth, with the opportunity for them to be heard. In this way, a formal motion procedure is not required, but the opportunity allows the defendant or attorney for the Commonwealth who opposes the change to "state his or her reasons." Thus, under this new procedure, the defendant, or the attorney for the Commonwealth, or even the issuing authority can initiate consideration of pre-preliminary hearing modification of bail, as long as there is notice to the other parties, and an opportunity for them to be heard. The specific consent requirement is deleted

⁴ The Committee also considered that there may be equally important and compelling reasons the issuing authority would want to increase the amount of bail.

⁵ We did not add a requirement for the attorney for the defendant to receive notice because frequently at this early stage of the proceedings, the defendant does not have counsel.

as no longer necessary, because paragraph (A), with the notice and opportunity to be heard provisions, encompasses the consent situation.

In view of these considerations, the following language is added as a new paragraph (A) in Rule 529:

The issuing authority who is the magisterial district judge who was elected or assigned to preside over the jurisdiction where the crime occurred, upon request of the defendant or the attorney for the Commonwealth, or by the issuing authority sua sponte, and after notice to the defendant and the attorney for the Commonwealth and an opportunity to be heard, may modify a bail order at anytime before the preliminary hearing.⁶

A new paragraph is added to the Comment that further explains that the new procedures change existing practice by permitting the issuing authority to modify bail before the preliminary hearing upon the issuing authority's "own motion" or the request of one of the parties.

New paragraph (B) maintains, as a separate paragraph, the present paragraph (A) provision that a bail order may be modified by the issuing authority at the preliminary hearing. However, the requirement that modification occur "upon the request of either party" is deleted because it is no longer necessary—the issuing authority has the authority to modify bail without the request being made by a party.

Correlative amendments have been made to Rule 1011 to conform the cross-reference to Rule 529(B), (C), and (D) with new paragraphing being made under these amendments.⁷ Similarly, corresponding amendments have been made to 543(C)(2) by deleting the reference to subparagraph (A) of Rule 529.

[Pa.B. Doc. No. 06-970. Filed for public inspection June 2, 2006, 9:00 a.m.]

SUPREME COURT

The Act of June 29, 2002 (P. L. 663, No. 100), The Right-to-Know Law; No. 229; Magisterial Doc. No. 1

Order

Per Curiam

And Now, this 16th day of May, 2006, the order of December 12, 2002, directing that proceedings pursuant to Section 4(b) of the Act of June 29, 2002 (P. L. 663, No. 100), 65 P. S. § 66.4(b), are assigned to and shall be commenced in the courts of common pleas, is hereby made permanent.

[Pa.B. Doc. No. 06-971. Filed for public inspection June 2, 2006, 9:00 a.m.]

⁶ This new language includes the new provision defining the "proper" issuing authority.

⁷ The cross-reference to Pa.R.A.P. 1762 in the Comment to Rule 529 has been updated to reflect recent amendments to Rule 1762.

RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

STATE CONSERVATION COMMISSION

[25 PA. CODE CH. 83]

Nutrient Management

The State Conservation Commission (Commission) amends Chapter 83, Subchapter D (relating to nutrient management). This final-form rulemaking makes various changes to existing regulations to improve environmental protection at agricultural operations subject to 3 Pa.C.S. §§ 501—522 (relating to nutrient management and odor management) (act).

These amendments were adopted by the Commission at the meeting on January 19, 2006.

Effective Date

This final-form rulemaking will go into effect October 1, 2006.

Contact Person

For further information, contact Karl G. Brown, Executive Secretary, State Conservation Commission, Suite 407, Agriculture Building, 2301 North Cameron Street, Harrisburg, PA 17110, (717) 787-8821. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final-form rulemaking is available on the Commission's website at www.agriculture.state.pa.us (Choose "Commissions & Councils" and "State Conservation Commission").

Statutory Authority

This final-form rulemaking is promulgated under the authority of sections 504 and 506(a) of the act (relating to powers and duties of commission; and nutrient management plans), which authorize the Commission to promulgate regulations to make appropriate changes to the criteria used to define a concentrated animal operation (CAO) and to establish minimum criteria for nutrient management plans (NMP) and other requirements necessary to implement the act. This final-form rulemaking is promulgated under section 4 of the Conservation District Law (3 P. S. § 852), which authorizes the Commission to promulgate rules and regulations as may be necessary to carry out its functions. This final-form rulemaking is promulgated under section 503(d) of the Conservation and Natural Resources Act (71 P. S. § 1340.503(d)), which modified the authority and responsibilities of the Commission, the Department of Environmental Protection (DEP) and the Department of Agriculture (Department).

Background and Summary

This final-form rulemaking is the culmination of several years' work administering the act across this Commonwealth, advances in the sciences of agronomics and manure management and revisions to the former Nutrient Management Act, as well as legislative hearings voicing public concerns with livestock agriculture and changes in the industry. Currently, 901 operations are subject to the existing nutrient management regulations in Chapter 83, Subchapter D and an additional 1,325 farms have voluntarily complied with the requirements.

The predecessor to the act, the Nutrient Management Act, was enacted in May 1993 to provide for the management of nutrients on certain agricultural operations to abate nonpoint source pollution. It required the Commission, in conjunction with the Department, the DEP, the Penn State Cooperative Extension, the Nutrient Management Advisory Board (Advisory Board) and county conservation districts to develop a program for the proper utilization and management of nutrients. The act did not change that basic approach. Accordingly, Commission staff has worked closely with these organizations in developing this final-form rulemaking.

Nitrogen is identified in section 504(1)(i) of the act as the nutrient of primary concern, but it allows for the Commission to address other nutrients under specific criteria established by the Commission. This final-form rulemaking adds another nutrient—phosphorus—to be considered within the development of NMPs under the act. This change, along with various provisions regarding the export of manure off of the farms governed by these regulations, were two central issues with the current program identified to the Commission by the House Committee on Agriculture and Rural Affairs, following public hearings in 2001.

The Commission is also required to provide education, technical assistance and financial assistance to the agricultural community regarding proper nutrient management. To date, the Commission has administered over \$12 million in financial assistance to farmers subject to these regulations.

The Commission developed this final-form rulemaking in conjunction with the Advisory Board, as required by the act. The Advisory Board, which represents a wide range of agricultural, academic, governmental, environmental and private interests, provided extensive assistance to the Commission over the past several years in an effort to develop workable and effective amendments to the existing regulations. The development of this final-form rulemaking was also done with regular assistance and guidance from county conservation districts, the Department, the DEP, United States Department of Agriculture (USDA) Natural Resources Conservation Service, the USDA Agricultural Research Service, and the Pennsylvania State University College of Agricultural Sciences.

This final-form rulemaking directly regulates CAOs that are required to develop and implement NMPs under the act, as well as agricultural operations that volunteer to meet the requirements under the act, referred to as volunteer agricultural operations (VAOs). In addition, the final-form rulemaking requirements for CAOs and VAOs also apply to agricultural operations found to be in violation of The Clean Streams Law (35 P. S. §§ 691.1—691.1001) if they are required to submit a plan that meets the requirements of the act. These operations will be collectively referred to as "NMP operations" in this preamble. Further, this final-form rulemaking affects operations that agree to import manure from NMP operations, and others involved in that export such as commercial haulers and brokers. Finally, the DEP's concentrated animal feeding operation (CAFO) regulations in Chapter 92 (relating to National pollutant discharge elimination system permitting, monitoring and compliance) requires permittees to meet the requirements of this final-form rulemaking.

The Commission has been successful in obtaining voluntary participation of VAOs in the nutrient management program, as envisioned by the act. The Commission believes that a strong voluntary program can operate simultaneously with the mandated regulatory program to further protect water quality in this Commonwealth.

Various nutrient management planning responsibilities are set forth in detail in this final-form rulemaking. These include requirements to prevent pollution from land application of manure and other nutrient sources, and minimum standards for the construction, location, storage capacity and operation of animal manure storage facilities.

NMPs are required by the act to be developed by nutrient management specialists who meet rigorous technical qualifications, and who are certified by the Department. Additionally, plans are to be submitted to the Commission or the delegated county conservation district for approval. The final actions by the Commission and delegated county conservation districts are subject to appeal to the Environmental Hearing Board.

Agricultural operations may apply for financial assistance to develop and to implement NMPs. In accordance with the act, Commission responsibilities for administering the act and regulations can be delegated to county conservation districts and this is being done in 60 of the 67 counties across this Commonwealth to ensure timely and effective implementation of the program.

Numerous public comments were received on the proposed rulemaking published at 34 Pa.B. 4361 (August 7, 2004). This final-form rulemaking contains revisions to the proposed rulemaking based on those comments, as well as interaction with the Advisory Board and various State and Federal agencies involved with implementation. The changes from the proposed rulemaking are described in the following section, followed by a description of comments and the Commission's responses to the comments.

E. Summary of Changes from the Proposed Rulemaking General

Clarifying and stylistic changes to the existing regulations are made throughout these revisions. Many changes are intended to address changes requested by the Independent Regulatory Review Commission (IRRC) to conform to the Regulatory Review Act (71 P. S. §§ 745.1—745.15). Some of these changes are described in the following sections.

Phosphorus management

Phosphorus is one of the two nutrients of concern in managing nutrients to protect water resources. The other is nitrogen, which was already expressly addressed in the prior regulations. A decision of the Environmental Hearing Board in April 2004 determined that the law requires NMPs to specifically address phosphorus as well as nitrogen. The proposed rulemaking contained a requirement in § 83.293(b) (relating to determination of nutrient application rates) to address phosphorus runoff by restricting land application of nutrients based on a "Phosphorus Index" methodology developed by Pennsylvania State University.

In the final-form rulemaking, several changes were made. First, the basic criteria required for phosphorus management, and a preferred approach, are now described in the final-form rulemaking. These reflect various source and transport factors which influence phosphorus runoff, and include phosphorus soil levels and

distance to surface waters. These criteria, factors and methodology are based on extensive study of phosphorus runoff from farms in this Commonwealth and elsewhere in the country.

Second, agricultural operations are given the option of following either the Phosphorus Index or other methods approved by the Commission to meet those criteria. The Phosphorus Index is preferred by the Commission due to the extensive work done in this Commonwealth by Pennsylvania State University, the USDA and others to develop it.

Third, a 5-year phase-in period for implementation of the full scope of the phosphorus management regimen is allowed. This will give the industry time to find alternative means of addressing the excess nutrients generated by NMP operations while still imposing new restrictions on phosphorus application that are protective of surface waters. The phase-in applies to existing NMP operations and importers that elect to use the Phosphorus Index methodology. The phase-in does not apply in certain circumstances, such as when fields drain into Special Protection waters. Importantly, the phase-in still requires that basic phosphorus control measures are taken by limiting land application to the phosphorus removal rate.

Finally, § 83.293 has been reorganized to better reflect the interaction between phosphorus and nitrogen considerations for determining proper nutrient application rates.

Phosphorus is also addressed at manure import sites, discussed next.

Manure export

Another significant concern with the prior Chapter 83 regulations was management of manure that is exported away from NMP operations, particularly CAOs. For instance, 28% of manure generated by CAOs is exported, while only 3% of manure from VAOs is exported.

The proposed rulemaking addressed this in two main ways—by requiring commercial manure haulers and brokers involved in manure export from NMP operations to meet certain qualifications and to require that phosphorus runoff be managed at the import sites through either a 150-foot manure application setback or use of the Phosphorus Index. The proposed rulemaking also required brokers to develop nutrient balance sheets (NBSs).

This final-form rulemaking addresses the qualifications of commercial haulers and brokers in § 83.301(d) and (h) (relating to excess manure utilization plans) by simply referring to the Commercial Manure Hauler and Broker Certification Act (Act 49) (3 P. S. §§ 2010.1—2010.12) instead of the criteria in the proposed rulemaking. The statute addresses the same issue targeted in the proposed rulemaking. Section 83.282(d) (relating to summary of plan) and § 83.301(c)(5), (d) and (e)(1) of the final-form rulemaking also requires that the name of the broker be listed in the plan, but names of haulers do not need to be listed.

Phosphorus management is addressed in the final-form rulemaking by giving importing operations several options, all of which address phosphorus risks more specifically than the 150-foot setback option in the proposed rulemaking. These options in § 83.301(c) require: (1) application of nutrients according to the phosphorus removal rate and using a 150-foot setback from streams, lakes and ponds; (2) application using the nitrogen removal rate as long as the application is outside a 150-foot setback and only if the soil test level for phosphorus is

below 200 parts per million; (3) use of the Commission-approved Phosphorus Index; or (4) use of an NMP approved under this final-form rulemaking. In addition, the exporter or broker must prepare an NBS for use by the importer which incorporates the restrictions in § 83.301.

The final-form rulemaking deletes the requirement for brokers to develop NBSs, but it does require in § 83.301(e)(2) that the broker ensure that an NBS, or alternatively an approved NMP, exists for all the lands where the exported manure will be applied. Finally, § 83.301(i) exempts from these requirements export of de minimis quantities manure.

Manure application setbacks

Proposed § 83.294(f) (relating to nutrient application procedures) contained a number of setbacks from vulnerable areas such as open sinkholes, drinking water sources and concentrated water flow areas, as well as from streams, springs, lakes and ponds. The setback distances varied depending on the slope of the field. Special setback provisions were proposed for land application during fall and winter.

The final-form rulemaking makes several changes to the proposed provisions. First, a general setback of 100 feet is required for all perennial and intermittent streams with a defined bed and bank, lakes and ponds. Instead of a setback, a 35-foot vegetated buffer may be used. This is the setback/buffer requirement in the act.

Second, setbacks from concentrated water flow areas were deleted, as were increased setbacks on steep slope fields. Third, details were added to the general setbacks for fall application when there is less than 25% plant cover or crop residue. Fourth, more specifics were added for land application during winter. For instance, § 83.294(g) includes a new setback from wetlands identified on the National Wetlands Inventory map that are in floodplains for Exceptional Value streams, and requires minimum plant cover or residue on fields where manure is applied during winter.

Plan development funding and other financial assistance

Under the proposed rulemaking, there was no funding program to address the new phosphorus planning requirement. Section 83.214 (relating to eligible costs) of the final-form rulemaking authorizes a new funding program to support farmers' efforts to maintain and update their NMPs annually, as may be necessary for phosphorus planning.

In addition, the final-form rulemaking adds a category of funding recipients by specifying that the Commission can support multi-partner manure processing facilities. The final-form rulemaking limits plan implementation funding to operations having over 8 AEUs.

Control of E & S from plowing and tilling

Erosion and sediment (E & S) control is an important component of addressing phosphorus impacts to surface waters because the main threat from phosphorus loss comes from surface runoff of phosphorus bound up with the sediment. The proposed rulemaking required that a certified planner verify that a current Erosion and Sediment Control Plan (E & S Plan) was developed for the operation, as required by Chapter 102 (relating to erosion and sediment control), which is administered by the DEP.

Section 83.361(f) (relating to initial plan review and approval) of the final-form rulemaking requires that this verification be done by either the delegated county conservation district or the DEP. This requirement is not effective until October 1, 2009, on existing operations, due to current efforts by the DEP to provide more detailed guidance to the industry on its E & S requirement. This provision does not affect the legal requirement to comply with Chapter 102; it only addresses verification during the NMP approval process under the act.

Field stacking

In certain circumstances it is important for farmers to temporarily stack dry manure in fields where it will be applied. The proposed rulemaking allowed field stacking as long as the stacks meet certain shaping, location and timing criteria. Section 83.294(h) of the final-form rulemaking includes a similar provision and adds more detail. It also more explicitly establishes the time period allowed for these stacks to meet those criteria, to 120 days, after which the manure must meet more stringent storage requirements. Finally, it clarifies that the temporary stacking requirements apply to importing operations.

Plan amendments

The final-form rulemaking includes several changes to former § 83.371 (relating to plan amendments), such as the need to possibly amend the plan during the triennial review to reflect consideration of phosphorus under § 83.293, and to reflect plan updates. See § 83.262(c)(2) (relating to identification of CAOs). It provides flexibility for minor changes and provides more clarity on what those are, although notice to the district is required. For instance, whenever adding new importers, the final-form rulemaking allows the operator to send certain documentation to the plan review authority (for example, a delegated county conservation district) prior to transport. Other clarifications to § 83.371 are included, such as an express prohibition on implementing any significant changes in the operation before the amendment is approved.

Nutrients to be addressed

The proposed rulemaking simply referred to "nutrients." Sections 83.201, 83.272(e) and 83.291(a) (relating to definitions; content of plans; and determination of available nutrients) of the final-form rulemaking clarify that nitrogen and phosphorus are the only two nutrients to be addressed by best management practices (BMPs) under the final-form rulemaking. This is based on the wealth of scientific opinion that these are the only two nutrients from agricultural operations affecting water quality. This is also consistent with the act, which authorizes the Commission to determine which nutrients must be considered under the act.

Use of outside reference documents

The proposed rulemaking continued the use of several reference documents developed by external sources, such as Pennsylvania State University, to meet the regulatory requirements that were contained in the original regulations. The final-form rulemaking changes this approach throughout by setting performance standards and then identifying reference documents that can be used to meet those standards. Alternative reference sources, data and methods may be used in plans if they are approved by the Commission. For example, see § 83.291(c)(3).

Special protection waters

The proposed rulemaking made no distinction in the level of protection to be given to surface waters potentially affected by NMP operations. Section 83.293(c)(4) of the final-form rulemaking contains additional requirements and protections for waters classified as Special Protection under Chapter 93 (relating to water quality standards). It also contains special protections for wetlands identified on the National Wetlands Inventory map that are in floodplains for exceptional value streams. For example, see § 83.294(g).

Signature requirements

The proposed rulemaking required that the plan be signed by the operator "which meets the signature requirements of the Commission." The final-form rulemaking details the requirements in § 83.261(9) (relating to general). For instance, if a plan is signed by a corporation, the signature must indicate what office the signatory holds in the corporation. Plans signed by a corporation must include a formal document from the corporation, as an appendix to the plan, indicating that the signatory has legal authority to sign the plan for the corporation.

Definitions

A number of the existing and proposed definitions were amended, new definitions were added and definitions were deleted.

(1) *Existing definitions amended.* The following existing definitions are amended in this final-form rulemaking: "AEU—animal equivalent unit," "fund" and "manure storage facility."

(2) *Proposed definitions amended.* The following proposed definitions are amended in this final-form rulemaking.

"Farming resources" was revised to clarify that horses are included in the scope of the final-form rulemaking.

"Nutrient" was revised to clarify that the final-form rulemaking only requires BMPs for nitrogen and phosphorus.

The following definitions are also amended in this final-form rulemaking: "in-field stacking," "manure group," "nutrient balance sheet," "Phosphorus Index," "plan" and "VAO—voluntary agricultural operation."

(3) New definitions.

The definition of "act" reflects the recently enacted act, which replaces the Nutrient Management Act.

"Act 49" defines the Commercial Manure Hauler and Broker Certification Act.

"Animal unit" was added, along with a revision to the definition of "AEU—animal equivalent unit," to clarify the difference between the two.

"Agricultural erosion and sediment control plan" clarifies the type of E & S Plan referred to in the final-form rulemaking and its relationship to a conservation plan.

"National Wetlands Inventory" describes a new term used in § 83.294(c)(4) regarding the scope of setbacks for land application during winter months and § 83.351 (relating to minimum standards for the design, construction, location, operation, maintenance and removal from service of manure storage facilities) regarding location of manure storage facilities.

"Manure" clarifies this important term used in the final-form rulemaking. Redundant language was also deleted. For example, see § 83.291(c)(2)(ii).

The following definitions were also added to the final-form rulemaking: "broker," "buffer or vegetated buffer," "commercial manure hauler," "intermittent stream," "soil test level" and "winter."

(4) Definitions deleted.

"Conservation Plan" and "Erosion and Sediment Control Plan" were deleted and replaced with the new definition of "agricultural erosion and sediment control plan."

The final-form rulemaking also deletes the following definitions: "Department," "existing agricultural operation," "surface water and groundwater" and "temporary manure stacking areas."

Other changes

One planning standard. The proposed rulemaking contained two virtually identical sets of provisions, one for CAOs and one for volunteers or VAOs. The final-form rulemaking merges the two. For example, see § 83.261.

Required plan format. The final-form rulemaking adds a requirement in § 83.272(b) to use a standard format developed by the Commission for plans submitted for approval under the act.

Manure storage setbacks. The scope of the setbacks for manure storage facilities is expanded from the proposed rulemaking to include intermittent streams and, similar to the setbacks for land application in § 83.294, wetlands identified on the National Wetlands Inventory map that are in floodplains for exceptional value streams. See § 83.351(a)(2)(v)(B) and (vi)(B).

Bare ground application restrictions in the fall. The proposed rulemaking allowed for fall application "according to standards contained in the Pennsylvania Technical Guide." Section 83.294(f)(5) of the final-form rulemaking requires control of runoff until the next growing season and specifies two BMPs which will be allowed instead of a cover crop—manure injection and manure incorporation—under certain specified circumstances.

Manure spreader calibration. The proposed rulemaking contained some ambiguity on the requirement for calibrating manure spreaders, which helps ensure proper application rates. Section 83.294(c) of the final-form rulemaking contains added details to clarify the requirement.

Pastures. The proposed rulemaking required that pastures meet the same phosphorus planning requirements as crop fields. Section 83.294(j) of the final-form rulemaking provides for additional alternative measures unique to pastures to protect against phosphorus runoff, in lieu of outright prohibition of their use.

Manure testing. Section 83.291(c)(3) of the final-form rulemaking creates an exception for the annual testing requirement in the proposed rulemaking for minor manure groups. It also allows combining similar manure groups, and use of book values for pastures.

Notification of owners of rented/leased land. The proposed rulemaking did not have any requirements regarding owners of rented and leased land. Section 83.261(10) of the final-form rulemaking requires a statement in the plan that indicates that the owner has been notified that a plan is being submitted which will allow for the application of manure on his land.

Temporary manure stacking areas. This terminology has been changed in the final-form rulemaking to “emergency manure stacking areas.” In addition, these stacks are limited to 60 days unless the district or the Commission authorizes a longer period of time for the operation, and the operator is required to inform the district when the emergency manure stacking allowance is to be used. For example, see § 83.311(e) (relating to manure management).

Soil tests. The proposed rulemaking required that soil test results be submitted for soil phosphorus levels. Section 83.281(e) (relating to identification of agricultural operations and acreage) of the final-form rulemaking clarifies that soil test results in summary form, not the actual laboratory reports, can be submitted. This is to be done as an appendix to the plan. The appendix will be in the form of a chart providing field number, P, K and pH soil levels, date of test and name of the lab that provided the analysis.

Scope of the final-form rulemaking. Several sections now clarify that the final-form rulemaking is directed at CAOs, volunteers and agricultural operations required to develop compliance plans as stated in section 506(j) of the act. For example, see § 83.202 (relating to scope). Collectively, these are called “NMP operations” in the final-form rulemaking because they develop and implement NMPs.

Potassium. The proposed rulemaking did not require reporting on soil levels of potassium even though most plans now contain that information. Several sections of the final-form rulemaking require the plan to list potassium crop needs and application rates, based on soil fertility issues. Potassium runoff does not affect water quality, but management of potassium is important to ensure that adequate soil fertility levels are addressed to meet crop production goals. For example, see § 83.272(e).

Plan summary information. Some new requirements are included in the final-form rulemaking, such as the names and addresses of the owners of leased and rented land, and details on BMPs. For example, see §§ 83.281(a)(6)(i) and 83.282(b).

Irrigation systems. Section 83.294(d) of the final-form rulemaking includes more detailed requirements, such as the need for computations for application rates and depth, and an additional restriction for irrigation.

Winter application. The proposed rulemaking had special requirements for winter application in different portions of the regulation. The final-form rulemaking consolidates them into § 83.294(g) and adds several new requirements, such as the need for additional details in the plan, setbacks from certain wetlands and minimum ground cover.

Animal concentration areas. The existing provisions in § 83.321 (relating to stormwater control) are now in § 83.311(c) and several changes were made, such as the addition of details for controlling access to surface waters. Alternatives for compliance are now included.

Emergency stacking areas. Formerly called “temporary stacking areas,” several new requirements are added to protect water quality in § 83.311(e), including a 60 day time limit. These are different from “in-field stacking areas” described in § 83.294(h).

Plan reviews. The process of plan reviews and approvals is clarified in § 83.361.

Summary of Comments and Responses on the Proposed Rulemaking Phosphorus

Numerous comments were directed at the proposed amendment regarding phosphorus in § 83.293(b). There was significant support for the idea of phosphorus management, and a Phosphorus Index, but conflicting comments on how to implement it.

Some commentators stated that this requirement would impose a severe financial burden on farms in this Commonwealth because of the lack of options for use of the manure. Some commentators, including the Advisory Board and the House and Senate Agriculture and Rural Affairs Committees, requested additional flexibility in the provision for existing operations, such as a phase-in period. Other commentators asserted that the phosphorus provisions were not stringent enough to protect water quality and suggested use of “phosphorus balancing.”

Many commentators requested more details regarding the Phosphorus Index. Commentators who reviewed the current Phosphorus Index developed by Pennsylvania State University, and approved by the Commission, had various comments suggesting improvements which tracked the tenor of the general comments previously described.

IRRC requested that the rationale behind use of the Phosphorus Index be explained. IRRC also questioned the legality of requiring compliance with a methodology not prepared by the Commission or detailed in the regulations.

The final-form rulemaking contains new requirements for phosphorus management, as required by the act under the April 2004 decision of the Environmental Hearing Board. Based on the public comments, this final-form rulemaking contains several changes to the proposed rulemaking. These changes are reflected in current § 83.293, which has been revised and reorganized based on the comments.

First, the basic criteria required for phosphorus management, and a preferred approach, are now described in the final-form rulemaking. These reflect various source and transport factors which influence phosphorus runoff, and include phosphorus soil levels and distance to surface waters. These criteria, factors and methodology are based on extensive study of phosphorus runoff from farms in this Commonwealth and elsewhere in the country.

Second, agricultural operations are given the option of following either the Phosphorus Index or other methods approved by the Commission to meet those criteria. The Phosphorus Index is preferred by the Commission due to the extensive work done in this Commonwealth by Pennsylvania State University, the USDA and others to develop it.

Third, a 5-year phase-in period for implementation of the full scope of the phosphorus management regimen is allowed. This will give the industry time to find alternative means of addressing the excess nutrients generated by NMP operations, while still imposing new restrictions on phosphorus application that are protective of surface waters. The phase-in would apply to existing NMP operations, and importers that elect to use the Phosphorus Index methodology. The phase-in would not apply in certain circumstances, such as when fields drain into Special Protection waters. Importantly, the phase-in would still require that basic phosphorus control measures are taken by limiting land application to the phosphorus removal rate.

Phosphorus is also addressed in the following section regarding manure import sites.

Manure export

The export of manure from NMP operations was another source of many of the comments received on the proposed rulemaking. Some commentators recommended less restrictions on manure export so that the export market would not be disrupted. Others raised questions about the impact these new requirements would have on that market. Several recommended establishment of a minimum threshold for the increased requirements.

However, the majority of the comments supported the additional requirements, including the use of NBSs and setback requirements. Others recommended additional requirements, such as including phosphorus in the NBS. Among these commentators, there were varying opinions on how to address phosphorus at import sites. Some were satisfied with the proposed rulemaking, while others, including the Advisory Board, recommended giving import sites several options. The Advisory Board also recommended making changes which reflect the requirements of Act 49.

There were also a number of comments regarding haulers and brokers. The comments generally recommended that haulers not be named in the plan to allow for flexibility for the exporting farm. The comments generally favored the additional requirements on brokers.

Finally, several comments recommended various ways to facilitate the export market, such as dedicating staff for this purpose at county conservation districts.

This final-form rulemaking includes new requirements on manure export to help close "the manure export loophole" similar to the proposed rulemaking. However, a number of changes were made to the proposed rulemaking as a result of the comments.

First, the final-form rulemaking retains the basic approach of requiring NBSs (or NMPs) and signed agreements with importers. The Commission feels that these are essential components to addressing manure export issues, along with the new requirements under Act 49.

However, the final-form rulemaking provides flexibility for addressing phosphorus by giving importing operations several options. The options in § 83.301(c) require one of the following: (1) application of nutrients according to the phosphorus removal rate and using a 150-foot setback from streams, lakes and ponds; (2) application using the nitrogen removal rate as long as the application is outside a 150-foot setback and only if the soil test level for phosphorus is below 200 parts per million; (3) use of the Commission-approved Phosphorus Index; or (4) use of an NMP approved under this final-form rulemaking. These options address phosphorus risks more specifically than the 150-foot setback option in the proposed rulemaking.

In addition, the exporter or broker must prepare an NBS for use by the importer, which incorporates the restrictions in § 83.301. The final-form rulemaking adds some new provisions which clarify the requirements for NBSs and the responsibilities of brokers. Moreover, the final-form rulemaking requires that the same setbacks applicable to NMP operations apply to importers for the exported manure.

Further, the final-form rulemaking exempts from these requirements export of de minimis quantities of manure, and haulers do not need to be named in the plan, as suggested by several commentators.

Finally, the final-form rulemaking addresses the qualifications of commercial haulers and brokers by simply referring to Act 49. Act 49 addresses the same issue targeted in the proposed rulemaking.

Manure application setbacks

There were a number of comments on the issue of setbacks from water resources and land application of manure. First, however, it is important to note that the act added, for the first time, a specific statutory requirement for setbacks.

While some commentators opposed the regulatory setbacks because, for example, they do not take into account site-specific conditions, many others supported the proposed provisions on setbacks. Many of the commentators supporting the setbacks also recommended that they apply throughout the year, not just when the ground is snow-covered, frozen or saturated. There also were a number of comments and suggestions on the details and scope of the setbacks. For instance, several commentators suggested that the setbacks should be the same as those for CAFOs, and others recommended clarification of "wetlands." This latter issue was of particular concern to the Advisory Board.

The Commission agrees that setbacks are an important part of the regulations, so the final-form rulemaking contains many of the same setbacks as in the proposed rulemaking. However, some setbacks were deleted and others added and several other changes were made, as recommended in the comments. It is important to note that the phosphorus assessment required in § 83.293 also addresses surface runoff issues.

First, a general setback of 100 feet is required for all perennial and intermittent streams with a defined bed and bank, lakes and ponds. Instead of a setback, a 35-foot vegetated buffer may be used. This is the statutory setback/buffer requirement in the act.

Second, setbacks from concentrated water flow areas were deleted, as were increased setbacks on steep slope fields. Third, details were added to the general setbacks for fall application when there is less than 25% plant cover or crop residue.

Fourth, more specifics were added for land application during winter. For instance, § 83.294(g) clarifies that wetlands are those identified on the National Wetlands Inventory map that are in floodplains for exceptional value streams. In addition, the other requirements for winter application are contained in that subsection, including requirements for minimum plant cover or residue.

Plan development funding and other financial assistance

Many comments were received on the expected financial impacts of the final-form rulemaking. Commentators recommended that additional funding be made available to CAOs to meet the new requirements of the final-form rulemaking, both for planning and for plan implementation. Some commentators opposed this new funding. A number of commentators suggested that the Commission develop new programs to address alternative uses of manure.

The Advisory Board recommended that the Plan Development Incentives Program provide for an annual payment to support maintenance and recordkeeping efforts.

Section 83.214 of the final-form rulemaking authorizes a new funding program to support farmers' efforts to maintain and update their NMPs annually, as may be necessary for phosphorus planning.

In addition, the final-form rulemaking authorizes the funding of alternative manure technology projects to address phosphorus imbalances on farms. The Commission has added a category of funding recipients for alternative projects and specified that the Commission can support multi-partner manure processing facilities.

The final-form rulemaking authorizes funding of a cover crop implementation program to assist farms in meeting the fall manure application restrictions in § 83.294(f).

Control of E & S from plowing and tilling

Several comments were received which raised questions and made recommendations regarding the requirement to verify that a current E & S Plan is being implemented on the NMP operation. Many of the comments focused on the question of what is an acceptable E & S Plan and how a conservation plan could be used to meet the requirement.

A number of commentators questioned whether planners were qualified to do the verification since the E & S requirement is administered by the DEP and not the Department, which certifies those planners. Some commentators expressed concern that there is not enough technical support being made available to farmers to even develop E & S Plans and that districts will need additional resources to do these reviews. One commentator asked what happens if the farm does not have an E & S Plan and is therefore out of compliance with DEP regulations in Chapter 102.

The Commission has retained the requirement to verify that an E & S Plan is being implemented, but it has also made several changes in light of the comments. The fundamental concepts behind this approach are: (1) because control of E & S is so important to phosphorus management it is useful to utilize the existing legal requirement administered by the DEP instead of developing a new one; and (2) the final-form rulemaking is not creating a new requirement, nor does the Commission intend to enforce the DEP's regulations in Chapter 102.

The final-form rulemaking now requires that this verification be done by either the delegated county conservation district or the DEP, not the planner. In addition, this requirement is not effective for existing operations until October 1, 2009, due to current efforts by the DEP to provide more detailed guidance to the industry on its E & S requirement. This effective date provision does not affect the legal requirement to comply with Chapter 102; it only addresses verification during the NMP approval process under the act.

Field stacking

A number of commentators discussed in-field stacking of manure. Most commentators felt that the time allowed for this in the proposed rulemaking was too long and offered various maximum time periods. Several commentators pointed out that the United States Environmental Protection Agency takes the position that any operation that stacks dry manure in a field uncovered for longer than 2 weeks may be a CAFO if it meets certain animal number thresholds (for example, 30,000 chickens). The Advisory Board recommended deferring action until Pennsylvania-specific data could be compiled and studied. The Advisory Board also voiced concern over a possible conflict between this final-form rulemaking and the DEP CAFO regulations on this issue.

The Commission feels that in certain circumstances it is important for farmers to temporarily stack dry manure in fields where it will be applied, although the Commission agrees that more details are needed in the regulations. Therefore, the final-form rulemaking clarifies the requirement by describing the types of BMPs needed. It allows stacking for longer than 2 weeks, but it more explicitly establishes the time period allowed for these stacks to meet those criteria, to 120 days, after which the manure must meet more stringent storage requirements. Finally, it clarifies that the temporary stacking requirements apply to importing operations.

Manure storage

Most of the comments on manure storage focused on setbacks for storage facilities. The comments uniformly recommended stricter requirements than those proposed by the Commission, although there was disagreement on the ability of county conservation districts to grant waivers.

The Commission considers the existing manure storage requirements to be protective of the environment for the most part. Some changes were made to the manure storage provisions to improve that protection. For instance, the scope of the setbacks for manure storage facilities is expanded from the proposed rulemaking to include intermittent streams and, similar to the setbacks for land application in § 83.294, wetlands identified on the National Wetlands Inventory map that are in floodplains for exceptional value streams. In addition, the waiver provision was narrowed.

Plan amendments

Virtually all of the comments on the plan amendment provisions recommended providing more flexibility to the operator, and the district, when relatively minor changes are made.

In response to comments, the final-form rulemaking clarifies the circumstances under which a plan amendment is required. The final-form rulemaking provides flexibility for minor changes and provides more clarity on what are minor changes, although notice to the district is required. For instance, whenever adding new importers, the final-form rulemaking allows the operator to send certain documentation to the plan review authority (for example, a delegated county conservation district) prior to transport. The documentation becomes a part of the plan and the additional importers are formally approved during the 3-year plan review.

Section 83.293 requires a possible plan amendment during the triennial review to reflect consideration of phosphorus, consistent with this important issue in the final-form rulemaking. The final-form rulemaking also contains an express prohibition on implementing any significant changes in the operation before a required plan amendment is approved.

Recordkeeping

Commentators expressed opposing views on the level of recordkeeping that should be required. Some offered that the existing recordkeeping is either adequate or excessive, while others argued for more records and more public access to those records.

The Commission believes that sufficient recordkeeping is already in place, so the final-form rulemaking does not differ substantially from the proposed rulemaking. The changes involve pastures and manure export.

Public involvement

There were conflicting comments about the ability of the public to be involved oversight of the nutrient management program under the act. For instance, some commentators wanted more information published in the *Pennsylvania Bulletin*, such as receipt of NMPs by the districts, while others wanted less information available to the public, such as the records of manure export.

The issues addressed by the comments are outside the scope of the final-form rulemaking. Publication of various stages of the NMP development is a matter of policy for the Commission. The Commission is continuing to evaluate this policy. The accessibility of records is a matter of State law under the act of June 21, 1957 (P. L. 390, No. 212), known as the Right-to-Know Law (65 P. S. §§ 66.1—66.4).

Special protection and impaired waters

There were several comments regarding sensitive surface waters. First, these commentators pointed out the special protections required under Chapter 93 for High Quality and Exceptional Value surface waters, and asserted that the proposed rulemaking did not recognize this. Second, the commentators recommended that special consideration be given to NMPs for farms draining into surface waters determined by the DEP to be "impaired" from agriculture.

Section 83.293(c)(4) of this final-form rulemaking contains additional requirements and protections for waters classified as "Special Protection" under Chapter 93. Section 83.294(g) contains special protections for wetlands identified on the National Wetlands Inventory map that are in floodplains for exceptional value streams. However, there are no special provisions for impaired waters because the actions which need to be taken in these situations are very location-specific, are developed by the DEP under its Total Maximum Daily Load program, and therefore do not lend themselves to general requirements in the Commission's regulation.

General

There were a number of comments about the nutrient management program under the act generally. They reflected the differing views described in the other comments listed here, and their responses. These comments are not described here where they do not address the proposed rulemaking. These include issues such as enforcement, staffing in districts and various Commission guidance issues.

Other Categories of Comments and Responses

Manure testing. Some comments addressed the annual testing requirement and other details. The final-form rulemaking retains the annual testing, clarifies certain aspects of the requirement, adds some flexibility for test analyses, pastures and similar animal types and excludes small manure groups.

Livestock management. A number of commentators supported the proposed provision restricting animal access to streams in animal concentration areas, and most supported the restrictions on animal concentration areas. The final-form rulemaking contains provisions similar to the proposed rulemaking, with some clarifications.

Soil testing. Several commentators agreed with the proposed requirement that soil tests be submitted with the NMP. One commentator requested that the tests also include nitrogen. The final-form rulemaking contains the

proposed soil test provision, with some modifications as suggested by some of the commentators. The final-form rulemaking does not require testing for nitrogen, because it is not generally useful due to soil types and climate conditions in this Commonwealth.

Horses. The commentators discussing the proposed rulemaking's new provisions on horses endorsed this change. The definition of "farming resources" was revised in the final-form rulemaking to ensure clarity in the Commission's intent to include horses.

Maps. Several suggestions were made concerning the requirement to submit maps with the proposed NMP. The final-form rulemaking contains several changes, such as inclusion of road names. Topographic maps are still required and no scale is specified.

Nutrients of concern. Several commentators recommended clarifying that phosphorus and nitrogen are the two nutrients being addressed in the regulations. The Commission, in consultation with various water quality experts, agrees and the final-form rulemaking makes this clarification.

Definitions. Concerns were raised in the comments about several definitions. A number of definitions were changed from the proposed rulemaking, as described previously in this preamble.

Plan review/approval. Commentators requested some more flexibility, and clarity, in this area. The final-form rulemaking retains the flexibility in the proposed rulemaking, and clarifies the process of review and approval of NMPs.

Fertilizers. Several commentators recommended that application of commercial fertilizer be subject to the same setbacks as manure. One commentator requested no restrictions on starter fertilizer. The final-form rulemaking does not adopt these approaches.

Volunteers. Several commentators recommended consolidating the CAO and VAO provisions. Other commentators stated concerns over loss of volunteers due to the new requirements. The final-form rulemaking consolidates the two separate sets of provisions.

Pastures. Several commentators requested flexibility on phosphorus management in pastures. The final-form rulemaking contains added flexibility.

Liquid manure. Several comments expressed concern over consideration of infiltration rates and holding capacity of soils, requesting more detailed requirements. The final-form rulemaking contains added clarity in this area, such as the factors to be considered, the need for records with computations and an express reference to both infiltration rates and water holding capacity.

Calibration. Several commentators requested clarification on calibration of manure spreading equipment. The final-form rulemaking contains more clarity on the requirements, such as a compliance statement by the operator and records to support it and a clear provision requiring commercial applicators to meet the requirements.

Benefits, Costs and Paperwork

Benefits

The intended result of the final-form rulemaking is to strengthen the Commonwealth's current efforts to oversee NMP operations to protect this Commonwealth's water quality. The final-form rulemaking is necessary to address

the Commission's evolving understanding of nutrient management issues discussed in recent scientific research, as well as over 8 years of experience implementing the nutrient management laws.

It also is a key component of the Commonwealth's efforts to ensure the industry trend toward higher intensity animal operations does not negatively impact this Commonwealth's water quality. The current program addresses approximately 13.3 million tons of manure, which is approximately 51% of all the manure generated in this Commonwealth. This equates to over 174 million pounds of nitrogen and 158 million pounds of phosphorus. The final-form rulemaking will help ensure that these manure nutrients are stored, handled and applied in an environmentally sound manner to protect water quality.

The final-form rulemaking will provide for much of the increased protection of water quality through specific provisions addressing potential phosphorus losses to surface waters from land application of manure and other nutrient sources and through a set of restrictions on the application of manure on importing sites. These are the two major issues of concern that have been expressed to the Commission in the implementation of the current program.

The Commission has developed the final-form rulemaking in close coordination with various Federal, State and local agencies and institutions. These include: the Advisory Board, the Pennsylvania State University College of Agriculture, the Department, the DEP, the USDA's Natural Resources Conservation Service and Agricultural Research Service, various county conservation districts and the Penn State Extension. The final-form rulemaking also applies the results of current scientific information about water quality impacts from agriculture. At the same time, the Commission was very careful to minimize possible negative impact on the regulated community when possible.

Farmers will benefit from this coordination. The final-form rulemaking will assist the current 901 CAO operations and the approximately 500 additional CAOs that will be brought into the program through this final-form rulemaking in enhancing their water quality protection efforts. At the same time, their compliance with the final-form rulemaking should increase local community acceptance of their operations by giving further credibility to their actions to protect local and regional water resources. The additional 1,325 farmers who have voluntarily participated under the prior regulations to protect water quality will capitalize from the similar water quality and environmental credibility benefits afforded to CAOs under this final-form rulemaking. These refined regulations will assist farmers in their efforts to effectively utilize nutrient resources on their operations. The final-form rulemaking also provides for enhanced financial assistance efforts to further assist the farm community in addressing manure management concerns.

Citizens in this Commonwealth will benefit from the increased environmental protection this final-form rulemaking will provide. Water resources potentially affected by NMP operations will be protected. Tourism is a major industry in this Commonwealth and many elements of tourism are dependent upon high quality water resources. The cost of purification of surface and groundwater by water users and suppliers should decrease as these increased water protection efforts are implemented.

The Commonwealth has worked hard over the past 8 years to ensure that the nutrient management planning program developed through the act (and its predecessor statute, the Nutrient Management Act) can be used as the singular planning process to meet both Federal and State nutrient management planning requirements. In so doing, the final-form rulemaking has the added benefit of allowing our state program for CAFOs to meet new Federal regulations.

Costs

Existing CAOs

Plan updates. This final-form rulemaking will affect the current regulated community (901 CAOs) by requiring them to update their current NMPs (consistent with their current plan update timeframe) to incorporate the new criteria included in this final-form rulemaking.

These updates are expected to result in an increase in the cost for developing an NMP. The average cost of a CAO plan prior to implementing the Phosphorus Index and NBS requirements was \$938. Incorporating the new criteria into the updated CAO plans is estimated to cost an additional \$850 per CAO.

The Commission is planning to provide cost share assistance to these CAOs to offset the additional cost. With the standard 75% State cost share, the additional cost to a farmer to update a current CAO plan would be \$212 per CAO (\$850 total cost, \$638 State cost share, \$212 farmer cost). There are currently 901 CAOs in this Commonwealth; therefore, this would calculate to a net increased cost of \$191,000 for the existing 901 CAOs to develop their required plan updates over a 3-year time frame.

Plan maintenance. The criteria some included in the final-form rulemaking will necessitate some operators to make annual adjustments to their approved plan due to the shift to phosphorus management. This will add an additional plan maintenance cost to the operators, which is expected to cost approximately \$400 a farm annually. The Commission will begin implementing the Plan Maintenance Program to assist operators in keeping their plans current. Assuming that 1,000 plans will be written on an annual basis and that this effort will be 75% cost shared, this will cost existing CAOs \$100,000 a year. This requirement is expected to begin to affect existing CAOs in the second year after the final-form rulemaking goes into effect and take until the fourth year following the effective date to become fully implemented.

Commercial fertilizer. The final-form rulemaking will require an estimated 60% of existing CAOs (540 CAOs) to export some increased portion of their generated manure due to the phosphorus element of the final-form rulemaking and due to revised setback requirements as required in the act. They will likely need to purchase nitrogen chemical fertilizer to replace the nitrogen that used to be supplied by the manure that they are now required to ship off site because of the phosphorus limitations in their plans. Based on program records, the average CAO farm size is 94 acres. Based on a compilation of the data from the last 4 years' Pennsylvania Agricultural Statistics books, 115 bushels of corn per acre is a reasonable average for corn grown across this Commonwealth. Assuming that 60% of the land on a CAO is corn ground and seeing that CAOs exporting all their manure will need to purchase chemical nitrogen to meet this corn need, a CAO exporting all of their manure will need to purchase 7,000 pounds of nitrogen to meet the nitrogen need of the corn crop on their individual farm.

At the current price of 37¢ a pound for nitrogen, it will cost these CAOs approximately \$2,600 per farm to purchase this nitrogen. This means a total cost to the industry of \$1.4 million. That cost is likely to be reduced to \$920,000, as described in the next subsection.

Manure export. The 540 existing CAOs will also need to find additional land to export their manure, or other alternative uses for the manure they produce, due to the phosphorus considerations in the final-form rulemaking.

Approximately 30% of these CAOs (162 CAOs) will be able to recoup the cost of transportation of the manure from those operators receiving the manure. The remaining farmers needing to transport additional manure from their farm sites (378 CAOs) will have to pay manure transportation costs to export the additional excess manure to appropriate sites.

The cost per operation needing to export additional excess manure is estimated to be \$1,500 annually, with a total annual cost to the regulated community of \$567,000. This expense will be phased in over the next 3 years due to the 3-year lifespan of existing NMPs (FY +1—\$189,000; FY +2—\$378,000; FY +3—\$567,000).

The Commission is proposing to assist the existing regulated community to meet this financial burden by supporting alternative manure processing or utilization technologies which will economically utilize the manure onsite or at a manure processing facility in an environmentally sound manner. Therefore, starting in FY +4, the Commission would expect operators to begin to implement alternative technologies reducing this farmer expense at the rate of an additional 10% each year (that is, 10% reduction in FY +4, 20% in FY +5, and the like).

Fall and winter application; field stacking. The final-form rulemaking also includes additional restrictions on fall and winter application restrictions and field stacking criteria. To address these issues, some poultry farmers will find it necessary to construct manure storage facilities onsite to properly store their manure until it can be applied to fields consistent with the final-form criteria. Dry manure storage facilities are expected to be constructed on 250 farms at the cost of \$40,000 per farm. Of this total cost, 50% is expected to be funded through the Nutrient Management Grants program, 25% from Federal funding programs, leaving 25% to be funded by the regulated CAOs. This equates to a total of \$2.5 million to be spent by the CAO operators, spread out over the next 6 years.

E & S control. The final-form rulemaking will induce farmers to install conservation practices at a faster rate to reduce their Phosphorus Index values for their farm fields and to address the manure management controls required for animal concentration areas (barnyards and feedlots). This conservation work will be consistent with those practices in their current E & S Plans and the Pennsylvania Manure Management Manual, as required by existing DEP regulations. Therefore, no additional costs over what is currently required under existing regulations are anticipated for these efforts.

Newly-regulated CAOs

The final-form rulemaking will bring additional farms into the CAO category. These newly regulated farms will primarily be larger-scale horse operations. These new CAOs will be required to develop and implement NMPs. These operations are commonly less cropland extensive in nature and generally have less complexity relating to the

management of manure on the farm; therefore, their planning costs are expected to be less than the cost of an average NMP.

Based on past program experience, the estimated cost of developing a plan for these newly defined operations will be approximately \$800. This would translate into a total cost of \$400,000 to develop NMPs for the 500 newly defined CAOs. This final-form rulemaking continues to provide a cost share program to offset the planning cost for CAOs. With 75% State cost share, the final cost per new CAO would be \$200 (\$800 total cost, \$600 cost share, \$200 farmer cost). This would calculate to a total cost of \$100,000 for the 500 newly defined CAOs to develop their required plans over a 2-year time frame.

Paperwork Requirements

The final-form rulemaking has been written to minimize paperwork to the maximum extent while maintaining program integrity and tracking. Farmers are required to keep records, BMP designs, emergency response plans and E & S Plans on their farms, but are not required to submit those documents for Commission or conservation district filing.

The program relies on the conservation district onsite plan review visits and annual status reviews to confirm proper documentation and to ensure that proper application and export efforts are implemented on farms with approved plans. The final-form rulemaking reduces the amount of paperwork required by the operator to be submitted for program files by eliminating the need for the CAOs to submit exporting records for the program files where they are exporting for other than agricultural land application.

The program does recognize the importance of good recordkeeping for the protection of water quality and the implementation of the limited liability clause of the act. The program requires these necessary records but does not require them to be submitted for inclusion in the program files, but they are reviewed annually with the operator during the program's annual onsite status review.

Sunset Review

The Commission will evaluate the effectiveness of this final-form rulemaking, as it has done for the existing regulations, on an ongoing basis. Therefore, no sunset date is being established for the regulations.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on July 28, 2004, the Commission submitted a copy of the notice of proposed rulemaking, published at 34 Pa.B. 4361, to IRRC and the Chairpersons of the House and Senate Environmental Resources and Energy Committees for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on March 20, 2006, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on March 21, 2006, and approved the final-form rulemaking.

Findings

The Commission finds that:

- (1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law, and all comments were considered.
- (3) These regulations do not enlarge the purpose of the proposal published at 34 Pa.B. 4361.
- (4) These regulations are necessary and appropriate for administration and enforcement of the authorizing laws.

Order

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

(a) The regulations of the Commission, 25 Pa. Code Chapter 83, are amended by amending §§ 83.201—83.203, 83.205, 83.206, 83.211—83.216, 83.221, 83.222, 83.224—83.226, 83.229, 83.231, 83.232, 83.241, 83.251, 83.261, 83.262, 83.272, 83.281, 83.282, 83.291—83.294, 83.301, 83.311, 83.321, 83.331, 83.341—83.344, 83.351, 83.361, 83.362, 83.371, 83.373 and 83.381; by deleting § 83.204; and by adding § 83.312 to read as set forth in Annex A.

(Editor's Note: The Commission has withdrawn the proposal to amend §§ 83.391, 83.392, 83.401—83.404, 83.411, 83.421, 83.431, 83.451—83.453, 83.461, 83.471, 83.472, 83.481 and 83.491 and to add §§ 83.422 and 83.454, included in the proposal at 34 Pa.B. 4361.)

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

(c) The Chairperson of the Commission shall submit this order and Annex A to IRRC and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.

(d) The Chairperson of the Commission shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(e) This order shall take effect October 1, 2006.

DENNIS C WOLFF,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 36 Pa.B. 1555 (April 1, 2006).)

Fiscal Note: 7-390. (1) Nutrient Management Fund;

	<i>Education, Research and Technical Assistance</i>	<i>Planning, Loans, Grants and Technical Assistance</i>	<i>Nutrient Management Administration</i>
(2) Implementing Year 2005-06 is	\$0	\$0	\$0
(3) 1st Succeeding Year 2006-07 is	\$200,000	\$1,175,000	\$120,000
2nd Succeeding Year 2007-08 is	\$200,000	\$1,425,000	\$120,000
3rd Succeeding Year 2008-09 is	\$200,000	\$1,375,000	\$120,000
4th Succeeding Year 2009-10 is	\$200,000	\$1,283,000	\$120,000
5th Succeeding Year 2010-11 is	\$200,000	\$1,283,000	\$120,000
(4) 2004-05 Program—	\$2,201,000	\$2,645,000	\$231,000
2003-04 Program—	\$1,788,000	\$4,852,000	\$254,000
2002-03 Program—	\$1,245,000	\$4,136,000	\$248,000

(8) recommends adoption. The distribution of funding for the grant programs will be provided to the extent funds are available.

Annex A

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

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE I. LAND RESOURCES

CHAPTER 83. STATE CONSERVATION COMMISSION

**Subchapter D. NUTRIENT MANAGEMENT
GENERAL PROVISIONS**

§ 83.201. Definitions.

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

AEU—Animal equivalent unit—One thousand pounds live weight of livestock or poultry animals, on an annualized basis, regardless of the actual number of individual animals comprising the unit.

AEU per acre—An animal equivalent unit per acre of cropland or acre of land suitable for application of animal manure.

Act—3 Pa.C.S. §§ 501—522 (relating to nutrient management and odor management).

Act 49—Commercial Manure Hauler and Broker Certification Act (3 P. S. §§ 2010.1—2010.12).

Agent—An entity delegated Commission powers and duties under the authority of section 4(3) of the Conservation District Law (3 P. S. § 852(3)), including a partnership, association, corporation, municipality, municipal authority, political subdivision of this Commonwealth and an agency, department, commission or authority of the Commonwealth.

Agricultural erosion and sediment control plan—A site-specific plan identifying BMPs to minimize accelerated erosion and sedimentation from agricultural runoff, required by Chapter 102 (relating to erosion and sediment control). The agricultural erosion and sediment control components of a conservation plan may meet this requirement, if allowed under Chapter 102.

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

Animal concentration areas—

(i) Barnyards, feedlots, loafing areas, exercise lots or other similar animal confinement areas that will not maintain a growing crop, or where deposited manure nitrogen is in excess of crop needs.

(ii) The term excludes areas managed as pastures or other cropland.

(iii) The term excludes pasture access ways, if they do not cause direct flow of nutrients to surface water or groundwater.

Animal unit—One thousand pounds live weight of livestock or poultry animals, regardless of the actual number of individual animals comprising the unit.

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

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

Buffer or vegetated buffer—

(i) A permanent strip of dense perennial vegetation established parallel to the contours of, and perpendicular to, the dominant slope of the field.

(ii) There is no mechanical application of manure within the buffer area.

(iii) The purposes include slowing water runoff, enhancing water infiltration and minimizing the risk of any potential nutrients from leaving the field and reaching surface waters.

CAO—Concentrated animal operation—Agricultural operations with eight or more animal equivalent units where the animal density exceeds two AEUs per acre on an annualized basis.

Commercial manure hauler—A person that transports or land-applies manure as a contract agent for an NMP operation or a broker under the direction of the operation or broker.

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

Concentrated water flow areas—

(i) Natural or manmade areas where stormwater runoff is channeled and conveyed directly to surface water or groundwater.

(ii) The term includes, but is not limited to, ditches, waterways, gullies and swales.

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

Cooperative Extension—The Penn State Cooperative Extension.

Critical runoff problem areas—

(i) Nonvegetated concentrated water flow areas directly discharging into surface water or groundwater, and areas where runoff containing nutrients that were applied after the growing season discharge directly into surface water or groundwater.

(ii) The term includes gullies and unprotected ditches.

Crop management unit—The portion of cropland, hayland and pasture, including a field, a portion of a field, or group of fields, on an agricultural operation that has a unique management history (same rotation and manure history), similar production capability, and that will be managed uniformly as a distinct unit.

Emergency manure stacking areas—Unimproved areas that are authorized to be used for the storage of solid manure to be applied to the land as plant nutrients, except that these areas are only used as a contingency measure to address situations where the approved manure handling practice as described in the plan is not able to address the manure generated on the operation due to unforeseen circumstances.

Farming resources—The animals, facilities and lands used for the production or raising of crops, livestock or poultry. The lands are limited to those located at the animal facility which are owned by the operator of the facility, and other owned, rented or leased lands under the management control of the operator of the facility that are used for the application, treatment or storage of manure generated at the facility.

Fund—The Nutrient Management Fund established under section 512 of the act (relating to nutrient management fund).

In-field stacking—The practice of stacking solid manure on unimproved cropland, hayland and pasture areas to be applied to the land as plant nutrients.

Intermittent stream—A body of water flowing in a channel or bed composed primarily of substrates associated with flowing water which, during periods of the year, is below the water table and obtains its flow from both surface runoff and groundwater discharges.

Livestock—

(i) Animals raised, stabled, fed or maintained on an agricultural operation with the purpose of generating income or providing work, recreation or transportation.

(ii) Examples include: dairy cows, beef cattle, goats, sheep, swine and horses.

(iii) The term does not include aquatic species.

Manure—

(i) Animal excrement, including poultry litter, which is produced at an agricultural operation.

(ii) The term includes materials such as bedding, washwater and other materials which are commingled with that excrement.

Manure group—A portion of the manure generated on the operation that is distinct due to factors including species, handling practices, manure consistency, anticipated nutrient content or application season.

Manure Management Manual—The guidance manual published by the Department of Environmental Protection that is entitled *Manure Management Manual for Environmental Protection*, including its supplements and amendments. The manual describes approved manure management practices for all agricultural operations as required by § 91.36 (relating to pollution control and prevention at agricultural operations).

Manure storage facility—

(i) A permanent structure or facility, or portion of a structure or facility, utilized for the primary purpose of containing manure.

(ii) Examples include: liquid manure structures, manure storage ponds, component reception pits and transfer pipes, containment structures built under a confinement building, permanent stacking and composting facilities and manure treatment facilities.

(iii) The term does not include the animal confinement areas of poultry houses, horse stalls, freestall barns or bedded pack animal housing systems.

Mechanically incorporated—The combination of manure with the soil by means of farm tillage or manure injection equipment, including disks and twisted shank chisel plows, to minimize the potential of overland runoff of the manure.

NMP operation—Nutrient management plan operation—CAOs, VAOs and operations required to develop compliance plans under section 506(j) of the act (relating to nutrient management plans).

NRCS—Natural Resources Conservation Service—The Natural Resources Conservation Service of the United States Department of Agriculture, formerly known as the Soil Conservation Service.

National Wetlands Inventory—The inventory of known wetlands prepared by the United States Fish and Wildlife Service and readily available on maps in digital format on the Internet.

Nutrient—A substance or recognized plant nutrient, element or compound which is used or sold for its plant nutritive content or its claimed nutritive value. The term includes, but is not limited to, livestock and poultry manures, compost as fertilizer, commercially manufactured chemical fertilizers, biosolids or combinations thereof. The only nutrient elements of concern under this subchapter, based on their potential to impact the quality of surface waters or groundwater, are nitrogen and phosphorus. Unless the context clearly indicates otherwise, “nutrients” as used in this subchapter means nitrogen and phosphorus.

Nutrient balance sheet—A crop management BMP developed to protect surface and groundwater quality by providing the calculations for determining the appropriate rate, method and timing of manure that can be applied to cropland, hayland and pasture, to meet the purposes of this subchapter.

Nutrient management specialist or specialist—A person satisfying the requirements of the Department of Agriculture’s Nutrient Management Certification Program in 7 Pa. Code §§ 130b.1—130b.51 (relating to nutrient management certification).

Pastures—Crop areas managed for forage production that are harvested by livestock, or a combination of livestock and mechanical harvesting.

Pennsylvania Agronomy Guide—The reference book published by Cooperative Extension and updated periodically, used as a practical guide to grain and forage production, soil fertility management, pest management and erosion control, with special reference to Pennsylvania conditions.

Pennsylvania Technical Guide—A primary reference document published by the United States Department of Agriculture’s NRCS, entitled *The Pennsylvania Soil and Water Conservation Technical Guide*, which is used by technically trained persons to plan and apply appropriate BMPs.

Perennial stream—A body of water flowing in a channel or bed composed primarily of substrates associated with flowing waters and capable, in the absence of pollution or other manmade stream disturbances, of supporting bottom dwelling aquatic animals.

Permanent manure stacking areas—Designated, improved storage areas that are used for the long term or recurring storage of solid manure.

Phosphorus Index—

(i) The field evaluation methodology developed specifically for this Commonwealth and approved by the Commission, which combines indicators of phosphorus sources and phosphorus transport, to identify areas that have a high vulnerability or risk of phosphorus loss to surface waters.

(ii) This evaluation methodology provides direction on BMPs to address the land application of phosphorus-containing nutrient sources, to protect water quality.

Plan—Nutrient management plan—

(i) A written site-specific plan which meets the requirements in the act, and in §§ 83.271, 83.272 and 83.281—83.381.

(ii) Except when otherwise stated, the term includes plan amendments required under this subchapter.

Soil test level—The level of soil characteristics such as phosphorus, potassium and pH, analyzed using standard industry methods such as those described in the current *Pennsylvania Agronomy Guide*.

Spring—A place where groundwater flows naturally from rock or soil onto the land surface for a total of 183 days or more per year.

Stormwater—Runoff from the surface of the land resulting from rain, snow or ice melt.

VAO—Voluntary agricultural operation—

(i) Any operation that voluntarily agrees to meet the requirements of this subchapter even though it is not otherwise required under the act or this chapter to submit a nutrient management plan.

(ii) The term includes agricultural operations applying for financial assistance under the act.

Winter—December 15 to February 28, or any time the ground is frozen at least 4 inches deep or is snow covered.

§ 83.202. Scope.

This subchapter specifies criteria and requirements for:

(1) Nutrient management plans required under the act for CAOs, VAOs and operations required to develop compliance plans under section 506(j) of the act (relating to nutrient management plans).

(2) The construction, location, design, installation and operation of animal manure storage facilities on NMP operations.

(3) Manure handling in emergency situations when there is an outbreak of a contagious disease that poses a threat to animal or human health.

(4) The awarding of financial assistance under the act for the implementation of plans for existing agricultural operations.

(5) The awarding of incentives for the development of plans under the Plan Development Incentives Program in §§ 83.211—83.216.

§ 83.203. Purpose.

The purposes of this subchapter are to:

(1) Assure the proper utilization and management of nutrients on CAOs, VAOs and operations required to develop compliance plans under section 506(j) of the act (relating to nutrient management plans).

(2) Assure the proper utilization and management of nutrients when manure is exported off of the operations described in paragraph (1).

(3) Protect the quality of surface water and groundwater.

§ 83.204. (Reserved).

§ 83.205. Preemption of local ordinances.

(a) The act and this subchapter are of Statewide concern and occupy the whole field of regulation regarding nutrient management to the exclusion of all local regulations.

(b) After October 1, 1997, no ordinance or regulation of any political subdivision or home rule municipality may prohibit or in any way regulate practices related to the storage, handling or land application of animal manure or nutrients or to the construction, location or operation of facilities used for storage of animal manure or nutrients or practices otherwise regulated by the act or this subchapter if the municipal ordinance is in conflict with the act and this subchapter.

(c) Nothing in the act or this subchapter prevents a political subdivision or home rule municipality from adopting and enforcing ordinances or regulations which are consistent with and no more stringent than the requirements of the act and this subchapter.

(d) No penalty will be assessed under any valid local ordinance or regulation for any violation for which a penalty has been assessed under the act or this subchapter.

§ 83.206. Limitation of liability.

If an operator is fully and properly implementing a plan approved by a delegated county conservation district or the Commission and maintained under the act and this subchapter, the implementation shall be given appropriate consideration as a mitigating factor in any civil action for penalties or damages alleged to have been caused by the management or utilization of nutrients under the implementation.

PLAN DEVELOPMENT AND PLAN MAINTENANCE INCENTIVES PROGRAMS

§ 83.211. Applicant eligibility.

(a) To be eligible to apply for financial assistance for nutrient management plan development or plan maintenance, a person shall meet the following criteria.

(1) In addition to seeking financial assistance for the implementation of a nutrient management plan under §§ 83.221—83.233 (relating to financial assistance), an NMP operation seeking to submit a nutrient management plan for the first time under the act, may apply for funding under the Plan Development Incentives Program for the development of a nutrient management plan by a certified plan writer.

(2) In addition to seeking financial assistance for the implementation of a nutrient management plan under §§ 83.221—83.233, an NMP operation seeking to amend an existing nutrient management plan approved prior to October 1, 2006, may apply for funding under the Plan Development Incentives Program for the development of the amendment to the existing approved plan by a certified nutrient management plan writer.

(3) In addition to seeking financial assistance for the implementation of a nutrient management plan under §§ 83.221—83.233, an NMP operation seeking to update or amend an approved nutrient management plan meeting the requirements of this revised subchapter, may apply for funding under the Plan Maintenance Incentives Program for the development of a nutrient management plan update or amendment by a certified nutrient management plan writer.

(b) Agricultural operations existing as of October 1, 2006, and are or will be producing or utilizing livestock or poultry manure or both on their operation, are eligible to receive funding under this subchapter.

(c) NMP operations that are in violation of the nutrient management plan submission requirements, or any other requirements of an existing nutrient management plan, the act, or this chapter, will not be eligible for funding under the Plan Development Incentives Program or the Plan Maintenance Incentives Program.

(d) NMP operations having an approved plan prior to October 1, 2006, that are in compliance with that plan and the act are eligible to receive funding under the Plan Development Incentives Program to amend the plan to meet the requirements of this revised subchapter.

(e) Only those agricultural operations having an approved nutrient management plan meeting the requirements of this revised subchapter shall be eligible to receive funding under the Plan Maintenance Incentives Program.

§ 83.212. Application procedure.

(a) An application for funding from the Plan Development Incentives Program or Plan Maintenance Incentives Program shall be made on forms developed by the Commission and shall be addressed to the Commission or delegated conservation district.

(b) An application received by the Commission or delegated conservation district will be reviewed for completeness, eligibility and the appropriate level of funding.

(c) If the application is determined to be incomplete, the Commission, or delegated conservation district, will provide the applicant with a written explanation of the reason for the determination, and request the additional information needed to complete the application process.

(d) The Commission or delegated conservation district will approve or disapprove each application submitted. Within 45 days of receipt of the required information, applicants will be notified in writing of actions taken on their applications and their rights to appeal the actions.

(e) If the approval of applications for funding from the Plan Development Incentives Program or Plan Maintenance Incentives Program is delegated to a county conservation district under § 83.241 (relating to delegation to local agencies), actions of conservation districts shall be deemed actions of the Commission unless an applicant aggrieved by an action of a conservation district seeks Commission review of the action within 30 days from actual or constructive notice of the action.

(f) The applicant may appeal a decision of the Commission to the EHB as provided for in section 517 of the act (relating to appealable actions).

§ 83.213. Application prioritization criteria.

(a) The distribution of funding under the Plan Development Incentives Program shall be provided to the extent funds are available based on the following prioritization:

(1) Agricultural operations newly classified as CAOs due to the revised criteria established in this amended subchapter.

(2) CAOs amending a plan approved prior to October 1, 2006, to conform with the revised program criteria.

(3) CAOs coming into existence after October 1, 2006, due to loss of rented acres.

(4) VAOs amending a plan approved prior to October 1, 2006, to conform with the revised program criteria.

(5) VAOs submitting a plan under the act.

(6) Other CAOs coming into existence after October 1, 2006.

(b) The distribution of funding under the Plan Maintenance Incentives Program will be provided to the extent funds are available based on the following prioritization:

(1) CAOs developing plan updates or amendments.

(2) VAOs developing plan updates or amendments.

(3) Other NMP operations developing plan updates or amendments.

§ 83.214. Eligible costs.

(a) Eligible costs considered by the Commission under the Plan Development Incentives Program are those fees incurred for the development of the initial nutrient management plan or the amendment of a nutrient management plan approved prior to October 1, 2006, to conform with the revised program criteria.

(b) Eligible costs considered by the Commission under the Plan Maintenance Incentives Program are those fees incurred for the development of an update or amendment to a nutrient management plan meeting the requirements of this revised subchapter.

(c) Costs of soil and manure tests (not including labor costs) for initial plan development, or for developing the amended or updated plan as described in subsections (a) and (b), are eligible for reimbursement.

§ 83.215. Funding limitations.

(a) The Commission will limit individual awards in the amounts it deems appropriate for the particular classification of operation.

(b) Funding under the Plan Development Incentives Program will be limited to a one-time reimbursement payment for initial plan development costs incurred after the eligible agricultural operator's application has been approved, and as a one-time reimbursement payment for

a nutrient management plan amendment of a plan approved prior to October 1, 2006, to conform with the revised program criteria.

(c) Funding under the Plan Maintenance Incentives Program will be limited to one payment annually for updating or amending an approved nutrient management plan meeting the requirements of this revised subchapter.

(d) Funding under both the Plan Development Incentives Program and the Plan Maintenance Incentives Program will not be available for planning efforts initiated prior to approval of the request for participation in the program.

§ 83.216. Implementation and reporting.

(a) The Commission will develop implementation and reporting documents defining the terms and conditions under which funding under each program will be provided and other documents determined to be necessary by the Commission.

(b) Only plans or plan updates and amendments meeting the requirements of this revised subchapter will be eligible for reimbursement under this program.

(c) The recipient of a Plan Development Incentives Program or a Plan Maintenance Incentives Program award shall maintain financial records for 3 years to substantiate reimbursement expenditures covered by this subchapter.

FINANCIAL ASSISTANCE

§ 83.221. Applicant eligibility.

(a) An owner of an agricultural operation existing as of October 1, 2006, may apply for financial assistance for the implementation of plans developed under the act. The owner shall have legal and financial responsibility for the agricultural operation during the term of the financial assistance provided by the Commission.

(b) Existing CAOs required to implement BMPs to conform with the revised criteria of this subchapter are eligible for financial assistance for the implementation of the BMPs.

(c) New agricultural operations coming into existence after October 1, 2006, are not eligible for financial assistance for the implementation of their approved plan, including the BMPs in the plan.

(d) Existing NMP operations having an approved nutrient management plan that are currently or were in violation of the plan submission requirements or any other requirements of this act prior to October 1, 2006, are not eligible for funding under this program.

(e) Existing agricultural operations expanding to become a CAO after October 1, 2006, are not eligible for financial assistance for the implementation of their approved plan, including the BMPs in the plan.

(f) Only those agricultural operations having over eight AEU's are eligible to receive financial assistance for the implementation of their approved plan, including the BMPs in the plan.

§ 83.222. Condition for receipt of financial assistance.

(a) An agricultural operation approved to receive financial assistance under the Chesapeake Bay Nonpoint Source Pollution Abatement Program after October 1, 2006, or otherwise receiving financial assistance under the act for plans, shall agree to develop and implement a plan as a condition for receiving the financial assistance.

(b) A recipient of financial assistance under this subchapter shall be obligated to maintain the BMPs funded by the financial assistance and continue to implement and adhere to the provisions of the plan, the act and this chapter for 10 years following receipt of the funds.

§ 83.224. Project evaluation and prioritization criteria.

(a) Applications for financial assistance will be evaluated in accordance with project evaluation criteria guidelines developed by the Commission.

(b) Applications for financial assistance will be prioritized for consideration as follows:

(1) CAOs in compliance with the act and properly implementing a plan approved prior to October 1, 2006, which, due to the revisions to the regulations, are required to implement additional practices to meet the new criteria.

(2) Existing agricultural operations newly classified as CAOs due to the revised criteria established in this amended subchapter.

(3) Existing agricultural operations that become CAOs after October 1, 2006, due to loss of rented acres.

(4) VAOs having an approved plan as of October 1, 2006.

(5) Other agricultural operations in existence as of October 1, 2006.

§ 83.225. Application procedure.

(a) An application for financial assistance shall be made on forms approved by the Commission and shall be addressed to the Commission or a delegated agent.

(b) An application received by the Commission or delegated agent will be reviewed for completeness and eligibility. An application must include a copy of the approved plan which identifies the proposed BMPs for which financial assistance is being requested.

(c) If the application is determined to be incomplete, the Commission or a delegated agent will provide the applicant with a written explanation of the reasons for the determination, and request the additional information needed to complete the application process.

(d) Within 60 days of receipt of all required information, applicants will be notified in writing of actions taken on their applications and any right to appeal the actions.

(e) The applicant may appeal a decision of the Commission to the EHB as provided for in section 517 of the act (relating to appealable actions).

§ 83.226. Eligible costs for the implementation of an approved plan.

(a) Eligible project costs considered by the Commission shall be the costs necessary to implement the plan and may include the following:

(1) Project design and engineering including plans, specifications, cost estimates, certifications and surveys.

(2) Costs associated with obtaining the financial assistance and may include loan origination or loan application fees, or both, title fees and filing fees.

(3) Project construction, including labor, materials, machinery, equipment and site preparation associated with the project.

(4) Costs associated with the implementation of a cover cropping BMP, in response to the requirement contained under § 83.294(f)(5)(i) (relating to nutrient application procedures).

(5) Other costs the Commission has determined to be necessary.

(b) Funds encumbered or advanced for the project which are not used for eligible costs in the project shall be returned to the fund or account from which they originated for reallocation and use in the implementation of other plans.

(c) The Commission may consider alternative manure technology practices and equipment eligible to receive financial assistance under this subchapter if these practices or equipment are considered to be effective in addressing nutrient management issues on the agricultural operation. Financial assistance funding levels and limitations for these alternative practices and equipment will be established by the Commission. These eligible practices may be approved to service an individual operation or may service more than one operation if approved by the Commission. For multi-partnered projects, all farms providing manure for the project must agree to amend an existing plan or develop and implement a new approved nutrient management plan meeting the provisions of this subchapter.

§ 83.229. Grants.

(a) A grant will be considered when funds have been made available to the Commission and the Commission determines that the financial condition of the recipient is such that the repayment of a loan is unlikely and that the recipient will be financially distressed by the implementation of BMPs without a grant.

(b) The Commission may limit individual grant awards to whatever amount it deems appropriate. The maximum amount of a grant may not exceed those maximum grant limits established by the Commission. An agricultural operation that has received or is approved to receive financial assistance under any local, State, Federal or other financial assistance program may also be eligible for grants under the Nutrient Management Plan Implementation Grant Program up to the grant limit established by the Commission in grants from those combined sources and the Nutrient Management Plan Implementation Grant Program.

(c) A grant will be made subject to the terms and conditions the Commission establishes.

§ 83.231. Funding limitations.

(a) *Total funding limits.* Total assistance provided under loans, grants and loan guarantees for the implementation of a single plan may not exceed those funding limits established by the Commission.

(b) *Partial funding.* The Commission reserves the right to provide funding for only a portion of the total costs of the project or only a portion of the amount requested in a financial assistance application.

(c) *Least cost alternative.* Financial assistance provided may not exceed that amount necessary for the least-cost alternative for each BMP included.

(d) *Limitation.*

(1) Financial assistance will not be made available that might jeopardize or compromise the fund.

(2) Financial assistance will not be available for refinancing.

(3) Financial assistance will not be available for BMPs if construction is initiated prior to submission of an application for financial assistance, unless a letter of no prejudice has been issued by the Commission as provided in subsection (e).

(e) *Letters of no prejudice.* Exceptions to the general prohibition against initiation of construction prior to consideration by the Commission may be made when circumstances require immediate plan implementation to proceed before an application for financial assistance can be submitted to the Commission. Circumstances that would require immediate plan implementation and therefore appropriate for consideration by the Commission for a letter of no prejudice, must relate to acute failures or malfunctions of practices where immediate implementation is necessary to address significant environmental degradation. In this case, a potential applicant may apply to the Commission for a letter of no prejudice wherein the Commission agrees to consider a future application for financial assistance without limitation or prejudice even if project construction has begun at the time of the future application for financial assistance. The application for a letter of no prejudice must set forth, in detail, the exact reason or reasons a letter of no prejudice is necessary and should be granted. The application for and approval of a letter of no prejudice must occur prior to the start of project construction. If the Commission issues a letter of no prejudice, project construction can begin without jeopardizing or benefiting a future application.

§ 83.232. Implementation and reporting.

(a) The Commission will develop financial assistance documents which will define the terms and conditions under which the financial assistance is offered and specify other documents determined to be necessary by the Commission.

(b) Unless otherwise approved by the Commission, the recipient of financial assistance under this subchapter shall begin construction of the project, in accordance with its approved application within 9 months of the Commission sending notice of approval of a grant or loan application. If the applicant does not begin implementation within the specified time period, does not continue work without unreasonable interruption or does not complete the project within the specified time period in the grant agreement, the financial assistance may be withdrawn by the Commission.

(c) Design and construction of BMPs must conform to the standards found in the *Pennsylvania Technical Guide*. The applicant may not significantly deviate from the scope, design or time schedule for a project unless prior written approval is given by the Commission or delegated agent. The term "scope," as used in this subsection, means the extent of project activities determined by the Commission to be eligible for financial assistance.

(1) A request for significant changes in scope shall be submitted in writing to the Commission for approval. When changes in scope require a plan amendment under the criteria of § 83.371 (relating to plan amendments), the applicant shall provide a copy of the approved plan amendment.

(2) Funding eligibility for a change in scope will be based on the criteria described in § 83.223 (relating to financial assistance eligibility criteria). Consent of the Commission to a change in scope will not be deemed to increase the amount of financial assistance provided without the express approval of the Commission. Funding for changes in the scope of an assistance project will be approved only in the following circumstances:

(i) The change in scope is a result of new or revised requirements, Federal legislation, or a Federal regulation thereunder, State legislation or State regulation thereunder, the act, this subchapter, The Clean Streams Law (35 P. S. §§ 691.1—691.1001) or regulations thereunder.

(ii) The change in scope is necessary to protect the structural or process integrity of the facilities.

(iii) Adverse conditions are identified during the construction of the facilities which could not have been foreseen by the design engineer prior to encountering the condition.

(iv) The change is necessary to relieve emergency conditions occurring during construction of the facilities.

(d) A request for a disbursement of financial assistance must be on forms approved by the Commission, include a statement certifying the project was completed as planned, and be submitted on a schedule approved by the Commission.

(e) The applicant shall maintain project progress and financial records to substantiate expenditures, as well as plan implementation records as outlined in §§ 83.341—83.344 (relating to recordkeeping and informational requirements).

(f) If the applicant fails to comply with this section, the Commission may withdraw the remaining funds allocated to the project, as well as take other action which it is legally entitled to take.

DELEGATION TO LOCAL AGENCIES

§ 83.241. Delegation to local agencies.

(a) The Commission may by written agreement delegate to a conservation district one or more of its administrative or enforcement authorities under the act.

(b) The delegation of administrative or enforcement authority may be made to a conservation district when the district demonstrates it has or will have an adequate program and sufficient resources to accept and implement the delegation.

(c) To the extent delegated by the agreement, the delegations may include the authority to enforce the act and this subchapter and to exercise other powers and duties otherwise vested in the Commission to implement the act.

(d) A delegation agreement will:

(1) Specify the powers and duties to be performed by the delegated district.

(2) Provide for the commitment of sufficient trained staff and resources to perform the powers and duties to be delegated.

(3) Require the delegated conservation district to maintain records of activities performed under the delegation.

(4) Provide for the monitoring and supervision by the Commission of performance by the delegated conservation district of the functions delegated under the agreement.

(e) When the Commission delegates one or more of its powers and duties to a delegated conservation district, the Commission will retain the concurrent power to administer and enforce the act and this subchapter.

COMPLIANCE PLANS

§ 83.251. Compliance plans.

An agricultural operation found to be in violation of The Clean Streams Law (35 P.S. §§ 691.1—691.1001) may be required to submit a plan that meets the requirements of the act and this subchapter within 3 months or notification thereof and to implement the plan in accordance with the schedule as approved.

NUTRIENT MANAGEMENT PLANS

§ 83.261. General.

NMP operations shall meet the plan requirements of §§ 83.251—83.381 according to the following:

(1) *Operations defined as a CAO prior to October 1, 2006.*

(i) For operations defined as CAOs operating as of October 1, 1997, a plan shall have been submitted prior to October 1, 1998.

(ii) For operations which were newly defined as a CAO due to expansion of operations prior to October 1, 2006, a plan shall have been submitted within 3 months of the change in operations which classified them as a CAO.

(iii) For new operations defined as CAOs and commencing before October 1, 2006, a plan shall have been submitted prior to commencement of operations.

(2) *Operations defined as a CAO after October 1, 2006, that were not defined as CAOs prior to that date.* An existing agricultural operation as of October 1, 2006, which did not meet the CAO definition prior to October 1, 2006, but which is defined as a CAO under this subchapter as amended, shall submit a plan by October 1, 2008.

(3) *Operations that become defined as CAOs after October 1, 2006, due to expansion of an existing operation or loss of rented or leased land.* Existing operations that make changes to their operations that result in becoming defined as CAOs for the first time after October 1, 2006, shall meet the following:

(i) An agricultural operation which becomes a CAO after October 1, 2006, due to loss of land suitable for manure application, shall submit a plan within 6 months after the date which the operation becomes a CAO.

(ii) An agricultural operation which will become a CAO due to expansion of operations by the addition of animals shall obtain approval of the plan prior to the expansion.

(4) *New operations.* A new operation which will commence after October 1, 2006, and which will be a CAO, shall obtain approval of a plan meeting the requirements of this subchapter prior to the commencement of the operation.

(5) *Non-CAO operations.* An agricultural operation other than a CAO may voluntarily submit a plan at any time after October 1, 1997.

(6) *Revision of plans approved prior to October 1, 2006.* Operations having an approved plan prior to October 1, 2006, shall comply with the following:

(i) CAOs and operations required to develop compliance plans under section 506(j) of the act (relating to nutrient management plans), shall submit an amended plan to address all of the requirements of this subchapter, including management of phosphorus and exported manure, under the 3-year review requirement of § 83.362 (relating to plan implementation), or by October 1, 2007, whichever is later.

(ii) VAOs shall submit an amended plan on the same schedule as CAOs in subparagraph (i) if they desire to maintain their status as a VAO.

(iii) VAOs that received funding under this subchapter shall implement the plan approved prior to October 1, 2006, and maintain the BMPs installed using that funding for 10 years following implementation of the BMP.

(7) The plan shall be submitted to the Commission or delegated conservation district by the operator who shall sign the plan.

(8) *Qualifications.* Plans shall be developed by nutrient management specialists certified in accordance with the Department of Agriculture's Nutrient Management Specialist Certification requirements in 7 Pa. Code §§ 130b.1—130b.51 (relating to nutrient management certification). The specialists shall certify, by signature, that the plans are in accordance with the act and this subchapter.

(9) *Signature requirements.* Plans shall be signed by the operator of the agricultural operation indicating concurrence with the information in the plan and acceptance of responsibilities under the plan. The following signature requirements apply:

(i) For sole proprietorships, the proprietor.

(ii) For partnerships, a general partner.

(iii) For corporations, a vice president, president or authorized representative. The plan must contain an attachment executed by the secretary of the corporation which states that the person signing on behalf of the corporation is authorized to do so.

(10) *Operations that include rented or leased lands.* For operations that include rented or leased lands, the operator shall sign a statement in the plan indicating the following:

(i) The owners of these lands have been provided notice that a nutrient management plan has been developed which included the owner's lands.

(ii) None of the owners indicated any objection to the application of nutrients to their own lands.

(11) *Penalties.* Operators and specialists who sign plans may be subject to penalties for any false information contained in the plans.

§ 83.262. Identification of CAOs.

(a) *Procedure.* To determine if a particular agricultural operation is a CAO, the number of AEUs per acre on the agricultural operation shall be calculated using the following procedure:

(1) The number of AEUs on the agricultural operation shall be calculated by using the following steps:

(i) Compute the animal weight for the agricultural operation by multiplying the average number of animals on the agricultural operation by the standard animal weight used by the livestock industry in this Commonwealth. The standard weights contained in guidance published by the Commission may be used to meet this requirement. Other animal weights may be used in place of those in the Commission guidance, if there is sufficient documentation to support their use. For those animal types not included in the Commission guidance, the average animal weight for the operation shall be used for this calculation, taking into account, if applicable, the range of animal weights throughout the time the animals are on the operation.

(ii) Annualize the average animal weight per day by multiplying the animal weight derived in subparagraph (i) by the number of days per year that the animals are on the operation, then divide by 365 days.

(iii) Compute the number of AEUs for the particular animal type by dividing the number derived in subparagraph (ii) by 1,000.

(iv) Compute the AEUs for the operation by adding together the number of AEUs for each type of animal to equal the total number of AEUs on the agricultural operation.

(v) Operations having less than eight AEUs are not classified as CAOs regardless of the animal density.

(2) Compute the number of AEUs per acre by dividing the total number of AEUs by the total number of acres of land suitable for the application of manure.

(i) For the sole purpose of determining whether an agricultural operation is a CAO, "land suitable for the application of manure" is land that meets all of the following:

(A) The land is under the management control of the operator.

(B) The land is cropland, hayland or pastureland.

(C) The land is an integral part of the agricultural operation, as demonstrated by title, rental or lease agreements, crop records or information on a form provided by the Commission.

(D) The land is or will be any of the following:

(I) Used for the application of manure generated by the agricultural operation.

(II) Included within the areas where manure may not be applied under § 83.293(c) (relating to determination of nutrient application rates).

(III) Included within the areas where manure may not be mechanically applied under section § 83.294(f) and (g) (relating to nutrient application procedures).

(ii) The term "land suitable for application of manure" does not include farmstead areas or forest land.

(b) *Example of AEU per acre calculation.* An operation has an average number of 10,000 medium broilers with an average weight of 2.3 pounds. During the year there are six flocks with a production period of 43 days per flock. This amounts to 258 days per year that the birds are on the operation. During the remaining down time, no manure is produced. The farmstead is 2 acres. There are 3 acres of woodlands and 7 acres of cropland. The following is the AEU per acre calculation for this operation:

Step 1. 10,000 med. broilers × 2.3 lb. avg. wt. = 23,000 lb. total weight

Step 2. 23,000 lb. total weight × 258 days per year divided by 365 days = 16,257 lbs.

Step 3. 16,257 lbs. divided by 1,000 lbs. per AEU = 16.25 AEUs

Step 4. Total number of AEUs on the agricultural operation is 16.25

Step 5. 16.25 AEUs divided by 7 acres of land suitable = 2.32 AEUs per acre

CONTENT REQUIREMENTS FOR ALL PLANS

§ 83.272. Content of plans.

(a) Plans developed for CAOs, VAOs and operations required to develop compliance plans under section 506(j) of the act (relating to nutrient management plans) must comply with §§ 83.261 and 83.271—83.381.

(b) A plan must follow the standardized plan format provided by the Commission, unless otherwise approved by the Commission.

(c) The operator shall be involved in the development of the plan.

(d) The BMPs listed in the plan must be consistent with the management practices listed in other relevant plans, such as the agricultural erosion and sediment control plan developed for the operation, unless otherwise approved by the Commission or delegated conservation district.

(e) The only nutrient elements of concern to be addressed by BMPs in the plan, based on their potential to impact the quality of surface water or groundwater, are nitrogen and phosphorus. Unless the context clearly indicates otherwise, "nutrients" as used in this subchapter means nitrogen and phosphorus.

(f) The plan must list potassium crop needs, and potassium application rates, from all nutrient sources, to ensure that adequate soil fertility levels are addressed to meet crop production goals.

PLAN SUMMARY INFORMATION

§ 83.281. Identification of agricultural operations and acreage.

(a) *Agricultural operation identification sheet.* The plan must include an agricultural operation identification sheet which includes the following information:

(1) The operator name, address and telephone number.

(2) A brief description of the operation including:

(i) Animal types and numbers included on the operation.

(ii) The crop rotation planned to be used on the operation.

(iii) The dimensions, capacity and freeboard of any existing manure storage facilities on the operation.

(3) The signatures and documentation as required by § 83.261 (relating to general).

(4) The counties where land included in the plan is located.

(5) The watersheds in which the land included in the plan is located. The existence of any special protection waters, as identified in Chapter 93 (relating to water quality standards), shall also be noted.

(6) The total acreage of the agricultural operation included in the plan. This acreage includes:

(i) Lands located at or adjacent to the animal facility, which are owned by the operator of the facility.

(ii) Other owned, rented or leased lands, under the management control of the operator of the facility, that are used for the application, treatment or storage of manure generated at the facility. The plan must include the names and addresses of owners of the rented and leased lands.

(7) The total acreage of land of the agricultural operation on which nutrients shall be applied. The total acreage shall be separated into acres of owned land and acres of rented or leased land.

(8) The total number of AEUs on the operation, and the number of AEUs per acre on the agricultural operation.

(9) The name, nutrient management certification program identification number and signature of the nutrient management specialist that prepared the plan and the date of plan preparation.

(b) *Maps and aerial photographs.* The plan must include a topographic map drawn to scale identifying the lands included in the agricultural operation, including the land described in subsection (a)(6), and must also contain maps or aerial photographs of sufficient scale which clearly identify:

(1) The location and boundaries of the agricultural operation.

(2) Individual field boundaries under the plan.

(3) Field number and acreage of each field.

(4) The identification of all soil types and slopes on the agricultural operation. An NRCS soil survey map with the soil identification legend will be sufficient to satisfy this requirement. These soil survey maps may be available at the county NRCS office or conservation district office.

(5) The location of areas where manure application is restricted under § 83.294(f) and (g) (relating to nutrient application procedures).

(6) The location of proposed or existing structural BMPs, including manure storage facilities, on the operation.

(7) The location of proposed or existing emergency manure stacking areas or in-field stacking locations.

(8) The names of the roads adjacent to or within the agricultural operation.

(c) *Phosphorus.* The plan must include an appendix containing information and calculations used to comply with § 83.293(c) (relating to determination of nutrient application rates). If the Phosphorus Index is used, the information must include the completed Phosphorus Index spreadsheet or other similar information summary which lists the individual source and transport factor values, as appropriate, and the final Phosphorus Index result, for each individual area evaluated on the operation, as developed under the Phosphorus Index.

(d) *Agreements with importers and brokers.* The plan must include an appendix containing signed exporter/importer and exporter/broker agreements, and nutrient balance sheets and associated maps, for operations where these documents are required under this subchapter.

(e) *Soil test results.* The plan must include an appendix containing a summary of the results of all soil test analyses performed on the operation. The summary must meet the requirements of § 83.292(e)(3) (relating to determination of nutrients needed for crop production).

§ 83.282. Summary of plan.

(a) The plan must contain a summary that includes:

(1) A manure summary table listing:

(i) The total amount of manure planned to be generated on the operation annually.

(ii) The total amount of manure planned to be used on the operation annually.

(iii) The total amount of manure planned to be exported from the operation annually.

(2) A nutrient application summary documenting the planned nutrient applications for each crop management unit listing:

(i) Acres.

(ii) Expected yield.

(iii) Nutrients applied as starter chemical fertilizer.

(iv) Planned manure application period.

(v) Planned manure application rate and type of manure to be applied.

(vi) Planned manure incorporation time.

(vii) Rate of other organic nutrient sources planned to be applied.

(viii) Other nutrients applied through chemical fertilizer.

(ix) Other comments or notes.

(3) General procedures and provisions for the utilization or proper disposal of excess manure.

(b) The summary must include the following information on planned BMPs:

(1) Planned manure management and storage practices, stormwater runoff control practices and other appropriate BMPs necessary to protect the quality of surface water and groundwater.

(2) The schedule for implementation of the planned BMPs.

(3) The locations of planned BMPs on the agricultural operation.

NUTRIENT APPLICATION

§ 83.291. Determination of available nutrients.

(a) The plan must address each type of nutrient source generated or planned to be used on the agricultural operation, including: manure, biosolids, compost, commercial fertilizers and other nutrient sources. Nitrogen and phosphorus are the only nutrient elements of concern to be addressed by BMPs in the plan.

(b) The plan must list potassium crop needs, and potassium application rates, from all nutrient sources, to ensure that adequate soil fertility levels are addressed to meet crop production goals.

(c) The amount and nutrient content of each manure group generated on the agricultural operation shall be documented in the plan as follows:

(1) List the average number of animals for each manure group, on the agricultural operation.

(2) List the amount of manure generated and when it is available for land application on the agricultural operation or for other planned uses.

(i) If actual manure production records are available for the operation, these records shall be used for determining the manure produced on the operation.

(ii) If actual records of manure production do not exist for the operation, the amount of manure produced shall be calculated based on the average number of animal units on the agricultural operation, and the storage capacity of manure storage facilities, if present. The plan must include the calculations or variables used for determining the amount of manure produced on the operation.

(3) Test the nutrient content of manure as follows:

(i) Analytical manure testing results shall be used in the development of the plan. These manure tests must include an analysis of the percent solids, total nitrogen (as N), ammonium nitrogen (as $\text{NH}_4\text{-N}$), total phosphate (as P_2O_5) and total potash (as K_2O), for each manure group generated on the operation, and these analytical results shall be recorded in the plan.

(ii) These manure analyses shall be performed using manure sampling and chemical analysis methods which accurately represent the contents of the manure. Methods described in the *Pennsylvania Agronomy Guide* may be used to meet this requirement. Other methods shall be approved by the Commission.

(iii) For newly proposed operations, and for manure groups on existing operations where sampling and analysis are not possible prior to initial plan development, the following applies:

(A) The plan must use either standard book values, or analytical results from a similar facility as approved by the Commission or delegated conservation district.

(B) Standard book values contained in the *Pennsylvania Agronomy Guide* may be used to meet this requirement. Other values shall be approved by the Commission.

(C) A similar facility is one that uses similar animal housing, animal groups, feeding practices and wastewater management.

(D) The nutrient content of the manure, as determined in clauses (A)—(C), shall be recorded in the plan.

(E) Samples and chemical analysis of the manure generated on the operation shall be obtained within 1 year of implementation of the approved plan, and the requirements of § 83.371 (relating to plan amendments) shall be followed as applicable.

(iv) The nutrient content of manure deposited on pastures by grazing animals shall be determined using the methods contained in subparagraph (vi).

(v) After approval of the initial plan, manure tests are required to be taken annually for each manure group generated on the operation.

(vi) The testing described in this subsection will not be required for manure groups associated with less than five AEU's of livestock or poultry at an operation. For these small quantity manure groups, the nutrient content of the manure may be determined using standard book values which represent the contents of the manure for the operation. Standard book values contained in the *Pennsylvania Agronomy Guide* may be used to meet this requirement. Other values shall be approved by the Commission or delegated conservation district.

(vii) Testing of manure groups may be consolidated when two or more manure groups on the same operation are produced by the same animal type and are managed in a similar manner.

(d) The nitrogen available from manure shall be based on availability factors which accurately represent the characteristics of the manure. Factors described in the *Pennsylvania Agronomy Guide* may be used to meet this requirement. Other methods shall be approved by the Commission. The plan must include the amount of nitrogen available in the manure, and the planned manure incorporation time used to determine the nitrogen available.

(e) The residual nitrogen from legume crops and previous applications of manure shall be determined using values which represent the common nitrogen residuals from the past crops and manure applications at the operation. Standard book values contained in the *Pennsylvania Agronomy Guide* may be used to meet this requirement. Other values shall be approved by the Commission. The values shall be recorded in the plan and credited when determining nutrient application rates.

§ 83.292. Determination of nutrients needed for crop production.

(a) The plan must include the acreage and realistic expected crop yields for each crop management unit.

(b) For the development of the initial plan, expected crop yields may not exceed those considered realistic for the soil type and climatic conditions, as set by the operator and the specialist, and approved by the Commission or delegated conservation district. If actual yield records are available during the development of the initial plan, the expected crop yields shall be based on these records.

(c) If after the first 3 years of implementing the plan, the yields do not average at least 80% of the planned expected yield, the plan shall be amended to be consistent with the documented yield levels unless sufficient justification for the use of the higher yields is approved by the Commission or delegated conservation district. The amendment shall be submitted as required under § 83.371 (relating to plan amendments).

(d) When determining expected crop yields for plan amendments, expected crop yields shall be based on documented yield levels achieved for the operation. Expected crop yields higher than historically achieved may be used if sufficient justification is approved by the Commission or delegated conservation district for the use of the higher yields.

(e) When developing the initial plan, soil tests shall be conducted for each crop management unit on the operation, to determine the level of phosphorus (as P), potassium (as K), and soil pH, as follows:

(1) The soil test procedures used must provide accurate test results. The procedures recommended by the Pennsylvania State University and published in *Recommended Soil Testing Procedures for the Northeastern United States*, Bulletin #493, published by the University of Delaware, may be used to meet this requirement. Other procedures shall be approved by the Commission.

(2) Soil tests conducted within the previous 3 years prior to submitting the initial plan are acceptable.

(3) The plan must include an appendix containing a summary of the results of the soil test analyses for each crop management unit showing the following:

(i) Soil test levels for phosphorus and potassium as reported by the laboratory.

(ii) Soil test levels for phosphorus (as P) in parts-per-million (PPM) and potassium (as K) in PPM, after conversion from the test results from the laboratory, as needed.

(iii) Soil test levels for pH.

(iv) The date of the soil tests and the name of the lab performing the tests.

(4) After the approval of the initial plan, soil tests are required for each crop management unit at least every 3 years from the date of the last test.

(f) Based on the soil tests in subsection (e), the plan must include recommendations for the amount of nitrogen (as total N), phosphorus (as P₂O₅) and potassium (as K₂O) necessary for realistic expected crop yields.

(g) If necessary based on the type of crops planned, the recommendations from the initial soil test shall be adjusted to determine the appropriate amount of nutrients necessary to achieve realistic expected crop yields. This adjustment may be satisfied by using the methodologies in the *Soil Test Recommendations Handbook for Agronomic Crops* published by the Pennsylvania State University Agricultural Analytical Services Laboratory. Other methodologies for this adjustment shall be approved by the Commission.

§ 83.293. Determination of nutrient application rates.

(a) *Application rate.* Application rates shall be developed to protect surface water and groundwater using BMPs as described in the plan. The manure application rate shall be the lesser of the following:

(1) A rate equal to or less than the balanced manure application rate based on nitrogen as determined under subsection (b).

(2) The rate as determined under subsection (c).

(b) *Nitrogen.* Land application of manure and other nutrient sources on cropland, hayland and pastures shall be managed to minimize the affects of nitrogen losses from fields. The rate may not exceed the amount of nitrogen necessary to achieve realistic expected crop yields or the amount of nitrogen the crop will utilize for an individual crop year.

(1) The balanced manure application rate based on nitrogen shall be determined by first subtracting the amount of available residual nitrogen and any applied nitrogen, such as nitrogen applied in starter fertilizer, from the amount of nitrogen necessary for realistic expected crop yields, and then dividing that amount by the available nitrogen content of the manure as determined under § 83.291 (relating to determination of available nutrients).

(2) The calculations and variables used for determining the balanced manure application rates based on nitrogen shall be recorded in the plan.

(c) *Phosphorus.* Land application of manure and other nutrient sources on cropland, hayland and pastures shall be managed to minimize the affects of phosphorus losses from fields. Methods for determining and managing the risk of phosphorus loss, and related water quality impacts, must comply with the following:

(1) Determine the risk of phosphorus loss and related water quality impacts based on relevant factors including the following:

- (i) Soil phosphorus levels.
- (ii) The method, rate and timing of phosphorus application.
- (iii) Runoff and soil loss potential for the application area.
- (iv) Distance to surface water.
- (v) The type of phosphorus source being used.

(2) Based on the risks and impacts determined as described in paragraph (1), establish appropriate BMPs such as methods, rates and timing of application designed to minimize the affects of phosphorus losses from fields. These may be addressed by a range of options, including:

(i) Manure application is limited to nitrogen requirements of the crop, if the application of phosphorus to the soil is not expected to pose an immediate risk of impacts to surface water.

(ii) Phosphorus application is limited to the level of phosphorus removal from the soil by the crop, if the application of phosphorus to the soil would be expected to pose an immediate risk of impacts to a surface water unless the risk is managed by limiting the application based on phosphorus.

(iii) Phosphorus application is completely restricted, if the application of phosphorus to the soil would be expected to pose an immediate risk of impacts to a surface water which cannot be managed by limiting the nutrients based on phosphorus.

(3) For CAOs and VAOs existing on October 1, 2006, the Commission will allow a phase-in period until December 31, 2010, to fully meet the requirements of paragraph (2).

(i) The phase-in shall allow flexibility in controlling phosphorus loss, as long as the phosphorus application rates on any crop management unit where the phase-in is used do not exceed the levels of phosphorus removal from the soil by the crops.

(ii) The phase-in in this paragraph also applies to operations that import manure from NMP operations existing on October 1, 2006.

(4) The phase-in period in paragraph (3) does not apply to the following:

- (i) An operation that commences after October 1, 2006.
- (ii) An operation that becomes defined as a CAO, due to an increase in animal numbers, after October 1, 2006.
- (iii) An operation that increases the total AEUs on the operation by 20% or more after October 1, 2006.
- (iv) An operation that adds a new animal type after October 1, 2006.

(v) Fields where the nearest downgradient stream segment which receives runoff from the fields is classified as a special protection water under Chapter 93 (relating to water quality standards).

(5) The criteria and procedures in the current phosphorus application guidance issued by the Commission may be used to comply with paragraphs (1)—(4), including the use of a Phosphorus Index contained in the guidance.

(6) If the criteria and procedures in the phosphorus application guidance issued by the Commission are not followed, an alternative method of meeting paragraphs (1)—(4) will be approved by the Commission.

(7) For pastures which require complete restrictions on phosphorus application as determined under this section, § 83.294(j) (relating to nutrient application procedures) applies.

(d) *General nutrient calculation.* The plan must include calculations for each crop management unit indicating the difference between the amount of nitrogen, phosphorus and potassium necessary for realistic expected crop yields under § 83.292 (relating to determination of nutrients needed for crop production) and the nitrogen, phosphorus

and potassium applied through all planned nutrient sources, including, but not limited to, manure, biosolids, starter fertilizer and other fertilizers and residual nitrogen. A nitrogen availability test may be used to determine supplemental nitrogen needs.

§ 83.294. Nutrient application procedures.

(a) *General.* Nutrients shall be applied to fields during times and conditions that will hold the nutrients in place for crop growth, and protect surface water and groundwater using BMPs as described in the plan.

(b) *Timing.* Intended target spreading periods for the application of manure shall be included in the plan.

(c) *Equipment capabilities.* Manure application rates and procedures must be consistent with the capabilities, including capacity and calibration range, of available application equipment.

(1) For existing operations using their own application equipment, the plan must include a statement indicating that the existing equipment has been calibrated to ensure implementation of the application rates described in the plan, and that the equipment has the capacity to meet those application rates. The supporting documentation for this statement shall be available at the operation for inspection by the county conservation district and the Commission.

(2) For proposed operations, or when it is not feasible to calibrate the equipment or verify its capacity at planning time, the operator shall perform this application equipment calibration and capability verification prior to the first application of manure. The statement described in paragraph (1) shall be included in any necessary amendments to the plan. The supporting documentation of this statement shall be available at the operation for inspection by the Commission and delegated county conservation district.

(3) If a commercial manure hauler is used, the hauler shall be responsible for ensuring that the equipment is capable of complying with the application rate contained in the plan.

(d) *Irrigation systems.* If manure will be applied using an irrigation system, the following applies:

(1) Application rates for irrigated liquid manure shall be based on the lesser of the following:

(i) The planned application rates in gallons per acre determined in accordance with § 83.293(a) (relating to determination of nutrient application rates).

(ii) The combination of the following:

(A) The liquid application rate in inches per hour determined to be within infiltration capabilities of the soil.

(B) The liquid application depth in inches not to exceed the soil's water holding capacity within the root zone or any restricting feature at the time of application.

(2) The allowable liquid application rate and application depth shall be based on appropriate factors such as available water holding capacity of the soil, depth of the root zone, depth to a shallow impervious soil layer, soil infiltration rate, soil texture and drainage, vegetation and ground slope. Application BMPs that are consistent with the current versions of Penn State Fact Sheets F254 through F257, as applicable to the type of irrigation

system planned to be used on the operation, and the *NRAES-89 Liquid Manure Application System Design Manual*, may be used to comply with this subsection. Other BMPs shall be approved by the Commission.

(3) The plan must include the computations for the application rate (in inches per hour) and application depth (in total inches) of the various application rates, and these applications may not exceed either the infiltration rate or the water holding capacity of the application sites, as listed in the plan.

(e) *Manure application at rates greater than 9,000 gallons per acre.* If liquid or semisolid manure is planned to be applied at rates greater than 9,000 gallons per acre at any one application time, the rates and amounts shall be limited based on the infiltration rate and water holding capacity of the application areas as described in subsection (d). In those instances, the plan must include the computations for the application rates in inches per hour, and in total inches, for the various application areas, and these applications may not be allowed to exceed either the infiltration rate or the water holding capacity of the application sites, as listed in the plan.

(f) *Setbacks and buffers.* Manure may not be mechanically applied in the following situations:

(1) Within 100 feet of the top of the bank of a perennial or intermittent stream with a defined bed and bank, a lake or a pond, unless a permanent vegetated buffer of at least 35 feet in width is used, to prevent manure runoff into the stream, lake or pond.

(2) Within 100 feet of an existing open sinkhole unless a permanent vegetated buffer of at least 35 feet in width is used.

(3) Within 100 feet of active private drinking water sources such as wells and springs.

(4) Within 100 feet of an active public drinking water source, unless other State or Federal laws or regulations require a greater isolation distance.

(5) On crop management units having less than 25% plant cover or crop residue at the time of manure application, unless:

(i) For fall applications, the crop management unit is planted to a cover crop in time to allow for appropriate growth to control runoff until the next growing season, or the manure is injected or mechanically incorporated within 5 days using minimal soil disturbance techniques consistent with no-till farming practices. The *Pennsylvania Technical Guide* contains practices which may be used to satisfy this requirement. Other practices shall be approved by the Commission. The practices must be consistent with those in the agricultural erosion and sediment control plan.

(ii) For applications in the spring or summer, the crop management unit is planted to a crop that growing season.

(iii) For winter applications, the crop management unit is addressed under subsection (g).

(g) *Winter application.* For winter application of manure, the following apply:

(1) The application procedures shall be described in the plan.

(2) The plan must list the following:

(i) The crop management units where winter application is planned or restricted.

(ii) The application procedures that will be utilized at those crop management units.

(iii) The field conditions that must exist for winter application.

(3) Setbacks listed in subsection (f) shall be implemented. In addition, during winter manure may not be mechanically applied in the following situations:

(i) Within 100 feet of an above-ground inlet to an agricultural drainage system, if surface flow is toward the aboveground inlet.

(ii) Within 100 feet of a wetland that is identified on the National Wetlands Inventory Maps, if the following are met:

(A) The wetland is within the 100-year floodplain of an Exceptional Value stream segment.

(B) Surface flow is toward the wetland.

(4) Fields where manure will be applied in winter must have at least 25% residue, or an established cover crop. The BMPs contained in the *Pennsylvania Technical Guide* may be used to satisfy this requirement. Other practices shall be approved by the Commission.

(h) *In-field stacking.* In-field stacking of dry manure as a part of manure application is permissible on an NMP operation, and any importing lands governed by § 83.301 (relating to excess manure utilization plans), if the following requirements are met:

(1) The manure shall be land applied on the crop management unit within 120 days of stacking, or prior to the beginning of the next growing season, whichever is sooner.

(2) The stacks shall be constructed using appropriate BMPs such as:

(i) Placement on appropriate soils.

(ii) Proper consideration of slopes where stacks will be placed.

(iii) Shaping that minimizes absorption of rainfall.

(iv) Proper consideration of the size of the stack.

(v) Use of setbacks

(vi) Rotation of stack locations.

(3) If stacking occurs for a longer period than that described in paragraph (1), the stacks shall either be covered to keep rainwater from entering the stacks, or a waste stacking and handling pad shall be used. The BMPs contained in the *Pennsylvania Technical Guide* may be used to meet this requirement. Other BMPs shall be approved by the Commission.

(4) Locations for in-field stacking of dry manure shall be shown on the farm maps and the nutrient balance sheet maps required by this subchapter.

(i) *Commercial manure haulers.* If a commercial manure hauler will be used for the application of the manure on the agricultural operation, the commercial manure hauler shall meet the requirements of Act 49.

(j) *Pastures requiring phosphorus restrictions.* If a pasture has been determined to require total restriction of phosphorus application under § 83.293(c) (relating to determination of nutrient application rates), the risk of phosphorus loss shall be addressed by the following BMPs in lieu of total restriction of phosphorus application:

(1) Grazing may not be conducted within 50 feet of a perennial or intermittent stream, a lake or a pond.

(2) A prescribed grazing system shall be used to maintain an established stand of forage on the pasture area.

(3) The stocking rate shall be limited to ensure that the level of phosphorus deposited by the animals does not exceed the level of phosphorus removal from the soil by vegetation in the pasture.

(4) BMPs contained in the *Pennsylvania Technical Guide* may be used to meet the requirements in paragraphs (1) and (2). Other BMPs shall be approved by the Commission.

ALTERNATIVE USES FOR EXCESS MANURE

§ 83.301. Excess manure utilization plans.

(a) *General.* If manure will be exported for use off the NMP operation at known agricultural operations for agricultural land application, the following applies:

(1) The plan must include signed agreements, on a form acceptable to the Commission, between the NMP operation and each importing operator agreeing to accept the manure from the exporting operation. If the importing operator will be applying manure on lands rented or leased to that importing operator, the agreement must state that the importing operator has the authority to apply manure on the leased or rented lands.

(2) The importing operator is responsible for the proper handling and application of the imported manure accepted from an exporter, in accordance with subsection (b).

(3) An NMP operation exporting manure shall also be responsible for the proper handling and application of the exported manure if the NMP operation, or an employee or contractor of the operation, applies manure at the importing operation.

(4) The plan must demonstrate how the exported manure will be properly managed. This must be done by use of either nutrient balance sheets or approved nutrient management plans, and signed agreements with importers, under this subchapter.

(b) *Restrictions on land application of exported manure.* The land application of manure exported from an NMP operation must address the risk and impacts of nitrogen and phosphorus loss to waters.

(1) Nitrogen shall be addressed under § 83.293(b) (relating to determination of nutrient application rates).

(2) Phosphorus shall be addressed by one of the following, as selected by the operator:

(i) The rate at which phosphorus is applied may not exceed the level of phosphorus removal from the soil by the planned crop as determined under § 83.293(c), and the manure may not be applied within 150 feet from the top of the bank of an intermittent or perennial stream, a lake or a pond.

(ii) For crop management units with documented soil test levels of phosphorus less than 200 PPM, manure may not be applied within 150 feet from the top of the bank of an intermittent or perennial stream, a lake or a pond.

(iii) Manure application shall be determined in accordance with § 83.293(c).

(iv) Manure application shall follow a nutrient management plan approved by the Commission or delegated conservation district under this subchapter.

(3) The setbacks in § 83.294 (relating to nutrient application procedures) apply to land application of manure exported from an NMP operation.

(c) *Nutrient balance sheets.* The method, rate and timing for any land application under subsection (b)(2)(i)—(iii) shall be described in a nutrient balance sheet. Nutrient balance sheets must include the following:

(1) A map which identifies the crop management units where the manure is planned to be applied, location for field stacking and applicable setbacks under § 83.294 and this section.

(2) Documentation of the selected method used to address nitrogen and phosphorus on the crop management units receiving the imported manure. Acceptable methods are those described in this section.

(3) If options in subsection (b)(2)(i)—(iii) are used, the calculations associated with determining the manure application rate appropriate to the selected nitrogen and phosphorus management option used.

(4) The date when the nutrient balance sheet was developed.

(5) The name and signature of the certified planner or broker that developed the nutrient balance sheet.

(d) *Commercial manure haulers.* If the NMP operation will utilize a commercial manure hauler for the hauling or application of the exported manure, only those haulers that hold a valid and current certification under Act 49 may be used. The plan must include a statement indicating that any commercial manure haulers used for implementation of the plan shall hold a valid and current certification under Act 49.

(e) *Brokers.* If manure will be exported for use off of the NMP operation through a manure broker, the following apply:

(1) The plan must include a signed agreement, on a form acceptable by the Commission, between the operation exporting the manure and each broker agreeing to accept manure from the exporting operation. Brokers are responsible for the proper handling and storage (where applicable) of the manure accepted from the NMP operation. Only brokers that meet the requirements of Act 49 shall be acceptable in the plan.

(2) If the manure accepted by a broker shall be land applied to agricultural operations for crop production, the broker shall be responsible for the following:

(i) Ensuring that nutrient balance sheets exist for the relevant crop management units on the importing operations, and that the importing operator is provided with nutrient balance sheets with respect to that manure.

(ii) Implementing manure application rates and applicable setbacks described in § 83.294, and any nutrient balance sheet and approved nutrient management plans, if the broker will be responsible for land application of the manure.

(iii) Retaining copies of all nutrient balance sheets.

(f) *Other uses of manure away from the operation.* If manure will be exported for use off of the NMP operation for use other than agricultural land application, the plan must include the following information:

(1) The name and general location of the importing agricultural operation.

(2) A brief description of the planned use for the imported manure.

(3) The amount of manure the operator plans to export to the importer annually.

(4) The planned season for the manure export.

(5) A signed agreement between the NMP operation and each importing operation agreeing to accept the manure for this use, on a form acceptable to the Commission.

(g) *Other uses of manure on the operation.* If manure is to be processed or utilized on the NMP operation in a manner other than for agricultural land application, the plan must briefly describe the planned use of the manure, including the amount planned to be processed or utilized annually.

(h) *Use of open advertising systems.* If manure is to be exported for use off of an NMP operation existing on October 1, 1997, by using an open advertising system and the importers cannot be identified at planning time, the following apply:

(1) The plan must describe the proposed marketing scheme, including the estimated amount of manure planned to be marketed annually using an open advertising system.

(2) An operator may only utilize this method of exporting manure if the operator meets the manure broker requirements for certification under Act 49.

(3) Where the marketed manure will be utilized for application to crop fields, the exporting operation shall ensure that nutrient balance sheets exist for the relevant crop management units on the importing operations, and the importing operator is provided with the nutrient balance sheets. These nutrient balance sheets shall be retained by the exporting operation, the importing operation and any commercial manure hauler involved in the exporting of the manure. Nutrient management plans implemented at the importing operations may be used instead of nutrient balance sheets.

(4) The setbacks in § 83.294 apply to land application of manure exported from an NMP operation under this paragraph.

(i) *Exceptions.* The plan is not required to provide the specific exported manure details as provided in subsections (a)—(h) if an importer receives less than the following amounts of manure from the NMP operation on an annual basis:

(1) 5 tons of solid poultry manure.

(2) 25 tons of solid nonpoultry manure.

(3) 10,000 gallons of liquid manure.

MANURE MANAGEMENT

§ 83.311. Manure management.

(a) *Review existing practices.* In the preparation of a plan, the nutrient management specialist shall perform a site visit to conduct a review of the adequacy of existing manure management practices to prevent surface water or groundwater pollution from storm events up to and including a 25-year, 24-hour storm intensity. The specialist may confer with NRCS, conservation district staff or others with expertise with nutrient runoff control. This review shall be documented in the plan by identification of those conditions and areas where there is a potential for stormwater commingled with manure to directly runoff into surface water as a result of a storm event up to and including a 25-year, 24-hour storm intensity, without sufficient filtration or other appropriate treatment or handling BMPs, such as vegetated buffers. Practices to be evaluated in this review include manure handling, manure collection, barnyard runoff control and manure storage practices. Examples of inadequate manure management practices include the following:

(1) Manure, contaminated water or nutrients leaving manure storage or animal concentration areas, and directly discharging into surface water or groundwater.

(2) The uncontrolled flow of storm water into, or across, manure storage facilities, emergency manure stacking areas or animal concentration areas.

(3) Manure storage facilities overflowing or maintained at levels above design full levels.

(4) Manure storage facilities that are sized for less than the projected manure accumulation based on the expected application periods used in the plan.

(5) Leaking or unstable manure storage facilities.

(6) Manure storage facilities which otherwise do not comply with § 91.36 (relating to pollution control and prevention at agricultural operations).

(b) *Address inadequate practices.* The plan must address any existing inadequate manure management practices as follows:

(1) As part of a plan certification under § 83.261(8) (relating to general), the nutrient management specialist shall ensure that the review required under subsection (a) was undertaken in the preparation of the plan.

(2) The plan must contain a listing of inadequate manure management practices and related conditions and problem areas, and the BMPs planned to correct them to protect surface water and groundwater.

(3) The BMPs shall be selected, designed, constructed and maintained to meet the requirements of this subchapter. When this subchapter does not specifically address an inadequate manure management practice, the BMPs contained in the *Pennsylvania Technical Guide* may be used to comply with this section. Other BMPs shall be approved by the Commission.

(4) The plan submitted for approval is not required to include BMP designs. During the implementation of the approved plan, the operator is responsible for obtaining the necessary BMP designs and associated operation and maintenance plans to implement the BMPs listed in the approved plan. The BMP designs and associated operation and maintenance plans shall be kept on record by the operator as a supplement to the plan.

(c) *Animal concentration areas.* The following applies to animal concentration areas:

(1) These areas shall be sized, located, implemented and managed using BMPs to eliminate the direct discharge of storm water runoff commingled with manure from these areas to surface water and groundwater.

(2) These areas must meet the following requirements which shall be addressed in the plan:

(i) Animal concentration areas shall be sized appropriately to minimize environmental impacts that may be associated with the areas.

(ii) These areas shall be located and managed to eliminate the direct discharge of storm water runoff commingled with manure from a storm event of up to and including a 25-year 24-hour storm intensity, except as allowed in paragraph (5).

(3) Accumulated manure on nonvegetated animal concentration areas shall be collected and land-applied to cropland, or exported from the operation, as described in the plan.

(4) These areas shall be designed, implemented and managed to minimize the amount of clean water entering the animal concentration area.

(5) Storm water runoff commingled with manure from these areas shall be either treated or stored through an appropriate vegetative or other suitable treatment or storage method, which meets the requirements of this subchapter. BMPs for vegetated buffers and other treatment or storage methods contained in the *Pennsylvania Technical Guide* may be used to satisfy this requirement. Other BMPs shall be approved by the Commission.

(6) Animal access to surface water in these areas shall be limited to properly installed stream crossings. BMPs contained in the *Pennsylvania Technical Guide* may be used to meet this requirement. Other BMPs shall be approved by the Commission.

(d) *BMPs.* The following BMPs, as appropriate, shall be used if necessary, and shall be described in the plan, to protect water quality by controlling storm water in the farmstead, including the manure storage and animal concentration areas:

(1) Manure storage facilities including permanent manure stacking areas. The construction of manure storage facilities is not required unless necessary to protect surface water and groundwater. Nutrient management plans that require the construction of a manure storage facility must describe the planned type, dimensions and capacity of the proposed facility, and the location of the proposed facility shall be identified on a plan map.

(2) Diversion of clean water from manure storage facilities and animal concentration areas, unless required for proper operation of the BMP.

(3) Treatment or storage of storm water commingled with manure in the manure storage or animal concentration areas.

(4) Emergency manure stacking areas must be located outside of concentrated water flow areas and areas where manure application is restricted or prohibited based on § 83.294 (f) and (g) (relating to nutrient application procedures).

(5) Other appropriate BMPs acceptable to the Commission, including those described in the *Pennsylvania Technical Guide*.

(e) When emergency manure stacking areas may be necessary for the implementation of the plan, the plan must identify those areas available for the storage of manure due to unforeseen circumstances such as adverse weather conditions. The stacks shall be managed using appropriate BMPs such as placement on appropriate soils, proper consideration of slopes where stacks will be placed and shaping that minimizes absorption of rainfall. The operator shall notify the county conservation district at least 24 hours in advance of the use of an emergency manure stacking area. Manure shall be removed from emergency stacking areas for utilization on cropland or other acceptable uses within 60 days, unless extended by the Commission or a delegated conservation district.

(f) Information contained in other sections of the plan may be used by the specialist when addressing this section.

(g) The siting, design and installation of manure storage facilities shall meet the requirements in § 83.351 (relating to minimum standards for the design, construction, location, operation, maintenance and removal from service of manure storage facilities). The BMPs contained

in the *Pennsylvania Technical Guide*, as they relate to water quality protection, may be used to comply with this subsection. Other measures shall be approved by the Commission.

(h) If alternative manure technology practices and equipment are planned to address nutrient management issues related to the operation, the rationale for and expected benefit of the planned alternative practices and equipment shall be described in the plan.

SITE SPECIFIC EMERGENCY RESPONSE PLANS

§ 83.312. Site specific emergency response plans.

(a) NMP operations shall develop and implement a written site-specific emergency response plan addressing actions to be taken in the event of a discharge, leak or spill of materials containing manure. A copy of the plan shall be kept onsite at the operation. The emergency response plan must contain information necessary to meet the notification requirements for reporting discharge, leak or spill events which would result in pollution or create a danger of pollution to surface water or groundwater contained in § 91.33 (relating to incidents causing or threatening pollution).

(b) In the case of a discharge, leak or spill of materials containing manure related to the operation, the operator shall implement the emergency response plan developed for the operation. The operator shall comply with all notification and reporting requirements.

(c) The nutrient management plan must contain a verification from a certified planner that an adequate written site-specific emergency response plan meeting the requirements of this section exists for the operation.

(d) The operator shall provide a copy of the emergency response plan to the local emergency management agency that would assist during a major discharge, leak or spill event.

(e) A BMP-specific contingency plan as required by § 83.351 (relating to the minimum standards for the design, construction, location, operation, maintenance and removal from service of manure storage facilities) shall be included as an addendum to the emergency response plan.

STORMWATER CONTROL

§ 83.321. Stormwater control.

(a) In the preparation of a nutrient management plan under this subchapter, the nutrient management specialist shall conduct a review of the adequacy of existing stormwater control practices on croplands, haylands and pastures included in the plan to prevent nutrient pollution of surface water and groundwater. The specialist may confer with NRCS, conservation district staff or others with expertise with nutrient runoff control. Based on this review, the plan must identify critical runoff problem areas.

(b) The nutrient management plan shall contain a list of specific stormwater control BMPs to address those critical runoff problem areas identified in the review required under subsection (a). This list of stormwater control BMPs may not be in conflict with other relevant plans developed for the operation, such as the agricultural erosion and sediment control plan, unless otherwise approved by the Commission or delegated conservation district.

(c) The plan submitted for approval is not required to include BMP designs. During the implementation of the approved plan, the operator is responsible for obtaining

the necessary BMP designs and associated operation and maintenance plans to implement the BMPs listed in the approved plan, and these BMP designs and associated operation and maintenance plans shall be kept on record by the operator as a supplement to the nutrient management plan.

(d) BMPs listed in the plan to address critical runoff problem areas shall be selected, designed, installed, operated and maintained to prevent nutrient pollution of surface water and groundwater. The BMPs contained in the *Pennsylvania Technical Guide* may be used to meet this requirement. Other BMPs shall be approved by the Commission.

(e) For areas on land rented or leased by the operator that have been identified as critical runoff problem areas which will require the installation of BMPs requiring construction activities, the operator shall do one of the following:

(i) Implement the listed BMP.

(ii) Enter into an agreement with the landowner requiring the landowner to implement the BMP.

IMPLEMENTATION SCHEDULE

§ 83.331. Implementation schedule.

A plan must contain a schedule that identifies when the necessary capital improvements and management changes will be made, consistent with the time frames in § 83.362 (relating to plan implementation).

RECORDKEEPING AND INFORMATIONAL REQUIREMENTS

§ 83.341. General recordkeeping requirements.

(a) Unless otherwise specified, records required under this subchapter are not required to be submitted to the Commission or delegated conservation district, but shall be retained by the agricultural operation for at least 3 years.

(b) Records required under this subchapter shall be maintained on forms provided by the Commission, unless otherwise allowed by the Commission.

§ 83.342. Recordkeeping relating to application of nutrients.

(a) Plans must be supported by the information required in this section and §§ 83.343 and 83.344 (relating to alternative manure utilization recordkeeping; and exported manure information packets).

(b) The NMP operation shall keep the following accurate records of the land application of nutrients, crop yields and soil tests on the NMP operation:

(1) Records of soil testing results shall be maintained consistent with § 83.292(e) (relating to determination of nutrients needed for crop production). Soil testing is required once every 3 years for each crop management unit.

(2) Records of manure testing results and testing of other nutrient sources shall be maintained consistent with § 83.291 (relating to determination of available nutrients). Manure testing is required once every year for each manure group, except manure groups associated with less than five AEU's and manure groups representing grazing consistent with § 83.291(c)(3)(iv) and (vi).

(3) Land application of nutrients on NMP operations shall be documented on an annual basis by recording the following information for each source of nutrients:

(i) The locations and number of acres of nutrient application.

(ii) The dates of nutrient application.

(iii) The rate of nutrient application for each crop management unit.

(iv) The number of animals on pasture, the number of days on pasture and the average number of hours per day on pasture.

(4) Approximate annual crop yield levels for each crop management unit.

(5) Annual manure production figures for each manure group.

§ 83.343. Alternative manure utilization record-keeping.

(a) *Recordkeeping for manure exports.* The following recordkeeping requirements apply to manure exported off of the NMP operation:

(1) A manure export sheet shall be used for all manure transfers from the operation.

(2) The Commission or delegated conservation district will make copies of the manure export sheet forms available to the operation.

(3) Computer-generated forms other than the manure export sheet forms provided by the Commission may be used if they contain the same information as, and are reasonably similar in format to, the forms provided by the Commission.

(4) Recordkeeping related to the application of exported manure must comply with the following:

(i) The exporter is responsible for the completion of the manure export sheet, providing a copy to the importer and retaining a copy at the exporting operation.

(ii) When the exporter, or person working under the direction of the exporter, such as an employee or a commercial manure hauler, applies the manure to the land, the exporter is responsible for maintaining records of the actual application dates, application areas (including the observation of any relevant setback restrictions), application methods, and application rates for the exported manure.

(iii) When the manure is exported through a broker, the exporting operation is not responsible for obtaining records of actual application information for importing operations, unless the exporting operator manages the application of the manure. If the broker is responsible for applying the manure, the broker shall retain records of the application of all manure (including date, areas, methods and rates applied) and shall provide a copy of these application records to the importing operation for its records.

(b) *Recordkeeping for alternative manure utilization by means other than manure export.* Operators shall keep annual records of the amount and use of manure utilized in any manner other than through manure transfers.

§ 83.344. Exported manure informational packets.

(a) If manure is exported from an NMP operation, the exporter will provide the importer and any relevant manure hauler or brokers with a completed manure export sheet.

(b) If the manure is to be land applied at an importing operation, the exporter is required, except as provided in subsection (c), to provide the following information to the importer, as supplied by the Commission or its delegated agent:

(1) The relevant sections of the *Manure Management Manual*.

(2) A concise educational publication describing the key concepts of nutrient management.

(3) Additional informational items as supplied by the Commission for this purpose.

(c) If a broker will be responsible for applying the manure at the operation, the broker shall meet the requirements of subsection (b).

(d) The Commission or its delegated agent will provide the materials in subsection (b) for distribution by the exporter. The exporter is only required to provide those items in subsection (b) that have been made available to the exporter by the Commission or its delegated agent.

(e) The exporter is responsible for providing the informational materials described in subsection (b) only if the importer or commercial manure hauler does not already have a current copy of the informational materials.

MINIMUM STANDARDS FOR MANURE STORAGE FACILITIES

§ 83.351. Minimum standards for the design, construction, location, operation, maintenance and removal from service of manure storage facilities.

(a) The minimum standards contained in this section apply to new manure storage facilities and the expansion of existing manure storage facilities, as part of a plan developed for an NMP operation.

(1) Manure storage facilities shall be designed, constructed, located, operated, maintained, and, if no longer used for the storage of manure, removed from service, in a manner that protects surface water and groundwater quality, and prevents the offsite migration of nutrients. Implementation of BMPs contained in the *Pennsylvania Technical Guide* may be used to satisfy this requirement, except if these standards conflict with this subchapter. Other BMPs shall be approved by the Commission.

(2) In addition to complying with paragraph (1), manure storage facilities shall be designed and located in accordance with the following criteria:

(i) Facilities shall comply with the applicable criteria in § 91.36 (relating to pollution control and prevention at agricultural operations).

(ii) Facilities shall comply with the applicable criteria in Chapter 105 (relating to dam safety and waterway management).

(iii) The location and construction of facilities to be placed within a floodplain shall be consistent with local ordinances developed under the Pennsylvania Flood Plain Management Act (32 P. S. §§ 679.101—679.601), which relates to the dangers and damage of floodwaters.

(iv) The sides of facilities located in a floodplain shall be protected from erosion and scouring from a 25 year flood event.

(v) For operations that were producing livestock or poultry on or before October 1, 1997, facilities, except reception pits and transfer pipes, may not be constructed:

(A) Within 100 feet of an intermittent or perennial stream, river, spring, lake, pond or reservoir.

(B) Within 100 feet of a wetland that is identified on the National Wetlands Inventory maps, if the following apply:

(I) The wetland is within the 100-year floodplain of an Exceptional Value stream segment.

(II) Surface flow is toward the wetland.

(C) Within 100 feet of a private water well, or open sinkhole.

(D) Within 100 feet of an active public drinking water well, unless other State or Federal laws or regulations require a greater isolation distance.

(E) Within 100 feet of an active public drinking water source surface intake, unless other State or Federal laws or regulations require a greater isolation distance.

(F) Within 100 feet of a property line, unless the landowners within the 100 foot distance from the facility otherwise agree and execute a waiver in a form acceptable to the Commission.

(G) Within 200 feet of an intermittent or perennial stream, river, spring, lake, pond or reservoir, or any water well, or wetland described in clause (B), if a facility (except permanent stacking and compost facilities) is located on slopes exceeding 8% or a facility has a capacity of 1.5 million gallons or greater.

(H) Within 200 feet of a property line, if a facility (except permanent stacking and compost facilities) is located on slopes exceeding 8% and if the slope is toward the property line, or a facility has a capacity of 1.5 million gallons or greater, unless the landowners within the 200 foot distance from the facility otherwise agree and execute a waiver in a form acceptable to the Commission.

(vi) For NMP operations that come into existence after October 1, 1997, facilities, except reception pits and transfer pipes, may not be constructed:

(A) Within 100 feet of an intermittent or perennial stream, river, spring, lake, pond or reservoir.

(B) Within 100 feet of a wetland that is identified on the National Wetlands Inventory maps, if the following apply:

(I) The wetland is within the 100-year floodplain of an Exceptional Value stream segment.

(II) Surface flow is toward the wetland.

(C) Within 100 feet of a private water well, or open sinkhole.

(D) Within 100 feet of an active public drinking water well, unless other State or Federal laws or regulations require a greater isolation distance.

(E) Within 100 feet of an active public drinking water source surface intake, unless other State or Federal laws or regulations require a greater isolation distance.

(F) Within 200 feet of a property line, unless the landowners within the 200 foot distance from the facility otherwise agree and execute a waiver in a form acceptable to the Commission.

(G) Within 200 feet of an intermittent or perennial stream, river, spring, lake, pond, reservoir or any water well, or wetland described in clause (B), if a facility (except permanent stacking and compost facilities) is located on slopes exceeding 8% or has a capacity of 1.5 million gallons or greater.

(H) Within 300 feet of a property line, if a facility (except permanent stacking and compost facilities) is located on slopes exceeding 8%, and if the slope is toward the property line, or a facility has a capacity of 1.5 million gallons or greater, unless the landowners within the 300 foot distance from the facility otherwise agree and execute a waiver in a form acceptable to the Commission.

(vii) The Commission or a delegated conservation district may waive the distance restrictions in subparagraph (v)(A)—(C) and (G), if the following can be demonstrated to the satisfaction of the Commission or a delegated conservation district:

(A) The siting restrictions contained in subparagraph (v) would make the placement economically unreasonable or physically impractical.

(B) A site investigation has been conducted which demonstrates that the proposed system will protect water quality and protect against offsite migration of nutrients.

(C) The type, design and contingency plan developed for the facilities meet additional criteria the Commission or delegated conservation district, in consultation with the NRCS, may require to protect water quality, and protect against offsite migration of nutrients.

(D) In the case of a private water well, the well construction meets the criteria that the Commission, in consultation with the NRCS, deems necessary to protect water quality. There will be no waivers granted from the setback requirements for public water wells or sources.

(viii) Manure storage facilities constructed after October 1, 1997, on CAOs that were in existence prior to October 1, 1997, shall meet the applicable criteria established under this section.

(3) The designer of the manure storage facility described in the plan shall address the following:

(i) Verification of the minimum manure storage period and minimum manure storage volume documented in the current plan.

(ii) Determination of the type and dimensions of facilities considering the environmental and space limitations of the site, as well as the operator's preference.

(iii) An onsite investigation to evaluate the site suitability for a facility. The criteria contained in the *Pennsylvania Technical Guide* may be used to satisfy this requirement. Other criteria shall be approved by the Commission.

(b) The repair of an existing manure storage facility that is part of a plan developed for an NMP operation shall be done in a manner that protects surface water and groundwater quality, and prevents the offsite migration of nutrients. Applicable standards in the *Pennsylvania Technical Guide* may be used to meet this requirement. Other standards shall be approved by the Commission. The location standards do not apply to these facility repairs.

(c) The site specific design for the construction, expansion or major repair of a liquid or semisolid manure storage facility covered under the act shall be done or approved by an engineer registered in this Commonwealth. The engineer shall certify that the design protects surface water and groundwater quality, and prevents the offsite migration of nutrients. Compliance with the applicable design standards described in the *Pennsylvania Technical Guide* may be used to meet this requirement. Other standards shall be approved by the Commission.

(d) At least 2 weeks prior to installation of the facility or the repair, the registered engineer shall submit a verification (including a quality assurance inspection plan for construction) to the Commission or delegated conservation district documenting that the design, meeting the requirements of this subsection including applicable setbacks, has been completed. Following completion of the installation or repair, the responsible engineer and construction contractor shall certify to the Commission or delegated conservation district that construction of the manure storage facility was completed according to the design, construction and location standards.

(e) A written site specific contingency plan, addressing actions to be taken in the event of a manure leak or spill from a manure storage facility covered under the act to protect surface water and groundwater quality, and prevent the offsite migration of nutrients, shall be developed and kept onsite at the operation. The standards contained in the *Pennsylvania Technical Guide* may be used to meet this requirement. Other standards shall be approved by the Commission. In the case of a leak or spill of manure from a manure storage facility covered under the act, the operator is responsible for implementation of the site specific contingency plan developed for the operation. The contingency plan must contain information necessary to meet the notification requirements for reporting leak or spill events which would result in pollution or create a danger of pollution to surface water or groundwater contained in § 91.33 (relating to incidents causing or threatening pollution).

PLAN REVIEW AND IMPLEMENTATION

§ 83.361. Initial plan review and approval.

(a) Plans for NMP operations shall be submitted for initial review and approval to delegated conservation districts, or alternatively to the Commission for NMP operations located in counties not delegated administrative authority under § 83.241 (relating to delegation to local agencies). A person performing the plan review shall be certified in accordance with the Department of Agriculture's nutrient management specialist certification requirements in 7 Pa. Code §§ 130b.1—130b.51 (relating to nutrient management certification).

(b) The Commission or a delegated conservation district will, within 10 days from the date of receipt of the plan, provide notice to the operator indicating whether all of the required plan elements have been received.

(c) The Commission or a delegated conservation district will approve or disapprove the plan or plan amendment within 90 days of receipt of a complete plan or plan amendment.

(d) If the Commission or delegated conservation district does not act on the plan within the 90-day period, the agricultural operation that submitted the plan is authorized to implement the plan. The Commission or delegated conservation district will thereafter have another 90 days to complete review of the plan, beginning on the expiration of the initial 90-day review period. If the Commission or delegated conservation district fails to act within the second 90-day period, it will be deemed approved.

(e) The notice of determination to disapprove a plan will be provided in writing to the operator submitting the plan, and include an explanation specifically stating the reasons for disapproval. If a plan for a CAO is disapproved, the operator submitting the plan for the first time shall have 90 days after receipt of the notice of disapproval to resubmit a revised plan.

(f) Approvals will be granted only for those plans that satisfy the requirements of this subchapter, including verification by the delegated conservation district or the Department of Environmental Protection that the operation has a current agricultural erosion and sediment control plan. For CAOs and VAOs existing on October 1, 2006, this agricultural erosion and sediment control plan verification is not required until October 1, 2009.

§ 83.362. Plan implementation.

(a) An NMP operation shall fully implement the plan consistent with the implementation schedule included as part of the approved plan. Implementation schedules may not extend past 3 years of the date the plan is approved or deemed approved, or for which implementation is otherwise authorized under § 83.361(d) (relating to initial plan review and approval), unless the implementation schedule is extended upon approval of the Commission or delegated conservation district.

(b) Nutrient application rates shall be developed as described in § 83.293 (relating to determination of nutrient application rates) and shall be implemented upon approval of the plan. The operator shall review the approved plan at least annually to ensure that this condition is met.

(c) At least every 3 years, the plan, records and the status of the operation's compliance, shall be reviewed by a nutrient management specialist to determine whether a plan amendment is required, according to the following:

(1) Unless otherwise required by § 83.371 (relating to plan amendments), if the approved plan continues to adequately represent the agricultural operation, including the manure nutrient content and soil test values in the plan, and if the book values used in the approved plan have not changed to the extent that it would affect the application rates used in the plan, no amendment is required. The specialist shall provide notice of this to the reviewing agency.

(2) The phosphorus application determination, including the procedures and criteria for addressing phosphorus contained in § 83.293(c) such as the Phosphorus Index, shall be reevaluated for each crop management unit once every 3 years after initial approval of the plan. A plan amendment is required if there is a change in manure application as a result of this reevaluation.

(3) A plan amendment shall be submitted to the reviewing agency in accordance with § 83.361(a), if the agricultural operation has changed from that described in the approved plan, as required by § 83.371 (relating to plan amendments).

(d) Limited liability protection, as described in § 83.206 (relating to limitation of liability), is afforded to those operators properly implementing an approved plan under this subchapter.

PLAN AMENDMENTS AND TRANSFERS

§ 83.371. Plan amendments.

(a) A plan amendment is required if the operator expects to make significant changes in the management of nutrients from those contained in the approved plan, prior to those changes being implemented. Those significant changes in the management of nutrients which would require a plan amendment are any one of the following:

(1) A net increase of greater than 10% occurs in AEU's per acre.

(2) A change in crop management that results in a reduction of greater than 20% in nitrogen necessary for realistic expected crop yields or the amount the crops will utilize for an individual crop year.

(3) A change in excess manure utilization arrangements as described in the approved plan.

(i) No amendment is required to address the loss of an importer if the loss does not impair the operator's ability to properly manage the manure generated on the operation.

(ii) No amendment is required to address the addition of a new importer if the operator submits the nutrient balance sheet and signed agreement required by this subchapter to the delegated conservation district overseeing the exporting farm, prior to transport. The district shall verify the adequacy of the documentation update the plan file with the new documentation and require formal approval of the new importer through a plan amendment when the plan is subject to the triennial review under § 83.362(c) (relating to plan implementation).

(4) If calculations in the plan as originally submitted are in error, or if figures used in the plan are inconsistent with the requirements of this subchapter, and adequate justification has not been given in writing for the inconsistency.

(5) If a BMP different than that called for in the approved plan, is proposed to address a manure management or stormwater management concern.

(6) If, after the first 3 years of implementing the plan, actual yields are less than 80% of the expected crop yields used in the development of the plan.

(7) If alternative organic nutrient sources will replace or augment nutrient sources described in the plan.

(8) If additional lands are brought into the operation through purchase, lease or renting.

(9) If there is a change in the manure management system that is expected to result in a different nutrient content that requires a change in manure application rates under § 83.293 (relating to determination of nutrient application rates).

(10) If a change in manure application is necessary based on the reevaluation of potential phosphorus loss as part of the triennial review under § 83.362(c) (relating to plan implementation), or a change in manure application is necessary due to the end of the phase-in period under § 83.293(c)(3).

(b) A plan amendment under subsection (a) shall be developed and certified by a nutrient management specialist and shall be submitted to the reviewing agency under subsection (a).

(c) Plan updates to address operational or computation changes other than those described in subsection (a) shall be developed and certified by a commercial or individual nutrient management specialist, retained at the operation

and submitted to the district for inclusion in the approved nutrient management plan. A plan amendment shall be submitted under this section to obtain approval of these changes, when the plan is subject to the triennial review under § 83.362(c).

§ 83.373. Plan transfers.

(a) An approved nutrient management plan may be transferred to a subsequent owner or operator of an agricultural operation by notification of the transfer to the Commission or delegated conservation district, unless the transfer results in operational changes requiring a plan amendment under § 83.371 (relating to plan amendments).

(b) If the transfer of the approved plan results in operational changes requiring a plan amendment under § 83.371, the plan amendment shall be submitted for approval of the Commission or a delegated conservation district along with, or before, the notification required under subsection (a).

CONTAGIOUS DISEASE EMERGENCIES

§ 83.381. Manure management in emergency situations.

(a) If there is an outbreak of a contagious disease as regulated by the Department of Agriculture, manure management shall be consistent with requirements in the Department of Agriculture's order of quarantine issued under the Domestic Animal Act (3 P. S. §§ 311—354) and regulations thereunder.

(b) The Department of Agriculture will notify the Commission when a quarantine is imposed on an agricultural operation covered by the act. The Department of Agriculture will supply the Commission and delegated conservation district with a copy of the quarantine document.

(c) Unless otherwise directed by the quarantine, an amended plan shall be developed addressing the management of manure under the quarantine. This plan shall be certified by a nutrient management specialist prior to implementation and submitted to the reviewing agency within 30 days of implementation.

(d) If nutrients are applied in excess of crop need due to the quarantine restrictions placed on the manure, and the cropping sequence permits, cover crops shall be planted to the site to minimize the loss of these nutrients. The harvesting of these cover crops is encouraged to facilitate the removal of excess nutrients.

(e) The temporary storage of manure during the quarantine shall be done under § 83.311 (relating to manure management).

(f) The application of manure during the quarantine shall be done under § 83.294(f) (relating to nutrient application procedures).

(g) Standard soil tests will be required each year for crop management units where the implementation of the quarantine required that nutrients be applied in excess of the amount the crop can use, and shall continue for 3 successive years thereafter. In addition to the standard test, an appropriate test indicating the amount of nitrogen available for crop uptake will be required for 1 year beyond the cessation of excess manure application.

[Pa.B. Doc. No. 06-972. Filed for public inspection June 2, 2006, 9:00 a.m.]

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF NURSING

[49 PA. CODE CH. 21]

Certified Registered Nurse Practitioner Program Approval

The State Board of Nursing (Board) adopts §§ 21.361—21.377 (relating to approval of certified registered nurse practitioner programs) to read as set forth in Annex A. *Statutory Authority*

The final-form rulemaking is authorized under sections 6.1 and 8.1 of the Professional Nursing Law (act) (63 P. S. §§ 216.1 and 218.1).

Background and Purpose

Notice of proposed rulemaking was published at 34 Pa.B. 4890 (September 4, 2004). Publication was followed by a 30-day public comment period. The Board did not receive comments from the general public. On October 5, 2004, the House Professional Licensure Committee (HPLC) submitted a comment for a typographical correction which has been made. On November 3, 2004, the Independent Regulatory Review Commission (IRRC) submitted comments and suggestions to the Board.

Summary of Comments and Responses to Proposed Rulemaking

§ 21.361. General criteria for approval of programs.

IRRC commented that the phrase “experimental or accelerated programs” in § 21.361(b) should be defined. The Board has changed the phrase to “pilot or accelerated programs,” but has not added a definition. The Board intends to permit nontraditional programs, such as those operating at Drexel University and the University of Pittsburgh, to submit applications for approval without regulatory impediment. A statutory change was required to permit a diploma professional nursing program in transition to degree-granting nursing education program to apply to the Board for approval. The act of June 29, 2002 (P. L. 651, No. 99), effective September 29, 2002, amended section 6 of the act (63 P. S. § 216) to authorize the Board to approve nursing education “programs in transition from approved diploma to degree granting programs.”

IRRC commented that § 21.361(c) was unwieldy. The Board has shortened subsection (c) by moving some information into subsection (b). The Board added a subsection (d), which includes information formerly in subsection (b).

§ 21.362. Annual reports and compliance reviews; list of approved programs.

IRRC suggested that the final-form rulemaking should specify how long a certified registered nurse practitioner (CRNP) program would be given to comply with recommendations of the Board under § 21.362(c). The Board has amended § 21.362(c) to provide that the Board will include compliance deadlines with its recommendations. The Board also amended subsection (d) to accurately reflect that the Board’s list of approved programs will include programs on initial as well as full and provisional approval status.

§ 21.363. Approval process.

IRRC asked what “other information” the Board could consider when determining whether to place a program on provisional approval status under § 21.363(b). The Board declines to specify acceptable information in the final-form rulemaking because doing so has the potential to limit the information that might be useful to the Board in considering whether to place a program on provisional status.

IRRC also asked when and how often a program on provisional approval status would be required to submit progress reports to the Board. The time frame varies depending on each individual school’s situation and the type and extent of changes needed to come into compliance with the Board’s regulations. The Board has added language to § 21.363(b) to notify schools that the Board will require progress reports at its discretion.

§ 21.364. Removal from approved list; discontinuance of CRNP program.

The Board changed the word “wishing” to “planning” in § 21.364(b).

§ 21.365. Establishment.

IRRC questioned whether it was necessary to include both regional accreditation and National accreditation in § 21.365(a). Regional accreditation is awarded to the college or university by entities approved by the United States Department of Education. National accreditation is awarded to the nursing education program by one of several accreditation services. The Board has amended the final-form rulemaking to specifically name the National accrediting bodies. IRRC also suggested that the Board amend § 21.51 (relating to establishment). The Board finds that this amendment is beyond the scope of the proposed rulemaking. Because medical schools are situated within accredited colleges or universities, a medical school could apply to the Board for approval to institute a CRNP educational program.

IRRC asked whether § 21.365(b) required the CRNP program director to hold a doctoral degree in a specific area or field. It does not. IRRC also asked for clarification on the language “a specific plan for completing doctoral preparation.” The Board has amended the language to clarify that the program director must have both a specific plan to complete the doctoral degree within 5 years and evidence effort toward completion of the degree. Most universities require doctoral candidates to complete their degrees within 7 years. The 5-year time frame assumes the program director has already enrolled in a doctoral degree program. The Board has adopted IRRC’s suggestion of the term “degree” rather than “preparation.”

§ 21.367. Faculty requirements for CRNP programs.

Regarding § 21.367(b)(1), IRRC asked about the phrases “evidence of expertise” and “when appropriate.” Evidence of expertise may be shown in many ways, through National certification, independent research and writing or work experience. Certification is only required “when appropriate” because it is common for some CRNP courses to be taught by individuals who hold credentials other than CRNP certification. For example, individuals who hold doctorate degrees in pharmacy, rather than a master’s degree in nursing, teach many advanced pharmacology courses. Other courses are taught by medical or osteopathic doctors rather than by CRNPs.

The Board also deleted the requirement in § 21.367(b)(2) that faculty members have at least 2 years of clinical nurse practitioner experience. There is a short-

age of individuals that meet the requirements to become faculty members and the Board believes that eliminating this requirement will allow more qualified individuals who are qualified to teach to become faculty members. Subsequent paragraphs were renumbered accordingly.

§ 21.369. General curriculum requirements.

IRRC questioned whether it was necessary to mention advanced pharmacology in both § 21.369(c)(2) and (4). The three pillars of advanced practice nursing are advanced health and physical assessment, advanced physiology and pathophysiology and advanced pharmacology. For this reason, advanced pharmacology must be listed in § 21.369(c)(2). The Board provides for specific regulation of the advanced pharmacology curriculum in § 21.369(c)(4). The Board does not believe that this minor duplication will provoke any confusion.

IRRC also noted that § 21.369(g) should reference § 21.373(c)(3)(ii) (relating to facility and resource requirements) to specify student to faculty ratios. The Board has added the cross-reference.

§ 21.376. Program records.

The Board amended § 21.376(b)(2)(i) to account for faculty members, such as medical doctors, who have licenses or certifications other than a nursing license or CRNP certification.

Miscellaneous Comments

Finally, IRRC raised two typographical concerns, which have been corrected. In addition, IRRC questioned whether the word "nationally" should be capitalized. The Legislative Reference Bureau capitalized this word prior to publication. The Board defers to the Legislative Reference Bureau's knowledge of proper regulatory style.

Fiscal Impact and Paperwork Requirements

The final-form rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The final-form rulemaking will impose no additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector. CRNP programs already apply to the Board for approval and submit information as set forth in this final-form rulemaking. The Board did not previously promulgate the regulations because CRNP educational programs were jointly regulated with the State Board of Medicine and a joint rulemaking was not feasible. A program seeking Board approval pays an application fee under § 21.5 (relating to fees). The Board intends to promulgate regulations to update its fees and will provide a separate fee for CRNP program approval at that time.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 4, 2004, the Board submitted a copy of the notice of proposed rulemaking, published at 34 Pa.B. 4890, to IRRC and the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) and the HPLC for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on March 14, 2006, the final-form

rulemaking was approved by the HPLC and was deemed approved by the SCP/PLC on April 18, 2006. Under section 5.1(e) of the Regulatory Review Act, IRRC met on April 19, 2006, and approved the final-form rulemaking.

Additional Information

Further information may be obtained by contacting Ann Steffanic, Administrative Assistant, State Board of Nursing, P. O. Box 2649, Harrisburg, PA 17105-2649 or from the Department of State's website: www.dos.state.pa.us.

Findings

The Board finds that:

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

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

(3) The amendments to the final-form rulemaking do not enlarge the purpose of proposed rulemaking published at 34 Pa.B. 4890.

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

Order

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

(a) The regulations of the Board, 49 Pa. Code Chapter 21, are amended by adding §§ 21.361—21.377 to read as set forth in Annex A.

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

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

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

JOANNE L. SORENSON, RN, MS,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 36 Pa.B. 2251 (May 6, 2006).)

Fiscal Note: Fiscal Note 16A-5119 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 21. STATE BOARD OF NURSING

Subchapter C. CERTIFIED REGISTERED NURSE PRACTITIONERS

APPROVAL OF CERTIFIED REGISTERED NURSE PRACTITIONER PROGRAMS

§ 21.361. General criteria for approval of programs.

(a) A CRNP program must require, at a minimum, a baccalaureate degree in nursing for admission and must culminate with a master's degree in nursing or postmaster's certificate.

(b) A CRNP program must prepare the registered nurse (RN) to function as a nurse practitioner in an expanded role in a particular specialty.

(c) A CRNP program must prepare the registered nurse to perform acts of medical diagnosis and prescription of medical, therapeutic or corrective measures in collaboration with a physician licensed to practice medicine in this Commonwealth.

(d) A CRNP program may be formed as a master's program, an RN to master's program, an RN to nursing doctorate program or a pilot or accelerated program that culminates with at least a master's degree in nursing.

§ 21.362. Annual reports and compliance reviews; list of approved programs.

(a) Approved programs must complete an annual report to the Board on a form provided by the Board. The annual report must update information regarding the program's administration, faculty, curriculum and student enrollment.

(b) Approved programs must conduct a compliance review of CRNP programs at least once every 3 years. The compliance review shall be submitted to the Board on a form provided by the Board. The compliance review must include information regarding accreditation, administration, clinical sites, faculty, curriculum, testing, educational resources and student body of the program.

(c) The Board will send a written report of recommendations or requirements, or both, including compliance deadlines, based on the CRNP program's compliance review, to the CRNP program. The Board will conduct an announced or unannounced site compliance visit at its discretion.

(d) Lists of approved CRNP programs will be compiled and published annually (the approved list) and will be made available for distribution. The approved list will consist of programs on initial, full and provisional approval status.

§ 21.363. Approval process.

(a) A program that meets and maintains the requirements of §§ 21.361, 21.365—21.369 and 21.372—21.375 will be granted full approval status.

(b) The Board will place a CRNP program on provisional approval status if, as evidenced by the compliance review or other information, the program is not in compliance with the Board's regulations. At its discretion, the Board will require progress reports or other information deemed necessary for the evaluation of a program on provisional approval status. Two years will be the maximum time allowed for the correction of the deficiencies that resulted in the program being placed on provisional approval status. If the program on provisional approval status is not in compliance within this designated time, the CRNP program will be removed from the approved list.

(c) The Board may return a CRNP program on provisional approval status to full approval status if the program attains and maintains the acceptable standards in §§ 21.365—21.377, and adheres to the policies and regulations of the Board.

§ 21.364. Removal from approved list; discontinuance of CRNP program.

(a) The Board will give at least 30 days notice of intent to remove a CRNP program from full approval status to provisional approval status or from provisional approval status to removal from the approved list and will provide

an opportunity for the program's officials to present documentation, within 10 days of notification of intent to remove, to show why approval should not be withdrawn. The Board will hold a hearing, within 30 days of the submission of documentation, at which the program official may appear and present additional evidence to show cause as to why approval should not be withdrawn. The 30 day period for holding a hearing may be waived by consent of the parties. Failure to hold a hearing within 30 days will not be cause to withdraw the notice of intent to remove.

(b) Programs planning to discontinue must follow the procedures in § 21.41 (relating to discontinuance of a program of nursing).

§ 21.365. Establishment.

(a) A CRNP program must be developed and maintained under the authority of a regionally accredited university or college or have current accreditation by the Credentialing Commission for Nurse Education or the National League of Nursing.

(b) A CRNP program must be under the direction of a faculty member who holds an active certification as a Pennsylvania CRNP and an earned doctorate degree or a specific plan for and evidence toward completion of the doctoral degree within 5 years. The length of appointment of temporary and acting directors of CRNP programs may not exceed 1 year.

(c) A university or college may conduct CRNP programs within the graduate program of the university or college where it resides, if the college or university has a professional nurse program and the philosophy of the parent institution encompasses dual programs of education. A college or university desiring to establish a program of nursing is required to:

(1) Submit a proposal to the Board, at least 12 months prior to the first intended admission of students, which includes the following:

(i) Sufficient statistical data to support the need for a CRNP program within the community and to assure availability of an adequate number of interested candidates.

(ii) Letters of intent from the cooperating agencies indicating positive commitment to the CRNP program and the availability of sufficient clinical resources to meet the educational requirements of the CRNP program.

(iii) The projected cost of the CRNP program including costs for faculty, clinical teaching resources, educational supplies, office supplies, and the like, and sufficient evidence of stable financial support.

(2) Employ the director of the CRNP program prior to the intended admission date of students.

(d) The planned CRNP educational program proposal must include:

(1) A statement of the organization and administrative policies of the college or university.

(2) A statement of the administrative structure and functions of the nursing school.

(3) A statement of the educational preparation and nursing experience of faculty members employed, which conforms to § 21.367(b) (relating to faculty requirements for CRNP programs).

(4) A statement of the philosophy, purposes and objectives of the program, which are congruent with the philosophy of the university or college.

(5) A statement of the curriculum, based on sound educational concepts, and including detailed course descriptions, objectives and descriptions of the relevant clinical practice related to the specialty area.

(6) A statement of admissions policies.

(7) A statement identifying the National educational standards and guidelines used in the development of the nursing practitioner program.

(8) Statements of financial viability for 5 years.

(9) A description of the clinical facilities.

(e) Following the review of the CRNP program proposal and before final Board action is taken to grant permission to recruit students, an initial facility survey may be made by the designee of the Board.

§ 21.366. Organizational requirements.

(a) The CRNP program must be a definable entity distinguishable from other educational programs and services within the institution.

(b) Relationships with central administrative officers, interrelationships among other disciplines and services of the college or university, and representation on college or university councils and committees for faculty in a CRNP program must be consistent with the interaction and responsibilities accorded to other faculty members of the college or university.

(c) Adequate funds shall be allocated and properly budgeted for the sound and effective operation of the CRNP program.

(d) Policies in effect for faculty members of the CRNP program must be those in effect for faculty members throughout the college or university.

(e) The resources, facilities and services of the college or university must be available to and used by the CRNP program and be adequate to meet the needs of the faculty and students.

§ 21.367. Faculty requirements for CRNP programs.

(a) The minimum faculty requirements submitted under § 21.365(d)(3) (relating to establishment) for the program are:

(1) Qualified faculty members teaching in their areas of specialized practice encompassed within the curriculum.

(2) Additional faculty members as needed to insure an educationally effective student-faculty ratio.

(b) Faculty qualifications for clinical courses in the CRNP program are as follows:

(1) Faculty members shall provide evidence of expertise in their subject areas, and when appropriate, be currently licensed and certified in this Commonwealth and hold and maintain National certification. Faculty members already employed in a CRNP program who do not hold National certification in their area of specialization shall obtain National certification, if available, by June 3, 2008.

(2) Faculty members shall give evidence of maintaining expertise in their clinical or functional areas of specialization.

(3) Faculty members shall maintain currency in clinical practice through ongoing clinical practice.

(4) Faculty members shall meet specialty requirements for continuing competency in accordance with their educational program responsibilities.

§ 21.368. Faculty policies.

(a) The faculty shall be employed by and be responsible to the college or university.

(b) Policies, including personnel policies in effect for CRNP program faculty, must be those in effect for faculty members throughout the college or university.

(c) Functions and responsibilities of each faculty member shall be defined in writing.

(d) Teaching hours of CRNP faculty must be consistent with the policies of the college or university.

§ 21.369. General curriculum requirements.

(a) The curriculum shall be developed, implemented and evaluated by the faculty and be based on the philosophy and objectives of the school.

(b) The curriculum must be organized and developed to include the knowledge, attitudes, skills and abilities necessary for practice as a CRNP and in accordance with this chapter as related to CRNP practice.

(c) The curriculum must provide for both clinical and theoretical experiences. The curriculum must have the following components incorporated into each CRNP program:

(1) *Graduate nursing core.* The graduate nursing core must include the following content:

(i) Research.

(ii) Health care policy and organization.

(iii) Ethics.

(iv) Professional role development.

(v) Theoretical foundations of nursing practice.

(vi) Human diversity and social issues.

(vii) Health promotion and disease prevention.

(2) *Advanced nursing practice core.* The advanced nursing practice core must include the following content:

(i) Advanced health/physical assessment.

(ii) Advanced physiology and pathophysiology.

(iii) Advanced pharmacology.

(3) *Specialty content.* The CRNP student shall receive sufficient clinical experience to provide depth and breadth in a given specialty or with designated populations, geared to nurse practitioner practice. Clinical hours must meet at least National certification requirements with a minimum of 500. Additional hours must be provided for specialties that provide care to multiple age groups (for example, family CRNPs) or for those who will practice in multiple care settings. When defining additional clinical hours, the complexity of the specialty content, as well as the need for clinical experience to enhance retention and skills, shall be considered. The expected graduate competencies must be the key determinant of the clinical component.

(4) *Advanced pharmacology.*

(i) CRNP program graduates shall have a well-grounded understanding of pharmacologic principles, which includes the cellular response level. This area of core content must also include both pharmacotherapeutics and pharmacokinetics of broad categories of pharmacologic agents. Advanced pharmacology shall be taught in a separate or dedicated 3-credit or 45-hour course. Pharmacology content shall also be integrated into the other content areas identified in the advanced

practice nursing core. Additional application of this content shall also be presented within the specialty course content and clinical experiences of the program to prepare the CRNP to practice within a specialty scope of practice.

(ii) The purpose of this content is to provide the graduate with the knowledge and skills to assess, diagnose and manage (including the prescription of pharmacologic agents) a patient's common health problems in a safe, high quality, manner.

(iii) The course work must provide graduates with the knowledge and skills to:

(A) Comprehend the pharmacotherapeutics of broad categories of drugs.

(B) Analyze the relationship between pharmacologic agents and physiologic/pathologic responses.

(C) Understand the pharmacokinetics and pharmacodynamics of broad categories of drugs.

(D) Understand the motivations of clients in seeking prescriptions and the willingness to adhere to prescribed regimens.

(E) Safely and appropriately select pharmacologic agents for the management of client health problems based on client variations, the problem being managed, and cost effectiveness.

(F) Provide comprehensive and appropriate client education in relation to prescribed pharmacologic agents.

(G) Analyze the effects of single and multiple drug regimens on the client's health and functioning.

(H) Understand the variety of State legal requirements for CRNP prescriptive authority.

(I) Fulfill legal requirements for writing prescriptions as a CRNP in this Commonwealth in accordance with §§ 21.283—21.387.

(5) *Professional role content.* The course work must provide graduates with curriculum in:

- (i) Management of client health/illness status.
- (ii) The nurse-client relationship.
- (iii) The teaching-mentoring function.
- (iv) Professional role.
- (v) Managing and negotiating health care delivery systems.
- (vi) Monitoring and ensuring the quality of health care practice.

(d) The instructional strategies must be appropriate and consistent with the program's philosophy, mission and objectives.

(e) The clinical facilities of the CRNP program must provide a variety of experiences with sufficient quality and quantity. Clinical experiences must be consistent with the scope of practice.

(f) CRNP courses and curriculum must be organized to continue the development of values, understandings, knowledge and skills needed in all aspects of practice as a CRNP and emphasize specialty areas.

(g) The ratio of students to faculty must insure optimal learning opportunities in clinical laboratory sessions, be consistent with the objectives of the CRNP courses, and comply with § 21.373(c)(3)(ii) (relating to facility and resource requirements).

(h) The curriculum for CRNP programs must give evidence of providing learning experiences which will prepare graduates for CRNP practice. The standards of practice are defined and delineated by the profession and §§ 21.18 and 21.284 (relating to standards of nursing conduct; and prescribing and dispensing parameters).

(i) Course syllabi that identify all aspects of each course must be developed and readily available.

§ 21.370. Evaluation.

(a) As part of the CRNP program approval process, the CRNP program shall submit an outline of, and appropriate time line for, its planned evaluative process. The evaluative process must include, at a minimum, the following:

(1) A self-evaluation process completed by faculty, administrators and students of the CRNP program evidencing input into the CRNP program by faculty, administrators and students. The self-evaluative process must include:

- (i) Peer evaluation of teacher effectiveness.
- (ii) Student evaluation of teaching and program effectiveness.
- (iii) Periodic evaluation of the program by faculty, students and graduates of the program.

(iv) Periodic evaluation of the program's human and fiscal resources, program policies, facilities and services.

(2) Provisions for the program's curriculum evaluation process, completed by faculty, students and graduates of the program. The curriculum must:

- (i) Assess the program's effectiveness relative to current standards of practice.
- (ii) Assess the program's effectiveness relative to current trends in education and health care.
- (iii) Assess the program's effectiveness in attaining program objectives.

(iv) Demonstrate that curriculum changes have been evaluated by the CRNP program faculty and are consistent with core competencies in the CRNP specialties.

(3) Provision for ongoing student evaluative process that assesses the student's progress toward and ultimate achievement of program objectives. The student evaluative process must:

- (i) Be evident in the course outlines provided to students at the beginning of each course.
- (ii) Include documentation of faculty-supervised performance evaluation of students.
- (iii) Utilize evaluation tools that reflect nurse practitioner National competencies in the specialty areas.

(iv) Include student evaluation of the quality of clinical experiences.

(b) Programs must measure outcomes of graduates at 1-year and 3-year intervals postgraduation.

§ 21.371. Curriculum changes requiring Board approval.

Curriculum changes that require Board approval include changes in:

(1) Program objectives, course content or instruction that affect the integration of material into the total curriculum.

(2) An approved program which deems a new or different certification specialty title for graduates of that program requires approval as a new CRNP education program.

§ 21.372. CRNP program philosophy; purposes and objectives.

(a) A clear statement of philosophy and purposes of the CRNP program, consistent with the philosophy and purposes of the college or university, shall be formulated and adopted.

(b) The philosophy, purposes and objectives of the CRNP program shall be developed and clearly stated by the faculty and be reviewed and revised at stated time intervals by this group.

(c) The philosophy and purposes of the CRNP program must be consistent with currently accepted social, educational and CRNP standards.

§ 21.373. Facility and resource requirements.

(a) The support of the college or university must be adequate to meet CRNP program needs and include the following:

- (1) Faculty and staff offices.
 - (2) Classrooms, conference rooms and laboratories.
 - (3) Administrative and secretarial support.
 - (4) Interactive information systems (computer/technical support) sufficient to develop, manage and evaluate the program.
- (b) There must be current, appropriate, adequate and available learning resources to include audio/visual equipment, computers and library materials.

(c) The CRNP program must provide appropriate clinical resources and experience for students, including:

- (1) Space for faculty's and students' needs.
- (2) Exposure of appropriate duration to a patient population sufficient in number to insure that the student will meet program goals.
- (3) Faculty to provide adequate supervision and evaluation.
 - (i) Supervision of all students in the clinical areas is the responsibility of the CRNP program faculty.
 - (ii) One program faculty member shall supervise no more than six students in a clinical course. If faculty are providing onsite preceptorship, the maximum ratio is two students per faculty member. If faculty are managing their own caseload of patients, the maximum ratio is one student per faculty member.
 - (iii) Onsite clinical preceptors may include:
 - (A) Advanced practice nurses who are currently licensed.
 - (B) Physicians who are currently licensed.
 - (C) CRNPs who are currently licensed and certified.

§ 21.374. Selection and admission standards.

(a) Policies and procedures related to the selection and admission of students are the responsibility of the individual program. Consideration must be given to scholastic aptitude, academic achievement, personal qualities and physical and emotional health necessary to fulfill the objectives of the program.

(b) Students admitted to CRNP programs shall meet the requirements for admission to the university or college for a master's degree in nursing program and additional requirements that may be established for the CRNP program.

(c) Students admitted to CRNP programs shall have successfully completed the equivalent of a baccalaureate degree in nursing from an accredited institution of higher learning in a nursing program.

(d) Students admitted to CRNP programs shall be currently licensed as a registered nurse (RN) or, if enrolled in an RN to Master of Science in Nursing (MSN) or RN to Nursing Doctorate (ND) program, shall complete all competencies for undergraduate requirements prior to taking graduate courses.

§ 21.375. Advanced standing.

The school shall have a written policy consistent with its philosophy and objectives concerning criteria for granting advanced standing. The policy of master's degree programs must be consistent with that of the college or university.

§ 21.376. Program records.

(a) The program shall employ a record system that ensures the operation of the program. Records shall be maintained in locked files which assure their safe keeping.

(b) Each nursing faculty shall select record forms specifically for the CRNP program that include the following:

(1) Student records, including the permanent record, containing both clinical and theoretical experience and achievement, shall be kept for 50 years.

(2) Faculty records, including the following:

- (i) "Display portion" of current Pennsylvania licenses and certifications.
 - (ii) Records of preparation and experience, including official college transcripts.
 - (iii) Current records of continuing education activities.
 - (iv) Records of National certification, if applicable.
- (3) Administrative records, including the following:
- (i) Affiliation agreements with cooperating agencies.
 - (ii) Minutes of meetings.
 - (iii) Annual reports.
 - (iv) Follow-up studies of graduates.
 - (v) Budgets.
 - (vi) Current written policies.

(4) School bulletins, including the following:

- (i) Comprehensive and current information.
- (ii) Clearly defined refund policies governing fees and tuition paid by the students.
- (iii) Clearly defined policies relating to admission, promotion, retention, transfer, advanced placement and dismissal.

§ 21.377. Custody of records.

(a) When a program closes, the college or university is responsible for the safekeeping of the records of students for at least 50 years after graduation of the last class.

(b) If the college or university also closes, advice should be obtained from the Board concerning the permanent safekeeping and availability of the records of the school of nursing.

(c) The Board shall be informed in writing concerning the permanent placement of these records.

[Pa.B. Doc. No. 06-973. Filed for public inspection June 2, 2006, 9:00 a.m.]

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STATE BOARD OF NURSING
[49 PA. CODE CH. 21]

Fees for Approval of Nursing Education Programs

The State Board of Nursing (Board) amends §§ 21.5, 21.147 and 21.253 (relating to fees).

Notice of proposed rulemaking was published at 35 Pa.B. 5522 (October 8, 2005). Publication was followed by a 30-day public comment period during which the Board did not receive any comments from the public. On November 22, 2005, the House Professional Licensure Committee (HPLC) submitted one comment. The Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) made no comments. On December 7, 2005, the Independent Regulatory Review Commission (IRRC) issued a letter stating that it had no objections, comments or recommendations to offer on the proposed rulemaking and noted that if the final-form rulemaking was submitted without revisions and the SCP/PLC and the HPLC did not take action, it would be deemed approved.

Comment and Response

The HPLC requested detailed information regarding the process for approving new education programs and the fiscal process used for determining the new fees.

As noted in the Board's proposed rulemaking, the Board reviews nursing educational programs with the assistance of its nursing education advisors, who are individuals with a minimum of a master's degree in nursing under section 2.1(i) of the Professional Nursing Law (RN Act) (63 P.S. § 212.1(i)). The procedure for reviewing an application for approval of a new nursing education program requires that the Board staff conduct an in-depth review and analysis of the application, including review of the budget, curriculum, faculty and clinical experiences.

Representatives of controlling institutions proposing development of a new nursing education program are required to submit a feasibility study addressing their intent. The feasibility study may be submitted in one or two phases. Most institutions choose to submit the study in two phases. The program must gather data to prepare Phase I of the feasibility study and submit the data in an organized format to the Board staff.

Board staff reviews the study to determine compliance with the Board's regulations. This review is extensive and requires Board staff to determine if the program is in compliance with the controlling institution's policies and procedures, if any other regulatory or accrediting bodies (such as the Department of Education, financial aid providers and institutional and programmatic accrediting bodies) have standards and whether the proposal meets these standards.

Board staff reviews the study to determine if the program has provided compelling regional labor statistics regarding the need for the type of licensee in the projected geographic area and potential local and regional employment opportunities for graduates.

Board staff reviews the study to determine whether the proposal has adequately addressed the potential impact on other nursing education programs within the geographic area (generally considered a 50-mile radius from the proposed program). This determination involves assessment of the locale, region, state or states from which the proposed and existing programs draw students to determine whether there are waiting lists or more applicants than the existing programs can admit annually. In addition, Board staff must consider whether the existing programs utilize the clinical sites the proposed program is proposing to use, and if so, analyze the possible effects on clinical experiences for the students of both the existing and proposed programs.

Board staff also review the projected student enrollment for the first and subsequent classes, the number of classes to be admitted annually and the projected time frame for planning and initiating the program, including the submission of the Phase II feasibility study, hiring of the program administrator and faculty and so forth.

Board staff reviews the controlling institution's accreditation status and date of next scheduled review. In addition, Board staff reviews the education mission of the controlling institution and the types of programs and degrees offered. Board staff considers whether the controlling institution operates satellite programs where the presence of this technologic capability impacts the proposed new nursing education program. Board staff reviews the organizational chart to determine whether the relationship of the proposed new program to the controlling institution complies with Board regulations.

Board staff reviews the job descriptions and suggested teaching/administrative hours of proposed faculty and staff for compliance with Board regulations. If faculty/staff have already been hired, Board staff determines whether the faculty/staff qualifications are consistent with the Board's regulations.

Board staff reviews the new program's philosophy and mission statement to determine congruence with that of the controlling institution. Board staff reviews the suggested curriculum and course descriptions. For practical nursing programs, Board staff reviews the hours required for program completion.

Board staff reviews the proposed physical location to be committed to the program, including staff and faculty office space, classrooms, laboratory, library and storage areas. Board staff determines if the proposed physical location is adequate to support the number of students the program has anticipated. Board staff reviews any submitted environmental or safety compliance documents submitted. Finally, Board staff carefully reviews the Agency Data Forms that must be submitted for each clinical site the program intends to use to determine whether sufficient and meaningful clinical experiences will be available for the proposed and existing programs.

Board staff also reviews the submitted budget to determine whether it is consistent with other nursing education programs of the same type operating in a similar geographic area within this Commonwealth.

Board staff offers feedback to the program within 3 to 4 weeks of receipt of the Phase I feasibility study. The program then responds to the feedback and may need to

submit a revised proposal. The program may also request additional feedback or assistance from the Board staff. When the Phase I study is ready for submission to the Board, Board staff provides the Board with a written review of the proposal's strengths and weaknesses, impact on existing programs and recommendation to accept the proposal or request additional information.

Once the Board has reviewed the Phase I study and the staff's report, the Board discusses the proposal at a Board meeting and votes on the acceptance of the study. This vote authorizes the program to prepare and submit the Phase II feasibility study. Board staff provides written verification of the Board's action to the program.

The program then prepares its Phase II study and submits it to Board staff for review. Board staff again reviews the Phase II study on behalf of the Board. The Phase II study is more focused. Staff reviews the qualifications of the proposed director and nursing faculty and academic policies. In addition, staff reviews the master plan of the curriculum proposed, including detailed course descriptions and sample of the student clinical evaluation tool. This review includes a determination of whether the program evidences an adequate number of suitably scheduled core courses that prepare the students to enter the practice of nursing at the level proposed.

Board staff reviews the construction or renovation of the proposed physical facilities and the list of educational resources, equipment, supplies and library resources that have been purchased or will be purchased for the program. Board staff conducts a site survey and reviews the physical facilities, such as classroom space, library holdings and nursing equipment.

Board staff reviews the admission policies and criteria to determine congruence with the controlling institution. Board staff reviews the proposed progression and graduation criteria, grading policies and advanced placement policies. Recordkeeping is also examined to ensure compliance with Board regulations.

Board staff offers feedback to the program within 3 to 4 weeks of receipt of the Phase II feasibility study. The program then responds to the feedback and may need to submit a revised proposal. The program may also request additional feedback or assistance from the Board staff. When the Phase II study is ready for submission to the Board, Board staff provides the Board with a written review of the proposal's strengths and weaknesses, impact on existing programs and recommendation to accept the proposal or request additional information.

Once the Board has reviewed the Phase II study and the staff's report, the Board discusses the proposal at a Board meeting and votes on the acceptance of the study. This vote authorizes the program to admit students and begin operation of the new nursing education program.

The HPLC also requested a more detailed description of the fiscal process used to arrive at the new fees. Fees that are based on services provided are calculated to offset the identifiable costs incurred by the Board and to defray a portion of the Board's administrative overhead. The Department of State Revenue Office identified the following cost categories for provision of the service of approving a nursing education program: staff time to review and prepare the application, Board administrator time to prepare the application for the Board, Board counsel time to review the application for legal issues, Board meeting time for the Board to review and discuss the application, nursing education advisor time to evaluate the application and draft a proposal to the Board, executive secre-

tary time per application and a portion of administrative overhead. When the fee is related to time spent by an individual or individuals, the fee is based on the average wage of the individual performing the task, with an added 31% to account for nonwage benefits.

For each of the three types of nursing education programs, staff time to review and prepare the application was estimated at 15 minutes, or \$4.27. Staff at this level would open the package sent by the program seeking approval, ensure that the proper number of copies had been provided, make any additional copies needed and forward the application through interoffice mail to other appropriate staff. The staff is also responsible for date stamping the application and logging its submission.

The time estimated for the Board's nursing education advisor to review the application is 21 hours for registered nurse (RN) and licensed practical nurse (LPN) programs and 15 hours for certified registered nurse practitioner (CRNP) programs, or \$695.31 and \$496.65, respectively. The review process was outlined in response to the HPLC's first comment. The review time varies widely depending on the knowledge and skill of the individuals preparing the application. The Board's nursing education advisors have spent over 100 hours on a single application. Other applications take less than 21 hours to review. CRNP program applications are more polished and are always prepared by professional-level university staff. Therefore, the average time to review these applications is less than the average time to review applications for RN and LPN programs.

For each of the three types of nursing education programs, Board counsel time to review legal issues was estimated at 30 minutes, or \$18.90. The Board's counsel works with the Board's nursing education advisors to review compliance with the Board's regulations. Because the Board counsel's review is limited to legal issues, the time involved is substantially less than the time required by the nursing education advisor.

For each of the three types of nursing education programs, the Board meeting time is estimated at 30 minutes, or \$196.14. Board meeting costs are calculated by adding per diem and travel expenses for Board members and dividing the result by the total hours the Board meets within a fiscal year to calculate an hourly cost. The figure for this final-form rulemaking was based on 12 Board members being compensated at the statutorily authorized rate of \$60 per diem, or \$720. In 2005, the Board met 18 days, so the total per diem paid to Board members was \$720 times 18, or \$12,960. Board meeting costs also include the annual expense for Board members to travel to Board meetings. The estimated travel expenses for the year, submitted for budget approval, are \$40,000. The total cost, \$12,960 + \$40,000, is \$52,960. The total cost is then divided by the number of hours (7 1/2 hours per day times 18 meeting days, or 135 hours), to obtain a per hour cost of \$392.29. Because the Board meeting time is estimated at 30 minutes, the fee for this part of the service was estimated at \$196.14.

For each of the three types of nursing education programs, Board administrator time to prepare the application was estimated at 4.8 minutes, or \$2.03. The Board administrator is responsible for drafting the formal correspondence to the program when the program has been approved.

For each of the three types of nursing education programs, an administrative overhead charge of \$11.50 was estimated.

Statutory Authority

The final-form rulemaking is authorized under section 11.2 of the RN Act (63 P. S. § 221.2) and section 17.5 of the Practical Nurse Law (PN Act) (63 P. S. § 667.5).

Fiscal Impact and Paperwork Requirements

The final-form rulemaking will increase the fee for approval of professional and practical nursing education programs by \$460. From 1993 to 2004, the Board has approved approximately 13 new professional nursing programs and 12 new practical nursing programs. If the numbers are consistent for the next 11-year time period, the overall increase will be \$11,500 or \$1,045 per year. The final-form rulemaking increases the fee for CRNP nursing education programs by \$260. The Board has approved 30 CRNP nursing education programs since 1993 and anticipates only a handful of new CRNP programs over the next 11 years. The Board will realize savings to its general operating budget by having the fee for the service of approving nursing education programs accurately reflect the cost of the service provided. There is no fiscal impact on the Commonwealth from the final-form rulemaking.

The final-form rulemaking will not create or reduce paperwork requirements for nursing education programs seeking approval or for the Board. There are no paperwork requirements on the Commonwealth regarding the approval of nursing education programs.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 26, 2005, the Board submitted a copy of the notice of proposed rulemaking, published at 35 Pa.B. 5522, to IRRC and the Chairpersons of the HPLC and the SCP/PLC for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on April 4, 2006, the final-form rulemaking was approved by the HPLC and was deemed approved by the SCP/PLC on April 18, 2006. Under section 5(g) of the Regulatory Review Act, the final-form rulemaking was deemed approved, effective April 18, 2006.

Additional Information

Additional information may be obtained by writing to Ann Steffanic, Board Administrator, State Board of Nursing, P. O. Box 2649, Harrisburg, PA 17105-2649.

Findings

The Board finds that:

- (1) Public notice of intention to adopt these amendments has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law and no comments were received.
- (3) This final-form rulemaking is necessary and appropriate for the administration of the RN Act and the PN Act.

Order

The Board therefore orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 21, are amended by amending §§ 21.5, 21.147 and 21.253 to read as set forth at 35 Pa.B. 5522.

(b) The Board shall submit a copy of this order and 35 Pa.B. 5522 to the Office of the Attorney General and the Office of General Counsel for approval as required by law.

(c) The Board shall certify this order and 35 Pa.B. 5522 and deposit them with the Legislative Reference Bureau as required by law.

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

JOANNE L. SORENSEN, RN, MS,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 36 Pa.B. 2251 (May 6, 2006).)

Fiscal Note: Fiscal Note 16A-5127 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 06-974. Filed for public inspection June 2, 2006, 9:00 a.m.]

STATE BOARD OF PODIATRY
[49 PA. CODE CH. 29]
Professional Liability Insurance

The State Board of Podiatry (Board) amends §§ 29.51—29.54 (relating to licensure applications) to read as set forth in Annex A.

Effective Date

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

Statutory Authority

The final-form rulemaking is authorized under section 15 of the Podiatry Practice Act (63 P. S. § 42.15) and the Medical Care Availability and Reduction of Error (MCARE) Act (MCARE Act) (40 P. S. §§ 1303.101—1303.910).

Background and Purpose

The Health Care Services Malpractice Act (40 P. S. §§ 1301.101—1301.1004), including provisions that relate to requirements for the maintenance of professional liability insurance by podiatrists, has been repealed and replaced by the MCARE Act. This final-form rulemaking amends the Board's current regulations by eliminating references to the Health Care Services Malpractice Act and replacing them with references to the MCARE Act. In addition, the final-form rulemaking more clearly notifies the Board's licensees that they must carry liability insurance as set forth in the MCARE Act.

Description of Amendments

Section 303 of the MCARE Act (40 P. S. § 1303.303) lists "podiatrist" as a health care provider. Section 702 of the MCARE Act (40 P. S. § 1303.702) defines "participating health care provider" as "[a] health care provider as defined in section 103 that conducts more than 20% of its health care business or practice within this Commonwealth." In compliance with these provisions of the MCARE Act, § 29.51 (relating to applicants) is amended

to require an applicant for licensure to inform the Board as to what percentage of the applicant's practice is conducted in this Commonwealth.

Section 29.52 (relating to requirements for applicants) is amended to require applicants for licensure or licensees applying for biennial renewal who practice in this Commonwealth to furnish satisfactory proof to the Board that they are complying with the MCARE Act. The final-form rulemaking also deletes references to minimum amounts of liability insurance that were required by the repealed Health Care Services Malpractice Act. A technical correction was made to § 29.52(a) to provide parallel construction within the subsection.

Section 29.52(c) is amended to add a statement requiring the Board's licensees to carry liability insurance or an approved self-insurance plan as required by the MCARE Act. In addition, a statement was added to clarify that licensees must be insured for all professional services the licensee performs. For example, a licensee may only perform surgery if the licensee carries surgical liability insurance.

Section 29.53 (relating to original license) requires podiatrists applying for original licensure to furnish the Board with proof of professional liability insurance. The Board deleted outdated references to the Arbitration Panels and the CAT fund.

Section 29.54 (relating to penalty), which provides the podiatrist with notice that failure to comply with liability insurance requirements will result in discipline, was amended to replace the reference to the repealed Health Care Services Malpractice Act with the MCARE Act.

Comment and Regulatory Review of Proposed Rulemaking

Publication of the proposed rulemaking at 34 Pa.B. 4902 (September 4, 2004), was followed by a 30-day public comment period. The Board received no public comments.

Following the close of the public comment period, the Board received comments from the House Professional Licensure Committee (HPLC) and the Independent Regulatory Review Commission (IRRC). The Board did not receive comments from the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC).

Existing § 29.52(b) provides that licensees practicing solely as Federal employees are not required to participate in the professional liability insurance program or to comply with the Health Care Services Malpractice Act. As proposed, § 29.52(b) would be amended to replace Health Care Services Malpractice Act with the MCARE Act. The HPLC asked the Board to confirm that the MCARE Act did not apply to Federal employees. IRRC commented that subsection (b) should be deleted in its entirety unless the Board could justify the statutory authority for its position.

The definition of "government" in section 702 (40 P.S. § 1303.702) of the MCARE Act is the same as the definition of "government" in section 103 of the Health Care Services Malpractice Act (40 P.S. § 1301.103). Similarly, section 711(i) of the MCARE Act (40 P.S. § 1303.711(i)), which states that governmental entities may satisfy their obligations under the MCARE Act, and the obligations of their employees, by purchasing insurance or self insuring is a restatement of section 701(c) of

the Health Care Services Malpractice Act (40 P.S. § 1301.701(c)). Section 711(i) of the MCARE Act also requires government entities to pay assessments to the Commonwealth Medical Care Availability and Reduction of Error Fund. In interpreting the relevant provisions of the Health Care Services Malpractice Act, a Pennsylvania Attorney General Opinion ruled that that "[h]ealth care providers employed by the Federal government do not have to comply with the fee and insurance provisions of [the Health Care Services Malpractice Act]." 1976 Op. Atty. Gen. No. 4. The Opinion relied upon the Federal Tort Claims Act (28 U.S.C.A. § 2679(d)(1)) which provides that "[u]pon certification by the [United States] Attorney General that the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose . . . the United States shall be substituted as the party defendant." The purpose of this amendment to the Federal Tort Claims Act was to "remove the potential personal liability of Federal employees for common law torts committed within the scope of their employment, and . . . instead provide that the exclusive remedy for such torts is through an action against the United States under the FTCA." H.R. Rep. No. 700, 100th Cong., 2d Sess. 4 (1988).

Inasmuch as there is no substantive difference between the language of the two acts, the Board believes that the MCARE Act insurance provisions were not intended to reverse the Attorney General's ruling and that the existing language of § 25.52(b) should not be deleted.

The HPLC also suggested that if the Board found that licensees employed by the Federal government do not have to comply with the MCARE Act, the Board should rewrite § 29.52(b) so that, if the Federal government changes its policy, licensees employed by the Federal government may comply with the MCARE Act. Section 29.52(b) does not prohibit licensees who are employed by the Federal government from complying with the MCARE Act. Rather, § 29.52(b) provides that these licensees are not required to comply with the MCARE Act. For this reason, the Board believes that § 29.52(b) will apply whether or not the Federal government changes its policy.

IRRC recommended that the Board amend § 29.53 to mirror section 711(b) of the MCARE Act, which requires health care providers to "submit proof of insurance or self-insurance to the department within 60 days of the policy being issued." The Board has complied with IRRC's recommendation by changing its original 90-day requirement to 60 days.

IRRC further recommended that the citations to the MCARE Act in §§ 29.52(a) and 29.54 be specific to the subjects in these sections. The Board believes that it is incumbent upon the licensee to be familiar with the relevant provisions of the MCARE Act regarding podiatrists. For this reason, the Board respectfully declines IRRC's recommendation.

Fiscal Impact and Paperwork Requirements

The final-form rulemaking should have no fiscal impact on the Commonwealth or its political subdivisions. Likewise, the final-form rulemaking should not necessitate any legal, accounting, reporting or other paperwork requirements.

Sunset Date

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 23, 2004, the Board submitted a copy of the notice of proposed rulemaking, published at 34 Pa.B. 4902, to IRRC and the Chairpersons of the HPLC and the SCP/PLC for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on April 4, 2006, the final-form rulemaking was approved by the HPLC. On April 18, 2006, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on April 19, 2006, and approved the final-form rulemaking.

Contact Person

Further information may be obtained by contacting Gina Bittner, Board Administrator, State Board of Podiatry, Post Office Box 2649, Harrisburg, PA 17105-2649, gbittnerstate.pa.us.

Findings

The Board finds that:

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

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

(3) This final-form rulemaking does not enlarge the purpose of proposed rulemaking published at 34 Pa.B. 4902.

(4) This final-form rulemaking is necessary and appropriate for administering and enforcing the act.

Order

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

(a) The regulations of the Board, 49 Pa. Code Chapter 29, are amended by amending §§ 29.51—29.54 to read as set forth in Annex A.

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

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

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

S. RONALD MILLER, D.P.M.,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 36 Pa.B. 2251 (May 6, 2006).)

Fiscal Note: Fiscal Note 16A-447 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 29. STATE BOARD OF PODIATRY

LICENSURE APPLICATIONS

§ 29.51. Applicants.

On applications for licensure or the biennial renewal of a license, the applicant shall answer the following three questions:

(1) Using as a base the number of patients served in an annual period, what percentage of your practice is in Pennsylvania?

0% _____ 1—20% _____ 21% or more _____ .

(If the answer to question (1) is 0%, or if practicing only as a Federal employee, (2) and (3) need not be answered.)

(2) Name of professional liability insurance carrier:

(3) Policy No.

§ 29.52. Requirements for applicants.

(a) Applicants for licensure or licensees applying for biennial renewal, who practice in this Commonwealth, shall furnish satisfactory proof to the Board that they are complying with the Medical Care Availability and Reduction of Error (MCARE) Act (40 P. S. §§ 1303.101—1303.910), in that the applicant or licensee, if required by the act and the rules and regulations pertaining thereto, is maintaining the required amount of professional liability insurance or an approved self-insurance plan, and has paid the required fees and surcharges.

(b) Licensees practicing solely as Federal employees are not required to participate in the professional liability insurance program, nor are they required to comply with the MCARE Act.

(c) Licensees practicing podiatry in this Commonwealth shall carry at least the minimum amount of professional liability insurance or an approved self-insurance plan as set forth in the MCARE Act. The licensee shall carry liability insurance or an approved self-insurance plan to cover all professional services performed by the licensee. Licensees who do not practice in this Commonwealth are not required to comply with the MCARE Act.

§ 29.53. Original license.

A podiatrist applying for an original license to practice podiatry shall, within 60 days after receipt of the podiatrist's original license, furnish the Board with the information required in § 29.51 (relating to applicants), and proof of professional liability insurance as required by § 29.52(a) (relating to requirements for applicants).

§ 29.54. Penalty.

Failure to comply with the Medical Care Availability and Reduction of Error (MCARE) Act (40 P. S. §§ 1303.101—1303.910), the regulations issued thereunder, and this subchapter will result in a suspension or revocation of the licensee's license after a formal hearing before the Board.

[Pa.B. Doc. No. 06-975. Filed for public inspection June 2, 2006, 9:00 a.m.]

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

[49 PA. CODE CH. 39]

Biennial Renewal Fees

The State Board of Examiners of Nursing Home Administrators (Board) amends § 39.72 (relating to fees) to read as set forth in Annex A. The final-form rulemaking increases the biennial license renewal fee for nursing home administrators from \$108 to \$297.

Effective Date

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

Statutory Authority

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

Background and Need for Amendments

The Board's current biennial license renewal fee for nursing home administrators was established by regulation at 24 Pa.B. 6564 (December 31, 1994). Under section 7.1(a) of the act, the Board is required by law to support its operations from the revenue it generates from fees, fines and civil penalties. In addition, the act provides that the Board must increase fees if the revenue raised by fees, fines and civil penalties is not sufficient to meet expenditures over a 2-year period. The biennial renewal fees fund nearly all of the Board's costs.

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

2001-2002 beginning balance	178,883.59
FY 01-02 revenue	44,149.67
Adjust. for prior year expenses	4,265.43
FY 01-02 expenses	164,000.00
Remaining balance	54,767.83
2002-2003 beginning balance	54,767.83
FY 02-03 revenue	249,850.03
Prior year returned funds	0.00
FY 02-03 expenses	182,000.00
Remaining balance	122,617.86
2003-2004 beginning balance	122,617.86
FY 03-04 revenue	229,599.72
Prior year returned funds	0.00
FY 03-04 expenses	235,000.00
Remaining balance	117,217.58
2004-2005 beginning balance	117,217.58
FY 04-05 projected revenue	60,000.00
Prior year returned funds (estimated)	20,000.00
Adjust. for prior year expenses (estimated)	85,929.11
FY 04-05 projected expenses	240,000.00
Remaining balance	(128,711.53)
2005-2006 beginning balance	(128,711.53)
FY 05-06 projected revenue	250,000.00
FY 05-06 projected expenses	247,000.00
Remaining balance	(125,711.53)
2006-2007 beginning balance	(125,711.53)
FY 06-07 projected revenue	60,000.00
FY 06-07 projected expenses	254,000.00
Remaining balance	(319,711.53)
2007-2008 beginning balance	(319,711.53)
FY 07-08 projected revenue	250,000.00
FY 07-08 projected expenses	262,000.00
Remaining balance	(331,711.53)
2008-2009 beginning balance	(331,711.53)
FY 08-09 projected revenue	60,000.00
FY 08-09 projected expenses	270,000.00
Remaining balance	(541,711.53)
2009-2010 beginning balance	(541,711.53)
FY 09-10 projected revenue	250,000.00
FY 09-10 projected expenses	278,000.00
Remaining balance	(569,711.53)
2010-2011 beginning balance	(569,711.53)
FY 10-11 projected revenue	60,000.00
FY 10-11 projected expenses	286,000.00
Remaining balance	(795,711.53)

As the previous table indicates, the BFO estimates that at the close of FY 2004-2005, the Board's expenses will exceed its revenues by \$128,711.53. The BFO anticipates that in subsequent fiscal years, the Board's expenses will continue to exceed its revenues. Without an increase, the projected deficit in FY 2010-2011 would be \$795,711.53.

The Board's review of its actual and projected expenses for the past 5 years revealed significant shortfalls in the areas of enforcement and investigation, legal office expenses and legislative and regulatory analysis. For example, despite annual increases in projected expenses, actual enforcement and investigation costs increased \$13,242.21 from FY 2002-2003 to FY 2003-2004. The

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

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

Comment and Review of Proposed Rulemaking

Publication of proposed rulemaking at 35 Pa.B. 2402 (April 23, 2005) was followed by a 30-day public comment period during which the Board received 17 comments. The Pennsylvania Health Care Association (PHCA) and The Pennsylvania Association of County Affiliated Homes were among those who commented. The rest of the comments were from individual licensees. In accordance with the Regulatory Review Act (71 P.S. §§ 745.1—745.15), the Independent Regulatory Review Commission (IRRC), the House Professional Licensure Committee (HPLC) and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) reviewed the proposed rulemaking. The HPLC and SCP/PLC had no objections, suggestions or comments. The following is the Board's response to IRRC's comments and the public comments.

In general, all of the public commentators believe the biennial increase is excessive. Specifically, IRRC questioned why it was necessary to increase the fee to a level that goes beyond erasing the current deficit to meet projected expenditures over a decade and urged the Board to consider raising fees only in the amount needed to resolve deficits in the short term. The reason for developing a renewal fee to erase the current deficit and meet projected expenditures over a decade is because the process to obtain a fee increase is labor intensive, costly and can take up to 2 years to get approved. The Board considered several fee increase options to ensure that the most reasonable fee increase would erase the current deficit and carry a modest balance to cover any unplanned expenses such as a large legal case that could have the potential to deplete funds quickly. Based on the options presented, it was determined that the 175% fee increase would generate the revenue needed to erase the current deficit and meet the Board's estimated expenditures in the near future.

IRRC also suggested that, as an alternative to the proposed rulemaking, fee increases could be phased in over a specific time frame. IRRC noted that this approach would have a less drastic economic impact on licensees and would allow the Board to adapt to changes in the number of licensees and enforcement activity. The PHCA also suggested phasing in the increase over a period of 8

to 10 years. However, section 7.1(a) of the act specifically states that "[i]f the revenues generated by fees, fines and civil penalties imposed pursuant to this act are not sufficient to match expenditures over a two-year period, the board shall increase those fees by regulation, subject to review in accordance with the Regulatory Review Act, such that the projected revenues will meet or exceed projected expenditures." The 175% fee increase will meet this mandate and the Board's operations will not be interrupted. If a graduated fee increase was implemented, it would take several years for the Board to recover the projected deficit and generate sufficient revenue to meet estimated expenditures in the future. This could cause the Board to cease operations and therefore would pose a threat to the public's health, safety and welfare.

IRRC also commented that the Board should identify the financial and economic impacts of the final-form rulemaking on individual licensees. In this regard, IRRC urged the Board to consider the potential impacts on the profession and the facilities that licensees administer, given the recent decline in the number of licensees and also urged the Board to consider whether, if the decline continues, a steep fee increase will have a negative impact on long-term care facilities and their ability to maintain and protect the health, safety and welfare of their residents. As IRRC recognized in its comments, a number of licensees who commented contend that the increase will be a significant deterrent for licensees to renew and stay in the profession and will dissuade newcomers from seeking licensure and entry into the profession. The only financial and economic impact that the Board can identify with certainty is that nursing home administrators will be required to pay \$189 more than they currently pay to renew their licenses. The Board cannot speculate on whether the fee increase will have a deterrent effect on licensees and potential licensees that it will ultimately have a negative impact on long-term care facilities and their ability to maintain and protect the health, safety and welfare of their residents. Nevertheless, the Board believes that the residents of long-term care facilities are at greater risk of harm if the Board ceases to operate than they are by the potential ramifications of the fee increase.

A licensee who commented noted that the proposed fee is higher than four contiguous states and lower than two others. This commentator questioned whether the average nursing home administrator wage have been reviewed and compared in the two lower states and whether the number of nursing homes in those states has been compared with this Commonwealth. The Board has not performed a review or comparison because these considerations are not relevant to the fee increase. Under section 7.1(a) of the act, the only consideration relevant to the fee increase is whether the revenue raised by fees, fines and civil penalties is sufficient to meet expenditures over a 2-year period.

Description of Amendments

Based upon the previous expense and revenue estimates provided to the Board, the Board is amending § 39.72 to increase the fee for biennial renewal of licenses for nursing home administrators from \$108 to \$297.

Fiscal Impact

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

Paperwork Requirements

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

Sunset Date

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 23, 2005, the Board submitted a copy of the notice of proposed rulemaking, published at 35 Pa.B. 2402, to IRRC and the Chairpersons of the HPLC and the SCP/PLC for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on March 14, 2006, the final-form rulemaking was approved by the HPLC. On April 18, 2006, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on April 19, 2006, and approved the final-form rulemaking.

Contact Person

Further information may be obtained by contacting Christina Stuckey, Administrative Assistant, State Board of Examiners of Nursing Home Administrators, P. O. Box 2649, Harrisburg, PA 17105-2649, cstuckey@state.pa.us.

Findings

The Board finds that:

- (1) Public notice of the proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law and all comments were considered.
- (3) This final rulemaking does not enlarge the purpose of the proposed rulemaking published at 35 Pa.B. 2402.
- (4) This final-form rulemaking is necessary and appropriate for administration and enforcement of the act.

Order

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

- (a) The regulations of the Board, 49 Pa. Code Chapter 39, are amended by amending § 39.72 to read as set forth in Annex A.
- (b) The Board shall submit this order and Annex A to the Office of General Counsel and to the Office of Attorney General as required by law.
- (c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

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

BARRY S. RAMPER, II,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 36 Pa.B. 2251 (May 6, 2006).)

Fiscal Note: Fiscal Note 16A-6210 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 39. STATE BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

RENEWAL

§ 39.72. Fees.

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

Biennial renewal of nursing home administrators license	\$297
License application fee	\$40
Temporary permit fee	\$145
Certification of examination scores	\$25
Verification of licensure or temporary permit	\$15
Continuing education provider application fee	\$40
Continuing education program application fee per clock hour	\$15
Continuing education individual program application fee	\$20

[Pa.B. Doc. No. 06-976. Filed for public inspection June 2, 2006, 9:00 a.m.]

STATE BOARD OF PSYCHOLOGY

[49 PA. CODE CH. 41]

Education Requirements

The State Board of Psychology (Board) amends §§ 41.1 and 41.31 (relating to definitions; and qualifications for taking licensure examination) to read as set forth in Annex A.

Statutory Authority

The final-form rulemaking is made under the authority of sections 3.2(1) and 6(a)(2) of the Professional Psychologists Practice Act (act) (63 P. S. §§ 1203.2(1) and 1206(a)(2)).

Response to Public Comments and Regulatory Review

The proposed rulemaking was published at 34 Pa.B. 4903 (September 4, 2004). Publication was followed by a 30-day public comment period during which the Board received comments from the Pennsylvania Psychological Association (PPA), the Vice President of Academic Affairs of Chestnut Hill College and, upon request from the House Professional Licensure Committee (HPLC), Judy Hall, the Executive Director of the Council for the

National Register of Health Service Providers (National Register). Following the close of the public comment period, the Board received comments from the HPLC and the Independent Regulatory Review Commission (IRRC). The Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) did not comment.

The following part provides an analysis of the Board's response to those comments.

General comments

In both the definition of "doctoral degree in a field related to psychology" and "doctoral degree in psychology," the Board referred to designation by the Joint Designation Committee of the Association of State and Provincial Psychology Boards (ASPPB). The HPLC noted that the current name is the ASPPB/National Register Designation Project (ASPPB/National Register). In this final-form rulemaking, the Board has changed the name. Also, for ease of reference, the Board has added definitions for "APA," "ASPPB," "CPA" and "National Register."

IRRC questioned whether the Board's accreditation requirement would negatively affect the development of new programs. The PPA commented that new programs would be stifled as a result of the final-form rulemaking. The Board acknowledges that this final-form rulemaking imposes additional requirements on nonaccredited/designated programs. However, the Board believes that this final-form rulemaking is necessary for two reasons. First, it provides a bright-line standard for applicants for licensure—if an individual graduate from a program that is or becomes accredited or designated within 1 year of when the degree is awarded, the individual has satisfied the educational requirements for licensure. The Board has learned through applications and testimony provided by applicants from nonaccredited/designated programs that many erroneously believed that they too would not have any impediments to licensure. By removing this pathway, the Board has eliminated this uncertainty for applicants who have spent thousands of dollars to obtain their degree.

Second, this final-form rulemaking sets minimum standards for graduate degree programs in psychology. When the rulemaking was initially promulgated, many programs in this Commonwealth were neither accredited nor designated. Therefore, there was a need for the third pathway. Given the number of programs currently accredited and designated, this stopgap measure is no longer necessary. A list of APA accredited programs in this Commonwealth is available at www.apa.org/ed/accreditation/doctoral.html. A list of ASPPB/National Register designated programs in this Commonwealth is available at www.nationalregister.org/designate_PA.htm.

Despite the additional requirements on nonaccredited/designated programs, the Board does not believe that the development of new programs will be negatively affected. By accepting designation in addition to accreditation, the Board has, in many instances, reduced the timeframe for acceptance. Unlike the APA/Canadian Psychological Association (CPA) accreditation process, which requires a site visit and, as a prerequisite, a graduation class to apply, the ASPPB/National Register designation process is a paper review that permits application each spring once a program has been fully developed (including standards for enrollees and the selection of instructors and curriculum). Additionally, unlike the APA and the CPA that limit accreditation to the specific specialties of clinical psychology, school psychology, counseling psychology and combined professional-scientific psychology, the ASPPB/

National Register designate additional specialties in psychology. Once a designated program has graduated a class and met the other accreditation requirements, it can obtain APA/CPA accreditation. APA/CPA accredited programs receive automatic designation by the ASPPB/National Register.

The HPLC questioned whether the Board has communicated its new education requirements to doctoral degree programs that do not meet the new requirements. Prior to publication of the proposed rulemaking, the Board solicited predraft input from stakeholders, including doctoral degree programs that currently do not meet the new requirements. In addition, after publication in the *Pennsylvania Bulletin*, the Board will post the new requirements on its website. This additional notice should alert programs and applicants that the new educational requirements will apply to all students who enroll 2 years from the publication date of this proposed rulemaking.

§ 41.1. Definitions.

Subparagraph (iii) of the definitions of "doctoral degree in a field related to psychology" and "doctoral degree in psychology" set out the standards for a doctoral degree from foreign colleges or universities. The Executive Officer of the National Register suggested that the Board incorporate the designation criteria required by the ASPPB/National Register by reference rather than insert a partial list of the requirements if the Board intends to accept the ASPPB/National Register criteria. Because it is the Board's intent to impose the same requirements on all doctoral degree programs regardless of the country where the program is being offered, the Board has amended the definitions to require that foreign degree programs satisfy standards equivalent to the ASPPB/National Register standards. These doctoral degree standards are available at www.nationalregister.org/doctoraldegrees.html.

The Board has removed provisions in subparagraph (iii) dealing with foreign accrediting bodies, individual differences in behavior courses, dissertations and appropriate standard for practicum and internship, which were the subject of inquiry by the HPLC, IRRC and the PPA. The Board will not address these comments. Like provisions in many other jurisdictions, these provisions require compliance with the ASPPB/National Register criteria rather than Board-developed requirements.

The Executive Officer of the National Register also suggested that the Board clarify that the doctoral degree standards must be met at the time of graduation and not some later date when the program obtains accreditation or designation. The proposed rulemaking imposed an "at graduation" standard. However, upon further consideration, the Board determined that that timeframe was too narrow.

During the Board's September 13, 2005, meeting, the Board contacted the Director of Accreditation at the APA and the Executive Officer of the National Register. Regarding APA/CPA accreditation, the Board learned that the accreditation date is not the date when the decision is made to award accreditation, but rather the date when the site visit was conducted, often months earlier. The Board also learned that accreditation reviews and awards occur year round.

Regarding ASPPB/National Register designation, the Board learned: (1) the designation date is the date that the decision is made; (2) designation reviews and awards occur one time a year; (3) applications are accepted until February 1; (4) the Designation Committee reviews those applications from April 1 through early summer and,

when there are no deficiencies, awards designation; (5) where there are easily curable deficiencies, the Designation Committee permits programs to cure the deficiencies within several months, and, when applicable, awards designation; and (6) many state psychology boards accept after the fact designation for a set period of time.

When these time frames were considered in light of the customary award of doctoral degrees in December and May, the Board determined that the "at graduation" date originally proposed would severely disadvantage recent graduates of newly accredited/designated programs. The Board believes that to include those graduates and, at the same time, achieve the Board's goal of assuring minimum standards for education, the Board should allow a 1-year time frame. This additional 1 year will also be advantageous for newly emerging programs as it will provide them with additional time to obtain accreditation or designation. Therefore, the Board has amended this provision in this final-form rulemaking to clarify that the program must be either accredited or designated within 1 year of the applicant's award of the doctoral degree.

§ 41.31. Qualifications for taking licensing examination.

Proposed § 41.31(b)(1) required the clinical training director to submit a Verification of Doctoral Program Approval Status. The Executive Director of the National Register suggested that the Board remove the reference to "clinical" as programs are designated in clinical, counseling and school psychology. The Board found this suggestion reasonable and amended this provision by replacing "clinical training director" with "program director."

Proposed § 41.31(b)(2) required that the foreign credential evaluator be acceptable to the Board. IRRC questioned what criteria the Board was going to apply to make this determination. The Board has learned from the National Register that it reviews foreign education to determine equivalency with education deemed acceptable to the ASPPB/National Register. The equivalency standards are available at www.nationalregister.org/foreigndegrees.htm. The Maryland Board of Examiners in Psychology is currently using this method. Because the National Register's review is psychology-specific, as opposed to that of the Department of Education approved foreign credential evaluators who review doctoral programs generally, the Board amended this section. The final-form section specifies that the National Register will make the initial equivalency determination and then the Board will assess the applicant's compliance.

Section 41.31(b)(3) addresses an applicant from a foreign college or university's ability to cure a deficiency in subsection (b)(2). In the proposed rulemaking, the Board required the applicant to complete an APA/CPA/ASPPB respecialization program. The Executive Director for the National Register commented that specialization programs are typically 2-year programs, one of which is an internship and that some applicants may not require that extensive of a sequence of education and training. In its place, it was recommended that the Board permit the accredited/designated doctoral program to evaluate the deficiency, require supplemental education or experience, or both, and following completion of the deficiency certify that the supplemental education/experience makes the applicant equivalent to a graduate of the program. The Board found this recommendation reasonable and has amended this section accordingly.

Several comments were raised about § 41.31(b)(4) in connection with the effective date of the final-form rulemaking. The HPLC and IRRC asked the Board to clarify this date in the final-form rulemaking. The PPA questioned how the effective date would be applied to applicants who have obtained a degree but have not yet applied for a license. Additionally, the Vice President of Academic Affairs for Chestnut Hill College suggested that the Board grandfather programs that are in the process of attaining APA accreditation when the final-form rulemaking is published. He also recommended that the Board provide a 5-year to 7-year window for emerging programs to obtain accreditation.

The Board has revised the subsection as follows. Applicants for licensure who were enrolled in a doctoral degree program in psychology before, at the time of, or up to 2 years after publication of this final-form rulemaking will have their education evaluated under the regulations in effect at the time of enrollment. Applicants who enroll on or after the effective date of this final-form rulemaking will have their education evaluated under these new requirements. Enrollment, as has been interpreted by the Board, is the date when the applicant has been accepted into the doctoral degree program and is registered for courses. This standard was applied by the Board when it grandfathered masters degree holders under former section 20 of the act (63 P. S. § 1220).

In the proposed rulemaking, the Board established the effective date as 2 years after publication of the final-form rulemaking. However, upon consideration of the designation time frame previously mentioned, the Board determined that the effective date should be extended until on or after July 1, 2 years following final-form publication in the *Pennsylvania Bulletin*. The Executive Director of the National Register advised that designation awards are only made in the late spring and early summer. Extending this date provides nonaccredited/designated programs with two full opportunities to avail themselves of the designation process prior to the effective date of the final-form rulemaking.

Because APA awards accreditation to programs on the date of the site visit, the Board declined to implement the recommendation that programs in the process of APA accreditation be automatically grandfathered. The Board believes that as written the regulation provides nonaccredited/designated programs at least 3 years to comply with the new requirements—2 years for the regulations to become effective plus 1 year after graduation. Based on the Board's understanding of APA and National Register processes, the Board believes that doctoral degree programs will be able to comply with the Board's requirements.

Fiscal Impact and Paperwork Requirements

The final-form rulemaking has no fiscal impact on the Commonwealth. Board members would no longer be required to review transcripts, courses, residencies and internships for applicants who attended non-APA and non-ASPPB/National Register programs in the United States, Canada and territories, and Board staff would simply confirm that the doctoral degree program was accredited by the APA or the CPA or designated by the ASPPB/National Register within 1 year of graduation. However, there were no costs associated with Board member review as that review was conducted following monthly Board meetings. Therefore, the change should not result in any discernible fiscal impact on the Board or

the Commonwealth. The Board would continue to conduct its review for applicants with doctoral degrees from foreign colleges and universities.

The final-form rulemaking decreases paperwork requirements for applicants from programs in the United States, Canada and United States territories. These applicants would be required to submit only a Verification of Doctoral Program Approval Status completed by the program's director reflecting accreditation by the APA or the CPA or designation by the ASPPB/National Register and an official transcript from the registrar. Applicants from foreign colleges and universities would continue to submit an evaluation from the ASPPB/National Register to the Board evidencing compliance with the educational requirements for degree holders from foreign colleges or universities in § 41.1.

Sunset Date

The Board continually monitors the effectiveness of its regulations through communication with the regulated population. Therefore, no sunset date has been set.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 23, 2004, the Board submitted a copy of the notice of proposed rulemaking, published at 34 Pa.B. 4903, to IRRC and the Chairpersons of the HPLC and the SCP/PLC for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on March 14, 2006, the final-form rulemaking was approved by the HPLC. On April 18, 2006, the final-form rulemaking was deemed approved by SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on April 19, 2006, and approved the final-form rulemaking.

Contact Person

Further information can be obtained by contacting Christina Stuckey, Administrative Assistant, State Board of Psychology, P. O. Box 2649, Harrisburg, PA 17105-2649, www.state.pa.us/bpoa.

Findings

The Commission finds that:

- (1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law and all comments were considered.
- (3) This final-form rulemaking does not enlarge the purpose of proposed rulemaking published at 34 Pa.B. 4903.
- (4) The final-form rulemaking is necessary and appropriate for administering and enforcing the act.

Order

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

(a) The regulations of the Board, 49 Pa. Code Chapter 41, are amended by amending §§ 41.1 and 41.3 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

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

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

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

ALEX M. SIEGEL, J.D., Ph.D.,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 36 Pa.B. 2251 (May 6, 2006).)

Fiscal Note: Fiscal Note 16A-6313 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 41. STATE BOARD OF PSYCHOLOGY GENERAL

§ 41.1 Definitions.

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

APA—American Psychological Association.

ASPPB—Association of State and Provincial Psychology Boards.

* * * * *

CPA—Canadian Psychological Association.

* * * * *

Doctoral degree in a field related to psychology—A degree awarded upon successful completion of a program which, within 1 year from the award of the doctoral degree, meets one of the following:

- (i) Is accredited by the APA or the CPA.
- (ii) Is designated by the ASPPB/National Register Designation Project.
- (iii) Is offered by a foreign college or university whose standards are equivalent to the ASPPB/National Register Designation Project criteria.

Doctoral degree in psychology—A degree awarded upon successful completion of a program in psychology which, within 1 year from the award of the doctoral degree, meets one of the following criteria:

- (i) Is accredited by the APA or the CPA.
- (ii) Is designated by the ASPPB/ National Register Designation Project.
- (iii) Is offered by a foreign college or university whose standards are equivalent to the ASPPB/National Register Designation Project Criteria.

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National Register—The Council for the National Register of Health Service Providers.

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§ 41.31. Qualifications for taking licensing examination.

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(b) *Education.* Before an applicant seeking licensure under section 6 of the act (63 P.S. § 1206) shall be permitted to take the licensing examination, the Board must be satisfied that the applicant has complied with the requirements for a doctoral degree in psychology or a field related to psychology as defined in § 41.1 (relating to definitions). The following documentation evidences compliance:

(1) For degree holders from a program in the United States, Canada or United States territories, a Verification of Doctoral Program Approval Status completed by the program's director reflecting accreditation by the CPA or designation by the ASPPB/National Register Designation Project within 1 year from the award of the doctoral degree, and an official transcript from the registrar.

(2) For degree holders from a foreign college or university, an evaluation completed by the National Register evidencing compliance with the educational requirements for degree holders from foreign colleges or universities in § 41.1 (relating to definitions). The Board will make a determination regarding the applicant's compliance based upon the evaluation.

(3) An applicant who does not meet the criteria in paragraph (2) shall complete supplemental education or training, or both, from a program accredited by the APA or the CPA or designated by ASPPB/National Register Designation Project based upon an evaluation of the deficiency by the program. The program director shall certify that the supplemental coursework or experience, or both, makes the applicant equivalent to a graduate of that program.

(4) First-time applicants who enroll in a graduate degree program in psychology on or after July 1, 2008, will be evaluated under this chapter. Applicants enrolled prior to July 1, 2008, will be evaluated under regulations in effect at the time of enrollment. Reapplicants under subsection (a)(1) or § 41.42(b) (relating to reexamination) will be evaluated under regulations in effect at the time of reapplication.

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[Pa.B. Doc. No. 06-977. Filed for public inspection June 2, 2006, 9:00 a.m.]

Title 67—TRANSPORTATION

DEPARTMENT OF TRANSPORTATION

[67 PA. CODE CH. 63]

Proportional Registration of Fleet Vehicles

The Department of Transportation, Bureau of Motor Vehicles (Bureau), under 75 Pa.C.S. §§ 6103 and 7501—7506, amends Chapter 63 (relating to proportional registration of fleet vehicles) to read as set forth in Annex A.

Purpose of this Chapter

The purpose of this chapter is to establish rules and procedures to implement bilateral agreements and the International Registration Plan entered into with other jurisdictions for the registration of fleets of vehicles on an apportioned basis as authorized by 75 Pa.C.S. §§ 6142 and 6145 (relating to reciprocity agreements, arrangements and declarations authorized; and proportional registration of fleet vehicles).

Purpose of this Final-Form Rulemaking

The purpose of this final-form rulemaking is to extend the term of the temporary permits under this chapter and to update the chapter with the current fees for registration and titling in 75 Pa.C.S. Chapter 19 (relating to fees).

Persons and Entities Affected

Extension of the temporary registration period from 30 to 60 days potentially may affect approximately 15,000 apportioned carriers. The additional time will have a positive effect in allowing the Bureau to complete the title and registration work in a more reasonable period. It eliminates the need for carriers to request additional temporary registration because the application has not been processed.

Fiscal Impact

This final-form rulemaking will not require additional expenditure by the Bureau or temporary issuing agents. Apportioned carriers may realize a cost savings by not having to request additional temporary registration.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on September 8, 2004, the Department submitted a copy of the notice of proposed rulemaking, published at 34 Pa.B. 5159 (September 18, 2004), to Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Transportation Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the House and Senate Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. No comments were received from the public, IRRC or the House and Senate Committees.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on March 15, 2006, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5(g) of the Regulatory Review Act, this final-form rulemaking was deemed approved by IRRC effective April 18, 2006, confirmed at the meeting of IRRC on April 19, 2006.

Sunset Date

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

Contact Person

The contact person for this final-form rulemaking is Joseph Centurione, Manager, Customer Service Division, Bureau of Motor Vehicles, 1101 S. Front Street, Harrisburg, PA 17104, (717) 787-2304.

Order

The Department orders that:

(a) The regulations of the Department, 67 Pa. Code Chapter 65, are amended by amending §§ 63.4, 63.51, 63.52, 63.116—63.118 and 63.122 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

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

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

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

ALLEN D. BIEHLER, P.E.,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 36 Pa.B. 2251 (May 6, 2006).)

Fiscal Note: Fiscal Note 18-396 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 67. TRANSPORTATION

PART I. DEPARTMENT OF TRANSPORTATION

Subpart A. VEHICLE CODE PROVISIONS

ARTICLE III. REGISTRATION

CHAPTER 63. PROPORTIONAL REGISTRATION OF FLEET VEHICLES

Subchapter A. GENERAL PROVISIONS

§ 63.4. Definitions.

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

* * * * *

Telegram of authority—A temporary registration transmitted by a wire service authorizing the operation of a Commonwealth-based vehicle for 60 days while application for a change in fleet registration is being processed by the Bureau.

Temporary authorization certificate—A temporary registration authorizing the operation of a Commonwealth-based vehicle for 60 days while application for a change in fleet registration is being processed by the Bureau.

* * * * *

Subchapter D. TEMPORARY REGISTRATION

§ 63.51. Pennsylvania temporary authorization certificates.

(a) *General rule.* Temporary authorization certificates may be obtained from the Commercial Registration Section in bulk, by registrants with five or more apportionable vehicles, for use on an additional vehicle or when it is necessary to increase a vehicle's registered weight. The registrant's fees on its original apportioned registration application shall be paid prior to approval of the request for temporary authorization certificates. Temporary authorization certificates are not transferable and may not be used by another carrier. A temporary authorization certificate is valid for 60 days from the date of its first use. A temporary authorization certificate may not be used in conjunction with 75 Pa.C.S. § 1311(c) (relating to registration card to be signed and exhibited on demand) to avoid prosecution under 75 Pa.C.S. § 1301 (relating to registration and certificate of title required).

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§ 63.52. Telegrams of authority.

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(d) *Effect of telegram.* A telegram of authority issued by the Department is valid for 60 days. An extension of a telegram of authority may be granted if, in the judgment of the Department, the supplemental application for proportional registration was submitted and fees were paid on a timely basis but there was insufficient time to process the application and forward the credentials to the carrier.

* * * * *

Subchapter G. FEES

§ 63.116. Cab cards.

The fee for a cab card issued in connection with the filing of an application requiring no Pennsylvania registration fees, is \$4.50.

§ 63.117. Duplicate cab cards.

The fee for each duplicate cab card shall be \$1.50 when ordered at the time of vehicle registration or transfer, or renewal of registration. The fee for each duplicate cab card ordered at any other time is \$4.50.

§ 63.118. Transfer of registration.

The fee for transfer of registration from a vehicle within an apportioned fleet to another vehicle within the same fleet or another apportioned fleet of the same carrier is \$6.

§ 63.122. Nontitled fleet registration.

The fee for establishing a registration record for an apportioned vehicle not titled in this Commonwealth is \$22.50.

[Pa.B. Doc. No. 06-978. Filed for public inspection June 2, 2006, 9:00 a.m.]

PROPOSED RULEMAKING

DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CHS. 3270, 3280, 3290 AND 3300]

Child Care Facilities

The Department of Public Welfare (Department), under the authority of Articles IX and X of the Public Welfare Code (62 P. S. §§ 901—922 and 1001—1087), proposes to amend Chapters 3270, 3280 and 3290 and delete Chapter 3300 to read as set forth in Annex A.

Purpose

The child care facility regulations in Chapters 3270, 3280, 3290 and 3300 provide standards to aid in protecting the health, safety and rights of children and to reduce risks to children in child day care centers, group child day care homes and family child day care homes (FDCH). The regulations identify the minimum level of compliance necessary to obtain the Department's certificate of compliance to operate a child care center or group child day care home or certificate of registration to operate an FDCH.

The proposed rulemaking is needed to update the minimum standards for child care facilities. The current regulations were published at 22 Pa.B. 1651 (April 4, 1992) and have not been amended since. The regulations need to be updated to reference the current laws that directly impact the operation of child care facilities, to incorporate the Department's statements of policy issued since 1992, to implement changes in recommended health and safety practices, to clarify minimum standards and to reflect best practice in the field of child care.

Requirements

Chapter 3300 (relating to specialized day care services for children with disabilities)

The Department proposes to delete Chapter 3300 and amend Chapters 3270, 3280 and 3290 (relating to child day care centers; group child day care homes; and family child day care homes) to include requirements related to providing care to a child with special needs. Chapter 3300 solely addresses child care provided to children with special needs; however, the equal opportunity provisions of the Americans With Disabilities Act of 1990 (ADA) (42 U.S.C.A. §§ 12101—12213) endorse inclusive, nonexclusionary practices. By amending Chapters 3270, 3280 and 3290 to address care for a child with special needs, the Department is clarifying that every child care facility is expected to make reasonable accommodation to enroll and provide care for children with special needs and to work with other persons who provide support services to the child and the child's family.

The Department proposes amending Chapters 3270, 3280 and 3290 to promote inclusion of children with special needs in all child care facilities and comply with the ADA philosophy.

§§ 3270.17, 3280.16 and 3290.15 (relating to service to child with a disability)

The proposed rulemaking requires the facility operator to make reasonable accommodation to provide care to a child with special needs and to permit service providers to work with the child onsite. The proposed rulemaking requires a facility operator to make facility staff aware of

early intervention and special education services. The Department will provide information and materials to facilities regarding community resources for children with special needs to share with staff and parents.

§§ 3270.133, 3280.133 and 3290.133 (relating to child medication and special diets)

The Department proposes to amend Chapters 3270, 3280 and 3290 to require a facility to make reasonable accommodation to administer a prescribed medication or special diet to a child with special needs. The current regulations state a facility is not required to administer medications or special diets. Refusal to administer medication may violate the ADA.

§§ 3270.4, 3280.4 and 3290.4 (relating to definitions)

Child with special needs—The Department proposes to delete the use of the phrase “child with a disability” to use and define the phrase “child with special needs.” The proposed definition includes a child who has been assessed as having a special need and receives early intervention or special education services; has a formal behavioral plan determined by a physician, psychiatrist or psychologist; or has a chronic health condition diagnosed by a medical professional that requires specialized health and related services. The amendment updates the regulations to reflect current practice related to services to a child with special needs.

Age level—The Department proposes to amend the definitions of “preschool child” and “young school-age child” so that a child in kindergarten is considered a young school-age child. The Department's current regulations define “preschool child” as a child from 37 months of age through the date the child enters 1st grade of a public or private school system. The Department's current regulations define “young school-age child” as a child from the 1st grade through the 3rd grade of a public or private school system.

School-age child care programs are established to meet the unique needs of children who need child care before and after school hours, including kindergarten children. Many school-age programs are located in school buildings. Other school-age programs transport children from school to the child care facility. The fact that a kindergarten child is a preschool child under the Department's regulations creates a disincentive for a school-age child care program to enroll a kindergarten child.

The Department's regulations permit a child day care center or group child day care home in which care is provided exclusively to school-age children to comply with fewer requirements than a facility that provides care for children of all age levels (see §§ 3270.241 and 3280.221 (relating to requirements specific to school-age programs)). In addition, a school-age child care program located in a school building is further exempt from physical site requirements in accordance with section 776.1 of the Public School Code of 1949 (24 P. S. § 7-776.1), regarding child day-care centers in school buildings. A facility that enrolls a kindergarten child cannot be considered a school-age program because the facility is not providing care exclusively to school-age children. As a result, the facility must comply with Chapters 3270 and 3280 and will incur higher costs.

The Department's regulations require a staff:child ratio for preschool children of 1:10 and a ratio for young school-age children of 1:12. When a kindergarten child is included in a group of young school-age children, the stricter preschool ratio must be maintained at a higher cost.

The Department's regulations regarding transportation of children state the driver may not be counted in the staff:child ratio when preschool children are transported, but may be counted in the ratio when only school-age children are being transported (see §§ 3270.173(b) and (c) and 3280.173(b) and (c) (relating to transportation ratios)). When a kindergarten child is being transported, the facility cannot count the driver as part of the staff:child ratio and must provide more staff on the vehicle to meet the preschool staff:child ratio of 1:10 rather than the young school-age ratio of 1:12. The cost of transporting a kindergarten child is therefore higher than the cost of transporting a school-age child.

By changing the definition of "young school-age child" to include children in kindergarten, a school-age child care facility will be able to enroll a kindergarten child without incurring the higher costs of providing care to a preschool child. This amendment will facilitate before- and after-school care for kindergarten children.

§§ 3270.119, 3280.119 and 3290.118 (relating to program plan)

The Department proposes requiring that a program plan be prepared for each child in care. Chapter 3300 requires program plans for a child with special needs. This requirement is not included in Chapters 3270, 3280 and 3290. Extending the requirement to each child in care will produce a minimum level of program planning that facilitates each child's healthy and safe development.

§§ 3270.11, 3280.11 and 3290.11 (relating to application for and issuance of a certificate of compliance)

The Department proposes requiring a legal entity or a legal entity's representative to participate in precertification orientation training provided by the Department within 12 months prior to issuance of a certificate of compliance or registration. The Department will provide the precertification orientation training at different locations in this Commonwealth at no charge to the legal entity. A legal entity that opens more than one child care facility within 12 months following participation in the training is not required to repeat the training. The Department currently offers precertification orientation training to prospective individuals who want to operate child care facilities. Participation in the orientation training is voluntary. The Department's certification staff find that individuals who attend orientation training are better prepared to operate a child care facility and comply with minimum health and safety standards. Mandating attendance at precertification orientation training will afford additional protection for the health and safety of children in care.

§ 3290.31 (relating to age and training)

The Department currently does not require a minimum level of education for an FDCH operator. The Department proposes to increase the minimum qualifications of the FDCH operator by requiring that the operator have a high school diploma or general educational development certificate (GED) at the time of renewal of a certificate of registration. This will afford an FDCH operator who does not have a high school diploma or GED at initial registration a 2-year period in which to obtain a high school diploma or GED.

A study conducted in 2002 in this Commonwealth revealed that 97% of FDCH operators had a high school diploma or GED. By requiring an FDCH operator to have a high school diploma or GED at the time of certificate renewal, the Department is requiring a minimum level of literacy sufficient to comply with the regulations and operate a small business. This will increase the health and safety of FDCHs and also will put into regulation what already is the minimum educational background of most FDCH operators.

The Department proposes to permit a current FDCH operator who does not have a high school diploma or GED to continue to operate a facility that is registered as of the effective date of the final-form rulemaking.

§§ 3270.102, 3270.233, 3280.102, 3280.215, 3290.102 and 3290.212

The Department proposes that the surface covering under outdoor play equipment that requires embedded mounting must meet the guidelines for loose-fill or unitary playground protective surface covering established by the United States Consumer Product Safety Commission (CPSC). The "Handbook for Public Playground Safety" published by the CPSC provides standards for loose-fill and unitary surface coverings that reflect the fall height of the equipment and the type or depth of surface covering required to protect from injury if a child falls from the highest point of the equipment. The standards are available on the CPSC website at www.cpsc.gov/cpscpub/pubs/325.pdf. The Department's current statements of policy in §§ 3270.102a, 3280.102a and 3290.102a (relating to condition of play equipment—statement of policy) require the same standard for unitary surface covering. The current requirement for 6 inches of loose-fill material is not related to the height of the play equipment and does not meet minimum health and safety standards. Incorporating the CPSC standards in the regulations will afford more protection for children. In recognition of the possible cost to the provider, the Department proposes to permit a 2-year period following the effective date of the final-form rulemaking to comply with the regulations.

The Department proposes to amend Chapters 3270 and 3280 to prohibit the use of children's products and toys determined hazardous by the CPSC. The current regulations do not prohibit the use of children's products or toys that have been determined unsafe for children and have been recalled. Hazardous products that have been recalled present a risk to the health and safety of children in care. Information regarding product recalls is available on the CPSC website. A facility can subscribe to product recall alerts on the CPSC website at www.cpsc.gov/cpsclist.asp. The Department will provide information to facilities regarding how to receive the alerts. The Department will enforce the regulations by requiring a facility to self-certify at the time of certificate renewal that there are no recalled children's products or toys in the facility. Requiring facilities to remove hazardous products from child care facilities protects the health and safety of children.

§§ 3270.120, 3280.120 and 3290.119 (relating to infant sleep position).

The Department proposes to amend Chapters 3270, 3280 and 3290 by requiring that infants shall be placed on their backs to sleep unless there is a medical reason an infant should not sleep in this position. The American

Academy of Pediatrics (AAP) policy on Sudden Infant Death Syndrome (SIDS) prevention recommends that infants be placed on their backs to sleep. This will reduce the risk of SIDS deaths in child care facilities.

§§ 3270.131, 3280.131 and 3290.131 (relating to health assessment information)

The Department proposes to amend the regulations regarding child health assessments and screenings by deleting the requirement to adhere to the AAP recommendations. The Department proposes timelines for a facility to obtain initial and updated child health reports. The current regulations make a facility responsible for updated child health assessments and health screening information that complies with the AAP recommendations. If the facility does not comply, the Department cites the facility for noncompliance with the regulation. A child's parent makes health care decisions for the child and pays for health care provided to the child. This is outside the facility's control. Parents may incur added costs to comply with the AAP schedule if their insurance plan does not cover all the examinations included in the AAP schedule. In addition, some physicians charge parents to complete the health report required by regulation. In some areas of this Commonwealth, facilities report that parents must wait months for well-child appointments and cannot meet the AAP timelines. The Department proposes to amend the regulations to provide less stringent timelines for updated health reports. The Department also proposes amendments regarding the information that must be included in the health report to include information needed to respond to a medical emergency and to control the spread of disease in a group setting.

The Department proposes to amend the immunization requirements to match the Department of Health (DOH) regulation in 28 Pa. Code § 27.77 (relating to immunization requirements for children in child care group settings), regarding immunizations in child care facilities. The DOH regulation requires child care facilities to comply with the immunization schedule recommended by the Advisory Committee on Immunization Practices, requires exclusion of a child who is not immunized and requires facilities to comply with the annual immunization reporting requirement in 28 Pa. Code § 27.77.

§§ 3270.201—3270.210, 3280.201—3280.209 and 3290.201—3290.208

The Department proposes to amend Chapters 3270, 3280 and 3290 by deleting the regulations regarding night care. The requirements regarding night care apply to child care provided from 7 p.m. to 7 a.m. The same minimum health and safety standards should apply during all hours of care.

§§ 3270.241 and 3280.221 (relating to requirements specific to school-age programs).

The Department proposes amending the school-age requirements to include proposed §§ 3270.27 and 3280.26 (relating to emergency plan), proposed amendments regarding hazardous toys in §§ 3270.102(g) and 3280.102(g) (relating to condition of play equipment) and proposed §§ 3270.119(g) and 3280.119(g). School-age facilities are currently subject to §§ 3270.21a and 3280.20a (relating to emergency plan-statement of policy).

The Department also proposes to amend the requirements specific to school-age programs to require that staff persons in a school-age facility shall have immediate access to a working telephone on the facility premises. Staff working in some school-age facilities in school

buildings do not have access to a telephone. The telephone may be located in an office that is locked after school hours. In the event of an emergency, staff may be unable to access the telephone to call for help. Ensuring access to a telephone will increase safety for children in school-age facilities.

In addition to the proposed amendments previously detailed, the Department proposes to amend Chapters 3270, 3280 and 3290 to incorporate existing statements of policy regarding emergency plan, posting the inspection summary, Department access, overpopulation of indoor child care space, supervision of children, water activity and release of children. The Department also proposes amendments reflecting current Commonwealth laws regarding a certificate of occupancy, child safety restraints in vehicles and the prohibition against transporting children in 11-15 passenger vans.

Affected Individuals and Organizations

Children are directly impacted by the proposed rulemaking. The minimum health and safety standards in Chapters 3270, 3280 and 3290 protect children who attend more than 9,000 certified and registered child care facilities in this Commonwealth. Parents also are impacted by the proposed rulemaking. Parents want their children to be safe in child care facilities. At the same time, the cost of child care is of concern to parents and directly impacts the choices that parents make regarding child care. The proposed rulemaking may result in decreased costs to parents due to the decreased costs associated with providing updated child health reports to the facility. The proposed rulemaking also will facilitate inclusion of children with special needs in child care facilities.

Child care facilities and staff also are affected by the proposed rulemaking. The proposed rulemaking may increase costs to some facilities. The Department provides 120 days for facilities to assess and plan for increased costs. In addition, a facility has 2 years to comply with the requirements regarding playground surfacing. The delay in implementation of the final-form rulemaking will afford the Department time to provide information and tools to assist in understanding and complying with the final-form rulemaking to facilities. The proposed amendments regarding staff health appraisals and tuberculosis testing will decrease costs to facilities and staff.

Accomplishments and Benefits

The child care service regulations were last published in April 1992. Since 1992, many changes have occurred that affect the regulations and operation of a child care facility. The Department published 11 statements of policy clarifying or interpreting the regulations, including statements of policy regarding emergency plans, supervision of children, Syrup of Ipecac, release of children, posting inspection summaries, Departmental access and swimming pool accessibility. Laws that impact operating a child care facility have changed regarding certificate of occupancy, vehicle safety, childhood immunizations and the ADA. New research has resulted in changes to recommendations regarding health and safety practices regarding SIDS prevention, playground safety and tuberculosis testing. In addition, the Department has noted areas in which facilities have difficulty complying with requirements, examined the reasons for noncompliance and, when possible, proposed amendments that will assist facilities to comply with the regulations and continue to ensure minimum health and safety at a facility.

The Department is proposing amendments for child care facilities to improve health and safety standards for

all children in care, facilitate inclusion of children with special needs, incorporate current statements of policy and correct regulatory language to accurately reflect laws that impact facility operation.

Fiscal Impact

Kindergarten child as young school-age child

The Department establishes daily reimbursement rates for facilities that participate in the child care subsidy program. The reimbursement rates are established by age level and are different for each county. The reimbursement rate for a preschool child is generally higher than the rate for a school-age child because the cost of complying with the requirements related to caring for a preschool child are higher than the costs of caring for a school-age child.

The proposed amendments to the definition of "young school-age child" to include a kindergarten child will also change the reimbursement rate for a kindergarten child from the preschool rate to the lower school-age rate. The daily reimbursement rate for a school-age child ranges from 10¢ to \$12.40 less than the reimbursement rate for a preschool child across 45 counties.

While the reimbursement rate may decrease, the cost of caring for a kindergarten child will also decrease. The cost of complying with the requirements applicable to a young school-age child is less than the cost of caring for a preschool child. The staff:child ratio for preschool children is 1:10 and the ratio for young school-age children is 1:12. In addition, a school-age facility will be able to enroll a kindergarten child and maintain its status as a school-age facility that is permitted to comply with the less stringent requirements for school-age programs. A facility that transports kindergarten and school-age children will be able to count the driver in the staff:child ratio and will no longer have to supply one or more additional staff persons on the vehicle to comply with ratio requirements related to transporting preschool children. The decrease in the daily reimbursement rate will be offset by lowered operating costs.

Precertification orientation

Precertification orientation may create costs to an individual who wants to apply for a certificate of compliance or registration. The training will require a full day, including travel and training time. The individual's costs will vary depending on the distance the individual must travel to participate in training. Using the Commonwealth mileage rate, an individual who travels 200 miles round trip would incur a travel cost of \$97.

For individuals currently operating or working in child care facilities, attendance at orientation training would be part of their job and they would be paid for the time to attend the training.

An individual who operates an FDCH or group child day care home and who wants to open a new facility may have to arrange for staff to work at the facility while the individual attends orientation training. According to the Department of Labor and Industry (L & I), the average wage for a child care worker is \$8.50 per hour. If substitute staff must be hired to cover an 8-hour shift, the estimated cost is \$68.

An individual who is employed outside the child care field and who wants to open a facility may miss a day of work to attend orientation training and may lose wages for that day. Based on L & I's statistics regarding the average state wage, the individual may lose \$147 in wages to attend orientation training.

Ventilation required at 82°F

The current regulation requires that when the indoor temperature exceeds 85°F in a child care space, a means of mechanical air circulation must be operating. Many facilities already have a means of ventilation in place. Ventilation may be provided through using a fan. If a facility has to purchase a fan, the cost of a fan will vary depending on the type of fan (that is, standing fan, window fan, wall fan or ceiling fan). The estimated costs would be anywhere from \$15 to \$100 depending upon the type of fan purchased.

Disposable, nonporous gloves in first aid kit

The addition of disposable, nonporous gloves to the first aid kit represents increased cost to a facility. The use of gloves is a universal precaution to prevent the spread of disease transmitted from body fluids. The cost of a box of 100 gloves ranges from \$2.99 to \$8.99. The rate at which the gloves are used to administer first aid is unknown. The health and safety protection afforded to children and staff by using gloves outweighs the cost.

Protective surfacing under outdoor play equipment

The proposed amendments regarding surface covering under outdoor embedded play equipment will result in increased costs for facilities where the surface covering does not meet the CPSC guidelines. The current regulations require at least 6 inches of loose-fill material under equipment. If the facility must modify the protective surface to comply with the regulations, the cost will depend upon the fall height from the equipment, the type of surface covering used and the size of the area that must be covered.

A facility that has a unitary surface covering that currently meets the requirements in the Department's statements of policy will be in compliance with the amended regulations.

Program plan

Facilities will incur added costs in preparing a program plan for each child twice a year. The current regulations in Chapter 3300 requires that each child with special needs must have a program plan that is reviewed every 3 months and rewritten annually. The proposed amendment regarding program plan requires that each child must have a program plan developed at initial attendance and the plan must be reviewed every 6 months. The Department estimates that on average, an initial program plan may take 1 hour to develop and that each review may take 1/2 hour. The Department does not have data on the average annual number of new enrollments at a facility. The child care center director, group child day care home primary staff person or FDCH operator is responsible for program plan reviews. The Department estimates the average costs of preparing program plan reviews to be as follows: child care center—\$832; group child day care home—\$199.68; and FDCH—\$99.84.

Staff health

Staff persons will save money from the decreased requirements for staff health appraisals. By amending the requirement for annual health appraisals to biannual health appraisals, each staff person will save \$75 to \$150 per year. In addition, eliminating the requirement for biannual tuberculosis testing will save each staff person an additional \$25 to \$75 every 2 years.

Paperwork Requirements

Sections 3270.119, 3280.119 and 3290.118 will result in increased paperwork. The plan must be developed at the time of initial attendance and updated every 6 months. The program plan must include documented observation of the child's development. The Department will develop tools to assist the provider in completing the program plan and observation.

The proposed rulemaking requires that each child day care center and group child day care home must certify that no hazardous equipment is on the premises. The Department will develop the certification document. The form will take no more than 10 minutes for the facility to complete.

Effective Date

This proposed rulemaking will be effective 120 calendar days after publication of the final-form rulemaking in the *Pennsylvania Bulletin*. The Department is providing an additional 2 years beyond the effective date of the final-form rulemaking for facility operators to comply with the amended regulations regarding protective surface covering under outdoor play equipment.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to Jennifer Lau, Bureau of Certification Services, Office of Child Development, Department of Public Welfare, 1401 North Seventh Street, P. O. Box 2675, Harrisburg, PA 17105, jlau@state.pa.us within 30 calendar days after the date of publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference Regulation No. 14-506 when submitting comments.

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

Regulatory Review Act

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on May 23, 2006, 2003, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Children and Youth and the Senate Committee on Public Health and Welfare. A copy of this material is available to the public upon request.

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

ESTELLE B. RICHMAN,
Secretary

Fiscal Note: 14-506. No fiscal impact; (8) recommends adoption.

Annex A

**TITLE 55. PUBLIC WELFARE
PART V. CHILDREN, YOUTH AND FAMILIES
MANUAL**

**Subpart D. NONRESIDENTIAL AGENCIES,
FACILITIES AND SERVICES**

ARTICLE I. LICENSING/APPROVAL

CHAPTER 3270. CHILD DAY CARE CENTERS

GENERAL PROVISIONS

§ 3270.4. Definitions.

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

* * * * *

ACIP—The Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention, United States Department of Health and Human Services.

* * * * *

[Age-appropriate child health assessment—A written report assessing a child's health status. The report is signed by a physician or a CRNP and includes the child's health history, the child's physical examination and a plan for treatment of health problems identified in the health assessment.]

Age level—The grouping category appropriate for the child's age.

(i) *Infant*—A child from birth [**through 12 months**] to **1 year** of age.

(ii) *Young toddler*—A child from [**13 through 24 months**] **1 to 2 years** of age.

(iii) *Older toddler*—A child from [**25 through 36 months**] **2 to 3 years** of age.

(iv) *Preschool child*—A child from [**37 months of age through**] **3 years of age** to the date the child enters [**1st grade of**] kindergarten in a public or private school system.

(v) *Young school-age child*—A child [**from the 1st grade through the 3rd**] who attends kindergarten to the date the child enters the 4th grade of a public or private school system.

(vi) *Older school-age child*—A child [**from**] who attends the 4th grade of a public or private school system through 15 years of age.

* * * * *

Child with [a disability] special needs—A child who [**does not function according to age-appropriate expectations in the areas of emotional, cognitive, communicative, perceptual-motor, physical or social development and requires special adaptations, program adjustments and related services on a regular basis to function in an adaptive manner. Examples of a child with a disability include a child who has:**

(i) **A developmental delay.**

(ii) **A neurologically-based condition, such as mental retardation, cerebral palsy, autism, epilepsy**

or another condition closely related to mental retardation or requiring treatment similar to that required by mentally retarded children.

(iii) Mental retardation associated with sociocultural or psychosocial disadvantage.

(iv) A genetic disorder or physiological condition usually associated with mental retardation.

(v) Problems of social or emotional adjustment.

(vi) A physical disability such as visual impairment, hearing impairment, speech or language impairment, or a physical handicap.] has one or more of the following:

(i) A disability or developmental delay identified on an Individualized Education Program or an Individualized Family Service Plan.

(ii) A formal behavioral plan that has been determined by a licensed physician, psychiatrist or licensed psychologist.

(iii) A chronic health condition diagnosed by a licensed physician, physician's assistant or CRNP that requires health and related services of a type or amount beyond that required by children generally.

* * * * *

Inspection summary—A document prepared by an agent of the Department describing each regulatory noncompliance item confirmed as a result of a facility inspection.

* * * * *

GENERAL REQUIREMENTS

§ 3270.11. Application for and issuance of a certificate of compliance.

* * * * *

(b) A legal entity or a representative of the legal entity shall participate in a pre-certification orientation training provided by the Department within 12 months prior to issuance of a certificate of compliance. The precertification orientation does not count toward the annual minimum of 6 hours of child care training required in § 3270.31(e) (relating to age and training).

(c) Application for a certificate of compliance shall be submitted to the appropriate regional day care office in accordance with Chapter 20 (relating to the licensure or approval of facilities and agencies).

[(c)] (d) * * *

[(d)] (e) * * *

[(e)] (f) * * *

[(f)] (g) * * *

[(g)] (h) A facility whose certificate of compliance is current as of [April 4, 1992,] _____ (*Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.*) will not be inspected under this chapter until the current certificate of compliance is due to be renewed or when a regulatory violation is alleged and the Department responds to the alleged violation with an inspection.

§ 3270.15. [Firesafety approval] Certificate of occupancy.

A certificate of compliance will not be granted by the Department until the legal entity provides a certificate of occupancy as proof of compliance with the applicable requirements of the Department of Labor and Industry [at] in 34 Pa. Code [Chapter 54 (relating to Group B educational) or local authorities in Scranton, Pittsburgh or Philadelphia] § 403.23 (relating to child day care facilities).

§ 3270.17. Service to a child with [a disability] special needs.

[A facility serving a child with a disability as defined in § 3270.4 (relating to definitions) shall also comply with applicable sections of Chapter 3300 (relating to specialized day care service for children with disabilities).]

(a) The operator shall make reasonable accommodation to include a child with special needs in accordance with the Americans With Disabilities Act of 1990 (ADA) (42 U.S.C.A. §§ 12101—12213).

(b) The operator shall permit an adult individual who provides specialized services to a child with special needs to provide those services on the facility premises as specified in the child's Individualized Education Program, Individualized Family Service Plan, formal behavioral plan or program plan as defined in § 3270.119 (relating to program plan).

(c) The operator is responsible to make staff persons aware of community resources for the family of a child with possible special needs.

(1) When the director believes a child may need an assessment due to developmental, behavioral or health concerns, the director shall inform the child's parent of the concern and provide information to the parent regarding resources for referral and assistance.

(2) When a staff person believes a child may need an assessment due to developmental, behavioral or health concerns, the staff person shall inform the director. The director shall inform the child's parent of the staff person's concern and provide information to the parent regarding resources for referral and assistance.

§ 3270.24. Departmental access.

* * * * *

(c) An agent of the Department will inspect for compliance with this chapter in all areas of the facility premises that are accessible to children.

§ 3270.25. Availability of certificate of compliance and applicable regulations.

(a) The facility's current certificate of compliance and a copy of the applicable regulations under which the facility is certified shall be posted in a conspicuous location used by parents, with instructions for contacting the appropriate regional day care office posted at the same location.

(b) The operator shall post a copy of each inspection summary issued by the Department next to the facility's certificate of compliance in a conspicuous location used by parents. The inspection summary shall remain posted until an agent of the Department

ment verifies that each regulatory noncompliance item cited on the inspection summary has been corrected.

§ 3270.27. Emergency plan.

(a) The facility shall have an emergency plan that provides for:

- (1) Shelter of children during an emergency.
- (2) Evacuation of children from the facility.
- (3) A method for facility persons to contact parents as soon as reasonably possible when an emergency situation arises.
- (4) A method for facility persons to inform parents that the emergency has ended and to provide instruction as to how parents can safely be reunited with their children.

(b) The operator shall review the emergency plan at least annually and update the plan as needed. Each review and update of the emergency plan shall be documented in writing and kept on file at the facility.

(c) Each facility person shall receive training regarding the emergency plan at the time of initial employment, on an annual basis and at the time of each plan update. The date of each training and the name of each facility person who received the training shall be documented in writing and kept on file at the facility.

(d) The emergency plan shall be posted in the facility at a conspicuous location.

(e) The operator shall provide to the parent of each enrolled child a letter explaining the emer-

gency procedures described in subsection (a). The operator shall also provide to the parent of each enrolled child a letter explaining any subsequent update to the plan.

(f) The operator shall send a copy of the emergency plan and subsequent plan to the county emergency management agency.

FACILITY PERSONS

§ 3270.31. Age and training.

* * * * *

(d) A Child Development Associate (CDA) credential or a Certified Childcare Professional (CCP) credential, as it applies to the staff qualifications in this chapter, is equivalent to [one of the following:

(1) Fifteen] 9 credit hours from an accredited college or university in early childhood education or child development and 1 year of experience with children.

[(2) Thirty credit hours from an accredited college or university in early childhood education or child development.]

* * * * *

STAFF-CHILD RATIO

§ 3270.52. Mixed age level.

When children are grouped in mixed age levels, [the following child group sizes and ratios of staff persons apply:] the age of the youngest child in the group determines the staff:child ratio and maximum group size in accordance with the requirements in § 3270.51 (relating to similar age level).

[Mixed Age Levels	Staff	Children	Maximum Group Size*	Total Number of Staff Required for the Maximum Group Size
Infant/young or older toddler	1	4	8	2
Infant/preschool	1	4	8	2
Young toddler/ preschool	1	5	10	2
Older toddler/ preschool	1	6	12	2
Preschool/young or older school-age	1	10	20	2

*No more than 50% of each group may be of the older age level.]

PHYSICAL SITE

§ 3270.61. Measurement and use of indoor child care space.

* * * * *

(h) The capacity established for an indoor space may not be exceeded except [at] in the following situations:

(1) At naptime, when toddler or preschool children are resting on rest equipment described in § 3270.106 (relating to rest equipment)[.] if the following conditions are met:

- [(1)] (i) * * *
- [(2)] (ii) * * *

(2) When older toddler, preschool or school-age children are participating in a program activity if the following conditions are met:

(i) The capacity of the indoor child care space may be exceeded for no more than two separate 1/2 hour time periods daily.

(ii) Each time period shall be designated on the facility's schedule of daily activities.

(iii) The space may not be occupied by children of the infant or young toddler age levels during a time period when the capacity is exceeded.

(iv) The number of children present in the space may not be more than twice the measured capacity of the space.

(3) When a meal is served in a space designated and measured as indoor child care space if the following conditions are met:

(i) The capacity of a space may be exceeded when children are eating for no more than 1 hour daily.

(ii) The meal time shall be designated on the facility's schedule of daily activities.

(iii) The number of children present in the space may not be more than twice the measured capacity of the space.

(i) The total number of children receiving child day care services at the facility at any one time may not exceed the maximum capacity stated on the facility's certificate of compliance.

§ 3270.70. Indoor temperature.

* * * * *

(b) If the indoor temperature exceeds [85°] 82°F in a child care space, a means of mechanical air circulation shall be operating.

§ 3270.75. First-aid kit.

* * * * *

(c) A first-aid kit [shall] must contain the following: soap, an assortment of adhesive bandages, sterile gauze pads, tweezers, tape, scissors and [Syrup of Ipecac] disposable, nonporous gloves. [Instructions for use of the Syrup of Ipecac shall be included as described at § 3270.133(9) (relating to child medication and special diets).]

(d) One first-aid kit per child care group [shall] must accompany children and facility persons on excursions from the facility. Each first aid kit taken on an excursion must contain a bottle of water in addition to the items specified at subsection (c).

* * * * *

§ 3270.82. Toilet areas.

* * * * *

(f) Toilets and training chairs may not be located in an area used for cooking or eating. [If the toilet area is not on the same floor as the child care space, an adult shall accompany toddler and preschool children going to and from the toilet area.]

* * * * *

EQUIPMENT

§ 3270.102. Condition of play equipment.

* * * * *

(c) Outdoor equipment that requires embedded mounting [shall] must be mounted over [at least 6 inches of loose-filled, impact-absorbing materials,] a loose-fill or unitary playground protective surface covering that meets the recommendations of the United States Consumer Product Safety Commission. The equipment must be anchored firmly and be in good repair.

* * * * *

(g) Children's equipment and toys described as hazardous by the United States Consumer Product Safety Commission may not be used by children at the facility and may not be on the premises at the facility.

§ 3270.104. Furniture.

(a) Furniture [shall] must be durable, safe, easily cleaned and appropriate for the child's size, age and [disability] special needs.

* * * * *

PROGRAM

§ 3270.113. Supervision of children.

(a) Children on the facility premises and on facility excursions off the premises shall be supervised by a staff person at all times. Outdoor play space used by the facility is considered part of the facility premises.

(1) Each staff person shall be assigned the responsibility for supervision of specific children. The staff person shall know the names and whereabouts of the children in his assigned group. The staff person shall be physically present with the children in his group on the facility premises and on facility excursions off the facility premises.

(2) The requirement for supervision on and off the facility premises includes compliance with the staff:child ratio requirements in §§ 3270.51—3270.54.

* * * * *

(e) A facility person may not restrain a child by using bonds, ties or straps to restrict a child's movement or by enclosing the child in a confined space, closet or locked room. The prohibition against restraining a child does not apply to the use of adaptive equipment prescribed for a child with special needs.

§ 3270.115. Water activity.

(a) *Swimming.*

* * * * *

(3) An aboveground swimming pool which is not in use [shall] must be made inaccessible to children in accordance with the swimming pool barrier guidelines of the United States Consumer Product Safety Commission.

* * * * *

§ 3270.117. Release of children.

(a) A child shall be released only to the child's parent or to an individual designated in writing by the enrolling parent. A child shall be released to either parent unless a court order on file at the facility states otherwise.

* * * * *

§ 3270.119. Program plan.

(a) The director or group supervisor shall develop a program plan specific to the child no later than 60 days following the child's first day of attendance at the facility. The program plan for a child with special needs must incorporate the Individualized Education Program, Individualized Family Service Plan or formal behavioral plan if that plan is reviewed and implemented within the 60 days.

(b) The child's program plan must include the following:

(1) A documented observation of the child's development.

(2) If applicable, identification of the child's unique needs and recommendations, plans or referrals as appropriate. The director shall inform the parent of the possible special needs of the child and provide information to the parent regarding resources for referral and assistance.

(3) A plan to facilitate the child's continued development and participation in the daily activities described in § 3270.111 (relating to daily activities), including involvement of a specialist who may be helping to support the child and family.

(c) The director or group supervisor shall review the child's program plan according to the following schedule:

(1) For an infant, toddler or preschool child, the plan shall be reviewed at least every 6 months.

(2) For a school-age child, the plan shall be reviewed at least every 12 months.

(3) For a child with special needs, the program plan shall also be reviewed according to the schedule specified in the Individualized Education Program, Individualized Family Service Plan or formal behavioral plan.

(d) The director or group supervisor shall revise the plan as needed to meet the needs of the child at each review.

(e) The director or group supervisor shall provide to the following individuals an opportunity to provide input into the development of the child's initial program plan and each review of the child's program plan:

(1) The child's parent.

(2) Other staff persons who supervise the child at the facility.

(3) Other individuals who provide early intervention or special education services, treatment, therapy or other specialized services to the child.

(4) The child if the child is a school-age child.

(f) The director or group supervisor shall date and sign the child's initial program plan and each reviewed or updated program plan. The child's parent shall be given an opportunity to sign each program plan and receive a copy of each dated and signed program plan.

(g) A signed and dated copy of the child's initial program plan and each reviewed or updated program plan shall be placed in the child's facility record.

§ 3270.120. Infant sleep position.

Infants shall be placed on their backs to sleep unless there is a medical reason an infant should not sleep in this position. The medical reason shall be documented in a statement signed by a physician, physician's assistant or CRNP and placed in the child's record at the facility.

PROCEDURES FOR ADMISSION

§ 3270.122. Admission interview.

A child shall be interviewed or observed by the operator and when possible shall have the opportunity to visit the facility prior to being admitted for care. The child shall be told as much about the service being planned as he can understand. If the parent indicates that the child has a

[disability or handicapping condition] special need, the operator shall discuss the condition with the parent, refer to § 3270.4 (relating to definitions), and comply with §§ 3270.17, 3270.124 and 3270.131 (relating to service to a child with [a disability] special needs; emergency contact information; and health [assessment] information).

§ 3270.124. Emergency contact information.

* * * * *

(b) Emergency contact information [shall] must include the following:

* * * * *

(5) Information on the [disability of the child] child's special needs, as specified by the child's parent [or], physician, physician's assistant or CRNP, which is needed in an emergency situation.

* * * * *

CHILD HEALTH

§ 3270.131. Health [assessment] information.

(a) [An] The operator shall require the parent of an enrolled child, including a child, a foster child and a relative of an operator or a facility person, [shall have an age-appropriate] to provide an initial health report [on record at the facility] no later than 60 days following [enrollment] the first day of attendance at the facility.

(1) The initial health report for an infant must be dated no more than 3 months prior to the first day of attendance at the facility.

(2) The initial health report for a young toddler must be dated no more than 6 months prior to the first day of attendance at the facility.

(3) The initial health report for an older toddler or preschool child shall be dated no more than 1 year prior to the first day of attendance at the facility.

(4) The initial health report for a school-age child must be dated in accordance with the requirements for medical examinations for school attendance in 28 Pa. Code § 23.2 (relating to medical examinations).

(b) [An age-appropriate health assessment shall be conducted according to the recommended schedule for routine health supervision as referenced in the most current edition of the American Academy of Pediatrics (AAP) Guidelines for Health Supervision. This publication can be obtained from the American Academy of Pediatrics, 141 Northwest Point Boulevard, Post Office Box 927, Elk Grove Village, Illinois 60007.] The operator shall require the parent to provide an updated health report in accordance with the following schedules:

(1) At least every 6 months for an infant or young toddler.

(2) At least every 12 months for an older toddler or preschool child.

(c) A health [assessment shall be conducted and a] report [shall] must be written and signed by a physician, physician's assistant or a CRNP. The signature [shall] must include the individual's professional title.

(d) The health report shall include the following information:

(1) A review of the child's [previous] health history.

(2) [The results of a physical examination] A list of the child's allergies.

(3) [An assessment of the child's growth patterns] A list of the child's current medication and the reason for the medication.

(4) [The physician's or CRNP's] An assessment of [a disability or a] an acute or chronic health problem or special need and recommendations for treatment or services.

(5) A review of the child's immunized status according to recommendations of the [AAP] ACIP. [The Department will provide the AAP guidelines upon request.]

* * * * *

(7) [A review of age-appropriate screenings according to the standards of the AAP.] A statement that the child is able to participate in child care and appears to be free from contagious or communicable disease.

(e) [The operator shall comply with the Department of Health (DOH) regulation at 28 Pa. Code § 27.121a (Reserved) and shall implement dismissal policies in accordance with that section. The Department will provide the DOH regulation upon request.] The facility may not accept or retain an infant 2 months of age or older, a toddler or a preschool child at the facility for more than 60 days following the first day of attendance at the facility unless the parent provides written verification from a physician, physician's assistant, CRNP, the Department of Health or a local health department of the dates (month, day and year) the child was administered immunizations in accordance with the recommendations of the ACIP.

(1) The facility shall require the parent to provide updated written verification from a physician, physician's assistant, CRNP, the Department of Health or a local health department of ongoing vaccines administered to an infant, toddler or preschool child in accordance with the schedule recommended by the ACIP.

(2) Exemption from immunization must be documented as follows:

(i) Exemption from immunization for religious belief or strong personal objection equated to a religious belief shall be documented by a written, signed and dated statement from the child's parent or guardian. The statement shall be kept in the child's record.

(ii) Exemption from immunization for reasons of medical need must be documented by a written, signed and dated statement from the child's physi-

cian, physician's assistant or CRNP. The statement shall be kept in the child's record.

(3) The facility shall implement dismissal policies in accordance with the Department of Health regulation in 28 Pa. Code § 27.77 (relating to immunization requirements for children in child care group settings).

(4) The facility shall comply with the annual immunization reporting requirements in accordance with the Department of Health regulation in 28 Pa. Code § 27.77.

§ 3270.133. Child medication and special diets.

The operator shall make reasonable accommodation in accordance with the Americans With Disabilities Act of 1990 (ADA) (42 U.S.C.A. §§ 12101—12213) to facilitate administration of medication or a special diet prescribed by a physician, physician's assistant or CRNP for a child with special needs. Facility persons are not required to administer [child] medication or special diets which are requested or required by a parent, a physician, a physician's assistant or a CRNP to a child who does not have special needs. [If child] When medication or special diets are administered, the following requirements apply:

* * * * *

[(9) A staff person who administers Syrup of Ipecac shall request case-specific instruction for administration from a poison control center or a physician. The staff person shall record in the child's file the date and time instruction was received, the name of the individual who issued the instruction, the content of the information and the time, date and amount of Syrup of Ipecac administered.]

§ 3270.135. Diapering requirements.

(a) When children are diapered, the facility shall use disposable diapers, a diaper service or arrange with the parent to provide a daily diaper supply.

* * * * *

(3) If disposable diapers are provided by a parent or by a facility, a soiled diaper shall be discarded [in one of the following ways] by immediately placing the diaper into a plastic-lined, hands-free covered can. [The diaper shall be:

(i) immediately placed into a lined outdoor trash container.

(ii) Placed in an individual, tied bag and discarded indoors until outdoor disposal is possible.]

* * * * *

(e) A staff person shall check a child's diaper at least every 2 hours and whenever the child indicates discomfort or exhibits behavior that suggests a soiled diaper. A staff person shall change a child's diaper when the diaper is soiled.

ADULT HEALTH

§ 3270.151. Health assessment.

(a) A facility person providing direct care who comes into contact with the children or who works with food preparation shall have a health assessment conducted within [3] 12 months prior to providing initial service in a child care setting and every [year] 24 months

thereafter. A health assessment is valid for [12] 24 months following the date of signature, if the person does not contract a communicable disease or develop a medical problem.

(b) A health assessment shall be conducted and a report shall be written and signed by a physician, **physician's assistant** or CRNP. The signature [shall] must include the individual's professional title.

(c) The health assessment [shall] must include the following:

* * * * *

(2) Tuberculosis screening by the Mantoux method at initial employment [and subsequently at least once every 2 years]. Subsequent tuberculosis screening is not required unless directed by a physician, physician's assistant, CRNP, the Department of Health or a local health department.

* * * * *

TRANSPORTATION

§ 3270.175. Safety restraints.

(a) A child [4] 7 years of age or younger shall be transported in accordance with the requirements for parents and guardians as stated in 75 Pa.C.S. § 4581 (relating to restraint systems).

* * * * *

§ 3270.176. Vehicles.

* * * * *

(f) The facility may not transport a child in an 11-15 passenger van in accordance with the requirements of 67 Pa. Code Chapter 171 (relating to school buses and school vehicles).

CHILD RECORDS

§ 3270.182. Content of records.

A child's record shall contain the following information:

(1) Initial and subsequent health [assessments] reports.

* * * * *

[NIGHT CARE]

(Editor's Note: As part of this proposed rulemaking, the Department is proposing to delete the text of §§ 3270.201—3270.210, which appears at 55 Pa. Code pages 3270-54 to 3270-56, serial pages (204590) to (204592).)

- § 3270.201. (Reserved).
- § 3270.202. (Reserved).
- § 3270.203. (Reserved).
- § 3270.204. (Reserved).
- § 3270.205. (Reserved).
- § 3270.206. (Reserved).
- § 3270.207. (Reserved).
- § 3270.208. (Reserved).
- § 3270.209. (Reserved).
- § 3270.210. (Reserved).

SPECIAL EXCEPTIONS

§ 3270.233. Play surfaces.

(a) A facility certified by the Department as of [April 4, 1992,] is exempt from the requirement to provide an impact-absorbing ground cover, as described in

§ 3270.102(c) (relating to condition of play equipment)] _____ (Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.) has until _____ (Editor's Note: The blank refers to a date 2 years after the effective date of adoption of this proposed rulemaking.) to comply with the protective surface requirement described in § 3270.102(c) (relating to condition of play equipment).

(b) A facility certified by the Department as of [April 4, 1992,] _____ (Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.) which has a play surface not in compliance with § 3270.102(e) [is exempt from the requirement unless the surface is replaced] has until _____ (Editor's Note: The blank refers to a date 2 years after the effective date of adoption of this proposed rulemaking.) to comply with the requirement described in § 3270.102(e).

SCHOOL-AGE PROGRAMS

§ 3270.241. Requirements specific to school-age programs.

* * * * *

(b) A facility or a space in a facility in which care is provided exclusively to school-age children shall comply only with the following sections:

* * * * *

(2) *General requirements.* Sections 3270.11—[3270.26] 3270.27 (relating to general requirements).

* * * * *

(7) *Equipment.* Sections 3270.101, 3270.102(a)—(c) and (g), 3270.104, 3270.107 and 3270.108.

(8) *Program.* Sections 3270.111, 3270.113, 3270.115(a) and (b), 3270.116 [and], 3270.118 and 3270.119.

* * * * *

(10) *Child health.* Sections 3270.131—3270.134(a) and 3270.136—3270.138. An equivalent [age-appropriate] health [assessment] report completed by a school is acceptable as documentation of child health for a school-age child.

* * * * *

(17) **Staff persons shall have immediate access to a working telephone on the facility premises.**

CHAPTER 3280. GROUP CHILD DAY CARE HOMES

GENERAL PROVISIONS

§ 3280.4. Definitions.

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

ACIP—The Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention, United States Department of Health and Human Services.

* * * * *

[*Age-appropriate child health assessment*—A written report assessing a child's health status. The report is signed by a physician or a CRNP and includes the child's health history, the child's physi-

cal examination and a plan for treatment of health problems identified in the health assessment.]

Age level—The grouping category appropriate for the child's age.

(i) Infant—A child from birth [through 12 months] to 1 year of age.

(ii) Young toddler—A child from [13 through 24 months] 1 to 2 years of age.

(iii) Older toddler—A child from [25 through 36 months] 2 to 3 years of age.

(iv) Preschool child—A child from [37 months of age through] 3 years of age to the date the child enters [first grade of] kindergarten in a public or private school system.

(v) Young school-age child—A child [from the first grade through the 3rd] who attends kindergarten to the date the child enters the 4th grade of a public or private school system.

(vi) Older school-age child—A child [from] who attends the 4th grade of a public or [private] private school system through 15 years of age.

* * * * *

Child with [a disability] special needs—A child who [does not function according to age-appropriate expectations in the areas of emotional, cognitive, communicative, perceptual-motor, physical or social development and requires special adaptations, program adjustments and related services on a regular basis in order to function in an adaptive manner. Examples of a child with a disability include a child who has:

(i) A developmental delay.

(ii) A neurologically-based condition, such as mental retardation, cerebral palsy, autism, epilepsy or another condition closely related to mental retardation or requiring treatment similar to that required by mentally retarded children.

(iii) Mental retardation associated with sociocultural or psychosocial disadvantage.

(iv) A genetic disorder or physiological condition usually associated with mental retardation.

(v) Problems of social or emotional adjustment.

(vi) A physical disability such as visual impairment, hearing impairment, speech or language impairment, or a physical handicap.] has one or more of the following:

(i) A disability or developmental delay identified on an Individualized Education Program or an Individualized Family Service Plan.

(ii) A formal behavioral plan that has been determined by a licensed physician, psychiatrist, or licensed psychologist.

(iii) A chronic health condition diagnosed by a licensed physician, physician's assistant or CRNP that requires health and related services of a type or amount beyond that required by children generally.

* * * * *

Inspection summary—A document prepared by an agent of the Department describing each regulatory noncompliance item confirmed as a result of a facility inspection.

* * * * *

GENERAL REQUIREMENTS

§ 3280.11. Application for and issuance of a certificate of compliance.

* * * * *

(b) A legal entity or a representative of the legal entity shall participate in a pre-certification orientation training provided by the Department within 12 months prior to issuance of a certificate of compliance. The precertification orientation does not count toward the annual minimum of 6 hours of child care training required in § 3280.31(e) (relating to age and training).

(c) Application for a certificate of compliance shall be submitted to the appropriate regional day care office in accordance with Chapter 20 (relating to the licensure or approval of facilities and agencies).

[(c)] (d) * * *

[(d)] (e) * * *

[(e)] (f) * * *

[(f)] (g) * * *

[(g)] (h) A facility whose certificate of compliance is current as of [April 4, 1992,] _____ (Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.) will not be inspected under this chapter until the current certificate of compliance is due to be renewed or when a regulatory violation is alleged and the Department responds to the alleged violation with an inspection.

§ 3280.15. [Firesafety approval] Certificate of occupancy.

A certificate of compliance will not be granted by the Department until the legal entity provides a certificate of occupancy as proof of compliance with the applicable requirements of the Department of Labor and Industry [at] in 34 Pa. Code [Chapter 54 or 56 (relating to Group B educational; and division C-3 small group habitation) or local authorities in Scranton, Pittsburgh or Philadelphia] § 403.23 (relating to child day care facilities).

* * * * *

§ 3280.16. Service to a child with [a disability] special needs.

[A facility serving a child with a disability as defined in § 3280.4 (relating to definitions) shall also comply with applicable sections of Chapter 3300 (relating to specialized day care service for children with disabilities).]

(a) The operator shall make reasonable accommodation to include a child with special needs in accordance with the Americans With Disabilities Act of 1990 (ADA) (42 U.S.C.A. §§ 12101—12213).

(b) The operator shall permit an adult individual who provides specialized services to a child with special needs to provide those services on the facility premises as specified in the child's Indi-

vidualized Education Program, Individualized Family Service Plan, formal behavioral plan or program plan as defined in § 3280.119 (relating to program plan).

(c) The operator is responsible to make staff persons aware of community resources for the family of a child with possible special needs.

(1) When a primary staff person believes a child may need an assessment due to developmental, behavioral or health concerns, the primary staff person shall inform the child's parent of the concern and shall provide information to the parent regarding resources for referral and assistance.

(2) When a staff person believes a child may need an assessment due to developmental, behavioral or health concerns, the staff person shall inform the primary staff person. The primary staff person shall inform the child's parent of the staff person's concern and shall provide information to the parent regarding resources for referral and assistance.

§ 3280.23. Departmental access.

* * * * *

(c) An agent of the Department will inspect compliance with this chapter in all areas of the facility premises that are accessible to children.

§ 3280.24. Availability of certificate of compliance and applicable regulations.

(a) The facility's current certificate of compliance and a copy of the applicable regulations under which the facility is certified shall be posted in a conspicuous location used by parents, with instructions for contacting the appropriate regional day care office posted at the same location.

(b) The operator shall post a copy of each inspection summary issued by the Department next to the facility's certificate of compliance in a conspicuous location used by parents. The inspection summary shall remain posted until an agent of the Department verifies that each noncompliance item noted on the inspection summary has been corrected.

§ 3280.26 Emergency plan.

(a) The facility shall have an emergency plan that provides for:

- (1) Shelter of children during an emergency.
- (2) Evacuation of children from the facility.

(3) A method for facility persons to contact parents as soon as reasonably possible when an emergency situation arises.

(4) A method for facility persons to inform parents that the emergency has ended and to provide instruction as to how parents can safely be reunited with their children.

(b) The operator shall review the emergency plan at least annually and update the plan as needed. Each review and update of the emergency plan shall be documented in writing and kept on file at the facility.

(c) Each facility person shall receive training regarding the emergency plan at the time of initial employment, on an annual basis and at the time of each plan update. The date of each training and the name of each facility person who received the training shall be documented in writing and kept on file at the facility.

(d) The emergency plan shall be posted in the facility at a conspicuous location.

(e) The operator shall provide to the parent of each enrolled child a letter explaining the emergency procedures described in subsection (a). The operator shall also provide to the parent of each enrolled child a letter explaining any subsequent update to the plan.

(f) The operator shall send a copy of the emergency plan and subsequent plan to the county emergency management agency.

FACILITY PERSONS

§ 3280.31. Age and training.

* * * * *

(d) A Child Development Associate (CDA) credential or a Certified Childcare Professional (CCP) credential, as it applies to the staff qualifications in this chapter, is equivalent to [one of the following:

(1) Fifteen] 9 credit hours from an accredited college or university in early childhood education or child development and 1 year of experience with children.

[(2) Thirty credit hours from an accredited college or university in early childhood education or child development.]

* * * * *

STAFF-CHILD RATIO

§ 3280.52. Ratio requirements.

* * * * *

(c) When children are grouped in mixed age levels, [the following child group sizes and ratios of staff persons apply:

	<i>Staff</i>	<i>Children</i>	<i>Maximum Group Size</i>	<i>Total Number of Staff Required for the Maximum Group Size</i>
Infant/young or older toddler	1	4	12	3
Young toddler/older toddler	1	5	12	3
Older toddler/ preschool	1	6	12	2
Preschool/young school-age	1	10	12	2
Young school- age/older school-age	1	12	12	1]

the age of the youngest child in the group determines the staff:child ratio and maximum group size in accordance with the requirements at subsection (b).

PHYSICAL SITE

§ 3280.61. Measurement and use of indoor child care space.

* * * * *

(h) The capacity established for an indoor space may not be exceeded except in the following situations:

(1) At naptime, when toddler or preschool children are resting on rest equipment described in § 3280.105 (relating to rest equipment) if the following conditions are met:

(i) The capacity is determined by the requirement for placement of rest equipment described in § 3280.105(f).

(ii) The capacity may be exceeded for no longer than 2 1/2 consecutive hours and no more than twice in a program day.

(2) When older toddler, preschool or school-age children are participating in a program activity if the following conditions are met:

(i) The capacity of the indoor child care space may be exceeded for no more than two separate 1/2 hour time periods daily.

(ii) Each time period shall be designated on the facility's schedule of daily activities.

(iii) The space may not be occupied by children of the infant or young toddler age levels during a time period when the capacity is exceeded.

(iv) The number of children present in the space may not be more than twice the measured capacity of the space.

(3) When a meal is served in a space designated and measured as indoor child care space if the following conditions are met:

(i) The capacity of a space may be exceeded when children are eating for no more than 1 hour daily.

(ii) The meal time shall be designated on the facility's schedule of daily activities.

(iii) The number of children present in the space may not be more than twice the measured capacity of the space.

§ 3280.70. Indoor temperature.

* * * * *

(b) If the indoor temperature exceeds [85°] 82°F in a child care space, a means of mechanical air circulation shall be operating.

§ 3280.75. First-aid kit.

* * * * *

(c) A first-aid kit shall contain the following: soap, an assortment of adhesive bandages, sterile gauze pads, tweezers, tape, scissors and [Syrup of Ipecac] disposable, nonporous gloves. [Instructions for use of the Syrup of Ipecac shall be included as described at § 3270.133(9) (relating to child medication and special diets).]

(d) One first-aid kit per child care group [shall] must accompany children and facility persons on excursions from the facility. Each first aid kit taken on an excursion must contain a bottle of water in addition to the items specified at subsection (c).

EQUIPMENT

§ 3280.102. Condition of play equipment.

* * * * *

(c) Outdoor equipment that requires embedded mounting shall be mounted over [at least 6 inches of loose-filled, impact-absorbing materials,] a loose-fill or unitary playground protective surface covering that meets the recommendations of the United States Consumer Product Safety Commission. The equipment must be anchored firmly and be in good repair.

* * * * *

(f) Children's equipment and toys described as hazardous by the United States Consumer Product Safety Commission may not be used by children at the facility and may not be on the premises at the facility.

§ 3280.108. Furniture.

(a) Furniture [shall] must be durable, safe, easily cleaned and appropriate for the child's size, age and [disability] special needs.

* * * * *

PROGRAM

§ 3280.113. Supervision of children.

(a) Children on the facility premises and on facility excursions off the premises shall be supervised by a staff person at all times. Outdoor play space used by the facility is considered part of the facility premises.

(1) Each staff person shall be assigned the responsibility for supervision of specific children. The staff person shall know the names and whereabouts of the children in his assigned group. The staff person shall be physically present with the children in his group on the facility premises and on facility excursions off the facility premises.

(2) The requirement for supervision on and off the facility premises includes compliance with the staff:child ratio requirements in §§ 3280.51—3280.54.

* * * * *

(e) A facility person may not restrain a child by using bonds, ties or straps to restrict a child's movement or by enclosing the child in a confined space, closet or locked room. The prohibition against restraining a child does not apply to the use of adaptive equipment prescribed for a child with special needs.

§ 3280.115. Water activity.

(a) *Swimming.*

* * * * *

(3) An aboveground swimming pool which is not in use [shall] must be made inaccessible to children in accordance with the swimming pool barrier guidelines of the United States Consumer Product Safety Commission.

* * * * *

§ 3280.117. Release of children.

(a) A child shall be released only to the child's parent or to an individual designated in writing by the enrolling parent. A child shall be released to either parent unless a court order on file at the facility states otherwise.

* * * * *

§ 3280.119 Program plan.

(a) The primary staff person shall develop a program plan specific to the child no later than 60 days following the child's first day of attendance at the facility. The program plan for a child with special needs must incorporate the Individualized Education Program, Individualized Family Service Plan or formal behavioral plan if that plan is reviewed and implemented within the 60 days.

(b) The child's program plan must include the following:

- (1) A documented observation of the child's development.
- (2) If applicable, identification of the child's unique needs and recommendations, plans or referrals as appropriate. The director shall inform the parent of the possible special needs of the child and provide information to the parent regarding resources for referral and assistance.

(3) A plan to facilitate the child's continued development and participation in the daily activities described in § 3280.111 (relating to daily activities), including involvement of a specialist who may be helping to support the child and family.

(c) The primary staff person shall review the child's program plan according to the following schedule:

- (1) For an infant, toddler or preschool child, the plan shall be reviewed at least every 6 months.
- (2) For a school-age child, the plan shall be reviewed at least every 12 months.
- (3) For a child with special needs, the program plan must also be reviewed according to the schedule specified in the Individualized Education Program, Individualized Family Service Plan or formal behavioral plan.

(d) The primary staff person shall revise the plan as needed to meet the needs of the child at each review.

(e) The primary staff person shall provide to the following individuals an opportunity to provide input into the development of the child's initial program plan and each review of the child's program plan:

- (1) The child's parent.
- (2) Other staff persons who supervise the child at the facility.
- (3) Other individuals who provide early intervention or special education services, treatment, therapy or other specialized services to the child.
- (4) The child if the child is a school-age child.

(f) The primary staff person shall date and sign the child's initial program plan and each reviewed or updated program plan. The child's parent shall be given an opportunity to sign each program plan and receive a copy of each dated and signed program plan.

(g) A signed and dated copy of the child's initial program plan and each reviewed or updated program plan shall be placed in the child's facility record.

§ 3280.120. Infant sleep position.

Infants shall be placed on their backs to sleep unless a there is a medical reason an infant should not sleep in this position. The medical reason shall be documented in a statement signed by a physician, physician's assistant or CRNP and placed in the child's record at the facility.

PROCEDURES FOR ADMISSION

§ 3280.122. Admission interview.

A child shall be interviewed or observed by the operator and, when possible, shall have the opportunity to visit the facility prior to being admitted for care. The child shall be told as much as he can understand about the service being planned. If the parent indicates that the child has [a disability or handicapping condition] special needs, the operator shall discuss the condition with the parent, refer to § 3280.4 (relating to definitions), and comply with §§ 3280.16, 3280.124 and 3280.131 (relating to service to a child with [a disability] special needs; emergency contact information; and health [assessment] information).

§ 3280.124. Emergency contact information.

* * * * *

(b) Emergency contact information [shall] must include the following:

* * * * *

(5) Information on the [disability of the child] child's special needs, as specified by the child's parent [or], physician, physician's assistant or CRNP, which is needed in an emergency situation.

* * * * *

CHILD HEALTH

§ 3280.131. Health [assessment] information.

(a) [An] The operator shall require the parent of an enrolled child, including a child, a foster child and a relative of an operator or a facility person, [shall have an age-appropriate] to provide an initial health report [on record at the facility] no later than 60 days following [enrollment] the first day of attendance at the facility.

(1) The initial health report for an infant must be dated no more than 3 months prior to the first day of attendance at the facility.

(2) The initial health report for a young toddler must be dated no more than 6 months prior to the first day of attendance at the facility.

(3) The initial health report for an older toddler or preschool child shall be dated no more than 1 year prior to the first day of attendance at the facility.

(4) The initial health report for a school-age child must be dated in accordance with the requirements for medical examinations for school attendance at in 28 Pa. Code § 23.2 (relating to medical examinations).

(b) [An age-appropriate health assessment shall be conducted according to the recommended schedule for routine health supervision as referenced in the most current edition of the American Academy of Pediatrics (AAP) Guidelines for Health Supervision. This publication can be obtained from the American Academy of Pediatrics, 141 Northwest Point Boulevard, Post Office Box 927, Elk Grove Village, Illinois 60007.] The operator shall require the parent to provide an updated health report in accordance with the following schedules:

(1) At least every 6 months for an infant or young toddler.

(2) At least every 12 months for an older toddler or preschool child.

(c) A health [assessment shall be conducted and a] report [shall] must be written and signed by a physician, physician's assistant or a CRNP. The signature [shall] must include the individual's professional title.

(d) The health report shall include the following information:

(1) A review of the child's [previous] health history.

(2) [The results of a physical examination] A list of the child's allergies.

(3) [An assessment of the child's growth patterns] A list of the child's current medication and the reason for the medication.

(4) [The physician's or CRNP's] An assessment of [a disability or a] an acute or chronic health problem or special needs and recommendations for treatment or services.

(5) A review of the child's immunized status according to recommendations of the [AAP] ACIP. [The Department will provide the AAP guidelines upon request.]

* * * * *

(7) [A review of age-appropriate screenings according to the standards of the AAP.] A statement that the child is able to participate in child care and appears to be free from contagious or communicable disease.

(e) [The operator shall comply with the Department of Health (DOH) regulation at 28 Pa. Code § 27.121a (Reserved) and shall implement dismissal policies in accordance with that section. The Department will provide the DOH regulation upon request.] The facility may not accept or retain an infant 2 months of age or older, a toddler or a preschool child at the facility for more than 60 days

following the first day of attendance at the facility unless the parent provides written verification from a physician, physician's assistant, CRNP, the Department of Health or a local health department of the dates (month, day and year) the child was administered immunizations in accordance with the recommendations of the ACIP.

(1) The facility shall require the parent to provide updated written verification from a physician, physician's assistant, CRNP, the Department of Health or a local health department of ongoing vaccines administered to an infant, toddler or preschool child in accordance with the schedule recommended by the ACIP.

(2) Exemption from immunization must be documented as follows:

(i) Exemption from immunization for religious belief or strong personal objection equated to a religious belief shall be documented by a written, signed and dated statement from the child's parent or guardian. The statement shall be kept in the child's record.

(ii) Exemption from immunization for reasons of medical need must be documented by a written, signed and dated statement from the child's physician, physician's assistant or CRNP. The statement shall be kept in the child's record.

(3) The facility shall implement dismissal policies in accordance with the Department of Health regulation in 28 Pa. Code § 27.77 (relating to immunization requirements for children in child care group settings).

(4) The facility shall comply with the annual immunization reporting requirements in accordance with the Department of Health regulation in 28 Pa. Code § 27.77.

§ 3280.133. Child medication and special diets.

The operator shall make reasonable accommodation in accordance with the Americans With Disabilities Act of 1990 (ADA) (42 U.S.C.A. §§ 12101—12213) to facilitate administration of medication or a special diet prescribed by a physician, physician's assistant or CRNP for a child with special needs. Facility persons are not required to administer [child] medication or special diets which are requested or required by a parent, a physician, a physician's assistant or a CRNP to a child who does not have special needs. [If child] When medication or special diets are administered, the following requirements apply:

* * * * *

[(9) A staff person who administers Syrup of Ipecac shall request case-specific instruction for administration from a poison control center or a physician. The staff person shall record in the child's file the date and time instruction was received, the name of the individual who issued the instruction, the content of the information and the time, date and amount of Syrup of Ipecac administered.]

§ 3280.135. Diapering requirements.

(a) When children are diapered, the facility shall use disposable diapers, a diaper service or arrange with the parent to provide a daily diaper supply.

* * * * *

(3) If disposable diapers are provided by a facility or a parent, a soiled diaper shall be discarded [in one of the following ways] by immediately placing the diaper into a plastic-lined, hands-free covered can. [The diaper shall be:

(i) immediately placed into a lined outdoor trash container.

(ii) Placed in an individual, tied bag and discarded indoors until outdoor disposal is possible.]

* * * * *

(e) A staff person shall check a child's diaper at least every 2 hours and whenever the child indicates discomfort or exhibits behavior that suggests a soiled diaper. A staff person shall change a child's diaper when the diaper is soiled.

ADULT HEALTH

§ 3280.151. Health assessment.

(a) A facility person providing direct care who comes into contact with the children or who works with food preparation shall have a health assessment conducted within [3] 12 months prior to providing initial service in a child care setting and every [year] 24 months thereafter. A health assessment is valid for [12] 24 months following the date of signature, if the person does not contract a communicable disease or develop a medical problem.

(b) A health assessment shall be conducted and a report shall be written and signed by a physician, physician's assistant or CRNP. The signature [shall] must include the individual's professional title.

(c) The health assessment [shall] must include the following:

* * * * *

(2) Tuberculosis screening by the Mantoux method at initial employment [and subsequently at least once every 2 years]. Subsequent tuberculosis screening is not required unless directed by a physician, physician's assistant, CRNP, Department of Health or local health department.

* * * * *

TRANSPORTATION

§ 3280.175. Safety restraints.

(a) A child [4] 7 years of age or younger shall be transported in accordance with the requirements for parents and guardians as stated in 75 Pa.C.S. § 4581 (relating to restraint systems).

* * * * *

§ 3280.176. Vehicles.

* * * * *

(f) The facility may not transport a child in an 11-15 passenger van in accordance with 67 Pa. Code Chapter 171 (relating to school buses and school vehicles).

CHILD RECORDS

§ 3280.182. Content of records.

A child's record [shall] must contain the following information:

(1) Initial and subsequent health [assessments] reports.

* * * * *

[NIGHT CARE]

(Editor's Note: As part of this proposed rulemaking, the Department is proposing to delete the text of §§ 3280.201—3280.209, which appears at 55 Pa. Code pages 3280-49 and 3280-50, serial pages (204645) and (204646).)

§§ 3280.201—3280.209.

SPECIAL EXCEPTIONS

§ 3280.215. Play surfaces.

(a) A facility certified by the Department as of [April 4, 1992,] is exempt from the requirement to provide an impact-absorbing ground cover, as described at § 3280.102(c) (relating to condition of play equipment) [Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.] has until [Editor's Note: The blank refers to a date 2 years after the effective date of adoption of this proposed rulemaking.] to comply with the protective surface requirement described in § 3280.102(c) (relating to condition of play equipment).

(b) A facility certified by the Department as of [April 4, 1992,] [Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.] which has a play surface not in compliance with § 3280.102(e) [is exempt from the requirement unless the surface is replaced] has until [Editor's Note: The blank refers to a date 2 years after the effective date of adoption of this proposed rulemaking.] to comply with § 3280.102(e).

SCHOOL-AGE PROGRAMS

§ 3280.221. Requirements specific to school-age programs.

* * * * *

(b) A facility or a space in a facility in which care is provided exclusively to school-age children shall comply only with the following:

* * * * *

(2) General requirements. Sections 3280.11—[3280.25] 3280.26 (relating to general requirements).

* * * * *

(7) Equipment. Sections 3280.101, 3280.102(a)—(c) and (g), 3280.107 and 3280.108.

(8) Program. Sections 3280.111, 3280.113, 3280.115(a) and (b), 3280.116 [and], 3280.118 and 3280.119.

* * * * *

(10) Child health. Sections 3280.131—3280.134(a) and 3280.136—3280.138. An equivalent [age-appropriate] health [assessment] report completed by a school is acceptable as documentation of child health for a school-age child.

* * * * *

(17) Staff persons shall have immediate access to a working telephone on the facility premises.

CHAPTER 3290. FAMILY CHILD DAY CARE HOMES
GENERAL PROVISIONS

§ 3290.4. Definitions.

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

ACIP—The Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention, United States Department of Health and Human Services.

* * * * *

[Age-appropriate child health assessment]—A written report assessing a child's health status. The report is signed by a physician or a nurse practitioner and includes the child's health history, the child's physical examination and a plan for treatment of health problems identified in the health assessment.]

Age level—The grouping category appropriate for the child's age.

(i) **Infant**—A child from birth [through 12 months] to 1 year of age.

(ii) **Young toddler**—A child from [13 through 24 months] 1 to 2 years of age.

(iii) **Older toddler**—A child from [25 through 36 months] 2 to 3 years of age.

(iv) **Preschool child**—A child from [37 months of age through] 3 years of age to the date the child enters [first grade of] kindergarten in a public or private school system.

(v) **Young school-age child**—A child [from the first grade through the 3rd] who attends kindergarten to the date the child enters the 4th grade of a public or private school system.

(vi) **Older school-age child**—A child [from] who attends the 4th grade of a public or private school system through 15 years of age.

* * * * *

Child with [a disability] special needs—A child who [does not function according to age-appropriate expectations in the areas of emotional, cognitive, communicative, perceptual-motor, physical or social development and requires special adaptations, program adjustments and related services on a regular basis to function in an adaptive manner. Examples of a child with a disability include a child who has:

- (i) A developmental delay.
- (ii) A neurologically-based condition, such as mental retardation, cerebral palsy, autism, epilepsy or other condition closely related to mental retardation or requiring treatment similar to that required by mentally retarded children.
- (iii) Mental retardation associated with sociocultural or psychosocial disadvantage.
- (iv) A genetic disorder or physiological condition usually associated with mental retardation.
- (v) Problems of social or emotional adjustment.

(vi) A physical disability, such as visual impairment, hearing impairment, speech or language impairment, or a physical handicap.] has one or more of the following:

(i) A disability or developmental delay identified on an Individualized Education Program or an Individualized Family Service Plan.

(ii) A formal behavioral plan that has been determined by a licensed physician, psychiatrist, or licensed psychologist.

(iii) A chronic health condition diagnosed by a licensed physician, physician's assistant or CRNP that requires health and related services of a type or amount beyond that required by children generally.

* * * * *

Inspection summary—A document prepared by an agent of the Department describing each regulatory noncompliance item confirmed as a result of a facility inspection.

* * * * *

Legal entity—A person, [society,] corporation[, governing authority] or partnership that is legally responsible for the administration of [one] the facility [or several facilities, or one type of facility or several types of facilities].

* * * * *

GENERAL REQUIREMENTS

§ 3290.11. Application for and issuance of a certificate of registration.

* * * * *

(b) [An individual] A legal entity desiring to apply for a certificate of registration shall request application documents from the appropriate regional office of the Department.

(c) A legal entity or a representative of the legal entity shall participate in a precertification orientation training provided by the Department within 12 months prior to issuance of a certificate of compliance. The precertification orientation does not count toward the biennial minimum of 12 clock hours of child care training required in § 3290.31(f) (relating to age and training).

[(c)] (d) Prior to providing child day care at any one time to more than three children unrelated to the operator, [an individual] the legal entity shall apply for and shall be issued a certificate of registration.

[(d) An individual] (e) A legal entity seeking to operate a facility shall apply to the appropriate regional office on a form approved by the Department. The [applicant] legal entity shall be required to submit information specified by the registration law and this chapter.

[(e)] (f) The [applicant] legal entity applying for a certificate of registration shall certify, in writing, compliance with the registration law and this chapter.

[(f)] (g) * * *

[(g)] (h) * * *

(1) A certificate of registration is issued to a specific [operator] legal entity at a specific location. A certificate of registration is not transferrable.

(2) A certificate of registration is void without notice if there is a change in the legal entity[, the operator] or the location of the facility.

(3) If a facility is to be operated at a new location or by a new legal entity [or operator], the [operator] legal entity shall advise the appropriate regional office at least 30 days in advance of the change.

[(h)] (i) * * * * *

[(i)] (j) If a certificate of registration lapses, the [applicant] legal entity shall file an original application and the supplemental information required by the Department.

[(j)] (k) Prior to expiration of a current certificate of registration, the [operator] legal entity will receive notice from the Department regarding renewal of the certificate.

[(k) An operator] (l) A legal entity desiring to renew a certificate of registration shall submit a correct, completed application and other required materials to the appropriate regional office of the Department prior to the expiration of the current certificate of registration.

[(l)] (m) * * * * *

[(m)] (n) An operator whose facility's certificate of registration is current as of [April 4, 1992,] _____ (Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.) will not be required to certify compliance with this chapter until renewal of the certificate of registration or until the Department inspects in response to an alleged regulatory violation, whichever occurs first.

§ 3290.14. [Firesafety approval] Certificate of occupancy.

A certificate of registration will not be granted by the Department until the [operator] legal entity provides a certificate of occupancy as proof of compliance with the applicable requirements in 34 Pa. Code [Chapter 56 (relating to division C-3 small group habitation) or local authorities in Scranton, Pittsburgh or Philadelphia] § 403.23 (relating to child day care facilities).

* * * * *

§ 3290.15. Service to a child with [a disability] special needs.

[A facility serving a child with a disability as defined in § 3290.4 (relating to definitions) shall also comply with applicable sections of Chapter 3300 (relating to specialized day care service for children with disabilities).]

(a) The operator shall make reasonable accommodation to include a child with special needs in accordance with the Americans With Disabilities Act of 1990 (ADA) (42 U.S.C.A. §§ 12101—12213).

(b) The operator shall permit an adult individual who provides specialized services to a child with

special needs to provide those services on the facility premises as specified in the child's Individualized Education Program, Individualized Family Service Plan, formal behavioral plan or program plan as defined in § 3290.118 (relating to program plan).

(c) The operator is responsible to make staff persons aware of community resources for the family of a child with possible special needs.

(1) When the operator believes a child may need an assessment due to developmental, behavioral or health concerns, the operator shall inform the child's parent of the concern and provide information to the parent regarding resources for referral and assistance.

(2) When a staff person believes a child may need an assessment due to developmental, behavioral or health concerns, the staff person shall inform the operator. The operator shall inform the child's parent of the staff person's concern and provide information to the parent regarding resources for referral and assistance.

§ 3290.21. Departmental access.

* * * * *

(c) An agent of the Department will inspect for compliance with this chapter in all areas of the facility premises that are accessible to children.

§ 3290.22. Availability of certificate of compliance and applicable regulations.

* * * * *

(c) The operator shall post a copy of each inspection summary issued by the Department next to the facility's certificate of registration in a conspicuous location used by parents. The inspection summary shall remain posted until an agent of the Department verifies that each noncompliance item noted on the inspection summary has been corrected.

§ 3290.24 Emergency plan.

(a) The facility shall have an emergency plan that provides for:

(1) Shelter of children during an emergency.

(2) Evacuation of children from the facility.

(3) A method for facility persons to contact parents as soon as reasonably possible when an emergency situation arises.

(4) A method for facility persons to inform parents that the emergency has ended and to provide instruction as to how parents can safely be reunited with their children.

(b) The operator shall review the emergency plan at least annually and update the plan as needed. Each review and update of the emergency plan shall be documented in writing and kept on file at the facility.

(c) Each facility person shall receive training regarding the emergency plan at the time of initial employment, on an annual basis and at the time of each plan update. The date of each training and the name of each facility person who received the training shall be documented in writing and kept on file at the facility.

(d) The emergency plan shall be posted in the facility at a conspicuous location.

(e) The operator shall provide to the parent of each enrolled child a letter explaining the emergency procedures described in subsection (a). The operator shall also provide to the parent of each enrolled child a letter explaining any subsequent update to the plan.

(f) The operator shall send a copy of the emergency plan and subsequent plan to the county emergency management agency.

FACILITY PERSONS

§ 3290.31. Age and training.

(a) The operator shall [be] have the following qualifications:

(1) Be 18 years of age or older.

(2) Have a high school diploma or a general educational development certificate and submit proof to the appropriate regional office of the Department at the time of registration renewal.

* * * * *

(e) A Child Development Associate (CDA) credential or a Certified Childcare Professional (CCP) credential is equivalent to [one of the following:

(1) Fifteen] 9 credit hours from an accredited college or university in early childhood education or child development and 1 year of experience with children.

[(2) Thirty credit hours from an accredited college or university in early childhood education or child development.]

* * * * *

PYSICAL SITE

§ 3290.68. Indoor temperature.

* * * * *

(b) If the indoor temperature exceeds [85°] 82°F in a child care space, a means of mechanical air circulation shall be operating.

§ 3290.73. First-aid kit.

* * * * *

(c) A first-aid kit [shall] must contain the following: soap, an assortment of adhesive bandages, sterile gauze pads, tweezers, tape, scissors and [Syrup of Ipecac] disposable, nonporous gloves. [Instructions for use of the Syrup of Ipecac shall be included as described at § 3290.133 (relating to child medication and special diets).]

(d) One first-aid kit [shall] must accompany children and facility person on excursions from the facility. The first aid kit taken on an excursion must contain a bottle of water in addition to the items specified at (c).

EQUIPMENT

§ 3290.102. Condition of play equipment.

* * * * *

(c) Outdoor equipment that requires embedded mounting [shall] must be mounted over [at least 6 inches of loose-filled impact-absorbing materials,] a loose-fill or unitary playground protective surface covering that meets the recommendations of the United States Consumer Product Safety Commission. The equipment must be anchored firmly and be in good repair.

* * * * *

PROGRAM

§ 3270.113. Supervision of children.

(a) Children on the facility premises and on facility excursions off the premises shall be supervised by a staff person at all times. Outdoor play space used by the facility is considered part of the facility premises. The requirement for supervision on and off the facility premises includes compliance with the staff:child ratio requirements in § 3290.52 (relating to ratio requirements).

* * * * *

(e) A facility person may not restrain a child by using bonds, ties or straps to restrict a child's movement or by enclosing the child in a confined space, closet or locked room. The prohibition against restraining a child does not apply to the use of adaptive equipment prescribed for a child with special needs.

§ 3290.115. Water activity.

(a) *Swimming or wading.*

* * * * *

(2) An aboveground swimming pool which is not in use shall be made inaccessible to children in accordance with the swimming pool barrier guidelines of the United States Consumer Product Safety Commission.

* * * * *

§ 3290.116. Release of children.

(a) A child shall be released from care only to the child's parent or to an individual designated in writing by the enrolling parent. A child shall be released to either parent unless a court order on file at the facility states otherwise.

* * * * *

§ 3290.118 Program plan.

(a) The operator shall develop a program plan specific to the child no later than 60 days following the child's first day of attendance at the facility. The program plan for a child with special needs shall incorporate the Individualized Education Program, Individualized Family Service Plan or formal behavioral plan if that plan is reviewed and implemented within the 60 days.

(b) The child's program plan must include the following:

(1) A documented observation of the child's development.

(2) If applicable, identification of the child's unique needs and recommendations, plans or referrals as appropriate. The operator shall inform the parent of the possible special needs of the child and provide information to the parent regarding resources for referral and assistance.

(3) A plan to facilitate the child's continued development and participation in the daily activities described in § 3290.111 (relating to daily activities) including involvement of specialist who may be helping to support the child and family.

(c) The operator shall review the child's program plan according to the following schedule:

(1) For an infant, toddler or preschool child, the plan shall be reviewed at least every 6 months.

(2) For a school-age child, the plan shall be reviewed at least every 12 months.

(3) For a child with special needs, the program plan shall also be reviewed according to the schedule specified in the Individualized Education Program, Individualized Family Service Plan or formal behavioral plan.

(d) The operator shall revise the plan as needed to meet the needs of the child at each review.

(e) The operator shall provide to the following individuals an opportunity to provide input into the development of the child's initial program plan and each review of the child's program plan:

- (1) The child's parent.
- (2) Other staff persons who supervise the child at the facility.
- (3) Other individuals who provide early intervention or special education services, treatment, therapy or other specialized services to the child.
- (4) The child if the child is a school-age child.

(f) The operator shall date and sign the child's initial program plan and each reviewed or updated program plan. The child's parent shall be given an opportunity to sign each program plan and will receive a copy of each dated and signed program plan.

(g) A signed and dated copy of the child's initial program plan and each reviewed or updated program plan shall be placed in the child's facility record.

§ 3290.119. Infant sleep position.

Infants shall be placed on their backs to sleep unless there is a medical reason an infant should not sleep in this position. The medical reason shall be documented in a statement signed by a physician, physician's assistant or CRNP and placed in the child's record at the facility.

PROCEDURES FOR ADMISSION

§ 3290.122. Admission interview.

A child shall be interviewed or observed by the operator and when possible shall have the opportunity to visit the facility prior to being admitted for care. The child shall be told as much about the service being planned as the child can understand. If the parent indicates that the child has a [disability or handicapping condition] special need, the operator shall discuss the condition with the parent, refer to § 3290.4 (relating to definitions), and

comply with §§ 3290.15, 3290.124 and 3290.131 (relating to service to a child with [a disability] special needs; emergency contact information; and health [assessment] information).

§ 3290.124. Emergency contact information.

* * * * *

(b) Emergency contact information [shall] must include the following:

* * * * *

(5) Information on the [disability of the child] child's special needs, as specified by the child's parent [or], physician, physician's assistant or CRNP, which is needed in an emergency situation.

* * * * *

CHILD HEALTH

§ 3290.131. Health [assessment] information.

(a) [An] The operator shall require the parent of an enrolled child [shall have an age-appropriate] to provide an initial health report [on record at the facility] no later than 60 days following [enrollment] the first day of attendance at the facility.

(1) The initial health report for an infant shall be dated no more than 3 months prior to the first day of attendance at the facility.

(2) The initial health report for a young toddler shall be dated no more than 6 months prior to the first day of attendance at the facility.

(3) The initial health report for an older toddler or preschool child shall be dated no more than 1 year prior to the first day of attendance at the facility.

(4) The initial health report for a school-age child shall be dated in accordance with the requirements for medical examinations for school attendance in 28 Pa. Code § 23.2 (relating to medical examinations).

(b) [An age-appropriate health assessment shall be conducted according to the recommended schedule for routine health supervision as referenced in the most current edition of the American Academy of Pediatrics (AAP) Report of the Committee on Infectious Diseases. This publication can be obtained from the American Academy of Pediatrics, 141 Northwest Point Boulevard, Post Office Box 927, Elk Grove Village, Illinois 60007.] The operator shall require the parent to provide an updated health report in accordance with the following schedules:

(1) At least every 6 months for an infant or young toddler.

(2) At least every 12 months for an older toddler or preschool child.

(c) A health [assessment shall be conducted and a] report [shall] must be written and signed by a physician, physician's assistant or a CRNP. The signature [shall] must include the individual's professional title.

(d) The health report [shall] must include the following information:

- (1) A review of the child's [previous] health history.
- (2) [The results of a physical examination] A list of the child's allergies.
- (3) [An assessment of the child's growth patterns] A list of the child's current medication and the reason for the medication.
- (4) [The physician's CRNP's] An assessment of [a disability or a] an acute or chronic health problem or special needs and recommendations for treatment or services.
- (5) A review of the child's immunized status according to recommendations of the [AAP] ACIP. [The Department will provide the AAP guidelines upon request.]

* * * * *

(7) [A review of age-appropriate screenings according to the standards of the AAP.] A statement that the child is able to participate in child care and appears to be free from contagious or communicable disease.

(e) [The operator shall comply with the Department of Health (DOH) regulation at 28 Pa. Code § 27.121a (Reserved) and shall implement dismissal policies in accordance with that section. The Department will provide the Department of Health regulation upon request.] The facility may not accept or retain an infant 2 months of age or older, a toddler or a preschool child at the facility for more than 60 days following the first day of attendance at the facility unless the parent provides written verification from a physician, physician's assistant, CRNP, the Department of Health or a local health department of the dates (month, day and year) the child was administered immunizations in accordance with the recommendations of the ACIP.

(1) The facility shall require the parent to provide updated written verification from a physician, CRNP, the Department of Health or a local health department of ongoing vaccines administered to an infant, toddler or preschool child in accordance with the schedule recommended by the ACIP.

(2) Exemption from immunization must be documented as follows:

(i) Exemption from immunization for religious belief or strong personal objection equated to a religious belief shall be documented by a written, signed and dated statement from the child's parent or guardian. The statement shall be kept in the child's record.

(ii) Exemption from immunization for reasons of medical need must be documented by a written, signed and dated statement from the child's physician, physician's assistant or CRNP. The statement shall be kept in the child's record.

(3) The facility shall implement dismissal policies in accordance with the Department of Health regulation in 28 Pa. Code § 27.77 (relating to immunization requirements for children in child care group settings).

(4) The facility shall comply with the annual immunization reporting requirements in accordance with the Department of Health regulation in 28 Pa. Code § 27.77.

§ 3290.133. Child medication and special diets.

The operator shall make reasonable accommodation in accordance with the Americans With Disabilities Act of 1990 (ADA) (42 U.S.C.A. §§ 12101—12213) to facilitate administration of medication or a special diet prescribed by a physician, physician's assistant or CRNP for a child with special needs. Facility persons are not required to administer [child] medication or special diets which are requested or required by a parent, a physician, a physician's assistant or a CRNP to a child who does not have special needs. [If child] When medication or special diets are administered, the following requirements apply:

* * * * *

[(9) A staff person who administers Syrup of Ipecac shall request case-specific instruction for administration from a poison control center or a physician. The staff person shall record in the child's file the date and time instruction was received, the name of the individual who issued the instruction, the content of the information and the time, date and amount of Syrup of Ipecac administered.]

§ 3290.135. Diapering requirements.

(a) When children are diapered, the facility shall use disposable diapers, a diaper service or arrange with the parent to provide a daily diaper supply.

* * * * *

(3) If disposable diapers are provided by a facility or a parent, a soiled diaper shall be discarded [in one of the following ways] by immediately placing the diaper into a plastic-lined, hands-free covered can [The diaper shall be:

(i) immediately placed into a lined outdoor trash container.

(ii) Placed in an individual, tied bag and discarded indoors until outdoor disposal is possible.]

* * * * *

(e) A staff person shall check a child's diaper at least every 2 hours and whenever the child indicates discomfort or exhibits behavior that suggests a soiled diaper. A staff person shall change a child's diaper when the diaper is soiled.

ADULT HEALTH

§ 3290.151. Health assessment.

(a) A facility person [shall provide the Department with a satisfactory initial health assessment. A health assessment shall be submitted] providing direct care who comes into contact with the children or who works with food preparation shall have a health assessment on file at the facility.

(1) The operator shall submit a health assessment to the Department prior to issuance of an initial or renewal certificate of registration.

(2) A health assessment is valid for 24 months following the date of signature, if the person does not contract a communicable disease or develop a medical problem.

(b) A health assessment shall be conducted and a report [shall be] written and signed by a physician, physician's assistant or CRNP. The signature [shall] must include the individual's professional title.

(c) The health assessment [shall] must include the following:

* * * * *

(2) Tuberculosis screening by the Mantoux method at initial employment [and subsequently at least once every 2 years]. Subsequent tuberculosis screening is not required unless directed by a physician, CRNP, the Department of Health or a local health department.

* * * * *

TRANSPORTATION

§ 3290.173. Safety restraints.

(a) A child [4] 7 years of age or younger shall be transported in accordance with the requirements for parents and guardians as stated in 75 Pa.C.S. § 4581 (relating to restraint systems).

* * * * *

§ 3290.174. Vehicles.

* * * * *

(f) The facility may not transport a child in an 11-15 passenger van in accordance with 67 Pa. Code Chapter 171 (relating to school buses and school vehicles).

CHILD RECORDS

§ 3290.182. Content of records.

A child's record [shall] must contain the following information:

(1) Initial and subsequent health [assessments] reports.

* * * * *

[NIGHT CARE]

(Editor's Note: As part of this proposed rulemaking, the Department is proposing to delete the text of §§ 3290.201—3290.208, which appears at 55 Pa. Code pages 3290-35 and 3290-36, serial pages (204685)—(204686).)

§§ 3290.201—3290.208.

SPECIAL EXCEPTIONS

§ 3290.212. Play surfaces.

(a) A facility registered by the Department as of [April 4, 1992, is exempted from the requirement to provide an impact-absorbing ground cover,] _____ (Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.) has until _____ (Editor's Note: The blank refers to a date 2 years after the effective date of adoption of this proposed rulemaking.) to

comply with the protective surface requirement as described at § 3290.102(c) (relating to condition of play equipment).

(b) A facility registered by the Department as of [April 4, 1992] _____ (Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.) which has a play surface or play surface not in compliance with § 3920.102(e) [is exempt from the requirement unless the surface is replaced] has until _____ (Editor's Note: The blank refers to a date 2 years after the effective date of adoption of this proposed rulemaking.) to comply with § 3290.102(e).

§ 3290.213. Age and training.

The operator of a facility registered by the Department as of _____ (Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.) is permanently qualified as an operator at the currently registered family day care home.

CHAPTER 3300. (Reserved)

(Editor's Note: As part of this proposed rulemaking, the Department is proposing to delete the text of §§ 3300.1—3300.4, 3300.11—3300.13, 3300.31—3300.36, 3300.51—3300.54, 3300.71, 3300.101, 3300.102, 3300.111—3300.113, 3300.121, 3300.131, 3300.161 and 3300.171, which appears at 55 Pa. Code pages 3300-1 to 3300-15, serial pages (253095) to (253096) and (252719) to (252731).)

- §§ 3300.1—3300.4. (Reserved).
§§ 3300.11—3300.13. (Reserved).
§§ 3300.31—3300.36. (Reserved).
§§ 3300.51—3300.54. (Reserved).
§ 3300.71. (Reserved).
§ 3300.101. (Reserved).
§ 3300.102. (Reserved).
§§ 3300.111—3300.113. (Reserved).
§ 3300.121. (Reserved).
§ 3300.131. (Reserved).
§ 3300.161. (Reserved).
§ 3300.171. (Reserved).

[Pa.B. Doc. No. 06-979. Filed for public inspection June 2, 2006, 9:00 a.m.]

FISH AND BOAT COMMISSION

[58 PA. CODE CHS. 61, 63, 65 AND 69] Fishing

The Fish and Boat Commission (Commission) proposes to amend Chapters 61, 63, 65 and 69. The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code).

A. Effective Date

The proposed rulemaking, if approved on final-form rulemaking, will go into effect on January 1, 2007.

B. Contact Person

For further information on the proposed rulemaking, contact Laurie E. Shepler, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This proposal is available on the Commission's website at www.fish.state.pa.us.

C. Statutory Authority

The proposed amendments to §§ 61.1, 61.2, 63.3, 65.26, 69.12 and 69.12a are published under the statutory authority of section 2102 of the code (relating to rules and regulations). The proposed amendment to § 63.20 (relating to permits for the protection and management of trout and salmon) is published under the statutory authority of section 2904 of the code (relating to permits for protection and management of particular fish). The proposed amendments to §§ 65.4a, 65.7, 65.9 and 65.24 and proposed § 65.12 (relating to Regional Opening Day of Trout Season Program) are published under the statutory authority of section 2307 of the code (relating to waters limited to specific purposes).

D. Purpose and Background

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

E. Summary of Proposals

(1) *Sections 61.1 and 65.26.* Recently, a question arose as to which waters the extended season applies. Section 61.1 (relating to Commonwealth inland waters) states that the extended season applies to "streams listed as approved trout waters and all waters downstream of streams listed as approved trout waters, plus lakes and ponds." Section 65.26 (relating to extended trout season), on the other hand, states that the extended season is in effect on "approved trout waters and downstream areas, plus lakes and ponds." The wording of these sections does not reflect that lakes and ponds themselves can be approved trout waters or that lakes and ponds can be waters downstream of approved trout waters. Therefore, the Commission proposes that these sections be amended to provide that the extended season applies to approved trout waters and all waters downstream of approved trout waters. The Commission proposes that these sections be amended to read as set forth in Annex A.

(2) *Section 63.20.* Under § 63.20(e), a trout/salmon permit is required when persons fish in streams or rivers that are approved trout waters or their tributaries during the 2-week period that begins on the first Saturday after April 11. However, this 2-week period does not cover the period when the Commission is actively stocking trout. Therefore, the Commission proposes that § 63.20 be amended to provide that a trout/salmon permit is required when persons fish in streams and rivers that are approved trout waters or their tributaries from March 1 through May 31. This period more accurately reflects the period during which the majority of the Commission's stocking occurs. In addition, the requirement is consistent with the Commission's thinking that trout are the primary species being targeted by anglers during that time period. The Commission accordingly proposes that § 63.20 be amended to read as set forth in Annex A.

(3) *Sections 65.12 and 61.1, 61.2, 63.3, 65.4a, 65.7, 65.9, 65.24, 69.12 and 69.12a.* Under the current regulations for Commonwealth inland waters, the opening day of the regular trout season occurs on the first Saturday after April 11. Considering the fact that differences exist

in climate across this Commonwealth, the time frame for providing optimum conditions for trout angling during the spring is earlier in portions of southern Pennsylvania, particularly in southeastern Pennsylvania. For example, in southeastern Pennsylvania, air temperatures tend to be warmer earlier in the spring as compared with other regions of this Commonwealth. These warmer temperatures also provide conditions better suited for trout angling at an earlier time in the spring in this region of this Commonwealth. However, these same warming conditions also can limit trout angling opportunities by mid-spring on many southeastern Pennsylvania waters. The combination of a mid-April opening day and the potential for these waters to become too warm for trout angling by mid-May constricts the amount of time that trout angling can be provided. The Commission therefore proposes the establishment of an earlier opening day in this region of this Commonwealth to address this problem.

Another issue that an earlier opening day in southeastern Pennsylvania will address is the growing concerns with the movement of stocked trout prior to opening day as well as the fact that some fish die between the time of stocking and opening day. A southeast regional opening day will provide the opportunity to stock trout in southeastern Pennsylvania earlier for the earlier opening day and shift the stocking to the other regions for the later opening day. This will effectively help to shorten the times between stocking and opening day throughout this Commonwealth.

The Commission reviewed several alternative boundaries for the southeast regional opening day and proposes to utilize the alternative that covers the following 18 counties: Adams, Berks, Bucks, Chester, Cumberland, Dauphin, Delaware, Franklin, Juniata, Lancaster, Lebanon, Lehigh, Montgomery, Northampton, Perry, Philadelphia, Schuylkill and York. This alternative includes the stream sections and lakes set forth in the lists that follow this preamble.

To provide for an earlier opening day in southeastern Pennsylvania, the Commission proposes to add a special regulations program entitled Regional Opening Day of Trout Season Program in § 65.12. The Regional Opening Day of Trout Season Program will allow the Executive Director, with the approval of the Commission, to designate waters in certain regions as waters subject to the Regional Opening Day of Trout Season regulations. The opening day of trout season for these waters will be the first Saturday after March 28, 2 weeks earlier than the current opening day. The Commission proposes § 65.12 to read as set forth in Annex A.

The Commission also proposes that trout stocked lakes in this region that are currently managed under § 65.10 (relating to Early Season Trout Stocked Waters Program) will be managed under the new regional opening day regulation. These waters are designated with an asterisk in the list following this preamble.

The waters that the Commission proposes to be selected initially for inclusion in this program are located in southeastern Pennsylvania. This program, however, may be extended in the future to waters in other parts of the Commonwealth where conditions support their inclusion in the program.

With the creation of a regional opening day, § 61.1 and § 63.3 (relating to fishing in approved trout waters) must be amended to reflect that it is unlawful to fish in approved trout waters regulated under the Regional

Opening Day of Trout Season Program from 12:01 a.m. on March 1 to 8 a.m. on the first Saturday after March 28. This proposed prohibition is in addition to the current prohibition against fishing in approved trout waters regulated under § 61.1 from 12:01 a.m. on March 1 to 8 a.m. on the first Saturday after April 11. The creation of a regional opening day also requires minor amendments to §§ 61.1, 61.2, 65.4a, 65.7, 65.9, 65.24, 69.12 and 69.12a to clarify that the opening day that is referred to in those sections is the opening day of the regular trout season (that is, the first Saturday after April 11). The Commission proposes that these sections be amended to read as set forth in Annex A.

F. Paperwork

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

G. Fiscal Impact

The proposed rulemaking will not have an adverse fiscal impact on the Commonwealth or its political subdivisions. However, the Commission will incur relatively nominal costs to print and post new signs for waters included in the Regional Opening Day of Trout Season Program. The proposed rulemaking will impose no new costs on the private sector or the general public.

H. Public Comments

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

Comments also may be submitted electronically by completing the form at www.state.pa.us/Fish/regcomments. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt. Electronic comments submitted in any other manner will not be accepted.

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

Fiscal Note: 48A-183. (1) Fish Fund; (2) Implementing Year 2006-07 is \$5,000; (3) 1st Succeeding Year 2007-08 is \$0; 2nd Succeeding Year 2008-09 is \$0; 3rd Succeeding Year 2009-10 is \$0; 4th Succeeding Year 2010-11 is \$0; 5th Succeeding Year 2011-12 is \$0; (4) 2005-06 Program—\$0; 2004-05 Program—\$0; 2003-04 Program—\$0; (7) General Government Operations; (8) recommends adoption.

Streams proposed for inclusion in the Regional Opening Day of Trout Season Program (18-County Option)

Bold are crossover sections or streams

<i>Water Name</i>	<i>Section</i>	<i>County 1</i>	<i>County 2</i>	<i>County 3</i>	<i>Length (miles)</i>
Antietam Creek East Branch	2	Adams	Franklin		4.225
Bermudian Creek	2	Adams			3.081
Bermudian Creek	4	Adams			1.220
Carbaugh Run	3	Adams	Franklin		1.367
Conewago Creek	3	Adams			2.485
Conewago Creek	5	Adams			6.649
Conococheague Creek	2	Adams	Franklin		3.902
Latimore Creek	2	Adams			5.654
Marsh Creek	2	Adams			5.704
Marsh Creek Ltl.	2	Adams			2.361
Marsh Creek Ltl.	3	Adams			4.847
Middle Creek	2	Adams			5.903
Opossum Creek	2	Adams			8.264
Toms Creek	2	Adams			4.753
Antietam Creek	2	Berks			1.864
Antietam Creek	4	Berks			2.485
Furnace Creek	2	Berks			2.734
Hay Creek	2	Berks			2.361
Hay Creek	3	Berks			3.977
Kistler Creek	2	Berks	Lehigh		2.479
Lehigh Creek Ltl.	2	Berks	Lehigh		3.231
Maiden Creek	1	Berks			2.485
Maiden Creek	2	Berks			2.299
Manatawny Creek	2	Berks			7.394
Manatawny Creek	4	Berks			3.169

PROPOSED RULEMAKING

2711

<i>Water Name</i>	<i>Section</i>	<i>County 1</i>	<i>County 2</i>	<i>County 3</i>	<i>Length (miles)</i>
Mill Creek	2	Berks	Lebanon		1.988
Mill Creek	2	Berks			5.654
Mill Creek	3	Berks			3.045
Muddy Creek Ltl.	2	Berks	Lancaster		3.480
Northkill Creek	3	Berks			5.903
Ontelaunee Creek	2	Berks	Lehigh		9.383
Perkiomen Creek	3	Berks	Montgomery		3.728
Pine Creek	2	Berks			4.163
Rock Run	2	Berks	Lancaster		3.418
Sacony Creek	2	Berks			3.293
Sacony Creek	3	Berks			1.491
Spring Creek	2	Berks			2.175
Swamp Creek	2	Berks	Lancaster		3.200
Swatara Creek Ltl.	2	Berks			5.095
Tulpehocken Creek	2	Berks	Lebanon		12.179
UNT Pine Creek (Eckville)	2	Berks			0.932
Willow Creek	3	Berks			1.901
Wyomissing Creek	2	Berks			2.591
Delaware Canal	5	Bucks			8.575
Neshaminy Creek	2	Bucks			1.932
Neshaminy Creek	4	Bucks			1.040
Perkiomen Creek East Branch	2	Bucks			3.915
Unami Creek	2	Bucks			3.293
Lizard Creek	2	Carbon	Schuylkill		2.361
Lizard Creek	4	Carbon			7.084
Mahoning Creek	2	Carbon	Schuylkill		2.983
Mahoning Creek	3	Carbon			7.705
Beaver Creek	2	Chester			2.983
Brandywine Creek East Branch	2	Chester			5.220
Brandywine Creek West Branch	3	Chester			3.790
Buck Run	2	Chester			3.604
Elk Creek Bg.	1	Chester			4.660
Elk Creek East Branch	2	Chester			2.423
French Creek	2	Chester			8.388
French Creek	4	Chester			7.146
Pickering Creek	2	Chester			2.051
Pocopson Creek	2	Chester			4.536
Valley Creek West	2	Chester			2.113
White Clay Creek	1	Chester			1.181
White Clay Creek East Branch	2	Chester			7.767
White Clay Creek East Branch	3	Chester			2.548
White Clay Creek M. Branch	2	Chester			5.654
Green Spring Creek	3	Cumberland			0.994
Middle Spring Creek	2	Cumberland	Franklin		5.779

PROPOSED RULEMAKING

<i>Water Name</i>	<i>Section</i>	<i>County 1</i>	<i>County 2</i>	<i>County 3</i>	<i>Length (miles)</i>
Mountain Creek	3	Cumberland			3.169
Mountain Creek	5	Cumberland			4.785
Spring Creek Bg.	3	Cumberland			1.056
Spring Creek Bg.	4	Cumberland			1.305
Yellow Breeches Creek	2	Cumberland			14.602
Yellow Breeches Creek	4	Cumberland	York		27.713
Armstrong Creek	2	Dauphin			7.394
Clark Creek	2	Dauphin			7.021
Clark Creek	3	Dauphin			5.965
Clark Creek	5	Dauphin			9.321
Mahantango Creek	3	Dauphin	Schuylkill	Northumberland	21.089
Manada Creek	3	Dauphin			8.451
Pine Creek	4	Dauphin	Schuylkill		3.790
Powell Creek	1	Dauphin			6.841
Powell Creek	3	Dauphin			6.071
Powell Creek South Fork	2	Dauphin			2.485
Rattling Creek	1	Dauphin			2.113
Rattling Creek West Branch	2	Dauphin			2.299
Stony Creek	3	Dauphin			6.835
Wiconisco Creek	2	Dauphin			13.266
Wiconisco Creek	4	Dauphin			1.603
Chester Creek	4	Delaware			4.474
Chester Creek West Branch	2	Delaware			4.101
Darby Creek	2	Delaware			6.400
Darby Creek	3	Delaware			5.468
Darby Creek Ltl.	2	Delaware			0.808
Ithan Creek	2	Delaware			1.864
Ridley Creek	2	Delaware			3.107
Antietam Creek East Branch	4	Franklin			1.630
Antietam Creek West Branch	2	Franklin			4.287
Antietam Creek West Branch	3	Franklin			6.649
Buck Run	3	Franklin			1.988
Conococheague Creek	3	Franklin			13.049
Conococheague Creek	4	Franklin			5.903
Conocochge Creek West Branch	2	Franklin			14.726
Conocochge Creek West Branch	3	Franklin			15.037
Conodoguinnet Creek	2	Franklin			7.270
Cove Creek Ltl.	2	Franklin			6.705
Dennis Creek	2	Franklin			2.858
Falling Spring Branch	5	Franklin			0.761
Rowe Run	2	Franklin			1.864
Blacklog Creek	2	Huntingdon	Juniata		21.499
Tuscarora Creek	2	Huntingdon	Juniata		16.528
Big Run	2	Juniata			2.051
Cocolamus Creek	3	Juniata			9.942
Delaware Creek	2	Juniata			4.660

PROPOSED RULEMAKING

2713

<i>Water Name</i>	<i>Section</i>	<i>County 1</i>	<i>County 2</i>	<i>County 3</i>	<i>Length (miles)</i>
Horning Run	2	Juniata			3.355
Horse Valley Run	2	Juniata	Perry		6.276
Laurel Run	2	Juniata	Perry		3.977
Licking Creek East	4	Juniata			5.344
Licking Creek East	5	Juniata			9.258
Lost Creek	3	Juniata			8.513
Beaver Creek Bg.	2	Lancaster			4.971
Beaver Creek Ltl.	2	Lancaster			4.381
Bowery Run	2	Lancaster			2.051
Chickies Creek Ltl.	2	Lancaster			3.418
Climbers Run	2	Lancaster			1.491
Cocalico Creek Ltl.	2	Lancaster			4.225
Conestoga Creek Ltl.	2	Lancaster			2.791
Conowingo Creek	2	Lancaster			8.078
Conoy Creek	2	Lancaster			2.610
Constg. Creek Ltl. West Branch	2	Lancaster			1.939
Donegal Creek	2	Lancaster			2.361
Fishing Creek	2	Lancaster			7.891
Hammer Creek	4	Lancaster			2.548
Hammer Creek	6	Lancaster			3.852
Hammer Creek	2	Lancaster	Lebanon		2.392
Indian Run	2	Lancaster			1.864
Meetinghouse Creek	2	Lancaster			2.237
Middle Creek	2	Lancaster			8.699
Muddy Run	2	Lancaster			2.672
Octoraro Creek West Branch	2	Lancaster			4.474
Octoraro Creek West Branch	4	Lancaster			1.118
Pequea Creek	2	Lancaster			4.412
Stewart Run	2	Lancaster			2.485
Swarr Run	2	Lancaster			2.485
Trout Run	2	Lancaster			0.746
Bachman Run	2	Lebanon			3.604
Conewago Creek	2	Lebanon			4.660
Indiantown Run	2	Lebanon			1.367
Quittapahilla Creek	3	Lebanon			2.858
Quittapahilla Creek	6	Lebanon			0.932
Quittapahilla Creek	8	Lebanon			5.717
Snitz Creek	2	Lebanon			4.225
Trout Run	2	Lebanon			3.107
Cedar Creek	3	Lehigh			1.243
Coplay Creek	2	Lehigh			5.592
Jordan Creek	2	Lehigh			9.507
Jordan Creek	4	Lehigh			6.835
Jordan Creek	6	Lehigh			5.530
Lehigh Canal	8	Lehigh	Northampton		3.424
Lehigh Creek Ltl.	4	Lehigh			4.903
Lehigh Creek Ltl.	7	Lehigh			2.063

PROPOSED RULEMAKING

<i>Water Name</i>	<i>Section</i>	<i>County 1</i>	<i>County 2</i>	<i>County 3</i>	<i>Length (miles)</i>
Lehigh Creek Ltl.	9	Lehigh			4.269
Monocacy Creek	9	Lehigh	Northampton		2.113
Saucon Creek South Branch	2	Lehigh			1.553
Swabia Creek	2	Lehigh			5.282
Switzer Creek	2	Lehigh			3.480
Trout Creek Bg.	2	Lehigh			6.400
Licking Creek East	2	Mifflin			2.672
Kepner Creek	2	Montgomery			0.994
Mill Creek	2	Montgomery			2.485
Pennypack Creek	4	Montgomery	Philadelphia		9.134
Skippack Creek	2	Montgomery			8.196
Stony Creek	2	Montgomery			3.293
Unami Creek	4	Montgomery			2.051
Unami Creek	5	Montgomery			1.740
Wissahickon Creek	2	Montgomery			2.983
Bushkill Creek	2	Northampton			8.699
Bushkill Creek	5	Northampton			1.740
Bushkill Creek	7	Northampton			2.920
Bushkill Creek Ltl.	2	Northampton			1.864
Bushkill Creek Ltl.	4	Northampton			3.418
Hokendauqua Creek	2	Northampton			8.016
Hokendauqua Creek	4	Northampton			3.231
Hokendauqua Creek	5	Northampton			1.988
Indian Creek	2	Northampton			5.282
Jacoby Creek	2	Northampton			2.237
Lehigh Canal	5	Northampton			3.790
Martins Creek	1	Northampton			4.735
Martins Creek	3	Northampton			2.703
Monocacy Creek	3	Northampton			2.423
Monocacy Creek	5	Northampton			2.361
Monocacy Creek	8	Northampton			0.994
Saucon Creek	4	Northampton			2.485
Bixler Run	2	Perry			4.225
Buffalo Creek	2	Perry			17.523
Buffalo Creek Ltl.	2	Perry			4.722
Buffalo Creek Ltl.	3	Perry			3.418
Bull Run	3	Perry			2.423
Fishing Creek	2	Perry			5.965
Fowler hollow Run	2	Perry			1.802
Juniata Creek Ltl.	2	Perry			9.445
McCabe Run	2	Perry			5.220
Montour Creek	2	Perry			3.728
Panther Creek	2	Perry			2.858
Raccoon Creek	2	Perry			8.202
Sherman Creek	2	Perry			14.602
Shultz Creek	2	Perry			3.977
Wissahickon Creek	4	Philadelphia			5.530
Bear Creek	2	Schuylkill			3.107

PROPOSED RULEMAKING

2715

<i>Water Name</i>	<i>Section</i>	<i>County 1</i>	<i>County 2</i>	<i>County 3</i>	<i>Length (miles)</i>
Beaver Creek	2	Schuylkill			1.616
Catawissa Creek Ltl.	2	Schuylkill			5.282
Cold Run	2	Schuylkill			2.175
Deep Creek	3	Schuylkill			9.445
Deep Creek	4	Schuylkill			7.208
Locust Creek	2	Schuylkill			6.524
Locust Creek	3	Schuylkill			0.684
Mahanoy Creek Ltl.	2	Schuylkill			3.852
Mahantango Creek	2	Schuylkill			5.269
Pine Creek	2	Schuylkill			2.423
Pine Creek	2	Schuylkill			7.214
Pine Creek	3	Schuylkill			9.258
Pine Creek	3	Schuylkill			3.293
Red Creek	2	Schuylkill			2.796
Schuylkill R. Ltl.	2	Schuylkill			3.355
Schuylkill R. Ltl.	7	Schuylkill	Berks		1.118
Swatara Creek Ltl. Lower	2	Schuylkill			7.954
Swatara Creek Ltl. Upper	2	Schuylkill			6.214
Mahantango Creek West Branch	2	Snyder	Juniata		4.474
Bald Eagle Creek	2	York			2.485
Beaver Creek	2	York			2.858
Blymire hw Run	2	York			1.429
Codorus Creek	2	York			3.480
Codorus Creek East Branch	2	York			2.610
Codorus Creek East Branch	3	York			3.107
Codorus Creek South Branch	5	York			2.113
Deer Creek	2	York			2.672
Fishing Creek	2	York			5.592
Fishing Creek	2	York			4.225
Fishing Creek	3	York	Lancaster		1.429
Leibs Creek	2	York			2.051
Muddy Creek	1	York			1.926
Muddy Creek	4	York			2.672
Muddy Creek North Branch	2	York			2.734
Muddy Creek North Branch	4	York			3.666
Muddy Creek South Branch	2	York			2.423
Otter Creek	2	York			5.592
Otter Creek	3	York			4.039
Sawmill Run	2	York			0.808
Total Sections	249			Total Miles	1147.874

Lakes proposed for inclusion in the Regional Opening Day of Trout Season Program (18-County Option)

<i>Water Name</i>	<i>County</i>	<i>Area (Acres)</i>
Waynesboro RS	Adams	22.97
Antietam Lake*	Berks	13.59
Scotts Run Lake*	Berks	22.48
Levittown Lake*	Bucks	19.76

<i>Water Name</i>	<i>County</i>	<i>Area (Acres)</i>
Lake Luxembourg*	Bucks	165.98
Childrens Lake	Cumberland	8.89
Doubling Gap Lake	Cumberland	4.00
Fuller Lake	Cumberland	1.73
Laurel Lake*	Cumberland	24.95
Middletown RS	Dauphin	11.11
Letterkenny RS	Franklin	54.09
Muddy Run Rec. Lake*	Lancaster	97.81
Lions Lake	Lebanon	6.99
Marquette Lake	Lebanon	15.07
Stovers Dam*	Lebanon	25.93
Leaser Lake*	Lehigh	117.08
Deep Creek Dam*	Montgomery	24.95
Loch Alsh RS	Montgomery	5.43
Minsi Lake*	Northampton	122.02
Locust Lake	Schuylkill	51.87
Neifert Creek F. C. RS	Schuylkill	5.93
Pumping Station Dam	Schuylkill	8.89
Rabbit Run RS	Schuylkill	4.94
Whipoorwill Dam	Schuylkill	5.19
Sheppard Myers Dam	York	46.93

* These lakes are currently managed under § 65.10.

Annex A
TITLE 58. RECREATION
PART II. FISH AND BOAT COMMISSION
Subpart B. FISHING
CHAPTER 61. SEASONS, SIZES AND CREEL LIMITS

§ 61.1. Commonwealth inland waters.

* * * * *

(d) Except as otherwise provided in this subpart, the following seasons, sizes and creel limits apply to inland waters of this Commonwealth and the Youghiogeny Reservoir:

<i>SPECIES</i>	<i>SEASONS</i>	<i>MINIMUM SIZE</i>	<i>DAILY LIMIT</i>
ALL SPECIES OF TROUT AND SALMON (except landlocked Atlantic salmon)	Regular Season: 8 a.m. first Saturday after April 11[,] to midnight Labor Day	7 inches	5[—Streams, lakes and ponds] (combined species) except areas with special regulations
	Extended Season: [Streams listed as approved] Approved trout waters and all waters downstream of [streams listed as] approved trout waters [plus lakes and ponds] [January 1—last day of February and] 12:01 a.m. day after Labor Day to midnight[,] last day of February of the following year.	7 inches	3 (combined species) except areas with special regulations

<i>SPECIES</i>	<i>SEASONS</i>	<i>MINIMUM SIZE</i>	<i>DAILY LIMIT</i>
* * * * *			
BASS—Largemouth and Smallmouth and Spotted Lakes:	January 1 to midnight the day before [opening day of trout season in April] first Saturday after April 11 and November 1 to midnight December 31**	15 inches	4 (combined species from all habitats)
	12:01 a.m. the [opening day of trout season in April] first Saturday after April 11 to 12:01 a.m. the first Saturday after June 11	NO HARVEST—Catch and immediate release only (No Tournaments Permitted)	
	12:01 a.m. the first Saturday after June 11 to midnight October 31	12 inches	6 (combined species)
BASS—Largemouth and Smallmouth and Spotted Rivers and Streams*:	January 1 to midnight the day before the [opening day of trout season in April] first Saturday after April 11 and October 1 to midnight December 31**	15 inches	4 (combined species)
	12:01 a.m. the [opening day of trout season in April] first Saturday after April 11 to 12:01 a.m. the first Saturday after June 11	NO HARVEST—Catch and immediate release only (No Tournaments Permitted)	
	12:01 a.m. the first Saturday after June 11 to midnight September 30	12 inches	6 (combined species)
* * * * *			

* * * * *

**** Note: [Approved trout waters are closed to fishing from March 1 to opening day of regular trout season in April unless included in the Early Season Trout Stocked Waters Program. See § 65.10 (relating to Early Season Trout Stocked Waters Program).] Approved trout waters are closed to all fishing from March 1 to the first Saturday after April 11 unless included in the Early Season Trout Stocked Waters Program (see § 65.10 (relating to Early Season Trout Stocked Waters Program)) or in the Regional Opening Day of Trout Season Program (see § 65.12 (relating to Regional Opening Day of Trout Season Program)). Waters included in the Early Season Trout Stocked Waters Program are closed to all fishing from April 1 to the first Saturday after April 11. Waters included in the Regional Opening Day of Trout Season Program are closed to all fishing from March 1 to the first Saturday after March 28.**

* * * * *

§ 61.2. Delaware River and River Estuary.

* * * * *

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

<i>SPECIES</i>	<i>SEASONS</i>	<i>MINIMUM SIZE</i>	<i>DAILY LIMIT</i>
* * * * *			
BASS Largemouth Smallmouth	North of I-84: Open year-round	12 inches	5 (combined species)
	South of I-84: January 1 to midnight the day before the [opening day of trout season in April] first Saturday after April 11 and October 1 to midnight December 31	12 inches	5 (combined species)
	12:01 a.m. the [opening day of trout season in April] first Saturday after April 11 to 12:01 a.m. the first Saturday after June 11	NO HARVEST—Catch and immediate release only	
	12:01 a.m. the first Saturday after June 11 to midnight September 30	12 inches	5 (combined species)
* * * * *			

* A special no-kill artificial lures only season is in effect on the West Branch of the Delaware River from October 1 to midnight[,] on the Friday before the [**opening day of trout season**] first **Saturday after April 11**. See § 65.24.

* * * * *

CHAPTER 63. GENERAL FISHING REGULATIONS

§ 63.3. Fishing in approved trout waters.

It is unlawful to fish in approved trout waters **regulated under § 61.1 (relating to Commonwealth inland waters)** from 12:01 a.m. on March 1 to 8 a.m. on [**the opening day of trout season in April**] the first **Saturday after April 11** and in approved trout waters **regulated under § 65.12 (relating to Regional Opening Day of Trout Season Program)** from **12:01 a.m. on March 1 to 8 a.m. on the first Saturday after March 28**. As used in this subpart, the term “approved trout waters” means designated waters that contain significant portions that are open to public fishing and are stocked with trout. A listing of approved trout waters is published in the Commission’s “Summary of Fishing Regulations and Laws,” which is available from the Commission at Post Office Box 67000, Harrisburg, Pennsylvania 17106-7000. The Executive Director or a designee may, from time to time, supplement or modify the list of approved trout waters, and additions or deletions will be published in the *Pennsylvania Bulletin*.

§ 63.20. Permits for the protection and management of trout and salmon.

* * * * *

(e) *Fish for trout or salmon.* A person fishes for trout or salmon when one of the following applies:

* * * * *

(2) The person fishes in streams or rivers that are approved trout waters as defined in § 63.3 (relating to fishing in approved trout waters) or their tributaries during the period from [**8 a.m. on the first Saturday after April 11 until 12:01 a.m. on the first Saturday in May**] **12:01 a.m. on March 1 until midnight May 31**.

* * * * *

CHAPTER 65. SPECIAL FISHING REGULATIONS

§ 65.4a. All-tackle trophy trout.

* * * * *

(b) It is unlawful to fish in designated and posted all-tackle trophy trout areas except in compliance with the following requirements:

* * * * *

(3) The daily creel limit is two trout-combined species from 8 a.m. on the [**opening day of trout season in April**] **first Saturday after April 11** until midnight Labor Day, except during the period from the day after Labor Day to the opening day of regular trout season of the following year, when no trout may be killed or had in possession on the waters under regulation.

* * * * *

§ 65.7. Trophy Trout Program.

* * * * *

(b) It is unlawful to fish in designated and posted trophy trout areas except in compliance with the following requirements:

* * * * *

(5) The daily creel limit is two trout—combined species—except during the period from the day after Labor Day to 8 a.m. of the [**opening day of regular trout season**] **first Saturday after April 11** of the following year, when no trout may be killed or had in possession on the waters under regulation.

* * * * *

§ 65.9. Big bass special regulations.

* * * * *

(b) It is unlawful to take, catch, kill or possess a largemouth, smallmouth or spotted bass on or in designated “Big Bass Regulation” waters except in compliance with the following seasons and size and creel limits. It is not a violation of this section if the bass is immediately returned unharmed to the waters from which it is taken.

<i>Seasons</i>	<i>Size (in)</i>	<i>Creel Limit</i>
<i>Lakes:</i> January 1 to midnight the day before the [opening day of trout season in April] first Saturday after April 11 and 12:01 a.m. the first Saturday after June 11 to midnight December 31	15	4 (combined species)
12:01 a.m. the [opening day of trout season in April] first Saturday after April 11 to 12:01 a.m. the first Saturday after June 11	NO HARVEST—Catch and immediate release only (No Tournaments Permitted)	
<i>Rivers and Streams:</i> January 1 to midnight the day before the [opening day of trout season in April] first Saturday after April 11 and October 1 to midnight December 31	18	2 (combined species)
12:01 a.m. the [opening day of trout season in April] first Saturday after April 11 to 12:01 a.m. the first Saturday after June 11	NO HARVEST—Catch and immediate release only (No Tournaments Permitted)	
12:01 a.m. the first Saturday after June 11 to midnight September 30	15	4 (combined species)

* * * * *

§ 65.12. Regional Opening Day of Trout Season Program.

(a) The Executive Director, with the approval of the Commission, may designate waters in certain regions as part of the Regional Opening Day of Trout Season Program. The designation of waters as part of the Regional Opening Day of Trout Season Program shall be effective upon publication of a notice of designation in the *Pennsylvania Bulletin*.

(b) It is unlawful to fish in waters designated as part of the Regional Opening Day of Trout Season Program except in compliance with the following seasons, sizes and creel limits:

SEASONS	MINIMUM SIZE	DAILY LIMIT
Regular Season: 8 a.m. first Saturday after March 28 to midnight Labor Day	7 inches	5 (combined species)
Extended Season: Approved trout waters and all waters downstream of approved trout waters 12:01 a.m. day after Labor Day to midnight last day of February of the following year.	7 inches	3 (combined species)

(c) It is unlawful to take, catch, kill or possess trout except during the seasons specified in this section. It is not a violation of this section if a trout caught out of season from waters where fishing for other species is otherwise lawful is immediately returned unharmed to the waters from which it was taken.

(d) It is unlawful to take, catch, kill or possess trout of less than the minimum size specified in this section. It is not a violation of this section if an undersized trout taken from waters where fishing is otherwise lawful is immediately returned unharmed to the waters from which it was taken.

(e) It is unlawful to take, catch or kill more than 1 day's limit of any species of trout as specified in this section during 1 calendar day. It is unlawful to possess more than 1 day's limit of any species of trout as specified in this section except under the following circumstances:

(1) A person may possess any number of lawfully caught trout at the person's residence.

(2) A person who is engaged in a fishing trip away from home for 2 or more consecutive calendar days may possess, while transporting trout from the place where caught to his residence, a number of trout equal to no more than two times the daily creel limit for trout. In prosecutions for violations of this section, it shall be a rebuttable presumption that a person transporting trout from a fishing site caught all of the trout during 1 calendar day.

(3) A trout will not be considered to be caught in violation of this section if it is immediately returned unharmed to the waters from which it was taken.

(4) Any trout caught that is not to be counted in the creel limit shall be immediately released unharmed to the waters from which taken. Except as otherwise provided in §§ 53.24 or 63.40 (relating to tournament and fishing derby permits; and fishing tournaments and fishing derbies), a trout placed on a stringer or confined by any type of container, structure or device or not returned immediately to the water will be considered as part of the daily creel or possession limits. Trout returned to the water shall be handled carefully and be returned unharmed to the waters from which taken.

(5) Trout may be given to another person, but the trout shall be counted in the donor's creel limit and neither donor nor the recipient may kill or possess (while in the act of fishing) more than the limit allowed.

§ 65.24. Miscellaneous special regulations.

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

<i>County</i>	<i>Name of Water</i>	<i>Special Regulations</i>
	* * * * *	
Crawford and Erie	Conneaut Creek E. Branch Conneaut Creek M. Branch Conneaut Creek W. Branch Conneaut Creek Mud Run Stone Run	Salmon and Steelhead: 12:01 a.m. the day after Labor Day until midnight the Thursday before the [opening day of trout season in April] first Saturday after April 11. Minimum size limit: 15 inches. Daily creel limit: 3 (combined species). Lake Erie fishing permit is not required.

<i>County</i>	<i>Name of Water</i>	<i>Special Regulations</i>
Crawford	Crazy Run	<p>Salmon and Steelhead: 12:01 a.m. the day after Labor Day until midnight the Thursday before the [opening day of trout season in April] first Saturday after April 11.</p> <p>Minimum size limit: 15 inches. Daily creel limit: 3 (combined species). Lake Erie fishing permit is not required.</p>
* * * * *		
Erie	E. Branch Conneaut Creek Marsh Run Temple Run Turkey Creek	<p>Salmon and Steelhead: 12:01 a.m. the day after Labor Day until midnight the Thursday before the [opening day of trout season in April] first Saturday after April 11.</p> <p>Minimum size limit: 15 inches. Daily creel limit: 3 (combined species). Lake Erie fishing permit is not required.</p>
Huntingdon	Raystown Lake (includes Raystown Branch from the Raystown Dam downstream to the confluence with the Juniata River).	<p>Trout (all species)—no closed season. [Creel limits: Regular inland season—5. Day after Labor Day to opening day of next regular inland season—3 (combined species)] Daily limit: First Saturday after April 11 until Labor Day—5 trout per day; day after Labor Day to first Saturday after April 11 of the following year—3 trout per day. Size limits: Inland rules apply. Smelt may be taken from shore or by wading by means of dip nets not to exceed 20 inches in diameter or 20 inches square. The daily limit per person is the greater of 1 gallon of smelt by volume or 200 smelt by number.</p>
* * * * *		
Luzerne	Harveys Lake	<p>During the period from the [opening day of trout season] the first Saturday after April 11 through midnight March 31, the daily creel limit for trout (combined species) is 3, only one of which may exceed 18 inches in length. Fishing is prohibited from April 1 through 8 a.m. of the [opening day of regular trout season] first Saturday after April 11.</p> <p>Warmwater/coolwater species, except as provided in this section-Inland regulations apply.</p>

PROPOSED RULEMAKING

<i>County</i>	<i>Name of Water</i>	<i>Special Regulations</i>
Mercer	Shenango River from the dam downstream to SR 3025, a distance of 1.5 miles	Closed season on trout: April 1 until 8 a.m., first Saturday after April 11. Daily limit— [Opening day of trout season in April] First Saturday after April 11 until Labor Day: [five] 5 trout per day; day after Labor Day to midnight, March 31 of the following year— [three] 3 trout per day. Inland regulations apply to warmwater/coolwater species.
* * * * *		
Somerset, Fayette, Westmoreland and Allegheny	<p>Youghiogheny River from confluence with Casselman River downstream to the confluence with Ramcat Run</p> <p>Youghiogheny River from the pipeline crossing at the confluence with Lick Run downstream to the mouth of the river.</p> <p>Youghiogheny River from Reservoir downstream to confluence with Casselman River.</p>	<p>[No closed season on trout. Daily limit opening day of trout season to Labor Day—5 trout; day after Labor Day to succeeding opening day of trout season—3 trout per day] Trout (all species)—no closed season. Daily limit: First Saturday after April 11 until Labor Day—5 trout per day; day after Labor Day to first Saturday after April 11 of the following year—3 trout per day. Inland regulations apply to warmwater/coolwater species.</p> <p>Closed season on trout: April 1 until 8 a.m., first Saturday after April 11. Daily limit—[Opening day of trout season in April] First Saturday after April 11 until Labor Day—[five] 5 trout per day; day after Labor day to midnight, March 31 of following year: [three] 3 trout per day. Inland regulations apply to warmwater/coolwater species.</p>
Warren	Allegheny River—8.75 miles downstream from the outflow of the Allegheny Reservoir to the confluence with Conewago Creek	Trout—minimum size limit—14 inches; daily creel limit—2 trout per day (combined species) from 8 a.m. on the [opening day of regular trout season] first Saturday after April 11 through midnight Labor Day, except during the period from the day after Labor Day to the [opening day of regular trout season] first Saturday after April 11 of the following year, when no trout may be killed or had in possession. Other inland seasons, sizes and creel limits apply.
Washington	Little Chartiers Creek from Canonsburg Lake Dam approximately 1/2 mile downstream to mouth of Chartiers Creek	Fishing is prohibited from 12:01 a.m. March 1 to 8 a.m. [opening day of trout season] first Saturday after April 11.
* * * * *		

<i>County</i>	<i>Name of Water</i>	<i>Special Regulations</i>
Wayne	West Branch Delaware River	Trout: From the Pennsylvania/New York border downstream to the confluence with the East River Branch of the Delaware River: no-harvest artificial lures only season on trout from October 16 until midnight of the Friday before [opening day of trout season] first Saturday after April 11. During the no-harvest artificial lures only season: <ol style="list-style-type: none"> 1. Fishing may be done with artificial lures only, constructed of metal, plastic, rubber or wood, or flies or streamers constructed of natural or synthetic materials. Lures may be used with spinning or fly fishing gear. 2. The use or possession of any natural bait, baitfish, fishbait, bait paste and similar substances, fish eggs (natural or molded) or any other edible substance is prohibited. 3. The daily creel limit for trout is 0.

* * * * *

§ 65.26. Extended trout seasons.

(a) *General rule.* The extended trout season is in effect from the day after Labor Day until the last day of February of the following year on approved trout waters and **all waters** downstream **[areas, plus lake and ponds] of approved trout waters.** A creel limit of three trout per day and a minimum size limit of 7 inches applies during this season.

CHAPTER 69. FISHING IN LAKE ERIE AND BOUNDARY LAKES

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

* * * * *

(d) It is unlawful to fish in or along any Lake Erie tributary stream or the Water Works Ponds at Presque Isle State Park from 12:01 a.m. on the Friday before the **[opening day of trout season] first Saturday after April 11** until 8 a.m. on the **[opening day of trout season in April] first Saturday after April 11.**

(e) It is unlawful to possess trout or salmon in or along any Lake Erie tributary stream or the Water Works Ponds at Presque Isle State Park from 12:01 a.m. on the Friday before the **[opening day of trout season] first Saturday after April 11** until 8 a.m. on the **[opening day of trout season in April] first Saturday after April 11.**

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

<i>SPECIES</i>	<i>SEASONS</i>	<i>MINIMUM SIZE</i>	<i>DAILY LIMIT</i>
	* * * * *		
BASS Largemouth Smallmouth	January 1 to [opening day of trout season in April] first Saturday after April 11 and first Saturday after June 11 until December 31 [Opening day of trout season in April] First Saturday after April 11 until first Saturday after June 11.*	15 inches 20 inches	4 (combined species) 1
	* * * * *		

* It is unlawful to conduct or participate in a fishing tournament (as defined in § 63.40 (relating to seasons for fishing tournaments)) for bass on Lake Erie, Lake Erie tributaries or Presque Isle Bay during the period from **[opening day of trout season in April] the first Saturday after April 11** until the first Saturday after June 11.

§ 69.12a. Special regulations applicable to Lake Erie tributary streams.

* * * * *

(c) From 12:01 a.m. on the day after Labor Day, until the [**opening day of trout season in April**] **first Saturday after April 11 of the following year**, all Lake Erie tributary streams are closed to fishing from 10 p.m. until 5 a.m. on the following day except for Walnut Creek and Elk Creek north of Route 5.

* * * * *

[Pa.B. Doc. No. 06-980. Filed for public inspection June 2, 2006, 9:00 a.m.]

[58 PA. CODE CH. 79]
Reptiles and Amphibians

The Fish and Boat Commission (Commission) proposes to add §§ 79.8, 79.11 and 79.12 (relating to artificial propagation and dealers of live aquatic animals; introduction; and color morphs). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The proposed rulemaking updates and improves the Commission's reptile and amphibian regulations to provide for the greater protection and management of these resources.

A. *Effective Date*

The proposed rulemaking, if approved on final-form rulemaking, will go into effect on January 1, 2007.

B. *Contact Person*

For further information on the proposed rulemaking, contact Laurie E. Shepler, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This proposed rulemaking is available on the Commission's website at www.fish.state.pa.us.

C. *Statutory Authority*

Proposed §§ 79.8, 79.11 and 79.12 are published under the statutory authority of section 2102 of the code (relating to rules and regulations).

D. *Purpose and Background*

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

On two occasions, the Commission has published proposed rulemakings soliciting public comments regarding its proposed reptile and amphibians regulations. The first proposed rulemaking was published at 35 Pa.B. 5683 (October 15, 2005). The second proposed rulemaking was published at 36 Pa.B. 1220 (March 18, 2006). Upon closer review of the proposed regulations in the second proposed rulemaking, the Commission determined that several issues require additional clarification. They are artificial propagation and dealers of live aquatic animals, introduction and color morphs.

(*Editor's Note:* The rescission of Chapter 77 was included in the proposal published at 36 Pa.B. 1220).

E. *Summary of Proposals*

(1) *Section 79.8:* Although the second proposed rulemaking broadly addresses artificial propagation of reptiles and amphibians, it does not address the more

specific issue of closed system propagation. Closed systems are designed to prevent release or escape of animals from the system. Closed system propagation, primarily in the context of fin fish, is already addressed in Chapter 71 (relating to propagation and introduction of fish into Commonwealth waters), and the proposed closed system provisions pertaining to reptiles and amphibians in § 79.8 resemble the provisions in Chapter 71. Under the proposed regulation, the Commission will maintain two lists of species of reptiles and amphibians that are approved for artificial propagation—one containing species approved for open systems and another containing species approved for closed systems. Currently, bullfrogs and green frogs are on the list of species approved for open system propagation under Chapter 71 and will be approved for open system propagation under proposed Chapter 79. Commission staff do not intend to recommend other native species of reptiles and amphibians for open system propagation. A list of species approved for closed system propagation will include all nonnative species except those specifically prohibited by the Commission and color morphs of certain native species. The list of color morphs will be developed with input from commercial propagators and hobby breeders.

(2) *Section 79.11:* Although the introduction of nonnative species is addressed in the second proposed rulemaking, the introduction of native species is not. Like propagation, introduction of native species is already addressed in the broad context of Chapter 71. However, for purposes of completeness, provisions dealing with the introduction of native species of reptiles and amphibians should be included in the proposed Chapter 79. Proposed § 79.11 provides that as a general rule, native species of reptiles and amphibians may be introduced onto lands and into waters of this Commonwealth only when the Commission has approved the native species for introduction. Similar to propagation, the Commission will maintain a list of native species that it has approved for introduction. There is an exception to the general rule that allows a person who lawfully catches and possesses a reptile or amphibian in this Commonwealth to reintroduce that animal into the wild if certain conditions are met.

(3) *Section 79.12:* The Commission has determined that the provisions of § 79.12 as in the second proposed rulemaking should be modified to clarify that color morphs of native species designated by the Commission may be artificially propagated provided they are not taken from the wild and they are propagated in a closed system meeting the requirements of § 79.8.

The Commission proposes to add these sections as set forth in Annex A.

F. *Paperwork*

The proposed rulemaking will increase paperwork slightly in that the Commission will maintain two separate lists of species of reptiles and amphibians that are

approved for artificial propagation—one containing species approved for open systems and another containing species approved for closed systems. The Commission already maintains a list of species approved for open system propagation under Chapter 71, which contains two frog species. The Commission will now maintain separate lists for reptiles and amphibians.

The proposed rulemaking will create no new paperwork requirements in that the requirement for registration with the Department of Agriculture (Department) as an artificial propagator or as a dealer of live aquatic animals is in 3 Pa.C.S. Chapter 42 (relating to Aquaculture Development Law) (act), not the Commission's proposed regulations. Under section 4220 of the act (relating to registration for artificial propagation), the Department may register applicants for artificial propagation upon receipt of a written application and payment of a registration fee of \$150. Section 4222 of the act (relating to registration for dealers of live aquatic animals) provides that the Department may register applicants wishing to become dealers of live aquatic animals upon receipt of a written application and payment of a registration fee of \$50.

G. Fiscal Impact

The proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking will impose no new costs on the private sector or the general public. As previously described, the act requires persons wishing to become artificial propagators or dealers of live reptiles and amphibians to register with the Department.

H. Public Comments

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

Comments also may be submitted electronically by completing the form at www.state.pa.us/Fish/regcomments. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt. Electronic comments submitted in any other manner will not be accepted.

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

Fiscal Note: 48A-184. Nonfiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 79. REPTILES AND AMPHIBIANS

(Editor's Note: The following text is new and is printed in regular type to enhance readability.)

§ 79.8. Artificial propagation and dealers of live aquatic animals.

(a) *General.* Except for hobby breeders and pet stores as defined in 3 Pa.C.S. Chapter 42 (relating to aquaculture development), it is unlawful to artificially propagate or deal in live reptiles and amphibians without

being registered with the Department of Agriculture (Department) under 3 Pa.C.S. Chapter 42. It is unlawful for anyone, regardless of whether or not registered, to artificially propagate reptiles and amphibians except those species, subspecies and color morphs that the Commission has approved for artificial propagation in this Commonwealth in accordance with this section.

(b) *Approved lists.* The Bureau of Fisheries will maintain lists of species, subspecies and color morphs for which the Department may issue registrations for artificial propagation and registrations for dealers of live aquatic animals. The Bureau of Fisheries will maintain two separate lists—one that the Commission has approved for artificial propagation in an open system and one that the Commission has approved for artificial propagation in a closed system or a system with discharges rendered incapable of containing self-perpetuating living organisms. The Director of the Bureau of Fisheries may update or modify the lists of approved species, subspecies and color morphs by adding species, subspecies or color morphs to or deleting species, subspecies or color morphs from the lists as necessary for the protection and management of reptiles and amphibians in this Commonwealth. The Commission will provide the lists to the Department on or before January 31 each year and whenever the Commission updates or modifies the lists. Copies of the lists of approved species, subspecies and color morphs are available upon request from the Pennsylvania Fish and Boat Commission, Bureau of Fisheries, 450 Robinson Lane, Bellefonte, Pennsylvania 16823.

(c) *Open systems.* Reptiles and amphibians may be artificially propagated or held by dealers in an open system only when the Commission has approved the species, subspecies or color morphs for artificial propagation in an open system.

(d) *Closed systems or systems with discharges rendered incapable of containing self-perpetuating living organisms.*

(1) Reptiles and amphibians may be artificially propagated or held by dealers in a closed system or in a system with discharges rendered incapable of containing self-perpetuating living organisms that meets the requirements of this subsection only when the Commission has approved the species, subspecies or color morphs for artificial propagation in a closed system or a system with discharges rendered incapable of containing self-perpetuating living organisms.

(2) To artificially propagate or deal in live reptiles and amphibians in a closed system, an applicant for registration shall certify that all of the following conditions are met:

(i) The closed system will be housed indoors in a structure enclosed by solid walls, floor and roof. For purposes of this paragraph, a wall, floor or roof will be considered "solid" if it is constructed and maintained to prevent unauthorized human or animal intrusions into the closed system facility and to prevent release or escape of live reptiles or amphibians from the closed system.

(ii) If water will be used in normal operations, no discharge will be allowed onto the lands or into the waters of this Commonwealth.

(iii) Water will be added to the system only for making up evaporative loss, cleaning, harvesting or consumption.

(iv) No live reptiles or amphibians or live reptile or amphibian eggs will be permitted to escape. Accidental escape, spillage or loss of live reptiles or amphibians including their eggs will be contained within the facility in a manner that prevents the reptiles and amphibians or their eggs from escaping onto the lands or into the waters of this Commonwealth.

(3) To artificially propagate or deal in live reptiles and amphibians in a system with discharges rendered incapable of containing self-perpetuating living organisms, an applicant for registration shall certify that one of the following conditions is met:

(i) Discharged water will be subject to treatment processes that will destroy living organisms.

(ii) Water will be discharged in a manner that living organisms cannot survive.

(4) The Commission may request from the Department a list of registered propagators and dealers that hold reptiles and amphibians in closed systems or systems with discharges rendered incapable of containing self-perpetuating living organisms. The Commission, in its discretion, may inspect these systems to ensure that they are designed and constructed in a manner to prevent escape of live reptiles or amphibians or their live eggs onto lands or into the waters of this Commonwealth or so that their discharges are rendered incapable of containing live amphibians or reptiles or their eggs. In addition, the Commission, in its discretion, may inspect these systems at any time to ensure compliance with this subsection, and the Commission may issue an order to suspend operations of any of these systems when an inspection discloses that it is not in compliance with this subsection.

(5) The Commission will invite the Department's Aquaculture Advisory Committee or a subcommittee thereof to draft and periodically update construction guidelines for closed system propagators and dealers to help them ensure closed systems prevent escape of reptiles and amphibians onto the lands or into the waters of this Commonwealth. These guidelines will assist registered propagators and dealers in the design, construction and maintenance of closed systems and will assist the Commission in inspecting these systems.

(6) It is unlawful for an operator of a system described in this subsection to allow live reptiles or amphibians to escape onto lands or into the waters of this Commonwealth.

(7) A registered operator of any system described in this subsection shall develop, maintain and make available for immediate inspection by the Commission and the Department upon request a written plan for containing or treating discharged animals in the event of a closed system failure.

(8) A registered operator of any system described in this subsection shall notify both the Commission's Director of the Bureau of Fisheries and the Department's Aquaculture Coordinator immediately in the event of an escape or a discharge failure that is likely to contain viable living organisms.

§ 79.11. Introduction.

(a) *Nonnative species.* It is unlawful to introduce any species of reptile or amphibian into the natural environment of this Commonwealth if that species is not native to this Commonwealth. Persons who import nonnative reptiles or amphibians into this Commonwealth shall institute appropriate safeguards to prevent their introduction into the environment of this Commonwealth.

(b) *Native species.*

(1) *General rule.* Except as otherwise provided in this subsection, native species of reptiles and amphibians may be introduced into the natural environment of this Commonwealth only when the Commission has approved the native species for introduction. Except as otherwise provided in this subsection, it is unlawful to introduce or facilitate the introduction of native species of reptiles and amphibians except those native species that the Commission has approved for introduction. The Commission will maintain a list of native species that the Commission has approved for introduction. The Director of the Bureau of Fisheries may update or modify the list of approved species by adding species to or deleting species from the list as necessary for the protection and management of reptiles and amphibians in this Commonwealth. Copies of the list of approved species are available upon request from the Pennsylvania Fish and Boat Commission, Bureau of Fisheries, 450 Robinson Lane, Bellefonte, PA 16823.

(2) *Exception.* A person who lawfully catches and possesses a reptile or amphibian in accordance with § 79.3 (relating to season and daily possession limits) may reintroduce that reptile or amphibian into the natural environment of this Commonwealth as long as the following conditions are met:

(i) The person other than a Commission-recognized rehabilitator releases the reptile or amphibian to the point of capture. If the point of capture is unknown, a Commission-recognized rehabilitator may release the animal to appropriate habitat.

(ii) The person other than a Commission-recognized rehabilitator releases the reptile or amphibian within 30 days of capture. A Commission-recognized rehabilitator may release the animal more than 30 days after capture.

(iii) The person releases the reptile or amphibian during the period, May 1 through Labor Day.

(iv) The reptile or amphibian is in good health.

§ 79.12. Color morphs.

For purposes of this chapter, it is presumed that color morphs of certain native species that are held in captivity were not taken from the wild. Therefore, the Commission has determined that color morphs of certain native species are exempt from the requirements of this chapter as provided in this section. The Commission will publish in the *Pennsylvania Bulletin* a list of color morphs of native species to which the following provisions apply:

(1) Color morphs of native species designated by the Commission are not subject to the possession limits of § 79.3 (relating to season and daily possession limits) provided they are not taken from the wild.

(2) Color morphs of native species designated by the Commission may be artificially propagated provided they are not taken from the wild and they are propagated in a closed system meeting the requirements of § 79.8 (relating to artificial propagation and dealers of live aquatic animals).

(3) Color morphs of native species designated by the Commission may be sold provided they are not taken from the wild.

[Pa.B. Doc. No. 06-981. Filed for public inspection June 2, 2006, 9:00 a.m.]

GAME COMMISSION

[58 PA. CODE CH. 143]

Hunting and Furtaker Licenses; Mentored Youth Hunting Program

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its April 18, 2006, meeting, proposed to add Chapter 143, Subchapter M (relating to mentored youth hunting program license exemption) to create, define and implement the Mentored Youth Hunting Program (MYHP) within this Commonwealth.

The proposed rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for the proposed rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

The proposed rulemaking was made public at the April 18, 2006, meeting of the Commission. Comments can be sent, until June 6, 2006, to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

1. *Purpose and Authority*

Due to today's complex society and all of the competing interests youths have to choose from, it is difficult for our sporting men and women to expose youngsters to the joys of hunting. On December 22, 2005, Governor Rendell signed into law House Bill 1690 to provide a way for parents to better combat these challenges. In effect, this statutory amendment authorized the Commission to create, define and implement a concept aptly named the MYHP.

The mission of the MYHP is to create and expanded youth opportunities while maintaining safety afield. The MYHP provides youngsters a chance to develop the love of hunting early and allow that passion to grow as they do. The MYHP promotes the culture and development of the type of one-on-one training, and hands on experience that will help protect our hunting future as well as increase hunting safety through the intimate counseling provided by dedicated mentors. Youths who might otherwise never experience hunting will now have the chance to taste the thrills of past generations as they carry this Commonwealth's hunting heritage into our future. The MYHP may not benefit all youths, however, it does provide a vehicle into the hunting fraternity for many youngsters whose parents feel are mentally, emotionally and physically ready for the rigors of hunting.

It was only with the dedicated assistance of various sportsmen's organizations that the MYHP was even possible. Indeed, the MYHP concept was initially developed and promoted by the determination of organizations such as the National Wild Turkey Federation, Pennsylvania Federation of Sportsmen's Clubs, United Bowhunters of Pennsylvania, Central Counties Concerned Sportsmen, National Rifle Association, Quality Deer Management

Association, Rocky Mountain Elk Foundation, Big Bothers/Big Sisters Pass It On Program and the U.S. Sportsmen's Alliance.

In a world in which everyone seems to have less and less time, and we never seem to place the proper value on the truly important things, there can be no greater way to instill values, provide the ideal time and place to teach conservation, respect, ethics and responsibilities that we all have as caretakers of our streams and forests, than by adopting the MYHP in this Commonwealth. Therefore, after consideration of the relevant issues, the Commission is proposing to add Subchapter M to create, define and implement the MYHP within this Commonwealth.

Section 2701(a) of the code (relating to license requirements) states that "Except in defense of person or property or pursuant to exemptions authorized by the commission for implementing a mentored youth hunting program, every person, prior to engaging in any of the privileges granted by this title, shall first obtain the applicable license subject to any conditions or other requirements imposed by this title." Section 2102(a) of the code (relating to regulations) provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth." The addition of Subchapter M was proposed under this authority.

2. *Regulatory Requirements*

The proposed rulemaking will add Subchapter M to create, define and implement the MYHP within this Commonwealth.

3. *Persons Affected*

Persons wishing to engage in mentored youth hunting opportunities or those in the vicinity of persons engaging in mentored youth hunting activities will be affected by the proposed rulemaking.

4. *Cost and Paperwork Requirements*

The proposed rulemaking should not result in any additional cost or paperwork.

5. *Effective Date*

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

6. *Contact Person*

For further information regarding the proposed rulemaking, contact Michael A. Dubaich, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

CARL G. ROE,
Executive Director

Fiscal Note: 48-230. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 143. HUNTING AND FURTAKER
LICENSESSubchapter M. MENTORED YOUTH HUNTING
PROGRAM LICENSE EXEMPTION

Sec.

- 143.241. Purpose and scope.
 143.242. Definitions.
 143.243. General.
 143.244. Safety.
 143.245. Liability.
 143.246. Unlawful acts.
 143.247. Penalties.

(*Editor's Note:* The following text is new and is printed in regular type to enhance readability.)

§ 143.241. Purpose and scope.

(a) The purpose of this subchapter is to define and implement the Mentored Youth Hunting Program.

(b) The Mentored Youth Hunting Program is intended to provide mentors who are dedicated to promoting and sharing this Commonwealth's hunting heritage with interested youths, the opportunity to provide these younger unlicensed youths with one-on-one, hands-on experience and in-field training on the mechanical, ethical, safety, responsibility and enjoyment aspects of the hunting experience.

§ 143.242. Definitions.

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

Lawful hunting device—Any firearm or implement that is lawful to be possessed during the current season and used to harvest the particular species hunted.

Mentor—A licensed person, 21 years of age or older who is serving as a trusted counselor to a mentored youth while engaged in hunting or related activities.

Mentored youth—An unlicensed person, under 12 years of age who is accompanied by a mentor while engaged in hunting or related activities.

Stationary—The state or condition where a person is still, fixed in place or static, indicated by a cessation of all forward, backward or lateral movement, whether in the standing, kneeling, sitting or prone position.

§ 143.243. General.

(a) A mentor shall possess a valid Pennsylvania hunting license or qualify for license and fee exemptions under section 2706 of the act (relating to resident license and fee exemptions) prior to engaging in any mentored youth hunting activities.

(b) A mentored youth's hunting eligibility is restricted to the following species: squirrel, woodchuck and wild turkey (spring gobbler season only) beginning in the 2006-2007 hunting license year.

(i) Beginning in the 2007-2008 hunting license year, antlered deer will be included in the mentored youth hunts.

(ii) Mentored youth hunters shall comply with the same antler requirements as junior license holders.

(c) A mentored youth's hunting eligibility is further constrained by all applicable hunting seasons, daily limits, field possession limits and season limits provided in § 139.4 (relating to seasons and bag limits for the license year).

(d) A mentored youth is eligible to hunt during any special youth hunting seasons that apply to any species specified in subsection (b).

(e) A mentored youth shall tag and report all big game harvested in the manner provided for in section 2323(b) of the act (relating to killings by persons without license).

§ 143.244. Safety.

While engaged in mentored youth hunting activities:

(1) A mentored youth shall be stationary and within arms reach of the mentor, subject to his immediate control, at all times while in possession of any lawful hunting device.

(2) A mentor may not accompany more than one youth, including junior hunters, at any given time.

(3) A mentor and mentored youth may not collectively possess more than one lawful hunting device at any given time.

(4) A mentor and mentored youth shall both comply with section 2524 of the act (relating to protective material required) and with any regulations promulgated by the Commission relating to protective material.

§ 143.245. Liability.

A mentor is responsible and accountable for all actions of the mentored youth occurring while engaged in mentored youth hunting activities. A mentor who causes or allows a mentored youth to engage in an unlawful act shall be punishable as the principal offender as provided in section 924 of the act (relating to liability for actions of others) or with any regulations promulgated by the Commission.

§ 143.246. Unlawful acts.

It is unlawful while engaged in mentored youth hunting activities for:

(1) A mentor not to possess a valid Pennsylvania hunting license or qualify for license and fee exemptions under section 2706 of the act (relating to resident license and fee exemptions).

(2) A mentor to permit a mentored youth to possess any lawful hunting device except while in a stationary position and within arms reach of the mentor.

(3) A mentor to permit a mentored youth to take or attempt to take any species of game or wildlife not otherwise authorized by this subchapter.

(4) A mentor to accompany more than one youth, including junior hunters, at any given time.

(5) A mentor or mentored youth to collectively possess more than one lawful hunting device at any given time.

(6) A mentor or mentored youth to fail to comply with section 2524 of the act (relating to protective material required) or any regulations promulgated by the Commission relating to protective material.

(7) A mentor or mentored youth to violate any other provision of this subchapter.

§ 143.247. Penalties.

A person violating this subchapter shall, upon conviction, be sentenced to pay the fine prescribed in the act.

[Pa.B. Doc. No. 06-982. Filed for public inspection June 2, 2006, 9:00 a.m.]

STATEMENTS OF POLICY

Title 4—ADMINISTRATION

PART II. EXECUTIVE BOARD

[4 PA. CODE CH. 9]

Reorganization of the Board of Probation and Parole

The Executive Board approved a reorganization of the Board of Probation and Parole effective April 6, 2006.

The organization chart at 36 Pa.B. 2731 (June 3, 2006) is published at the request of the Joint Committee on Documents under 1 Pa. Code § 3.1(a)(9) (relating to contents of Code).

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

[Pa.B. Doc. No. 06-983. Filed for public inspection June 2, 2006, 9:00 a.m.]

PART II. EXECUTIVE BOARD

[4 PA. CODE CH. 9]

Reorganization of the Department of General Services

The Executive Board approved a reorganization of the Department of General Services effective April 25, 2006.

The organization chart at 36 Pa.B. 2732 (June 3, 2006) is published at the request of the Joint Committee on Documents under 1 Pa. Code § 3.1(a)(9) (relating to contents of Code).

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

[Pa.B. Doc. No. 06-984. Filed for public inspection June 2, 2006, 9:00 a.m.]

PART II. EXECUTIVE BOARD

[4 PA. CODE CH. 9]

Reorganization of the Department of Labor and Industry

The Executive Board approved a reorganization of the Department of Labor and Industry effective May 10, 2006.

The organization chart at 36 Pa.B. 2733 (June 3, 2006) is published at the request of the Joint Committee on Documents under 1 Pa. Code § 3.1(a)(9) (relating to contents of Code).

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

[Pa.B. Doc. No. 06-985. Filed for public inspection June 2, 2006, 9:00 a.m.]

PART II. EXECUTIVE BOARD

[4 PA. CODE CH. 9]

Reorganization of the Department of Public Welfare

The Executive Board approved a reorganization of the Department of Public Welfare effective April 13, 2006.

The organization charts at 36 Pa.B. 2734—2742 (June 3, 2006) is published at the request of the Joint Committee on Documents under 1 Pa. Code § 3.1(a)(9) (relating to contents of Code).

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

[Pa.B. Doc. No. 06-986. Filed for public inspection June 2, 2006, 9:00 a.m.]

PART II. EXECUTIVE BOARD

[4 PA. CODE CH. 9]

Reorganization of the Public School Employees' Retirement System

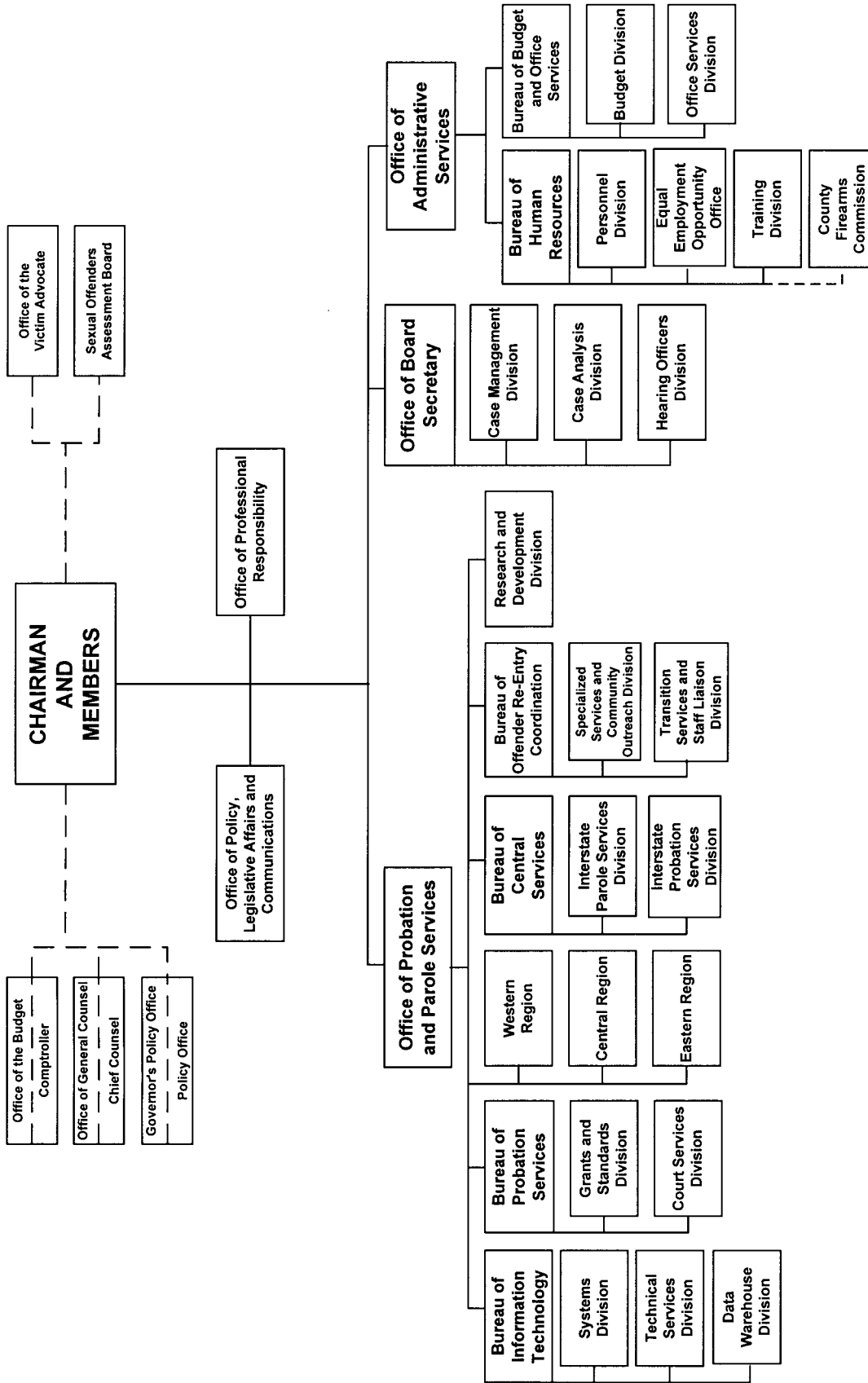
The Executive Board approved a reorganization of the Public School Employees' Retirement System effective April 25, 2006.

The organization chart at 36 Pa.B. 2743 (June 3, 2006) is published at the request of the Joint Committee on Documents under 1 Pa. Code § 3.1(a)(9) (relating to contents of Code).

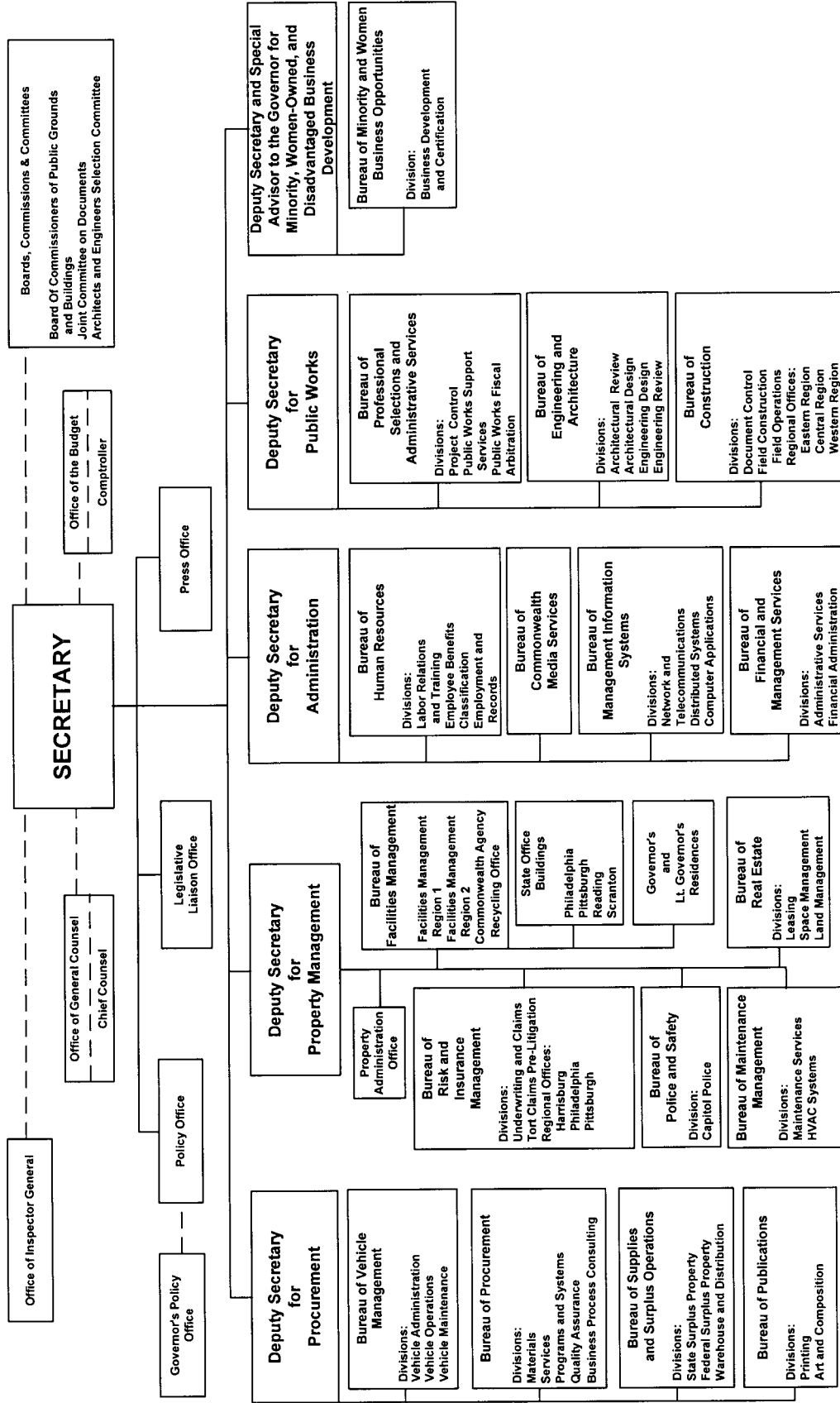
(Editor's Note: The Joint Committee on Documents has found organization charts to be general and permanent in nature. This document meets the criteria of 45 Pa.C.S. § 702(7) (relating to contents of Pennsylvania Code) as a document general and permanent in nature which shall be codified in the Pennsylvania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

[Pa.B. Doc. No. 06-987. Filed for public inspection June 2, 2006, 9:00 a.m.]

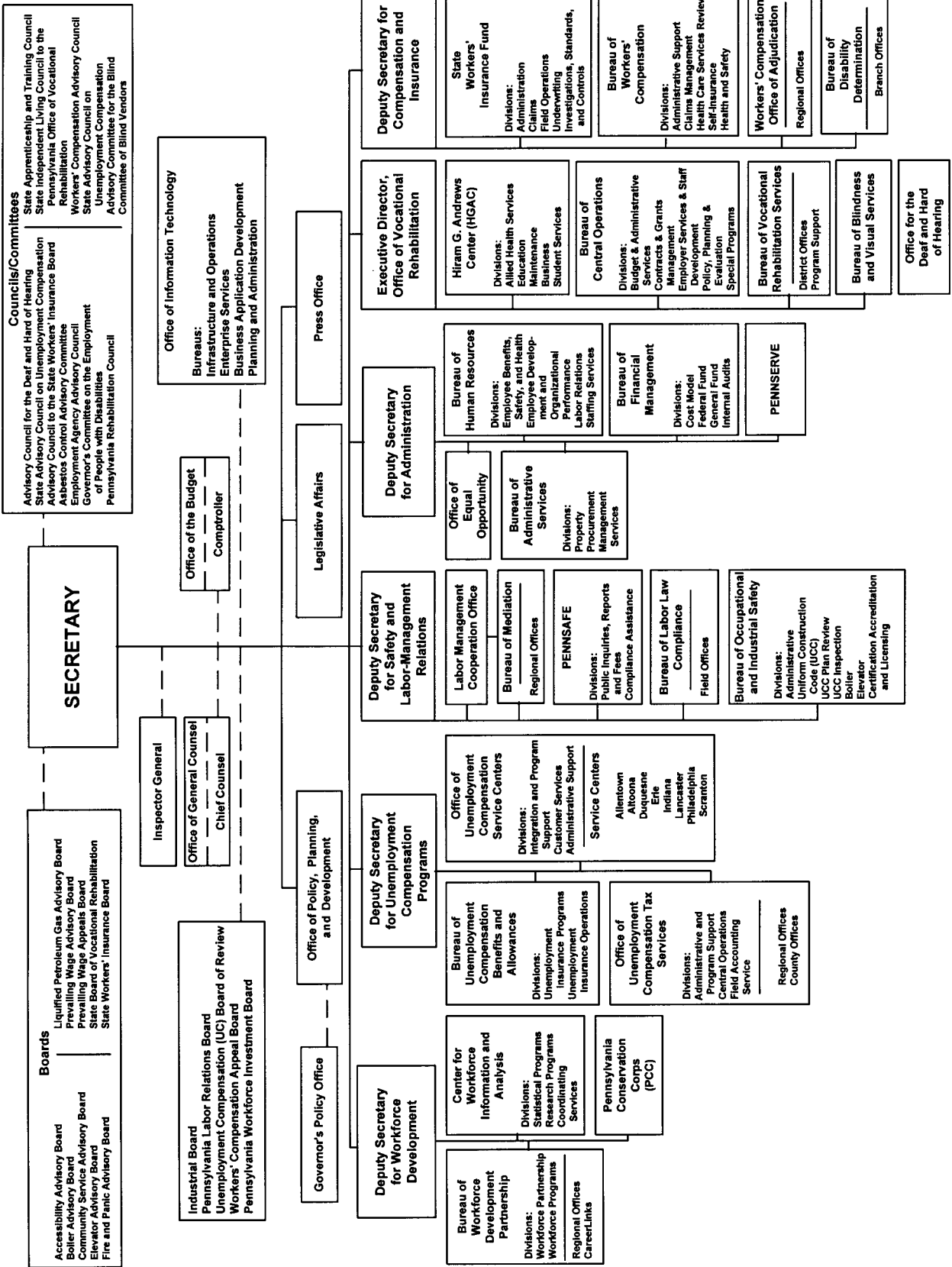
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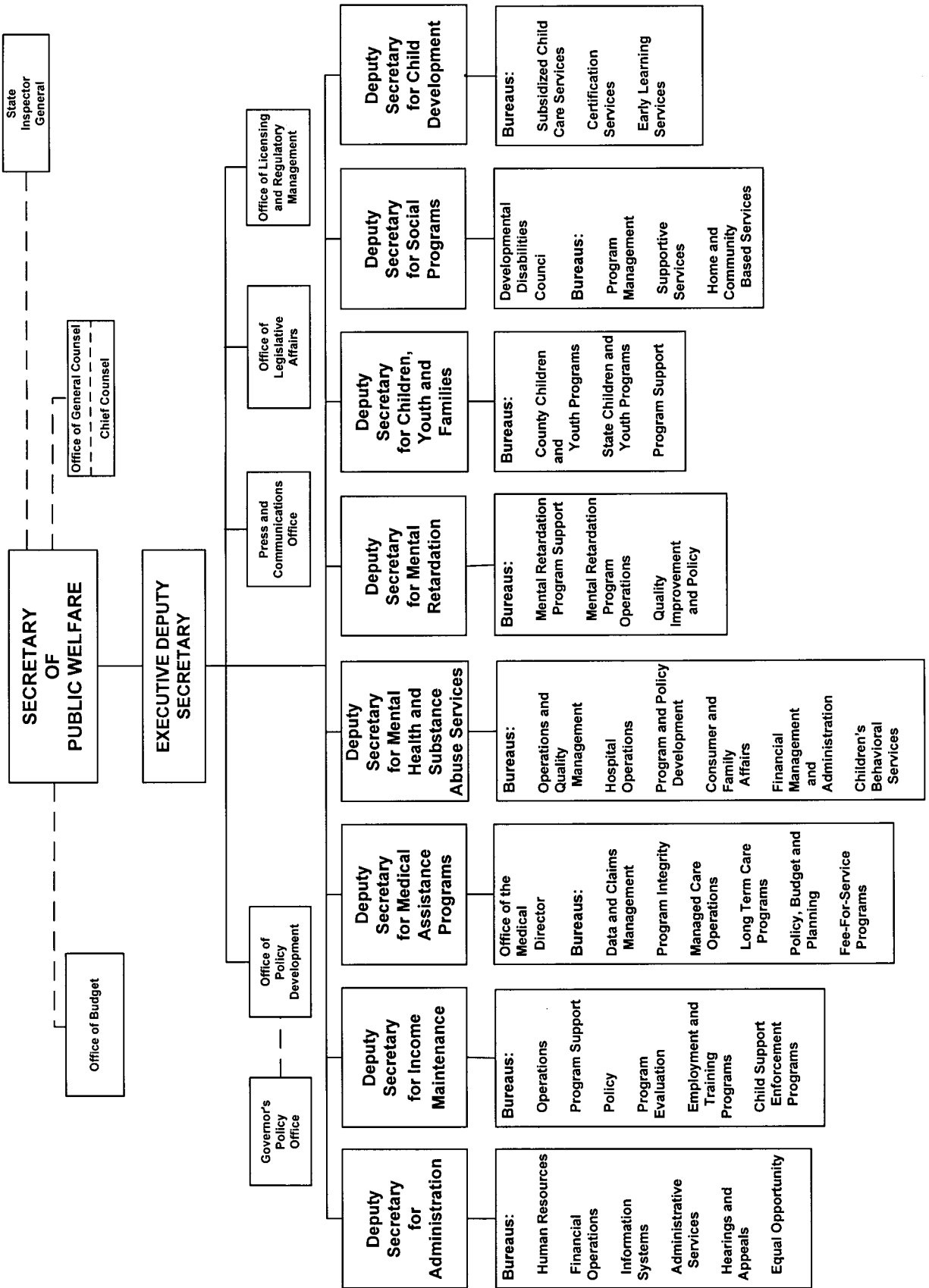
DEPARTMENT OF GENERAL SERVICES



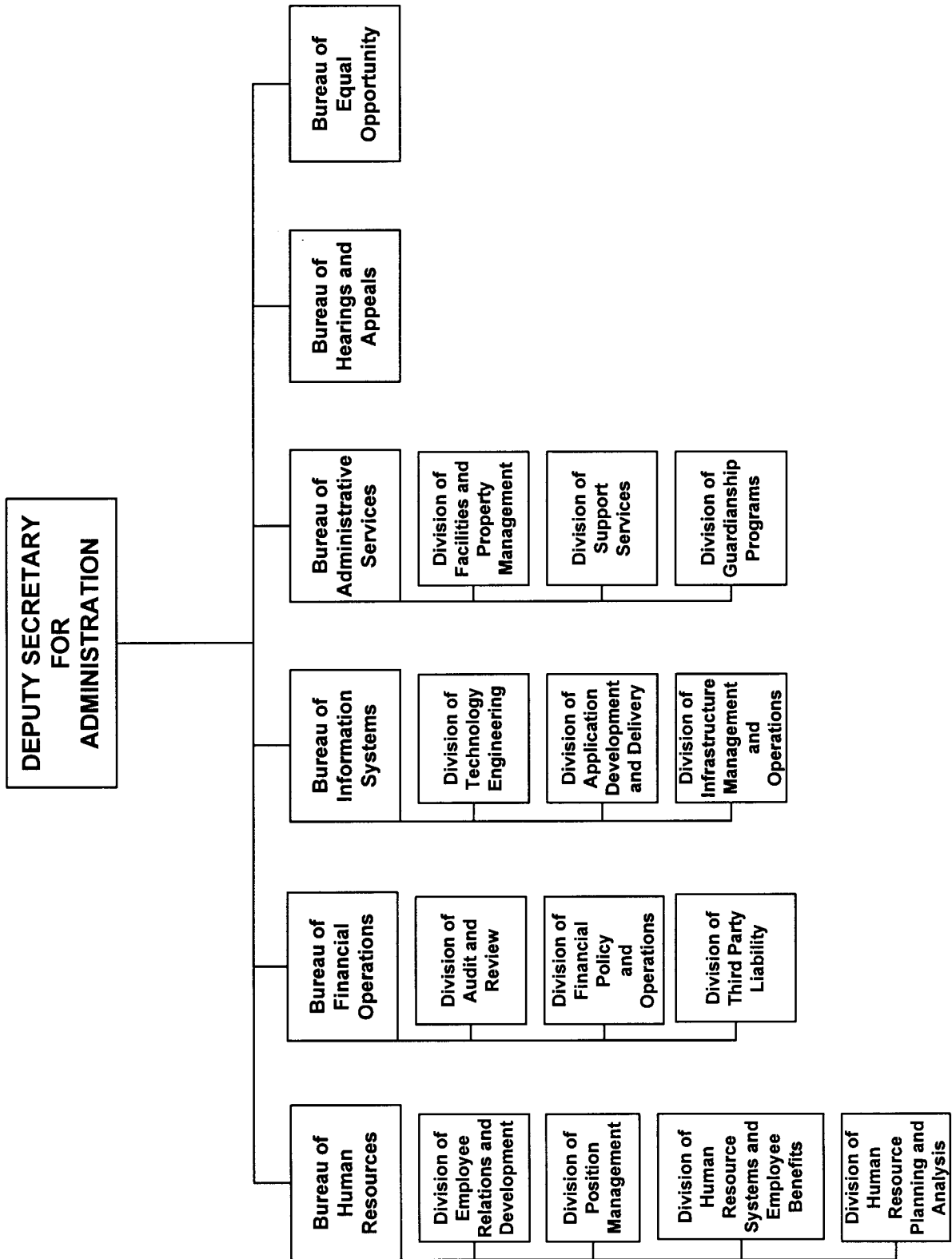
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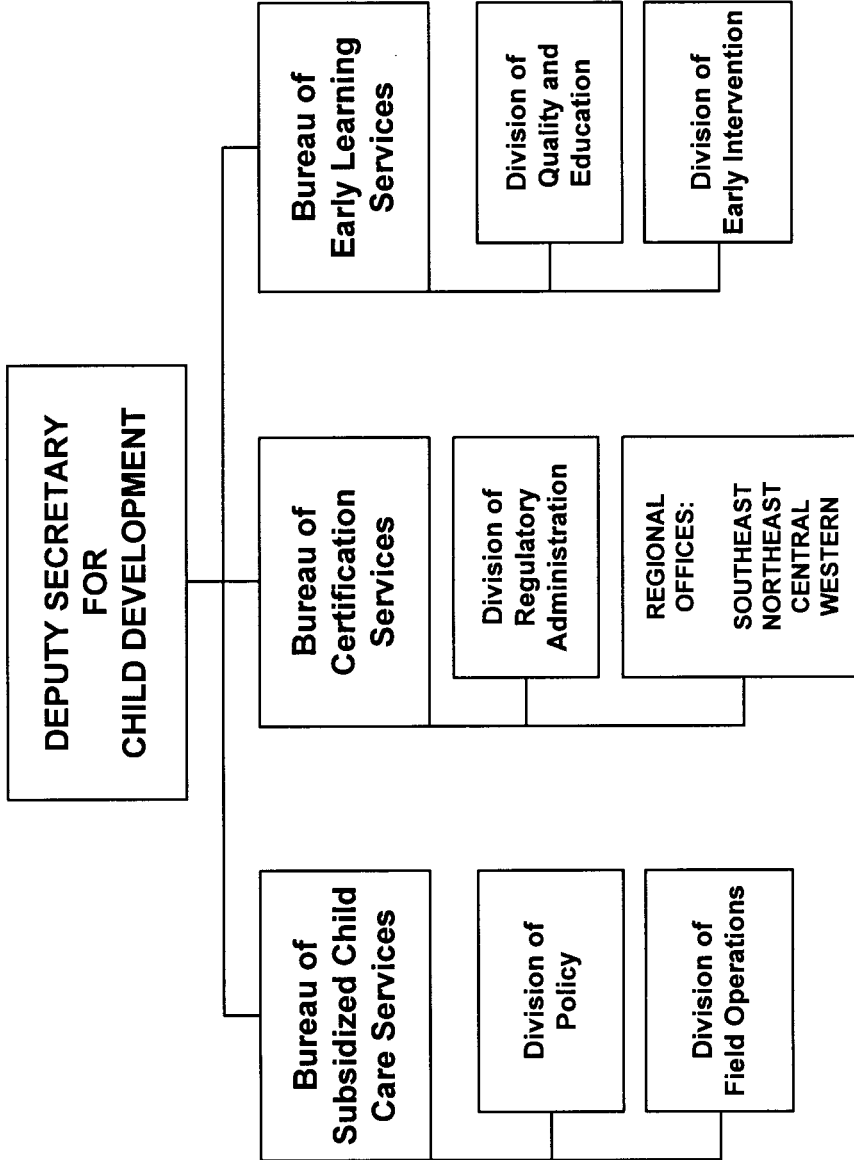
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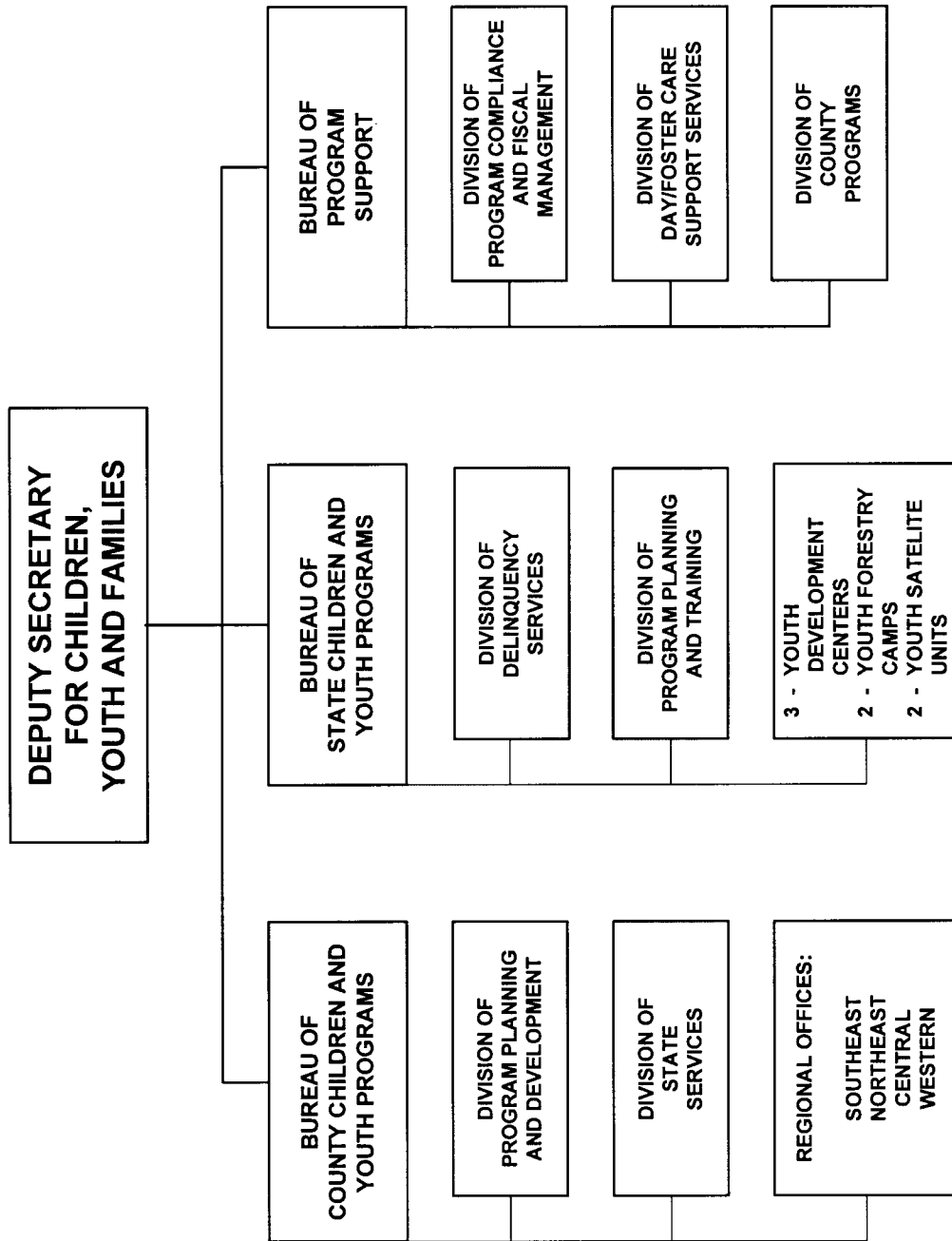
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DEPUTY SECRETARY FOR ADMINISTRATION



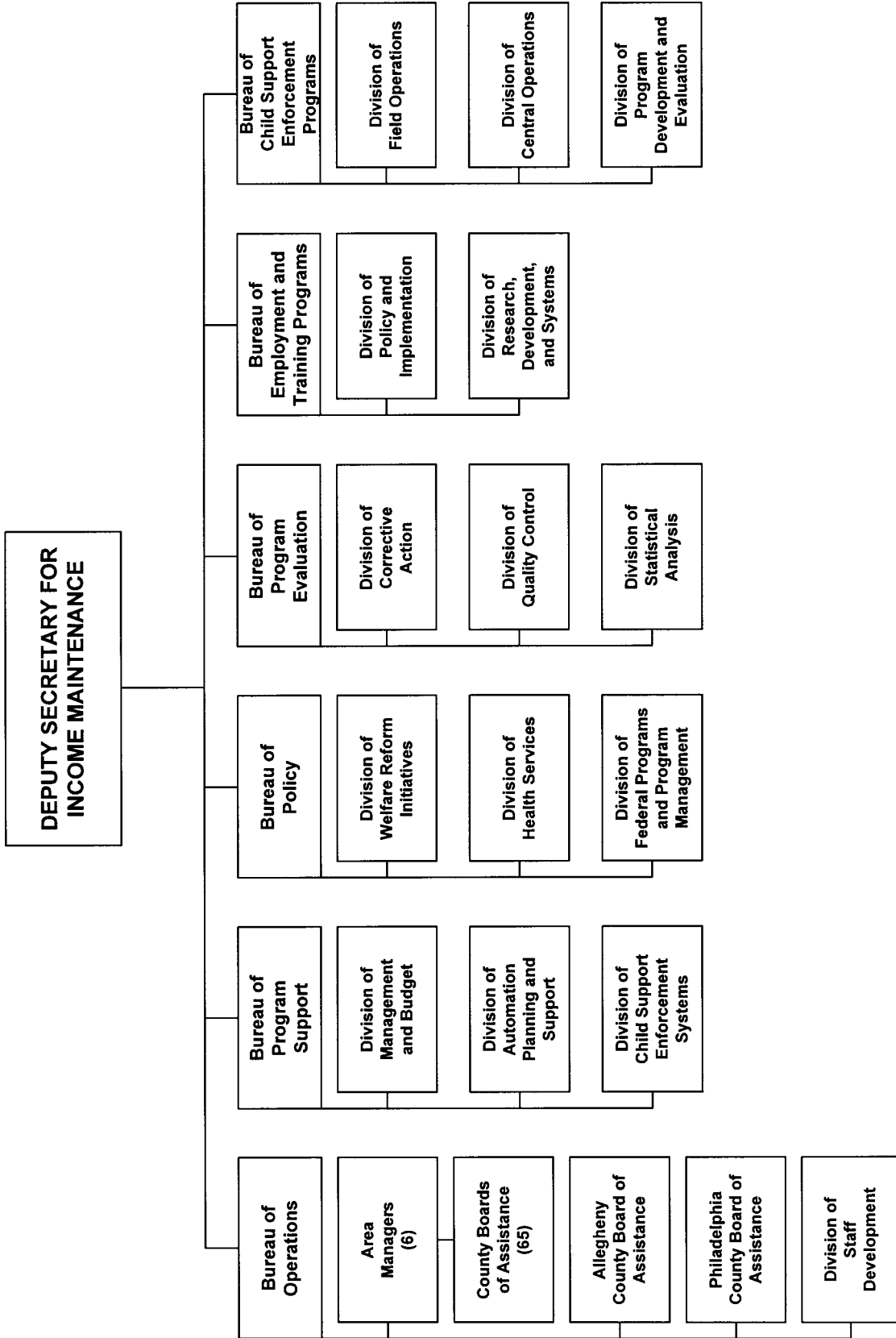
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DEPUTY SECRETARY FOR CHILD DEVELOPMENT**



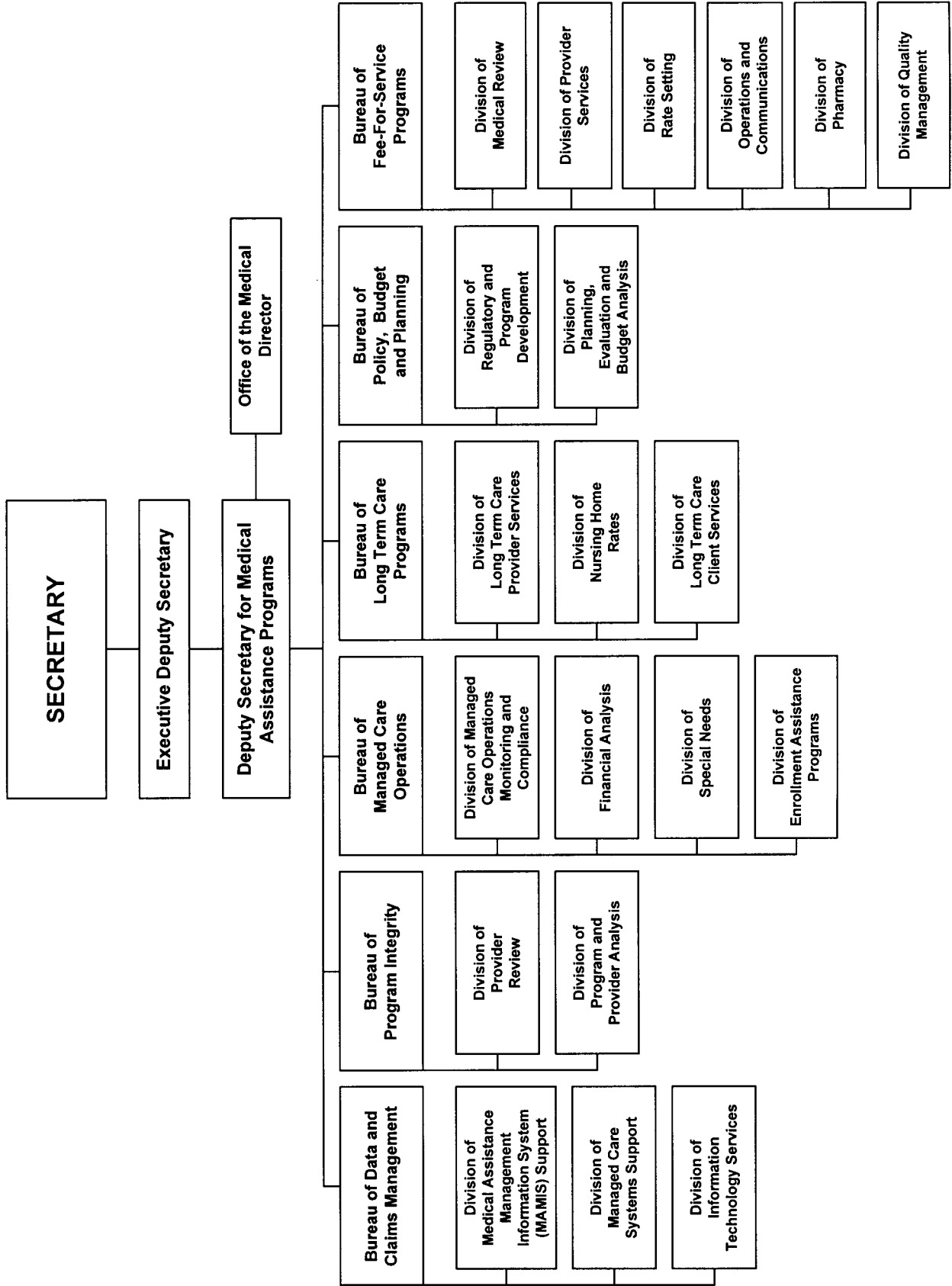
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DEPUTY SECRETARY FOR CHILDREN, YOUTH AND
FAMILIES



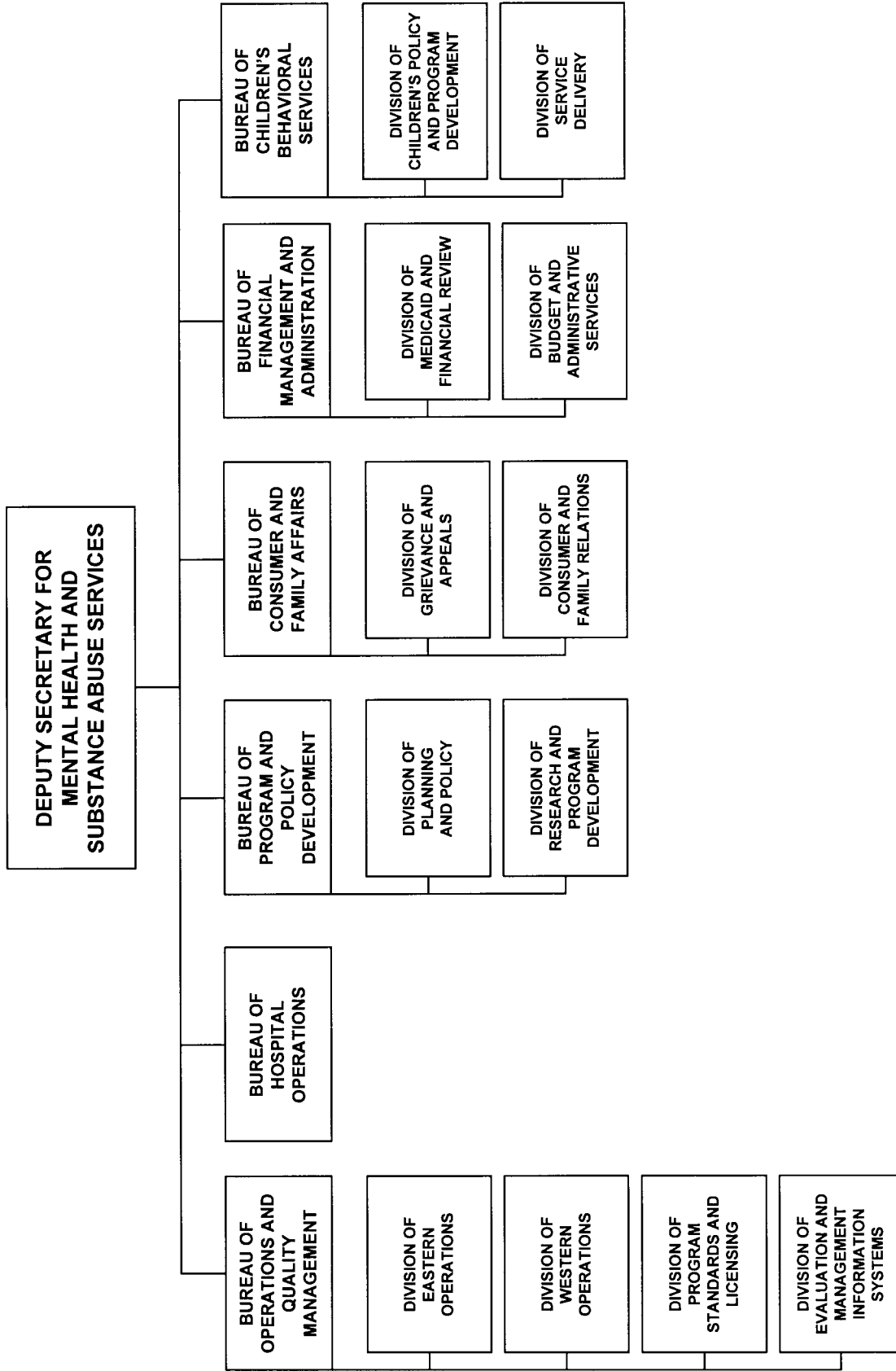
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DEPUTY SECRETARY FOR INCOME MAINTENANCE



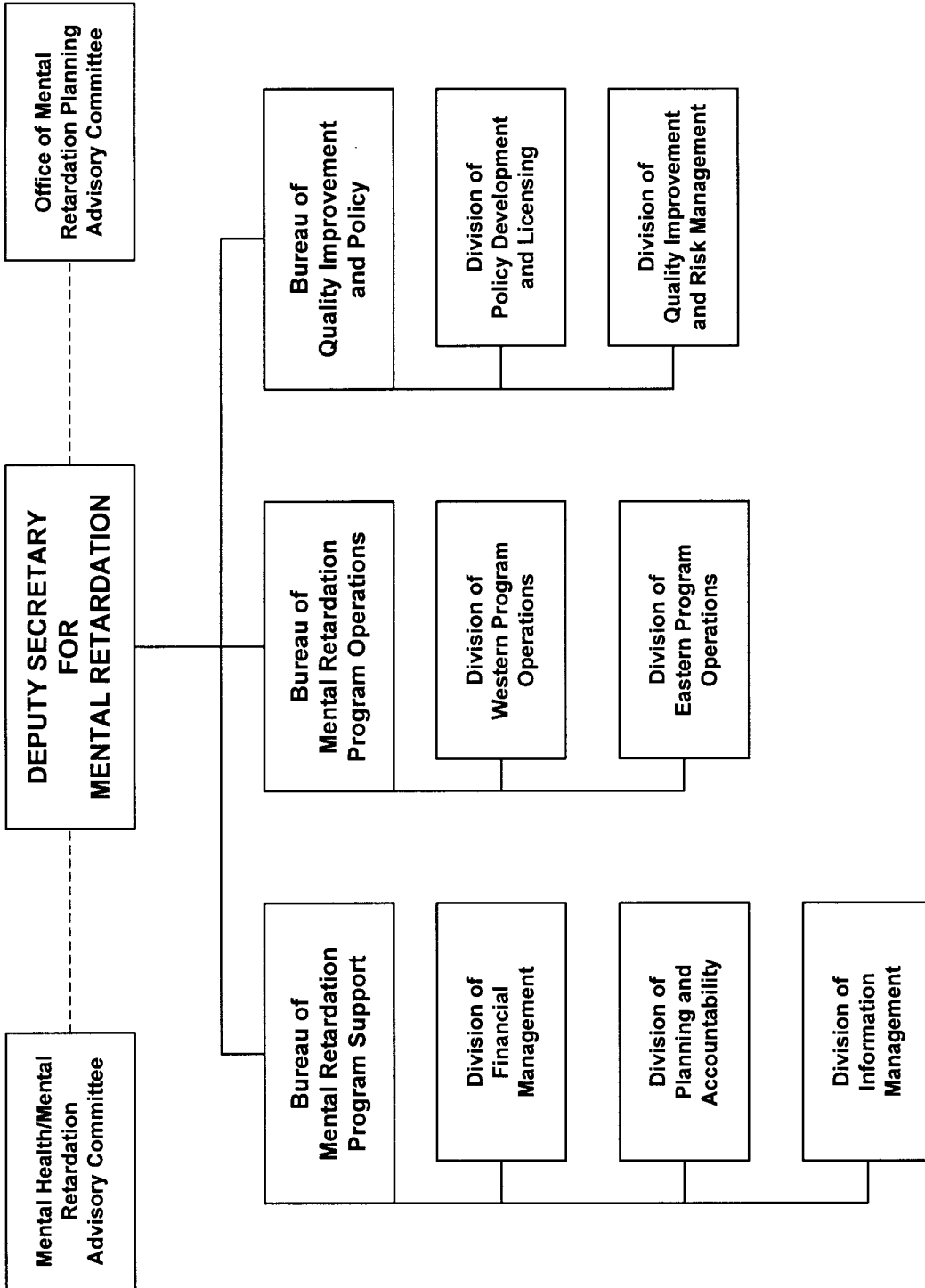
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DEPUTY SECRETARY FOR MEDICAL ASSISTANCE PROGRAMS**



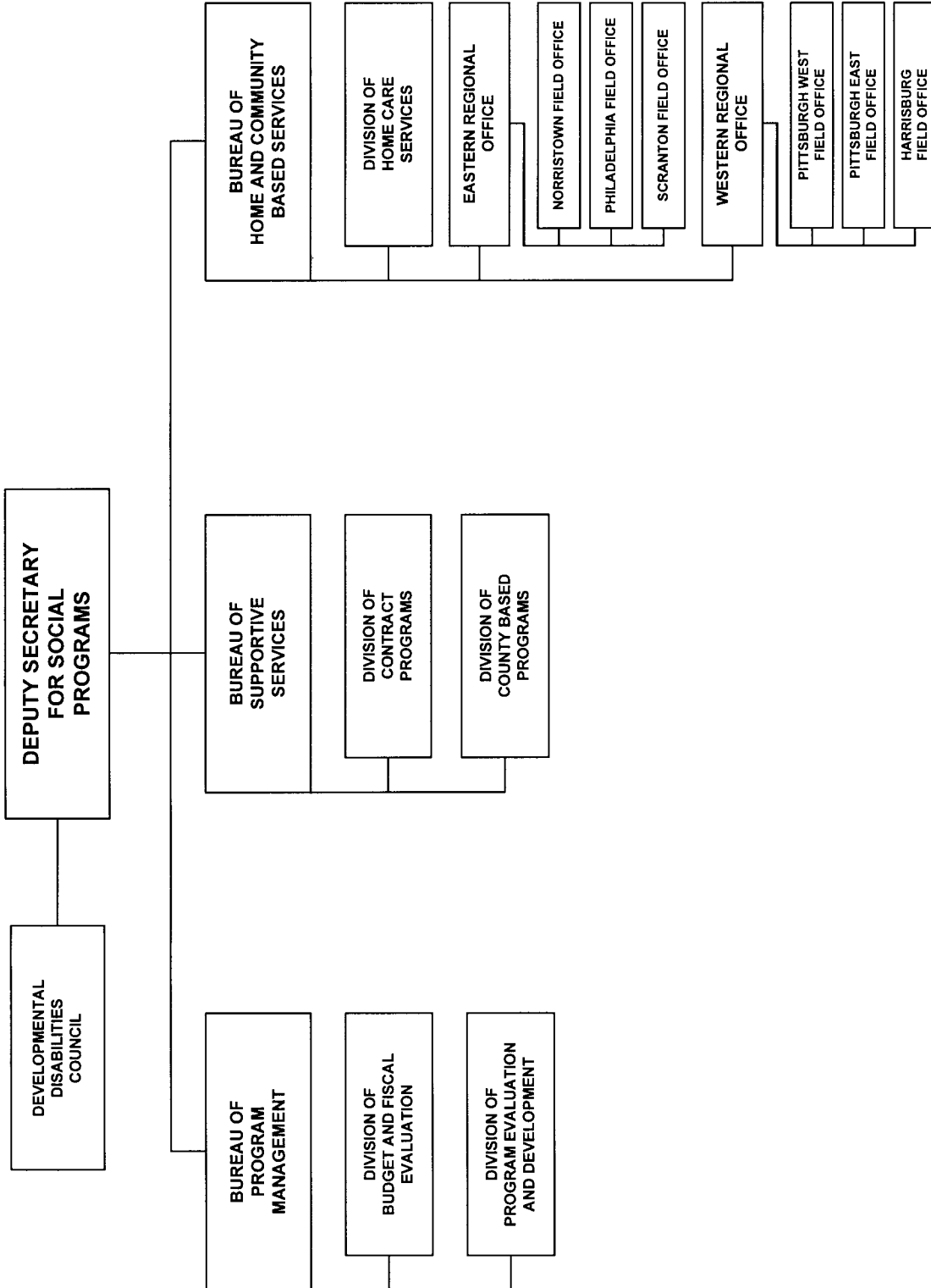
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DEPUTY SECRETARY FOR MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES



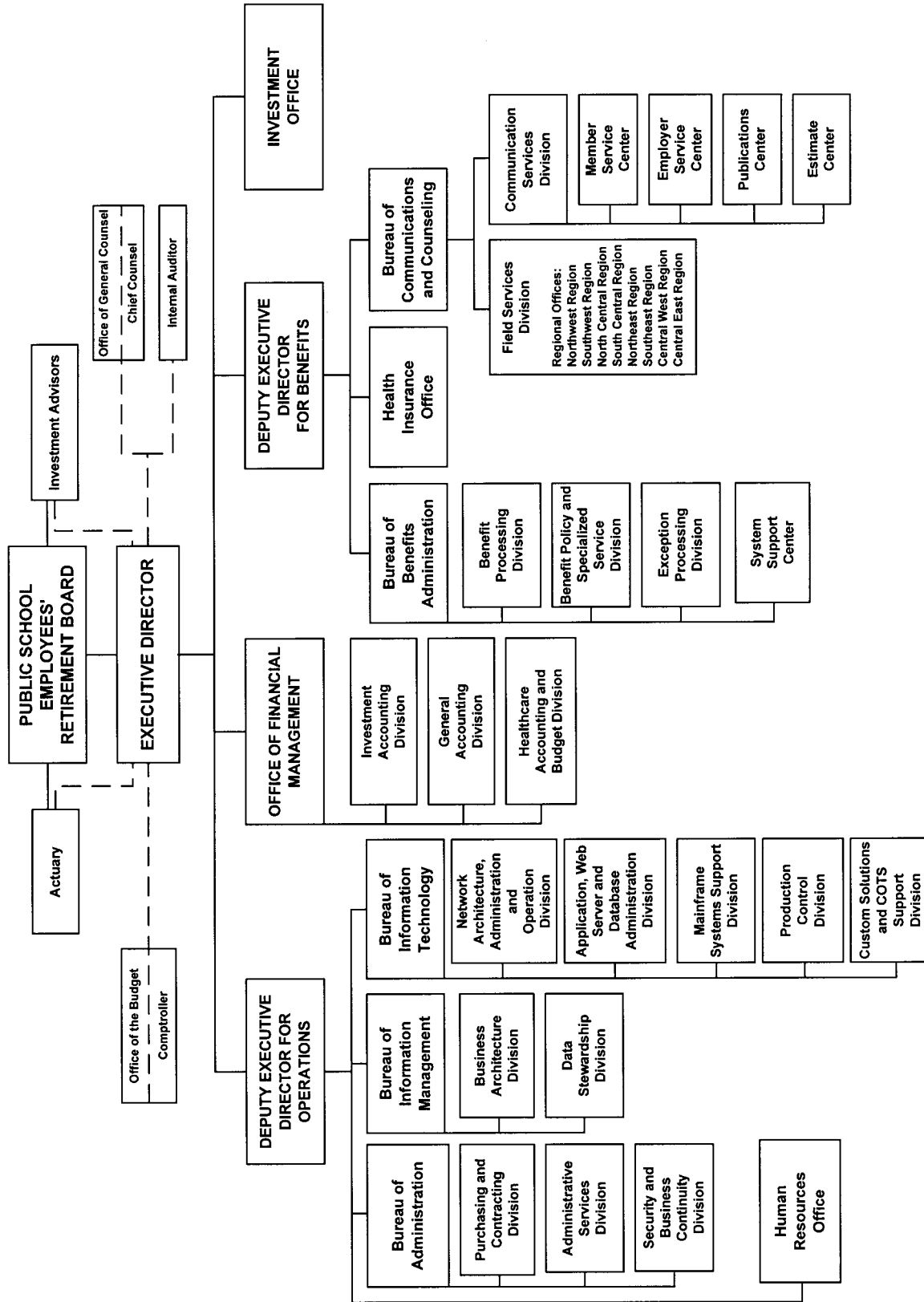
DEPARTMENT OF PUBLIC WELFARE
DEPUTY SECRETARY FOR MENTAL RETARDATION



DEPARTMENT OF PUBLIC WELFARE
DEPUTY SECRETARY FOR SOCIAL PROGRAMS



PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM



NOTICES

DEPARTMENT OF BANKING

Action on Applications

The Department of Banking (Department), under the authority contained in the act of November 30, 1965 (P. L. 847, No. 356), known as the Banking Code of 1965; the act of December 14, 1967 (P. L. 746, No. 345), known as the Savings Association Code of 1967; the act of May 15, 1933 (P. L. 565, No. 111), known as the Department of Banking Code; and the act of December 9, 2002 (P. L. 1572, No. 207), known as the Credit Union Code, has taken the following action on applications received for the week ending May 23, 2006.

BANKING INSTITUTIONS

Holding Company Acquisitions

<i>Date</i>	<i>Name of Corporation</i>	<i>Location</i>	<i>Action</i>
5-18-06	S & T Bancorp, Inc., Indiana, to acquire up to 24.99% of the outstanding shares of common stock of Allegheny Valley Bancorp, Inc., Pittsburgh, under section 112 of the Banking Code of 1965	Indiana	Approved
5-18-06	Centra Financial Holdings, Inc., Morgantown, WV, to acquire up to 81.3% of the outstanding shares of common stock of Smithfield State Bank of Smithfield, Smithfield, PA, under section 112 of the Banking Code of 1965	Morgantown, WV	Approved

Section 112 Applications

<i>Date</i>	<i>Name of Individual</i>	<i>Location</i>	<i>Action</i>
5-22-06	Gelt Holdings, Inc., Southampton, PA, to acquire up to 100% of the outstanding shares of common stock of Public Finance Services, Inc., Willow Grove, PA, and thereby indirectly acquire Public Savings Bank, Willow Grove, PA, under section 112 of the Banking Code of 1965	Southampton	Approved

Absorptions, Mergers and Consolidations

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
5-19-06	Maryland Permanent Bank & Trust Co., Owings Mills, MD, and Northwest Merger Subsidiary II, Inc., Warren, PA Surviving Institution— Maryland Permanent Bank & Trust Co., Owings Mills, MD	Owings Mills, MD	Effective
	This merger being effected solely to facilitate the merger of Maryland Permanent Bank & Trust Co. with and into Northwest Savings Bank, Warren, PA.		
	Northwest Savings Bank, Warren, PA, and Maryland Permanent Bank & Trust Co., Owings Mills, MD Surviving Institution— Northwest Savings Bank, Warren, PA	Warren, PA	Effective
	<i>Branches Acquired by Means of Merger:</i>		
	9612 Reisterstown Road Owings Mills Baltimore County, MD	7310 Ritchie Highway Glen Burnie Anne Arundel County, MD	

Branch Applications

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
5-15-06	East Penn Bank Emmaus Lehigh County	502 State Road Emmaus Lehigh County	Opened
5-18-06	CommunityBanks Millersburg Dauphin County	1201 Carlisle Road West Manchester Township York County	Filed
5-18-06	Citizens Bank of Pennsylvania Philadelphia Philadelphia County	Shadyside Giant Eagle 5550 Centre Avenue Pittsburgh Allegheny County	Opened

SAVINGS INSTITUTIONS

No activity.

CREDIT UNIONS**Absorptions, Mergers and Consolidations**

<i>Date</i>	<i>Name of Credit Union</i>	<i>Location</i>	<i>Action</i>
5-22-06	White Rose Credit Union, York, and Flinchbaugh Credit Union, Red Lion Surviving Institution— White Rose Credit Union, York	York	Approved
5-22-06	Incol Credit Union, Old Forge, and Wilkes-Barre Newspapers Federal Credit Union, Kingston Surviving Institution— Incol Credit Union, Old Forge	Old Forge	Approved

Articles of Amendment

<i>Date</i>	<i>Name of Credit Union</i>	<i>Purpose</i>	<i>Action</i>
5-23-06	PPL G.O.L.D. Credit Union Allentown Lehigh County	To amend Article 1 of the Articles of Incorporation to provide for a change in corporate title from PPL G.O.L.D. Credit Union to PPL GOLD Credit Union.	Effective

The Department's website at www.banking.state.pa.us includes public notices for more recently filed applications.

A. WILLIAM SCHENCK, III,
Secretary

[Pa.B. Doc. No. 06-988. Filed for public inspection June 2, 2006, 9:00 a.m.]

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Applications, Actions and Special Notices

APPLICATIONS

THE CLEAN STREAMS LAW AND THE FEDERAL CLEAN WATER ACT
APPLICATIONS FOR NATIONAL POLLUTION DISCHARGE ELIMINATION
SYSTEM (NPDES) PERMITS AND WATER QUALITY MANAGEMENT (WQM)
PERMITS

This notice provides information about persons who have applied for a new, amended or renewed NPDES or WQM permit, a permit waiver for certain stormwater discharges or submitted a Notice of Intent (NOI) for coverage under a general permit. The applications concern, but are not limited to, discharges related to industrial, animal or sewage waste, discharges to groundwater, discharges associated with municipal separate storm sewer systems (MS4), stormwater associated with construction activities or concentrated animal feeding operations (CAFOs). This notice is provided in accordance with 25 Pa. Code Chapters 91 and 92 and 40 CFR Part 122, implementing The Clean Streams Law (35 P. S. §§ 691.1—691.1001) and the Federal Clean Water Act.

<i>Location</i>	<i>Permit Authority</i>	<i>Application Type or Category</i>
Section I	NPDES	Renewals
Section II	NPDES	New or amendment
Section III	WQM	Industrial, sewage or animal waste; discharge into groundwater
Section IV	NPDES	MS4 individual permit
Section V	NPDES	MS4 permit waiver
Section VI	NPDES	Individual permit stormwater construction
Section VII	NPDES	NOI for coverage under NPDES general permits

For NPDES renewal applications in Section I, the Department of Environmental Protection (Department) has made a tentative determination to reissue these permits for 5 years subject to effluent limitations and monitoring and reporting requirements in their current permits, with appropriate and necessary updated requirements to reflect new and changed regulations and other requirements.

For applications for new NPDES permits and renewal applications with major changes in Section II, as well as applications for MS4 individual permits and individual stormwater construction permits in Sections IV and VI, the Department, based upon preliminary reviews, has made a tentative determination of proposed effluent limitations and other terms and conditions for the permit applications. These determinations are published as proposed actions for comments prior to taking final actions.

Unless indicated otherwise, the EPA Region III Administrator has waived the right to review or object to proposed NPDES permit actions under the waiver provision in 40 CFR 123.24(d).

Persons wishing to comment on an NPDES application are invited to submit a statement to the regional office noted before an application within 30 days from the date of this public notice. Persons wishing to comment on a WQM permit application are invited to submit a statement to the regional office noted before the application within 15 days from the date of this public notice. Comments received within the respective comment periods will be considered in the final determinations regarding the applications. Comments should include the name, address and telephone number of the writer and a concise statement to inform the Department of the exact basis of a comment and the relevant facts upon which it is based.

The Department will also accept requests for a public hearing on applications. A public hearing may be held if the responsible office considers the public response significant. If a hearing is scheduled, a notice of the hearing will be published in the *Pennsylvania Bulletin* and a newspaper of general circulation within the relevant geographical area. The Department will postpone its final determination until after a public hearing is held.

Persons with a disability who require an auxiliary aid, service, including TDD users, or other accommodations to seek additional information should contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

I. NPDES Renewal Applications

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

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

PA0027375, Sewerage SIC 4952, **City of DuBois**, P. O. Box 408, 16 West Scribner Avenue, DuBois, PA 15801. This proposed action is for renewal of a NPDES permit for the discharge of treated sewage effluent. This discharge is located in Sandy Township, **Clearfield County**.

The receiving stream, Sandy Lick Creek, is located in the Redbank Watershed 17-C and is classified for the following uses: TSF and aquatic life, water supply and recreation.

For the purpose of evaluating effluent requirements for TDS, NO₂-NO₃, fluoride and phenolics, the downstream potable water supply considered during the evaluation is located at Hawthorne approximately 35 river miles below the discharge.

Outfall 001—The effluent limits, based on a design flow of 4.4 mgd, are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD ₅			
(5-1 to 10-31)	15	22	30
(11-1 to 4-30)	25	40	50
TSS	30	45	60
NH ₃ N			
(5-1 to 10-31)	2.5	3.5	5.0
(5-1 to 10-31)	7.5	11	15.0
Chlorine Res. (T)	0.5		1.6
Dissolved Oxygen		minimum of 5.0 mg/l at all times	
Manganese	Monitor		
Fecal Coliform			
(5-1 to 9-30)	200/100 ml as a geometric average		
(10-1 to 4-30)	2,000/100 ml as a geometric average		
pH	6.0 to 9.0 standard units at all times.		

Outfall S101—Annual stormwater inspection and Best Management Practices.

Other Conditions:

1. Pretreatment.
2. Whole Effluent Toxicity Testing.
3. Stormwater Management Requirements.
4. Dechlorination of Effluent.

The EPA waiver is not in effect.

PA0228958, Sewerage SIC 4952, **Penngolf Corporation**, 375 Kennel Lane, Port Matilda, PA 16870. This existing facility is located in Huston Township, **Centre County**.

Description of Proposed Activity: This proposed action is for the construction of a small flow treat facility to serve a golf course club house and maintenance building.

The receiving stream, Bald Eagle Creek, is in the State Water Plan watershed 9C and classified for TSF. The nearest downstream public water supply intake is PA American in Milton, PA.

The proposed effluent limits for Outfall 001 based on a design flow of 0.0016 mgd.

Parameter	Concentration mg/l				Mass lbs	
	Monthly Average	Weekly Average	Daily Maximum	Instantaneous Maximum	Monthly Load	Annual Load
pH	within the range of 6.0 to 9.0					
CBOD ₅	10			20		
TSS	20			40		
Fecal Coliforms:	200 colonies/100 ml					

The EPA waiver is in effect.

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

PA0001236, Industrial Waste, SIC 3613, **Eaton Electrical**, One Tuscarawas Road, Beaver, PA 15009. This application is for renewal of an NPDES permit to discharge treated process water and untreated cooling water storm water from the Vanport Plant in Vanport Township, **Beaver County**.

The following effluent limitations are proposed for discharge to the receiving waters of Two Mile Run and the Ohio River, classified as a WWF existing and/or potential uses for aquatic life, water supply and recreation. The first existing/proposed downstream potable water supply is Midland Borough Water Authority, located on the Ohio River, 8.0 miles below the discharge point.

Outfall 302: existing discharge, design flow of 0.168 mgd.

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
Flow (mgd)	Monitor and Report				
Cadmium			0.26	0.69	
Chromium			1.71	2.77	
Copper			2.07	3.38	
Lead			0.43	0.69	
Nickel			2.38	3.98	
Silver			0.24	0.43	
Zinc			1.48	2.61	
Cyanide			0.65	1.20	
TTO				2.13	
Oil and Grease			3.0	60.0	
Total Suspended Solids			31.0	60.0	
Total Residual Chlorine			0.5	1.0	
pH	not less than 6.0 nor greater than 9.0				

Other Conditions: Outfall 002 receives wastewater from Internal Monitoring Point 302. Effluent limits are imposed and monitored at this internal monitoring point.

Outfall 006: existing discharge, design flow of 0.038 mgd.

<i>Parameter</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
Flow (mgd)	Monitor and Report				
Temperature (°F)					
June 1-15			110		
June 16-30			110		
July 1-31			106		
August 1-31			104		
September 1-15			97		
September 16-30			91		
Zinc	Monitor and Report				
pH	not less than 6.0 nor greater than 9.0				

Outfalls 001, 008 and 009: existing stormwater discharge, design flow of varied mgd.

<i>Parameter</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
	The discharge from these outfalls shall consist of uncontaminated stormwater runoff only.				

Outfalls 003—005 and 007: stormwater discharge, design flow of varied mgd.

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

The EPA waiver is not in effect.

PA0096814, Sewage, **Ashbridge Oil Company, Inc.**, P. O. Box 5478, Johnstown, PA 15904. This application is for renewal of an NPDES permit to discharge treated sewage from Robyns Shop Donegal Tri-Fuel STP in Donegal Township, **Westmoreland County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as UNT of Minnow Run, which are classified as a CWF with existing and/or potential uses for aquatic life, water supply and recreation. The first downstream potable water supply intake from this facility is the Indiana Creek Valley Water Authority.

Outfall 001: existing discharge, design flow of 0.0022 mgd.

<i>Parameter</i>	<i>Concentration (mg/l)</i>			
	<i>Average Monthly</i>	<i>Average Weekly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
CBOD ₅	10			20
Suspended Solids	10			20
Ammonia Nitrogen				
(5-1 to 10-31)	2.0			4.0
(11-1 to 4-30)	3.0			6.0
Fecal Coliform				
(5-1 to 9-30)	200/100 ml as a geometric mean			
(10-1 to 4-30)	2,000/100 ml as a geometric mean			
Total Residual Chlorine	1.4			3.3
Dissolved Oxygen	not less than 3.0 mg/l			
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is in effect.

PA0218642, Sewage, **Indiana County Municipal Services Authority**, 827 Water Street, Indiana, PA 15701. This application is for renewal of an NPDES permit to discharge treated sewage from Marion Center STP in East Mahoning Township, **Indiana County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as Pine Run, which are classified as a CWF with existing and/or potential uses for aquatic life, water supply and recreation. The first downstream potable water supply intake from this facility is the Buffalo Township Municipal Authority, Freeport Plant.

Outfall 001: existing discharge, design flow of 0.09 mgd.

<i>Parameter</i>	<i>Concentration (mg/l)</i>			
	<i>Average Monthly</i>	<i>Average Weekly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
CBOD ₅	25			50
Suspended Solids	30			60
Ammonia Nitrogen				
(5-1 to 10-31)	4.5			9.0
(11-1 to 4-30)	13.5			27.0
Fecal Coliform				
(5-1 to 9-30)	200/100 ml as a geometric mean			
(10-1 to 4-30)	2,000/100 ml as a geometric mean			
Dissolved Oxygen	not less than 4 mg/l			
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is in effect.

PA0218685, Sewage, **RoxCoal, Inc.**, P. O. Box 149, Friedens, PA 15541. This application is for renewal of an NPDES permit to discharge treated sewage from Geronimo Mine STP in Jenner Township, **Somerset County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as UNT of Quemahoning Creek, which are classified as a CWF with existing and/or potential uses for aquatic life, water supply and recreation. The first downstream potable water supply intake from this facility is the: Manufacturer's Water Company.

Outfall 001: existing discharge, design flow of 0.00161 mgd.

<i>Parameter</i>	<i>Concentration (mg/l)</i>			
	<i>Average Monthly</i>	<i>Average Weekly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
CBOD ₅	25			50
Suspended Solids	30			60
Ammonia Nitrogen				
(5-1 to 10-31)	8.0			16.0
(11-1 to 4-30)	24.0			48.0
Fecal Coliform				
(5-1 to 9-30)	200/100 ml as a geometric mean			
(10-1 to 4-30)	2,000/100 ml as a geometric mean			
Total Residual Chlorine	Monitor and Report			
Dissolved Oxygen	not less than 3 mg/l			
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is in effect.

III. WQM Industrial Waste and Sewerage Applications Under The Clean Streams Law (35 P. S. §§ 691.1—691.1001)

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

WQM Permit No. 5406402, St. Clair Sewer Authority, 16 South Third Street, St. Clair, PA 17970. This proposed facility is located in East Norwegian Township, **Schuylkill County**, PA.

Description of Proposed Action/Activity: Project consists of improvements to wastewater treatment plant, which includes replacement of the headwork's building and equipment inside. The project also consists of replacement of the comminutor with an automated bar screen and replacement of grit removal system.

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

WQM Permit No. 0306402, Sewerage, **Municipal Authority of the Borough of Kittanning**, 300 South McKean Street, Kittanning, PA 16201. This proposed facility is located in Kittanning Borough, **Armstrong County**.

Description of Proposed Action/Activity: Application for the construction of a sewer separation.

The Pennsylvania Infrastructure Investment Authority which administers Pennsylvania's State Revolving Fund has been identified as a possible funding source. The Department of Environmental Protection's review of the sewage facilities plan revision has not identified any significant environmental impacts resulting from this proposal.

IV. NPDES Applications for Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4)**V. Applications for NPDES Waiver Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4)****VI. NPDES Individual Permit Applications for Discharges of Stormwater Associated with Construction Activities**

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

Carbon County Conservation District: 5664 Interchange Road, Lehighton, PA 18235-5114, (601) 377-4894.

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI021306004	Reading Blue Mtn. & Northern Railroad 1 Railroad Blvd. P. O. Box 218 Port Clinton, PA 19549	Carbon	Jim Thorpe and Nesquehoning Boroughs	Lehigh River HQ-CWF

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

PAG-12	Concentrated Animal Feeding Operations (CAFOs)
PAG-13	Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4)

PUBLIC WATER SUPPLY (PWS) PERMIT

Under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17), the following parties have applied for a PWS permit to construct or substantially modify a public water system.

Persons wishing to comment on a permit application are invited to submit a statement to the office listed before the application within 30 days of this public notice. Comments received within the 30-day comment period will be considered in the formulation of the final determinations regarding the application. Comments should include the name, address and telephone number of the writer and a concise statement to inform the Department of Environmental Protection (Department) of the exact basis of a comment and the relevant facts upon which it is based. A public hearing may be held after consideration of comments received during the 30-day public comment period.

Following the comment period, the Department will make a final determination regarding the proposed permit. Notice of this final determination will be published in the *Pennsylvania Bulletin* at which time this determination may be appealed to the Environmental Hearing Board.

The permit application and any related documents are on file at the office listed before the application and are available for public review. Arrangements for inspection and copying information should be made with the office listed before the application.

Persons with a disability who require an auxiliary aid, service or other accommodations to participate during the 30-day public comment period should contact the office listed before the application. TDD users should contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

SAFE DRINKING WATER

Applications Received Under the Pennsylvania Safe Drinking Water Act

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

Permit No. 0106508 , Public Water Supply.	
Applicant	Double L Partners
Municipality	Mt. Pleasant Township
County	Adams
Responsible Official	Laverne L. Leese, Partner 928 Bollinger Road Littlestown, PA 17340
Type of Facility	Public Water Supply
Consulting Engineer	Janet R. McNally, P. E. William F. Hill & Assoc., Inc. 207 Baltimore St. Gettysburg, PA 17325
Application Received:	5/4/2006
Description of Action	Construction of a new community water system to be known as "Gcentennial Meadows" with two wells and associated treatment.

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

Application No. 1606501 , Public Water Supply	
Applicant	Piney Creek Limited Partnership
Township or Borough	Piney Creek Township Clarion County
Responsible Official	Kendall R. Reed, Plant Manager

Consulting Engineer John L. Schaudé, P. E.
Gannett Fleming Inc.
Foster Plaza 3
Suite 200
601 Holiday Drive
Pittsburgh PA 15220

Application Received 05/11/2006
Date

Description of Action Modification to add chemical
feed points for chlorine and soda
ash, and the construction of a
raw water reservoir.

MINOR AMENDMENT

Applications Received Under the Pennsylvania Safe Drinking Water Act

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

Application No. 368W001-T2-MA2, Minor Amendment

Applicant **Aqua PA, Inc.**

Township or Borough Sadsbury Township
Crawford County

Responsible Official Peter J. Kusky
Project Manager

Type of Facility Public Water Supply

Application Received 05/04/2006
Date

Description of Action Chlorine Feed Modifications to
the Oakland Beach Water
System to replace gas chlorine
storage and feed system with
liquid system

WATER ALLOCATIONS

Applications received under the act of June 24, 1939 (P. L. 842, No. 365) (35 P. S. §§ 631—641) relating to the acquisition of rights to divert waters of the Commonwealth

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

WA 28-631D. Water Allocations, **Bear Valley Franklin County Pennsylvania Joint Authority, Franklin County.** Water allocation for the right to purchase up to 1 million gallons per day from the Borough of Chambersburg, based on a 30-day average. Consulting Engineer: David R Knapton, P. E., Gannett Fleming, Inc.. Permit Issued: 5/17/2006.

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

WA 25-726C. Water Allocation, **Millcreek Township Water Authority, Millcreek Municipal Building, 3608 West 26th Street, Erie, PA 16506, Millcreek Township, Erie County.** Modification to existing Water Allocation Permit to increase the combined total of all take points for a 30-day average from the Erie City Water Authority, as well as an increase in the peak withdrawal of the East Gore Road/Cider Mill Road take point from 0.3 mgd to

0.66 mgd. As proposed, the combined total will be increased to 3.76 mgd, which is not in discord with the current water service agreement between the Township Water Authority and the Erie City Water Authority.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

UNDER ACT 2, 1995

PREAMBLE 1

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

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

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

For further information concerning the content of a Notice of Intent to Remediate, contact the environmental cleanup program manager in the Department regional office before which the notice appears. If information concerning this acknowledgment is required in an alternative form, contact the community relations coordinator at the appropriate regional office. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

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

Southcentral Region: Environmental Cleanup Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

Flextronic Enclosure Site, Chambersburg Borough, **Franklin County**. Shield Environmental Associates, Inc., 948 Floyd Drive, Lexington, KY 40505, on behalf of Castle Farms, LLC, 6 Riverside Industrial Park, Rome, GA 30161, submitted a Notice of Intent to Remediate groundwater contaminated with TCE. The property is nonresidential and will continue to be nonresidential in the future. The applicant is seeking to remediate to the Site Specific Standard.

Edwards Property, Frankstown Township, **Blair County**. American Geosciences, Inc., 3925 Reed Boulevard, Suite 400, Murrysville, 15668, on behalf of Joseph Edwards, R. D. 2 Box 302, Williamsburg and Sel-Lo Oil Inc., R. D. 2 Box 629, Altoona, PA 16601, submitted a Notice of Intent to Remediate site soils and groundwater contaminated with No. 2 heating oil. The property is currently used as a residence and will remain residential in the future. The applicant seeks to remediate to the Statewide Health Standard.

AIR QUALITY

PLAN APPROVAL AND OPERATING PERMIT APPLICATIONS

NEW SOURCES AND MODIFICATIONS

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

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

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

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

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

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

PLAN APPROVALS

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

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

07-05037A: Cove Shoe Co. (107 Highland Street, Martinsburg, PA 16662) for installation of a shoe insert molding line for their facility in Martinsburg Borough, **Blair County**.

67-03071A: PA State Pet Memorial at Golden Lake (210 Andersontown Road, Mechanicsburg, PA 17055) for construction of an animal crematory controlled by an afterburner at its pet care facility in Monaghan Township, **York County**.

Intent to Issue Plan Approvals and Intent to Issue or Amend Operating Permits under the Air Pollution Control Act (35 P. S. §§ 4001–4015) and 25 Pa. Code Chapter 127, Subchapter B. These actions may include the administrative amendments of an associated operating permit.

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

09-0019B: Miller and Son Paving, Inc. (887 Mill Creek Road, Rushland, PA 18956) for installation of a replacement baghouse at an existing batch hot mix asphalt (HMA) plant at their facility in Wrightstown Township, Bucks County. Miller and Son Paving, Inc. (Miller & Son) replaced the baghouse and exhaust fan associated with the batch HMA plant without the Department approval. There is no increase in the potential emissions of any pollutant. The facility is a non-Title V facility.

Miller & Son is required to perform stack testing for the batch HMA plant to demonstrate compliance with the requirements of 40 CFR Part 60, Subpart I and assure the control of emissions consistent with the best available technology. Miller & Son will continue to monitor and maintain records of HMA production on a monthly and 12-month rolling basis to ensure compliance with the HMA production limitation and site-level VOC emission restriction. The permit will include monitoring, recordkeeping, reporting and work practice requirements designed to keep the facility operating within all applicable air quality requirements.

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

40-303-026: Wilkes-Barre Materials LLC (500 Chase Road, Shavertown, PA 18708) for modification of a batch asphalt plant to utilize recycled asphalt at the American Asphalt and Paving Company, at 130 Ridgewood Road, Plains Township, **Luzerne County**. Particulate emissions from the plant will be controlled by the existing baghouse. Expected particulate emission rate will be less than 0.02 grain/dscf. The company will operate the facility and maintain the equipment in accordance with the good engineering practices to assure proper operation of the system. The Plan Approval will be incorporated into the company's State-only Operating Permit No. 40-00076 when operational. The operating permit will contain additional recordkeeping and operating restrictions that are designed to keep the facility operating within all applicable air quality requirements.

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

49-00007C: Merck and Co., Inc. (P. O. Box 600, Danville PA 17821-0600) for modification of equipment included in the antibiotic campaign operations to produce Imipenem Non-Sterile (INS) and to tie-in five existing vessels and one new vessel to the existing thermal oxidizer and associated packed bed scrubber and for installation of a 200-gallon makeup tank, a 1,500-gallon hold tank, four elution columns, a reverse osmosis filter, a 1,500-gallon hold tank, a wastewater stripper, new vent condenser CN-1513 for ST-1510, new vent condenser CN-2962 for TA-2960 and existing vent condenser CN-1527 for TA-1522 at their Cherokee plant in Riverside Borough, **Northumberland County**. The respective facility is a major facility for which a Title V operating permit (49-00007) has been issued. The Department of Environmental Protection (Department) intends to issue a plan approval to authorize the applicant to perform the modification and installations.

Potential emissions from the proposed modification and installations are 0.1 ton per year of point source methylene chloride emissions, 0.78 ton per year of fugitive methylene chloride emissions, 0.17 ton per year of point source VOC emissions, 3.6 tons per year of fugitive VOC emissions, 8.59 tons per year of point source acetone emissions and 0.8 ton per year of fugitive acetone emissions.

The Department's review of the information contained in the application indicates that the INS production operation, as proposed, will comply with all applicable requirements pertaining to air contamination sources and the emission of air contaminants including 40 CFR Part 63, Subpart GGG—National Emission Standards for Pharmaceuticals Production (Pharmaceutical MACT Rule), 25 Pa. Code § 129.68 and the BAT requirements of 25 Pa. Code §§ 127.1 and 127.12. Based on this finding, the Department intends to approve the application and issue a plan approval for the proposed operation. Additionally, if the Department determines that the sources and the air cleaning devices are operating in compliance with the plan approval conditions, the conditions established in the plan approval will be incorporated into the operating permit by means of an administrative amendment under 25 Pa. Code § 127.450.

The Department proposes to place in the plan approval the following conditions to ensure compliance with all applicable regulatory requirements:

1. Under the BAT provisions in 25 Pa. Code §§ 127.1 and 127.12, the air contaminant emissions from the following pieces of equipment shall be controlled by thermal oxidizer IN-2050 (Control Device ID C500) followed by the Sub-X water cooled quench and Ceilcote model SPT-54-120 packed bed scrubber (Control Device ID C501), or for backup, thermal oxidizer IN-226 (Control Device ID C150) followed by the Ceilcote model SPT-30-156 packed bed scrubber (Control Device ID C154): TA-1696, TA-1532, TA-3035, ST-1501, TA-1542, TA-1522, ST-1510, TA-1154, TA-1160, TA-3075, RE-1651, TA-1680, TA-1682, ST-1415, EV-1230, TA-1444, ST-1447, TA-1031, TA-1435, ST-1240, RE-1210, TA-1249, TA-1033, TA-1201, FD-3100, TA-1255, RE-1676, TA-1550, TA-1270, TA-889, CL-765/DE-1282 (or alternatively CL-1280/DE-1282), TA-1669, DR-1675, TA-1450, TA-876, TA-854 and TA-814. Operations shall cease in this equipment, except for TA-1522, ST-1510 and TA-889, when the thermal oxidizer or associated scrubber is not operational or when the thermal oxidizer or associated scrubber is not operating in accordance with the requirements contained in this plan approval or in Title V operating permit 49-00007. Processing in TA-1522 and ST-1510 and wastewater collection in TA-889 is only authorized to continue up to the next stable hold point. Operations shall not continue after ceasing, in this equipment, until the thermal oxidizer and associated scrubber is operational and is operating in accordance with the requirements contained herein and in Title V operating permit 49-00007.

2. Under the BAT provisions in 25 Pa. Code §§ 127.1 and 127.12, the permittee shall follow the internal procedures that ensure that when thermal oxidizer IN-226 is operational overloading of the oxidizer is not occurring. Records of internal procedures and load modeling results shall be maintained and shall be made available to the Department upon request. Additionally, ADC-13 shall not be produced at the same time INS is being produced.

3. Under the BAT provisions in 25 Pa. Code §§ 127.1 and 127.12, back-up condensers CN-1513 and CN-1527 shall be used to control the air contaminant emissions from ST-1510 and TA-1522, respectively, when the thermal oxidizer or associated scrubber is not operational or when the thermal oxidizer or associated scrubber is not operating in accordance with the requirements contained in this plan approval or in Title V operating permit 49-00007.

4. Under the BAT provisions in 25 Pa. Code §§ 127.1 and 127.12, no condition in this plan approval shall void any requirement in Title V operating permit 49-00007. The permittee shall continue to comply with all requirements of Title V operating permit 49-00007. If there is a conflict between any Title V operating permit condition and a condition of this plan approval, the permittee shall comply with the condition of this plan approval.

5. Under the BAT provisions in 25 Pa. Code §§ 127.1 and 127.12, fugitive VOC and acetone emissions from equipment leaks shall be controlled by conducting weekly inspections of INS production process equipment and auxiliary step equipment, during operation, for visible, audible or olfactory indications of leaks. Records of each inspection shall be maintained for a minimum of 5 years and shall include the results of each inspection and when leaky components have been repaired or replaced. Leaky components shall be repaired or replaced as soon as practicable, but not later than 15 calendar days after it is detected.

6. Under the BAT provisions in 25 Pa. Code §§ 127.1 and 127.12, fugitive methylene chloride emissions shall be controlled by compliance with the leak detection and repair provisions of 40 CFR 63.1255.

7. Under the BAT provisions in 25 Pa. Code §§ 127.1 and 127.12, thermal oxidizers IN-2050 and IN-226 and associated scrubbers shall comply with the following destruction/removal efficiencies: (a) maintain a minimum combined VOC destruction/removal efficiency of 99.9%; (b) maintain a minimum combined methylene chloride destruction/removal efficiency of 99.99%; and (c) maintain a minimum hydrogen chloride removal efficiency of 99%.

8. Under the BAT provisions in 25 Pa. Code §§ 127.1 and 127.12, for thermal oxidizer IN-2050 and thermal oxidizer IN-226, the permittee shall maintain a minimum oxidizer outlet temperature of at least 1,800°F.

9. Under the BAT provisions in 25 Pa. Code §§ 127.1 and 127.122, for Ceilcote scrubber model SPT-54-120 (Control Device ID C501), the permittee shall maintain a scrubber solution pH of at least 7 and shall maintain a scrubber solution flow rate of at least 85 gallons per minute.

10. Under the BAT provisions in 25 Pa. Code §§ 127.1 and 127.12, for Ceilcote scrubber model SPT-30-156 (Control Device ID C154), the permittee shall maintain a scrubber solution pH of at least 7 and shall maintain a scrubber solution flow rate of at least 50 gallons per minute.

11. Under the BAT provisions in 25 Pa. Code §§ 127.1 and 127.12, the maximum coolant inlet temperature to condensers CN-1513 and CN-1527 shall not exceed -4°F (-20°C).

12. Under 25 Pa. Code §§ 129.68, the maximum coolant inlet temperature to condenser CN-2962 shall not exceed 41°F (5°C).

13. Condensers CN-1513, CN-1527 and CN-2962 shall be equipped with temperature gauges that accurately measure the condenser inlet coolant temperatures.

14. The condenser coolant inlet temperatures shall be recorded at a minimum of once each shift. In addition, the highest vapor pressure compound condensed in CN-2962 shall be recorded. The records shall be maintained for a minimum of 5 years and shall be made available to the Department upon request.

15. The permittee shall operate CN-2962 in compliance with 25 Pa. Code § 129.68. In addition, when triethylamine or any other HAP is being emitted from TA-2960, the use of CN-2962 shall be in accordance with the Pharmaceutical MACT requirements, Subpart A of 40 CFR Part 63 and the permittee's startup, shutdown and malfunction plan.

16. The INS production process, the methylene chloride recovery process, the methylene chloride wastewater stripping process and associated storage tanks and wastewater tanks are subject to 40 CFR Part 63, Subpart GGG—National Emission Standards for Pharmaceuticals Production (Pharmaceutical MACT Rule). The permittee shall comply with all applicable requirements of the Pharmaceutical MACT Rule and shall comply with the provisions of the Notification of Compliance Status Report dated March 14, 2003, and NOCSR revisions dated February 28, 2006.

17. Issuance of an operating permit for INS production is contingent upon all sources being constructed, all air cleaning devices being installed and all sources and air

cleaning devices being maintained and operated as described in the plan approval application and supplemental materials submitted with the application, and in accordance with all conditions, and upon satisfactory demonstration that any air contaminant emissions are in compliance with all limitations specified herein, as well as in compliance with the requirements specified in 40 CFR Part 63, Subpart GGG—National Emission Standards for Pharmaceuticals Production (Pharmaceutical MACT Rule) and 25 Pa. Code §§ 123.31, 123.41 and 129.68 as well as in compliance with the requirements specified in, or established under, any other applicable rules and regulations contained in 40 CFR and Article III of the Rules and Regulations of the Department.

Copies of the application and the Department's review of the application are available for public review between 8 a.m. and 4 p.m. at the Department's Northcentral Regional Office, 208 West Third Street, Suite 101, Williamsport, PA 17701. Appointments for scheduling a review may be made by contacting the Department at (570) 327-3693.

Written comments or requests for a public hearing should be directed to Muhammad Q. Zaman, Chief, Facilities Permitting Section, Department of Environmental Protection, Air Quality Program, Northcentral Regional Office, 208 West Third Street, Suite 101, Williamsport, PA 17701, (570) 327-0512.

OPERATING PERMITS

Intent to Issue Title V Operating Permits under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter G.

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

06-05024: Reliant Energy Mid-Atlantic Power Holdings, LLC (121 Champion Way, Canonsburg, PA 15317) for operation of an electricity generating station (Titus Station) in Cumru Township, **Berks County**. The renewal will also incorporate the Plan Approvals No. 06-05024A and No. 06-05024B issued for the construction of a coal handling system and the modification of the SO₂ limits on the three main coal fired boilers. The current Acid Rain permit is included within this permit renewal. The three main boilers are subject to 40 CFR Part 64, Compliance Assurance Monitoring for particulate, SO₂ and NO_x and Title IV (Acid Rain) of the Clean Air Act, which includes 40 CFR Parts 72, 73 and 75—77. This action is a renewal of the Title V Operating Permit issued in 2000.

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

63-00074: Langeloth Metallurgical Co., LLC. (10 Langeloth Plant Drive, Langeloth, PA 15054) for manufacturing of Electrometallurgical Products at their Washington Plant in Smith Township, PA, **Washington County**. This is a Title V Operating Permit Renewal.

Intent to Issue Operating Permits under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter F.

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

45-00031: Horizon Milling, LLC (Harvest Lane, Route 940, P. O. Box 147, Mt. Pocono, PA 18344) for a State-only (Synthetic Minor) Operating Permit for a flour and grain mill products facility in Pocono Township, **Monroe County**. The sources at the facility include wheat receiving rail truck grain cleaning, wheat transfer screening, milling and bulk loadout packing operations. The sources have the potential to emit pollutants (PM) above Title V thresholds. The permittee is proposing production throughput limitations at the source level along with recordkeeping and reporting as a method of compliance. The State-only (Synthetic Minor) Operating Permit shall contain all applicable requirements for emissions limitations, testing, monitoring, recordkeeping, reporting and work practice standards used to maintain facility compliance with Federal and State air pollution regulations.

35-00023: United Gilsonite Laboratories (P. O. Box 70, Scranton, PA 18501) for operation of their paint-coating operations in Dunmore Borough, **Lackawanna County**. The Department of Environmental Protection intends to renew the State-only (Natural Minor) Operating Permit for this facility.

54-00032: Lehigh Asphalt Paving and Construction Co., Inc. (P. O. Box 549, Tamaqua, PA 18252) for operation of their hot mix batch asphalt plant in West Penn Township, **Schuylkill County**. The Department intends to renew the State-only (Synthetic Minor) Operating Permit for this facility.

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

06-03128: Royal Green Corp. (30 West Huller Lane, Temple, PA 19560) for operation of a ferrous metal shredding operation in Ontelaunee Township, **Berks County**. The facility has the potential to emit 53 tons of PM per year. The facility wide operating permit shall include emission restrictions, monitoring and recordkeeping requirements designed to ensure the facility complies with applicable air quality regulations.

07-03009: Tyrone Wastewater Treatment Plant (1100 Logan Avenue, Tyrone, PA 16686) for operation of their wastewater treatment facility in Snyder Township, **Blair County**. The State-only Operating Permit will include monitoring, recordkeeping, reporting requirements, emission restrictions and work practice standards designed to keep the facility operating within all applicable air quality requirements.

29-03007: Mellott Wood Preserving Co., Inc. (1398 Sawmill Road, Needmore, PA 17238) for operation of a wood-fired boiler at the wood treatment plant in Belfast Township, **Fulton County**. The State-only operating permit will include emission restrictions, work practice standards, monitoring, recordkeeping and reporting requirements to ensure the facility complies with the applicable air quality requirements.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, Eric Gustafson, Facilities Permitting Chief, (814) 332-6940.

10-00293: Quality Aggregates, Inc. (201 Deer Road, Boyers, PA 16020) for manufacturing crushed and screened limestone outside the town of Boyers, Marion Township, **Butler County**.

42-00184: Keystone Powdered Metal Company—Lewis Run Plant (8 Hanley Drive, Lewis Run, PA 16738) for operation of a powdered metal part manufacturing facility, in the Borough of Lewis Run, **McKean County**. The facility's primary emission sources include sintering and heat treating furnaces. The emissions of criteria pollutants from this facility are below major source levels.

43-00309: Bucks Fabricating, Inc. (3547 Perry Highway, Hadley, PA 16130-7237) for emission sources including a surface coating operation, assembly cleaning and miscellaneous propane gas usage in Sandy Creek Township, **Mercer County**. Appropriate conditions from previous plan approvals and operating permits have been incorporated into this permit.

37-00299: International Mill Service, Inc. (208 Rundle Road, New Castle, PA 16103) for emission sources including a slag processing operation, material dumping, material storage and plant roadways in Taylor Township, **Lawrence County**. Appropriate conditions from previous plan approvals and operating permits have been incorporated into this permit.

COAL AND NONCOAL MINING ACTIVITY APPLICATIONS

Applications under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. §§ 3301—3326); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66); and The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21). Mining activity permits issued in response to applications will also address the applicable permitting requirements of the following statutes: the Air Pollution Control Act (35 P. S. §§ 4001—4015); the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27); and the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003).

The following permit applications to conduct mining activities have been received by the Department of Environmental Protection (Department). A copy of an application is available for inspection at the district mining office indicated before an application. Where a 401 Water Quality Certification is needed for any aspect of a particular proposed mining activity, the submittal of the permit application will serve as the request for certification.

Written comments, objections or requests for informal conferences on applications may be submitted by any person or any officer or head of any Federal, State or local government agency or authority to the Department at the district mining office indicated before an application within 30 days of this publication, or within 30 days after the last publication of the applicant's newspaper advertisement, as provided by 25 Pa. Code §§ 77.121—77.123 and 86.31—86.34.

Where any of the mining activities listed will have discharges of wastewater to streams, the Department will incorporate NPDES permits into the mining activity permits issued in response to these applications. NPDES permits will contain, at a minimum, technology-based effluent limitations as identified in this notice for the respective coal and noncoal applications. In addition, more restrictive effluent limitations, restrictions on discharge volume or restrictions on the extent of mining which may occur will be incorporated into a mining activity permit, when necessary, for compliance with water quality standards (in accordance with 25 Pa. Code

Chapters 93 and 95). Persons or agencies who have requested review of NPDES permit requirements for a particular mining activity within the previously mentioned public comment period will be provided with a 30-day period to review and submit comments on the requirements.

Written comments or objections should contain the name, address and telephone number of the person submitting comments or objections; the application number; and a statement of sufficient detail to inform the Department on the basis of comment or objection and relevant facts upon which it is based. Requests for an

informal conference must contain the name, address and telephone number of requestor; the application number; a brief summary of the issues to be raised by the requestor at the conference; and a statement whether the requestor wishes to have the conference conducted in the locality of the proposed mining activities.

Coal Applications Received

Effluent Limits—The following coal mining applications that include an NPDES permit application will be subject to, at a minimum, the following technology-based effluent limitations for discharges of wastewater to streams:

<i>Parameter</i>	<i>30-Day Average</i>	<i>Daily Maximum</i>	<i>Instantaneous Maximum</i>
Iron (total)	3.0 mg/l	6.0 mg/l	7.0 mg/l
Manganese (total)	2.0 mg/l	4.0 mg/l	5.0 mg/l
Suspended solids	35 mg/l	70 mg/l	90 mg/l
pH*		greater than 6.0; less than 9.0	
Alkalinity greater than acidity*			

* The parameter is applicable at all times.

A settleable solids instantaneous maximum limit of 0.5 ml/l applied to: (1) surface runoff (resulting from a precipitation event of less than or equal to a 10-year 24-hour event) from active mining areas; active areas disturbed by coal refuse disposal activities; and mined areas backfilled and revegetated; and (2) drainage (resulting from a precipitation event of less than or equal to a 1-year 24-hour event) from coal refuse disposal piles.

California District Office: 25 Technology Drive, Coal Center, PA 15423, (724) 769-1100.

03031301 and NPDES Permit No. PA0235563. Rosebud Mining Company (301 Market Street, Kittanning, PA 16201), to revise the permit for the Keystone East Mine in Plumcreek Township, **Armstrong County** to modify the subsidence control plan. No additional discharges. Application received May 1, 2006.

Greensburg District Mining Office: Armbrust Professional Center, 8205 Route 819, Greensburg, PA 15601, (724) 925-5500.

65010102 and NPDES Permit No. PA0202967. Coal Loaders, Inc. (210 E. Main St., P. O. Box 556, Ligonier, PA 15658). Renewal application for continued mining of an existing bituminous surface mine, located in Fairfield Township, **Westmoreland County**, affecting 133.6 acres. Receiving streams: UNTs to Hypocrite Creek, classified for the following use: WWF. There is no potable water supply intake within 10 miles downstream from the point of discharge. Renewal application received: May 12, 2005.

Knox District Mining Office: P. O. Box 669, 310 Best Avenue, Knox, PA 16232-0669, (814) 797-1191.

33010102 and NPDES Permit No. PA0241890. McKay Coal Company, Inc. (P. O. Box 343, Punxsutawney, PA 15767). Renewal of an existing bituminous surface strip, auger, limestone and coal removal, and tippie refuse disposal operation in Perry Township, **Jefferson County** affecting 56.4 acres. Receiving streams: two UNTs to Foundry Run, Foundry Run to Mahoning Creek, classified for the following use: CWF. There are no potable surface water supply intakes within 10 miles downstream. Application received: May 16, 2006.

16060104 and NPDES Permit No. PA0258156. Ben Hal Mining Company (389 Irishtown Road, Grove City, PA 16127). Commencement, operation and restoration of a bituminous surface strip operation in Monroe Township, **Clarion County** affecting 16.0 acres. Receiving streams: three UNTs to Piney Creek and Piney Creek, classified for the following use: CWF. There are no potable surface water supply intakes within 10 miles downstream. Application received: May 11, 2006.

61020102 and NPDES Permit No. PA0242101. Amerikohl Mining, Inc. (202 Sunset Drive, Butler, PA 16001). Revision to an existing bituminous surface strip operation in Scrubgrass Township, **Venango County** affecting 133.0 acres. Receiving streams: UNTs to Allegheny River, classified for the following use: CWF. The first downstream potable water supply intakes from the point of discharge are Emlenton Water Company and Parker Area Water Authority. Revision to include a post-mining landuse change from cropland to Industrial/Commercial use and to remove topsoil from the site on the Dave and Edna Mae Kasmoch property. Application received: May 19, 2006.

Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, (814) 342-8200.

17910113 and NPDES No. PA0206610. AMFIRE Mining Company, LLC (One Energy Place, Latrobe, PA 15650), permit renewal for reclamation only of a bituminous surface mine in Penn Township, **Clearfield County**, affecting 78.0 acres. Receiving streams: Bell Run and Poplar Run. There are no potable water supply intakes within 10 miles downstream. Application received: May 10, 2006.

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, (570) 621-3118.

49851603R4. Mid-Valley Coal Sales, Inc. (1380 Tioga Street, Coal Township, PA 17866), renewal of an existing anthracite coal preparation plant operation in Ralpho Township, **Northumberland County** affecting 21.6 acres. Receiving stream: none. Application received May 15, 2006.

54851342R4. Little Buck Coal Company (57 Lincoln Road, Pine Grove, PA 17963), renewal of an existing anthracite underground mine operation in Tremont Township, **Schuylkill County** affecting 5.0 acres. Receiving stream: none. Application received May 16, 2006.

49871601R3. Calvin V. Lenig Coal Prep & Sales, Inc. (R. R. 1 Box 330, Shamokin, PA 17872), renewal of an existing anthracite coal preparation plant operation in Little Mahanoy Township, **Northumberland County**

affecting 3.2 acres. Receiving stream: none. Application received May 17, 2006.

Noncoal Applications Received

Effluent Limits

The following noncoal mining applications that include an NPDES permit application will be subject to, at a minimum, the following technology-based effluent limitations for discharges of wastewater to streams:

<i>Parameter</i>	<i>30-day Average</i>	<i>Daily Maximum</i>	<i>Instantaneous Maximum</i>
suspended solids	35 mg/l	70 mg/l	90 mg/l
Alkalinity exceeding acidity ¹			
pH ¹		greater than 6.0; less than 9.0	

¹ The parameter is applicable at all times.

A settleable solids instantaneous maximum limit of 0.5 ml/l applied to surface runoff resulting from a precipitation event of less than or equal to a 10-year 24-hour event. If coal will be extracted incidental to the extraction of noncoal minerals, at a minimum, the technology-based effluent limitations identified under coal applications will apply to discharges of wastewater to streams.

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, (570) 621-3118.

4873SM8C5 and NPDES Permit No. PA0594644. O-N Minerals (Penroc) Company, LP (P. O. Box 1967, York, PA 17405), renewal of NPDES Permit for discharge of treated mine drainage from a quarry operation in West Manchester Township, **York County**. Receiving stream: UNT to Codorus Creek, classified for the following use: WWF. Application received May 15, 2006.

7475SM5A3C10 and NPDES Permit No. PA0613711. Pennsy Supply, Inc. (P. O. Box 3331, Harrisburg, PA 17105), renewal of NPDES Permit for discharge of treated mine drainage from a quarry operation in Dickinson Township, **Cumberland County**. Receiving stream: UNT to Yellow Breeches Creek, classified for the following use: CWF. Application received May 17, 2006.

FEDERAL WATER POLLUTION CONTROL ACT, SECTION 401

The following permit applications, requests for Environmental Assessment approval and requests for 401 Water Quality Certification have been received by the Department of Environmental Protection (Department). Section 401 of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C.A. § 1341) requires the State to certify that the involved projects will not violate the applicable provisions of sections 301—303, 306 and 307 of the FWPCA (33 U.S.C.A. §§ 1311—1313, 1316 and 1317) as well as relevant State requirements. Persons objecting to approval of a request for certification under section 401 of the FWPCA or to the issuance of a Dam Permit, Water Obstruction and Encroachment Permit or the approval of an Environmental Assessment must submit comments, suggestions or objections within 30 days of the date of this notice, as well as questions, to the regional office noted before the application. Comments should contain the name, address and telephone number of the person commenting, identification of the certification request to which the comments or objections are addressed and a concise statement of comments, objections or suggestions including the relevant facts upon which they are based.

The Department may conduct a fact-finding hearing or an informal conference in response to comments if deemed necessary. Individuals will be notified, in writing, of the time and place of a scheduled hearing or conference concerning the certification request to which the comment, objection or suggestion relates. Maps, drawings and other data pertinent to the certification request are available for inspection between 8 a.m. and 4 p.m. on each working day at the regional office noted before the application.

Persons with a disability who wish to attend a hearing and require an auxiliary aid, service or other accommodation to participate in the proceedings should contact the specified program. TDD users should contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

Applications received under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27) and section 302 of the Flood Plain Management Act (32 P. S. § 679.302) and requests for certification under section 401(a) of the Federal Water Pollution Control Act (33 U.S.C.A. § 1341(a)).

WATER OBSTRUCTIONS AND ENCROACHMENTS

Northeast Region: Watershed Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (570) 826-2511.

E35-396. Lackawanna Heritage Valley Authority, 1300 Old Plank Road, Mayfield, PA 18433, in the City of Scranton, **Lackawanna County**, United States Army Corps of Engineers, Baltimore District.

To construct and maintain a trail system in the floodway of the Lackawanna River for approximately 3,750 feet and to construct and maintain 900 feet of rock bank stabilization along the right bank of the Lackawanna River (CWF). (Scranton, PA Quadrangle N: 7.3 inches; W: 5.4 inches).

E35-397. North Pocono School District, 701 Church Street, Moscow, PA 18444, in Moscow Borough, **Lackawanna County**, United States Army Corps of Engineers, Baltimore District.

To place and maintain fill in 0.12 acre of wetlands within the Van Brunt Creek Watershed (CWS) for the purpose of improving safety and improving access to existing athletic fields at the North Pocono Elementary School. (Moscow, PA Quadrangle N: 16.0 inches; W: 5.0 inches).

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

E25-708. Jordan M. Florida, 14970 Willy Road, Waterford, PA 16441-3754. Florida Bridge, in LeBouef Township, **Erie County**, ACOE Pittsburgh District (Waterford, PA Quadrangle N: 1.4 inches; W: 7.5 inches).

The applicant proposes to construct and maintain a steel beam bridge having a clear span of approximately 30 feet and an underclearance of approximately 7 feet across Colt Run on Willy Road, approximately 0.2 mile northwest of the intersection of SR 6 and Willey Road for access to a private residence. Colt Run is a perennial stream classified as a WWF. The project proposes to directly impact approximately 30 feet of stream.

ENVIRONMENTAL ASSESSMENTS

Central Office: Bureau of Waterways Engineering, Rachel Carson State Office Building, Floor 3, 400 Market Street, Harrisburg, PA 17105.

D21-003EA. South Middleton Township, 520 Park Drive, Boiling Springs, PA 17007, South Middleton Township, **Cumberland County**, ACOE Baltimore District.

Project proposes to breach and remove Wittlinger Dam across Yellow Breeches Creek (HQ-CWF) for the purpose of eliminating a threat to public safety and restoring the stream to a free flowing condition. The project will restore approximately 1,400 feet of stream channel. The dam is located approximately 3,300 feet south of the intersection of Forge Road (SR 2003) and SR 174 (Carlisle, PA Quadrangle N: 2.85 inches; W: 0.4 inch).

D15-403EA. Nestle Water North America Inc., 405 Nestle Way, Breinigsville, PA 18031, South Coventry Township, **Chester County**, ACOE Philadelphia District.

Project proposes to breach and remove Nestle Dam across a tributary to Pigeon Creek (HQ-CWF) for the purpose of eliminating a threat to public safety and restoring the stream to a free flowing condition. The project will restore approximately 100 feet of stream channel. The dam is located approximately 4,500 feet east of the intersection of Harmonyville Road (SR 4041) and Chestnut Hill Road (T 470) (Pottstown, PA Quadrangle N: 13.25 inches; W: 8.1 inches).

D46-343EA. Central Perkiomen Valley Park, P. O. Box 311, Norristown, PA 19404, Perkiomen Township and Borough of Schwenksville, **Montgomery County**, ACOE Philadelphia District.

Project proposes to breach and remove Schwenksville Dam across Perkiomen Creek (WWF) for the purpose of eliminating a threat to public safety and restoring the stream to a free flowing condition. The project will also allow for unobstructed migration of migratory and resident fishes. The project will restore approximately 750 feet of stream channel. The dam is located approximately 800 feet north of the intersection of SR 29 and Haldeman Road (SR 1022) (Perkiomenville, PA Quadrangle N: 0.60 inch; W: 12.05 inches).

D46-023EA. Central Perkiomen Valley Park, P. O. Box 311, Norristown, PA 19404, Lower Frederick and Upper Salford Townships, **Montgomery County**, ACOE Philadelphia District.

Project proposes to breach and remove Kratz Dam across Perkiomen Creek (WWF) for the purpose of eliminating a threat to public safety and restoring the stream to a free flowing condition. The project will also allow for unobstructed migration of migratory and resident fishes. The project will restore approximately 1,100 feet of

stream channel. The dam is located approximately 1,500 feet north of the intersection of SR 29 and Schwenksville Road (SR 4018) (Perkiomenville, PA Quadrangle N: 2.65 inches; W: 12.4 inches).

D46-056EA. Central Perkiomen Valley Park, P. O. Box 311, Norristown, PA 19404, Perkiomen and Skippack Townships, **Montgomery County**, ACOE Philadelphia District.

Project proposes to breach and remove Rosman Dam across Perkiomen Creek (WWF) for the purpose of eliminating a threat to public safety and restoring the stream to a free flowing condition. The project will also allow for unobstructed migration of migratory and resident fishes. The project will restore approximately 2,500 feet of stream channel. The dam is located approximately 800 feet northeast of the intersection of SR 29 and Plank Road (SR 4044) (Collegeville, PA Quadrangle N: 21.2 inches; W: 11.0 inches).

D06-508EA. Robert Ciccone and Sons, P. O. Box 86, Bath, PA 18014. Maxatawney Township, **Berks County**, ACOE Philadelphia District.

Project proposes to breach and remove Arrowhead Business and Industrial Park Dam across a tributary to Mill Creek (TSF) and to construct an off-stream stormwater detention basin within the former reservoir. The purpose of the project is to restore the stream to a free flowing condition and to provide stormwater detention for the Arrowhead Business and Industrial Park. The project will restore approximately 325 linear feet of stream channel. The dam is located immediately east of Long Lane approximately 1,000 feet north of the intersection of Long Lane (SR 1024) and US Route 222 (Topton, PA Quadrangle N: 7.0 inches; W: 15.5 inches).

EA54-003. James S. Turner, Jr., 291 Pheasant Run Road, Orwigsburg, PA 17961. West Brunswick Township, **Schuylkill County**, ACOE Philadelphia District.

Project proposes to expand an existing nonjurisdictional dam across a tributary to Pine Creek (CWF) for recreation and fire protection. The project will impact approximately 120 feet of stream channel. The dam is located approximately 1,800 feet east of the intersection of Pheasant Run Road (T 725) and Lakefront Drive (T 712) (Orwigsburg, West, PA Quadrangle, N: 3.25", W: 6.4").

DAM SAFETY

Central Office: Bureau of Waterways Engineering, 400 Market Street, Floor 3, P. O. Box 8554, Harrisburg, PA 17105-8554.

D63-134. Consol PA Coal Company, P. O. Box J, 1525 Pleasant Grove Road, Claysville, PA 15323. Description: To construct, operate and maintain Enlow Fork Mine Fresh Water Impoundment Dam across a tributary to Short Creek (TSF), impacting 1.793 acres of wetlands (PEM, PEM/SS and PEM/FO) and 8,786 feet of stream and providing 2.69 acres of wetland mitigation and 9,222 feet of stream mitigation for the purpose of providing a water supply system to support a planned expansion of the Enlow Fork Mine to include additional underground mine acres in **Greene and Washington Counties** (Prosperity, PA Quadrangle N: 4.5 inches; W: 5.9 inches) in Morris Township, Washington County.

D35-001EA. Natural Lands Trust, Inc., 1031 Palmers Mill Road, Media, PA 19063. Plan for initial drawdown and stabilization of sediments within the impoundment created by Glenburn Pond Dam, located across Ackerly Creek (TSF). This work is considered Phase I of the eventual breach and removal plan and includes initial drawdown of the impoundment using siphons, redirecting Ackerly Creek to discharge to the

center of the impoundment area, constructing a berm within the reservoir impacting approximately 0.9 acre for access and sediment management, and creating a spillway notch to reduce the spillway elevation and normal pool from 1,022.79 to 1,019.0. (Dalton, PA Quadrangle N: 3.4 inches; W: 3.0 inches) in Glenburn Township, **Lackawanna County**.

ACTIONS

THE CLEAN STREAMS LAW AND THE FEDERAL CLEAN WATER ACT FINAL ACTIONS TAKEN FOR NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES) PERMITS AND WATER QUALITY MANAGEMENT (WQM) PERMITS

The Department of Environmental Protection (Department) has taken the following actions on previously received applications for new, amended and renewed NPDES and WQM permits, applications for permit waivers and Notices of Intent (NOI) for coverage under general permits. This notice is provided in accordance with 25 Pa. Code Chapters 91 and 92 and 40 CFR Part 122, implementing provisions of The Clean Streams Law (35 P. S. §§ 691.1—691.1001) and the Federal Clean Water Act.

<i>Location</i>	<i>Permit Authority</i>	<i>Application Type or Category</i>
Section I	NPDES	Renewals
Section II	NPDES	New or amendment
Section III	WQM	Industrial, sewage or animal wastes; discharges to groundwater
Section IV	NPDES	MS4 individual permit
Section V	NPDES	MS4 permit waiver
Section VI	NPDES	Individual permit stormwater construction
Section VII	NPDES	NOI for coverage under NPDES general permits

Sections I—VI contain actions related to industrial, animal or sewage wastes discharges, discharges to groundwater and discharges associated with municipal separate storm sewer systems (MS4), stormwater associated with construction activities and concentrated animal feeding operations (CAFOs). Section VII contains notices for parties who have submitted NOIs for coverage under general NPDES permits. The approval for coverage under general NPDES permits is subject to applicable effluent limitations, monitoring, reporting requirements and other conditions set forth in each general permit. The approval of coverage for land application of sewage sludge or residential septage under applicable general permit is subject to pollutant limitations, pathogen and vector attraction reduction requirements, operational standards, general requirements, management practices and other conditions set forth in the respective permit. Permits and related documents, effluent limitations, permitting requirements and other information are on file and may be inspected and arrangements made for copying at the contact office noted before the action.

Persons aggrieved by an action may appeal, under section 4 of the Environmental Hearing Board Act (35 P. S. § 7514) and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law), to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users should contact the Environmental Hearing Board (Board) through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin*, unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary of the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decision law.

For individuals who wish to challenge an action, appeals must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

I. NPDES Renewal Permit Actions

II. New or Expanded Facility Permits, Renewal of Major Permits and EPA Nonwaived Permit Actions

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

NPDES Permit No. PA0244058, Sewage, **Bedminster Municipal Authority**, 432 Elephant Road, Perkasio, PA 18944. This proposed facility is located in Bedminster Township, **Bucks County**.

The following notice reflects changes to the notice published at 36 Pa.B. 1501, 1505 (April 1, 2006). The typographical error in permit No. PA0244066 has been corrected to PA0244058.

Description of Proposed Action/Activity: Approval for the issuance of an NPDES permit to discharge treated sewage from the treatment plant serving Ferlauto Tract Subdivision into Deep Run Creek in Watershed 2D—Three Mile Run.

NPDES Permit No. PA0052451, Sewage, **The Landenberg Village, LLC**, 104 Landenberg Road, Suite 3, Landenberg, PA 19350. This proposed facility is located in New Garden Township, **Chester County**.

Description of Proposed Action/Activity: Approval for the renewal and transfer to discharge treated sewage from a STP serving The Wool House into East Branch of White Clay Creek in Watershed 3I.

III. WQM Industrial Waste and Sewerage Actions under The Clean Streams Law (35 P. S. §§ 691.1—691.1001)

IV. NPDES Stormwater Discharges from MS4 Permit Actions

V. NPDES Waiver Stormwater Discharges from MS4 Actions

VI. NPDES Discharges of Stormwater Associated with Construction Activities Individual Permit Actions

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

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI026404009	Great Valley Nature Center Route 29 and Hollow Road Devault, PA 19432	Wayne	Dreher Township	Wallenpaupack Creek HQ-CWF

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

Armstrong County Conservation District, Armsdale Administration Building, Suite B-2, 124 Armsdale Road, Kittanning, PA 16201, (724) 548-3425.

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI050305003	Allegheny Power 800 Cabin Hill Drive Greensburg, PA 15601	Armstrong	South Buffalo Township	Buffalo Creek (HQ-TSF)

Fayette County Conservation District, 10 Nickman Plaza, Lemont Furnace, PA 15456, (724) 438-4497.

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI052606001	National Pike Water Authority P. O. Box 10 Markleyburg, PA 15459	Fayette	Wharton Township	UNT to Deadman's Run and Meadow Run (HQ-CWF)

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

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI063705002	Turnpike Commission 700 South Eisenhower Road Middletown, PA 17057	Lawrence	Little Beaver and North Beaver Townships	North Fork Little Beaver Creek HQ-CWF

VII. Approvals to Use NPDES and/or Other General Permits

The EPA Region III Administrator has waived the right to review or object to this permit action under the waiver provision 40 CFR 123.23(d).

List of NPDES and/or Other General Permit Types

PAG-1	General Permit for Discharges from Stripper Oil Well Facilities
PAG-2	General Permit for Discharges of Stormwater Associated with Construction Activities (PAR)
PAG-3	General Permit for Discharges of Stormwater from Industrial Activities
PAG-4	General Permit for Discharges from Single Residence Sewage Treatment Plants
PAG-5	General Permit for Discharges from Gasoline Contaminated Ground Water Remediation Systems
PAG-6	General Permit for Wet Weather Overflow Discharges from Combined Sewer Systems
PAG-7	General Permit for Beneficial Use of Exceptional Quality Sewage Sludge by Land Application

PAG-8	General Permit for Beneficial Use of Nonexceptional Quality Sewage Sludge by Land Application to Agricultural Land, Forest, a Public Contact Site or a Land Reclamation Site
PAG-8 (SSN)	Site Suitability Notice for Land Application under Approved PAG-8 General Permit Coverage
PAG-9	General Permit for Beneficial Use of Residential Septage by Land Application to Agricultural Land, Forest or a Land Reclamation Site
PAG-9 (SSN)	Site Suitability Notice for Land Application under Approved PAG-9 General Permit Coverage
PAG-10	General Permit for Discharge Resulting from Hydrostatic Testing of Tanks and Pipelines
PAG-11	(To Be Announced)
PAG-12	CAFOs
PAG-13	Stormwater Discharges from MS4

General Permit Type—PAG-2

<i>Facility Location & Municipality</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
Hazle Township West Hazleton Borough Hazleton City Luzerne County	PAG2004005007	Andrew G. Benyo Municipal Authority of Hazle Township P. O. Box 502 Harleigh, PA 18225	Hazle Creek CWF	Luzerne County Conservation District (570) 674-7991
Edwardsville Borough Luzerne County	PAG2004006007	WP Edwardsville Associates, LLC 940 Haverford Rd. Bryn Mawr, PA 19010	Toby Creek WWF	Luzerne County Conservation District (570) 674-7991
Hazle Township Luzerne County	PAG2004005046	Pets United, Inc. Attn: Gregg Patterson 1 Maplewood Dr. Hazleton, PA 18202	Black Creek CWF	Luzerne County Conservation District (570) 674-7991
Jackson Township Luzerne County	PAG2004006014	Heritage Hills Estates, Inc. Attn: David Pieczynski 24 Richard Drive Dallas, PA 18612	Drakes Creek CWF	Luzerne County Conservation District (570) 674-7991
Beaver County Harmony Township	PAG2000406004	Paul Kamzelski Harmony Township Municipal Authority 2501 Woodland Road Ambridge, PA 15003	UNTs to Ohio River (WWF)	Beaver County Conservation District (724) 378-1701
Beaver County Harmony Township	PAG2000406005	Paul Kamzelski Harmony Township Municipal Authority 2501 Woodland Road Ambridge, PA 15003	UNTs to Ohio River (WWF)	Beaver County Conservation District (724) 378-1701
Beaver County Independence Township	PAG2000406009	Gene Fleegal Independence Township 104 School Road Aliquippa, PA 15001	Raccoon Creek (WWF)	Beaver County Conservation District (724) 378-1701
Fayette County North Union Township	PAG2002606008	R.E.A.L. Investments 3005 Hartsock Lane Colorado Springs, CO 80917	UNT to Redstone Creek (WWF)	Fayette County Conservation District (724) 438-4497
Cambria County Richland Township	PAG2001106005	Johnstown-Cambria County Airport Authority 479 Airport Road Suite 1 Johnstown, PA 15904	UNT to Solomon Run (WWF)	Cambria County Conservation District (814) 472-2120
Westmoreland County Mt. Pleasant Township	PAG2006505002	Dennis Castelli R. D. 3, Box 374 New Alexandria, PA 15670	Shoup Run (WWF)	Westmoreland County Conservation District (724) 837-5271

<i>Facility Location & Municipality</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
Westmoreland County Unity Township	PAG2006505057	John Odell Warner of Sturgis, LLC 507 Mortimer Avenue Sturgis, MI 49091	Loyalhanna Creek (WWF)	Westmoreland County Conservation District (724) 837-5271
Westmoreland County Hempfield Township	PAG2006505063	Logan M. Dickerson 460 Glenmeade Road Greensburg, PA 15601	UNT to Jacks Run (WWF)	Westmoreland County Conservation District (724) 837-5271
Westmoreland County Penn Township	PAG2006505073	David W. Casuccio Fischione Instruments, Inc. 9003 Corporate Circle Export, PA 15632	Turtle Creek (TSF)	Westmoreland County Conservation District (724) 837-5271
Westmoreland County Hempfield Township	PAG2006506003	Kevin P. Abbott, NDC 340 Mansfield Avenue Pittsburgh, PA 15220	Jacks Run (WWF)	Westmoreland County Conservation District (724) 837-5271
Westmoreland County Hempfield Township	PAG2006506004	Gordon Food Service P. O. Box 1787 Grand Rapids, MI 49501	Brush Creek (TSF)	Westmoreland County Conservation District (724) 837-5271
Westmoreland County Unity Township	PAG2006506006	Department of Transportation District 12 825 North Gallatin Avenue Uniontown, PA 15401	Monastery Run (WWF)	Westmoreland County Conservation District (724) 837-5271
Westmoreland County Rostraver Township	PAG2006506010	J. Yorick United Mobile Home 1275 Forman Drive Morgantown, WV 26508	UNT to Cedar Creek (TSF)	Westmoreland County Conservation District (724) 837-5271
Westmoreland County City of Lower Burrell	PAG2006506011	J. Callahan Burrell School District 1021 Puckety Church Road Lower Burrell, PA 15068	Little Pucketa Creek (TSF)	Westmoreland County Conservation District (724) 837-5271
Westmoreland County Murrysville	PAG2006506019	Ben Sampson Toro Development Co. 2500 Eldo Road Monroeville, PA 15146	UNT to Humms Run (TSF)	Westmoreland County Conservation District (724) 837-5271
Butler County Middlesex Township	PAG2001006005	Larry and Laurel Colonello 131 Meredith Drive Mars, PA 16046	UNT Glade Run WWF	Butler Conservation District (724) 284-5270
Butler County Slippery Rock Township	PAG2001006006	G. L. McKnight, Inc. Reese Road Slippery Rock, PA 16057	UNT Slippery Rock Creek CWF	Butler Conservation District (724) 284-5270
Jefferson County Young Township	PAG2003306001	Richardson Construction Company, Inc. P. O. Box 96 Punxsutawney, PA 15767	UNT Cold Spring Run CWF	Jefferson Conservation District (814) 849-7463
Venango County Cranberry Township	PAG2006106002	Department of Transportation 255 Elm Street Oil City, PA 16301	Upper Sage Run UNT Allegheny River CWF	Venango Conservation District (814) 676-2832

General Permit Type—PAG-8 (SSN)

<i>Facility Location & County/Municipality Permit No.</i>	<i>Applicant Name & Address</i>	<i>Site Name & Location</i>	<i>Contact Office & Phone No.</i>
Conemaugh Township Indiana County PAG086106A1	Redevelopment Authority of the City of Johnstown Public Safety Building 4th Floor 401 Washington Street Johnstown, PA 15901	Geyer Farm	Southwest Regional Office Water Management Program Manager 400 Waterfront Drive Pittsburgh PA 15222-4745 (412) 442-4000

General Permit Type—PAG-10

<i>Facility Location: Municipality & County</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
Whitehall Township Lehigh County	PAG102202	Gulf Oil Limited Partnership Fullerton Gulf Terminal 2451 Main Street Whitehall, PA 18052	UNT to Lehigh River	DEP—ERO Water Management 2 Public Square Wilkes-Barre, PA 18711 (570) 826-2511

PUBLIC WATER SUPPLY (PWS)

PERMITS

The Department of Environmental Protection has taken the following actions on applications received under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17) for the construction, substantial modification or operation of a public water system.

Persons aggrieved by an action may appeal, under section 4 of the Environmental Hearing Board Act (35 P. S. § 7514) and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law), to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users should contact the Environmental Hearing Board (Board) through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin*, unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary of the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decision law.

For individuals who wish to challenge an action, appeals must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

SAFE DRINKING WATER

Actions taken under the Pennsylvania Safe Drinking Water Act

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

Permit No. 5005504 , Public Water Supply.	
Applicant	Newport Water Authority
Municipality	Howe Township
County	Perry
Type of Facility	Campbell Well and related treatment facilities.
Consulting Engineer	Harry E. Bingaman, P. E. Glace Assoc., Inc. 3705 Trindle Rd. Camp Hill, PA 17011
Permit to Construct Issued:	5/10/2006
Permit No. 6706509 , Minor Amendment, Public Water Supply.	
Applicant	Glen Rock Water Authority
Municipality	Glen Rock Borough
County	York
Type of Facility	Repainting of the Hanover Street finished water standpipe.
Consulting Engineer	William A. LaDieu, P. E. CET Engineering Services 1240 N. Mountain Road Harrisburg, PA 17112
Permit to Construct Issued:	5/9/2006
Permit No. 3105502 , Minor Amendment, Public Water Supply.	
Applicant	R.P.R. Recreation Limited Partnership
Municipality	Lincoln Township
County	Huntingdon
Type of Facility	Addition of potassium permanganate.
Consulting Engineer	Daniel J. Carbaugh, P. E. Keller Engineers, Inc. 420 Allegheny Street Hollidaysburg, PA 16648
Permit to Construct Issued:	5/19/2006

Permit No. 6706505, Public Water Supply.

Applicant **The York Water Company**
 Municipality Spring Garden Township
 County **York**
 Type of Facility PWS permit is for the replacement of the secondary raw water intake's screen and screen house at the Brillhart Pumping Station.

Consulting Engineer Ryan M. Ural, P. E.
 The York Water Company
 130 East Market Street
 P. O. Box 15089
 York, PA 17405-7089

Permit to Construct 5/10/2006
 Issued:

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

Permit No. Minor Amendment—Construction Public Water Supply.

Applicant **BCI Municipal Authority**
 Township or Borough Beccaria Township
 County **Clearfield**
 Responsible Official Steven G. Fletcher, Supervisor
 BCI Municipal Authority
 Cressview Street
 P. O. Box 388
 Irvona, PA 16656

Type of Facility Public Water
 Supply—Construction

Consulting Engineer Timothy A. Cooper, P. E.
 Stiffler, McGraw & Associates
 P. O. Box 462
 19 North Juniata Street
 Hollidaysburg, PA 16648

Permit Issued Date 5/19/06

Description of Action Booster Pump Station No. 2 upgrades and the extension of the waterline in Lyleville.

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

Operations Permit issued to **Pinebloom Corporation d/b/a Wolf's Camping Resort**, 308 Timberwolf Run, Knox, PA 16232-9316, PWS ID 6160861, Beaver Township, **Clarion County**, on May 18, 2006, for the operation of the 48 gpm water treatment plant consisting of flocculation, sedimentation, filtration, disinfection, pumping and pipeline, completed to specifications of Construction Permit No. 1605501, issued February 26, 2003.

Rescission of Operations Permit issued to the **Department of Conservation and Natural Resources, Bureau of State Parks, RCSOB**, P. O. Box 8551, Harrisburg, PA 17105-8551, PWS ID 6620363, Chapman State Park, Pleasant Township, **Warren County**, on May 17, 2006. Permit No. 6279502, issued January 29, 1980, is no longer required for this facility; this action relieves the Department of Conservation and Natural Resources, Chapman State Park of any obligations covered by Permit No. 6279502.

SEWAGE FACILITIES ACT PLAN APPROVAL**Plan Approvals Granted under the Pennsylvania Sewage Facilities Act (35 P. S. §§ 750.1—750.20a)**

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

Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Mifflinburg Borough	333 Chestnut Street Mifflinburg, PA 17844	Union

Plan Description: The approved plan provides for construction of an upgrade of the existing sewerage facilities in the Borough. The existing SBR wastewater treatment facility will be converted to a membrane bioreactor process to enable the facility to meet the nutrient reduction requirements of the Chesapeake Bay Tributary Strategy. Tankage freed up by the conversion will be utilized to provide flow equalization. Influent pumping and incoming interceptor capacity will be expanded. The Department's review of the sewage facilities update revision has not identified any significant negative environmental impacts resulting from this proposal. Any required NPDES Permits or WQM Permits must be obtained in the name of the municipality or authority as appropriate.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION**UNDER ACT 2, 1995****PREAMBLE 2**

The following plans and reports were submitted under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).

Provisions of Chapter 3 of the Land Recycling and Environmental Remediation Standards Act (act) require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* a notice of submission of plans and reports. A final report is submitted to document cleanup of a release of a regulated substance at a site to one of the act's remediation standards. A final report provides a description of the site investigation to characterize the nature and extent of contaminants in environmental media, the basis for selecting the environmental media of concern, documentation supporting the selection of residential or nonresidential exposure factors, a description of the remediation performed and summaries of sampling analytical results which demonstrate that remediation has attained the cleanup standard selected. Submission of plans and reports, other than the final report, shall also be published in the *Pennsylvania Bulletin*. These include the remedial investigation report, risk assessment report and cleanup plan for a site-specific standard remediation. A remedial investigation report includes conclusions from the site investigation, concentration of regulated substances in environmental media; benefits of refuse of the property and, in some circumstances, a fate and transport analysis. If required, a risk assessment report describes potential adverse effects caused by the presence of regulated substances. If required, a cleanup plan evaluates the abilities of potential remedies to achieve remedy requirements.

For further information concerning plans or reports, contact the Environmental Cleanup Program manager in the Department regional office after which the notice of receipt of plans or reports appears. If information concerning plans or reports is required in an alternative form, contact the Community Relations Coordinator at the appropriate regional office. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following plans and reports:

Southcentral Region: Environmental Cleanup Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

Armstrong World Industries, Building 800, City of Lancaster and Manheim Township, **Lancaster County**. Science Applications International Corporation, 6310 Allentown Boulevard, Harrisburg, PA 17112, on behalf of Armstrong World Industries, Inc., P. O. Box 3001, Lancaster, PA 17604-3001, submitted a Final Report concerning remediation of groundwater contaminated with solvents. The report is intended to document remediation of the site to the Site-Specific Standard.

Northcentral Region: Environmental Cleanup Program Manager, 208 West Third Street, Williamsport, PA 17701.

Nextel Partners, Inc. Patton Forest Facility, Patton Township, **Centre County**. Blazosky Assoc, Inc., 2525 Green Tech Dr., Suite D, State College, PA 16803 on behalf of Nextel Partners, Inc., 2603 E. College Ave., State College, PA 16802 has submitted a Final Report concerning remediation of site soil contaminated with diesel fuel. The report is intended to document remediation of the site to meet the Statewide Health Standard.

Penns Creek Elementary School, Centre Township, **Snyder County**. Chambers Environmental Group, Inc. 629 East Rolling Ridge Dr., Bellefonte, PA 16823 on behalf of Mid-West School District, 568 East Main St., Middleburg, PA 17842 has submitted a Remedial Investigation Report and Final Report concerning remediation of site soil contaminated with fuel oil No. 2. The report is intended to document remediation of the site to meet the Site-Specific Standard.

J & J Sales & Service Inc., Benton Township, **Columbia County**. United Environmental Services, Inc., 86 Hillside Drive, Drums, PA 18222 on behalf of Gerald Houseweart II, 146A Dotyville Road, Benton, PA 17814 has submitted a work plan and Baseline Environmental Report concerning remediation of site soil and groundwater contaminated with leaded and unleaded gasoline. The report is intended to document remediation of the site to meet the Special Industrial Area requirements.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

UNDER ACT 2, 1995

PREAMBLE 3

The Department has taken action on the following plans and reports under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).

Provisions of 25 Pa. Code § 250.8, administration of the Land Recycling and Environmental Remediation Standards Act (act), require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* a notice of final actions on plans and reports. A final report is submitted to document cleanup of a release

of a regulated substance at a site to one of the remediation standards of the act. A final report provides a description of the site investigation to characterize the nature and extent of contaminants in environmental media, the basis of selecting the environmental media of concern, documentation supporting the selection of residential or nonresidential exposure factors, a description of the remediation performed and summaries of sampling methodology and analytical results which demonstrate that the remediation has attained the cleanup standard selected. Plans and reports required by provisions of the act for compliance with selection of remediation to a site-specific standard, in addition to a final report, include a remedial investigation report, risk assessment report and cleanup plan. A remedial investigation report includes conclusions from the site investigation, concentration of regulated substances in environmental media, benefits of refuse of the property and, in some circumstances, a fate and transport analysis. If required, a risk assessment report describes potential adverse effects caused by the presence of regulated substances. If required, a cleanup plan evaluates the abilities of potential remedies to achieve remedy requirements. A work plan for conducting a baseline remedial investigation is required by provisions of the act for compliance with selection of a special industrial area remediation. The baseline remedial investigation, based on the work plan, is compiled into the baseline environmental report to establish a reference point to show existing contamination, describe proposed remediation to be done and include a description of existing or potential public benefits of the use or reuse of the property. The Department may approve or disapprove plans and reports submitted. This notice provides the Department's decision and, if relevant, the basis for disapproval.

For further information concerning the plans and reports, contact the Environmental Cleanup Program manager in the Department regional office before which the notice of the plan or report appears. If information concerning a final report is required in an alternative form, contact the Community Relations Coordinator at the appropriate regional office. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following plans and reports:

Southcentral Region: Environmental Cleanup Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

Eatwell Diner (Former), North Lebanon Township, **Lebanon County**. Alliance Environmental Services, Inc., 1820 Linglestown Road, Harrisburg, PA 17110, on behalf of Hamdy Aboshua, c/o Timothy Engler Esquire, Engler Law Office, 411 Cumberland Street, Lebanon, PA 17402, submitted a Final Report concerning the remediation of site groundwater contaminated with No. 2 heating oil. The final report demonstrated attainment of the residential Statewide Health Standard and was approved by the Department on May 16, 2006.

Northcentral Region: Environmental Cleanup Program Manager, 208 West Third Street, Williamsport, PA 17701.

Pennsylvania Air National Guard Station (Former), College Township, **Centre County**. CH2M HILL, 1700 Market St., Suite 1600, Philadelphia, PA 19103 on behalf of the United States Air National Guard, 3500 Fetchet Ave., Andrews Air Force Base, MD 20762-5157 has submitted a Final Report concerning remediation of site groundwater contaminated with

trichloroethene. The Final Report demonstrated attainment of the Statewide Health Standard and was approved by the Department on April 24, 2006.

AIR QUALITY

General Plan Approval and Operating Permit Usage Authorized under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127 to construct, modify, reactivate or operate air contamination sources and associated air cleaning devices.

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

66-310-012GP3: Haines & Kibblehouse, Inc. (P. O. Box 196, 2052 Lucon Road, Skippack, PA 19474) on May 11, 2006, to construct and operate a portable stone crushing plant at the Wyoming Asphalt Company in Eaton Township, **Wyoming County**.

Plan Approvals Issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and regulations in 25 Pa. Code Chapter 127, Subchapter B relating to construction, modification and reactivation of air contamination sources and associated air cleaning devices.

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

09-0102A: Soil Technology, Inc. (7 Steel Road East, Morrisville, PA 19067) on May 19, 2006, to operate a diesel driven screen in Falls Township, **Bucks County**.

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

64-301-007: James H. Wilson Funeral Home, Inc. (P. O. Box 7, Lake Ariel, PA 18436) on May 9, 2006, to construct a crematory and associated air cleaning device in Lake Township, **Wayne County**.

13-399-013: Ametek, Inc. (42 Mountain Avenue, Green Acres Industrial Park, Nesquehoning, PA 18260) on May 8, 2006, to install an air cleaning device to capture emissions from starch processing operations in Nesquehoning Borough, **Carbon County**.

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

67-05045B: Glen-Gery Corp. (1090 East Boundary Avenue, York, PA 17403-2920) on May 16, 2006, to install a dry limestone adsorber on Tunnel Kiln No. 2 at the York Plant in Spring Garden Township, **York County**.

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

25-069K: Engelhard Corp. (1729 East Avenue, Erie, PA 16503) on May 15, 2006, to install a Palladium Acetate process at the Erie facility in the City of Erie, **Erie County**.

Plan Approval Revisions Issued including Extensions, Minor Modifications and Transfers of Ownership under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code §§ 127.13, 127.13a and 127.32.

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

46-0005Y: Merck and Co., Inc. (Sumneytown Pike, P. O. Box WP20, West Point, PA 19486) on May 16, 2006, to operate a low-VOC alternate operating scenario of the pharmaceutical manufacturing processes in Building 69, in Upper Gwynedd Township, **Montgomery County**.

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

36-05139A: AFP Advanced Food Products, LLC (158 West Jackson Street, New Holland, PA 17557-1607) on April 27, 2006, to construct a new boiler and to use landfill gas as an alternate fuel source at their food packaging plant in New Holland Borough, **Lancaster County**. This plan approval was extended.

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

60-318-011A: Pik Rite, Inc. (60 Pik Rite Lane, Lewisburg, PA 17837) on May 15, 2006, to increase various coating, adhesive and cleanup solvent usage limitations for a fabricated steel parts surface coating operation as well as to increase the VOC limitation for the operation from 3.54 to 4.95 tons in any 12-consecutive month period and the volatile HAP limitation from .57 to 1.5 tons in any 12-consecutive month period in Buffalo Township, **Union County**.

Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745; William Charlton, New Source Review Chief, (412) 442-4174.

32-00385A: CQ Hardwood Finishers, LLC (28 Kendall Road, Homer City, PA 15748) on May 18, 2006 to complete construction at the Hardwood Flooring Finishing plant in Burrell Township, **Indiana County**. This plan approval was extended.

Title V Operating Permits Issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter G.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Yasmin Neidlinger, Facilities Permitting Chief, (717) 705-4702.

28-05015: IESI PA Blue Ridge Landfill, Corp. (P. O. Box 399, Scotland, PA 18254-0399) on May 17, 2006, to incorporate appropriate language for the beneficial use of landfill gas for their refuse disposal facility in Greene Township, **Franklin County**. This is revision No. 1.

Operating Permits for Non-Title V Facilities Issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter F.

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

35-00056: P. A. Hutchison Co. (400 Penn Avenue, Mayfield, PA 18433) on April 21, 2006, to issue a State-only Operating Permit for a commercial printing facility in Mayfield Borough, **Lackawanna County**.

45-00003: Reliant Energy—Shawnee CT Facility (121 Champion Way, Suite 200, Canonsburg, PA 15317) on April 28, 2006, to issue a renewal State-only (Synthetic Minor) Operating Permit for a combustion turbine in Middle Smithfield Township, **Monroe County**.

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

05-03011: Blue Triangle Hardwoods, LLC (Route 26 North, Everett, PA 15537) on May 16, 2006, to operate a sawmill in West Providence Township, **Bedford County**.

21-05030: Ahlstrom Mount Holly Springs, LLC (122 West Butler Street, Mount Holly Springs, PA 17065-1218) on May 17, 2006, to operate a specialty paper manufacturing facility in Mount Holly Springs Borough, **Cumberland County**. This is a renewal of the State-only operating permit.

22-03009: Dauphin Precision Tool, LLC (200 Front Street, Millersburg, PA 17061-1324) on May 16, 2006, for their machining and heat treat operations at their Millersburg Plant in Millersburg Borough, **Dauphin County**. This is a renewal of the State-only operating permit.

38-05034: Butler Manufacturing Co. (400 North Weaver Street, Annville, PA 17003-1103) on May 16, 2006, to operate two spray-paint booths at their steel fabrication facility in Annville Township, **Lebanon County**.

67-03115: Garrod Hydraulics, Inc. (1050 Locust Point Road, York, PA 17402-8059) on May 17, 2006, to operate a hard chrome electroplating system in East Manchester Township, **York County**.

67-05031: Wayneco, Inc. (800 Hanover Road, York, PA 17404-6212) on May 12, 2006, to operate their wood furniture manufacturing facility in Jackson Township, **York County**. This is a renewal of the State-only operating permit.

67-05063: York Building Products Co., Inc. (950 Smile Way, York, PA 17404-1798) on May 18, 2006, to operate their asphalt plant and stone quarry in West Manchester Township, **York County**. This is a renewal of the State-only operating permit.

67-05079: York Building Products Co., Inc. (P. O. Box 1708, 1020 N. Hartley Street, York, PA 17405) on May 18, 2006, to operate their asphalt plant in Jackson Township, **York County**. This is a renewal of the State-only operating permit.

67-05080: York Building Products Co., Inc. (P. O. Box 1708, 1020 N. Hartley Street, York, PA 17405) on May 18, 2006, to operate their stone quarry in Jackson Township, **York County**. This is a renewal of the State-only operating permit.

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

04-00675: Aliquippa Terminals, Inc. (100 Woodlawn Road, Aliquippa, PA 15001) on May 11, 2006, to operate two docks with an excavator/hydraulic clamshell, a backup clamshell crane a large storage building for super bags and bulk materials and assorted stockpiles at the terminal in Aliquippa Township, **Beaver County**. This is a State-only Operating Permit.

11-00051: Quaker Sales Corp. (P. O. Box 880, Johnstown, PA 15907) on May 16, 2006 to operate a Batch Process, Hot Mix Asphalt Concrete Plant in West Taylor, **Cambria County**. This is a Synthetic Minor Permit.

Department of Public Health, Air Management Services: 321 University Avenue, Philadelphia, PA 19104; Edward Braun, Chief, (215) 685-9476.

AMS 06014: Sun Chemical (3301 Hunting Park Avenue, Philadelphia, PA 19132) on May 4, 2006, to install one Kady mill, 16 mixers, one post mixer and eight table top mixers in the City of Philadelphia, **Philadelphia County**.

Operating Permit Revisions Issued including Administrative Amendments, Minor Modifications or Transfers of Ownership under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code §§ 127.412, 127.450, 127.462 and 127.464.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401; Edward Jurdon Brown, Facilities Permitting Chief, (484) 250-5920.

23-00001: Sunoco, Inc.—R&M (100 Green Street, Marcus Hook, PA 19061) on May 17, 2006, to incorporate CO monitoring for source 101 at 0% oxygen in Marcus Hook Borough, **Delaware County**. Title V Operating Permit Minor Modification issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code § 127.462. The permit will include monitoring, recordkeeping, and reporting requirements designed to keep the facility within all applicable air quality requirements.

Department of Public Health, Air Management Services: 321 University Avenue, Philadelphia, PA 19104; Edward Braun, Chief, (215) 685-9476.

V05-001: Exelon Generation Co.—Southwark Generating Co. (2501 South Delaware Avenue, Philadelphia, PA 19148) on May 15, 2006, administratively amended to correct a particulate emission limit from the regulations. The Title V operating permit was originally issued on December 16, 2005.

ACTIONS ON COAL AND NONCOAL MINING ACTIVITY APPLICATIONS

Actions on applications under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. §§ 3301—3326); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66); and The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21). The final action on each application also constitutes action on the request for 401 Water Quality Certification and the NPDES permit application. Mining activity permits issued in response to the applications will also address the application permitting requirements of the following statutes: the Air Quality Control Act (35 P. S. §§ 4001—4015); the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27); and the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003).

Coal Permits Actions

California District Office: 25 Technology Drive, Coal Center, PA 15423, (724) 769-1100.

32803712 and NPDES Permit No. PA0092142, Keystone Coal Mining Corporation (P. O. Box 219, 400 Overview Drive, Shelocta, PA 15774), to renew the permit for the Lewisville Recovery Plant in Young Township,

Indiana County and related NPDES permit for reclamation only. No additional discharges. Application received: May 23, 2005. Permit issued May 18, 2006.

32841303 and NPDES Permit No. PA0001775, Helvetia Coal Company (P. O. Box 219, 400 Overview Drive, Shelocta, PA 15774), to renew the permit for the Lucerne Mine No. 6 in Center Township, **Indiana County** and related NPDES permit for reclamation only. No additional discharges. Application received: April 22, 2005. Permit issued May 18, 2006.

Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, (814) 472-1900.

56050105 and NPDES No. PA0249793. Svonavec, Inc., 150 West Union Street, Suite 201, Somerset, PA 15501, commencement, operation and restoration of a bituminous surface mine in Milford Township, **Somerset County**, affecting 273.6 acres. Receiving streams: UNTs to/and Middle Creek and UNT to/and South Glade Creek classified for the following uses: TSF and WWF. There are no potable water supply intakes within 10 miles downstream. Application received May 13, 2005. Permit issued May 12, 2006.

56040106, Mountaineer Mining Corporation, 1010 Garrett Shortcut Road, Berlin, PA 15530, commencement, operation and restoration of a bituminous surface mine in Brothersvalley Township, **Somerset County**, affecting 4.1 acres. Receiving streams: UNTs to/and Buffalo Creek and UNTs to/and Hays Run classified for the following use: CWF. There are no potable water supply intakes within 10 miles downstream. Application received October 18, 2004. Permit issued: May 12, 2006.

11000104 and NPDES No. PA0248851. Hoffman Mining, Inc., P. O. Box 130, 118 Runway Road, Friedens, PA 15541, permit renewal for the continued operation and restoration of a bituminous surface auger mine in Adams Township, **Cambria County**, affecting 133.8 acres. Receiving stream: Paint Creek, classified for the following use: CWF. There are no potable water supply intakes within 10 miles downstream. Application received December 9, 2005. Permit issued May 11, 2006.

Greensburg District Mining Office: Armbrust Professional Center, 8205 Route 819, Greensburg, PA 15601, (724) 925-5500.

65010102 and NPDES Permit No. PA0202967. Coal Loaders, Inc. (210 East Main Street, P. O. Box 556, Ligonier, PA 15658). Permit revised to add removal of the Sewickley coal seam and add mining and reclamation areas at an existing bituminous surface mining site located in Fairfield Township, **Westmoreland County**, now affecting 146.8 acres. Receiving streams: Hypocrite Creek, Hannas Run and UNTs to Hypocrite Creek. Application received: February 10, 2006. Revised permit issued: May 18, 2006.

Knox District Mining Office: P. O. Box 669, 310 Best Avenue, Knox, PA 16232-0669, (814) 797-1191.

16050111 and NPDES No. PA0258041. Neiswonger Construction, Inc. (17592 Route 322, Strattanville, PA 16258) Commencement, operation and restoration of a bituminous strip operation in Porter Township, **Clarion County** affecting 86.0 acres. Receiving streams: UNT to Licking Creek and UNT to West Fork of Leatherwood Creek. Application received: October 12, 2005. Permit Issued: May 10, 2006.

Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, (814) 342-8200.

17060105 and NPDES Permit No. PA0256374. Allegheny Enterprises, Inc. (P. O. Box 333, Curwensville, PA 16833), commencement, operation and restoration of a bituminous surface mine in Brady Township, **Clearfield County** affecting 38.0 acres. Receiving stream: Stump Creek classified for the following use: CWF. There are no downstream potable water supply intakes from the point of discharge. Application received May 17, 2006.

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, (570) 621-3118.

54851305R4. D & F Deep Mine Coal Company (207 Creek Road, Klingertown, PA 17941), renewal of an existing anthracite underground mine operation Cass Township, **Schuylkill County** affecting 1.08 acres, receiving stream: none. Application received February 13, 2006. Renewal issued May 16, 2006.

13010201R. Rossi Excavating Company (9 West 15th Street, Hazleton, PA 18201), renewal of an existing anthracite surface mine operation in Banks Township, **Carbon County** affecting 580.0 acres. Receiving stream: none. Application received March 9, 2006. Renewal issued May 16, 2006.

Noncoal Permits Actions

Knox District Mining Office: P. O. Box 669, 310 Best Avenue, Knox, PA 16232-0669, (814) 797-1191.

24050301 and NPDES Permit No. PA0257974. North Star Aggregates, Inc. (P. O. Box R, Ridgway, PA 15853) Commencement, operation and restoration of a large industrial mineral sandstone and topsoil operation in Horton Township, **Elk County** affecting 130.0 acres. Receiving streams: Johnson Run and Oyster Run. Application received: August 17, 2005. Permit Issued: May 18, 2006.

20050805. Timothy C. Powell (18536 Cussewago Road, Meadville, PA 16335). Commencement, operation and restoration of a small noncoal sandstone operation in Vernon Township, **Crawford County** affecting 5.2 acres. Receiving streams: UNT to French Creek. Application received: December 15, 2005. Permit Issued: May 15, 2006.

20930801. Sean Spencer (24454 Gravel Run Road, Cambridge Springs, PA 16403) Transfer of an existing small noncoal sand and gravel operation from David and Sandra McMahon in Woodcock Township, **Crawford County** affecting 5.0 acres. Receiving streams: UNT to Gravel Run. Application received: February 6, 2006. Permit Issued: May 17, 2006.

42050801. William K. Robinson (P. O. Box 76, Roulette, PA 16746) Commencement, operation and restoration of a small noncoal bluestone operation in Eldred Township, **McKean County** affecting 1.5 acres. Receiving streams: Canfield Creek. Application received: August 2, 2005. Permit Issued: May 18, 2006.

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, (570) 621-3118.

58050820. Lee A. Warner (R. R. 1, Box 221 West, New Milford, PA 18834), commencement, operation and restoration of a quarry operation in New Milford Township, **Susquehanna County** affecting 3.0 acres. Receiving stream: none. Application received May 2, 2005. Permit issued May 16, 2006.

58050841. Andrew Boisselle (137 Manhattan Avenue, Teaneck, NJ 07666-6135), commencement, operation and restoration of a quarry operation in Auburn Township, **Susquehanna County** affecting 5.0 acres. Receiving stream: none. Application received August 29, 2005. Permit issued May 16, 2006.

66060803. Frank A. Remington (R. R. 2, Box 195, New Albany, PA 18833), commencement, operation and restoration of a quarry operation in Braintrim Township, **Wyoming County** affecting 5.0 acres. Receiving stream: none. Application received February 1, 2006. Permit issued May 17, 2006.

ACTIONS ON BLASTING ACTIVITY APPLICATIONS

Actions on applications under the Explosives Acts of 1937 and 1957 (73 P.S. §§ 151–161) and 25 Pa. Code § 211.124. Blasting activity performed as part of a coal or noncoal mining activity will be regulated by the mining permit for that coal or noncoal mining activity.

Knox District Mining Office: P. O. Box 669, 310 Best Avenue, Knox, PA 16232-0669, (814) 797-1191.

10064001. Kesco, Inc. (P. O. Box 95, Adrian, PA 16210). Blasting activity permit to install sanitary sewer lines in Connoquenessing Township, **Butler County**. This blasting activity permit will expire on July 15, 2006. Application received: May 15, 2006. Application Issued: May 15, 2006.

Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, (814) 342-8200.

08064001. Demtech, Inc. (65 Bald Mountain Road, Dubois, WY 82513). Blasting Activity Permit issued May 15, 2006, in Athens Boro and Athens Township, **Bradford County** with an expiration date of May 14, 2006. An extension has been requested and approved and the new expiration date is June 15, 2006.

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, (570) 621-3118.

09064002. Joao & Bradley Construction (P. O. Box 20345, Lehigh Valley, PA 18002) and AJT Blasting, LLC (P. O. Box 20412, Bethlehem, PA 18002), construction blasting for Three Mile Run Road and Schoolhouse Road Water Main Extension in Perkasio Borough, **Bucks County** with an expiration date of November 15, 2006. Permit issued May 15, 2006.

06064111. Keystone Blasting Service (381 Reifsnyder Road, Lititz, PA 17543), construction blasting for a barn/equipment storage in Marion Township, **Berks County** with an expiration date of December 30, 2006. Permit issued May 15, 2006.

36064146. Brubacher Excavating, Inc. (P. O. Box 528, Bowmansville, PA 17507), construction blasting for Conley Farms Dairy Barn in West Hempfield Township, **Lancaster County** with an expiration date of December 31, 2007. Permit issued May 15, 2006.

40064114. Hayduk Enterprises (P. O. Box 554, Dalton, PA 18414), construction blasting for a foundation in Ross Township, **Luzerne County** with an expiration date of June 30, 2006. Permit issued May 15, 2006.

28064003. Winchester Building Supply Co., Inc. (2001 Millwood Pike, Winchester, VA 22602), construction blasting at Moss Springs Development in Greencastle Township, **Franklin County** with an expiration date of April 30, 2007. Permit issued May 17, 2006.

28064143. Geological Technologies, Inc. (P. O. Box 70, Falling Waters, WV 25419), construction blasting for Farmsprings Estates in Washington Township, **Franklin County** with an expiration date of May 30, 2007. Permit issued May 17, 2006.

28064144. M & J Explosives, Inc. (P. O. Box 608, Carlisle, PA 17013), construction blasting for a home in Antrim Township, **Franklin County** with an expiration date of May 31, 2007. Permit issued May 17, 2006.

28064145. Geological Technologies, Inc. (P. O. Box 70, Falling Waters, WV 25419), construction blasting for Grandpoint Crossing in Greene Township, **Franklin County** with an expiration date of May 1, 2007. Permit issued May 17, 2006.

28064146. David H. Martin Excavating, Inc. (4961 Cumberland Highway, Chambersburg, PA 17201), construction blasting for Longview Estates in Greene Township, **Franklin County** with an expiration date of May 11, 2007. Permit issued May 17, 2006.

28064147. David H. Martin Excavating, Inc. (4961 Cumberland Highway, Chambersburg, PA 17201), construction blasting for a home in Antrim Township, **Franklin County** with an expiration date of May 12, 2007. Permit issued May 17, 2006.

36064149. Gerlach's Drilling & Blasting (172 Bender Mill Road, Lancaster, PA 17603), construction blasting for residential development on Municipal Drive in Millersville Borough, **Lancaster County** with an expiration date of May 15, 2007. Permit issued May 17, 2006.

36064150. Newville Construction Services, Inc. (408 Mohawk Road, Newville, PA 17241), construction blasting for a pool in Manheim Township, **Lancaster County** with an expiration date of April 30, 2007. Permit issued May 17, 2006.

22064003. Abel Construction Company, Inc. (P. O. Box 476, Mountville, PA 17554), construction blasting at Meadows of Hanover Phase 13 in South Hanover Township, **Dauphin County** with an expiration date of May 1, 2007. Permit issued May 18, 2006.

FEDERAL WATER POLLUTION CONTROL ACT SECTION 401

The Department of Environmental Protection (Department) has taken the following actions on previously received permit applications, requests for Environmental Assessment approval and requests for Water Quality Certification under section 401 of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C.A. § 1341).

Except as otherwise noted, the Department has granted 401 Water Quality Certification certifying that the construction and operation described will comply with the applicable provisions of sections 301–303, 306 and 307 of the FWPCA (33 U.S.C.A. §§ 1311–1313, 1316 and 1317) and that the construction will not violate applicable Federal and State water quality standards.

Persons aggrieved by an action may appeal, under section 4 of the Environmental Hearing Board Act (35 P.S. § 7514) and 2 Pa.C.S. §§ 501–508 and 701–704 (relating to the Administrative Agency Law), to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users should contact the Environmental Hearing Board (Board) through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the

Pennsylvania Bulletin, unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary of the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decision law.

For individuals who wish to challenge an action, appeals must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

Actions on applications for the following activities filed under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27), section 302 of the Flood Plain Management Act (32 P. S. § 679.302) and The Clean Streams Law (35 §§ 691.1—691.702) and Notice of Final Action for Certification under section 401 of the FWPCA (33 U.S.C.A. § 1341).

Permits, Environmental Assessments and 401 Water Quality Certifications Issued

WATER OBSTRUCTIONS AND ENCROACHMENTS

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

E48-369. Jaiindl Land Company, 3150 Coffeetown Road, Orefield, PA 18069. Allen Township, **Northampton County**, Army Corps of Engineers Philadelphia District.

To construct and maintain a wooden pedestrian bridge having a span of 36 feet and a maximum underclearance of 6 feet across Dry Run (CWF) with two access ramps having lengths of 41 feet and 37 feet. The purpose of the bridge is to provide a safer access to areas north of Dry Run without having to walk along the busy Willowbrook Road. The project is located approximately 40 feet upstream of Willowbrook Road (Catasauqua, PA Quadrangle N: 10.9 inches; W: 13.2 inches). (Subbasin: 2C)

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

E02-1524. McCandless Township Sanitary Authority, 418 Arcadia Drive, Pittsburgh, PA 15237-5597. To place a culvert and outfalls in McCandless Township, **Allegheny County**, Pittsburgh ACOE District. (Emsworth, PA Quadrangle N: 11.25 inches; W: 1.5 inches and Latitude: 40° 33' 39"—Longitude: 80° 01' 39"). To remove and/or abandon existing structures, to operate and maintain various existing outfalls; to temporarily impact and restore 0.067 acre of wetlands (PEM) to construct and maintain three sequencing batch reactors, a headworks grit barscreen and a UV Tank/Post equalization flow control valve vault and associated fill on the left bank of Little Pine Creek (TSF) and to replace and maintain a 12-inch diameter culvert approximately 20 feet long in a UNT to Little Pine Creek (TSF) for the purpose of upgrading the existing Longvue No. 1 Watershed Treatment Facility located approximately 800 feet north from the intersection of Hazlett Road and Remington Drive.

E03-438. Allegheny Power, 800 Cabin Hill Drive, Greensburg, PA 15601. To place fill in wetlands in South Buffalo Township, **Armstrong County**, Pittsburgh ACOE District. (Freeport, PA Quadrangle N: 22.5 inches; W: 2.5 inches and Latitude: 40° 44' 45"—Longitude: 79° 38' 30"). To place and maintain fill in 0.05 acre of PFO wetlands in the watershed of a UNT to Pine Run (HQ-TSF) for the purpose of construction of an electric power substation located approximately 600 feet north of Sipes Road

E32-339A. Reliant Energy Northeast Management Company, 121 Champion Way, Suite 200, Canonsburg, PA 15317-5817. To construct a new rail track in West Wheatfield Township, **Indiana County**, Pittsburgh ACOE District. The project begins at (New Florence, PA Quadrangle N: 2.2 inches; W: 7.1 inches and Latitude: 40° 23' 16"—Longitude: 79° 04' 24" and ends at New Florence, PA Quadrangle N: 1.9 inches; W: 9.5 inches and Latitude: 40° 23' 07"—Longitude: 79° 03' 27"). To amend permit No. E32-339 to construct a new rail track to facilitate coal rail car operations at the Conemaugh Power Station: 1) Place and maintain fill in three wetlands for a total wetland impact of 0.03 acre; 2) Place and maintain fill along the right bank floodway of the Conemaugh River for a total length of approximately 2,000 feet; and 3) Extend and maintain the height of an existing endwall by 1 foot on a UNT to the Conemaugh River (WWF) and extend the length of an existing culvert by 6 feet on another UNT to the Conemaugh River, both located in watersheds under 100 acres.

E32-466. Ruben D. Byler, 31 Windows Road, Smicksburg, PA 16256. To construct a bridge in West Mahoning Township, **Indiana County**, Pittsburgh ACOE District. (Plumville, PA Quadrangle N: 20.8 inches; W: 5.1 inches and Latitude: 40° 52' 00"—Longitude: 79° 9' 30"). To remove the existing structure and to construct and maintain a single span bridge having a span of approximately 18 feet and underclearance of approximately 6 feet and approximately 17 feet wide over a UNT to Little Mahoning Creek (HQ-CWF) for the purpose of providing access to a residence. The project is located on the east side of SR 954 approximately 500 feet north of its intersection with T-396.

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

E25-700. Erie County Convention Center Authority, 809 French Street, Erie, PA 16501. Dobbins Landing Wall and Pedestrian Bridge in the City of Erie, **Erie County**, ACOE Pittsburgh District (Erie North, PA Quadrangle N: 2.0 inches; W: 12.6 inches).

The applicant proposes to construct and maintain a pedestrian overpass bridge having a clear span of 174 feet and an underclearance of 69.0 feet above the entrance channel to the West Canal Basin (Erie North, PA Quadrangle N: 2.0 inches; W: 12.6 inches) in Presque Isle Bay (PIB), Lake Erie in the City of Erie, Erie County. The bridge would connect a proposed Sheraton Hotel and the Erie County Convention Center. Also, to construct and maintain a soldier pile wall having a length of 113 feet along the southern wall of West Dobbins Landing in the West Canal Basin to provide public access and for site aesthetics.

Also, to transfer a portion of DEP Permit No. E25-696 from the Erie-Western Pennsylvania Port Authority (EWPPA) to the Erie County Convention Center Authority (ECCCA). Permit E25-696 authorized EWPPA to conduct the following activities within the West Canal Basin, Presque Isle Bay, Lake Erie within the City of Erie, Erie County:

1. To remove the existing wall and to construct and maintain a 260-foot long soldier pile wall on the easterly portion of the south wall of West Dobbins Landing.

2. To fill the former boat hoist area near the midsection of the south wall of West Dobbins Landing and a basin area at the east end of the south wall of West Dobbins Landing. The total area of fill is 0.18 acre.

3. To construct and maintain approximately an 8-foot wide header dock having a length of approximately 530 feet along the south wall of West Dobbins Landing.

4. To remove five existing finger piers along the south wall of West Dobbins Landing.

5. To construct and maintain two approximately 85-foot long finger pier extensions to the existing finger piers that extend north from the north wall of the Presque Isle Yacht Club.

6. To remove the existing wall and to construct and maintain the 250-foot long north vertical wall of the Presque Isle Yacht Club.

7. To remove an approximately 310-foot long sheet pile wall and associated docks and to construct and maintain a 310-foot long revetment slope 6-foot wide header dock having a length of approximately 300 feet along the east side of the Presque Isle Yacht Club in the south portion of the West Canal Basin.

The following activities are transferred from EWPPA's DEP Permit No. E25-696 to the proposed ECCCA DEP Permit No. E25-700.

1. To remove the existing wall and to construct and maintain a 260-foot long soldier pile wall on the easterly portion of the south wall of West Dobbins Landing.

2. To fill the former boat hoist area near the midsection of the south wall of West Dobbins Landing and a basin area at the east end of the south wall of West Dobbins Landing. The total area of fill is 0.18 acre.

E62-406, Department of Transportation, District 1-0, 255 Elm Street, P. O. Box 398, Oil City, PA 16301-1412. SR 0069, Section B00, Segment 0280, Offset 0046 Bridge in Sugar Grove Borough, **Warren County**, ACOE Pittsburgh District (Sugar Grove, PA Quadrangle N: 19.4 inches; W: 12.6 inches).

The applicant proposes to remove the existing structure and to construct and maintain a concrete box beam bridge having a clear span of 43.0 feet and an underclearance of 10.0 feet across Stillwater Creek (Sugar Grove, PA Quadrangle N: 19.4 inches; W: 12.6 inches) on SR 0069, Section B00, Segment 0280, Offset 0046 in Sugar Grove Borough, Warren County approximately 75 feet east of the intersection of SR 0069 and SR 957.

Stillwater Creek is a perennial stream classified as a CWF. The project proposes to impact approximately 100 feet of stream.

ENVIRONMENTAL ASSESSMENTS

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

EA13-002NE. Nesquehoning Water Authority, Attention: Stephen Yurchak, Chairperson, 114 West Catawissa Street, Nesquehoning, PA 18240, in Nesquehoning Borough, **Carbon County**, United States Army Corps of Engineers, Philadelphia District.

To remove an abandoned water obstruction consisting of three 15-inch CMP culverts located in First Hollow Run (EV) and restore the channel to its natural condition. The project will be constructed under Waiver 11, Section 105.12a(11) and is located approximately 3,000 feet upstream of the confluence of First Hollow Run and Nesquehoning Creek (Nesquehoning, PA Quadrangle N: 21.5 inches; W: 10.5 inches).

Cambria District: Environmental Program Manager, 286 Industrial Pk Rd, Ebensburg, PA 15931-4119.

EA1009-003. Robindale Energy Services, Inc., 1001 Broad St., Suite 130, Johnstown, PA 15906. Abandoned Mine Land Reclamation Project, in Brushvalley Township, **Indiana County**, Pittsburgh ACOE District.

The applicant proposes to backfill a 31-acre abandoned surface mine, which includes four dangerous highwalls totaling 4,852 linear feet. The project will include the backfilling of: (1) 0.46 acre of AMD-impacted wetlands; (2) 0.49 acre open-water body; and (3) 200 linear feet of AMD-impacted stream channel. (New Florence Quadrangle N: 20.25 inches, W: 4 inches).

[Pa.B. Doc. No. 06-989. Filed for public inspection June 2, 2006, 9:00 a.m.]

Availability of Technical Guidance

Technical guidance documents are available on the Department of Environmental Protection's (Department) website at www.depweb.state.pa.us (DEP Keyword: Technical Guidance). The "Final Documents" heading is the link to a menu of the various Department bureaus where each bureau's final technical guidance documents are posted. The "Draft Technical Guidance" heading is the link to the Department's draft technical guidance documents.

The Department will continue to revise its nonregulatory documents, as necessary, throughout 2006.

Ordering Paper Copies of Department Technical Guidance

The Department encourages the use of the Internet to view and download technical guidance documents. When this option is not available, persons can order a paper copy of any of the Department's draft or final technical guidance documents by contacting the Department at (717) 783-8727.

In addition, bound copies of some of the Department's documents are available as Department publications. Check with the appropriate bureau for more information about the availability of a particular document as a publication.

Changes to Technical Guidance Documents

Following is the current list of recent changes. Persons who have questions or comments about a particular document should call the contact person whose name and phone number is listed with each document.

Final Technical Guidance

DEP ID: 363-4000-003. Title: Standards and Guidelines for Identifying, Tracking, and Resolving Violations of the Storm Water Management Act. Description: This document provides guidance concerning the implementation and execution of compliance and enforcement activities employed by the Department for the Act 167 Stormwater Management Program. The document was developed in conformance with the Department's policy on Standards

and Guidelines For Identifying, Tracking, and Resolving Violations and is issued under the authority of the Storm Water Management Act (32 P. S. §§ 680.1—680.17). Notice of availability of the draft document for public comment was published at 36 Pa.B. 1006 (February 25, 2006). The Department did not receive any comments on the draft document during the public comment period, which concluded on March 27, 2006. Contact: Questions regarding this technical guidance document should be directed to Barry Newman, Division of Waterways, Wetlands and Stormwater Management, (717) 772-5661, banewman@state.pa.us. Effective Date: June 3, 2006.

DEP ID: 363-4000-004. Title: Standards and Guidelines for Identifying, Tracking, and Resolving Violations for Operators of Municipal Separate Storm Sewer Systems (MS4s). Description: This document provides guidance concerning the implementation and execution of compliance and enforcement activities employed by the Department for the Small Municipal Separate Storm Sewer System (MS4) Program. The document was developed in conformance with the Department's policy on Standards and Guidelines For Identifying, Tracking, and Resolving Violations and is issued under the authority of the Clean Water Act (33 U.S.C.A. §§ 1251—1376), the Federal stormwater management regulations in 40 CFR 122.26—123.35, The Clean Streams Law (35 P. S. §§ 691.1—691.1001), section 1917-A of The Administrative Code of 1929 (71 P. S. § 510-17), 25 Pa. Code Chapter 92 (relating to National Pollutant Discharge Elimination System permitting, monitoring and compliance) and other applicable rules and regulations promulgated thereunder. Notice of availability of the draft document for public comment was published at 36 Pa.B. 1006 (February 25, 2006). The Department did not receive any comments on the draft document during the public comment period, which concluded on March 27, 2006. Contact: Questions regarding this technical guidance document should be directed to Barry Newman, Division of Waterways, Wetlands and Stormwater Management, (717) 772-5661, banewman@state.pa.us. Effective Date: June 3, 2006.

KATHLEEN A. MCGINTY,
Secretary

[Pa.B. Doc. No. 06-990. Filed for public inspection June 2, 2006, 9:00 a.m.]

Dam Safety and Waterway Management

Proposed Water Quality Certification under Section 401 of the Federal Clean Water Act and Federal Consistency Review under the Coastal Zone Management Act of 1972, as amended, for the Army Corps of Engineers Pennsylvania State Programmatic General Permit (PASPGP-3)

On December 27, 2005, the Baltimore, Philadelphia and Pittsburgh Districts of the Army Corps of Engineers, under the authority of section 404(e) of the Federal Clean Water Act (33 U.S.C.A. § 1344(e)), proposed by its Special Public Notice 05-54, to reissue with modifications the State Programmatic General Permit to the Commonwealth (PASPGP-3). Section 401(a) of the Federal Clean Water Act (33 U.S.C.A. § 1341(a)) requires the State to certify that any activity requiring a Federal license or permit, which may result in a discharge into the waters

of the United States, will comply with the applicable provisions of the Federal Clean Water Act as well as applicable State law related to water quality protection. In addition, section 307 of the Federal Coastal Zone Management Act of 1972 (33 U.S.C.A. § 1456) requires that any Federal action which affects the coastal use or resource of a coastal state will be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of that State's approved Coastal Management Program. On April 26, 2006, the Army Corps of Engineers furnished to the Department of Environmental Protection (Department) a final copy of the Pennsylvania State Programmatic General Permit (PASPGP-3) for a 5-year period with an effective date of July 8, 2006.

This action by the Corps of Engineers continues the present Federal permitting process undertaken jointly with the State process for activities affecting waterways, water bodies and wetlands authorized under the State's Dam Safety and Encroachment Act. PASPGP-3 places the Department Regional Offices and delegated county conservation districts in the lead for the majority of permit actions. Through the incorporation of Federal and State permitting standards in one process, the PASPGP-3 continues a streamlined process for permit applicants without compromising comprehensive environmental protection.

The Department, by this notice, proposes to certify that the construction, operation and maintenance of an encroachment or water obstruction as proposed in PASPGP-3 complies with the applicable provisions of sections 301—303, 306 and 307 of the Clean Water Act (33 U.S.C.A. §§ 1311—1313, 1316 and 1317). The Department further proposes to certify that the construction, operation and maintenance of the projects complies with applicable State laws related to water quality protection and that the construction, operation and maintenance of the projects does not violate applicable State water quality standards provided that the construction, operation and maintenance of the projects complies with the criteria and conditions of the permit.

Furthermore, PASPGP-3 is a Federal action subject to review for consistency with the enforceable policies of Pennsylvania's Coastal Zone Management (CZM) Program. As required under section 306(d)(14) of the Coastal Zone Management Act, the CZM Program is providing the public this opportunity to provide comments on whether the PASPGP-3 is consistent with the CZM Program's policies. The CZM Program's policies can be found on the Department's website at <http://www.depweb.state.pa.us>. Select DEP Programs (A-Z); Select W—Water Planning Office; Select Coastal Zone Management Program; Select Program Reference Documents; Select Program Guidance Document.

Prior to final action on the proposed 401 Water Quality Certification and CZM Consistency for the PASPGP-3, consideration will be given to any comments, suggestions or objections which are submitted in writing by July 3, 2006. Comments concerning the proposed 401 Water Quality Certification and CZM consistency for PASPGP-3 should be directed to Kenneth Murin, Chief, Division of Waterways, Wetlands and Stormwater Management, Bureau of Watershed Management, P. O. Box 8775, Harrisburg, PA 17105-8775, (717) 787-6827 or through Pennsylv-

vania AT&T Relay Service at (800) 654-5984 (TDD). Comments must be submitted in writing and contain the name, address and telephone number of the person commenting and a concise statement of comments, objections or suggestions on this proposal. No comments submitted by facsimile will be accepted. The Department will consider all relevant and timely comments received. Comments must be submitted by July 3, 2006.

Copies of the PASPGP-3 and the Army Corps of Engineers public notice may be obtained by contacting Patricia Strong, Pennsylvania Section, Baltimore District, United States Army Corps of Engineers, P. O. Box 1715, Baltimore, MD 21203-1715, (410) 962-1847.

KATHLEEN A. MCGINTY,
Secretary

[Pa.B. Doc. No. 06-991. Filed for public inspection June 2, 2006, 9:00 a.m.]

Revised Bond Rate Guidelines for the Calculation of Land Reclamation Bonds on Coal Mining Operations

The Department of Environmental Protection (Department) announces revisions to the 2006 bond rate guidelines for anthracite and bituminous coal mining operations based on additional reclamation contract bid data. These revisions are effective July 1, 2006. The authority for bonding coal mining operations is found under The Clean Streams Law (35 P. S. §§ 691.1—691.1001); the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66); and the regulations promulgated thereunder at 25 Pa. Code Chapter 86, Subchapter F (relating to bonding and insurance requirements). The unit costs listed in these guidelines will be used in calculating the land reclamation bonds for surface coal mining operations including: surface mines, coal refuse disposal sites, coal refuse reprocessing sites, coal processing facilities, and the surface facilities of underground mining operations. The procedures for calculating land reclamation bonds are described in technical guidance 563-2504-001, "Conventional Bonding for Land Reclamation—Coal," which is available at the Public Participation Center on the Department's website at www.depweb.state.pa.us.

The Department may review the adequacy of bonds on existing permits based on the bond rate guidelines at any time. The Department will conduct these reviews before issuing permit renewals. The Department may conduct similar reviews at the mid-term of a permit and before approving a permit revision.

The bond rate guidelines do not apply to bonds assuring replacement of water supplies under section 3.1(c) of the Surface Mining Conservation and Reclamation Act (52 P. S. § 1396a(c)) or to bonds ensuring compliance with the requirements of the Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21).

These revisions are the result of additional data on unit costs for reclamation bids during 2005. The 2005 data was averaged in with previous years' data to calculate the revised bond rate guidelines.

Substantial reclamation cost increases during 2005 resulted in an overall increase of the 2006 bond rate guidelines. The Department anticipates that reclamation

costs will continue to increase, resulting in substantial increases in the 2007 bond rate guidelines. In light of these continuing reclamation cost increases, the Mining and Reclamation Advisory Board (MRAB) recommended that the Department continue to use the most current 3 years of reclamation cost data available to set the bond rate guidelines. The MRAB also recommended that the Department publish the bond rate guidelines on an annual basis by April 1 of each year. The Department agrees with the MRAB recommendations and will publish future bond rate guidelines using the most current data by April 1 of each year.

General Methodology

The Department developed the revised bond rate guidelines for 2006 from the unit costs for competitively bid contracts for mine reclamation. Contract bid data is available for various unit operations needed to complete reclamation of a mine site for the years 1998 through 2005. In general, a 3-year (2003—2005) weighted average was used to calculate the guidelines. Some categories required another approach due to limited data. For example, there were no contracts in 2005 that included R-3 rock used for channel lining. Therefore, the previously calculated guideline was used. During 2005, only 21.5 acres of selective grading was bid. Therefore, a 4-year weighted average was used for selective grading.

For most categories, the bond rate for a given unit operation is the weighted average of the three lowest total bids for each contract over a 3-, 4-, or 5-year period depending on the number of bids received. However, grading costs are calculated using a weighted frequency distribution in combination with the weighted averages and trend analysis.

The pond removal bond rate guideline for active phases of mining has been increased by 8% from the flat rate of \$3,500. This increase is based on an 8% increase in grading costs, which is the major cost in removing ponds. The Department will continue to calculate the costs of pond removal based on any increases of associated reclamation unit costs, such as grading, in future bond rate guidelines.

In the event that a unit operation necessary to calculate a reclamation bond is not listed in Table 1, then any additional cost information available will be used. If enough data is still not available, the rate will be set from a standard reference like *Means Building Construction Cost Data* or *Walker's Building Estimator's Reference Book*.

The bond rate guidelines are available electronically at www.dep.state.pa.us/dep/deputate/minres/bmr/programs/bonding.htm. For background information and supporting documentation regarding bonding rate guidelines, contact the Bureau of Mining and Reclamation, Division of Monitoring and Compliance, P. O. Box 8461, Harrisburg, PA 17105-8461, (717) 787-5103.

Effective Date

The bond rate guidelines in this notice are effective July 1, 2006.

TABLE 1

**Revised Bond Rate Guidelines
For Year 2006
Effective July 1, 2006**

<i>Unit Operation</i>	<i>Unit Measure</i>	<i>Unit Costs (\$)</i>
Mobilization/demobilization	Job	4% of direct costs or \$40,000, whichever is less
Grading (< 500-foot push)	cubic yard	0.65
Grading (\geq 500-foot push/haul)	cubic yard	0.95
Selective Grading	Acre	1,300.00
Revegetation	Acre	1,350.00
Tree Planting	Tree	0.15
Ditch Excavation	cubic yard	4.60
Jute Matting	square yard	2.45
High Velocity Erosion Control	square yard	2.20
R3 Rock Lining	square yard	18.00
R4 Rock Lining	square yard	23.75
R5 Rock Lining	square yard	18.00
Geotextile/Filter Fabric	square yard	2.00
PVC Lining ¹	square yard	9.50
Subsurface Drain	lineal foot	10.90
Erosion and Sedimentation Control (Temporary Installation)	Job	Lump sum (5% of direct costs for site)
Pond Removal Active Phase ²	Pond	3,800.00
Erosion and Sedimentation Control (Temporary Installation)	Job	Lump sum (5% of direct costs for site)
Stage 3 Maintenance Bond Non-Cropland Areas (Land uses where crop yields are not required)	Acre	100.00
Stage 3 Maintenance Bond Cropland (not row crops) Pastureland or Land occasional cut for hay (excludes seed cost)	Acre	550.00
Stage 3 Maintenance Bond Cropland Area-Row Crops (includes seed cost)	Acre	750.00
Stage 3 Mobilization	Job	2,500.00
Pond Removal—Stage 3	Cubic yards (Embankment volume) plus topsoiling and revegetation cost	Use < 500 grading for pond embankment volume plus topsoiling and revegetation cost for the area disturbed
Ditch Removal—Stage 3	Lineal Foot	0.65
Equipment Tire Removal and Disposal	Tire	300.00
Structure Demolition	Costs will be calculated using costs listed in the construction industry's latest annual cost publications, such as <i>Means Building Construction Cost Data</i> .	
Mine Sealing ³ Nonhydraulic shaft seal—inert fill	shaft (10 ft. or less diameter)	1,400.00
	shaft (11 to 15 ft. diameter)	3,000.00
	shaft (16 to 20 ft. diameter)	4,500.00
	shaft (21 to 25 ft. diameter)	8,000.00
Mine Sealing ³ Hydraulic shaft seal w/bulkhead	shaft (10 ft. or less diameter)	7,600.00
	shaft (11 to 15 ft. diameter)	9,200.00
	shaft (16 to 20 ft. diameter)	10,700.00
	shaft (21 to 25 ft. diameter)	14,200.00

<i>Unit Operation</i>	<i>Unit Measure</i>	<i>Unit Costs (\$)</i>
Mine Sealing ³ Nonhydraulic drift/slope seal	drift/slope	3,900.00
Mine Sealing ³ Hydraulic drift/slope seal w/bulkhead	drift/slope	6,200.00

¹ Typically used for lining of ponds or ditches crossing fill material.

² Unit cost not from BAMR bids, includes dewatering, grading, topsoil placement and revegetation.

³ Mine sealing costs are minimum costs. Additional costs per mine seal will be assessed based on specific design criteria, such as the thickness of the seal and the volume of backfill material required, using appropriate material, equipment, and labor costs from BAMR bid abstracts or from an industry-standard cost estimation publications, for example, *Means Estimating Handbook* or *Walker's Building Estimator's Reference Book*.

TABLE 2

Land Maintenance Financial Guarantee Fees for Year 2006

<i>Fee Category</i>	<i>Fee (\$)</i>
Publication	\$1,000
Administrative	\$ 300

KATHLEEN A. MCGINTY,
Secretary

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DEPARTMENT OF GENERAL SERVICES

Right-to-Know Law

1. PURPOSE: In compliance with section 8(a) of the Right-to-Know Law, 65 P. S. § 66.8(a), and Management Directive 205.36, the Department of General Services (DGS) adopts this amended Right-to-Know Law (RTKL) notice establishing the policy, process and procedures that DGS will follow when responding to requests made pursuant to the RTKL for access to or copies of public records.

2. POLICY: DGS will provide the public with access to public records to the fullest extent required by law consistent with DGS' duties to protect the interests and rights of those who do business with DGS, their employees and our employees in compliance with the RTKL, 65 P. S. §§ 66.1—66.9, Management Directive 205.36 (relating to agency responses to RTKL requests) and Manual 215.3, Procurement Handbook: Part I—Chapter 50 (relating to public access to procurement information).

Consistent with this policy, to facilitate access to documents of public interest and to reduce time delays and processing efforts associated with formal RTKL requests, DGS may, from time to time, make documents available on its web site www.dgs.state.pa.us such as statewide contracts, commodity specifications, bid awards, the debarment list and lists of firms appointed as designed professionals.

When a resident's right to access requested documents is limited by law, DGS will apply the applicable legal standards, including, but not limited to these recurring situations:

a. Bids and proposals are not "public records" unless and until a contract is executed with one of the bidders or offerors. If a formal contract is executed, the selected firm's bid or proposal is subject to disclosure. The disclosure of competing proposals during the evaluation/discussion processes of the competitive sealed proposals method of procurement is specifically prohibited. 62 Pa.C.S. § 513(d) and (f). The disclosure of unsuccessful

proposals also is prohibited under the Commonwealth Procurement Code, 62 Pa.C.S. § 106(b).

b. The Commonwealth Procurement Code prohibits DGS from disclosing financial information contained in a sealed bid, sealed proposal or prequalification document of a bidder or offeror, which was requested in an Invitations for Bids or Request for Proposals to demonstrate its economic capability to fully perform the contract requirements. 62 Pa.C.S. § 106(b).

c. DGS redacts the names and personal information related to a contractor's employees when providing certified payroll records. See *Sapp Roofing Co. Inc. v. Sheet Metal Workers' Int'l. Assoc.*, 552 Pa. 105, 713 A.2d 627 (1998).

d. DGS redacts social security numbers and home addresses contained in public records.

e. DGS will not provide sensitive records, which are not "public records." The RTKL definition of "public records" excludes sensitive records when disclosure of the record "would operate to the prejudice or impairment of a person's reputation or personal security." Such sensitive records, if released, might reasonably operate to impair a person's privacy rights or to impair the security of an individual or a group of individuals, including any interest of such persons in their persons, property and reputations, if such information were to come into the possession of persons engaged in the commission of criminal acts, terroristic acts, or acts of war, or persons engaged in planning such acts. Examples of "sensitive records" include, but are not limited to: blueprints, plans, and as-built drawings for public and private buildings; plans for highway and railroad bridges; plans for emergency response and evacuation, including Continuity of Government plans, counter-terrorism protocols and other records involving public health and safety; names, addresses, and other information that disclose the identity of law enforcement or corrections officers and officials and their families; and information that would disclose the whereabouts of abused spouses and children.

f. DGS will undertake legal review of a RTKL request related to litigation and will assert its right to extend the responsive time. Requesters are encouraged to follow the Rules of Civil Procedure governing discovery to receive documents in a time frame shorter than the extended time in which a RTKL response is due.

g. DGS follows the rules of statutory construction in the computation of time under the RTKL. See 1 Pa.C.S. § 1908 (period of time referred to in statute is computed as to exclude the first and include the last day of such period. Whenever the last day of any such period shall fall on Saturday or Sunday, or on a legal holiday, such day shall be omitted from the computation).

3. DEFINITIONS: The terms "Public Record," "Requester," and "Response" shall have the meanings given to them in the "Right-to-Know Law," as amended, 65 P. S. §§ 66.1—66.9. Other terms used in this notice have the following meanings:

a. Business day. Monday through Friday from 8:30 AM to 5:00 PM, except those days when the offices of the Department are closed for all or part of a day:

- (1) due to a state holiday;
- (2) pursuant to Management Directives 530.71, Partial and Full Day Closings of State Offices and 505.7, Personnel Rules, Section 8.7, due to severe weather (such as a blizzard or ice storm);
- (3) due to natural or other disaster; or
- (4) due to the request or direction of local, State, or Federal law enforcement agencies or officials.

b. Deemed denied. A request is deemed denied if one of the following conditions occurs:

- (1) the Department fails to respond within the initial 10-business-day period specified in the RTKL for response to RTKL requests.
- (2) the Department extends the 10-business-day period by up to 30 calendar days, but then fails to respond by the end of that extended period.
- (3) the Department notifies the Requester that it requires additional time to respond in excess of the permitted 30 calendar day period.

c. Department. Department of General Services.

d. Exceptions. A written document filed with the RTKL Exceptions Official by a Requester challenging the denial or deemed denial of the Requester's RTKL request by the Department's RTKL Official.

e. RTKL. The Act of June 21, 1957 (P. L. 390, No. 212), commonly referred to as the "Right-to-Know Law," as amended, 65 P. S. §§ 66.1—66.9.

f. Records Custodian. Any person having custody, possession or control of a document.

g. Redaction. The eradication of a portion of a record while retaining the remainder.

h. RTKL Exceptions Official. The official designated by the Secretary to receive RTKL exceptions, to conduct hearings (if and when hearings are convened at the discretion of the RTKL Exceptions Official), and to issue final determinations in accordance with the RTKL. The RTKL Exceptions Official is the Deputy Secretary for Administration, 515 North Office Building, Harrisburg, PA 17125. The facsimile number is (717) 787-4741. The name of the RTKL Exceptions Official may be found at <http://www.dgs.state.pa.us>.

i. RTKL Official. The official designated by the Secretary to receive RTKL requests submitted to the Department, to direct requests to other appropriate persons, to track the Department's progress in responding to RTKL request, and to issue interim and final responses to RTKL requests. The RTKL Official is the DGS Press Secretary. The address of the RTKL Official is 515 North Office

Building, Harrisburg, PA 17125. The facsimile number is (717) 772-2026. The name of the RTKL Official may be found at <http://www.dgs.state.pa.us>.

j. RTKL request. A written request invoking the RTKL submitted to the Department's RTKL Official asking for access to a record.

k. Secretary. The Secretary of the Department of General Services.

4. PROCEDURES FOR RESPONDING TO RTKL REQUESTS:

a. RTKL Requests.

(1) *Verbal RTKL requests.* The Department will not accept any verbal RTKL request.

(2) *Anonymous RTKL requests.* The Department will not accept any written RTKL request that does not identify the Requester.

(3) *Electronic RTKL requests other than by facsimile.* The Department will not accept RTKL requests submitted via e-mail.

(4) *Contents of a request.* A RTKL request must include the name of the Requester and a Pennsylvania address to which the Department should respond. The RTKL request must identify or describe the records sought with sufficient specificity to enable the Department to ascertain which records are being requested.

(5) *Reason for the request.* The Department asks that the Requester disclose the reason for the request so that the Department's response is limited to relevant documents. However, the Department does not insist that a statement of reason for the RTKL request be provided, nor will the Department reject or refuse a RTKL request on the grounds that no such reason was given. Additionally, if the Requester discloses the reason for the RTKL request, the Department will not deny a Requester access to a public record due to the Requester's intended use of that record.

(6) *Forms.* No specific form is required for submission of the request so long as the required information is included.

(7) *Residency requirement.* The Department is required to provide a Requester with access to a public record only if the Requester is a resident of Pennsylvania. The Department may, in its discretion, rely upon the Requester's stated address, the return address listed on the request, the postmark, or a combination of these or some other factor(s) to determine whether the Requester is a resident of Pennsylvania.

b. Submittal of RTKL Requests.

(1) All RTKL requests must be addressed to the RTKL Official at the address provided.

(2) The 10-business-day period does not begin to run until the RTKL request is received by the Department's RTKL Official.

(3) If an official or employee of the Department, other than the RTKL Official, receives a RTKL request, that person should, within a reasonable time, either return the RTKL request to the Requester or forward the RTKL request to the Department's RTKL Office. If the request is returned to the Requester, the person who returns it shall inform the Requester that such requests must be sent to the Department's RTKL Official and shall provide

the Requester with the RTKL Official's address. If the request is forwarded to the RTKL Official, the 10-business-day period commences upon receipt of the request at the RTKL Official's address.

c. Responses, in General.

(1) The act of providing a Requester with access to a record, either in the offices of the Department, by providing a website address where the document is posted or by sending a copy, is a "response" for purposes of the RTKL.

(2) The Department may send written responses to Requesters by U.S. mail, by hand (in person or by delivery service), by facsimile or by e-mail.

d. Physical Access to Public Records.

(1) Unless otherwise provided by law, the Department will make its public records accessible for inspection by any Requester during the regular business hours of the Department. In the case of a public record that is available only through electronic means, the Department will provide access to the public record at an office of the Department. This requirement may be satisfied by providing access (under supervision, as deemed appropriate, to prevent access to information which is not a public record of the Department) at a computer or computer terminal located in a public records access room.

(2) The Department will provide the public record to a Requester in the medium requested if the record exists in that medium. Otherwise, the public record will be provided in the medium in which it exists. If a public record only exists in one medium, the Department is not required to convert that record to another medium.

(3) The Department has the discretion to determine the building(s) and room(s) that will be used to provide a Requester with access to the Department's public records. The selection of buildings and rooms for access to the Department's public records is a matter within the discretion of the RTKL Official.

(4) The Department is not required to create a public record that does not already exist, nor is it required to compile, maintain, format or organize a public record in a manner in which it does not currently do so.

e. Interim Responses.

(1) The Department must provide a final response to a RTKL request within 10 business days unless one or more specific conditions are satisfied and the Department gives the Requester written notice that additional time will be required. That notice is referred to as an "interim response."

(2) The circumstances in which the Department may obtain an extension of time in which to provide a final response are as follows:

(a) The RTKL request requires redaction of a public record.

(b) The RTKL request requires retrieval of a record stored at a remote location.

(c) A response within the 10-business-day period cannot be accomplished due to bona fide staffing limitations (including those resulting from business disruptions caused by weather and other occurrences), which limitations must be specified in the interim response.

(d) A legal review is necessary to determine whether the record requested is subject to access under the RTKL.

(e) The Requester has not complied with Department's policies regarding access to public records.

(f) The Requester has not complied with a demand for prepayment of fees which are required to fulfill the RTKL request and which are estimated to exceed \$100. If prepayment of fees is required by the Department, the time period for response shall be tolled from the time the demand for payment is made until such time as payment is actually received.

(3) In addition to setting forth each applicable justification for the extension of time, the interim response must meet the following criteria:

(a) It must be sent to the Requester on or before the last day of the 10-business-day period.

(b) It must include a statement notifying the Requester that the request for access is being reviewed.

(c) It must state a reasonable date when a response is expected to be provided. This date must not be more than 30 calendar days from the end of the 10-business-day period except if the deadline falls on a Saturday, Sunday or holiday, the time for response is the next business day.

f. Final Responses.

(1) *Types of final responses.* The RTKL provides for three types of written final responses to a RTKL request:

(a) The Department grants the entire RTKL request.

(b) The Department refuses the entire RTKL request.

(c) The Department grants part of the RTKL request and refuses the remainder.

(2) *Deemed denials.* The failure of the Department to make a timely final response is a deemed denial under the Act.

(3) *Final responses granting requests.* Unless otherwise provided by law, a written RTKL request will be granted if the record is within the statutory definition of a public record.

(4) *Final responses denying requests, either in whole or in part.* If a written RTKL request is denied in whole or in part, the Department will issue a final written response including the following:

(a) A description of the record requested.

(b) The specific reasons for the denial, including a citation of supporting legal authority. If the denial is the result of a determination that that the record requested is not a public record, the specific reasons for the Department's determination that the record is not a public record shall be included.

(c) The typed or printed name, title, business address, business telephone number and signature of the RTKL Official on whose authority the denial is issued.

(d) The date of response.

(e) The procedure to appeal the denial of access under the RTKL.

g. Redaction. If only portions of a record are public records, the Department will not deny access to the record based upon the fact that portions are not public records. Rather, the Department will redact the portions that are not public records and produce the portions that are public records.

h. Duplication of Public Records.

(1) A public record must be accessible for duplication by a Requester. The Department may either make copies itself or, in its discretion, allow the Requester to bring the necessary equipment to make its own copies.

(2) The Department may make its duplication equipment available to a Requester but require that the Requester operate the equipment; assign its own staff to make the duplications requested by the Requester; or contract for duplication services and require that the Requester pay the contractor for those services.

5. EXCEPTIONS:

a. Filing Exceptions.

(1) If a RTKL request is denied or deemed denied, whether in whole or in part, the Requester may file exceptions to the denial with the Department.

(2) A person who makes a verbal RTKL request, an e-mail request or an anonymous RTKL request lacks standing to file exceptions. Any exceptions filed by such a Requester shall be dismissed for that reason.

(3) A Requester may not file exceptions to the Department's decision to extend the response period by up to 30 days.

b. Time for Filing Exceptions.

(1) Exceptions to the Department's written denial must be filed within 15 business days of the mailing date of the written denial.

(2) Exceptions to a deemed denial must be filed within 15 calendar days of the date the RTKL request is deemed denied.

(3) Exceptions that are untimely filed may be dismissed for that reason.

c. Contents of Exceptions.

(1) Exceptions must state the reasons for the Requester's assertion that the record is a public record. Reasons not set forth in writing within the applicable 15-day period are deemed to be waived and may be disregarded by the Department.

(2) Exceptions should address the reasons stated by the Department for denying the RTKL request. Exceptions that fail to comply with this requirement may be dismissed for that reason.

(3) If an RTKL request is deemed denied, the Requester is not required to set forth any grounds for contesting the denial.

d. Submission of Written Exceptions to the RTKL Exceptions Official. Exceptions must be set forth in writing and must be received by the RTKL Exceptions Official. Exceptions submitted to any other official, office, or address are defective and do not stop the running of the 15-day exceptions period.

e. Method of Submission. Exceptions may be submitted by U.S. mail, by hand (in person or by delivery service) or by facsimile. Submission of exceptions by e-mail will not be accepted.

f. Exceptions Procedures. The following procedure will be followed in considering exceptions to the Department's denial of a RTKL request:

(1) Date-stamp the exceptions letter and assign it a tracking number.

(2) Retain the envelope and any documents that accompany the exceptions letter.

(3) Send a copy of the exceptions letter and accompanying documents to the RTKL Official to notify that person of the exceptions.

(4) Schedule and conduct hearings, if hearings are ordered by the RTKL Exceptions Official. The RTKL Exceptions Official may request that the Requester and the Department make written submissions, whether in connection with a hearing or otherwise.

(5) Obtain the services of a court reporter or other method for recording testimony, if a hearing is conducted.

(6) Docket the receipt of evidence and other submittals.

(7) Maintain a record of the final determinations by the RTKL Exceptions Official.

(8) Prepare an official record if an appeal is filed in the Commonwealth Court.

g. Department Response to Exceptions, Timing of Hearings and Submittals. The Department may submit a written response to the exceptions. The Department shall submit any such response to the RTKL Exceptions Official and shall send a copy to the person who submitted the exceptions. The RTKL Exceptions Official should set a schedule for the parties to submit any other documents in support of their respective positions. The RTKL Exceptions Official may also impose reasonable limits on the nature and type of documents to be submitted. If a hearing will be conducted, the RTKL Exceptions Official should schedule it promptly.

h. Period for Resolving Exceptions. Unless the Requester agrees otherwise, the RTKL Exceptions Official must issue a "final determination" within 30 calendar days of the mailing date of the exceptions. If the Requester requests a hearing, the RTKL Exceptions Official may condition the grant of that request upon the Requester's written consent or agreement to an extension of that time.

i. Hearings. The Department may conduct a hearing but is not required to do so. Either party (Requester or Department) may request that a hearing be held. The decision to hold a hearing rests in the discretion of the RTKL Exceptions Official and is not appealable.

j. Rules of Evidence and Proof of the Nature or Contents of a Withheld Record.

(1) If a hearing is held, the strict rules of evidence will not be applied. The official presiding at the hearing shall have the discretion to admit into evidence such testimony, evidence, and documents as he or she believes to be reasonably probative and relevant to an issue in dispute. The presiding official may also limit the nature and extent of evidence found to be cumulative.

(2) The RTKL does not provide for the in camera examination of a withheld document. Consequently, if the Department denies access to a record, that record should not be submitted to the RTKL Exceptions Official. Rather, the Department should provide a description of the record, either in writing or by means of oral testimony. If the record is set forth on a form, a copy of the blank form also may be submitted. The Department shall not be compelled to produce a withheld record to the RTKL Exceptions Official.

(3) Unless it is presented to the RTKL Exceptions Official, no withheld record shall become a part of the official record.

k. Rules of Procedure. If exceptions are to be resolved without a hearing, the General Rules of Administrative Practice and Procedure, set forth at 1 Pa. Code Chapters 31, 33, and 35, do not apply. If a hearing is held, the General Rules of Administrative Practice and Procedure shall apply.

I. Department Final Determination. Exceptions are resolved by a final determination of the RTKL Exceptions Official. A final determination must be set forth in writing. If the RTKL Exceptions Official determines that the Department correctly denied the RTKL request, he or she must provide a written explanation to the Requester of the reason for the denial, which explanation may include such exhibits or references to materials as the RTKL Exceptions Official deems appropriate.

6. FEES AND CHARGES:

a. Photocopies. One "photocopy" is either a single-sided copy or one side of a double-sided copy.

- 1 side of a standard 8.5" x 11" page \$0.15 if using the Department's copiers and prevailing cost if copied otherwise.
- 1 side of any irregular sized page The Department may set this fee based on its determination of the prevailing cost at the time of the RTKL request.

b. Other Materials.

- PC Diskettes \$5 per diskette plus cost of labor.
- Microfilm/Microfiche/Other Actual cost (including cost of labor, both salary and benefits).

c. Postage.

- Material fitting into standard letter envelope and sent by First Class United States mail No Charge
- Other Actual cost

d. Redaction. The Department may charge a reasonable fee for necessary redaction including cost of labor, both salary and benefits.

e. Certified Copies. The Department may assess a reasonable fee for providing certified copies in response to a request for certified copies.

f. Compilation. The Department may charge a reasonable fee for compiling and printing requested records or compiling electronic records based on cost of labor, both salary and benefits.

g. Other Costs. The Department may assess reasonable fees for labor and other expenses necessary to comply with the request for access to, or copying of, requested records (but not for determining whether requested records are public records required to be provided to the requested pursuant to the RTKL), e.g., costs for retrieval of records from storage.

JAMES P. CREEDON,
Secretary

[Pa.B. Doc. No. 06-993. Filed for public inspection June 2, 2006, 9:00 a.m.]

DEPARTMENT OF HEALTH

Application of Albert Einstein Medical Center for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Albert Einstein Medical Center has requested an exception to the requirements of 28 Pa. Code § 51.23 (relating to positron emission tomography).

The request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, paexcept@health.state.pa.us.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division and address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request for exception and require an auxiliary aid, service or other accommodation to do so should contact the Division at the previously listed address or phone numbers or for speech and/or hearing impaired persons, V/TT (717) 783-6154 or the Pennsylvania AT&T Relay Service at (800) 654-5984.

CALVIN B. JOHNSON, M. D., M.P.H.,
Secretary

[Pa.B. Doc. No. 06-994. Filed for public inspection June 2, 2006, 9:00 a.m.]

Application of Allegheny General Hospital for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Allegheny General Hospital has requested an exception to the requirements of 28 Pa. Code § 151.21 (relating to fire drills).

The request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, paexcept@health.state.pa.us.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division and address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request for exception and require an auxiliary aid, service or other accommodation to do so should contact the Division at the previously listed address or phone numbers or for speech and/or hearing impaired persons, V/TT (717) 783-6154 or the Pennsylvania AT&T Relay Service at (800) 654-5984.

CALVIN B. JOHNSON, M. D., M.P.H.,
Secretary

[Pa.B. Doc. No. 06-995. Filed for public inspection June 2, 2006, 9:00 a.m.]

Application of Digestive Disease Institute and PA GI Consultants for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives

notice that Digestive Disease Institute and PA GI Consultants have requested an exception to the requirements of 28 Pa. Code § 555.31(a) (relating to principle).

The request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, paexcept@health.state.pa.us.

The facility is requesting a waiver of the comment period, as set forth in 28 Pa. Code § 51.33(c).

Persons with a disability who wish to obtain a copy of a request for exception and require an auxiliary aid, service or other accommodation to do so should contact the Division at the previously listed address or phone numbers or for speech and/or hearing impaired persons, V/TT (717) 783-6154 or the Pennsylvania AT&T Relay Service at (800) 654-5984.

CALVIN B. JOHNSON, M. D., M.P.H.,
Secretary

[Pa.B. Doc. No. 06-996. Filed for public inspection June 2, 2006, 9:00 a.m.]

Application of Physicians Surgical Center for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Physicians Surgical Center has requested an exception to the requirements of 28 Pa. Code § 551.21(d)(2) (relating to criteria for ambulatory surgery).

The request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, paexcept@health.state.pa.us.

The facility is requesting a waiver of the comment period, as set forth in 28 Pa. Code § 51.33(c).

Persons with a disability who wish to obtain a copy of a request for exception and require an auxiliary aid, service or other accommodation to do so should contact the Division at the previously listed address or phone numbers or for speech and/or hearing impaired persons, V/TT (717) 783-6154 or the Pennsylvania AT&T Relay Service at (800) 654-5984.

CALVIN B. JOHNSON, M. D., M.P.H.,
Secretary

[Pa.B. Doc. No. 06-997. Filed for public inspection June 2, 2006, 9:00 a.m.]

Application of Pottstown Surgical Center for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Pottstown Surgical Center has requested an exception to the requirements of 28 Pa. Code § 551.3 (relating to definitions).

The request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, paexcept@health.state.pa.us.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division and address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request for exception and require an auxiliary aid, service or other accommodation to do so should contact the Division at the previously listed address or phone numbers or for speech and/or hearing impaired persons, V/TT (717) 783-6154 or the Pennsylvania AT&T Relay Service at (800) 654-5984.

CALVIN B. JOHNSON, M. D., M.P.H.,
Secretary

[Pa.B. Doc. No. 06-998. Filed for public inspection June 2, 2006, 9:00 a.m.]

Application of St. Clair Memorial Hospital for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that St. Clair Memorial Hospital has requested an exception to the requirements of 28 Pa. Code § 153.1 (relating to minimum standards) which requires compliance with minimum standards contained in *Guidelines for Design and Construction of Hospital and Healthcare Facilities*. The facility specifically requests exemption from the following standards contained in this publication: 7.6, 7.6.B12 and 9.1.C (relating to psychiatric nursing unit; therapy/multipurpose; and facility).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@state.pa.us.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division and address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care at (717) 783-8980 or for speech and/or hearing impaired persons, V/TT (717) 783-6154 or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

CALVIN B. JOHNSON, M. D., M.P.H.,
Secretary

[Pa.B. Doc. No. 06-999. Filed for public inspection June 2, 2006, 9:00 a.m.]

Application of Somerset Hospital for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Somerset Hospital has requested an exception to the requirements of 28 Pa. Code § 51.23 (relating to positron emission tomography).

The request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, paexcept@health.state.pa.us.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division and address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request for exception and require an auxiliary aid, service or other accommodation to do so should contact the Division at the previously listed address or phone numbers or for speech and/or hearing impaired persons, V/TT (717) 783-6154 or the Pennsylvania AT&T Relay Service at (800) 654-5984.

CALVIN B. JOHNSON, M. D., M.P.H.,
Secretary

[Pa.B. Doc. No. 06-1000. Filed for public inspection June 2, 2006, 9:00 a.m.]

Health Policy Board Meeting Cancellation

The Health Policy Board meeting scheduled for Wednesday, June 14, 2006, in Room 812, Health and Welfare Building, Seventh and Forster Streets, Harrisburg, PA 17120 has been cancelled. The next scheduled meeting will be held on Wednesday, September 13, 2006, from 10 a.m. until 12 p.m. in Room 812, Health and Welfare Building, Harrisburg, PA 17120.

Persons with a disability who require an alternative format of this notice (for example, large print, audiotope, Braille) should contact Lew Wolkoff, Bureau of Health Planning at (717) 772-5298 or for speech and/or hearing impaired persons, V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Services at (800) 654-5984.

CALVIN B. JOHNSON, M. D., M.P.H.,
Secretary

[Pa.B. Doc. No. 06-1001. Filed for public inspection June 2, 2006, 9:00 a.m.]

INDEPENDENT REGULATORY REVIEW COMMISSION

Actions Taken by the Commission

The Independent Regulatory Review Commission met publicly at 10:30 a.m., Thursday, May 18, 2006, and announced the following:

Regulation Deemed Approved under section 5(g) of the Regulatory Review Act—Effective May 17, 2006

Pennsylvania Public Utility Commission #57-238: Gas Service; Safety Code (amends 52 Pa. Code § 59.33)

Regulations Approved

State Board of Pharmacy #16A-5412: Drug Therapy and Injectable Medications, Biologicals and Immunizations (amends 49 Pa. Code Chapter 27)

Department of Community and Economic Development #4-82: Manufactured Housing Improvement Program (amends 12 Pa. Code Chapter 149)

Approval Order

Public Meeting held
May 18, 2006

Commissioners Voting: Alvin C. Bush, Chairperson; Arthur Coccodrilli; John F. Mizner, Esq.

State Board of Pharmacy—Drug Therapy and Injectable Medications, Biologicals and Immunizations; Regulation No. 16A-5412

On September 29, 2004, the Independent Regulatory Review Commission (Commission) received this proposed regulation from the State Board of Pharmacy (Board). This rulemaking amends 49 Pa. Code Chapter 27. The proposed regulation was published in the October 9, 2004 *Pennsylvania Bulletin* with a 30-day public comment period. The final-form regulation was submitted to the Commission on April 13, 2006.

This regulation implements Act 102 of 2002 which expanded the practice of pharmacy to include drug therapy management and drug administration. The regulation establishes the requirements, standards and procedures for pharmacists to qualify for the authority to administer medications. It also sets forth continuing education requirements and the content requirements for written protocols between physicians and pharmacists.

We have determined this regulation is consistent with the statutory authority of the Board (63 P. S. §§ 390-4(j), 390-6(k)(1) and (9), 390-9.1(e) and 390-9.2(a)) and the intention of the General Assembly. Having considered all of the other criteria of the Regulatory Review Act, we find promulgation of this regulation is in the public interest.

By Order of the Commission:

This regulation is approved.

Approval Order

Public Meeting held
May 18, 2006

Commissioners Voting: Alvin C. Bush, Chairperson; Arthur Coccodrilli; John F. Mizner, Esq.

Department of Community and Economic Development—Manufactured Housing Improvement Program; Regulation No. 4-82

On November 22, 2005, the Independent Regulatory Review Commission (Commission) received this proposed regulation from the Department of Community and Economic Development. This rulemaking amends 12 Pa. Code Chapter 149. The proposed regulation was published in the December 24, 2005 *Pennsylvania Bulletin* with a 30-day public comment period. The final-form regulation was submitted to the Commission on April 13, 2006.

This final-form regulation establishes the provisions of the Manufactured Housing Improvement Program, as required by Act 158 of 2004.

We have determined this regulation is consistent with the statutory authority of the Department of Community and Economic Development (35 P. S. § 1658.5) and the intention of the General Assembly. Having considered all of the other criteria of the Regulatory Review Act, we find

promulgation of this regulation is in the public interest.

By Order of the Commission:

This regulation is approved.

ALVIN C. BUSH,
Chairperson

[Pa.B. Doc. No. 06-1002. Filed for public inspection June 2, 2006, 9:00 a.m.]

Notice of Filing of Final Rulemaking

The Independent Regulatory Review Commission (Commission) received the following regulation. It is scheduled to be considered on the date noted. The Commission's public meetings are held at 333 Market St., 14th Floor, Harrisburg at 10:30 a.m. To obtain a copy of the regulation, interested parties should first contact the promulgating agency. If a copy cannot be obtained from the promulgating agency, the Commission will provide a copy.

This schedule is tentative. Contact the Commission at (717) 783-5417 or check its website at www.irrc.state.pa.us for updates.

<i>Final-Omit Reg. No.</i>	<i>Agency/Title</i>	<i>Received</i>	<i>Public Meeting</i>
18-406	Department of Transportation Emissions Inspection Program	5/23/06	7/6/06

ALVIN C. BUSH,
Chairperson

[Pa.B. Doc. No. 06-1003. Filed for public inspection June 2, 2006, 9:00 a.m.]

INSURANCE DEPARTMENT

Application for Approval to Redomesticate

HM Health Insurance Company, a Virginia stock life insurance company, has submitted a plan of redomestication, whereby it proposes to redomesticate from the Commonwealth of Virginia to this Commonwealth. The filing was made under 15 Pa.C.S. §§ 4161 and 4162 (relating to the Business Corporation Law of 1988) and section 357 of the Insurance Company Law of 1921 (40 P. S. § 477e). Persons wishing to comment on the redomestication are invited to submit a written statement to the Insurance Department (Department) within 30 days from the date of this issue of the *Pennsylvania Bulletin*. Written statements must include the name, address and telephone number of the interested party, identification of the application to which the statement is addressed and a concise statement with sufficient detail and relevant facts to inform the Department of the exact basis of the statement. Written statements should be directed to Cressinda Bybee, Company Licensing Division, Insurance Department, 1345 Strawberry Square, Harrisburg, PA 17120, fax (717) 787-8557, cbybee@state.pa.us.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 06-1004. Filed for public inspection June 2, 2006, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Steam Heat Service

A-130100F2000. Community Central Energy Corporation. Application of Community Central Energy Corporation for approval of the abandonment of steam heat service to the public in this Commonwealth.

Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities). Filings must be made with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant, on or before June 19, 2006. The documents filed in support of the application are available for inspection and copying at the Office of the Secretary between 8 a.m. and 4:30 p.m., Monday through Friday, and at the applicant's business address.

Applicant: Community Central Energy Corporation

Through and By Counsel: Joseph A. O'Brien, Esquire, Oliver, Price and Rhodes, 1212 Abington Road, Clarks Summit, PA 18411

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 06-1005. Filed for public inspection June 2, 2006, 9:00 a.m.]

Telecommunications

A-310651F7003. Commonwealth Telephone Company and Service Electric Telephone Company, LLC. Joint petition of Commonwealth Telephone Company and Service Electric Telephone Company, LLC for approval of amendments to an interconnection agreement under section 252(e) of the Telecommunications Act of 1996.

Commonwealth Telephone Company and Service Electric Telephone Company, LLC, by its counsel, filed on May 16, 2006, at the Pennsylvania Public Utility Commission (Commission), a joint petition for approval of amendments to an interconnection agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania

Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the Commonwealth Telephone Company and Service Electric Telephone Company, LLC joint petition are on file with the Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 06-1006. Filed for public inspection June 2, 2006, 9:00 a.m.]

PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the Frontier Communications of Canton, LLC and T-Mobile USA, Inc. joint petition are on file with the Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 06-1008. Filed for public inspection June 2, 2006, 9:00 a.m.]

Telecommunications

A-311394F7018. Frontier Communications of Breezewood, LLC and T-Mobile USA, Inc. Joint petition of Frontier Communications of Breezewood, LLC and T-Mobile USA, Inc. for approval of an interconnection and traffic agreement for cellular and other 2-way mobile radio services under section 252(e) of the Telecommunications Act of 1996.

Frontier Communications of Breezewood, LLC and T-Mobile USA, Inc., by its counsel, filed on May 15, 2006, at the Pennsylvania Public Utility Commission (Commission), a joint petition for approval of an interconnection agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the Frontier Communications of Breezewood, LLC and T-Mobile USA, Inc. joint petition are on file with the Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 06-1007. Filed for public inspection June 2, 2006, 9:00 a.m.]

Telecommunications

A-311394F7021. Frontier Communications of Lakewood, LLC and T-Mobile USA, Inc. Joint petition of Frontier Communications of Lakewood, LLC and T-Mobile USA, Inc. for approval of an interconnection and traffic agreement for cellular and other 2-way mobile radio services under section 252(e) of the Telecommunications Act of 1996.

Frontier Communications of Lakewood, LLC and T-Mobile USA, Inc., by its counsel, filed on May 15, 2006, at the Pennsylvania Public Utility Commission (Commission), a joint petition for approval of an interconnection agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the Frontier Communications of Lakewood, LLC and T-Mobile USA, Inc. joint petition are on file with the Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 06-1009. Filed for public inspection June 2, 2006, 9:00 a.m.]

Telecommunications

A-311394F7019. Frontier Communications of Canton, LLC and T-Mobile USA, Inc. Joint petition of Frontier Communications of Canton, LLC and T-Mobile USA, Inc. for approval of an interconnection and traffic agreement for cellular and other 2-way mobile radio services under section 252(e) of the Telecommunications Act of 1996.

Frontier Communications of Canton, LLC and T-Mobile USA, Inc., by its counsel, filed on May 15, 2006, at the Pennsylvania Public Utility Commission (Commission), a joint petition for approval of an interconnection agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg,

Telecommunications

A-311394F7020. Frontier Communications of Oswayo River, LLC and T-Mobile USA, Inc. Joint petition of Frontier Communications of Oswayo River, LLC and T-Mobile USA, Inc. for approval of an interconnection and traffic agreement for cellular and other 2-way mobile radio services under section 252(e) of the Telecommunications Act of 1996.

Frontier Communications of Oswayo River, LLC and T-Mobile USA, Inc., by its counsel, filed on May 15, 2006, at the Pennsylvania Public Utility Commission (Commission), a joint petition for approval of an interconnection agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days

after the date of publication of this notice. Copies of the Frontier Communications of Oswayo River, LLC and T-Mobile USA, Inc. joint petition are on file with the Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 06-1010. Filed for public inspection June 2, 2006, 9:00 a.m.]

Telecommunications

A-311394F7007. Frontier Communications of Pennsylvania, LLC and T-Mobile USA, Inc. Joint petition of Frontier Communications of Pennsylvania, LLC and T-Mobile USA, Inc. for approval of an interconnection and traffic agreement for cellular and other 2-way mobile radio services under section 252(e) of the Telecommunications Act of 1996.

Frontier Communications of Pennsylvania, LLC and T-Mobile USA, Inc., by its counsel, filed on May 15, 2006, at the Pennsylvania Public Utility Commission (Commission), a joint petition for approval of an interconnection agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the Frontier Communications of Pennsylvania, LLC and T-Mobile USA, Inc. joint petition are on file with the Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 06-1011. Filed for public inspection June 2, 2006, 9:00 a.m.]

Telecommunications

A-311365F7001. Verizon North Inc. and CloseCall America, Inc. Joint petition of Verizon North Inc. and CloseCall America, Inc. for approval of an interconnection agreement and amendment no. 1 under section 252(e) of the Telecommunications Act of 1996.

Verizon North Inc. and CloseCall America, Inc., by its counsel, filed on May 10, 2006, at the Pennsylvania Public Utility Commission (Commission), a joint petition for approval of an interconnection agreement and amendment no. 1 under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days

after the date of publication of this notice. Copies of the Verizon North Inc. and CloseCall America, Inc. joint petition are on file with the Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 06-1012. Filed for public inspection June 2, 2006, 9:00 a.m.]

Telecommunications

A-311408F7001. Verizon North Inc. and Northstar Telecom, Inc. Joint petition of Verizon North Inc. and Northstar Telecom, Inc. for approval of an interconnection agreement and amendment no. 1 under section 252(e) of the Telecommunications Act of 1996.

Verizon North Inc. and Northstar Telecom, Inc., by its counsel, filed on May 10, 2006, at the Pennsylvania Public Utility Commission (Commission), a joint petition for approval of an interconnection agreement and amendment no. 1 under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the Verizon North Inc. and Northstar Telecom, Inc. joint petition are on file with the Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 06-1013. Filed for public inspection June 2, 2006, 9:00 a.m.]

Telecommunications

A-311408F7000. Verizon Pennsylvania Inc. and Northstar Telecom, Inc. Joint petition of Verizon Pennsylvania Inc. and Northstar Telecom, Inc. for approval of an interconnection agreement and amendment no. 1 under section 252(e) of the Telecommunications Act of 1996.

Verizon Pennsylvania Inc. and Northstar Telecom, Inc., by its counsel, filed on May 10, 2006, at the Pennsylvania Public Utility Commission (Commission), a joint petition for approval of an interconnection agreement and amendment no. 1 under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the

Verizon Pennsylvania Inc. and Northstar Telecom, Inc. joint petition are on file with the Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 06-1014. Filed for public inspection June 2, 2006, 9:00 a.m.]

Telecommunications Service

A-311409F0002AMA. Velocity.Net Communications, Inc. Application of Velocity.Net Communications, Inc. for approval to offer, render, furnish or supply competitive local exchange carrier services to the public in the service territory of Alltel Pennsylvania, Inc.

Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities). Filings must be made with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant, on or before June 19, 2006. The documents filed in support of the application are available for inspection and copying at the Office of the Secretary between 8 a.m. and 4:30 p.m., Monday through Friday, and at the applicant's business address.

Applicant: Velocity.Net Communications, Inc.

Through and By Counsel: Keith Wood, Esquire, 235 North Edgeworth Street, Greensboro, NC 27401

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 06-1015. Filed for public inspection June 2, 2006, 9:00 a.m.]

PHILADELPHIA REGIONAL PORT AUTHORITY

Request for Bids

The Philadelphia Regional Port Authority (PRPA) will accept sealed bids for Project #06-075.4, Furnish and Install Roof Top Pole Lights at Pier 82 South until 2 p.m. on Thursday, July 13, 2006. The bid documents can be obtained from the Director of Procurement, PRPA, 3460 N. Delaware Ave., 2nd Floor, Philadelphia, PA 19134, (215) 426-2600 and will be available June 20, 2006. Additional information and project listings may be found at www.philaport.com. The cost of the bid document is \$35 (includes 7% Pennsylvania Sales Tax). The cost is nonrefundable. PRPA is an equal opportunity employer. Contractors must comply with all applicable equal opportunity laws and regulations. Bidders must provide to the Procurement Department, in writing, the names of individuals that will be attending prebid meetings. This information is needed 24 hours prior to the meeting. Fax to (215) 426-6800, Attn: Procurement Department.

A mandatory prebid job site meeting will be held June 29, 2006, at 10 a.m. at Columbus Blvd. and entrance gate north of Snyder Ave., Philadelphia, PA.

JAMES T. MCDERMOTT, Jr.,
Executive Director

[Pa.B. Doc. No. 06-1016. Filed for public inspection June 2, 2006, 9:00 a.m.]

STATE BOARD OF EDUCATION

Approval of Resolutions Regarding the Highly Qualified Teacher Requirements of the No Child Left Behind Act of 2001

On May 18, 2006, at a regular public meeting of the State Board of Education (Board), the Board approved two resolutions that address the highly qualified teacher requirements of the Federal No Child Left Behind Act of 2001. The first resolution establishes a high objective uniform State standard of evaluation process (HOUSSSE) for teachers who received their certificate in elementary education before 1988. The second resolution establishes a HOUSSSE process for experienced Commonwealth teachers or new special education teachers who teach multiple core academic subjects in middle and secondary school settings. The resolutions follow.

JIM BUCKHEIT,
Executive Director

RESOLUTION

WHEREAS, in enacting the No Child Left Behind Act of 2001 (NCLB) (P. L. 107-110, 115 Stat. 1425), the Congress of the United States imposed upon the States certain requirements that they must meet as a condition of receiving Federal funds in support of primary and secondary education; and

WHEREAS, NCLB requires all teachers teaching in core academic subjects to be highly qualified by the end of the 2005-2006 school year; and

WHEREAS, as part of its monitoring responsibilities under NCLB, the United States Department of Education (USDE) reviewed Pennsylvania's implementation of the highly qualified teacher provisions of NCLB; and

WHEREAS, USDE issued findings as part of a monitoring report relating to Pennsylvania's implementation of the highly qualified provisions of NCLB; and

WHEREAS, one finding USDE in its monitoring report states that Pennsylvania has not demonstrated that its Elementary teachers certified prior to the implementation of testing requirements are highly qualified under NCLB; and

WHEREAS, the Pennsylvania Department of Education (PDE) filed a response to USDE's monitoring report on April 5, 2006; and

WHEREAS, the Pennsylvania State Board of Education (State Board) reviewed and considered PDE's response to USDE's preliminary findings; and

WHEREAS, the response documented that Pennsylvania's Elementary Teachers certified prior to the implementation of testing requirements in 1988 are highly qualified; and

WHEREAS, through its response, PDE established a State-level high objective state standard of evaluation (HOUSSE) detailing the following pieces of evidence, which demonstrate that Elementary teachers certified prior to Pennsylvania's implementation of teacher testing requirements have demonstrated subject matter competency and are highly qualified as required by NCLB:

- Pennsylvania has a long and rich tradition of preparing highly qualified teachers.
- Pennsylvania's rigorous teacher training programs require teachers to demonstrate grade appropriate subject matter knowledge and teaching skills.
- All teachers are evaluated annually using a state-wide assessment tool which measures, in part, an educator's mastery of his or her content area.
- All teachers have been required to demonstrate satisfactory teaching performance before obtaining a Level II certificate.
- All teachers must satisfy professional development requirements in their areas of certification or assignment to maintain certification.
- Pennsylvania's teacher preparation program standards are aligned with student academic achievement standards.

NOW, THEREFORE, be it RESOLVED: The State Board of Education concurs in the statements made in the Pennsylvania Department of Education's response to the findings of the U. S. Department of Education related to the quality of Pennsylvania's Elementary teachers certified prior to Pennsylvania's implementation of teacher testing requirements and specifically recognizes that Pennsylvania's teachers have satisfied Pennsylvania's State-level high objective uniform state standard of evaluation, have demonstrated subject matter competency and, therefore, are highly qualified under NCLB.

RESOLUTION

WHEREAS, in enacting the No Child Left Behind Act of 2001 (NCLB) (P. L. 107-110, 115 Stat. 1425), the Congress of the United States imposed upon the States certain requirements that they must meet as a condition of receiving Federal funds in support of primary and secondary education; and

WHEREAS, NCLB requires all teachers teaching in core academic subjects to be highly qualified by the end of the 2005-2006 school year; and

WHEREAS, as part of its monitoring responsibilities under NCLB, the United States Department of Education (USDE) reviewed Pennsylvania's planned implementation of the highly qualified teacher provisions of NCLB; and

WHEREAS, USDE issued findings as part of a monitoring report relating to Pennsylvania's implementation of the highly qualified provisions of NCLB; and

WHEREAS, one finding by USDE in its monitoring report states that Pennsylvania's Bridge II program is not rigorous enough to provide a high objective state standard of evaluation by which teachers could become highly qualified; and

WHEREAS, the Pennsylvania Department of Education (PDE) filed a response to USDE's monitoring report on April 5, 2006; and

WHEREAS, the Pennsylvania State Board of Education (State Board) reviewed and considered PDE's response to USDE's preliminary findings; and

WHEREAS, in the response to the finding made by USDE in its monitoring report, PDE agreed to discontinue the Bridge II program; and

WHEREAS, PDE's Bridge I program will expire July 30, 2006; and

WHEREAS, PDE, with assistance from the State Board, developed a new high objective state standard of evaluation (HOUSSE) program to replace the Bridge II program; and

WHEREAS, the new HOUSSE program is a high objective state standard of evaluation; and

WHEREAS, the new HOUSSE program provides that experienced Pennsylvania teachers or new special education teachers who teach multiple core academic subjects in middle and secondary settings and who qualify for the additional flexibility under IDEA may demonstrate subject matter competency and be designated as "highly qualified" upon the obtainment of 100 points, documented through achievements in the following areas:

- Satisfactory teaching experience in the core academic subject area.
- College and graduate coursework in the core academic subject area.
- Professional education courses in the core academic subject area.
- Advanced degree in teaching, curriculum, instruction, or assessment related to the core academic subject area.
- Academic scholarship and awards related to the core academic subject area.
- Pennsylvania Instructional II Special Education certification.

NOW, THEREFORE, be it RESOLVED: Teachers successfully completing Pennsylvania's HOUSSE program by documenting 100 points in the above categories have demonstrated subject matter competency through Pennsylvania's high objective state standard of evaluation and are highly qualified under NCLB.

[Pa.B. Doc. No. 06-1017. Filed for public inspection June 2, 2006, 9:00 a.m.]

Schedule of Meetings for 2007

The regular meetings of the State Board of Education (Board), Councils of Basic and Higher Education and the State Board for Vocational Education will be held on the following dates:

January 17—18, 2007
 March 21—22, 2007
 May 16—17, 2007
 July 18—19, 2007
 September 19—20, 2007
 November 21—22, 2007

Unless due and timely notice to the contrary is given, these meetings will be held in the Conference Rooms on the Lobby Level and First Floor of the Education Building, 333 Market Street, Harrisburg, PA.

Persons with disabilities needing special accommodations to attend the meetings should contact the Board at (717) 787-3787 at least 24 hours in advance so that arrangements can be made.

This schedule of meetings as well as future notices of special meetings, hearings and roundtables of the Board, councils and committees will be posted on the Board's web pages on the Department of Education website: www.pde.state.pa.us.

JIM BUCKHEIT,
Executive Director

[Pa.B. Doc. No. 06-1018. Filed for public inspection June 2, 2006, 9:00 a.m.]

STATE CONTRACTS INFORMATION

DEPARTMENT OF GENERAL SERVICES

Act 266 of 1982 provides for the payment of interest penalties on certain invoices of "qualified small business concerns". The penalties apply to invoices for goods or services when payments are not made by the required payment date or within a 15 day grace period thereafter.


Act 1984-196 redefined a "qualified small business concern" as any independently owned and operated, for-profit business concern employing 100 or fewer employees. See 4 Pa. Code § 2.32. The business must include the following statement on every invoice submitted to the Commonwealth: "(name of business) is a qualified small business concern as defined in 4 Pa. Code 2.32."

A business is eligible for payments when the required payment is the latest of:
 The payment date specified in the contract.
 30 days after the later of the receipt of a proper invoice or receipt of goods or services.
 The net payment date stated on the business' invoice.

A 15-day grace period after the required payment date is provided to the Commonwealth by the Act.

For more information: contact: Small Business Resource Center
 PA Department of Community and Economic Development
 374 Forum Building
 Harrisburg, PA 17120
 800-280-3801 or (717) 783-5700

Reader's Guide



① Service Code Identification Number

② Commodity/Supply or Contract Identification No.

B-54137. Consultant to provide three 2-day training sessions, covering the principles, concepts, and techniques of performance appraisal and standard setting with emphasis on performance and accountability, with a knowledge of State Government constraints.

Department:	General Services		
Location:	Harrisburg, Pa.		③ Contract Information
Duration:	12/1/93-12/30/93		④ Department
Contact:	Procurement Division 787-0000		⑤ Location
			⑥ Duration

⑦

(For Commodities: Contact:
 Vendor Services Section
 717-787-2199 or 717-787-4705

REQUIRED DATA DESCRIPTIONS

- ① Service Code Identification Number: There are currently 39 state service and contractual codes. See description of legend.
- ② Commodity/Supply or Contract Identification No.: When given, number should be referenced when inquiring of contract of Purchase Requisition. If more than one number is given, each number represents an additional contract.
- ③ Contract Information: Additional information for bid preparation may be obtained through the departmental contracting official.
- ④ Department: State Department or Agency initiating request for advertisement.
- ⑤ Location: Area where contract performance will be executed.
- ⑥ Duration: Time estimate for performance and/or execution of contract.
- ⑦ Contact: (For services) State Department or Agency where vendor inquiries are to be made.

(For commodities) Vendor Services Section (717) 787-2199 or (717) 787-4705

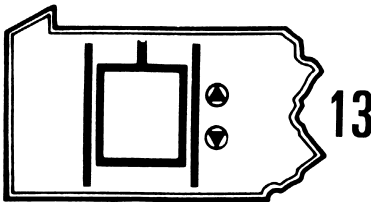
DO BUSINESS WITH STATE AGENCIES

The Treasury Department's Bureau of Contracts and Public Records can help you do business with state government agencies. The bureau is, by law, the central repository for all state contracts over \$5,000. Contract Specialists can supply you with descriptions of contracts, names of previous bidders, pricing breakdowns and other information. They can also direct you to the appropriate person and agency looking for your product or service. Copies of state contracts are also available. (Duplicating and mailing costs may apply). For more information, visit us online at www.patreasury.org.

Contact: **Bureau of Contracts and Public Records**
 Pennsylvania Treasury Department
 201 Finance Building
 Harrisburg, PA 17120
 Phone: (717) 787-2990 or 1-800-252-4700
 Fax: (717) 772-0977

ROBERT P. CASEY, Jr.,
State Treasurer

SERVICES

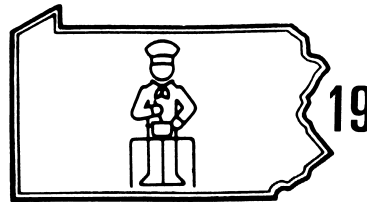


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Elevator Maintenance

ESU 30-06-ELEV East Stroudsburg University has a need for elevator maintenance services for the campus. All responsible firms are invited to participate including MBE/WBE Firms. Bid Opening is June 22, 2006 at 2 PM at Rosenkrans Hall Room 218. Pre-Bid Tour is June 6, 2006 at 9:30 AM. E-mail azaffuto@po-box.esu.edu for bid package.

Department: State System of Higher Education
Location: East Stroudsburg University
Duration: One Year with 4 one year options
Contact: Ann Zaffuto, 570-422-3595



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Food

CN00021114 8 oz. caffeine-free diet iced tea and lemon fruit drink to be delivered July through December 2006.

Department: Public Welfare
Location: Torrance State Hospital, Dietary Department, State Route 1014, Torrance, PA 15779
Duration: July through December 2006
Contact: Kristina Meighan, 724-459-4678

CN00021118 4 oz. Low Fat Yogurt and 4 oz. Frozen Juices to be delivered July - December 2006.

Department: Public Welfare
Location: Torrance State Hospital, Dietary Department, State Route 1014, Torrance, PA 15779
Duration: July - December 2006
Contact: Kristina Meighan, 724-459-4678

CN00021109 Fresh pastries to be delivered July through December of 2006.

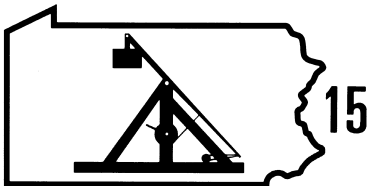
Department: Public Welfare
Location: Torrance State Hospital, Dietary Department, State Route 1014, Torrance, PA 15779
Duration: July - December 2006
Contact: Kristina Meighan, 724-459-4678

CN00021147 Perishable Foods - Decaffeinated Iced Tea, Lemonade, and Juices. Prospective vendors must register with the Integrated Enterprise System (IES) at www.vendorregistration.state.pa.us. DPW utilizes the information contained in the vendor master file for its procurement activities. Registered vendors who need to update or change the existing information in this file must contact IES and provide the changes or updates to IES. It is the vendor's responsibility to contact IES for changes, as DPW is unable to change vendor information. If you fail to update or change information, you may not receive requested bid information.

Department: Public Welfare
Location: Norristown State Hospital, 1001 Sterigere Street, Norristown, PA 19401
Duration: Deliveries are for the time period of July, August, and September, 2006. Bid opening date is 6/2/06 at 2 p.m.
Contact: Debbie Jones, 610-313-1025

FOOD BIDS Perishable and Non-Perishable Foods Bids.

Department: Public Welfare
Location: Ebersburg Center, 4501 Admiral Peary Highway, P. O. Box 600, Ebersburg, PA 15931
Duration: July 01, 2006 through December 31, 2006
Contact: Marilyn A. Cartwright, 814-472-0290



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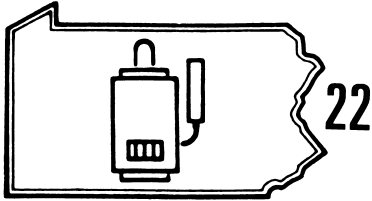
Environmental Maintenance Service

OSM 02(1592)101.1 Mine Subsidence Control Project, Green Valley School. The principal items of work and approximate quantities include 2,586 linear feet of Four (4) or Six (6) Inch Air Rotary Drilling, 2,526 linear feet of Furnishing and Installing Four (4) or Six (6) Inch Casing, Steel or PVC and 5,666 tons of Supply and Delivery, and Injection of Grout Material. This project issues on June 2, 2006 and bids will be opened on June 29, 2006 at 2:00 p.m. Bid documents cost \$10.00 per set and will not be mailed until payment has been received. This project is financed by the Federal Government under the authority given it by P.L. 95-87 dated August 3, 1977, "The Surface Mining Control and Reclamation Act of 1977," and is subject to that Law and to the Federal Grant for this project.

Department: Environmental Protection
Location: North Versailles Township, Allegheny County
Duration: 120 calendar days after the official start date.
Contact: Construction Contracts Section, 717-787-7820

PF 0879-18 This is a consolidated perishable food bid advertisement for five (5) individual food groups. There are separate commodity bid proposals; each bid proposal is to be requested individually by the product and bid number shown in this advertisement. Juice - July through September 2006 - Bid 9136. Poultry/Fish - July through September 2006 - Bid 9137. Meat/Meat Products - July through September 2006 - Bid 9138. Frozen Fruits and Vegetables, July through September 2006 - Bid 9139. Miscellaneous Frozen Food, July through September 2006 - Bid 9140. Fax requests for each bid package to 570-372-5675.

Department: Public Welfare
Location: Selinsgrove Center, 1000 Route 522, Selinsgrove, PA 17870
Duration: See above
Contact: Patti Kreamer, 570-372-5670



HVAC Services

PR10103922 Comprehensive service, repair, and preventive and predictive maintenance services for automatic temperature controls, heating, ventilating, and air conditioning and water treatment equipment for Reading State Office Building.

Department: General Services
Location: Department of General Services, Bureau of Facilities Management, Reading State Office Building, 625 Cherry Street, Reading, PA 19602
Duration: Bid Opening will be Thursday, June 8 at 2:00 PM. There is a pre-bid conference on June 1 at 10:00 AM
Contact: Kathy Frederick, 610-378-4185

CN00021113 Vendor to provide Heating, Ventilation, and Air-Conditioning maintenance and repairs to the HVAC system at PennDOT Engineering District 9 Office Building located at 1620 N. Juniata Street, Hollidaysburg, PA 16648. An on-site visit will be required prior to bid submission. This will be a multiple year service contract with possible extensions and renewals with escalation considerations.

Department: Transportation
Location: PennDOT Engineering District 9, 1620 N Juniata Street, Hollidaysburg, PA 16648
Contact: Nannette C. McCreary, Purchasing Agent 1, 814-696-7269

63-0238FA-REBID Campus Wide Fire Alarm System Upgrade. Provide new proprietary central reporting fire alarm station, a modified inter-communication system to permit communication of new fire alarm system and interface existing Autocall RFT fire alarm panels on campus. Replace existing fire alarm panels and all detection and notification devices and provide a (3) year Service Contract for on-site programming, component testing and on-site training. Prevailing Wages are applicable. Estimated Cost is \$1.5 million. Mandatory Pre-Proposal Conference is June 2nd, 2006 at 1:30 p.m. Proposals are due June 22, 2006.

Department: State System of Higher Education
Location: West Chester University, West Chester, PA 19383
Duration: 365 days from Notice to Proceed
Contact: Barb Cooper, 610-436-2706



Janitorial Services

FM 9008 Furnish all Materials, Equipment and Labor to perform Janitorial Services three (3) visits per week at the Station listed below. The detailed Work Schedule and Bid Specifications will be forwarded upon notification of request to quote from the Facility Management Division. Contact Person listed below.

Department: State Police
Location: Pennsylvania State Police, Troop H, Gettysburg Station, 3033 Old Harrisburg Pike, Gettysburg, PA 17325
Duration: July 1, 2006 through June 30, 2009
Contact: Helen Fuhrman, 717-705-5952

FM 8958 Furnish all Materials, Equipment and Labor to perform Janitorial Services three (3) visits per week at the Troop F, Stonington Station. The detailed Work Schedule and Bid Specifications will be forwarded upon notification of request to quote from the Facility Management Division. Contact Person listed below.

Department: State Police
Location: Pennsylvania State Police, Troop F, Stonington Station, R.D. 2, Box 83, Sunbury, PA 17801
Duration: July 1, 2006 through June 30, 2009
Contact: Helen Fuhrman, 717-705-5952

FM 8950 Furnish all Materials, Equipment and Labor to perform Janitorial Services three (3) visits per week at the station listed below. The detailed Work Schedule and Bid Specifications will be forwarded upon notification of request to quote from the Facility Management Division. Contact Person listed below.

Department: State Police
Location: Pennsylvania State Police, Troop C, Punxsutawney Headquarters, 485 N. Findley Street, Punxsutawney, PA 15767-0445
Duration: July 1, 2006 through June 30, 2009
Contact: Helen Fuhrman, 717-705-5952

FM 8971 Furnish all labor, equipment and materials to perform janitorial service three (3) days per week at the PA State Police, Wilkes-Barre District Enforcement Office. Detailed Work Schedule and Bid must be obtained from the Facility Management Division, 717-705-5951.

Department: State Police
Location: BLCE, Wilkes-Barre DEO, 1095 Hanover Street, Wilkes-Barre, PA 18706
Duration: 07/01/06 to 06/30/09
Contact: Sandy Wolfe, 717-705-5951



Laboratory Services

CN00021162 Clinical Laboratory Services to be provided to Warren State Hospital.

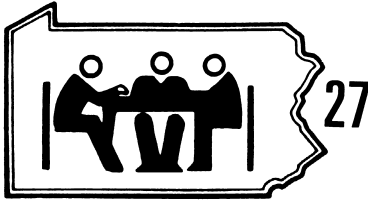
Department: Public Welfare
Location: Warren State Hospital, 33 Main Dr., N. Warren, PA 16365-5099
Duration: 10/01/2006 - 09/30/2007
Contact: Ms. Bobbie Muntz, PA III, 814-726-4496



Laundry/Dry Cleaning & Linen/Uniform Rental

PR10102695 General laundering, dry cleaning, pressing, repairs and alterations of uniforms for the Capitol Police at the Capitol complex in Harrisburg.

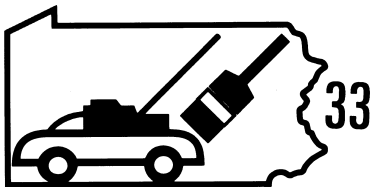
Department: General Services
Location: Department of General Services, Bureau of Police and Safety, Room 70-E, East Wing Building, Harrisburg, PA 17125
Duration: Bid Opening will be Tuesday, June 6 at 2:00 PM.
Contact: George Glendening, 717-787-8640



Lodging/Meeting Facilities

CN00021062 The Pennsylvania Emergency Management Agency, an agency representing the Commonwealth of Pennsylvania, intends to conduct an Exercise Design and Evaluation Course within a 5 mile radius of State College/University Park, August 14-18, 2006. The facilities needed for this Training Session are for up to 30 single lodging rooms for the nights of August 14-17, 2006. A breakout room, large overhead projector and screen, podium, instructor table, Internet connections, breakfast, AM and PM break, and lunch buffet, all available August 15-18, 2006. If you are interested please download the bid package and additional documents. Please contact Jamie Smolen at 717-651-2191 or jsmolen@state.pa.us if you have any questions. Facsimile requests may be submitted to 717-651-2025. Please include name, title, phone number, fax number, complete company address, Federal ID number and reference CN00021062. Bid submission deadline is 1 PM on Wednesday May 31, 2006. If not already registered with the Commonwealth, please register by logging onto www.vendorregistration.state.pa.us or by calling Central Vendor Management Unit (CMVU) toll free at 1-866-775-CVMU (2868).

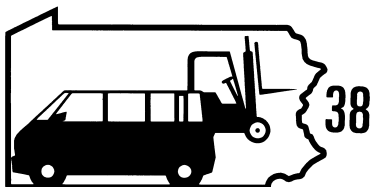
Department: PA Emergency Management Agency
Location: 5 miles radius of State College/University Park, PA
Duration: August 14-18, 2006
Contact: Jamie Smolen, 717-651-2191



Property Maintenance

CL-629 This project is comprised of restoring the masonry walls on Egbert Hall, a two story office building on the main campus of Clarion University, Clarion, PA. Wall area, excluding windows and doors is approximately 7,500 square feet. Additionally, the project will include repairing the slate roof, repairing and refinishing eaves and fascia, refinishing stairwell walls and installation of a doorway between two offices. Pre-bid meeting: June 8, 2006 at 10:00 a.m. in McEntire Maintenance Building, Clarion, PA. Bids Due: June 22, 2006 at 2:00 p.m. \$35 non refundable bid deposit required for bid package. Requests should be directed to Ruth Wolfgong, Thorn II, Clarion University, 840 Wood Street, Clarion, PA 16214, Telephone: 814-393-2365.

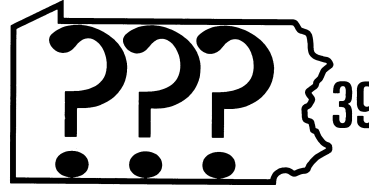
Department: Education
Location: Clarion County, Clarion, PA
Duration: 90 days from Notice to Proceed
Contact: Ruth Wolfgong, 814-393-2365



Vehicle, Heavy Equipment and Powered Machinery Services

cn00019214 Changing aerial lift w/body from 1998 GMC Sierra 3500HD cab and chassis to 2006 Ford F-550 cab and chassis to be installed as a complete working unit. All parts, labor and supplies to convert changeover of cab and chassis to a complete working unit to be supplied by vendor.

Department: Transportation
Location: PennDOT, 3450 Bear Creek Blvd., Wilkes-Barre, PA 18602
Duration: One Time Purchase
Contact: Gregg Sigley, 570-826-5473



Miscellaneous

CN00021097 PennDOT is seeking bids to provide a turn-key wireless information system ("Wireless System") for the Pennsylvania Welcome Center at Delaware Water Gap (the "Welcome Center") that will provide "hotspot" style internet service to travelers at no cost to PennDOT. The Wireless System will provide Internet access to wireless equipment owned by the traveling public. As part of the Wireless System, the Vendor will also provide a kiosk ("Kiosk") at the Welcome Center which will allow access to the PennDOT splash page and related screens. Internet and e-mail access will be prohibited from the Kiosk. The Wireless System will be completely independent of the existing Commonwealth infrastructure and must meet the travelers present and future needs. The successful Vendor will conduct a six (6) month proof-of-concept trial at the Pennsylvania Welcome Center located at Exit 310 I-80, Rte. 611 and River Road, Delaware Water Gap, PA 18327.

Department: Transportation
Location: PennDOT, Harrisburg, PA
Duration: The duration will be for 6 months
Contact: Donna Leitzel, 717-705-6486

RFP BWC 2006-1 The Department of Labor and Industry, Bureau of Workers' Compensation (BWC), is responsible for updating, adjusting and distributing the Workers' Compensation Medical Fee Schedules as provided under the Workers' Compensation Act. The BWC seeks an offeror to do the following: make revisions to the schedules, distribute the schedules, credential new health care providers, analyze data submitted by health care providers and prepare reports.

Department: Labor and Industry
Location: Procurement, Room 208, Seventh and Forster Street, Harrisburg, PA 17120
Duration: One year

1010-053 PA Department of Transportation in Kittanning, Armstrong County is in need of a vendor for trash removal. Vendor must supply the Department with 3 to 6 yard dumpsters for their yard at the Main Shed in Kittanning.

Department: Transportation
Location: PA Department of Transportation, Armstrong County District 10-1, 504 South Water Street, Kittanning, PA 16201-1016
Duration: 2 year period
Contact: Susan Carson, 724-543-0120

1010-054 Maintenance and supplying of necessary materials and repair parts for 2 signalized Intersections and two advance warning devices on SR 66 South, and SR 422 and SR 66 in Armstrong County. Contractor to be on 24 hour call.

Department: Transportation
Location: PA Department of Transportation, Armstrong Co. District 10-1, SR 66 and SR 422 and SR 66, Kittanning, PA 16201-1016
Duration: 2 year period
Contact: Susan Carson, 724-543-0120

RFP Lottery1-2006 This Request For Proposal (RFP) provides interested instant lottery games printing and related services providers with sufficient information to enable them to prepare and submit proposals for consideration by the Commonwealth of Pennsylvania, Department of Revenue, PA Lottery to satisfy a need for instant lottery games, printing, warehousing, distribution, marketing, and related services.

Department: Revenue
Location: Department of Revenue, PA Lottery, 2850 Turnpike Industrial Road, Middletown, PA 17057
Contact: Thomas Shaub, 717-985-5244

[Pa.B. Doc. No. 06-1019. Filed for public inspection June 2, 2006, 9:00 a.m.]

DESCRIPTION OF LEGEND

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| <p>1 Advertising, Public Relations, Promotional Materials</p> <p>2 Agricultural Services, Livestock, Equipment, Supplies & Repairs: Farming Equipment Rental & Repair, Crop Harvesting & Dusting, Animal Feed, etc.</p> <p>3 Auctioneer Services</p> <p>4 Audio/Video, Telecommunications Services, Equipment Rental & Repair</p> <p>5 Barber/Cosmetology Services & Equipment</p> <p>6 Cartography Services</p> <p>7 Child Care</p> <p>8 Computer Related Services & Equipment Repair: Equipment Rental/Lease, Programming, Data Entry, Payroll Services, Consulting</p> <p>9 Construction & Construction Maintenance: Buildings, Highways, Roads, Asphalt Paving, Bridges, Culverts, Welding, Resurfacing, etc.</p> <p>10 Court Reporting & Stenography Services</p> <p>11 Demolition—Structural Only</p> <p>12 Drafting & Design Services</p> <p>13 Elevator Maintenance</p> <p>14 Engineering Services & Consultation: Geologic, Civil, Mechanical, Electrical, Solar & Surveying</p> <p>15 Environmental Maintenance Services: Well Drilling, Mine Reclamation, Core & Exploratory Drilling, Stream Rehabilitation Projects and Installation Services</p> <p>16 Extermination Services</p> <p>17 Financial & Insurance Consulting & Services</p> <p>18 Firefighting Services</p> <p>19 Food</p> <p>20 Fuel Related Services, Equipment & Maintenance to Include Weighing Station Equipment, Underground & Above Storage Tanks</p> <p>21 Hazardous Material Services: Abatement, Disposal, Removal, Transportation & Consultation</p> | <p>22 Heating, Ventilation, Air Conditioning, Electrical, Plumbing, Refrigeration Services, Equipment Rental & Repair</p> <p>23 Janitorial Services & Supply Rental: Interior</p> <p>24 Laboratory Services, Maintenance & Consulting</p> <p>25 Laundry/Dry Cleaning & Linen/Uniform Rental</p> <p>26 Legal Services & Consultation</p> <p>27 Lodging/Meeting Facilities</p> <p>28 Mailing Services</p> <p>29 Medical Services, Equipment Rental and Repairs & Consultation</p> <p>30 Moving Services</p> <p>31 Personnel, Temporary</p> <p>32 Photography Services (includes aerial)</p> <p>33 Property Maintenance & Renovation—Interior & Exterior: Painting, Restoration, Carpentry Services, Snow Removal, General Landscaping (Mowing, Tree Pruning & Planting, etc.)</p> <p>34 Railroad/Airline Related Services, Equipment & Repair</p> <p>35 Real Estate Services—Appraisals & Rentals</p> <p>36 Sanitation—Non-Hazardous Removal, Disposal & Transportation (Includes Chemical Toilets)</p> <p>37 Security Services & Equipment—Armed Guards, Investigative Services & Security Systems</p> <p>38 Vehicle, Heavy Equipment & Powered Machinery Services, Maintenance, Rental, Repair & Renovation (Includes ADA Improvements)</p> <p>39 Miscellaneous: This category is intended for listing all bids, announcements not applicable to the above categories</p> |
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JAMES P. CREEDON,
Secretary

