

PROPOSED RULEMAKING

DEPARTMENT OF EDUCATION

[22 PA. CODE CH. 711]

Charter School and Cyber Charter School Services and Programs for Children with Disabilities

The Department of Education proposes to amend Chapter 711 (relating to charter school and cyber charter school services and programs for children with disabilities) to read as set forth in Annex A. The Department is acting under the authority of sections 1732-A(c)(2) and 1749-A(b)(8) of the Charter School Law (24 P. S. §§ 17-1732-A(c)(2) and 17-1749-A(b)(8)).

This proposed rulemaking establishes procedures for the education of students with disabilities who attend public charter schools or cyber charter schools, and sets forth requirements and procedures for the delivery of services and programs for the students. This proposed rulemaking is promulgated to facilitate compliance with Federal statute, regulations and court decrees that apply to students with disabilities. Chapter 14 (relating to special education services and programs) which governs programs for students with disabilities who are served by school districts, does not apply to students with disabilities who attend charter schools and cyber charter schools. Instead, these schools must follow the regulations of the Department of Education in Chapter 711, as required by section 1732-A(b) of the Charter School Law.

Representatives of the Department held five regional public roundtable meetings during December 2006 and January 2007 when stakeholders were provided an opportunity to discuss the issues and share their concerns about charter schools and cyber charter schools. These roundtable meetings were conducted immediately following roundtable meetings for other regulations, Chapter 14 and Chapter 16 (relating to special education for gifted students), thereby, expanding the awareness of stakeholders regarding the roundtable discussions.

Notices of the meetings were distributed to individuals and organizations who asked to be included on the Department's stakeholder list. Notice was sent to charter school and cyber charter school chief executive officers, superintendents, intermediate unit executive directors, area vocational school directors and others by means of the Department's PennLINK email system. Public notice was posted on the Department's website. A number of large Statewide education associations alerted their members and others about the meetings through their email distribution lists, websites and publications.

The Department heard from over 50 individuals and organizations throughout this process.

Purpose

The proposed revisions to Chapter 711 are designed to align the chapter with the Individuals with Disabilities Education Improvement Act (IDEA) (20 U.S.C.A. §§ 1400—1419), as amended December 3, 2004, and related Federal regulations, and applicable provisions of Pennsylvania statutes.

The revised Federal regulations are adopted by reference in this chapter. The Department determined that many areas in the Federal rules are sufficiently detailed to provide for effective implementation and, therefore, are proposed to be incorporated by reference.

Additional language is proposed in this chapter where Federal rules require greater detail for implementation or State statute requires regulation.

This rulemaking will become part of the eligibility grant application to the United States Department of Education under IDEA. The Commonwealth must demonstrate a good faith effort to align its policies with IDEA and its implementing regulations to be eligible to receive Federal funds. Copies of the eligibility grant application will be made available to the public through the Department of Education.

Requirements of the Proposed Rulemaking

The proposed rulemaking defines terms related to special education for charter schools and cyber charter schools and outlines the Department's authority to assure charter schools' compliance with the Federal laws, regulations and court decrees as they apply to children with disabilities. The proposed rulemaking adopts specific terminology; specifies time lines for development and implementation of Individualized Education Program (IEP) plans; requires timely access to instructional materials for students who are blind or visually impaired; and, specifies criteria for the determination of students with specific learning disabilities. In addition, the proposed rulemaking incorporates requirements for the transportation of students to charter schools and cyber charter schools, as specified by State law. Major elements of the proposed rules include:

§ 711.1. Definitions.

The definition of "cyber charter school" which is used throughout the chapter where the term charter school appears. This change reflects the amendment of section 17-1749-A(b)(8) of the Charter School Law (24 P. S. § 17-1749-A(b)(8)) by adding provisions regarding cyber charter schools and making cyber charter schools subject to this chapter.

§ 711.2. Purposes and intent.

This section specifies the intent to comply with the IDEA, IDEA 2004 and its August 2006 implementing regulations and indicates intent for students to have access to the general curriculum and assessments and support for charter schools and cyber schools providing early intervening (prereferral intervention).

§ 711.3. Incorporation of Federal regulations.

References to Federal regulations are updated.

§ 711.5. Personnel.

Language was added regarding the qualifications of educational interpreters in conformity with the criteria adopted by the State Board of Education under the Sign Language Interpreter/Transliterator State Registration Act (63 P. S. §§ 1725.1—1725.12).

§ 711.10. Complaint procedure.

Language was added that directs the Department to establish a complaint procedure consistent with Federal regulations and to disseminate notice of the procedure.

§ 711.22. Reevaluation.

This section was revised to clarify that students have the right to be reevaluated annually, upon request of a parent or teacher but that more frequent reevaluation may occur only if the parents and school agree.

§ 711.23. Screening.

This section clarifies requirements for charter schools and cyber charter schools to establish systems for the initial screening of students before making referrals for special education evaluation. The section also clarifies the procedures charter schools and cyber charter schools must follow if they provide early intervening services (prereferral intervention) to struggling students. The early intervening services are not required, but, if the charter school or cyber charter school provides the services, the school must conduct the services in accordance with these requirements.

§ 711.24. Evaluation.

This section requires copies of the evaluation report to be disseminated to parents at least 10 school days prior to the meeting of the individualized education program (IEP) team, unless this requirement is waived by a parent in writing.

§ 711.25. Criteria for the determination of Specific Learning Disabilities.

As required by IDEA 2004, the proposed rulemaking establishes criteria that charter schools and cyber charter schools must follow when establishing procedures for determining whether students have specific learning disabilities.

§ 711.41. IEP.

This section requires transition planning to occur when the student reaches age 14 and requires IEP implementation within 10 days of completion of the IEP.

§ 711.42. Transportation.

The proposed amendment clarifies transportation requirements based on amendments to the Charter School Law since the initial promulgation of this chapter. The proposed rulemaking indicates school districts must provide transportation to students with disabilities and to protected handicapped students under Section 504 who are enrolled in a charter school. This includes transportation to an extended school year program, if that program is held at the charter school. If modifications or accommodations, to the transportation are required, including bus aides, the provisions of the modifications or accommodations are the responsibility of the charter school. The proposed rulemaking also clarifies that cyber charter school students are not required to attend a specific facility to receive their educational services and, therefore, the district of residence is not required to provide transportation for cyber charter school students.

§ 711.45. Access to instructional materials.

As required by Federal regulations, the Department has established standards for instructional materials in alternative formats by adopting the National Instructional Materials Accessibility Standard as defined in 20 U.S.C.A. § 1474(e)(3)(B). The Federal regulations require the State's adoption of this requirement.

§ 711.46. Behavior support.

This section establishes positive rather than negative measures will be required; prohibits certain aversive

techniques and inappropriate use of restraints; and, establishes notification requirements when a student has been injured.

§ 711.62. Procedural safeguards.

Language has been added in this section to clarify that due process hearings, appeal panel proceedings and hearing officers are subject to 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure). It also incorporates IDEA requirements for resolution sessions for parents of children with disabilities and permits parent advocates to attend resolution sessions and provides for new time lines for due process hearings, consistent with Federal law. The proposal also provides for a student to remain in a current educational program (pendency) during mediation and allows parent advocates to attend resolution sessions.

Affected Parties

Students who need or may need special education services and programs who are enrolled in charter schools and cyber schools will be affected by this proposal. The proposal also will affect parents and guardians of those students by guaranteeing their participation in the process of determining services and programs that best meet the needs of their child. The Department, charter schools and cyber charter schools will be affected through compliance with the regulations.

Cost and Paperwork Estimates

The proposed rulemaking will not result in significant added costs or savings to either the Department or charter schools and cyber charter schools since they reflect existing Federal or State requirements.

Specific criteria for the identification of students with learning disabilities and specific attributes of early intervening services are added, consistent with IDEA. The regulations emphasize the use of scientifically based instruction prior to identifying a student as having a learning disability. In addition, the regulations also permit the use of prereferral intervention (early intervening services) to help struggling students. The procedures for identifying students with learning disabilities will require schools to document the instruction provided to students prior to referral.

Requirements for the access to instructional materials as required by IDEA are added. The resource center is funded by the Federal government. This requirement is not anticipated to add costs to charter schools or cyber charter schools.

Effective Date

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

Sunset Date

This chapter will be subject to sunset review by the Department on December 31, 2012, to determine its effectiveness in implementing the underlying State and Federal statutes and regulations.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on November 28, 2007, the Department submitted a copy of this proposed rulemaking and a copy of the Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Committees on Education. A copy of this material is available to the public upon request.

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

Public Comments and Contact Person

Interested individuals and organizations may access the proposed amendments at www.pabulletin.com. The current Chapter 711 regulations may be accessed at: www.pacode.com. The Federal regulations adopted by reference may be found at: <http://idea.ed.gov/explore/home>.

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Dr. Linda O. Rhen, Department of Education. Comments may be sent by means of mail or email. Comments sent by mail should be sent to 333 Market Street, Harrisburg, PA 17126-0333. Comments sent by e-mail should be sent to RA-Chapter711@state.pa.us. Public comments must be received within 30 days following publication in the *Pennsylvania Bulletin*.

Persons with disabilities needing an alternative means of providing public comment may make arrangements by calling Dr. Linda O. Rhen at (717) 783-5786 or TTY (717) 783-8445.

GERALD L. ZAHORCHAK,
Secretary

Fiscal Note: 6-308. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 22. EDUCATION

PART XX. CHARTER SCHOOLS

CHAPTER 711. CHARTER SCHOOL AND CYBER CHARTER SCHOOL SERVICES AND PROGRAMS FOR CHILDREN WITH DISABILITIES

GENERAL [PROVISION] PROVISIONS AND SUPERVISION

§ 711.1. Definitions.

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

* * * * *

Child with a disability—As defined in [34 CFR 300.7] 34 CFR 300.8 (relating to child with a disability).

Cyber charter school—An independent public school established and operated under a charter from the Department and which uses technology to provide a significant portion of its curriculum and to deliver a significant portion of instruction to its students through the Internet or other electronic means. A cyber charter school shall be organized as a public, nonprofit corporation. Cyber charters may not be granted to any for-profit entity.

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IDEA—Individuals with Disabilities Education Improvement Act (20 U.S.C.A. §§ 1400—1485).

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Regional charter school—An independent public school established and operated under a charter from more than one local board of school directors and in which students are enrolled or attend. **A regional charter school shall be organized as a public, nonprofit corporation. Charters may not be granted to any for-profit entity.**

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§ 711.2. Purposes and intent.

(a) This chapter specifies how the Commonwealth, through the Department, will meet its obligation to ensure that charter schools **and cyber charter schools** comply with [the] IDEA and its implementing regulations in 34 CFR Part 300 (relating to assistance to states for the education of children with disabilities), and Section 504 and its implementing regulations in 34 CFR Part 104 (relating to nondiscrimination on the basis of handicap in programs and activities receiving federal financial assistance).

(b) This chapter does not prevent a charter school **or cyber charter school** and a school district from entering into agreements regarding the provision of services and programs to comply with this chapter, whether or not the agreements involve payment for the services and programs by the charter school **or the cyber charter school**.

(c) Charter schools **and cyber charter schools** are exempt from Chapter 14 (relating to special education services and programs). See 24 P. S. § 17-1732-A.

(d) **Children with disabilities shall have access to the general curriculum, and participate in State and local assessments as established and described in Chapter 4 (relating to academic standards and assessment).**

(e) **The Department supports the use of pre-referral intervention strategies, in accordance with 34 CFR 300.226 (relating to early intervening services) and as outlined in § 711.23(c) (relating to screening) to promote students' success in the general education environment.**

§ 711.3. Incorporation of Federal regulations.

(a) Charter schools **and cyber charter schools** assume the duty to ensure that a FAPE is available to a child with a disability in compliance with [the] IDEA and its implementing regulations in 34 CFR Part 300 (relating to assistance to states for the education of children with disabilities) and [section] Section 504 and its implementing regulations in 34 CFR Part 104 (relating to nondiscrimination on the basis of handicap in programs and activities receiving federal financial assistance).

(b) [The requirements of 34 CFR Part 300 are incorporated by reference as follows:

- (1) 300.3 (relating to regulations that apply).
- (2) 300.4—300.26.
- (3) 300.28 and 300.29 (relating to supplementary aids; and transition services).
- (4) 300.121—300.125.
- (5) 300.138 (relating to participation in assessments).

(6) 300.139 (relating to reports relating to assessments).

(7) 300.300 (relating to provision of FAPE).

(8) 300.302—300.309.

(9) 300.312 and 300.313 (relating to children with disabilities in public charter schools; and children experiencing developmental delays).

(10) 300.320 and 300.321 (relating to initial evaluations; and reevaluations).

(11) 300.340 (relating to definitions related to IEPs).

(12) 300.342—300.346.

(13) 300.347(a) and (b) (relating to content of IEP).

(14) 300.348—300.350 (relating to agency responsibilities for transition services; private school placements by public agencies; and IEP accountability).

(15) 300.401 (relating to responsibility of State educational agency).

(16) 300.403 (relating to placement of children by parents if FAPE is at issue).

(17) 300.500—300.515.

(18) 300.519—300.529.

(19) 300.531—300.536.

(20) 300.540—300.543.

(21) 300.550—300.553.

(22) 300.560—300.573.

(23) 300.574(a) and (b) (relating to children's rights).

(24) 300.576 (relating to disciplinary information)]

The requirements of 34 CFR Part 300 (relating to assistance to states for the education of children with disabilities) as published at 64 FR 46450—46845 (August 14, 2006) are incorporated by reference, as follows:

(i) 34 CFR 300.4—300.8(a) and (c) (relating to act; assistive technology device; assistive technology service; charter school; and child with a disability).

(ii) 34 CFR 300.9—300.15 (relating to consent; core academic subjects; day; business day; school day; educational service agency; elementary school; equipment; and evaluation).

(iii) 34 CFR 300.17—300.19 (relating to free appropriate public education; highly qualified special education teachers and homeless children).

(iv) 34 CFR 300.22 and 300.23 (relating to individualized education program; and individualized education program team).

(v) 34 CFR 300.27—300.30 (relating to limited English proficient; local educational agency; native language; and parent).

(vi) 34 CFR 300.32—300.37 (relating to personally identifiable; public agency; related services; scientifically based research; and secondary school).

(vii) 34 CFR 300.39 (relating to special education).

(viii) 34 CFR 300.41—300.45 (relating to State educational agency; supplementary aids and services; transition services; universal design and ward of the state).

(ix) 34 CFR 300.101 and 34 CFR 300.102 (relating to free appropriate public education (FAPE); and exception to FAPE for certain ages).

(x) 34 CFR 300.104—300.108 (relating to residential placement; assistive technology; extended school year services; nonacademic services; and physical education).

(xi) 34 CFR 300.113 and 300.114(a)(2) (relating to routine checking of hearing aids and external components of surgically implanted medical devices; and general LRE requirements).

(xii) 34 CFR 300.115—300.117 (relating to continuum of alternative placements; placements; and nonacademic settings).

(xiii) 34 CFR 300.122 (relating to evaluation).

(xiv) 34 CFR 300.148 (relating to children with disabilities enrolled by their parents in private schools when FAPE is at issue).

(xv) 34 CFR 300.160 (relating to participation in assessments).

(xvi) 34 CFR 300.172 (relating to access to instructional materials).

(xvii) 34 CFR 300.174 (relating to prohibition on mandatory medication).

(xviii) 34 CFR 300.207 (relating to personnel development).

(xix) 34 CFR 300.210—300.213 (relating to purchase of instructional materials; information for SEA; public information; and records regarding migratory children).

(xx) 34 CFR 300.226 (relating to early intervening services).

(xxi) 34 CFR 300.300 and 300.301 (relating to parental consent and initial evaluations).

(xxii) 34 CFR 300.302—300.307(a)(1)(2) and (b) (relating to screening for instructional purposes is not evaluation; reevaluations; valuation procedures; additional requirements for evaluations and reevaluations; determination of eligibility; and specific learning disabilities).

(xxiii) 34 CFR 300.308—300.311 (relating to additional group members; determining the existence of a specific learning disability; observation; and specific documentation for the eligibility determination).

(xxiv) 34 CFR 300.320—300.325 (relating to definition of individualized education program; IEP team; parent participation; when IEPs must be in effect; development, review and revision of IEP; and private school placement by public agencies).

(xxv) 34 CFR 300.327 and 300.328 (relating to educational placements; and alternative means of meeting participation).

(xxvi) 34 CFR 300.501—300.508 (relating to opportunity to examine records; parent participation in meetings; independent education evaluation; prior notice by the public agency; content of notice;

procedural safeguards notice; electronic mail; mediation; filing a due process complaint; and due process complaint).

(xxvii) 34 CFR 300.510—300.516 (relating to resolution process; impartial due process hearing; hearing rights; hearing decisions; finality of decisions, appeal and partial review; timelines and convenience of hearings and reviews; and civil action).

(xxviii) 34 CFR 300.518(a), (b) and (d) and 300.519 (relating to child’s status during proceedings; and surrogate parents).

(xxix) 34 CFR 300.530—300.537 (relating to authority of school personnel; determination of setting; appeal; placement during appeals; protections for children not determined eligible for special education and related services; referral to and action by law enforcement and judicial authorities; change of placement because of disciplinary removals; and state enforcement mechanisms).

(xxx) 34 CFR 300.610—300.625 (relating to confidentiality of information; definitions; notice to parents; access rights; record of access; records on more than one child; list of types and locations of information; fees; amendment of records at parent request; opportunity for hearing; result of hearing; hearing procedures; consent; safeguards; destruction of information; and children’s rights).

(c) The requirements of 34 CFR Part 104 are incorporated by reference as follows:

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(2) 104.4—104.8, regarding discrimination prohibited; assurances required; remedial action; designation of responsible employee; and notice.

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(5) 104.21—104.37 regarding accessibility.

§ 711.4. Supervision.

(a) The Commonwealth, through the Department will provide general supervision of special education services and programs provided under this chapter to ensure that charter schools and cyber charter schools comply with § 711.3 (relating to incorporation of Federal regulations).

(b) The Department will supervise charter schools’ and cyber charter schools’ compliance with [the] IDEA in accordance with the policies and procedures in the Department’s IDEA grant application under 34 CFR 300.100 (relating to eligibility for assistance) and as approved by the United States Department of Education.

(c) Charter schools and cyber charter schools shall:

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§ 711.5. Personnel.

(a) *Appropriate certification required.* Persons who provide special education or related services to children with disabilities in charter schools and cyber charter schools shall have appropriate certification, notwithstanding section 1724-A of the act (24 P. S. § 17-1724-A).

(b) **Educational interpreters.** To serve as an educational interpreter at a charter school or cyber charter school, consistent with the Sign Language Interpreter/Transliterators State Registration Act (63 P. S. §§ 1725.1—1725.12), an individual shall meet the qualifications in paragraph (1) or (2) and paragraph (3):

(1) Achieve and provide evidence of a score of 3.5 on the Educational Interpreter Performance Assessment (EIPA) for the appropriate grade level to which the person has been assigned.

(2) Be a qualified educational interpreter or qualified transliterator under the Sign Language Interpreter or Transliterator State Registration Act and its implementing regulations.

(3) Provide evidence of a minimum of 20 hours of staff development activities relating to interpreting or transliterating services annually.

(c) The Department, in consultation with the State Board of Education will review the EIPA score requirement every 2 years.

§ 711.6. Annual report.

(a) The annual report required under section 1728-A(b) of the act (24 P. S. § 17-1728-A(b)) [shall] must include:

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(2) The services, programs and resources being implemented by the charter school or cyber charter school staff.

(3) The services and programs utilized by the charter school or the cyber charter school through contracting with another public agency, other organizations or individuals.

(4) The services and programs utilized by the charter school or the cyber charter school through the assistance of [the] an intermediate unit [in which the charter school is located] as prescribed under [section] sections 1725-A(a)(4) and 1744-A(3) of the act (24 P. S. §§ 17-1725-A(a)(4) and 1744-A(3)).

(5) Staff training in special education utilized by the charter school or the cyber charter school through the Department’s training and technical assistance network and intermediate unit.

(b) The annual report [shall] must include an assurance that the charter school or the cyber charter school is in compliance with Federal laws and regulations governing children with disabilities and the requirements of this chapter.

(c) The annual report [shall] must include the age and type of exceptionality for each enrolled child with a disability; the level of intervention provided to each child with a disability; certification of staff providing services to each child with a disability; and programs and services available to children with a disability.

§ 711.7. Enrollment.

(a) A charter school or cyber charter school may not deny enrollment or otherwise discriminate in its admission policies or practices on the basis of a child’s disability or the child’s need for special education or supplementary aids or services.

(b) Subject to subsection (a), a charter school or cyber charter school may limit admission to a particular grade level or areas of concentration of the school such as mathematics, science or the arts. A charter school or cyber charter school may establish reasonable criteria to evaluate prospective students which shall be outlined in the school charter.

(c) A charter school **or cyber charter school** may not discriminate in its admission policies or practices on the basis of intellectual ability. Admission criteria may not include measures of achievement or aptitude.

§ 711.8. Education records.

(a) When the educational records for a child with a disability are transferred from a public agency, private school, approved private school or private agency, to a charter school **or cyber charter school**, the public agency, private school, approved private school or private agency from which the child transferred shall forward all of the child's educational records, including the most recent IEP, within 10 days after the public agency, private school, approved private school or private agency is notified in writing that the child is enrolled in a charter school **or cyber charter school**.

(b) When the educational records for a child with a disability are transferred to a public agency, private school, approved private school or private agency from a charter school **or cyber charter school**, the charter school **and cyber charter schools** shall forward the child's educational records, including the most recent IEP, within 10 school days after the charter school **or cyber charter school** is notified in writing that the child is enrolled at another public agency, private school, approved private school or private agency.

(c) Charter schools **and cyber charter schools** shall maintain educational records for children with disabilities consistent with the regulations for the Family Educational Rights and Privacy Act of 1974 (20 U.S.C.A. §§ 1221 note and 1232g) in 34 CFR Part 99 (relating to family educational rights and privacy).

§ 711.9. Payments.

(a) The child's school district of residence shall provide the special education payments required by section 1725-A(a)(3) of the act (24 P.S. § 17-1725-A(a)(3)) to the charter school either when:

(1) A child with an IEP **[from a school entity in this Commonwealth]** begins attending the charter school **or cyber charter school**.

(2) The charter school **or cyber charter school** has identified an enrolled child as a child with a disability under **[the]** IDEA, has developed an IEP for the child**[,]** and notifies the district of residence of the identification.

(b) When a child for whom a charter school **or cyber charter school** received the special education payment required under section 1725-A(a)(3) of the act enrolls in another public agency, private school or private agency **[in this Commonwealth]**, the charter school **or cyber charter school** shall immediately inform the child's school district of residence that its payment responsibilities under section 1725-A(a)(3) of the act have ceased.

§ 711.10 Complaint procedure.

The Department will establish a complaint procedure consistent with 34 CFR 300.151–300.153 (relating to adoption of State complaint procedures; minimum State complaint procedures; and filing a complaint) and disseminate notice of that procedure.

IDENTIFICATION AND EVALUATION

§ 711.21. Child find.

(a) To enable the Commonwealth to meet its obligations under **[34 CFR 300.125] 34 CFR 300.111** (relat-

ing to child find), each charter school **and cyber charter school** shall establish written policies and procedures to ensure that all children with disabilities **[that] who** are enrolled in the charter school **or cyber charter school**, and who are in need of special education and related services, are identified, located and evaluated.

(b) Each charter school's **or cyber charter school's** written policy **[shall] must** include:

(1) Public awareness activities sufficient to inform parents of children applying to or enrolled in the charter school **or cyber charter school** of available special education services and programs and how to request those services and programs.

(2) Systematic screening activities that lead to the identification, location and evaluation of children with disabilities enrolled in the charter school **or cyber charter school**.

§ 711.22. Reevaluation.

(a) The parent or teacher of a child with a disability has the right under 34 CFR Part **[300] 300.303(b) [(relating to assistance to states for the education of children with disabilities)] (relating to reevaluations)** to request a reevaluation **[at any time] annually. More frequent reevaluations may only occur if the parent and charter school or cyber charter school agree.**

(b) Charter schools **and cyber charter schools** shall reevaluate students with disabilities at least once every 3 years.

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§ 711.23. Screening

(a) Each charter school **and cyber charter school** shall establish a system of screening which may include prereferral intervention services to accomplish the following:

(1) Identification and provision of initial screening for students prior to referral for a special education evaluation, including those services outlined in subsection (c).

(2) Provision of peer support for teachers and other staff members to assist them in working effectively with students in the general education curriculum.

(3) Identification of students who may need special education services and programs.

(b) The screening process must include:

(1) Hearing and vision screening in accordance with section 1402 of the Public School Code of 1949 (24 P.S. § 14-1402) for the purpose of identifying students with hearing or vision difficulty so that they can be referred for assistance or recommended for evaluation for special education.

(2) Screening at reasonable intervals to determine whether all students are performing based on grade-appropriate standards in core academic subjects.

(c) Each charter school **and cyber charter school** may develop a program of prereferral intervention services. In the case of charter schools and cyber charter schools meeting the criteria in 34 CFR

300.646(b)(2) (relating to disproportionality), as established by the State agency, the services are required and include:

(1) A verification that the student was provided with appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the Elementary and Secondary Education Act (ESEA) (20 U.S.C.A. § 6368(3)), and appropriate instruction in math.

(2) For students with academic concerns, an assessment of the student's performance in relation to State-approved grade level standards.

(3) For students with behavioral concerns, a systematic observation of the student's behavior in the school environment where the student is displaying difficulty.

(4) A research-based intervention to increase the student's rate of learning or behavior change based on the results of the assessments under paragraph (2) or (3), or both.

(5) Repeated assessments of achievement or behavior, or both, conducted at reasonable intervals, reflecting formal monitoring of student progress during the interventions.

(6) A determination as to whether the student's assessed difficulties are the result of a lack of instruction or limited English proficiency.

(7) A determination as to whether the student's needs exceed the functional ability of the regular education program to maintain the student at an appropriate instructional level.

(8) Documentation that information about the student's progress as identified in paragraph (5) was periodically provided to the student's parents.

(d) Screening or prereferral intervention activities may not serve as a bar to the right of a parent to request an evaluation, at any time, including prior to or during the conduct of screening or prereferral intervention activities.

§ 711.24. Evaluation.

(a) The group of qualified professionals, which reviews the evaluation materials to determine whether the child is a child with a disability under 34 CFR 300.306 (relating to determination of eligibility), must include a certified school psychologist when evaluating a child for autism, emotional disturbance, mental retardation, multiple disabilities, other health impairments, specific learning disability or traumatic brain injury.

(b) In addition to the requirements incorporated by reference in 34 CFR 300.301 (relating to initial evaluations), the initial evaluation shall be completed and a copy of the evaluation report presented to the parents no later than 60 school days after the agency receives written parental consent for evaluation.

(c) Copies of the evaluation report shall be disseminated to the parents at least 10 school days prior to the meeting of the IEP team unless this requirement is waived by a parent in writing.

§ 711.25. Criteria for the determination of specific learning disabilities.

Following are State-level criteria for determining the existence of a specific learning disability. Each

charter school and cyber charter school shall develop procedures for the determination of specific learning disabilities that conform to criteria in this section. These procedures shall be included in the school's charter application. To determine that a child has a specific learning disability, the charter school or cyber charter school shall:

(1) Address whether the child does not achieve adequately for the child's age or meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and scientifically based instruction appropriate for the child's age or State-approved grade-level standards:

- (i) Oral expression
- (ii) Listening comprehension.
- (iii) Written expression.
- (iv) Basic reading skill.
- (v) Reading fluency skills.
- (vi) Reading comprehension.
- (vii) Mathematics calculation.
- (viii) Mathematics problem solving.

(2) Use one of the following procedures:

(i) A process based on the child's response to scientific, research-based intervention, which includes documentation that:

(A) The student received high quality instruction in the general education setting.

(B) Research-based interventions were provided to the student.

(C) Student progress was regularly monitored.

(ii) A process that examines whether a child exhibits a pattern of strengths and weaknesses, relative to intellectual ability as defined by a severe discrepancy between intellectual ability and achievement, or relative to age or grade.

(3) Have determined that its findings under this section are not primarily the result of any of the following:

- (i) A visual, hearing or orthopedic disability.
- (ii) Mental retardation.
- (iii) Emotional disturbance.
- (iv) Cultural factors.
- (v) Environmental or economic disadvantage.
- (vi) Limited English proficiency.

(4) Ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or mathematics by considering documentation that:

(i) Prior to, or as a part of, the referral process, the child was provided scientifically-based instruction in regular education settings, delivered by qualified personnel, as indicated by observations of routine classroom instruction.

(ii) Repeated assessments of achievement were conducted at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

IEP

§ 711.41. IEP.

(a) When a child with an IEP transfers to a charter school [from another public agency, private school, approved private school or private agency in this Commonwealth] or cyber charter school, the charter school or cyber charter school is responsible upon enrollment for ensuring that the child receives special education and related services in conformity with the IEP, either by adopting the existing IEP or by developing a new IEP for the child in accordance with the requirements of [the] IDEA.

(b) For students who are 14 years of age or older, the charter school or cyber charter school shall include a transition plan which includes appropriate measurable postsecondary goals related to training, education, employment and, when appropriate, independent living skills.

(c) The IEP of each student shall be implemented as soon as possible but no later than 10 school days after its completion.

§ 711.42. Transportation.

(a) [A child with a disability who resides in the school district in which the charter school is located, or who is a resident of a school district which is part of a regional charter school, shall be provided transportation to the charter school on the same terms and conditions as transportation is provided to students attending the schools of the district. Nonresident students shall be provided transportation under section 1361 of the Public School Code of 1949 (24 P. S. § 13-1361).]

School districts shall provide transportation to students with disabilities eligible under IDEA and to protected handicapped students under Section 504, to the charter school in which they are enrolled, if the charter school is located in their school district of residence, a regional charter school of which the school district is a part or a charter school located outside district boundaries at a distance not exceeding 10 miles by the nearest public highway. This includes transportation to an ESY program, if that program is held at the charter school.

(b) Students with disabilities and Section 504 students may require modifications or accommodations for transportation to the charter school. Provision of modifications or accommodations, including specialized equipment and bus aides, in a student's IEP or Section 504 Service Agreement, are the obligation of the charter school.

(c) Cyber charter school students are not required to attend a specific facility to receive their educational services. The act does not require that a student's school district of residence provide transportation for cyber charter school students. If transportation is required as a related service in the IEP of the student with disabilities, who is enrolled in a cyber charter school, the cyber charter school shall provide the required transportation.

(d) This chapter does not prohibit a charter school or cyber charter school and a school district from entering into agreements regarding the provision of transportation

as a related service or accommodation to children with disabilities **eligible under IDEA, or students eligible under Section 504.**

§ 711.43. Educational placement.

When the IEP team at a charter school or cyber charter school places a child in another public agency, private school, or private agency, and the parents choose to keep their child enrolled in the charter school or cyber charter school, the charter school or cyber charter school is obligated to pay for that placement.

§ 711.44. ESY.

To implement [34 CFR 300.309 (relating to day; business day; school day)] 34 CFR 300.106 (relating to extended school year services), the State ESY Standards are as follows:

* * * * *

(5) Charter schools and cyber charter schools are responsible for considering the need for ESY services for each eligible student, including each student placed by the charter school or cyber charter school in an approved private school or other placement site not operated by the charter school or cyber charter school.

(6) Consideration of the need for ESY services shall occur at the IEP team meeting to be convened annually, or more frequently if conditions warrant consistent with Federal requirements in 34 CFR [300.343(c) (relating to IEP meetings)] 300.324(b) (relating to development, review and revision of IEP). Consideration means that ESY services are raised and discussed at the IEP team meeting. In making a determination that a student is eligible for ESY services, the IEP team shall rely on criteria in this section and applicable judicial decisions.

* * * * *

§ 711.45. Access to instructional materials.

(a) The Department adopts the National Instructional Materials Accessibility Standard (NIMAS) as defined in section 674(e)(3)(B) of IDEA (20 U.S.C.A. § 1474(e)(3)(B)), and set forth at 71 FR 41084 (July 19, 2006) for the purpose of providing print instructional materials in alternate accessible formats or specialized formats to blind persons or other persons with print disabilities in a timely manner. To insure the timely provision of high quality, accessible instructional materials to children who are blind or other persons with print disabilities, charter schools and cyber charter schools shall adopt the NIMAS. The NIMAS refers to a standard for source files of print instructional materials created by publishers that may be converted into accessible instructional materials.

(b) Charter schools and cyber charter schools shall provide print instructional materials in specialized, accessible formats (that is, Braille, audio, digital, large-print, and the like) to children who are blind or other persons with print disabilities, as defined in IDEA to provide books for adult blind approved March 3, 1931, (See 2 U.S.C.A. § 135a (regarding books and sound reproduction records for blind and other physically handicapped residents annual appropriations and purchases)), in a timely manner.

(c) Charter schools and cyber charter schools act in a timely manner in providing instructional mate-

rials under subsection (a) if they take all reasonable steps to ensure that children who are blind or other persons with print disabilities have access to their accessible format instructional materials at the same time that students without disabilities have access to instructional materials. Charter schools and cyber charter schools may not withhold instructional materials from other students until instructional materials in accessible formats are available.

(d) Receipt of a portion of the instructional materials in alternate accessible or specialized format shall be considered receipt in a timely manner if the material received covers the chapters that are currently being taught in the student's class.

(e) If a child who is blind or other person with a print disability enrolls in school after the start of the school year, a charter school or cyber charter school shall take all reasonable steps to ensure that the student has access to accessible format instructional materials within 10 school days from the time it is determined that the child requires printed instructional materials in an alternate accessible or specialized format.

(f) The Department, charter schools or cyber charter schools may coordinate with the National Instructional Materials Access Center (NIMAC) to facilitate the production of and delivery of accessible materials to children who are blind or other persons with print disabilities. The NIMAC refers to the central repository, established under section 674(e) of IDEA (20 U.S.C.A. § 1474(e)), which is responsible for processing, storing and distributing NIMAS files of textbooks and core instructional materials.

(g) Charter schools and cyber charter schools coordinating with NIMAC shall require textbook publishers to deliver the contents of print instructional materials to the NIMAC in NIMAS format files on or before delivery of the print instructional materials to the charter schools or cyber charter schools. Charter schools or cyber charter schools that choose not to coordinate with NIMAC may require that publishers deliver the contents of print instructional materials to the NIMAC in NIMAS format files on or before delivery of the print instructional materials to the charter schools or cyber charter schools.

§ 711.46. Behavior support.

(a) Positive rather than negative measures shall form the basis of behavior support programs to ensure that all students are free from demeaning treatment and aversive techniques or the inappropriate use of restraints. Behavior support programs include a variety of techniques to develop and maintain skills that will enhance an individual student's opportunity for learning and self-fulfillment. The types of intervention chosen for a particular student must be the least intrusive necessary.

(b) Notwithstanding the requirements incorporated by reference in 34 CFR 300.34, 300.324, 300.530 (relating to related services; development, review, and revision of IEP; and authority of school personnel), with regard to a child's behavior, the following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

Aversive techniques—Deliberate activities designed to establish a negative association with a specific behavior.

Behavior support—The development, change and maintenance of selected behaviors through the systematic application of behavior change techniques.

Positive techniques—Methods which utilize positive reinforcement and other positive techniques to shape a student's behavior, ranging from the use of positive verbal statements as a reward for good behavior to specific tangible rewards.

Restraints—

(i) Devices and techniques, that last longer than 30 consecutive seconds, designed and used to control acute, episodic behaviors, including aggressive or self-injurious behaviors. Redirection or physical prompting as a teaching technique when a student does not exhibit active resistance is not considered a restraint. Devices, objects or techniques prescribed by a qualified medical professional for reasons of safety or for therapeutic or medical treatments are excluded from this definition.

(ii) Examples excluded from this definition include devices used for physical or occupational therapy, seatbelts in wheelchairs or on toilets for balance and safety, safety harnesses in buses, functional positioning devices, or hand over hand assistance with feeding or task completion.

(c) Restraints to control acute or episodic aggressive or self-injurious behavior may be used only when the student is acting in a manner as to be a clear and present danger to himself, to other students or to employees, and only when less restrictive measures and techniques have proven to be or are less effective.

(1) When there is evidence to suggest that the emergency use of restrictive procedures, such as restraints may be necessary to ensure a student's safety or the safety of others, parental consent should be obtained. If a restrictive procedure is needed on an emergency basis, parents should be informed and consent for future uses obtained within 10 school days following the need for the use of a restrictive procedure. The need for restrictive procedures for safety should be noted in the student's IEP.

(2) The use of restraints to control the aggressive and self-injurious behavior on the part of an individual student shall cause a meeting of the IEP team within 10 school days of the behavior causing the use of restraints unless the use of restraint was consistent with the explicit provisions of the existing IEP and that IEP remains current and appropriate for the student. At this meeting, the team shall consider whether the student needs a behavioral assessment, reevaluation, a new or revised behavior plan, or a change of placement to address the inappropriate behavior.

(3) The use of restraints may not be included in the IEP for the convenience of staff, as a substitute for an educational program or employed as punishment.

(4) Charter schools and cyber charter schools shall maintain and report data on the use of restraints as prescribed by the Secretary.

(d) Mechanical restraints, which are used to control involuntary movement or lack of muscular control of students when due to organic causes or conditions, may be employed only when specified by an IEP and as determined by a medical professional qualified to make the determination, and as agreed to by the student's parents. Mechanical restraints shall prevent a student from injuring himself or others or promote normative body positioning and physical functioning.

(e) The use of prone (face down) restraints is prohibited in educational programs, unless specifically directed by a physician and documented in the student's current IEP.

(f) The following aversive techniques of handling behavior are considered inappropriate and may not be used by charter schools or cyber charter schools in educational programs:

- (1) Corporal punishment.
- (2) Punishment for a manifestation of a student's disability.
- (3) Locked rooms, locked boxes or other locked structures or spaces from which the student cannot readily exit.
- (4) Noxious substances.
- (5) Deprivation of basic human rights, such as withholding meals, water or fresh air.
- (6) Suspensions constituting a pattern.
- (7) Treatment of a demeaning nature.
- (8) Electric shock.

(g) Charter schools and cyber charter schools have the primary responsibility for ensuring that behavior support programs are in accordance with this chapter, including the training of personnel for the use of specific procedures, methods and techniques, and for having a written policy and procedures on the use of behavior support techniques and obtaining parental consent prior to the use of highly restraining or intrusive procedures.

(h) Charter schools and cyber charter schools shall notify parents within 24 hours of the school's awareness of injuries requiring treatment by medical personnel that occur as the result of self-injurious behavior or a nonaccidental act by another student. The charter school or cyber charter school shall conduct a review within 10 school days, which includes consideration as to whether the student causing the injury needs a behavioral assessment, reevaluation, a new or revised behavior plan, or other change in program or placement. Any recommended changes or determinations should be communicated to the parent and other IEP team members who may request that an IEP meeting be held.

(i) Charter schools and cyber charter schools may convene a review, including the use of human rights committees, to oversee the use of restrictive or intrusive procedures or restraints.

PROCEDURAL SAFEGUARDS

§ 711.61. Suspension and expulsion.

(a) For purposes of this chapter, the terms "suspension" and "expulsion" have the meanings as set forth in § 12.6 (relating to exclusions from school).

(b) Charter schools and cyber charter schools shall comply with Chapter 12 (relating to students) and [34 CFR 300.519—300.529] 34 CFR 300.530—300.537, regarding discipline procedures.

* * * * *

(d) When a child with a disability has been expelled from a charter school or cyber charter school, the charter school or cyber charter school shall provide the child with a disability with the education required under § 12.6(e) until the charter school or cyber charter school is notified in writing that the child is enrolled in another public agency, private school, approved private school or private agency.

§ 711.62. Procedural safeguards.

(a) The charter school or cyber charter school shall ensure that procedures are established and implemented to allow parties to disputes regarding any matter described in 34 CFR 300.503(a)(1) (relating to prior notice by the public agency; content of notice), to resolve the dispute through a mediation process that, at a minimum, must be available whenever a hearing is requested under 34 CFR 300.507 (relating to filing of a due process complaint) or [300.520—300.528] 34 CFR 300.530—300.537, regarding discipline procedures.

(b) The following apply to coordination services for special education and Section 504 hearings and to hearing officers and appellate hearing officers:

(1) The Secretary may contract for coordination services in support of hearings conducted by local charter schools or cyber charter schools. The coordination services shall be provided on behalf of charter schools or cyber charter schools and may include arrangements for stenographic services, arrangements for hearing officer services, scheduling of hearings and other functions in support of procedural consistency and the rights of the parties to hearings.

(2) If a charter school or cyber charter school chooses not to utilize the coordination services under paragraph (1), it may conduct hearings independent of the services if it has obtained the Secretary's approval of procedures that similarly provide for procedural consistency and ensure the rights of the parties. In the absence of approval, a charter school or cyber charter school which receives a request for an impartial due process hearing shall forward the request within 5 days of its receipt to the entity providing coordination services under paragraph (1).

* * * * *

(5) Impartial due process hearings, appeal panel proceedings and the hearing officers who conduct the hearings and proceedings shall be subject to 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

(c) A charter school or cyber charter school may request a hearing to proceed with an initial evaluation or a reevaluation when a parent fails to respond to the charter school's or cyber charter school's evaluation or reevaluation. When a parent rejects the charter school's or cyber charter school's proposed identification of a child, proposed evaluation, proposed provision of a free appropriate public education or proposed educational placement, other than the initial placement, the charter school or cyber charter school may request an impartial due process hearing. If the parent fails to

respond or refuses to consent to the initial provision of special education services, neither due process nor mediation may be used to obtain agreement or a ruling that the services may be provided.

(d) The following time line applies to due process hearings:

(1) A hearing shall be held after the conclusion of the resolution session under 34 CFR 300.510 (relating to resolution process) or after one of the parties withdraws from mediation or the parties agree to waive or end the resolution session.

(2) The hearing officer's decision shall be issued within 45 days after the resolution or mediation session ends without resolution or agreement date.

(e) Except as provided by 34 CFR 300.533 (relating to placement during appeals), during the pendency of any mediation proceeding conducted in accordance with 34 CFR 300.506 (relating to mediation), unless the school entity and the parents of the child agree otherwise, the child that is the subject of the mediation shall remain in the child's then current education placement until the mediation process is concluded.

(f) The resolution session required by 34 CFR 300.510 shall be available to parents of both school age and eligible young children with disabilities. Parent advocates may attend the sessions.

[Pa.B. Doc. No. 07-2201. Filed for public inspection December 7, 2007, 9:00 a.m.]

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 91]

Boating Safety Education Certificates and Criteria for Courses in Boating Safety Education

The Fish and Boat Commission (Commission) proposes to amend 58 Pa. Code Chapter 91 (relating to general provisions). 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 amends the regulations regarding Boating Safety Education Certificates and the criteria for courses in boating safety education.

A. Effective Date

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

B. Contact Person

For further information on the proposed rulemaking, contact Laurie E. Shepler, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This proposed rulemaking is available on the Commission's website at www.fish.state.pa.us.

C. Statutory Authority

The proposed amendments to §§ 91.6 and 91.7 (relating to Boating Safety Education Certificates; and criteria for courses of instruction in boating safety education) are published under the statutory authority of section 5103 of the code (relating to boating education).

D. Purpose and Background

The proposed rulemaking is designed to improve, enhance and update the Commission's boating regulations. The specific purpose of the proposed amendments is described in more detail under the summary of proposal.

E. Summary of Proposal

The act of December 9, 2002 (P. L. 1542, No. 199) (act) amended 30 Pa.C.S. § 5103 (relating to boating education) to provide for mandatory boater education. The act established a requirement for persons born after January 1, 1982, and operating a boat powered by a motor in excess of 25 horsepower to obtain and carry a certificate of boating safety education. The act also required the Commission to promulgate regulations that establish criteria for a course of instruction in boating safety education. The Commission subsequently amended its regulation in § 91.6 to describe more fully what constitutes a Boating Safety Education Certificate and distinguished between residents and nonresidents. The Commission also adopted a new regulation in § 91.7 that authorized the Executive Director to designate, by notice, organizations that offer safety education courses that are acceptable for residents, nonresidents, or both. The section further provided that to be approved by the Commission, a course of instruction in boating safety education has to meet the National Boating Safety Education Standards of the National Association of State Boating Law Administrators (NASBLA) and receive the approval of NASBLA.

After a review of these regulations, the Commission proposes to update them by adopting the following changes. The proposed changes to § 91.6 will simplify the definition of a "Boating Safety Education Certificate." The Commission believes that this change more accurately reflects the intent of the act and will eliminate confusion among boaters who move their boats between states. The proposed amendments to § 91.7 will authorize the Executive Director to publish criteria upon which boating courses may be approved for the purposes of the act. The Executive Director will publish separate criteria for Internet, video and classroom courses. The Commission proposes to amend §§ 91.6 and 91.7 as set forth in Annex A.

F. Paperwork

The proposed rulemaking will not increase paperwork and will create no new paperwork requirements. The Commission currently issues Boating Safety Education Certificates, which will not be changed by the proposed amendments. The Commission will publish course criteria in the *Pennsylvania Bulletin* under the proposed amendments.

G. Fiscal Impact

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

H. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about the proposed rulemaking to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000, within 30 days after publication of this 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.fishandboat.com/reg comments. 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-197. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart C. BOATING

CHAPTER 91. GENERAL PROVISIONS

§ 91.6. Boating Safety Education Certificates.

(a) *Definition.*

(1) For residents of this Commonwealth, [a Boating Safety Education Certificate is one issued to an individual by the Commission. Upon proper application and payment of the appropriate fee, the Commission will issue a Boating Safety Education Certificate to a resident of this Commonwealth who successfully completes a course offered by the Commission, another state, Canada or an organization designated by the Executive Director.

(2) For nonresidents, a Boating Safety Education Certificate is one issued to an individual who successfully completes a course offered by the Commission, another state, Canada or an organization designated by the Executive Director.] a Boating Safety Education Certificate is a document issued by the Commission certifying that the person named on the certificate has established proof of competency through the successful completion of a course approved in accordance with § 91.7 (relating to criteria for courses of instruction in boating safety education).

(3) For nonresidents, a Boating Safety Education Certificate is a certificate, card or other official document that indicates on the certificate, card or other document successful completion of a course approved by the National Association of State Boating Law Administrators.

(b) *Certificate issuance.* The Commission will issue a Pennsylvania Boating Safety Education Certificate to persons who present proof of successful completion of a boating safety education course approved in accordance with § 91.7 and the payment of fees under section 5104 of the code (relating to fees).

(c) *Certificate possession.* When the operator of a boat is required by law or regulation to possess a Boating Safety Education Certificate, it is unlawful to operate the boat on the waters of this Commonwealth without carrying onboard the Boating Safety Education Certificate issued to the operator. A Boating Safety Education Certificate shall be carried so that it can be presented to an officer authorized to enforce this subpart. [In addition to the requirements of this subsection, nonresidents shall carry proof of nonresidency.]

[(c)] (d) *Temporary certificate.* * * *

[(d)] (e) *Boating without a certificate onboard.*

(1) When an operator is found operating a boat without **possessing** a Boating Safety Education Certificate [**onboard**], the operator will cease operation of the boat and follow the instructions of the apprehending officer. The operator may not resume operation of the boat until he demonstrates to the Commission's satisfaction that he possesses a certificate.

* * * * *

[(e)] (f) *Prohibitions.* A person may not alter, borrow, lend or transfer a Boating Safety Education Certificate or give false or misleading information to the Commission, its officers or agents when applying for a **temporary or a permanent** Boating Safety Education Certificate.

§ 91.7. Criteria for courses of instruction in boating safety education.

[The Executive Director may designate, by notice, organizations that offer boating safety education courses that are acceptable for residents, nonresidents, or both. A course of instruction in boating safety education shall meet the National Boating Safety Education Standards of the National Association of State Boating Law Administrators (NASBLA) and shall have received the approval of the NASBLA. These standards and procedures for approval may be obtained from the NASBLA at 1500 Leestown Road, Suite 330, Lexington, Kentucky 40511 or http://www.nasbla.org/education_standards.htm.]

(a) The Executive Director will establish criteria for courses of instruction in boating safety education, and the Executive Director will publish the criteria in the *Pennsylvania Bulletin*.

(b) The Executive Director may approve, by notice, boating safety education courses that meet the course criteria established under this section and will publish a list of approved boating safety education courses in the *Pennsylvania Bulletin* on an annual basis or more frequently as required.

[Pa.B. Doc. No. 07-2202. Filed for public inspection December 7, 2007, 9:00 a.m.]

[58 PA. CODE CH. 111]

Boating; Special Regulations Counties

The Fish and Boat Commission (Commission) proposes to amend 58 Pa. Code Chapter 111 (relating to special regulations counties). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The proposed rulemaking amends the regulation relating to boating in Allegheny County.

A. *Effective Date*

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

B. *Contact Person*

For further information on the proposed rulemaking, contact Jason E. Oyler, 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*

The proposed amendment to § 111.2 (relating to Allegheny County) is published under the statutory authority of section 5124 of the code (relating to particular areas of water).

D. *Purpose and Background*

The proposed rulemaking is designed to improve, enhance and update the Commission's boating regulations. The specific purpose of the proposed amendment is described in more detail under the summary of proposal.

E. *Summary of Proposal*

Several years ago, the Commission amended § 111.2(c) to extend the slow, no-wake zone (SNW) on the Allegheny River from the Fort Duquesne Bridge upriver to the Fort Wayne (Norfolk Southern) Bridge. The Commission, however, has been unable to enforce this extension of the SNW zone because it has not been properly marked.

Commission staff made numerous attempts to receive permission from the bridge owner to place SNW signs on the bridge, but a suitable agreement could not be reached. Staff subsequently received permission from the Department of Transportation to place SNW signs on the 9th Street Bridge, which is downriver approximately 1,000 feet from the Fort Wayne (Norfolk Southern) Bridge. The signs were installed on the 9th Street Bridge in May of this year.

The Commission proposes to amend § 111.2(c) to designate the 9th Street Bridge as the upriver SNW limit on the Allegheny River as set forth in Annex A. Prior to the Commission's action, its Boating Advisory Board considered this item and recommended that the Commission approve the publication of a notice of proposed rulemaking containing the amendment.

F. *Paperwork*

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

G. *Fiscal Impact*

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

H. *Public Comments*

Interested persons are invited to submit written comments, objections or suggestions about the proposed rulemaking to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000, within 30 days after publication of this 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.fishandboat.com/reg comments. 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-196. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart C. BOATING

CHAPTER 111. SPECIAL REGULATIONS COUNTIES

§ 111.2. Allegheny County.

* * * * *

(c) *Allegheny, Monongahela and Ohio Rivers (City of Pittsburgh)*. Boats are limited to slow, no-wake speed from the Fort Pitt Bridge over the Monongahela River and the [**Fort Wayne (Norfolk Southern)] 9th Street** Bridge over the Allegheny River to the West End Bridge over the Ohio River. This zone shall be in effect on weekends from May 1 to October 1 from 3 p.m. Friday until midnight Sunday and from 3 p.m. on the day preceding Memorial Day, July 4th and Labor Day until midnight of the holiday.

* * * * *

[Pa.B. Doc. No. 07-2203. Filed for public inspection December 7, 2007, 9:00 a.m.]

[58 PA. CODE CHS. 53 and 63]

Commission Property; General Fishing Regulations

The Fish and Boat Commission (Commission) proposes to amend Chapters 53 and 63 (relating to Commission property; and general fishing regulations). 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 upon publication in the *Pennsylvania Bulletin*.

B. *Contact Person*

For further information on the proposed rulemaking, contact Laurie E. Shepler, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This proposed rulemaking is available on the Commission's website at www.fish.state.pa.us.

C. *Statutory Authority*

The proposed amendment to § 53.24 (relating to tournament and fishing derby permits) is published under the statutory authority of section 741 of the code (relating to control of property). The proposed amendment to § 63.40 (relating to fishing tournaments and fishing derbies) is published under the statutory authority of section 2102(a) 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 bass tournaments. The specific purpose of the proposed amendments is described in more detail under the summary of proposal.

E. *Summary of Proposal*

The Commission is seeking public input on a proposed prohibition on bass fishing tournaments on the West

Branch, North Branch and main stem of the Susquehanna River that permit the harvest of fish. This proposal was generated in response to angler concerns about organized events that focus on taking fish, especially at a time when agency biologists and bass fishermen have concerns about the relatively weak reproduction of young smallmouth bass in parts of the river system in recent years. To address this matter, the Commission proposes that §§ 53.24 and 63.40 be amended to read as set forth in Annex A.

F. Paperwork

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

G. Fiscal Impact

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

H. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about the proposed rulemaking to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000, within 30 days after publication of this 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.fishandboat.com/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-199. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 53. COMMISSION PROPERTY

§ 53.24. Tournament and fishing derby permits.

* * * * *

(e) *Prohibited acts.* It is unlawful to conduct a fishing tournament or fishing derby on Commission owned or controlled property except in compliance with permit conditions. It is unlawful to conduct a tournament or fishing derby on Commission owned or controlled property on the opening day for any species of game fish unless the applicant has made an extraordinary showing that the proposed tournament will not interfere with other fishing and boating activities and the Commission issues a special activity permit containing a specific finding, based upon the applicant's showing, that the permitted activity will not constitute interference. It is unlawful to conduct or participate in a fishing tournament or fishing derby involving the catch or attempted catch of a particular species of fish during the closed season for that species. **It is unlawful to conduct a fishing tournament on the North Branch, West Branch or main stem of the Susquehanna River that allows tournament anglers to harvest bass.**

* * * * *

CHAPTER 63. GENERAL FISHING REGULATIONS

§ 63.40. Fishing tournaments and fishing derbies.

* * * * *

(d) *Prohibited acts.* It is unlawful to conduct a fishing tournament or fishing derby on Commonwealth waters except in compliance with permit conditions. It is unlawful to conduct a tournament or fishing derby on Commonwealth waters on the opening day for any species of game fish unless the applicant has made an extraordinary showing that the proposed tournament will not interfere with other fishing and boating activities and the Commission issues a special activity permit containing a specific finding, based upon the applicant's showing, that the permitted activity will not constitute interference. It is unlawful to conduct or participate in a fishing tournament or fishing derby involving the catch or attempted catch of a particular species of fish during the closed season for that species. **It is unlawful to conduct a fishing tournament on the North Branch, West Branch or main stem of the Susquehanna River that allows tournament anglers to harvest bass.**

[Pa.B. Doc. No. 07-2204. Filed for public inspection December 7, 2007, 9:00 a.m.]

[58 PA. CODE CH. 65]

Fishing; Special Fishing Regulations

The Fish and Boat Commission (Commission) proposes to amend Chapter 65 (relating to special fishing regulations). 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 upon publication in the *Pennsylvania Bulletin*.

B. *Contact Person*

For further information on the proposed rulemaking, contact Jason E. Oyler, 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*

The proposed amendments to §§ 65.4a, 65.5—65.7, 65.10, 65.14 and 65.15 are published under the statutory authority of section 2102(a) 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 fishing regulations. The specific purpose of the proposed amendments is described in more detail under the summary of proposals.

E. *Summary of Proposals*

In recent months, the public as well as staff from the Commission's Bureaus of Fisheries and Law Enforcement have raised concerns regarding a number of existing special regulation programs for trout on waters that may be large enough to permit boating. When regulation changes occur along a stream and a person angling from a boat that traverses from a section of stream that is

under one set of regulations into another section under different regulations, that person could be in violation of the law for the section they just entered. For example, if one section of stream is managed under § 61.1 (relating to Commonwealth inland waters) for trout, a creel limit of five fish is in effect from the first Saturday after April 11 until Labor Day and bait is permitted. However, if the next downstream section is regulated under § 65.6 (relating to delayed harvest artificial lures only areas), harvest is only permitted from June 15 until Labor Day, the creel limit during this period is three, and bait is not permitted. Anglers boating from the upstream section to the downstream section any time before June 15 in this example would be in violation of the delayed harvest regulations if they had either trout or bait on board, even though these fish had been taken lawfully and gear used lawfully in the upstream section.

To address this matter, the Commission proposes that §§ 65.4a, 65.5—65.7, 65.10, 65.14 and 65.15 be amended to read as set forth in Annex A.

F. Paperwork

The proposed rulemaking will slightly increase paperwork and will create new paperwork requirements in that the Commission will have to post signs notifying anglers of the regulatory change on the water areas that are implicated.

G. Fiscal Impact

The proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The Commission's costs for signage will be modest. The proposed rulemaking will impose no new costs on the private sector or the general public.

H. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about the proposed rulemaking to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000, within 30 days after publication of this 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.fishandboat.com/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-198. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 65. SPECIAL FISHING REGULATIONS

§ 65.4a. All-tackle trophy trout.

* * * * *

(d) Notwithstanding the requirements of this section, an angler in a boat may possess fish caught in compliance with the seasons, sizes and creel limits in effect for the water from which taken, provided that the boat angler floats through the all-tackle

trophy trout area without stopping or engaging in the act of fishing or the boat angler takes out his boat at an access point within the all-tackle trophy trout area.

§ 65.5. Catch and release areas.

* * * * *

(c) Notwithstanding the requirements of this section, an angler in a boat may possess bait and fish caught in compliance with the seasons, sizes and creel limits in effect for the water from which taken, provided that the boat angler floats through the catch and release area without stopping or engaging in the act of fishing or the boat angler takes out his boat at an access point within the catch and release area.

§ 65.6. Delayed harvest artificial lures only areas.

* * * * *

(c) Notwithstanding the requirements of this section, an angler in a boat may possess bait and fish caught in compliance with the seasons, sizes and creel limits in effect for the water from which taken, provided that the boat angler floats through the delayed harvest artificial lures only area without stopping or engaging in the act of fishing or the boat angler takes out his boat at an access point within the delayed harvest artificial lures only area.

§ 65.7. Trophy Trout Program.

* * * * *

(c) Notwithstanding the requirements of this section, an angler in a boat may possess bait and fish caught in compliance with the seasons, sizes and creel limits in effect for the water from which taken, provided that the boat angler floats through the trophy trout area without stopping or engaging in the act of fishing or the boat angler takes out his boat at an access point within the trophy trout area.

§ 65.10. Early Season Trout Stocked Waters Program.

* * * * *

(c) Notwithstanding the requirements of this section, an angler in a boat may possess fish caught in compliance with the seasons, sizes and creel limits in effect for the water from which taken, provided that the boat angler floats through the water designated as part of the Early Season Trout Stocked Waters Program without stopping or engaging in the act of fishing or the boat angler takes out his boat at an access point within the water designated as part of the Early Season Trout Stocked Waters Program.

§ 65.14. Catch and release fly-fishing only areas.

* * * * *

(c) Notwithstanding the requirements of this section, an angler in a boat may possess bait and fish caught in compliance with the seasons, sizes and creel limits in effect for the water from which taken, provided that the boat angler floats through the catch and release fly-fishing only area without stopping or engaging in the act of fishing or the boat angler takes out his boat at an access point within the catch and release fly-fishing only area.

§ 65.15. Catch and release all-tackle areas.

* * * * *

(c) Notwithstanding the requirements of this section, an angler in a boat may possess fish caught in compliance with the seasons, sizes and creel limits in effect for the water from which taken, provided that the boat angler floats through the catch and release all-tackle area without stopping or engaging in the act of fishing or the boat angler takes out his boat at an access point within the catch and release all-tackle area.

[Pa.B. Doc. No. 07-2205. Filed for public inspection December 7, 2007, 9:00 a.m.]

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CH. 437a]

Vendor Certification and Registration

The Pennsylvania Gaming Control Board (Board), under the general authority in 4 Pa.C.S. §§ 1202(b)(30) and 1321 (relating to general and specific powers; and additional licenses and permits and approval of agreements) proposes to amend Chapter 437a (relating to vendor certification and registration) to read as set forth in Annex A.

Purpose of the Proposed Rulemaking

These amendments modify provisions related to registration of vendors and clarify the procedures for requesting permission to conduct business prior to certification or registration.

Explanation of Amendments to Chapter 437a

Currently, applications for certification or registration of vendors must be submitted by an applicant for or holder of a slot machine license. These amendments will give an applicant for registration as a vendor the option to file his applications directly with the Board. This will simplify the application process and is expected to increase the number of registered vendors on the Board's approved vendor list. Because slot machine applicants and licensees may use any vendor on the Board's approved list, this will increase the vendors' opportunities to provide services and give slot machine applicants and licensees more vendors to choose from.

In § 437a.4 (relating to individual certification and investigations) minor revisions have been made to clarify who will be required to file for certification.

Additionally, several references to forms have been updated throughout the chapter to reflect the current names of the applicable forms.

Affected Parties

Slot machine applicants and licensees and applicants for vendor registration will benefit from having another option for applying for registration as a vendor.

There are currently 11 slot machine licensees, 4 applicants for slot machine licenses and 168 registered vendors.

Fiscal Impact

Commonwealth

There will be no new costs to the Board or other Commonwealth agencies as a result of this proposed rulemaking. Because the application for a vendor registration will no longer require a Slot Machine Licensee/Applicant's Verification Form, there will be some savings to the Board related to review of vendor registration applications submitted directly by vendors.

Political Subdivisions

This proposed rulemaking will have no fiscal impact on political subdivisions of this Commonwealth.

Private Sector

The Board anticipates that there may be some small direct savings to slot machine applicants and licensees and to applicants for vendor registrations as a result of having another option for applying for registration as a vendor.

Because the Board anticipates an increase in the number of vendors, slot machine applicants and licensees may benefit from increased competition for their business.

General Public

This proposed rulemaking will have no fiscal impact on the general public.

Paperwork Requirements

The proposed amendments eliminate the need for a Slot Machine Licensee/Applicant's Verification Form as part of the vendor registration application when the vendor applies directly.

Effective Date

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

Public Comments

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking, within 30 days after the date of publication in the *Pennsylvania Bulletin* to Paul Resch, Secretary, Pennsylvania Gaming Control Board, P. O. Box 69060, Harrisburg, PA 17106-9060, Attention: Public Comment on Regulation #125-74.

Contact Person

The contact person for questions about this proposed rulemaking is Richard Sandusky, Director of Regulatory Review at (717) 214-8111.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on November 28, 2007, the Board submitted a copy of this proposed rulemaking and a copy of the Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Gaming Oversight Committee and the Senate Community, Economic and Recreational Development Committee. A copy of this material is available to the public upon request.

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

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

MARY DIGIACOMO COLINS,
Chairperson

Fiscal Note: 125-74. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart B. LICENSING, PERMITTING, CERTIFICATION AND REGISTRATION

CHAPTER 437a. VENDOR CERTIFICATION AND REGISTRATION

§ 437a.2. Vendor registration applications.

(a) A vender seeking registration shall [complete and the slot machine applicant or licensee for whom the vendor will provide goods or services shall submit an original and four copies of a Vendor Registration Form unless otherwise directed by the Board.] do one of the following:

(1) Complete an original and four copies of a Vendor Registration Form—Sponsored. The original and copies and the fee toward the cost of the investigation of the applicant posted on the Board's website (www.pgcb.state.pa.us) shall be submitted to the Bureau of Licensing by the slot machine applicant or licensee for whom the vendor will provide goods or services unless otherwise directed by the Board.

(2) Complete an original and four copies of a Vendor Registration Form—Unsponsored. The original and copies and the fee toward the cost of the investigation of the applicant posted on the Board's website (www.pgcb.state.pa.us) shall be submitted to the Bureau of Licensing by the vendor unless otherwise directed by the Board.

* * * * *

§ 437a.3. Vendor certifications applications.

(a) A vendor seeking certification shall complete and the slot machine applicant or licensee for whom the vendor will provide goods or services shall submit:

(1) An original and four copies of a Vendor Certification Application and Disclosure Information Form unless otherwise directed by the Board.

* * * * *

§ 437a.4. Individual certifications and investigations.

(a) If a certified vendor or vendor seeking certification is a publicly traded company or a subsidiary of a publicly traded company, the [officer] officers of the [publicly traded company] certified vendor or vendor seeking certification who [is] are responsible for the conduct of business with the slot machine applicant or licensee shall be required to apply for certification by filing a Pennsylvania Personal History Disclosure Form with the Board.

(b) If a certified vendor or vendor seeking certification is [a privately held entity] not a publicly traded company or a subsidiary of a publicly traded com-

pany, each officer and director of the entity shall be required to apply for certification by filing a Pennsylvania Personal History Disclosure Form with the Board. For the purposes of this subsection, the term "officer" means a president, chief executive officer, a chief financial officer and a chief operating officer, and any person routinely performing corresponding functions with respect to an organization whether incorporated or unincorporated.

* * * * *

§ 437a.5. Construction subcontractors.

(a) A construction subcontractor who is otherwise required to be certified or registered may elect to file an On-site Subordinate [Vendor] Pre-Opening Construction Notification Form with the Board in lieu of registration or certification if:

* * * * *

§ 437a.9. Permission to conduct business prior to certification or registration.

(a) Notwithstanding § 437a.1 (relating to general vendor requirements), the Board may allow an applicant for a vendor certification or registration to conduct business with a slot machine applicant or licensee prior to the certification or registration of the vendor applicant if the following criteria are met:

(1) A completed Vendor Registration Form—Unsponsored has been filed by the vendor, a completed Vendor Registration Form—Sponsored has been filed by the slot machine applicant or licensee or a completed Vendor Certification Application and Disclosure Information Form has been filed by the slot machine applicant or licensee in accordance with § 437a.2 or § 437a.3 (relating to vendor registration applications; and vendor certification applications).

* * * * *

§ 437a.10. Emergency vendor.

* * * * *

(b) When using a vendor that is not registered or certified to respond to an emergency, the slot machine applicant or licensee shall:

(1) File a Vendor Emergency Notification Form with the Board within 72 hours of the vendor's commencement of services.

* * * * *

[Pa.B. Doc. No. 07-2206. Filed for public inspection December 7, 2007, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CHS. 5 AND 102]

[L-00070185/57-256]

Implementation of the Public Utility Confidential Security Information Disclosure Protection Act

The Pennsylvania Public Utility Commission (Commission) on August 30, 2007, adopted a proposed rulemaking order which establishes protocols and procedures to be followed when public utilities file records with the Commission containing confidential security information and

challenges to the utility's designations or requests to examine records containing confidential security information are made.

Executive Summary

On November 29, 2006, Governor Edward Rendell signed into law the Public Utility Confidential Security Information Disclosure Protection Act (CSI Act) (35 P. S. §§ 2141.1—2141.6). The CSI Act provides safeguards for confidential security information of public utilities that is provided to State agencies such as the Commission from disclosure that may compromise security against sabotage or criminal or terrorist acts. In creating this mandate of nondisclosure of confidential security information, the CSI Act directs the Commission to develop, among other things: (1) filing protocols and procedures for public utilities to follow when submitting records containing confidential security information; and (2) protocols and procedures to address challenges to the designations or requests to examine records containing confidential security information. 35 P. S. § 2141.3.

The rulemaking went through an advance notice published in the *Pennsylvania Bulletin* on May 5, 2007, and the Commission received comments and reply comments from several parties. The proposed regulations in 52 Pa. Code Chapter 102 (relating to confidential security information) spell out the purpose of the new regulations; provide a series of definitions that are identical to the corresponding definitions in the CSI Act, except for "member of the public," which is defined in a way to be consistent with section 2 of the Right-to-Know Law (65 P. S. § 66.2); and address the filing and challenge procedures contemplated by the CSI Act. The proposed regulations address issues such as how a utility is to label confidential security information to be filed with the Commission, how the Commission is to handle previously-filed unmarked records in its possession and how electronic submissions will be treated. The proposed rulemaking also amends § 5.423 (relating to orders to limit availability of proprietary information) by adding a new subsection (g) whose sole purpose is to refer the reader to the new Chapter 102.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on November 1, 2007, the Commission submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Committees. In addition to submitting the proposed rulemaking, the Commission provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Commission. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed rulemaking, it will notify the Commission within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria that have not been met by the portion of the proposed rulemaking to which an objection is made. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the amendments, by the Commission, the General Assembly and the Governor of objections raised.

Public Meeting held
August 30, 2007

Commissioners Present: Wendell F. Holland, Chairperson; James H. Cawley, Vice Chairperson; Terrance J. Fitzpatrick; Tyrone J. Christy; Kim Pizzingrilli

Proposed Rulemaking Regarding Implementation of the Public Utility Confidential Security Information Disclosure Protection Act; L-00070185

Implementation of the Public Utility Confidential Security Information Disclosure Protection Act; M-00072014

Proposed Rulemaking Order

By the Commission:

This proposed rulemaking establishes, in furtherance of the Public Utility Confidential Security Information Disclosure Protection Act (35 P. S. §§ 2141.1—2141.6) (CSI Act), protocols and procedures that must be followed when: (1) public utilities file records with the Commission that contain confidential security information; and (2) challenges to the utility's designations or requests to examine records containing confidential security information are made by members of the public.

A. Background and Procedural History

On April 20, 2007, the Commission entered an order at this docket directing an Advance Notice of Proposed Rulemaking be issued to solicit comments regarding the development of the regulations necessary to implement the CSI Act. As stated in the April 20, 2007, order, the purpose of the CSI Act is to create mechanisms for the safeguarding of confidential security information of public utilities that is provided to various state agencies such as the Commission from disclosure that may compromise security against sabotage or criminal or terrorist acts.

In creating this mandate of nondisclosure of confidential security information, the CSI directs the Commission to develop: (1) filing protocols and procedures for public utilities to follow when submitting records containing confidential security information; (2) protocols and procedures to address challenges to the designations or requests to examine records containing confidential security information; and (3) protocols and procedures to protect public utility records or portions thereof that contain confidential security information from prohibited disclosure by Commission employees. 35 P. S. § 2141.3.

It is the first two protocols listed above—filing requirements for confidential security information and procedures to address challenges to or requests to review confidentiality designations—we concluded were most appropriate for our rulemaking process because they are procedures to be followed by outside parties such as utilities, ratepayers and the statutory advocates. In the Advance Notice, we particularly asked for comments on the following issues: (1) the factors that should be used to determine whether a public utility's designation of a record or portion thereof as "confidential security information" should be upheld by the Commission in the face of a challenge; (2) when InfoMAP is implemented by the Commission, whether electronic filing of documents containing confidential security information should be allowed (or should only hard copies be filed), and if the answer is yes, whether any special rules need to be implemented for electronic filings; and (3) the procedures that should be followed for the statutory advocates to obtain access to the confidential security information when they have a legitimate need to such access.

The Advance Notice was published at 37 Pa.B. 2098 (May 5, 2007), with a 45-day comment period and a 30-day reply comment period. Comments were received from four parties: the Office of Consumer Advocate (OCA), PECO Energy Company (PECO), the National Association of Water Companies, Pennsylvania Chapter (NAWC), and the Energy Association of Pennsylvania (EAPA). Reply comments were received from OCA, PECO and EAPA. These comments and reply comments are discussed in the "Comments and Responses Document" attached to this Order as Appendix A.

B. Discussion

We are proposing today a comprehensive set of regulations that will be applicable to all public utilities in this Commonwealth relating to the filing requirements and challenge procedures outlined in the CSI Act that each State agency is directed to create to help ensure the safeguarding of confidential security information from unwanted disclosure. These proposed regulations reflect our consideration of all the comments and reply comments filed under the Advance Notice, while attempting to satisfy the legislative intent and meaning of the various provisions of the CSI Act. We appreciate and thank all the commenting parties who provided worthwhile suggestions to aid the Commission in the development of its proposed regulations.

As an initial matter, we believe that the proposed regulations fit naturally as a new chapter in Subpart E (relating to public utility security planning and readiness) of our existing regulations dealing with public utility security planning and readiness. However, it is also probable that parties in the future may try to find our confidential security information rules under our existing process in Chapter 5 (relating to formal proceedings) for determining the availability of proprietary information, specifically § 5.423 (relating to orders to limit availability of proprietary information). We have, therefore, suggested adding in our proposed regulations a new § 5.423(g) that refers the reader to the new chapter in Subpart E to ensure that the proper process is used from the outset.

Proposed § 102.1 (relating to purpose) spells out the purpose of the new regulations, which is to establish the filing requirements and challenge procedures relating to confidential security information as mandated by the CSI Act. Proposed § 102.2 (relating to definitions) provides a series of definitions that are identical to the corresponding definitions in the CSI Act, except for "member of the public," which is not specifically defined in the statute. We have defined "member of the public" to be consistent with the Right-to-Know Law, which gives access to public records to "any citizen of the Commonwealth of Pennsylvania." However, given that confidential security information may be relevant in litigation pending before the Commission, including rate cases and safety-related cases, we believe it is appropriate to clarify that "member of the public" also includes public utilities certified by the Commission, the statutory advocates who represent Pennsylvania consumers and small businesses, and the Commission's own Office of Trial Staff and prosecutory staff, all of who regularly participate in litigation before the Commission.

Proposed § 102.3 (relating to filing procedures) addresses the filing procedures mandated by the CSI Act. Subsection (a), which has its genesis from recommendations made by EAPA and PECO in their respective comments, requires utilities, unless directed by the Commission or its staff to do otherwise, to maintain any record containing confidential security information on site

and to rely on the Commission's self-certification process described in Chapter 101 (relating to public utility preparedness through self certification) of the Commission's regulations. We also believe this recommended procedure will minimize the Commission's storage costs and Commission staff's exposure to possible sanctions that could result from mishandling confidential security information filed with the Commission. These were some of the concerns expressed by the OCA in advocating that the Commission should take a stringent view of what type of information should be categorized as confidential security information.

Subsection (b) spells out requirements that are already in the CSI Act, except that subsection (b)(3) spells out further how a public utility shall label confidential security information to be filed with the Commission to ensure that it is properly handled by Commission staff. Similarly, subsection (c) is consistent with the mandates of the CSI Act, which places the burden on the public utility to identify records that contain confidential security information or lose the protections afforded by the statute. The proposed regulation in the last sentence makes clear that any record not properly identified as confidential security information will be treated as a public document and be made available under the Right-to-Know Law.

Subsections (d) and (e) relating to the status of previously-filed unmarked records and the Commission's responsibility for handling unmarked records that may contain confidential security information both come from suggestions made by NAWC in its comments to address areas not expressly covered by the CSI Act, but which nevertheless pose potentially serious liability issues for Commission employees. We believe the proposed regulations contain common sense approaches to dealing with the two issues that protect our employees while maximizing the protections afforded by the statute in areas not expressly covered by the statute.

Subsection (f) deals expressly with one of the areas we asked for specific comments in the Advance Notice—electronic submissions. The proposed regulation acknowledges the Commission's inability at present to handle electronic submissions that would ensure the confidentiality of the filed information and, therefore, provides that until the Commission develops adequate safeguards and notifies the public utility industry that it has developed such safeguards, electronic submissions will be treated as public filings. This proposed regulation is consistent with the unanimous recommendation of all the commenting parties of not supporting electronic filing until appropriate encryption and special software is implemented by the Commission. It is also consistent with the internal procedures recently prepared by the Department of Environmental Resources Policy Office that became effective May 29, 2007, addressing the same issue.

Final § 102.4 (relating to challenge procedures to confidentiality designation) addresses challenge procedures to confidentiality designations and requests to review records containing confidential security information. Proposed subsection (a) spells out the general procedures that will be followed whenever there is a challenge or request to review. This provision makes clear that only records filed with the Commission are subject to this provision while records maintained on-site by the utility

are not subject to this provision. The proposed regulation would require the Commission to issue a Secretarial Letter to notify the public utility of the challenge or request to review. In adversarial cases the matter will be referred to the Office of Administrative Law Judge, while in nonadversarial proceedings the matter will go to the Law Bureau for recommended disposition. Because we are dealing with purported security-related information, the proposed regulation would require the challenger or requester to provide certain basic information including his social security number if an individual and its certification number if another Pennsylvania public utility. Finally, subsection (a) would give the public utility that has designated the information as confidential security information 15 days to respond to the challenge or request to review, and it would give the administrative law judge or the Law Bureau 15 days from the date the utility's response is filed to issue its recommended decision.

Subsection (b) provides that the Commission will apply a balancing test that weighs the sensitivity of the designated confidential security information and the potential harm resulting from its disclosure against the challenger's or requester's need for the information and also lists several factors that will be relevant in the Commission's consideration of whether to grant a request to review confidential security information.

Consistent with the CSI Act, subsection (c) provides that the Commission shall have 60 days to issue its decision in writing. Failure to act within this 60-day window will be deemed a denial of the challenge or request to review. Similarly, subsections (d) and (e) closely track the language in the CSI Act relating to appeals of Commission decisions and to treatment of records allegedly containing confidential security information during the pendency of any Commission review or court appeal.

Finally, subsections (f) and (g) address how confidential security information is to be accessed by the statutory advocates, another area we asked for specific comments, and by Commission staff.

Accordingly, under sections 1—6 of the Public Utility Confidential Security Information Disclosure Protection Act (35 P. S. §§ 2141.1—2141.6); 66 Pa.C.S. 501 and 1501; sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202), and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2 and 7.5; section 204(b) of the Commonwealth Attorneys Act (71 P. S. § 732.204(b)); section 745.5 of the Regulatory Review Act (71 P. S. § 745.5); and section 612 of The Administrative Code of 1929 (71 P. S. § 232), and the regulations promulgated thereunder in 4 Pa. Code §§ 7.231—7.234, we are considering adopting the proposed regulations set forth in Annex A, attached hereto; *Therefore,*

It Is Ordered that:

1. The proposed rulemaking at L-00070185 will consider the regulations set forth in Annex A.

2. The Secretary shall submit this order and Annex A to the Office of Attorney General for review as to form and legality and to the Governor's Budget Office for review of fiscal impact.

3. The Secretary shall submit this order and Annex A for review and comment to the IRRC and the Legislative Standing Committees.

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

5. An original and 15 copies of any comments referencing the docket number of the proposed regulations be submitted within 30 days of publication in the *Pennsylvania Bulletin* to the Pennsylvania Public Utility Commission, Attention Secretary, P. O. Box 3265, Harrisburg, PA 17105-3265.

6. The contact person for this rulemaking is Carl S. Hisiro, Assistant Counsel, Law Bureau, (717) 783-2812. Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Sherri DelBiondo, Regulatory Coordinator, Law Bureau, (717) 772-4579.

7. A copy of this order and Annex A shall be served upon the National Association of Water Companies, Pennsylvania Chapter; the Energy Association of Pennsylvania; PECO Energy Company; Philadelphia Gas Works; FirstEnergy Corporation; Equitable Gas Company; Nisource Corporate Services Company; Duquesne Light Company; Dominion Peoples; UGI Corporation; UGI Utilities, Inc.; UGI Penn Natural Gas, Inc.; Allegheny Power; PPL Services Corporation; National Fuel Distribution Corporation; Nauman Global Enterprises, LLC; Dart Container Corporation of California, d/b/a DTX Inc.; McClymonds Supply & Transit Co., Inc.; Meckley's Limestone Products, Inc.; American Expediting Company; the Office of Trial Staff; the Office of Consumer Advocate; and the Small Business Advocate.

JAMES J. MCNULTY,
Secretary

(Editor's Note: A Comment and Response Document prepared by the Commission regarding this proposed rulemaking is available at the Commission's website www.puc.state.pa.us.)

Fiscal Note: 57-256. (1) Restricted Revenue Account within the General Fund; (2) Implementing Year 2007-08 is Minimal; (3) 1st Succeeding Year 2008-09 is Minimal; 2nd Succeeding Year 2009-10 is Minimal; 3rd Succeeding Year 2010-11 is Minimal; 4th Succeeding Year 2011-12 is Minimal; 5th Succeeding Year 2012-13 is Minimal; (4) 2006-07 Program—New Program; 2005-06 Program—New Program; 2004-05 Program—New Program; (8) General Government Operations; (8) recommends adoption.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart A. GENERAL PROVISIONS

CHAPTER 5. FORMAL PROCEEDINGS

Subchapter E. EVIDENCE AND WITNESSES

§ 5.423. Orders to limit availability of proprietary information.

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(g) Confidential security information. Challenges to a public utility's designation of confidential security information or requests in writing to examine confidential security information are addressed in Chapter 102 (relating to confidential security information).

**Subpart E. PUBLIC UTILITY SECURITY
PLANNING AND READINESS**

(Editor's Note: The following text is new and has been printed in regular type for readability.)

**CHAPTER 102. CONFIDENTIAL SECURITY
INFORMATION**

Sec.	
102.1.	Purpose.
102.2.	Definitions.
102.3.	Filing procedures.
102.4.	Challenge procedures to confidentiality designation.

§ 102.1. Purpose.

This chapter establishes procedures for public utilities to follow when filing records with the Commission containing confidential security information under Act 156 and procedures to address challenges by members of the public to a public utility's designation of confidential security information or requests to examine records containing confidential security information in both adversarial and nonadversarial proceedings pending before the Commission.

§ 102.2. Definitions.

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

Act 156—The Public Utility Confidential Security Information Disclosure Protection Act (35 P. S. §§ 2141.1—2141.6).

Commission—The Pennsylvania Public Utility Commission.

Confidential security information—Information contained within a record maintained by the Commission in any form, the disclosure of which would compromise security against sabotage or criminal or terrorist acts and the nondisclosure of which is necessary for the protection of life, safety, public property or public utility facilities, including the following:

(i) A vulnerability assessment which is submitted to the Environmental Protection Agency or other Federal, State or local agency.

(ii) Portions of emergency response plans that are submitted to the Department of Environmental Protection, the Commission or other Federal, State or local agency dealing with response procedures or plans prepared to prevent or respond to emergency situations, except those portions intended for public disclosure, the disclosure of which would reveal vulnerability assessments, specific tactics, specific emergency procedures or specific security procedures. Nothing in this definition may be construed to relieve a public utility from its public notification obligations under other applicable Federal and State laws.

(iii) A plan, map or other drawing or data which shows the location or reveals location data on community drinking water wells and surface water intakes.

(iv) A security plan, security procedure or risk assessment prepared specifically for the purpose of preventing or for protection against sabotage or criminal or terrorist acts.

(v) Specific information, including portions of financial statements, about security devices or personnel, designed to protect against sabotage or criminal or terrorist acts. Nothing in this definition may be construed to prevent the disclosure of monetary amounts.

Facilities—

(i) The plant and equipment of a public utility, including tangible and intangible real and personal property without limitation, and any means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished or supplied for, by or in connection with the business of any public utility.

(ii) The term also includes electric power generation.

Member of the public—Includes any citizen of this Commonwealth, a public utility certified by the Commission, the Office of Consumer Advocate, the Office of Small Business Advocate, the Office of Trial Staff or Commission prosecutory staff.

Public utility—Any person, corporation, municipality or municipal authority or corporation now or hereafter owning or operating in this Commonwealth equipment or facilities for:

(i) Producing, generating, transmitting, distributing or furnishing natural or artificial gas, electricity or steam for the production of light, heat or power to the public for compensation. The term also includes electric power generation.

(ii) Diverting, developing, pumping, impounding, distributing or furnishing water to or for the public for compensation.

(iii) Using a canal, turnpike, tunnel, bridge, wharf, and the like, for the public for compensation.

(iv) Transporting or conveying natural or artificial gas, crude oil, gasoline or petroleum products, materials for refrigeration or oxygen or nitrogen or other fluid substance, by pipeline or conduit, for the public for compensation.

(v) Conveying or transmitting messages or communications by telephone or telegraph or domestic public land mobile radio service, including point-to-point microwave radio service for the public for compensation.

(vi) Collecting, treating or disposing sewage for the public for compensation.

(vii) Transporting passengers or property as a common carrier.

Right-to-Know Law—The act of June 21, 1957 (P. L. 390, No. 212) (65 P. S. §§ 66.1—66.9).

Secretary—The Secretary of the Commission.

Terrorist act—An act constituting a violent offense intended to do one or more of the following:

(i) Intimidate or coerce a civilian population.

(ii) Influence the policy of a government by intimidation or coercion.

(iii) Affect the conduct of a government.

§ 102.3. Filing procedures.

(a) *Maintenance of records onsite*. Unless required by order or other directive from the Commission or its staff that records containing confidential security information shall be filed with the Commission, public utilities shall do the following:

(1) Maintain any record containing confidential security information onsite.

(2) Certify that the record is present and up-to-date consistent with Chapter 101 (relating to public utility preparedness through self certification).

(3) Make the record containing confidential security information available for review upon request by authorized Commission staff.

(b) *Filing requirements.* When a public utility is required to submit a record that contains confidential security information to the Commission, the public utility shall do the following:

(1) Clearly state in its transmittal letter to the Commission that the record contains confidential security information and explain why the information should be treated as confidential.

(2) Separate the information being filed into at least two categories:

(i) Records that are public in nature and subject to the Right-to-Know Law.

(ii) Records that are to be treated as containing confidential security information and not subject to the Right-to-Know Law.

(3) Stamp or label each affected page of the record containing confidential security information with the words "Confidential Security Information" and place all affected pages in a separate envelope marked "Confidential Security Information."

(c) *Public utility's responsibility.* The public utility has the responsibility to identify records as containing confidential security information. When the public utility fails to designate a record as containing confidential security information, it does not obtain the protections offered in this chapter and in Act 156. Any record that is not identified, stamped and separated as set forth in subsection (b), will be made available to the public under the Right-to-Know Law.

(d) *Status of previously-filed unmarked records.* Records containing what would otherwise be deemed confidential security information already on file at the Commission prior to May 29, 2007, the effective date of Act 156, are not covered by the protections offered in this chapter and in Act 156. To obtain the protections, the public utility shall resubmit and replace the existing records by following the filing procedures provided for in this section. When a public utility's filing is intended to replace pre-Act 156 filed records, the Commission will waive any otherwise applicable filing fee.

(e) *Commission's responsibility with unmarked records.* The Commission and its staff are under no legal obligation to protect confidential security information already on file with the Commission that has not been marked "Confidential Security Information," following the procedures provided for in this section. When a request is made by a member of the public for an existing record that is not marked "Confidential Security Information" and Commission staff has reason to believe that it contains confidential security information, staff will refer the requested record to the Law Bureau for review. If the Law Bureau determines the record contains confidential security information, the Law Bureau will advise the affected public utility and give it an opportunity to resubmit and replace the record with a copy that is marked "Confidential Security Information" pursuant to subsection (d).

(f) *Electronic submissions.* The Commission does not yet have the ability to handle electronically submitted confidential security information in the manner required under this chapter or Act 156. The Commission will notify the public utility industry when it develops the ability to handle electronic submissions of confidential security

information. Until the Commission develops the ability to handle electronic submissions of confidential security information, the information submitted electronically will be made available to the public under the Right-to-Know Law.

§ 102.4. Challenge procedures to confidentiality designation.

(a) *General rule for challenges or requests to review.* When a member of the public other than a statutory advocate or Commission staff challenges the public utility's designation of confidential security information or requests in writing to examine confidential security information, the Commission will issue a Secretarial Letter to the public utility notifying the public utility of the challenge to its designation or the request to examine records containing confidential security information. Only records filed with the Commission as confidential security information are subject to a challenge or written request to review under this subsection and Act 156. Records maintained onsite by the public utility are not subject to challenge or request to review.

(1) When a challenge or written request to review occurs in an adversarial proceeding, the matter will be referred to the Office of Administrative Law Judge for recommended disposition by the Commission.

(2) When a challenge or written request to review occurs in a nonadversarial proceeding, the matter will be referred to the Law Bureau for recommended disposition by the Commission.

(3) The Commission will have up to 60 days from the date the challenge or written request to review is filed with the Secretary's Bureau to render a final decision. During the 60-day review period, the following process shall be used:

(i) For identification purposes, the challenger or requester, if not a statutory advocate or Commission staff, shall provide his full name, address, telephone number and Social Security number if an individual and its certification number, address and telephone number if it is a Pennsylvania utility.

(ii) For challenges, the challenger shall provide at the time it files the challenge a detailed statement explaining why the confidential security information designation should be denied.

(iii) For requests to review, the requester shall provide at the time it files the request a detailed statement explaining the particular need for and intended use of the information and a statement as to the requester's willingness to adhere to limitations on the use and disclosure of the information requested.

(iv) The public utility shall have 15 days from the date the challenge or request to review is filed with the Secretary's Bureau to respond to the challenger's or requester's detailed statement in support of its position.

(v) The presiding officer or the Law Bureau will have 15 days from the date the public utility's response is filed with the Secretary's Bureau to issue its recommended disposition to the Commission.

(b) *Relevant factors to be considered.* The Commission will apply a balancing test that weighs the sensitivity of the designated confidential security information and the potential harm resulting from its disclosure against the challenger's or requester's need for the information. Applying this balancing test, a challenge to a public utility's designation of confidential security information or written

request to review a record containing confidential security information will be granted only upon a determination by the Commission that the potential harm to the public utility of disclosing information relating to its security is less than the challenger's or requester's need for the information. In determining whether to grant a written request to review a record containing confidential security information, the Commission, the presiding officer or the Law Bureau will consider, along with other relevant factors, the following:

(1) The requester's willingness to sign a nondisclosure agreement.

(2) The requester's willingness to be subjected to a criminal background check.

(3) The conditions, if any, to place on release of the information.

(c) *Written notification of disposition.* The Commission will provide, within the 60-day period, written notification of its decision on confidentiality to the public utility and the member of the public that requested to examine the records containing confidential security information or challenged the designation made by the public utility. Failure by the Commission to act within the 60-day period will be deemed a denial of the challenge or the request to review. In the written notification, the Commission will affirmatively state whether the disclosure would compromise the public utility's security against sabotage or criminal or terrorist act. When the Commission determines that a record contains confidential security information and information that is public, the confidential portion will be redacted before disclosure.

(d) *Appeal of Commission decision.* The Commission's decision on confidentiality under this chapter will be issued by order adopted at a public meeting. The public utility and member of the public shall have up to 30 days following entry of this order to file an appeal in Commonwealth Court. The Commonwealth Court will review any records containing the disputed confidential security in-

formation in camera to determine whether the information should be protected from disclosure under this chapter. During the pendency of the in camera review, the records subject to this review may not be made part of the public court filing.

(e) *Treatment of records during pendency of review.* During the challenge, request to review, or an appeal of the Commission's final determination, the Commission will continue to honor the confidential security information designation by the public utility.

(f) *Access for statutory advocates.* Authorized individuals, as provided for in Act 156, employed by the statutory advocates shall be provided with access to confidential security information on file with the Commission when they provide the public utility with a justification for the need of the information and execute access agreements that summarize responsibilities and personal liabilities when confidential security information is knowingly or recklessly released, published or otherwise disclosed.

(g) *Access for Commission staff.* Unopened envelopes marked "Confidential Security Information" filed with the Commission will be given only to Commission employees authorized to review the information as provided for in Act 156. Authorized Commission employees will execute access agreements that summarize responsibilities and personal liabilities when confidential security information is knowingly or recklessly released, published or otherwise disclosed. Commission employees may decline designation as authorized individuals. Commission employees that agree to the designation will have their names added to the Authorized Access List maintained by the Commission's Secretary's Bureau. The Commission will withdraw designations when the employee no longer requires access to confidential security information because of a change in duties or position or when the employee fails to attend required training.

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