

PENNSYLVANIA BULLETIN

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for the Pennsylvania Public
Utility Commission's
Natural Gas Distribution Companies
and the Promotion of Competitive
Retail Markets

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**Latest Pennsylvania Code Reporters
(Master Transmittal Sheets):**

No. 449, April 2012

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READER'S GUIDE TO THE PENNSYLVANIA BULLETIN AND PENNSYLVANIA CODE

Pennsylvania Bulletin

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

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

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

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

Adoption, Amendment or Repeal of Regulations

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

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

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

wishes to adopt changes to the Notice of Proposed Rulemaking to enlarge the scope, it must repropose.

Citation to the *Pennsylvania Bulletin*

Cite material in the *Pennsylvania Bulletin* by volume number, a page number and date. Example: Volume 1, *Pennsylvania Bulletin*, page 801, January 9, 1971 (short form: 1 Pa.B. 801 (January 9, 1971)).

Pennsylvania Code

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

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

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

How to Find Documents

Search for your area of interest in the *Pennsylvania Code*. The *Pennsylvania Code* is available at www.pacode.com.

Source Notes give you the history of the documents. To see if there have been recent changes, not yet codified, check the List of *Pennsylvania Code* Chapters Affected in the most recent issue of the *Pennsylvania Bulletin*.

A chronological table of the history of *Pennsylvania Code* sections may be found at www.legis.state.pa.us.

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

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Printing Format

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

Fiscal Notes

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

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

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List of Pa. Code Chapters Affected

The following numerical guide is a list of the chapters of each title of the *Pennsylvania Code* affected by documents published in the *Pennsylvania Bulletin* during 2012.

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1500, 1661, 1662, 1989, 1990, 1991

THE GENERAL ASSEMBLY

Recent Actions during the 2012 Regular Session of the General Assembly

The following is a summary of recent actions of the General Assembly during the 2012 Regular Session.

<i>Doc. No.</i>	<i>Date of Action</i>	<i>Bill Number</i>	<i>Printer's Number</i>	<i>Effective Date</i>	<i>Subject Matter</i>
2012 GENERAL ACTS of Regular Session ENACTED—ACT 017 through 020					
017	Mar 14	HB0816	PN1853	60 days	Social Workers, Marriage and Family Therapists and Professional Counselors Act—qualifications for license
018	Mar 14	HB0934	PN3166	Immediately	Pennsylvania Election Code—omnibus amendments
019	Mar 14	HB1355	PN1584	60 days	Jarrid L. King Memorial Bridge—designation
020	Mar 14	HB1886	PN2461	60 days	General Carl E. Vuono Bridge—designation

* denotes an effective date with exceptions

Effective Dates of Statutes

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

Advance Copies of Statutes

Section 1106 of Title 1 of the *Pennsylvania Consolidated Statutes* provides that the prothonotaries of each county shall file advance copies of statutes in their offices for public inspection until the *Laws of Pennsylvania* are generally available. Section 2406(h) of The Administrative Code of 1929 provides that the Department of General Services (Department) shall distribute advance sheets of the *Laws of Pennsylvania* to each law judge of the courts, to every county and public library of this Commonwealth and to each member of the General Assembly. These copies shall be furnished without charge. The Department shall also mail one copy of each law enacted during any legislative session to any person who pays to it the sum of \$25.

Requests for annual subscriptions for advance copies of statutes should be sent to the State Bookstore, Commonwealth Keystone Building, 400 North Street, Harrisburg, PA 17120, accompanied by a check or money order in the sum of \$25, payable to the "Commonwealth of Pennsylvania."

ROBERT ZECH, Jr.,
Director
Legislative Reference Bureau

[Pa.B. Doc. No. 12-632. Filed for public inspection April 13, 2012, 9:00 a.m.]

THE COURTS

Title 210—APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

[210 PA. CODE CH. 19]

Proposed Amendments to Rules of Appellate Procedure 1921, 1931 and 1952

The Appellate Court Procedural Rules Committee proposes to amend Pennsylvania Rules of Appellate Procedure 1921, 1931 and 1952. The amendments are being submitted to the bench and bar for comments and suggestions prior to its submission to the Supreme Court.

Proposed new material is in bold faced type and deleted material is bracketed and in bold faced type.

All communications in reference to the proposed amendment should be sent no later than May 31, 2012 to:

Dean R. Phillips, Counsel
 D. Alicia Hickok, Deputy Counsel
 Scot Withers, Deputy Counsel
 Appellate Court Procedural Rules Committee
 Pennsylvania Judicial Center
 601 Commonwealth Ave., Suite 6200
 P. O. Box 62635
 Harrisburg, Pennsylvania 17106-2635
 or Fax to (717) 231-9551
 or E-Mail to appellaterules@pacourts.us

*By the Appellate Court
 Procedural Rules Committee*

HONORABLE RENÉE COHN JUBELIRER,
Chair

Annex A

TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

ARTICLE II. APPELLATE PROCEDURE

CHAPTER 19. PREPARATION AND TRANSMISSION OF RECORD AND RELATED MATTERS

RECORD ON APPEAL FROM LOWER COURT

Rule 1921. Composition of Record on Appeal.

The original papers and exhibits filed in the lower court, [**hard**] **paper** copies of legal papers filed with the prothonotary by means of electronic filing, the transcript of proceedings, if any, and a certified copy of the docket entries prepared by the clerk of the lower court shall constitute the record on appeal in all cases.

Official Note: [**The rule is intended as a codification of present practice.**] An appellate court may consider only the facts which have been duly certified in the record on appeal. *Commonwealth v. Young*, 456 Pa. 102, 115, 317 A.2d 258, 264 (1974). **All involved in the appellate process have a duty to take steps necessary to assure that the appellate court has a complete record on appeal, so that the appellate court has the materials necessary to review the issues raised on appeal. Ultimate responsibility for a complete record rests with the party raising an issue that requires appellate court access to record mate-**

rials. See, e.g., Commonwealth v. Williams, 552 Pa. 451, 715 A.2d 1101 (1998). Rule 1931 (c) and (f) afford a “safe harbor” from waiver of issues based on an incomplete record. Parties may rely on the list of documents transmitted to the appellate court and served on the parties. If the list shows that the record transmitted is incomplete, the parties have an obligation to supplement the record pursuant to Rule 1926 (correction or modification of the record) or other mechanisms in Chapter 19. If the list shows that the record transmitted is complete, but it is not, the omission shall not be a basis for the appellate court to find waiver. Further, if the appellate court determines that something in the original record or otherwise presented to the trial court is necessary to decide the case and is not included in the certified record, the appellate court may, upon notice to the parties, inquire to the trial court *sua sponte* and supplement the certified record following receipt of the missing item. *See* Rule 1926 (correction or modification of the record).

[Explanatory Comment—2008

Pa.R.C.P. No. 205.4(a)(1) authorizes a court by local rule to permit or require electronic filing of legal papers with the prothonotary. Therefore, the amendment to Rule 1921 provides that where such electronic filing is utilized, hard copies of legal papers electronically filed shall become part of the record on appeal.]

Rule 1931. Transmission of the Record.

* * * * *

(c) *Duty of clerk to transmit the record.*—When the record is complete for purposes of the appeal, the clerk of the lower court shall transmit it to the prothonotary of the appellate court. The clerk of the lower court shall number the documents comprising the record and shall transmit with the record a list of the documents correspondingly numbered and identified with [**reasonable definiteness**] **sufficient specificity to allow the parties on appeal to identify each document and to determine whether the record on appeal is complete.** Documents of unusual bulk or weight and physical exhibits other than documents shall not be transmitted by the clerk unless he or she is directed to do so by a party or by the prothonotary of the appellate court. A party must make advance arrangements with the clerk for the transportation and receipt of exhibits of unusual bulk or weight. Transmission of the record is effected when the clerk of the lower court mails or otherwise forwards the record to the prothonotary of the appellate court. The clerk of the lower court shall indicate, by endorsement on the face of the record or otherwise, the date upon which the record is transmitted to the appellate court.

(d) *Service of the list of record documents.*—The clerk of the lower court shall, at the time of the transmittal of the record to the appellate court, mail a copy of the list of record documents to all counsel of record, or if unrepresented by counsel, to the parties at the address they have provided to the clerk. The clerk shall note on the docket the giving of such notice.

(e) *Multiple appeals.*—Where more than one appeal is taken from the same order, it shall be sufficient to transmit a single record, without duplication.

(f) *Inconsistency between list of record documents and documents actually transmitted.*—If the clerk of the lower court fails to transmit to the appellate court all of the documents identified in the list of record documents, such failure shall be deemed a breakdown in judicial procedure. Any omission shall be corrected promptly pursuant to Rule 1926 (correction or modification of the record) and shall not be the basis for any penalty against a party.

Official Note: [Former Supreme Court Rule 22 required the record to be returned forthwith. See also former Superior Court Rule 50 and former Commonwealth Court Rules 22 and 23.]

Rule 1926 (correction or modification of the record) provides the means to resolve any disagreement between the parties as to what should be included in the record on appeal. The court may, however, *sua sponte* take appropriate action to supplement or correct the certified record. Appellate courts often exercise discretion to avoid harsh enforcement of precedent that found waiver where missing items are not included in the record on appeal, but where the missing items are in the reproduced record and there is no dispute that the reproduced record is an accurate representation of the trial court record or when a record has been supplemented after an inquiry by the appellate court. See 20A Pennsylvania Appellate Practice Section 1921:2 (2011-12) (collecting cases). These cases represent a liberal construction of Chapter 19 of the Rules of Appellate Procedure as permitted under Rule 105(a). However, there are numerous cases to the contrary which while they may be subject to criticism are still good law.

[Explanatory Comment—2007

The 2007 amendment expands the time period for the trial court to transmit the certified record, including any opinions drafted pursuant to Pa.R.A.P. 1925(a), from forty to sixty days. The appellate court retains the ability to establish a shorter (or longer) period of time for the transmittal of the record in any class or classes of cases.]

RECORD ON PETITION FOR REVIEW OF ORDERS OF GOVERNMENT UNITS OTHER THAN COURTS

Rule 1952. Filing of Record in Response to Petition for Review.

* * * * *

(b) *Certificate of record.*—The government unit shall certify the contents of the record and a list of all documents, transcripts of testimony, exhibits and other material comprising the record. The government unit shall (1) arrange the documents to be certified in chronological order, (2) number them, and (3) affix to the right or bottom edge of the first page of each document a tab showing the number of that document. These shall be bound and shall contain a table of contents identifying each document in the record. The certificate shall be made by the head, chairman, deputy or secretary of the government unit. The government unit may file the entire record or such parts thereof as the parties may designate by stipulation filed with the government unit. The original papers in the government unit or certified copies thereof may be filed. Instead of filing the record or designated parts thereof, the government unit may file a certified list of all documents, transcripts of testimony, exhibits and other material comprising the record, or a

certified list of such parts thereof as the parties may designate, adequately describing each, and the filing of the certified list shall constitute filing of the record. The parties may stipulate that neither the record nor a certified list be filed with the court. The stipulation shall be filed with the prothonotary of the court and the date of its filing shall be deemed the date on which the record is filed. If a certified list is filed, or if the parties designate only parts of the record for filing or stipulate that neither the record nor a certified list be filed, the government unit shall retain the record or parts thereof. Upon request of the court or the request of a party, the record or any part thereof thus retained shall be transmitted to the court notwithstanding any prior stipulation. All parts of the record retained by the government unit shall be a part of the record on review for all purposes.

(c) *Notice to counsel of contents of certified record.*—At the time of transmission of the record to the appellate court, the government unit shall send a copy of the list of the contents of the certified record to all counsel of record, or if unrepresented by counsel, to the parties at the address they have provided to the government unit.

Official Note: [Based in part upon former Commonwealth Court Rules 22, 23 and 32A (second sentence). The time within which the record must be certified has been increased from 20 days to 40 days to conform to Rule 1931 (transmission of the record).] The addition of subdivision (c) in 2012 requires government units other than courts to notify counsel of the content of the certified record. This is an extension of the requirement in Rule 1931 (transmission of the record) that trial courts give such notice.

EXPLANATORY COMMENT

In May of 2010, the Appellate Court Procedural Rules Committee published proposed amendments to Rule 1931 to provide that the list of documents in the record on appeal prepared by the clerk or prothonotary be sufficiently specific “to allow the parties on appeal to identify each document and to determine whether the record on appeal is complete.” The Committee had also proposed to amend subdivision (d) of Rule 1931 to provide that a party can rely on the content of the list without having to physically examine the record.

These proposed amendments were to further assist a party raising an issue to meet its burden to make sure that a full and complete record is forwarded to the appellate court. In 2004, the Supreme Court partially addressed this problem by adopting subdivision (d) to Rule 1931, adding a requirement that the clerk or prothonotary send the appellant the list of record documents. Experience has shown this was only a partial solution. First, in many cases the list is not sufficiently specific for the parties to determine what is or is not included. Second, in many cases, the clerk or prothonotary did not actually transmit all items on the list to the appellate court.

Following publication and review of comments, the Committee now proposes to recommend further amendments to Rule 1931 and a proposed amendment to the Note to Rule 1921. These additional amendments are to clarify the obligations of the parties and the appellate courts with respect to the record on appeal while providing for “safe harbor” from waiver where parties rely on

the contents of the list of record documents prepared by the prothonotary or clerk. More specifically, in lieu of the published proposed amendment to subdivision (d) of Rule 1931 the Committee instead proposes a subdivision (f) to Rule 1931 to provide:

(f) *Inconsistency between list of record documents and documents actually transmitted*—If the clerk of the lower court fails to transmit to the appellate court all of the documents identified in the list of record documents, such failure shall be deemed a breakdown in judicial procedure. Any omission shall be corrected promptly pursuant to Rule 1926 and shall not be the basis for any penalty against a party.

Taken together, the proposed amendments are intended to improve the likelihood that a full and complete record will be transmitted from the trial court to the appellate court, and will decrease the prospects of waiver resulting from the inadvertent omission of a document from the certified record.

The Committee also proposes to add subdivision (c) to Rule 1952 to require government units other than courts to notify counsel of the content of the record on appeal. This is an extension of the requirement in Rule 1931 that trial courts give such notice.

[Pa.B. Doc. No. 12-633. Filed for public inspection April 13, 2012, 9:00 a.m.]

Title 25—LOCAL COURT RULES

SNYDER COUNTY

Juvenile Restitution Fund; No. CP-55-AD-000010-2011

Amended Order

And Now, this 1st day of March, 2012, it is hereby *Ordered and Directed* that the Court of Common Pleas of Snyder County and Union County, Pennsylvania, adopts the Juvenile Restitution Fund pursuant to section 6352(a)(5) of the Juvenile Act.

The Guidelines dated July 14, 2011 are incorporated herein by reference.

By the Court

MICHAEL H. SHOLLEY,
President Judge

Snyder and Union County

Juvenile Restitution Fund Guidelines

July 14, 2011

I. Definitions

1. Restitution Fund—A fund established by the president judge of a court of common pleas under section 6352(a)(5) of the Juvenile Act (relating to disposition of delinquent child), from which disbursements are made at the discretion of the president judge pursuant to written guidelines promulgated by the president judge and the limitations of the Juvenile Act, and used to reimburse crime victims for financial losses resulting from delinquent acts.

2. Crime Victim—individual(s), non-profit-charitable organizations, and governmental entities that suffer financial loss as a result of delinquent acts.

II. Establishment and Administration of Restitution Funds

Monies currently in the Snyder County Juvenile Collection Trust Account will be used to create the new Juvenile Restitution Fund (JRF). To further fund the Juvenile Restitution Fund, every adjudicated delinquent or individual placed on consent decree shall pay a mandatory, one time, case management fee into the JRF, of twenty-five dollars. Payment of this case management fee cannot be waived, nor can community service, in place of payment, be used.

The Juvenile Restitution Fund will pay out a maximum of \$500 of restitution to a crime victim per case without a court order, depending on the cost of damages or financial loss resulting from delinquent acts. The adjudicated individual will then gradually pay back their restitution to the Juvenile Restitution Fund, based on the specific terms of their probation. Restitution shall not exceed the court's determination of restitution.

Should an individual victim's need be too great, as decided by the sentencing judge, and the restitution being paid out to that victim is determined to be too low, the sentencing judge may increase the pay out from the Juvenile Restitution Fund. This is at the sole discretion of the sentencing judge for special cases in which the victim's financial hardship is such that restitution paid out to them is deemed insufficient.

All payments from the Juvenile Restitution Fund must be approved by the Chief Probation Officer and the Probation Officer assigned to the case. Any payments in excess of the \$500 referenced above shall be approved by the president judge.

All adjudicated individuals aged 16 years or older that cannot pay their restitution will be required to find part-time employment and use earnings to pay off restitution owed. If an adjudicated individual cannot find employment, they must submit five job applications per week as proof of an attempt to find employment.

Adjudicated individuals aged 12 to 15 years that cannot find, or are too young to have, part-time employment and cannot pay their restitution will be required to perform community service in lieu of a part-time job. The number of required hours of community service will be calculated by dividing the amount of restitution owed by the amount of Pennsylvania State minimum wage.

III. Disbursements From The Restitution Fund (adopted from *The Pennsylvania Code*, Subchapter F. Standards Governing the Administration of Restitution Funds)

The Juvenile Restitution Fund is to be administered by the Probation Department.

Disbursements from the restitution fund shall be made at the discretion of the president judge, and shall be used to reimburse crime victims for financial losses resulting from delinquent acts. Disbursements from the fund shall require the signatures of the Chief Probation Officer and either the Chief Juvenile Probation Officer or the Juvenile Probation Officer assigned to the case.

An annual report to the president judge, detailing the aggregate and individual data regarding payments to and disbursements from the restitution fund, and an annual audit, under county policy, of all payments to and disbursements from the fund, will be required.

[Pa.B. Doc. No. 12-634. Filed for public inspection April 13, 2012, 9:00 a.m.]

SNYDER COUNTY

Juvenile Restitution Fund; No. CP-55-AD-000011-2011

Amended Order

And Now, this 1st day of March, 2012, the court hereby *Approves, Adopts and Promulgates* Snyder and Union County Administrative Order CP-55-AD-000010-2011, effective thirty (30) days after the date of publication of this Rule in the *Pennsylvania Bulletin*, pursuant to Rule 121 of the Pennsylvania Rules of Juvenile Court Procedure.

The Court Administrator of the 17th Judicial District is ordered and directed to do the following:

1. File one (1) certified copy of this Order and Administrative Order CP-55-AD-000010-2011 with the Juvenile Court Procedural Rules Committee. Then upon approval from the Juvenile Court Procedural Rules Committee:

2. Furnish two (2) certified copies of this Order and Administrative Order CP-55-AD-000010-2011 and a computer diskette or CD to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin* as well as a copy of written approval from Juvenile Court Procedural Rules Committee

3. File one (1) certified copy of this Order and Administrative Order CP-55-AD-000010-2011 with the Administrative Office of Pennsylvania Courts as well as having it published on UJS Portal.

By the Court

MICHAEL H. SHOLLEY,
President Judge

[Pa.B. Doc. No. 12-635. Filed for public inspection April 13, 2012, 9:00 a.m.]

SNYDER COUNTY

Victim Services Fee; No. CP-55-AD-000012-2011

Amended Order

And Now, this 1st day of March, 2012, it is hereby *Ordered and Directed* that the Court of Common Pleas of 17th Judicial District of Pennsylvania adopts a fee in the amount of seventy-five dollars (\$75.00) for all criminal and juvenile cases for which there is a victim for the purposes of sustaining victim services. This fee is created due to the Commonwealth's reduction of funding for victim services as mandated by the Crime Victims Act 18 P. S. § 11.01, et seq.

This fee shall be imposed in every juvenile and criminal case for which there is a victim.

The effective date of this Order shall be thirty (30) days after advertising in the *PA Legal Bulletin*.

By the Court

MICHAEL H. SHOLLEY,
President Judge

[Pa.B. Doc. No. 12-636. Filed for public inspection April 13, 2012, 9:00 a.m.]

SNYDER COUNTY

Victim Services Fee; No. CP-55-AD-000013-2011

Amended Order

And Now, this 1st day of March, 2012, the court hereby *Approves, Adopts and Promulgates* Snyder and Union County Administrative Order CP-55-AD-000012-2011 effective thirty (30) days after the date of publication of this Rule in the *Pennsylvania Bulletin*, pursuant to Rule 105 of the Pennsylvania Rules of Criminal Procedure and Rule 121 of the Pennsylvania Rules of Juvenile Court Procedure.

The Court Administrator of the 17th Judicial District is ordered and directed to do the following:

1. File one (1) certified copy of this Order and Administrative Order CP-55-AD-000012-2011 with the Juvenile Court Procedural Rules Committee as well as one (1) certified copy to the Criminal Rules Committee. Then upon approval from the Juvenile Court Procedural Rules Committee and approval from the Criminal Rules Committee:

2. Furnish two (2) certified copies of this Order and Administrative Order CP-55-AD-000012-2011 and a computer diskette and/or CD to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin* as well as a copy of written approval from the Juvenile Court Procedural Rules Committee and approval from the Criminal Rules Committee.

3. File one (1) certified copy of this Order and Administrative Order CP-55-AD-000012-2011 with the Administrative Office of Pennsylvania Courts as well as having it published on UJS Portal.

By the Court

MICHAEL H. SHOLLEY,
President Judge

[Pa.B. Doc. No. 12-637. Filed for public inspection April 13, 2012, 9:00 a.m.]

UNION COUNTY

Juvenile Restitution Fund; No. CP-60-AD-2-2011; 11-00633

Order

And Now, this 1st day of March, 2012, it is hereby *Ordered and Directed* that the Court of Common Pleas of Snyder County and Union County, Pennsylvania, adopts the Juvenile Restitution Fund pursuant to section 6352(a)(5) of the Juvenile Act.

The Guidelines dated July 14, 2011 are incorporated herein by reference.

By the Court

MICHAEL H. SHOLLEY,
President Judge

**Snyder and Union County
Juvenile Restitution Fund Guidelines
July 14, 2011**

I. Definitions

1. **Restitution Fund**—A fund established by the president judge of a court of common pleas under section 6352(a)(5) of the Juvenile Act (relating to disposition of delinquent child), from which disbursements are made at the discretion of the president judge pursuant to written guidelines promulgated by the president judge and the limitations of the Juvenile Act, and used to reimburse crime victims for financial losses resulting from delinquent acts.

2. **Crime Victim**—individual(s), non-profit-charitable organizations, and governmental entities that suffer financial loss as a result of delinquent acts.

II. Establishment and Administration of Restitution Funds

Monies currently in the Snyder County Juvenile Collection Trust Account will be used to create the new Juvenile Restitution Fund (JRF). To further fund the Juvenile Restitution Fund, every adjudicated delinquent or individual placed on consent decree shall pay a mandatory, one time, case management fee into the JRF, of twenty-five dollars. Payment of this case management fee cannot be waived, nor can community service, in place of payment, be used.

The Juvenile Restitution Fund will pay out a maximum of \$500 of restitution to a crime victim per case without a court order, depending on the cost of damages or financial loss resulting from delinquent acts. The adjudicated individual will then gradually pay back their restitution to the Juvenile Restitution Fund, based on the specific terms of their probation. Restitution shall not exceed the court's determination of restitution.

Should an individual victim's need be too great, as decided by the sentencing judge, and the restitution being paid out to that victim is determined to be too low, the sentencing judge may increase the pay out from the Juvenile Restitution Fund. This is at the sole discretion of the sentencing judge for special cases in which the victim's financial hardship is such that restitution paid out to them is deemed insufficient.

All payments from the Juvenile Restitution Fund must be approved by the Chief Probation Officer and the Probation Officer assigned to the case. Any payments in excess of the \$500 referenced above shall be approved by the president judge.

All adjudicated individuals aged 16 years or older that cannot pay their restitution will be required to find part-time employment and use earnings to pay off restitution owed. If an adjudicated individual cannot find employment, they must submit five job applications per week as proof of an attempt to find employment.

Adjudicated individuals aged 12 to 15 years that cannot find, or are too young to have, part-time employment and cannot pay their restitution will be required to perform community service in lieu of a part-time job. The number of required hours of community service will be calculated by dividing the amount of restitution owed by the amount of Pennsylvania State minimum wage.

III. Disbursements From The Restitution Fund (adopted from *The Pennsylvania Code*, Subchapter F. Standards Governing the Administration of Restitution Funds)

The Juvenile Restitution Fund is to be administered by the Probation Department.

Disbursements from the restitution fund shall be made at the discretion of the president judge, and shall be used to reimburse crime victims for financial losses resulting from delinquent acts. Disbursements from the fund shall require the signatures of the Chief Probation Officer and either the Chief Juvenile Probation Officer or the Juvenile Probation Officer assigned to the case.

An annual report to the president judge, detailing the aggregate and individual data regarding payments to and disbursements from the restitution fund, and an annual audit, under county policy, of all payments to and disbursements from the fund, will be required.

[Pa.B. Doc. No. 12-638. Filed for public inspection April 13, 2012, 9:00 a.m.]

UNION COUNTY

Juvenile Restitution Fund; No. CP-60-AD-000003-2011; 11-00634

Amended Order

And Now, this 1st day of March, 2012, the court hereby *Approves, Adopts and Promulgates* Snyder and Union County Administrative Order CP-60-AD-0000002-2011, effective thirty (30) days after the date of publication of this Rule in the *Pennsylvania Bulletin*, pursuant to Rule 121 of the Pennsylvania Rules of Juvenile Court Procedure.

The Court Administrator of the 17th Judicial District is ordered and directed to do the following:

1. File one (1) certified copy of this Order and Administrative Order CP-60-AD-00000002-2011 with the Juvenile Court Procedural Rules Committee. Then upon approval from the Juvenile Court Procedural Rules Committee:

2. Furnish two (2) certified copies of this Order and Administrative Order CP-60-AD-0000002-2011 and a computer diskette and/or CD to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin* as well as a copy of written approval from Juvenile Court Procedural Rules Committee

3. File one (1) certified copy of this Order and Administrative Order CP-60-AD-0000002-2011 with the Administrative Office of Pennsylvania Courts as well as having it published on UJS Portal.

By the Court

MICHAEL H. SHOLLEY,
President Judge

[Pa.B. Doc. No. 12-639. Filed for public inspection April 13, 2012, 9:00 a.m.]

UNION COUNTY

Victim Services Fee; No. CP-60-AD-5-2011

Amended Order

And Now, this 1st day of March, 2012, the court hereby *Approves, Adopts and Promulgates* Snyder and Union County Administrative Order CP-60-AD-5-2011, effective thirty (30) days after the date of publication of this Rule in the *Pennsylvania Bulletin*, pursuant to Rule 105 of the Pennsylvania Rules of Criminal Procedure.

The Court Administrator of the 17th Judicial District is ordered and directed to do the following:

1. File one (1) certified copy of this Order and Administrative Order CP-60-AD-5-2011 with the Juvenile Court Procedural Rules Committee as well as one (1) certified copy to the Criminal Rules Committee. Then upon approval from the Juvenile Court Procedural Rules Committee and approval from the Criminal Rules Committee:

2. Furnish two (2) certified copies of this Order and Administrative Order CP-60-6-2011 and a computer diskette and/or CD to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin* as well as a copy of written approval from the Juvenile Court Procedural Rules Committee and approval from the Criminal Rules Committee.

3. File one (1) certified copy of this Order and Administrative Order CP-60-5-2011 with the Administrative Office of Pennsylvania Courts as well as having it published on UJS Portal.

By the Court

MICHAEL H. SHOLLEY,
President Judge

[Pa.B. Doc. No. 12-640. Filed for public inspection April 13, 2012, 9:00 a.m.]

UNION COUNTY

Victim Services Fee; No. CP-60-AD-5-2011

Amended Order

And Now, this 1st day of March, 2012, it is hereby *Ordered* and *Directed* that the Court of Common Pleas of 17th Judicial District of Pennsylvania adopts a fee in the amount of \$75.00 for all criminal and juvenile cases for which there is a victim for the purposes of sustaining victim services. This fee is created due to the Commonwealth's reduction of funding for victim services as mandated by the Crime Victims Act 18 P. S. § 11.01, et seq.

This fee shall be imposed in every juvenile and criminal case for which there is a victim.

The effective date of this Order shall be thirty (30) days after publication in the *Pennsylvania Legal Bulletin*.

By the Court

MICHAEL H. SHOLLEY,
President Judge

[Pa.B. Doc. No. 12-641. Filed for public inspection April 13, 2012, 9:00 a.m.]

RULES AND REGULATIONS

Title 55—PUBLIC WELFARE

DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CH. 165]

Road to Economic Self-Sufficiency Through Employment and Training (RESET) Program; Revisions to the Special Allowance for Supportive Services Requirements

The Department of Public Welfare (Department) amends Chapter 165 (relating to Road to Economic Self-Sufficiency Through Employment and Training (RESET) Program) to read as set forth in Annex A under the authority in sections 201(2), 403(b), 403.1, 405, 405.1, 405.1A, 405.3, 408(c) and 432 of the Public Welfare Code (code) (62 P. S. §§ 201(2), 403(b), 403.1, 405, 405.1, 405.1A, 405.3, 408(c) and 432), as amended by the act of June 30, 2011, (P. L. 89, No. 22) (Act 22).

Omission of Proposed Rulemaking

Act 22 added several new provisions to the code, including sections 403.1 and 405.1A. Section 403.1(a) of the code authorizes the Department to promulgate final-omitted regulations under section 204(1)(iv) of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204(1)(iv)), known as the Commonwealth Documents Law (CDL), to establish standards for determining eligibility and the nature and extent of assistance, modify existing benefits and establish benefit limits, among other things. Section 204(1)(iv) of the CDL authorizes an agency to omit or modify notice of proposed rulemaking when the regulation relates to Commonwealth grants or benefits.

Final-omitted rulemaking under section 403.1 of the code is expressly exempted from the Regulatory Review Act (71 P. S. §§ 745.1—745.12), section 205 of the CDL (45 P. S. § 1205) and section 204(b) of the Commonwealth Attorneys Act (71 P. S. § 732-204(b)). Section 403.1(c) of the code provides that the Department shall take action specified in subsection (a) as may be necessary to ensure that expenditures for State Fiscal Year (FY) 2011-2012 for assistance programs administered by the Department do not exceed the aggregate amount appropriated for programs by the General Appropriations Act of 2011.

Section 405.1A of the code provides that by January 1, 2012, the Department shall further reduce annual and lifetime limits for the Road to Economic Self-sufficiency Through Employment and Training (RESET) program, including moving and transportation expenses, by up to 25%, or eliminate special allowances from the program. Section 405.1A of the code also directs the Department to utilize the procedures outlined in section 403.1 of the code to effect these changes to the RESET program.

The Department is amending Chapter 165 in accordance with sections 403.1 and 405.1A of the code. These amendments relate to cash assistance, Supplemental Nutrition Assistance Program (SNAP) benefits and special allowances for supportive services, which are Commonwealth grants and benefits. The final-omitted rulemaking establishes standards for determining eligibility and the nature and extent of assistance, modifies existing benefits and establishes benefit limits.

Purpose

This final-omitted rulemaking eliminates several types of special allowances, combines public and private trans-

portation related special allowances into one category and reduces the maximum combined annual limit for transportation from \$3,000 to \$1,500. This final-omitted rulemaking also eliminates the motor vehicle insurance special allowance. In addition, the lifetime limit for other work, education and training-related allowances is reduced from \$2,000 to \$1,000.

This final-omitted rulemaking further specifies that the Department will not authorize a special allowance for a service or item that has been paid for or obtained prior to requesting the special allowance, unless required under Federal law. In addition, the individual shall provide verification within the time frame specified on the Agreement of Mutual Responsibility or Employment Development Plan. This verification must document that the special allowance was actually used to obtain the service or item requested.

This final-omitted rulemaking also amends Chapter 165 to specify the types of special allowances for supportive services that may be issued for individuals who apply for or receive SNAP-only benefits. This final-omitted rulemaking specifies that SNAP-only applicants or recipients whose educational or training-related expenses are being met prior to participation in a SNAP employment and training program or activity are not eligible to receive special allowances for supportive services. This means that SNAP-only applicants or recipients who are participating in an education or training program or activity prior to participation in the Department's SNAP employment and training program are not eligible for special allowances for education or training-related expenses, including books, fees or equipment.

These amendments meet the statutory requirement in section 405.1A of the code to further reduce annual and lifetime limits, as directed, for the RESET program. These amendments also meet the requirements in section 403.1 of the code, including the requirement in subsection (c) that the changes are necessary to ensure that expenditures for State FY 2011-2012 for assistance programs administered by the Department do not exceed the aggregate amount appropriated for programs by the General Appropriations Act of 2011.

This final-omitted rulemaking also eliminates two bases for good cause for failure to comply with RESET requirements: allowing an individual to end employment that is sporadic; and allowing an individual to reject a job offer that would result in the loss of income. This final-omitted rulemaking also deletes the "benefit of the doubt" language in § 165.52(b) (relating to good cause), which had directed caseworkers to give recipients the benefit of the doubt when determining good cause for failure to comply with work or work-related requirements. Finally, this final-omitted rulemaking adds a new provision stating that the Department may request verification from the individual regarding good cause and clarifies in § 165.52(a) that the good cause provisions apply as permitted by Federal law. Like the special allowance amendments, these good cause amendments are consistent with the requirements in section 403.1 of the code, including the requirement in subsection (c) that the changes are necessary to ensure that expenditures for State FY 2011-2012 for assistance programs administered by the Department do not exceed the aggregate amount appropriated by the General Appropriations Act of 2011.

Background

In 2010, the Department amended Chapter 165 by establishing new annual and lifetime limits, creating six categories of special allowances for supportive services and enhancing program integrity. See 40 Pa.B. 6665 (November 20, 2010). As a result of State budget constraints and to comply with Act 22 requirements, the Department is again amending Chapter 165 by combining public and private transportation special allowances into one transportation category, reducing the maximum combined annual limit for transportation from \$3,000 to \$1,500, deleting the motor vehicle insurance special allowance category and reducing the lifetime limit for other work, education and training special allowances from \$2,000 to \$1,000.

The Department is also eliminating certain special allowances for supportive services for SNAP-only participants consistent with sections 403.1 and 405.1A of the code and based on guidance from the United States Department of Agriculture, Food and Nutrition Services (FNS). In that guidance, FNS explained that special allowances for moving and relocation costs to accept employment, motor vehicle-related expenses, motor vehicle purchase, vehicle insurance, personal computers, union dues and professional fees are generally not permissible payments under 7 CFR 273.7 (relating to work provisions). This final-omitted rulemaking therefore deletes these special allowances for SNAP-only participants, except that union dues are permissible to the extent required under Federal law. In other Federal guidance, FNS has advised that payments for education or training-related expenses are not permissible SNAP payments under 7 CFR 273.7 when these expenses are being met prior to participation in a SNAP employment and training program. See Administrative Notice 48-2010 (August 24, 2010).

Chapter 165 currently provides a list of examples of good cause for failure to comply with RESET requirements, which include ending employment that is sporadic and rejecting employment that would result in a net loss of income. In this final-omitted rulemaking, the Department is deleting these two examples because deleting them is consistent with the legislative “work first” approach in section 405.1(a.1) of the code, which includes establishing a work history and maximizing economic independence through employment. It is also consistent with the explicit statutory requirement in section 405.1(a.2) of the code that as a condition of eligibility, the individual shall “accept any offer of employment.” The Department is also deleting the “benefit of the doubt” language in § 165.52(b) because it has determined that this policy tends to diminish the recipient’s burden to establish good cause. To further strengthen the Department’s good cause policy, a provision has been added to subsection (b) in which the Department may request verification from an individual when determining good cause.

Affected Individuals and Organizations

This final-omitted rulemaking affects cash assistance and SNAP-only applicants and recipients.

Accomplishments and Benefits

As required under Act 22, the Department is conserving resources to ensure that the expenditures for State FY 2011-2012 for assistance programs administered by the Department do not exceed the aggregate amount appropriated for the program by the General Appropriations Act of 2011. This final-omitted rulemaking also complies

with the directive in section 405.1A of the code to reduce special allowances for supportive services, including moving and transportation expenses, by up to 25%, or to eliminate special allowances from the program.

Fiscal Impact

The Commonwealth will realize an estimated savings of \$1.029 million (\$0.244 in State funds) in State FY 2011-2012.

Paperwork Requirements

There are no new paperwork requirements under this final-omitted rulemaking.

Public Comment

Although this regulation is being adopted without publication as proposed rulemaking, the Department decided to post a draft regulation on the Department’s web site on February 24, 2012, with a 15-day comment period. The Department invited interested persons to submit written comments regarding the regulation to the Department. The Department received 17 comments from 9 commentators. The Department also discussed the Act 22 regulations and responded to questions at the House Health Committee hearing on March 8, 2012.

The Department considered the comments received in response to the draft regulation. After careful deliberation, the Department decided to maintain the following draft changes to § 165.52: (1) addition of the phrase “[a]s permitted by Federal law” in subsection (a); (2) deletion of the current text in subsection (a)(10) and (11), regarding ending employment that is sporadic and rejecting employment that would result in a net loss of income; and (3) deletion of the “benefit of the doubt” language in subsection (b). The Department also added a provision stating that the Department may request verification of good cause. Because transportation-related good cause will remain intact, the Department no longer needs to amend §§ 165.51 and 165.61 (relating to compliance review; and sanctions). As a result, the Department removed those draft changes from this final-form rulemaking. For the following reasons, the Department has decided to maintain the remaining policies and procedures in the draft regulations.

Discussion of Comments and Major Changes

Following is a summary of the major comments received following publication of the draft regulation and the Department’s response to those comments.

Comment

Several commentators stated that the Department did not allow sufficient time for review and comment of the regulations. In addition, commentators requested the public comment period be extended an additional 30 days due to the policy changes and the volume of regulations.

Response

The Department engaged in a transparent public process through which the Department solicited and received numerous comments and input from stakeholders and other interested parties.

As previously mentioned, the Department posted the draft regulation on the Department’s web site on February 24, 2012. The Department invited interested persons to submit written comments, on or before March 9, 2012, regarding the regulation to the Department. In addition, the Department’s Regulatory Agenda announced the Act 22 regulations at 42 Pa.B. 879, 894 (February 11, 2012).

As a final-omitted rulemaking under Act 22, the Department was not required to have a public comment process. However, to encourage transparency and public input the Department provided an opportunity for comment by posting the draft regulation on the Department's web site. This public comment process provided sufficient opportunity for interested parties to submit comments, as supported by the number of comments that were submitted.

As previously mentioned, the Department removed the draft changes in §§ 165.51 and 165.61 regarding transportation-related good cause. The Department will, however, follow through on its plan to add "[a]s permitted by Federal law" to § 165.52(a) and to delete § 165.52(a)(10) and (11). The Department is also deleting the "benefit of the doubt" language in § 165.52(b) and adding a provision stating that the Department may request verification of good cause. The Department decided to keep the remaining amendments in this final-omitted rulemaking for the reasons stated elsewhere in this preamble.

Faced with a budgetary crisis, the Department undertook this final-omitted rulemaking to ensure that its State expenditures for FY 2011-2012 would not exceed its appropriations. To accomplish that task, the Department is refining some of its policies and procedures, changes that are entirely consistent with Federal and State law. Many changes are simply refinements of current policy, such as those involving verification and those required under Federal SNAP law and guidance.

To continue to provide special allowances to the greatest number of recipients, the Department revised certain special allowance limits in Appendix A (relating to work and work-related special allowances). The authority in Act 22 to amend special allowances and related limits is clear and two-fold: (1) the authority as directed by the General Assembly in section 405.1A of the code; and (2) the authority as permitted by the General Assembly in section 403.1 of the code. Together, these sections provide the legal bases for the Chapter 165 amendments, including those in Appendix A. With the removal of the draft amendments regarding transportation-related good cause and the related draft amendments involving penalties, the remaining policy and procedural changes are relatively modest, conform to the General Assembly's intent under Act 22 and are specifically designed to ensure the integrity of the Department's RESET program.

Comment

Commentators suggested that the Department has not complied with section 405.1A of the act because this final-omitted rulemaking will be promulgated after January 1, 2012. Section 405.1A of the code provides that "no later than January 1, 2012, the department shall further reduce annual and lifetime limits for the RESET program, including moving and transportations expenses, by up to twenty-five percent, or eliminate any special allowances from the program."

Response

As previously stated, the Department's statutory authority to promulgate this regulation is twofold, existing under sections 403.1 and 405.1A of the code. Although section 405.1A of the code directs the Department to reduce annual and lifetime limits for the RESET program, section 403.1 of the code also authorizes the Department to establish regulations to establish standards for determining eligibility and the nature and extent of assistance and modify benefit limits, which

plainly include making revisions and additional reductions to special allowances for cost savings or cost containment purposes. Under section 403.1(e) of the code, the Department has until June 30, 2012, to promulgate this final-omitted rulemaking.

Comment

Commentators also stated that the Department did not comply with Act 22 by reducing annual and lifetime limits by more than 25%.

Response

As previously explained, the Department's statutory authority to promulgate this final-omitted rulemaking is not limited to section 405.1A of the code. Section 405.1A of the code directs the Department to reduce annual and lifetime limits for the RESET program by up to 25% or to eliminate special allowances, but section 403.1 of the code authorizes the Department to establish regulations to establish standards for determining eligibility and the nature and extent of assistance and modify benefit limits. This authority includes making revisions and additional reductions to special allowances for cost savings or cost containment purposes. Section 405.1A of the code does not preclude discretionary revisions.

Comment

Several commentators expressed concern about the proposed reduction or elimination of annual and lifetime limits. Commentators asserted that the reductions in lifetime limits on transportation, education and training allowances undermine the ability of parents to work or participate in welfare to work programs. One commentator also expressed concern that the regulatory amendments will place financial burdens on women and their families when salaries and supports are shrinking. The commentator stated that the safety net is important and worthy of support by the government and taxpayers. Commentators also asserted that the elimination of allowances for car insurance payments means that parents will be faced with the choice of not going to work, their welfare to work programs or driving without car insurance.

Response

The need to apply a fiscally responsible approach in offering supportive services for special allowances related to employment and training, as well as the General Assembly's directive to reduce or eliminate at least some special allowances necessitated at least some changes in benefits. Despite these changes, the Department will continue to provide many supports for employment and training-related needs and also promote personal responsibility and self-sufficiency. Even with these changes, the Department's special allowance program will continue to effectively serve the needs of the vast majority of the recipient population. The safety net will remain intact for the greatest number of eligible recipients, which will help to alleviate the additional financial burden they would have without it.

The annual limit for all types of transportation special allowances for supportive services will be reduced to \$1,500. In addition, the work, education and training related special allowances have been limited to actual cost up to \$1,000 in a lifetime. These reductions will help to ensure that limited funding is available to a greater number of participants.

In addition, a review of the Department's data warehouse revealed that the educational assistance received by individuals from grants, loans and scholarships is

usually adequate to cover educational expenses and that an additional payment for the service or item would often be a duplication of employment and training-related supports.

Finally, the Department deleted the special allowance for motor vehicle insurance since it is the least frequently issued special allowance based on the Department's data warehouse figures and statistics for 2012. Eliminating this special allowance will, therefore, not affect many individuals. Although the few that would benefit from it will experience the change, the Department had to make some difficult budgetary decisions to continue to support the greatest number of needy individuals.

Comment

Commentators claimed that SNAP special allowance limitations based on FNS guidance lacks sufficient authority for these regulatory amendments.

Response

The Department regulates SNAP-only special allowances based on FNS regulations and guidance. To maximize its compliance with Federal law and related FNS guidance and to minimize the possibility of Federal disallowance based on noncompliance with Federal law, the Department is prudently exercising its authority to revise its regulations to ensure consistency with Federal law and the guidance interpreting the law.

Comment

Senator Kitchen expressed concern that the draft regulation states that a nonwillful failure to comply with RESET requirements due to transportation-related reasons results in ineligibility for the family. The plain text meaning of this draft regulation indicates that if, for example, a TANF parent is late because of a flat tire or traffic delays then the whole family would be deemed ineligible. The enforcement of a provision such as this appears harsh and unforgiving. Changing the standard from willful to unwillful places a burden on individuals who are attempting to become self-sufficient and also appears to conflict with the code.

Response

After careful consideration, the Department has decided to withdraw this proposal and will not, therefore, amend §§ 165.51 and 165.61.

Comment

Senator Kitchen and commentators also commented that the nonwillful failure to comply with RESET requirements due to transportation-related reasons conflicts with the statutory provisions of the code. The code contains a detailed statutory scheme under section 405.1(a.2) and section 432.3 (62 P. S. § 432.3) that defines what happens if a Temporary Assistance for Needy Families (TANF) parent is noncompliant with RESET requirements. Commentators also asserted that the rulemaking ignores the distinction between pre- and post-24-month sanctions.

Response

After careful consideration, the Department decided to not to amend the transportation-related examples of good cause in the existing regulations. Consequently, the Department determined that it will also not amend §§ 165.51 and 165.61.

Comment

Commentators commented on the deletion of certain good cause exceptions in § 165.52(a)(10), (11) and (14). Commentators asserted that the eliminations of certain

good cause exceptions are unnecessarily harsh, undermine self-sufficiency and justification has not been provided. In addition, commentators requested the Department retain the "benefit of the doubt" language in § 165.52(b).

Response

After careful consideration, the Department decided to restore the minor transgression language in subsection (b) of the final-omitted rulemaking. The Department, however, decided to proceed with the draft amendments to the good cause provisions. The Department is maintaining the addition of the "[a]s permitted by Federal law" language and the deletion of subsection (a)(10) and (11). In addition, the "benefit of the doubt" language is also being deleted with a new provision being added which states that the Department may request verification of good cause.

These amendments are consistent with the legislative intent of the RESET program to promote "work first" as the overarching goal based on the premise that establishing a work history is critical to economic self-sufficiency. Establishing a work history includes accepting even temporary or sporadic employment or a job that nets less income than the cash assistance grant and is consistent with the legislative intent in section 405.1(a.1) of the code and the explicit statutory requirement in section 405.1(a.2) of the code that as a condition of eligibility, the individual shall "accept any offer of employment." As stated earlier, the Department is deleting the "benefit of the doubt" language because this diminishes the recipient's burden to establish good cause. To underscore the recipient's burden to establish good cause, the Department added a provision that the Department may request verification from the individual when determining good cause. These amendments are reasonable, advance the "work first" goal of RESET and are expected to yield cost savings as recipients further establish their work histories, maximize their earnings and rely less on public assistance.

Comment

Commentators claimed that eligibility for special allowances is not determined within the time frames required under § 165.45 (relating to time frames for authorization of special allowances for supportive services). Therefore, recipients have to borrow money for employment and training expenses. Commentators commented that special allowances should not be barred from being reimbursed due to untimely eligibility determinations. Commentators also state that this delay inappropriately rewards staff for stalling on special allowance requests by reducing their workload if they neglect the requests long enough.

Response

The Department disagrees with the assertion that welfare offices often exceed the time frames for authorizing special allowances. Recipients shall provide necessary verification to establish their eligibility for special allowances, which sometimes delays the process. The intent of this regulatory amendment under § 165.44 (relating to verification for special allowances for supportive services) is not to withhold legitimate special allowances for eligible recipients. Rather, the intent is to prohibit reimbursement if the need for the special allowance no longer exists, unless Federal law requires it.

Regulatory Review Act

Under section 403.1 of the code, this final-omitted rulemaking is not subject to review under the Regulatory Review Act.

Findings

The Department finds that:

(1) Notice of proposed rulemaking is omitted in accordance with section 204(1)(iv) of the CDL and 1 Pa. Code § 7.4(1) (iv) because the final-omitted rulemaking relates to Commonwealth grants and benefits.

(2) Adoption of this final-omitted rulemaking in the manner provided by this order is necessary and appropriate for the administration and enforcement of the code.

Order

The Department, acting under the code, orders that:

(a) The regulations of the Department, 55 Pa. Code Chapter 165, are amended by amending §§ 165.1, 165.41, 165.44, 165.46 and 165.52 and Appendix A to read as set forth in Annex A.

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

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

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

GARY D. ALEXANDER,
Secretary

Fiscal Note: 14-526. No fiscal impact; (8) recommends adoption.

Annex A**TITLE 55. PUBLIC WELFARE****PART II. PUBLIC ASSISTANCE MANUAL****Subpart C. ELIGIBILITY REQUIREMENTS****CHAPTER 165. ROAD TO ECONOMIC SELF-SUFFICIENCY THROUGH EMPLOYMENT AND TRAINING (RESET) PROGRAM****GENERAL RESET PROVISIONS****§ 165.1. General.**

(a) A recipient who is not exempt shall participate in and comply with RESET, including meeting hourly and other work and work-related requirements as specified on the AMR or EDP, unless the recipient establishes good cause. An exempt individual may volunteer to participate in an approved work or work-related activity. The Department will inform an applicant and recipient of the rights, responsibilities and services and benefits available to RESET participants. The Department or its agent will assess the recipient's ability to meet RESET participation requirements after consultation with the recipient.

(b) The Department will provide RESET participants with case management and special allowances for supportive services as required to help them become self-sufficient. The Department will authorize special allowances for supportive services for the least costly item or service which is available and practical considering the location and hours of scheduled employment or training, and the location of the participant's residence in relation to the provider of the item or service. In addition, the Department will provide participants with or refer them to work or work-related activities designed to break the cycle of welfare dependency. To the extent it deems possible, the Department will identify and promote resources in the public and private sectors that may assist

participants to prepare for and obtain employment they may realistically be expected to obtain.

(c) Nothing in this chapter shall be interpreted as requiring the Department to develop or to offer or to continue to offer employment, education, training, work-related activities or work experience programs.

(d) This chapter applies to applicants and recipients of TANF and GA cash assistance. Sections 165.1, 165.2, 165.31(d), 165.41—165.46, 165.52, 165.71, 165.81, 165.91 and Appendix A also apply to SNAP only participants defined in § 165.2 (relating to definitions) as permitted by Federal law. For SNAP only participants, a special allowance for supportive services may be authorized as determined by the Department only up to the employment start date, with the following exception. SNAP only participants may receive special allowances for supportive services not to exceed the types and time frames permitted by Federal law.

(e) The Department may provide for additional supportive services to the extent required by an approved work, work-related or educational program under a written agreement with the Department.

SPECIAL ALLOWANCES FOR SUPPORTIVE SERVICES**§ 165.41. Eligibility for special allowances for supportive services.**

(a) A participant may receive special allowances for supportive services, as specified in this chapter, to enable the individual to participate in an approved work or work-related activity for the number of hours as specified on the AMR or EDP. Supportive services will be provided if required by the individual to participate in an approved work or work-related activity.

(b) A special allowance for supportive services is made only to the extent that the item or service is not available from another public or non-profit source at no cost to the individual, and cannot be met by educational assistance. The activity may not be secondary education or an equivalent level of vocational or technical training, unless the individual is pregnant or a custodial parent.

(c) The Department will inform the individual, orally and in writing, of the availability of special allowances for supportive services at application, redetermination, recertification and whenever the AMR or EDP is developed or revised.

(d) The Department will assist the participant to obtain supportive services required to participate in approved work or work-related activities as specified on an AMR or EDP, with one exception. Supportive services are not available for a SNAP only participant to maintain current employment, except as provided in § 165.1(d) (relating to general).

(e) Except as otherwise restricted in this chapter, special allowances for supportive services may be granted up to the maximum amount and frequency established by the Department in Appendix A (relating to work and work-related special allowances).

(f) The Department will not pay for education or training-related expenses for a SNAP only participant when these expenses are being met prior to participation in a SNAP employment and training program.

§ 165.44. Verification for special allowances for supportive services.

(a) *Verification needed to authorize special allowances for supportive services.*

(1) Before authorizing the special allowance for supportive services, the Department will determine the following:

(i) Whether the supportive service requested is required to enable the participant to engage in an approved work or work-related activity.

(ii) The expected charge for the service or item requested.

(iii) The date the service or item is needed by the participant.

(iv) The date that payment for the service or item is required under the provider's usual payment policy or practice.

(v) The Department will not pay for or provide a special allowance for items and services already paid for or obtained unless required under Federal law.

(2) Verification, including collateral contact, that the special allowances for supportive services is required will be provided prior to authorization.

(3) Acceptable verification consists of collateral contacts, written statements or completed Departmental forms, obtained from sources such as employers, prospective employers, school officials, employment and training providers or providers of supportive services. If collateral contacts are used, the information will be documented in the participant's file.

(4) The Department will use collateral contacts whenever necessary to ensure that payment is made in advance of the date that payment is required.

(b) *Verification needed for reoccurring and nonrecurring special allowances for supportive services.*

(1) The individual's eligibility for a special allowance for a supportive service is reviewed monthly, or more often if expenses are likely to change, at each redetermination or recertification, whenever a change in employment or training is reported by the individual or the employment and training provider, and whenever the AMR or EDP is revised.

(i) A participant shall verify the actual costs incurred by the participant for the supportive service and the participant's attendance at the approved work or work-related activity. The Department may require that the participant or provider of the supportive service, or both, verify that the participant received the approved special allowance for supportive services and that the provider received payment for the amount the participant was eligible to receive.

(ii) When verification provided indicates a change in eligibility, payment of the special allowance to the participant shall be reduced, terminated or increased, as appropriate, upon issuance of a confirming notice to the participant, in accordance with § 133.4(c) (relating to procedures).

(iii) The individual shall provide verification of expenditure of the special allowance within the time frame specified on the AMR or EDP.

(2) The Department will process an overpayment referral to recover a special allowance for supportive services to the extent of the misuse in accordance with § 165.91

(relating to restitution) and Chapter 255 (relating to restitution). Circumstances for which a referral may be appropriate include the following:

(i) The participant was ineligible for cash assistance or SNAP only benefits in the month the Department issued a special allowance for supportive services.

(ii) The participant did not use the special allowance for supportive services for its intended purpose.

(iii) The actual cost of the supportive service was less than the estimated cost of the service.

(iv) The participant provided falsified or erroneous documentation to obtain a special allowance for supportive services.

(v) The participant received a reoccurring special allowance for supportive services when the need no longer existed.

(vi) The participant or provider of supportive services, or both, did not provide verification, such as a receipt, that the supportive services requested were obtained using the special allowance payment.

(vii) The participant did not participate in or comply with RESET, including meeting hourly and other work and work-related requirements as specified on the AMR or EDP.

§ 165.46. Types of special allowances for supportive services.

(a) *Transportation and related expenses.* The Department will pay for transportation and related expenses required for an individual to engage in approved work or work-related activities up to the maximum allowance established in Appendix A (relating to work or work-related special allowances). Transportation-related allowances are provided for the least costly type of transportation which is available and practical considering the location and hours of scheduled approved work or work-related activity, the participant's physical condition and the need to transport children to a child care provider. Transportation-related allowances are not provided if the activity is secondary education or an equivalent level of vocational or technical training unless the individual is pregnant or a custodial parent.

(1) *Public transportation.* Public transportation-related allowances are provided for costs incurred for transportation provided by bus, subway, commuter rail, taxi, paratransit or other recognized modes of transportation.

(i) An allowance for public transportation is the actual cost to the participant up to the maximum amount established by the Department in Appendix A.

(ii) Verification of the need and the cost of transportation is required.

(2) *Private transportation.* Private transportation-related allowances are provided for costs incurred for transportation provided by privately owned vehicles, ride sharing and car or van pools.

(i) An allowance for private transportation provided by a vehicle owned by the participant is the mileage rate established by the Department in Appendix A and the actual cost of parking and highway or bridge tolls up to the maximum amount established by the Department in Appendix A.

(ii) An allowance for transportation provided by a volunteer driver or if the participant is permitted to use another person's vehicle is the mileage rate established by the Department in Appendix A and the actual cost of parking and highway or bridge tolls up to the maximum amount established by the Department in Appendix A.

(iii) An allowance provided for transportation by a car or van pool is the participant's proportionate share of the cost up to the maximum amount established by the Department in Appendix A. If the participant's share is a flat fee, the payment is the actual fee up to the maximum amount established by the Department in Appendix A.

(3) *Motor vehicle purchase or repair.* When there is no other type of practical transportation available or other available transportation is more expensive, a special allowance may be authorized toward the purchase, down payment or repair of a motor vehicle for an individual to participate in an approved work or work-related activity.

(i) The maximum total allowance toward a motor vehicle purchase, down payment and repair is limited to the rate and frequency established by the Department in Appendix A.

(ii) Preexpenditure approval is required.

(4) *Motor vehicle-related expenses.* The cost of a driver's license, State inspection fee, emission control inspection fee, license plates and vehicle registration fee may be authorized for a participant if they are required for participation in an approved work or work-related activity.

(i) Payment is made for actual cost up to the maximum allowance and frequency established by the Department in Appendix A.

(ii) Preexpenditure approval is required.

(b) *Other expenses related to approved work and work-related activities.* Special allowances may be authorized for other items related to participation in approved work or work-related activities. Preexpenditure approval is required. The maximum allowances for these items are subject to the rates and frequencies established by the Department in Appendix A.

(1) *Clothing.* The Department may refer a participant to other public or nonprofit sources that provide clothing and grooming items at no cost. If these sources are not available or do not have appropriate clothing or other required items, the Department may authorize a special allowance for supportive services for clothing and grooming items required to participate in an approved work or work-related activity.

(2) *Tools and other equipment.* A special allowance may be authorized for tools and other equipment which an employer, education, employment or training provider requires for participation in an approved work or work-related activity but which are not provided by the employer, education, employment or training provider and are not available under Federal, State or other educational grants.

(3) *Books and supplies.* A special allowance may be authorized for books and supplies that an employer or employment and training provider requires for a participant to participate in an approved work or work-related activity if these items are not provided by the employer or training provider and are not available under Federal, State or other educational grants.

(4) *Fees.* A special allowance for supportive services may be authorized for a fee to take a test such as a high

school equivalency test, a test that is a prerequisite for employment or for registration or enrollment fees required for an individual to enter an approved work or work-related activity. Tuition is not construed to be a fee.

(5) *Union dues and professional fees.* If payment of union dues or professional fees is a condition of employment, a special allowance for supportive services may be authorized to participants who receive TANF or GA cash assistance for the initial fee only and for the period up to the date of the participant's first pay. A special allowance for supportive services may not be issued to pay for reoccurring fees, such as license fees, even if they are necessary for the individual to maintain employment.

COMPLIANCE REVIEW AND GOOD CAUSE

§ 165.52. Good cause.

(a) As permitted by Federal law, good cause includes the following circumstances beyond the individual's control:

(1) The job was beyond the capacity of the individual.

(2) The individual reasonably attempted and is unable to secure or to maintain transportation.

(3) The individual reasonably attempted and cannot secure or maintain appropriate child care, as defined in § 165.2 (relating to definitions), or appropriate adult care for an incapacitated adult living in the same home, within a reasonable distance from the individual's home, as defined in § 165.2.

(4) The working conditions are substandard; that is, the place of employment is not free of recognized hazards that are causing or are likely to cause death or serious physical harm, or the wages paid are below the minimum wage if applicable for that type of employment or are below the prevailing wage normally paid in the community for that specific kind of employment.

(5) The individual establishes a basis for a claim of discrimination by an employer or fellow employees based on age, race, sex, color, handicap, religious beliefs, national origin or political beliefs or other unlawful discrimination.

(6) The individual leaves a job in connection with patterns of employment in which workers frequently move from one employer to another, such as migrant farm labor, construction work or temporary work through an agency. Even though employment at the new site has not actually started, leaving the previous employment shall be considered good cause if it is part of the pattern of that type of employment.

(7) Personal illness or illness of another household or family member.

(8) A personal emergency.

(9) The individual failed to receive notice at least 2 days prior to the date of a scheduled RESET activity.

(10) The individual was placed in an education or training activity that was beyond the capacity of the individual to complete, and the individual is willing to participate in another activity better suited to the individual's needs and aptitudes.

(11) A required employment and training activity conflicts with scheduled hours of employment or a job interview.

(12) The location of a RESET site or job is more than 2 hours round-trip by reasonably available public or private transportation from the individual's residence.

(13) The individual is claiming to be exempt from RESET participation requirements under § 165.21 (relating to exemptions from RESET participation requirements) and is cooperating in an attempt to provide verification of exemption.

(b) In determining good cause, the worker will consider all the facts and circumstances, especially if the transgression is relatively minor (such as reporting to a component a few minutes late) or isolated in nature (such as forgetting to keep an appointment, despite good overall attendance). The Department may request verification from the individual when determining good cause. Even after the CAO has made a preliminary determination of the lack of good cause, an individual may offer evidence of good cause to avoid sanction.

(c) The Department may grant good cause for up to 6 months to an individual, when strict application of any RESET participation requirement would not promote an individual's approved plan for self-sufficiency, as recorded on the AMR, and would make it more difficult for the individual to fulfill the plan. Examples of good cause for

not strictly complying with a RESET participation requirement include:

(1) Hours that an individual is participating in an approved education or training activity which began during the first 24 months of receipt of cash assistance, if the total hours of instruction, lab time and work or work-related activity, whichever applies, equals at least 20 hours per week.

(2) Hours that an individual is participating in an internship, student teaching, or practicum assignment required as part of an approved education or training curriculum, if the individual is maintaining satisfactory progress as determined by the school or training agency, and the total hours of this activity and work or work-related activity, whichever applies, equals at least 20 hours per week.

(d) The Department may also grant good cause to a pregnant or parenting individual under 22 years of age who is enrolled in high school or attending a minimum 20-hour per week GED program, until the individual graduates from high school, receives a GED or reaches 22 years of age, whichever occurs first.

APPENDIX A

WORK AND WORK-RELATED SPECIAL ALLOWANCES

<i>Type of Allowance</i>	<i>Frequency TANF or GA</i>	<i>SNAP Only</i>	<i>Maximum Allowance</i>
TRANSPORTATION RELATED ALLOWANCES			—actual cost up to \$1,500 annually except for moving/relocation costs to accept employment
<i>Transportation Public</i>	—as required for job interviews, work or work-related activities	—as required for job interviews, work or work-related activities	
—bus			
—subway			
—commuter rail	—for employment, may be authorized for the period up to the date of the first pay	—for employment, may be authorized for the period up to the start date	
—taxi			
—paratransit			
<i>Transportation Private</i>	—as required for job interviews, work or work-related activities	—as required for job interviews, work or work-related activities	—mileage reimbursement rate will be set by the Department by notice not to exceed Commonwealth reimbursement rate for actual cost of gasoline, plus the actual cost of parking and highway and bridge tolls
—privately-owned vehicle	—for employment, may be authorized for the period up to the date of the first pay	—for employment, may be authorized for the period up to the start date	
—volunteer car and driver			
<i>Transportation Car or van pool</i>	—as required for work or work-related activities	—as required for work or work-related activities	
	—for employment, may be authorized for the period up to the date of the first pay	—for employment, may be authorized for the period up to the start date	
<i>Moving/relocation costs to accept employment</i>	—to accept a verified offer of gainful, permanent employment	Not permitted.	—actual cost up to \$200
	—no more than once in a 12-month period		

<i>Type of Allowance</i>	<i>Frequency TANF or GA</i>	<i>SNAP Only</i>	<i>Maximum Allowance</i>
Motor Vehicle Repair	—as required for work or work-related activities	—as required for work or work-related activities or if required to accept employment	
Motor Vehicle-Related Expenses —driver's license —State inspection fee —emission control inspection fee —license plates —vehicle registration fee	—as required for work or work-related activities	Not permitted.	
MOTOR VEHICLE PURCHASE	—as required for work or work-related activities	Not permitted.	—actual cost for one vehicle up to \$1,500 in a lifetime.
CLOTHING	—as required for work or work-related activities	—as required for work or work-related activities or if required to accept employment	—required clothing or actual cost of clothing up to \$150 annually
WORK, EDUCATION AND TRAINING-RELATED ALLOWANCES			—actual cost up to \$1,000 a lifetime
Tools and Equipment	—as required for work or work-related activities	—as required for work or work-related activities or if required to accept employment	
		Personal computers and related hardware or software are not permitted.	
Books and Supplies	—as required for work or work-related activities	—as required for work or work-related activities	
Fees	—as required for work or work-related activities	—as required for work-or work-related activities or if required to accept employment	
Union Dues/ Professional Fees	—may be authorized for the period up to date of first pay	Not permitted, unless required under Federal law.	

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DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CHS. 168 AND 3041]

Subsidized Child Care Hearings, Overpayments and Absence Changes

The Department of Public Welfare (Department) amends Chapters 168 and 3041 (relating to child care; and subsidized child care eligibility) to read set forth in Annex A under the authority in sections 201(2), 403(b) and 403.1 of the Public Welfare Code (code) (62 P. S. §§ 201(2), 403(b) and 403.1), as amended by the act of June 30, 2011 (P. L. 89, No. 22) (Act 22).

Omission of Proposed Rulemaking

Act 22 amended the code and added several new provisions. Specifically, Act 22 added section 403.1 of the code. Section 403.1(a)(1) of the code authorizes the Department to promulgate final-omitted regulations to establish standards for determining eligibility and the nature and extent of assistance. The basis for the final-omitted regulation is section 204(1)(iv) of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204(1)(iv)),

known as the Commonwealth Documents Law (CDL), which authorizes an agency to omit or modify notice of proposed rulemaking when the regulation relates to Commonwealth grants or benefits. See section 403.1(d) of the code. Child care subsidy is a Commonwealth benefit. In addition, until June 30, 2012, section 403.1 of the code expressly exempts certain regulations under the Regulatory Review Act (71 P. S. §§ 745.1—745.12), section 205 of the CDL (45 P. S. § 1205) and section 204(b) of the Commonwealth Attorneys Act (71 P. S. § 732-204(b)).

The Department is amending Chapters 168 and 3041 in accordance with section 403.1 of the code because this final-omitted rulemaking pertains to establishing standards for determining eligibility and the nature and extent of assistance. In addition, this final-omitted rulemaking implements section 403.1(c) of Act 22. As provided in section 403.1(c) of the code, the Department is permitted to exercise its rulemaking authority granted under section 403.1(a) of the code as may be necessary to ensure that expenditures for State Fiscal Year (FY) 2011-2012 for assistance programs administered by the Department do not exceed the aggregate amount appropriated for the

program by the General Appropriations Act of 2011. Specifically, this final-omitted rulemaking will save \$463,000 in State FY 2011-2012.

Purpose

The purpose of this final-omitted rulemaking is to amend the number of days of consecutive absences of a child allowed before the eligibility agency shall send an adverse action notice to a parent or caretaker. Reducing the allowable number of consecutive days of absence from 10 days to 5 days will result in cost-savings. For example, if a child cannot return to care because of a lengthy illness, the child care subsidy can be suspended during this time and eligibility can continue for up to 90 days.

In addition, the number of days of child care that will be paid if a parent or caretaker involuntarily loses work, begins a strike or graduates from or completes education or training will be reduced to 30 days. The parent will continue to have 30 additional days of eligibility, however subsidy will be suspended and payment will not be made to the provider. The additional 30 days of eligibility, for which child care subsidy is not paid, allows the parent or caretaker an additional 30 days to begin another work or training activity and not have to be placed at the bottom of the waiting list.

This final-omitted rulemaking will also deem the parent or caretaker responsible to pay the child care provider for any absences beyond the total number of absences allowed. Section 3041.18(b) (relating to attendance) specifies that a child is expected to attend child care on all days for which the parent or caretaker has established a need. Setting a standard for a total number of allowable absences and imposing consequences for exceeding the standard encourages the parent or caretaker to use the days of child care requested or report a change in the number of days needed. If a child has more than one enrollment in a day, a child is considered absent only once if the child is absent from more than one provider on the same day. The requirement to pay for absences does not apply to a parent or caretaker who is receiving subsidized child care under the Supplemental Nutrition Assistance Program (SNAP) employment and training program. In addition, suspended days will not count towards the total number of absent days.

Also, this final-omitted rulemaking amends the requirements for the Head Start expansion program to make certain that a child enrolled in the Head Start expansion program remains eligible as long as the parent or caretaker meets the criteria under § 3041.51 (relating to Head Start expansion program) and the child remains enrolled in Head Start. To be eligible for the Head Start expansion program, a family shall verify eligibility each time a child in the family applies for the Head Start expansion program. In addition, the amendment states that children in the Head Start expansion program remain eligible even if other family members become ineligible. Families with children not enrolled in the Head Start expansion program, but receiving subsidized child care, shall still meet the eligibility requirements.

Finally, this final-omitted rulemaking amends the regulations concerning the collection of overpayments. Specifically, the collection of overpayments in cases of suspected fraud will be delayed until the Office of Inspector General (OIG) completes its investigation. Overpayments involving fraud will be collected in conjunction with the OIG. This will allow the Department to determine whether the eligibility agency, OIG or the court is best suited to collect the overpayments.

Requirements

§ 168.72. Determining monthly child care costs

This section is amended to state that child care costs include a charge for up to 5 consecutive days on which the child was not in attendance, instead of 10 consecutive days.

This section is also amended by adding subsection (b). Subsection (b) states that if a child is absent more than 25 days during the State's fiscal year, the parent or caretaker will be responsible to pay the provider for each day a child is absent beginning with the 26th day of absence. The parent or caretaker will be required to pay the provider's verified published daily rate for each day of absence over the allowed number. A parent or caretaker who receives subsidized child care through the SNAP employment and training program, however, will not be required to pay for absent days that exceed the allowable number.

The Department posted a draft regulation on the Department's web site on February 24, 2012, with a 15-day comment period. The draft regulation included 20 allowable absences for the child if the parent or caretaker worked or trained less than 25 hours and 30 allowable absences if the parent or caretaker worked or trained 25 hours or more. As provided in more detail as follows, this subsection was revised to provide for 25 allowable absences based on the public comments received. The draft regulation was also revised to clarify that a child is considered absent only once during an enrollment day.

§ 3041.19. Absence

Subsection (a) is amended to decrease the number of consecutive days of absence allowed before the eligibility agency sends an adverse action notice. The amended regulation states that the adverse action notice shall be sent after 5 consecutive days of absence instead of 10 consecutive days of absence.

Subsection (c) has been added to this section. If a child is absent more than 25 days during the State's fiscal year, the parent or caretaker will be responsible to pay the provider for each day a child is absent beginning with the 26th day of absence. The parent or caretaker will be required to pay the provider's verified published daily rate for each day of absence over the allowed number. Suspended days of service as specified in § 3041.21 (relating to subsidy suspension) are not considered days of absence.

Subsection (c) was also revised after public comment. The draft regulation included 20 allowable absences for the child if the parent or caretaker worked or trained less than 25 hours and 30 allowable absences if the parent or caretaker worked or trained more than 25 hours. Based on the comments received, this subsection was revised to provide 25 allowable absences. The draft regulation was also revised to clarify that a child is considered absent only once during an enrollment day.

§ 3041.20. Subsidy continuation during breaks in work, education or training

This section has been amended to state that a family's eligibility and payment for subsidized child care continues for 30 calendar days from the date of an involuntary loss of work, the date a strike begins or the date the parent graduates from or completes education or training. On day 31, the child care subsidy will be suspended and the family's eligibility will continue for an additional 30 days. The additional 30 days of eligibility, for which child care subsidy is not paid, allows the parent or caretaker an

additional 30 days to begin another work or training activity and not have to be placed at the bottom of the waiting list. The regulation previously allowed the family to be eligible and payment to be issued for 60 days.

§ 3041.21. *Subsidy suspension*

This section is amended to decrease the number of days of consecutive absences before subsidy can be suspended for up to 90 days for a child who meets specific criteria. The number of days of consecutive absence have decreased from 10 days to 5 days, which aligns with the change made to § 3041.19 (relating to absence). The criterion to qualify for subsidy suspension has not changed.

§ 3041.51. *Head Start expansion program*

Subsection (b) is amended to state that the parent or caretaker shall meet the eligibility requirements in subsection (f) each time a child in the family applies for the Head Start expansion program. An addition was also made to subsection (f) to include the need to verify income eligibility as specified in § 3041.41 (relating to financial eligibility) each time a child in the family applies for the Head Start expansion program.

Subsection (c) is amended to state that the eligibility agency will verify with the Head Start program that the child is enrolled in a Head Start program that meets Federal and State Head Start standards.

Under the amended regulation, the eligibility agency will not be permitted to complete a partial redetermination or redetermination on a child who is enrolled in the Head Start expansion program until a child is no longer enrolled in the Head Start program. The eligibility agency will conduct a partial redetermination or redetermination if the family has additional children who are not enrolled in Head Start, but receive subsidized child care.

A child enrolled in the Head Start expansion program is not subject to partial redetermination or redetermination regulation in subsection (i). Eligibility for a child enrolled in the Head Start expansion program is unrelated to the eligibility of other children in the family who are not enrolled in the Head Start expansion program and receive subsidized child care. Eligibility for a child enrolled in the Head Start expansion program shall continue as specified in subsections (a)—(k).

§ 3041.167. *Notice of overpayment*

Subsection (b)(5) is amended by adding the language “except in cases of suspected fraud.” The addition of this language rescinds the requirement to include the repayment methods in the notice of overpayment when the overpayment is due to suspected fraud.

§ 3041.182. *Eligibility agency responsibilities regarding overpayment*

This section specifies that cases of suspected provider fraud will be referred to the OIG.

§ 3041.183. *Delaying recoupment*

This section is amended to delay recoupment for cases referred to the OIG for suspected fraud until the investigation is complete. It also establishes that the method of recoupment in cases of suspected fraud will be determined in conjunction with the OIG.

§ 3041.186. *Collection*

This section is amended by adding the requirement that the collection of overpayments in cases of suspected fraud shall be done in conjunction with the OIG. When

the OIG has determined fraud, in an active case, the eligibility agency shall determine the collection method in conjunction with the OIG.

§ 3041.188. *Collection for a family whose child is no longer in care*

This section is amended by adding the requirement that the collection of overpayments in cases of suspected fraud shall be done in conjunction with the OIG. When the OIG has determined fraud, in a case when the child is no longer in care, the eligibility agency shall determine the collection method in conjunction with the OIG.

§ 3041.189. *Disqualification*

This section is amended by adding an additional criteria when a parent or caretaker is disqualified from participating in the subsidized child care program. If the parent or caretaker agrees to be disqualified by signing an administrative disqualification hearing waiver, the parent or caretaker will be disqualified.

Affected Individuals and Organizations

Parents and caretakers who receive subsidized child care are affected by this final-omitted rulemaking. If a parent or caretaker's child has five consecutive absences, the child care subsidy will be suspended. In addition, parents and caretakers will be required to pay for absences over a specified amount in a fiscal year. Parents and caretakers are also required to meet eligibility requirements each time a child in the family applies for the Head Start expansion program.

In addition, providers and eligibility agencies are affected by this final-omitted rulemaking. Providers are required to notify the eligibility agency when a child is absent for 5 consecutive days. Eligibility agencies are required to verify enrollment directly with the Head Start expansion program. In addition, eligibility agencies are required to track the number of absences for each child receiving subsidized child care to determine if a child exceeds the allotted number of absences. Finally, eligibility agencies are required to refer all suspected cases of fraud to the OIG.

Accomplishments and Benefits

This final-omitted rulemaking implements section 403.1 of the code. As provided in Act 22, this final-omitted rulemaking will help the Department's efforts to conserve resources to ensure that the expenditures for State FY 2011-2012 for assistance programs administered by the Department do not exceed the aggregate amount appropriated for assistance programs by the General Appropriations Act of 2011.

Fiscal Impact

The Commonwealth will realize an estimated savings of \$463,000 in State FY 2011-2012.

Paperwork Requirements

There are new paperwork requirements under the final-omitted rulemaking. Under the amended regulation, when applying for the Head Start expansion program, the parent or caretaker will be required to verify that the eligibility requirements are met for subsidized child care each time a child in the family applies for the Head Start expansion program. Verification will include income eligibility.

The eligibility agency is required to conduct partial redeterminations or redeterminations if the family has additional children who are not enrolled in Head Start,

but receive subsidized child care. The number of redeterminations will increase under the amended regulation.

In addition, the eligibility agency will need to track the number of absences for each child receiving subsidized child care to determine if a child exceeds 25 absences.

Public Comment

Although this rulemaking is being adopted without publication as proposed rulemaking, the Department posted a draft regulation on the Department's web site on February 24, 2012, with a 15-day comment period. The Department invited interested persons to submit written comments regarding the draft regulation to the Department. The Department received 48 comments. The Department also discussed the Act 22 regulations and responded to questions at the House Health Committee hearing on March 8, 2012.

The Department considered the comments received in response to the draft regulation. For the following reasons, the Department has decided to revise the regulations concerning the number of absences allowed before a parent or caretaker is deemed responsible to pay the provider if additional absences occur. The regulations were also revised to clarify that a child is considered absent only once during an enrollment day.

Discussion of Comments

Following is a summary of the major comments received within the public comment period following publication of the draft regulation and the Department's response to the comments.

Comment

Several commentators stated that the Department did not allow sufficient time for review and comment of the regulations. In addition, commentators requested the public comment period be extended an additional 30 days due to the policy changes and the volume of regulations.

Response

The Department engaged in a transparent public process through which the Department solicited and received numerous comments and input from stakeholders and other interested parties. As previously mentioned, the Department posted the draft regulation on the Department's web site on February 24, 2012. The Department invited interested persons to submit written comments, on or before March 9, 2012, regarding the draft regulation to the Department. In addition, the Department's Regulatory Agenda announced the Act 22 regulations at 42 Pa.B. 879, 893 (February 11, 2012).

As a final-omitted regulation under Act 22, the Department was not required to have a public comment process. However, to encourage transparency and public input, the Department provided an opportunity for comment by posting the draft regulation on the Department's web site. This public comment process provided sufficient opportunity for interested parties to submit comments, as supported by the number of comments that were submitted. Therefore, the Department is not extending the public comment period.

Comment

Comments were received both in support and opposition of the regulation regarding consecutive days of absence changing from 10 days to 5 days. Comments varied from supporting the 5 days of absence to opposing the reduction because illness can last longer or the absences will be difficult to track.

Response

The Department is maintaining the policy to reduce the allowable number of consecutive days of absence from 10 days to 5 days as provided in the draft regulations. This amendment will ensure that a child care subsidy is only provided on a limited basis to children who are not in child care.

Comment

Comments were received both in support and opposition to capping the number of absences allowed before a parent or caretaker is responsible to pay the provider for additional absences. Recommendations included making the number of absences the same regardless of the number of hours a parent or caretaker works or trains and adding exceptions for illness or hospitalization.

Response

Based on the comments received, the Department revised the regulation to allow a child to be absent a total of 25 enrollment days in a fiscal year before the parent is responsible for paying the provider for additional absent days, regardless of how many hours the parent or caretaker is working or training. Originally, the regulation differentiated the number of absences allowed according to the number of hours the parent or caretaker worked or trained—20 enrollment days if the parent or caretaker worked or trained less than 25 hours and 30 enrollment days if the parent or caretaker worked or trained 25 hours or more.

Due to varying training and work schedules, the Department revised § 168.72 (relating to determining monthly child care costs) and § 3041.19 to align the number of paid absences in a year. If a child's absences exceed 25 total enrollment days in the State's fiscal year, the parent or caretaker is responsible to pay to the provider the provider's verified published daily rate for each day of absence starting with the 26th day of absence. In addition, the Department clarified that a child is considered absent only once during an enrollment day.

Comment

Comments were received both in support and opposition of the regulation involving the time frames for eligibility and suspension when there is an involuntary loss of work, strike completes education or training. Comments varied from supporting the payment of child care subsidy only up to 30 days to opposing the reduction from 60 days due to the current economic climate and the difficulties with finding a job.

Response

The Department is maintaining the policy that 30 days of child care subsidy will be paid after a parent or caretaker involuntarily loses work, begins a strike or graduates or completes education or training. After 30 days, the child care subsidy will end. The family's eligibility, however, will remain for an additional 30 days in the event another job is found during that time. This change ensures that child care subsidy is only provided for children who need child care, while still allowing a grace period for the parent or caretaker to find another job.

Comment

Comments were received both in support and opposition to the regulatory amendment concerning disqualification and overpayments. Commentators suggested the regulations be revised to contain protections against

abuse of the hearing waiver process. In addition, commentators suggested the regulations be revised to specify the collection method in cases of suspected fraud.

Response

The Department is maintaining the policy concerning the disqualification hearing waiver and also the collection of overpayments in cases of suspected fraud. If a parent or caretaker agrees to be disqualified by signing an administrative waiver, the parent or caretaker will be disqualified. The collection of overpayments in cases of suspected fraud will be delayed until the OIG completes its investigation. Overpayments involving fraud will be collected in conjunction with the OIG. This change will allow the Department to determine whether the eligibility agency, OIG or the court is best suited to collect overpayments. Further, delaying recoupment in cases of suspected fraud will allow a thorough investigation to take place.

Comment

Commentators submitted recommendations concerning special eligibility for children enrolled in Head Start. These recommendations included requiring redeterminations for children enrolled in Head Start who receive subsidized child care, developing clear notification regarding sibling rules and providing sufficient time between notification and discontinuation of subsidy.

Response

The Department is maintaining the policy that to be eligible for the Head Start expansion program, a family shall verify eligibility each time a child in the family applies for the Head Start expansion program. Prior to amendment, the regulations only required parents and caretakers to report a job loss. Under the regulatory amendment, parents and caretakers will be required to continue to meet eligibility requirements.

Regulatory Review Act

Under section 403.1 of the code, this final-omitted rulemaking is not subject to the Regulatory Review Act.

Findings

The Department finds that:

(1) Notice of proposed rulemaking is omitted in accordance with section 204(1)(iv) of the CDL, 1 Pa. Code § 7.4(1)(iv) and section 403.1(d) of the code because the regulations relates to Commonwealth grants and benefits.

(2) Adoption of this final-omitted rulemaking in the manner provided by this order is necessary and appropriate for the administration and enforcement of the code.

Order

The Department, acting under the code, orders that:

(a) The regulations of the Department, 55 Pa. Code Chapters 168 and 3041, are amended by amending §§ 168.72, 3041.19—3041.21, 3041.51, 3041.167, 3041.182, 3041.183, 3041.186, 3041.188 and 3041.189 to read as set forth in Annex A.

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

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

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

GARY D. ALEXANDER,
Secretary

Fiscal Note: 14-532. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 55. PUBLIC WELFARE

PART II. PUBLIC ASSISTANCE MANUAL

Subpart C. ELIGIBILITY REQUIREMENTS

CHAPTER 168. CHILD CARE

PAYMENT DETERMINATION

§ 168.72. Determining monthly child care costs.

(a) Child care costs include the following:

(1) A charge for child care during the hours of the work-related activity, including travel time and sleep-time.

(2) A charge for up to 5 consecutive days on which the child was not in attendance.

(3) A charge for transporting the child to or from care if the charge is included as part of the normal child care charge and not levied as a separate charge.

(b) If a child's absences exceed 25 total enrollment days in the State's fiscal year, the parent or caretaker is responsible to pay to the provider the provider's verified published daily rate for each day of absence starting with the 26th day of absence. A child is considered absent only once during an enrollment day. A parent or caretaker who receives subsidized child care under the Supplemental Nutrition Assistance Program employment and training program is not be required to pay for absences under this subsection.

**PART V. CHILDREN, YOUTH AND FAMILIES
MANUAL**

Subpart B. ELIGIBILITY FOR SERVICES

**CHAPTER 3041. SUBSIDIZED CHILD CARE
ELIGIBILITY**

GENERAL REQUIREMENTS AND BENEFITS

§ 3041.19. Absence.

(a) Upon notification from the provider that a child has been absent more than 5 consecutive days for which the child is scheduled to attend child care, not including days of a child's illness, injury or impairment that precludes a child from attending child care, or other reason as specified in § 3041.21 (relating to subsidy suspension), the eligibility agency shall send the parent or caretaker an adverse action notice terminating the child's eligibility and payment to the provider.

(b) The notice shall inform the parent or caretaker of the following:

(1) The parent or caretaker shall report to the eligibility agency the date of the child's return to care.

(2) Payment will not be terminated if the child returns to care by the date set forth on the notice.

(3) If the child does not return to care by the date set forth on the notice and there are no grounds for subsidy suspension, the child's subsidy will be terminated effective the date set forth on the notice.

(c) If a child's absences exceed 25 total enrollment days in the State's fiscal year, the parent or caretaker is

responsible to pay to the provider the provider's verified published daily rate for each day of absence starting with the 26th day of absence. A child is considered absent only once during an enrollment day. Suspended days of service as specified in § 3041.21 are not considered days of absence.

§ 3041.20. Subsidy continuation during breaks in work, education or training.

A family's eligibility and payment for subsidized child care continues for and during the following:

(1) Thirty calendar days from the date of an involuntary loss of work, the date a strike begins or the date the parent graduates from or completes education or training. On day 31, the child care subsidy will be suspended and the family's eligibility will continue for an additional 30 days.

(2) A total of 84 calendar days from the first day of family leave, including maternity leave, as defined under the Family and Medical Leave Act of 1993 (29 U.S.C.A. §§ 2601—2654), provided there is a need for child care.

(3) Regularly scheduled breaks in work or breaks in education or training, if the regularly scheduled break is less than 31 calendar days.

§ 3041.21. Subsidy suspension.

(a) If a child is unable to attend child care for more than 5 consecutive days for which the child is scheduled to attend care, subsidy shall be suspended for up to 90 calendar days in the following circumstances:

(1) The child is visiting the noncustodial parent or caretaker.

(2) The child is ill or hospitalized, preventing the child from participating in child care.

(3) The child is absent because of family illness or emergency.

(4) The child remains at home with his parent or caretaker during family leave.

(5) The provider is closed because of failure to meet certification or registration requirements.

(6) The parent or caretaker needs to locate another provider because the current provider cannot meet the parent's or caretaker's child care needs.

(7) The parent or caretaker is on maternity or family leave, as defined under the Family and Medical Leave Act of 1993 (29 U.S.C.A. §§ 2601—2654).

(8) A parent or caretaker has a break in work, education or training that exceeds 30 calendar days but does not continue beyond 90 calendar days.

(b) The child is no longer eligible for subsidy payment or service if the child continues to be absent following 90 calendar days of suspension.

SPECIAL ELIGIBILITY PROGRAMS

§ 3041.51. Head Start expansion program.

(a) Head Start is a Federally-funded program designed to prepare at-risk children, 3 years of age or older but under 5 years of age, for school success. A Head Start expansion program is a program that combines the Head Start program with the subsidized child care program.

(b) A child who is enrolled in a Head Start program, whose parent or caretaker needs extended hours or days of child care beyond the hours or days provided by the Head Start program to work, is eligible for subsidized child care under this section, if the parent or caretaker

meets the eligibility requirements for subsidized child care as specified in subsection (f), each time a child in the family applies for the Head Start expansion program.

(c) The eligibility agency shall verify with the Head Start program that the child is enrolled in a Head Start program that meets Federal and State Head Start standards.

(d) If a child in the family as specified in § 3041.31 (relating to family size) is enrolled in the Head Start expansion program, the family co-payment is based on family size and income. If additional children in the family are enrolled in subsidized child care, the family co-payment is based on family size and income.

(e) If extended hours or days of care are provided beyond the Head Start program hours or days, the extended hours and days of care shall be provided by a facility that has a certificate of compliance or registration by the Department as a child day care facility.

(f) Upon program entry and continuation in the Head Start expansion program, a parent or caretaker shall meet the following conditions:

(1) Verification of a minimum of 20 hours of work per week as specified in § 3041.43 (relating to work, education and training) each time a child in the family applies for the Head Start expansion program.

(2) Verification that extended hours and days of child care are needed to work as specified in subsection (b).

(3) Verification of income eligibility for subsidized child care as specified in § 3041.41 (relating to financial eligibility) each time a child in the family applies for the Head Start expansion program.

(4) Compliance with the waiting list conditions specified in § 3041.133 (relating to waiting list).

(5) Payment of the co-payment as specified in § 3041.101 (relating to general co-payment requirements).

(6) Report loss of work within 10 calendar days following the date work ended as specified in § 3041.127(b) (relating to parent and caretaker report of change).

(7) Report when a child is no longer enrolled in Head Start within 10 calendar days following the date the Head Start enrollment ended.

(g) Subsidy for a child receiving care under this section may be suspended during summer school breaks.

(h) A parent or caretaker whose child receives subsidized child care and is enrolled in a Head Start program is not required to report changes in circumstances during the period of the child's Head Start enrollment, unless the parent or caretaker loses work. If the parent or caretaker involuntarily loses work, the family remains eligible for the Head Start expansion program for up to 60 calendar days following the loss of work. If the parent or caretaker is unemployed for more than 60 calendar days, the family is ineligible for subsidized child care.

(i) The eligibility agency may not complete a partial redetermination or redetermination on a child enrolled in the Head Start expansion program until the Head Start program, the parent or caretaker or a reliable source confirmed by the eligibility agency reports to the eligibility agency that a child is no longer enrolled in the Head Start program.

(j) The eligibility agency shall conduct a partial redetermination or redetermination as specified in §§ 3041.129 and 3041.130 (relating to partial determination based on

reported changes; and redetermination of eligibility) if the family has additional children who are not enrolled in Head Start but receive subsidized child care.

(k) A child enrolled in the Head Start expansion program is not subject to partial redetermination or redetermination requirements as specified in subsection (i). Eligibility for a child enrolled in the Head Start expansion program is unrelated to the eligibility of other children in the family who are not enrolled in the Head Start expansion program and receive subsidized child care. Eligibility for a child enrolled in the Head Start expansion program shall continue as specified in this section.

NOTIFICATION AND RIGHT TO APPEAL

§ 3041.167. Notice of overpayment.

(a) The eligibility agency shall notify the parent or caretaker in writing of an overpayment.

(b) The notice of overpayment must include the following:

- (1) The reason for the overpayment as specified in § 3041.181 (relating to overpayment).
- (2) The period of the overpayment.
- (3) The amount of the overpayment.
- (4) An explanation of how the overpayment was calculated.
- (5) The repayment methods as specified in § 3041.186 (relating to collection) except in cases of suspected fraud.

(6) The right of the parent or caretaker to appeal the decision on the overpayment and how to appeal as specified in §§ 3041.162 and 3041.171 (relating to notice of right to appeal; and appealable actions).

OVERPAYMENT AND DISQUALIFICATION

§ 3041.182. Eligibility agency responsibilities regarding overpayment.

(a) The eligibility agency shall inform a parent or caretaker who files an appeal and requests subsidy continuation pending appeal, that if the hearing decision is in favor of the eligibility agency or the Department, the parent or caretaker shall reimburse the amount of the overpayment unless the hearing officer determines a hardship.

(b) The eligibility agency shall pursue possible overpayments in active and closed cases, including those that were voluntarily closed.

(c) The following are the responsibilities of the eligibility agency when exploring possible overpayments:

- (1) Determination of whether the overpayment is the result of one of the conditions specified in § 3041.181 (relating to overpayment).
- (2) Written assurance that the methods of exploring overpayments are appropriate to the particular situation and to the different eligibility factors.
- (3) Assurance that the methods of exploring overpayments do not infringe on the civil liberties of individuals or interfere with the due process of law.
- (4) Investigation of a credible complaint that a parent or caretaker is erroneously receiving subsidized child care.
- (5) Identification and documentation of the causes of the overpayment.
- (6) Computation of the amount of the overpayment.

(7) Referral of suspected fraud cases to the Office of Inspector General.

(8) Submission of an overpayment notice to the parent or caretaker as specified in § 3041.167 (relating to notice of overpayment).

(d) The eligibility agency shall refer all cases of suspected provider fraud to the Office of Inspector General.

§ 3041.183. Delaying recoupment.

(a) Recoupment shall be delayed until after a hearing decision, if the family files an appeal of the overpayment decision no later than 10 calendar days after the date the written notice is postmarked or hand-delivered to the parent or caretaker by the eligibility agency.

(b) Recoupment shall be delayed for cases referred to the Office of Inspector General for suspected fraud until the investigation is complete.

(c) The method of recoupment in cases of suspected fraud will be determined in conjunction with the Office of Inspector General.

§ 3041.186. Collection.

(a) The eligibility agency shall collect the total amount of the overpayment from a family whose child continues to receive subsidized child care when the eligibility agency identifies an overpayment as specified in § 3041.182 (relating to eligibility agency responsibilities regarding overpayment).

(b) If the Department, eligibility agency or other entity identifies an overpayment unrelated to fraud, subject to repayment as specified in § 3041.181 (relating to overpayment), related to a family whose child continues to receive subsidized child care, the eligibility agency shall:

(1) Notify the parent or caretaker by a letter that a repayment is required, the amount of the repayment and the following repayment options:

- (i) A one-time payment of the full amount owed.
- (ii) A one-time partial payment and an increase in the co-payment to be paid until repayment is complete.
- (iii) An increase in the co-payment until the repayment is complete.

(2) Automatically implement an increase to the co-payment until the repayment is complete when the parent or caretaker does not select an option as specified in paragraph (1) no later than 10 calendar days following the date of the letter.

(3) Notify the parent or caretaker by a second letter of failure to choose a repayment option as specified in paragraph (1), the amount of the increased co-payment and the number of weeks the increased co-payment will continue.

(c) When the Office of Inspector General has determined fraud in an active case, the eligibility agency shall determine collection methods in conjunction with the Office of Inspector General.

§ 3041.188. Collection for a family whose child is no longer in care.

(a) The eligibility agency shall collect the total amount of the overpayment as specified in § 3041.182 (relating to eligibility agency responsibilities regarding overpayment) from a family whose child is no longer receiving subsi-

dized child care if the eligibility agency identifies an overpayment.

(b) If the Department, eligibility agency or other entity identifies an overpayment unrelated to fraud, for a family whose child is no longer receiving subsidized child care, the eligibility agency shall:

(1) Notify the Department of the subsidy termination date, the amount of the overpayment recouped and the amount outstanding. The Department will notify the parent or caretaker by letter of the overpayment, the amount of the outstanding overpayment and that repayment is required in either a single payment or under a payment plan agreeable to the parent or caretaker and the eligibility agency. The letter must state that the parent or caretaker has 10 calendar days to respond to the Department indicating agreement or disagreement and indicating the choice of a repayment method.

(2) Send a second letter that repeats the information contained in the letter specified in paragraph (1) when the Department notifies the eligibility agency that the parent or caretaker failed to respond. The second letter must also request a response from the parent or caretaker no later than 10 calendar days following the date of the letter.

(c) When the Office of Inspector General has determined fraud in a case when the child is no longer in care, the eligibility agency shall determine the collection methods in conjunction with the Office of Inspector General.

(d) The Department may institute civil legal proceedings when the parent or caretaker fails to respond to the second letter.

§ 3041.189. Disqualification.

(a) The parent or caretaker is disqualified from participating in the subsidized child care program if one of the following applies:

(1) A Federal or State court finds the parent or caretaker guilty of fraud in applying for or receiving subsidized child care.

(2) A hearing officer determines that the parent or caretaker committed fraud pursuant to the procedures and standards in Chapter 275 (relating to appeal and fair hearing and administrative disqualification hearings).

(3) The parent or caretaker signs a disqualification consent agreement as part of a court's deferred adjudication process.

(4) The parent or caretaker agrees to be disqualified by signing an administrative disqualification hearing waiver.

(b) Upon disqualification under subsection (a), a parent or caretaker and eligible children in the parent's or caretaker's family shall be prohibited from participation in the subsidized child care program:

(1) For 6 months from the date of the first conviction, hearing decision or determination.

(2) For 12 months from the second conviction, hearing decision or determination.

(3) Permanently from the date of the third conviction, hearing decision or determination.

(c) A parent or caretaker may not be granted a hearing on a court conviction or administrative disqualification hearing decision that led to the disqualification.

[Pa.B. Doc. No. 12-643. Filed for public inspection April 13, 2012, 9:00 a.m.]

DEPARTMENT OF PUBLIC WELFARE
[55 PA. CODE CH. 299]

Supplemental Security Income Program and State Supplementary Payment Program; State Supplementary Payment Levels

The Department of Public Welfare (Department) amends Chapter 299 (relating to Supplemental Security Income Program and State Supplementary Payment Program) to read as set forth in Annex A under the authority in sections 201(2), 403(b), 403.1 and 432(2) of the Public Welfare Code (code) (62 P. S. §§ 201(2), 403(b), 403.1 and 432(2)), as amended by the act of June 30, 2011 (P. L. 89, No. 22) (Act 22).

Omission of Proposed Rulemaking

Act 22 amended the code and added several new provisions. Specifically, Act 22 added section 403.1 to the code. Section 403.1(a)(1) and (3), (c) and (d) of the code authorizes the Department to promulgate final-omitted regulations to establish standards for the nature and extent of assistance and also to modify existing benefits and to establish benefit limits.

The basis for this final-omitted rulemaking is section 204(1)(iv) of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204(1)(iv)), known as the Commonwealth Documents Law (CDL), which authorizes an agency to omit or modify notice of proposed rulemaking when the regulation relates to Commonwealth grants or benefits. The State Supplementary Payment (SSP) is a Commonwealth benefit. Section 403.1 of the code provides additional authority for this final-omitted rulemaking. Until June 30, 2012, section 403.1(d) of the code expressly exempts certain regulations from under the Regulatory Review Act (71 P. S. §§ 745.1—745.12), section 205 of the CDL (45 P. S. § 1205) and section 204(b) of the Commonwealth Attorneys Act (71 P. S. § 732-204(b)).

The Department is amending § 299.37 (relating to optional SSP levels) in accordance with section 403.1 of the code because this final-omitted rulemaking pertains to the nature and extent of assistance and benefit limits.

This final-omitted rulemaking also implements section 403.1(c) of the code which requires that rulemaking under Act 22 be necessary to ensure that expenditures for State Fiscal Year (FY) 2011-2012 for assistance programs administered by the Department do not exceed the aggregate amount appropriated for the program by the General Appropriations Act of 2011. The amount appropriated for State supplemental grants for FY 2011-2012 is \$150,029,000.

Purpose

The purpose of this final-omitted rulemaking is to codify the SSP levels in § 299.37 and to rescind Appendix A. Previously, the SSP levels were codified in Appendix A.

Background

The Social Security Administration (SSA) established Supplemental Security Income (SSI) payment amounts as

a National minimum assistance standard. These payment amounts do not take into account variations in the cost of living throughout the country and the special needs of certain individuals. States have the option to provide additional assistance through the SSP program to address these differences.

The Commonwealth opted to provide the SSP to eligible individuals. SSI recipients receive an SSI payment from the SSA and also an SSP benefit from the Commonwealth. Certain other individuals who do not receive SSI, however, may still qualify for SSP.

Previously, the Department reduced the SSP payment levels by publishing a notice at 40 Pa.B. 479 (January 16, 2010). These SSP payment rates were reduced under the authority of § 299.37. This section provided that revisions to SSP payment levels will be published as a notice in the *Pennsylvania Bulletin*.

The authority of the Department to change the SSP payment levels by notice rather than by regulation is currently being challenged in Commonwealth Court. Although the Department is confident that its arguments in support of the existing regulation are strong, the purpose of this final-omitted rulemaking is to mitigate the uncertainty associated with that, as with any litigation. This final-omitted rulemaking sets the level of SSP payments at their current levels, places those levels in § 299.37, deletes the language authorizing that subsequent changes to payment levels will be by publication of a notice in the *Pennsylvania Bulletin* and rescinds Appendix A. With these amendments, the Department considered the four factors in section 432(2)(iii) of the code:

- (1) The funds certified by the Budget Secretary as available for State supplemental assistance.
- (2) Pertinent Federal legislation and regulation.
- (3) The cost-of-living.
- (4) The number of persons who may be eligible.

For the first and fourth statutory factors, the Department considered the funds certified as available for SSP for FY 2011-2012, which was set at \$150,029,000. See Appropriation Act 2011-1A. Under the FY 2011-2012 budget, the allocation is projected to be sufficient to cover the costs incurred for the monthly average SSP population of 380,000 individuals. If the SSP population continues to increase to 390,214 individuals for FY 2012-2013 (as projected in the current budget), SSP funding could fall short without a commensurate increase in the SSP appropriation.

For the second statutory factor, the Department considered pertinent Federal statutes and regulations, which include 20 CFR 416.2001, 416.2015, 416.2030, 416.2035 and 416.2095—416.2099. The Department's SSP payment levels in this final-omitted rulemaking comport with Federal pass-along (maintenance of effort) provisions which require states to maintain certain minimum SSP payment levels. The purpose of the pass-along requirement is to ensure that recipients, not states, benefit from Federal SSI payment increases by requiring minimum SSP payment thresholds that states must not fall below notwithstanding SSI payment increases. The penalty for noncompliance with this requirement is loss of Federal funding for Medicaid. See 20 CFR 416.2096 (relating to basic pass-along rules).

For the third statutory factor, the Department considered cost-of-living, taking into account the fact that inflation rates continue to be relatively low and are expected to remain stable for the foreseeable future.

When considering cost-of-living, the Department also kept in mind that higher SSP payment levels could threaten to deplete available SSP funds for eligible individuals.

Finally, as previously noted, the number of individuals who may qualify for SSP has continued to increase. In FY 2009-2010, approximately 359,300 recipients received SSP. The number of SSP recipients increased in FY 2010-2011 to approximately 369,917. This number is anticipated to rise to approximately 390,214 individuals for FY 2012-2013.

Requirements

In this final-omitted rulemaking, the Department is codifying the SSP payment levels in § 299.37 and rescinding Appendix A. This final-omitted rulemaking also deletes references to Appendix A in §§ 299.11 and 299.36 (relating to mandatory and optional SSPs; and eligibility requirements for SSP-only). The Department replaces these references with a citation to § 299.37.

Affected Individuals and Organizations

This final-omitted rulemaking affects approximately 380,000 individuals who receive or are anticipated to receive the optional SSP.

Accomplishments and Benefits

This final-omitted rulemaking implements section 403.1(a)(1) and (3), (c) and (d) of Act 22. As provided in Act 22, the Department is conserving resources to ensure that the expenditures for State FY 2011-2012 for assistance programs administered by the Department do not exceed the aggregate amount appropriated for the program by the General Appropriations Act of 2011.

Fiscal Impact

The Commonwealth will realize an estimated savings of \$21,147,890 in State FY 2011-2012.

Paperwork Requirements

There are no new paperwork requirements under the final-omitted rulemaking.

Public Comment

Although this regulation is being adopted without publication as proposed rulemaking, the Department posted a draft regulation on the Department's web site on February 24, 2012, with a 15-day comment period. The Department invited interested persons to submit written comments regarding the regulation to the Department. The Department did not receive public comments regarding this final-omitted rulemaking following the posting of the draft regulation. The Department also discussed the Act 22 regulations and responded to questions at the House Health Committee hearing on March 8, 2012.

Although the Department did not receive comments in response to the draft regulation, the Department did receive a comment from Community Legal Services (CLS) and Community Justice Project (CJP) prior to the posting of the draft regulation. In addition, the Department received general comments regarding the promulgation of regulations under Act 22.

Discussion of Comments

Comment

In response to the Department's Regulatory Agenda published at 42 Pa.B. 879, 894 (February 11, 2012), CLS and CJP commented that the Department is not in compliance with section 432(2)(iii) of the code in establishing the amount of the SSP by not considering all four of the following statutory criteria: "the funds certified by the Budget Secretary as available for State supplemental

assistance, pertinent Federal legislation and regulations, the cost-of-living and the number of persons who may be eligible.”

Response

As previously stated, the Department considered the four factors under section 432(2)(iii) of the code in establishing the SSP levels.

Comment

Several commentators stated that the Department did not allow sufficient time for review and comment of the regulations. In addition, commentators requested the public comment period be extended an additional 30 days due to the policy changes and the volume of regulations.

Response

The Department engaged in a transparent public process through which the Department solicited and received numerous comments and input from stakeholders and other interested parties. As previously mentioned, the Department posted the draft regulation on the Department’s web site on February 24, 2012. The Department invited interested persons to submit written comments, on or before March 9, 2012, regarding the regulation to the Department. In addition, the Department’s Regulatory Agenda announced the Act 22 regulations at 42 Pa.B. 879, 894.

As a final-omitted rulemaking under Act 22, the Department was not required to have a public comment process. However, to encourage transparency and public input, the Department provided an opportunity for comment by posting the draft regulation on the Department’s web site. This public comment process provided sufficient opportunity for interested parties to submit comments. Therefore, the Department is not extending the public comment period.

Regulatory Review Act

Under section 403.1 of the code, this final-omitted rulemaking is not subject to the Regulatory Review Act.

Findings

The Department finds that:

- (1) Notice of proposed rulemaking is omitted in accordance with section 204(1)(iv) of the CDL, 1 Pa. Code § 7.4(1)(iv) and section 403.1(d) of the code because the regulations relate to Commonwealth grants and benefits.
- (2) Adoption of this final-omitted rulemaking in the manner provided by this order is necessary and appropriate for the administration and enforcement of the code.

Order

The Department acting under the code, orders that:

- (a) The regulations of the Department, 55 Pa. Code Chapter 299, are amending by amending §§ 299.11, 299.36 and 299.37 and by deleting Appendix A to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.
- (b) The Secretary of the Department shall submit this order and Annex A to the Offices of General Counsel for approval as to legality and form as required by law.
- (c) The Secretary of the Department shall certify and deposit this order and Annex A with the Legislative Reference Bureau as required by law.

(d) This order shall take effect July 1, 2011, in accordance with section 403.1(e) of the code.

GARY D. ALEXANDER,
Secretary

Fiscal Note: 14-525. No fiscal impact. This action is expected to save \$21.148 million in FY 2011-12; (8) recommends adoption.

Annex A

TITLE 55. PUBLIC WELFARE

PART II. PUBLIC ASSISTANCE MANUAL

Subpart I. OTHER INCOME MAINTENANCE PROGRAMS

CHAPTER 299. SUPPLEMENTAL SECURITY INCOME PROGRAM AND STATE SUPPLEMENTARY PAYMENT PROGRAM

TYPES OF SSP

§ 299.11. Mandatory and optional SSPs.

The two types of SSPs are as follows:

- (1) *Mandatory SSP.* A mandatory SSP is provided to an eligible individual or couple under 20 CFR 416.2050 (relating to mandatory minimum state supplementation).
- (2) *Optional SSP.* An individual or couple not eligible for the mandatory SSP may receive an optional SSP, as specified in § 299.37 (relating to optional SSP levels). Eligibility requirements for the optional SSP are set forth in §§ 299.21, 299.22 and 299.31—299.36.

GENERAL PROVISIONS FOR STATE-ADMINISTERED OPTIONAL SSP

§ 299.36. Eligibility requirements for SSP-only.

(a) *Eligibility requirements.* The Commonwealth will administer and pay an optional SSP to an individual or a couple as follows:

- (1) *Categories.* The individual or couple may be eligible for SSP-Only if the individual or each member of the couple is one of the following:
 - (i) Aged—65 years of age or older.
 - (ii) Blind under 20 CFR Part 416, Subpart I (relating to determining disability and blindness).
 - (iii) Disabled under 20 CFR Part 416, Subpart I.

(2) *Additional requirements.* In addition to paragraph (1), the individual or each member of the couple shall:

- (i) Meet the residency requirements under § 147.23 (relating to requirements).
- (ii) Be a United States citizen or a qualified alien under 20 CFR Part 416, Subpart P (relating to residence and citizenship). A qualified alien shall meet the eligibility requirements under section 401 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C.A. § 1612) regarding limited eligibility of qualified aliens for certain Federal programs.
- (iii) Meet SSI resource requirements under 20 CFR Part 416, Subpart L (relating to resources and exclusions).
- (iv) Meet income requirements under 20 CFR Part 416, Subpart K (relating to income) except that:

(A) Countable income must be less than the combined total of the FBR and the maximum allowable SSP for the eligible individual or couple.

(B) Countable income is adjusted dollar for dollar against the appropriate SSP amount in § 299.37 (relating to optional SSP levels), plus the FBR.

(v) Meet enumeration requirements under § 155.2 (relating to general).

(vi) Meet redetermination requirements under 20 CFR 416.204 (relating to redeterminations of SSI eligibility).

(vii) Cooperate in verifying all eligibility requirements including age, residence, citizenship, employment, income and resources as specified under § 201.4 (relating to procedures).

(viii) Consent to the disclosure of information that is in the possession of third parties and necessary for the SSP eligibility determination.

* * * * *

§ 299.37. Optional SSP levels.

The SSP levels are as follows:

	<i>Individual</i>	<i>Couple</i>
Residing in an Independent Living Arrangement	\$22.10	\$33.30
Residing in the Household of Another	\$25.53	\$38.44
Residing in a Domiciliary Care Home	\$434.30	\$947.40
Residing in a Personal Care Home	\$439.30	\$957.40

**APPENDIX A.
(Reserved)**

[Pa.B. Doc. No. 12-644. Filed for public inspection April 13, 2012, 9:00 a.m.]

**DEPARTMENT OF PUBLIC WELFARE
[55 PA. CODE CH. 1101]
Amendments to Copayment Regulations**

The Department of Public Welfare (Department) amends Chapter 1101 (relating to general provisions) to read as set forth in Annex A under the authority of sections 201(2), 403(b) and 403.1 of the Public Welfare Code (code) (62 P. S. §§ 201(2), 403(b) and 403.1), as amended by the act of June 30, 2011 (P. L. 89, No. 22) (Act 22).

Omission of Proposed Rulemaking

On July 1, 2011, the General Assembly enacted Act 22, which amended the code. Act 22 added several new provisions to the code, including section 403.1. Section 403.1(a)(1) and (3) of the code authorizes the Department to promulgate final omitted regulations under section 204(1)(iv) of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204(1)(iv)), known as the Commonwealth Documents Law (CDL), to establish rules, regulations, procedures and standards for the nature and extent of assistance and to modify existing benefits. Section 204(1) of the CDL authorizes an agency to omit or modify notice of proposed rulemaking when a regulation relates to Commonwealth grants or benefits. The Medical Assistance (MA) Program is a Commonwealth grant program through which eligible recipients receive coverage of certain health care benefits. In addition, to ensure that the Department's expenditures for State Fiscal Year (FY)

2011-2012 do not exceed the aggregate amount appropriated by the General Assembly, section 403.1(d) of the code expressly exempts these regulations from the Regulatory Review Act (71 P. S. §§ 745.1—745.12), section 205 of the CDL (45 P. S. § 1205) and section 204(b) of the Commonwealth Attorneys Act (71 P. S. § 732-204(b)).

The Department is amending § 1101.63(b) (relating to payment in full) in accordance with section 403.1(a)(1) and (3) of the code because this final-omitted rulemaking pertains to the nature and extent of assistance and benefits for the MA Program. Further, consistent with section 403.1(c) of the code, this final-omitted rulemaking is necessary to ensure that expenditures for State FY 2011-2012 for assistance programs administered by the Department do not exceed the aggregate amount appropriated for the program by the General Appropriations Act of 2011.

Purpose

The purpose of this final-omitted rulemaking is to amend § 1101.63 to: 1) eliminate recipient copayment reimbursements; 2) update the sliding-scale MA copayment amount and provide that the Department may, by publication of a notice in the *Pennsylvania Bulletin*, adjust these copayments amounts; and 3) make technical amendments to Chapter 1101 to codify certain Federally mandated copayment exclusions and to clarify existing MA copayment policies.

Background

The Department administers the MA Program under Title XIX of the Social Security Act (act) (42 U.S.C.A. §§ 1396—1396w-5) for low-income individuals, pregnant women, infants and children, and individuals who are aged, blind or disabled. In addition, the Department administers an MA program for General Assistance (GA) MA recipients, principally single adults, which is funded solely by State funds and is not mandated by the Federal government. Both MA programs provide a continuum of physical and behavioral health services, including long-term care, inpatient hospital, pharmacy, outpatient services such as physician, podiatric, medical and psychiatric clinics, chiropractic services and dental services, and medical supplies and durable medical equipment to approximately 2.1 million eligible MA recipients.

In an effort to address the current budget constraints, the Department has taken steps to implement a series of initiatives aimed at reducing costs while still providing needed care to MA recipients, including limiting pharmacy benefits for recipients 21 years of age and older to six prescriptions for drugs per calendar month and by limiting certain dental benefits for recipients 21 years of age and older. Despite these and other cost saving efforts, the Department was compelled to identify additional ways to achieve the necessary cost savings. After reviewing various options, the Department determined that modifying the recipient copayment obligations will produce savings with the least impact on services and care provided to MA recipients.

The Department implemented nominal copayment requirements for certain nonexempt MA recipients in September 1983. At that time, the Department also implemented a reimbursement process for MA recipients other than GA recipients for copayments paid in excess of \$90 in a 6-month period. In January 1993, the copayment reimbursement process was expanded to apply to GA recipients who pay copayments in excess of \$180 in a 6-month period. Although this copayment reimbursement was intended to limit the potential adverse fiscal impact of the copayment requirement, it prevents the Depart-

ment from maximizing the potential cost savings available to the MA Program through application of MA recipient copayments. As a result, the Department will eliminate the copayment reimbursement provision in § 1101.63(b)(7) with this final-omitted rulemaking.

Until 2006, Federal Medicaid regulations permitted nominal sliding scale copayments ranging from \$0.50 to \$3 depending on the amount the Commonwealth pays for the service. The Department's MA sliding scale copayments for MA recipients, other than GA recipients, have remained fixed at these amounts for many years. For State-funded GA recipients, the Department applies twice the nominal copayments applicable to other MA recipients. The Deficit Reduction Act of 2005 (DRA) (Pub. L. No. 109-171) and implementing regulations increased the maximum Medicaid nominal sliding copayment amounts each year, beginning in 2006, by the annual percentage increase in the medical care component of the Consumer Price Index for All Urban Consumers (CPI-U) for the period September to September ending in the preceding calendar year and rounded to the next higher 5 cent increment. See section 1916(a)(3) and (b)(3) of the Social Security Act (42 U.S.C.A. § 1396o(a)(3) and (b)(3)) and 42 CFR 447.54 (relating to maximum allowable and nominal charges). The Department has not increased the copayment amount as permitted by Federal law. In an effort to meet current budgetary objectives, the Department is updating the MA sliding scale copayment amounts for MA recipients, other than GA recipients, to reflect the current CPI-U adjustments and may, through publication of a notice in the *Pennsylvania Bulletin*, update the sliding scale copayment amounts on a recurring basis to account for future CPI-U adjustments, as permitted by the DRA. The Department may also update the sliding scale copayment amounts for GA MA recipients, which will continue to be twice the amounts applied to MA recipients other than GA recipients, consistent with current MA copayment policy for these populations.

Technical Amendments

The Department is making several technical corrections to § 1101.63(b). These technical corrections do not represent changes to the Department's current MA copayment policies. The technical corrections reflect and clarify copayment exclusions that have been in effect under the MA Program, based upon Federal Medicaid requirements and MA copayment policies, but have not yet been incorporated into Chapter 1101. These technical corrections are as follows:

- Exclude from MA copayments services provided to individuals who are eligible under the Breast and Cervical Cancer Prevention and Treatment (BCCPT) Program and individuals, regardless of age, who qualify for benefits under Title IV-B Foster Care and Title IV-E Foster Care and Adoption Assistance, as mandated under the DRA. The Department adopted this mandate effective March 31, 2006, and notified providers by way of MA Bulletin 99-06-12, "Change to copayment requirements for recipients eligible under the Breast and Cervical Cancer Prevention and Treatment Program and Titles IV-B & IV-E Foster Care and Adoption Assistance," issued December 10, 2006.
- Exclude tobacco cessation counseling services from MA copayments. In September, 2006, the Department excluded these services to remove perceived barriers to accessing this MA covered service that helps recipients quit smoking.
- Exclude from MA copayments services for recipients residing in personal care homes (PCH) and domiciliary

care homes (DCH). In October 2007, the Department amended the Medicaid State Plan to exclude PCH and DCH residents from MA copayments, as most of these individuals receive Supplemental Security Income (SSI) and contribute all but a minimal amount of the SSI income to the costs of the PCH or DCH care.

- Exclude from MA copayments services for recipients in hospice care. This is a Federal Medicaid requirement that has been in effect under the MA Program for many years, but is not currently identified in MA copayment regulations.
- Clarify that the exclusion of pregnant women from copayment requirements extends throughout the woman's postpartum period, consistent with 42 CFR 447.53(b)(2) (relating to applicability; specification; multiple charges). The inadvertent omission of the postpartum period language in the Department's current MA copayment regulation has led to some confusion for MA enrolled providers regarding the full scope of this exclusion.
- Specify that intermediate care facilities (ICF/MR) or other related conditions (ICF/ORC) are facilities that meet the criteria for the copayment exclusion for institutionalized individuals. Institutionalized recipients are excluded from copayment requirements under 42 CFR 447.53(b)(3) if the institutionalized individuals are, as a condition of receiving services in the institution, required to spend all but a minimal amount of their income for medical services. Within the Commonwealth's MA Program, ICF/MRs and ICF/ORCs are facilities that meet the criteria for this copayment exclusion. The Department's current MA copayment regulation does not explicitly identify ICF/MRs and ICF/ORCs, which has resulted in confusion for MA providers regarding applicability of the exclusion to residents of these facilities.

Additionally, the Department is renumbering the copayment regulations.

Therefore, with this final-omitted rulemaking, the Department is amending § 1101.63(b)(2) to codify and clarify the scope and applicability of these copayment exclusions. The technical amendments do not impose new or additional copayment exclusions and reflect the manner in which these copayment exclusions are currently applied in the MA Program.

Public Process

The Department published an advance public notice at 42 Pa.B 1001 (February 18, 2012) announcing its intent to amend the copayment provisions under Chapter 1101. The Department invited interested persons to comment. In addition, the Department discussed these copayment amendments with the Medical Assistance Advisory Committee on February 23, 2012.

The Department also posted the draft regulation on the Department's web site on February 24, 2012, with a 15-day comment period. The Department again invited interested persons to submit written comments regarding the regulation to the Department. The Department received 16 topically-related comments from 85 commentators. The Department also discussed the Act 22 regulations and responded to questions at the House Health Committee hearing on March 8, 2012.

The Department considered the comments in response to the draft regulation.

Discussion of Comments

The following is a summary of the major comments received within the public comment period and the Department's response to those comments.

Comment: Several commentators stated that the Department did not allow sufficient time for review and comment of the regulations.

Response: The Department engaged in a transparent public process through which the Department solicited and received numerous comments and input from stakeholders and other interested parties.

As previously mentioned, the Department published advance public notice at 42 Pa.B. 1001 announcing its intent to amend the copayment provisions under Chapter 1101. The Department invited interested persons to comment. The Department also posted the draft regulation on the Department's web site on February 24, 2012. The Department again invited interested persons to submit written comments, on or before March 9, 2012, regarding the regulation to the Department. As a final-omitted regulation under Act 22, the Department was not required to have a public comment process. However, to encourage transparency and public input the Department provided an opportunity for comment by publishing the notice and posting the draft regulation on the Department's web site. This public comment process provided sufficient opportunity for interested parties to submit comments, as supported by the number of comments that were submitted.

Comment: Several commentators stated that the Department exceeded its authority under Act 22 by issuing a final-omitted rulemaking that changes copayments in future years. Further, the Department may not give itself the authority to adjust copayments by publishing a notice in the *Pennsylvania Bulletin*. Under State law, the Department may only adjust copayments by adopting regulations through a full rulemaking process.

Response: Act 22 authorizes the Department to promulgate final-omitted regulations that revise payment rates. To ensure that the Department's expenditures for State FY 2011-2012 do not exceed the amount appropriated by the General Assembly, these regulations are exempt from the Regulatory Review Act, section 205 of the CDL and section 204(b) of the Commonwealth Attorneys Act. There is nothing in Act 22 that precludes the promulgation of final-omitted regulations that will have an impact in both State FY 2011-2012 and in future years.

The Department is not required to undertake the full rulemaking process to adjust copayments. Federal law provides for annual increases in the maximum Medicaid nominal sliding copayment amounts each year based upon the annual percentage increase in the medical care component of the CPI-U for the period September to September ending in the preceding calendar year and rounded to the next higher 5 cent increment. See section 1916(a)(3) and (b)(3) of the Social Security Act and 42 CFR 447.54. The Department's regulation simply authorizes this inflation adjustment to be made to the Department's existing copayments if and only to the extent permitted by Federal law. Regulatory authority for routine adjustments to be made by notice in the *Pennsylvania Bulletin* is neither novel nor unusual. For example, see the following: § 501.7 (authorizing the Department to make adjustments to the standard utility allowance amounts, the telephone allowances and the homeless shelter allowances for recipients by publishing a notice in the *Pennsylvania Bulletin*); § 1187.2 (authorizing the Department to define certain types of Durable Medical Equipment by publishing a notice in the *Pennsylvania Bulletin*); § 1151.54(i) (authorizing the Department to publish a notice in *Pennsylvania Bulletin* to list qualifying inpatient psychiatric facilities and their annual dis-

proportionate share payment percentages); § 1150.61 (authorizing the Department to publish a notice when fees are changed and when procedures or items are added to or deleted from the MA Program Fee Schedule); § 1128.52 (for renal dialysis services, authorizing the Department to publish notice for rate increases and decreases and changes in methodology used in establishing maximum fees).

Comment: Several commentators suggested that eliminating the copayment reimbursement provision would impose a severe financial hardship on MA consumers.

Response: The Department acknowledges that the elimination of the copayment reimbursement provision may be viewed by some as a financial burden but is compelled to implement cost saving initiatives. The Department determined that eliminating the copayment reimbursement provision is preferable to other options, such as reducing or eliminating services.

Comment: Several commentators expressed concern that an increase in the sliding scale copayment amount will put added strain on MA consumer's limited income and reduce their ability to become self-sufficient.

Response: As noted in the previous response, the Department is compelled to implement cost savings initiatives. After analyzing the options, the Department concluded that increasing the sliding scale copayment amounts as authorized under the DRA is preferable to other options, such as reducing or eliminating services.

Comment: Several commentators stated that it is unfair for GA recipients to be required to pay double the copayment of MA recipients.

Response: The Department has considered the fiscal impact on GA recipients. However, GA copayments have always been double that of MA recipients. This change is simply in keeping with that standard.

Comment: Several commentators suggested providers should be able to deny services to individuals who cannot or refuse to pay their copayments.

Response: The Department acknowledges concerns that some recipients will be unable to pay the copayments at time of service. Section 1916(e) of the Social Security Act and 42 CFR 447.53(e), which pertain to the Department's nominal MA copayments for Medicaid recipients, prohibit denial of service due to a MA recipient's inability to pay the copayment. The DRA includes state options regarding enforcement of alternative cost-sharing. The Department may consider alternative cost sharing options provided for in the DRA in the future.

Comment: Many commentators, including several county MA transportation providers, objected to the imposition of a \$2 per one-way trip copayment for non-emergency medical transportation (NEMT) paratransit services.

Response: The Department included the NEMT paratransit copayment in the public notice description of the intended regulatory change and the draft regulation. After careful consideration of public comments on this subject, the Department is removing the NEMT paratransit copayment from this final-omitted rulemaking.

Comment: Many comments expressed concern over the application of copayments for children with disabilities whose family income exceeds 200% of the Federal Poverty Income Guidelines.

Response: This final-omitted rulemaking does not impose MA copayments for children with disabilities.

Requirements

The final-omitted rulemaking amends § 1101.63(b)(2) as follows:

- Subsection (b)(5)(vi) is amended by updating the sliding scale copayment amounts for MA recipients other than GA recipients to coincide with the current CPI-U medical component adjustment.
- Subsection (b)(5)(vi) is amended by adding clause (E) to state that the Department may update the sliding scale copayment amount on a recurring basis to account for future CPI-U adjustments by publication of a notice in the *Pennsylvania Bulletin*.
- Subsection (b)(6)(iv) is amended by updating the sliding scale copayment amounts for GA recipients to twice the amounts established for MA recipients other than GA recipients.
- Subsection (b)(6)(iv) is amended by adding clause (E) to state that the Department may update the sliding scale copayment amount on a recurring basis to account for future CPI-U adjustments by publication of a notice in the *Pennsylvania Bulletin*.
- Subsection (b)(7) regarding recipient copayment reimbursement is deleted and the remaining paragraphs are renumbered accordingly.
- Subsection (b)(2)(ii) is amended to add language to clarify that the copayment exclusion for services furnished to pregnant women extends throughout the post-partum period.
- Subsection (b)(2)(iii) is amended to add language to clarify that the copayment exclusion for services furnished to institutionalized individuals includes individuals residing in ICF/MRs or ICF/ORCs.
- Subsection (b)(2)(iv) is added to exclude from MA copayment requirements services furnished to individuals residing in PCHs or DCHs.
- Subsection (b)(2)(v) is added to specify that services furnished to women eligible under the BCCPT Program are excluded from MA copayment requirements.
- Subsection (b)(2)(vi) is added to specify that services furnished to individuals for whom assistance is made available under Titles IV-B and IV-E of the Social Security Act, without regard to the individual's ages, are excluded from MA copayment requirements.
- Subsection (b)(2)(xii) is added to specify that services provided to individuals receiving hospice care are excluded from MA copayment requirements.
- Subsection (b)(2)(xxi) is added to specify that tobacco cessation counseling services are excluded from MA copayment requirements.
- Numbering under subsection (b)(2) is changed as a result of these additions.

Affected Individuals and Organizations

MA recipients who are not otherwise excluded from copayment requirements will be affected by the final-omitted rulemaking, which increases the nominal sliding scale MA copayment amounts and eliminates excess copayment reimbursement to recipients.

MA enrolled providers will benefit from the enhanced clarity of the copayment regulation afforded through the technical amendments.

Accomplishments and Benefits

This final-omitted rulemaking imposes limited additional copayment liability on MA and GA MA recipients who are not otherwise excluded from copayment requirements, which will enable the Department to preserve vital benefits to the greatest number of MA recipients while reducing costs in accordance with the goals in section 403.1 of the code. The technical amendments will codify copayment exclusions as well as enhance clarity of the regulation.

Fiscal Impact

The final-omitted rulemaking ensures that the Department's expenditures do not exceed the aggregate amount appropriated by the General Assembly for FY 2011-2012.

Paperwork Requirements

There are no additional reports, paperwork or new forms needed to comply with the final-omitted rulemaking.

Regulatory Review Act

Under section 403.1 of the code, this final-omitted rulemaking is not subject to review under the Regulatory Review Act.

Findings

The Department finds that:

(1) Notice of proposed rulemaking is omitted in accordance with section 204(1)(iv) of the CDL, 1 Pa. Code § 7.4(1)(iv) and section 403.1(d) of the code because the final-omitted rulemaking relates to Commonwealth grants and benefits.

(2) The adoption of this final-omitted rulemaking in the manner provided by this order is necessary and appropriate for the administration and enforcement of the code.

Order

The Department, acting under the code, orders that:

(a) The regulations of the Department, 55 Pa. Code Chapter 1101, are amended by amending § 1101.63 to read as set forth in Annex A.

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

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

(d) This order shall take effect on May 15, 2012.

GARY D. ALEXANDER,
Secretary

Fiscal Note: 14-529. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 55. PUBLIC WELFARE

PART III. MEDICAL ASSISTANCE MANUAL

CHAPTER 1101. GENERAL PROVISIONS

FEES AND PAYMENTS

§ 1101.63. Payment in full.

(a) *Supplementary payment for a compensable service.* A provider shall accept as payment in full, the amounts paid by the Department plus a copayment required to be paid by a recipient under subsection (b). A provider who seeks or accepts supplementary payment of another kind

from the Department, the recipient or another person for a compensable service or item is required to return the supplementary payment. A provider may bill a MA recipient for a noncompensable service or item if the recipient is told before the service is rendered that the program does not cover it.

(b) *Copayments for MA services.*

(1) Recipients receiving services under the MA Program are responsible to pay the provider the applicable copayment amounts set forth in this subsection.

(2) The following services are excluded from the copayment requirement for all categories of recipients:

(i) Services furnished to individuals under 18 years of age.

(ii) Services and items furnished to pregnant women, which include services during the postpartum period.

(iii) Services furnished to an individual who is a patient in a long term care facility, an intermediate care facility for the mentally retarded or other related conditions, as defined in 42 CFR 435.1009 (relating to definitions relating to institutional status) or other medical institution if the individual is required as a condition of receiving services in the institution, to spend all but a minimal amount of his income for medical care costs.

(iv) Services provided to individuals residing in personal care homes and domiciliary care homes.

(v) Services provided to individuals eligible for benefits under the Breast and Cervical Cancer Prevention and Treatment Program.

(vi) Services provided to individuals eligible for benefits under Title IV-B Foster Care and Title IV-E Foster Care and Adoption Assistance.

(vii) Services provided in an emergency situation as defined in § 1101.21 (relating to definitions).

(viii) Laboratory services.

(ix) The professional component of diagnostic radiology, nuclear medicine, radiation therapy and medical diagnostic services, when the professional component is billed separately from the technical component.

(x) Family planning services and supplies.

(xi) Home health agency services.

(xii) Services provided to individuals receiving hospice care.

(xiii) Psychiatric partial hospitalization program services.

(xiv) Services furnished by a funeral director.

(xv) Renal dialysis services.

(xvi) Blood and blood products.

(xvii) Oxygen.

(xviii) Ostomy supplies.

(xix) Rental of durable medical equipment.

(xx) Targeted case management services.

(xxi) Tobacco cessation counseling services.

(xxii) Outpatient services when the MA fee is under \$2.

(xxiii) Medical examinations when requested by the Department.

(xxiv) Screenings provided under the EPSDT Program.

(xxv) More than one of a series of a specific allergy test provided in a 24-hour period.

(3) The following services are excluded from the copayment requirement for categories of recipients except GA recipients age 21 to 65:

(i) Drugs, including immunizations, dispensed by a physician.

(ii) Specific drugs identified by the Department in the following categories:

(A) Antihypertensive agents.

(B) Antidiabetic agents.

(C) Anticonvulsants.

(D) Cardiovascular preparations.

(E) Antipsychotic agents, except those that are also schedule C-IV antianxiety agents.

(F) Antineoplastic agents.

(G) Antiglaucoma drugs.

(H) Antiparkinson drugs.

(I) Drugs whose only approved indication is the treatment of acquired immunodeficiency syndrome (AIDS).

(4) Except for the exclusions specified in paragraphs (2) and (3), each MA service furnished by a provider to an eligible recipient is subject to copayment requirements.

(5) The amount of the copayment, which is to be paid to providers by categories of recipients, except GA recipients, and which is deducted from the Commonwealth's MA fee to providers for each service, is as follows:

(i) For pharmacy services, drugs and over-the-counter medications:

(A) For recipients other than State Blind Pension recipients, \$1 per prescription and \$1 per refill for generic drugs.

(B) For recipients other than State Blind Pension recipients, \$3 per prescription and \$3 per refill for brand name drugs.

(C) For State Blind Pension recipients, \$1 per prescription and \$1 per refill for brand name drugs and generic drugs.

(ii) For inpatient hospital services, provided in a general hospital, rehabilitation hospital or private psychiatric hospital, the copayment is \$3 per covered day of inpatient care, to an amount not to exceed \$21 per admission.

(iii) For nonemergency services provided in a hospital emergency room, the copayment on the hospital support component is double the amount shown in subparagraph (vi), if an approved waiver exists from the United States Department of Health and Human Services. If an approved waiver does not exist, the copayment will follow the schedule shown in subparagraph (vi).

(iv) When the total component or only the technical component of the following services are billed, the copayment is \$1:

(A) Diagnostic radiology.

(B) Nuclear medicine.

(C) Radiation therapy.

(D) Medical diagnostic services.

(v) For outpatient psychotherapy services, the copayment is 50¢ per unit of service.

(vi) For all other services, the amount of the copayment is based on the MA fee for the service, using the following schedule:

(A) If the MA fee is \$2 through \$10, the copayment is 65¢.

(B) If the MA fee is \$10.01 through \$25, the copayment is \$1.30.

(C) If the MA fee is \$25.01 through \$50, the copayment is \$2.55.

(D) If the MA fee is \$50.01 or more, the copayment is \$3.80.

(E) The Department may, by publication of a notice in the *Pennsylvania Bulletin*, adjust these copayment amounts based on the percentage increase in the medical care component of the Consumer Price Index for All Urban Consumers for the period of September to September ending in the preceding calendar year and then rounded to the next higher 5-cent increment.

(6) The amount of the copayment, which is to be paid to providers by GA recipients age 21 to 65, and which is deducted from the Commonwealth's MA fee to providers for each service, is as follows:

(i) For prescription drugs:

(A) \$1 per prescription and \$1 per refill for generic drugs.

(B) \$3 per prescription and \$3 per refill for brand name drugs.

(ii) For inpatient hospital services, provided in a general hospital, rehabilitation hospital or private psychiatric hospital, the copayment is \$6 per covered day of inpatient care, not to exceed \$42 per admission.

(iii) When the total component or only the technical component of the following services are billed, the copayment is \$2:

(A) Diagnostic radiology.

(B) Nuclear medicine.

(C) Radiation therapy.

(D) Medical diagnostic services.

(iv) For all other services, the amount of the copayment is based on the MA fee for the service, using the following schedule:

(A) If the MA fee is \$2 through \$10, the copayment is \$1.30.

(B) If the MA fee is \$10.01 through \$25, the copayment is \$2.60.

(C) If the MA fee is \$25.01 through \$50, the copayment is \$5.10.

(D) If the MA fee is \$50.01 or more, the copayment is \$7.60.

(E) The Department may, by publication of a notice in the *Pennsylvania Bulletin*, adjust these copayment amounts based on the percentage increase in the medical care component of the Consumer Price Index for All Urban Consumers for the period of September to September ending in the preceding calendar year and then rounded to the next higher 5-cent increment.

(7) A provider participating in the program may not deny covered care or services to an eligible MA recipient because of the recipient's inability to pay the copayment amount. This paragraph does not change the fact that the recipient is liable for the copayment, and it does not

prevent the provider from attempting to collect the copayment amount. If a recipient believes that a provider has charged the recipient incorrectly, the recipient shall continue to pay copayments charged by that provider until the Department determines whether the copayment charges are correct.

(8) A provider may not waive the copayment requirement or compensate the recipient for the copayment amount.

(9) If a recipient is covered by a third-party resource and the provider is eligible for an additional payment from MA, the copayment required of the recipient may not exceed the amount of the MA payment for the item or service.

(c) *MA deductible.*

(1) A \$150 deductible per fiscal year shall be applied to adult GA recipients for the following MA compensable services:

(i) Ambulatory surgical center services.

(ii) Inpatient hospital services.

(iii) Outpatient hospital services.

(2) Laboratory and X-ray services are excluded from the deductible requirement.

[Pa.B. Doc. No. 12-645. Filed for public inspection April 13, 2012, 9:00 a.m.]

DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CH. 1121]

Pharmaceutical Services; Amendments to Pharmacy Payment Methodology

The Department of Public Welfare (Department) amends Chapter 1121 (relating to pharmaceutical services) to read as set forth in Annex A under the authority in sections 201(2), 403(b) and 403.1 of the Public Welfare Code (code) (62 P. S. §§ 201(2), 403(b), 403.1), as amended by the act of June 30, 2011 (P. L. 89, No. 22) (Act 22).

Omission of Proposed Rulemaking

On July 1, 2011, the General Assembly enacted Act 22, which amended the code. Act 22 added several new provisions to the code, including section 403.1. Section 403.1(a)(1) and (4) of the code authorizes the Department to promulgate final-omitted regulations under the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1102—1208), known as the Commonwealth Documents Law (CDL) to establish rules, regulations, procedures and standards for the nature and extent of assistance and to revise provider payment rates. Section 204(1)(iv) of the CDL (45 P. S. § 1204(1)(v)) authorizes an agency to omit or modify notice of proposed rulemaking when a regulation relates to Commonwealth grants or benefits. The Medical Assistance (MA) Program is a Commonwealth grant program through which eligible recipients receive coverage of certain health care benefits, including pharmaceuticals. In addition, to ensure that the Department's expenditures for State Fiscal Year (FY) 2011-2012 do not exceed the aggregate amount appropriated by the General Assembly, section 403.1 of the code expressly exempts these regulations from the Regulatory Review Act (71 P. S. §§ 745.1—745.12), section 205 of the CDL (45 P. S. § 1205) and section 204(b) of the Commonwealth Attorneys Act (71 P. S. § 732-204(b)).

The Department is amending Chapter 1121 in accordance with section 403.1(a)(1) and (4) of the code because this final-omitted rulemaking pertains to the MA Program provider payments for compensable services. Further, consistent with section 403.1(c) of the code, this final-omitted rulemaking is necessary to ensure that expenditures for State FY 2011-2012 for assistance programs administered by the Department do not exceed the aggregate amount appropriated for the program by the General Appropriations Act of 2011.

Purpose

The purpose of this final-omitted rulemaking is to amend the current regulations in Chapter 1121 as follows:

- To set the dispensing fee paid to pharmacies at \$2 for prescriptions for compensable noncompounded legend and nonlegend drugs and \$3 for compensable compounded prescriptions.
- To set the dispensing fee paid to pharmacies for prescriptions for compensable legend and nonlegend drugs and compensable compounded prescriptions for MA recipients with a pharmacy benefit resource, which is a primary third-party payer, to MA at \$0.50 to cover the pharmacy's cost to transmit the claim to the MA program for secondary payment.
- To revise the calculation of wholesale acquisition cost (WAC) when establishing the estimated acquisition cost (EAC) as follows:
 - For brand name drugs, the WAC calculation is being amended to the lowest WAC listed for the drug in available Nationally recognized pricing services, plus 3.2%.
 - For generic drugs, the WAC calculation is being amended to the lowest WAC listed for the drug in available Nationally recognized pricing services.
- To modify the provision relating to the frequency of the update to the EAC for individual drugs from a monthly to an at least monthly basis.

Background

The Department administers the MA Program under Title XIX of the Social Security Act (act) (42 U.S.C.A. §§ 1396—1396w-5) for low-income individuals, pregnant women, infants and children, and individuals who are aged, blind or disabled. In addition, the Department administers an MA program for General Assistance MA recipients, principally single adults, which is funded solely by State funds and is not mandated by the Federal government. Both MA programs provide a wide array of medically necessary healthcare services, supplies and equipment to approximately 2.1 million indigent persons. Pharmaceutical services are among the healthcare services covered by the MA Program.

Since 2005, the Department has implemented a series of initiatives in the MA Program designed to provide cost effective pharmaceutical services while enhancing quality, addressing health and safety concerns, and improving administrative efficiencies. Initiatives included implementation of a payment methodology more consistent with other public and private third-party payers in this Commonwealth; implementation and expansion of a Preferred Drug List; expansion of utilization management programs including quantity limits, clinical prior authorizations, early refill and appropriate age edits; increasing the generic dispensing rate to 76%; maximization of Federal and supplemental rebates; selective contracting with spe-

cialty pharmacies for costly specialty drugs; automated prior authorization; and a comprehensive Retrospective Drug Use Review program for provider educational interventions. These sophisticated, industry-standard, pharmacy management tools enabled the Department to realize significant cost savings, minimize the per-member per-month increase in pharmacy expenditures and increase quality of care without compromising access or imposing overly burdensome requirements on providers.

In an effort to ensure that expenditures for assistance programs administered by the Department do not exceed the aggregate amount appropriated for the program by the General Appropriations Act of 2011, the Department has taken steps to implement additional initiatives to further reduce costs while still providing needed care to MA recipients, including limiting pharmacy benefits for recipients 21 years of age and older to six prescriptions per calendar month and limiting certain dental benefits for recipients 21 years of age and older. Despite these and other cost saving efforts, the Department must identify more ways to achieve necessary cost savings. The Department has determined that changing the method of payment for pharmacy services will produce savings, with the least impact on services and care provided to MA recipients.

Changes to Dispensing Fees

Federal law requires that State Medicaid pharmacy payments for drugs¹ include a drug cost based on the EAC,² plus a reasonable dispensing fee established by the Department. See 42 CFR 447.512 (relating to drugs: aggregate upper limits of payment). In December 2010, The Lewin Group issued a report titled "Potential Federal and State-by-State Savings if Medicaid Pharmacy Programs were Optimally Managed" (Lewin report) (<http://www.lewin.com/publications/publication/436/>). Based on its analysis of 2009 Centers for Medicare and Medicaid Services (CMS) Medicaid Fee-for-Service (FFS) data and using what it characterized as typical Medicare Part D dispensing fees estimated at \$1.90 for brand drugs and \$2.20 for generic drugs, the Lewin report concluded that Federal and State Medicaid pharmacy expenditures could be reduced by, among other things, decreasing dispensing fees.³

Currently, the Department pays a \$4 dispensing fee for prescriptions for compensable, noncompounded brand name and generic drugs and a \$5 dispensing fee for compensable compounded prescriptions in the MA FFS program. In deciding whether these fees could be reduced, the Department reviewed the State Medicaid prescription reimbursement information available on the CMS web site. For the quarter ending September 2011, CMS reported that states are paying a dispensing fee ranging from a low of \$1.75 (New Hampshire) to a high of \$14.01 (Oregon) for brand name drugs and generic drugs. The wide variance in dispensing fees paid by other state Medicaid programs is attributable, in part, to the different methods that states use to determine EAC. Given these differences and because, as previously mentioned,

¹ Drugs available from multiple manufacturers and distributors are often referred to as generic or multisource drugs. Drugs available from only one manufacturer that holds or held the patent for the drug product are referred to as brand name or single source drugs.

² The EAC is defined in 42 CFR 447.502 (relating to definitions) as the state Medicaid "agency's best estimate of the price generally and currently paid by providers for a drug marketed or sold by a particular manufacturer or labeler in the package size of the drug most frequently purchased by providers."

³ The Lewin report also recommended increasing generic dispensing rates, reducing ingredient costs and implementing more effective drug utilization controls as other means to reduce Federal and State Medicaid pharmacy expenditures. As previously noted, the Department has already implemented multiple initiatives consistent with these recommendations.

the dispensing fees of the Medicaid programs have been criticized as too high, the Department concluded that it was appropriate to consider other factors in determining whether to change the MA FFS dispensing fees.

Rather than focusing on other state Medicaid payments, the Department decided that a comparison of the current MA FFS dispensing fees with the fees paid by other third-party payers in this Commonwealth would provide a more accurate and realistic view of what a reasonable dispensing fee should be. The Department found that, with the exception of the Pharmaceutical Assistance Contract for the Elderly program, which also pays a \$4 dispensing fee, the Department's MA FFS dispensing fees are higher than, and in most cases more than double, the dispensing fees paid by all of the Department's contracted HealthChoices managed care organizations (MCO), the Pennsylvania Employees Benefits Trust Fund, private commercial third-party prescription drug programs in this Commonwealth and Medicare Part D plans.

The HealthChoices MCOs, which furnish pharmacy services to 57% of the MA population, pay dispensing fees between \$0.96 and \$2 for brand name drugs and between \$0.97 and \$2.29 for generic drugs. Notwithstanding these fees, HealthChoices MA MCO enrollees continue to have access to pharmacy services to the same extent as members of the general public in the HealthChoices geographic areas.

While specific information on dispensing fees paid by private commercial third-party plans is not made public, the Department did consider the information that is generally available for these payers. According to the Lewin report, state Medicaid programs pay pharmacies dispensing fees that are "more than twice the amount paid by private sector health plans." Lewin report at 12. In its 2011 "Prescription Drug Benefit Cost and Plan Design Report," which provides an overview of trends in prescription drug coverage, plan design, utilization and drug costs as reported by United States employers, the Pharmacy Benefit Management Institute noted that the average dispensing fee for both brand and generic drugs is \$1.54. Consistent with these reports, several of the Department's HealthChoices MCOs advised the Department that the dispensing fees in their private commercial book of business are under \$2. Further, according to Mercer Government Human Services Consultant, the Department's actuary contractor, its commercial clients based in this Commonwealth or who have a significant number of employees located in this Commonwealth pay dispensing fees ranging from \$1 to \$1.50.

The MA program cannot ignore that the dispensing fees paid to pharmacies in this Commonwealth by the HealthChoices MCOs, Medicare and private commercial third-party plans are significantly lower than those paid by the FFS program. The amendment to § 1121.55 (relating to method of payment) implements a dispensing fee in the MA FFS program that is comparable with the dispensing fees adopted by the HealthChoices MCOs, Medicare Part D plans and private commercial third-party plans.

The Department is also amending § 1121.55(a) with respect to the dispensing fee when the MA recipient has a medical resource that includes coverage of pharmacy services and is a primary third-party payer to MA. In these situations, the pharmacy agreed to accept the third-party resource's dispensing fee to cover the cost of dispensing the drug. Rather than paying a \$2 dispensing fee for prescriptions for compensable noncompounded

legend and nonlegend drugs and \$3 for compensable compounded prescriptions, the Department will pay a \$0.50 dispensing fee to account for the pharmacy's cost to transmit the claim to the MA program for secondary payment. This fee is intended to cover any additional transaction costs that the pharmacies incur to transmit the claims for processing. The industry average claim transaction fee ranges from \$0.20 to \$0.35. The Department's \$0.50 dispensing fee accounts for small independent pharmacies with lower claims volume and the potential for higher fees.

Changes to WAC Calculation

The Department is also revising the payment methodology for the drug cost component under § 1121.56 (relating to drug cost determination). In 2005, the Department amended the regulations governing the payment methodology for both brand name and generic drugs making the payment for the drug cost component of reimbursement more consistent with other public and private third-party payers. This amendment added WAC to the "lower of" payment methodology, establishing the EAC for brand name drugs at the lower of the lowest WAC listed for the drug in available Nationally recognized pricing services plus 7% or the lowest average wholesale price (AWP) listed for the drug in available Nationally recognized pricing services minus 14% for brand name drugs. The EAC for generic drugs was established at the lower of the lowest WAC listed for the drug in available Nationally recognized pricing services plus 66%, the lowest AWP listed for the drug in available Nationally recognized pricing services minus 25% or the State Maximum Allowable Cost (MAC) established by the Department. This "lower of" payment methodology assured the Department a payment methodology that is efficient and economic without compromising quality or access.

The Department is amending § 1121.56 to reflect the original intent of the 2005 amendment to the regulation. Because the current metrics to determine the AWP and WAC pricing are not equalized, when determining the EAC for a drug claim, the AWP metric is almost always the "lower of" amount when compared to the current WAC metric and typically is the amount used to determine the drug cost component of the payment to the pharmacy. Current predictions within the pharmacy industry are that eventually AWP will be phased out. In 2011, First Data Bank, one of the three Nationally recognized pricing services, stopped publishing AWP. Although Micromedex and Medi-Span, the other two pricing services, continue to publish AWP, most public and private industry stakeholders are seeking to identify a replacement benchmark metric for standardized drug pricing. If the National pricing services discontinue publishing AWP, the consequence will be that the MA Program will pay for the drug cost component at the higher WAC metric. Therefore, the Department must equalize the AWP and WAC metrics now to avoid unintended increases in payments of drug claims in the future.

The amendment to § 1121.56 equalizes the calculation of AWP and WAC by amending the WAC calculation to equal the result of the AWP calculation. Specifically, for brand name drugs, the WAC calculation is the lowest WAC listed in the available Nationally recognized drug pricing services, plus 3.2%. For generic drugs, it is the lowest WAC listed in the Nationally recognized pricing services. The AWP calculation, however, is not changing. The amendment will have minimal impact on pharmacy providers, as most drug claims are paid using the AWP metric. The amendment will not have an impact on consumers.

Public Process

The Department published advance public notice at 42 Pa.B. 1002 (February 18, 2012) announcing its intent to amend the method of payment for pharmacy services under Chapter 1121. The Department invited interested persons to comment. In addition, the Department discussed these pharmacy amendments with the Medical Assistance Advisory Committee at its meeting on February 23, 2012.

The Department also posted the draft regulation on the Department's web site on February 24, 2012, with a 15-day comment period. The Department again invited interested persons to submit written comments regarding the regulation to the Department. The Department received 32 topically-related comments from 20 commentators. The Department also discussed the Act 22 regulations and responded to questions at the House Health Committee hearing on March 8, 2012.

The Department considered all comments in response to the draft regulation.

Discussion of Comments

The following is a summary of the major comments received within the public comment period and the Department's responses to those comments.

Comment

Some commentators stated the changes may lead to the closing of some community pharmacies and others stated the changes would force pharmacies to discontinue services to MA recipients, both of which would result in limited access to pharmacy services for MA recipients. Some commentators also stated that the changes threaten the viability of long-term care pharmacies. Others also expressed concern about access for residents of rural areas and residents of long-term care facilities.

Response

The amended pharmacy payments are consistent with payments made by other public and private third-party payers and those MA recipients and beneficiaries continue to have access to pharmacy services to the same extent as members of the general public. Therefore, the changes to the pharmacy payments do not adversely affect provider participation and access to service, even in rural areas and long-term care facilities.

- The HealthChoices MCOs furnish pharmacy services to 57% of the MA population. Most of the MCOs pay lower ingredient rates for brand and generic medications and all pay dispensing fees between \$0.96 and \$2 for brand name drugs and between \$0.97 and \$2.29 for generic drugs.

- 42% of the MA recipients who qualify for pharmacy services are dual eligible recipients (eligible for both Medicare and Medicaid). Most dual eligible recipients receive their drug coverage under Medicare Part D. (Pharmacy coverage for a dual eligible recipient in the MA program is limited to over-the-counter drugs, benzodiazepines and barbiturates not covered by Part D plans.) Typical Medicare Part D dispensing fees are estimated at \$1.90 for brand drugs and \$2.20 for generic drugs.

- A published report indicated a National average dispensing fee for both brand and generic drugs of \$1.54 in the commercial sector.

Comment

Several commentators recommended increasing use of generic medications, medication therapy management

(MTM) programs and requiring mandatory cost sharing for certain recipients as alternative methods to achieve savings.

Response

The MA program already requires generic substitution and generic drug utilization increased from 67.03% in 2008 to 76% in 2011. The MA Program monitors the cost of brand name and generic drugs and the impact of Federal and supplemental rebates on net cost to the Department and maximizes the use of generic drugs when they are cost effective. In some instances, the cost of the brand drug after rebates (Federal and supplemental) is less than the cost of the generic equivalent after the Federal rebate. When the brand drug costs the Department less than the generic equivalent, the Department designates the brand name drug as preferred in the FFS program. This pricing is unique to the FFS delivery system in the Medicaid program.

Although the Department does not have an MTM program for high risk patients, the Department has a disease management program and an intensive care management program in FFS. These programs serve to educate MA recipients, coordinate care and lower the total cost of health care.

The Department may consider cost sharing options provided for in the Deficit Reduction Act of 2005 (Pub. L. No. 109-171) in the future.

Comment

Several commentators disagree with the decrease in dispensing fees stating that the new fees will be "difficult" for the pharmacies, the cost of dispensing medications falls into the range of \$5 to \$10 and the dispensing of compounded products takes much skill and time to accomplish.

Response

As previously provided, the amendment to § 1121.55 implements a dispensing fee in the MA FFS program that is comparable with the dispensing fees adopted by the HealthChoices MCOs, Medicare Part D plans and private commercial third-party plans. The payments made by these public and private third-party payers are accepted by pharmacies Statewide and have not compromised access to patients. The amended dispensing fees in the FFS program bring the Department in line with current pharmacy industry standards and continue to recognize compounding with a higher \$3 dispensing fee.

Comment

Several commentators commented on the changes to the EAC. Two commentators estimated reductions in payment for brand-name medications by \$7.57 per prescription and \$3.45 per prescription on generic medications. One of the commentators inquired regarding the Department's savings estimates, including the payment for generic medications.

Response

The Department disagrees with these estimated reductions in payment for brand name and generic medications. The Department, however, is unable to respond to the specific numbers because the commentators did not provide an explanation of how they estimated the reductions or provide any data to support the estimated reductions.

The Department's reported savings were estimated based on paid claims history. During calendar year 2011, the FFS program paid 9,091,734 pharmacy claims.

Because of the significant differential among generic prices, a literal crosswalk from AWP and WAC is more difficult than the crosswalk from AWP to WAC for brand name drugs. Information from retail pricing surveys was used to estimate the WAC-5% metric for the equivalency to AWP-25%. The actual impact in terms of payment to pharmacies is minimal based on an analysis of 2011 FFS Pharmacy Claims data. Only 3.64% of generic claims would have been paid using the WAC minus 5% metric. The 3.64% is comprised of claims that were billed at the usual and customary charge or paid at the current WAC plus 66% payment metric. The remaining 96.4% of generic claims were paid using AWP minus 25%, the Federal Upper Limit or at the State MAC and would continue to be paid on that basis.

Despite the minimal impact, the Department recognizes that the cost of generics to pharmacies may vary according to the pharmacy size and volume of business and can range on average anywhere from WAC to WAC-6%. In recognition of these differences and after consideration of the comments received on this provision, the Department changed the regulation to amend the calculation of WAC when establishing the EAC for generic drugs from “the lowest WAC listed for the drug in available Nationally recognized pricing services, minus 5%” to “the lowest WAC listed for the drug in available Nationally recognized pricing services.”

Comment

Two commentators inquired whether the Department will update the EAC on a daily or weekly basis. In addition, one commentator questioned what data will be used to determine the WAC metric and whether the data will be available to pharmacies to verify the accuracy.

Response

Currently, in accordance with § 1121.56(b), the EAC is updated monthly. The Department, however, is amending subsection (b) to change “monthly” to “at least monthly” to provide the flexibility for more frequent updates to the ingredient cost component of reimbursement.

The MA program uses three Nationally recognized pricing services, First Data Bank, Micromedex and Medi-Span, when determining the “lower of” payment. Drug pricing information from each of these pricing services is available by subscription.

Comment

Several commentators stated that the Department did not allow sufficient time for review and comment of the regulations.

Response

The Department engaged in a transparent public process through which the Department solicited and received numerous comments and input from stakeholders and other interested parties.

As previously mentioned, the Department published advance public notice at 42 Pa.B. 1002 announcing its intent to amend the method of payment for pharmacy services under Chapter 1121. The Department invited interested persons to comment. The Department also posted the draft regulation on the Department’s web site on February 24, 2012. The Department again invited interested persons to submit written comments, on or before March 9, 2012, regarding the regulation to the Department. As a final-omitted regulation under Act 22, the Department was not required to have a public comment process. However, to encourage transparency

and public input the Department provided an opportunity for comment by publishing the notice and posting the draft regulation on the Department’s web site. This public comment process provided sufficient opportunity for interested parties to submit comments, as supported by the number of comments that were submitted.

Comment

The Department exceeded its authority under Act 22 by issuing final-omitted regulations that change pharmacy reimbursement methods in future years.

Response

Act 22 authorizes the Department to promulgate final-omitted regulations that revise payment rates. To ensure that the Department’s expenditures for State FY 2011-2012 do not exceed the amount appropriated by the General Assembly, this final-omitted rulemaking is exempt from the Regulatory Review Act, section 205 of the CDL and section 204(b) of the Commonwealth Attorneys Act. There is nothing in Act 22 that precludes the promulgation of final-omitted regulations that will have an impact in both State FY 2011-2012 and in future years.

Technical Amendments

To promote understanding and application of MA payment for pharmaceutical services, the Department is making several technical corrections to Chapter 1121. These technical corrections do not represent changes to the Department’s current MA payment or coverage policies. They reflect and clarify payment for pharmaceutical services that have been in effect under the MA Program, based upon Federal Medicaid requirements and MA payment policies, but have not yet been incorporated into Chapter 1121. These technical corrections are as follows:

- Clarification that in the definition of “usual and customary charge” the phrase “other discounts extended to a particular group of patients” includes generic drug savings and discount programs.
- Deletion of the requirement for the licensed prescriber to write the prior authorization number on the prescription form as that information is now located in PROMISE, the Department’s claims processing system.
- Deletion of the reference to the 5-day grace period and the exclusions to the 5-day grace period for prescriptions filled and delivered to a recipient in a skilled nursing facility, an intermediate care facility or an intermediate care facility for the mentally retarded prior to the normal 30-day cycle. Pharmacy claims are now submitted through PROMISE, the Department’s online, point-of-sale claims adjudication system. The Department notified prescribing providers and pharmacies of the requirement for prior authorization of an early refill effective August 4, 2008, by way of MA Bulletin Number 02-08-04, et al, “Prior Authorization of Early Refills of Prescriptions,” issued July 18, 2008, and issued handbook pages that include the type of information needed to evaluate requests for early refills of prescriptions for medical necessity.
- Deletion of the following from the list of noncompensable services and items:
 - o Methadone. Methadone meets the conditions for coverage under the Medicaid Program (see section 1927(a)(1) of the act (42 U.S.C.A. § 1396r-8(a)(1))) and consequently it has been included in the Department’s list of covered drugs.

o Drugs prescribed for treatment of pulmonary tuberculosis. These drugs meet the conditions for coverage under the Medicaid Program (see section 1927(a)(1) of the act) and have been included on the Department's list of covered drugs.

o Drugs prescribed for cessation of smoking. In 2002, the Department expanded the scope of covered services for eligible MA recipients to include tobacco cessation drug products and tobacco cessation counseling services and notified all providers of this addition by way of MA Bulletin Number 99-02-02, "Coverage of Tobacco Cessation Drug Products and Counseling Services," issued January 16, 2002.

o Single entity and multiple vitamins with exceptions, legend and nonlegend aqueous saline solutions, legend and nonlegend water preparations and impregnated gauze and identical, similar or related products. In accordance with the CMS Medicaid Drug Rebate Program Release No. 155, issued August 11, 2010, substances that do not meet the definition of a covered outpatient drug as defined in section 1927(a)(1) of the act are considered nondrug products and are not subject to the requirements of the Medicaid Drug Rebate program. The MA program covers these products under the medical supplies and equipment category of service.

o Emollients. Emollients are included on the Department's list of covered drugs.

o Legend and nonlegend food supplements and substitutes. The Department expanded the scope of covered services for eligible MA recipients to include enteral nutritional supplements effective January 1, 2002, and notified providers of this addition by way of MA Bulletin Number 99-01-13, "Coverage of Enteral Nutritional Supplements," issued December 28, 2001.

- Addition of the following to the list of noncompensable services and items:

- o Erectile dysfunction (ED) drugs. Prescriptions for ED drugs are noncompensable unless used for a Food and Drug Administration-approved indication other than for the treatment of sexual or ED. The Department notified prescribing providers and pharmacies that effective March 1, 2006, coverage of drugs for the treatment of sexual or ED is eliminated in the Medicaid Program in accordance with notice from CMS by way of MA Bulletin Number 02-06-04, et al, "Federal Clarification—Elimination of Medicaid Coverage of Drugs for Treatment of Erectile Dysfunction," issued March 7, 2006.

Therefore, the Department is amending §§ 1121.2, 1121.53 and 1121.54 (relating to definitions; limitations on payment; and noncompensable services and items) to codify and better clarify the scope and applicability of coverage and payment conditions for pharmaceutical services. These technical amendments do not impose new or additional coverage exclusions or payment conditions and reflect the manner in which these services are currently covered under the Commonwealth's MA Program.

Requirements

The following is a summary of the major provisions of this final-omitted rulemaking.

§ 1121.2. Definitions

The Department is amending the definition of "usual and customary charge" to specifically include generic drug savings and discount programs.

§ 1121.53. Limitations on payment

The Department is amending subsection (b)(1)(ii) by deleting the requirement for a licensed prescriber to write

the prior authorization number on the prescription form. In addition, subsection (f) is amended to delete the reference to a 5-day grace period to accommodate prescriptions filled and delivered prior to the normal 30-day cycle. Paragraphs (1)—(10), which provided the exemptions to this limitation, are deleted as well.

§ 1121.54. Noncompensable services and items

The Department is making technical corrections that reflect current MA coverage policies. This section is amended to delete the services and items to reflect the current payment policies. The remaining paragraphs were renumbered accordingly.

§ 1121.55. Method of payment

The Department is amending subsection (a)(1) and (2) to change the \$4 dispensing fee to a \$2 dispensing fee. Subsection (b) is also amended to change the \$5 dispensing fee to a \$3 dispensing fee. In addition, paragraph (4) is added to provide a \$0.50 dispensing fee to cover the cost of the transaction to submit the claim when the MA recipient has a medical resource that includes coverage of pharmacy services and is a primary third-party to MA.

§ 1121.56. Drug cost determination

As stated previously, the Department is amending subsection (a)(1)(i)(A) to change the reference to WAC plus 7% to WAC plus 3.2%. Subsection (a)(1)(ii)(A) is also amended to change the reference to WAC plus 66% to WAC. Subsection (b) is amended to change the frequency of updates to EAC from monthly to at least monthly. Finally, subsection (f) is amended to correct a typographical error and change "CMF" to "CMS," which is the Centers for Medicare and Medicaid Services.

Affected Individuals and Organizations

Pharmacies that are enrolled as MA providers will be affected by the changes. MA recipients, however, will not be affected by these changes.

Accomplishments and Benefits

The final-omitted rulemaking aligns the Department's dispensing fee with those of other public and private third-party payers, enables the MA program to ensure the savings intended when the Department adopted the "lower of" payment methodology and clarifies the method of payment when the MA recipient has a pharmacy third-party benefit resource. In addition, the technical amendments codify the requirements for coverage and payment and enhance the clarity of the regulations.

Fiscal Impact

The final-omitted rulemaking will result in reduced payments to pharmacies enrolled in the MA program. The Commonwealth will realize \$1.589 million (\$0.714 million in State funds) in savings in FY 2011-2012.

Paperwork Requirements

There are not additional reports, paperwork or new forms needed to comply with the final-omitted rulemaking.

Regulatory Review Act

Under section 403.1 of the code, this final-omitted rulemaking is not subject to review under the Regulatory Review Act.

Findings

The Department finds that:

(1) Notice of proposed rulemaking is omitted in accordance with section 204(1)(iv) of the CDL, 1 Pa. Code § 7.4(1)(iv) and section 403.1 of the code because the final-omitted rulemaking relates to Commonwealth grants and benefits.

(2) That the adoption of this final-omitted rulemaking in the manner provided by this order is necessary and appropriate for the administration and enforcement of the code.

Order

The Department, acting under the code, orders that:

(a) The regulations of the Department, 55 Pa. Code Chapter 1121, are amended by amending §§ 1121.2 and 1121.53—1121.56 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

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

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

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

GARY D. ALEXANDER,
Secretary

Fiscal Note: 14-530. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 55. PUBLIC WELFARE

PART III. MEDICAL ASSISTANCE MANUAL

CHAPTER 1121. PHARMACEUTICAL SERVICES

GENERAL PROVISIONS

§ 1121.2. Definitions.

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

* * * * *

Usual and customary charge—The pharmacy’s lowest net charge an MA recipient would pay for a prescription as a non-Medicaid patient at the time of dispensing for the same quantity and strength of a particular drug or product, including applicable discounts, such as special rates to nursing home residents, senior citizens or other discounts extended to a particular group of patients, including generic drug discount and savings programs. This lowest net price does not apply to special in-store rates or discounts extended to charitable organizations, religious groups, store employees and their families, nonprofit organizations, members of the medical profession or other similar non-Medicaid groups.

* * * * *

PAYMENT FOR PHARMACEUTICAL SERVICES

§ 1121.53. Limitations on payment.

(a) The Department will not pay a provider an amount that exceeds the provider’s usual and customary charge to the general public.

(b) The Department establishes a State MAC which sets a limit on the drug cost component of the payment

formula for selected multisource drugs. The State MAC will include a combination of CMS multisource drugs and the Department’s MAC drugs and does not apply if the following exist:

(1) The licensed prescriber certifies that a specific brand is medically necessary by doing all of the following:

(i) Writes on the prescription form “Brand Necessary” or “Brand Medically Necessary” in the prescriber’s own handwriting.

(ii) Receives prior authorization from the Department to use the brand name product.

(2) In the case of a telephone prescription, the licensed prescriber sends a properly completed prescription, as described in paragraph (1), to the pharmacist within 15 days of the date of service.

* * * * *

(f) Payment to a pharmacy for prescriptions dispensed to a recipient in either a skilled nursing facility, an intermediate care facility or an intermediate care facility for the mentally retarded shall be limited to one dispensing fee for each drug dispensed within a 30-day period.

§ 1121.54. Noncompensable services and items.

Payment will not be made to a pharmacy for the following services and items:

(1) Drugs and other items prescribed for obesity, appetite control or other similar or related habit altering tendencies. Drugs which have been cleared for use in the treatment of hyperkinesia in children and primary and secondary narcolepsy due to structural damage of the brain are compensable if the physician indicates the diagnosis on the original prescription.

(2) Nonlegend drugs in the form of troches, lozenges, throat tablets, cough drops, chewing gum, mouthwashes and similar items.

(3) Pharmaceutical services provided to a hospitalized person.

(4) Drugs and devices classified as experimental by the FDA or whose use is classified as experimental by the FDA.

(5) Drugs and devices not approved by the FDA or whose use is not approved by the FDA.

(6) Placebos.

(7) Legend and nonlegend soaps, cleansing agents, dentifrices, mouthwashes, douche solutions, diluents, ear wax removal agents, deodorants, liniments, antiseptics, irrigants and other personal care and medicine chest items.

(8) Compounded prescriptions when one of the following applies:

(i) Compensable items are used in less than therapeutic quantities.

(ii) Noncompensable items are compounded.

(9) Nonlegend drugs not listed in § 1121.53(d) (relating to limitations on payment).

(10) Drugs prescribed in conjunction with sex reassignment procedures or other noncompensable procedures.

(11) The following items when prescribed for recipients in a skilled nursing facility, an intermediate care facility or an intermediate care facility for the mentally retarded:

- (i) Intravenous solutions.
- (ii) Noncompensable drugs and items as specified in this section.
- (iii) The following nonlegend drugs:
 - (A) Analgesics.
 - (B) Antacids.
 - (C) Antacids with simethicone.
 - (D) Cough—cold preparations.
 - (E) Contraceptives.
 - (F) Laxative and stool softeners.
 - (G) Ophthalmic preparations.
 - (H) Diagnostic agents.
- (iv) Legend laxatives.

(12) Items prescribed or ordered by a prescriber who has been barred or suspended from participation in the MA Program. The Department will periodically send pharmacies a list of the names of suspended, terminated or reinstated practitioners and the dates of the various actions. Pharmacies are responsible for checking this list before filling prescriptions.

(13) Prescriptions or orders filled by a pharmacy other than the one to which a recipient has been restricted under § 1101.91 (relating to recipient misutilization and abuse). The Department will issue special medical services eligibility cards to restricted recipients indicating the name of the pharmacy to which the recipient is restricted. Pharmacies are responsible for checking the recipient's medical services eligibility card before filling the prescription.

(14) DESI drugs and identical, similar or related products or combinations of these products.

(15) A pharmaceutical service for which payment is available from another public agency or another insurance or health program except for those drugs prescribed through the county mental health/mental retardation programs as specified in § 1121.51 (relating to general payment policy).

(16) FDA approved pharmaceutical products whose indicated use is not to treat or manage a medical condition, illness or disorder.

(17) Legend and nonlegend pharmaceutical products distributed by a company that has not entered into a National rebate agreement with the Federal government as provided under section 4401 of OBRA '90, except for those specific drug products authorized by the Federal government as essential to the health of an MA recipient. The Department will issue a special list comprised of those companies that signed rebate agreements with the Federal government and those products authorized as essential to the health of an MA recipient. Pharmacies are responsible for checking the list before filling the prescription.

(18) Legend and nonlegend cough and cold preparations, except when prescribed for MA recipients under 21 years of age.

(19) Erectile dysfunction drugs unless used for an FDA approved indication other than for the treatment of sexual or erectile dysfunction.

§ 1121.55. Method of payment.

(a) The Department will pay a pharmacy for a compensable legend and nonlegend drug (after deducting

the applicable copayment amount, as described in § 1101.63(b) (relating to payment in full)), the lowest of the following amounts:

(1) The EAC for the drug, multiplied by the number of units dispensed, plus a \$2 dispensing fee.

(2) The State MAC for the drug, multiplied by the number of units dispensed, plus a \$2 dispensing fee.

(3) The provider's usual and customary charge to the general public.

(4) For MA recipients with a pharmacy benefit resource which is a primary third party payer to MA, the lower of the following amounts:

(i) The EAC for the drug, multiplied by the number of units dispensed, plus a \$0.50 dispensing fee.

(ii) The State MAC, multiplied by the number of units dispensed, plus a \$0.50 dispensing fee.

(b) The Department will pay a pharmacy for a compensable compounded prescription at the lower of the cost of all ingredients plus a \$3 dispensing fee or the provider's usual and customary charge to the general public. For MA recipients with a pharmacy benefit resource which is a primary third party payer to MA, the dispensing fee shall be \$0.50.

(c) The provider shall bill the Department at its usual and customary charge to the general public.

§ 1121.56. Drug cost determination.

(a) The Department will base its drug cost for compensable legend and nonlegend drugs on the lower of:

(1) The EAC established by the Department.

(i) For brand name drugs, the EAC is established by the Department as one of the following:

(A) The lowest WAC listed for the drug in available Nationally recognized pricing services, plus 3.2%.

(B) If WAC data are not available from a Nationally recognized pricing service, the lowest AWP listed for the drug in available Nationally recognized pricing services, minus 14%.

(C) If both WAC and AWP cost data are available for the drug from a Nationally recognized pricing service, the lower of the two amounts.

(ii) For generic drugs, the EAC is established by the Department as one of the following:

(A) The lowest WAC listed for the drug in available Nationally recognized pricing services.

(B) If WAC data are not available from a Nationally recognized pricing service, the lowest AWP listed for the drug in available Nationally recognized pricing services, minus 25%.

(C) If both WAC and AWP cost data are available for the drug from a Nationally recognized pricing service, the lower of the two amounts.

(2) The State MAC established by the Department.

(b) The Department will update the EAC for individual drugs at least on a monthly basis as it appears in available Nationally recognized pricing services.

(c) CMS establishes lists that identify and set Federal upper limits for CMS multisource drugs and provides the listing of these drugs and revisions to the list to the Department through Medicaid manual transmittals on a periodic basis.

(d) The Department will determine the State MAC by one of the following methods:

(1) For multisource drugs, the Department will set the State MAC at the lower of the following:

(i) The upper payment limit established by the CMS.

(ii) Provided that the generic product is available at the price established by the Department from at least two wholesalers:

(A) If the generic product is available from more than one manufacturer, the base price of 150% of the lowest acquisition cost for the generic product, unless 150% of the lowest acquisition cost is not at least 120% of the second lowest acquisition cost, in which case the base price will be set at 120% of the second lowest acquisition cost.

(B) If the generic product is available from only one manufacturer, the base price is 120% of the acquisition cost for the generic product.

(2) For disposable insulin syringes, the Department will set the State MAC at the amount listed in the MA Program Fee Schedule.

(e) The Department will update the State MAC:

(1) If the State MAC for a multisource drug is set at the Federal upper payment limit established by CMS, the Department will apply the Federal upper limits for CMS multisource drugs to be effective on the date established by CMS and will describe the update to each pharmacy enrolled in the MA Program when it is available.

(2) The Department will apply the price for all other State MAC multisource drugs every 3 months, and will distribute the update to each pharmacy enrolled in the MA Program.

(f) With the exception of the CMS multisource drugs, the Department will make further additions to the list of State MAC drugs after consultation with the Medical Assistance Advisory Committee as to whether the application of a State MAC is cost effective to the Department for a particular multisource drug. The Department will add the CMS multisource drugs to the State MAC list effective as of the effective date established by CMS.

(g) With the exception of disposable insulin syringes, the State MAC does not apply if the conditions are met as described in § 1121.53(b)(1) and (2) (relating to limitations on payment).

(h) The most common package size for the purposes of determining the product cost is one of the following:

(1) For capsules, tablets and liquids available in breakable package sizes:

(i) The listed package size if only one package size is listed.

(ii) The 100 or pint package size if more than one package size is listed.

(iii) The next smaller package size from the 100 or pint size, excluding a drug company's unit-dose package size, if more than one package size is listed other than the 100 or pint package size.

(iv) The package size closest to the 100 or pint package size, excluding a drug company's unit-dose package size, if the next smaller package is the unit-dose package size.

(2) The listed package size for all dosage forms available for all nonlegend drug products.

(3) The smallest package size for all dosage forms available in nonbreakable packages.

[Pa.B. Doc. No. 12-646. Filed for public inspection April 13, 2012, 9:00 a.m.]

DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CH. 1163]

Newborn Payment Policy for Acute Care General Hospitals

The Department of Public Welfare (Department) amends Chapter 1163 (relating to inpatient hospital services) to read as set forth in Annex A under the authority in sections 201(2), 403(b) and 403.1 of the Public Welfare Code (code) (62 P. S. §§ 201(2), 403(b) and 403.1), as amended by the act of June 30, 2011 (P. L. 89, No. 22) (Act 22).

Omission of Proposed Rulemaking

On July 1, 2011, the General Assembly enacted Act 22, which amended the code. Act 22 added several new provisions to the code, including section 403.1. Section 403.1(a)(4), (c) and (d) of the code authorizes the Department to promulgate final-omitted regulations under section 204(1)(iv) of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204(1)(iv)), known as the Commonwealth Documents Law (CDL), to establish or revise provider payment rates or fee schedules, reimbursement models or payment methodologies for particular services. Section 204(1)(iv) of the CDL authorizes an agency to omit or modify notice of proposed rulemaking when a regulation relates to Commonwealth grants or benefits. The Medical Assistance (MA) Program is a Commonwealth grant program through which eligible recipients receive coverage of certain health care benefits, including inpatient hospital services. In addition, to ensure that the Department's expenditures for State Fiscal Year (FY) 2011-2012 do not exceed the aggregate amount appropriated by the General Assembly, section 403.1 of the code expressly exempts these regulations from the Regulatory Review Act (71 P. S. §§ 745.1—745.12), section 205 of the CDL (45 P. S. § 1205) and section 204(b) of the Commonwealth Attorneys Act (71 P. S. § 732-204(b)).

The Department is amending Chapter 1163 in accordance with section 403.1 of the code because this final-omitted rulemaking pertains to the revision of MA provider payment rates and methodologies for inpatient acute general hospital services.

Additionally, section 204(3) of the CDL provides authority for an agency to omit notice of proposed rulemaking when impracticable or unnecessary. Notice of proposed rulemaking is impracticable and unnecessary for the amendments to § 1163.57(a) and (b) (relating to payment policy for readmissions) because Act 22 statutorily amended the readmission time period to 30 days. See section 443.9 of the code (62 P. S. § 443.9). The Department is amending Chapter 1163 to conform the regulations to the Act 22 requirements for inpatient readmissions to acute care general hospitals.

Purpose

The purpose of this final-omitted rulemaking is to amend Chapter 1163, Subchapter A (relating to acute care general hospitals under the prospective payment system) to restructure the inpatient payment for normal newborn care for MA births in inpatient acute care general

hospitals. For normal newborn care, the Department will make one payment for inpatient services related to the mother's obstetrical delivery using the All Patient Refined (APR) Diagnosis Related Group (DRG) payment.

Additionally, the Department is amending regulations regarding its payment policy for readmissions to an inpatient acute care general hospital to increase the readmission time period from 7 to 30 days of the date of previous discharge. See section 443.9 of the code.

Background

The Department administers the MA Program under Title XIX of the Social Security Act (act) (42 U.S.C.A. §§ 1396—1396w-5). The MA Program provides a continuum of physical and behavioral health services, including long-term care, inpatient hospital, pharmacy, outpatient services, such as physician, podiatry, medical and psychiatric clinics, chiropractic and dental service, and medical supplies and durable medical equipment to approximately 2.1 million MA recipients.

In an effort to address the current budget constraints, the Department has taken steps to implement a series of initiatives aimed at reducing costs while still providing needed care to MA recipients, including limiting pharmacy benefits for recipients 21 years of age and older and by limiting certain dental benefits for recipients 21 years of age and older. Despite these and other cost savings efforts, the Department was compelled to identify additional ways to achieve the necessary cost savings. The Department determined that changing the payment method for normal newborn care will produce savings with the least impact on services and care provided to MA recipients.

Public Process

The Department published advance public notice at 42 Pa.B. 1005 (February 18, 2012) announcing its intent to amend the MA payment policy for normal newborn births. The Department invited interested persons to comment. In addition, the Department discussed these payment amendments with the Medical Assistance Advisory Committee at its February 23, 2012, meeting.

The Department also posted the draft regulation on the Department's web site on February 24, 2012, with a 15-day comment period. The Department again invited interested persons to submit written comments regarding the regulation to the Department. The Department received 19 topically-related comments from 27 commentators. The Department also discussed the Act 22 regulations and responded to questions at the House Health Committee hearing on March 8, 2012.

The Department considered the comments received in response to the draft regulation. For the following reasons, the Department decided to maintain the policies as provided in the draft regulation.

Discussion of Comments

Following is a summary of the major comments received within the public comment period and the Department's response to the comments.

Comment

Several commentators stated that the elimination of a normal newborn payment will increase the chance of poor newborn outcomes, such as children who are impaired before or during birth. One commentator noted that eliminating the Fee-for-Service (FFS) payment for normal newborn births undermines the historical mission of the Medicaid program, which is a program for pregnant women and newborns.

Response

The Department disagrees that restructuring the inpatient payment for normal newborns will increase the chance of poor newborn outcomes. Newborn outcomes are generally attributed to the quality of obstetrical and delivery services and the Department is not changing its payment policy for prenatal care or obstetrical deliveries. The Department will continue to pay for inpatient hospitalizations and high cost outliers for neonates that are not normal newborns. The Department will also pay for newborn inpatient hospitalizations when the Department does not make an APR-DRG payment for the mother's obstetrical delivery. The Department will monitor outcomes to ensure that there are not unintended consequences regarding the health of mothers and their newborns.

Comment

Several commentators noted that "normal newborn" is not defined consistent with the APR-DRG classification system.

Response

The Department disagrees. The Department believes that the regulatory definition of "normal newborn" is consistent with and specific to APR-DRG 640 with a severity of illness level 1.

Comment

One commentator noted that the payment change conflicts with the Federal requirement to pay for mandatory Medicaid services. Normal newborns covered by Medicaid are entitled to mandatory services. Inpatient hospital care is a mandatory service.

Response

MA coverage for eligible normal newborns includes inpatient hospital services, which is a mandatory class of service under Federal Medicaid rules. Federal rules allow states to establish limitations on payment under the state Medicaid Plan, subject to Federal approval.

Comment

Some commentators expressed access to care concerns in that the change in the inpatient newborn payment will continue the loss of access to obstetrical and newborn services. Another commentator expressed concern regarding the comparison of the Department's payment to other payers without an access to care analysis. The commentator also inquired whether the Department had historic access data concerning the availability of birthing services and newborn care for Medicaid recipients.

Response

The change in the payment for normal newborns will not create a loss of access to obstetrical and newborn services. Access to obstetrical and newborn inpatient care was maintained through the old DRG payment system, under which hospitals received less payment for both the mother's and newborn's care, than is currently paid under the APR-DRG payment system for the mother's obstetrical delivery. For years, under the ACCESS Plus Program and managed care delivery system, consumer responses to the Department's "Consumer Assessment of Healthcare Providers and Systems" (CAHPS) survey demonstrate sustained satisfaction regarding access to health care, satisfaction with specialist care, getting the appropriate needed care and obtaining care quickly. The Department's CAHPS surveys were completed, in part, by women who had obstetrical deliveries. Through the use of Healthcare Effectiveness Data and Information Set and similar

tools, the Department has monitored obstetrical services for both the FFS ACCESS Plus Program and the HealthChoices Program, the Department's mandatory managed care program. The Department will continue to monitor both outpatient and inpatient obstetrical services, including access.

Even with the change to the normal newborn payment policy, the APR-DRG system provides a significant increase in the total payment for the episode of care as compared to the prior DRG payments for both the mother's delivery and the newborn's hospitalization.

Comment

Several commentators noted that the notice published at 42 Pa.B. 1005 did not include a substantive analysis of the costs of newborn care, which requires specifically trained staff, infant supplies and mandated testing and screening, all of which hospitals shall provide even absent payment.

Response

The current MA payment policy for inpatient services is not cost based and neither is the payment methodology under this final-omitted rulemaking. Based on the Department's findings, hospitals are accepting payments from the MA managed care plans for the mother's delivery and normal newborn care (whether separate or combined) that are lower than the total payments for both the mother's delivery and the normal newborn's care made under the FFS delivery system. The Department determined that even with the change in the normal newborn payment, the APR-DRG system provides a significant increase in the total payment for the episode of care as compared to the previous DRG payments for both the mother's delivery and the newborn's hospitalization.

Comment

Multiple commentators expressed concern regarding the impact of the policy change on the qualification for and payment of Disproportionate Share Hospital (DSH) payments for both the MA and Medicare Programs. Commentators expressed concern that the data associated with inpatient newborn care will not be considered in determining a hospital's DSH qualification or payments, shifting DSH payments to hospitals not providing birthing services. Commentators also noted that MA births represent a large category of MA admissions and the potential impact of the change can be substantial.

Response

The Department acknowledges the concern about DSH qualification and payment calculations regarding the MA Program. The Department does not foresee that this policy change will affect a hospital's DSH qualification or payment or that it will result in a shift of DSH payments to providers who do not provide birthing services. For those DSH payments in which normal newborn data was previously used, the Department will use cost reports and develop other data sources, as necessary, to ensure that normal newborn days and payments are appropriately accounted for in DSH eligibility and payment calculations. In addition, the majority of FY 2011-12 and FY 2012-13 DSH payment programs under MA will not be affected by this change in payment policy since eligibility and payment distribution methodologies rely on historic utilization data.

Comment

Several commentators noted that the current APR-DRG relative payment for obstetrical and newborn care already

is lower than payment made under the previously used Centers for Medicare and Medicaid Services (CMS) DRGs and that the Department is actually paying less for the delivery and newborn care inpatient services relative to other inpatient services. Further, the relative value for what has been defined as normal newborn care under the APR-DRG is less than the relative value for this care under the CMS DRG system. Commentators suggest that not paying for the care hospitals provide to newborns removes the actuarial soundness of the entire DRG system by removing payment without adjusting payments or costs made for the mother.

Response

The payment made under the APR-DRG system is not calculated solely using the relative weight of the APR-DRG. Along with the implementation of APR-DRGs, hospitals received an increase in their base payment rates which also affects payment for inpatient services

The change in the payment for newborn inpatient services does not remove the actuarial soundness of the entire APR-DRG system. The Department determined that even with this payment change, the APR-DRG system provides a significant increase in the total payment for the episode of care from payment under the CMS DRG-based system. The Department will monitor the APR-DRG payments and the relative values for unintended consequences.

Comment

Several commentators also expressed concern regarding the relative value calculation for the APR-DRG system. Because births are the most prevalent DRG and the relative value assigned to APR-DRG 640.1 is an integral component of the calibration of APR-DRG relative values, the Department must recalibrate remaining APR-DRGs to account for this change. Otherwise, the Department will realize significant additional savings by underpaying all other cases.

Response

The Department recognizes the concern and will continue to monitor the appropriateness of relative weights moving forward. The assignment of relative weights, however, is distinct from the newborn payment policy.

Comment

Several commentators noted that the APR-DRG system enables the MA Program to group care categories and develop payments based on resource use and patient intensity, as well as to enable the Department to monitor care. The removal of the normal newborn payment inappropriately distorts the classification system that was designed to match resource use with patient needs.

Response

The Department's analysis shows that under the FFS delivery system, the MA Program is paying significantly more for the mother's delivery and normal newborn care than the global or separate payments made for the mother's delivery and normal newborn care under the MA managed care delivery system.

Comment

Several commentators suggested that the Department surveyed a limited number of health plans and states and that a single payment for the care of the mother during delivery and postpartum and the newborn are not common place. Rather, MA managed care organizations (MCO) and commercial health plans use a variety of payment means, including separate payments. When pay-

ments are combined in a singular case rate, there are clear criteria for what costs are incorporated into the single rate and what criteria constitute normal newborn.

Commentators also noted that the Department compares the combined payment for a delivery and normal newborn made under the MA FFS program, with the total payment made by MA MCOs. Commentators state this comparison is faulty because MCO payments were not based on the higher FFS rates or the APR-DRG grouping system. Commentators further added that MCO payments for hospital care would be higher than that of the MA FFS program, in recognition that patients would be managed more effectively.

Response

While the payment change will result in smaller MA FFS payment for the inpatient stay of a mother and her normal newborn, based on the Department's findings, hospitals are accepting payments from the MA MCOs for the mother's delivery and normal newborn care (whether separate or combined) that are lower than the MA FFS payments for mother's delivery alone. Even with the change in the normal newborn payment, the APR-DRG system provides a significant increase in the total payment for the episode of care as compared to the prior DRG payments for both the mother's delivery and the newborn's hospitalization. This new payment policy more closely aligns payment into the range of MA MCOs.

With the change to APR-DRGs, the per-admission average inpatient payment increased 33% under the FFS delivery system. After restructuring the normal newborn payments, the FFS payments will still be, on average, 31% higher on a per admission basis than under the DRG system. Over the same period of time, the MCO per admission payments increased by 0.65%.

Comment

Several commentators noted that the newborn payment policy does not address the interrelationship of the FFS program and the State's mandatory MA MCO program. The MA MCO programs are required to adhere to the FFS program payment policies. Commentators stated that removing the newborn payment will result in a further negative financial impact for hospitals providing care under the MA MCO program.

Response

The MA MCOs are not required to pay in the same manner as the MA Program and there is not a requirement for the MA MCOs to adopt any aspect of this payment change.

Comment

Multiple commentators suggested the payment policy does not clearly reflect the total potential financial impact (including State and Federal funds) on hospitals. Several commentators also noted that it is not clear how the Department arrived at the estimated savings. There is concern that the fiscal impact will be far greater than the Department's estimate of \$18 million.

Response

The Department's analysis shows that MA is paying significantly more for the mother's delivery and normal newborn care than other payers. The new payment policy more closely aligns payment into the range of MA MCOs.

The Department calculated the number of newborns who met "normal" definition in recent historical claims data, projected the number of normal newborns for

current and next fiscal year and multiplied by the average current normal newborn payment.

Comment

One commentator noted that this policy unfairly impacts safety net hospitals, both in rural and urban areas. Hospitals will need to evaluate their ability to continue providing birthing services.

Response

The Department disagrees that this policy unfairly targets those hospitals in rural Pennsylvania and that there is any disproportionate impact on safety net hospitals. This payment policy applies to all acute care general hospitals. The Department's analysis shows that under the FFS delivery system, the MA Program is paying significantly more for the mother's delivery and normal newborn care than other payers. The new payment policy more closely aligns payment into the range of MA MCOs.

Comment

One commentator noted concern about the Department's authority under Act 22 to continue the proposed change beyond July 1, 2012.

Response

Act 22 authorizes the Department to promulgate final-omitted regulations that revise payment rates. To ensure that the Department's expenditures for State FY 2011-2012 do not exceed the amount appropriated by the General Assembly, these regulations are exempt from the Regulatory Review Act, section 205 of the CDL and section 204(b) of the Commonwealth Attorneys Act. There is nothing in Act 22 that precludes the promulgation of final-omitted regulations that will have an impact in State FY 2011-2012 and in future years.

Comment

Several commentators stated that the Department did not allow sufficient time for review and comment of the regulations.

Response

The Department engaged in a transparent public process through which the Department solicited and received numerous comments and input from stakeholders and other interested parties.

As previously mentioned, the Department published advance public notice at 42 Pa.B. 1005 announcing its intent to amend the MA payment policy for the inpatient care related to the mother's delivery of a normal newborn. The Department invited interested persons to comment. The Department also posted the draft regulation on the Department's web site on February 24, 2012. The Department again invited interested persons to submit written comments, on or before March 9, 2012, regarding the regulations to the Department. To comply with Federal law and to encourage transparency and public input, the Department provided an opportunity for comment by publishing the notice and posting the draft regulation on the Department's web site. This public comment process provided sufficient opportunity for interested parties to submit comments, as supported by the number of comments that were submitted.

Comment

One commentator suggested that the expedited rule-making violates Federal law. Under section 1902(a)(13)(A) of the Social Security Act (42 U.S.C.A. § 1396a(a)(13)(A)), a state agency may not materially change payment methods for hospital services without first publishing the

change as a proposal and soliciting and considering public comment. Federal law is not satisfied by publishing a “final” rule, subject to after the fact comments, because rulemaking parameters are deemed finalized when they are adopted in final-form and comments on final rules are considered by the courts to be window dressing. Under the Supremacy Clause, State law permitting the Department to forego notice and comment does not eliminate the public process obligations imposed by Federal law.

Response

Contrary to the commentator’s contention and as required under Federal law, the Department published notice of its intent to change its payment for inpatient services at 42 Pa.B. 1005. The Department discussed the intended change and provided for a public comment period. The change will not be effective prior to the date on which the Department published its notice of the intended change.

Related Readmission Payment Policy

The Department implemented the 30-day readmission time period effective July 1, 2011, as required under Act 22, and announced the change at 41 Pa.B. 4818 (September 3, 2011).

The Department received written comments from two hospitals and the Urban Health Care Coalition of Pennsylvania regarding the readmission payment policy as published in the *Pennsylvania Bulletin*. The majority of these comments did not relate to the 30-day readmission time period. Instead, the comments related to the Department’s operational review procedures for review of readmissions and the inability of hospitals to control patient behavior. Although the Department appreciates the comments received, the Department is codifying the 30-day readmission time period as required under Act 22.

Requirements

The following is a summary of the major provisions of the final-omitted rulemaking.

§ 1163.2. Definitions

The Department is adding a definition for “normal newborn” as “a liveborn neonate whose diagnosis is categorized into severity of illness level 1 of the newborn APR-DRG 640 as of July 1, 2011.”

§ 1163.51. General payment policy

This section is amended by adding subsection (v) to provide that the Department will not make a separate APR-DRG payment for an inpatient acute care general hospital stay for a normal newborn.

§ 1163.52. Prospective payment methodology

This section is amended by adding subsection (e) to provide the nonpayment conditions for newborns when the following occur:

- The hospital receives an APR-DRG payment for the mother’s obstetrical delivery.
- The newborn meets the definition of a “normal newborn” under § 1163.2 (relating to definitions).
- The normal newborn is discharged from the hospital before or on the same date as the mother.
- The normal newborn is not discharged to another acute care inpatient setting.

Currently, the Department makes two separate MA APR-DRG payments to a hospital for the inpatient acute care general hospital admission related to a mother’s

obstetrical delivery and the admission related to her newborn’s care. For FY 2010-2011, the average MA APR-DRG payment for vaginal and cesarean section deliveries was \$5,712 and the average MA APR-DRG payment for normal newborn care was \$1,155, for a total average payment of \$6,867.

Some commercial insurers, as well as several Medicaid programs in other states, pay hospitals a single payment for both the inpatient stay related to the mother’s obstetrical delivery and to the normal newborn nursery care, rather than separate payments for the mother and normal newborn. The Department surveyed three health plans that cover a large percentage of commercial lives throughout this Commonwealth. Two of the three health plans typically pay one DRG for the mother’s delivery and the newborn care, but pay separately for medically necessary newborn care in the neonatal intensive care unit (NICU) or when the newborn’s stay exceeds 3 days or the DRG trim point for the mother’s delivery. The third health plan varies its payments. It makes either a single payment for the mother’s and newborn’s inpatient stay or separate payments for the mother’s delivery and newborn care depending on the particular hospital contracts involved. In addition, the Department’s contracted MA managed care plans pay hospitals, on average, either an all-inclusive payment of \$3,745 for the delivery and newborn care or separate payments that on average total \$4,884 (\$3,578 for the delivery and \$1,306 for the newborn care), depending on their provider specific contracts. Both these average payment amounts are significantly less than the current average MA APR-DRG payments for the mother’s delivery alone.

The Department also surveyed several states concerning their Medicaid payment methodology for these services. Some states pay a global payment for both the mother’s delivery and normal newborn care. However, these states make separate payments to the hospital for newborns who are detained in the NICU or newborn nursery after the mother is discharged. Other states make separate payments to the hospital for the mother’s delivery and newborn care, similar to the Department’s current practice.

In an effort to address the current budgetary constraints, the Department is changing its policy of making a separate APR-DRG payment to the hospital for the normal newborn’s care. Instead, the hospital will receive a single APR-DRG payment for the mother’s delivery. In the event the newborn stays in the NICU or experiences other complications not associated with normal newborn care, the hospital will receive two APR-DRG payments for the delivery and newborn care.

§ 1163.57. Payment policy for readmissions

This section is amended to conform the regulation to the Act 22 requirements for readmissions. Act 22 amended section 443.9 of the code by increasing the readmission time period from 14 days to 30 days from the date of previous discharge.

The Department also implemented the 30-day readmission time period effective July 1, 2011, as required under Act 22, and announced the change in the *Pennsylvania Bulletin* at 41 Pa.B. 4818.

Affected Individuals and Organizations

The newborn and readmission payment policies affect MA payments to acute care general hospitals. As a result of the change to the Department’s methodology for payments related to the delivery of normal newborns, hospitals will not receive a separate APR-DRG payment for the inpatient stay of a normal newborn. The readmission

requirement, however, was implemented through Act 22. Therefore, the amendment to § 1163.57 merely codifies existing law.

Accomplishments and Benefits

This final-omitted rulemaking changes MA Program payment policy for normal newborn admissions. This change will enable the Department to preserve vital benefits to the greatest number of MA recipients while reducing costs in accordance with the goals in section 403.1 of the code. The amendments to § 1163.57 also codifies current payment polices as required under section 443.9 of the code.

Fiscal Impact

The changes are anticipated to result in savings of \$1.029 million (\$0.463 million in State funds) in the MA Program in FY 2011-2012.

Paperwork Requirements

There are no additional reports, paperwork or new forms needed to comply with the final-omitted rule-making.

Regulatory Review Act

Under section 403.1 of the code, this final-omitted rulemaking is not subject to review under the Regulatory Review Act.

Findings

The Department finds that:

(1) Notice of proposed rulemaking is omitted in accordance with section 204(1)(iv) and (3) of the CDL, 1 Pa. Code § 7.4(1)(iv) and (3) and section 403.1(a) of the code because this final-omitted rulemaking relates to Commonwealth grants and benefits.

(2) The adoption of this final-omitted rulemaking in the manner provided by this order is necessary and appropriate for the administration and enforcement of the code.

(3) Notice of proposed rulemaking is impracticable and unnecessary for the amendments to § 1163.57(a) and (b) because Act 22 statutorily amended the readmission time periods to 30 days.

Order

The Department, acting under the code, orders that:

(a) The regulations of the Department, 55 Pa. Code Chapter 1163, are amended by amending §§ 1163.2, 1163.51, 1163.52 and 1163.57 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

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

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

(d) This order shall take effect for dates of discharge on and after May 1, 2012, and upon publication in the *Pennsylvania Bulletin* with the exception of § 1163.57. Section 1163.57 is effective July 1, 2011.

GARY D. ALEXANDER,
Secretary

Fiscal Note: 14-528. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 55. PUBLIC WELFARE

PART III. MEDICAL ASSISTANCE MANUAL

CHAPTER 1163. INPATIENT HOSPITAL SERVICES

Subchapter A. ACUTE CARE GENERAL HOSPITALS UNDER THE PROSPECTIVE PAYMENT SYSTEM

GENERAL PROVISIONS

§ 1163.2. Definitions.

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

APR-DRG—All Patient Refined Diagnosis Related Group.

Buildings—The basic structure or shell and additions thereto.

* * * * *

Institutionalized individual—A person who is detained or confined under one of the following:

(i) A civil or criminal statute in a correctional, rehabilitative or mental retardation facility, psychiatric hospital or other facility for the care and treatment of mental illness or mental retardation.

(ii) Voluntary commitment in a psychiatric hospital, mental retardation facility or other facility for the care and treatment of mental illness or mental retardation.

Normal newborn—A liveborn neonate whose diagnosis is categorized into severity level 1 of the newborn APR-DRG 640 as of July 1, 2011.

Outlier—An inpatient hospital case having either an extremely long length of stay or extraordinarily high costs in comparison to most discharges for the same DRG.

* * * * *

PAYMENT FOR HOSPITAL SERVICES

§ 1163.51. General payment policy.

* * * * *

(u) Capital and operating costs related to new or additional beds are nonallowable for purposes of this subchapter unless a Certificate of Need or letter of nonreviewability related to those beds was issued by the Department of Health prior to July 1, 1993.

(v) The Department will not make a separate APR-DRG payment for inpatient acute care general hospital services of a normal newborn.

§ 1163.52. Prospective payment methodology.

(a) The Department will base payment for inpatient hospital services on the classification of inpatient hospital discharges by DRGs used by the Medicare Program.

(b) The Department will assign a DRG to each MA discharge. The assignment of a DRG is based on:

- (1) The recipient's diagnoses.
- (2) The procedures performed during the recipient's hospital stay.
- (3) The recipient's sex.
- (4) The recipient's age.
- (5) The recipient's discharge status.

(c) For a DRG, the Department will determine a relative value which reflects the cost of hospital resources used to treat cases in that DRG relative to the Statewide average cost of hospital cases. The Department will determine the relative value under § 1163.122 (relating to determination of DRG relative values).

(d) The Department will base payment for compensable inpatient hospital services under the DRG payment system on the hospital's base DRG rate determined under § 1163.126 (relating to computation of hospital specific base payment rates).

(e) The Department will not make a separate APR-DRG payment for a normal newborn when the following occur:

(1) The hospital receives an APR-DRG payment for the mother's obstetrical delivery.

(2) The newborn meets the definition of a "normal newborn" under § 1163.2 (relating to definitions).

(3) The normal newborn is discharged from the hospital before or on the same date as the mother.

(4) The normal newborn is not discharged to another inpatient setting.

§ 1163.57. Payment policy for readmissions.

(a) Except as specified in subsection (c), if a recipient is readmitted to a hospital within 30 days of discharge, the Department makes no payment in addition to the hospital's original DRG payment. If the combined hospital stay qualifies as an outlier, an outlier payment will be made.

(b) If a patient is readmitted within 30 days of discharge for the treatment of conditions that could or should have been treated during the previous admission, the Department makes no payment in addition to the hospital's original DRG payment.

(c) Except as specified in subsection (b), if a patient is readmitted to the hospital due to complications of the original diagnosis and this results in a different DRG with a higher payment rate, the Department pays the higher DRG payment rate rather than the original DRG rate.

(d) Except as specified in subsection (b), if a patient is readmitted to the hospital due to conditions unrelated to the previous admission, the Department considers the readmission a new admission for payment purposes.

[Pa.B. Doc. No. 12-647. Filed for public inspection April 13, 2012, 9:00 a.m.]

code. Section 403.1(a)(1) of the code authorizes the Department to promulgate final-omitted regulations to establish standards for determining eligibility and the nature and extent of assistance. The basis for the final-omitted regulation is section 204(1)(iv) of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. § 1204(1)(iv)), known as the Commonwealth Documents Law (CDL), which authorizes an agency to omit or modify notice of proposed rulemaking when the regulation relates to Commonwealth grants or benefits. See section 403.1(d) of the code. Child care subsidy is a Commonwealth benefit. In addition, until June 30, 2012, section 403.1 of the code expressly exempts certain regulations under the Regulatory Review Act (71 P.S. §§ 745.1—745.12), section 205 of the CDL (45 P.S. § 1205) and section 204(b) of the Commonwealth Attorneys Act (71 P.S. § 732-204(b)).

The Department is amending Chapter 3041 and Appendix A in accordance with section 403.1 of the code because this final-omitted rulemaking pertains to establishing standards for determining eligibility and the nature and extent of assistance. In addition, this final-omitted rulemaking implements section 403.1(c) of the code. As provided in section 403.1(c) of the code, the Department is permitted to exercise its rulemaking authority granted under section 403.1(a) of the code as may be necessary to ensure that expenditures for State Fiscal Year (FY) 2011-2012 for assistance programs administered by the Department do not exceed the aggregate amount appropriated for the program by the General Appropriations Act of 2011. Specifically, this final-omitted rulemaking will save \$641,000 in State FY 2011-2012.

Purpose

The purpose of this final-omitted rulemaking is to amend the definition of "self-employment," rescind subsidized child care special eligibility for children enrolled in a prekindergarten program and amend copayment requirements for school-age child care subsidies. "Prekindergarten" is defined as a program serving children 3 or 4 years of age operated by a school entity or a certified child care center or licensed private academic school under contract with a school entity.

Requirements

§ 3041.3. Definitions

The definition of "self-employment" is being amended to include "profit equal or greater than the hourly Pennsylvania minimum wage."

§ 3041.52

Special eligibility granted to parents or caretakers who have a child enrolled in a prekindergarten program is being rescinded. Under the regulation, parents or caretakers who are eligible for special eligibility under this section are not subject to 6-month redeterminations and are not required to report changes in circumstances regarding work hours and income. In some instances, this results in parents or caretakers who do not meet the work requirements receiving additional hours of child care beyond their work or training schedule and pay co-payments that are not reflective of their changes in family income and size. Families enrolled in Pennsylvania Pre-K Counts, a prekindergarten program administered through the Department of Education and managed locally through school entities, have income at or below 300% of the Federal Poverty Income Guidelines. This income limit is higher than the income limit for other families that receive subsidized child care, making it more likely that a family with a child enrolled in Pennsylvania Pre-K Counts could be over the income

**DEPARTMENT OF PUBLIC WELFARE
[55 PA. CODE CH. 3041]
Subsidized Child Care Eligibility**

The Department of Public Welfare (Department) amends Chapter 3041 and Appendix A (relating to subsidized child care eligibility; and income to be included, deducted and excluded in determining gross monthly income) to read as set forth in Annex A under the authority of sections 201(2), 403(b) and 403.1 of the Public Welfare Code (code) (62 P.S. §§ 201(2), 403(b) and 403.1), as amended by the act of June 30, 2011 (P.L. 89, No. 22) (Act 22).

Omission of Proposed Rulemaking

Act 22 amended the code and added several new provisions. Specifically, Act 22 added section 403.1 of the

limit for subsidized child care, as compared to other families that receive subsidy. By rescinding this regulation, parents or caretakers who have a child enrolled in a prekindergarten program will be required to report all changes and have a redetermination every 6 months, as required for all other subsidy recipients under §§ 3041.127 and 3041.130 (relating to parent and caretaker report of change; and redetermination of eligibility), with the exception of those families enrolled in a Head Start expansion program. Under the amended regulations, parents or caretakers will be required to meet the work requirement, only be eligible for child care for the hours they are in a work or training activity and pay a co-payment based on their family size and income.

§ 3041.65. *Verification of income*

This section is amended to specify that the verification of income from self-employment must be documented by Federal Income Tax Returns, including all schedules related to self-employment. A notarized statement of gross earnings, minus allowable cost of doing business, is acceptable verification for a parent or caretaker who has not been self-employed for more than 1 year in the same business. However, the notarized statement is only valid until the Federal Income Tax Return is filed. At the time the Federal Income Tax Return is filed, a redetermination of eligibility shall be completed.

§ 3041.67. *Verification of work, education and training*

This section adds the requirement for submission of a Federal Income Tax Return as verification of work for a parent or caretaker who is self-employed. The Federal Income Tax Return must show profit from self-employment, that when divided by the Pennsylvania minimum wage, is equal to or greater than the number of hours required under § 3041.43 (relating to work, education and training) and is equal to or greater than the number of hours of care needed.

§ 3041.108. *Co-payment for families headed by a parent*

The Department is deleting subsection (c) and renumbering the section accordingly. By deleting subsection (c), parents or caretakers shall pay the full co-payment amount, regardless of the child's age or hours of care. Deleting this subsection will provide for equal application for all families that receive subsidy under § 3041.101 (relating to general co-payment requirements) which requires co-payments to be based on family income and size.

Appendix A, Part I. Income inclusions

The following items are being deleted from the list of allowable deductions for the cost of doing business for self-employment income: professional licensing fees and union dues, if necessary to practice a profession or trade; depreciation; and other deductions allowed by the Internal Revenue Service (IRS). The reason for disallowing these IRS deductions is to standardize the calculation of gross annual income for the purposes of determining eligibility and co-payment amount. Currently, these deductions are allowable for self-employed individuals only. For example, parents or caretakers who are not self-employed may not use professional licensing fees or unions dues as allowable deductions when determining their gross annual income.

The changes regarding self-employment income will serve to better align calculation of gross annual income for parents or caretakers receiving subsidized child care and clarify standards for acceptable verification relating to self-employment. Parents or caretakers will need to be

able to show a profit equal to or greater than the Pennsylvania hourly minimum wage to be eligible. This change will result in a cost savings to the Commonwealth and meet the Department's goal that only income-eligible families are served.

Affected Individuals and Organizations

Parents or caretakers who have a child enrolled in a prekindergarten program will have to comply with the same reporting requirements as other parents or caretakers who receive child care subsidy, with the exception of those families enrolled in the Head Start expansion program. The new requirements include the need to report a decrease in work or training hours which could result in ineligibility for subsidized child care and redetermination of income eligibility which will result in paying the appropriate co-payments based on their income and family size. Parents or caretakers will be ineligible for additional hours of child care beyond their work or training schedule.

Under the amended regulations, acceptable verification to demonstrate self-employment will be more specific than existing requirements for parents or caretakers who are self-employed. In addition to specifying acceptable documentation to establish self-employment, parents or caretakers shall show a profit equal to or greater than the Pennsylvania minimum wage to be eligible for subsidized child care.

Co-payments will increase for families of school-age children who have only one child receiving part-time subsidized child care. For example, if a parent or caretaker has a child who is in first grade that receives subsidized child care to attend a before and after school program for a total of 3 hours per day, the parent or caretaker will pay the full co-payment amount for the family size and income, the same as other families with one child receiving part-time care.

Each of these amendments will strengthen the eligibility requirements to be certain that those receiving subsidized child care truly are eligible for subsidy. This is imperative as there is currently a waiting list of otherwise eligible parents or caretakers in most counties in this Commonwealth.

Accomplishments and Benefits

This final-omitted rulemaking implements section 403.1 of the code. As provided in Act 22, this final-omitted rulemaking will help the Department's efforts to conserve resources to ensure that the expenditures for State FY 2011-2012 for assistance programs administered by the Department do not exceed the aggregate amount appropriated for assistance programs by the General Appropriations Act of 2011.

Fiscal Impact

The Commonwealth will realize an estimated savings of \$641,000 in State FY 2011-2012.

Paperwork Requirements

There are new paperwork requirements under the final-omitted rulemaking. There will be increased reporting requirements for families with a child enrolled in a prekindergarten program. Parents or caretakers will be required to complete a redetermination every 6 months, as well as report changes relating to work hours and income.

Parents or caretakers who are self-employed will be required to submit Federal Income Tax Returns. If the parent or caretaker has been self-employed for less than 1

year in the same business, a notarized statement of gross earnings, minus allowable cost of doing business, shall be submitted as verification until a Federal Income Tax Return is filed.

Public Comment

Although this rulemaking is being adopted without publication as proposed rulemaking, the Department posted a draft regulation on the Department's web site on February 24, 2012, with a 15-day comment period. The Department invited interested persons to submit written comments regarding the final-omitted rulemaking to the Department. The Department received 23 comments. The Department also discussed the Act 22 regulations and responded to questions at the House Health Committee hearing on March 8, 2012.

The Department considered the comments received in response to the draft regulation. For the following reasons, the Department has decided to maintain the policies as provided in the draft regulation.

Discussion of Comments

Following is a summary of the major comments received within the public comment period and the Department's response to the comments.

Comment

Several commentators stated that the Department did not allow sufficient time for review and comment of the regulations. In addition, commentators requested the public comment period be extended an additional 30 days due to the policy changes and the volume of regulations.

Response

The Department engaged in a transparent public process through which the Department solicited and received numerous comments and input from stakeholders and other interested parties. As previously mentioned, the Department posted the draft regulation on the Department's web site on February 24, 2012. The Department invited interested persons to submit written comments, on or before March 9, 2012, regarding the draft regulation to the Department. In addition, the Department's Regulatory Agenda announced the Act 22 regulations at 42 Pa.B. 879, 893 (February 11, 2012).

As a final-omitted regulation under Act 22, the Department was not required to have a public comment process. However, to encourage transparency and public input the Department provided an opportunity for comment by posting the draft regulation on the Department's web site. This public comment process provided sufficient opportunity for interested parties to submit comments, as supported by the number of comments that were submitted. Therefore, the Department is not extending the public comment period.

Comment

Comments were received both in support and opposition to the amendments regarding self-employment.

Response

The Department is maintaining the changes regarding self-employment. These changes standardize the calculation of gross annual income for the purposes of determining eligibility and co-payment amount. Further, the amendments clarify the verification requirements for self-employment.

Comment

Comments were received in opposition to the change to the school-age copayment regulation. Recommendations

received included monitoring the drop in the number of school-aged children being served, maintaining eligibility during the school year and creating a summer school-age set aside.

Response

The Department is maintaining the change to delete § 3041.108(c) (relating to co-payment for families headed by a parent). This amendment will require parents and caretakers to pay a full co-payment throughout the year.

Co-payment amounts are based on family size and income under § 3041.108. However, families receiving a subsidy with school-age children only pay the full co-payment amount from mid-June to the end of August. This amendment aligns the co-payment provisions for families receiving a child care subsidy since parents of school-age children will be required to pay the full co-payment amount throughout the year, just as other parents receiving child care subsidy are required to pay.

The Department will monitor the number of school-age children that become ineligible due to the copayment being greater than the cost of part-time care. In addition, the Department will create a summer school-age set aside to provide care for children that are only eligible during summer months when the cost of care is higher due to the need for full-time enrollment.

Comment

Comments were received in opposition concerning the change in regulation allowing special eligibility for children enrolled in prekindergarten programs. Recommendations included developing clear information to families regarding prekindergarten redetermination changes and sufficient time for families to adjust to the changes.

Response

The Department is maintaining the changes to remove the special conditions for subsidy-eligible children enrolled in prekindergarten. This amendment will align the requirements for receipt of subsidized child care. As previously stated, parents and caretakers who have a child enrolled in a prekindergarten program will be required to report all changes and have a redetermination every 6 months, as required for other subsidy recipients under §§ 3041.127 and 3041.130.

Parents or caretakers will receive written notification of the change in regulation as soon as the regulation becomes effective. In the following month, parents and caretakers with children enrolled in prekindergarten who have not received a redetermination in the last 6 months will receive a redetermination packet allowing the parent or caretaker 6 weeks to provide the required information. The Department anticipates that children currently eligible under the current prekindergarten section will be able to finish the 2011-2012 school year.

Regulatory Review Act

Under section 403.1 of the code, this final-omitted rulemaking is not subject to the Regulatory Review Act.

Findings

The Department finds that:

(1) Notice of proposed rulemaking is omitted in accordance with section 204(1)(iv) of the CDL, 1 Pa. Code § 7.4(1)(iv) and section 403.1(d) of the code because the regulations relate to Commonwealth grants and benefits.

(2) Adoption of this final-omitted rulemaking in the manner provided by this order is necessary and appropriate for the administration and enforcement of the code.

Order

The Department, acting under the code, orders that:

(a) The regulation of the Department, 55 Pa. Code Chapter 3041, are amended by deleting § 3041.52 and amending §§ 3041.3, 3041.65, 3041.67 and 3041.108 and Appendix A to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

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

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

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

GARY D. ALEXANDER,
Secretary

Fiscal Note: 14-527. No fiscal impact; (8) recommends adoption.

Annex A**TITLE 55. PUBLIC WELFARE****PART V. CHILDREN, YOUTH AND FAMILIES
MANUAL****Subpart B. ELIGIBILITY FOR SERVICES****CHAPTER 3041. SUBSIDIZED CHILD CARE
ELIGIBILITY****GENERAL PROVISIONS****§ 3041.3. Definitions.**

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

* * * * *

Self-employment—Operating one's own business, trade or profession for profit equal to or greater than the hourly Pennsylvania minimum wage.

* * * * *

SPECIAL ELIGIBILITY PROGRAMS**§ 3041.52. (Reserved).****SELF-CERTIFICATION AND VERIFICATION****§ 3041.65. Verification of income.**

(a) Acceptable verification of earned income from employment includes one of the following:

(1) Pay stubs reflecting earnings for 4 weeks in the most recent 6-week period, the Department's Employment Verification form reflecting actual or anticipated earnings, the Internal Revenue Service form used for reporting tips, an employer statement of anticipated earnings and hours or other document that establishes the parent's or caretaker's earnings or anticipated earnings from employment.

(2) A collateral contact, as specified in § 3041.62 (relating to collateral contact).

(3) A written self-declaration by the parent or caretaker as specified in § 3041.64 (relating to self-declaration).

(b) Acceptable verification of income from self-employment includes one of the following:

(1) Tax returns, including schedules related to self-employment, filed for the preceding Federal tax year and which document profit for that year.

(2) A notarized statement of gross earnings, minus allowable cost of doing business which shows hourly profit equal to or more than the Pennsylvania minimum wage, for the preceding Federal tax quarter is acceptable and is valid until the next Federal Income Tax Return is filed. At the time the Federal Income Tax Return is filed, a redetermination of eligibility shall be completed.

(3) An annual Federal Income Tax Return shall be used as income documentation when the parent or caretaker has been self-employed for more than 1 year in the same business and is only valid until the next Federal Income Tax Return is filed.

(c) Acceptable verification of unearned income includes one of the following:

(1) A copy of a current benefit check, an award letter that designates the amount of a grant or benefit, such as a letter from the Social Security Administration stating the amount of the Social Security benefit, a bank statement, a court order, or other document or database report that establishes the amount of unearned income.

(2) A collateral contact, as specified in § 3041.62.

(3) A written self-declaration by the parent or caretaker, as specified in § 3041.64.

(d) If a family receives or pays child support, the eligibility agency shall verify the amount of support received or paid by the family by requesting this information from the Department, whether the information is found in the Pennsylvania Child Support Enforcement System or in another source.

§ 3041.67. Verification of work, education and training.

Acceptable verification of hours of work, education, training or enrollment in education or training includes one of the following:

(1) A document provided by the parent or caretaker as verification of earned or anticipated earned income, provided this verification indicates or can be used to compute the number of hours the parent or caretaker worked, is normally scheduled to work or in cases when hours vary, the average number of hours worked.

(2) A copy of a work schedule signed by the employer.

(3) A copy of the class or training schedule from an education or training representative.

(4) Another document that establishes hours of work or anticipated hours of work, education or training.

(5) A collateral contact, as specified in § 3041.62 (relating to collateral contact).

(6) A written self-declaration by the parent or caretaker that indicates the parent or caretaker works or will work at least 20 hours per week, as specified in § 3041.64 (relating to self-declaration).

(7) A Federal Income Tax Return showing profit from self-employment that when divided by the Pennsylvania minimum wage is equal to or greater than the required number of hours, as specified in § 3041.43 (relating to work, education and training) and is equal to or greater than the number of hours of care needed.

CO-PAYMENT AND PAYMENT BY THE DEPARTMENT

§ 3041.108. Co-payment for families headed by a parent.

(a) For families headed by a parent, the family co-payment shall be determined based on the following:

(1) The family size and family income, as specified in §§ 3041.31–3041.34 (relating to determining family size and income).

(2) The co-payment shall be at least \$5, unless waived as specified in §§ 3041.44(a) and 3041.91(c) (relating to prospective work, education and training; and general domestic violence waiver requirements).

(3) The family’s annual co-payment may not exceed 11% of the family’s annual income.

(4) If the family’s annual income is 100% of FPIG or less, the annual co-payment may not exceed 8% of the family’s annual income.

(b) The eligibility agency shall determine the co-payment by using the co-payment chart in Appendix B (relating to co-payment chart family co-payment scale based on the 2005 FPIGs). The co-payment is calculated in \$5 increments for each \$2,000 of annual income.

(c) If the co-payments for 1 month are equal to or exceed the monthly payment for care, the family is not eligible for subsidized child care with that provider.

**APPENDIX A
INCOME TO BE INCLUDED, DEDUCTED AND EXCLUDED IN DETERMINING GROSS MONTHLY INCOME**

PART I. INCOME INCLUSIONS

Income from the following sources is included when determining total gross monthly income:

* * * * *

T. Profit from self-employment; total gross receipts minus costs of doing business. The costs of doing business shall only include:

(1) Costs of maintaining a place of business such as rent, utilities, insurance on the business and its property and property taxes. Note: If a business is operated in a home, the costs of maintaining a place of business are only those costs identified for the part of the home used exclusively for the business.

(2) Interest on the purchase of income-producing equipment and property.

(3) Employee labor costs, such as wage, salaries, taxes, benefits, Unemployment Compensation or Worker’s Compensation.

(4) Cost of goods sold, supplies and materials.

(5) Advertising costs.

(6) Accounting and legal fees.

(7) Transportation costs necessary to produce income.

U. Net income from room rent or room and board: Gross income received minus \$10 per month for each room rented. Divide the remainder by 2. That number is the income inclusion.

* * * * *

[Pa.B. Doc. No. 12-648. Filed for public inspection April 13, 2012, 9:00 a.m.]

PROPOSED RULEMAKING

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 62]

[L-2011-2266832]

Licensing Requirements for Natural Gas Suppliers

The Pennsylvania Public Utility Commission (Commission), on January 12, 2012, adopted a proposed rulemaking order which reviews the Commission's existing regulations outlining the licensing requirements for natural gas suppliers (NGS), specifically whether the exemption from NGS licensing of marketing services consultants and nontraditional marketers should be discontinued and whether all natural gas aggregators, marketers and brokers should be required to be licensed as NGSs to offer natural gas supply services to retail customers.

Executive Summary

By order entered January 13, 2012, the Pennsylvania Public Utility Commission (PUC) initiated a proposed rulemaking to review the exemption from licensing for "marketing services providers" and "non-traditional marketers" in its natural gas supply (NGS) licensing regulations at 52 Pa. Code § 62.102 (relating to scope of licensure). The terms "marketing services consultants" and "nontraditional marketer" are defined in 52 Pa. Code § 62.101 (relating to definitions). Rather than license these entities, the existing regulations hold a licensed NGS responsible for violations of the law, or for any fraudulent, deceptive or other unlawful marketing or billing acts committed by the marketing services consultant or nontraditional marketer that the NGS hires or with whom it partners.

The proposed rulemaking revises Section 62.102 by deleting the exemption language for marketing services consultants and non-traditional marketers at subsections (d) and (e), and deletes the definitions for these two groups at subsection 62.101. It also deletes subsection 62.110(a)(3) (relating to reporting requirements) that directs that a licensed NGS include in its annual report the names and addresses of nontraditional marketers and marketing services consultants who are acting or will be acting as agents for the licensee in the upcoming year.

The proposed rulemaking solicits comments on (1) whether the exemption from NGS licensing of marketing services consultants and non-traditional marketers should be discontinued; and (2) whether all natural gas aggregators, marketers and brokers should be required to be licensed as NGSs in order to offer natural gas supply services to retail customers. The PUC also requests comments on costs that would be incurred, and any savings that might be realized, by affected parties as the result of these proposed revisions. Affected parties would include marketing service consultants, nontraditional marketers, NGSs, NGDCs and customers.

Public Meeting held
January 12, 2012

Commissioners Present: Robert F. Powelson, Chairperson; John F. Coleman, Jr., Vice Chairperson; Wayne E. Gardner; James H. Cawley, statement follows; Pamela A. Witmer, statement follows

*Licensing Requirements for Natural Gas Suppliers
Regulations at 52 Pa. Code § 62.101—§ 62.102;
L-2011-2266832*

Proposed Rulemaking Order

By the Commission:

In conjunction with the approval of the Application of Alphabuyer LLC¹ ("Alphabuyer") for a natural gas supplier (NGS) license to operate as a broker/marketer engaged in the business of supplying natural gas services in various local natural gas distribution company service territories throughout the Commonwealth, the Pennsylvania Public Utility Commission (the Commission) determined that a review of the scope of its NGS licensing regulations at 52 Pa. Code § 62.101 (relating to definitions) and § 62.102 (relating to scope of licensure) should be undertaken. The focus of this review is the exemption from licensing of marketing services consultants and nontraditional marketers. Accordingly, by this order we will initiate this review.

Discussion

Background

On June 22, 1999, Governor Thomas J. Ridge signed into law the Natural Gas Choice and Competition Act, effective July 1, 1999, 66 Pa.C.S. §§ 2201—2212 ("Act"). Pursuant to the Act, beginning on November 1, 1999, retail customers have had the ability to choose their Natural Gas Supplier ("NGS").

Section 2208(a) of the Act requires that no entity can engage in the business of a NGS unless it holds a license issued by the Commission. 66 Pa.C.S. § 2208(a). The term NGS is defined, in part, as:

An entity other than a natural gas distribution company, but including natural gas distribution company marketing affiliates, which provides natural gas supply services to retail gas customers utilizing the jurisdictional facilities of a natural gas distribution company.

66 Pa.C.S. § 2202.

Further, Section 2202 of the Act defines natural "gas supply services" as including:

- (i) the sale or arrangement of the sale of natural gas to retail customers; and
- (ii) services that may be unbundled by the Commission under section 2203(3) of the Act (relating to standards for restructuring of the natural gas utility industry).
- (iii) The term does not include distribution service.

Id.

Notably, unlike the categories of Electric Generation Suppliers ("EGSs") in the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. §§ 2801—2815, the Natural Gas Choice and Competition Act, 66 Pa.C.S. §§ 2201—2212, does not break down NGSs into the subclasses of aggregator, broker and marketer.

Following the passage of the Natural Gas Choice and Competition Act in 1999, the Commission promulgated regulations governing licensing requirements for NGSs. See 52 Pa. Code §§ 62.101—114. While these regulations

¹ Application of Alphabuyer LLC, Docket No. A-2010-2201777, order entered October 17, 2011.

generally require all suppliers of retail natural gas supply services to obtain a NGS license, other than natural gas local distribution companies providing service within their certificated service territories and municipal utilities providing service within their corporate or municipal limits, the Commission exempted “marketing service consultants” and “nontraditional marketers” from these licensing requirements. In the NGS licensing regulations, the term “marketing services consultant” is defined as follows:

A commercial entity, such as a telemarketing firm or auction-type website, or energy consultant, that under contract to a licensee² or a retail customer, may act as an agent to market natural gas supply services to retail gas customers for the licensee or may act as an agent to recommend the acceptance of offers to provide service to retail customers. A marketing services consultant:

- (i) does not collect natural gas supply costs directly from retail customers;
- (ii) is not responsible for the scheduling of natural gas supplies;
- (iii) is not responsible for the payment of the costs of the natural gas to suppliers, producers, or NGDCs.

52 Pa. Code § 62.101 (footnote added).

Additionally, “nontraditional marketers” is defined as:

A community-based organization, civic, fraternal or business association, or common interest group that works with a licensed supplier as an agent to market natural gas supply services to its members or constituents. A nontraditional marketer: (i) conducts its transactions through a licensed NGS; (ii) does not collect revenue directly from retail customers; (iii) does not require its members or constituents to obtain its natural gas service through the nontraditional marketer or a specific licensed NGS; (iv) is not responsible for the scheduling of natural gas supplies; [and] (v) is not responsible for the payment of the costs of the natural gas to its suppliers or producers.”

52 Pa. Code § 62.101.

Rather than license these entities, the regulations emphasize that the licensed NGS is responsible for any violations of the statute, regulations or orders or for any fraudulent, deceptive or other unlawful marketing or billing acts committed by the marketing services consultant or nontraditional marketer. See 52 Pa. Code § 62.102 (relating to scope of licensure). See also 52 Pa. Code § 62.110(a)(3) (relating to reporting requirements) (NGSs must identify nontraditional marketers and marketing services consultants who are currently or will be acting as agents for the licensee in the upcoming year).

These regulations were finalized by the Commission in July 2001 in Licensing Requirements for Natural Gas Suppliers, Final Rulemaking Order, Docket No. L-00000150, 31 Pa.B. 3943 (July 21, 2001). As referenced in our July 2001 order, the Commission set forth its rationale for the existing exemptions to the NGS licensing requirements.

Review of NGS Licensing Regulations

During the past ten years, a number of entities similar to Alphabuyer have operated under a business model

² “Licensee” is defined as “a person or entity that has obtained a license to provide natural gas supply services to retail customers.” See also 52 Pa. Code § 62.101 (relating to definitions).

where marketers/brokers contract directly with retail customers without any affiliation to or contract with specific NGSs. Under this model, the entity falls within the definition of “marketing services consultant” if it: (1) does not collect natural gas supply costs directly from retail customers; (2) is not responsible for the scheduling of natural gas supplies; and (3) will not be responsible for the payment of costs to NGSs, producers or NGDCs. Despite this designation, some of these entities, like Alphabuyer, have applied for a NGS license in order to supply natural gas services to retail customers, despite the fact that they are not required to do so. To date, the Commission’s practice has been to issue NGS licenses to such entities upon demonstration that they meet the financial and technical requirements of NGS licensure and also comply with, and will be governed by, the applicable provisions of the Public Utility Code and Commission regulations.

However, due to the non-compulsory nature of licensing such entities and the amount of direct interaction these entities have with retail customers, we believe that now is the time to initiate a proposed rulemaking to conduct a review of the Commission’s regulations outlining the licensing requirements for natural gas suppliers. Specifically, the focus of this review will be on: (1) whether the exemption from NGS licensing of marketing services consultants and nontraditional marketers should be discontinued; and (2) whether all natural gas aggregators, marketers and brokers should be required to be licensed as NGSs in order to offer natural gas supply services to retail customers. At a minimum, initiating this proposed rulemaking will allow the Commission to receive comments to determine if our NGS licensing regulations conform with the plain language of the Act, and reflect the current business plans of NGSs appearing before this Commission so that we can determine whether continuing these exemptions is in the public interest. Finally, to be clear, the NGS licensing exemptions contained in 52 Pa. Code § 62.102 shall remain in effect until such time as the Commission adopts regulations that rescind them.

Proposed Revisions

In order to solicit comment on the possible rescission of the exemptions of marketing services consultants and nontraditional marketers from NGS licensing requirements, we propose the following revisions to our regulations:

Section 62.101. Definitions.

The definitions of “marketing service consultant” and “nontraditional marketer” are proposed to be deleted.

Section 62.102. Scope of licensure.

Subsections 62.102(d) and (e) are proposed to be deleted. Because marketing service consultants and nontraditional marketers are proposed to be licensed, we are requesting comment to determine whether it is appropriate to remove responsibility from a licensed NGS for violations of the Public Utility Code, and applicable Commission regulations, orders and directives and for fraudulent, deceptive or other unlawful marketing or billing acts committed by a marketing service consultant or a nontraditional marketer.

Section 62.110. Reporting Requirements.

Subsection 62.110(a)(3) is proposed to be deleted. This section required a licensee to report the names and addresses of nontraditional marketers and marketing services consultants who are acting or will be acting as agents for the licensee in the upcoming year.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 3, 2012, the Commission submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Committees. In addition to submitting the proposed rulemaking, the Commission provided IRRC and will provide the Committees with a copy of a detailed Regulatory Analysis Form. A copy of this material is available to the public upon request.

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

Conclusion

This order sets forth proposed amendments to the NGS licensing regulations that eliminate the exemption from licensing requirements for marketing service consultants and nontraditional marketers. This order also establishes a comment period that ends 60 days from the date of the publication of this order in the *Pennsylvania Bulletin*. Note that we are particularly interested in receiving comments on the costs that would be incurred, and any savings that might be realized, by affected parties as the result of these proposed amendments. Affected parties would include marketing service consultants, nontraditional marketers, NGSs, NGDCs and customers.

Accordingly, pursuant to sections 501, 504, 1501, 1504, 2202, and 2208 of the Public Utility Code, 66 Pa.C.S. §§ 501, 504, 1501, 1504, 2202, and 2208; sections 201 and 202 of the Act of July 31, 1968, P. L. 769 No. 240, 45 P. S. §§ 1201—1202, and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2, and 7.5; 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 at 4 Pa. Code §§ 7.231—7.234, we are proposing to amend our regulations as set forth in Annex A; *Therefore,*

It Is Ordered That:

1. A rulemaking docket shall be opened to revise regulations at 52 Pa. Code §§ 62.101, 62.102 and 62.110 relating to licensing requirements for natural gas suppliers as 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 comments to the Independent Regulatory Review Commission 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*.
5. An original and 15 copies of written comments referencing the docket number of the proposed regula-

tions be submitted within 60 days of publication in the *Pennsylvania Bulletin* to the Pennsylvania Public Utility Commission, Attn.: Secretary, P. O. Box 3265, Harrisburg, PA 17105-3265. To facilitate posting, a courtesy copy of each comment filed shall be forwarded via electronic mail to Patricia Krise Burket at pburket@pa.gov, Brent W. Killian at bkillian@pa.gov and Cyndi Page at cypage@pa.gov.

6. A copy of this order and Annex A shall be served on all jurisdictional natural gas distribution companies, all licensed natural gas suppliers, the Office of Consumer Advocate, the Office of Small Business Advocate, and the Energy Association of Pennsylvania.

7. The Office of Competitive Market Oversight shall electronically send a copy of this Order and Annex A on all persons on the contact list for the Stakeholders Exploring Avenues to Remove Competitive Hurdles (SEARCH).

8. A copy of this order and Annex A shall be posted on the Commission's web site at the Office of Competitive Market Oversight's web page.

9. The contact persons for this proposed rulemaking are Patricia Krise Burket, Law Bureau, (717) 787-3464 (legal) and Brent W. Killian, Bureau of Technical Utility Services, (717) 783-0350 (technical).

ROSEMARY CHIAVETTA,
Secretary

Fiscal Note: 57-288. No fiscal impact; (8) recommends adoption.

Statement of Commissioner Cawley

Before us is a tentative order to review and possibly modify the scope of the NGS licensing regulations at 52 Pa. Code § 62.101 (relating to definitions) and § 62.102 (relating to scope of licensure). The focus of this review is to examine whether or not this Commission should continue the current exemption from licensing of natural gas marketing services consultants and nontraditional marketers. Accordingly, by this tentative order, the Commission will initiate this review.

Currently, rather than license nontraditional marketers and marketing services consultants, the regulations emphasize that the licensed NGS is responsible for any violations of the statute, regulations or orders or for any fraudulent, deceptive or other unlawful marketing or billing acts committed by the marketing services consultant or nontraditional marketer. See 52 Pa. Code § 62.102 (relating to scope of licensure); see also 52 Pa. Code § 62.110(a)(3) (relating to reporting requirements) (NGSs must identify nontraditional marketers and marketing services consultants who are currently or will be acting as agents for the licensee in the upcoming year).

These regulations were finalized by the Commission in July 2001 in Licensing Requirements for Natural Gas Suppliers, Final Rulemaking Order, Docket No. L-00000150, 31 Pa.B. 3943 (July 21, 2001), and the Commission's rationale for the existing exemptions to the NGS licensing requirements was set forth:

Initially we note that as the agency responsible for implementing and enforcing the Public Utility Code and the act, we are afforded great deference by the courts in our interpretation of the law. When a statute is interpreted by the agency charged with the responsibility for its administration, interpretation shall be accorded great weight and shall not be overturned unless such construction is "clearly erro-

neous.” *Cherry v. Pennsylvania Higher Education Assistance Agency*, 620 A.2d 687, 691 (Pa. Cmwlth. 1993); *Hawkins v. Pennsylvania Housing Finance Agency*, 595 A.2d 712 (Pa. Cmwlth. 1991). This is particularly true when the interpretation involves construction of a statutory mandate in a new regulatory environment. *Barasch v. Pennsylvania Public Utility Commission*, 521 A.2d 482 (Pa. Cmwlth. 1987).

Under our authority to interpret our enabling legislation, the Commission is authorized to interpret the definitions of “natural gas supplier” and “natural gas supply services” that are referenced in the definition for “natural gas supplier.” Generally, under the act, an NGS is an entity engaged in the provision at retail of natural gas supply services. Natural gas supply services are defined in general as “the sale or the arrangement of the sale of natural gas to retail consumers.” In interpreting “natural gas supply services,” it is not clearly erroneous for us to distinguish certain activities that would fall within that definition from those activities that would fall outside of that definition. Based on an entity’s activities, it is not clearly erroneous for this Commission to identify entities who are not engaged in providing natural gas supply services to retail customers, and to exempt those entities from licensing requirements.

In this instance, the Commission defined for exemption from the licensing requirement at section 2208 of the act, the marketing services consultant, entities that are engaged in providing marketing and sales support services to licensed NGSs under a contract. Marketing service consultants would include commercial businesses involved in telemarketing, direct mail service or information dissemination through auction-type or information only websites and electronic newsletters. Based on their activities, the marketing services consultants are indistinguishable from the NGS’s own employees, who would not be required to be individually licensed under the act. Accordingly, it is not clearly erroneous for us to identify this group as falling outside the definition of “natural gas supplier.”

Nontraditional marketers such as fraternal organizations, unions, civic organizations or governmental organizations may provide endorsements of an NGS’s service to its membership or constituency. In these types of affiliations, the sole role of the nontraditional marketer is to make the endorsement that its members are free to accept or reject on its merits. If the member decides to accept the service offered, the transaction is between the contracting member and the licensed NGS. The nontraditional marketer is not involved in the financial transaction between the licensed supplier and the customer. Under this scenario, the nontraditional marketer is not engaged in providing natural gas supply services to retail customers.

Additionally, as the competitive energy marketplace has developed over the previous 4 years, the Commission staff has received a number of requests to exempt from licensing those entities who act, not on behalf of licensees, but on behalf of retail customers as energy consultants. These energy consultants gather and evaluate information about various energy supply offerings and then make recommendations to the consumer regarding the best offer available. These consultants are not generally involved in the actual transaction for the gas supply services in

that they are not responsible for paying the producer, the supplier or the NGDC for costs related to gas supply service and they are not responsible for the procurement or the scheduling for transport of natural gas supplies.

Based on their activities, it is our interpretation that energy consultants are not engaged in the sale or arranging the sale of natural gas supply services to retail consumers. Thus, they would fall outside the definition of an NGS at section 2202 of the act. We believe that our interpretation on this point is not clearly erroneous, and that the exemption from licensing of these energy consultants would not be detrimental to the public interest because consumers would be transacting business through a licensed supplier. Accordingly, we will revise our definition of “marketing services consultant” to include those entities who act as energy advisors to consumers.

31 Pa.B. at 3944-45

Through this tentative order, we solicit comments on whether or not this exemption should continue. At the outset, it should be made clear that my affirmative vote for this tentative order should not be interpreted as my concurrence with this rulemaking. Rather, my affirmative vote only reflects my willingness to listen to stakeholder feedback on how best to balance the needs of utilities, service providers, and customers in the provision of natural gas supply requirements as our industry matures. In support of this neutral position, responses to the following questions are welcomed:

1. Should the Commission affirm its current practice by not licensing any nontraditional marketers or consultants so as not to appear to favor one entity over another?
2. What problems may result from terminating the licenses of nontraditional marketers or consultants that have voluntarily subjected themselves to our regulation, and how could the Commission mitigate those problems?
3. Are nontraditional marketers and consultants presently acting in a manner contrary to existing NGS consumer protection regulations?
4. Is there a segment of natural gas market service providers that should be more closely regulated?

Given the evolving maturation of both competitive electricity and natural gas markets, and the future growth to competitive markets related to our efforts to remove barriers to competitive retail markets, we welcome all comments to ensure that our regulations continue to advance competition and protect consumers in the most efficient manner.

JAMES H. CAWLEY,
Commissioner

Statement of Commissioner Pamela A. Witmer

Before the Commission today is a proposed rulemaking order that solicits comments on the issue of removing the exemption from natural gas licensing requirements for marketing services consultants and nontraditional marketers. The rulemaking was initiated through my October 14, 2011 Motion directing staff to conduct a review of the Commission’s existing natural gas licensing regulations.

The current regulations exempt marketing services consultants and nontraditional marketers from licensing as natural gas suppliers (NGSs). However, some exempted entities have applied for a NGS license in order to supply natural gas services to retail customers, even though they are not required to do so. To date, the

Commission's practice has been to issue NGS licenses to such entities upon demonstration that they meet the financial and technical requirements of NGS licensure and also comply with, and will be governed by, the applicable provisions of the Public Utility Code and Commission regulations.

Our action here today provides an opportunity for interested parties to comment on whether it is appropriate, given the current NGS market, to discontinue the NGS licensing exemption of marketing services consultants and nontraditional marketers and instead require all natural gas aggregators, marketers and brokers to be licensed by the Commission in order to offer natural gas supply services to retail customers.

As I previously stated, I believe that it is necessary for the Commission to continuously review both the Public Utility Code and our regulations to ensure that their purpose is being properly effectuated. It is our job to ensure that the Commission's regulations are consistent with the law and responsive to changes within the regulated community. The proposed regulation addresses the issues the Commission set forth in its October 14 Motion.

I also wish to stress my desire for interested parties to comment on these proposed changes. In reviewing the proposed rulemaking, I believe it is instructive and appropriate for parties to review comments previously submitted on this issue under the 2001 proceeding that promulgated our current regulation. See Licensing Requirements for Natural Gas Suppliers, Final Rulemaking Order, Docket No. L-00000150, 31 Pa.B. 3943 (July 21, 2001).

PAMELA A. WITMER,
Commissioner

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

SUBPART C. FIXED SERVICE UTILITIES

CHAPTER 62. NATURAL GAS SUPPLY CUSTOMER CHOICE

Subchapter D. LICENSING REQUIREMENTS FOR NATURAL GAS SUPPLIERS

§ 62.101. Definitions.

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

* * * * *

[*Marketing services consultant*—A commercial entity, such as a telemarketing firm or auction-type website, or energy consultant, that under contract to a licensee or a retail customer, may act as an agent to market natural gas supply services to retail gas customers for the licensee or may act as an agent to recommend the acceptance of offers to provide service to retail customers. A marketing services consultant:

(i) Does not collect natural gas supply costs directly from retail customers.

(ii) Is not responsible for the scheduling of natural gas supplies.

(iii) Is not responsible for the payment of the costs of the natural gas to suppliers, producers, or NGDCs.]

* * * * *

[*Nontraditional marketer*—A community-based organization, civic, fraternal or business association, or common interest group that works with a licensed supplier as an agent to market natural gas supply services to its members or constituents. A nontraditional marketer:

(i) Conducts its transactions through a licensed NGS.

(ii) Does not collect revenues directly from retail customers.

(iii) Does not require its members or constituents to obtain its natural gas service through the nontraditional marketer or a specific licensed NGS.

(iv) Is not responsible for the scheduling of natural gas supplies.

(v) Is not responsible for the payment of the costs of the natural gas to its suppliers or producers.]

* * * * *

§ 62.102. Scope of licensure.

* * * * *

[(d) A nontraditional marketer is not required to obtain a license. The licensed NGS shall be responsible for violations of 66 Pa.C.S. (relating to the Public Utility Code), and applicable regulations of this title, orders and directives committed by the nontraditional marketer and fraudulent, deceptive or other unlawful marketing or billing acts committed by the nontraditional marketer.

(e) A marketing services consultant is not required to obtain a license. The licensed NGS shall be responsible for violations of 66 Pa.C.S. and applicable regulations of this title, orders and directives committed by the marketing services consultant and fraudulent, deceptive or other unlawful marketing or billing acts committed by the marketing services consultant.]

§ 62.110. Reporting requirements.

(a) A licensee shall file an annual report on or before April 30 of each year, for the previous calendar year. The annual report shall contain the following information:

* * * * *

[(3) The names and addresses of nontraditional marketers and marketing services consultants who are currently or will be acting as agents for the licensee in the upcoming year.]

* * * * *

[Pa.B. Doc. No. 12-649. Filed for public inspection April 13, 2012, 9:00 a.m.]

STATEMENTS OF POLICY

Title 4—ADMINISTRATION

PART II. EXECUTIVE BOARD

[4 PA. CODE CH. 9]

Reorganization of the Department of Military and Veterans Affairs

The Executive Board approved a reorganization of the Department of Military and Veterans Affairs effective March 26, 2012.

The organization chart at 42 Pa.B. 2040 (April 14, 2012) is published at the request of the Joint Committee on Documents under 1 Pa. Code § 3.1(a)(9) (relating to contents of *Code*).

(Editor's Note: The Joint Committee on Documents has found organization charts to be general and permanent in nature. This document meets the criteria of 45 Pa.C.S. § 702(7) (relating to contents of Pennsylvania Code) as a document general and permanent in nature which shall be codified in the Pennsylvania Code.)

[Pa.B. Doc. No. 12-650. Filed for public inspection April 13, 2012, 9:00 a.m.]

PART II. EXECUTIVE BOARD

[4 PA. CODE CH. 9]

Reorganization of the Pennsylvania Emergency Management Agency

The Executive Board approved a reorganization of the Pennsylvania Emergency Management Agency effective March 22, 2012.

The organization chart at 42 Pa.B. 2042 (April 14, 2012) is published at the request of the Joint Committee on Documents under 1 Pa. Code § 3.1(a)(9) (relating to contents of *Code*).

(Editor's Note: The Joint Committee on Documents has found organization charts to be general and permanent in nature. This document meets the criteria of 45 Pa.C.S. § 702(7) (relating to contents of Pennsylvania Code) as a document general and permanent in nature which shall be codified in the Pennsylvania Code.)

[Pa.B. Doc. No. 12-652. Filed for public inspection April 13, 2012, 9:00 a.m.]

PART II. EXECUTIVE BOARD

[4 PA. CODE CH. 9]

Reorganization of the Fish and Boat Commission

The Executive Board approved a reorganization of the Fish and Boat Commission effective March 22, 2012.

The organization chart at 42 Pa.B. 2041 (April 14, 2012) is published at the request of the Joint Committee on Documents under 1 Pa. Code § 3.1(a)(9) (relating to contents of *Code*).

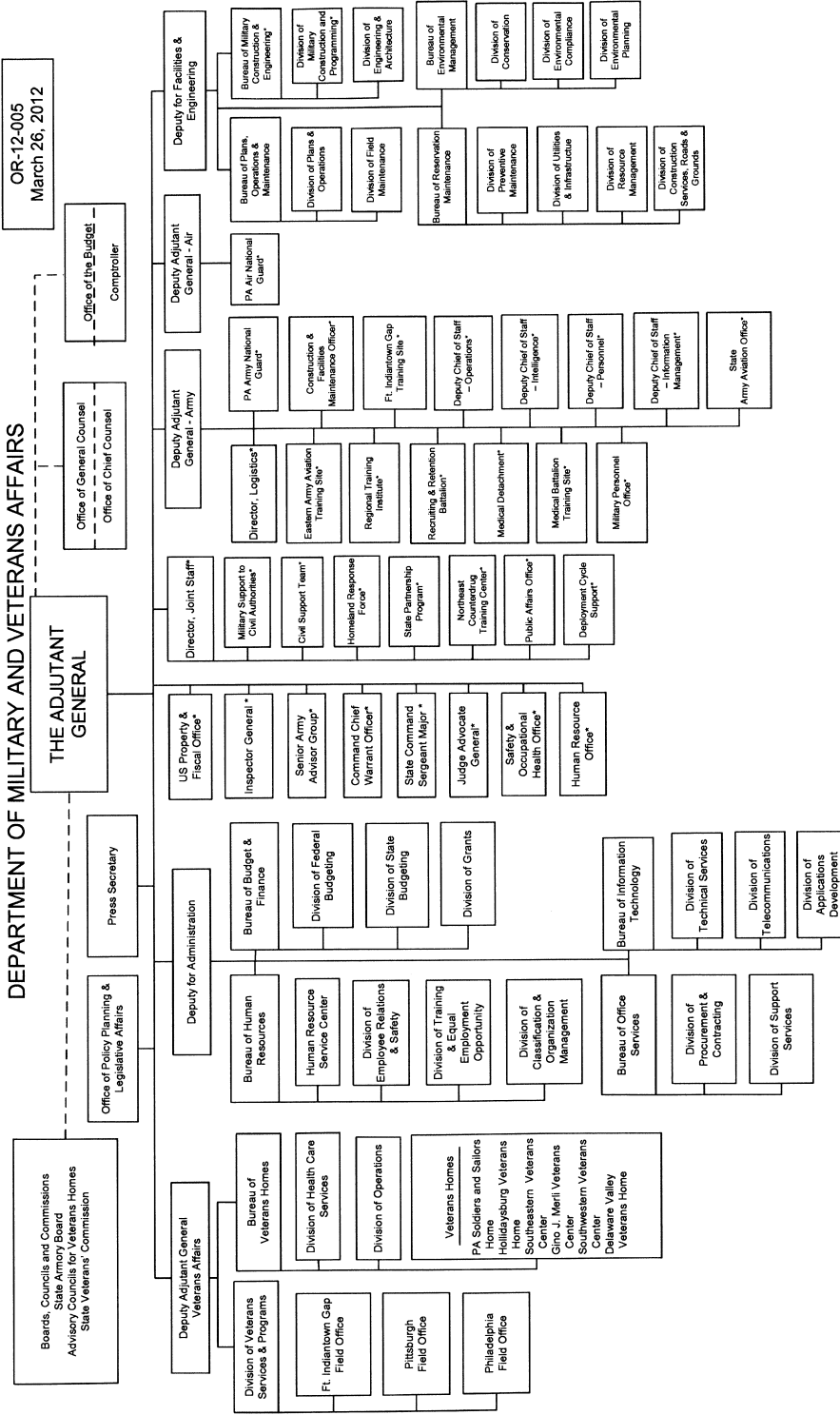
(Editor's Note: The Joint Committee on Documents has found organization charts to be general and permanent in nature. This document meets the criteria of 45 Pa.C.S. § 702(7) (relating to contents of Pennsylvania Code) as a document general and permanent in nature which shall be codified in the Pennsylvania Code.)

[Pa.B. Doc. No. 12-651. Filed for public inspection April 13, 2012, 9:00 a.m.]

DEPARTMENT OF MILITARY AND VETERANS AFFAIRS

OR-12-005
March 26, 2012

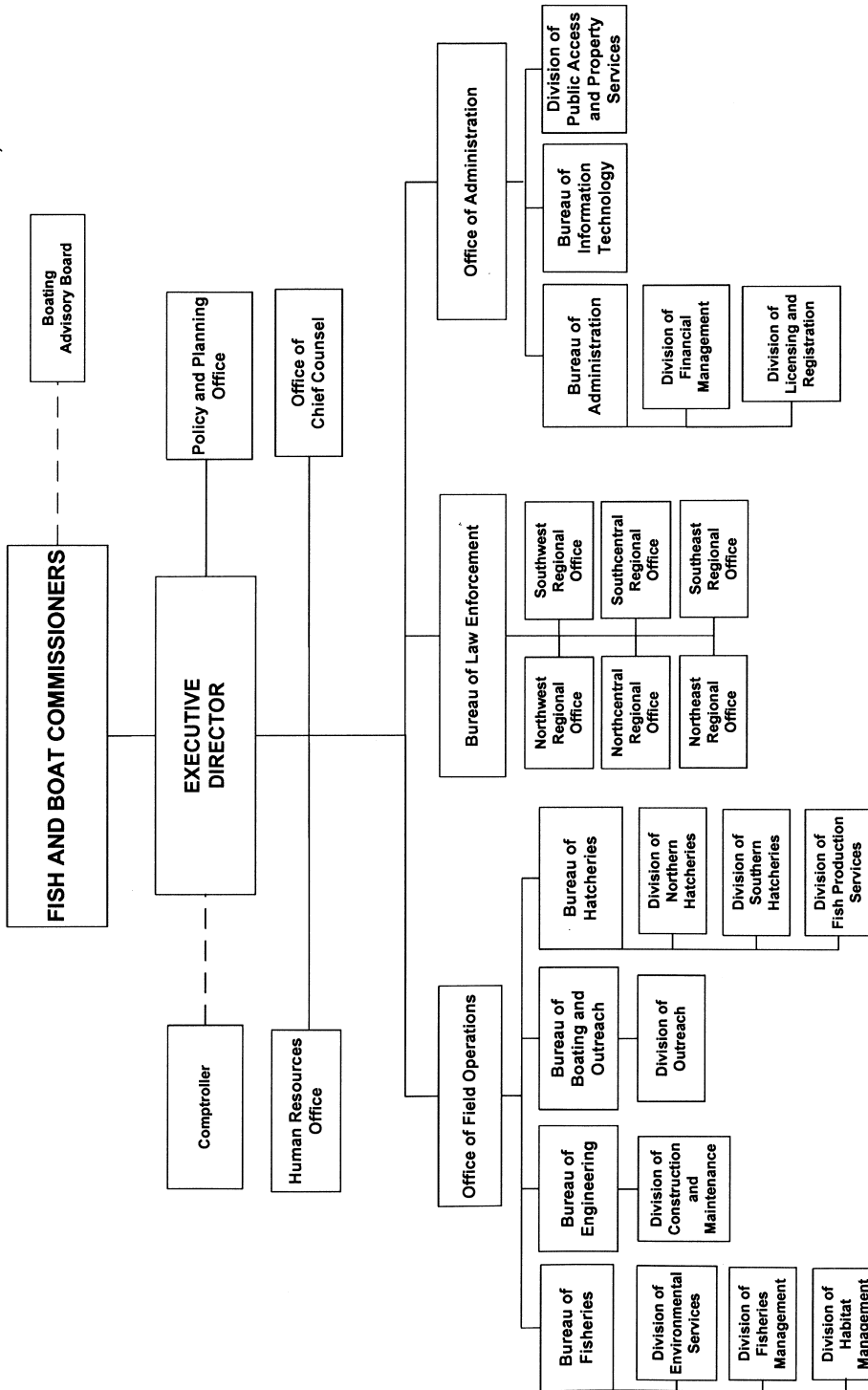
THE ADJUTANT GENERAL

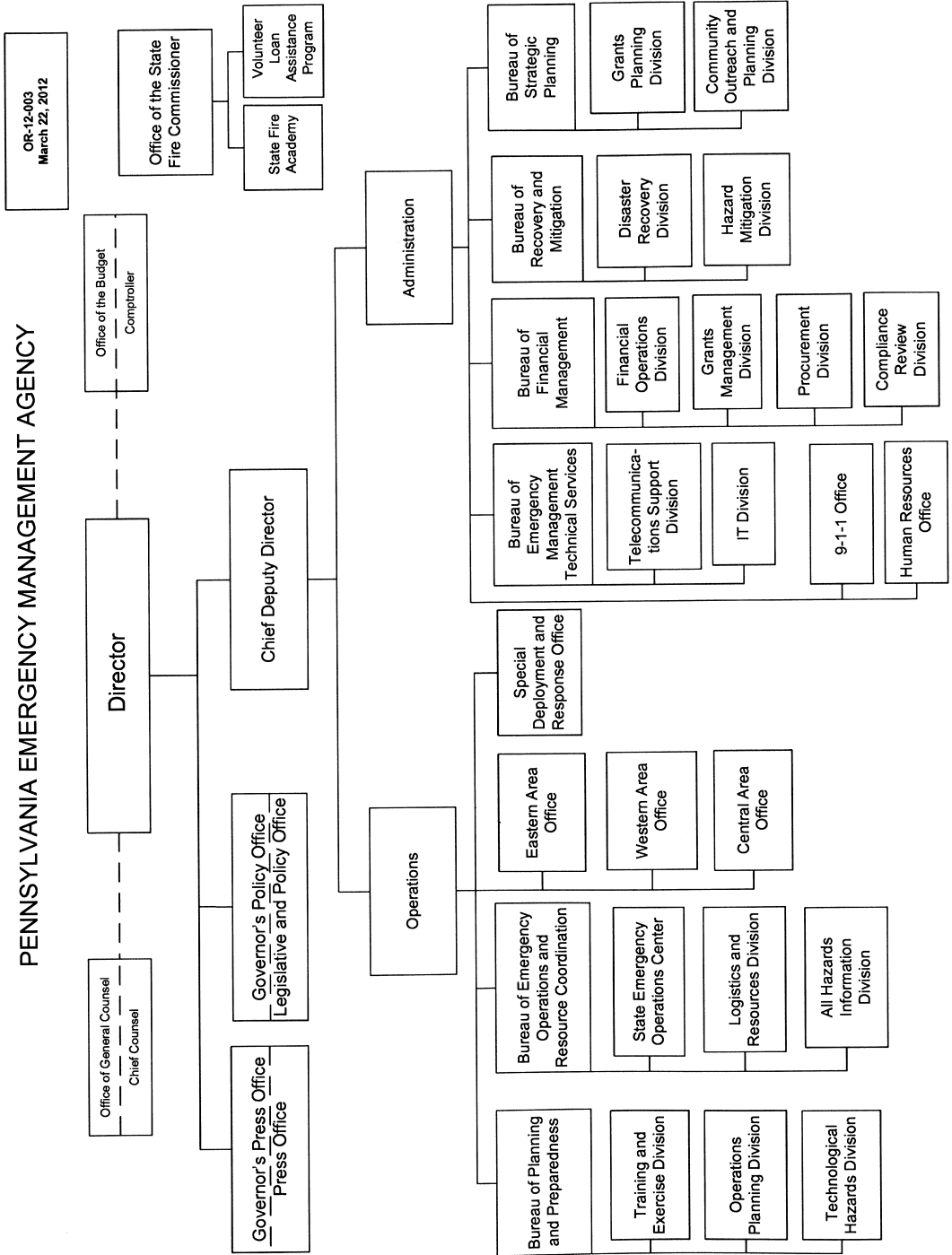


* Federal

OR-12-004
March 22, 2012

FISH AND BOAT COMMISSION





NOTICES

DEPARTMENT OF BANKING

Actions on Applications

The Department of Banking (Department), under the authority contained in the act of November 30, 1965 (P. L. 847, No. 356), known as the Banking Code of 1965; the act of December 14, 1967 (P. L. 746, No. 345), known as the Savings Association Code of 1967; the act of May 15, 1933 (P. L. 565, No. 111), known as the Department of Banking Code; and the act of December 19, 1990 (P. L. 834, No. 198), known as the Credit Union Code, has taken the following action on applications received for the week ending March 27, 2012.

Under section 503.E of the Department of Banking Code (71 P. S. § 733-503.E), any person wishing to comment on the following applications, with the exception of branch applications, may file their comments in writing with the Department of Banking, Corporate Applications Division, 17 North Second Street, Suite 1300, Harrisburg, PA 17101-2290. Comments must be received no later than 30 days from the date notice regarding receipt of the application is published in the *Pennsylvania Bulletin*. The nonconfidential portions of the applications are on file at the Department and are available for public inspection, by appointment only, during regular business hours. To schedule an appointment, contact the Corporate Applications Division at (717) 783-2253. Photocopies of the nonconfidential portions of the applications may be requested consistent with the Department's Right-to-Know Law Records Request policy.

BANKING INSTITUTIONS

Branch Applications

De Novo Branches

<i>Date</i>	<i>Name and Location of Applicant</i>	<i>Location of Branch</i>	<i>Action</i>
7-1-2011	First Keystone Community Bank Berwick Columbia County	463 West Main Street Plymouth Luzerne County	Opened
3-26-2012	Somerset Trust Company Somerset Somerset County	4634 National Pike Markleysburg Fayette County	Approved

Branch Consolidations

<i>Date</i>	<i>Name and Location of Applicant</i>	<i>Location of Branch</i>	<i>Action</i>
3-26-2012	Citizens Bank of Pennsylvania Philadelphia Philadelphia County	<i>Into:</i> 9353 Krewston Road Philadelphia Philadelphia County <i>From:</i> 9896 Bustleton Avenue Philadelphia Philadelphia County	Filed

SAVINGS INSTITUTIONS

No activity.

CREDIT UNIONS

No activity.

The Department's web site at www.banking.state.pa.us includes public notices for more recently filed applications.

GLENN E. MOYER,
Secretary

[Pa.B. Doc. No. 12-653. Filed for public inspection April 13, 2012, 9:00 a.m.]

DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

Consolidated Plan; 2011 Annual Performance and Evaluation Report

The Department of Community and Economic Development (Department) is preparing its 2011 Consolidated Annual Performance and Evaluation Report (CAPER) on the progress and accomplishments made during 2011 in

implementing the Commonwealth's Consolidated Plan for Federal Fiscal Years 2009-2013. This document must be submitted to, and approved by, the United States Department of Housing and Urban Development (HUD) for the Commonwealth and organizations within this Commonwealth to receive funding under most HUD housing and community development programs. The Consolidated Plan creates a unified strategy for housing and community development programs, as well as the necessary linkages for building successful neighborhoods and communities.

The Commonwealth has allocated funds under several programs, namely the Community Development Block

Grant, HOME Investment Partnerships Program, Emergency Shelter Grant Program and Housing Opportunities for People with AIDS Program. Additionally, this CAPER will detail funding from 2009 under both the Housing and Economic Recovery Act and the American Recovery and Reinvestment Act. The CAPER discusses accomplishments in relation to goals and objectives identified in the Action Plan of the Consolidated Plan.

The CAPER assesses the goals and objectives of this strategic plan; discusses how the Commonwealth is affirmatively furthering fair and affordable housing; reviews the activities of the Continuums of Care; and appraises how well resources in community development and housing are being leveraged.

Public Comments

Individuals or organizations may provide written comments regarding this draft version of the CAPER. This report will be available at <http://www.newpa.com/strengthen-your-community/technical-assistance> or by calling (717) 720-7412. Written comments will be accepted about funding activities, community development, housing, CAPER content and the process by which public input is gathered. The Commonwealth encourages public participation in this process.

Written comments will be accepted until 5 p.m. on May 14, 2012, and should be sent to Dan Fox, Department of Community and Economic Development, Center for Community Financing, Commonwealth Keystone Building, 400 North Street, 4th Floor, Harrisburg, PA 17120-0225.

C. ALAN WALKER,
Secretary

[Pa.B. Doc. No. 12-654. Filed for public inspection April 13, 2012, 9:00 a.m.]

Substantial Amendment to the Consolidated Plan

The Department of Community and Economic Development (Department) is announcing a public comment period to consider a substantial amendment to the Commonwealth of Pennsylvania Fiscal Year (FY) 2011 HUD Annual Action Plan for the new Emergency Solutions Grant (ESG). The public comment period is from April 14, 2012, through May 14, 2012.

Section 91.105 of 24 CFR (relating to citizen participation plan; local governments) requires the Commonwealth to notify and provide its citizens an opportunity to comment and provide input on proposed changes to an approved Action Plan. The United States Department of Housing and Urban Development (HUD) has previously submitted the Commonwealth's FY 2011 HUD Annual Action Plan to implement the strategy and goals as identified in the Commonwealth Five-Year Consolidated Plan prepared for the program year.

HUD released ESG funding for FY 2011 in a two-stage allocation process. The first allocation was made available immediately for existing emergency shelter activities. HUD awarded the first allocation of ESG funds in the amount of \$3,253,036 to the Commonwealth. The first allocation fell under the requirements of the former Emergency Shelter Grant program and prioritized rehabilitation of emergency shelters within the range of eligible rehab activities with an emphasis on addressing

building code issues as well as potential health and safety concerns. The second allocation, under the new ESG, provides an additional \$1,829,833 to the Commonwealth and is subject to the requirements of the new ESG program, and with an increased focus on homeless prevention and rapid rehousing activities targeting individuals and families below 30% of median family income who meet HUD's definition of homelessness.

The purpose of the ESG program is to facilitate coordination and efficient use of resources, align the requirements of the program with HUD's other formula and rental assistance programs and, when feasible, increase efficiency and coordination among the various Federal programs.

A public meeting will be conducted electronically on Monday, April 23, 2012, from 10 a.m. to 11:30 a.m. by means of the Internet. The format will be more accessible than an in-person meeting because those who wish to make a comment or discuss policy may participate directly from their personal computer or from a computer location at their public library on Monday, April 23, 2012. Access to the discussion by means of the Internet will occur between 10 a.m. and 11:30 a.m. This more widely available personal computer access will replace the usual public meeting.

Individuals or organizations may provide comment by means of the Internet. Comments will be accepted about topics related to the ESG program as well as the content of the draft of the Commonwealth's Substantial Amendment to the FY 2011 Action Plan and the process by which public input is gathered. The Commonwealth encourages public participation in this process. Anyone who wants to participate must register in advance on the Department's web site at <http://www.newpa.com/strengthen-your-community/technical-assistance#comp>. Individuals may also contact Daniel Fox at (717) 720-7412 to receive registration instructions for the Internet-based public meeting by Friday, April 20, 2012. During the meeting, if support is required call (717) 720-7401. The meeting will be shortened if there is no one to provide public comment or if there is minimal response.

The draft Substantial Amendment and supporting documentation is available for a 30-day public comment period and can be viewed on the Department's web site under the Consolidated Plan and Related Documents section at <http://www.newpa.com/strengthen-your-community/technical-assistance#comp>. The draft is also made available to the Tri-County Branch of the Pennsylvania Association of the Blind for transfer to electronic media. The text is available to hearing-impaired persons on the Department's web site at the previously listed link. The final version of the Substantial Amendment will be submitted to HUD by May 15, 2012.

Persons who would like to provide written comment on the draft amendment may send those comments electronically to Dan Fox at daniefox@pa.gov or by mail to his attention at the Department of Community and Economic Development, Center for Community Financing, 400 North Street, 4th Floor, Harrisburg, PA 17120. Comments must be received before 5 p.m. on May 14, 2012.

C. ALAN WALKER,
Secretary

[Pa.B. Doc. No. 12-655. Filed for public inspection April 13, 2012, 9:00 a.m.]

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Applications, Actions and Special Notices

APPLICATIONS

THE CLEAN STREAMS LAW AND THE FEDERAL CLEAN WATER ACT

APPLICATIONS FOR NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES) PERMITS AND WATER QUALITY MANAGEMENT (WQM) PERMITS

This notice provides information about persons who have applied for a new, amended or renewed NPDES or WQM permit, a permit waiver for certain stormwater discharges or submitted a Notice of Intent (NOI) for coverage under a General Permit. The applications concern, but are not limited to, discharges regarding industrial, animal or sewage waste, discharges to groundwater, discharges associated with municipal separate storm sewer systems (MS4), stormwater associated with construction activities or concentrated animal feeding operations (CAFO). This notice is provided in accordance with 25 Pa. Code Chapters 91 and 92a and 40 CFR Part 122, implementing The Clean Streams Law (35 P. S. §§ 691.1—691.1001) and the Federal Clean Water Act (33 U.S.C.A. §§ 1251—1376).

<i>Location</i>	<i>Permit Authority</i>	<i>Application Type or Category</i>
Section I	NPDES	Renewals
Section II	NPDES	New or Amendment
Section III	WQM	Industrial, Sewage or Animal Waste; Discharge into Groundwater
Section IV	NPDES	MS4 Individual Permit
Section V	NPDES	MS4 Permit Waiver
Section VI	NPDES	Individual Permit Stormwater Construction
Section VII	NPDES	NOI for Coverage under NPDES General Permits

For NPDES renewal applications in Section I, the Department of Environmental Protection (Department) has made a tentative determination to reissue these permits for 5 years subject to effluent limitations and monitoring and reporting requirements in their current permits, with appropriate and necessary updated requirements to reflect new and changed regulations and other requirements.

For applications for new NPDES permits and renewal applications with major changes in Section II, as well as applications for MS4 Individual Permits and Individual Stormwater Construction Permits in Sections IV and VI, the Department, based upon preliminary reviews, has made tentative determinations of proposed effluent limitations and other terms and conditions for the permit applications. These determinations are published as proposed actions for comments prior to taking final actions.

Unless indicated otherwise, the United States Environmental Protection Agency (EPA) Region III Administrator has waived the right to review or object to proposed NPDES permit actions under the waiver provision in 40 CFR 123.24(d).

Persons wishing to comment on NPDES applications are invited to submit statements to the contact office noted before the application within 30 days from the date of this public notice. Persons wishing to comment on WQM permit applications are invited to submit statements to the office noted before the application within 15 days from the date of this public notice. Comments received within the respective comment periods will be considered in the final determinations regarding the applications. A comment submittal should include the name, address and telephone number of the writer and a concise statement to inform the Department of the exact basis of a comment and the relevant facts upon which it is based.

The Department will also accept requests for public hearings on applications. A public hearing may be held if the responsible office considers the public response significant. If a hearing is scheduled, a notice of the hearing will be published in the *Pennsylvania Bulletin* and a newspaper of general circulation within the relevant geographical area. The Department will postpone its final determination until after a public hearing is held.

Persons with a disability who require an auxiliary aid, service, including TDD users, or other accommodations to seek additional information should contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

I. NPDES Renewal Applications

Northeast Region: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed No.)</i>	<i>EPA Waived Y/N?</i>
PA0060861 (Sewage)	Wayne Highland School District 474 Grove Street Honesdale, PA 18431	Wayne County Preston Township	Unnamed Tributary of Equinunk Creek (1-A)	Y

Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110. Phone: 717-705-4707.

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N?</i>
PA0084646 (Sew)	Southern Fulton School District (Southern Fulton Elementary School) 3027 Great Cove Road, Suite 100 Warfordsburg, PA 17267	Fulton County / Bethel Township	UNT White Oak Run / 13-B	Y
PA0084697 (Sew)	Wiconisco Township 305 Walnut Street Wiconisco, PA 17097-0370	Dauphin County / Wiconisco Township	Bear Creek / 6-C	Y
PA0084751 (Sew)	Doubling Gap Center Corp. 1550 Doubling Gap Road Newville, PA 17241-9757	Cumberland County / Lower Mifflin Township	Conodoguinet Creek / 7-B	Y
PA0051560 (IW)	Western Berks Water Authority 91 Water Road Sinking Springs, PA 19608	Berks County / Lower Heidelberg Township	Tulpehocken Creek / 3-C	Y
PA0246654 (Sew)	Center Township Municipal Authority (Hillcrest Estates II) 449 Bucks Hill Road Mohrsville, PA 19541	Berks County / Centre Township	Maiden Creek / 3-B	Y
PA0248045 (Sew)	Jason R. Sauder 88 Oaktree Road Manheim, PA 17545	Lancaster County / Rapho Township	Chickies Creek / 7-G	Y

Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed#)</i>	<i>EPA Waived Y/N?</i>
PA0238431 (Sewage)	Charles A. Betts SFTF 1800 Weiler Road, Warren, PA 16365-3759	Warren County Conewango Township	Unnamed Tributary to Morse Run (16-B)	Y
PA0102369 (Sewage)	Rainbow Valley MHP 11682 PA Route 97 North, Waterford, PA 16441	Erie County Waterford Township	Unnamed Tributary to LeBoeuf Creek (16-A)	Y
PA01000943 (Sewage)	Strattanville Borough STP US Route 322 Shippenville, PA 16258	Clarion County Strattanville Borough	Unnamed Tributary to Brush Run (17-B)	Y

II. Applications for New or Expanded Facility Permits, Renewal of Major Permits and EPA Non-Waived Permit Applications

Southeast Region: Water Management Program Manager, 2 East Main Street, Norristown, PA 19401

PA0244333, Sewage, SIC Code 4952, **East Brandywine Township Municipal Authority**, 1214 Horseshoe Pike, Downingtown, PA 19335. Facility Name: Overlook Rd Farm WWTP. This proposed facility is located in East Brandywine Township, **Chester County**.

Description of Proposed Activity: The application is for a new NPDES permit for a new discharge of treated Sewage.

The receiving stream(s), Beaver Creek, is located in State Water Plan watershed 3-H and is classified for Cold Water Fishes and Migratory Fishes, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.138 MGD.

<i>Parameters</i>	<i>Mass (lb/day)</i>			<i>Concentration (mg/l)</i>		<i>Instant. Maximum</i>
	<i>Average Monthly</i>	<i>Average Weekly</i>	<i>Instant. Minimum</i>	<i>Average Monthly</i>	<i>Average Weekly</i>	
Flow (GPD)	Report	XXX	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0	XXX	XXX	9.0
Dissolved Oxygen	XXX	XXX	5.0	XXX	XXX	XXX
CBOD ₅	29	XXX	XXX	25	XXX	50
Total Suspended Solids	35	XXX	XXX	30	XXX	60
Fecal Coliform (CFU/100 ml)	XXX	XXX	XXX	200	XXX	1,000
Total Nitrogen	17	XXX	XXX	15	XXX	30

<i>Parameters</i>	<i>Mass (lb/day)</i>			<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Average Weekly</i>	<i>Instant. Minimum</i>	<i>Average Monthly</i>	<i>Average Weekly</i>	<i>Instant. Maximum</i>
Ammonia-Nitrogen	3.5	XXX	XXX	3.0	XXX	6.0
Total Phosphorus	2.3	XXX	XXX	2.0	XXX	4.0
Nitrite-Nitrate as N	XXX	XXX	XXX	Report	XXX	Report

In addition, the permit contains the following major special conditions:

- Designation of responsible operator
- Remedial Measures
- No Stormwater
- Necessary Property Rights
- Change of Ownership
- Sludge Disposal
- I-max limits
- UV Disinfection Proposed
- Lab Certification
- Fecal Coliform I-max Reporting

You may make an appointment to review the DEP files on this case by calling the File Review Coordinator at 484-250-5910.

The EPA Waiver is not in effect.

Northeast Region: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790

PA0044997, Sewage, SIC Code 4952, **Mount Pocono Municipal Authority**, 303 Pocono Boulevard, Mount Pocono, PA 18344. Facility Name: Mt. Pocono Municipal Authority WWTP. This existing facility is located in Mount Pocono Borough, **Monroe County**.

Description of Existing Activity: The application is for a renewal of an NPDES permit for an existing discharge of treated Sewage.

The receiving stream(s), Forest Hills Run, is located in State Water Plan watershed 1-E and is classified for High Quality Waters—Cold Water Fishes, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 based on a discharge flow of up to 0.40 MGD are as follows:

<i>Parameters</i>	<i>Mass (lb/day)</i>			<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Weekly Average</i>	<i>Minimum</i>	<i>Average Monthly</i>	<i>Daily Maximum</i>	<i>Instant. Maximum</i>
Flow (MGD)	Report	Report Daily Max	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0	XXX	XXX	9.0
Dissolved Oxygen	XXX	XXX	7.0	XXX	XXX	XXX
Total Residual Chlorine	XXX	XXX	XXX	0.19	XXX	0.44
Temperature (°F)						
Jan 1-31	XXX	XXX	XXX	XXX	41.6	XXX
Feb 1-29	XXX	XXX	XXX	XXX	42.2	XXX
Mar 1-31	XXX	XXX	XXX	XXX	46.7	XXX
Apr 1-15	XXX	XXX	XXX	XXX	63	XXX
Apr 16-30	XXX	XXX	XXX	XXX	63	XXX
May 1-15	XXX	XXX	XXX	XXX	64	XXX
May 16-31	XXX	XXX	XXX	XXX	69	XXX
Jun 1-15	XXX	XXX	XXX	XXX	72.3	XXX
Jun 16-30	XXX	XXX	XXX	XXX	75	XXX
Jul 1-31	XXX	XXX	XXX	XXX	77.3	XXX
Aug 1-15	XXX	XXX	XXX	XXX	75.0	XXX
Aug 16-31	XXX	XXX	XXX	XXX	75.0	XXX
Sep 1-15	XXX	XXX	XXX	XXX	70.7	XXX
Sep 16-30	XXX	XXX	XXX	XXX	63.2	XXX
Oct 1-15	XXX	XXX	XXX	XXX	55.8	XXX
Oct 16-31	XXX	XXX	XXX	XXX	51.2	XXX
Nov 1-15	XXX	XXX	XXX	XXX	49.0	XXX
Nov 16-30	XXX	XXX	XXX	XXX	47.2	XXX
Dec 1-31	XXX	XXX	XXX	XXX	43.3	XXX

<i>Parameters</i>	<i>Mass (lb/day)</i>			<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Weekly Average</i>	<i>Minimum</i>	<i>Average Monthly</i>	<i>Daily Maximum</i>	<i>Instant. Maximum</i>
CBOD ₅	33	50	XXX	10	15	20
Total Suspended Solids	100	150	XXX	30	Wkly Avg 45	60
Fecal Coliform (CFU/100 ml)						
May 1 - Sep 30	XXX	XXX	XXX	200	XXX	1000
Oct 1 - Apr 30	XXX	XXX	XXX	Geo Mean 2000	XXX	10000
Nitrate-Nitrite as N	46	XXX	XXX	13.8	XXX	27.6
Ammonia-Nitrogen						
May 1 - Oct 31	9.0	XXX	XXX	2.7	XXX	5.4
Nov 1 - Apr 30	27	XXX	XXX	8.1	XXX	16.2
Total Phosphorus	3.3	XXX	XXX	1.0	XXX	2.0
Total Copper	Report	XXX	XXX	Report	XXX	XXX
Total Lead	Report	XXX	XXX	Report	XXX	XXX
Total Zinc	Report	XXX	XXX	Report	XXX	XXX

The proposed effluent limits for Outfall 001 based on a discharge flow greater than 0.40 MGD and up to 0.50 MGD are as follows:

<i>Parameters</i>	<i>Mass (lb/day)</i>			<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Weekly Average</i>	<i>Minimum</i>	<i>Average Monthly</i>	<i>Daily Maximum</i>	<i>Instant. Maximum</i>
Flow (MGD)	Report	Report Daily Max	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0	XXX	XXX	9.0
Dissolved Oxygen	XXX	XXX	7.0	XXX	XXX	XXX
Total Residual Chlorine	XXX	XXX	XXX	0.19	XXX	0.44
Temperature (°F)						
Jan 1-31	XXX	XXX	XXX	XXX	41.2	XXX
Feb 1-29	XXX	XXX	XXX	XXX	41.8	XXX
Mar 1-31	XXX	XXX	XXX	XXX	45.8	XXX
Apr 1-15	XXX	XXX	XXX	XXX	63	XXX
Apr 16-30	XXX	XXX	XXX	XXX	63	XXX
May 1-15	XXX	XXX	XXX	XXX	64	XXX
May 16-31	XXX	XXX	XXX	XXX	69	XXX
Jun 1-15	XXX	XXX	XXX	XXX	69.8	XXX
Jun 16-30	XXX	XXX	XXX	XXX	75	XXX
Jul 1-31	XXX	XXX	XXX	XXX	75.0	XXX
Aug 1-15	XXX	XXX	XXX	XXX	73.2	XXX
Aug 16-31	XXX	XXX	XXX	XXX	73.2	XXX
Sep 1-15	XXX	XXX	XXX	XXX	69.3	XXX
Sep 16-30	XXX	XXX	XXX	XXX	62.6	XXX
Oct 1-15	XXX	XXX	XXX	XXX	55.4	XXX
Oct 16-31	XXX	XXX	XXX	XXX	51.0	XXX
Nov 1-15	XXX	XXX	XXX	XXX	48.8	XXX
Nov 16-30	XXX	XXX	XXX	XXX	47.0	XXX
Dec 1-31	XXX	XXX	XXX	XXX	43.0	XXX
CBOD ₅	41	62	XXX	10	15	20
Total Suspended Solids	125	187	XXX	30	Wkly Avg 45	60
Fecal Coliform (CFU/100 ml)						
May 1 - Sep 30	XXX	XXX	XXX	200	XXX	1000
Oct 1 - Apr 30	XXX	XXX	XXX	Geo Mean 2000	XXX	10000
Nitrate-Nitrite as N	57	XXX	XXX	13.8	XXX	27.6
Ammonia-Nitrogen						
May 1 - Oct 31	11	XXX	XXX	2.7	XXX	5.4
Nov 1 - Apr 30	33	XXX	XXX	8.1	XXX	16.2
Total Phosphorus	4.1	XXX	XXX	1.0	XXX	2.0
Total Copper	Report	XXX	XXX	Report	XXX	XXX
Total Lead	Report	XXX	XXX	Report	XXX	XXX
Total Zinc	Report	XXX	XXX	Report	XXX	XXX

In addition, the permit contains the following major special conditions:

- Limitation on Discharge Flow
- Maximum Temperature Change
- Continuous Discharge

Notice of the draft permit was previously published in the *Pennsylvania Bulletin*, on February 5, 2011. The revised draft permit reflects the addition of a second set of effluent limitations for a discharge flow greater than 0.40 MGD and up to 0.50 MGD, and includes revised conditions under Part C of the permit. The permit has been drafted using an updated permit template for Parts A and B.

You may make an appointment to review the DEP files on this case by calling the File Review Coordinator at 570-826-5472.

The EPA Waiver is in effect.

PA0026492 A-2, Sewage, SIC Code 4952, **Scranton Sewer Authority**, 312 Adams Avenue, Scranton, PA 18503. Facility Name: Scranton Sewer Authority Wastewater Treatment Plant. This existing facility is located in the City of Scranton, **Lackawanna County**.

Description of Existing Activity: The application is for an amendment to an NPDES permit for an existing discharge of treated Sewage.

The receiving stream, Lackawanna River, is located in State Water Plan watershed 5-A and is classified for Cold Water Fishes, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The current permit was issued on September 21, 2009, became effective on October 1, 2009, was amended on May 13, 2011, and expires on September 30, 2014. The effluent limits are based upon a design discharge rate of 20 MGD. The purpose of the amendment is to add recently discovered CSO outfalls to the list of permitted CSO outfalls, to delete permitted CSO outfalls which have been eliminated, and to revise the date for certification of substantial completion (of wastewater treatment plant improvements for Biological Nutrient Removal) as contained in the Chesapeake Bay compliance schedule in Part C of the permit. The date for achieving final compliance with the Chesapeake Bay nutrient caps remains unchanged. The proposed permit amendment has been drafted using an updated permit template for Parts A and B and an updated template for the Chesapeake Bay Nutrient Requirements in Part C. There are no other substantive changes to the permit.

You may make an appointment to review the DEP files on this case by calling the File Review Coordinator at 570-826-5472.

The EPA Waiver is not in effect.

PA0060283, Sewage, SIC Code 4911, **Penn Estates Utilities Inc.**, 503 Hallet Road, East Stroudsburg, PA 18301. Facility Name: Penn Estates WWTP. This existing facility is located in Stroud Township, **Monroe County**.

Description of Existing Activity: The application is for a renewal of an NPDES permit for an existing discharge of treated Sewage.

The receiving stream(s), Unnamed Tributary of Brodhead Creek, is located in State Water Plan watershed 1-E and is classified for High Quality Waters—Cold Water Fishes, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.560 MGD.

Parameters	Mass (lb/day)			Concentration (mg/l)		
	Average Monthly	Daily Maximum	Minimum	Average Monthly	Daily Maximum	Instant. Maximum
Flow (MGD)	Report	Report	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0	XXX	XXX	9.0
Dissolved Oxygen	XXX	XXX	7.0	XXX	XXX	XXX
Total Residual Chlorine (Interim)	XXX	XXX	XXX	0.14	XXX	0.33
Total Residual Chlorine (Final)	XXX	XXX	XXX	0.01	XXX	0.01
CBOD ₅	46.7	XXX	XXX	10.0	Report	20.0
Total Suspended Solids	46.7	XXX	XXX	10.0	Report	20.0
Total Dissolved Solids	XXX	XXX	XXX	1,000	Report	2,000
Fecal Coliform (CFU/100 ml)						
May 1 - Sep 30	XXX	XXX	XXX	200	XXX	1,000
Oct 1 - Apr 30	XXX	XXX	XXX	Geo Mean 2,000	XXX	10,000
Nitrate-Nitrite as N				Geo Mean 13.0	Report	26.0
Ammonia-Nitrogen						
May 1 - Oct 31	4.67	XXX	XXX	1.5	Report	3.0
Nov 1 - Apr 30	14.0	XXX	XXX	4.5	Report	9.0
Total Phosphorus	9.3	XXX	XXX	2.0	Report	4.0
Total Organic Carbon	XXX	XXX	XXX	Report	XXX	XXX

In addition, the permit contains the following major special conditions:

- WET Testing, Reopener, Stream Survey Requirement

You may make an appointment to review the DEP files on this case by calling the File Review Coordinator at 570-826-5472.

The EPA Waiver is in effect.

Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110. Phone: 717-705-4707.

PA0032034, Sewage, SIC Code 6515, **Gsp Management Co.**, PO Box 677, Morgantown, PA 19543-0677. Facility Name: Shamrock MHP. This existing facility is located in Juniata Township, **Blair County**.

Description of Existing Activity: The application is for a renewal of an NPDES permit for an existing discharge of treated Sewage.

The receiving stream(s), Blair Gap Run, is located in State Water Plan watershed 11-A and is classified for Trout Stocking, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.012 MGD.

Parameters	Mass (lb/day)			Concentration (mg/l)		
	Average Monthly	Daily Maximum	Minimum	Average Monthly	Daily Maximum	Instant. Maximum
Flow (MGD)	Report	Report	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0	XXX	XXX	9.0
Dissolved Oxygen	XXX	XXX	5.0	XXX	XXX	XXX
Total Residual Chlorine	XXX	XXX	XXX	0.5	XXX	1.6
CBOD ₅	XXX	XXX	XXX	25	XXX	50
Total Suspended Solids	XXX	XXX	XXX	30	XXX	60
Fecal Coliform (CFU/100 ml)						
May 1 - Sep 30	XXX	XXX	XXX	200 Geo Mean	XXX	1,000
Oct 1 - Apr 30	XXX	XXX	XXX	2,000 Geo Mean	XXX	10,000

You may make an appointment to review the DEP files on this case by calling the File Review Coordinator at 717-705-4732.

The EPA Waiver is in effect.

PA0024350, Sewage, SIC Code 4952, **Dauphin Borough**, 200 S Church Street, Dauphin, PA 17018. Facility Name: Dauphin Borough STP. This existing facility is located in Dauphin Borough, **Dauphin County**.

Description of Existing Activity: The application is for a renewal of an NPDES permit for an existing discharge of treated sewage.

The receiving stream(s), Susquehanna River, is located in State Water Plan watershed 7-C and is classified for Warm Water Fishes, Migratory Fishes, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.20 MGD.

Parameters	Mass (lb/day)			Concentration (mg/l)		
	Average Monthly	Daily Maximum	Minimum	Average Monthly	Daily Average	Instant. Maximum
Flow (MGD)	Report	Report	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0	XXX	XXX	9.0
Dissolved Oxygen	XXX	XXX	5.0	XXX	XXX	XXX
Total Residual Chlorine	XXX	XXX	XXX	0.5	XXX	1.6
CBOD ₅	41.7	66.7	XXX	25	40	50
		Wkly Avg				
BOD ₅						
Raw Sewage Influent	Report	Report	XXX	Report	XXX	XXX
Total Suspended Solids	50	75	XXX	30	45	60
		Wkly Avg				
Total Suspended Solids						
Raw Sewage Influent	Report	Report	XXX	Report	XXX	XXX
Fecal Coliform (CFU/100 ml)						
May 1 - Sep 30	XXX	XXX	XXX	200 Geo Mean	XXX	1,000
Oct 1 - Apr 30	XXX	XXX	XXX	2,000 Geo Mean	XXX	10,000

You may make an appointment to review the DEP files on this case by calling the File Review Coordinator at 717-705-4732.

The EPA Waiver is in effect.

III. WQM Industrial Waste and Sewerage Applications under The Clean Streams Law

Southeast Region: Water Management Program Manager, 2 East Main Street, Norristown, PA 19401.

WQM Permit No. 2311401, Sewage, **Upper Providence Township Sewer Authority**, 935 N. Providence Road, Media, PA 19063-1499.

This proposed facility is located in Upper Providence Township, **Delaware County**.

Description of Action/Activity: Construction and operation of a low pressure sanitary sewer extension utilizing individual grinder pumps.

WQM Permit No. 1512401, Sewage, **Avon Grove School District** 375 S. Jennersville Road, West Grove, PA 19390.

This proposed facility is located in New London Township, **Chester County**.

Description of Action/Activity: Upgrade to the existing wastewater treatment plant to satisfy stricter NPDES discharge criteria for total nitrogen.

WQM Permit No. 4600415, Sewage, **Transfer, Mark Jackson**, 3234 Rockhill Road, Perkiomenville, PA 18074.

This proposed facility is located in Upper Frederick Township, **Montgomery County**.

Description of Action/Activity Permit transfer from Terry Schnable to Mark Jackson.

Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110. Phone: 717-705-4707.

WQM Permit No. 2812401, Sewerage, **Washington Township Municipal Authority**, 11102 Buchanan Trail East, Waynesboro, PA 17268.

This proposed facility is located in Washington Township, **Franklin County**.

Description of Proposed Action/Activity: Seeking approval to upgrade the wastewater conveyance system.

WQM Permit No. 2812402, Sewerage, **Tuscarora School District**, 118 Seminary Street, Mercersburg, PA 17236.

This proposed facility is located in Montgomery Township, **Franklin County**.

Description of Proposed Action/Activity: Seeking approval for the replacement of the existing wastewater treatment facility.

WQM Permit No. 2112403, Sewerage, **Lower Allen Township Authority**, 120 Limekiln Road, New Cumberland, PA 17070-2428.

This proposed facility is located in Lower Allen Township, **Cumberland County**.

Description of Proposed Action/Activity: Seeking approval for the construction of a new pump station at Windsor Park in order to divert sewage flow from entering Hampden Township.

Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481

WQM Permit No. 2087405, Sewerage **Amendment No. 1, Vernon Township Sanitary Authority**, 16678 McMath Avenue, Meadville, PA 16335-6588.

This existing facility is located in Vernon Township, **Crawford County**.

Description of Proposed Action/Activity: Application to install and operate an automated chemical feed system at the Fredericksburg Wastewater Treatment Facility to meet seasonal phosphorous limits.

IV. NPDES Applications for Stormwater Discharges from MS4

V. Applications for NPDES Waiver Stormwater Discharges from MS4

VI. NPDES Individual Permit Applications for Discharges of Stormwater Associated with Construction Activities

Southeast Region: Water Management Program Manager, 2 East Main Street, Norristown, PA 19401

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI01 5107002-R	Penrose Park Associates, LP 1750 Walton Road Blue Bell, PA 19422-0465	Philadelphia	City of Philadelphia	Schuylkill River (WWF-MF)
PAI01 151208	Brown Family Partnership 125 Limestone Road Oxford, PA 19363	Chester	Lower Oxford Township	West Branch Big Elk Creek (HQ-TSF-MF)

Southwest Region: Waterways & Wetlands Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

Allegheny County Conservation District, Lexington Technology Park, Building 1 Suite 102, 400 North Lexington, Pittsburgh, PA 15208 (412) 241.7645

<i>Permit No.</i>	<i>Applicant & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Stream Name</i>
PAI050212001	VAMCO International 555 Epsilon Drive Pittsburgh, PA 15238	Allegheny	O'Hara Township	UNT to Squaw Run (HQ-WWF)

Armstrong County Conservation District, Armsdale Administration Building, 124 Armsdale Road, Kittanning, PA 16201 (724) 548-3435

<i>Permit No.</i>	<i>Applicant & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Stream Name</i>
PAI050312001	Kittanning Suburban Joint Water Authority 710 Tarrtown Road Adrian, PA 16210	Armstrong	North Buffalo East Franklin	UNT to Glade Run (TSF) UNT to Pine Run (HQ-TSF) Marrowbone Run, Allegheny River (WWF)

Westmoreland County Conservation District, 218 Donohoe Road, Greensburg, PA 15601 (724) 837- 5271

<i>Permit No.</i>	<i>Applicant & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Stream Name</i>
PAI056512003	Donald Tarosky Colony Norwin, LLC & Bob Massie Auto Sales, Inc. 8954 Hill Drive Irwin, PA 15642 & 1200 Long Run Road White Oak, PA 15131	Westmoreland	North Huntingdon Tonwnship	Long Run (HQ-TSF)

VII. List of NOIs for NPDES and/or Other General Permit Types

PAG-12	CAFOs
PAG-13	Stormwater Discharges from MS4

STATE CONSERVATION COMMISSION

NUTRIENT MANAGEMENT PLANS RELATED TO APPLICATIONS FOR NPDES PERMITS FOR CAFOs

The State Conservation Commission has taken the following actions on previously received applications for nutrient management plans under 3 Pa.C.S. Chapter 5, for agricultural operations that have or anticipate submitting applications for new, amended or renewed NPDES permits or NOIs for coverage under a general permit for CAFOs under 25 Pa. Code Chapter 92a. This notice is provided in accordance with 25 Pa. Code Chapter 92a and 40 CFR Part 122, implementing The Clean Streams Law and the Federal Clean Water Act.

Persons aggrieved by an action may appeal under 3 Pa.C.S. § 517, section 4 of the Environmental Hearing Board Act (35 P. S. § 7514) and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law) to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users should contact the Environmental Hearing Board (Board) through the Pennsylvania AT&T Relay Service at (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin*. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary of the Board at (717) 787-3483. This paragraph does not, in and of itself, create a right of appeal beyond that permitted by applicable statutes and decision law.

For individuals who wish to challenge actions, appeals must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for pro bono representation. Call the Secretary of the Board at (717) 787-3483 for more information.

NUTRIENT MANAGEMENT PLAN—PUBLIC NOTICE SPREADSHEET

<i>Agricultural Operation Name and Address</i>	<i>County</i>	<i>Total Acres</i>	<i>Animal Equivalent Units</i>	<i>Animal Type</i>	<i>Special Protection Waters (HQ or EV or NA)</i>	<i>Renewal / New</i>
Theodore L. Esbenshade 29 Engle Rd Marietta, PA 17547	Lancaster	500	4096.1	Layers	NA	R

PUBLIC WATER SUPPLY (PWS) PERMITS

Under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17), the following parties have applied for PWS permits to construct or substantially modify public water systems.

Persons wishing to comment on permit applications are invited to submit statements to the office listed before the application within 30 days of this public notice. Comments received within this 30-day comment period will be considered in the formulation of the final determinations regarding an application. A comment should include the name, address and telephone number of the writer and a concise statement to inform the Department of the exact basis of a comment and the relevant facts upon which it is based. A public hearing may be held after consideration of comments received during the 30-day public comment period.

Following the comment period, the Department will make a final determination regarding the proposed permit. Notice of this final determination will be published in the *Pennsylvania Bulletin* at which time this determination may be appealed to the Environmental Hearing Board.

The permit application and related documents are on file at the office listed before the application and available for public review. Arrangements for inspection and copying information should be made with the office listed before the application.

Persons with a disability that require an auxiliary aid, service or other accommodations to participate during the 30-day public comment period should contact the office listed before the application. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

SAFE DRINKING WATER

Applications Received Under the Pennsylvania Safe Drinking Water Act

Southeast Region: Water Supply Management Program Manager, 2 East Main Street, Norristown, PA 19401

Application No. 1512502 Public Water Supply

Applicant	Borough of Phoenixville
Borough	Phoenixville
County	Chester
Responsible Official	Jesse D. Semanchik, P.E. 212 Continental Drive Suite 207 Newark, DE 19713
Type of Facility	PWS
Application Received Date	February 24, 2012
Description of Action	Improvements to the existing water system, including new floating covers for the finished water reservoirs, repainting and

installation of a mixer at the Lane Avenue standpipe, and water treatment plant improvements, including installation of plate settlers, sludge collectors, flocculation tank baffles, filter valves and actuators, filters controls, and chemical feed improvements.

Northeast Region: Safe Drinking Water Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790

Application No. 2520065, Public Water Supply.

Applicant	Aqua Pennsylvania, Inc.
[Township or Borough]	Palmyra Township, Pike County
Responsible Official	Steve E. Clark, Honesdale Div. Mgr. Aqua Pennsylvania, Inc. 1775 North Main Street Honesdale, PA 18431
Type of Facility	Community Water System
Consulting Engineer	Douglas E. Berg, PE Entech Engineering, Inc. P. O. Box 32 Reading, PA 19603
Application Received Date	March 15, 2012
Description of Action	Application for abandonment of three (3) low yield wells serving the Tanglwood Lakes Development.

Northwest Region: Water Supply Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481

Permit No. 2012503, Public Water Supply

Applicant	Hayfield Estates Mobile Home Park
Township or Borough	Hayfield Township
County	Crawford
Responsible Official	Richard D. Grubbs
Type of Facility	Public Water Supply
Consulting Engineer	Mark J. Corey, P.E. Mark J. Corey & Associates P. O. Box 268 Harborcreek, PA 16421
Application Received Date	March 30, 2012
Description of Action	Permit modifications with the groundwater rule to add two tanks.

Permit No. 3712503, Public Water Supply

Applicant	Heritage Hills Mobile Home Park
Township or Borough	Pulaski Township
County	Lawrence
Responsible Official	Scott F. Berlin
Type of Facility	Public Water Supply

Consulting Engineer William P. Deemer, P.E.
William P. Deemer & Associates
205-B South Duffy Road
Butler, PA 16001

Application Received Date March 30, 2012

Description of Action Permit modifications for the purpose of finished water storage and the necessary additional disinfection contact time to achieve 4-Log compliance.

Permit No. 1612501, Public Water Supply

Applicant **Piney Creek LP**

Township or Borough Piney Township

County **Clarion**

Responsible Official Kendall Reed

Type of Facility Public Water Supply

Consulting Engineer Rulison Evans, P.E.
Gannett Fleming, Inc.
Foster Plaza 3, Suite 200
601 Holiday Drive
Pittsburgh, PA 15220

Application Received Date March 30, 2012

Description of Action Replace potable water system with well water source and treatment system.

MINOR AMENDMENT

Applications Received Under the Pennsylvania Safe Drinking Water Act

Northeast Region: Water Supply Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790

Application No. 5812502MA, Minor Amendment.

Applicant **PA American Water Company Susquehanna Division**

[Township or Borough] Susquehanna Borough
Susquehanna County

Responsible Official Mr. David Kaufman
Vice-President Engineering
800 West Hershey Park Drive
Hershey, PA. 17033

Type of Facility Public Water Supply

Consulting Engineer Ms. Diana Young, PE
Buchart Horn, Inc.
445 West Philadelphia Street
York, PA. 17401-3383

Application Received Date 3/2/12

Description of Action This project provides for the construction of a 600,000 gallon concrete ground storage tank and 1,600 LF of 12-in interconnect piping. The tank is 50 feet in diameter by 40 feet high. The existing Convent Street tank will

be demolished. The existing PRV at the water treatment plant will be removed and a new PRV vault will be installed on the main serving the Laneshoro and Hallstead areas of the system.

Application No. 6412502MA

Applicant **Sunrise Terrace Management, LLC**

[Township or Borough] Honesdale Borough
Wayne County

Responsible Official Leanne Heller, Operations Manager
Box 677
Morgantown, PA 19543

Type of Facility Community Water System

Consulting Engineer James A. Cieri, PE
ACT ONE Consultants, Inc.
200 South 41st Street
Harrisburg, PA 17111
717-236-7500

Application Received Date March 26, 2012

Description of Action Application for modifications to the community water system serving Sunrise Terrace Mobile Home Park to include replacement of a 1000 gallon hydro pneumatic tank with two (2) 264 gallon pressure tanks and replacement of three (3) 1500 gallon contact tanks with three 1700 gallon tanks.

Application No. 4512502MA, Minor Amendment.

Applicant **Buck Hill Falls Water Company**

[Township or Borough] Barrett Township
Monroe County

Responsible Official Mr. Michael R. O'Shea, President
Buck Hill Falls Company
PO Box 426
Buck Hill Falls, PA. 18323-0426

Type of Facility Public Water Supply

Consulting Engineer Charles H. Niclaus, PE.
Niclaus Engineering Corporation
804 Sarah Street
Stroudsburg, PA. 18360

Application Received Date 03/09/2012

Description of Action This project provides for replacing the chlorine gas with hypochlorite at Well #2: addition of a 2nd static mixer at the filter plant: change existing diaphragm metering pumps to peristaltic feed pumps, and change corrosion control chemical.

Southwest Region: Water Supply Management Program Manager, 400 Waterfront Drive, Pittsburgh, Pa 15222-4745

Application No. 3212503GWR, Minor Amendment.

Applicant **Green Township Municipal Authority**
PO Box 129
Commodore, PA 15729

[Township or Borough] Green Township

Responsible Official David Putt, Plant Operator
Green Township Municipal Authority
PO Box 129
Commodore, PA 15729

Type of Facility Water system

Consulting Engineer

Application Received Date March 8, 2012

Description of Action Demonstration of 4-log treatment for groundwater sources

Application No. 0312502MA, Minor Amendment.

Applicant **Borough of Ford City**
PO Box 112
Ford City Borough, PA 16226

[Township or Borough] Ford City Borough

Responsible Official Patrick Cujas, Operator
Borough of Ford City
PO Box 112
Ford City Borough, PA 16226

Type of Facility Water system

Consulting Engineer Buchart Horn, Inc.
Liberty Technology Center
2200 Liberty Avenue
Suite 300
Pittsburgh, PA 15222

Application Received Date April 3, 2012

Description of Action Installation of sedimentation basin roof.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

UNDER ACT 2, 1995 PREAMBLE 1

Acknowledgment of Notices of Intent to Remediate Submitted under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.907)

Sections 302—305 of the Land Recycling and Environmental Remediation Standards Act (act) (35 P. S. §§ 6026.302—6026.305) require the Department to publish in the *Pennsylvania Bulletin* an acknowledgment noting receipt of Notices of Intent to Remediate. An acknowledgment of the receipt of a Notice of Intent to Remediate is used to identify a site where a person proposes to, or has been required to, respond to a release of a regulated substance at a site. A person intending to use the background standard, Statewide health standard, the site-specific standard or intend to remediate a site as a special industrial area shall file a Notice of Intent to Remediate with the Department. A Notice of Intent to Remediate filed with the Department provides a brief description of the location of the site, a list of known or

suspected contaminants at the site, the proposed remediation measures for the site and a description of the intended future use of the site. A person who demonstrates attainment of one or a combination of cleanup standards or receives approval of a special industrial area remediation identified under the act will be relieved of further liability for the remediation of the site for contamination identified in reports submitted to and approved by the Department. Furthermore, the person shall not be subject to citizen suits or other contribution actions brought by responsible persons not participating in the remediation.

Under sections 304(n)(1)(ii) and 305(c)(2) of the act, there is a 30-day public and municipal comment period for sites proposed for remediation using a site-specific standard, in whole or in part, and for sites remediated as a special industrial area. This period begins when a summary of the Notice of Intent to Remediate is published in a newspaper of general circulation in the area of the site. For the following site, proposed for remediation to a site-specific standard or as a special industrial area, the municipality, within which the site is located, may request to be involved in the development of the remediation and reuse plans for the site if the request is made within 30 days of the date specified as follows. During this comment period, the municipality may request that the person identified as the remediator of the site develop and implement a public involvement plan. Requests to be involved and comments should be directed to the remediator of the site.

For further information concerning the content of a Notice of Intent to Remediate, contact the environmental cleanup program manager in the Department regional office listed before the notice. If information concerning this acknowledgment is required in an alternative form, contact the community relations coordinator at the appropriate regional office. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following Notices of Intent to Remediate:

Northeast Region: Eric Supey, Environmental Cleanup and Brownfields Program Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915.

Hankee Residence, 3406 Franklin Street, Washington Township, **Lehigh County**. Janine Jacobs and Richard D. Trimpi, Trimpi Associates, Inc., 1635 Old Plains Road, Pennsburg, PA 18073 have submitted a Notice of Intent to Remediate on behalf of their client, Mr. and Mrs. Ian Hankee, 3406 Franklin Street, Emerald, PA 18080, concerning the remediation of soil found to have been impacted by No. 2 fuel oil as a result of a release during a fuel oil delivery. The applicant proposes to remediate the site to meet the Residential Statewide Health Standard for soil. The intended future use of the site is residential. A summary of the Notice of Intent to Remediate was published in *The Express Times* on February 10, 2012.

Southcentral Region: Environmental Cleanup and Brownfields Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

Former Nauman's Garage, 404 South Market Street, Elizabethtown, PA, Elizabethtown Borough, **Lancaster County**. RETTEW Associates, Inc., 3020 Columbia Avenue, Lancaster, PA 17603, on behalf of Elizabethtown Borough, 600 South Hanover Street, Elizabethtown, PA 17022, submitted a Notice of Intent to Remediate site soils and groundwater contaminated with gasoline, waste

oil and hydraulic oil from historic operations of a gasoline and automotive repair garage. The site will be remediated to the Residential Statewide Health Standard. Development of the site will create public use areas including a roadway and a community plaza.

Northwest Region: Environmental Cleanup Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481

Heath Oil Incident (Mullet & Mattis Properties), East Mead Township, **Crawford County.** ER&R, Inc., 4250 Route 6N, Edinboro, PA 16412 on behalf of Heath Oil, Inc., P. O. Box 1128, Oil City, PA 16301 has submitted a Notice of Intent to Remediate. A bulk transporter was involved in a traffic accident that resulted in the release of approximately 1,000 gallons of unleaded gasoline to the environment. Future use of the property is expected to remain residential. The Notice of Intent to Remediate was published in *The Meadville Tribune* on March 15, 2012. The proposed cleanup standard for the site is Statewide Health.

Villa Maria Community Center, Pulaski Township, **Lawrence County.** Flynn Environmental, Inc., 5640 Whipple Avenue NW, Suite 1, North Canton, OH 44720 on behalf of Sisters of the Humility of Mary, 276 Villa Maria Road, Villa Maria, PA 16155 has submitted a Notice of Intent to Remediate. An underground storage tank released heating oil impacting the subsurface soil and groundwater. Samples were analyzed for benzene, toluene, ethylbenzene, cumene, MTBE, naphthalene, 1,2,4-trimethylbenzene, and 1,3,5-trimethylbenzene. The proposed future use of the property will continue to be the activities currently associated with the Villa Maria Community Center. The proposed cleanup standard is Statewide Health. The Notice of Intent to Remediate was published in *The New Castle News* on March 7, 2012.

Dresser Piping Solutions, City of Bradford, **McKean County.** Groundwater Sciences Corporation, 2601 Market Place Street, Suite 310, Harrisburg, PA 17110 on behalf of DII Industries, LLC., P. O. Box 42806, Houston, TX 77242-2806 has submitted a Notice of Intent to Remediate. The site has been impacted by historical operations resulting in limited presence of various regulated substances in vadose zone soils proximate to an existing hazardous waste storage shed. The site is located within an active manufacturing facility. The intended future use of the property will be manufacturing. The Notice of Intent to Remediate was published in *The Bradford Era* on January 28, 2012. The proposed remediation standard is Statewide Health.

AIR QUALITY

PLAN APPROVAL AND OPERATING PERMIT APPLICATIONS NEW SOURCES AND MODIFICATIONS

The Department has developed an "integrated" plan approval, State Operating Permit and Title V Operating Permit program. This integrated approach is designed to make the permitting process more efficient for the Department, the regulated community and the public. This approach allows the owner or operator of a facility to complete and submit permitting documents relevant to its application one time, affords an opportunity for public input and provides for sequential issuance of the necessary permits.

The Department received applications for Plan Approvals and Operating Permits from the following facilities.

Copies of these applications, subsequently prepared draft permits, review summaries and other support mate-

rials are available for review in the regional office listed before the applications. Persons interested in reviewing the application files should contact the appropriate regional office to schedule appointments.

Persons wishing to receive a copy of a proposed Plan Approval or Operating Permit shall indicate interests to the Department regional office within 30 days of the date of this notice and shall file protests or comments on a proposed Plan Approval or Operating Permit within 30 days of the Department providing a copy of the proposed documents to persons or within 30 days of its publication in the *Pennsylvania Bulletin*, whichever comes first. Interested persons may also request that hearings be held concerning a proposed Plan Approval or Operating Permit. A comment or protest filed with the Department regional office shall include a concise statement of the objections to the issuance of the Plan Approval or Operating Permit and relevant facts which serve as the basis for the objections. If the Department schedules a hearing, a notice will be published in the *Pennsylvania Bulletin* at least 30 days prior the date of the hearing.

Persons with a disability who wish to comment and require an auxiliary aid, service or other accommodation to participate should contact the regional office listed before the application. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

Final Plan Approvals and Operating Permits will contain terms and conditions to ensure that the source is constructed and operating in compliance with applicable requirements in 25 Pa. Code Chapters 121–143, the Federal Clean Air Act (42 U.S.C.A. §§ 7401–7671q) and regulations adopted under the Federal Clean Air Act.

PLAN APPROVALS

Plan Approval Applications Received under the Air Pollution Control Act (35 P. S. §§ 4001–4015) and 25 Pa. Code Chapter 127, Subchapter B that may have special public interest. These applications are in review and no decision on disposition has been reached.

Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745

Contact: M. Gorog & B. Hatch, Environmental Engineer Managers—Telephone: 412-442-4163/5226

63-00936F: Markwest Liberty Midstream & Resources, LLC (1515 Arapahoe Street, Tower 1, Suite 1600, Denver, CO 80202-2137) to install heater for Deethanizer project and modifications to truck/rail load-out at Houston Plant in Chartiers Township, **Washington County.**

Intent to Issue Plan Approvals and Intent to Issue or Amend Operating Permits under the Air Pollution Control Act and 25 Pa. Code Chapter 127, Subchapter B. These actions may include the administrative amendments of an associated operating permit.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701

Contact: Muhammad Q. Zaman, Environmental Program Manager—Telephone: 570-327-3648

59-00017C: Hitachi Metals Automotive Components USA, LLC (18986 Route 287, Tioga, PA 16946-8815) for modification to the foundry operation at their

facility in Lawrence Township, **Tioga County**. The respective facility is a state only (synthetic minor) facility for which a state only operating permit has been issued.

The Department's review of the information submitted by Hitachi Metals Automotive Components USA, LLC indicates that modification of the foundry will meet all applicable air quality regulatory requirements pertaining to air contamination sources and the emission of air contaminants. Based on these findings, the Department intends to issue a plan approval for the modification of the foundry. Additionally, if the Department determines the foundry is operating in compliance with all plan approval conditions, the conditions established in the plan approval will be incorporated into a state only (synthetic minor) operating permit.

The following is a summary of the conditions that the Department proposes to place in the plan approval to be issued to ensure compliance with all applicable regulatory requirements:

1. The emission of volatile organic compounds from the pouring & cooling section of Line 2013 (Source P207) shall not exceed 0.941 pound per ton of metal poured, as measured at the stack.

2. No more than 33,325 tons of metal shall be poured in Line 2013 (Sources P207, P208 and P209) in any 12 consecutive month period.

3. By no later than December 31, 2012, and by no later than every two years thereafter (December 31, 2014, December 31, 2016, etc.), but, in each case, not more than one year prior to the specified deadline, the permittee shall perform volatile organic compound stack testing upon Sources P207, P208 and P209 incorporated in Line 2013 using test methods and procedures acceptable to the Department. All testing shall be performed while the source is operating at its normal maximum rate of production.

4. By no later than December 31, 2012, and by no later than every two years thereafter (December 31, 2014, December 31, 2016, etc.), but, in each case, not more than one year prior to the specified deadline, the permittee shall perform volatile organic compound stack testing upon Sources P203, P204 and P205 incorporated in Line 2070 using test methods and procedures acceptable to the Department. All testing shall be performed while the source is operating at its normal maximum rate of production.

5. All conditions contained in State Only Operating Permit 59-00017 remain in effect unless superseded or amended by conditions contained in this plan approval. If there is a conflict between a condition or requirement contained in this plan approval and a condition or requirement contained in State Only Operating Permit 59-00017, the permittee shall comply with the condition or requirement contained in this plan approval rather than the conflicting condition or requirement contained in State Only Operating Permit 59-00017.

A copy of the plan approval application is available for public review between 8 a.m. and 4 p.m. at the Department's Northcentral Regional Office, 208 West Third Street, Suite 101, Williamsport, PA 17701. Appointments for scheduling a review may be made by calling the Department at 570-327-3693. Written comments or requests for a public hearing should be directed to Muhammad Q. Zaman, Environmental Program Manager, Department of Environmental Protection, Air Quality Program, Northcentral Regional Office, 208 West Third Street, Suite 101, Williamsport, PA 17701, 570-327-3648.

Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745

*Contact: B. Hatch, Environmental Engineer Managers—
Telephone: 412-442-4163/5226*

63-00955B: National Fuel Gas Supply Corp. (1100 State Street, Erie, PA 16512) for installation and initial temporary operation of two (2) new Solar Taurus 70 natural gas-fired turbines rated at 10,280 HP each at their Buffalo Compressor Station in Buffalo Township, **Washington County**.

In accordance with 25 Pa. Code §§ 127.44—127.46, the Department of Environmental Protection (DEP) intends to issue Air Quality Plan Approval: PA-63-00955B to allow the installation and initial temporary operation of two new Solar Taurus 70 natural gas-fired turbines rated at 10,280 HP each at the Buffalo Compressor Station located in Buffalo Township, Washington County. Two currently authorized lean burn natural gas-fired compressor engines rated at 2,370 bhp each will be incorporated into this plan approval.

Potential to emit from the facility is estimated to be 77.64 tons of nitrogen oxides (NO_x), 72.04 tons of carbon monoxide (CO), 34.03 tons of particulate matter less than 10 microns (PM₁₀), 2.7 tons of sulfur oxides (SO_x), 31.02 tons of volatile organic compounds (VOC), 6.62 tons of formaldehyde (HCHO), 9.57 tons of hazardous air pollutants (HAP), and 109,221 tons of carbon dioxide equivalents (CO₂e) per year. The potential to emit increase for CO₂e is estimated at 84,499 and is not considered significant because this is an existing natural minor facility. Best available technology (BAT) for the proposed natural gas-fired turbines includes good combustion practices including operation in SoLoNO_x mode, minimization of startup and shutdown events, and proper maintenance and operation. The authorization is subject to State regulations including 25 Pa. Code § 123.31, and Federal New Source Performance Standards (NSPS) including 40 CFR Part 60 Subpart KKKK for stationary combustion turbines. The reporting of greenhouse gas emissions in the form of CO₂e and on a mass basis has also been included in this Plan Approval. Plan Approval has been conditioned to ensure compliance with all applicable rules. This includes NO_x, CO, and VOC emission limits, stack testing, work practice standards, monitoring, recordkeeping, and reporting conditions. Once compliance with the Plan Approval is demonstrated, the applicant will subsequently apply for a Title V Operating Permit in accordance with 25 Pa. Code Subchapter F. Buffalo Compressor Station has become a Title V facility based solely on GHG emissions through Step 2 of U.S. EPA's Greenhouse Gas Tailoring Rule.

Interested persons may submit written comments, suggestions, or objections concerning the proposed Plan Approval to Alan Binder, Pennsylvania Department of Environmental Protection, 400 Waterfront Drive, Pittsburgh, PA, 15222. Written comments submitted to the Department shall include the name, address and telephone number of the person submitting the comments, identification of the proposed Plan Approval (PA-63-00955B) and a concise statements regarding the relevancy of the information or objections to issuance of the Plan Approval. All comments must be received prior to the close of business 30 days after the date of this publication. For additional information you may contact Alan Binder at 412-442-4168.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481

Contact: Edward Orris, New Source Review Chief—
Telephone: 814-332-6636

25-996C: Advanced Finishing USA (7401 Klier Drive, Fairview Business Park, Fairview PA 16506) to construct and operate a third surface coating booth at their existing facility in Fairview Township, **Erie County**. Public notice is required for sources required to obtain a Plan Approval in accordance with 25 Pa. Code § 127.44. The facility currently operates under state only operating permit 25-00996 which expires August 31st, 2014.

VOC emissions will be minimized from the application of VOC compliant coatings as required by 25 Pa. Code § 129.52. PM emissions will be controlled by the booth's paint arresting filter which is greater than 90% efficient. These air contaminate reduction measures are consistent with current best available technology (BAT).

The source shall comply with conditions, which will satisfy the requirements of 25 Pa. Code § 127.12b (pertaining to plan approval terms and conditions) and will demonstrate Best Available Technology for the source:

1. VOC emissions from this facility shall not exceed 12.0 tpy based on any consecutive 12-month period. Particulate matter emissions shall not exceed 0.02 grains/dscf.
2. All maintenance performed on and observations of the paint booth's paint arrestor shall be recorded in a log. The permittee shall maintain all logs on-site for a period of five years and furnish these records to the Department upon request.
3. The volume of each material consumed, which contains VOC and/or HAP, shall be recorded monthly in a log. Each month's total VOC and HAP emissions shall be kept in this log.
4. The permittee shall record pressure drop weekly (defined as at least once every calendar week) from the control device (these records may be done with strip charts recorders, data acquisition systems, or manual log entries).
5. The permittee shall operate the control device at all times that the source is in operation. The permittee shall maintain and operate the source and control device in accordance with the manufacturer's specifications and in accordance with good air pollution control practices.
6. A manometer or equivalent shall be installed and maintained at a conveniently readable location on the paint booth to monitor pressure drop across the filter. The filter shall be operated in the pressure range prescribed by the manufacturer.
7. Those conditions contained in 25 Pa. Code § 129.52 which are applicable to this facility.

Emissions from the facility are not anticipated to increase as a result of this project. For additional information contact Jacob G. Chemsak at (814) 332-6638.

OPERATING PERMITS

Intent to Issue Title V Operating Permits under the Air Pollution Control Act and 25 Pa. Code Chapter 127, Subchapter G.

Department of Public Health, Air Management Services:
321 University Avenue, Philadelphia, PA 19104

Contact: Edward Wiener, Chief—Telephone: 215-685-9426

V11-003: Exelon Generating Co.—Richmond Station (3901 North Delaware Avenue, Philadelphia, PA 19137) for a Title V Operating Permit in the City of Philadelphia, **Philadelphia County**. The facility's air emission sources include two (2) 838 MMBTU/hr combustion turbines and a 1.77 MMBTU/hr boiler.

The operating permit will be issued under 25 Pa. Code, 3 Philadelphia Code and Air Management Regulation XIII. Permit copies and other supporting information are available for public inspection at AMS, 321 University Ave., Philadelphia, PA 19104. For further information, contact Mr. Edward Wiener (215) 685-9426.

Persons wishing to file protest or comments on the above operating permit must submit the protest or comments within 30 days from the date of this notice. Any protests or comments filed with AMS must include a concise statement of the objections to the permit issuance and the relevant facts upon which the objections are based. Based upon the information received during the public comment period, AMS may modify the operating permit or schedule a public hearing. The hearing notice will be published in the *Pennsylvania Bulletin* and a local newspaper at least thirty days before the hearing.

Intent to Issue Operating Permits under the Air Pollution Control Act and 25 Pa. Code Chapter 127, Subchapter F.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19428

Contact: Janine Tulloch-Reid, Facilities Permitting Chief—Telephone: 484-250-5920

46-00008: Coopers Creek Chemical Corp. (884 River Road, West Conshohocken, PA 19428) for renewal of a Non-Title V Facility, State-Only, Natural Minor Permit in Upper Merion Township, **Montgomery County**. Coopers Creek Chemical Corporation operates a crude coal tar distillation facility. The sources of emissions include boilers, crude coal tar distillate process tanks, road tar storage tanks, creosote tanks and other road tar product storage vessels. The facility has a potential to emit less than 25 tons per year of Volatile Organic Compounds (VOCs). Monitoring, record keeping and reporting requirements have been added to the permit to address applicable limitations.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110

Contact: Thomas J. Hanlon, Facility Permitting Chief—Telephone: 717-705-4862 or Daniel Husted, New Source Review Chief—Telephone: 717-705-4863

67-03099: Bituminous Paving Materials (1300 Zinn's Quarry Road, York PA 17404) for their hot mix batch asphalt plant in West Manchester Township, **York County**.

In accordance with 25 Pa. Code §§ 127.424 and 127.425, the Department of Environmental Protection (DEP) has received an application and intends to issue an Air Quality Operating Permit renewal for the abovementioned facility.

The subject asphalt plant has an estimated emissions potential of more than 10 tons per year of particulate matter. The asphalt plant is subject to 40 CFR Part 60, Subpart I for hot mix asphalt facilities. The Operating Permit renewal will include emission limits and work practice standards along with monitoring, recordkeeping and reporting requirements to ensure the facility complies with the applicable air quality regulations. Copies of the

renewal application, DEP's analysis and other documents used in the evaluation of the application are available for public review during normal business hours at the PA DEP Southcentral Regional Office, at 909 Elmerton Avenue, Harrisburg, PA 17110.

A person may oppose the proposed plan approval, or may provide the Department with additional information to consider in its review, or may request a public hearing, by filing a written protest with the Department at the address listed above. Each written comment must contain the name, address and telephone number of the person submitting the comments, identification of the proposed permit by the permit number listed above and a concise statement regarding the relevancy of the information or objections to the issuance of the permit.

A 30-day comment period, from the date of publication of this notice in the *Pennsylvania Bulletin*, will exist for the submission of comments or protests.

Daniel C. Husted, New Source Review Chief, may be contacted at 717-705-4863, or at PA DEP Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, for additional information or for the submission of comments or protests.

36-03121: Cadmus Journal Services, Inc. (3575 Hempland Road, Lancaster PA 17601) for their commercial printing facility in West Hempfield Township, Lancaster County.

In accordance with 25 Pa. Code §§ 127.424 and 127.425 the Department of Environmental Protection (DEP) has received an application and intends to issue an Air Quality Operating Permit for the abovementioned facility.

The subject facility has actual emissions of 1.8 tpy of NO_x, 1.7 tpy of CO and 11.5 tpy of VOCs. The Operating Permit will include emission limits and work practice standards along with monitoring, recordkeeping and reporting requirements to ensure the facility complies with the applicable air quality regulations.

Copies of the application, DEP's analysis and other documents used in the evaluation of the application are available for public review during normal business hours at the PA DEP Southcentral Regional Office, at 909 Elmerton Avenue, Harrisburg, PA 17110.

A person may oppose the proposed plan approval, or may provide the Department with additional information to consider in its review, or may request a public hearing, by filing a written protest with the Department at the address listed above. Each written comment must contain the name, address and telephone number of the person submitting the comments, identification of the proposed permit by the permit number listed above and a concise statement regarding the relevancy of the information or objections to the issuance of the permit.

A 30-day comment period, from the date of publication of this notice in the *Pennsylvania Bulletin*, will exist for the submission of comments or protests.

Mr. Thomas Hanlon, Facility Permitting Chief, may be contacted at 717-705-4862, or at PA DEP Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, for additional information or for the submission of comments or protests.

28-03013: Grove Bowersox Funeral Home, Inc. (50 S Broad Street, Waynesboro, PA 17268) for operation of their human crematory facility in Waynesboro Borough, Franklin County.

In accordance with 25 Pa. Code §§ 127.424 and 127.425 the Department of Environmental Protection (DEP) has received an application and intends to issue an Air Quality Operating Permit renewal for the abovementioned facility.

The estimate Potential emissions in year 2011 were: 1.75 tons per year of CO, 2.1 tons per year of NO_x, 0.44 tons per year of PM, 0.72 tons per year of SO₂, and 1.03 tons per year of VOC. The Operating Permit will include emission limits and work practice standards along with monitoring, recordkeeping and reporting requirements to ensure the facility complies with the applicable air quality regulations.

Copies of the application, DEP's analysis and other documents used in the evaluation of the application are available for public review during normal business hours at the PA DEP Southcentral Regional Office, at 909 Elmerton Avenue, Harrisburg, PA 17110.

A person may oppose the proposed operating permit, or may provide the Department with additional information to consider in its review, or may request a public hearing, by filing a written protest with the Department at the address listed above. Each written comment must contain the name, address and telephone number of the person submitting the comments, identification of the proposed permit by the permit number listed above and a concise statement regarding the relevancy of the information or objections to the issuance of the permit.

A 30-day comment period, from the date of publication of this notice in the *Pennsylvania Bulletin*, will exist for the submission of comments or protests. A public hearing may be held, if the Department of Environmental Protection, in its discretion, decides that such a hearing is warranted based on the comments received.

Daniel C. Husted, New Source Review Chief, may be contacted at 717-705-4863, or at PA DEP Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, for additional information or for the submission of comments or protests.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701

Contact: Muhammad Q. Zaman, Environmental Program Manager—Telephone: 570-327-3648

18-00013: Clinton Hospital Corp. (24 Cree Drive, Lock Haven, PA 17745) to issue a renewal state only operating permit for their Lock Haven Hospital in the City of Lock Haven, Clinton County. The facility's sources include four natural gas/#2 fuel oil fired boilers, four emergency generators, and a 15,000 gallon fuel oil storage tank. The proposed state only operating permit contains all applicable Federal and State regulatory requirements including monitoring, recordkeeping, and reporting conditions.

PLAN APPROVALS

Receipt of Plan Approval Applications and Intent to Issue Plan Approvals, and Intent to Issue Amended Operating Permits under the Air Pollution Control Act and 25 Pa. Code Chapter 127, Subchapter B And Subchapter F. These actions may include the administrative amendments of an associated operating permit.

Northeast Region: Air Quality Program, 2 Public Square, Wilke-Barre, PA 18711-0790

Contact: Ray Kempa, New Source Review Chief—
Telephone: 570-826-2507

458-302-009: Blue Ridge School District (RR3, Box 220, New Milford, PA 18834-9503) for installation of a new 6.0 MMBTU Biomass fired boiler for their facility to be in New Milford Township, **Susquehanna County**.

In accordance with 25 Pa. Code §§ 127.44(a) and 127.45(a), the Department of Environmental Protection (DEP) has received and intends to issue a Plan Approval to Blue Ridge School District (RR3, Box 220, New Milford, PA 18834-9503) for their facility to be located in New Milford Township, Susquehanna County. This Plan Approval No. 458-302-009 will be incorporated into a Synthetic Minor Permit through an administrative amendment at a later date.

Plan Approval No. 58-302-009 is for the installation of a new 6.0 MMBTU Biomass fired boiler. The company shall be subject to and comply with 25 Pa. Code § 123.41 for Visible emissions. The company shall be subject to and comply with 25 Pa. Code § 123.22 for Sulfur Compound Emissions. The company shall be subject to and comply with 25 Pa. Code § 123.31 for malodorous emissions. The company is subject to NESHAP Part 63 Subpart JJJJJ requirements. These limits will meet BAT requirements for this source. The Plan Approval and Operating permit will contain additional recordkeeping and operating restrictions designed to keep the facility operating within all applicable air quality requirements.

The Plan Approval and Operating permit will contain additional recordkeeping and operating restrictions designed to keep the facility operating within all applicable air quality requirements.

Copies of the application, DEP's analysis and other documents used in the evaluation of the application are available for public review during normal business hours at Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18701-1915.

Any person(s) wishing to provide DEP with additional information, which they believe should be considered prior to the issuance of this permit, may submit the information to the address shown in the preceding paragraph. Each written comment must contain the following:

Name, address and telephone number of the person submitting the comments. Identification of the proposed permit No.: 58-302-009.

A concise statement regarding the relevancy of the information or objections to the issuance of the permit.

A public hearing may be held, if the Department of Environmental Protection, in its discretion, decides that such a hearing is warranted based on the comments received. All persons submitting comments or requesting a hearing will be notified of the decision to hold a hearing by publication in the newspaper or the *Pennsylvania Bulletin* or by telephone, where DEP determines such notification is sufficient. Written comments or requests for a public hearing should be directed to Ray Kempa, Chief, New Source Review Section, Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18701-1915, Phone # 570-826-2511 within 30 days after publication date.

40-399-077: InterMetro Industries Corp. (651 North Washington Street, Wilkes-Barre, PA 18705) for construction and operation of three (3) plating tanks with scrubbers at Plant 1 for their facility to be in Wilkes-Barre City, **Luzerne County**.

In accordance with 25 Pa. Code §§ 127.44(a) and 127.45(a), the Department of Environmental Protection

(DEP) has received and intends to issue a Plan Approval to InterMetro Industries Corp. (651 North Washington Street, Wilkes-Barre, PA 18705) for their facility to be located in Wilkes-Barre City, Luzerne County. This Plan Approval No. 40-399-077 will be incorporated into a Synthetic Minor Permit through an administrative amendment at a later date.

Plan Approval No. 40-399-077 is for the construction and operation of three plating tanks with scrubbers at Plant 1. The VOC emissions from the facility will not equal or exceed 50 TPY, based on a 12-month rolling sum. The NO_x emissions from the facility will not equal or exceed 100 TPY, based on a 12-month rolling sum. Total PM, SO_x, and CO emissions from the facility will not equal or exceed 100 TPY, based on a 12-month rolling sum. The HAPs from the facility must never equal or exceed 10 TPY of any single HAP and must never equal or exceed 25 TPY of all aggregated HAPs, based on a 12-month rolling sum. The Plan approval and Operating Permit will include testing, monitoring, record keeping and reporting requirements designed to keep the sources operating within all applicable air quality requirements.

The facility is subject to NESHAP Subpart N and Subpart WWWW and 25 Pa. Code § 127.12(a)(5) Best Available Technology (BAT) requirements. The visible emission opacity shall not be equal to or greater than 20% at any time. The company shall be subject to and comply with 25 Pa. Code § 123.31 for malodorous emissions.

The Plan Approval and Operating permit will contain additional recordkeeping and operating restrictions designed to keep the facility operating within all applicable air quality requirements.

Copies of the application, DEP's analysis and other documents used in the evaluation of the application are available for public review during normal business hours at Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18701-1915.

Any person(s) wishing to provide DEP with additional information, which they believe should be considered prior to the issuance of this permit, may submit the information to the address shown in the preceding paragraph. Each written comment must contain the name, address and telephone number of the person submitting the comments, identification of the proposed permit No.: 40-399-077 and a concise statement regarding the relevancy of the information or objections to the issuance of the permit.

A public hearing may be held, if the Department of Environmental Protection, in its discretion, decides that such a hearing is warranted based on the comments received. All persons submitting comments or requesting a hearing will be notified of the decision to hold a hearing by publication in the newspaper or the *Pennsylvania Bulletin* or by telephone, where DEP determines such notification is sufficient. Written comments or requests for a public hearing should be directed to Ray Kempa, Chief, New Source Review Section, Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18701-1915, Phone # 570-826-2511 within 30 days after publication date.

40-399-078: L & P Berwick—Division of Leggett & Platt (515 Salem Boulevard, Berwick, PA 18603) for operation of a polyurethane carpet padding operation with baghouse at their facility in Salem Township, **Luzerne County**.

In accordance with 25 Pa. Code §§ 127.44(a) and 127.45(a), that the Department of Environmental Protec-

tion (DEP) has received and intends to issue a Plan Approval to L & P Berwick, A Division of Leggett & Platt (515 Salem Blvd., Berwick, PA 18603) for their facility located in Salem Twp., Luzerne County. This Plan Approval No. 40-399-078 will be incorporated into a Synthetic Minor Permit through an administrative amendment at a later date.

Plan Approval No. 40-399-078 is for the operation of a polyurethane carpet padding operation with baghouse at the facility. VOC emissions from the plant will not exceed 50 TPY threshold limit, 12-month rolling sum. Particulate emissions will not exceed 0.02 grains/dscf from the baghouse. The company shall be subject to and comply with 25 Pa. Code § 123.31 for malodorous emissions. The company shall be subject to and comply with 25 Pa. Code § 123.41 for Visible emissions. The HAPs from the facility must never equal or exceed 10 TPY of any single HAP and must never equal or exceed 25 TPY of all aggregated HAPs, based on a 12-month rolling sum. These limits will meet BAT requirements for this source. The Plan Approval and Operating permit will contain additional recordkeeping and operating restrictions designed to keep the facility operating within all applicable air quality requirements.

Copies of the application, DEP's analysis and other documents used in the evaluation of the application are available for public review during normal business hours at Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711.

Any person(s) wishing to provide DEP with additional information, which they believe should be considered prior to the issuance of this permit, may submit the information to the address shown in the preceding paragraph. Each written comment must contain the name, address and telephone number of the person submitting the comments, identification of the proposed permit No.: 40-399-078 and a concise statement regarding the relevancy of the information or objections to the issuance of the permit.

A public hearing may be held, if the Department of Environmental Protection, in its discretion, decides that such a hearing is warranted based on the comments received. All persons submitting comments or requesting a hearing will be notified of the decision to hold a hearing by publication in the newspaper or the *Pennsylvania Bulletin* or by telephone, where DEP determines such notification is sufficient. Written comments or requests for a public hearing should be directed to Ray Kempa, Chief, New Source Review Section, Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711, Phone # 570-826-2511 within 30 days after publication date.

COAL AND NONCOAL MINING ACTIVITY APPLICATIONS

Applications under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. §§ 3301—3326); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66); and The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.20a). Mining activity permits issued in response to such applications will also address the applicable permitting requirements of the following statutes: the Air Pollution Control Act (35 P. S. §§ 4001—4015); the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27); and the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003).

The following permit applications to conduct mining activities have been received by the Department. A copy of the application is available for inspection at the district mining office indicated before each application. Notices of requests for 401 Water Quality Certifications are included in individual application notices, as noted.

Written comments or objections, or requests for an informal conference, or a public hearing, as applicable, on a mining permit application and request for Section 401 water quality certification application may be submitted by any person or any officer or head of any Federal, State or local government agency or authority to the Department at the address of the district mining office indicated before each application within 30 days of this publication, or within 30 days after the last publication of the applicant's newspaper advertisement as provided by 25 Pa. Code §§ 77.121—77.123 and 86.31—86.34.

Written comments or objections regarding a mining permit application should contain the name, address and telephone number of persons submitting comments or objections, application number and a statement of sufficient detail to inform the Department on the basis of comment or objection and relevant facts upon which it is based.

A request for an informal conference or a public hearing, as applicable, on a mining permit application, as provided by 25 Pa. Code § 77.123 or § 86.34, must contain the name, address and telephone number of the requestor; the application number; a brief summary of the issues to be raised by the requestor at the conference; and a statement whether the requestor desires to have the conference conducted in the locality of the proposed mining activities.

When an NPDES number is listed, the mining activity permit application was accompanied by an application for an individual NPDES permit. A separate notice will be provided after the draft NPDES permit is prepared.

Coal Applications Received

California District Office: 25 Technology Drive, Coal Center, PA 15423, 724-769-1100

30841307. Emerald Coal Resources, LP, (P. O. Box 1020, 158 Portal Road, Waynesburg, PA 15370), to revise the permit for the Emerald Mine No. 1 in Whiteley Township, **Greene County**, ACOE Pittsburgh, (Oak Forest, PA Quadrangle, from N: 9.85 inches; W: 0.01 inches to N: 17.82 inches; W: 0.02 inches). This is a Chapter 105 Water Obstruction and Encroachment permit application (Stream Module 15), and 401 Water Quality Certification request, if applicable, submitted as part of the mining permit revision application to authorize stream restoration to eliminate stream pooling resulting from longwall mining to Mt. Phoebe Run and an associated unnamed tributary to Mt. Phoebe Run.

Written comments or objections on the request for Section 401 Water Quality Certification or to the issuance of the Water Obstruction and Encroachment Permit, (Stream Module 15) may be submitted to the Department within 30 days of the date of this notice to the District Mining Office identified above. Comments should contain the name, address and telephone number of the person commenting, identification of the request for 401 Water Quality Certification and Chapter 105 permit application (Stream Module 15) to which the comments or objections are addressed and a concise statement of comments, objections or suggestions including relevant facts upon which they are based. The Water Obstruction and En-

croachment permit application is available for review at the California District Mining Office, by appointment, at the address listed above.

The application was considered administratively complete on March 28, 2012. Application received: January 27, 2012.

56773798 and NPDES No. PA0001881, Miller Springs Remediation Management, Inc., (5005 LBJ Freeway, Suite 1350, Dallas, TX 75244-6119), to renew the permit for the Bird Mine No. 2/No. 3 in Conemaugh Township, Somerset County and Stonycreek Township, **Cambria County** and related NPDES permit for reclamation-water treatment only. No additional discharges. The application was considered administratively complete on March 28, 2012. Application received: June 2, 2011.

30841307. Emerald Coal Resources, LP, (P. O. Box 1020, 158 Portal Road, Waynesburg, PA 15370), to revise the permit for the Emerald Mine No. 1 in Franklin and Jefferson Townships, **Greene County** to install seven boreholes. Application also includes a request for a Section 401 Water Quality Certification. Surface Acres Proposed 4.84. No additional discharges. The application was considered administratively complete on March 30, 2012. Application received: July 11, 2011.

Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, 814-472-1900

56100101 and NPDES No. PA0262951. PBS Coals, Inc., P. O. Box 260, Friedens, PA 15541, transfer of an existing bituminous surface mine from Berwind Coal Sales Company, 509, 15th Street, Windber, PA 15963, located in Paint Township, **Somerset County**, affecting 238.9 acres. Receiving stream(s): UTS to/and Stonycreek River classified for the following use(s): cold water fishery; warm water fishery. There are no potable water supply intakes within 10 miles downstream. Application received: December 21, 2011.

56070103 and NPDES No. PA0262366. PBS Coals, Inc., P. O. Box 260, Friedens, PA 15541, revision of an existing bituminous surface, auger and refuse reprocessing mine to add 20.0 additional coal acres to the existing SMP boundary in Stonycreek Township, **Somerset County**, affecting 338.3 acres. Receiving stream(s): UTS to/and Schrock Run classified for the following use(s): cold water fishery. There are no potable water supply intakes within 10 miles downstream. Application received: March 21, 2012.

Greensburg District Mining Office: Armbrust Professional Center, 8205 Route 819, Greensburg, PA 15601, 724-925-5500

63120101 and NPDES Permit No. PA0252191. Neiswonger Construction, Inc. (17592 Route 322, Strattanville, PA 16258). Application for commencement, operation and reclamation of a bituminous surface mine, located in Somerset Township, **Washington County**, affecting 62.4 acres. Receiving streams: North Branch Pigeon Creek, Pigeon Creek, and unnamed tributaries to North Branch Pigeon Creek, classified for the following use: WWF. There is no potable water supply intake within 10 miles downstream from the point of discharge. Application received: March 21, 2012.

Knox District Mining Office: P. O. Box 669, 310 Best Avenue, Knox, PA 16232-0669, 814-797-1191

24020102. P. and N. Coal Co., Inc. (P. O. Box 332, Punxsutawney, PA 15767) Renewal of an existing bituminous surface and coal ash placement operation in Benezette Township, **Elk County** affecting 118.9 acres.

Receiving streams: Unnamed tributaries to Porcupine Hollow Run and unnamed tributary to Chase Hollow, both classified for the following uses: CWF. There are no potable surface water supply intakes within 10 miles downstream. This renewal is issued for reclamation only. Application received: March 26, 2012.

33120101 and NPDES Permit No. PA0259268. Original Fuels, Inc. (P. O. Box 343, Punxsutawney, PA 15767) Commencement, operation and restoration of a bituminous surface mine in Perry Township, **Jefferson County** affecting 232.0 acres. Receiving streams: Four unnamed tributaries to Mahoning Creek and Rose Run, both classified for the following uses: CWF. There are no potable surface water supply intakes within 10 miles downstream. Application received: March 26, 2012.

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, 570-621-3118

54-305-024GP12. Superior Coal Preparation Co-Op, LLC, (184 Schwenks Road, Hegins, PA 17938), application to operate a coal preparation plant whose pollution control equipment is required to meet all applicable limitations, terms and conditions of General Permit, BAQ-GPA/GP-12 on Surface Mining Permit No. 54851601 in Hegins and Hubley Townships, **Schuylkill County**. Application received: March 26, 2012.

54060202T. YZ-05, Inc., (154 North State Road, Branchdale, PA 17923), transfer of an existing anthracite coal refuse reprocessing operation from Cruz Bay Trading, Inc. in Frailey Township, **Schuylkill County** affecting 25.0 acres, receiving stream: Good Spring Creek, classified for the following use: cold water fishes. Application received: March 27, 2012.

54060202R. YZ-05, Inc., (154 North State Road, Branchdale, PA 17923), renewal of an existing anthracite coal refuse reprocessing operation in Frailey Township, **Schuylkill County** affecting 25.0 acres, receiving stream: Good Spring Creek, classified for the following use: cold water fishes. Application received: March 27, 2012.

Noncoal Applications Received

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, 570-621-3118

7873SM1A1C7 and NPDES Permit No. PA0225282. Penn Big Bed Slate Co., Inc., (P. O. Box 184, Slatington, PA 18080), new NPDES Permit for discharge of treated mine drainage from a quarry operation in Washington Township and Slatington Borough, **Lehigh County** affecting 50.07 acres, receiving stream: unnamed tributary to Trout Creek, classified for the following uses: cold water and migratory fishes. Application received: March 23, 2012.

MINING ACTIVITY NPDES DRAFT PERMITS

This notice provides information about applications for a new, amended or renewed NPDES permits associated with mining activity (coal or noncoal) permits. The applications concern industrial waste (mining) discharges to surface water and discharges of stormwater associated with mining activities. This notice is provided in accordance with 25 Pa. Code Chapters 91 and 92a and 40 CFR Part 122, implementing provisions of The Clean Streams Law (35 P. S. §§ 691.1—691.1001) and the Federal Clean Water Act (33 U.S.C.A. §§ 1251—1376).

The Department of Environmental Protection (Department) has prepared a draft NPDES permit and made a

tentative determination to issue the NPDES permit in conjunction with the associated mining activity permit.

Effluent Limits for Coal Mining Activities

For coal mining activities, NPDES permits, when issued, will contain effluent limits that are the more

stringent of technology-based (BAT) effluent limitations or Water Quality Based Effluent Limits (WQBEL).

The BAT limits for coal mining activities, as provided in 40 CFR Part 434 and 25 Pa. Code Chapters 87—90 are as follows:

<i>Parameter</i>	<i>30-Day Average</i>	<i>Daily Maximum</i>	<i>Instantaneous Maximum</i>
Iron (Total)	3.0 mg/l	6.0 mg/l	7.0 mg/l
Manganese (Total)	2.0 mg/l	4.0 mg/l	5.0 mg/l
Suspended solids	35 mg/l	70 mg/l	90 mg/l
pH*		greater than 6.0; less than 9.0	
Alkalinity greater than acidity*			

*The parameter is applicable at all times.

In addition, the Department imposes a technology-based aluminum limit of 2.0 mg/l (30 day average) to protect stream uses.

A settleable solids instantaneous maximum limit of 0.5 ml/l applies to: surface runoff (resulting from a precipitation event of less than or equal to a 10-year 24-hour event) from active mining areas; active areas disturbed by coal refuse disposal activities; mined areas backfilled and revegetated; and all other discharges and drainage (resulting from a precipitation event of greater than 1-year 24-hour to less than or equal to a 10-year 24-hour event) from coal refuse disposal piles. Similarly, modified BAT

limits apply to iron, manganese and suspended solids in surface runoff, discharges and drainage resulting from these precipitation events and those of greater magnitude in accordance with 25 Pa. Code §§ 87.102, 88.92, 88.187, 88.292, 89.52 and 90.102.

Exceptions to BAT effluent limits may be applicable in accordance with 25 Pa. Code §§ 87.102, 88.92, 88.187, 88.292, 89.52 and 90.102.

Effluent Limits for Noncoal Mining Activities

The BAT limits for noncoal mining activities as provided in 40 CFR Part 436 and 25 Pa. Code Chapter 77 are as follows:

<i>Parameter</i>	<i>30-day Average</i>	<i>Daily Maximum</i>	<i>Instantaneous Maximum</i>
Suspended solids	35 mg/l	70 mg/l	90 mg/l
Alkalinity exceeding acidity*		greater than 6.0; less than 9.0	
pH*			

* The parameter is applicable at all times.

Discharges from noncoal mines located in some geologic settings (for example, in the coal fields) may require additional water quality based effluent limits. If additional effluent limits are needed for an NPDES permit associated with a noncoal mining permit, then the permit description specifies the parameters.

In addition to BAT or WQBEL limits, coal and noncoal NPDES permits establish effluent limitations in the form of implemented Best Management Practices (BMPs) identified in the associated Erosion and Sedimentation Plan, the Reclamation Plan and the NPDES permit application. These BMPs restrict the rates and quantities of associated pollutants from being discharged into surface waters in this Commonwealth.

More restrictive effluent limitations, restrictions on discharge volume or restrictions on the extent of mining that may occur are incorporated into an NPDES permit when necessary for compliance with water quality standards and antidegradation requirements (in accordance with 25 Pa. Code Chapters 91—96).

The procedures for determining the final effluent limits, using a mass-balance equation or model, are found in Technical Guidance Document 362-0600-001, NPDES Program Implementation—Memorandum of Understanding (MOU) Concerning Water Quality Management, NPDES Program Implementation, and Related Matters. Other

specific factors to be considered include public comments and Total Maximum Daily Load(s). Additional discharge limitations may apply in the event that unexpected discharges occur.

Discharge rates for surface mining activities are precipitation driven. Discharge rates for proposed discharges associated with underground mining are noted in the permit description.

Persons wishing to comment on an NPDES draft permit should submit a written statement to the Department at the address of the district mining office indicated before each draft permit within 30 days of this public notice. Comments received within the comment period will be considered in the final determinations regarding the NPDES permit applications. Comments must include the name, address and telephone number of the writer and a concise statement to inform the Department of the exact basis of a comment and the relevant facts upon which it is based.

The Department will also accept requests or petitions for a public hearing on NPDES permit applications, as provided in 25 Pa. Code § 92a.82(d). The request or petition for a public hearing shall be filed within 30 days of this public notice and contain the name, address, telephone number and the interest of the party filing the request, and state the reasons why a hearing is war-

ranted. A public hearing may be held if the Department considers the public interest significant. If a hearing is scheduled, a notice of the hearing on the NPDES permit application will be published in the *Pennsylvania Bulletin* and a newspaper of general circulation within the relevant geographical area. When a public hearing is held, the Department will consider comments from the public hearing in the final determination on the NPDES permit application.

Coal NPDES Draft Permits

Greensburg District Mining Office: Armbrust Professional Center, 8205 Route 819, Greensburg, PA 15601, 724-925-5500

NPDES No. PA0252158 (Mining permit no. 26100104), Amerikohl Mining, Inc. (1384 State Route 711, Stahlstown, PA 15687), new NPDES permit for a bituminous surface mine in Wharton Township, **Fayette County**, affecting 41.3 acres. Receiving stream(s): unnamed tributaries to Mill Run and Mill Run, classified for the following use(s): HQ-CWF. Application received: December 9, 2011.

Unless otherwise noted for a specific outfall, the proposed effluent limits for all outfalls in this permit are the BAT limits described above for coal mining activities.

The outfalls listed below will be using a non-discharge alternative (all treatment facilities) and a combination of non-discharge alternative and non-degrading discharges (all sediment ponds):

<i>Outfall Nos.</i>	<i>New Outfall (Y/N)</i>
SP1	Y
SP2	Y
TFA	Y
TFB	Y

Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, 814-342-8200

NPDES No. PA-0257842 (Mining permit no. 17110111), Sky Haven Coal, Inc., 5510 State Park Road, Penfield, PA 15849, new NPDES permit for surface coal mining in Bradford Township, **Clearfield County**, affecting 102.0 acres. Receiving stream(s): Valley Fork Run, classified for the following use(s): CWF. [Clearfield Creek Watershed TMDL] Application received: September 21, 2011.

Unless otherwise noted for a specific outfall, the proposed effluent limits for all outfalls in this permit are the BAT limits described above for coal mining activities.

The outfall(s) listed below discharge to Valley Fork Run:

<i>Outfall No.</i>	<i>New Outfall (Y/N)</i>
A	Yes
B	Yes
C	Yes

The outfall(s) listed below require a non-discharge alternative:

<i>Outfall No.</i>	<i>New Outfall (Y/N)</i>
TB1	Yes

There is no proposed surface discharge from the above listed facilities to the receiving stream due to the implementation of Best Management Practices.

Noncoal NPDES Draft Permits

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, 570-621-3118

NPDES No. PA0225274 on Surface Mining Permit No. 66090301. Noxen Sand & Materials, (2162 Chase Road, Shavertown, PA 18708), new NPDES Permit for a sand and gravel quarry operation in Noxen Township, **Wyoming County**, affecting 24.5 acres. Receiving stream: Beaver Run, classified for the following use: HQ-cold water fishes. Application received: March 16, 2012.

There will be no point-source discharge to Beaver Run. Non-discharge BMP's shall be in effect.

FEDERAL WATER POLLUTION CONTROL ACT, SECTION 401

The following permit applications, requests for Environmental Assessment approval and requests for 401 Water Quality Certification have been received by the Department. Section 401 of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C.A. § 1341) requires the Commonwealth to certify that the involved projects will not violate the sections 301—303, 306 and 307 of the FWPCA (33 U.S.C.A. §§ 1311—1313, 1316 and 1317) as well as relevant State requirements. Persons objecting to approval of a request for certification under section 401 of the FWPCA, the issuance of a Dam Permit or Water Obstruction and Encroachment Permit or the approval of an Environmental Assessment shall submit comments, suggestions or objections within 30 days of the date of this notice as well as any questions to the office noted before an application. Comments should contain the name, address and telephone number of the person commenting, identification of the certification request to which the comments or objections are addressed and a concise statement of comments, objections or suggestions including the relevant facts upon which they are based.

The Department may conduct a fact-finding hearing or an informal conference in response to comments if deemed necessary. Each individual will be notified, in writing, of the time and place of a scheduled hearing or conference concerning the certification request to which the comment, objection or suggestion relates. Maps, drawings and other data pertinent to the certification request are available for inspection between 8 a.m. and 4 p.m. on working days at the office noted before the application.

Persons with a disability who wish to attend the hearing and require an auxiliary aid, service or other accommodation to participate in the proceedings should contact the specified program. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

Applications Received under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27) and section 302 of the Flood Plain Management Act (32 P. S. § 679.302) and Requests for Certification under section 401(a) of the FWPCA.

WATER OBSTRUCTIONS AND ENCROACHMENTS

Southeast Region: Watershed Management Program Manager, 2 East Main Street, Norristown, PA 19401

E46-1078. Pennsylvania Department of Transport, District 6, 7000 Geerdes Blvd, King of Prussia, PA 19406, **Montgomery County**. ACOE Philadelphia District

To perform the following water obstruction and encroachment activities associated with the improvement of the Main Street arch bridge, SR 0202-Section 520, across Stony Creek (TSF):

1. To rehabilitate and maintain the existing Main Street arch bridge. This work includes placement of rip-rap associated with scour protection at the upstream side of the bridge.
2. To place and maintain temporary support piles in the stream, immediately upstream and downstream of the bridge associated with the working platform.
3. To construct and maintain an outfall structure.

The project will permanently impact approximately 103 linear feet of stream. The site is located approximately 300 feet northwest of the intersection of Markley Street and Main Street in Norristown Borough, Montgomery County (Norristown, PA USGS Quadrangle N: 21.26 inches; W: 13.97 inches).

Northeast Region: Watershed Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, Telephone 570-826-2511.

E54-353. Pennsylvania Department of Transportation, Engineering District 5-0, 1002 Hamilton Street, Allentown, PA 18103-1013, in Auburn Borough & West Brunswick Township, **Schuylkill County**, U.S. Army Corps of Engineers, Philadelphia District.

To remove the existing structure and to construct and maintain a two span pre-stressed concrete bulb tee beam bridge. The structure will have a span of 225 feet and an approximate underclearance of 18.3 feet over the Schuylkill River (CWF). The project is located along S.R. 895, Section 04B, Segment 0390 Offset 0477. (Auburn, PA Quadrangle, Latitude: 40°36'07"; Longitude: -76°5'19").

E35-438. City of Scranton, 101 West Poplar Street, Scranton, PA 18508, in City of Scranton, **Lackawanna County**, U.S. Army Corps of Engineers, Baltimore District.

To remove the existing structure and to construct and maintain a concrete arch bridge having a 36-foot span and an approximate underclearance of 13.7 feet approximately 100 feet across Leggetts Creek and to construct and maintain two 18-inch reinforced concrete stormwater outfalls in the floodway of Leggetts Creek (TSF). This project was previously authorized by Permit No. E35-371 which expired prior to commencement of construction. The project is on Rockwell Avenue approximately 0.1 mile northeast of West Market Street (Scranton, PA Quadrangle, Latitude: 41°26'33.6"; Longitude: -75°39'32.8").

Southcentral Region: Watershed Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110. Telephone: 717-705-4802.

E28-373. Mr. Kenneth M. Waggoner, Driveway Culvert Construction, Lurgan Township, **Franklin County**, ACOE Baltimore District

To construct and maintain a 50.0-foot long 47.0-inch by 71.0-inch metal arch culvert in and across Laughlin Run (WWF, MF), impacting 0.1 acre of wetland, located on Mowersville Road approximately 1.25 miles northwest of the intersection of Mowersville Road and SR 641 (Newburg, PA Quadrangle, N: 5.36 inches, W: 15.84 inches; Latitude: N 40° 08' 46.31", Longitude: W -77° 36' 11") in Lurgan Township, Franklin County. The purpose of the project is to provide access to a home and agricultural areas.

E38-178. Lebanon Valley Conservancy, Inc., 752 Willow Street, Suite E, Lebanon, Pennsylvania 17046, in North Cornwall Township, **Lebanon County**, ACOE Baltimore District

To: 1) construct and maintain streambank stabilization and in-stream grade-control structures; 2) relocate and maintain 850.0 feet of the Quittapahilla Creek requiring the placement of fill, all for the purpose of improving and restoring the Quittapahilla Creek. The project is located along the Quittapahilla Creek starting at the Chestnut Street Bridge and extending downstream (Lebanon, PA Quadrangle: Latitude: 40°20'16", Longitude: 76°27'29") in North Cornwall Township, Lebanon County.

E67-897. Liberty Property Limited Partnership, 74 West Broad Street, Suite 530, Bethlehem, Pennsylvania 18018, in Fairview Township, **York County**, ACOE Baltimore District

To: 1) improve and maintain approximately 330.0 feet of streambank along an unnamed tributary to Fishing Creek (TSF, MF); and 2) install and maintain a 256.0-foot long temporary wetland crossing, all for the purpose of stabilizing the streambank of an unnamed tributary to Fishing Creek. The project is located at 600 Industrial Drive, Lewisberry, Pennsylvania 17339 (Steelton, PA Quadrangle, Latitude: 40°10'23", Longitude: -76°50'32") in Fairview Township, York County.

E67-898. York Township, 190 Oak Road, Dallastown, Pennsylvania 17313, in York Township, **York County**, ACOE Baltimore District

To: 1) relocate and maintain 600.0 feet of Mill Creek; 2) install and maintain fish enhancement structures in Mill Creek; and 3) restore and maintain 1,125.0 feet of Mill Creek (WWF, MF) for the purpose of improving fish habitat and stabilizing the stream. The project site runs parallel to Camp Betty Washington Road and is located at the southeast corner of the intersection of Camp Betty Washington Road and Chestnut Hill Road (York, PA Quadrangle; Latitude: 39°56'40", Longitude: -76°39'39") in York Township, York County.

Southwest Region: Wetlands & Waterways Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

E 63-641. City of Monongahela, 449 West Main Street, Monongahela, PA 15063, in the City of Monongahela, **Washington County**. ACOE Pittsburgh District.

The applicant proposes to construct, operate and maintain an L-shaped boat dock with a total length of approximately 280 feet and a width of 8.33 feet (area of 2333 square feet). The proposed structure will be constructed on the Monongahela River (WWF). The project is located at the end of Second Street approximately 300 feet from the intersection with SR-88 (USGS Monongahela, PA Quadrangle; N: 14.4 inches, W: 6.9 inches; Latitude: 40° 12' 20"; Longitude: 79° 56' 00")

East District: Oil and Gas Operations, 208 West Third Street, Suite 101, Williamsport, PA 17701

E5829-025. Angelina Gathering Company, LLC; 2350 North Sam Houston Parkway, Suite 125, Houston, TX 77032; Clifford and Lenox Townships, **Susquehanna County**, ACOE Baltimore District.

To construct, operate, and maintain:

- 1) One 16 inch diameter and one 12 inch diameter steel natural gas gathering line, one 16 inch diameter HDPE waterline, and a temporary timber bridge impacting

2,217 square feet of PEM wetlands (Lenoxville, PA Quadrangle; Latitude: 41° 41' 02", Longitude: -75° 39' 39"),

2) One 16 inch diameter and one 12 inch diameter steel natural gas gathering line, one 16 inch diameter HDPE waterline, and a temporary timber mat bridge impacting 22,750 square feet of PEM wetlands (Lenoxville, PA Quadrangle; Latitude: 41° 41' 08", Longitude: -75° 39' 10"),

3) One 16 inch diameter and one 12 inch diameter steel natural gas gathering line, one 16 inch diameter HDPE waterline impacting 590 square feet of PSS wetlands (Lenoxville, PA Quadrangle; Latitude: 41° 41' 05", Longitude: -75° 39' 04"),

4) One 16 inch diameter and one 12 inch diameter steel natural gas gathering line, one 16 inch diameter HDPE waterline impacting 110 square feet of PEM wetlands (Lenoxville, PA Quadrangle; Latitude: 41° 41' 07", Longitude: -75° 38' 34"),

5) One 16 inch diameter and one 12 inch diameter steel natural gas gathering line, one 16 inch diameter HDPE waterline, and a temporary timber mat bridge impacting 12,752 square feet of PEM wetlands (Lenoxville, PA Quadrangle; Latitude: 41° 41' 19", Longitude: -75° 38' 41"),

6) One 16 inch diameter and one 12 inch diameter steel natural gas gathering line, one 16 inch diameter HDPE waterline impacting 125 square feet of PFO wetlands (Lenoxville, PA Quadrangle; Latitude: 41° 41' 34", Longitude: -75° 38' 48"),

7) One 16 inch diameter and one 12 inch diameter steel natural gas gathering line, one 16 inch diameter HDPE waterline, and a temporary timber mat bridge impacting 2,734 square feet of PEM wetlands (Lenoxville, PA Quadrangle; Latitude: 41° 42' 08", Longitude: -75° 38' 32"),

8) One 16 inch diameter and one 12 inch diameter steel natural gas gathering line, one 16 inch diameter HDPE waterline, and a temporary timber mat bridge impacting 2,508 square feet of PEM wetlands (Lenoxville, PA Quadrangle; Latitude: 41° 42' 21", Longitude: -75° 38' 15"),

9) One 16 inch diameter and one 12 inch diameter steel natural gas gathering line, one 16 inch diameter HDPE waterline, and a temporary timber mat bridge impacting 20 lineal feet of unnamed tributary to East Branch Tunkhannock Creek (CWF) (Lenoxville, PA Quadrangle; Latitude: 41° 40' 32", Longitude: -75° 39' 50"),

10) One 16 inch diameter and one 12 inch diameter steel natural gas gathering line, one 16 inch diameter HDPE waterline, and a temporary timber mat bridge impacting 20 lineal feet of unnamed tributary to East Branch Tunkhannock Creek (CWF) (Lenoxville, PA Quadrangle; Latitude: 41° 40' 32", Longitude: -75° 39' 50"),

11) One 16 inch diameter and one 12 inch diameter steel natural gas gathering line, one 16 inch diameter HDPE waterline, and a temporary timber mat bridge impacting 16 lineal feet of unnamed tributary to East Branch Tunkhannock Creek (CWF) (Lenoxville, PA Quadrangle; Latitude: 41° 41' 04", Longitude: -75° 39' 03"),

12) One 16 inch diameter and one 12 inch diameter steel natural gas gathering line, one 16 inch diameter HDPE waterline, and a temporary timber mat bridge impacting 120 lineal feet of unnamed tributary to East Branch Tunkhannock Creek (CWF) (Lenoxville, PA Quadrangle; Latitude: 41° 41' 22", Longitude: -75° 38' 45"),

13) One 16 inch diameter and one 12 inch diameter steel natural gas gathering line, one 16 inch diameter

HDPE waterline, and a temporary timber mat bridge impacting 56 lineal feet of unnamed tributary to East Branch Tunkhannock Creek (CWF) (Lenoxville, PA Quadrangle; Latitude: 41° 41' 31", Longitude: -75° 38' 47"),

14) One 16 inch diameter and one 12 inch diameter steel natural gas gathering line, one 16 inch diameter HDPE waterline, and a temporary timber mat bridge impacting 34 lineal feet of unnamed tributary to East Branch Tunkhannock Creek (CWF) (Lenoxville, PA Quadrangle; Latitude: 41° 41' 31", Longitude: -75° 38' 47"),

15) One 16 inch diameter and one 12 inch diameter steel natural gas gathering line, one 16 inch diameter HDPE waterline impacting 10 lineal feet of unnamed tributary to East Branch Tunkhannock Creek (CWF) (Lenoxville, PA Quadrangle; Latitude: 41° 41' 34", Longitude: -75° 38' 48"),

16) One 16 inch diameter and one 12 inch diameter steel natural gas gathering line, one 16 inch diameter HDPE waterline, and a temporary timber mat bridge impacting 52 lineal feet of unnamed tributary to East Branch Tunkhannock Creek (CWF) (Lenoxville, PA Quadrangle; Latitude: 41° 41' 40", Longitude: -75° 38' 49"),

17) One 16 inch diameter and one 12 inch diameter steel natural gas gathering line, one 16 inch diameter HDPE waterline, and a temporary timber mat bridge impacting 40 lineal feet of unnamed tributary to Tunkhannock Creek (CWF) (Lenoxville, PA Quadrangle; Latitude: 41° 42' 03", Longitude: -75° 38' 32"),

18) One 16 inch diameter and one 12 inch diameter steel natural gas gathering line, one 16 inch diameter HDPE waterline, and a temporary timber mat bridge impacting 50 lineal feet of unnamed tributary to Tunkhannock Creek (CWF) (Lenoxville, PA Quadrangle; Latitude: 41° 42' 04", Longitude: -75° 38' 35").

The project will result in 398 lineal feet of temporary stream impacts and 1.01 acres of temporary wetland impacts, all for the purpose of installing one 16 inch diameter and one 12 inch diameter steel natural gas gathering lines, and one 16 inch diameter HDPE waterline to provide for natural gas and freshwater conveyance for Marcellus Shale natural gas development.

E4129-038: Anadarko E&P Company LP, 33 West Third Street, Suite 200, Williamsport, PA 17701, Mifflin & Piatt Townships, **Lycoming County**, ACOE Baltimore District.

To construct, operate, and maintain:

1) two six inch waterlines impacting 81 linear feet of an unnamed tributary to Larry's Creek (EV) and 836 square feet of adjacent palustrine emergent (PEM) wetlands (Linden, PA Quadrangle 41°13'15"N 77°13'01"W);

2) two six inch waterlines impacting 43 linear feet of an unnamed tributary to Larry's Creek (EV) (Linden, PA Quadrangle 41°13'29"N 77°12'57"W);

3) two six inch waterlines impacting 48 linear feet of an unnamed tributary to Larry's Creek (EV) (Linden, PA Quadrangle 41°14'08"N 77°12'47"W);

4) two six inch waterlines impacting 81 linear feet of an unnamed tributary to Seeley Run (EV) (Linden, PA Quadrangle 41°14'32"N 77°12'38"W);

5) two six inch waterlines impacting 49 linear feet of Seeley Run (EV) (Linden, PA Quadrangle 41°14'38"N 77°12'38"W).

The project will result in 302 linear feet of temporary stream impacts and 0.02 acre of temporary wetland

impacts all for the purpose of installing freshwater pipelines with associated roadways for Marcellus well development.

E5829-026. Angelina Gathering Company, LLC; 2350 North Sam Houston Parkway, Suite 125, Houston, TX 77032; Lenox Township, **Susquehanna County**, ACOE Baltimore District.

To construct, operate, and maintain:

1) Two 12 inch diameter steel natural gas gathering lines and one 16 inch diameter HDPE waterline impacting 355 square feet of PSS wetlands (Lenoxville, PA Quadrangle; Latitude: 41° 40' 20", Longitude: -75° 39' 59"),

2) Two 12 inch diameter steel natural gas gathering lines and one 16 inch diameter HDPE waterline, and a temporary timber mat bridge impacting 3,850 square feet of PEM wetlands (Lenoxville, PA Quadrangle; Latitude: 41° 40' 24", Longitude: -75° 39' 7"),

3) Two 12 inch diameter steel natural gas gathering lines and one 16 inch diameter HDPE waterline, and a temporary timber mat bridge impacting 1,487 square feet of PEM wetlands (Lenoxville, PA Quadrangle; Latitude: 41° 40' 36", Longitude: -75° 39' 25"),

4) Two 12 inch diameter steel natural gas gathering lines and one 16 inch diameter HDPE waterline impacting 50 square feet of PEM wetlands (Lenoxville, PA Quadrangle; Latitude: 41° 40' 47", Longitude: -75° 39' 27"),

5) Temporary rock construction entrance impacting 430 square feet of PEM wetlands (Lenoxville, PA Quadrangle; Latitude: 41° 40' 47", Longitude: -75° 39' 27").

The project will result in no disturbance to stream channels and 0.14 acre of temporary wetland impacts, all for the purpose of installing two 16 inch diameter steel natural gas gathering lines and one 16 inch diameter HDPE waterline to provide for natural gas and freshwater conveyance for Marcellus Shale natural gas development.

E0729-001. Caiman Penn Midstream, LLC, 5949 Sherry Lane, Suite 1300, Dallas, TX, 75225-8008. Richie Hodge Pipeline, in Freedom, Greenfield, and Juniata Townships, **Blair County**, ACOE Baltimore District.

To construct, operate, and maintain a 6-inch natural gas pipeline, with impacts to the following:

(1) 20 linear feet of a UNT to South Dry Run (CWF, MF) via open cut trenching and a temporary access road culvert crossing, (Blue Knob, PA Quadrangle, Latitude: N40°21'19.2", Longitude: W78°30'30.4");

(2) 22 linear feet of a UNT to Carson Run (CWF, MF) via open cut trenching and a temporary access road culvert crossing, (Blue Knob, PA Quadrangle, Latitude: N40°20'21.5", Longitude: W78°32'00.3");

(3) 21 linear feet of a UNT to Carson Run (CWF, MF) via open cut trenching and a temporary access road culvert crossing, (Blue Knob, PA Quadrangle, Latitude: N40°20'20.4", Longitude: W78°32'02.9");

(4) 12 linear feet of a UNT to Carson Run (CWF, MF) via a temporary access road culvert crossing, (Blue Knob, PA Quadrangle, Latitude: N40°20'19.8", Longitude: W78°32'05.8");

(5) 15 linear feet of Carson Run (CWF, MF) via a temporary access road culvert crossing, (Blue Knob, PA Quadrangle, Latitude: N40°20'10.4", Longitude: W78°31'51.0");

(6) 26 linear feet of a UNT to Carson Run (CWF, MF) via open cut trenching and a temporary access road culvert crossing, (Blue Knob, PA Quadrangle, Latitude: N40°20'36.9", Longitude: W78°32'18.6");

(7) 33 linear feet of a UNT to Carson Run (CWF, MF) via open cut trenching and a temporary access road culvert crossing, (Blue Knob, PA Quadrangle, Latitude: N40°20'40.6", Longitude: W78°32'46.0");

(8) 21 linear feet of a UNT to Carson Run (CWF, MF) via open cut trenching and a temporary access road culvert crossing, (Blue Knob, PA Quadrangle, Latitude: N40°20'40.5", Longitude: W78°32'52.4");

(9) 21 linear feet of a UNT to Carson Run (CWF, MF) via open cut trenching and a temporary access road culvert crossing, (Blue Knob, PA Quadrangle, Latitude: N40°20'41.4", Longitude: W78°32'56.5");

(10) 4 linear feet of a UNT to Bobs Creek (EV, MF) via boring, (Blue Knob, PA Quadrangle, Latitude: N40°20'48.8", Longitude: W78°33'19.9");

(11) 56 square feet of an EV palustrine emergent and palustrine scrub/shrub wetland via boring, (Blue Knob, PA Quadrangle, Latitude: N40°20'48.8", Longitude: W78°33'19.9");

(12) 22 linear feet of a UNT to Bobs Creek (EV, MF) via boring and a temporary access road bridge crossing, (Blue Knob, PA Quadrangle, Latitude: N40°21'05.6", Longitude: W78°33'49.6");

(13) 36 linear feet of UNTs to Bobs Creek (EV, MF) via boring and temporary access road bridge crossings, (Blue Knob, PA Quadrangle, Latitude: N40°21'09.4", Longitude: W78°33'51.9");

(14) 21 linear feet of a UNT to Blue Knob Run (CWF, MF) via open cut trenching and a temporary access road culvert crossing, (Blue Knob, PA Quadrangle, Latitude: N40°21'32.0", Longitude: W78°33'38.9");

(15) 21 linear feet of a UNT to Blue Knob Run (CWF, MF) via open cut trenching and a temporary access road culvert crossing, (Blue Knob, PA Quadrangle, Latitude: N40°21'35.8", Longitude: W78°33'34.5");

The project will result in 295 linear feet of temporary channel impacts and 56 square feet (0.01 acre) of permanent wetland impacts, all for the purpose of installing a natural gas pipeline and temporary construction access.

E0829-042: Appalachia Midstream, LLC, 100 IST Center, Horseheads, NY 14845, Tuscarora and Wyalusing Township, **Bradford County**, ACOE Baltimore District.

To construct, operate and maintain:

1. one 12 inch diameter natural gas line and a temporary timber mat bridge impacting 747 square feet of a Palustrine Emergent Wetland (Laceyville, PA Quadrangle, Latitude: 41°42'27", Longitude: -76°12'24");

2. one 12 inch diameter natural gas line and a temporary timber mat bridge impacting 150 linear feet of Little Tuscarora Creek (CWF, MF) (Laceyville, PA, Latitude: 41°42'20", Longitude: -76°11'58");

3. one 12 inch diameter natural gas line and a temporary timber mat bridge impacting 80 linear feet of Little Tuscarora Creek (CWF, MF) (Laceyville, PA, Latitude: 41°42'06", Longitude: -76°11'51");

4. one 12 inch diameter natural gas line and a temporary timber mat bridge impacting 747 square feet of a Palustrine Emergent Wetland (Laceyville, PA Quadrangle, Latitude: 41°42'05", Longitude: -76°11'50");

5. one 12 inch diameter natural gas line and a temporary timber mat bridge impacting 80 linear feet of an unnamed tributary to Little Tuscarora Creek (CWF, MF) (Laceyville, PA, Latitude: 41°41'51", Longitude: -76°11'45");

6. one 12 inch diameter natural gas line and a temporary timber mat bridge impacting 150 linear feet of an unnamed tributary to Little Tuscarora Creek (CWF, MF) and impacting 2,401 square feet of an adjacent Palustrine Emergent Wetland (Laceyville, PA Quadrangle, Latitude: 41°41'44", Longitude: -76°11'41");

7. one 12 inch diameter natural gas line and a temporary timber mat bridge impacting 21,326 square feet of a Palustrine Emergent Wetland (Laceyville, PA Quadrangle, Latitude: 41°41'42", Longitude: -76°11'33");

8. one 12 inch diameter natural gas line and a temporary timber mat bridge impacting 150 linear feet of an unnamed tributary to Little Tuscarora Creek (CWF, MF) and impacting 2,401 square feet of an adjacent Palustrine Emergent Wetland (Laceyville, PA Quadrangle, Latitude: 41°41'44", Longitude: -76°11'41");

9. one 12 inch diameter natural gas line, and a temporary timber mat bridge impacting 87 linear feet of an unnamed tributary to Fargo Creek (CWF, MF) and impacting 4,021 square feet of an adjacent Palustrine Emergent Wetland (Laceyville, PA Quadrangle, Latitude: 41°41'45", Longitude: -76°10'28");

10. one 12 inch diameter natural gas line, and a temporary timber mat bridge impacting 1,488 square feet of a Palustrine Emergent Wetland (Laceyville, PA Quadrangle, Latitude: 41°41'47", Longitude: -76°10'06");

11. one 12 inch diameter natural gas line impacting 62 linear feet of Fargo Creek (CWF, MF) (Laceyville, PA, Latitude: 41°41'48", Longitude: -76°10'00");

12. one 12 inch diameter natural gas line, and a temporary timber mat bridge impacting 4,285 square feet of a Palustrine Emergent Wetland (Laceyville, PA Quadrangle, Latitude: 41°41'50", Longitude: -76°09'46");

The project will result in 609 linear feet or 10,408 square feet of temporary stream impacts and 37,576 square feet (.86 acre) of PEM wetland impacts all for the purpose of installing a natural gas pipeline with associated access roadways for Marcellus shale development.

ACTIONS

THE PENNSYLVANIA CLEAN STREAMS LAW AND THE FEDERAL CLEAN WATER ACT

FINAL ACTIONS TAKEN FOR NPDES PERMITS AND WQM PERMITS

The Department has taken the following actions on previously received applications for new, amended and renewed NPDES and WQM permits, applications for permit waivers and NOIs for coverage under General Permits. This notice of final action is provided in accordance with 25 Pa. Code Chapters 91 and 92a and 40 CFR Part 122, implementing provisions of The Clean Streams Law (35 P. S. §§ 691.1—691.101) and the Federal Clean Water Act (33 U.S.C.A. §§ 1251—1376).

<i>Location</i>	<i>Permit Authority</i>	<i>Application Type or Category</i>
Section I	NPDES	Renewals
Section II	NPDES	New or Amendment
Section III	WQM	Industrial, Sewage or Animal Wastes; Discharges to Groundwater
Section IV	NPDES	MS4 Individual Permit
Section V	NPDES	MS4 Permit Waiver
Section VI	NPDES	Individual Permit Stormwater Construction
Section VII	NPDES	NOI for Coverage under NPDES General Permits

Sections I—VI contain actions regarding industrial, animal or sewage wastes discharges, discharges to groundwater, and discharges associated with MS4, stormwater associated with construction activities and CAFOs. Section VII contains notices for parties who have submitted NOIs for Coverage under General NPDES Permits. The approval for coverage under these General NPDES Permits is subject to applicable effluent limitations, monitoring, reporting requirements and other conditions in each General Permit. The approval of coverage for land application of sewage sludge or residential septage under applicable general permit is subject to pollutant limitations, pathogen and vector attraction reduction requirements, operational standards, general requirements, management practices and other conditions in the respective permit. The permits and related documents, effluent limitations, permitting requirements and other information are on file and may be inspected and arrangements made for copying at the contact office noted before the action.

Persons aggrieved by an action may appeal that action to the Environmental Hearing Board (Board) under section 4 of the Environmental Hearing Board Act (35 P. S. § 7514) and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law). The appeal should be sent to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, PO Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users may contact the Board through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin* unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary to the Board at (717) 787-3483. This paragraph does not, in and of itself, create a right of appeal beyond that permitted by applicable statutes and decisional law.

For individuals who wish to challenge an action, the appeal must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should contact a lawyer at once. Persons who cannot afford a lawyer may qualify for pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

I. NPDES Renewal Permit Actions

Northeast Regional Office: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915. Phone: 570.826.2553.

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed No.)</i>	<i>EPA Waived Y/N?</i>
PAS802214 (Storm Water)	North American Bulk Transportation 3190 Daniels Road Nazareth, PA 18064	Northampton County Upper Nazareth Township	Unnamed Tributary to East Branch Monocacy Creek (2-C)	Y
PAS402202 (Storm Water)	RPM Recycling Inc. 701 North Broadway Wind Gap, PA 18091	Northampton County	Little Bushkill Creek (1-F)	Y

Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110. Phone: 717-705-4707.

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA0080829 (Industrial Waste)	Keystone Protein Company PO Box 37 Fredericksburg, PA 17026	Lebanon County / Bethel Township	UNT to Beach Run / 7-D	Y
PA0261637 (Industrial Waste)	NGK Metals Corporation 917 Highway 11 South Sweetwater, TN 37874	Berks County / Muhlenberg Township	Laurel Run / 3-C	Y

Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA0222020 (Sewage)	Kuhl Road Property Association SFTF 5775 Kuhl Road Erie, PA 16510-4710	Erie County Harborcreek Township	Unnamed Tributary to Fourmile Creek (15)	Y

II. New or Expanded Facility Permits, Renewal of Major Permits and EPA Nonwaived Permit Actions

Southeast Region: Water Management Program Manager, 2 East Main Street, Norristown, PA 19401

NPDES Permit No. PA0244589, Sewage, **Linh Quang Buddhist Temple**, 821 Ridge Road, Telford, PA 18969.

This proposed facility is located in Salford Township, **Montgomery County**.

Description of Proposed Action/Activity: Approval for the issuance of an NPDES permit to discharge an average flow of 705 GPD from a facility known as Linh Quang Buddhist Temple STP to Unnamed Tributary of Ridge Valley Creek in Watershed 3-E.

Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481

PA0020141, Sewage, SIC Code 4952, **Brookville Municipal Authority**, 30 Darrah Street, Brookville, PA 15825-2404. Facility Name: Brookville Municipal Authority. This existing facility is located in Brookville Borough, **Jefferson County**.

Description of Existing Activity: The application is for a renewal of an NPDES permit for an existing discharge of treated sewage.

The receiving stream, Redbank Creek, is located in State Water Plan watershed 17-C and is classified for trout stocking fishes, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of 1.25 MGD.

<i>Parameters</i>	<i>Mass (lb/day)</i>			<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Weekly Average</i>	<i>Minimum</i>	<i>Average Monthly</i>	<i>Weekly Average</i>	<i>Instant. Maximum</i>
Flow (MGD)	Report	Report	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0	XXX	XXX	9.0
Total Residual Chlorine	XXX	XXX	XXX	0.2	XXX	0.6
CBOD ₅	260	417	XXX	25	40	50
Total Suspended Solids	313	469	XXX	30	45	60
Fecal Coliform (CFU/100 ml)						
May 1 - Sep 30	XXX	XXX	XXX	200	XXX	1000
Oct 1 - Apr 30	XXX	XXX	XXX	2000	XXX	10000

The proposed effluent limits for Outfalls 003-005 are based on a design flow of N/A MGD.

This discharge shall consist of uncontaminated stormwater runoff from the sewage treatment plant site.

In addition, the permit contains the following major special conditions:

- Chlorine Minimization
- Stormwater Best Management Practices
- Whole Effluent Toxicity testing for the renewal permit
- Electronic DMR submittal requirement
- Sanitary Sewer Overflow prohibition

You may make an appointment to review the DEP files on this case by calling the File Review Coordinator at 814-332-6340.

The EPA Waiver is not in effect.

PA0263940, Sewage, SIC Code 8800, **Renee Terrill**, 21466 State Highway 86, Cambridge Springs, PA 16403. Facility Name: Terrill SRSTP. This proposed facility is located in Woodcock Township, **Crawford County**.

Description of Proposed Activity: This application is for a new NPDES permit for a new discharge of treated sanitary wastewater from a single residence.

The receiving stream, an Unnamed Tributary to the Woodcock Creek, is located in State Water Plan watershed 16-A and is classified for High Quality Waters—Cold Water Fishes, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.0004 MGD.

Parameters	Mass (lbs/day)		Concentration (mg/l)		
	Average Monthly	Minimum	Average Monthly	Instant. Maximum	
Flow (MGD)	Report	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0	XXX	9.0
CBOD ₅	XXX	XXX	XXX	10	XXX
Total Suspended Solids	XXX	XXX	XXX	10	XXX
Fecal Coliform (CFU/100 ml)	XXX	XXX	XXX	200	XXX
				Geo Mean	1,000

You may make an appointment to review the DEP files on this case by calling the File Review Coordinator at 814-332-6340.

The EPA Waiver is in effect.

III. WQM Industrial Waste and Sewerage Actions under The Clean Streams Law

Southeast Region: Water Management Program Manager, 2 East Main Street, Norristown, PA 19401

WQM Permit No. 0912401, Sewage, **Wrightstown Township**, 2033 Second Street Pike, Wrightstown, PA 18940.

This proposed facility is located in Wrightstown Township, **Bucks County**.

Description of Action/Activity: Construction and operation of a wastewater treatment system which consist of individual grinder stations and a force main conveyance to treatment lagoon.

WQM Permit No. 2312401, Sewage **Delaware County Regional Water Quality Control Authority**, P. O. Box 999, Chester, PA 19016-0999.

This proposed facility is located in Rose Valley Borough, **Delaware County**.

Description of Action/Activity: The previous chlorination system that used chlorine gas is being replaced by one that uses sodium hypochlorite solution. The previous dechlorination system that used sulfite tablets is being replaced by one that uses sodium thiosulfate dry crystals.

WQM Permit No. 1505420, Sewage, **Renewal, West Vincent Township**, 729 St. Matthews Road, Chester Springs, PA 19425.

This proposed facility is located in West Vincent Township, **Chester County**.

Description of Action/Activity: Renewal of continued operation of the existing WQM Permit.

WQM Permit No. 1505428, Sewage, **Amendment, Borough of Spring City**, 6 South Church Street, Spring City, PA 19475.

This proposed facility is located in Spring City Borough, **Chester County**.

Description of Action/Activity: Construction of chemical feed facilities for the addition of ferric chloride and/or aluminum sulfate at the Borough's WWTP to reduce effluent phosphorus concentrations.

WQM Permit No.1512402, Sewage, **Easttown Municipal Authority**, 566 Beaumont Road, Devon, PA 19333.

This proposed facility is located in Easttown Township, **Chester County**.

Description of Action/Activity: Construction of a new wet well/dry well sewage pumping station and emergency generator/control building, associated with piping and electrical work, site work, demolition of the existing system.

WQM Permit No. 2312402, Sewage, **Little Washington Wastewater Company**, 762 West Lancaster Avenue, Bryn Mawr, PA 19010-3489.

This proposed facility is located in Media Borough, **Delaware County**.

Description of Action/Activity: This permit is to improve modifications to Lincoln Street Pump Station.

WQM Permit No. WQG010037, Sewage, **Salisbury Behavioral Health, Inc.**, 6061 Durham Road, Pipersville, PA 18947.

This proposed facility is located in Plumstead Township, **Bucks County**.

Description of Action/Activity: Construction and operation of a small flow treatment plant.

WQM Permit No. 4693412, Sewage, **Jonathan Blair**, 136 Haldeman Road, Schwenksville, PA 19473.

This proposed facility is located in Perkiomen Township, **Montgomery County**.

Description of Action/Activity: Permit transferred from Michael and Carol English to Jonathan Blair.

WQM Permit No. 2389417-T3, Sewage, **M & B Environmental, Inc.**, 744 Harleysville Pike, Harleysville, PA 19438.

This proposed facility is located in Concord Township, **Delaware County**.

Description of Action/Activity: Permit transferred from American Commonwealth Management Services, Inc. to M & B Environmental, Inc.

Northeast Region: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790

WQM Permit No. 4012402, Sewage, SIC Code 4952, **Sanitary Sewer Authority of the Borough of Shickshinny**, PO Box 62, Shickshinny, PA 18655-0062.

This proposed facility is located in Conyngham Township, **Luzerne County**.

Description of Proposed Action/Activity: Issuance of Water Quality Management Permit for the upgrade of a 450,000 gpd wastewater treatment facility utilizing two new sequencing batch reactors plus the modification of its three existing treatment tanks.

Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110. Phone: 717-705-4707.

WQM Permit No. 0795401 Amendment 11-1, Sewerage, **GSP Management Co.**, PO Box 677, Morgantown, PA 19543-0677.

This proposed facility is located in Juniata Township, **Blair County**.

Description of Proposed Action/Activity: Amendment approval for the modifications to sewage facilities consisting of the installation of a two tube tablet dispenser system between chlorine contact tank and the outfall to feed tablets for de-chlorination and a six tier aluminum or fiberglass cascade placed downstream of the dispenser.

WQM Permit No. WQG02361201, Sewerage, **Leacock Township Municipal Authority**, PO Box 558, 3545 West Newport Road, Intercourse, PA 17534.

This proposed facility is located in Leacock Township, **Lancaster County**.

Description of Proposed Action/Activity: Extension to the sanitary sewer system to provide upgrades for increased needs.

Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481

WQM Permit No. WQG018834, Sewage, **Jorden D. Mosher**, 8261 US Route 6, Union City, PA 16438.

This proposed facility is located in Union Township, **Erie County**.

Description of Proposed Action/Activity: Issuance of a new permit for a Single Residence Sewage Treatment Plant to replace a malfunctioning on-lot system.

WQM Permit No. 4374404, Sewage, **Amendment No. 3, Borough of Grove City**, P. O. Box 110, Grove City, PA 16127-0110.

This existing facility is located in Grove City Borough, **Mercer County**.

Description of Proposed Action/Activity: This permit amendment approves the modification/operation of sewerage wastewater facilities.

WQM Permit No. 2511405, Sewage, **Harborcreek Township Sewer Authority**, 5601 Buffalo Road, Harborcreek, PA 16421.

This proposed facility is located in Harborcreek Township, **Erie County**.

Description of Proposed Action/Activity: This permit approves the construction and operation of a pump station, force main, and sewer extensions to support 42 existing sanitary requirements on Garfield Avenue, Wallace Street, and Depot Street in Harborcreek Township.

WQM Permit No. WQG018832, Sewage, **Renee Terrill**, 21466 State Highway 86, Cambridge Springs, PA 16403.

This proposed facility is located in Woodcock Township, **Crawford County**.

Description of Proposed Action/Activity: Issuance of a new permit for a Small Flow Treatment Facility to repair a malfunctioning on-lot system.

IV. NPDES Stormwater Discharges from MS4 Permit Actions**V. NPDES Waiver Stormwater Discharges from MS4 Actions****VI. NPDES Discharges of Stormwater Associated with Construction Activities Individual Permit Actions**

Southeast Region: Water Management Program Manager, 2 East Main Street, Norristown, PA 19401

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI01 1508069A-1	FSB—Willistown, LP 150 North Radnor-Chester Road—Suite A-220 Radnor, PA 19087	Chester	Willistown Township	Ridley Creek (HQ-TSF-MF)
PAI01 1509015A-1	Telvil Corporation 527 Main Street Harleysville, PA 19428	Chester	East Coventry Township	Unnamed Tributary Pigeon Creek/Schuylkill River (HQ-TSF)

Northeast Region: Watershed Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI023511003	North Pocono Public Library 123 Van Brunt St. Moscow, PA 18444	Lackawanna	Moscow Borough	Van Brunt Creek, HQ-CWF, MF
PAI023905022R	Pulte Homes 1100 Northbrook Drive Trevose, PA 19053	Lehigh	Lower Macungie Township, and Upper Macungie Township	Schaefer Run, HQ-CWF, MF

Southcentral Region: Watershed Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110. Telephone 717-705-4802.

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI032111004	Mr. David W. Lutz Tex Visions Pine Hill Industrial Park PO Box 810 Carlisle, PA 17013	Cumberland	Middlesex Township	Letort Spring Run/ HQ-CWF, MF

Southwest Region: Waterways and Wetlands Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI050305004R	Armstrong County Industrial Development Council 124 Armsdale Road, Suite 205 Kittanning, PA 16201	Armstrong	South Buffalo Township	Pine Run (HQ-TSF) Nicholson Run (WWF)
PAI050312001	PennDOT District 10-0 PO Box 429 2550 Oakland Ave Indiana, PA 15701	Armstrong	West Franklin Township	UNT to Buffalo Creek (HQ-TSF)

VII. Approvals to Use NPDES and/or Other General Permits

The EPA Region III Administrator has waived the right to review or object to this permit action under the waiver provision in 40 CFR 123.23(d).

List of NPDES and/or Other General Permit Types

PAG-1	General Permit for Discharges from Stripper Oil Well Facilities
PAG-2	General Permit for Discharges of Stormwater Associated with Construction Activities (PAR)
PAG-3	General Permit for Discharges of Stormwater from Industrial Activities
PAG-4	General Permit for Discharges from Small Flow Treatment Facilities
PAG-5	General Permit for Discharges from Gasoline Contaminated Ground Water Remediation Systems
PAG-6	General Permit for Wet Weather Overflow Discharges from Combined Sewer Systems
PAG-7	General Permit for Beneficial Use of Exceptional Quality Sewage Sludge by Land Application

PAG-8	General Permit for Beneficial Use of Nonexceptional Quality Sewage Sludge by Land Application to Agricultural Land, Forest, a Public Contact Site or a Land Reclamation Site
PAG-8 (SSN)	Site Suitability Notice for Land Application under Approved PAG-8 General Permit Coverage
PAG-9	General Permit for Beneficial Use of Residential Septage by Land Application to Agricultural Land, Forest or a Land Reclamation Site
PAG-9 (SSN)	Site Suitability Notice for Land Application under Approved PAG-9 General Permit Coverage
PAG-10	General Permit for Discharge Resulting from Hydrostatic Testing of Tanks and Pipelines
PAG-11	(To Be Announced)
PAG-12	CAFOs
PAG-13	Stormwater Discharges from MS4

*General Permit Type—PAG-02**Facility Location:*

<i>Municipality & County</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water / Use</i>	<i>Contact Office & Phone No.</i>
Aston Township Delaware County	PAG0200 2308023-R	J Grace Company PO Box 91 Chadds Ford, PA 19317	Tributary Chester Creek (TSF-MF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Butler Township, Schuylkill County	PAG02005403020R	Irish Springs Subdivision Scott McCormick 16 North Oak St. Mt. Carmel, PA 17851	UNT to Little Mahanoy Creek, CWF, MF	Schuylkill Co. Cons. Dist. 570-622-3742
Wilkes-Barre City, Luzerne County	PAG02004012004	Wilkes University Justin Kraynack 84 W. South St. Wilkes-Barre, PA 18766	Susquehanna River, WWF, MF	Luzerne Co. Cons. Dist. 570-674-7991
Cumberland Twp. Adams County	PAG02000112002	Carl G. Woerner 1195 Herrs Ridge Road Gettysburg, PA 17325	Willoughby Run/WWF	Adams Co. Conservation District 670 Old Harrisburg Rd, Suite 201 Gettysburg, PA 17325 717.334.0636
Conewago Township Adams County	PAG02000111023	Laverne Leese BJMR Enterprises 932 Bollinger Road Littlestown, PA 17340	UNT to South Branch Conewago Creek/WWF	Adams Co. Conservation District 670 Old Harrisburg Rd, Suite 201 Gettysburg, PA 17325 717.334.0636
Tyrone Township Adams County	PAG02000111021	Malcolm Rudolph Granite Ridge Farms 200 Ginzle Road New Oxford, PA 17350	Tributary to Plum Run/ WWF	Adams Co. Conservation District 670 Old Harrisburg Rd, Suite 201 Gettysburg, PA 17325 717.334.0636
Germany Township Adams County	PAG02000112005	Tony R. Forbes Bon Ton Builders, Inc. 1060 Baltimore Street Hanover, PA 17331	Alloway Creek/ WWF	Adams Co. Conservation District 670 Old Harrisburg Rd, Suite 201 Gettysburg, PA 17325 717.334.0636
Womelsdorf Boro. Berks County	PAI2030612001	Galen Good Squire Hill at Womelsdorf 1901 Birch Road Lebanon, PA 17042	UNT to Tulpehocken Creek/HQ-CWF	Berks County Conservation Dist. 1238 County Welfare Rd, Ste 200 Leesport, PA 19533-9710 610.372.4657, Ext. 142
Silver Spring Twp. Cumberland County	PAG02002110008R	Mark DiSanto Triple Crown Corporation 5351 Jaycee Avenue Harrisburg, PA 17112	Trindle Spring Run/CWF	Cumberland Co Conservation Dist 310 Allen Road, Suite 301 Carlisle PA 17013 717.240.7812

<i>Facility Location: Municipality & County</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
Elizabethtown Boro. Lancaster County	PAG02003611065	Elizabethtown Area Sch. Dist. 600 East High Street Elizabethtown, PA 17022	Conoy Creek/ TSF	Lancaster Co Conservation District 1383 Arcadia Road, Room 200 Lancaster PA 17601 717.299.5361, Ext. 5
East Petersburg Boro. Lancaster County	PAG02003611104	Hempfield School District 200 Church Street Landisville, PA 17538	UNT Conestoga Creek/ TSF, MF	Lancaster Co Conservation District 1383 Arcadia Road, Room 200 Lancaster PA 17601 717.299.5361, Ext. 5
Caernarvon Twp. Lancaster County	PAG02003612007	John M. Stoltzfus 2431 Conestoga Creek Road Narvon, PA 17555	Conestoga River/ WWF, MF	Lancaster Co Conservation District 1383 Arcadia Road, Room 200 Lancaster PA 17601 717.299.5361, Ext. 5
Penn Township Lancaster County	PAG02003612013	Oak Tree Development Group, LLC 903 Wheatland Avenue Lancaster, PA 17603	Chickies Creek/ WWF	Lancaster Co Conservation District 1383 Arcadia Road, Room 200 Lancaster PA 17601 717.299.5361, Ext. 5
Mount Joy Township Lancaster County	PAG02003612014	Members 1st Federal Credit Union 5000 Louise Drive Mechanicsburg, PA 17055	UNT Conoy Creek/TSF	Lancaster Co Conservation District 1383 Arcadia Road, Room 200 Lancaster PA 17601 717.299.5361, Ext. 5
Brecknock Township Lancaster County	PAG02003612015	Pine Grove Mennonite Church 1194 Reading Road Bowmansville, PA 17057	Muddy Creek/ TSF	Lancaster Co Conservation District 1383 Arcadia Road, Room 200 Lancaster PA 17601 717.299.5361, Ext. 5
Brecknock Township Lancaster County	PAG02003612019	Raymond S. Zimmerman 1220 Muddy Creek Road Denver, PA 17517	Little Muddy Creek/TSF	Lancaster Co Conservation District 1383 Arcadia Road, Room 200 Lancaster PA 17601 717.299.5361, Ext. 5
Providence Twp. Lancaster County	PAG02003612020	Quarryville Borough Authority 300 Saint Catherine Street Quarryville, PA 17566	South Fork to Big Beaver Creek/TSF, MF	Lancaster Co Conservation District 1383 Arcadia Road, Room 200 Lancaster PA 17601 717.299.5361, Ext. 5
Manor Township Lancaster County	PAG02003612021	M. James Cosentino 354 Rock Hill Road Millersville, PA 17551	UNT Susquehanna River/WWF, MF	Lancaster Co Conservation District 1383 Arcadia Road, Room 200 Lancaster PA 17601 717.299.5361, Ext. 5
Providence Twp. Lancaster County	PAG02003612020	Quarryville Borough Authority 300 Saint Catherine Street Quarryville, PA 17566	South Fork to Big Beaver Creek/TSF, MF	Lancaster Co Conservation District 1383 Arcadia Road, Room 200 Lancaster PA 17601 717.299.5361, Ext. 5

Northcentral Region: Waterways & Wetlands Program Manager, 208 W Third Street, Williamsport, Pa 17701

*Facility Location:
Municipality &
County*

<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
PAG02000812014	Warren J Croft 13 Lyman Ave Waverly NY 14892	Cayuta Creek WWF	Bradford County Conservation District Stoll Natural Resource Center 200 Lake Rd Ste E Towanda PA 18848 (570) 265-5539 X 120
PAG02000812015	Marty J Muggleton Terra Aqua Resource Mgmt 1000 Commerce Park Dr Williamsport PA 17701	UNT to Susquehanna River WWF	Bradford County Conservation District Stoll Natural Resource Center 200 Lake Rd Ste E Towanda PA 18848 (570) 265-5539 X 120
PAG02001712002	Thomas Delaney Exit 101 LLC 1018 Second St Encinitas CA 92024	Gravel Lick Run CWF	Clearfield County Conservation District 511 Spruce St Ste 6 Clearfield PA 16830 Phone: (814) 765-2629
PAG02001912001	Matthew J Zoppetti PO Box 333 Bloomsburg PA 17815	W Branch of Briar Creek & N Branch of Susquehanna River CWF, MF	Columbia County Conservation District 702 Sawmill Rd Ste 204 Bloomsburg PA 17815 (570) 784-1310 X 102
PAG02004111030	Francois Gingras Leclerc Foods USA 44 Park Dr Montgomery PA 17752	UNT to W.B. Susquehanna River WWF, MF	Lycoming County Conservation District 542 County Farm Rd Suite 202 Montoursville PA 17754 (570) 433-3003
PAG02005512002	Jeff Goff 88 Old Colony Rd Selinsgrove PA 17870	UNT to Penns Creek CWF	Snyder County Conservation District 10541 Route 522 Middleburg PA 17842 (570) 837-3000

Southwest Region: Regional Waterways & Wetlands Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

*Facility Location:
Municipality &
County*

<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
PAG02000211046	The Housing Authority of the City of Pittsburgh 1000 Ross Street Pittsburgh, PA 15219	Allegheny County (WWF)	Allegheny County CD Lexington Technology Park Building 1 Suite 102 400 North Lexington Ave Pittsburgh, PA 15208 (412) 241-7645
PAG02001111008	Saint Francis University PO Box 600 Loretto, PA 15940	UNT to Clearfield Creek (CWF)	Cambria County CD 401 Candlelight Suite 221 Ebensburg, PA 15931 (814) 472-2120
PAG02003212003	COSM Realty Group, LTD 1265 Wayne Ave Indiana, PA 15701	Marsh Run/Stoney Run (CWF)	Indiana County CD 625 Kolter Dr Suite 8 Indiana, PA 15701 (724) 471-4751
PAG02003212005	Indiana County CD 625 Kolter Dr Suite 8 Indiana, PA 15701	Bear Run (CWF)	Indiana County CD 625 Kolter Dr Suite 8 Indiana, PA 15701 (724) 471-4751

<i>Facility Location: Municipality & County</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water / Use</i>	<i>Contact Office & Phone No.</i>
Peters Township Washington County	PAG02006312007	Giant Eagle, Inc. Pasquale Avolio, P.E. 261 Kappa Drive Pittsburgh, PA 15238	UNT to Brush Run (WWF)	Washington County CD 2800 North Main St Suite 105 Washington, PA 15301 (724)705-7098
Slippery Rock Township Butler County	PAG02001012015	Slippery Rock Municipal Authority PO Box 157 Slippery Rock PA 16057	Slippery Rock Creek CWF	Butler County Conservation District 724-284-5270
Adams Township Butler County	PAG02001012016	Municipal Water Authority of Adams Township 600 Valencia Road PO Box 807 Mars PA 16046	Breakneck Creek WWF	Butler County Conservation District 724-284-5270
City of Erie Erie County	PAG02002512003	Erie County Convention Center Authority 809 French Street Erie PA 16501	Presque Isle Bay WWF	Erie County Conservation District 814-825-6403
Wilmington Township Lawrence County	PAG02003712004	New Wilmington Family Medicine Mr. Anthony Uberti 565 West Neshannock Ave New Wilmington PA 16142	UNT Little Neshannock Creek TSF	Lawrence County Conservation District 724-652-4512
Clinton County, Leidy and Noyes Townships	PAG2091812003	Bureau of Abandoned Mine Reclamation Cambria Office 286 Industrial Park Road Ebensburg, PA 15931-4119	Kettle Creek Basin/TSF	PA DEP Cambria Office 286 Industrial Park Road Ebensburg, PA 15931-4119 814-472-1800
Plains Township Luzerne County	PAG2-1140-12-003	PA DEP Bureau of Abandoned Mine Reclamation 2 Public Square 5th Floor Wilkes-Barre, PA 18711-0790	Mill Creek (CWF)	PA DEP Bureau of Abandoned Mine Reclamation 2 Public Square 5th Floor Wilkes-Barre, PA 18711-0790 (570) 826-2371

General Permit Type—PAG-03

<i>Facility Location: Municipality & County</i>	<i>Permit No.</i>	<i>Applicants Name & Address</i>	<i>Receiving Water / Use</i>	<i>Contact Office & Phone No.</i>
City of Philadelphia Philadelphia County	PAR600114	Angel Martinez dba Clearfield Recycling 547 W. Clearfield Street Philadelphia, PA 19133	Delaware River—3J	Southeast Region Clean Water Program 484.250.5970
City of Philadelphia Philadelphia County	PAR120025	Kraft Foods Global Inc. 12000 E. Roosevelt Boulevard Philadelphia, PA 19116	Unnamed Tributary To Walton Run—3J	Southeast Region Clean Water Program 484.250.5970
Lower Swatara Township Dauphin County	PAR113554	Tyco Electronics P. O. Box 3608 M.S. 106-018 Harrisburg, PA 17105-3608	UNT to Laurel Run / WWF	DEP—SCRO 909 Elmerton Avenue Harrisburg, PA 17110-8200 717-705-4707

Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481

*Facility Location:
Municipality &
County*

<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
Wayne Township Crawford County	PAR608303 Hovis, Inc. 1973 Old Route 322 Cochranton, PA 16314	An Unnamed Tributary to French Creek (16-D)	DEP NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 814/332-6942
City of New Castle Lawrence County	PAR218312 Castle Builder Supply, Inc. 1409 Moravia Street New Castle PA 16101-3930	Big Run (20-A)	DEP NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 814/332-6942
South Pymatuning Township Mercer County	PAR128304 Dean Dairy Products Co. 1858 Oneida Lane, Sharpsville, PA 16150	Unnamed Tributary to McCullough Run (20-A)	DEP NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 814/332-6942

General Permit Type—PAG-4

Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481

*Facility Location:
Municipality &
County*

<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
Union Township Erie County	PAG041066 Jordan D. Mosher 8261 US Route 6 Union City, PA 16438	Unnamed Tributary of South Branch French Creek 16-A	DEP NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 814/332-6942

General Permit Type—PAG-10

*Facility Location:
Municipality &
County*

<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
Bridgewater, Brooklyn Dimock Township Susquehanna County	PAG102223 Williams Field SVC Co LLC 1605 Coraopolis Heights Rd. Moon Township PA 15108	Meshoppen Creek CWF, MF UNT to Hop Bottom Creek CWF, MF	DEP—NERO Water Management 2 Public Square Wilkes-Barre, PA 18701 (570-826-2511)
Bridgewater, Brooklyn Dimock & Springville Township Susquehanna County	PAG102224 Williams Field SVC Co LLC 1605 Coraopolis Heights Rd. Moon Township PA 15108	Meshoppen Creek Basin CWF, MF UNT to White Creek CWF, MF	DEP—NERO Water Management 2 Public Square Wilkes-Barre, PA 18701 (570-826-2511)
Bridgewater & Forest Lake Township Susquehanna County	PAG102225 Williams Field SVC Co LLC 1605 Coraopolis Heights Rd. Moon Township PA 15108	Forest Lake Creek Basin CWF, MF	DEP—NERO Water Management 2 Public Square Wilkes-Barre, PA 18701 (570-826-2511)
Forest Lake Township Susquehanna County	PAG102226 Williams Field SVC Co LLC 1605 Coraopolis Heights Rd. Moon Township PA 15108	Forest Lake Creek Basin CWF, MF	DEP—NERO Water Management 2 Public Square Wilkes-Barre, PA 18701 (570-826-2511)
Bridgewater, Brooklyn Township Susquehanna County	PAG102227 Williams Field SVC Co LLC 1605 Coraopolis Heights Rd. Moon Township PA 15108	Meshoppen Creek CWF, MF	DEP—NERO Water Management 2 Public Square Wilkes-Barre, PA 18701 (570-826-2511)

*General Permit Type—PAG-12**Facility Location:*

<i>Municipality & County</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
Delaware Township Juniata County	PAG123628	Benner's Swine Barn, LLC 56 Platt Hollow Road Thompsontown, PA 17094	UNT to Delaware Creek / TSF	DEP—SCRO 909 Elmerton Avenue Harrisburg, PA 17110-8200 717-705-4707
Warwick Township Lancaster County	PAG123602	Elvin Hurst Poultry Farm 61 Clay Road Lititz, PA 17543	Lititz Run / WWF	DEP—SCRO 909 Elmerton Avenue Harrisburg, PA 17110-8200 717-705-4707
Conewago Township York County	PAG123645	Sloat Crane Poultry Farm 170 Daugherty Road York, PA 17404	UNT to Little Conewago Creek / TSF	DEP—SCRO 909 Elmerton Avenue Harrisburg, PA 17110-8200 717-705-4707

PUBLIC WATER SUPPLY PERMITS

The Department has taken the following actions on applications received under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17) for the construction, substantial modification or operation of a public water system.

Persons aggrieved by an action may appeal that action to the Environmental Hearing Board (Board) under section 4 of the Environmental Hearing Board Act and 2 Pa.C.S. §§ 501—508 and 701—704. The appeal should be sent to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, PO Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users may contact the Board through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin* unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary to the Board at (717) 787-3483. This paragraph does not, in and of itself, create a right of appeal beyond that permitted by applicable statutes and decisional law.

For individuals who wish to challenge an action, the appeal must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this document to a lawyer at once. Persons who cannot afford a lawyer may qualify for pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

SAFE DRINKING WATER**Actions taken under the Pennsylvania Safe Drinking Water Act**

Southeast Region: Water Supply Management Program Manager, 2 East Main Street, Norristown, PA 19401

Permit No. 2311508, Public Water Supply.

Applicant **Aqua Pennsylvania, Inc.**
762 West Lancaster Avenue
Bryn Mawr, PA 19010

Township	Middletown
County	Delaware
Type of Facility	PWS
Consulting Engineer	CET Engineering Services 1240 North Mountain Road Harrisburg, PA 17112
Permit to Construct Issued	March 29, 2012
<i>Central Office: Bureau Director, Safe Drinking Water, PO Box 8467, Harrisburg, PA 17105-8467</i>	
Permit No. [9996536] , Public Water Supply.	
Applicant	[Avoca Spring Water, Inc.]
[Township or Borough]	[Clifton Springs, New York]
Responsible Official	[Rosemary Viggiano, Manager]
Type of Facility	[Out of State Bottled System]
Effective Date	[March 30, 2012]
Description of Action	[Public Water Supply Permit to sell bottled water in Pennsylvania Rescinded for non-compliance with the monitoring requirements. All bottled water products from Avoca Spring Water, Inc. barred for sale in Pennsylvania.]

Southcentral Region: Water Supply Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110

Operations Permit issued to: **Mountaintop Mobile Home Park**, 7360156, Caernarvon Township, **Lancaster County** on 3/29/2012 for the operation of facilities approved under Construction Permit No. 3611547 MA.

Operations Permit issued to: **F & P Enterprises**, 7360006, Brecknock Township, **Lancaster County** on 3/28/2012 for the operation of facilities approved under Construction Permit No. 3611534 MA.

Operations Permit issued to: **Heritage Estates Mobile Home Park**, 7360166, Providence Township, **Lancaster County** on 3/28/2012 for the operation of facilities approved under Construction Permit No. 3611535.

Operations Permit issued to: **Model Enterprises, Inc.**, 7360010, Rapho Township, **Lancaster County** on 3/30/2012 for the operation of facilities approved under Construction Permit No. 3611537 MA.

Operations Permit issued to: **Bailey Family Limited Partnership**, 7360023, Mount Joy Township, **Lancaster County** on 3/29/2012 for the operation of facilities submitted under Application No. 3612506 MA.

Operations Permit issued to: **Kensington Water Company**, 7280064, Letterkenny Township, **Franklin County** on 3/30/2012 for the operation of facilities submitted under Application No. 2812501 MA.

Source Water Protection Program Approval issued to **Birdsboro Municipal Authority**, 202 East Main Street, Birdsboro, PA 19508, PWSID 3060010, Borough of Birdsboro, **Berks County** on March 28, 2012.

Northcentral Region: Safe Drinking Water Program Manager, 208 West Third Street, Williamsport, PA 17701

Permit No. Minor Amendment—Operation Public Water Supply.

Applicant **Aqua Pennsylvania, Inc.**
 [Township or Borough] Penn Township
 County **Snyder**
 Responsible Official Mr. Tate Hunsinger
 Aqua Pennsylvania, Inc.
 204 Sunbury Street
 Shamokin, PA 17872
 Type of Facility Public Water Supply
 Consulting Engineer Ms. Amanda Stank
 CET Engineering Services
 1240 North Mountain Road
 Harrisburg, PA 17112-1788
 Permit Issued March 28, 2012
 Description of Action 4-log inactivation of viruses at
 Entry Point 100 (Well No. 3).

Permit No. Minor Amendment—Operation Public Water Supply.

Applicant **Stony Brook Circle MHP**
 [Township or Borough] Orange Township
 County **Columbia**
 Responsible Official Donald Bennett, Sr., Operator
 Stony Brook Management, LLC
 P. O. Box 677
 Morgantown, PA 19543
 Type of Facility Public Water Supply
 Consulting Engineer James A. Cieri, P.E.
 ACT ONE Consultants, Inc.
 200 S. 41st Street, Suite A
 Harrisburg, PA 17111
 Permit Issued March 29, 2012
 Description of Action 4-log inactivation of viruses at
 Entry Point 101 (Well Nos. 1
 and 3).

Permit No. Minor Amendment—Operation Public Water Supply.

Applicant **Burnside Borough Water System**
 [Township or Borough] Burnside Borough
 County **Clearfield**

Responsible Official Burnside Borough Water System
 P. O. Box 208
 Burnside, PA 15721
 Type of Facility Public Water Supply
 Consulting Engineer Mr. John Larimer
 CME Engineering
 165 Union Street
 Somerset, PA 15501
 Permit Issued March 30, 2012
 Description of Action 4-log inactivation of viruses at
 Entry Points 101 and 102
 (Schoolhouse & Reservoir Wells).

Permit No. Minor Amendment—Operation Public Water Supply.

Applicant **Tiadaghton View MHP**
 [Township or Borough] Upper Fairfield Township
 County **Lycoming**
 Responsible Official Mr. Frank Perano
 GSP Management Company
 P. O. Box 677
 Morgantown, PA 19543
 Type of Facility Public Water Supply
 Consulting Engineer James A. Cieri, P.E.
 ACT ONE Consultants, Inc.
 200 S. 41st Street, Suite A
 Harrisburg, PA 17111
 Permit Issued March 30, 2012
 Description of Action 4-log inactivation of viruses at
 Entry Point 101 (Well Nos. 1, 2
 and 3).

Southwest Region: Water Supply Management Program Manager, 400 Waterfront Drive, Pittsburgh, Pa 15222-4745

Permit No. 2611507MA, Minor Amendment. Public Water Supply.

Applicant **National Pike Water Authority**
 PO Box 10
 Markleysburg, PA 15459
 [Borough or Township] Henry Clay and Wharton
 Townships
 County **Fayette**
 Type of Facility Water system
 Consulting Engineer McMillen Engineering
 115 Wayland Smith Drive
 Uniontown, PA 15401
 Permit to Construct Issued March 30, 2012

Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481

Transfer of Operation Permit issued to **Transitions Healthcare Autumn Grove, LLC d/b/a Autumn Grove Care Center**, PWSID #5100045, Harrisville Borough, **Butler County** on March 27, 2012. Action is for change in ownership; the potable water supplier will do business as Autumn Grove Care Center. The new permit number is 1010505-T1.

Cancellation of Permit issued to **Bonetti Health Care Center, Inc.**, PWSID #5100045, Harrisville Bor-

ough, **Butler County** on March 27, 2012. This action represents the cancellation of Permit Number 1087507 issued September 21, 1987. This action is due to a consolidation.

Cancellation of Permit issued to **Corsica, Rose, and Union Municipal Authority**, PWSID #6330006, Corsica Borough, **Jefferson County** on March 28, 2012. This action represents the cancellation of Permit Number 4895 issued September 13, 1933. This action is due to a consolidation.

Cancellation of Permit issued to **Corsica, Rose, and Union Municipal Authority**, PWSID #6330006, Corsica Borough, **Jefferson County** on March 28, 2012. This action represents the cancellation of Permit Number 4895-MA1 issued January 9, 1996. This action is due to a consolidation.

Transfer of Operation Permit issued to **Brookville Municipal Authority**, PWSID #6330004, Brookville Borough, **Jefferson County** on March 28, 2012. Action is for change in ownership and acquisition of the Corsica, Rose, and Union Municipal Authority; the potable water supplier will do business as Brookville Municipal Authority. The new permit number is 368W002-T1.

Operation Permit issued to **Rew Water Association**, PWSID #6420013, Foster Township, **McKean County**. Permit Number 4286501-MA1, issued March 29, 2012 for the operation of 4-Log treatment of viruses for Entry Point 101. This action is taken under the requirements of the Groundwater Rule.

Operation Permit issued to **Peter Rabbit Campground, Inc. d/b/a Brady Hills Mobile Home Park**, PWSID #5100869, Brady Township, **Butler County**. Permit Number 1001502-T1-MA1, issued March 29, 2012 for the operation of 4-Log treatment of viruses for Entry Point 101. This action is taken under the requirements of the Groundwater Rule.

Operation Permit issued to **Continental Communities, LLC d/b/a Forrest Brooke Mobile Home Park**, PWSID #6430062, Lackawannock Township, **Mercer County**. Permit Number 4389504-T1-MA1, issued March 28, 2012 for the operation of 4-Log treatment of viruses for Entry Point 101. This action is taken under the requirements of the Groundwater Rule.

Operation Permit issued to **Cooperstown Water Company**, PWSID #6610017, Cooperstown Borough and Jackson Township, **Venango County**. Permit Number 6188503-MA2, issued March 29, 2012 for the operation of 4-Log treatment of viruses for Entry Point 134 and 135. This action is taken under the requirements of the Groundwater Rule.

Operation Permit issued to **Jack R. Foht d/b/a Rainbow Valley Mobile Home Park**, PWSID #6250089, Waterford Township, **Erie County**. Permit Number 2587503-MA1, issued March 28, 2012 for the operation of 4-Log treatment of viruses for Entry Point 100. This action is taken under the requirements of the Groundwater Rule.

Operation Permit issued to **Sisters of the Humility of Mary, Villa Maria Community Center**, PWSID #6370048, Pulaski Township, **Lawrence County**. Permit Number 3788503-MA2, issued March 29, 2012 for the operation of 4-Log treatment of viruses for Entry Point 101. This action is taken under the requirements of the Groundwater Rule.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

UNDER ACT 2, 1995

PREAMBLE 2

The following plans and reports were submitted under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.907).

Provisions of Sections 301—308 of the Land Recycling and Environmental Remediation Standards Act (act) (35 P. S. §§ 6026.301—6026.308) require the Department to publish in the *Pennsylvania Bulletin* a notice of submission of plans and reports. A final report is submitted to document cleanup of a release of a regulated substance at a site to one of the act's remediation standards. A final report provides a description of the site investigation to characterize the nature and extent of contaminants in environmental media, the basis for selecting the environmental media of concern, documentation supporting the selection of residential or nonresidential exposure factors, a description of the remediation performed and summaries of sampling analytical results which demonstrate that remediation has attained the cleanup standard selected. Submission of plans and reports, other than the final report, will also be published in the *Pennsylvania Bulletin*. These include the remedial investigation report, risk assessment report and cleanup plan for a site-specific standard remediation. A remedial investigation report includes conclusions from the site investigation; concentration of regulated substances in environmental media; benefits of reuse of the property; and, in some circumstances, a fate and transport analysis. If required, a risk assessment report describes potential adverse effects caused by the presence of regulated substances. If required, a cleanup plan evaluates the abilities of potential remedies to achieve remedy requirements.

For further information concerning plans or reports, contact the environmental cleanup program manager in the Department regional office under which the notice of receipt of plans or reports appears. If information concerning plans or reports is required in an alternative form, contact the community relations coordinator at the appropriate regional office. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following plans and reports:

Northeast Region: Eric Supey, Environmental Cleanup and Brownfields Program Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915.

Hankee Residence, 3406 Franklin Street, Washington Township, **Lehigh County**. Janine Jacobs and Richard D. Trimpi, Trimpi Associates, Inc., 1635 Old Plains Road, Pennsburg, PA 18073 have submitted a Final Report on behalf of their client, Mr. and Mrs. Ian Hankee, 3406 Franklin Street, Emerald, PA 18080, concerning the remediation of soil found to have been impacted by No. 2 fuel oil as a result of a release during a fuel oil delivery. The report was submitted to document attainment of the Residential Statewide Health Standard for soil. A public notice regarding the submission of the Final Report was published in *The Express Times* on February 10, 2012.

Bosch Rexroth Corp, 2315 City Line Road, Bethlehem City, **Lehigh County**. Martin Ilgallon and Dean Cruciani, Pennsylvania Tectonics, Inc., 723 Main

Street, Archbald, PA 18403 have submitted a Final Report on behalf of their client, Bosch Rexroth Corporation, 2315 City Line Road, Bethlehem, PA 18017-2131, concerning the remediation of soil found to have been impacted by diesel fuel as a result of a release which occurred when a saddle tank from a tractor-trailer unit struck a curb due to inclement weather conditions. The report was submitted to document attainment of the Non-Residential Statewide Health Standard for soil. A public notice regarding the submission of the Final Report was to have been published in *The Morning Call* on March 19, 2012.

Southcentral Region: Environmental Cleanup and Brownfields Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110

Former Schaefferstown Elementary School, 301 North Carpenter Street, Schaefferstown, Heidelberg Township, **Lebanon County**. SSM Group, Inc., 1047 North Park Road, Reading, PA 19610, on behalf of Eastern Lebanon County School District, 180 Elco Drive, Myerstown, PA 17067, submitted a Final Report regarding site soils contaminated with No. 2 fuel oil. The report is intended to document remediation of the site to meet the Residential Statewide Health Standard.

Northcentral Region: Environmental Cleanup Program Manager, 208 West Third Street, Williamsport, PA 17701

Halliburton Energy Services, Inc. Clinton Township, **Lycoming County**. Northridge Group, Inc., 1172 Ridge Road, Northumberland, Pa 17857 on behalf of Halliburton Energy Services, Inc., 4 Girton Drive, Muncy, PA 17756 has submitted a Final Report concerning remediation of site soil contaminated with Benzene, Fluorene, Anthracene, Phenanthrene, Pyrene, Benzo(a) anthracene, Chrysene, Benzo(b)Fluoranthene, Benzo(a)Pyrene, Benzo(g,h,i) perylene, Naphthalene, 1,3,5-Trimethylbenzene, 1,2,4-Trimethylbenzene. The report is intended to document remediation of the site to meet the Statewide Health Standard.

Keystone Mills, Washington Township, **Snyder County**. Northridge Group Incorporated, on behalf of Keystone Mills has submitted a Final Report concerning remediation of site soil contaminated with Benzene, Naphthalene, Anthracene, Benzo(a)anthracene, Benzo(a)pyrene, Benzo(b)fluoranthene, Benzo(g,h,i)perylene, Chrysene, Fluorene, Phenanthrene, and Pyrene for property owned by PennDot along Lenig Road. The report is intended to document remediation of the site to meet the Statewide Health Standard.

Northwest Region: Environmental Cleanup Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481

Dresser Piping Solutions, City of Bradford, **McKean County**. Groundwater Sciences Corporation, 2601 Market Place Street, Suite 310, Harrisburg, PA 17110 on behalf of DII Industries, LLC., P. O. Box 42806, Houston, TX 77242-2806 has submitted a Final Report concerning the remediation of site soil contaminated with Organic Compounds, Acenaphthene, Acenaphthylene, Acetone, Anthracene, Benzene, Benzo[a]anthracene, Benzo[a]pyrene, Benzo[b]fluoranthene, Benzo[g,h,i]perylene, Benzo[k]fluoranthene, 2-Butanone (methyl ethyl ketone), Carbon Disulfide, Carbon Tetrachloride, Chlorobenzene, Chrysene, Dibenz[a,h]anthracene, Ethylbenzene, Fluoranthene, Fluorene, Indeno[1,2,3-cd]pyrene, Isopropylbenzene (cumene), 1-Methylnaphthalene, 2-Methylnaphthalene, Naphthalene, PCB-1254, PCB-1260, Phenanthrene, Pyrene, Tetrachloroethene, Toulene, 1,2,4-Trimethylbenzene, 1,3,5-Trimethylbenzene, Xylene (total),

Inorganic Compounds, and Lead. The report is intended to document remediation of the site to meet the Statewide Health Standard.

Southwest Region: Environmental Cleanup & Brownfield Development Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745

Reichhold Property, Beazer East Bridgeville, Newbury Market, South Fayette Township, Borough of Bridgeville, **Allegheny County**. Civil and Environmental Consultants, Inc., 333 Baldwin Road, Pittsburgh PA, 15205 on behalf of Beazer East, Inc., Newbury Development LP, and Cytec Industries, has submitted a Final Report concerning the remediation of site soil and groundwater contaminated with naphthalene, aluminum, arsenic, iron, lead and manganese in area AEO-1. The property will be conveyed to Hardy Investment Associates LTD. The Final Report intends to document attainment of the site specific standard in area AOE-1. The Final Report was noticed in the *Pittsburgh Post-Gazette* on March 26 2012.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

UNDER ACT 2, 1995

PREAMBLE 3

The Department has taken action on the following plans and reports under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.907).

Section 250.8 of 25 Pa. Code and administration of the Land Recycling and Environmental Remediation Standards Act (act) require the Department to publish in the *Pennsylvania Bulletin* a notice of its final actions on plans and reports. A final report is submitted to document cleanup of a release of a regulated substance at a site to one of the remediation standards of the act. A final report provides a description of the site investigation to characterize the nature and extent of contaminants in environmental media, the basis of selecting the environmental media of concern, documentation supporting the selection of residential or nonresidential exposure factors, a description of the remediation performed and summaries of sampling methodology and analytical results which demonstrate that the remediation has attained the cleanup standard selected. Plans and reports required by the act for compliance with selection of remediation to a site-specific standard, in addition to a final report, include a remedial investigation report, risk assessment report and cleanup plan. A remedial investigation report includes conclusions from the site investigation; concentration of regulated substances in environmental media; benefits of reuse of the property; and, in some circumstances, a fate and transport analysis. If required, a risk assessment report describes potential adverse effects caused by the presence of regulated substances. If required, a cleanup plan evaluates the abilities of potential remedies to achieve remedy requirements. A work plan for conducting a baseline remedial investigation is required by the act for compliance with selection of a special industrial area remediation. The baseline remedial investigation, based on the work plan, is compiled into the baseline environmental report to establish a reference point to show existing contamination, describe proposed remediation to be done and include a description of existing or potential public benefits of the use or reuse of the property. The Department may approve or disapprove plans and reports submitted. This notice provides the Department's decision and, if relevant, the basis for disapproval.

For further information concerning the plans and reports, contact the environmental cleanup program manager in the Department regional office under which the notice of the plan or report appears. If information concerning a final report is required in an alternative form, contact the community relations coordinator at the appropriate regional office. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following plans and reports:

Northeast Region: Eric Supey, Environmental Cleanup and Brownfields Program Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915.

PPL Wescosville Substation, Off Cetronia Road, between Krocks Road and Schantz Road, Upper Macungie Township, **Lehigh County**. Jennifer L. Sedora, PPL Electric Utilities Corp., 1639 Church Road (WALO), Allentown, PA 18104 submitted a Final Report, concerning the remediation of soil found to have been impacted by diesel fuel as a result of a release from an abandoned diesel tank. The report documented attainment of the Residential Statewide Health Standard for soil and was approved on March 29, 2012. The report was originally submitted within 90 days of the release.

Jarrah Property, 2234 Center Street, Whitehall Township, **Lehigh County**. Thomas Martinelli, JMT Environmental Technologies, Inc. submitted a Final Report on behalf of his client, Mr. Adel Jarrah, 1934 Belleview Road, Whitehall, PA 18052, concerning the remediation of soil found to have been impacted by No. 2 heating oil as a result of a release from a non-regulated aboveground storage tank due to an overflow during fuel delivery. The report documented attainment of the Residential Statewide Health Standard for soil and was approved on March 27, 2012. The report was originally submitted within 90 days of the release.

Southcentral Region: Environmental Cleanup and Brownfields Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

Fort Indiantown Gap Area 17, Building 17-40A, East Hanover Township, **Lebanon County**. PA Dept. of Military and Veterans Affairs, Office of Facilities and Engineering, Environmental Management, Building 0-11, Fort Indiantown Gap, Annville, PA 17003-5002, submitted a Final Report concerning remediation of site soils and groundwater contaminated with heating oil. The Final Report demonstrated attainment of the Residential Statewide Health Standard and was approved by the Department on March 26, 2012.

Merv Shenk Property, 360 South Ebensshade Road, Manheim, PA 17545, Rapho Township, **Lancaster County**. PA Tectonics, Inc., 826 Main Street, Peckville, PA 18452, on behalf of Merv Shenk, 360 South Ebensshade Road, Manheim, PA 17545, submitted a Final Report concerning remediation of site soils contaminated with diesel fuel due to a Delaware Valley Shippers, Inc. tractor trailer accident. The Final Report demonstrated attainment of the Residential Statewide Health Standard and was approved by the Department on March 27, 2012.

Lewis's Cleaners, 1422 North George Street, York, PA 17404, Manchester Township and North York Borough, **York County**. BL Companies, Inc., 4242 Carlisle Pike, Suite 260, Camp Hill, PA 17011, on behalf of Northgate Associates, 146 Pine Grove Circle, Suite 100, York, PA 17403, submitted a Remedial Investigation Report and Final Report concerning groundwater contaminated with

chlorinated solvents. The combined report demonstrated attainment of a combination of Residential Statewide Health and Site-Specific standards and was approved by the Department on March 28, 2012.

Northcentral Region: Environmental Cleanup Program Manager, 208 West Third Street, Williamsport, PA 17701

Mallard Contractors/Sunoco Pipeline Release, Coal Township, **Northumberland County**. Patrick S. Crawford, P.G., Crawford Environmental Services, 195 Proudfoot Drive, Birdsboro, Pa 19508 on behalf of Mallard Contracting Company, 122 Wilburton Road, Mount Carmel, Pa 17851 has submitted a Final Report concerning the remediation of site soil contaminated with benzene, ethylbenzene, Isopropylbenzene (cumene), methyl tertiary butyl ether (MTBE), naphthalene, toluene, xylenes (total), 1,2,4-trimethylbenzene, 1,3,5-trimethylbenzene. The Final Report demonstrated attainment of the Statewide Health Standard and was approved by the Department on March 23, 2012.

Pennsylvania General Energy Company LLC, Clara Township, **Potter County**. DMS Environmental Services, LLC, 103 South Spring Street, Bellefonte, PA 16823 on behalf of Penn General Energy Co., LLC, 120 Market Street, Warren, Pa 16365 has submitted a Final Report concerning the remediation of site soil contaminated with Benzene, Toluene, Ethylbenzene, Xylenes (total), Barium, Zinc. The Final Report demonstrated attainment of the Statewide Health Standard and was approved by the Department on March 22, 2012.

DETERMINATION OF APPLICABILITY FOR RESIDUAL WASTE GENERAL PERMITS

Determination of Applicability for General Permit issued Under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003); the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101—4000.1904); and Residual Waste Regulations for a General Permit to Operate Residual Waste Processing Facilities and/or the Beneficial Use of Residual Waste Other Than Coal Ash.

Central Office: Division of Municipal and Residual Waste, Rachel Carson State Office Building, 14th Floor, 400 Market Street, Harrisburg, PA 17106-9170.

General Permit No. WMGM034D002F. PPL Renewable Energy, LLC, 2 North 9th Street, Allentown, PA 18101-1179. Site: Blue Ridge Renewable Energy Plant, 1660 Orchard Road, Scotland, PA 17257.

The general permit is for the processing and beneficial use of landfill gas (LFG) generated by the landfill disposal of municipal waste. The Department of Environmental Protection, Bureau of Waste Management issued a determination of applicability under the General Permit No. WMGM034D002F on March 27, 2012.

Persons interested in reviewing the general permit may contact Scott E. Walters, Chief, Permits Section, Division of Municipal and Residual Waste, Bureau of Waste Management, P. O. Box 69170, Harrisburg, PA 17106-9170, 717-787-7381. TDD users may contact the Department through the Pennsylvania Relay service, (800) 654-5984.

AIR QUALITY

General Plan Approval and Operating Permit Usage Authorized under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127 to construct, modify, reactivate or operate air contamination sources and associated air cleaning devices.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110

Contact: Thomas J. Hanlon, Facility Permitting Chief—Telephone: 717-705-4862 or Daniel Husted, New Source Review Chief—Telephone: 717-705-4863

GP3-28-05035C: Highway Materials, Inc.—St. Thomas Development, Inc. (1750 Walton Road, Blue Bell, PA 19422) on March 26, 2012, for portable nonmetallic mineral processing equipment in St. Thomas Township, **Franklin County**.

GP9-28-05035C: Highway Materials, Inc.—St. Thomas Development, Inc. (1750 Walton Road, Blue Bell, PA 19422) on March 26, 2012, for two (2) diesel fuel-fired internal combustion engines in St. Thomas Township, **Franklin County**.

GP3-67-05098E: Kinsley Construction, Inc. (PO Box 2886, York, PA 17405) on March 29, 2012, for portable nonmetallic mineral processing equipment under GP3 at the Penroc Quarry in West Manchester Township, **York County**.

GP9-67-05098E: Kinsley Construction, Inc. (PO Box 2886, York, PA 17405) on March 29, 2012, for a diesel-fired internal combustion engine under GP9, to power portable nonmetallic mineral processing equipment, at their Penroc Quarry in West Manchester Township, **York County**.

GP3-21-KR-12-1: BR Kreider and Son, Inc. (63 Kreider Lane, Manheim, PA 17545) on March 29, 2012, for portable nonmetallic mineral processing equipment under GP3 at the Pennsy Supply Silver Spring Quarry in Silver Spring Township, **Cumberland County**.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701

Contact: Muhammad Q. Zaman, Environmental Program Manager—Telephone: 570-327-3648

GP5-59-187B: SWEPI, LP (190 Thorn Hill Road, Warrendale, PA 15086) on March 26, 2012, for installation of Miratech SP-ZES-30x31-12-XH2B1 oxidation catalyst on each of the existing two 1340 bhp Caterpillar 3516 TALE 4SLB (serial numbers WPW02705, & WPW02656) (four-stroke lean-burn) compressor engine, for the construction and operation of one 1380 bhp Caterpillar G3516B LE 4SULB (four-stroke ultra-lean-burn) compressor engine equipped with a Miratech model IQ-RE-30EH (element)/ IQ-30-16-HSG (housing) oxidation catalyst, one 95 bhp GM 4.3L Vortec (4SRB) four-stroke rich-burn natural gas fired generator engine, one 10,000 gallon produced water Tank 1, and one 30.0 MMSCF/day and one 60.0 MMSCF/day glycol dehydrator unit, each equipped 0.275 MMBtu/hr and 0.55 MMBtu/hr re-boilers, respectively, at the Wellsboro #1 Compressor Station in Richmond Township, **Tioga County**.

GP14-60-127: White Springs Cremation Organization, LLC (2490 Red Ridge Road, Mifflinburg, PA 17844) on March 29, 2012, for construction and operation of an Armil CFS model CFR-2300 human cremation incinerator under the General Plan Approval and/or General Operat-

ing Permit for Human or Animal Crematories (BAQ-GPA/GP-14) at a site in Limestone Township, **Union County**.

GP3-41-588: Glenn O. Hawbaker, Inc. (711 East College Avenue, Bellefonte, PA 16823) on March 30, 2012, to construct and operate a portable nonmetallic mineral processing plant with associated water spray dust suppression system pursuant to the General Plan Approval And/Or General Operating Permit For Portable Nonmetallic Mineral Processing Plants (BAQ-GPA/GP-3) at their Montoursville Plant facility in Loyalsock Township, **Lycoming County**.

GP9-41-588: Glenn O. Hawbaker, Inc. (711 East College Avenue, Bellefonte, PA 16823) on March 30, 2012, to construct and operate one 100 bhp Caterpillar model 3052 diesel-fired engine pursuant to the General Plan Approval And/Or General Operating Permit (BAQ-GPA/GP-9): Diesel or #2 Fuel-fired Internal Combustion Engines at their Montoursville Plant facility in Loyalsock Township, **Lycoming County**.

GP3-59-221A: Tioga Sand and Rock LLC (232 Bradshaw Road, Tioga, PA 16946) on March 30, 2012, to construct and operate a portable nonmetallic mineral processing plant with associated water spray dust suppression system pursuant to the General Plan Approval And/Or General Operating Permit For Portable Nonmetallic Mineral Processing Plants (BAQ-GPA/GP-3) at their Bradshaw Pit in Lawrence Township, **Tioga County**.

GP5-08-324C: Mid-Atlantic Gas Services, LLC (P. O. Box 54722, Oklahoma City, OK 73154-4722) on March 26, 2012, for the change of ownership of the sources at the Jefferson Compressor Station in Smithfield Township, **Bradford County**. The sources at the facility include the following: one 145 bhp Caterpillar G3306NA serial number G6X03216 four-stroke rich-burn natural gas-fired compressor engine equipped with a EMIT Technologies model EAH-1200T-0404F-21CEE catalytic converter, and two 1,680 gallon produced water tanks (TK-1 & TK-2).

Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745

Contact: Mark Gorog and Barb Hatch, Environmental Engineer Managers—Telephone: 412-442-4163/5226

GP5-32-00416: Mountain Gathering, LLC (810 Houston Street, Suite 2000, Fort Worth, TX 76102) on March 29, 2012, to allow the operation of one (1) Caterpillar, natural gas fired 4-stroke rich burn compressed engines, rated at 95 bhp 1,800 rpm. Three (3) storage tanks with an overall capacity of 10,500 gallons at their Wetzell/McKee Compressor Station, in Rayne Township, **Indiana County, PA**.

GP5-32-00415: Mountain Gathering, LLC (810 Houston Street, Suite 200, Fort Worth, Texas 76102) on March 29, 2012, to allow the operation of one (1) Caterpillar natural gas-fired engine, rated at 95 bhp, at their Maurer Compressor Station in Green Township, **Indiana County**.

GP5-32-00420: Laurel Mountain Midstream Operating, LLC 810 (Westpointe Corporate Center Three, 1065 Coraopolis Heights Road, Moon Township, PA 15108) on April 1, 2012, to allow the installation and operation of one Natco Dehydrator and reboiler, rated at 20 MMscfd and 0.4 MMBtu/hr respectively, and three storage tanks with a total capacity of 23,640 gallons at their Clyde North Compressor Station in Green Township, **Indiana County**.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481

Contact: Edward Orris, New Source Review Chief—
Telephone: 814-332-6636

GP3-42-236E: Glenn O. Hawbaker, Inc.—McKean County Landfill (Hutchins Road, Mount Jewett, PA 16740) on March 27, 2012, for operation of a Portable Nonmetallic Mineral Processing Plant Scalper 107T Vibratory Screen (500 tph) (BAQ-GPA/GP-3) in Sergeant Township, **McKean County**.

Plan Approvals Issued under the Air Pollution Control Act and regulations in 25 Pa. Code Chapter 127, Subchapter B relating to construction, modification and reactivation of air contamination sources and associated air cleaning devices.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401

Contact: Sachin Shankar, New Source Review Chief—
Telephone: 484-250-5920

09-0021D: MRI Flexible Packaging Co. (120 Penns Trail, Newtown, PA 18940) on March 30, 2012, for installation of a new printing press at an existing facility in Newtown Township, **Bucks County**. This facility is a synthetic minor facility for VOC emissions. The facility wide VOC emissions will stay below 25 tons per year. The combined HAP emissions will be below 25 tons per year. Each HAP emissions will stay below 10 tons per year. The Plan Approval and Operating Permit will contain recordkeeping requirements and operating restrictions designed to keep the facility operating within all applicable air quality requirements.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110

Contact: Thomas J. Hanlon, Facility Permitting Chief—
Telephone: 717-705-4862 or Daniel Husted, New Source Review Chief—Telephone: 717-705-4863

28-05045A: PPL Renewable Energy, LLC (Two North Ninth Street (GEN PL2), Allentown, PA 18101) on March 26, 2012, for construction and temporary operation of a landfill gas electric generation facility, to be known as the Blue Ridge Renewable Energy Plant, at the Blue Ridge Landfill, in Greene Township, **Franklin County**. The Blue Ridge Renewable Energy Plant will consist of a landfill gas treatment system, four (4) landfill gas-fired reciprocating internal combustion engines (RICEs), four (4) associated electric generators, and an enclosed ground flare.

67-03132B: Voith Hydro, Inc. (P. O. Box 712, York, PA 17405-0712) on March 27, 2012, for construction of a surface coating operation consisting of two (2) spray paint areas at their facility in West Manchester Township, **York County**.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701

Contact: Muhammad Q. Zaman, Environmental Program Manager—Telephone: 570-327-3648

08-00016B: Dalrymple Gravel & Contracting Co., Inc. (2105, South Broadway, Pine City, NY 14871) on February 28, 2012, for a modification of existing drum mix and batch mix asphalt plants at the Chemung Plant in Athens Township, **Bradford County**.

Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745

Contact: Mark Gorog and Barb Hatch, Environmental Engineer Managers—Telephone: 412-442-4163/5226

32-00055H: EME Homer City Generation, LP (1750 Power Plant Road, Homer City, PA 15748) on April 2, 2012, to construct and begin temporary operation of dry flue gas desulfurization (FGD) systems with fabric filters and associated support equipment for control of primarily SO₂ emissions from boiler Unit 1 & 2 at Homer City Generating Station in Black Lick and Center Townships, **Indiana County**. Secondary control of PM/PM10/PM2.5 mercury, lead, sulfuric acid mist, hydrogen chloride, fluorides, and VOC is expected.

32-00059E: GenOn Northeast Management Co. (121 Champion Way, Suite 200, Canonsburg, PA 15317) on March 30, 2012, to construct and begin temporary operation of selective catalytic reduction (SCR) systems and associated support equipment to control NO_x emissions at the Conemaugh Power Plant located in West Wheatfield Township, **Indiana County**. A reduction of PM/PM10, mercury, and sulfuric acid mist is also expected.

Plan Approval Revisions Issued including Extensions, Minor Modifications and Transfers of Ownership under the Air Pollution Control Act and 25 Pa. Code §§ 127.13, 127.13a and 127.32.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401

Contact: Sachin Shankar, New Source Review Chief—
Telephone: 484-250-5920

23-0111B: Janssen Research and Development, Inc. (145 King of Prussia Road, Radnor, PA 19087) on March 26, 2012, to operate a generator in Radnor Township, **Delaware County**.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110

Contact: Thomas J. Hanlon, Facility Permitting Chief—
Telephone: 717-705-4862 or Daniel Husted, New Source Review Chief—Telephone: 717-705-4863

21-03081A: Keystone Bio-Fuels (2850 Appleton Street, Suite E, Camp Hill, PA 17011) on March 28, 2012, for construction and temporary operation of a 33 million gallon per year biodiesel production facility with methanol emissions controlled by a vapor recovery system in Lower Allen Township, **Cumberland County**. The plan approval was extended.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701

Contact: Muhammad Q. Zaman, Environmental Program Manager—Telephone: 570-327-3648

08-399-019E: Global Tungsten & Powders, Corp. (Hawes Street, North Towanda, PA 18848) on March 26, 2012, to extend the authorization to temporarily operate a process reactor (CR-6) and associated control devices at their facility located in North Towanda Township, **Bradford County** until October 17, 2012. The plan approval has been extended.

19-00001B: Rieter Automotive North America, Inc. (480 West 5th Street, Bloomsburg, PA 17815-1563) on March 28, 2012, to extend the authorization to operate the natural gas Boiler #7 (Source ID 033) on a temporary basis to November 20, 2012 at their facility located in Bloomsburg Borough, **Columbia County**. The plan approval has been extended.

Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745

Contact: M. Gorog & B. Hatch, Environmental Engineer Managers—Telephone: 412-442-4163/5226

04-00699G: NGC Industries, LLC—formerly National Gypsum Co. (168 Shippingport Hill Road, Shippingport, PA 15077-0346) on August 20, 2010 to authorize the use of ammonium sulfate as a board hardening accelerating agent at NGC's wallboard manufacturing facility in Shippingport, **Beaver County**. This process commenced operation on February 13, 2012, starting the 180-day period of temporary operation. Effective February 13, 2012, the expiration date of PA-63-00699G was modified to August 11, 2012.

65-00016H: Latrobe Specialty Steel Co. (2626 Ligonier St., Latrobe, PA, 15650) on April 2, 2012, to extend the plan approval until a renewal Title V operating permit can be issued to incorporate the plan approval requirements in Latrobe, **Westmoreland County**. Extension of the plan approval has been approved until September 30, 2012.

30-00077C: (Texas Eastern Transmission, L.P., P. O. Box 1642, Houston, TX 77251-1642) on March 28, 2012, DEP extended Air Quality Plan Approval PA-30-00077C for 180 days. Extension is to allow additional time for DEP to issue the pending TVOP application. PA-30-00077C was originally issued to authorize the installation of a third Solar Mars 100-150002S III turbine rated at 13,300 hp, a Waukesha emergency generator, rated at 400 hp and operating less than 100 hours per year, and two gas heaters rated respectively at 0.12 and 0.5 mmbtu/hr. Additionally, Texas Eastern permanently disabled one existing Rand KVS-412 internal combustion engine rated at 2,000 hp at the Holbrook Compressor Station located in Wind Ridge, Richhill Township, **Greene County**, PA. The plan approval has been extended.

32-00055G: EME Homer City Generation, LP, (1750 Power Plant Rd., Homer City, PA 15748) on April 1, 2012, to allow the continued construction and initial temporary operation of activated carbon injection (ACI) systems to control mercury emissions from boiler Units 1 & 2 at Homer City Generating Station located in Black Lick and Center Townships, **Indiana County**.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481

Contact: Edward Orris, New Source Review Chief—Telephone: 814-332-6636

10-265B: Iron Mountain Information Management—The Underground (1137 Branchton Road, Boyers, PA 16020) on March 31, 2012, for the installation of ten (10) emergency generators at their facility in Cherry Township, **Butler County**.

37-307C: PSC Metals Inc. (5875 Landerbrook Drive, Suite 200, Mayfield Heights, OH 44124) on March 31, 2012, for modifications to the exhaust capture system associated with scrap cutting activities at their facility in the City of New Castle, **Lawrence County**.

62-017R: United Refining Company (15 Bradley Street, Warren, PA 16365) on March 31, 2012, for the removal of the external cyclones and expansion of the electric static precipitator that controls the FCC in Warren City, **Warren County**. This is a Title V facility.

Title V Operating Permits Issued under the Air Pollution Control Act and 25 Pa. Code Chapter 127, Subchapter G.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401

Contact: Janine Tulloch-Reid, Facilities Permitting Chief—Telephone: 484-250-5920

23-00040: Laurel Pipe Line Co., L.P. (3398 Garnet Mine Road, Boothwyn, PA 19061-0917) on March 26, 2012, for a renewal of the Title V Operating Permit in Bethel Township, **Delaware County**. The initial permit was issued on 12-19-2001. The facility is a refined petroleum breakout station consisting of in-coming and out-going pipeline systems and aboveground breakout tanks. As a result of potential emissions of VOCs, the facility is a major stationary source as defined in Title I, Part D of the Clean Air Act Amendments, and is therefore subject to the Title V permitting requirements adopted in 25 Pa. Code Chapter 127, Subchapter G. The proposed Title V Operating Renewal does not reflect any change in air emissions from the facility. The facility is not subject to Compliance Assurance Monitoring (CAM) pursuant to 40 CFR Part 64. The renewal contains all applicable requirements including monitoring, recordkeeping and reporting.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701

Contact: Muhammad Zaman, Environmental Program Manager—Telephone: 570-327-3648

17-00001: GenOn REMA LLC (121 Champion Way, Canonsburg PA 15317) on March 26, 2012 for their facility located in Bradford Township, **Clearfield County**. Renewal Title V Operating Permit 17-00001 contains monitoring, recordkeeping and reporting conditions to ensure compliance with all applicable Federal and State air regulatory requirements for stationary sources.

Operating Permits for Non-Title V Facilities Issued under the Air Pollution Control Act and 25 Pa. Code Chapter 127, Subchapter F.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19428

Contact: Janine Tulloch-Reid, Facilities Permitting Chief—Telephone: 484-250-5920

23-00099: Haven Memorial Park (2500 Concord Road, Chester, PA 19013) On March 28, 2012, for operation of a human crematory in Chester Township, **Delaware County**. The renewal permit is for a non-Title V (State only) facility. The sources of air emissions are 2 two-stage human crematory units, both firing on natural gas. The permit will include monitoring, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

46-00267: GlaxoSmithKline LLC (1250 S Collegeville Rd) On March 28, 2012, for an operating permit for a non-Title V (State only) facility for a Data Center in Upper Providence Township, **Montgomery County**. The initial operating permit is for a non-Title V (State only) facility. The source of emissions are eight, identical diesel/No. 2 fuel oil fired generator engines used to provide emergency power for the Data Center operations and for peak shaving purposes. The permit contains emission restrictions on visible emissions, nitrogen oxides (NO_x), volatile organic compounds (VOC), carbon monoxide (CO), particulate matter (PM), formaldehyde and fuel limitations on sulfur content and usage. The conditions of Plan Approvals 46-0267 and 46-0267A form the basis of this initial operating permit. GlaxoSmithKline will follow good air pollution control practices, monitoring, recordkeeping and reporting requirements designed to

keep the facility operating within all applicable air quality requirements. This facility was formerly known as SmithKline Beecham Research Company dba GlaxoSmithKline.

09-00211: Pennridge School District (1303 North 5th Street, Perkasio, PA 18944) On March 30, 2012, for operation of five (5) boilers and three (3) emergency generators in East Rockhill Township, **Bucks County**. The main emissions from this facility are Nitrogen Oxides (NO_x) produced by the consumption of fuels. The proposed operating permit is for a non-Title V (State Only), Synthetic Minor facility. It contains monitoring, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790

Contact: Ray Kempa, New Source Review Chief—Telephone: 570-826-2507

35-00042: Scranton Sewer Authority (312 Adams Avenue, Scranton, PA 18503) on February 28, 2012, for operation of a sewer treatment facility located in the City of Scranton, **Lackawanna County**.

48-00090: PPL Interstate Energy (214 Shoemaker Road, Pottstown, PA 19464) on March 29, 2012, to issue a renewal state only (synthetic Minor) operating permit for a facility in Lower Mt. Bethel Township, **Northampton County**.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110

Contact: Thomas J. Hanlon, Facility Permitting Chief—Telephone: 717-705-4862 or Daniel Husted, New Source Review Chief—Telephone: 717-705-4863

67-05063: York Building Products Co., Inc. (PO Box 1708, York, PA 17405) on March 26, 2012 for the stone crushing and batch asphalt operations at the Roosevelt Quarry located in West Manchester Township, **York County**. The State-only permit was renewed.

36-03152A: Wenger's Feed Mill, Inc. (101 W Harrisburg Avenue, Rheems, PA 17570) on March 26, 2012 for the soybean processing facility located in West Donegal Township, **Lancaster County**. The State-only permit was renewed.

36-05008: Tyson Foods, Inc. (PO Box 1156, 403 S Custer Avenue, New Holland, PA 17557-0901) on March 26, 2012 for the poultry slaughtering and processing facility located in Earl Township, **Lancaster County**. The State-only permit was renewed.

67-03163: Ecore International, Inc. (76 Acco Drive, York, PA 17404) on March 26, 2012 for the waste tire processing facility located in York Township, **York County**. This permit number was changed from 67-05115 to 67-03163.

21-05050: Naval Inventory Control Point (5450 Carlisle Pike, Mechanicsburg, PA 17050-2411) on March 26, 2012 for the Naval Support Activities facility located in Hampden Township, **Cumberland County**. The State-only permit was renewed.

38-05038: Grosfillex, Inc. (230 Old West Penn Avenue, Robesonia, PA 19551-8904) on March 27, 2012 for the facility located in North Lebanon Township, **Lebanon County** that manufactures plastic indoor and outdoor furniture, decorative and utility shelving, garden planters, and window boxes and garden carts.

67-03074: Heffner Funeral Chapel & Crematory, Inc. (1551 Kenneth Road, York, PA 17408-2243) on March 28, 2012 for the human crematory located in West Manchester Township, **York County**. The State-only permit was renewed.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701

Contact: Muhammad Q. Zaman, Environmental Program Manager—Telephone: 570-327-3648

41-00045: RP's Machinery Sales (175 Old Route 220 Highway, PO Box 507, Jersey Shore, PA 17740) on March 28, 2012, for their steel (bridge parts) fabrication facility located in Piatt Township, **Lycoming County**. The facility's main sources include a shot blast machine, oxygen-propane burning machines, and a surface coating operation. The State Only operating permit contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

17-00046: HPM Industries, Inc.—Atlas Pressed Metals (125 Tom Mix Drive, DuBois, PA 15801) on March 30, 2012, for their powdered metal parts manufacturing facility located in the City of DuBois, **Clearfield County**. The facility's main sources include five (5) sintering furnaces, a dip sizing operation, and an oil impregnation system. The State Only operating permit contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

17-00042: Clearfield Leather, Inc.—Wickett and Craig of America (120 Cooper Road, Curwensville, PA 16833) on February 8, 2012, for their plant in Curwensville Borough, **Clearfield County**. The facility's main sources include 4 spray booths, 1 cold cleaning solvent parts washer, 1 emergency generator, a process water treatment facility and 19 combustion units. The State Only operating permit contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745

Contact: Barbara Hatch, Facilities Permitting Chief—Telephone: 412-442-4174

11-00515: J-Lok, Co.—Cresson Plant (258 Kappa Drive, Pittsburgh, PA 15238) on March 29, 2012, to issue a State Only Operating Permit for the manufacturing of mine bolt resin cartridges designed for underground mine roof bolting located in Cresson Township, **Cambria County**. The subject facility consists of a single dock for unloading barges with one clam shell crane. Material is transferred by clam shell bucket to a 400 ton per hour hopper where it is conveyed by a partial covered belt into a building; to trucks; or to an outside stockpile. Material transferred into the building or stockpiles is then transferred by front loaders into trucks for delivery. The facility wide potential emissions, based on 40 MM lbs per year throughput, 96.5 percent capture efficiency of carbon adsorption unit and 99.9 percent capture efficiency on bin vent filters are less than 0.07 tons per year VOC; 0.07 tons per year HAPs, and 0.052 tons per year particulate and will remain under State Only Operating Permit limitations. The facility is required to conduct surveys of the site for fugitive emissions and malodors and must take all actions to prevent particulate matter from becoming airborne. VOC and HAP containing material and limestone throughput must be recorded monthly as well as emissions. The facility is required to record the VOC/HAP concentration of the outlet air between beds weekly. The proposed authorization is subject to State

and Federal Regulations. The permit includes operation requirements, monitoring requirements, and recordkeeping requirements.

63-00064: North Central Processing, Inc.—Donora Site (2002 Meldon Avenue, Donora, PA 15033) on March 29, 2012 to issue a State Only Operating Permit for the operation of drying and sizing metallurgical coke located in Carroll Township, **Washington County**. The subject facility consists of a 12.78 MMBtu/hr natural gas Gencor dryer equipped with a 14,000 cfm baghouse, one hopper, one double deck screen, one pug mill, one bucket elevator, four storage silos and various covered/enclosed conveyors. The facility has the potential to emit 28.10 tpy PM, 4.82 tpy NO_x, 26.72 tpy CO, 2.41 tpy VOC and 3.37 tpy SO_x. The facility is required to conduct a weekly survey of the facility during daylight hours while the facility is operating to ensure compliance with the visible emission, fugitive emission and malodor restrictions. Records of the weekly survey performed must be recorded. Tons of coke shipped on a weekly and monthly basis, hours of operation of the mixing screw, dates of filter changes on control devices and any preventative and corrective maintenance performed must be recorded in an on-site log. Stockpiles shall be kept as compact as possible to limit exposure to the wind. Material shall be stockpiled in such a manner that it may be adequately wetted as necessary to control fugitive emissions. The plant access roadway shall be paved with an asphalt surface. This road, as well as 250 feet of State Route 837 on both sides of the plant access road, shall be kept free of debris and maintained in good working condition acceptable to the Department. A pressurized water truck shall be available at this site. All conveyor belts except for the feed belt into the dryer are to be covered at all times. Loading from Silo #1 and #2 must remain inside enclosed building, building doors remain closed, and building baghouse operating to capture particulate. Truck loading from Silo #3 and #4 must be performed using pneumatic methods. Particulate matter emissions are not to exceed 0.04 gr/dscf. The proposed authorization is subject to State and Federal Regulations. The permit includes operation requirements, monitoring requirements, and recordkeeping requirements.

04-00675: Aliquippa Terminals—Aliquippa River Terminal (100 Woodlawn Road, Aliquippa, PA 15001) on March 29, 2012 issued a State Only Operating Permit for the operation of large and rail unloading, loading and bulk commodity storage facility located in Aliquippa (D) City, **Beaver County**. The subject facility consists of a single dock for unloading barges with one clam shell crane. Material is transferred by clam shell bucket to a 400 ton per hour hopper where it is conveyed by a partial covered belt into a building; to trucks; or to an outside stockpile. Material transferred into the building or stockpiles is then transferred by front loaders into trucks for delivery. The potential emissions from this type of operating are strongly dependent on the amount of material and its physical condition when handled. Implementation of good work practice standards will minimize the potential for fugitive emissions and remain under State Only Operating Permit limitations. The facility is required to conduct surveys of the site for fugitive emissions and malodors and must take all actions to prevent particulate matter from becoming airborne. The drop height from front-end loaders and clam shell bucket being used to stockpile, transfer, and load material must be kept as

short as possible to minimize dust emissions. Stockpiles must be kept as compact as possible to limit exposure to the wind. The proposed authorization is subject to State and Federal Regulations. The permit includes operation requirements, monitoring requirements, and recordkeeping requirements.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481

Contact: Edward Orris, New Source Review Chief—Telephone: 814-332-6636

42-00221: McKean County Joint Venture, LP, Hedgehog Lane Compressor Station (88 Hedgehog Lane, Bradford, PA 16701) on April 2, 2012, for an initial Natural Minor Permit to operate a compressor station located in Bradford Township, **McKean County**. The emitting sources are, 1) Reboiler 2) 200 HP Caterpillar Compressor Engine, 3) Dehydrated plant, 4) Plant fugitives and 5) 133 HP Kohler natural gas generator. The Caterpillar compressor is subject to 40 CFR Part 63, Subpart ZZZZ, the Kohler generator engine is subject to 40 CFR Part 63, Subpart ZZZZ and 40 CFR Part 60 Subpart JJJJ. The Plant Fugitives source is subject to 40 CFR Part 60 Subpart VV and KKK. The dehydration plant is subject to 40 CFR Part 63 Subpart HH: National Emission Standards for Hazardous Air Pollutants from Oil and Natural Gas Production Facilities. The facility is Natural Minor because the emissions are less than Title V emission threshold limits.

Department of Public Health, Air Management Services: 321 University Avenue, Philadelphia, PA 19104

Contact: Edward Wiener, Chief—Telephone: 215-685-9426

S11-022: Tasty Baking Company (4300 S 26th St, Philadelphia, PA 19112) for the operation of a bakery in the City of Philadelphia, **Philadelphia County**. The facility's air emissions sources include the following sources: two (2) 10.02 MMBtu/hr boilers, each firing natural gas; one (1) 150-kW emergency generator firing No.2 oil; Eighteen (18) warm air furnaces each firing natural gas; seven (7) product oven lines each firing natural gas; One (1) Parts Washer; Twenty-two (22) Dust Collectors.

Operating Permit Revisions Issued including Administrative Amendments, Minor Modifications or Transfers of Ownership under the Air Pollution Control Act and 25 Pa. Code §§ 127.412, 127.450, 127.462 and 127.464.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401

Contact: Janine Tulloch-Reid, Facilities Permitting Chief—Telephone: 484-250-5920

15-00115: QVC, Inc. (1200 Wilson Drive, West Chester, PA 19380) on March 26, 2012, for a non-Title V facility in West Goshen Township, **Chester County**. The Synthetic Minor Operating Permit has been amended to incorporate conditions from Plan Approval No. 15-0115F, which was for the modification of formaldehyde emissions from a 2-MW generator (Source ID 106). The engine for this generator is a 2009 model. The generator was installed under Plan Approval No. 15-0115E. The generator has the following 12-month rolling emission limits: NO_x—6.80 tons; VOC—0.13 tons; CO—0.78 tons; PM—0.10 tons; and SO_x—0.20 tons. Formaldehyde emissions are limited to 1,106 ppmvd, corrected to 15% O₂ (equivalent to 0.01 TPY). The generator, along with three (3) other genera-

tors [Source IDs 101 (2 units) and 105], is limited to a fuel usage rate of 46,009 gallons per 12-month rolling sum, to ensure that the generator complies with all applicable emission limits. Fuel usage and hours of operation are monitored and recorded to demonstrate compliance to the fuel usage restriction. The Synthetic Minor Operating Permit contains additional monitoring, recordkeeping, and operating conditions designed to keep the facility operating within the allowable emissions and all applicable air quality requirements.

15-00051: Allan A. Myers L.P.—d/b/a Independence Construction Materials— Devault Asphalt Plant (4042 State Road, Charlestown Township, PA 19432) on March 28, 2012, for operation of their batch asphalt plant in Charlestown Township, **Chester County**. The issued State Only Operating Permit has been amended by the Department to remove the testing requirement for the RAP Crusher (Source 104) and include it as an applicable testing requirement for the Drum Mix Asphalt Plant (Source 101) and the Aggregate Dryer/Burner (Source 102).

09-00010: TEVA Pharmaceuticals USA, Inc. (650 Cathill Road, Sellersville, PA 18960) on March 30, 2012, in West Rockhill Township, **Bucks County**. This permit was revised to incorporate Plan Approvals 09-0010 and 09-0010C for the operation of a 60-inch Accela-Cota Tablet Coater and the addition of a new dust collection system to the S-8 Fluid Bed Processor into the State Only Operating Permit. A 9.2 MMBTU/hr No. 2 Fuel Oil fired boiler that was exempt from plan approval in accordance with 25 Pa. Code § 127.14(a)(3) was added to the permit. Applicable requirements from 40 C.F.R. Part 63, Subpart JJJJJ were added to all boilers in operation at this facility through this action. Some typographical errors were addressed in this action as well. This Administrative Amendment of the State Only Operating Permit was issued in accordance with the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code § 127.450.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110

Contact: Thomas J. Hanlon, Facility Permitting Chief—Telephone: 717-705-4862 or Daniel Husted, New Source Review Chief—Telephone: 717-705-4863

67-05102: Heritage Propane Express, LLC (149 Bowman Road, York PA 17408-8792) on March 27, 2012, for their automated propane cylinder filling facility in Jackson Township, **York County**. The State-only permit was administratively amended to reflect a change of ownership.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701

Contact: Muhammad Q. Zaman, Environmental Program Manager—Telephone: 570-327-3648

17-00022: Walker Lumber Co., Inc. (148 Tipple Lane, Woodland, PA 16881-0060) on April 2, 2012, issued a revised State Only operating permit for a change of ownership of the Bigler facility from Walker Lumber Company, Inc. to Walker Lumber Company, Inc. This facility is located in Bradford Township, **Clearfield County**. This revised State Only operating permit contains all applicable regulatory requirements including monitoring, recordkeeping, and reporting conditions.

ACTIONS ON COAL AND NONCOAL MINING ACTIVITY APPLICATIONS

Actions on applications under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. §§ 3301—3326); The Clean Streams Law; the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66); and The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.20a). The final action on each application also constitutes action on the NPDES permit application and, if noted, the request for a Section 401 Water Quality Certification. Mining activity permits issued in response to applications will also address the application permitting requirements of the following statutes: the Air Quality Pollution Act (35 P. S. §§ 4001—4014); the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27); and the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1002).

Coal Permits Actions

California District Office: 25 Technology Drive, Coal Center, PA 15423, 724-769-1100

30841312 and NPDES No. PA0013790, Consolidation Coal Company, (1 Bridge Street, Monongah, WV 26554), to revise the permit for the Blacksville Mine No. 2 in Gilmore Township, **Greene County** to add subsidence control plan area acres for development mining. Subsidence Control Plan Acres Proposed 822.1. No additional discharges. The application was considered administratively complete on September 30, 2011. Application received: August 4, 2011. Permit issued: March 28, 2012.

30841316 and NPDES No. PA0213535, Consol Pennsylvania Coal Company, LLC, (P. O. Box J, 1525 Pleasant Grove Road, Claysville, PA 15323), to revise the permit for the Bailey Mine & Prep Plant in Richhill Township, **Greene County** to add underground permit and subsidence control plan acres for development mining only. Underground Acres Proposed 3135.0, Subsidence Control Plan Acres Proposed 3135.0. No additional discharges. The application was considered administratively complete on July 16, 2007. Application received: April 6, 2007. Permit issued: March 29, 2012.

30831303 and NPDES No. PA 0013211, Cumberland Coal Resources, LP, (P. O. Box 1020, 158 Portal Road, Waynesburg, PA 15370), to revise the permit for the Cumberland Mine in Wayne and Center Townships, **Greene County** to install the No. 7 Bleeder Shaft site. Surface Acres Proposed 3.7. No additional discharges. The application was considered administratively complete on July 20, 2011. Application received: February 15, 2011. Permit issued: April 2, 2012.

Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, 814-472-1900

32050106 and NPDES No. PA0249823. Beth Contracting, Inc., 815 Rock Run Road, Glen Campbell, PA 15742, permit renewal for the continued operation and restoration of a bituminous surface mine in Glen Campbell Borough, **Indiana County**, affecting 56.1 acres. Receiving stream(s): Brady Run and unnamed tributaries to Cush Creek classified for the following use(s): cold water fishery. There are no potable water supply intakes within 10 miles downstream. Application received: June 21, 2011. Permit issued: March 27, 2012.

Knox District Mining Office: P. O. Box 669, 310 Best Avenue, Knox, PA 16232-0669, 814-797-1191

10110102 and NPDES Permit No. PA0259012. K & A Mining (P. O. Box 288, Grove City, PA 16127) Commencement, operation and restoration of a bituminous surface mine in Marion Township, **Butler County** affecting 41.3 acres. Receiving streams: Unnamed tributaries to North Branch Slippery Rock Creek and North Branch Slippery Rock Creek. Application received: March 7, 2011. Permit Issued: March 28, 2012.

23723-10110102-E-1. K & A Mining (P. O. Box 288, Grove City, PA 16127) Application for a stream encroachment to construct a stream crossing and conduct mining activities within 50 feet and support activities within 25 feet of Unnamed tributary "C" to North Branch Slippery Rock Creek in Marion Township, **Butler County**. Receiving streams: Unnamed tributaries to North Branch Slippery Rock Creek and North Branch Slippery Rock Creek. In conjunction with this approval, the Department is granting 401 Water Quality Certification certifying that the approved activities will comply with the applicable provisions of sections 301—303, 306 and 307 of the Federal Water Pollution Control Act (33 U.S.C.A. § 1341) and will not violate applicable Federal and State water quality standards. Application received: July 13, 2011. Permit Issued: March 28, 2012.

Noncoal Permits Actions

Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, 814-472-1900

07070301, Glenn O. Hawbaker, Inc., 1952 Waddle Road, State College, PA 16803, renewal in Woodbury Township, **Blair County**. Receiving stream(s): Schmucker Run, classified for the following use(s): warm water fishery. There are no potable water supply intakes within 10 miles downstream. Renewal application received: October 20, 2011. Permit issued: March 22, 2012.

Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, 814-342-8200

14090301 and NPDES No. PA0257087. Hanson Aggregates Pennsylvania, Inc. (7600 Imperial Way, Allentown, PA 18195). Commencement, operation and restoration of a surface large noncoal (limestone and dolomite) operation located in Spring and Marion Townships, **Centre County** affecting 76.7 acres. Receiving stream: Nittany Creek classified for high-quality cold water fishery. There are no potable water supply intakes within 10 miles downstream. Application received: February 11, 2009. Permit issued: March 26, 2012.

ABANDONED MINE RECLAMATION PROJECT ACT 181 ONLY

Cambria District Mining Office: 286 Industrial Park Road, Ebensburg PA 15931-4119, Telephone (814) 472-1908

Primary Bond Forfeiture Contract Awarded	PBF 56773084.3
Location	Summit Township Somerset County Pennsylvania
Description	Act 181 Bond Forfeiture Reclamation Project D & E—Moore Site

Contractor	Saddle Creek Farms Bedding, Inc. 5007 South Turner Road Canfield, OH 44406
Amount	\$109,998.00
Date of Award	March 27, 2012
Primary Bond Forfeiture Contract Awarded	PBF 56840112.3
Location	Black Township Somerset County Pennsylvania
Description	Act 181 Bond Forfeiture Reclamation Project American Development— Job 33
Contractor	Earth Shapers, LLC 266 Scout Dam Road Ebensburg, PA 15931
Amount	\$159,430.00
Date of Award	March 27, 2012

ACTIONS ON BLASTING ACTIVITY APPLICATIONS

Actions on applications under the Explosives Acts of 1937 and 1957 and 25 Pa. Code § 211.124. Blasting activity performed as part of a coal or noncoal mining activity will be regulated by the mining permit for that coal or noncoal mining activity.

Blasting Permits Actions

Greensburg District Mining Office: Armbrust Professional Center, 8205 Route 819, Greensburg, PA 15601, 724-925-5500

63124003. Mele & Mele & Sons, Inc. (One Mele Place, Braddock, PA 15104). Blasting activity permit for the construction of the Mylan Headquarters, located in Cecil Township, **Washington County**. The duration of blasting is expected to last eight months. Blasting permit issued: March 27, 2012.

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, 570-621-3118

58124121. Maine Drilling & Blasting, (P. O. Box 1140, Gardiner, ME 04345), construction blasting for MacGeorge Well Pad in Silver Lake Township, **Susquehanna County** with an expiration date of March 22, 2013. Permit issued: March 26, 2012.

38124109. Maine Drilling & Blasting, (P. O. Box 1140, Gardiner, ME 04345), construction blasting for Lebanon High School in the City of Lebanon, **Lebanon County** with an expiration date of March 22, 2013. Permit issued: March 28, 2012.

54124101. Maurer & Scott Sales, Inc., (122 Thomas Street, Coopersburg, PA 18036), construction blasting for CES Landfill in Foster and Frailey Townships, **Schuylkill County** with an expiration date of June 1, 2014. Permit issued: March 28, 2012.

66124105. Midstream Explosives, LLC, (289 Southside Drive, Newville, PA 17241), construction blasting for Anthracite East West Pipeline in Auburn, Meshoppen and Washington Townships, **Susquehanna County** with an expiration date of March 21, 2013. Permit issued: March 28, 2012.

38124110. Maine Drilling & Blasting, (P. O. Box 1140, Gardiner, ME 04345), construction blasting for a single dwelling on Russell Road in South Annville Township, **Lebanon County** with an expiration date of March 27, 2013. Permit issued: March 29, 2012.

36124001. Explosives Experts, Inc., (500 Dairy Road, Parkton, MD 21120), construction blasting for Bently Ridge in East Lampeter Township, **Lancaster County** with an expiration date of March 31, 2013. Permit issued: March 29, 2012.

38124110. Maine Drilling & Blasting, (P. O. Box 1140, Gardiner, ME 04345), construction blasting for a single dwelling on Russell Road in South Annville Township, **Lebanon County** with an expiration date of March 27, 2013. Permit issued: March 29, 2012.

38124111. Schlouch, Inc., (P. O. Box 69, Blandon, PA 19510), construction blasting for Logistics Park in Union Township, **Lebanon County** with an expiration date of March 29, 2013. Permit issued: April 2, 2012.

46124106. Rock Work, Inc., (1257 DeKalb Pike, Blue Bell, PA 19422), construction blasting for White Spring Farms in Upper Providence Township, **Montgomery County** with an expiration date of April 1, 2013. Permit issued: April 2, 2012.

58124123. Maurer & Scott Sales, Inc., (122 Thomas Street, Coopersburg, PA 18036), construction blasting for Powers Stone Auburn Quarry in Auburn Township, **Susquehanna County** with an expiration date of March 26, 2013. Permit issued: April 2, 2012.

FEDERAL WATER POLLUTION CONTROL ACT SECTION 401

The Department has taken the following actions on previously received permit applications, requests for Environmental Assessment approval and requests for Water Quality Certification under section 401 of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C.A. § 1341).

Except as otherwise noted, the Department has granted 401 Water Quality Certification certifying that the construction and operation described will comply with sections 301–303, 306 and 307 of the FWPCA (33 U.S.C.A. §§ 1311–1313, 1316 and 1317) and that the construction will not violate applicable Federal and State water quality standards.

Persons aggrieved by an action may appeal that action to the Environmental Hearing Board (Board) under section 4 of the Environmental Hearing Board Act and 2 Pa.C.S. §§ 501–508 and 701–704. The appeal should be sent to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, PO Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users may contact the Board through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin* unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary to the Board at (717) 787-3483. This paragraph does not, in and of itself, create a right of appeal beyond that permitted by applicable statutes and decisional law.

For individuals who wish to challenge an action, the appeal must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

Actions on applications for the following activities filed under the Dam Safety and Encroachments Act (32 P.S. §§ 693.1–693.27), section 302 of the Flood Plain Management Act (32 P.S. § 679.302) and The Clean Streams Law and Notice of Final Action for Certification under section 401 of the FWPCA.

Permits, Environmental Assessments and 401 Water Quality Certifications Issued:

WATER OBSTRUCTIONS AND ENCROACHMENTS

Northcentral Region: Waterways & Wetlands Program Manager, 208 West Third Street, Williamsport, PA 17701, 570-327-3636

E41-624. Christel L. Ertel, 2966 Maple Road, Camp Hill, PA 17011-2824. Small Projects Water Obstruction and Encroachment Joint Permit, in Plunketts Creek Township, **Lycoming County**, ACOE Susquehanna River Basin District (Barbours, PA Quadrangle N: 41° 23' 36"; W: -76° 48' 00").

To construct and maintain an existing residential structure measuring 73' by 43'. The existing structure and improvements are to be elevated above the 100-year flood elevation. The proposed improvements are located within the floodway of Loyalsock Creek at 111 Cemetery Road, Barbours in Plunketts Creek Township, Lycoming County. This project does not propose to impact any wetlands. This permit was issued under Section 105.13(e) "Small Projects."

E49-318. Robert Zimmerman, Jr., 1435 East Market Street, Sunbury, PA 17801-2523. Small Projects Water Obstruction and Encroachment Joint Permit, in Upper Augusta Township, **Northumberland County**, ACOE Susquehanna River Basin District (Sunbury, PA Quadrangle N: 40° 51' 32.9"; W: 76° 46' 35.2").

To construct and maintain an open sided entryway measuring 67 feet long by 7 feet wide in the delineated floodway of Shamokin Creek, which is located along East Market Street in Upper Augusta Township, Northumberland County. There are no proposed wetland impacts. This permit was issued under Section 105.13(e) "Small Projects."

Eastern District: Oil and Gas Management Program Manager, 208 West Third Street, Suite 101, Williamsport, PA 17701

E0829-014: Chesapeake Appalachia, LLC, 101 North Main Street, Athens, PA 18810, Ulster Township, **Bradford County**, ACOE Baltimore District.

To construct, operate and maintain:

1. a 12 inch diameter waterline and a temporary 12 foot wide equipment mat across an unnamed tributary to Susquehanna River (WWF-MF) impacting 12 linear feet of stream; (Ulster, PA Quadrangle, Latitude: 41°49'40", Longitude: -76°30'34");

2. a 12 inch diameter waterline and a temporary 12 foot wide equipment mat across an unnamed tributary to Susquehanna River (WWF-MF) impacting 12 linear feet of stream; (Ulster, PA Quadrangle, Latitude: 41°49'36", Longitude: -76°30'55");

3. a 12 inch diameter waterline and a temporary 12 foot wide equipment mat across an unnamed tributary to Susquehanna River (WWF-MF) impacting 12 linear feet of stream; (Ulster, PA Quadrangle, Latitude: 41°49'38", Longitude: -76°31'18");

4. a 12 inch diameter waterline and a temporary 12 foot wide equipment mat across a Palustrine Emergent Wetland (PEM) impacting 41 square feet; (Ulster, PA Quadrangle, Latitude: 41°49'40", Longitude: -76°30'34");

5. a 12 inch diameter waterline and a temporary 12 foot wide equipment mat across a Palustrine Emergent Wetland (PEM) impacting 8,104 square feet; (Ulster, PA Quadrangle, Latitude: 41°49'36", Longitude: -76°30'45");

6. a 12 inch diameter waterline and a temporary 12 foot wide equipment mat across a Palustrine Emergent Wetland (PEM) impacting 389 square feet; (Ulster, PA Quadrangle, Latitude: 41°49'36", Longitude: -76°30'47");

7. a 12 inch diameter waterline and a temporary 12 foot wide equipment mat across a Palustrine Emergent Wetland (PEM) impacting 2,869 square feet; (Ulster, PA Quadrangle, Latitude: 41°49'36", Longitude: -76°30'54");

8. a 12 inch diameter waterline and a temporary 12 foot wide equipment mat across a Palustrine Emergent/Scrub-Shrub Wetland (PEM/SS) impacting 14,881 square feet; (Ulster, PA Quadrangle, Latitude: 41°49'52", Longitude: -76°31'55");

9. a 12 inch diameter waterline and a temporary 12 foot wide equipment mat across a Palustrine Emergent Wetland (PEM) impacting 136 square feet; (Ulster, PA Quadrangle, Latitude: 41°49'36", Longitude: -76°30'48");

10. a 12 inch diameter waterline and a temporary 12 foot wide equipment mat across a Palustrine Emergent/Scrub-Shrub Wetland (PEM/SS) impacting 4,019 square feet; (Ulster, PA Quadrangle, Latitude: 41°49'33", Longitude: -76°31'9");

The project will result in 36 linear feet of temporary stream impacts and 30,438 square feet (0.70 acre) of PEM/SS wetland impact all for the purpose of installing a waterline with associated access roadways.

E5829-010: Chief Gathering LLC, 6051 Wallace Road Extension, Suite 210, Wexford, PA 15090, Springville Township, Susquehanna County and Lemon Township, Wyoming County, ACOE Baltimore District.

To construct, operate, and maintain:

1) an 8 inch steel gas gathering line and a temporary road crossing impacting 24 lineal feet of an unnamed tributary to Meshoppen Creek (CWF-MF) (Springville, PA Quadrangle; Latitude: 41° 38' 40", Longitude: -75° 54' 28");

2) an 8 inch steel gas gathering line and a temporary road crossing impacting 76 lineal feet of Meshoppen Creek (CWF-MF) (Springville, PA Quadrangle; Latitude: 41° 38' 42", Longitude: -75° 54' 28");

3) an 8 inch steel gas gathering line and a temporary road crossing impacting 6,179 square feet of a palustrine scrub shrub/emergent (PSS/PEM) wetland (Springville, PA Quadrangle; Latitude: 41° 39' 14", Longitude: -75° 54' 26");

4) an 8 inch steel gas gathering line and a temporary road crossing impacting 60 lineal feet of Meshoppen Creek (CWF-MF) (Springville, PA Quadrangle; Latitude: 41° 39' 18", Longitude: -75° 54' 17");

5) an 8 inch steel gas gathering line and a temporary road crossing impacting 917 square feet of a palustrine

emergent (PEM) wetland (Springville, PA Quadrangle; Latitude: 41° 39' 19", Longitude: -75° 54' 16");

6) a temporary road crossing impacting 4,058 square feet of a palustrine emergent (PEM) wetland (Springville, PA Quadrangle; Latitude: 41° 39' 26", Longitude: -75° 54' 10");

7) an 8 inch steel gas gathering line impacting 164 square feet beneath a palustrine forested (PFO) wetland (Springville, PA Quadrangle; Latitude: 41° 39' 54", Longitude: -75° 53' 50");

8) an 8 inch steel gas gathering line impacting 1 lineal foot beneath an unnamed tributary to Meshoppen Creek (CWF-MF) (Springville, PA Quadrangle; Latitude: 41° 39' 55", Longitude: -75° 53' 50");

The purpose of the project is for the conveyance of natural gas from the PMG Annie well site for 2.04 miles to the Polovitch to Wilson natural gas pipeline. The project will result in 134 linear feet of temporary stream impacts and a total of 11,318 square feet (0.26 acre) of temporary wetland impacts.

EROSION AND SEDIMENT CONTROL

The following Erosion and Sediment Control permits have been issued.

Persons aggrieved by an action may appeal that action to the Environmental Hearing Board (Board) under section 4 of the Environmental Hearing Board Act and 2 Pa.C.S. §§ 501—508 and 701—704. The appeal should be sent to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, PO Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users may contact the Board through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin* unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary to the Board at (717) 787-3483. This paragraph does not, in and of itself, create a right of appeal beyond that permitted by applicable statutes and decisional law.

For individuals who wish to challenge an action, the appeal must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

Northcentral Region: Oil & Gas Management Program Manager, 208 West Third Street, Williamsport, PA 17701

ESCGP-1 # ESX12-117-0024

Applicant Name Seneca Resources

Contact Person Doug Keplar

Address 51 Zents Boulevard

City, State, Zip Brookville, PA 15825

County Tioga County

Township(s) Delmar Township

Receiving Stream(s) and Classification(s) Baldwin Run,

Kack Hollow, Hibard Hollow (EV);

Secondary: Marsh Creek

ESCGP-1 # ESX12-115-0039

Applicant Name Williams Field Services Company, LLC

Contact Person Kristy Flavin

Address 1605 Coraopolis Heights Road
 City, State, Zip Moon Township, PA 15108
 County Susquehanna County
 Township(s) Springville and Lathrop Townships
 Receiving Stream(s) and Classification(s) Pond Brook,
 Trib 28923 to Field Brook, Trib 28924 to Field Brook,
 East Branch to Field Brook, Field Brook, Trib 28922 to
 Field Brook, Monroe Creek, Trib 28914 to Monroe
 Creek, Trib 28921 to Field Brook, Trib 28912 to
 Monroe Creek (All CWF, MF)

ESCGP-1 # ESX12-081-0037
 Applicant Name EXCO Resources (PA), LLC
 Contact Person Larry Sanders
 Address 3000 Ericsson Drive, Suite 200
 City, State, Zip Warrendale, PA 15086
 County Lycoming County
 Township(s) Cogan House Township
 Receiving Stream(s) and Classification(s) UNT (EV) &
 Little Gap Run (HQ-CWF);
 Secondary: Roaring Run (EV) & Hoagland Run (HQ-
 CWF)

ESCGP-1 # ESX12-081-0014 (01)
 Applicant Name Anadarko Marcellus Midstream, LLC
 Contact Person Nathan S. Bennett
 Address 33 W. Third Street, Suite 200
 City, State, Zip Williamsport, PA 17701
 County Lycoming County
 Township(s) Cummings and Gallagher Townships
 Receiving Stream(s) and Classification(s) Ott Fork,
 Second Branch Ott Fork, Velely Fork and Upper
 Pine Bottom Run (All HQ-CWF, MF) and Craig
 Fork (EV);
 Secondary: Pine Creek (EV)

ESCGP-1 # ESX12-081-0035
 Applicant Name Anadarko Marcellus Midstream, LLC
 Contact Person Nathan S. Bennett
 Address 33 W. Third Street, Suite 200
 City, State, Zip Williamsport, PA 17701
 County Lycoming County
 Township(s) Pine Township
 Receiving Stream(s) and Classification(s) Blockhouse
 Creek (EV, MF); Little Pine Creek (EV, MF)

ESCGP-1 # ESX12-015-0016
 Applicant Name Chesapeake Appalachia, LLC
 Contact Person Eric Haskins
 Address 101 North Main Street
 City, State, Zip Athens, PA 18810
 County Bradford County
 Township(s) Wysox Township
 Receiving Stream(s) and Classification(s) Laning Creek,
 Pond Hill Run;
 Secondary: Wysox Creek

ESCGP-1 # ESX12-081-0032
 Applicant Name Anadarko Marcellus Midstream, LLC
 Contact Person Nathan S. Bennett
 Address 33 W. Third Street, Suite 200
 City, State, Zip Williamsport, PA 17701
 County Lycoming County
 Township(s) Gamble Township
 Receiving Stream(s) and Classification(s) West Branch
 Murray Run and Miller Run

ESCGP-1 # ESX12-035-0005
 Applicant Name Anadarko E&P Company, LP
 Contact Person Nathan S. Bennett
 Address 33 W. Third Street, Suite 200
 City, State, Zip Williamsport, PA 17701
 County Clinton County

Township(s) Beech Creek Township
 Receiving Stream(s) and Classification(s) East Branch Big
 Run (CWF, MF);
 Secondary: Big Run (CWF, MF)

ESCGP-1 # ESX12-015-0056
 Applicant Name Chesapeake Appalachia, LLC
 Contact Person Eric Haskins
 Address 101 North Main Street
 City, State, Zip Athens, PA 18810
 County Bradford County
 Township(s) Wysox Township
 Receiving Stream(s) and Classification(s) Susquehanna
 River (WWF);
 Secondary: Chesapeake Bay

ESCGP-1 # ESX11-015-0118 (01)
 Applicant Name Appalachia Midstream Services, LLC
 Contact Person Patrick Myers, Jr.
 Address 100 Ist Center
 City, State, Zip Horseheads, NY 14845
 County Bradford County
 Township(s) Wysox Township
 Receiving Stream(s) and Classification(s) Laning Creek,
 UNT to Laning Creek, UNT to Rummerfield Creek,
 Susquehanna River, UNT to Susquehanna River (All
 WWF, MF); Wysox Creek, UNT to Wysox Creek, Pond
 Hill Run, UNT to Pond Hill Run, Hollow Run, Dry Run,
 UNT to Johnson Creek (All CWF, MF)

ESCGP-1 # ESX12-081-0034
 Applicant Name EXCO Resources (PA), LLC
 Contact Person Larry Sanders
 Address 3000 Ericsson Drive, Suite 200
 City, State, Zip Warrendale, PA 15086
 County Lycoming County
 Township(s) Penn and Franklin Townships
 Receiving Stream(s) and Classification(s) UNT to Beaver
 Creek and Big Run;
 Secondary: Little Muncy Creek

ESCGP-1 # ESX12-115-0047
 Applicant Name Appalachia Midstream Services, LLC
 Contact Person Patrick Myers, Jr.
 Address 100 Ist Center
 City, State, Zip Horseheads, NY 14845
 County Susquehanna County
 Township(s) Rush Township
 Receiving Stream(s) and Classification(s) 2 UNT to Elk
 Lake Stream (CWF)/Wysox—Wyalusing Creeks Water-
 shed;
 Secondary: Elk Lake Stream (CWF)

ESCGP-1 # ESX12-115-0032
 Applicant Name Williams Field Services, LLC
 Contact Person Clayton Roesler
 Address 1605 Coraopolis Heights Road
 City, State, Zip Moon Township, PA 15108
 County Susquehanna County
 Township(s) Dimock Township
 Receiving Stream(s) and Classification(s) UNT to Elk
 Lake Stream, (CWF, MF)

ESCGP-1 # ESX10-115-0014 (02)
 Applicant Name Williams Field Services, LLC
 Contact Person Frank Canneto
 Address 1605 Coraopolis Heights Road
 City, State, Zip Moon Township, PA 15108
 County Susquehanna County
 Township(s) Dimock Township
 Receiving Stream(s) and Classification(s) Hop Bottom
 Creek, Meshoppen Creek & their UNT (All CWF) MF

ESCGP-1 # ESX11-115-0187
 Applicant Name Southwestern Energy Production Company
 Contact Person Dave Sweeley
 Address 917 State Route 92 North
 City, State, Zip Tunkhannock, PA 18657
 County Susquehanna County
 Township(s) Jackson Township
 Receiving Stream(s) and Classification(s) Martins Creek (CWF, MF)

ESCGP-1 # ESX12-033-0011
 Applicant Name EOG Resources, Inc.
 Contact Person Jon Jorgenson
 Address 2039 South Sixth Street
 City, State, Zip Indiana, PA 15701
 County Clearfield County
 Township(s) Lawrence and Goshen Townships
 Receiving Stream(s) and Classification(s) Lick Run (HQ);
 Secondary: Fork Run

ESCGP-1 # ESX12-117-0026
 Applicant Name SWEPI LP
 Contact Person H. James Sewell
 Address 190 Thorn Hill Road
 City, State, Zip Warrendale, PA 15086
 County Tioga County
 Township(s) Liberty Township
 Receiving Stream(s) and Classification(s) Salt Spring Run/Susquehanna River Basin in PA—West Branch Susquehanna River (List L);
 Secondary: Roaring Branch to Lycoming Creek (HQ, EV, CWF)

ESCGP-1 # ESX12-105-0001
 Applicant Name Tenaska Midstream Pennsylvania, LLC
 Contact Person Ronald P. McGlade
 Address 375 Southpointe Boulevard, Suite 350
 City, State, Zip Canonsburg, PA 15317-8587
 County Potter County
 Township(s) Abbott and West Branch Townships
 Receiving Stream(s) and Classification(s) Germania Branch, Sliders Branch, UNT to Sliders Branch, Boedler Branch (All EV)

ESCGP-1 # ESX11-117-0135
 Applicant Name SWEPI LP
 Contact Person H. James Sewell
 Address 190 Thorn Hill Road
 City, State, Zip Warrendale, PA 15086
 County Tioga County
 Township(s) Liberty Township
 Receiving Stream(s) and Classification(s) Brion Creek/Susquehanna River Basin (List L), Lycoming Creek/Susquehanna River Basin (List L) (Both EV)

ESCGP-1 # ESX12-113-0014
 Applicant Name Chesapeake Appalachia, LLC
 Contact Person Eric Haskins
 Address 101 North Main Street
 City, State, Zip Athens, PA 18810
 County Sullivan County
 Township(s) Cherry Township
 Receiving Stream(s) and Classification(s) Mill Creek to NW & Lick Creek to SE;
 Secondary: Little Loyalsock Creek (EV)

ESCGP-1 # ESG11-115-0195
 Applicant Name Southwestern Energy Production Company
 Contact Person Dave Sweeley
 Address 917 State Route 92 North
 City, State, Zip Tunkhannock, PA 18657

County Susquehanna County
 Township(s) New Milford Township
 Receiving Stream(s) and Classification(s) Smith Creek (HQ-CWF)/UNT to E. Lake Creek (CWF, MF);
 Secondary: Salt Lick Creek (HQ-CWF, MF)

ESCGP-1 # ESX12-081-0041
 Applicant Name Anadarko Marcellus Midstream, LLC
 Contact Person Nathan S. Bennett
 Address 33 W. Third Street, Suite 200
 City, State, Zip Williamsport, PA 17701
 County Lycoming County
 Township(s) Gamble Township
 Receiving Stream(s) and Classification(s) UNT to Shoemaker Run (HQ-CWF, MF)

ESCGP-1 # ESX12-081-0040
 Applicant Name Anadarko E&P Company, LP
 Contact Person Rane Wilson
 Address 33 W. Third Street, Suite 200
 City, State, Zip Williamsport, PA 17701
 County Lycoming County
 Township(s) Cogan House Township
 Receiving Stream(s) and Classification(s) Larry's Creek (HQ-CWF, MF);
 Secondary: West Branch of Susquehanna River (WWF, MF)

ESCGP-1 # ESX12-033-0004
 Applicant Name Brian Clauto
 Contact Person EQT Gathering, LLC
 Address 455 Racetrack Road, Suite 101
 City, State, Zip Washington, PA 15301
 County Clearfield County
 Township(s) Huston Township
 Receiving Stream(s) and Classification(s) UNT 4 to UNT5 to Bark Camp Run, UNT 5 to Bark Camp Run, UNT 6 to Bark Camp Run, UNT 7 to Bark Camp Run, UNT 8 to Bark Camp Run, UNT 9 to Bark Camp Run, UNT 10 to Bark Camp Run (All CWF), Bark Camp Run (CWF, MF)
 Secondary: Bennett Branch Sinnemahoning Creek (CWF, MF)

ESCGP-1 # ESX12-081-0004 (01)
 Applicant Name Anadarko Marcellus Midstream, LLC
 Contact Person Nathan S. Bennett
 Address 33 W. Third Street, Suite 200
 City, State, Zip Williamsport, PA 17701
 County Lycoming County
 Township(s) Cummings and Watson Townships
 Receiving Stream(s) and Classification(s) Ott Fork, first Branch Ott Fork, and Lower Pine Bottom Run (All HQ-CWF, MF);
 Secondary: Pine Creek (EV)

ESCGP-1 # ESX12-015-0050
 Applicant Name Talisman Energy USA, Inc.
 Contact Person Tracy Gregory
 Address 337 Daniel Zenker Drive
 City, State, Zip Horseheads, NY 14845
 County Bradford County
 Township(s) Orwell Township
 Receiving Stream(s) and Classification(s) South Creek, Johnson Creek (Both CWF, MF)

ESCGP-1 # ESX12-115-0015
 Applicant Name Williams Field Services, LLC
 Contact Person Kristy Flavin
 Address 1605 Coraopolis Heights Road
 City, State, Zip Moon Township, PA 15108
 County Susquehanna County
 Township(s) Springville Township

Receiving Stream(s) and Classification(s) North Branch Meshoppen Creek and an UNT to Meshoppen Creek/Upper Susquehanna-Tunkhannock Watershed

ESCGP-1 # ESX12-115-0011

Applicant Name Southwestern Energy Production Company

Contact Person Dave Sweeley
Address 917 State Route 92 North
City, State, Zip Tunkhannock, PA 18657
County Susquehanna County

Township(s) New Milford Township

Receiving Stream(s) and Classification(s) UNT to Nine Partners Creek (CWF/MF)

ESCGP-1 # ESG11-115-0201

Applicant Name Southwestern Energy Production Company

Contact Person Dave Sweeley
Address 917 State Route 92 North
City, State, Zip Tunkhannock, PA 18657
County Susquehanna County

Township(s) New Milford Township

Receiving Stream(s) and Classification(s) Smith Creek (HQ-CWF)

Secondary: Salt Lick Creek (HQ-CWF, MF)

ESCGP-1 # ESX12-015-0063

Applicant Name Chesapeake Appalachia, LLC

Contact Person Eric Haskins
Address 101 North Main Street
City, State, Zip Athens, PA 18810
County Bradford County

Township(s) Terry Township

Receiving Stream(s) and Classification(s) UNT to Bowman Creek (CWF) & Bowman Creek (CWF);

Secondary: Bowman Creek (CWF)

ESCGP-1 # ESX12-015-0054

Applicant Name Chesapeake Appalachia, LLC

Contact Person Eric Haskins
Address 101 North Main Street
City, State, Zip Athens, PA 18810
County Bradford County

Township(s) Sheshequin Township

Receiving Stream(s) and Classification(s) Mallory Creek (WWF);

Secondary: Susquehanna River (WWF)

ESCGP-1 # ESX12-015-0047

Applicant Name Appalachia Midstream Services, LLC

Contact Person Patrick Myers, Jr.
Address 100 1st Center
City, State, Zip Horseheads, NY 14845
County Bradford County

Township(s) Smithfield, Troy, West Burlington, Asylum, Albany and Granville Townships

Receiving Stream(s) and Classification(s) North Branch Sugar Run, North Branch Towanda Creek, UNTs to Sugar Run and UNTs to Sugar Creek (CWF/MF); Sugar Creek, Mud Creek, Canfield Run, Van Horn Glen Run, Mill Creek and Tomjack Creek (TSF/MF, Susquehanna River, Durell Creek and UNT to Durell Creek (WWF/MF)

ESCGP-1 # ESX12-081-0038

Applicant Name EXCO Resources (PA), LLC

Contact Person Larry Sanders
Address 3000 Ericsson Drive, Suite 200
City, State, Zip Warrendale, PA 15086
County Lycoming County

Township(s) Penn Township

Receiving Stream(s) and Classification(s) UNT to Beaver

Run, UNT to Big Run, and Big Run;
Secondary: Little Muncy Creek

ESCGP-1 # ESX11-117-0037 (01)

Applicant Name SWEPI LP

Contact Person H. James Sewell
Address 190 Thorn Hill Road
City, State, Zip Warrendale, PA 15086
County Tioga County

Township(s) Jackson & Liberty Townships

Receiving Stream(s) and Classification(s) Brion Creek, Little Elk Run, Tributaries to Brion Creek, Little Elk Run, Roaring Branch (All EV, MF)

ESCGP-1 # ESX12-015-0049

Applicant Name Appalachia Midstream Services, LLC

Contact Person Patrick Myers, Jr.
Address 100 1st Center
City, State, Zip Horseheads, NY 14845
County Bradford County

Township(s) Wilmot Township

Receiving Stream(s) and Classification(s) 2 UNTs to Foster Branch, Foster Branch (All CWF) Wysox-Wyalusing Watershed,
Secondary: Sugar Run (CWF)

ESCGP-1 # ESX11-015-0243

Applicant Name Chief Oil & Gas LLC

Contact Person Michael Hritz
Address 6051 Wallace Road Ext., Suite 210
City, State, Zip Wexford, PA 15090
County Bradford County

Township(s) Ulster Township

Receiving Stream(s) and Classification(s) Brown's Creek (TSF,MF), UNT to Browns Creek (TSF, MF);
Secondary: Sugar Creek (TSF, MF)

ESCGP-1 # ESX12-015-0072

Applicant Name Talisman Energy USA, Inc.

Contact Person Tracy Gregory
Address 337 Daniel Zenker Drive
City, State, Zip Horseheads, NY 14845
County Bradford County

Township(s) Warren Township

Receiving Stream(s) and Classification(s) Wappasening Creek (CWF, MF), Corbin Creek (CWF, MF)

ESCGP-1 # ESX12-113-0015

Applicant Name Carrizo Marcellus, LLC

Contact Person Gary Byron
Address 251 Drain Lick Road, P. O. Box 231
City, State, Zip Drifting, PA 16834
County Sullivan County

Township(s) Fox Township

Receiving Stream(s) and Classification(s) Schrader Creek/Sugar—Towanda Creek Watershed,
Secondary: Lycoming Creek (EV)

ESCGP-1 # ESX11-081-0145 (01)

Applicant Name Inflection Energy, LLC

Contact Person Scott Zimmerman
Address 701 Technology Drive, Suite 250
City, State, Zip Canonsburg, PA 15317
County Lycoming County

Township(s) Upper Fairfield Township

Receiving Stream(s) and Classification(s) Loyalsock Creek (TSF,MF);

Secondary: West Branch Susquehanna River

ESCGP-1 # ESX10-081-0070 (02)

Applicant Name Pennsylvania General Energy Company, LLC

Contact Person Jim Ashbaugh
Address 120 Market Street

City, State, Zip Warren, PA 16365
 County Lycoming County
 Township(s) Cummings and Watson Township
 Receiving Stream(s) and Classification(s) Ritter Run,
 North Fork Tombs Run (HQ/CWF);
 Secondary: Tarklin Run (HQ/CWF)

ESCGP-1 # ESX12-117-0009
 Applicant Name EQT Production Company
 Contact Person Todd Klaner
 Address 455 Racetrack Road
 City, State, Zip Washington, PA 15301
 County Tioga County
 Township(s) Duncan Township
 Receiving Stream(s) and Classification(s) UNT to Sands
 Run and Sands Run (Both CWF)/Pine Creek Water-
 shed;
 Secondary: Wilson Creek (CWF)

ESCGP-1 # ESX12-081-0043
 Applicant Name PVR Marcellus Gas Gathering, LLC
 Contact Person Kevin Roberts
 Address 100 Penn Tower, Suite 201-202, 25 W. Third
 Street
 City, State, Zip Williamsport, PA 17701
 County Lycoming County
 Township(s) Fairfield and Upper Fairfield Townships
 Receiving Stream(s) and Classification(s) Mill Creek East
 (HQ)

ESCGP-1 # ESX12-081-0001
 Applicant Name Anadarko E&P Company, LP
 Contact Person Rane Wilson
 Address 33 W. Third Street, Suite 200
 City, State, Zip Williamsport, PA 17701
 County Lycoming County
 Township(s) Cummings Township
 Receiving Stream(s) and Classification(s) Veley Fork (HQ-
 CWF, MF);
 Secondary: Upper Pine Bottom Run (HQ-CWF, MF)

ESCGP-1 # ESX12-081-0042
 Applicant Name EXCO Resources (PA), LLC
 Contact Person Larry Sanders
 Address 3000 Ericsson Drive, Suite 200
 City, State, Zip Warrendale, PA 15086
 County Lycoming County
 Township(s) Penn Township
 Receiving Stream(s) and Classification(s) Derr Run, Jakes
 Run & UNT to Sugar Run;
 Secondary: Little Muncy Creek

ESCGP-1 # ESX12-015-0070
 Applicant Name Southwestern Energy Production
 Company
 Contact Person Dave Sweeley
 Address 917 State Route 92 North
 City, State, Zip Tunkhannock, PA 18657
 County Bradford County
 Township(s) Herrick and Standing Stone Townships
 Receiving Stream(s) and Classification(s) UNT to Rum-
 merfield Creek and Rummerfield Creek (Both WWF);
 Secondary: Susquehanna River (WWF)

ESCGP-1 # ESX11-081-0157
 Applicant Name XTO Energy, Inc.
 Contact Person Stacy Vehovic
 Address 395 Airport Road
 City, State, Zip Indiana, PA 15701
 County Lycoming County
 Township(s) Moreland Township
 Receiving Stream(s) and Classification(s) Sugar Run
 (CWF, MF);
 Secondary: Little Muncy Creek (CWF, MF)

ESCGP-1 # ESX12-015-0061
 Applicant Name Chesapeake Appalachia, LLC
 Contact Person Eric Haskins
 Address 101 North Main Street
 City, State, Zip Athens, PA 18810
 County Bradford County
 Township(s) Wilmot Township
 Receiving Stream(s) and Classification(s) UNT to Sugar
 Creek (CWF);
 Secondary: Sugar Run Creek (CWF)

ESCGP-1 # ESX12-117-0025
 Applicant Name Talisman Energy USA, Inc.
 Contact Person Tracy Gregory
 Address 337 Daniel Zenker Drive
 City, State, Zip Horseheads, NY 14845
 County Tioga County
 Township(s) Bloss Township
 Receiving Stream(s) and Classification(s) UNT to Bellman
 Run, UNT to Flower Run, Johnson Creek, UNT to
 Johnson Creek (All CWF/MF);
 Secondary: Bellman Run, Flower Run (Both CWF/MF)

ESCGP-1 # ESX12-015-0058
 Applicant Name Talisman Energy USA, Inc.
 Contact Person Tracy Gregory
 Address 337 Daniel Zenker Drive
 City, State, Zip Horseheads, NY 14845
 County Bradford County
 Township(s) Orwell and Pike Townships
 Receiving Stream(s) and Classification(s) UNT to
 Rockwell Creek (WWF-MF), South Creek (CWF-MF)

ESCGP-1 # ESX11-0150226 (02)
 Applicant Name Chief Oil & Gas LLC
 Contact Person Michael Hritz
 Address 6051 Wallace Road Ext., Suite 210
 City, State, Zip Wexford, PA 15090
 County Bradford County
 Township(s) Wilmot Township
 Receiving Stream(s) and Classification(s) UNT to Sugar
 Run Creek (CWF), Sugar Run Creek (CWF);
 Secondary: Susquehanna River (CWF)

ESCGP-1 # ESX12-081-0025
 Applicant Name Seneca Resources Corporation
 Contact Person Michael Clinger
 Address 51 Zents Boulevard
 City, State, Zip Brookville, PA 15825
 County Lycoming County
 Township(s) Lewis Township
 Receiving Stream(s) and Classification(s) Dry Run, Brown
 Hollow, Hagerman Run (HQ-CWF)/Natural Trout Re-
 production HQ;
 Secondary: Lycoming Creek (EV, MF)

ESCGP-1 # ESX12-033-0010
 Applicant Name Carrizo Marcellus, LLC
 Contact Person Gary Byron
 Address 251 Drain Lick Road, P. O. Box 231
 City, State, Zip Drifting, PA 16834
 County Clearfield County
 Township(s) Woodward Township
 Receiving Stream(s) and Classification(s) UNT to Gose
 Run;
 Secondary: Gose Run

ESCGP-1 # ESX12-015-0055
 Applicant Name Southwestern Energy Production
 Company
 Contact Person Dave Sweeley
 Address 917 State Route 92 North
 City, State, Zip Tunkhannock, PA 18657

County Bradford County
 Township(s) Stevens Township
 Receiving Stream(s) and Classification(s) UNT to Wyalusing Creek (WWF);
 Secondary: Susquehanna River (WWF)

ESCGP-1 # ESG12-081-0010
 Applicant Name Chief Gathering, LLC
 Contact Person Ted Wurfel
 Address 6051 Wallace Road, Suite 210
 City, State, Zip Wexford, PA 15090
 County Lycoming County
 Township(s) Jordan Township
 Receiving Stream(s) and Classification(s) Little Muncy Creek (CWF, MF)

ESCGP-1 # ESX12-015-0057
 Applicant Name Chesapeake Appalachia, LLC
 Contact Person Eric Haskins
 Address 101 North Main Street
 City, State, Zip Athens, PA 18810
 County Bradford County
 Township(s) Tuscarora Township
 Receiving Stream(s) and Classification(s) UNT Tuscarora Creek (CWF); Tuscarora Creek (CWF)

ESCGP-1 # ESX12-117-0030
 Applicant Name SWEPI LP
 Contact Person H. James Sewell
 Address 190 Thorn Hill Road
 City, State, Zip Warrendale, PA 15086
 County Tioga County
 Township(s) Charleston Township
 Receiving Stream(s) and Classification(s) UNT to Norris Brook/Susquehanna River Basin in PA—Susquehanna River (List H);
 Secondary: Catiln Hollow/Susquehanna River Basin in PA—Susquehanna River (List H) (TSF)

ESCGP-1 # ESX12-115-0021
 Applicant Name Cabot Oil & Gas Corporation
 Contact Person Kenneth Marcum
 Address Five Penn Center West, Suite 401
 City, State, Zip Pittsburgh, PA 15276
 County Susquehanna County
 Township(s) Lathrop Township
 Receiving Stream(s) and Classification(s) Horton Creek;
 Secondary: Tunkhannock Creek

ESCGP-1 # ESX12-115-0020
 Applicant Name Williams Field Services Company, LLC
 Contact Person Kristy Flavin
 Address 1605 Coraopolis Heights Road
 City, State, Zip Moon Township, PA 15108
 County Susquehanna County
 Township(s) Bridgewater and Forest Lake Townships
 Receiving Stream(s) and Classification(s) Beebe Creek, Tributaries to Forest Lake Creek and a Trib to East Branch Wyalusing Creek / Upper Susquehanna—Tunkhannock Watershed

ESCGP-1 # ESX12-115-0034
 Applicant Name WPX Energy Appalachia, LLC
 Contact Person David Freudenrich
 Address 1000 Town Center Way
 City, State, Zip Canonsburg, PA 15317
 County Susquehanna County
 Township(s) Liberty Township
 Receiving Stream(s) and Classification(s) UNT to Snake Creek (CWF, MF);
 Secondary: Snake Creek

ESCGP-1 # ESX12-115-0010
 Applicant Name Southwestern Energy Production Company
 Contact Person Dave Sweeley
 Address 917 State Route 92 North
 City, State, Zip Tunkhannock, PA 18657
 County Susquehanna County
 Township(s) Jackson Township
 Receiving Stream(s) and Classification(s) UNT to Butler Creek (CWF, MF), Butler Creek (CWF, MF), UNT to Salt Lick Creek (HQ-CWF, MF);
 Secondary: Salt Lick Creek (HQ-CWF/MF)

ESCGP-1 # ESG12-081-0009
 Applicant Name Chief Gathering, LLC
 Contact Person Ted Wurfel
 Address 6051 Wallace Road, Suite 210
 City, State, Zip Wexford, PA 15090
 County Lycoming County
 Township(s) Jordan Township
 Receiving Stream(s) and Classification(s) West Branch Run (CWF, MF), Little Muncy Creek (CWF, MF)

ESCGP-1 # ESX10-117-0065 (01)
 Applicant Name SWEPI LP
 Contact Person H. James Sewell
 Address 190 Thorn Hill Road
 City, State, Zip Warrendale, PA 15086
 County Tioga County
 Township(s) Delmar Township
 Receiving Stream(s) and Classification(s) UNT to East Branch Stony Fork/West Branch Susquehanna River (List L)

ESCGP-1 # ESX12-115-0042
 Applicant Name Angelina Gathering Company, LLC
 Contact Person Danny Spaulding
 Address 2350 N. Sam Houston Pkwy E., Suite 125
 City, State, Zip Houston, TX 77032
 County Susquehanna County
 Township(s) Lenox and Clifford Townships
 Receiving Stream(s) and Classification(s) This site drains to Tunkhannock Creek and UNT to Tunkhannock Creek including Round Pond (CWF, MF)

ESCGP-1 # ESX12-115-0044
 Applicant Name WPX Energy Appalachia, LLC
 Contact Person David Freudenrich
 Address 6000 Town Center Blvd., Suite 300
 City, State, Zip Canonsburg, PA 15317
 County Susquehanna County
 Township(s) Silver Lake Township
 Receiving Stream(s) and Classification(s) Rhiney Creek/Snake Creek Watershed, Little Snake Creek/Snake Creek Watershed—Rhiney Creek and Little Snake Creek are Tribs to Snake Creek (CWF, MF)

ESCGP-1 # ESX11-033-0015 (02)
 Applicant Name Energy Corporation of America
 Contact Person Mark Fry
 Address 501 56th Street South East
 City, State, Zip Charleston, WV 25304
 County Clearfield County
 Township(s) Goshen Township
 Receiving Stream(s) and Classification(s) Jack Dent Branch, Medix Run, Shaggers Inn Run, Robert Run, Gifford Run, Deer Creek, Little Deer Creek, Little Trout Run, Surveyor Run, and Trout Run;
 Secondary: Susquehanna River (WWF)

ESCGP-1 # ESX12-115-0037
 Applicant Name Susquehanna Gathering Company 1, LLC
 Contact Person John Miller
 Address P. O. Box 839, 1299 Oliver Road
 City, State, Zip New Milford, PA 18834
 County Susquehanna County
 Township(s) New Milford Township
 Receiving Stream(s) and Classification(s) UNT Meylert Creek, Meylert Creek, Meylert Creek Watershed;
 Secondary: Salt Lick Creek (HQ-CWF, MF)

ESCGP-1 # ESX11-033-0011 (01)
 Applicant Name Carrizo Marcellus, LLC
 Contact Person Gary Byron
 Address 251 Drain Lick Road, P. O. Box 231
 City, State, Zip Drifting, PA 16834
 County Clearfield County
 Township(s) Gulich Township
 Receiving Stream(s) and Classification(s) Whiteside Run, CWF;
 Secondary: Moshannon Creek

ESCGP-1 # ESX12-015-0065
 Applicant Name Angelina Gathering Company, LLC
 Contact Person Danny Spaulding
 Address 2350 N. Sam Houston Pkwy E., Suite 125
 City, State, Zip Houston, TX 77032
 County Susquehanna County
 Township(s) Herrick Township
 Receiving Stream(s) and Classification(s) UNT to Cold Creek (WWF, MF)

ESCGP-1 # ESX12-015-0062
 Applicant Name Chesapeake Appalachia, LLC
 Contact Person Eric Haskins
 Address 101 North Main Street
 City, State, Zip Athens, PA 18810
 County Bradford County
 Township(s) Wysox Township
 Receiving Stream(s) and Classification(s) UNT Wysox Creek (CWF), Hollow Run which is Trib to Pond Hill, which is Trib to Wysox Creek (CWF)

ESCGP-1 # ESG11-115-0191
 Applicant Name Southwestern Energy Production Company
 Contact Person Dave Sweeley
 Address 917 State Route 92 North
 City, State, Zip Tunkhannock, PA 18657
 County Susquehanna County
 Township(s) New Milford Township

Receiving Stream(s) and Classification(s) Smith Creek (HQ-CWF);
 Secondary: Salk Lick Creek (HQ-CWF, MF)

ESCGP-1 # ESX12-015-0074
 Applicant Name Appalachia Midstream Services, LLC
 Contact Person Patrick Myers, Jr.
 Address 100 Ist Center
 City, State, Zip Horseheads, NY 14845
 County Bradford County
 Township(s) Ulster Township
 Receiving Stream(s) and Classification(s) UNT to Susquehanna River (CWF/MF)

ESCGP-1 # ESX12-015-0068
 Applicant Name Chesapeake Appalachia, LLC
 Contact Person Eric Haskins
 Address 101 North Main Street
 City, State, Zip Athens, PA 18810
 County Bradford County
 Township(s) Litchfield Township
 Receiving Stream(s) and Classification(s) UNT to Spaulding Creek and UNT to Saterlee Creek (Both CWF);
 Secondary: Susquehanna River (WWF)

ESCGP-1 # ESX11-015-0268 (01)
 Applicant Name Chesapeake Appalachia, LLC
 Contact Person Eric Haskins
 Address 101 North Main Street
 City, State, Zip Athens, PA 18810
 County Bradford County
 Township(s) Franklin Township
 Receiving Stream(s) and Classification(s) Towanda Creek (TSF), UNT to Towanda Creek;
 Secondary: Susquehanna River (WWF)

ESCGP-1 # ESX12-015-0060
 Applicant Name Talisman Energy USA, Inc.
 Contact Person Tracy Gregory
 Address 337 Daniel Zenker Drive
 City, State, Zip Horseheads, NY 14845
 County Bradford County
 Township(s) Windham and Orwell Townships
 Receiving Stream(s) and Classification(s) Wysox Creek (CWF, MF) and UNT to Wysox Creek;
 Secondary: Wysox Creek

Southwest Region: Waterways & Wetlands Program Manager, 400 Waterfront Drive, Pittsburgh, Pa 15222-4745.

Washington County Conservation District: 2800 North Main St, Suite 105, Washington PA, 15301 (724) 705-7098

<i>ESCGP-1 No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
0063128001	National Fuel gas Supply Corporation 1100 State Street Erie, PA 15601	Washington	Buffalo, Donegal, Hopewell, and Morris Townships	Buffalo Creek (HQ-WWF) Brush Run (HQ-WWF) Templeton Fork (WWF), Short Creek (WWF), Tenmile Creek (TSF)

Northwest Region: Oil and Gas Program Manager, 230 Chestnut St., Meadville, PA 16335

ESCGP-1 #ESX12-047-0040—Owls Nest Pad D
 Applicant Seneca Resources Corporation
 Contact Michael Clinger
 Address 51 Zents Boulevard
 City Brookville State PA Zip Code 15825
 County Elk Township(s) Highland(s)

Receiving Stream(s) and Classification(s) Big Run (HQ-CWF); UNT to Red Lick Run (HQ-CWF); Red Lick Run (HQ-CWF)

ESCGP-1 #ESX12-053-0027-DR02 Pad & Impoundment
 Applicant Hunt Marcellus Operating Company
 Contact Bradley Batterson
 Address 160 N Michael Street, Suite 3
 City St. Marys State PA Zip Code 15857

County Forest Township(s) Hickory(s)
Receiving Stream(s) and Classification(s) Beaver/Otter
Creek/Reno Run—HQ

*Southwest Region: Oil & Gas Program Mgr. 400 Water-
front Dr. Pittsburgh PA*

1/23/2012

ESCGP-1 No.: ESX12-125-0011
Applicant Name: MARKWEST LIBERTY MIDSTREAM &
RESOURCES LLC
Contact Person MR RICK LOWRY
Address: 824 MORGANZA ROAD
City: CANONSBURG State: PA Zip Code: 15317
County: WASHINGTON Township: INDEPENDENCE
Receiving Stream (s) And Classifications: SUGARCAMP
RUN, UNTs TO SUGARCAMP RUN; HQ

2/16/12

ESCGP-1 No.: ESX12-125-0021
Applicant Name: CNX GAS COMPANY LLC
Contact Person: MR DANIEL BITZ
Address: 200 EVERGREENE DRIVE
City: WAYNESBURG State: PA Zip Code: 15370
County: WASHINGTON Township(s): SOUTH
FRANKLIN TOWNSHIP
Receiving Stream(s) and Classifications: 2 UNT's OF
TENMILE CREEK (TSF); OTHER

2/17/12

ESCGP-1 No.: ESX12-125-0023
Applicant Name: MARKWEST LIBERTY MIDSTREAM &
RESOURCES LLC
Contact Person: RICK LOWRY
Address: 824 MORGANZA ROAD
City: CANONSBURG State: PA Zip Code: 15317
County: WASHINGTON Township(s): HOPEWELL
Receiving Stream(s) and Classifications: UNT'S TO
HANEN RUN AND UNT TO DUNKLE RUN; HQ

11/17/11

ESCGP-1 No.: ESX11-059-0069
Applicant Name: CAIMAN GAS GATHERING LLC
Contact Person: STEPHEN SKELLIE
Address: 5949 SHERRY LANE SUITE 1300
City: DALLAS State: TX Zip Code: 75225
County: GREENE Township(s): GILMORE
Receiving Stream(s) and Classifications: SIX RUN, UNT's
TO GARRISON FORK, GARRISON FORK & UNT's
TO BLOODY RUN; OTHER

2/15/12

ESCGP-1 No.: ESX12-007-0004
Applicant Name: CHESAPEAKE APPALACHIA LLC
Contact Person: ERIC HASKINS
Address: 101 NORTH MAIN STREET
City: ATHENS State: PA Zip Code: 18810
COUNTY BEAVER Township(s): DARLINGTON
Receiving Stream(s) and Classifications: DILWORTH
RUN (HQ-CWF) LITTLE BEAVER CREEK 2 UNT TO
NORTH FORK LITTLE BEAVER (HQ-CWF) LITTLE
BEAVER CREEK; HQ

9/12/11

ESCGP-1 No.: ESX11-129-0030
Applicant Name: CHEVRON APPALACHIA LLC
Contact Person: MR JEREMY HIRTZ
Address: 800 MOUNTAIN VIEW DRIVE
City: SMITHFIELD State: PA Zip Code: 15478
County: WESTMORELAND Township(s): SALEM
Receiving Stream(s) and Classifications: UNT's TO
WHITETHORN CREEK/LOYALHANNA CREEK WA-
TERSHED; OTHER

3/9/12

ESCGP-1 No.: ESX10-125-0020
Applicant Name: RANGE RESOURCES APPALACHIA
LLC
Contact Person: MR GLENN TRUZZI
Address: 3000 TOWN CENTER BOULEVARD
City: CANONSBURG State: PA Zip Code 15317
County: WASHINGTON Township(s): SOUTH
STRABANE
Receiving Stream(s) and Classifications: UNT's TO
LITTLE CHARTIERS CREEK/ CHARTIERS CREEK
WATERSHED; HQ; OTHER

2/16/12

ESCGP-1 No.: ESX12-059-0009
Applicant Name: EQT PRODUCTION
Contact Person: MR TODD KLANER
Address: 455 RACETRACK ROAD
City: WASHINGTON State: PA Zip Code: 15301
County: GREENE Township(s): CENTER
Receiving Stream(s) and Classifications: (4) UNT's TO
WEST RUN—HQ-WWF/TENMILE CREEK WATER-
SHED; HQ; OTHER

1/13/12

ESCGP-1 No.: ESX12-125-0010
Applicant Name: CHESAPEAKE APPALACHIA LLC
Contact Person: MR ERIC HASKINS
Address: 101 NORTH MAIN STREET
City: ATHENS State: PA Zip Code: 18810
County: WASHINGTON Township(s): DONEGAL
Receiving Stream(s) and Classifications: 1, UNT-NORTH
PRONG OF CASTLEMAN RUN-(HO) UPPER OHIO
SOUTH & BUFFALO CREEK 2 UNT's BUFFALO
CREEK (HO)/UPPER OHIO SOUTH & BUFFALO
CREEK; HQ

1/13/12

ESCGP-1 NO.: ESX12-125-0008
Applicant Name: RANGE RESOURCES APPALACHIA
LLC
CONTACT PERSON: MR GLENN TRUZZI
ADDRESS: 3000 TOWN CENTER BOULEVARD
City: CANONSBURG State: PA Zip Code: 15317
County: WASHINGTON Township(s): SMITH
Receiving Stream(s) and Classifications: UNT TO
BURGETTS FORK/RACCOON CREEK WATERSHED;
OTHER

2/6/12

ESCGP-1 NO.: ESX12-125-0020
Applicant Name: MARKWEST LIBERTY MIDSTREAM &
RESOURCES LLC
CONTACT: MR RICK LOWRY
ADDRESS: 824 MORGANZA ROAD
City: CANONSBURG State: PA Zip Code: 15317
County: WASHINGTON Township(s): CROSS CREEK,
MOUNT PLEASANT
Receiving Stream(s) and Classifications: UNT's TO
SOUTH FORK CROSS CREEK; HQ

1/6/12

ESCGP-1 NO.: ESX12-125-0004
Applicant Name: RICE DRILLING B LLC
CONTACT: MR TOBY Z RICE
ADDRESS: 171 HILLPOINTE DRIVE SUITE 301
City: CANONSBURG State: PA Zip Code: 15317
County: WASHINGTON Township(s): SOMERSET
Receiving Stream(s) and Classifications: UNT TO SOUTH
BRANCH PIGEON CREEK/PIGEON CREEK
WATERSHED; OTHER

3/8/12
 ESCGP-1 NO.: ESX2-125-0026
 Applicant Name: RANGE RESOURCES APPALACHIA
 LLC
 CONTACT: MR GLENN TRUZZI
 ADDRESS: 3000 TOWN CENTER BOULEVARD
 City: CANONSBURG State: PA Zip Code: 15317
 County: WASHINGTON Township(s): CANTON
 Receiving Stream(s) and Classifications: GEORGES RUN/
 CHARTIERS CREEK WATERSHED; OTHER

1/25/12
 ESCGP-1 NO.: ESX12-125-0016
 Applicant Name: RANGE RESOURCES APPALACHIA
 LLC
 CONTACT: MR GLENN TRUZZI
 ADDRESS: 3000 TOWN CENTER BOULEVARD
 City: CANONSBURG State: PA Zip Code: 15317
 County: WASHINGTON Township(s): AMWELL
 Receiving Stream(s) and Classifications: SMITH RUN &
 UNT TO MONTGOMERY RUN/TENMILE CREEK
 WATERSHED; OTHER

2/6/12
 ESCGP-1 NO.: ESX12-125-0019
 Applicant Name: RICE DRILLING B LLC
 CONTACT: MR DAVID MILLER
 ADDRESS: 171 HILLPOINTE DRIVE SUITE 301
 City: CANONSBURG State: PA Zip Code: 15317
 County: WASHINGTON Township(s): WEST PIKE RUN
 Receiving Stream(s) and Classifications: UNT PIKE RUN;
 OTHER

2/8/12
 ESCGP-1 NO.: ESX10-005-0006 MAJOR REVISION
 Applicant Name: EQT PRODUCTION
 CONTACT: MR TODD KLANER
 ADDRESS: 455 RACETRACK ROAD SUITE 101
 City: WASHINGTON State: PA Zip Code: 15301
 County: ARMSTRONG Township(s): KITTANNING
 Receiving Stream(s) and Classifications: HORNEY CAMP
 RUN AND UNT TO HORNEY CAMP RUN-WWF/
 COWANSHANNOCK-CROOKED CREEKS WATER-
 SHED; OTHER

2/7/12
 ESCGP-1 NO.: ESX11-059-0044 MAJOR REVISION
 Applicant Name: APPALACHIA MIDSTREAM SERVICES
 LLC
 CONTACT: MR ERIC N STEWART
 ADDRESS: 179 CHESAPEAKE DRIVE
 City: JANE LEW State: WV Zip Code: 26378
 County: GREENE Township(s): ALEPPO
 Receiving Stream(s) and Classifications: UNT TO HARTS
 RUN—WWF; OTHER

1/11/12
 ESCGP-1 NO.: ESX12-003-0002
 Applicant Name: RANGE RESOURCES APPALACHIA
 LLC
 CONTACT: MR GLENN TRUZZI
 ADDRESS: 3000 TOWN CENTER BOULEVARD
 City: CANONSBURG State: PA Zip Code: 15317
 County: ALLEGHENY Township(s): FINDLAY
 Receiving Stream(s) and Classifications: UNT's TO PO-
 TATO GARDEN RUN/RACCOON CREEK WATER-
 SHED; OTHER

SPECIAL NOTICES

Notice of Certification to Perform Radon-Related Activities in Pennsylvania

In the month of March 2012 Department of Environmental Protection of the Commonwealth of Pennsylvania, under the authority contained in the Radon Certification Act, act of July 9, 1987, P. L. 238, No. 43 (63 P. S. §§ 2001—2014) and regulations promulgated thereunder at 25 Pa. Code Chapter 240, has certified the persons listed below to perform radon-related activities in Pennsylvania. The period of certification is two years. (For a complete list of persons currently certified to perform radon-related activities in Pennsylvania and for information as to the specific testing devices that persons certified for testing or laboratory are certified to use, contact the Bureau of Radiation Protection, Radon Division, P. O. Box 8469, Harrisburg, PA 17105-8469, (1-800-23RADON).

<i>Name</i>	<i>Address</i>	<i>Type of Certification</i>
Donald Antry	2205 Meadowbrook Drive Schnecksville, PA 18078	Testing
Thomas Bartholetti	25 Jenner's Village Center #13 West Grove, PA 19390	Testing
Richard Barto	112 Shields Lane Slippery Rock, PA 16057	Testing
Thomas Berardelli	1639 Newton Ransom Blvd. Clarks Summit, PA 18411	Testing
Frederick Buck	P. O. Box 63 Saylorsburg, PA 18353	Testing
Paul Bukeavich	318 Ridge Street Ashley, PA 18706	Testing
Dean Conrad	1315 Pottsville Street Pottsville, PA 17901	Testing
David DeMar	P. O. Box 296 Green Lane, PA 18054	Testing
David DeMar Accurate Radon Control, Inc.	P. O. Box 296 Green Lane, PA 18054	Mitigation

<i>Name</i>	<i>Address</i>	<i>Type of Certification</i>
Chris Dobson	P. O. Box 153 Centre Hall, PA 16828	Mitigation
Christopher Earley	420 Eleanor Circle Aston, PA 19014	Testing
Sheldon Fleming	P. O. Box 279 Codorus, PA 17311	Testing & Mitigation
John Goldsworthy	2007 Carmel Drive Jamison, PA 18929	Testing
Robert Hannabery	P. O. Box 1582 Bethlehem, PA 18016	Testing
Sean Harkin	90 Caernarvon Drive Elverson, PA 19520	Testing
Phil Houck	677 Jacobsburg Road Nazareth, PA 18064	Testing
Steven Hunn	3650 Concorde Parkway Suite 100 Chantilly, VA 20151	Testing
George Kasmirsky	P. O. Box 145 Hickory, PA 15340	Testing
Zachery Keller Abatement Pros Radon Reduction Systems	402 King Street East Stroudsburg, PA 18301	Mitigation
George Kerr	3650 Concorde Parkway Suite 100 Chantilly, VA 20151	Testing
Craig Lennox	2801 Soni Drive Trooper, PA 19403	Testing
Daniel Linski	100 N. Wilkes-Barre Boulevard Wilkes-Barre, PA 18353	Testing
Joseph Liotta	2902 Keenwood Road Norristown, PA 19403	Mitigation
Andrew Luzetski	20 Woodside Drive Dallas, PA 18612	Testing
Greg Mathias	66 Wedgewood Gardens Lewisburg, PA 17837	Testing
David Morgan	44 Crestview Road Phoenixville, PA 19460	Testing
Daniel Moscaritolo	103 Lassen Lane Milford, PA 18337	Testing
Patrick Otterson	2804 Village Green Lane Trooper, PA 19403	Testing & Mitigation
Joseph Peake	110 Lakeview Trail Sugarloaf, PA 18249	Testing
Piotr Podolecki	11 Timber Drive Alburtis, PA 18011	Mitigation
Wilbur Robinson	107 Laporte Drive Cranberry Township, PA 16066	Testing
Brendan Ryan Envirocare of Southwest PA	216 Logan Road Valencia, PA 16059	Testing
George Schambach Professional Home Inspections	1278 Vestal Avenue Binghamton, NY 13903	Testing & Mitigation
Timothy Stewart	3650 Concorde Parkway Suite 100 Chantilly, VA 20151	Testing

<i>Name</i>	<i>Address</i>	<i>Type of Certification</i>
Richard Stump, II Suburban Property Inspections	4600 Kutztown Road Temple, PA 19560	Testing
William Thacker	33 Cherry Road Airville, PA 17302	Testing
Stanley J. Watras S. J. Watras, Inc.	32 Indian Lane Boyertown, PA 19512	Testing & Mitigation
Matthew Winslow	51 Sugar Maple Road Barto, PA 19504	Testing
Ronald Zimmerman	P. O. Box 179 Kutztown, PA 19530	Testing

CATEGORICAL EXCLUSION

Northeast Region: Clean Water Program, 2 Public Square, Wilkes-Barre, PA 18701-1915

Project Information:

<i>Project Applicant</i>	<i>Project Applicant's Address</i>	<i>Project Location (Municipality)</i>	<i>Project Location (County)</i>
Borough of West Pittston	555 Exeter Avenue West Pittston, PA. 18643	Borough of West Pittston	Luzerne

Description: The Pennsylvania Infrastructure Investment Authority, which administers the Commonwealth's State Revolving Fund, is intended to be the funding source for this project. The proposed project, known as the York Avenue Project, will rehabilitate a portion of an existing combined sewer system and install a new storm sewer system to be located in the public right-of-way, primarily in streets, that has previously been disturbed when the combined sewer system and the street were originally constructed. The replacement combined sewer system will be located in and/or near the same public, right-of-way locations as the originally installed combined sewer system. The Department's review of the project and the information received has not identified any significant, adverse environmental impact resulting from this proposal. The Department hereby categorically excludes this project from the State Environmental Review Process.

[Pa.B. Doc. No. 12-656. Filed for public inspection April 13, 2012, 9:00 a.m.]

Availability of Technical Guidance

Technical guidance documents are available on the Department of Environmental Protection's (Department) web site at <http://www.eLibrary.dep.state.pa.us>. The "Technical Guidance Final Documents" heading is the link to a menu of the various Department bureaus where each bureau's final technical guidance documents are posted. The "Technical Guidance Draft Documents" heading is the link to the Department's draft technical guidance documents.

Ordering Paper Copies of Department Technical Guidance

The Department encourages the use of the Internet to view and download technical guidance documents. When this option is not available, persons can order a paper copy of any of the Department's draft or final technical guidance documents by contacting the Department at (717) 783-8727.

In addition, bound copies of some of the Department's documents are available as Department publications. Check with the appropriate bureau for more information about the availability of a particular document as a publication.

Changes to Technical Guidance Documents

Following is the current list of recent changes. Persons who have questions or comments about a particular document should call the contact person whose name and phone number is listed with each document.

Draft Technical Guidance Document: New Guidance

DEP ID: 550-5000-001. Title: Addressing Spills and Releases from Oil & Gas Wells and Related Operations.

Description: This policy is developed to facilitate a consistent and uniform general response by those working in and for the oil and gas industry to respond to spills and releases related to oil and gas well operations regulated by the Department. *Written Comments:* Interested persons may submit written comments on this Draft Technical Guidance Document. Comments must be received by May 14, 2012. Comments submitted by facsimile will not be accepted. Comments, including comments submitted by electronic mail must include the originator's name and address. Written comments should be submitted to Kurt Klapkowski, Department of Environmental Protection, Bureau of Oil and Gas Planning and Program Management, P. O. Box 8765, Harrisburg, PA 17105-8765, (717) 772-2199 or kklapkowski@pa.gov.

Effective Date: Upon publication of notice as final in the *Pennsylvania Bulletin*.

MICHAEL L. KRANCER,
Secretary

[Pa.B. Doc. No. 12-657. Filed for public inspection April 13, 2012, 9:00 a.m.]

Certification under Section 401 of the Federal Clean Water Act

The Department of Environmental Protection (Department) certifies under section 401 of the Federal Clean Water Act (33 U.S.C.A. § 1341), subject to the conditions listed in this notice, that the activities authorized by the

Army Corps of Engineers published at 77 FR 10184 (February 21, 2012) (Reissuance of Nationwide Permits (NWP)) which may result in a discharge into waters of the United States in this Commonwealth will comply with the applicable provisions of sections 301—303, 306 and 307 of the Federal Clean Water Act (33 U.S.C.A. §§ 1311—1313, 1316 and 1317). In addition, the Commonwealth certifies, subject to the conditions listed in this notice, that there is a reasonable assurance that the construction and operation of the NWPs in the February 21, 2012, notice will comply with applicable Federal and State water quality standards.

For further information concerning the NWPs, contact the Army Corps of Engineers, David Olson at (202) 761-4922 or access the Army Corps of Engineers web page at <http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits.aspx>.

This final certification is conditional on any public comment received. The Department will accept comments on this certification for 30 days. The Department requests written comments on the proposed modifications to this General Permit by May 14, 2012. Comments received by facsimile will not be accepted. Interested persons may submit comments, suggestions or objections to Ken Murin, Department of Environmental Protection, Bureau of Waterways Engineering and Wetlands, Division of Wetlands, Encroachments and Training, P. O. Box 8460, Harrisburg, PA 17105-8460, kmurin@pa.gov, (717) 787-3411.

The Army Corps of Engineers is reissuing 48 of the 49 NWPs, general conditions and definitions with some modifications and 2 new NWPs, 3 new general conditions and 3 new definitions. These final NWPs were effective on March 19, 2012.

Except in instances where the Pennsylvania Statewide Programmatic General Permit (PASPGP-4) issued by the Army Corps of Engineers in July 2011 does not apply, the Army Corps of Engineers has indicated it will suspend these NWPs. This suspension will preserve the one-stop State and Federal permitting process the Army Corps of Engineers presently offers under PASPGP-4 while maintaining the current level of protection provided to wetlands and water resources.

Nationwide Permits

1. Aids to Navigation
2. Structures in Artificial Canals
3. Maintenance
4. Fish and Wildlife Harvesting, Enhancement and Attraction Devices and Activities
5. Scientific Measurement Devices
6. Survey Activities
7. Outfall Structures and Associated Intake Structures
8. Oil and Gas Structures
9. Structures in Fleeting and Anchorage Areas
10. Mooring Buoys
11. Temporary Recreational Structures
12. Utility Line Activities
13. Bank Stabilization

14. Linear Transportation Projects
15. United States Coast Guard Approved Bridges
16. Return Water From Upland Contained Disposal Areas
17. Hydropower Projects
18. Minor Discharges
19. Minor Dredging
20. Response Operations for Oil and Hazardous Substances
21. Surface Coal Mining Activities
22. Removal of Vessels
23. Approved Categorical Exclusions
24. Indian Tribe or State Administered Section 404 Programs
25. Structural Discharges
26. [Reserved]
27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities
28. Modifications of Existing Marinas
29. Residential Developments
30. Moist Soil Management for Wildlife
31. Maintenance of Existing Flood Control Facilities
32. Completed Enforcement Actions
33. Temporary Construction, Access and Dewatering
34. Cranberry Production Activities
35. Maintenance Dredging of Existing Basins
36. Boat Ramps
37. Emergency Watershed Protection and Rehabilitation
38. Cleanup of Hazardous and Toxic Waste
39. Commercial and Institutional Developments
40. Agricultural Activities
41. Reshaping Existing Drainage Ditches
42. Recreational Facilities
43. Stormwater Management Facilities
44. Mining Activities
45. Repair of Uplands Damaged by Discrete Events
46. Discharges in Ditches
47. [Reserved]
48. Commercial Shellfish Aquaculture Activities
49. Coal Remining Activities
50. Underground Coal Mining Activities
51. Land-Based Renewable Energy Generation Facilities
52. Water-Based Renewable Energy Generation Pilot Projects

Nationwide Permit General Conditions

1. Navigation
2. Aquatic Life Movements
3. Spawning Areas
4. Migratory Bird Breeding Areas
5. Shellfish Beds

6. Suitable Material
7. Water Supply Intakes
8. Adverse Effects from Impoundments
9. Management of Water Flows
10. Fills Within 100-Year Floodplains
11. Equipment
12. Soil Erosion and Sediment Controls
13. Removal of Temporary Fills
14. Proper Maintenance
15. Single and Complete Project
16. Wild and Scenic Rivers
17. Tribal Rights
18. Endangered Species
19. Migratory Bird and Bald and Golden Eagle Permits
20. Historic Properties
21. Discovery of Previously Unknown Remains and Artifacts
22. Designated Critical Resource Waters
23. Mitigation
24. Safety of Impoundment Structures
25. Water Quality
26. Coastal Zone Management
27. Regional and Case-by-Case Conditions
28. Use of Multiple Nationwide Permits
29. Transfer of Nationwide Permit Verifications
30. Compliance Certification
31. Pre-Construction Notification

This certification is subject to the following conditions:

Conditions

1. Prior to commencing any activity covered by an NWP, the applicant must obtain all necessary permits or approvals from the Department, including, but not limited to, those required by The Clean Streams Law (35 P. S. §§ 691.1—691.1001), the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27), the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003), the Hazardous Sites Cleanup Act (35 P. S. §§ 6020.101—6020.1304), the Land Recycling and Remediation Standards Act (35 P. S. §§ 6026.101—6026.908) and the regulations promulgated thereunder including 25 Pa. Code Chapters 75, 91—93, 95, 102, 105 and 260—299. All environmental assessments required under these regulations, in addition to other regulatory requirements, must be complied with as a condition of Section 401 Water Quality Certification for the NWPs.

2. Fill material cannot contain wastes as defined in the Solid Waste Management Act.

3. For activities that impact wetlands, a delineation shall be conducted in accordance with the Commonwealth's procedures for wetland delineation. The present procedure is published at 25 Pa. Code § 105.451 (relating to identification and delineation of wetlands—statement of policy).

4. The Department retains the right, on an individual activity basis, to withdraw or modify 401 Water Quality Certification for an activity subject to a NWP which it determines may adversely impact water quality.

5. The Department retains the right, to add or modify conditions based on comment received by the public.

MICHAEL L. KRANCER,
Secretary

[Pa.B. Doc. No. 12-658. Filed for public inspection April 13, 2012, 9:00 a.m.]

Radioactive Material Decommissioning Planning

On June, 17, 2011, the Nuclear Regulatory Commission (NRC) published a final rule on “decommissioning planning” at 76 FR 35512 (June 17, 2011). This rule amends sections of 10 CFR Parts 20, 30, 40, 50, 70 and 72. The final rule is effective on December 17, 2012, for the Commonwealth and NRC radioactive materials users licensed under the previously noted regulations. Those NRC licensees subject to 10 CFR Part 50, compliance with the reporting provisions in 10 CFR 50.82(a)(8)(v) and (vii) (relating to termination of license), is required by March 31, 2013.

The NRC final rule is designed to improve decommissioning planning and prevent future “legacy sites” with insufficient funds for facility or site clean-up by requiring licensees to minimize the introduction of residual radioactivity at their sites during operations. A legacy site is a facility with an owner who cannot complete complex decommissioning work for technical or financial reasons.

Further, the final rule will require licensees to report additional details in their decommissioning cost estimate, eliminate the escrow account and line of credit as approved financial assurance mechanisms and modify other financial assurance requirements.

As an NRC Agreement State, the Commonwealth incorporates by reference most NRC regulations related to radiation protection and the licensing of byproduct material, source material and small quantities of special nuclear material. These reference citations are found throughout 25 Pa. Code Subpart D, Article V (relating to radiological health). Therefore, this final NRC rule will take effect for Commonwealth licensees on the same date as NRC licensees, December 17, 2012.

For additional information on radioactive material decommissioning, individuals may contact the Bureau of Radiation Protection at (717) 787-2480 or RA-EPDecommissioning@pa.gov. Persons in need of accommodations as provided for in the Americans with Disabilities Act of 1990 should contact the Department of Environmental Protection (Department) directly at (717) 787-2480 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

MICHAEL L. KRANCER,
Secretary

[Pa.B. Doc. No. 12-659. Filed for public inspection April 13, 2012, 9:00 a.m.]

DEPARTMENT OF GENERAL SERVICES

Lease Office Space to the Commonwealth Butler County

Proposals are invited to provide the Department of General Services with 5,763 usable square feet of office space for the Pennsylvania Board of Probation and Parole in Butler County. For more information on SFP No. 10001430, which is due on Friday, May 25, 2012, visit www.dgs.state.pa.us or contact Scott Shelton at (717) 787-5546.

SHERI PHILLIPS,
Secretary

[Pa.B. Doc. No. 12-660. Filed for public inspection April 13, 2012, 9:00 a.m.]

DEPARTMENT OF HEALTH

Application for Exception to 28 Pa. Code § 51.6

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that the following facilities have requested an exception to the requirements of 28 Pa. Code § 51.6 (relating to identification of personnel):

Heart of Lancaster Regional Medical Center
Lancaster Regional Medical Center
York Hospital

These requests are on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@pa.gov.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division at the address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Division at the previously listed address or phone number, or for speech and/or hearing impaired persons V/TT (717) 783-6154, or the Pennsylvania AT&T Relay Service at (800) 654-5984.

ELI N. AVILA, MD, JD, MPH, FCLM,
Secretary

[Pa.B. Doc. No. 12-661. Filed for public inspection April 13, 2012, 9:00 a.m.]

Application for Exception to 28 Pa. Code § 131.22

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that the following facilities have requested an

exception to the requirements of 28 Pa. Code § 131.22 (relating to treatment orders):

St. Luke's Hospital
St. Luke's Hospital Anderson
St. Luke's Hospital Quakertown
St. Luke's Miners Hospital

These requests are on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@pa.gov.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division at the address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Division at the previously listed address or phone number, or for speech and/or hearing impaired persons V/TT (717) 783-6154, or the Pennsylvania AT&T Relay Service at (800) 654-5984.

ELI N. AVILA, MD, JD, MPH, FCLM,
Secretary

[Pa.B. Doc. No. 12-662. Filed for public inspection April 13, 2012, 9:00 a.m.]

Application of Heritage Valley Beaver for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Heritage Valley Beaver has requested an exception to the requirements of 28 Pa. Code § 153.1 (relating to minimum standards), which requires compliance with minimum standards contained in the following publication: *Guidelines for Design and Construction of Hospitals and Healthcare Facilities*. The facility specifically requests exception from the following standard contained in this publication: 3.1-7.2.2.1(1) (relating to public corridors).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@pa.gov.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division at the address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care at (717) 783-8980, for speech and/or

hearing impaired persons V/TT (717) 783-6154, or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

ELI N. AVILA, MD, JD, MPH, FCLM,
Secretary

[Pa.B. Doc. No. 12-663. Filed for public inspection April 13, 2012, 9:00 a.m.]

Application of Holy Spirit Carlisle Center for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Holy Spirit Carlisle Center has requested an exception to the requirements of 28 Pa. Code § 153.1 (relating to minimum standards), which requires compliance with minimum standards contained in the following publication: *Guidelines for Design and Construction of Hospitals and Healthcare Facilities*. The facility specifically requests exception from the following standard contained in this publication: 3.1-6.1.1 (relating to vehicular drop-off and pedestrian entrance).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@pa.gov.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division at the address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care at (717) 783-8980, for speech and/or hearing impaired persons V/TT (717) 783-6154, or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

ELI N. AVILA, MD, JD, MPH, FCLM,
Secretary

[Pa.B. Doc. No. 12-664. Filed for public inspection April 13, 2012, 9:00 a.m.]

Application of Hospital of the University of Pennsylvania for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Hospital of the University of Pennsylvania has requested an exception to the requirements of 28 Pa. Code § 153.1 (relating to minimum standards), which requires compliance with minimum standards contained in the following publication: *Guidelines for Design and Construction of Hospitals and Healthcare Facilities*. The facility specifically requests exception from the following standards contained in this publication: 2.1-7.2.3.4(3),

2.1-8.3.2.2 and 2.2-3.3.6.14 (relating to ceilings in restricted areas; new panel boards; and sterile room).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@pa.gov.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division at the address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care at (717) 783-8980, for speech and/or hearing impaired persons V/TT (717) 783-6154, or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

ELI N. AVILA, MD, JD, MPH, FCLM,
Secretary

[Pa.B. Doc. No. 12-665. Filed for public inspection April 13, 2012, 9:00 a.m.]

Application of Magee Womens Hospital for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Magee Womens Hospital has requested an exception to the requirements of 28 Pa. Code § 153.1 (relating to minimum standards), which requires compliance with minimum standards contained in the following publication: *Guidelines for Design and Construction of Hospitals and Healthcare Facilities*. The facility specifically requests exception from the following standards contained in this publication: 2.2-3.4.5.1 and 2.2-3.4.5.3 (relating to space requirements; and patient toilet).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@pa.gov.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division at the address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care at (717) 783-8980, for speech and/or

hearing impaired persons V/TT (717) 783-6154, or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

ELI N. AVILA, MD, JD, MPH, FCLM,
Secretary

[Pa.B. Doc. No. 12-666. Filed for public inspection April 13, 2012, 9:00 a.m.]

Application of Main Line Fertility Center for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Main Line Fertility Center has requested an exception to the requirements of 28 Pa. Code § 571.1 (relating to minimum standards), which requires compliance with minimum standards contained in the following publication: *Guidelines for Design and Construction of Hospitals and Healthcare Facilities*. The facility specifically requests exception from the following standards contained in this publication: 3.7-3.8.1 and 3.7-3.8.1.2 (relating to outpatient surgery change area; and securing patients' personal effects).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@pa.gov.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division at the address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care at (717) 783-8980, for speech and/or hearing impaired persons V/TT (717) 783-6154, or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

ELI N. AVILA, MD, JD, MPH, FCLM,
Secretary

[Pa.B. Doc. No. 12-667. Filed for public inspection April 13, 2012, 9:00 a.m.]

Application of Mechanicsburg Pain Management Center for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Mechanicsburg Pain Management Center has requested an exception to the requirements of 28 Pa. Code § 571.1 (relating to minimum standards), which requires compliance with minimum standards contained in the following publication: *Guidelines for Design and Construction of Hospitals and Healthcare Facilities*. The facility specifically requests exception from the following standard contained in this publication: 3.7-3.8.1.1 (relating to outpatient change areas).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@pa.gov.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division at the address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care at (717) 783-8980, for speech and/or hearing impaired persons V/TT (717) 783-6154, or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

ELI N. AVILA, MD, JD, MPH, FCLM,
Secretary

[Pa.B. Doc. No. 12-668. Filed for public inspection April 13, 2012, 9:00 a.m.]

Application of Memorial Hospital Outpatient Endoscopy Center for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Memorial Hospital Outpatient Endoscopy Center has requested an exception to the requirements of 28 Pa. Code §§ 553.1, 553.31, 555.1, 555.2, 555.31, 563.2, 567.2 and 569.1.

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@pa.gov.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division at the address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Division at the previously listed address or phone number, or for speech and/or hearing impaired persons V/TT (717) 783-6154, or the Pennsylvania AT&T Relay Services at (800) 654-5984.

ELI N. AVILA, MD, JD, MPH, FCLM,
Secretary

[Pa.B. Doc. No. 12-669. Filed for public inspection April 13, 2012, 9:00 a.m.]

Application of Memorial Hospital York for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Memorial Hospital York has requested an exception to the requirements of 28 Pa. Code §§ 123.25(2), 127.32, 138.13, 138.15 and 138.18(b).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@pa.gov.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division at the address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Division at the previously listed address or phone number, or for speech and/or hearing impaired persons V/TT (717) 783-6154, or the Pennsylvania AT&T Relay Service at (800) 654-5984.

ELI N. AVILA, MD, JD, MPH, FCLM,
Secretary

[Pa.B. Doc. No. 12-670. Filed for public inspection April 13, 2012, 9:00 a.m.]

Application of Peters Township Surgery Center for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Peters Township Surgery Center has requested an exception to the requirement of 28 Pa. Code § 569.35 (relating to general safety precautions).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@pa.gov.

This facility is requesting a waiver of the comment period, as set forth in 28 Pa. Code § 51.33(c).

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Division at the previously listed address or phone number, or for speech and/or hearing impaired persons V/TT (717) 783-6154, or the Pennsylvania AT&T Relay Service at (800) 654-5984.

ELI N. AVILA, MD, JD, MPH, FCLM,
Secretary

[Pa.B. Doc. No. 12-671. Filed for public inspection April 13, 2012, 9:00 a.m.]

Application of Pinnacle Health at Harrisburg Hospital for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Pinnacle Health at Harrisburg Hospital has requested an exception to the requirements of 28 Pa. Code § 153.1 (relating to minimum standards), which requires compliance with minimum standards contained in the following publication: *Guidelines for Design and Construction of Hospitals and Healthcare Facilities*. The facility specifically requests exception from the following standard contained in this publication: 2.1-8.5.3.2 (relating to size of technology distribution rooms).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@pa.gov.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division at the address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care at (717) 783-8980, for speech and/or hearing impaired persons V/TT (717) 783-6154, or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

ELI N. AVILA, MD, JD, MPH, FCLM,
Secretary

[Pa.B. Doc. No. 12-672. Filed for public inspection April 13, 2012, 9:00 a.m.]

Application of Riddle Hospital for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Riddle Hospital has requested an exception to the requirements of 28 Pa. Code § 153.1 (relating to minimum standards), which requires compliance with minimum standards contained in the following publication: *Guidelines for Design and Construction of Hospitals and Healthcare Facilities*. The facility specifically requests exception from the following standards contained in this publication: 2.2-3.1.3.7 and 2.2-3.1.4.2 (relating to patient toilets; and airborne infection isolation room).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@pa.gov.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division at the address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be

reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care at (717) 783-8980, for speech and/or hearing impaired persons V/TT (717) 783-6154, or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

ELI N. AVILA, MD, JD, MPH, FCLM,
Secretary

[Pa.B. Doc. No. 12-673. Filed for public inspection April 13, 2012, 9:00 a.m.]

Application of The Skin Center for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that The Skin Center has requested an exception to the requirements of 28 Pa. Code § 557.4 (relating to Quality Assurance and Improvement Committee).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@pa.gov.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division at the address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Division at the previously listed address or phone number, or for speech and/or hearing impaired persons V/TT (717) 783-6154, or the Pennsylvania AT&T Relay Service at (800) 654-5984.

ELI N. AVILA, MD, JD, MPH, FCLM,
Secretary

[Pa.B. Doc. No. 12-674. Filed for public inspection April 13, 2012, 9:00 a.m.]

Application of South Hills Surgery Center for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that South Hills Surgery Center has requested an exception to the requirement of 28 Pa. Code § 569.35 (relating to general safety precautions).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@pa.gov.

This facility is requesting a waiver of the comment period, as set forth in 28 Pa. Code § 51.33(c).

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Division at the previously listed address or phone number, or for speech and/or hearing impaired persons V/TT (717) 783-6154, or the Pennsylvania AT&T Relay Service at (800) 654-5984.

ELI N. AVILA, MD, JD, MPH, FCLM,
Secretary

[Pa.B. Doc. No. 12-675. Filed for public inspection April 13, 2012, 9:00 a.m.]

Application of Surgical Center of York for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Surgical Center of York has requested an exception to the requirements of 28 Pa. Code §§ 553.1, 553.3, 553.4, 553.31(b), 555.1—555.4, 557.1—557.4, 563.1, 563.2 and 567.21(1).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@pa.gov.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division at the address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Division at the previously listed address or phone number, or for speech and/or hearing impaired persons V/TT (717) 783-6154, or the Pennsylvania AT&T Relay Service at (800) 654-5984.

ELI N. AVILA, MD, JD, MPH, FCLM,
Secretary

[Pa.B. Doc. No. 12-676. Filed for public inspection April 13, 2012, 9:00 a.m.]

Application of The Western Pennsylvania Hospital for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that The Western Pennsylvania Hospital has requested an exception to the requirements of 28 Pa. Code § 153.1 (relating to minimum standards), which requires compliance with minimum standards contained in the following publication: *Guidelines for Design and Construction of Hospitals and Healthcare Facilities*. The facility specifically requests exception from the following standards contained in this publication: 2.2-2.6.2.2 and 2.2-

3.5.6.2 (relating to space requirements for medical/surgical ICU; and patient prep, holding and recovery).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@pa.gov.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division at the address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care at (717) 783-8980, for speech and/or hearing impaired persons V/TT (717) 783-6154, or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

ELI N. AVILA, MD, JD, MPH, FCLM,
Secretary

[Pa.B. Doc. No. 12-677. Filed for public inspection April 13, 2012, 9:00 a.m.]

Application of Wills Eye Institute for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Wills Eye Institute has requested an exception to the requirements of 28 Pa. Code § 153.1 (relating to minimum standards), which requires compliance with minimum standards contained in the following publication: *Guidelines for Design and Construction of Hospitals and Healthcare Facilities*. The facility specifically requests exception from the following standards contained in this publication: 2.1-2.6.10, 2.1-2.6.11.2, 2.1-2.6.11.3, 2.1-2.7.2, 2.1-8.5.1.2, 2.1-8.5.2.3.1, 2.1-8.5.3.2, 2.1-8.7.2.2, 2.2-2.2.6.9, 2.2-2.2.6.12, 2.2-3.3.2(a)(1), 2.2-3.3.3.2(2)(a) and (b), 2.2-3.3.3.3(1)(b), 2.2-3.3.3.4(2)(a) and (b), 2.2-3.3.3.4(4)(b)(i), 2.2-3.3.6.11, 2.2-3.3.8.1, 2.2-5.2.4.2 and 2.2-5.7.

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@pa.gov.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division at the address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care at (717) 783-8980, for speech and/or

hearing impaired persons V/TT (717) 783-6154, or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

ELI N. AVILA, MD, JD, MPH, FCLM,
Secretary

[Pa.B. Doc. No. 12-678. Filed for public inspection April 13, 2012, 9:00 a.m.]

Pennsylvania Diabetes Action Partnership Meeting

The Pennsylvania Diabetes Action Partnership will hold a public meeting on Thursday, May 10, 2012, from 10 a.m. to 3 p.m. The meeting will be held at the Pennsylvania Medical Society, 777 East Park Drive, Harrisburg, PA 17105-8820.

For additional information, or for persons with a disability who wish to attend the meeting and require an auxiliary aid, service or other accommodation to do so contact John Hagni, Administrator of Community Services, Division of Nutrition and Physical Activity, Bureau of Health Promotion and Risk Reduction, Room 1000 Health and Welfare Building, Harrisburg, PA, (717) 787-5876, or for speech and/or hearing impaired persons V/TT (717) 783-6514, or the Pennsylvania AT&T Relay Service at (800) 654-5984.

This meeting is subject to cancellation without notice.

ELI N. AVILA, MD, JD, MPH, FCLM,
Secretary

[Pa.B. Doc. No. 12-679. Filed for public inspection April 13, 2012, 9:00 a.m.]

Tobacco Use Prevention and Cessation Advisory Committee Public Meeting

The Tobacco Use Prevention and Cessation Advisory Committee of the Department of Health, established under section 705 of the Tobacco Settlement Act (35 P. S. § 5701.705), will hold a public meeting on Wednesday, April 25, 2012, from 1 p.m. to 3:30 p.m. in Room 812, Health and Welfare Building, 625 Forster Street, Harrisburg, PA 17120. The purpose of the meeting is to discuss the tobacco use prevention and cessation priorities for State Fiscal Year 2012-2013. No reservations are required to attend the meeting.

For additional information or for persons with a disability who wish to attend the meeting and require an auxiliary aid, service or other accommodation to do so, contact Judy Ochs, Director, Division of Tobacco Prevention and Control, Room 1032, Health and Welfare Building, 625 Forster Street, Harrisburg, PA 17120-0701, (717) 783-6600, or V/TT (717) 783-6514 for speech and/or hearing impaired persons, or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

This meeting is subject to cancellation without notice.

ELI N. AVILA, MD, JD, MPH, FCLM,
Secretary

[Pa.B. Doc. No. 12-680. Filed for public inspection April 13, 2012, 9:00 a.m.]

DEPARTMENT OF PUBLIC WELFARE

Allowable Cost Reimbursement for Non-State Intermediate Care Facilities for persons with Intellectual Disabilities

The purpose of this notice is to announce the Department of Public Welfare's (Department) intent to amend 55 Pa. Code Chapter 6211 (relating to allowable cost reimbursement for non-State operated intermediate care facilities for the mentally retarded) regarding provider payment methodologies, rates and terminology. These regulations will apply to non-State operated intermediate care facilities for persons with intellectual disabilities (ICF/ID) providers (previously referred to as ICF/MR providers) rendering services for individuals with intellectual disabilities or other related conditions.

Background

On July 1, 2011, the General Assembly enacted the act of June 30, 2011 (P. L. 89, No. 22) (Act 22), which amended the Public Welfare Code (code) (62 P. S. §§ 101—1503). Act 22 added several new provisions to the code, including section 403.1 (62 P. S. § 403.1). Section 403.1(a)(4), (c) and (d) of the code authorizes the Department to promulgate final-omitted regulations under section 204(1)(iv) of the Commonwealth Documents Law (CDL)¹ to establish or revise provider payment rates or payment methodologies for particular services. In addition, to ensure that the Department's expenditures for State Fiscal Year (FY) 2011-2012 do not exceed the aggregate amount appropriated by the General Assembly, section 403.1 of the code expressly exempts the regulations from the Regulatory Review Act (71 P. S. §§ 745.1—745.12), section 205 of the CDL (45 P. S. § 1205) and section 204(b) of the Commonwealth Attorneys Act (71 P. S. § 732-204(b)).

The Department's non-State operated ICF/ID program has approximately 178 ICF/ID service locations and 33 providers in this Commonwealth with a total funding level of \$362.666 million in Federal and State funding. To improve cost efficiencies of this program, the Department intends to amend 55 Pa. Code Chapter 6211.

The following is a summary of the major regulatory amendments contemplated by the Department:

The Department intends to amend 55 Pa. Code § 6211.16(c)(2) (relating to establishment of standard interim per diem rate). Subsection (c)(2) will provide that the Department may apply a cost of living adjustment during the rate development process and eliminate references to the application of an inflationary factor.

The Department also intends to amend 55 Pa. Code § 6211.16 by adding a new subsection. Subsection (e) will provide that the Department has the authority to apply a rate adjustment factor (RAF) to the standard interim per diem rate for each provider, including those providers who request a waiver of the standard interim per diem rate as specified in 55 Pa. Code § 6211.31 (relating to request for waiver). The ability to apply a RAF will maintain fiscal stability and ensure the Department's expenditures do not exceed the aggregate amount appropriated by the General Assembly.

¹ The act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204(1)(iv)). Section 204(1)(iv) of the CDL authorizes an agency to omit or modify notice of proposed rulemaking when a regulation relates to Commonwealth grants and benefits. The Medical Assistance program is a Commonwealth grant program through which eligible recipients receive coverage of certain health care benefits.

The Department intends to amend the deadline under 55 Pa. Code § 6211.31. The Department intends to amend the regulation to provide for an October 31st deadline to submit a request for waiver in place of the March 1st deadline. The request for waiver shall be submitted to the Department in writing by October 31 of the fiscal year for which the waiver is being requested. This amendment adjusts the regulations to current program practice.

The Department intends to amend 55 Pa. Code § 6211.31 to clarify that for a provider with less than a 12-month cost report who fails to submit a request for waiver of the standard interim per diem rate will be provided a rate established under 55 Pa. Code § 6211.15 (relating to failure to submit cost report).

The Department also intends to delete references to the language "mental retardation" and replace this outdated language with "persons with intellectual disabilities." The Department also intends to replace the references to the "Office of Mental Retardation" with "the Department."

Fiscal Impact

The Department does not anticipate savings or costs. Implementation of a rate adjustment factor ensures that the Department's expenditures do not exceed the aggregate amount appropriated by the General Assembly.

Public Comment

Copies of this notice may be obtained at the local Mental Health/Intellectual Disabilities (MH/ID) County Program or regional Office of Developmental Programs (ODP) in the corresponding regions:

- *Western region:* Piatt Place, Room 4900, 301 5th Avenue, Pittsburgh, PA 15222, (412) 565-5144
- *Northeast region:* Room 315, Scranton State Office Building, 100 Lackawanna Avenue, Scranton, PA 18503, (570) 963-4749
- *Southeast region:* 801 Market Street, Suite 5071, Philadelphia, PA 19107, (215) 560-2242 or (215) 560-2245
- *Central region:* Room 430, Willow Oak Building, P. O. Box 2675, DGS Annex Complex, Harrisburg, PA 17105, (717) 772-6507

Contact information for the local MH/ID County Program may be accessed at <https://www.hcsis.state.pa.us/hcsis-ssd/pgm/asp/PRCNT>. ASP or contact the previously referenced regional ODP.

Interested persons are invited to submit written comments for these changes to the Department within 15 days from the date of publication of this notice by sending an e-mail to ODP's rate-setting mailbox at ra-comment@pa.gov, use subject header "PN 6211 ICF/ID; provider rates" or send postal mail to the Department of Public Welfare, Office of Developmental Programs, Division of Policy, 5th Floor, Health and Welfare Building, Forster and Commonwealth Avenues, Harrisburg, PA 17120.

Persons with a disability who require an auxiliary aid or service may submit comments using the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

GARY D. ALEXANDER,
Secretary

Fiscal Note: 14-NOT-752. No fiscal impact; (8) recommends adoption.

[Pa.B. Doc. No. 12-681. Filed for public inspection April 13, 2012, 9:00 a.m.]

Payments for Burn Center Services

The Department of Public Welfare is announcing its intent to decrease the funding allotted for Fiscal Year (FY) 2011-2012 disproportionate share hospital (DSH) payments to certain qualifying Medical Assistance acute care general hospital burn centers. This decrease in funding is required to be consistent with the FY 2011-2012 appropriated amount for inpatient hospital services. There is no change in the current qualifying criteria or methodology for determining eligibility for these payments.

Fiscal Impact

The FY 2011-2012 fiscal impact, as a result of this anticipated change to this class of DSH payments is \$7.576 million (\$3.404 million in State general funds and \$4.172 million in Federal funds) pending approval by the Centers for Medicare and Medicaid Services.

Public Comment

Interested persons are invited to submit written comments regarding this notice to the Department of Public Welfare, Office of Medical Assistance Programs, c/o Regulations Coordinator, Room 515, Health and Welfare Building, Harrisburg, PA 17120. Comments received within 30 days will be reviewed and considered for any subsequent revision of the notice.

Persons with a disability who require an auxiliary aid or service may submit comments using the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

GARY D. ALEXANDER,
Secretary

Fiscal Note: 14-NOT-751. (1) General Fund; (2) Implementing Year 2011-12 is \$3,404,000; 1st Succeeding Year 2012-13 is \$0; 2nd Succeeding Year 2013-14 is \$0; 3rd Succeeding Year 2014-15 is \$0; 4th Succeeding Year 2015-16 is \$0; 5th Succeeding Year 2016-17 is \$0; (4) 2010-11 Program—\$4,946,000; 2009-10 Program—\$4,630,000; 2008-09 Program—\$5,170,000; (7) Hospital Based Burn Centers; (8) recommends adoption. Funds have been included in the budget to cover these payments.

[Pa.B. Doc. No. 12-682. Filed for public inspection April 13, 2012, 9:00 a.m.]

Payments to Nonpublic and County Nursing Facilities; Rates for State Fiscal Year 2011-2012

This notice announces the Department of Public Welfare's (Department) final annual case-mix per diem payment rates for State Fiscal Year (FY) 2011-2012 for most of the nonpublic and county nursing facilities that participate in the Medical Assistance (MA) Program. This notice also announces the proposed case-mix per diem payment rates for four of the special rehabilitation nursing facilities that participate in the MA Program for the period November 1, 2011, through June 30, 2012.

Nonpublic Nursing Facility Final Per Diem Rates

As required by the case-mix payment methodology regulations in 55 Pa. Code Chapter 1187, Subchapter G (relating to rate setting), the Department annually sets an annual MA per diem rate for each nonpublic nursing facility provider. Each facility's annual per diem rate is

comprised of four components: resident care; other resident related; administrative; and capital.

Section 1187.96 of 55 Pa. Code (relating to price- and rate-setting computations) authorizes a 3-year phase-in of the use of the Minimum Data Set Resource Utilization Group III version 5.12 44 Grouper (RUG v 5.12) and the most recent classifiable resident assessments beginning July 1, 2010, and ending June 30, 2013. The phase-in provisions only affect the resident care component of a facility's case-mix per diem rate. The resident care rate used to establish a nursing facility's case-mix per diem rate is a blended resident care rate which consists of a portion of the resident care rate calculated using the previous RUG version 5.01 Grouper (RUG v 5.01) and the most recent comprehensive resident assessments and a portion of the resident care rate calculated using RUG v 5.12 and the most recent classifiable resident assessments. For FY 2011-2012, the nursing facility's blended resident care rate will equal 50% of the nursing facility's RUG v 5.01 resident care rate from the prior rate quarter adjusted by the percent increase or decrease in the RUG v 5.12 resident care rate and 50% of the nursing facility's RUG v 5.12 resident care rate.

The act of July 4, 2008 (P. L. 557, No. 44) (Act 44), among other things, directed the Department to phase-out the use of county nursing facility costs in nonpublic nursing facility rate setting over a period of 3 rate years, beginning with FY 2009-2010 and ending on June 30, 2012. Consistent with Act 44, the Department has continued to include county nursing facilities in determining peer groups in accordance with 55 Pa. Code § 1187.94(1)(v) (relating to peer grouping for price setting) for the rate year 2011-2012. Once peer groups were determined, the Department calculated an interim median by adding each county nursing facility's costs from the three most recent audited cost reports or their reported costs if audited costs were not available to a noncollapsed peer group based on bed size and Metropolitan Statistical Area group. For rate year 2011-2012, the phase-out median equals 25% of the interim median plus 75% of the median calculated in accordance with 55 Pa. Code § 1187.98(b)(4) (relating to phase-out median determination).

In addition, the act of June 30, 2011 (P. L. 89, No. 22) (Act 22) amended the Public Welfare Code (62 P. S. §§ 101—1503) to authorize the Department to continue to apply a budget adjustment factor (BAF) in calculating rates for MA nonpublic and county nursing facilities for each fiscal year between July 1, 2011, and June 30, 2013. Federal Centers for Medicare and Medicaid Services (CMS) approved State Plan Amendment (SPA) 11-015 on November 21, 2011. SPA 11-015 states that the BAF shall limit payment rates for MA nursing facility services for county and nonpublic nursing facilities so that the State-wide day-weighted average payment rate for FY 2011-2012 is limited to the amount permitted by the funds appropriated by the General Appropriations Act of 2011. For FY 2011-2012, a BAF will be calculated each quarter for nonpublic nursing facilities. The formula the Department will use to determine a Quarterly BAF equals the annual target rate divided by the weighted average quarterly rate at 100%. If the Quarterly BAF as calculated is greater than 1.0, the Quarterly BAF will equal 1.0. The proposed change in rate methodology related to the special rehabilitation nursing facilities was not a factor in these quarterly BAF calculations.

County Nursing Facility Per Diem Rates

As required by the rate methodology in 55 Pa. Code Chapter 1189, Subchapter D (relating to rate setting), the Department annually sets an annual MA per diem rate for each county nursing facility provider. As stated in 55 Pa. Code § 1189.91(b) (relating to per diem rates for county nursing facilities), for each rate year beginning on or after July 1, 2007, the per diem rate paid to a county nursing facility for a rate year is the facility's prior rate year per diem rate multiplied by a BAF.

In addition, as required by 55 Pa. Code § 1189.91(d), the Department followed the formula in the Commonwealth's approved State Plan to determine that the BAF for FY 2011-2012 county nursing facilities is 1.0. CMS approved SPA 11-016 on November 21, 2011.

SPA 11-016 states that for rate setting years 2011-2012 and 2012-2013, the BAF shall limit the estimated State-wide day-weighted average payment rate for MA nursing facility services for county and nonpublic nursing facilities so that the average payment rate for FY 2011-2012 is limited to the amount permitted by the funds appropriated by the General Appropriations Act of 2011.

The final per diem rates for FY 2011-2012 are available on the Department's web site at www.dpw.state.pa.us/provider/doingbusinesswithdpw/longtermcarecasemixinformation/index.htm, at local county assistance offices throughout this Commonwealth or by contacting Yvette Sanchez-Roberts, Department of Public Welfare, Office of Long-Term Living at (717) 265-7569.

Special Rehabilitation Proposed Per Diem Rates

For the period commencing November 1, 2011, peer group medians and prices will be established for the four nursing facilities that were classified as special rehabilitation nursing facilities on or before July 1, 2000 (Good Shepherd Home Raker Center, Inglis House, Margaret E. Moul Home and Good Shepherd Home—Bethlehem). These peer group medians and prices are separate from those for any other facilities meeting the definition of a special rehabilitation nursing facility as described in the notice Payment for Nursing Facility Services Provided by Special Rehabilitation Nursing Facilities; Change in Methods and Standards of Setting Payment Rates published at 41 Pa.B. 5826 (October 29, 2011). The Department intends to make additional changes to the payment methodology, for the period November 1, 2011, through June 30, 2012, so that this change in peer group methodology will not be a factor in the quarterly BAF calculations in the Commonwealth's approved State Plan. SPA 11-028 was submitted to the CMS on December 28, 2011.

Final annual per diem rates for Good Shepherd Home Raker Center, Inglis House, Margaret E. Moul Home and Good Shepherd Home—Bethlehem for the period November 1, 2011, through June 30, 2012, will be published as a public notice in the *Pennsylvania Bulletin* after CMS approval of SPA 11-028 and publication of regulations.

Public Process

The Department published a notice in the *Pennsylvania Bulletin* announcing its proposed case-mix per diem payment rates for nonpublic and county nursing facilities for FY 2011-2012 at 41 Pa.B. 3306 (June 25, 2011) and invited interested persons to submit comments. No comments were received by the Department in response to the proposed rate notice. In addition, the Department reviewed and considered the public comment received within the 30-day public comment period in response to the notice published at 41 Pa.B. 5826 related to the change in rate methodology for special rehabilitation nursing facilities.

Appeals

Following publication of this notice, the Department will send rate letters to notify MA nursing facilities of their final rates for FY 2011-2012. The rate letter will also advise the facility that it may file an administrative appeal if the facility believes that the Department made any errors or otherwise disagrees with its final rates for FY 2011-2012. A provider's appeal must be in writing and filed with the Department's Bureau of Hearings and Appeals, 2330 Vartan Way, 2nd Floor, Harrisburg, PA 17110-9721, within 33 days of the date of the Department's letter notifying the facility of its final rates. Facilities should refer to 67 Pa.C.S. Chapter 11 (relating to Medical Assistance hearings and appeals) and to the Department's regulations at 55 Pa. Code Chapter 41 (relating to Medical Assistance provider appeal procedures) for more detail regarding their appeal rights and the requirements related to written appeals.

Fiscal Impact

There is no fiscal impact for the change in final payment rates for FY 2011-2012 per diem rate payments to nonpublic and county nursing facilities compared to the facilities' final FY 2010-2011 per diem rates. The estimated fiscal impact for the proposed change in payment rates related to the four special rehabilitation nursing facilities for the period November 1, 2011, through June 30, 2012, is \$0.331 million in State funds. Funding for these changes has been included in the MA Long-Term Care appropriation.

Public Comment

Interested persons are invited to submit written comments regarding this notice to the Department of Public Welfare/Department of Aging, Office of Long-Term Living, Bureau of Policy and Strategic Planning, Attention: Yvette Sanchez-Roberts, Forum Place, 5th Floor, 555 Walnut Street, Harrisburg, PA 17101-1919. Comments received within 30 days will be reviewed and considered for any subsequent revision of the notice.

Persons with a disability who require an auxiliary aid or service may submit comments using the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

GARY D. ALEXANDER,
Secretary

Fiscal Note: 14-NOT-753. No fiscal impact; (8) recommends adoption.

[Pa.B. Doc. No. 12-683. Filed for public inspection April 13, 2012, 9:00 a.m.]

DEPARTMENT OF REVENUE

Pennsylvania Hot Ticket Instant Lottery Game

Under the State Lottery Law (72 P. S. §§ 3761-101—3761-314) and 61 Pa. Code § 819.203 (relating to notice of instant game rules), the Secretary of Revenue hereby provides public notice of the rules for the following instant lottery game:

1. *Name:* The name of the game is Pennsylvania Hot Ticket.

2. *Price:* The price of a Pennsylvania Hot Ticket instant lottery game ticket is \$5.

3. *Play Symbols:* Each Pennsylvania Hot Ticket instant lottery game ticket will contain one play area and a "HOT MULTIPLIER" area. The play symbols and their captions printed in black ink, located in the play area are: 1 (ONE), 3 (THREE), 4 (FOUR), 6 (SIX), 7 (SEVEN), 8 (EIGHT), 9 (NINE), 11 (ELEVN), 12 (TWLV), 13 (THRTN), 14 (FORTN), 15 (FIFTN), 16 (SIXTN), 17 (SVNTN), 18 (EGHTN), 19 (NINTN), 20 (TWENT), 21 (TWYONE), 22 (TWYTWO), 23 (TWYTHR), 24 (TWYFOR), 25 (TWYFIV), 26 (TWYSIX), 27 (TWYSVN), 28 (TWYEGT), 29 (TWYNIN), 30 (THIRTY), 31 (THYONE), 32 (THYTWO), 33 (THYTHR), 34 (THYFOR), 35 (THYFIV), 36 (THYSIX), 37 (THYSVN) and a Flame (FLAME) symbol. The play symbols and their captions printed in red ink, located in the play area are: 1 (ONE), 3 (THREE), 4 (FOUR), 6 (SIX), 7 (SEVEN), 8 (EIGHT), 9 (NINE), 11 (ELEVN), 12 (TWLV), 13 (THRTN), 14 (FORTN), 15 (FIFTN), 16 (SIXTN), 17 (SVNTN), 18 (EGHTN), 19 (NINTN), 20 (TWENT), 21 (TWYONE), 22 (TWYTWO), 23 (TWYTHR), 24 (TWYFOR), 25 (TWYFIV), 26 (TWYSIX), 27 (TWYSVN), 28 (TWYEGT), 29 (TWYNIN), 30 (THIRTY), 31 (THYONE), 32 (THYTWO), 33 (THYTHR), 34 (THYFOR), 35 (THYFIV), 36 (THYSIX), 37 (THYSVN) and a HOT (RDHOT) symbol. The play symbols and their captions located in the "HOT MULTIPLIER" area are: NO MULTIPLIER (TRY AGAIN), TRY AGAIN (NO MULTIPLIER), 2X (2TIMES), 5X (5TIMES) and 10X (10TIMES).

4. *Prize Symbols:* The prize symbols and their captions located in the play area are: \$5⁰⁰ (FIV DOL), \$10⁰⁰ (TEN DOL), \$20⁰⁰ (TWENTY), \$25⁰⁰ (TWY FIV), \$40⁰⁰ (FORTY), \$50⁰⁰ (FIFTY), \$75⁰⁰ (SVY FIV), \$100 (ONE HUN), \$150 (ONEHUNFTY), \$250 (TWOHUNFTY), \$500 (FIV HUN), \$750 (SVNHUNFTY), \$1,000 (ONE THO), \$5,000 (FIV THO) and \$100,000 (ONEHUNTHO).

5. *Prizes:* The prizes that can be won in this game are: \$5, \$10, \$20, \$25, \$40, \$50, \$75, \$100, \$150, \$250, \$500, \$750, \$1,000, \$5,000, and \$100,000. A player can win up to 15 times on a ticket.

6. *Approximate Number of Tickets Printed For the Game:* Approximately 8,400,000 tickets will be printed for the Pennsylvania Hot Ticket instant lottery game.

7. *Determination of Prize Winners:*

(a) Holders of tickets with a Flame (FLAME) symbol in the play area, with the symbol and caption printed in black ink, and a prize symbol of \$100,000 (ONEHUNTHO) appears in the "prize" area under that Flame (FLAME) symbol, on a single ticket, shall be entitled to a prize of \$100,000.

(b) Holders of tickets with a Flame (FLAME) symbol in the play area, with the symbol and caption printed in black ink, and a prize symbol of \$5,000 (FIV THO) appears in the "prize" area under that Flame (FLAME) symbol, on a single ticket, shall be entitled to a prize of \$5,000.

(c) Holders of tickets with a Flame (FLAME) symbol in the play area, with the symbol and caption printed in black ink, and a prize symbol of \$1,000 (ONE THO) appears in the "prize" area under that Flame (FLAME) symbol and a 5X (5TIMES) symbol appears in the "HOT MULTIPLIER" area, on a single ticket, shall be entitled to a prize of \$5,000.

(d) Holders of tickets with a Flame (FLAME) symbol in the play area, with the symbol and caption printed in black ink, and a prize symbol of \$1,000 (ONE THO) appears in the "prize" area under that Flame (FLAME) symbol, on a single ticket, shall be entitled to a prize of \$1,000.

(e) Holders of tickets with a Flame (FLAME) symbol in the play area, with the symbol and caption printed in black ink, and a prize symbol of \$500 (FIV HUN) appears in the "prize" area under that Flame (FLAME) symbol and a 2X (2TIMES) symbol appears in the "HOT MULTIPLIER" area, on a single ticket, shall be entitled to a prize of \$1,000.

(f) Holders of tickets with a Flame (FLAME) symbol in the play area, with the symbol and caption printed in black ink, and a prize symbol of \$100 (ONE HUN) appears in the "prize" area under that Flame (FLAME) symbol and a 10X (10TIMES) symbol appears in the "HOT MULTIPLIER" area, on a single ticket, shall be entitled to a prize of \$1,000.

(g) Holders of tickets with a Flame (FLAME) symbol in the play area, with the symbol and caption printed in black ink, and a prize symbol of \$750 (SVNHUNFTY) appears in the "prize" area under that Flame (FLAME) symbol, on a single ticket, shall be entitled to a prize of \$750.

(h) Holders of tickets with a HOT (RDHOT) symbol in the play area, with the symbol and caption printed in red ink, and a prize symbol of \$10⁰⁰ (TEN DOL) appears in all fifteen of the "prize" areas and a 5X (5TIMES) symbol appears in the "HOT MULTIPLIER" area, on a single ticket, shall be entitled to a prize of \$750.

(i) Holders of tickets with a HOT (RDHOT) symbol in the play area, with the symbol and caption printed in red ink, and a prize symbol of \$5⁰⁰ (FIV DOL) appears in all fifteen of the "prize" areas and a 10X (10TIMES) symbol appears in the "HOT MULTIPLIER" area, on a single ticket, shall be entitled to a prize of \$750.

(j) Holders of tickets with a Flame (FLAME) symbol in the play area, with the symbol and caption printed in black ink, and a prize symbol of \$500 (FIV HUN) appears in the "prize" area under that Flame (FLAME) symbol, on a single ticket, shall be entitled to a prize of \$500.

(k) Holders of tickets with a Flame (FLAME) symbol in the play area, with the symbol and caption printed in black ink, and a prize symbol of \$250 (TWOHUNFTY) appears in the "prize" area under that Flame (FLAME) symbol and a 2X (2TIMES) symbol appears in the "HOT MULTIPLIER" area, on a single ticket, shall be entitled to a prize of \$500.

(l) Holders of tickets with a Flame (FLAME) symbol in the play area, with the symbol and caption printed in black ink, and a prize symbol of \$100 (ONE HUN) appears in the "prize" area under that Flame (FLAME) symbol and a 5X (5TIMES) symbol appears in the "HOT MULTIPLIER" area, on a single ticket, shall be entitled to a prize of \$500.

(m) Holders of tickets with a Flame (FLAME) symbol in the play area, with the symbol and caption printed in black ink, and a prize symbol of \$50⁰⁰ (FIFTY) appears in the "prize" area under that Flame (FLAME) symbol and a 10X (10TIMES) symbol appears in the "HOT MULTIPLIER" area, on a single ticket, shall be entitled to a prize of \$500.

(n) Holders of tickets with a HOT (RDHOT) symbol in the play area, with the symbol and caption printed in red

black ink, and a prize symbol of \$25⁰⁰ (TWY FIV) appears in the “prize” area under that Flame (FLAME) symbol, on a single ticket, shall be entitled to a prize of \$25.

(jj) Holders of tickets with a Flame (FLAME) symbol in the play area, with the symbol and caption printed in black ink, and a prize symbol of \$5⁰⁰ (FIV DOL) appears in the “prize” area under that Flame (FLAME) symbol and a 5X (5TIMES) symbol appears in the “HOT MULTIPLIER” area, on a single ticket, shall be entitled to a prize of \$25.

(kk) Holders of tickets with a Flame (FLAME) symbol in the play area, with the symbol and caption printed in black ink, and a prize symbol of \$20⁰⁰ (TWENTY) appears in the “prize” area under that Flame (FLAME) symbol, on a single ticket, shall be entitled to a prize of \$20.

(ll) Holders of tickets with a Flame (FLAME) symbol in the play area, with the symbol and caption printed in black ink, and a prize symbol of \$10⁰⁰ (TEN DOL)

appears in the “prize” area under that Flame (FLAME) symbol and a 2X (2TIMES) symbol appears in the “HOT MULTIPLIER” area, on a single ticket, shall be entitled to a prize of \$20.

(mm) Holders of tickets with a Flame (FLAME) symbol in the play area, with the symbol and caption printed in black ink, and a prize symbol of \$10⁰⁰ (TEN DOL) appears in the “prize” area under that Flame (FLAME) symbol, on a single ticket, shall be entitled to a prize of \$10.

(nn) Holders of tickets with a Flame (FLAME) symbol in the play area, with the symbol and caption printed in black ink, and a prize symbol of \$5⁰⁰ (FIV DOL) appears in the “prize” area under that Flame (FLAME) symbol, on a single ticket, shall be entitled to a prize of \$5.

8. *Number and Description of Prizes and Approximate Odds:* The following table sets forth the approximate number of winners, amounts of prizes, and approximate odds of winning:

<i>Reveal A “FLAME” (FLAME) Symbol In The Play Area, Win Prize Shown Under It. Win With:</i>	<i>Win:</i>	<i>Approximate Odds Are 1 In:</i>	<i>Approximate No. Of Winners Per 8,400,000 Tickets:</i>
\$5	\$5	8.57	980,000
\$5 × 2	\$10	40	210,000
\$10	\$10	30	280,000
\$10 w/2X	\$20	150	56,000
\$10 × 2	\$20	200	42,000
\$20	\$20	200	42,000
\$5 w/5X	\$25	200	42,000
\$5 × 5	\$25	300	28,000
(\$10 × 2) + \$5	\$25	600	14,000
\$25	\$25	300	28,000
\$20 w/2X	\$40	300	28,000
\$10 × 4	\$40	600	14,000
\$20 × 2	\$40	600	14,000
\$40	\$40	600	14,000
\$5 w/10X	\$50	600	14,000
\$10 w/5X	\$50	600	14,000
\$25 × 2	\$50	600	14,000
\$50	\$50	600	14,000
HOT w/(\$5 × 15)	\$75	600	14,000
(\$5 × 3) w/5X	\$75	1,600	5,250
\$25 × 3	\$75	1,600	5,250
\$75	\$75	2,400	3,500
HOT w/(\$5 × 10) + (\$10 × 5)	\$100	1,200	7,000
\$10 w/10X	\$100	3,000	2,800
\$20 w/5X	\$100	3,000	2,800
\$50 w/2X	\$100	2,400	3,500
\$10 × 10	\$100	2,400	3,500
\$25 × 4	\$100	3,000	2,800
\$50 × 2	\$100	3,000	2,800
\$100	\$100	3,000	2,800
HOT w/(\$10 × 15)	\$150	12,000	700
(\$5 + \$25) w/5X	\$150	12,000	700
\$75 w/2X	\$150	12,000	700
\$50 × 3	\$150	20,000	420
\$75 × 2	\$150	20,000	420
\$150	\$150	20,000	420
HOT w/(\$10 × 5) + (\$20 × 10)	\$250	20,000	420
\$25 w/10X	\$250	20,000	420
\$50 w/5X	\$250	20,000	420
(\$100 × 2) + \$50	\$250	40,000	210

Reveal A "FLAME" (FLAME)
Symbol In The Play Area, Win
Prize Shown Under It. Win With:

	Win:	Approximate Odds Are 1 In:	Approximate No. Of Winners Per 8,400,000 Tickets:
\$250	\$250	40,000	210
HOT w/(\$20 × 5) + (\$40 × 10)	\$500	40,000	210
\$50 w/10X	\$500	40,000	210
\$100 w/5X	\$500	40,000	210
\$250 w/2X	\$500	40,000	210
\$50 × 10	\$500	120,000	70
\$100 × 5	\$500	120,000	70
\$250 × 2	\$500	120,000	70
\$500	\$500	120,000	70
(HOT w/(\$5 × 15)) w/10X	\$750	40,000	210
(HOT w/(\$10 × 15)) w/5X	\$750	40,000	210
\$250 + \$500	\$750	120,000	70
\$750	\$750	120,000	70
\$100 w/10X	\$1,000	120,000	70
(\$20 × 10) w/5X	\$1,000	120,000	70
\$500 w/2X	\$1,000	120,000	70
\$100 × 10	\$1,000	120,000	70
\$500 × 2	\$1,000	120,000	70
\$1,000	\$1,000	120,000	70
\$1,000 w/5X	\$5,000	420,000	20
\$5,000	\$5,000	420,000	20
\$100,000	\$100,000	840,000	10

Reveal a "HOT" (RDHOT) symbol, win all 15 prizes shown automatically.
Hot Multiplier: When you reveal a 2X, 5X or 10X symbol, multiply any prize won in the play area by that amount.

Prizes, including top prizes, are subject to availability at the time of purchase.

9. *Retailer Incentive Awards:* The Lottery may conduct a separate Retailer Incentive Game for retailers who sell Pennsylvania Hot Ticket instant lottery game tickets. The conduct of the game will be governed by 61 Pa. Code § 819.222 (relating to retailer bonuses and incentive).

10. *Unclaimed Prize Money:* For a period of 1 year from the announced close of Pennsylvania Hot Ticket, prize money from winning Pennsylvania Hot Ticket instant lottery game tickets will be retained by the Secretary for payment to the persons entitled thereto. If no claim is made within 1 year of the announced close of the Pennsylvania Hot Ticket instant lottery game, the right of a ticket holder to claim the prize represented by the ticket, if any, will expire and the prize money will be paid into the State Lottery Fund and used for purposes provided for by statute.

11. *Governing Law:* In purchasing a ticket, the customer agrees to comply with and abide by the State Lottery Law (72 P.S. §§ 3761-101—3761-314), 61 Pa. Code Part V (relating to State Lotteries) and the provisions contained in this notice.

12. *Termination of the Game:* The Secretary may announce a termination date, after which no further tickets from this game may be sold. Such announcement will be disseminated through media used to advertise or promote Pennsylvania Hot Ticket or through normal communications methods.

DANIEL MEUSER,
Secretary

[Pa.B. Doc. No. 12-684. Filed for public inspection April 13, 2012, 9:00 a.m.]

Pennsylvania Instant Millions '12 Instant Lottery Game

Under the State Lottery Law (72 P.S. §§ 3761-101—3761-314) and 61 Pa. Code § 819.203 (relating to notice of instant game rules), the Secretary of Revenue hereby provides public notice of the rules for the following instant lottery game:

1. *Name:* The name of the game is Pennsylvania Instant Millions '12.

2. *Price:* The price of a Pennsylvania Instant Millions '12 instant lottery game ticket is \$20.

3. *Play Symbols:* Each Pennsylvania Instant Millions '12 instant lottery game ticket will contain one play area featuring a "WINNINGNUMBERS" area, a "YOURNUMBERS" area, a "Fast \$50" area, a "Fast \$100" area and a "Fast \$500" area. The play symbols and their captions located in the "WINNING NUMBERS" area are: 1 (ONE), 2 (TWO), 3 (THREE), 4 (FOUR), 5 (FIVE), 6 (SIX), 7 (SEVEN), 8 (EIGHT), 9 (NINE), 11 (ELEVN), 12 (TWLV), 13 (THRTN), 14 (FORTN), 15 (FIFTN), 16 (SIXTN), 17 (SVNTN), 18 (EGHTN), 19 (NINTN), 20 (TWENT), 21 (TWYONE), 22 (TWY TWO), 23 (TWYTHR), 24 (TWYFOR), 25 (TWYFIV), 26 (TWYSIX), 27 (TWYSVN), 28 (TWYEGT), 29 (TWYNIN), 30 (THIRTY), 31 (THYFOR), 32 (THYTWO), 33 (THYTHR), 34 (THYFIV), 35 (THYSIX), 36 (THYSVN), 37 (THYSVN), 38 (THYEGT), 39 (THYNIN) and 40 (FORTY). The play symbols and their captions located in the "YOUR NUMBERS" area are: 1 (ONE), 2 (TWO), 3 (THREE), 4 (FOUR), 5 (FIVE), 6 (SIX), 7 (SEVEN), 8 (EIGHT), 9 (NINE), 11 (ELEVN), 12 (TWLV), 13 (THRTN), 14 (FORTN), 15 (FIFTN), 16 (SIXTN), 17 (SVNTN), 18 (EGHTN), 19 (NINTN), 20 (TWENT), 21 (TWYONE), 22 (TWY TWO), 23 (TWYTHR), 24 (TWYFOR), 25 (TWYFIV), 26 (TWYSIX), 27 (TWYSVN), 28 (TWYEGT), 29 (TWYNIN), 30 (THIRTY), 31 (THYONE), 32 (THYTWO), 33 (THYTHR), 34 (THYFOR), 35 (THYFIV), 36 (THYSIX),

37 (THYSVN), 38 (THYEGT), 39 (THYNIN), 40 (FORTY), 10X (10TIMES) symbol and an INSTANT (INSTMIL) symbol. The prize play symbol and the play symbols and their captions located in the "Fast \$50" area are: \$50⁰⁰ (FIFTY), NO BONUS (TRY AGAIN) and TRY AGAIN (NO BONUS). The prize play symbol and the play symbols and their captions located in the "Fast \$100" area are: \$100 (ONE HUN), NO BONUS (TRY AGAIN) and TRY AGAIN (NO BONUS). The prize play symbol and the play symbols and their captions located in the "Fast \$500" area are: \$500 (FIV HUN), NO BONUS (TRY AGAIN) and TRY AGAIN (NO BONUS). Each play area is played separately.

4. *Prize Symbols:* The prize symbols and their captions located in the "YOUR NUMBERS" area are: \$10⁰⁰ (TEN DOL), \$20⁰⁰ (TWENTY), \$25⁰⁰ (TWY FIV), \$40⁰⁰ (FORTY), \$50⁰⁰ (FIFTY), \$100 (ONE HUN), \$200 (TWO HUN), \$500 (FIV HUN), \$1,000 (ONE THO), \$5,000 (FIV THO), \$25,000 (TWYFIVTHO), \$100,000 (ONEHUNTHO) and \$1MILL (ONE MIL).

5. *Prizes:* The prizes that can be won in this game are: \$10, \$20, \$25, \$40, \$50, \$100, \$200, \$500, \$1,000, \$5,000, \$25,000, \$100,000 and \$1,000,000. The \$1,000,000 top prize is a lump sum cash payment. The prize that can be won in the "Fast \$50" area is \$50. The prize that can be won in the "Fast \$100" area is \$100. The prize that can be won in the "Fast \$500" area is \$500. A player can win up to 20 times on a ticket.

6. *Approximate Number of Tickets Printed For the Game:* Approximately 5,400,000 tickets will be printed for the Pennsylvania Instant Millions '12 instant lottery game.

7. *Determination of Prize Winners:*

(a) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$1MILL (ONE MIL) appears under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$1,000,000.

(b) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is an INSTANT (INSTMIL) symbol, and a prize symbol of \$1MILL (ONE MIL) appears under that INSTANT (INSTMIL) symbol, on a single ticket, shall be entitled to a prize of \$1,000,000.

(c) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$100,000 (ONEHUNTHO) appears under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$100,000.

(d) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$25,000 (TWYFIVTHO) appears under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$25,000.

(e) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$5,000 (FIV THO) appears under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$5,000.

(f) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a 10X (10TIMES) symbol,

and a prize symbol of \$500 (FIV HUN) appears under that 10X (10TIMES) symbol, on a single ticket, shall be entitled to a prize of \$5,000.

(g) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a 10X (10TIMES) symbol, and a prize symbol of \$200 (TWO HUN) appears under that 10X (10TIMES) symbol, on a single ticket, shall be entitled to a prize of \$2,000.

(h) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$1,000 (ONE THO) appears under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$1,000.

(i) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a 10X (10TIMES) symbol, and a prize symbol of \$100 (ONE HUN) appears under that 10X (10TIMES) symbol, on a single ticket, shall be entitled to a prize of \$1,000.

(j) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$500 (FIV HUN) appears under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$500.

(k) Holders of tickets with a \$500 (FIV HUN) prize play symbol in the "Fast \$500" area, on a single ticket, shall be entitled to a prize of \$500.

(l) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a 10X (10TIMES) symbol, and a prize symbol of \$50⁰⁰ (FIFTY) appears under that 10X (10TIMES) symbol, on a single ticket, shall be entitled to a prize of \$500.

(m) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a 10X (10TIMES) symbol, and a prize symbol of \$25⁰⁰ (TWY FIV) appears under that 10X (10TIMES) symbol, on a single ticket, shall be entitled to a prize of \$250.

(n) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$200 (TWO HUN) appears under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$200.

(o) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a 10X (10TIMES) symbol, and a prize symbol of \$20⁰⁰ (TWENTY) appears under that 10X (10TIMES) symbol, on a single ticket, shall be entitled to a prize of \$200.

(p) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$100 (ONE HUN) appears under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$100.

(q) Holders of tickets with a \$100 (ONE HUN) prize play symbol in the "Fast \$100" area, on a single ticket, shall be entitled to a prize of \$100.

(r) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a 10X (10TIMES), and a prize symbol of \$10⁰⁰ (TEN DOL) appears under that 10X (10TIMES), on a single ticket, shall be entitled to a prize of \$100.

(s) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the

“WINNING NUMBERS” play symbols and a prize symbol of \$50⁰⁰ (FIFTY) appears under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$50.

(t) Holders of tickets with a \$50⁰⁰ (FIFTY) prize play symbol in the “Fast \$50” area, on a single ticket, shall be entitled to a prize of \$50.

(u) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$40⁰⁰ (FORTY) appears under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$40.

(v) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$25⁰⁰ (TWY FIV) appears under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$25.

(w) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$20⁰⁰ (TWENTY) appears under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$20.

(x) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$10⁰⁰ (TEN DOL) appears under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$10.

8. *Number and Description of Prizes and Approximate Odds:* The following table sets forth the approximate number of winners, amounts of prizes, and approximate odds of winning:

When Any Of Your Numbers Match Any Winning Number, Win Prize Shown Under The Matching Number. Win With:

	<i>Win:</i>	<i>Approximate Odds Are 1 In:</i>	<i>Approximate No. Of Winners Per 5,400,000 Tickets</i>
\$10 × 2	\$20	20	270,000
\$20	\$20	20	270,000
\$25	\$25	15	360,000
\$10 × 4	\$40	37.5	144,000
\$20 × 2	\$40	50	108,000
\$40	\$40	50	108,000
\$10 × 5	\$50	150	36,000
\$25 × 2	\$50	300	18,000
(\$20 × 2) + \$10	\$50	300	18,000
\$50 w/FAST \$50	\$50	75	72,000
\$50	\$50	150	36,000
\$20 × 5	\$100	300	18,000
\$10 w/10X	\$100	150	36,000
\$50 + (\$50 w/FAST \$50)	\$100	300	18,000
\$100 w/FAST \$100	\$100	150	36,000
\$100	\$100	150	36,000
\$20 × 10	\$200	1,000	5,400
\$40 × 5	\$200	1,000	5,400
\$100 × 2	\$200	1,000	5,400
\$20 w/10X	\$200	750	7,200
\$50 + (\$50 w/FAST \$50) + (\$100 w/FAST \$100)	\$200	750	7,200
\$200	\$200	1,000	5,400
\$25 × 20	\$500	4,800	1,125
\$50 × 10	\$500	8,000	675
\$100 × 5	\$500	8,000	675
(\$10 × 10) + (\$40 × 10)	\$500	4,800	1,125
(\$25 × 10) + (\$50 × 5)	\$500	8,000	675
\$50 w/10X	\$500	4,000	1,350
(\$200 × 2) + (\$100 w/FAST \$100)	\$500	4,000	1,350
\$500 w/FAST \$500	\$500	4,000	1,350
\$500	\$500	8,000	675
\$50 × 20	\$1,000	12,000	450
\$200 × 5	\$1,000	15,000	360
\$500 × 2	\$1,000	15,000	360
(\$100 × 6) + (\$40 × 10)	\$1,000	20,000	270
(\$50 w/10X) × 2	\$1,000	12,000	450
\$100 w/10X	\$1,000	12,000	450
\$50 + (\$100 × 3) + (\$50 w/FAST \$50) + (\$100 w/FAST \$100) + (\$500 w/FAST \$500)	\$1,000	12,000	450
\$500 + (\$500 w/FAST \$500)	\$1,000	12,000	450
\$1,000	\$1,000	15,000	360
\$1,000 × 5	\$5,000	120,000	45
(\$100 × 5) + (\$200 × 10) + (\$500 × 5)	\$5,000	120,000	45

When Any Of Your Numbers Match Any Winning Number, Win Prize Shown Under The Matching Number. Win With:

	Win:	Approximate Odds Are 1 In:	Approximate No. Of Winners Per 5,400,000 Tickets
(\$25 w/10X) × 20	\$5,000	120,000	45
\$500 w/10X	\$5,000	120,000	45
\$5,000	\$5,000	120,000	45
((100 w/10X) × 15) + ((200 w/10X) × 5)	\$25,000	675,000	8
\$25,000	\$25,000	540,000	10
\$5,000 × 20	\$100,000	1,350,000	4
\$100,000	\$100,000	1,080,000	5
\$1,000,000 w/INSTANT	\$1,000,000	1,800,000	3
\$1,000,000	\$1,000,000	2,700,000	2

Reveal a "10X" (10TIMES) symbol, win 10 times the prize shown under that symbol.
 Reveal an "INSTANT" (INSTMIL) symbol, win \$1 million instantly!
 Fast \$50 = Reveal \$50, win that amount.
 Fast \$100 = Reveal \$100, win that amount.
 Fast \$500 = Reveal \$500, win that amount.
 Bonus games played separately.

Prizes, including top prizes, are subject to availability at the time of purchase.

9. *Retailer Incentive Awards:* The Lottery may conduct a separate Retailer Incentive Game for retailers who sell Pennsylvania Instant Millions '12 instant lottery game tickets. The conduct of the game will be governed by 61 Pa. Code § 819.222 (relating to retailer bonuses and incentive).

10. *Unclaimed Prize Money:* For a period of 1 year from the announced close of Pennsylvania Instant Millions '12, prize money from winning Pennsylvania Instant Millions '12 instant lottery game tickets will be retained by the Secretary for payment to the persons entitled thereto. If no claim is made within 1 year of the announced close of the Pennsylvania Instant Millions '12 instant lottery game, the right of a ticket holder to claim the prize represented by the ticket, if any, will expire and the prize money will be paid into the State Lottery Fund and used for purposes provided for by statute.

11. *Governing Law:* In purchasing a ticket, the customer agrees to comply with and abide by the State Lottery Law (72 P.S. §§ 3761-101—3761-314), 61 Pa. Code Part V (relating to State Lotteries) and the provisions contained in this notice.

12. *Termination of the Game:* The Secretary may announce a termination date, after which no further tickets from this game may be sold. Such announcement will be disseminated through media used to advertise or promote Pennsylvania Instant Millions '12 or through normal communications methods.

DANIEL MEUSER,
 Secretary

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Pennsylvania Spades Instant Lottery Game

Under the State Lottery Law (72 P.S. §§ 3761-101—3761-314) and 61 Pa. Code § 819.203 (relating to notice of instant game rules), the Secretary of Revenue hereby provides public notice of the rules for the following instant lottery game:

1. *Name:* The name of the game is Pennsylvania Spades.

2. *Price:* The price of a Pennsylvania Spades instant lottery game ticket is \$2.

3. *Play Symbols:* Each Pennsylvania Spades instant lottery game ticket will contain one play area consisting of "GAME 1," "GAME 2," "GAME 3," "GAME 4," "GAME 5," "GAME 6," "GAME 7" and "GAME 8." Each "GAME" is played separately. Each "GAME" features a "YOUR CARD" area and a "DEALER'S CARD" area. The play symbols and their captions located in the "YOUR CARD" area are: 3 (THR), 4 (FOR), 5 (FIV), 6 (SIX), 7 (SVN), 8 (EGT), 9 (NIN), 10 (TEN), J (JCK), Q (QUN), K (KNG), A (ACE) and a Spade (SPD) card play symbols. The play symbols and their captions located in the "DEALER'S CARD" area are: 2 (TWO), 3 (THR), 4 (FOR), 5 (FIV), 6 (SIX), 7 (SVN), 8 (EGT), 9 (NIN), 10 (TEN), J (JCK), Q (QUN) and K (KNG) card play symbols. Cards are ranked in value from high to low: A, K, Q, J, 10, 9, 8, 7, 6, 5, 4, 3, 2.

4. *Prize Symbols:* The prize symbols and their captions located in the "PRIZE" area are: \$2⁰⁰ (TWO DOL), \$4⁰⁰ (FOR DOL), \$5⁰⁰ (FIV DOL), \$10⁰⁰ (TEN DOL), \$20⁰⁰ (TWENTY), \$40⁰⁰ (FORTY), \$50⁰⁰ (FIFTY), \$100 (ONE HUN), \$250 (TWOHUNFTY), \$500 (FIV HUN), \$1,000 (ONE THO) and \$21,000 (TWYONETHO).

5. *Prizes:* The prizes that can be won in this game are: \$2, \$4, \$5, \$10, \$20, \$40, \$50, \$100, \$250, \$500, \$1,000, and \$21,000. A player can win up to 8 times on a ticket.

6. *Approximate Number of Tickets Printed For the Game:* Approximately 11,400,000 tickets will be printed for the Pennsylvania Spades instant lottery game.

7. *Determination of Prize Winners:*

(a) Holders of tickets where the "YOUR CARD" play symbol is greater than the "DEALER'S CARD" play symbol in the same "GAME," and a prize symbol of \$21,000 (TWYONETHO) appears in the "PRIZE" area for that "GAME," on a single ticket, shall be entitled to a prize of \$21,000.

(b) Holders of tickets where the "YOUR CARD" play symbol is greater than the "DEALER'S CARD" play symbol in the same "GAME," and a prize symbol of \$1,000 (ONE THO) appears in the "PRIZE" area for that "GAME," on a single ticket, shall be entitled to a prize of \$1,000.

(c) Holders of tickets where the "YOUR CARD" play symbol is greater than the "DEALER'S CARD" play symbol in the same "GAME," and a prize symbol of \$500

(FIV HUN) appears in the "PRIZE" area for that "GAME," on a single ticket, shall be entitled to a prize of \$500.

(d) Holders of tickets with a Spade (SPD) card play symbol in a "GAME" and a prize symbol of \$500 (FIV HUN) appears in the "PRIZE" area for that "GAME," on a single ticket, shall be entitled to a prize of \$500.

(e) Holders of tickets where the "YOUR CARD" play symbol is greater than the "DEALER'S CARD" play symbol in the same "GAME," and a prize symbol of \$250 (TWOHUNFTY) appears in the "PRIZE" area for that "GAME," on a single ticket, shall be entitled to a prize of \$250.

(f) Holders of tickets with a Spade (SPD) card play symbol in a "GAME" and a prize symbol of \$250 (TWOHUNFTY) appears in the "PRIZE" area for that "GAME," on a single ticket, shall be entitled to a prize of \$250.

(g) Holders of tickets where the "YOUR CARD" play symbol is greater than the "DEALER'S CARD" play symbol in the same "GAME," and a prize symbol of \$100 (ONE HUN) appears in the "PRIZE" area for that "GAME," on a single ticket, shall be entitled to a prize of \$100.

(h) Holders of tickets with a Spade (SPD) card play symbol in a "GAME" and a prize symbol of \$100 (ONE HUN) appears in the "PRIZE" area for that "GAME," on a single ticket, shall be entitled to a prize of \$100.

(i) Holders of tickets where the "YOUR CARD" play symbol is greater than the "DEALER'S CARD" play symbol in the same "GAME," and a prize symbol of \$50^{.00} (FIFTY) appears in the "PRIZE" area for that "GAME," on a single ticket, shall be entitled to a prize of \$50.

(j) Holders of tickets with a Spade (SPD) card play symbol in a "GAME" and a prize symbol of \$50^{.00} (FIFTY) appears in the "PRIZE" area for that "GAME," on a single ticket, shall be entitled to a prize of \$50.

(k) Holders of tickets where the "YOUR CARD" play symbol is greater than the "DEALER'S CARD" play symbol in the same "GAME," and a prize symbol of \$40^{.00} (FORTY) appears in the "PRIZE" area for that "GAME," on a single ticket, shall be entitled to a prize of \$40.

(l) Holders of tickets with a Spade (SPD) card play symbol in a "GAME" and a prize symbol of \$40^{.00} (FORTY) appears in the "PRIZE" area for that "GAME," on a single ticket, shall be entitled to a prize of \$40.

(m) Holders of tickets where the "YOUR CARD" play symbol is greater than the "DEALER'S CARD" play symbol in the same "GAME," and a prize symbol of \$20^{.00}

(TWENTY) appears in the "PRIZE" area for that "GAME," on a single ticket, shall be entitled to a prize of \$20.

(n) Holders of tickets with a Spade (SPD) card play symbol in a "GAME" and a prize symbol of \$20^{.00} (TWENTY) appears in the "PRIZE" area for that "GAME," on a single ticket, shall be entitled to a prize of \$20.

(o) Holders of tickets where the "YOUR CARD" play symbol is greater than the "DEALER'S CARD" play symbol in the same "GAME," and a prize symbol of \$10^{.00} (TEN DOL) appears in the "PRIZE" area for that "GAME," on a single ticket, shall be entitled to a prize of \$10.

(p) Holders of tickets with a Spade (SPD) card play symbol in a "GAME" and a prize symbol of \$10^{.00} (TEN DOL) appears in the "PRIZE" area for that "GAME," on a single ticket, shall be entitled to a prize of \$10.

(q) Holders of tickets where the "YOUR CARD" play symbol is greater than the "DEALER'S CARD" play symbol in the same "GAME," and a prize symbol of \$5^{.00} (FIV DOL) appears in the "PRIZE" area for that "GAME," on a single ticket, shall be entitled to a prize of \$5.

(r) Holders of tickets with a Spade (SPD) card play symbol in a "GAME" and a prize symbol of \$5^{.00} (FIV DOL) appears in the "PRIZE" area for that "GAME," on a single ticket, shall be entitled to a prize of \$5.

(s) Holders of tickets where the "YOUR CARD" play symbol is greater than the "DEALER'S CARD" play symbol in the same "GAME," and a prize symbol of \$4^{.00} (FOR DOL) appears in the "PRIZE" area for that "GAME," on a single ticket, shall be entitled to a prize of \$4.

(t) Holders of tickets with a Spade (SPD) card play symbol in a "GAME" and a prize symbol of \$4^{.00} (FOR DOL) appears in the "PRIZE" area for that "GAME," on a single ticket, shall be entitled to a prize of \$4.

(u) Holders of tickets where the "YOUR CARD" play symbol is greater than the "DEALER'S CARD" play symbol in the same "GAME," and a prize symbol of \$2^{.00} (TWO DOL) appears in the "PRIZE" area for that "GAME," on a single ticket, shall be entitled to a prize of \$2.

(v) Holders of tickets with a Spade (SPD) card play symbol in a "GAME" and a prize symbol of \$2^{.00} (TWO DOL) appears in the "PRIZE" area for that "GAME," on a single ticket, shall be entitled to a prize of \$2.

8. *Number and Description of Prizes and Approximate Odds:* The following table sets forth the approximate number of winners, amounts of prizes, and approximate odds of winning:

When Your Card Beats The Dealer's Card In The Same Game, Win Prize Shown For That Game. Win With:

\$2 w/SPADE
 \$2
 \$2 x 2
 \$4 w/SPADE
 \$4
 \$5 w/SPADE
 \$5
 \$5 x 2
 (\$2 w/SPADE) x 5
 \$10 w/SPADE
 \$10
 \$5 x 4
 (\$10 w/SPADE) x 2
 \$20 w/SPADE

Win:	Approximate Odds Are 1 In:	Approximate No. Of Winners Per 11,400,000 Tickets:
\$2	15	760,000
\$2	25	456,000
\$4	150	76,000
\$4	37.5	304,000
\$4	150	76,000
\$5	37.5	304,000
\$5	150	76,000
\$10	500	22,800
\$10	125	91,200
\$10	125	91,200
\$10	500	22,800
\$20	1,500	7,600
\$20	375	30,400
\$20	375	30,400

When Your Card Beats The Dealer's Card In The Same Game, Win Prize Shown For That Game. Win With:

	Win:	Approximate Odds Are 1 In:	Approximate No. Of Winners Per 11,400,000 Tickets:
\$20	\$20	1,500	7,600
\$10 × 4	\$40	2,000	5,700
\$20 × 2	\$40	2,000	5,700
(\$5 w/SPADE) × 8	\$40	857.14	13,300
\$40 w/SPADE	\$40	857.14	13,300
\$40	\$40	1,500	7,600
(\$10 × 2) + (\$5 × 6)	\$50	4,000	2,850
(\$10 w/SPADE) × 5	\$50	1,714	6,650
\$50 w/SPADE	\$50	1,714	6,650
\$50	\$50	4,000	2,850
(\$20 × 2) + (\$10 × 6)	\$100	15,000	760
\$50 × 2	\$100	15,000	760
(\$20 w/SPADE) × 5	\$100	4,286	2,660
\$100 w/SPADE	\$100	4,286	2,660
\$100	\$100	15,000	760
(\$40 × 5) + (\$20 × 2) + \$10	\$250	60,000	190
(\$100 × 2) + \$50	\$250	60,000	190
(\$50 w/SPADE) × 5	\$250	24,000	475
\$250 w/SPADE	\$250	24,000	475
\$250	\$250	60,000	190
(\$100 × 2) + (\$50 × 6)	\$500	120,000	95
(\$100 w/SPADE) × 5	\$500	60,000	190
\$500 w/SPADE	\$500	60,000	190
\$500	\$500	120,000	95
\$1,000	\$1,000	60,000	190
\$21,000	\$21,000	760,000	15

Reveal a "SPADE" (SPD) symbol in any game, win prize shown for that game automatically.
Ace is high.

Prizes, including top prizes, are subject to availability at the time of purchase.

9. *Retailer Incentive Awards:* The Lottery may conduct a separate Retailer Incentive Game for retailers who sell Pennsylvania Spades instant lottery game tickets. The conduct of the game will be governed by 61 Pa. Code § 819.222 (relating to retailer bonuses and incentive).

10. *Unclaimed Prize Money:* For a period of 1 year from the announced close of Pennsylvania Spades, prize money from winning Pennsylvania Spades instant lottery game tickets will be retained by the Secretary for payment to the persons entitled thereto. If no claim is made within 1 year of the announced close of the Pennsylvania Spades instant lottery game, the right of a ticket holder to claim the prize represented by the ticket, if any, will expire and the prize money will be paid into the State Lottery Fund and used for purposes provided for by statute.

11. *Governing Law:* In purchasing a ticket, the customer agrees to comply with and abide by the State Lottery Law (72 P. S. §§ 3761-101—3761-314), 61 Pa. Code Part V (relating to State Lotteries) and the provisions contained in this notice.

12. *Termination of the Game:* The Secretary may announce a termination date, after which no further tickets from this game may be sold. Such announcement will be disseminated through media used to advertise or promote Pennsylvania Spades or through normal communications methods.

DANIEL MEUSER,
Secretary

[Pa.B. Doc. No. 12-686. Filed for public inspection April 13, 2012, 9:00 a.m.]

Pennsylvania Word-o-Rama! Instant Lottery Game

Under the State Lottery Law (72 P. S. §§ 3761-101—3761-314) and 61 Pa. Code § 819.203 (relating to notice of instant game rules), the Secretary of Revenue hereby provides public notice of the rules for the following instant lottery game:

1. *Name:* The name of the game is Pennsylvania Word-o-Rama!.

2. *Price:* The price of a Pennsylvania Word-o-Rama! instant lottery game ticket is \$3.

3. *Play Symbols:* Each Pennsylvania Word-o-Rama! instant lottery game ticket will feature a "YOUR LETTERS" area, a "CROSSWORD" puzzle play grid and three "CORNER PUZZLE" play grids known as "CORNER PUZZLE 1," "CORNER PUZZLE 2" and "CORNER PUZZLE 3." The "CROSSWORD" puzzle play grid and each of the "CORNER PUZZLE" play grids are played separately. The play symbols and their captions located in the "YOUR LETTERS" area are: the letters A through and including Z. The play symbols located in the "CROSSWORD" play grid and "CORNER PUZZLE" play grids are: the letters A through and including Z.

4. *Prizes:* The prizes that can be won in the "CROSSWORD" puzzle play grid area are: \$3, \$10, \$20, \$50, \$100, \$500, \$750, \$2,500 and \$30,000. The prizes that can be won in the "CORNER PUZZLE" play grids are: \$10 and \$30. A player can win up to 4 times on a ticket.

5. *Approximate Number of Tickets Printed For the Game:* Approximately 10,200,000 tickets will be printed for the Pennsylvania Word-o-Rama! instant lottery game.

6. *Determination of Prize Winners:*

(a) The determination of the prize winners for the "CROSSWORD" play grid are:

(1) Holders of tickets where the player completely matches ten words in the "CROSSWORD" play grid, using only the letters found in the "YOUR LETTERS" area, on a single ticket, shall be entitled to a prize of \$30,000.

(2) Holders of tickets where the player completely matches nine words in the "CROSSWORD" play grid, using only the letters found in the "YOUR LETTERS" area, on a single ticket, shall be entitled to a prize of \$2,500.

(3) Holders of tickets where the player completely matches eight words in the "CROSSWORD" play grid, using only the letters found in the "YOUR LETTERS" area, on a single ticket, shall be entitled to a prize of \$750.

(4) Holders of tickets where the player completely matches seven words in the "CROSSWORD" play grid, using only the letters found in the "YOUR LETTERS" area, on a single ticket, shall be entitled to a prize of \$500.

(5) Holders of tickets where the player completely matches six words in the "CROSSWORD" play grid, using only the letters found in the "YOUR LETTERS" area, on a single ticket, shall be entitled to a prize of \$100.

(6) Holders of tickets where the player completely matches five words in the "CROSSWORD" play grid, using only the letters found in the "YOUR LETTERS" area, on a single ticket, shall be entitled to a prize of \$50.

(7) Holders of tickets where the player completely matches four words in the "CROSSWORD" play grid, using only the letters found in the "YOUR LETTERS" area, on a single ticket, shall be entitled to a prize of \$20.

(8) Holders of tickets where the player completely matches three words in the "CROSSWORD" play grid, using only the letters found in the "YOUR LETTERS" area, on a single ticket, shall be entitled to a prize of \$10.

(9) Holders of tickets where the player completely matches two words in the "CROSSWORD" play grid, using only the letters found in the "YOUR LETTERS" area, on a single ticket, shall be entitled to a prize of \$3.

(b) The determination of the prize winners for the "CORNER PUZZLE" play grids are:

(1) Holders of tickets where the player completely matches two words in the same "CORNER PUZZLE" play

grid, using only the letters found in the "YOUR LETTERS" area, on a single ticket, shall be entitled to a prize of \$30.

(2) Holders of tickets where the player completely matches one word in a "CORNER PUZZLE" play grid, using only the letters found in the "YOUR LETTERS" area, on a single ticket, shall be entitled to a prize of \$10.

7. *Game Play Instructions for the "CROSSWORD" play grid and the "CORNER PUZZLE" play grids are:*

(a) The player shall scratch the "YOUR LETTERS" area to reveal 18 letters. For each of the 18 letters revealed in the "YOUR LETTERS" area, the player shall rub the same letter each time it is found in the "CROSSWORD" play grid and the "CORNER PUZZLE" play grids.

(b) When a player reveals two or more entire words in the "CROSSWORD" play grid, the player is entitled to win a prize as described in Section 6(a).

(c) When a player reveals one or two entire words in a "CORNER PUZZLE" play grid, the player is entitled to win a prize as described in Section 6(b).

(d) Only the highest prize won in the "CROSSWORD" play grid and the highest prize won in the "CORNER PUZZLE" play grids will be paid if the ticket meets the criteria established in 61 Pa. Code § 819.213 (relating to ticket validation and requirements).

(e) For purposes of this game, a word must contain at least three letters and cannot be formed by linking letters diagonally or by reading the letters from the bottom to the top.

(f) Every single letter square of a word must be matched and letters combined to form a word must appear in an unbroken horizontal or vertical string of letters in the "CROSSWORD" play grid or the "CORNER PUZZLE" play grids. An unbroken string of letters cannot be interrupted by a black space. There will only be one word in an unbroken horizontal or vertical string of letters.

(g) Every single letter in the unbroken string must be revealed in "YOUR LETTERS" and must be included to form a word.

(h) The possible complete words for each ticket in the game are shown on the "CROSSWORD" play grid or the "CORNER PUZZLE" play grids of the ticket. The player must match all of the letters in a possible complete word in order to complete the word.

8. *Number and Description of Prizes and Approximate Odds:* The following table sets forth the approximate number of winners, amounts of prizes, and approximate odds of winning:

When You Have Matched The Letters Of Two (2) Or More Entire Words In The Crossword Grid, You Win The Corresponding Prize Shown In The Prize Legend.

<i>Crossword Win With:</i>	<i>Corner Puzzles Win With:</i>	<i>Win:</i>	<i>Approximate Odds Are</i>	<i>Approximate No. Of Winners Per 10,200,000 Tickets:</i>
			<i>1 In:</i>	
2 WORDS		\$3	6.25	1,632,000
	1 WORD	\$10	33.33	306,000
3 WORDS		\$10	50	204,000
3 WORDS	1 WORD	\$20	250	40,800

When You Have Matched The Letters Of Two (2) Or More Entire Words In The Crossword Grid, You Win The Corresponding Prize Shown In The Prize Legend.

	(1 WORD) × 2	\$20	250	40,800
4 WORDS		\$20	333.33	30,600
3 WORDS	(1 WORD) × 2	\$30	1,000	10,200
4 WORDS	1 WORD	\$30	1,000	10,200
	(1 WORD) × 3	\$30	500	20,400
	2 WORDS	\$30	500	20,400
	((1 WORD) × 2) + (2 WORDS)	\$50	1,200	8,500
3 WORDS	1 WORD + 2 WORDS	\$50	1,200	8,500
4 WORDS	2 WORDS	\$50	1,200	8,500
5 WORDS		\$50	1,200	8,500
	(2 WORDS) × 2	\$60	6,000	1,700
3 WORDS	((1 WORD) × 2) + (2 WORDS)	\$60	6,000	1,700
4 WORDS	(1 WORD) + (2 WORDS)	\$60	6,000	1,700
5 WORDS	1 WORD	\$60	6,000	1,700
3 WORDS	(2 WORDS) × 3	\$100	2,400	4,250
5 WORDS	((1 WORD) × 2) + (2 WORDS)	\$100	2,400	4,250
6 WORDS		\$100	2,400	4,250
7 WORDS		\$500	4,000	2,550
8 WORDS		\$750	10,000	1,020
9 WORDS		\$2,500	60,000	170
10 WORDS		\$30,000	680,000	15

Corner Puzzles 1-3: When you have matched the letters of one (1) entire word in any Corner Puzzle, win \$10. When you have matched the letters of two (2) entire words in any Corner Puzzle, win \$30.

Prizes, including top prizes, are subject to availability at the time of purchase.

9. *Retailer Incentive Awards:* The Lottery may conduct a separate Retailer Incentive Game for retailers who sell Pennsylvania Word-o-Rama! instant lottery game tickets. The conduct of the game will be governed by 61 Pa. Code § 819.222 (relating to retailer bonuses and incentive).

10. *Unclaimed Prize Money:* For a period of 1 year from the announced close of Pennsylvania Word-o-Rama!, prize money from winning Pennsylvania Word-o-Rama! instant lottery game tickets will be retained by the Secretary for payment to the persons entitled thereto. If no claim is made within 1 year of the announced close of the Pennsylvania Word-o-Rama! instant lottery game, the right of a ticket holder to claim the prize represented by the ticket, if any, will expire and the prize money will be paid into the State Lottery Fund and used for purposes provided for by statute.

11. *Governing Law:* In purchasing a ticket, the customer agrees to comply with and abide by the State Lottery Law (72 P.S. §§ 3761-101—3761-314), 61 Pa. Code Part V (relating to State Lotteries) and the provisions contained in this notice.

12. *Termination of the Game:* The Secretary may announce a termination date, after which no further tickets from this game may be sold. Such announcement will be disseminated through media used to advertise or promote Pennsylvania Word-o-Rama! or through normal communications methods.

DANIEL MEUSER,
Secretary

[Pa.B. Doc. No. 12-687. Filed for public inspection April 13, 2012, 9:00 a.m.]

DEPARTMENT OF TRANSPORTATION

Bureau of Highway Safety and Traffic Engineering; Access Route Approval

Under 75 Pa.C.S. § 4908 (relating to operation of certain combinations on interstate and certain other highways), the Department of Transportation approved on January 9, 2012, the following access routes for use by the types of truck combinations as indicated:

1. (X) 96" wide twin trailers (28 1/2' maximum length of each trailer).
2. (X) 102" wide 53' long trailer.
3. (X) 102" wide 48' long trailer.
4. (X) 102" wide twin trailers (28 1/2' maximum length each).
5. (X) 102" wide maxi-cube.

<i>Route Identification</i>	<i>Route Description</i>	<i>Length Miles</i>
SR 3023	From SR 29 to SR 3010	3.01

Questions should be directed to Matthew Hedge at (717) 772-5462.

BARRY J. SCHOCH, P.E.,
Secretary

[Pa.B. Doc. No. 12-688. Filed for public inspection April 13, 2012, 9:00 a.m.]

**Bureau of Highway Safety and Traffic Engineering;
Access Route Approval**

Under 75 Pa.C.S. § 4908 (relating to operation of certain combinations on interstate and certain other highways), the Department of Transportation approved on January 9, 2012, the following access routes for use by the types of truck combinations as indicated:

1. (X) 96" wide twin trailers (28 1/2' maximum length of each trailer).
2. (X) 102" wide 53' long trailer.
3. (X) 102" wide 48' long trailer.
4. (X) 102" wide twin trailers (28 1/2' maximum length-each).
5. (X) 102" wide maxi-cube.

<i>Route Identification</i>	<i>Route Description</i>	<i>Length Miles</i>
SR 3029	From SR 29 to SR 706	4.6

Questions should be directed to Matthew Hedge at (717) 772-5462.

BARRY J. SCHOCH, P.E.,
Secretary

[Pa.B. Doc. No. 12-689. Filed for public inspection April 13, 2012, 9:00 a.m.]

fishing interests fishing in this Commonwealth's waters of Lake Erie.

JOHN A. ARWAY,
Executive Director

[Pa.B. Doc. No. 12-690. Filed for public inspection April 13, 2012, 9:00 a.m.]

Lake Erie Creel Limits for Walleye and Yellow Perch 2012

The Executive Director of the Fish and Boat Commission (Commission), acting under the authority of 58 Pa. Code § 69.12b (relating to Lake Erie walleye and yellow perch adaptive management for establishing daily limits) has established the daily limits for walleye and yellow perch that are necessary and appropriate for the better protection and management of the fishery. Effective May 1, 2012, the daily limit for walleye in Lake Erie is 6, and the daily limit for yellow perch is 30.

The Executive Director may revise the daily limit for walleye or yellow perch if he determines that conditions so warrant. The daily limits will remain in effect until April 30, 2013, or until the Executive Director establishes new daily limits. Anglers are responsible for obtaining the current daily limits for walleye and yellow perch on Lake Erie including Presque Isle Bay prior to fishing those waters.

JOHN A. ARWAY,
Executive Director

[Pa.B. Doc. No. 12-691. Filed for public inspection April 13, 2012, 9:00 a.m.]

**FISH AND BOAT
COMMISSION**

Lake Erie Commercial Fishing—2012

The Executive Director of the Fish and Boat Commission (Commission), acting under the authority of 58 Pa. Code § 69.31(b) (relating to seasons), has determined that the 2012 total allowable commercial catch for walleye from this Commonwealth's waters of Lake Erie is 4,000 pounds. The commercial fishing season for walleye on Lake Erie is January 1 to March 14 and 12:01 a.m. the first Saturday in May to December 31. This season shall end when the Executive Director determines that 4,000 pounds of walleye probably have been taken by commercial fishing interests fishing in this Commonwealth's waters of Lake Erie.

The Executive Director of the Commission, acting under the authority of 58 Pa. Code § 69.31(c), has established that the 2012 total allowable commercial catch for yellow perch from this Commonwealth's waters of Lake Erie is 100,000 pounds. The commercial fishing season for yellow perch on Lake Erie is January 1 until the date the Executive Director determines that 100,000 pounds of yellow perch probably have been taken by commercial

Triploid Grass Carp Permit Application

Under 58 Pa. Code § 71.7 (relating to triploid grass carp), the Fish and Boat Commission (Commission) may issue permits to stock triploid grass carp in Commonwealth waters. Triploid grass carp are sterile fish that may, in appropriate circumstances, help control aquatic vegetation. The Commission has determined consistent with 58 Pa. Code § 71.7(e)(3) to seek public input with respect to any proposed stockings of triploid grass carp in waters having a surface area of more than 5 acres.

Interested persons are invited to submit written comments, objections or suggestions about the notice to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000, within 10 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.

The following application to stock triploid grass carp in waters having a surface area of greater than 5 acres is currently undergoing staff review:

<i>Applicant</i>	<i>Water</i>	<i>Location of Water</i>	<i>Description of Water</i>	<i>Nature of Vegetation to be Controlled</i>
Jeff Fowler	Lake Sheridan	New Albany Township Bradford County	8 acre lake which discharges into a UNT to Beaver Run and eventually the Susquehanna River	Potamogeton americanus Brasenia spp.

JOHN A. ARWAY,
Executive Director

[Pa.B. Doc. No. 12-692. Filed for public inspection April 13, 2012, 9:00 a.m.]

GOVERNOR'S ADVISORY COUNCIL ON PRIVATIZATION AND INNOVATION

Meeting Scheduled

The Governor's Advisory Council on Privatization and Innovation will be meeting Wednesday, May 2, 2012, at 1 p.m. in the Rachel Carson State Office Building, Room 105. Persons with any questions should contact Christopher Gray at (717) 772-3820 or chrgray@pa.gov.

JOHN A. BARBOUR,
Chairperson

[Pa.B. Doc. No. 12-693. Filed for public inspection April 13, 2012, 9:00 a.m.]

INDEPENDENT REGULATORY REVIEW COMMISSION

Notice of Filing of Final Rulemakings

The Independent Regulatory Review Commission (Commission) received the following regulations. They are scheduled to be considered on the date noted. The Commission's public meetings are held at 333 Market Street, 14th Floor, Harrisburg, PA at 10 a.m. To obtain a copy of the regulation, interested parties should first contact the promulgating agency. If a copy cannot be obtained from the promulgating agency, the Commission will provide a copy or a copy can be obtained from the Commission's web site, www.irrc.state.pa.us.

<i>Final-Form Reg. No.</i>	<i>Agency/Title</i>	<i>Received</i>	<i>Public Meeting</i>
57-278	Pennsylvania Public Utility Commission Call Recording for Telephone Companies	4/3/12	5/17/12
<i>Final-Omit Reg. No.</i>	<i>Agency/Title</i>	<i>Received</i>	<i>Public Meeting</i>
6-325	State Board of Education Safe Schools	3/28/12	5/17/12

SILVAN B. LUTKEWITTE, III,
Chairperson

[Pa.B. Doc. No. 12-694. Filed for public inspection April 13, 2012, 9:00 a.m.]

INSURANCE DEPARTMENT

The AF&L Insurance Company; Rate Increase Filing for LTC Form LTC-93

The AF&L Insurance Company is requesting approval to increase the premium 30.6% on 439 policyholders with the following individual LTC form: LTC-93.

Unless formal administrative action is taken prior to June 28, 2012, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's web site at www.insurance.pa.gov. Under the tab "How to Find . . ." click on "PA Bulletin."

Interested parties are invited to submit written comments, suggestions or objections to James Laverty, Actu-

ary, Insurance Department, Insurance Product Regulation and Market Enforcement, Room 1311, Strawberry Square, Harrisburg, PA 17120, jlaverty@pa.gov within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

MICHAEL F. CONSEDINE,
Insurance Commissioner

[Pa.B. Doc. No. 12-695. Filed for public inspection April 13, 2012, 9:00 a.m.]

The AF&L Insurance Company; Rate Increase Filing for LTC Form QLTC-97

The AF&L Insurance Company is requesting approval to increase the premium 27.1% on 33 policyholders with the following individual LTC form: QLTC-97.

Unless formal administrative action is taken prior to June 28, 2012, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's web site at www.insurance.pa.gov. Under the tab "How to Find . . ." click on "PA Bulletin."

Interested parties are invited to submit written comments, suggestions or objections to James Laverty, Actuary, Insurance Department, Insurance Product Regulation and Market Enforcement, Room 1311, Strawberry Square, Harrisburg, PA 17120, jlaverty@pa.gov within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

MICHAEL F. CONSEDINE,
Insurance Commissioner

[Pa.B. Doc. No. 12-696. Filed for public inspection April 13, 2012, 9:00 a.m.]

Application and Request for a Certificate of Authority to Provide a Continuing Care Retirement Community by Liberty Lutheran Housing Development Corporation

Liberty Lutheran Housing Development Corporation has applied for a Certificate of Authority to operate a Continuing Care Retirement Community at The Village at Penn State in State College, PA. The initial filing was received on March 30, 2012, and was made under the Continuing-Care Provider Registration and Disclosure Act (40 P. S. §§ 3201—3225).

Persons wishing to comment on the grounds of public or private interest to the issuance of a Certificate of Authority are invited to submit a written statement to the Insurance Department (Department) within 7 days from the date of this issue of the *Pennsylvania Bulletin*. Each written statement must include name, address and telephone number of the interested party; identification of the application to which the statement is addressed; and a concise statement with sufficient detail to inform the Department of the exact basis of the statement. Written statements should be directed to Steven L. Yerger, Insurance Department, 1345 Strawberry Square, Harrisburg, PA 17120, fax (717) 787-8557 or syerger@pa.gov.

MICHAEL F. CONSEDINE,
Insurance Commissioner

[Pa.B. Doc. No. 12-697. Filed for public inspection April 13, 2012, 9:00 a.m.]

The Bankers Life and Casualty Company; Rate Increase Filing for LTC Forms GR-N050 and GR-N055

The Bankers Life and Casualty Company is requesting approval to increase the premium 25.8% on 694 policyholders with the following individual LTC forms: GR-N050 and GR-N055.

Unless formal administrative action is taken prior to June 28, 2012, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's web site at www.insurance.pa.gov. Under the tab "How to Find . . ." click on "PA Bulletin."

Interested parties are invited to submit written comments, suggestions or objections to James Laverty, Actuary, Insurance Department, Insurance Product Regulation and Market Enforcement, Room 1311, Strawberry Square, Harrisburg, PA 17120, jlaverty@pa.gov within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

MICHAEL F. CONSEDINE,
Insurance Commissioner

[Pa.B. Doc. No. 12-698. Filed for public inspection April 13, 2012, 9:00 a.m.]

The Bankers Life and Casualty Company; Rate Increase Filing for LTC Forms GR-N100 and GR-N105

The Bankers Life and Casualty Company is requesting approval to increase the premium 35% on 342 policyholders with the following individual LTC forms: GR-N100 and GR-N105.

Unless formal administrative action is taken prior to June 28, 2012, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's web site at www.insurance.pa.gov. Under the tab "How to Find . . ." click on "PA Bulletin."

Interested parties are invited to submit written comments, suggestions or objections to James Laverty, Actuary, Insurance Department, Insurance Product Regulation and Market Enforcement, Room 1311, Strawberry Square, Harrisburg, PA 17120, jlaverty@pa.gov within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

MICHAEL F. CONSEDINE,
Insurance Commissioner

[Pa.B. Doc. No. 12-699. Filed for public inspection April 13, 2012, 9:00 a.m.]

The Bankers Life and Casualty Company; Rate Increase Filing for LTC Forms GR-N160 and GR-N165

The Bankers Life and Casualty Company is requesting approval to increase the premium 17.4% on 185 policyholders with the following individual LTC forms: GR-N160 and GR-N165.

Unless formal administrative action is taken prior to June 28, 2012, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's web site at www.insurance.pa.gov. Under the tab "How to Find . . ." click on "PA Bulletin."

Interested parties are invited to submit written comments, suggestions or objections to James Laverty, Actuary, Insurance Department, Insurance Product Regulation and Market Enforcement, Room 1311, Strawberry Square, Harrisburg, PA 17120, jlaverty@pa.gov within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

MICHAEL F. CONSEDINE,
Insurance Commissioner

[Pa.B. Doc. No. 12-700. Filed for public inspection April 13, 2012, 9:00 a.m.]

The Bankers Life and Casualty Company; Rate Increase Filing for LTC Form GR-N250

The Bankers Life and Casualty Company is requesting approval to increase the premium 8% on 439 policyholders with the following individual LTC form: GR-N250.

Unless formal administrative action is taken prior to June 28, 2012, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's web site at www.insurance.pa.gov. Under the tab "How to Find . . ." click on "PA Bulletin."

Interested parties are invited to submit written comments, suggestions or objections to James Laverty, Actuary, Insurance Department, Insurance Product Regulation and Market Enforcement, Room 1311, Strawberry Square, Harrisburg, PA 17120, jlaverty@pa.gov within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

MICHAEL F. CONSEDINE,
Insurance Commissioner

[Pa.B. Doc. No. 12-701. Filed for public inspection April 13, 2012, 9:00 a.m.]

The Bankers Life and Casualty Company; Rate Increase Filing for LTC Form GR-7A1

The Bankers Life and Casualty Company is requesting approval to increase the premium 35% on 714 policyholders with the following individual LTC form: GR-7A1.

Unless formal administrative action is taken prior to June 28, 2012, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's web site at www.insurance.pa.gov. Under the tab "How to Find . . ." click on "PA Bulletin."

Interested parties are invited to submit written comments, suggestions or objections to James Laverty, Actuary, Insurance Department, Insurance Product Regulation and Market Enforcement, Room 1311, Strawberry Square, Harrisburg, PA 17120, jlaverty@pa.gov within 30 days

after publication of this notice in the *Pennsylvania Bulletin*.

MICHAEL F. CONSEDINE,
Insurance Commissioner

[Pa.B. Doc. No. 12-702. Filed for public inspection April 13, 2012, 9:00 a.m.]

Export List of Insurance Coverages; Request for Comments

The Insurance Commissioner (Commissioner) published a notice at 42 Pa.B. 745 (February 4, 2012) soliciting comments to the export list published at 41 Pa.B. 2400 (May 7, 2011). Consideration was given to all comments received.

The Insurance Commissioner proposes to amend the May 7, 2011, list as following:

Add

- Miscellaneous Errors and Omissions or Professional Liability except architects and engineers, medical malpractice, lawyers, personnel agencies, travel agents, real estate brokers and insurance agents and brokers
- Pollution Liability and/or Environmental Impairment Coverage
- Paint and Coating Manufacturers—Liability

Revise

- "Day Care Centers Liability, including Sexual Abuse Coverage" to "Day Care Centers, including Sexual Abuse Coverage"
- "Tattoo Parlors Liability" to "Tattoo Parlors"

Persons wishing to comment on the Commissioner's proposal are invited to submit a written statement within 15 days from the date of this publication. Each written statement must include sufficient detail and relevant facts to inform the Insurance Department of the exact basis of the statement. Written statements should be directed to Cressinda Bybee, Office of Corporate and Financial Regulation, Insurance Department, 1345 Strawberry Square, Harrisburg, PA 17120, fax (717) 787-8557, cbybee@pa.gov. Formal notification of any changes will be published in the *Pennsylvania Bulletin* after the 15-day comment period, or a notice will be published stating that the May 7, 2011, list remains in effect.

MICHAEL F. CONSEDINE,
Insurance Commissioner

[Pa.B. Doc. No. 12-703. Filed for public inspection April 13, 2012, 9:00 a.m.]

Nationwide Affinity Insurance Company of America; Private Passenger Automobile; Rate Revision

On March 28, 2012, the Insurance Department (Department) received from Nationwide Affinity Insurance Company of America a filing for rate level changes for private passenger automobile insurance.

The Nationwide Affinity Insurance Company of America requests an overall 3.1% increase amounting to \$8.749 million, to be effective September 12, 2012. This overall

figure represents an average; the effect of this filing on the rates for individual consumers may vary.

Unless formal administrative action is taken prior to May 27, 2012, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's web site at www.insurance.pa.gov. Under the tab "How to Find . . ." click on "PA Bulletin."

Interested parties are invited to submit written comments, suggestions or objections to Bojan Zorkic, Insurance Department, Insurance Product Regulation, 1311 Strawberry Square, Harrisburg, PA 17120, bzorkic@pa.gov within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

MICHAEL F. CONSEDINE,
Insurance Commissioner

[Pa.B. Doc. No. 12-704. Filed for public inspection April 13, 2012, 9:00 a.m.]

Nationwide Insurance Company of America; Nationwide Mutual Insurance Company; Private Passenger Automobile; Rate Revision

On March 28, 2012, the Insurance Department (Department) received from Nationwide Insurance Company of America and Nationwide Mutual Insurance Company a filing for rate level changes for private passenger automobile insurance.

The companies request an overall 3.2% increase amounting to \$3.588 million and \$8.567 million, respectively, to be effective September 12, 2012, for renewals. These overall figures represent an average; the effect of this filing on the rates for individual consumers may vary.

Unless formal administrative action is taken prior to May 27, 2012, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Department's web site at www.insurance.pa.gov. Under the tab "How to Find . . ." click on "PA Bulletin."

Interested parties are invited to submit written comments, suggestions or objections to Bojan Zorkic, Insurance Department, Insurance Product Regulation, 1311 Strawberry Square, Harrisburg, PA 17120, bzorkic@pa.gov within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

MICHAEL F. CONSEDINE,
Insurance Commissioner

[Pa.B. Doc. No. 12-705. Filed for public inspection April 13, 2012, 9:00 a.m.]

Review Procedure Hearings; Cancellation or Refusal of Insurance

The following insureds have requested a hearing as authorized by the act of June 17, 1998 (P. L. 464, No. 68) (Act 68) in connection with the termination of the insureds' automobile insurance policies. The hearings will be held in accordance with the requirements of Act 68; 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure); and 31 Pa. Code §§ 56.1—

56.3 (relating to Special Rules of Administrative Practice and Procedure). The administrative hearings will be held in the Insurance Department's regional offices in Harrisburg and Philadelphia, PA. Failure by an appellant to appear at the scheduled hearing may result in dismissal with prejudice.

The following hearing will be held in the Administrative Hearings Office, Capitol Associates Building, Room 200, 901 North Seventh Street, Harrisburg, PA 17102.

Appeal of Tammy Palacios; file no. 12-114-115702; Nationwide Affinity Insurance Company of America; Doc. No. P12-03-025; May 16, 2012, 10 a.m.

The following hearing will be held in the Fairmount Hearing Room, 4th Floor, 801 Market Street, Philadelphia, PA 19107.

Appeal of Carmen Marquez; file no. 12-188-115032; Infinity Insurance Company; Doc. No. P12-03-024; May 4, 2012, 1 p.m.

Parties may appear with or without counsel and offer relevant testimony or other relevant evidence. Each party must bring documents, photographs, drawings, claims files, witnesses, and the like, necessary to support the party's case. A party intending to offer documents or photographs into evidence shall bring enough copies for the record and for each opposing party.

In some cases, the Insurance Commissioner (Commissioner) may order that the company reimburse an insured for the higher cost of replacement insurance coverage obtained while the appeal is pending. Reimbursement is available only when the insured is successful on appeal, and may not be ordered in all instances. If an insured wishes to seek reimbursement for the higher cost of replacement insurance, the insured must produce documentation at the hearing which will allow comparison of coverages and costs between the original policy and the replacement policy.

Following the hearing and receipt of the stenographic transcript, the Commissioner will issue a written order resolving the factual issues presented at the hearing and stating what remedial action, if any, is required. The Commissioner's Order will be sent to those persons participating in the hearing or their designated representatives. The Order of the Commissioner may be subject to judicial review by the Commonwealth Court.

Persons with a disability who wish to attend the previously-referenced administrative hearing and require an auxiliary aid, service or other accommodation to participate in the hearing should contact Donna R. Fleischauer, Human Resources Director at (717) 705-4194.

MICHAEL F. CONSEDINE,
Insurance Commissioner

[Pa.B. Doc. No. 12-706. Filed for public inspection April 13, 2012, 9:00 a.m.]

Review Procedure Hearings under the Unfair Insurance Practices Act

The following insureds have requested a hearing as authorized by section 8 of the Unfair Insurance Practices Act (40 P. S. § 1171.8) in connection with their companies' termination of the insureds' homeowners policies. The hearings will be held in accordance with the requirements

of the act; 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure); and 31 Pa. Code §§ 56.1—56.3 (relating to Special Rules of Administrative Practice and Procedure). The administrative hearings will be held in the Insurance Department's regional office in Philadelphia, PA. Failure by an appellant to appear at a scheduled hearing may result in dismissal with prejudice.

The following hearings will be held in the Fairmount Hearing Room, 4th Floor, 801 Market Street, Philadelphia, PA 19107.

Appeal of Jason and Daniella Cooperstein; file no. 12-183-116717; The First Liberty Insurance Corporation; Doc. No. P12-03-026; May 4, 2012, 2 p.m.

Appeal of Alice M. Randall; file no. 12-115-116140; The Philadelphia Contributionship Insurance Company; Doc. No. P12-03-031; May 4, 2012, 3 p.m.

Appeal of Isaac Small, Jr.; file no. 12-188-116418; State Farm Fire and Casualty Insurance Company; Doc. No. P12-03-032; May 4, 2012, 11:30 a.m.

Parties may appear with or without counsel and offer relevant testimony and/or other relevant evidence. Each party must bring documents, photographs, drawings, claims files, witnesses, and the like, necessary to support

the party's case. A party intending to offer documents or photographs into evidence shall bring enough copies for the record and for each opposing party.

Following the hearing and receipt of the stenographic transcript, the Insurance Commissioner (Commissioner) will issue a written order resolving the factual issues presented at the hearing and stating what remedial action, if any, is required. The Commissioner's Order will be sent to those persons participating in the hearing or their designated representatives. The Order of the Commissioner may be subject to judicial review by the Commonwealth Court.

Persons with a disability who wish to attend the previously-referenced administrative hearing and require an auxiliary aid, service or other accommodation to participate in the hearing should contact Donna R. Fleischauer, Human Resources Director at (717) 705-4194.

MICHAEL F. CONSEDINE,
Insurance Commissioner

[Pa.B. Doc. No. 12-707. Filed for public inspection April 13, 2012, 9:00 a.m.]

OFFICE OF ADMINISTRATION

Coverage Amount of Group Life Insurance for Commonwealth Employees

The following schedules provide the coverage amount of group life insurance for employees of the Commonwealth as required under section 1503-A of The Fiscal Code (72 P. S. § 1503-A). The coverage amount is one times annual salary rounded to the nearest one thousand, up to the maximum stated in the schedule. There are three schedules because some groups of employees have a different maximum coverage. The three schedules are as follows: Class 1, which is most employees (including participating independent agencies); Pennsylvania State Police members as well as State System of Higher Education faculty and management; and university presidents of the State System of Higher Education.

KELLY POWELL LOGAN,
Secretary

Schedule of Life Insurance Class 1 Employees

<i>Annual Salary</i>	<i>Amount of Insurance Under Age 70</i>	<i>Amount of Insurance Age 70 Through 74</i>	<i>Amount of Insurance Age 75 and Older</i>
less than \$2,500	\$2,500	\$1,625	\$1,250
\$2,500 & less than \$3,500	\$3,000	\$1,950	\$1,500
\$3,500 & less than \$4,500	\$4,000	\$2,600	\$2,000
\$4,500 & less than \$5,500	\$5,000	\$3,250	\$2,500
\$5,500 & less than \$6,500	\$6,000	\$3,900	\$3,000
\$6,500 & less than \$7,500	\$7,000	\$4,550	\$3,500
\$7,500 & less than \$8,500	\$8,000	\$5,200	\$4,000
\$8,500 & less than \$9,500	\$9,000	\$5,850	\$4,500
\$9,500 & less than \$10,500	\$10,000	\$6,500	\$5,000
\$10,500 & less than \$11,500	\$11,000	\$7,150	\$5,500
\$11,500 & less than \$12,500	\$12,000	\$7,800	\$6,000
\$12,500 & less than \$13,500	\$13,000	\$8,450	\$6,500
\$13,500 & less than \$14,500	\$14,000	\$9,100	\$7,000
\$14,500 & less than \$15,500	\$15,000	\$9,750	\$7,500
\$15,500 & less than \$16,500	\$16,000	\$10,400	\$8,000
\$16,500 & less than \$17,500	\$17,000	\$11,050	\$8,500
\$17,500 & less than \$18,500	\$18,000	\$11,700	\$9,000
\$18,500 & less than \$19,500	\$19,000	\$12,350	\$9,500
\$19,500 & less than \$20,500	\$20,000	\$13,000	\$10,000

<i>Annual Salary</i>	<i>Amount of Insurance Under Age 70</i>	<i>Amount of Insurance Age 70 Through 74</i>	<i>Amount of Insurance Age 75 and Older</i>
\$20,500 & less than \$21,500	\$21,000	\$13,650	\$10,500
\$21,500 & less than \$22,500	\$22,000	\$14,300	\$11,000
\$22,500 & less than \$23,500	\$23,000	\$14,950	\$11,500
\$23,500 & less than \$24,500	\$24,000	\$15,600	\$12,000
\$24,500 & less than \$25,500	\$25,000	\$16,250	\$12,500
\$25,500 & less than \$26,500	\$26,000	\$16,900	\$13,000
\$26,500 & less than \$27,500	\$27,000	\$17,550	\$13,500
\$27,500 & less than \$28,500	\$28,000	\$18,200	\$14,000
\$28,500 & less than \$29,500	\$29,000	\$18,850	\$14,500
\$29,500 & less than \$30,500	\$30,000	\$19,500	\$15,000
\$30,500 & less than \$31,500	\$31,000	\$20,150	\$15,500
\$31,500 & less than \$32,500	\$32,000	\$20,800	\$16,000
\$32,500 & less than \$33,500	\$33,000	\$21,450	\$16,500
\$33,500 & less than \$34,500	\$34,000	\$22,100	\$17,000
\$34,500 & less than \$35,500	\$35,000	\$22,750	\$17,500
\$35,500 & less than \$36,500	\$36,000	\$23,400	\$18,000
\$36,500 & less than \$37,500	\$37,000	\$24,050	\$18,500
\$37,500 & less than \$38,500	\$38,000	\$24,700	\$19,000
\$38,500 & less than \$39,500	\$39,000	\$25,350	\$19,500
\$39,500 & over	\$40,000	\$26,000	\$20,000

Schedule of Life Insurance Pennsylvania State Police Enlisted Members and Pennsylvania State System of Higher Education Faculty and Management Staff

<i>Annual Salary</i>	<i>Amount of Insurance Under Age 70</i>	<i>Amount of Insurance Age 70 Through 74</i>	<i>Amount of Insurance Age 75 and Older</i>
less than \$2,500	\$2,500	\$1,625	\$1,250
\$2,500 & less than \$3,500	\$3,000	\$1,950	\$1,500
\$3,500 & less than \$4,500	\$4,000	\$2,600	\$2,000
\$4,500 & less than \$5,500	\$5,000	\$3,250	\$2,500
\$5,500 & less than \$6,500	\$6,000	\$3,900	\$3,000
\$6,500 & less than \$7,500	\$7,000	\$4,550	\$3,500
\$7,500 & less than \$8,500	\$8,000	\$5,200	\$4,000
\$8,500 & less than \$9,500	\$9,000	\$5,850	\$4,500
\$9,500 & less than \$10,500	\$10,000	\$6,500	\$5,000
\$10,500 & less than \$11,500	\$11,000	\$7,150	\$5,500
\$11,500 & less than \$12,500	\$12,000	\$7,800	\$6,000
\$12,500 & less than \$13,500	\$13,000	\$8,450	\$6,500
\$13,500 & less than \$14,500	\$14,000	\$9,100	\$7,000
\$14,500 & less than \$15,500	\$15,000	\$9,750	\$7,500
\$15,500 & less than \$16,500	\$16,000	\$10,400	\$8,000
\$16,500 & less than \$17,500	\$17,000	\$11,050	\$8,500
\$17,500 & less than \$18,500	\$18,000	\$11,700	\$9,000
\$18,500 & less than \$19,500	\$19,000	\$12,350	\$9,500
\$19,500 & less than \$20,500	\$20,000	\$13,000	\$10,000
\$20,500 & less than \$21,500	\$21,000	\$13,650	\$10,500
\$21,500 & less than \$22,500	\$22,000	\$14,300	\$11,000
\$22,500 & less than \$23,500	\$23,000	\$14,950	\$11,500
\$23,500 & less than \$24,500	\$24,000	\$15,600	\$12,000
\$24,500 & less than \$25,500	\$25,000	\$16,250	\$12,500

<i>Annual Salary</i>	<i>Amount of Insurance Under Age 70</i>	<i>Amount of Insurance Age 70 Through 74</i>	<i>Amount of Insurance Age 75 and Older</i>
\$25,500 & less than \$26,500	\$26,000	\$16,900	\$13,000
\$26,500 & less than \$27,500	\$27,000	\$17,550	\$13,500
\$27,500 & less than \$28,500	\$28,000	\$18,200	\$14,000
\$28,500 & less than \$29,500	\$29,000	\$18,850	\$14,500
\$29,500 & less than \$30,500	\$30,000	\$19,500	\$15,000
\$30,500 & less than \$31,500	\$31,000	\$20,150	\$15,500
\$31,500 & less than \$32,500	\$32,000	\$20,800	\$16,000
\$32,500 & less than \$33,500	\$33,000	\$21,450	\$16,500
\$33,500 & less than \$34,500	\$34,000	\$22,100	\$17,000
\$34,500 & less than \$35,500	\$35,000	\$22,750	\$17,500
\$35,500 & less than \$36,500	\$36,000	\$23,400	\$18,000
\$36,500 & less than \$37,500	\$37,000	\$24,050	\$18,500
\$37,500 & less than \$38,500	\$38,000	\$24,700	\$19,000
\$38,500 & less than \$39,500	\$39,000	\$25,350	\$19,500
\$39,500 & less than \$40,500	\$40,000	\$26,000	\$20,000
\$40,500 & less than \$41,500	\$41,000	\$26,650	\$20,500
\$41,500 & less than \$42,500	\$42,000	\$27,300	\$21,000
\$42,500 & less than \$43,500	\$43,000	\$27,950	\$21,500
\$43,500 & less than \$44,500	\$44,000	\$28,600	\$22,000
\$44,500 & less than \$45,500	\$45,000	\$29,250	\$22,500
\$45,500 & less than \$46,500	\$46,000	\$29,900	\$23,000
\$46,500 & less than \$47,500	\$47,000	\$30,550	\$23,500
\$47,500 & less than \$48,500	\$48,000	\$31,200	\$24,000
\$48,500 & less than \$49,500	\$49,000	\$31,850	\$24,500
\$49,500 and over	\$50,000	\$32,500	\$25,000

Schedule of Life Insurance Pennsylvania State System of Higher Education University Presidents

<i>Annual Salary</i>	<i>Amount of Insurance Under Age 70</i>	<i>Amount of Insurance Age 70 Through 74</i>	<i>Amount of Insurance Age 75 and Older</i>
less than \$2,500	\$2,500	\$1,625	\$1,250
\$2,500 & less than \$3,500	\$3,000	\$1,950	\$1,500
\$3,500 & less than \$4,500	\$4,000	\$2,600	\$2,000
\$4,500 & less than \$5,500	\$5,000	\$3,250	\$2,500
\$5,500 & less than \$6,500	\$6,000	\$3,900	\$3,000
\$6,500 & less than \$7,500	\$7,000	\$4,550	\$3,500
\$7,500 & less than \$8,500	\$8,000	\$5,200	\$4,000
\$8,500 & less than \$9,500	\$9,000	\$5,850	\$4,500
\$9,500 & less than \$10,500	\$10,000	\$6,500	\$5,000
\$10,500 & less than \$11,500	\$11,000	\$7,150	\$5,500
\$11,500 & less than \$12,500	\$12,000	\$7,800	\$6,000
\$12,500 & less than \$13,500	\$13,000	\$8,450	\$6,500
\$13,500 & less than \$14,500	\$14,000	\$9,100	\$7,000
\$14,500 & less than \$15,500	\$15,000	\$9,750	\$7,500
\$15,500 & less than \$16,500	\$16,000	\$10,400	\$8,000
\$16,500 & less than \$17,500	\$17,000	\$11,050	\$8,500
\$17,500 & less than \$18,500	\$18,000	\$11,700	\$9,000
\$18,500 & less than \$19,500	\$19,000	\$12,350	\$9,500
\$19,500 & less than \$20,500	\$20,000	\$13,000	\$10,000

<i>Annual Salary</i>	<i>Amount of Insurance Under Age 70</i>	<i>Amount of Insurance Age 70 Through 74</i>	<i>Amount of Insurance Age 75 and Older</i>
\$20,500 & less than \$21,500	\$21,000	\$13,650	\$10,500
\$21,500 & less than \$22,500	\$22,000	\$14,300	\$11,000
\$22,500 & less than \$23,500	\$23,000	\$14,950	\$11,500
\$23,500 & less than \$24,500	\$24,000	\$15,600	\$12,000
\$24,500 & less than \$25,500	\$25,000	\$16,250	\$12,500
\$25,500 & less than \$26,500	\$26,000	\$16,900	\$13,000
\$26,500 & less than \$27,500	\$27,000	\$17,550	\$13,500
\$27,500 & less than \$28,500	\$28,000	\$18,200	\$14,000
\$28,500 & less than \$29,500	\$29,000	\$18,850	\$14,500
\$29,500 & less than \$30,500	\$30,000	\$19,500	\$15,000
\$30,500 & less than \$31,500	\$31,000	\$20,150	\$15,500
\$31,500 & less than \$32,500	\$32,000	\$20,800	\$16,000
\$32,500 & less than \$33,500	\$33,000	\$21,450	\$16,500
\$33,500 & less than \$34,500	\$34,000	\$22,100	\$17,000
\$34,500 & less than \$35,500	\$35,000	\$22,750	\$17,500
\$35,500 & less than \$36,500	\$36,000	\$23,400	\$18,000
\$36,500 & less than \$37,500	\$37,000	\$24,050	\$18,500
\$37,500 & less than \$38,500	\$38,000	\$24,700	\$19,000
\$38,500 & less than \$39,500	\$39,000	\$25,350	\$19,500
\$39,500 & less than \$40,500	\$40,000	\$26,000	\$20,000
\$40,500 & less than \$41,500	\$41,000	\$26,650	\$20,500
\$41,500 & less than \$42,500	\$42,000	\$27,300	\$21,000
\$42,500 & less than \$43,500	\$43,000	\$27,950	\$21,500
\$43,500 & less than \$44,500	\$44,000	\$28,600	\$22,000
\$44,500 & less than \$45,500	\$45,000	\$29,250	\$22,500
\$45,500 & less than \$46,500	\$46,000	\$29,900	\$23,000
\$46,500 & less than \$47,500	\$47,000	\$30,550	\$23,500
\$47,500 & less than \$48,500	\$48,000	\$31,200	\$24,000
\$48,500 & less than \$49,500	\$49,000	\$31,850	\$24,500
\$49,500 & less than \$50,500	\$50,000	\$32,500	\$25,000
\$50,500 & less than \$51,500	\$51,000	\$33,150	\$25,500
\$51,500 & less than \$52,500	\$52,000	\$33,800	\$26,000
\$52,500 & less than \$53,500	\$53,000	\$34,450	\$26,500
\$53,500 & less than \$54,500	\$54,000	\$35,100	\$27,000
\$54,500 & less than \$55,500	\$55,000	\$35,750	\$27,500
\$55,500 & less than \$56,500	\$56,000	\$36,400	\$28,000
\$56,500 & less than \$57,500	\$57,000	\$37,050	\$28,500
\$57,500 & less than \$58,500	\$58,000	\$37,700	\$29,000
\$58,500 & less than \$59,500	\$59,000	\$38,350	\$29,500
\$59,500 & less than \$60,500	\$60,000	\$39,000	\$30,000
\$60,500 & less than \$61,500	\$61,000	\$39,650	\$30,500
\$61,500 & less than \$62,500	\$62,000	\$40,300	\$31,000
\$62,500 & less than \$63,500	\$63,000	\$40,950	\$31,500
\$63,500 & less than \$64,500	\$64,000	\$41,600	\$32,000
\$64,500 & less than \$65,500	\$65,000	\$42,250	\$32,500
\$65,500 & less than \$66,500	\$66,000	\$42,900	\$33,000
\$66,500 & less than \$67,500	\$67,000	\$43,550	\$33,500

<i>Annual Salary</i>	<i>Amount of Insurance Under Age 70</i>	<i>Amount of Insurance Age 70 Through 74</i>	<i>Amount of Insurance Age 75 and Older</i>
\$67,500 & less than \$68,500	\$68,000	\$44,200	\$34,000
\$68,500 & less than \$69,500	\$69,000	\$44,850	\$34,500
\$69,500 & less than \$70,500	\$70,000	\$45,500	\$35,000
\$70,500 & less than \$71,500	\$71,000	\$46,150	\$35,500
\$71,500 & less than \$72,500	\$72,000	\$46,800	\$36,000
\$72,500 & less than \$73,500	\$73,000	\$47,450	\$36,500
\$73,500 & less than \$74,500	\$74,000	\$48,100	\$37,000
\$74,500 & less than \$75,500	\$75,000	\$48,750	\$37,500
\$75,500 & less than \$76,500	\$76,000	\$49,400	\$38,000
\$76,500 & less than \$77,500	\$77,000	\$50,050	\$38,500
\$77,500 & less than \$78,500	\$78,000	\$50,700	\$39,000
\$78,500 & less than \$79,500	\$79,000	\$51,350	\$39,500
\$79,500 & less than \$80,500	\$80,000	\$52,000	\$40,000
\$80,500 & less than \$81,500	\$81,000	\$52,650	\$40,500
\$81,500 & less than \$82,500	\$82,000	\$53,300	\$41,000
\$82,500 & less than \$83,500	\$83,000	\$53,950	\$41,500
\$83,500 & less than \$84,500	\$84,000	\$54,600	\$42,000
\$84,500 & less than \$85,500	\$85,000	\$55,250	\$42,500
\$85,500 & less than \$86,500	\$86,000	\$55,900	\$43,000
\$86,500 & less than \$87,500	\$87,000	\$56,550	\$43,500
\$87,500 & less than \$88,500	\$88,000	\$57,200	\$44,000
\$88,500 & less than \$89,500	\$89,000	\$57,850	\$44,500
\$89,500 & less than \$90,500	\$90,000	\$58,500	\$45,000
\$90,500 & less than \$91,500	\$91,000	\$59,150	\$45,500
\$91,500 & less than \$92,500	\$92,000	\$59,800	\$46,000
\$92,500 & less than \$93,500	\$93,000	\$60,450	\$46,500
\$93,500 & less than \$94,500	\$94,000	\$61,100	\$47,000
\$94,500 & less than \$95,500	\$95,000	\$61,750	\$47,500
\$95,500 & less than \$96,500	\$96,000	\$62,400	\$48,000
\$96,500 & less than \$97,500	\$97,000	\$63,050	\$48,500
\$97,500 & less than \$98,500	\$98,000	\$63,700	\$49,000
\$98,500 & less than \$99,500	\$99,000	\$64,350	\$49,500
\$99,500 & less than \$100,500	\$100,000	\$65,000	\$50,000
\$100,500 & less than \$101,500	\$101,000	\$65,650	\$50,500
\$101,500 & less than \$102,500	\$102,000	\$66,300	\$51,000
\$102,500 & less than \$103,500	\$103,000	\$66,950	\$51,500
\$103,500 & less than \$104,500	\$104,000	\$67,600	\$52,000
\$104,500 & less than \$105,500	\$105,000	\$68,250	\$52,500
\$105,500 & less than \$106,500	\$106,000	\$68,900	\$53,000
\$106,500 & less than \$107,500	\$107,000	\$69,550	\$53,500
\$107,500 & less than \$108,500	\$108,000	\$70,200	\$54,000
\$108,500 & less than \$109,500	\$109,000	\$70,850	\$54,500
\$109,500 & less than \$110,500	\$110,000	\$71,500	\$55,000
\$110,500 & less than \$111,500	\$111,000	\$72,150	\$55,500
\$111,500 & less than \$112,500	\$112,000	\$72,800	\$56,000
\$112,500 & less than \$113,500	\$113,000	\$73,450	\$56,500
\$113,500 & less than \$114,500	\$114,000	\$74,100	\$57,000

<i>Annual Salary</i>	<i>Amount of Insurance Under Age 70</i>	<i>Amount of Insurance Age 70 Through 74</i>	<i>Amount of Insurance Age 75 and Older</i>
\$114,500 & less than \$115,500	\$115,000	\$74,750	\$57,500
\$115,500 & less than \$116,500	\$116,000	\$75,400	\$58,000
\$116,500 & less than \$117,500	\$117,000	\$76,050	\$58,500
\$117,500 & less than \$118,500	\$118,000	\$76,700	\$59,000
\$118,500 & less than \$119,500	\$119,000	\$77,350	\$59,500
\$119,500 & less than \$120,500	\$120,000	\$78,000	\$60,000
\$120,500 & less than \$121,500	\$121,000	\$78,650	\$60,500
\$121,500 & less than \$122,500	\$122,000	\$79,300	\$61,000
\$122,500 & less than \$123,500	\$123,000	\$79,950	\$61,500
\$123,500 & less than \$124,500	\$124,000	\$80,600	\$62,000
\$124,500 & less than \$125,500	\$125,000	\$81,250	\$62,500
\$125,500 & less than \$126,500	\$126,000	\$81,900	\$63,000
\$126,500 & less than \$127,500	\$127,000	\$82,550	\$63,500
\$127,500 & less than \$128,500	\$128,000	\$83,200	\$64,000
\$128,500 & less than \$129,500	\$129,000	\$83,850	\$64,500
\$129,500 & less than \$130,500	\$130,000	\$84,500	\$65,000
\$130,500 & less than \$131,500	\$131,000	\$85,150	\$65,500
\$131,500 & less than \$132,500	\$132,000	\$85,800	\$66,000
\$132,500 & less than \$133,500	\$133,000	\$86,450	\$66,500
\$133,500 & less than \$134,500	\$134,000	\$87,100	\$67,000
\$134,500 & less than \$135,500	\$135,000	\$87,750	\$67,500
\$135,500 & less than \$136,500	\$136,000	\$88,400	\$68,000
\$136,500 & less than \$137,500	\$137,000	\$89,050	\$68,500
\$137,500 & less than \$138,500	\$138,000	\$89,700	\$69,000
\$138,500 & less than \$139,500	\$139,000	\$90,350	\$69,500
\$139,500 & less than \$140,500	\$140,000	\$91,000	\$70,000
\$140,500 & less than \$141,500	\$141,000	\$91,650	\$70,500
\$141,500 & less than \$142,500	\$142,000	\$92,300	\$71,000
\$142,500 & less than \$143,500	\$143,000	\$92,950	\$71,500
\$143,500 & less than \$144,500	\$144,000	\$93,600	\$72,000
\$144,500 & less than \$145,500	\$145,000	\$94,250	\$72,500
\$145,500 & less than \$146,500	\$146,000	\$94,900	\$73,000
\$146,500 & less than \$147,500	\$147,000	\$95,550	\$73,500
\$147,500 & less than \$148,500	\$148,000	\$96,200	\$74,000
\$148,500 & less than \$149,500	\$149,000	\$96,850	\$74,500
\$149,500 & less than \$150,500	\$150,000	\$97,500	\$75,000
\$150,500 & less than \$151,500	\$151,000	\$98,150	\$75,500
\$151,500 & less than \$152,500	\$152,000	\$98,800	\$76,000
\$152,500 & less than \$153,500	\$153,000	\$99,450	\$76,500
\$153,500 & less than \$154,500	\$154,000	\$100,100	\$77,000
\$154,500 & less than \$155,500	\$155,000	\$100,750	\$77,500
\$155,500 & less than \$156,500	\$156,000	\$101,400	\$78,000
\$156,500 & less than \$157,500	\$157,000	\$102,050	\$78,500
\$157,500 & less than \$158,500	\$158,000	\$102,700	\$79,000
\$158,500 & less than \$159,500	\$159,000	\$103,350	\$79,500
\$159,500 & less than \$160,500	\$160,000	\$104,000	\$80,000
\$160,500 & less than \$161,500	\$161,000	\$104,650	\$80,500

<i>Annual Salary</i>	<i>Amount of Insurance Under Age 70</i>	<i>Amount of Insurance Age 70 Through 74</i>	<i>Amount of Insurance Age 75 and Older</i>
\$161,500 & less than \$162,500	\$162,000	\$105,300	\$81,000
\$162,500 & less than \$163,500	\$163,000	\$105,950	\$81,500
\$163,500 & less than \$164,500	\$164,000	\$106,600	\$82,000
\$164,500 & less than \$165,500	\$165,000	\$107,250	\$82,500
\$165,500 & less than \$166,500	\$166,000	\$107,900	\$83,000
\$166,500 & less than \$167,500	\$167,000	\$108,550	\$83,500
\$167,500 & less than \$168,500	\$168,000	\$109,200	\$84,000
\$168,500 & less than \$169,500	\$169,000	\$109,850	\$84,500
\$169,500 & less than \$170,500	\$170,000	\$110,500	\$85,000
\$170,500 & less than \$171,500	\$171,000	\$111,150	\$85,500
\$171,500 & less than \$172,500	\$172,000	\$111,800	\$86,000
\$172,500 & less than \$173,500	\$173,000	\$112,450	\$86,500
\$173,500 & less than \$174,500	\$174,000	\$113,100	\$87,000
\$174,500 & less than \$175,500	\$175,000	\$113,750	\$87,500
\$175,500 & less than \$176,500	\$176,000	\$114,400	\$88,000
\$176,500 & less than \$177,500	\$177,000	\$115,050	\$88,500
\$177,500 & less than \$178,500	\$178,000	\$115,700	\$89,000
\$178,500 & less than \$179,500	\$179,000	\$116,350	\$89,500
\$179,500 & less than \$180,500	\$180,000	\$117,000	\$90,000
\$180,500 & less than \$181,500	\$181,000	\$117,650	\$90,500
\$181,500 & less than \$182,500	\$182,000	\$118,300	\$91,000
\$182,500 & less than \$183,500	\$183,000	\$118,950	\$91,500
\$183,500 & less than \$184,500	\$184,000	\$119,600	\$92,000
\$184,500 & less than \$185,500	\$185,000	\$120,250	\$92,500
\$185,500 & less than \$186,500	\$186,000	\$120,900	\$93,000
\$186,500 & less than \$187,500	\$187,000	\$121,550	\$93,500
\$187,500 & less than \$188,500	\$188,000	\$122,200	\$94,000
\$188,500 & less than \$189,500	\$189,000	\$122,850	\$94,500
\$189,500 & less than \$190,500	\$190,000	\$123,500	\$95,000
\$190,500 & less than \$191,500	\$191,000	\$124,150	\$95,500
\$191,500 & less than \$192,500	\$192,000	\$124,800	\$96,000
\$192,500 & less than \$193,500	\$193,000	\$125,450	\$96,500
\$193,500 & less than \$194,500	\$194,000	\$126,100	\$97,000
\$194,500 & less than \$195,500	\$195,000	\$126,750	\$97,500
\$195,500 & less than \$196,500	\$196,000	\$127,400	\$98,000
\$196,500 & less than \$197,500	\$197,000	\$128,050	\$98,500
\$197,500 & less than \$198,500	\$198,000	\$128,700	\$99,000
\$198,500 & less than \$199,500	\$199,000	\$129,350	\$99,500
\$199,500 & over	\$200,000	\$130,000	\$100,000

[Pa.B. Doc. No. 12-708. Filed for public inspection April 13, 2012, 9:00 a.m.]

PATIENT SAFETY AUTHORITY

Public Meeting

The Patient Safety Authority (Authority), established by section 303 of the Medical Care Availability and Reduction of Error (MCARE) Act (40 P.S. § 1303.303), announces a meeting of the Authority's Board to be held at the Sheraton, Harrisburg-Hershey, 4650 Lindle Road, Harrisburg, PA at 10 a.m. on Tuesday, April 24, 2012.

Individuals having questions regarding this meeting, which is open to the public, should contact the Authority at (717) 346-0469.

MICHAEL C. DOERING,
Executive Director

[Pa.B. Doc. No. 12-709. Filed for public inspection April 13, 2012, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Eligible Telecommunications Carriers; Universal Service Program

The Pennsylvania Public Utility Commission (Commission) invites comment on the following pending wireless carrier's petition for designation as eligible telecommunications carriers (ETC) for purposes of the Federal high-cost universal service program:

Keystone Wireless, LLC, d/b/a Immix Wireless—Doc. No. P-2012-2287339

The Commission, at its July 29, 2010, public meeting adopted a final policy statement on ETC designation and ETC annual recertification and reporting requirements for all telecommunications carriers. This notice informs telecommunications providers and interested parties that the Commission intends to act on the previously-referenced ETC petition pending before the Commission.

Interested parties are invited to file comments at the relevant docket numbers within 14 days of publication of this notice. Reply comments of the carrier are due within 7 days thereafter. Interested parties may review the pending petitions at the Commission web site <http://www.puc.state.pa.us> or hard copies are available for a fee by means of written request to the Secretary of the Commission, Pennsylvania Public Utility Commission, Rosemary Chiavetta, Secretary, P. O. Box 3265, Harrisburg, PA 17105-3265.

The contact for questions regarding this notice is David E. Screven, Assistant Counsel, Law Bureau (717) 787-5000.

ROSEMARY CHIAVETTA,
Secretary

[Pa.B. Doc. No. 12-710. Filed for public inspection April 13, 2012, 9:00 a.m.]

Net Metering—Use of Third Party Operators

Public Meeting held
March 29, 2012

Commissioners Present: Robert F. Powelson, Chairperson; John F. Coleman, Jr., Vice Chairperson; Wayne E. Gardner; James H. Cawley; Pamela A. Witmer

Net Metering—Use of Third Party Operators; Docket No. M-2011-2249441

Final Order

By the Commission:

With the passage of the Alternative Energy Portfolio Standards Act of 2004¹ (AEPS Act), this Commonwealth embarked on a policy of promoting alternative generation sources. The Commission has been steadfastly committed to making sure the AEPS Act successfully meets the legislative policy goal of promoting reasonable alternative energy. To further this commitment, the Commission, in a Tentative Order,² proposed that it be the policy of the Commission to interpret the term “operator” in the definition of “customer-generator” as including customer-generators with distributed alternative energy systems that contract with a third party to perform the operational functions of the system. With this order, we adopt this policy as modified by this order.

Background

On November 30, 2004, Governor Edward Rendell signed Act 213 into law. Act 213 became effective on February 28, 2005, and established the Alternative Energy Portfolio Standards Act in Pennsylvania. The AEPS Act includes two key mandates, greater reliance on alternative energy sources, such as solar photovoltaic, in serving Pennsylvania's retail electric customers and the opportunity for customer-generators to interconnect and net meter small alternative energy systems. The Pennsylvania General Assembly charged the Commission with implementing and enforcing these mandates, with the assistance of the Pennsylvania Department of Environmental Protection.³

The AEPS Act defines net metering as “[t]he means of measuring the difference between the electricity supplied by an electric utility and the electricity generated by a customer-generator when any portion of the electricity generated by the alternative energy generating system is used to offset part or all of the customer-generator's requirements for electricity.”⁴ The AEPS Act also permits virtual net metering “on properties owned or leased and operated by a customer-generator and located within two miles of the boundaries of the customer-generator's property and within a single electric distribution company's service territory.”⁵

The AEPS Act defines a customer-generator as:

a nonutility owner or operator of a net metered distributed generation system with a nameplate capacity of not greater than 50 kilowatts if installed at a residential service or not larger than 3,000 kilowatts at other customer service locations, except for customers whose systems are above three megawatts and up to five megawatts who make their systems available to operate in parallel with the electric

¹ 73 P.S. §§ 1648.1—1648.8 and 66 Pa.C.S. § 2814.

² See Tentative Order entered on July 28, 2011, under the above referenced caption and docket number (Tentative Order).

³ 73 P.S. § 1648.7(a) and (b).

⁴ 73 P.S. § 1648.2.

⁵ 73 P.S. § 1648.2 (definition of net metering).

utility during grid emergencies as defined by the regional transmission organization or where a microgrid is in place for the primary or secondary purpose of maintaining critical infrastructure, such as homeland security assignments, emergency services facilities, hospitals, traffic signals, wastewater treatment plants or telecommunications facilities, provided that technical rules for operating generators interconnected with facilities of an electric distribution company, electric cooperative or municipal electric system have been promulgated by the Institute of Electrical and Electronic Engineers and the Pennsylvania Public Utility Commission.⁶

The Commission's regulations require electric distribution companies (EDCs) to "offer net metering to customer-generators that generate electricity on the customer-generator's side of the meter using Tier I or Tier II alternative energy sources, on a first come, first served basis."⁷ Regarding electric generation suppliers (EGSs) the Commission's regulations state that "EGSs may offer net metering to customer-generators, on a first come, first served basis, under the terms and conditions as are set forth in agreements between EGSs and customer-generators taking services from EGSs."⁸

The Commission's regulations define a customer-generator facility as "[t]he equipment used by a customer-generator to generate, manage, monitor and deliver electricity to the EDC."⁹ The Commission's regulations also define net metering as "[t]he means of measuring the difference between the electricity supplied by an electric utility or EGS and the electricity generated by a customer-generator when any portion of the electricity generated by the alternative energy generation system is used to offset part or all of the customer-generator's requirements for electricity."¹⁰

On June 30, 2011, the Commission adopted a motion by Chairman Robert F. Powelson seeking comment on a proposal to make it the policy of the Commission to allow net metering of alternative energy systems where the customer-generator contracts with a third-party to operate the system, provided that the system is designed to generate no more than 110% of the customer-generator's prior year electric consumption. On July 28, 2011, the Commission entered a Tentative Order seeking comment on this proposed net metering policy. The Tentative Order was published in the *Pennsylvania Bulletin* on August, 13, 2011.¹¹ Comments were due by September 12, 2011.

Comments were filed by Citizen Power; Duquesne Light Company (Duquesne); the Energy Association of Pennsylvania (EAP); EnergyWorks Group (EnergyWorks); the Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company (collectively, FirstEnergy); the Interstate Renewable Energy Council (IREC); the Office of Consumer Advocate (OCA); PECO Energy Company (PECO); PennFuture; the Pennsylvania Solar Energy Industry Association and the Mid-Atlantic Solar Energy Industries Association (collectively PASEIA/MSEIA); the Solar Alliance (SA); SunRun, Inc. (SunRun); the Sustainable Energy Fund (SEF); the Vote Solar Initiative (Vote Solar); and Washington Gas Energy Services, Inc. (WGES).

Discussion

The Commission would like to thank all parties who provided comments in this proceeding. Below, we will address those comments that are germane to the proposed policy.

A. Proposed Commission Policy

In the Tentative Order, we stated that we believe that it should be the policy of this Commission to support access to alternative energy systems to as broad an array of consumers as possible. We further stated that we were aware of the fact that consumers often may need to make a significant initial capital outlay in order to install an alternative energy facility at their residence or small business, and that this significant capital expense is an impediment to many consumers wishing to install such systems.

In the Tentative Order, we stated that the AEPS Act and the Commission's regulations may be interpreted as prohibiting the net metering of an alternative energy system located, on a customer's premises, which is owned and operated by an alternative energy system developer that sells the electricity generated by that system to the customer through a power purchase agreement. In the Tentative Order, we propose that it be the policy of this Commission to allow alternative energy systems installed using the business model described above to net meter. Specifically, we stated that for the purposes of net metering, it should be the policy of this Commission that the term "operator," as found in the definition of "customer-generator" in the AEPS Act,¹² shall be interpreted as including customer-generators with distributed alternative energy systems that contract with a third-party to perform the operational functions of the alternative energy system.

In the Tentative Order, we further proposed that it be the policy of this Commission to limit this interpretation to alternative energy systems installed on property owned or leased and operated by the customer-generator and designed to generate no more than 110% of the customer-generator's annual electric consumption,¹³ provided that its nameplate capacity does not exceed the size limits defined in the AEPS Act.¹⁴ We proposed the system size limitation of 110% of a customer-generator's prior year electricity consumption to prevent the installation of oversized alternative energy systems that are more accurately described as merchant generation posing as customer-generators.

1. Comments

The majority of commenters support or do not object to the Commission's proposed policy.¹⁵ Many of the commenters do, however, make suggestions to further clarify the intent and application of the proposed policy. We will address these suggestions below.

2. Disposition

As the proposed policy was supported by the vast majority of the Commenters, with requests for clarification

¹² See 73 P. S. § 1648.2.

¹³ As measured by the customer-generator's total electric usage in the 12 full months immediately preceding submission of the interconnection application. In the event of a system expansion, the customer-generator would need to demonstrate that the expansion is designed not to exceed 110% of their electricity consumption in the 12 full months immediately preceding submission of the expansion application, in order to fall within the policy proposed in this Order.

¹⁴ As set forth in the definition of "customer-generator" at 73 P. S. § 1648.2.

¹⁵ See Citizen Power Comments at 2, Duquesne Comments at 2, EAP Comments at 3, FirstEnergy Comments at 2, IREC Comments at 2 and 3, OCA Comments, PECO Comments at 2, PennFuture Comments at 2 and 3, PASEIA/MSEIA Comments at 2, SA Comments, SunRun Comments at 1, Vote Solar Comments at 2, and WGES Comments at 1 and 3.

⁶ 73 P. S. § 1648.2.

⁷ 52 Pa. Code § 75.13(a).

⁸ Id.

⁹ 52 Pa. Code § 75.12.

¹⁰ Id.

¹¹ See 41 Pa. Bull. 4515.

tion, and for the reasons expressed in our Tentative Order, we will adopt the proposed policy, as modified by this order. Specifically, we adopt as Commission policy that the term “operator,” as found in the definition of “customer-generator” in the AEPS Act,¹⁶ shall be interpreted as including customer-generators with distributed alternative energy systems that contract with a third-party to perform the operational functions of the alternative energy system.

B. 110% Consumption Limit

In the Tentative Order, we proposed that alternative energy systems installed using the business model in which a developer installs the system, maintains ownership and performs operations and maintenance functions, and sells the generation to the customer through a power purchase agreement, be limited in size. Specifically, we proposed that the system be installed on a property owned or leased and operated by the customer-generator and designed to generate no more than 110% of the customer-generator’s annual electric consumption. This consumption was measured by the customer-generator’s total electric usage in the 12 full months immediately preceding submission of the interconnection application.

1. 110% Limit

Several parties commented on the reasonableness of the proposed 110% design limit on third-party owned and operated net metered alternative energy systems.

a. Comments

Seven of the 15 commenters state that the Commission’s proposed 110% limitation is reasonable in preventing the installation of oversized alternative energy systems.¹⁷ In particular, PennFuture comments that it “believes that the Commission’s proposal to limit the alternative energy system to 110% of the customer-generator’s electric consumption is fair and reasonable given the fact that net metering is designed to offset all or part of a customer-generator’s electricity requirements.”¹⁸

PASEIA/MSEIA suggest that the 110% limitation only be applied to commercial systems with a nameplate capacity over 200 kW. PASEIA/MSEIA assert that residential systems should be excluded from the 110% limit as they are already limited to 50 kW and there are other protections against oversizing residential systems.¹⁹ WGES suggests a limit similar to that imposed by Maryland, which adopted a 200% limit, asserting that a higher percentage will allow for growth in electricity usage by the customer-generator and encourage efficient installation of alternative energy systems.²⁰

b. Disposition

In proposing this limitation, the Commission believed it would be a reasonable way to limit the possibility of merchant generators posing as customer-generators. As we noted in the Tentative Order, we believe the intent of the AEPS Act, as expressed in the Act’s definition of net metering, was to provide electric utility customers with a reasonable means to offset their electric consumption. The majority of comments support the 110% design limit as a reasonable and balanced approach to supporting the intent of the AEPS Act and limiting the potential for

merchant generators to use net metering as a way to circumvent the wholesale electric market and gain excessive retail rate subsidies at retail customer expense. As such we adopt, as Commission policy, a size limitation of 110% for net metered alternative energy systems owned and operated by third-parties that are interconnected and placed on property owned or leased and operated by an electric utility customer.

The Commission would like to clarify that the 110% limitation is to be part of the criteria used in designing a system that is installed as part of the third-party business model. This limitation does not apply to those systems directly owned or operated by a customer-generator who is not using the third-party owner or operator model.

The Commission declines to adopt PASEIA/MSEIA’s proposal to limit the application of the 110% limitation to commercial systems greater than 200 kW in size. Although there may be other protections in place for residential systems at this time, the Commission believes that the 110% limitation should be applied equally across all rate classes. The intent is to limit oversizing by any third-party owned and operated system. The Commission believes there is still ample opportunity for customers of all rate classes to take advantage of this business model with the 110% limitation in place.

The Commission also declines to adopt WGES’ proposal to increase the design limitation to 200% as Maryland has done. It is the Commission’s belief that a 200% size limitation would not effectively limit the potential for merchant generators to use net metering as a way to circumvent the wholesale electric market and gain excessive retail rate subsidies at retail customer expense.²¹

2. Determination of 110%

Several parties sought clarification on how the 110% limit is to be determined and whether it should be a cap on the amount of energy to be netted against electric usage.

a. Comments

Some commenters express acceptance of the limitation with additional parameters. Specifically, Duquesne, EAP and PECO suggest that the Commission make the 110% limitation a cap on the kWh output eligible for net metering, implying that the customer-generator would not receive compensation for any generation in excess of 110% of its annual electric usage.²² EAP also suggests that the Commission clarify that the 110% cap be set during the system design phase such that it limits the size of the system that can be installed based on the customer-generator’s total electric usage during the preceding 12 months. EAP asserts that such a limitation will decrease cost-shifting to customers who do not participate in net metering, will simplify the role of EDCs in monitoring excess generation and limit the opportunity for abuse by merchant generators seeking retail rate subsidies in contradiction of the intent of the AEPS Act.²³

b. Disposition

The Commission would like to clarify that the 110% sizing limitation is a design parameter set forth to govern system size when third-party owners and operators are calculating the size of an alternative energy system to be interconnected and installed on property owned or leased and operated by an electric utility customer for net

¹⁶ See 73 P.S. § 1648.2.

¹⁷ Duquesne Comments at 3, IREC Comments at 8, PECO Comments at 2, PennFuture Comments at 3, SA Comments at 1, SunRun Comments at 1, Vote Solar Comments at 3.

¹⁸ PennFuture Comments at 3.

¹⁹ PASEIA/MSEIA Comments at 2.

²⁰ WGES Comments at 3 and 4 (citing COMAR 20.50.10.01 D).

²¹ We note that both Delaware and New Jersey impose a similar 110% design limit. See 26 Del.C. § 1014(d)(5) and N.J.S.A. 4:1C-32.4a(4).

²² Duquesne Comments at 3, EAP Comments at 5 and PECO Comments at 4.

²³ EAP Comments at 5.

metering purposes. As the Commission's goal is to support Pennsylvania ratepayer access to alternative energy systems, it does not believe it is necessary to implement other limitations at this time. Specifically, the Commission believes it is unnecessary to include a kWh output restriction on systems utilizing the third-party operator business model, as proposed by Duquesne, EAP and PECO. The Commission notes that the 110% design limit will be based on historical or estimated annual system output and customer usage, both of which are affected by weather that is beyond the control of the customer-generator. As such, the Commission believes that a hard cap, as proposed by Duquesne, EAP and PECO, would unfairly penalize customer-generators for variations in weather that are beyond their control.

3. *Virtual Net Metering*

In comments to the Tentative Order, parties questioned the application of the 110% limitation for customers who wish to implement the third-party business model to install systems that would allow for virtual meter aggregation.

a. *Comments*

FirstEnergy asserts that the 110% limitation should apply solely to the consumption at the meter where the system is interconnected as it would prevent third-parties from greatly oversizing an alternative energy system with the intention of requiring the retail customer to aggregate any nearby metering points to satisfy the 110% limitation.²⁴ PASEIA/MSEIA and PennFuture assert that the 110% limitation should apply to the cumulative consumption of all meters that qualify for virtual aggregation.²⁵

Duquesne requests that the Commission require that each customer must be individually metered and have individual accounts in the homeowner's name, as opposed to the accounts being placed in the name of the third-party.²⁶ Duquesne further asserts that the EDC should not have a contractual relationship with any third-party owners or operators, emphasizing that the electric account must continue to be between the customer and the EDC.²⁷ FirstEnergy comments that the third-party should not be eligible to aggregate EDC customer accounts, asserting that only retail electric customers be eligible to physically or virtually net meter accounts.²⁸ PECO suggests that the third-party option should not be used to promote community energy aggregation, but to allow electricity generated by the third-party owned and operated alternative energy system to be sold only to a single customer.²⁹

b. *Disposition*

The Commission agrees with PASEIA/MSEIA and PennFuture that the 110% limitation should apply to the cumulative consumption of all meters that qualify for virtual meter aggregation under the AEPS Act and the Commission's regulations. It is the Commission's belief that restricting third-party owned and operated systems as FirstEnergy suggests would unreasonably discriminate against customer-generators who would otherwise be eligible for virtual meter aggregation under the provisions of the AEPS Act³⁰ and the Commission's regulations.³¹ As such, the Commission adopts the policy that the 110% limitation as a design criterion of third-party owned and

operated alternative energy systems shall apply to the cumulative consumption of all meters that are eligible for virtual meter aggregation in accordance with the AEPS Act and the Commission's regulations.

The Commission, however, does agree with Duquesne, FirstEnergy and PECO, that this policy should not be interpreted as creating a contractual relationship between the EDC and a third-party owner or operator of an alternative energy system placed on property owned or leased and operated by a customer-generator. Any contractual relations in such a scenario remain between the EDC and the retail electric customer, who is responsible for complying with all applicable EDC tariff provisions and Commission regulations. Furthermore, this policy does not in any way expand the virtual meter aggregation provisions of the AEPS Act and Commission regulations to include community aggregation. This policy simply permits customer-generators who chose to contract with a third-party to own and operate an alternative energy system located on property owned or leased and operated by that customer-generator to virtual net meter in the same manner as if that customer-generator owned or operated the alternative energy system.

4. *New Construction*

In the Tentative Order we proposed that the 110% limitation be based on the customer-generator's total electric usage during the 12 full months immediately preceding submission of the interconnection application.

a. *Comments*

Several commenters request that the Commission provide guidance on how the 110% limitation is to be determined for newly constructed buildings or where the retail customer does not have a full 12 months of historical usage.³² Some of these commenters suggest that the developer be permitted to use the square footage, usage patterns and number of occupants for the new building to determine that building's estimated consumption.³³ Other commenters recommend using the usage patterns of similarly situated neighboring buildings to determine an estimate of consumption.³⁴ FirstEnergy and PECO suggest that the estimate be calculated by the customer/installer and provided to the EDC for review during the interconnection application process.³⁵ PASEIA/MSEIA suggest that the issue be referred to the Solar Working Group Net Metering Committee for discussion and development of recommendations.³⁶

EAP and PECO also suggest that customer-generators with existing alternative energy systems seeking to expand the size of their systems be required to amend their application and provide data showing an increased usage in the immediately preceding 12 month period to show compliance with the 110% limit.³⁷

b. *Disposition*

While the Commission understands the desire to have specific criteria defined for determining the 110% limitation value for a building that does not have prior consumption data, it does not believe such granularity is necessary. The use of square footage, occupancy and comparisons to similar buildings are all valid recommendations that could be utilized. The Commission believes

²⁴ FirstEnergy Comments at 4.

²⁵ PASEIA/MSEIA Comments at 3 and 5, PennFuture Comments at 3.

²⁶ Duquesne Comments at 4.

²⁷ Id.

²⁸ FirstEnergy Comments at 3.

²⁹ PECO Comments at 4.

³⁰ See 73 P. S. § 1648.2 (definition of net metering).

³¹ See 52 Pa. Code § 75.12 (definition of virtual meter aggregation).

³² Citizen Power Comments at 2 and 3, IREC Comments at 9, PASEIA/MSEIA Comments at 3, PECO Comments at 5 and 6, SA Comments at 1, SunRun Comments at 2, and Vote Solar Comments at 4.

³³ Citizen Power Comments at 3, SA Comments at 1, and SunRun Comments at 2.

³⁴ SA Comments at 1 and SunRun Comments at 2.

³⁵ FirstEnergy Comments at 4 and PECO Comments at 6.

³⁶ PASEIA/MSEIA Comments at 3.

³⁷ EAP Comments at 6 and PECO Comments at 5.

that the customer-generator and/or developer has the responsibility to provide an estimate of annual electric consumption for the new building, along with supporting data, to demonstrate that the alternative energy system design does not exceed 110% of that annual consumption. The customer-generator and/or the developer will have to provide adequate support for their usage estimate, which may include one or more years of historical usage or estimates based on similarly equipped and utilized buildings. This estimated consumption shall be provided to the EDC when filing the interconnection application.

The Commission agrees with EAP and PECO that the 110% limitation shall apply as a design criterion for the sizing of an entire alternative energy system, to include any proposed expansion of an existing system. As such, it is Commission policy that customer-generators with third-party owned and operated systems shall provide, with the interconnection application, adequate supporting data to demonstrate that the alternative energy system is designed to provide no more than 110% of the customer-generator's annual electric usage. This requirement also applies to applications to expand existing alternative energy systems owned and operated by a third-party.

Conclusion

With this Final Order, the Commission adopts the net metering policy described in this Final Order. This Final Order is to be published in the *Pennsylvania Bulletin* and made available to the public on the Commission's alternative energy³⁸ web page. *Therefore,*

It Is Ordered That:

1. It be the policy of the Commission that the term "operator," as found in the definition of "customer-generator" in Section 2 the AEPS Act, 73 P. S. § 1648.2, shall be interpreted as including customer-generators with distributed alternative energy systems that contract with a third-party to perform the operational functions of the alternative energy system.

2. It be the policy of the Commission that net metered alternative energy systems owned and operated by third-parties that are interconnected and placed on property owned or leased and operated by an electric utility customer be designed to generate no more than 110% of that utility customer's annual electricity consumption, at the interconnection meter location and all qualifying virtual meter locations.

3. It be the policy of the Commission that customer-generators with third-party owned and operated systems shall provide with the interconnection application adequate supporting data to demonstrate that the alternative energy system is designed to provide no more than 110% of the customer-generator's annual electric usage at all qualifying meter locations.

4. This Final Order be published on the Commission's Alternative Energy web page.

5. This Final Order shall be published in the *Pennsylvania Bulletin* and served upon the Office of Consumer Advocate, the Office of Small Business Advocate, the Bureau of Investigation and Enforcement, all jurisdictional electric distribution companies, and all parties who filed comments at this Docket.

6. The contact person for technical issues regarding this policy is Scott Gebhardt, Analyst, Bureau of Technical Utility Services—Policy and Planning, (717) 425-2860 or sgebhardt@state.pa.us. The contact person for legal

issues regarding this policy is Kriss Brown, Assistant Counsel, Law Bureau, (717) 787-4518 or kribrown@state.pa.us.

ROSEMARY CHIAVETTA,
Secretary

[Pa.B. Doc. No. 12-711. Filed for public inspection April 13, 2012, 9:00 a.m.]

Service of Notice of Motor Carrier Applications

The following temporary authority and/or permanent authority applications for the right to render service as a common carrier or contract carrier in this Commonwealth have been filed with the Pennsylvania Public Utility Commission. Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities). A protest shall indicate whether it applies to the temporary authority application, the permanent authority application, or both. Filings must be made with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant by April 30, 2012. Documents filed in support of the applications are available for inspection and copying at the Office of the Secretary between 8 a.m. and 4:30 p.m., Monday through Friday, and at the business address of the respective applicant.

Application of the following for the approval of the right and privilege to *discontinue/abandon operating as common carriers by motor vehicle and for cancellation of the certificate of public convenience as described under the application.*

A-2012-2290614. Access Airport Cab Co (60 North 2nd Street, Hamburg, Berks County, PA 19526)—discontinuance of service—persons, upon call or demand, in the Borough of Hamburg, Berks County.

Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. Brag Inc, t/a Great Arrivals; Doc. No. C-2011-2270729

COMPLAINT

The Pennsylvania Public Utility Commission (Commission) is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within the Commonwealth. The Commission has delegated its authority to initiate proceedings which are prosecutory in nature to the Bureau Investigation and Enforcement and other Bureaus with enforcement responsibilities. Pursuant to that delegated authority and Section 701 of the Public Utility Code, the Bureau of Investigation and Enforcement hereby represents as follows:

1. That Brag Inc, t/a Great Arrivals, Respondent, maintains a principal place of business at PO Box 144, Sayre, PA 18840.

2. That Respondent was issued a certificate of public convenience by this Commission on October 19, 1989, at Docket No. A-00108540,F.3, for limousine authority.

3. That, between December 1 and December 31 of 2010, Respondent did not provide this Commission with a current list of all of its vehicles utilized under its limousine authority. The list must contain the year, make, vehicle identification number and registration number for each vehicle. It shall be mailed to: Manager, Inspection

³⁸ http://www.puc.state.pa.us/electric/electric_alt_energy.aspx.

Division, Bureau of Investigation and Enforcement, PA Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105.

4. That Respondent, by failing to provide this Commission with a current vehicle list, violated 52 Pa. Code § 29.333(d). The Bureau of Investigation and Enforcement's proposed civil penalty for this violation is \$250.

Wherefore, the Bureau of Investigation and Enforcement hereby requests that the Commission fine Brag Inc, t/a Great Arrivals the sum of two hundred and fifty dollars (\$250) for the illegal activity described in this complaint and order such other remedy as the Commission may deem to be appropriate.

Respectfully submitted,

Michael E. Hoffman, Manager
Bureau of Investigation and Enforcement

VERIFICATION

I, Michael E. Hoffman, Manager, Inspection Division, of the Bureau of Investigation and Enforcement, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect that the Bureau will be able to prove same at any hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: 11/21/11 Michael E. Hoffman, Manager
Bureau of Investigation and Enforcement

NOTICE

A. You must file an answer within twenty days of the date of service of this Complaint. The date of service is the mailing date as indicated at the top of the Secretarial cover letter for this Complaint and notice, 52 Pa. Code § 1.56(a). An answer is a written explanation of circumstances wished to be considered in determining the outcome. The answer shall raise all factual and legal arguments that you wish to claim in your defense and must include the reference number of this Complaint. Your answer must be verified and the original shall be mailed to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265

Or may be sent by overnight delivery to:

400 North Street, 2nd Floor
Harrisburg, Pennsylvania 17120

Additionally, please serve a copy on:

Wayne T. Scott, Prosecutor
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265

B. If you fail to answer this Complaint within twenty days, the Bureau of Investigation and Enforcement will request that the Commission issue a Secretarial Letter imposing a penalty. Pursuant to 66 Pa.C.S. § 3301(a), the penalty could include a fine of up \$1,000 for each violation, the revocation of your Certificate of Public Convenience, or any other remedy as may be appropriate. Each day you continue to violate any regulation, direc-

tion, requirement, determination or order of the Commission is a separate and distinct offense, subject to additional penalties.

C. You may elect not to contest this Complaint by paying the fine proposed in this Complaint by certified check or money order within twenty (20) days. Your certified check or money order should be payable to the Commonwealth of Pennsylvania and should be forwarded to:

Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265

Your payment is an admission that you committed the alleged violation and an agreement to cease and desist from further violations. Upon receipt of your payment, the complaint proceeding shall be closed.

D. If you file an answer which either admits or fails to deny the allegations of the Complaint, the Bureau of Investigation and Enforcement will request the Commission to issue a Secretarial Letter imposing a penalty (see Paragraph B). Should the Commission cancel your Certificate of Public Convenience, it may also impose an additional fine of up to \$1,000.

E. If you file an answer which contests the Complaint, the matter will be assigned to an administrative law judge for hearing and decision. The judge is not bound by the penalty set forth in this Complaint.

F. Alternative formats of this material are available, for persons with disabilities, by contacting the Compliance Office at (717) 787-1227.

Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. Eagle Transportation Svcs Inc; Doc. No. C-2011-2270778

COMPLAINT

The Pennsylvania Public Utility Commission (Commission) is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within the Commonwealth. The Commission has delegated its authority to initiate proceedings which are prosecutory in nature to the Bureau Investigation and Enforcement and other Bureaus with enforcement responsibilities. Pursuant to that delegated authority and Section 701 of the Public Utility Code, the Bureau of Investigation and Enforcement hereby represents as follows:

1. That Eagle Transportation Svcs Inc, Respondent, maintains a principal place of business at 77 McCullough Drive, New Castle, DE 19720.

2. That Respondent was issued a certificate of public convenience by this Commission on March 19, 2007, at Docket No. A-00122217,F.2, for limousine authority.

3. That, between December 1 and December 31 of 2010, Respondent did not provide this Commission with a current list of all of its vehicles utilized under its limousine authority. The list must contain the year, make, vehicle identification number and registration number for each vehicle. It shall be mailed to: Manager, Inspection Division, Bureau of Investigation and Enforcement, PA Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105.

4. That Respondent, by failing to provide this Commission with a current vehicle list, violated 52 Pa. Code

§ 29.333(d). The Bureau of Investigation and Enforcement's proposed civil penalty for this violation is \$250.

Wherefore, the Bureau of Investigation and Enforcement hereby requests that the Commission fine Eagle Transportation SVCS Inc the sum of two hundred and fifty dollars (\$250) for the illegal activity described in this complaint and order such other remedy as the Commission may deem to be appropriate.

Respectfully submitted,

Michael E. Hoffman, Manager
Bureau of Investigation and Enforcement

VERIFICATION

I, Michael E. Hoffman, Manager, Inspection Division, of the Bureau of Investigation and Enforcement, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect that the Bureau will be able to prove same at any hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: 11/11 Michael E. Hoffman, Manager
Bureau of Investigation and Enforcement

NOTICE

A. You must file an answer within twenty days of the date of service of this Complaint. The date of service is the mailing date as indicated at the top of the Secretarial cover letter for this Complaint and notice, 52 Pa. Code § 1.56(a). An answer is a written explanation of circumstances wished to be considered in determining the outcome. The answer shall raise all factual and legal arguments that you wish to claim in your defense and must include the reference number of this Complaint. Your answer must be verified and the original shall be mailed to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265

Or may be sent by overnight delivery to:

400 North Street, 2nd Floor
Harrisburg, Pennsylvania 17120

Additionally, please serve a copy on:

Wayne T. Scott, Prosecutor
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265

B. If you fail to answer this Complaint within twenty days, the Bureau of Investigation and Enforcement will request that the Commission issue a Secretarial Letter imposing a penalty. Pursuant to 66 Pa.C.S. § 3301(a), the penalty could include a fine of up to \$1,000 for each violation, the revocation of your Certificate of Public Convenience, or any other remedy as may be appropriate. Each day you continue to violate any regulation, direction, requirement, determination or order of the Commission is a separate and distinct offense, subject to additional penalties.

C. You may elect not to contest this Complaint by paying the fine proposed in this Complaint by certified check or money order within twenty (20) days. Your

certified check or money order should be payable to the Commonwealth of Pennsylvania and should be forwarded to:

Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265

Your payment is an admission that you committed the alleged violation and an agreement to cease and desist from further violations. Upon receipt of your payment, the complaint proceeding shall be closed.

D. If you file an answer which either admits or fails to deny the allegations of the Complaint, the Bureau of Investigation and Enforcement will request the Commission to issue a Secretarial Letter imposing a penalty (see Paragraph B). Should the Commission cancel your Certificate of Public Convenience, it may also impose an additional fine of up to \$1,000.

E. If you file an answer which contests the Complaint, the matter will be assigned to an administrative law judge for hearing and decision. The judge is not bound by the penalty set forth in this Complaint.

F. Alternative formats of this material are available, for persons with disabilities, by contacting the Compliance Office at (717) 787-1227.

*Pennsylvania Public Utility Commission, Bureau of
Investigation and Enforcement v. Gur Parshad Inc;
Doc. No. C-2011-2270304*

COMPLAINT

The Pennsylvania Public Utility Commission (Commission) is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within the Commonwealth. The Commission has delegated its authority to initiate proceedings which are prosecutory in nature to the Bureau of Investigation and Enforcement and other Bureaus with enforcement responsibilities. Pursuant to that delegated authority and Section 701 of the Public Utility Code, the Bureau of Investigation and Enforcement hereby represents as follows:

1. That Gur Parshad Inc, Respondent, maintains a principal place of business at 4421 Aramingo Avenue, Philadelphia, PA 19124.

2. That Respondent was issued a certificate of public convenience by this Commission on February 22, 2002, at Docket No. A-00118542, for call or demand authority.

3. That, between December 1 and December 31 of 2010, Respondent did not provide this Commission with a current list of all of its vehicles utilized under its call or demand authority. The list must contain the year, make, vehicle identification number and registration number for each vehicle. It shall be mailed to: Manager, Inspection Division, Bureau of Investigation and Enforcement, PA Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105.

4. That Respondent, by failing to provide this Commission with a current vehicle list, violated 52 Pa. Code § 29.314(c). The Bureau of Investigation and Enforcement's proposed civil penalty for this violation is \$250.

Wherefore, the Bureau of Investigation and Enforcement hereby requests that the Commission fine Gur Parshad Inc the sum of two hundred and fifty dollars

(\$250) for the illegal activity described in this complaint and order such other remedy as the Commission may deem to be appropriate.

Respectfully submitted,

Michael E. Hoffman, Manager
Bureau of Investigation and Enforcement

VERIFICATION

I, Michael E. Hoffman, Manager, Inspection Division, of the Bureau of Investigation and Enforcement, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect that the Bureau will be able to prove same at any hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: 11/8/11 Michael E. Hoffman, Manager
Bureau of Investigation and Enforcement

NOTICE

A. You must file an answer within twenty days of the date of service of this Complaint. The date of service is the mailing date as indicated at the top of the Secretarial cover letter for this Complaint and notice, 52 Pa. Code § 1.56(a). An answer is a written explanation of circumstances wished to be considered in determining the outcome. The answer shall raise all factual and legal arguments that you wish to claim in your defense and must include the reference number of this Complaint. Your answer must be verified and the original shall be mailed to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265

Or may be sent by overnight delivery to:

400 North Street, 2nd Floor
Harrisburg, Pennsylvania 17120

Additionally, please serve a copy on:

Wayne T. Scott, Prosecutor
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265

B. If you fail to answer this Complaint within twenty days, the Bureau of Investigation and Enforcement will request that the Commission issue a Secretarial Letter imposing a penalty. Pursuant to 66 Pa.C.S. § 3301(a), the penalty could include a fine of up to \$1,000 for each violation, the revocation of your Certificate of Public Convenience, or any other remedy as may be appropriate. Each day you continue to violate any regulation, direction, requirement, determination or order of the Commission is a separate and distinct offense, subject to additional penalties.

C. You may elect not to contest this Complaint by paying the fine proposed in this Complaint by certified check or money order within twenty (20) days. Your certified check or money order should be payable to the Commonwealth of Pennsylvania and should be forwarded to:

Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265

Your payment is an admission that you committed the alleged violation and an agreement to cease and desist from further violations. Upon receipt of your payment, the complaint proceeding shall be closed.

D. If you file an answer which either admits or fails to deny the allegations of the Complaint, the Bureau of Investigation and Enforcement will request the Commission to issue a Secretarial Letter imposing a penalty (see Paragraph B). Should the Commission cancel your Certificate of Public Convenience, it may also impose an additional fine of up to \$1,000.

E. If you file an answer which contests the Complaint, the matter will be assigned to an administrative law judge for hearing and decision. The judge is not bound by the penalty set forth in this Complaint.

F. Alternative formats of this material are available, for persons with disabilities, by contacting the Compliance Office at (717) 787-1227.

ROSEMARY CHIAVETTA,
Secretary

[Pa.B. Doc. No. 12-712. Filed for public inspection April 13, 2012, 9:00 a.m.]

PHILADELPHIA PARKING AUTHORITY

Motor Carrier Medallion Transfer Application for Service in the City of Philadelphia

Permanent or temporary authority to render services as a common carrier in the City of Philadelphia has been filed with the Philadelphia Parking Authority (PPA) Taxicab and Limousine Division (TLD) by the following named applicant. The company has applied to transfer the rights held by Barring Trans, Inc. (CPC No. 1014204-01, Medallion P-0812) to transport persons in taxicab service between points within the City of Philadelphia and from points in the City of Philadelphia to points in Pennsylvania, and return.

A-12-03-05. Chopra, Inc., 49 Sonora Avenue, Iselin, NJ 08830 registered with the Commonwealth on January 30, 2012.

Formal protests must be filed in accordance with 52 Pa. Code Part II (relating to Philadelphia Parking Authority). Filings must be made at the offices of the TLD with the Clerk, 2415 South Swanson Street, Philadelphia, PA 19148, with a copy served on the applicant by April 30, 2012. Documents filed in support of the application are available for inspection at the TLD office (contact Charles Milstein) between 9 a.m. and 4:30 p.m. Monday to Friday or may be inspected at the business address of the applicant. The protest fee is \$2,500 (certified check or money order payable to PPA).

VINCENT J. FENERTY, Jr.,
Executive Director

[Pa.B. Doc. No. 12-713. Filed for public inspection April 13, 2012, 9:00 a.m.]

Motor Carrier Medallion Transfer Application for Service in the City of Philadelphia

Permanent or temporary authority to render services as a common carrier in the City of Philadelphia has been filed with the Philadelphia Parking Authority (PPA) Taxicab and Limousine Division (TLD) by the following named applicant. The company has applied to transfer the rights held by New Delhi Roadways, Inc. (CPC No. 1021104-01, Medallion P-0711) to transport persons in taxicab service between points within the City of Philadelphia and from points in the City of Philadelphia to points in Pennsylvania, and return.

A-12-03-07. Parmar Trans., Inc., 5475 82nd Street, Elmhurst, NY 11373 registered with the Commonwealth on October 17, 2011.

Formal protests must be filed in accordance with 52 Pa. Code Part II (relating to Philadelphia Parking Authority). Filings must be made at the offices of the TLD with the Clerk, 2415 South Swanson Street, Philadelphia, PA 19148, with a copy served on the applicant by April 30, 2012. Documents filed in support of the application are available for inspection at the TLD office (contact Charles Milstein) between 9 a.m. and 4:30 p.m. Monday to Friday or may be inspected at the business address of the applicant. The protest fee is \$2,500 (certified check or money order payable to PPA).

VINCENT J. FENERTY, Jr.,
Executive Director

[Pa.B. Doc. No. 12-714. Filed for public inspection April 13, 2012, 9:00 a.m.]

Taxicab and Limousine Division; Fuel Surcharge Comments and Public Hearing

April 2, 2012

The price per gallon for gasoline has been climbing steadily over the past few months. Fuel prices across the region are now averaging \$3.89 for regular and \$4.14 for premium gasoline. One week ago, the price of regular gasoline in our area was \$3.85, 1 month ago it was \$3.76 and 1 year ago, just before the most recent fuel surcharge was approved by the Philadelphia Parking Authority (PPA), it was \$3.58.

On March 28, 2012, the Taxi Workers Alliance of Pennsylvania filed a petition and Fuel Surcharge proposal with the Taxicab and Limousine Division (TLD) of the PPA requesting that a surcharge be implemented. The proposal, which follows for review and comment, describes a sliding scale at which the first surcharge is "triggered" when gasoline reaches \$3.50 per gallon of

regular gasoline and increases commensurately by .50 cents with each .50 cent increase in the price of regular gasoline. The proposal calls for an additional .50 cents on top of the base surcharge for trips to and from the Philadelphia International Airport.

A simpler but more comprehensive approach is the Pennsylvania Public Utility Commission's (Commission) procedure for implementing on going fuel surcharges which has been under consideration by the PPA since receipt of public comments last summer praising the system. The Commission fuel surcharge system and implementation procedure, which follows, has been in effect for a number of years. It provides for a much greater degree of consistency and predictability in addressing what has become a very problematic and costly aspect of making a living as a call or demand/for hire transportation driver. The system allows fuel surcharges to be implemented or repealed on a monthly basis without the need for the inherent delays of emergency petitions, comments, investigations and hearings.

Accordingly, the PPA invites public comment with regard to the need for a fuel surcharge and for comments as to the best way to implement a sliding scale surcharge. The proposed surcharge applies to all medallion and partial rights taxicab trips as well as airport transfer service under Philadelphia jurisdiction.

The surcharge system selected and implemented by the PPA will need to be one which may be electronically implemented and repealed by all vendors of meter technology systems approved by PPA's TLD.

Partial rights taxicabs will need to adhere to the terms and schedule concerning any surcharge method selected and approved but will need to have their meters manually updated and sealed at TLD Headquarters with regard to surcharge addition and removal.

Submit any comments regarding this proposal no later than 12 p.m. on Wednesday, April 18, 2012, to the attention of Charles Milstein, Esq., Assistant to the Director, Taxicab and Limousine Division, cmilstein@philapark.org. A public hearing will be held on Wednesday, April 18, 2012, at 10 a.m. at the PPA, TLD Headquarters. Oral and/or typed or printed comments will be accepted at the hearing. Notice for comments and a public hearing concerning the implementation of a Fuel Surcharge for Medallion and Partial Rights Cabs as well as Airport Transfer service serving Philadelphia has been conveyed to all concerned by a posting to the TLD web site, posting at the TLD Headquarters and broadcast by e-mail on April 4, 2012. In addition, an abbreviated notice was sent to each medallion cab through the meter system. It is requested that Medallion owners and Dispatch Associations pass this information to drivers.

JAMES R. NEY,
Director
Taxicab and Limousine Division

**The Philadelphia Parking Authority
Taxicab and Limousine Division**

In Re: Petition for Fuel Surcharge	RECEIVED BY: PPA TAXICAB Filed in by: TTD Petition No. _____ PPA Hack No.: H-102361 2012 MAR 28 A 11:41 P 1 2 0 3 0 7
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Clerk
Office of the Clerk
Philadelphia Parking Authority
Taxicab and Limousine Division
2415 South Swanson Street
Philadelphia, Pennsylvania 19148

OFFICE OF THE CLERK

Petition For Fuel Surcharge

I Petitioner, Taxi Workers Alliance of Pennsylvania by its President, Ronald Blount, am requesting an emergency fuel surcharge on behalf of our memberships, who all are certified PPA taxicab drivers. The Taxi Workers Alliance of Pennsylvania, (TWA-PA) was incorporated in the State of Pennsylvania in May 2005. TWA-PA is an advocacy organization seeking to improve the working conditions of low-income taxicab drivers in the city of Philadelphia.

1. We request an emergency fuel surcharge of \$1.00 per trip when the price of regular unleaded gasoline reach the price of \$3.50 per gallon and \$1.50 per trip to and from Philadelphia International Airport, when the price of regular unleaded gasoline reaches \$3.50 per gallon.
2. We request an emergency fuel surcharge of \$1.50 per trip when the price of regular unleaded gasoline reach the price of \$4.00 per gallon and \$2.00 per trip to and from Philadelphia International Airport, when the price of regular unleaded gasoline reaches \$4.00 per gallon. Every \$0.50 increment increase of regular unleaded gasoline afterwards will result in a \$0.50 increase in the fuel surcharge for both the regular fare and airport flat rate.
3. The ability of taxicab drivers to earn a living is being jeopardized. According to AAA, the price of regular unleaded gasoline in the Philadelphia region was \$3.57 a year ago, \$3.67 a month ago, and \$3.87 as of today. The price of fuel is expected to rise until late August of this year. Act 94 of 2004 has set provisions for this emergency:

§ 5703 of the Act- (f) Temporary rates.--The authority may, in any proceeding involving the rates of a taxicab or limousine service, after reasonable notice and hearing and, if the public interest requires, immediately fix, determine and prescribe temporary rates to be charged by a taxicab... (g) Fair return.--In fixing any rate of a taxicab or limousine service engaged exclusively as a common carrier by motor vehicle, the authority may fix the fair return by relating the fair and reasonable operating expenses, depreciation, taxes and other costs of furnishing service to operating revenues.

NOTICES

Furthermore, under the Authority regulations, § 1003.11, drivers can petition the PPA for relief in times of unexpected expenses. If granted, drivers will be able to maintain their present earnings and continue to operate without the fear of fuel eating away at their profits.


4. If approved, the emergency fuel surcharge will not cause any public harm. The taxi industry will operate as normal, as most people are fully aware that fuel prices are rising. People understand that high fuel prices are out of drivers' control and that drivers are usually at the bottom rung of the economic ladder. Philadelphians are aware that any fuel surcharge is only temporary and will recede when fuel prices decrease. The Authority as well as VTS should not incur any extra expenses in implementing the fuel surcharge.

Respectfully submitted;



VERIFICATION

I, **Ronald Blount**, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

Date: 3/28/12 'Signature:' 

Ronald Blount- President
 Taxi Workers Alliance of Pennsylvania
 4233 Chestnut Street
 Philadelphia, Pa. 19104
 (215) 279-0472
Blount86@aol.com
www.twaape.org

Philadelphia (PA only)	Regular	Mid	Premium
Current	\$3.865	\$3.986	\$4.111
	\$3.857	\$3.978	\$4.100
Week Ago	\$3.820	\$3.941	\$4.062
Month Ago	\$3.749	\$3.867	\$3.985
Year Ago	\$3.564	\$3.674	\$3.791

Highest Recorded Average Price:			
Regular Uni.	\$4.155	6/20/2008	
Dsl.	\$5.024	6/16/2008	


CERTIFICATE OF SERVICE

I, Ronald Blount, hereby certify that I have this day served a true copy of the foregoing document upon the parties listed below, in accordance with the requirements of § 1001.52 (relating to service by a party).

James R. Ney *via hand-delivery*
Director
The Philadelphia Parking Authority
Taxicab and Limousine Division
2415 South Swanson Street
Philadelphia, PA 19148

Dennis G. Weldon, Jr. *via hand-delivery*
General Counsel
The Philadelphia Parking Authority
3101 Market Street, 2nd Floor
West Wing
Philadelphia, PA 19104

Date: March 28, 2012


Ronald Blount

The Philadelphia Parking Authority
Taxicab and Limousine Division

In Re: Petition for Fuel Surcharge	Petition No. <u>TAXICAB & LIMOUSINE DIV.</u>	RECEIVED BY: PPA FILED INTO THE DIV. 2012 MAR 28 A 11:41
	PPA Hack No.: <u>H-102361</u>	

P120307

Clerk
Office of the Clerk
Philadelphia Parking Authority
Taxicab and Limousine Division
2415 South Swanson Street
Philadelphia, Pennsylvania 19148

OFFICE OF THE CLERK

Petition For Fuel Surcharge

I Petitioner, Taxi Workers Alliance of Pennsylvania by its President, Ronald Blount, am requesting an emergency fuel surcharge on behalf of our memberships, who all are certified PPA taxicab drivers. The Taxi Workers Alliance of Pennsylvania, (TWA-PA) was incorporated in the State of Pennsylvania in May 2005. TWA-PA is an advocacy organization seeking to improve the working conditions of low-income taxicab drivers in the city of Philadelphia.

1. We request an emergency fuel surcharge of \$1.00 per trip when the price of regular unleaded gasoline reach the price of \$3.50 per gallon and \$1.50 per trip to and from Philadelphia International Airport, when the price of regular unleaded gasoline reaches \$3.50 per gallon.
2. We request an emergency fuel surcharge of \$1.50 per trip when the price of regular unleaded gasoline reach the price of \$4.00 per gallon and \$2.00 per trip to and from Philadelphia International Airport, when the price of regular unleaded gasoline reaches \$4.00 per gallon. Every \$0.50 increment increase of regular unleaded gasoline afterwards will result in a \$0.50 increase in the fuel surcharge for both the regular fare and airport flat rate.
3. The ability of taxicab drivers to earn a living is being jeopardized. According to AAA, the price of regular unleaded gasoline in the Philadelphia region was \$3.67 a year ago, until late

UNITED STATES POSTAL SERVICE **POSTAL MONEY ORDER**

Serial Number: 19968627712 Year, Month, Day: 2012-03-28 Post Office: 191043 U.S. Dollars and Cents: \$200.00

Amount: TWO HUNDRED DOLLARS & 00/100

Pay to: Philadelphia Parking Authority - TLD Clerk: 25

Address: 2415 S. Swanson Street Philadelphia, Pa. 19148 From: Taxi Workers Alliance of Pa. 0025

Address: 4233 Chestnut Street Phila. Pa. 19104

Media: Payment for fuel surcharge Petitioner Filing

SEE REVERSE WARNING - NEGOTIABLE ONLY IN THE U.S. AND POSSESSIONS

⑆000008002⑆ 19968627712⑈

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Fuel Surcharge for Passenger Motor Carriers
http://www.puc.state.pa.us/transport/motor/fuel_surcharge.aspx
 Accessed April 3, 2012

April 2012 Average Price of Gasoline = \$3.83

Taxi Fuel Surcharge = \$1.15

Airport Transfer & Paratransit Fuel Surcharge = \$2.55

March 2012 Average Price of Gasoline = \$3.69

Taxi Fuel Surcharge = \$1.05

Airport Transfer & Paratransit Fuel Surcharge = \$2.35

Docket No. S.P. 28209

Taxi companies, providers of paratransit transportation, and motor carriers providing transportation to and from airports, are permitted to add the fuel cost recovery charge to the cost of the trip in order to recover the unanticipated high price of gasoline.

Fuel Surcharge Determination

The amount of the fuel surcharge is determined by locating the average price of gasoline (posted at the top of this page) in the chart displayed below, and then select the corresponding fuel surcharge in the column for the respective type of transportation. The average price of fuel is posted on the third Friday of each month, with the effective date of the surcharge being the first day of the subsequent month.

For example, if the posted average price of gasoline is \$3.85, the ninth line of the chart contains the price range for the \$3.85 cost. The corresponding surcharge for taxicabs is \$1.15, while the corresponding surcharge for paratransit and airport transfer transportation is \$2.55. Those surcharges would be effective on the first day of the next month.

<i>FUEL (\$ per Gallon)</i>	<i>Taxicabs*</i>	<i>Paratransit & Airport Transfers**</i>
\$1.40—\$1.49	\$.05	\$.05
\$1.50—\$1.59	\$.05	\$.15
\$1.60—\$1.69	\$.10	\$.25
\$1.70—\$1.79	\$.15	\$.35
\$1.80—\$1.89	\$.20	\$.45
\$1.90—\$1.99	\$.20	\$.55
\$2.00—\$2.09	\$.25	\$.70
\$2.10—\$2.19	\$.30	\$.80
\$2.20—\$2.29	\$.35	\$.90
\$2.30—\$2.39	\$.40	\$1.00
\$2.40—\$2.49	\$.45	\$1.10
\$2.50—\$2.59	\$.50	\$1.20
\$2.60—\$2.69	\$.55	\$1.30
\$2.70—\$2.79	\$.60	\$1.40
\$2.80—\$2.89	\$.65	\$1.50
\$2.90—\$2.99	\$.70	\$1.60
\$3.00—\$3.09	\$.75	\$1.70
\$3.10—\$3.19	\$.80	\$1.80
\$3.20—\$3.29	\$.85	\$1.95
\$3.30—\$3.39	\$.90	\$2.05
\$3.40—\$3.49	\$.95	\$2.15
\$3.50—\$3.59	\$1.00	\$2.25
\$3.60—\$3.69	\$1.05	\$2.35
\$3.70—\$3.79	\$1.10	\$2.45
\$3.80—\$3.89	\$1.15	\$2.55
\$3.90—\$3.99	\$1.20	\$2.65
\$4.00—\$4.09	\$1.25	\$2.75
\$4.10—\$4.19	\$1.30	\$2.85
\$4.20—\$4.29	\$1.35	\$2.95

<i>FUEL (\$ per Gallon)</i>	<i>Taxicabs*</i>	<i>Paratransit & Airport Transfers**</i>
\$4.30—\$4.39	\$1.40	\$3.05
\$4.40—\$4.49	\$1.45	\$3.15
\$4.50—\$4.59	\$1.50	\$3.25
\$4.60—\$4.69	\$1.55	\$3.35
\$4.70—\$4.79	\$1.60	\$3.45
\$4.80—\$4.89	\$1.65	\$3.55
\$4.90—\$4.99	\$1.70	\$3.65
\$5.00—\$5.09	\$1.75	\$3.75
\$5.10—\$5.19	\$1.80	\$3.85
\$5.20—\$5.29	\$1.85	\$3.95
\$5.30—\$5.39	\$1.90	\$4.05
\$5.40—\$5.49	\$1.95	\$4.15
\$5.50—\$5.59	\$2.00	\$4.25
\$5.60—\$5.69	\$2.05	\$4.35
\$5.70—\$5.79	\$2.10	\$4.45
\$5.80—\$5.89	\$2.15	\$4.55
\$5.90—\$5.99	\$2.20	\$4.65
\$6.00—\$6.09	\$2.25	\$4.75
\$6.10—\$6.19	\$2.30	\$4.85
\$6.20—\$6.29	\$2.35	\$4.95
\$6.30—\$6.39	\$2.40	\$5.05
\$6.40—\$6.49	\$2.45	\$5.15
\$6.50—\$6.59	\$2.50	\$5.25
\$6.60—\$6.69	\$2.55	\$5.35
\$6.70—\$6.79	\$2.60	\$5.45
\$6.80—\$6.89	\$2.65	\$5.55
\$6.90—\$6.99	\$2.70	\$5.65
\$7.00—\$7.09	\$2.75	\$5.75

* The amount is per trip.

** The amount is per paying passenger per trip.

How the Amounts for the Fuel Surcharge are Determined

The basis for the fuel surcharge is the premise that the cost of gasoline rose dramatically following the year 2003, when the average price for a gallon of unleaded regular gasoline was \$1.35. The fuel surcharge compensates carriers for the difference in the current cost of gasoline for an average trip and the cost of gasoline for an average trip in 2003.

In its order of June 1, 2006, creating the Fuel Cost Recovery Surcharge, the Commission established that the following constants would be utilized in the formulas for determining the amounts for the surcharge:

- The base price to be used is \$1.35 per gallon of unleaded regular gasoline.
- The average distance of a trip for taxicabs is 6.8 miles.
- The average distance of a trip for paratransit and airport transfer carriers is 13.61 miles.
- The average gasoline mileage for taxicabs is 15.04 miles per gallon.
- The average gasoline mileage for paratransit and airport transfer carriers is 13.01 miles per gallon.

In determining the cost of gasoline per trip the following formulas are used:

• Taxicab cost/trip = [(gas price) X (6.8 miles per trip)] ÷ (15.04 miles per gallon)

- Paratransit/Airport Transfer = [(gas price) X (13.61 miles/trip)] ÷ (13.01 miles/gallon)

The amounts in the chart are calculated determining the cost per trip for the costs of gasoline in the chart and subtracting the cost per trip at \$1.35 per gallon. The difference was then rounded to the nearest nickel or dime.

Carrier Notification of Fuel Surcharge

Carriers shall notify the public by placing a notice in all vehicles, which shall read:

The PA Public Utility Commission has authorized a fuel surcharge under Special Permission No. 28209. The surcharge has been extended and shall terminate on June 30, 2012. The current surcharge is (insert current charge here) per trip for each paying passenger.

History of Fuel Surcharge

On June 10, 2004 the Commission approved a temporary fuel surcharge of 30 cents per trip for each paying passenger for taxis. Paratransit and airport transfer carriers were allowed 70 cents per trip for each paying passenger. The temporary fuel surcharge was to last for one year.

At a public meeting on June 2, 2005, the PUC extended the temporary fuel surcharge for another year. The extension was granted in response to the Commission's receipt of verbal and written requests from passenger motor carriers. Throughout the first year of the fuel surcharge the price of gasoline fluctuated, but the average price of gasoline for that period was \$2.

Due to the unanticipated increase in gasoline prices, the PUC approved an emergency order on Sept. 2, 2005, to raise the fuel surcharge to 70 cents for taxis and \$1.55 for paratransit and airport transfer carriers.

The fuel surcharge was then determined on a monthly basis until 2006, when the review became quarterly. At the June 1, 2006 public meeting, the PUC determined that on the third Friday of each month, the Commission will post the average cost of unleaded regular gasoline, which will determine the surcharge. The Commission extended the surcharge at five public meetings: June 21, 2007, June 24, 2008, June 18, 2009, June 16, 2010 and then again on June 9, 2011.

The fuel surcharge is scheduled to terminate June 30, 2012.

[Pa.B. Doc. No. 12-715. Filed for public inspection April 13, 2012, 9:00 a.m.]

PHILADELPHIA REGIONAL PORT AUTHORITY

Request for Bids

The Philadelphia Regional Port Authority (PRPA) will accept sealed bids for Project No. 12-028.4, On Call Electrical Investigation & Repairs, until 2 p.m. on Thursday, May 14, 2012. Information (including mandatory prebid info) concerning this project can be obtained from the PRPA web site www.philaport.com under Procure-

ment, or call the Engineering Department at (215) 426-2600.

JAMES T. MCDERMOTT, Jr.,
Executive Director

[Pa.B. Doc. No. 12-716. Filed for public inspection April 13, 2012, 9:00 a.m.]

STATE BOARD OF NURSING

Bureau of Professional and Occupational Affairs v. Charlotte McNamee Camerlengo, RN; Doc. No. 1852-51-2011

On January 13, 2012, Charlotte McNamee Camerlengo, license no. RN322489L, of Levittown, Bucks County, was suspended for no less than 3 years retroactive to October 20, 2011, based on her failure to comply with terms of a previously issued State Board of Nursing order.

Individuals may obtain a copy of the order by writing to Beth Sender Michlovitz, Board Counsel, State Board of Nursing, P. O. Box 2649, Harrisburg, PA 17105-2649.

JOSEPH J. NAPOLITANO, PHD, MPH, CRNP,
Chairperson

[Pa.B. Doc. No. 12-717. Filed for public inspection April 13, 2012, 9:00 a.m.]

Bureau of Professional and Occupational Affairs v. Veronica Burke Cohen, RN, LPN; Doc. No. 2137- 51-2011

On January 24, 2012, Veronica Burke Cohen, license no. PN094410L, of Drexel Hill, Delaware County, was suspended for no less than 3 years retroactive to December 2, 2011, based on her failure to comply with terms of a previously issued State Board of Nursing order.

Individuals may obtain a copy of the order by writing to Beth Sender Michlovitz, Board Counsel, State Board of Nursing, P. O. Box 2649, Harrisburg, PA 17105-2649.

JOSEPH J. NAPOLITANO, PHD, MPH, CRNP,
Chairperson

[Pa.B. Doc. No. 12-718. Filed for public inspection April 13, 2012, 9:00 a.m.]

Bureau of Professional and Occupational Affairs v. Penny Novak Goyette, LPN; Doc. No. 0958-51- 2008

On January 31, 2012, Penny Novak Goyette, Pennsylvania license no. PN152318L, of Johnson City, NY, was indefinitely suspended based on disciplinary action taken against her license by the proper licensing authority in another state.

Individuals may obtain a copy of the order by writing to Beth Sender Michlovitz, Board Counsel, State Board of Nursing, P. O. Box 2649, Harrisburg, PA 17105-2649.

JOSEPH J. NAPOLITANO, PHD, MPH, CRNP,
Chairperson

[Pa.B. Doc. No. 12-719. Filed for public inspection April 13, 2012, 9:00 a.m.]

**Bureau of Professional and Occupational Affairs v.
Miranda Harris, RN, LPN; Doc. No. 1775-51-2010**

On February 6, 2012, Miranda Harris, license no. PN265539, of Philadelphia, Philadelphia County, was suspended for no less than 3 years retroactive to September 14, 2010, based on her failure to comply with terms of a previously issued State Board of Nursing order.

Individuals may obtain a copy of the order by writing to Beth Sender Michlovitz, Board Counsel, State Board of Nursing, P. O. Box 2649, Harrisburg, PA 17105-2649.

JOSEPH J. NAPOLITANO, PHD, MPH, CRNP,
Chairperson

[Pa.B. Doc. No. 12-720. Filed for public inspection April 13, 2012, 9:00 a.m.]

STATE BOARD OF VEHICLE MANUFACTURERS, DEALERS AND SALESPERSONS

**Application for Vehicle Salesperson of Scott
Streeter**

On January 11, 2012, Scott Streeter, license no. MV229794, of Broomall, Delaware County, was granted a probationary license as a vehicle salesperson to run concurrent with his criminal probation based on his convictions involving crimes of moral turpitude.

Individuals may obtain a copy of the adjudication by writing to C. William Fritz, II, Board Counsel, State Board of Vehicle Manufacturers, Dealers and Salespersons, P. O. Box 2649, Harrisburg, PA 17105-2649.

KENNETH GLOTFELTY,
Chairperson

[Pa.B. Doc. No. 12-721. Filed for public inspection April 13, 2012, 9:00 a.m.]

STATE TAX EQUALIZATION BOARD

Objections/Appeal of the School District of Philadelphia and the City of Philadelphia to the Certified 2010 Common Level Ratio for Philadelphia County

Memorandum and Order

Acting pursuant to section 16.1 of the State Tax Equalization Board Act (Act), 72 P. S. § 4656.16a, the State Tax Equalization Board (STEB) on August 6, 2011, published in the *Pennsylvania Bulletin* the certified Common Level Ratios for 2010. See 41 Pa.B. 4280. The certified Common Level Ratio (CLR) established for Philadelphia County was 18.1%. *Id.*

By letter dated September 30, 2011, the School District of Philadelphia and the City of Philadelphia (collectively,

Philadelphia) timely filed with STEB Objections/Appeal to STEB's published 2010 CLR. Philadelphia's objections/appeal were lodged pursuant to section 16.1(c) of the Act. 72 P. S. § 4656.16a(c) ("Any political subdivision or taxpayer aggrieved by any finding, conclusion or any method or technique of [STEB] made pursuant to this section may, in writing, state objections thereto..."). In its objections/appeal, Philadelphia asked STEB for the opportunity to revise its CLR based on the ongoing efforts of Philadelphia's newly formed Office of Property Assessment (OPA) to refine its data gathering, coding and analysis so that OPA might then be able to submit to STEB revised 2010 information that would "present a more complete and accurate picture of real property values" in Philadelphia.

After extensive work with STEB staff, OPA on December 28, 2011, submitted to STEB a second data set file containing 9,492 sales that OPA determined to be valid sales for the purpose of calculating CLR. Based on this second data set, STEB staff estimated that the revised CLR would be 25.5%. STEB staff also determined that this second data set appears to comply with STEB requirements and that a new CLR for Philadelphia should be set based on this submission.

However, on January 13, 2012, Philadelphia asked STEB to consider a third data set. As part of its submission of the third data set, OPA explained that it had adjusted its certified market values so as to correct for the skewing effect that it says Philadelphia Code § 19-1308 has on actual market values. This adjustment is necessary, OPA explained, because STEB's methodology for calculating a county's CLR assumes that the county has reported to STEB its actual market values. Because Philadelphia Code § 19-1308 artificially mandates assessed values that do not reflect actual market values as required by STEB, OPA asserts that an adjustment is necessary so that actual market values can be reported. Only with the adjustments made in its January 13, 2012, submission would Philadelphia be able to report to STEB actual market values—as all other counties in the Commonwealth report to STEB and the STEB expects counties to report as part of STEB's uniform data collection and CLR calculation methodology.

In addition, Philadelphia in its January 13, 2012, submission asked STEB to adjust its uniform methodology for the calculation of CLRs to "reflect legitimate, arms-length sales even though they do not fall within the parameters of STEB's automated formula for the calculation of CLRs."

In accordance with the Act, STEB conducted a hearing on March 23, 2012, at which Philadelphia made a presentation in support of its third data set submission and asked STEB to revise its CLR based on this submission. In the alternative, Philadelphia asked STEB to accept its second data set and to revise the CLR based on this second data set.

After careful consideration of Philadelphia's submissions and arguments, the Board concludes that the third data set submitted by Philadelphia on or about January 13, 2012, is not valid under the Act. In setting the CLR, STEB may consider only the "assessed valuations" that are set "for county tax purposes." See 72 P. S. §§ 4656.7(2), 4656.9(a). The submissions made by OPA in its third data set do not comport with the requirements of the Act and, therefore, cannot be accepted.

In addition, STEB cannot properly adjust the formula that it uniformly applies for the calculation of the CLR in

all 67 counties. The formula that STEB uniformly employs is based on statistically acceptable techniques, as required by the Act. See 72 P. S. § 4656.16a(b). Consequently, the established uniform formula must be used to calculate Philadelphia's CLR.

Order

For the reasons set forth in the Memorandum, it is hereby *Ordered* that the objections made by the School district of Philadelphia and the City of Philadelphia to the 2010 Common Level Ratio of 18.1% established by the State Tax Equalization Board and published in the *Pennsylvania Bulletin* on August 6, 2011, are *Sustained* in part and *Overruled* in part.

The objections are *Sustained* based on the revised data submitted to STEB on December 28, 2011, that STEB staff has recommended be used for the calculation of Philadelphia's CLR. Thus, the 18.1% CLR is hereby vacated.

The objections are *Overruled* to the extent that Philadelphia requests STEB to accept the third data set submitted on January 13, 2012, or to depart from STEB's established formula used for the calculation of the CLR.

Therefore, STEB staff is directed to calculate a new CLR for Philadelphia based on the second data set submitted on December 28, 2011, and accordingly to issue a new 2010 Common Level Ratio forthwith.

JAMES A. ZURICK,
Chairperson

2010 COMMON LEVEL RATIOS

**Revised 4/4/2012

<i>County</i>	<i>CLR</i>
^Adams	26.2%
*Allegheny	85.8%
Armstrong	37.8%
Beaver	32.7%
*Bedford	78.4%
*Berks	73.2%
*Blair	15.0%
Bradford	33.5%
*Bucks	11.3%
*Butler	19.1%
*Cambria	33.4%
Cameron	41.0%
Carbon	42.9%
Centre	28.1%
*Chester	56.0%
Clarion	29.6%
Clearfield	20.2%
*Clinton	98.9%
Columbia	26.4%
Crawford	37.3%
*Cumberland	79.2%
*Dauphin	73.5%
*Delaware	67.5%
Elk	42.4%
<i>County</i>	<i>CLR</i>
*Erie	84.4%
*Fayette	82.7%
Forest	26.8%
*Franklin	13.1%
*Fulton	35.1%
*Greene	83.3%
Huntingdon	13.9%
*Indiana	19.2%
*Jefferson	54.1%
*Juniata	21.1%
*Lackawanna	18.2%
*Lancaster	76.5%
*Lawrence	95.6%
*Lebanon	15.8%
Lehigh	35.7%
*Luzerne	100.4%
*Lycoming	82.9%
*McKean	86.4%
*Mercer	34.6%
Mifflin	52.3%
Monroe	16.8%
*Montgomery	58.0%
*Montour	81.4%
Northampton	33.6%
*Northumberland	27.6%
*Perry	74.0%
**Philadelphia	25.2%
Pike	21.4%
*Potter	31.2%
Schuylkill	47.3%
*Snyder	18.0%
Somerset	39.9%
*Sullivan	69.6%
Susquehanna	35.4%
*Tioga	73.8%
*Union	77.8%
*Venango	90.4%
Warren	34.6%
Washington	21.3%
*Wayne	80.0%
*Westmoreland	23.8%
Wyoming	19.7%
*York	83.7%
^ partial sales data for the year	
*Counties with a predetermined assessment ratio of 100%	

[Pa.B. Doc. No. 12-722. Filed for public inspection April 13, 2012, 9:00 a.m.]

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Consumptive Uses of Water

The Susquehanna River Basin Commission (Commission) has approved by rule the following list of projects during February 1, 2012, through February 29, 2012.

For further information contact Richard A. Cairo, General Counsel, (717) 238-0423, Ext. 306, fax (717) 238-2436, rcairo@srbcc.net; or regular mail inquiries may be sent to the Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, PA 17102-2391.

Supplementary Information

This notice lists the projects, described as follows, receiving approval for the consumptive use of water under the Commission's approval by rule process set forth in 18 CFR 806.22(f) (relating to standards for consumptive uses of water) for the time period specified previously:

Approvals By Rule Issued Under 18 CFR 806.22(f):

1. EXCO Resources (PA), LLC, Pad ID: Warner North Unit Pad, ABR-201202001, Penn Township, Lycoming County, PA; Consumptive Use of Up to 8.000 mgd; Approval Date: February 6, 2012.

2. SWEPI, LP, Pad ID: Smith 260, ABR-201202002, Jackson Township, Tioga County, PA; Consumptive Use of Up to 4.000 mgd; Approval Date: February 6, 2012.

3. EXCO Resources (PA), LLC, Pad ID: Spotts Unit Drilling Pad 3H, 4H, 5H, 7H, 8H, 9H, ABR-201202003, Mifflin Township, Lycoming County, PA; Consumptive Use of Up to 8.000 mgd; Approval Date: February 6, 2012.

4. Chief Oil & Gas, LLC, Pad ID: Wright A Drilling Pad No. 1, ABR-201202004, Canton Township, Bradford County, PA; Consumptive Use of Up to 2.000 mgd; Approval Date: February 6, 2012.

5. Southwestern Energy Production Company, Pad ID: ASNIP-ABODE, ABR-201202005, Orwell Township, Bradford County, PA; Consumptive Use of Up to 4.999 mgd; Approval Date: February 8, 2012.

6. Chesapeake Appalachia, LLC, Pad ID: Schlapfer, ABR-201202006, Albany Township, Bradford County, PA; Consumptive Use of Up to 7.500 mgd; Approval Date: February 13, 2012.

7. Chesapeake Appalachia, LLC, Pad ID: Ferraro, ABR-201202007, Terry Township, Bradford County, PA; Consumptive Use of Up to 7.500 mgd; Approval Date: February 13, 2012.

8. Chesapeake Appalachia, LLC, Pad ID: Makayla, ABR-201202008, Wilmot Township, Bradford County, PA; Consumptive Use of Up to 7.500 mgd; Approval Date: February 13, 2012.

9. EXCO Resources (PA), LLC, Pad ID: Dale Bower East Unit Pad, ABR-201202009, Penn Township, Lycoming County, PA; Consumptive Use of Up to 8.000 mgd; Approval Date: February 13, 2012.

10. EXCO Resources (PA), LLC, Pad ID: Painters Den Pad 1, ABR-201202010, Davidson Township, Sullivan County, PA; Consumptive Use of Up to 8.000 mgd; Approval Date: February 13, 2012.

11. WPX Energy Appalachia, LLC, Pad ID: MacGeorge Well Pad, ABR-201202011, Silver Lake Township, Susquehanna County, PA; Consumptive Use of Up to 4.000 mgd; Approval Date: February 13, 2012.

12. Chief Oil & Gas, LLC, Pad ID: Castle A Drilling Pad No. 1, ABR-201202012, Canton Township, Bradford County, PA; Consumptive Use of Up to 2.000 mgd; Approval Date: February 13, 2012.

13. Chief Oil & Gas, LLC, Pad ID: Crandall Drilling Pad No. 1, ABR-201202013, Ridgebury Township, Bradford County, PA; Consumptive Use of Up to 2.000 mgd; Approval Date: February 13, 2012.

14. Chief Oil & Gas, LLC, Pad ID: L & L Construction A Drilling Pad No. 1, ABR-201202014, Wilmot Township, Bradford County, PA; Consumptive Use of Up to 2.000 mgd; Approval Date: February 13, 2012.

15. Southwestern Energy Production Company, Pad ID: FIELDS PAD 1, ABR-201202015, Herrick Township, Bradford County, PA; Consumptive Use of Up to 4.999 mgd; Approval Date: February 28, 2012.

16. Southwestern Energy Production Company, Pad ID: PEASE, ABR-201202016, Jackson Township, Susquehanna County, PA; Consumptive Use of Up to 4.999 mgd; Approval Date: February 28, 2012.

17. Range Resources—Appalachia, LLC, Pad ID: Bobst Mtn Hunting Club 30H-33H, ABR-201202017, Cogan House Township, Lycoming County, PA; Consumptive Use of Up to 5.000 mgd; Approval Date: February 17, 2012.

18. Range Resources—Appalachia, LLC, Pad ID: Bobst Mtn Hunting Club 24H-29H, ABR-201202018, Cogan House Township, Lycoming County, PA; Consumptive Use of Up to 5.000 mgd; Approval Date: February 17, 2012.

19. Chesapeake Appalachia, LLC, Pad ID: Moyer, ABR-201202019, Overton Township, Bradford County, PA; Consumptive Use of Up to 7.500 mgd; Approval Date: February 17, 2012.

20. Chesapeake Appalachia, LLC, Pad ID: Yadpad, ABR-201202020, Wilmot Township, Bradford County, PA; Consumptive Use of Up to 7.500 mgd; Approval Date: February 17, 2012.

21. Chesapeake Appalachia, LLC, Pad ID: Maple Ln Farms, ABR-201202021, Athens Township, Bradford County, PA; Consumptive Use of Up to 7.500 mgd; Approval Date: February 21, 2012.

22. Chesapeake Appalachia, LLC, Pad ID: CPD, ABR-201202022, Athens Township, Bradford County, PA; Consumptive Use of Up to 7.500 mgd; Approval Date: February 21, 2012.

23. Chesapeake Appalachia, LLC, Pad ID: Bumpville, ABR-201202023, Litchfield Township, Bradford County, PA; Consumptive Use of Up to 7.500 mgd; Approval Date: February 21, 2012.

24. XTO Energy Incorporated, Pad ID: Everbe Farms Unit B, ABR-201202024, Franklin Township, Lycoming County, PA; Consumptive Use of Up to 4.000 mgd; Approval Date: February 21, 2012.

25. EXCO Resources (PA), LLC, Pad ID: Dunwoody Pad, ABR-201202025, Plunketts Creek Township, Lycoming County, PA; Consumptive Use of Up to 8.000 mgd; Approval Date: February 24, 2012.

26. WPX Energy Appalachia, LLC, Pad ID: Conaty Well Pad, ABR-201202026, Silver Lake Township, Susquehanna County, PA; Consumptive Use of Up to 4.000 mgd; Approval Date: February 24, 2012.

27. EXCO Resources (PA), LLC, Pad ID: Snyder Unit No. 1, ABR-20090430.1, Franklin Township, Lycoming County, PA; Consumptive Use of Up to 8.000 mgd; Approval Date: February 27, 2012.

28. Chief Oil & Gas, LLC, Pad ID: Muzzy Drilling Pad No. 1, ABR-201202027, Ulster Township, Bradford County, PA; Consumptive Use of Up to 2.000 mgd; Approval Date: February 27, 2012.

29. Southwestern Energy Production Company, Pad ID: WATTS, ABR-201202028, New Milford Township, Susquehanna County, PA; Consumptive Use of Up to 4.999 mgd; Approval Date: February 28, 2012.

30. WPX Energy Appalachia, LLC, Pad ID: Wilkes Well Pad, ABR-201202029, Silver Lake Township, Susquehanna County, PA; Consumptive Use of Up to 4.000 mgd; Approval Date: February 29, 2012.

31. SWEPI, LP, Pad ID: Kreitzer 505, ABR-201202030, Rutland Township, Tioga County, PA; Consumptive Use of Up to 4.000 mgd; Approval Date: February 29, 2012.

Authority: Pub. L. No. 91-575, 84 Stat. 1509 et seq., 18 CFR Parts 806—808.

Dated: March 29, 2012.

PAUL O. SWARTZ,
Executive Director

[Pa.B. Doc. No. 12-723. Filed for public inspection April 13, 2012, 9:00 a.m.]

THADDEUS STEVENS COLLEGE OF TECHNOLOGY

Request for Bids

Thaddeus Stevens College of Technology is soliciting bids for Project 11-0011 for lumber, doors and windows to complete a single family three-story residence. Bid documents can be obtained from Nancy Froeschle, Thaddeus Stevens College of Technology, 750 East King Street, Lancaster, PA 17602, (717) 299-7787, froeschle@stevenscollege.edu.

DR. WILLIAM E. GRISCOM,
President

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RULES AND REGULATIONS

Title 52—PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 62]

[L-2008-2069114]

Natural Gas Distribution Companies and the Promotion of Competitive Retail Markets

The Pennsylvania Public Utility Commission (Commission), on June 23, 2011, adopted a final rulemaking order which ensures that consumers of natural gas will be able to shop for gas that is marketed on a level playing field for all market participants.

Executive Summary

The purpose of this Revised Final Rulemaking Order is to remove barriers to retail competition in the market for natural gas supplies in the Commonwealth pursuant to the Natural Gas Choice and Competition Act (Act), 66 Pa.C.S. §§ 2201—2212. Section 2204(g) of the Act required the PUC to investigate as to whether there is “effective competition for natural gas supply” five years after passage of the Act. If the Commission found there is no effective competition, the Act required it to explore avenues for encouraging increased competition in the Commonwealth. Section 2204(a) of the Act, 66 Pa.C.S. § 2204(a), gives the Commission the authority to propose and adopt regulations to implement the principles of the Act. Having found that there was no effective competition in the Commonwealth, the Commission initiated three different rulemaking proceedings to encourage competition.

This particular rulemaking reformulates the NGDCs’ “price to compare” to better reflect all costs related to natural gas supply and procurement so that there will be a more accurate price to compare for shoppers, establishes permanent rules for NGDCs’ purchase of receivables programs and ensures that the release, assignment or transfer of capacity by an NGDC is nondiscriminatory and at the applicable contract rate. As it relates to the “price to the compare,” the rulemaking requires NGDCs to remove natural gas procurement costs from base rates, excluding those costs related to the administration of firm storage and transportation capacity, and to recover those fuel acquisition costs as part of the “price to compare” on a revenue neutral basis. Moreover, rules for programs by which NGDCs purchase the accounts receivables of natural gas suppliers are also included as are rules requiring that the release of interstate pipeline capacity held by NGDCs be nondiscriminatory and at the applicable pipeline rate.

Commissioners: Robert F. Powelson, Chairperson; John F. Coleman, Jr., Vice Chairperson; Tyrone J. Christy, partial dissenting statement follows; Wayne E. Gardner, partial dissenting statement follows; James H. Cawley

Natural Gas Distribution Companies and Promotion of Competitive Retail Markets; Doc. No. L-2008-2069114

Revised Final Rulemaking Order

By order entered February 23, 2011, the Commission issued a Final Rulemaking Order (Final Rulemaking Order) on specific issues intended to promote effective competition for natural gas supply service pursuant to Chapter 22 of the Public Utility Code (Code). In particu-

lar, the Commission reformulated the price to compare (PTC), adopted permanent rules for voluntary purchase of receivables (POR) programs, and adopted rules for the non-discriminatory release, assignment and transfer of capacity when customers chose a competitive natural gas supplier.

The Commission submitted the Final Rulemaking Order to the Independent Regulatory Review Commission (IRRC) for its review and approval. Based upon comments from IRRC Staff and also some supplemental comments submitted to the IRRC from interested parties, the Commission voluntarily withdrew the final rulemaking from IRRC’s review in order to give consideration to the various clarification issues raised by IRRC’s Staff and the supplemental comments. In order to address those clarification issues, the Commission made some revisions to Annex A and advised the parties of these revisions via a Secretarial Letter. Parties were invited to file comments to these proposed changes. This Order specifically addresses those comments, as well as the comments to the proposed rulemaking and the ANOFR.

Background

Much of the background of this instant rulemaking proceeding is set forth in the prior Proposed Rulemaking Order and ANOFR Order. Therefore, we will not go into much detail in this order. The Natural Gas Choice and Competition Act, 66 Pa.C.S. § 2201—12 (the “Competition Act”), was enacted by the Legislature in 1999 with the purpose of restructuring the natural gas industry to allow the retail sale of natural gas in an open market. In particular, the Competition Act allows individual customers to choose from independent suppliers of natural gas which are not necessarily affiliated with the local natural gas utility. Additionally, the Competition Act in section 2204(g) required the Commission to initiate a look-back appraisal of how retail competition is progressing after passage of the Act. This investigation was to include participation of all interested parties so that a thorough examination of retail competition might be completed. *Id.*

In October 2005, the Commission issued its Report to the General Assembly on Pennsylvania’s Retail Natural Gas Supply Market (Report to the General Assembly),¹ in which we determined that effective competition did not exist in Pennsylvania’s retail natural gas market. If the Commission found that “effective competition” did not exist, it was to reconvene the stakeholders in the natural gas industry to “explore avenues . . . for encouraging increased competition in this Commonwealth.” 66 Pa.C.S. § 2204(g). As the Report to the General Assembly noted:

Based on the factors we have adopted to consider whether “effective competition” exists for purposes of Section 2204(g), these findings support the ultimate conclusion that there is a lack of “effective competition” in Pennsylvania’s retail natural gas supply market at this time.

Report to the General Assembly at 67. We, therefore, convened the Natural Gas Stakeholders Group, named “SEARCH,”² to explore avenues for increasing competition.

¹ The Report to the General Assembly was released in October 2005 at Docket No. I-00040103 and may be accessed at <http://www.puc.state.pa.us/PcDocs/570097.pdf>.

² SEARCH is an acronym for “Stakeholders Exploring Avenues for Removing Competition Hurdles.”

The work and report of that stakeholders' working group is detailed in our Final Order and Action Plan³ ("SEARCH Order" or "Action Plan") issued in September 2008. We concluded that there were a number of steps which the Commission could take to help promote the development of competition in the retail markets for natural gas supply in the Commonwealth. Accordingly, we initiated this rulemaking with the goal of nurturing a robust retail market for natural gas. Action Plan at 7.

Specifically, this rulemaking addresses five issues related to the duties, rights, and obligations of NGDCs. Those areas are as follows:

- Reformulate the NGDCs' "price to compare" to better reflect all costs related to natural gas supply and procurement.
- Establish permanent rules for NGDC purchase of receivables programs.
- Ensure that the release, assignment or transfer of capacity by an NGDC is nondiscriminatory and at the applicable contract rate.
- Change the handling of costs related to NGDCs' competition activities.
- Allow NGDCs to recover the cost of their annual regulatory assessments under Section 510 of the Public Utility Code via an automatic adjustment surcharge.

The Proposed Rulemaking Order was entered on March 27, 2009, and was published on July 11, 2009, in the *Pennsylvania Bulletin* at 39 Pa.B. 3461. The order established a 45-day comment period. Comments were filed by IRRC and other interested parties.⁴

We reviewed and addressed those comments and on August 10, 2010, issued the ANOFR Order which incorporated the revisions we had made to the proposed regulations based on the first round of public comments. In the ANOFR Order, we requested interested parties to file further comments on these revisions. We received additional comments on the ANOFR Order from fifteen interested parties.⁵ We have reviewed and addressed these comments below.

Thereafter, by order entered February 23, 2011, the Commission adopted a Final Rulemaking Order in this matter based upon its review of the additional comments submitted in response to the ANOFR Order. That order constituted the final rulemaking for these key elements necessary for creating an effective market for retail natural gas competition in Pennsylvania. Subsequently,

³ Investigation into the Natural Gas Supply Market: Report on Stakeholders' Working Group (SEARCH); Action Plan for Increasing Effective Competition in Pennsylvania's Retail Natural Gas Supply Services Market, Docket No. I-00040103F0002, Final Order and Action Plan entered September 11, 2008.

⁴ The NGS Parties (Agway Energy Services, LLC, Gateway Energy Services Corporation, Interstate Gas Supply, Inc., and Vectren Retail, LLC); Equitable Gas Company (Equitable); Independent Oil and Gas Association of Pennsylvania (IOGA); Office of Consumer Advocate (OCA); Pennsylvania Utility Law Project (PULP); PECO Energy Company (PECO); Columbia Gas of Pennsylvania (Columbia); Direct Energy Services (DES); Peoples Natural Gas Company d/b/a Dominion Peoples (Dominion Peoples); Industrial Consumers Group (consisting of "Industrial Energy Consumers of Pennsylvania," the "Central Penn Gas Large Users Group," the "Columbia Industrial Intervenor," and the "PNG Industrial Intervenor"); National Energy Marketers Association; Energy Association of Pennsylvania (EAPA) (a non-profit trade association whose members include "Columbia," "Dominion Peoples," "Equitable," "National Fuel Gas Distribution Company" (NFG), "PECO," "Philadelphia Gas Works," and "UGI Utilities, Inc."); NFG; Office of Small Business Advocate (OSBA); Office of Trial Staff (OTS); T.W. Phillips, UGI Gas Company (UGI); Shipley Energy, Interstate Gas and Dominion Retail (hereinafter referred to as "Joint Commenters"), the Retail Energy Supply Association (RESA) (a non-profit trade association whose members include Commerce Energy, Inc., Consolidated Edison Solutions, Inc., Direct Energy Services, LLC, Exelon Energy Company, Gexa Energy, Green Mountain Energy Company, Hess Corporation, Integrys Energy Services, Inc., Liberty Power Corporation, RRI Energy, Sempra Energy Solutions LLC, SUEZ Energy Resources NA, Inc., and UGI Energy Savings Corporation); and Philadelphia Gas Works (PGW).

⁵ EAPAA, Equitable, National Energy Marketers Association, NFG, OCA, OSBA, Pennsylvania Energy Marketers Coalition, IOGA, Shipley, Valley Energy, Inc., Columbia, PECO, Peoples, PGW, and UGI.

the Commission submitted the Final Rulemaking Order to the Independent Regulatory Review Commission (IRRC) for its review and approval. Nevertheless, IRRC Staff requested that the Commission clarify various aspects of the proposed final regulations. Based upon IRRC Staff's comments and further supplemental comments submitted to the IRRC by interested parties, such as the EAPA and the OCA, the Commission voluntarily withdrew the rulemaking from IRRC's consideration in order to address the various clarification issues raised by IRRC and the additional comments.

In light of the latest comments to the Final Rulemaking Order, the Commission, via a Secretarial Letter dated June 9, 2011, proposed several revisions to Annex A. Parties were invited to file comments to the proposed revisions by June 16, 2011. The Commission has reviewed those comments⁶ and now intends to approve the version of the final form regulation set forth in Annex A.

Summary of Changes

Based on the comments to the Proposed Rulemaking Order and the further comments requested by the ANOFR Order, the Commission has made some further refinements to the proposed final regulations. In this Revised Final Rulemaking Order (RFRO), the substantive revisions made to Annex A may be summarized as follows:

- Revised Sections 62.221—62.225 to include, inter alia, the development of a price to compare (PTC) that will appear on the NGDC's bill so that consumers can make an informed choice of whether the price offered by the competitive NGS is more or less than the default service rate charged by the incumbent NGDC.
- Clarified the section of the regulation setting forth permanent rules for POR programs which are critical to the ability of NGS firms to enter the market.
- Revised the section of the regulation concerning capacity release to ensure that the capacity released to serve shopping customers is non-discriminatory both as to availability and price.
- Eliminated several of the adjustment clauses previously proposed in the regulations.

In addition, the clarification revisions made to Annex A in response to IRRC's clarification comments and the supplemental comments to the Final Rulemaking Order include the following:

- Include a definition of "base rate" in Section 62.222 and make consistent reference to "distribution" rates in the regulation.
- Make consistent reference to "gas costs" in the MFC definition, Section 62.222, and elsewhere, versus using other similar terms.
- Correct definition of SOLR in Section 62.222 to be consistent with the definition at Section 62.101.
- Rephrase Section 62.223(b)(1) to clarify what procurement-related costs are to be considered, and that costs related to transportation and storage are not included.
- Add phrase to end of 62.223(e) to specify that there will be no reconciliation for "any prior period over/under collections."
- Delete word "only" in Section 62.224(a)(7).

⁶ Comments were filed pursuant to the June 9, 2011 Secretarial Letter by the EAPA, the OCA, Valley Energy, Inc., PECO, the OSBA, Columbia, NFG, Pennsylvania Energy Marketers Coalition and the NGS Parties.

- Used existing definitions where available, rather than to create new ones.

In sum, the Commission believes that these regulations, as revised, will foster the development of competition in the retail markets for natural gas supply in the Commonwealth in accordance with Chapter 22.

Discussion

As a general commentary, IRRC's initial comments suggested that the proposed regulations may be overly complex and difficult for retail natural gas consumers to comprehend and, as such, may ultimately discourage them from participating in competition. IRRC Comments p. 1. In addition, the IRRC comments advise that, in crafting our final regulations, we should avoid single issue ratemaking and make sure that the regulations protect against cross-subsidization between shopping and non-shopping customers and among customer classes. IRRC Comments, p. 2. Lastly, IRRC sought clarification to some aspects of the proposed final regulations.

In considering all of the comments filed in response to the Proposed Rulemaking Order the ANOFR Order, and the Final Rulemaking Order, including IRRC's, we believe that we have improved our approach to meeting the statutory goals set forth in the Competition Act of fostering competition in the natural gas market in Pennsylvania. As more fully discussed below, we have simplified the manner in which the "price to compare" is computed and have revised its components in order to reduce complexity for NGDCs and their customers. Additionally, we have ensured that the regulations avoid single issue ratemaking and protect against cross-subsidization. We believe these revisions to the proposed regulations adequately address IRRC's concerns.

For purposes of this Revised Final Rulemaking Order, we will focus on IRRC's comments to each iteration of the proposed rulemaking and the additional comments that were requested in the ANOFR Order. We will proceed section by section.

62.221. Purpose.

Proposed Rulemaking Order Comments

IRRC stated that the definition of retail gas customer as set forth in Section 2202 of the Act, 66 Pa.C.S. § 2202, is "a direct purchaser of natural gas supply services or natural gas distribution services, other than a natural gas supplier . . ." IRRC noted that this definition is not limited to any customer class. IRRC further noted, however, that this section of the proposed regulation limits its purpose to fostering competitive service to "residential and small commercial customers." IRRC stated that the Commission should explain why this section and the regulation is limited to "residential and small commercial customers" only, and how this proposed regulation does not affect all service provided to "retail gas customers" as defined in the Act. IRRC Comments at 3.

In its comments, NFG made a similar observation regarding the phrase "residential and small commercial customers." NFG stated this phrase is confusing and it is unclear why the purpose should be limited to only these customers when all NGDC customers will be impacted by the regulation. NFG Initial Comments at 3. EAPA stated that the phrase should be eliminated so that the purpose of the regulation reflects legislative intent. EAPA Initial Comments at 2-3. EAPA suggested using the phrase "retail and transportation gas customers." Id. PGW stated that the wording of this section should just be revised to read "retail natural gas service customers" from "natural

gas service to residential and small commercial customers." PGW Initial Comments at 3.

Additionally, IRRC stated that this section uses the term "small commercial customer." IRRC noted, however, that the term defined in Section 62.222 is "small business customer." IRRC Comments at 3. IRRC stated that this section should use the defined term. Id. The OSBA also made this observation concerning the term small commercial customer. The OSBA stated that the term "small commercial customer" is ambiguous and recommends that this term be clarified throughout the regulations so that it is consistent. OSBA Initial Comments at 10.

ANOFR Order Comments

In its additional comments, PECO states that the Commission should clarify that the proposed PTC regulations are applicable, at a minimum, to residential and small business customers (defined as using less than 300 Mcf⁷ per year). PECO further states that clarity is also needed to ensure that these regulations will apply to commercial customers whose usage exceeds 300 Mcf per year but who are not considered large commercial and industrial customers. PECO ANOFR Comments at 2.

Resolution

Consistent with our authority and obligations under the Act, particularly, Section 2204(a) of the Code, 66 Pa.C.S. § 2204(a), the Commission is establishing rules and regulations that will bring the benefits of natural gas competition to retail natural gas supply consumers. The purpose of the regulations is to eliminate barriers to supplier entry and participation in that marketplace.

A "retail gas customer" is defined in the Act as "a direct purchaser of natural gas supply services or natural gas distribution services, other than a natural gas supplier." 66 Pa.C.S. § 2202. As IRRC notes, this definition is not limited to any customer class. However, as mentioned above, the real focus of this regulation is the elimination of barriers to supplier entry in the competitive retail natural gas supply market. Accordingly, the Commission has purposely limited the scope on this regulation to affect only those customers eligible for supplier of last resort (SOLR) service. The Commission notes that for many years, large industrial and commercial customers have pursued and obtained competitive natural gas supply alternatives, even before the enactment of the Act in 1999. See Comments of Industrial Consumer Groups at 3. These types of consumers, large industrial consumers, are already actively engaged and participating in the competitive natural gas market and have been doing so for years through natural gas transportation tariffs and direct purchases of supply. In most areas, these types of customers no longer receive or rely on SOLR service.

Further, the Competition Act created a SOLR obligation for NGDCs that was limited to supply service for residential, essential human needs customers and small commercial and small industrial customers (who usage generally exceeds 300 Mcf per year but are not necessarily considered or designated as "large" commercial and industrial customers). For this reason, the focus of this section and the overall regulation is limited to those customers eligible for SOLR service which, at a minimum, are largely "residential and small commercial and small industrial customers" as opposed to necessarily applying it to all customers receiving natural gas service. Therefore, as set forth in the final-form regulation, we will

⁷ MCF = 1,000 cubic feet, a unit of measure in the oil and gas industry for natural gas, more often written Mcf.

clarify that the scope of this regulation does not entail the breadth of the “retail gas customers” statutory definition.

As to IRRC’s and the OSBA’s comments regarding the use of the term “small commercial customer” in this section, we agree with the comments and will delete this term so that the final-form regulation accurately reflects the statutory term, “small business customer” as set forth and defined in Section 62.72 of the Pa. Code.

Section 62.222—Definitions

Proposed Rulemaking Order Comments

In its initial comments, OSBA stated the definition of “gas procurement charge” (GPC) is in need of clarification because there is no limiting language indicating which customers the GPC would be applied to, which is in direct contrast to its reference in the definition of “gas procurement reduction rate.”

In its comments, IRRC noted that there are several definitional terms set forth in this section that either are not consistent with their corresponding statutory definition or are vague and in need of clarification. The first term discussed is GPC. IRRC stated that this term is vague because it describes a “mechanism” and its effect, and that it should directly state what costs the charge encompasses.

IRRC also stated that the term “gas procurement reduction rate” (GPRR) is redundant and unnecessary. Additionally, Equitable stated that it is not clear from the definition what is intended by this “equal offsetting credit to GPC” or how this rate is to be determined, or what the cost element is that will be reflected in the GPRR. Equitable Initial Comments, Appendix A, p. 1. PGW stated this definition should be revised from “residential and small commercial customers” to “retail gas customers.” PGW Initial Comments at 4.

Additionally, IRRC stated that the term “net gas procurement adjustment” (NGPA) is vague because it describes a concept or goal, but does not increase the understanding of the term or its components. Furthermore, IRRC stated that the term “natural gas supply service” should reference the Act similar to other definitions in this section. IRRC further states that the definition of “purchased gas cost” is unclear and not useful because it uses the term being defined. IRRC also stated that the definition should provide descriptions or examples of the costs that may be included under this definition. Furthermore, IRRC stated that this term is unclear as to whether “purchased gas costs” include procurement costs that are mentioned in the GPC definition.

Lastly, IRRC stated that the term “price to compare” is not clear as to whether it is a rate or a cost. IRRC noted that a customer would need a rate to make a comparison, or at least a volume of gas associated with the cost. IRRC stated that we should revise the definition so that it is clear what will result from this regulation and how a customer can use the PTC to shop among the SOLR and NGSS.

ANOFR Order Comments

Based on these initial comments, the Commission made significant revisions to the definitions set forth in the proposed regulation. In the ANOFR Order, we revised the definition of the PTC so that it is clear that the PTC is a single commodity rate that will be set forth on a customer’s bill and will assist them in comparing prices for natural gas supply charged by the incumbent NGDC with the prices offered to consumers by competitive NGS firms.

The Commission also deleted the terms “gas procurement reduction rate” and “net gas procurement adjustment” from the proposed regulation as they were no longer necessary in light of the revisions we had made to the definition of PTC. Additionally, the Commission revised the definition of “gas procurement charge” (GPC) and incorporated the new term “merchant function charge” (MFC) as a component of the PTC.

We also revised the definition of “natural gas supply service” so that it references the Act. However, we retained the definition of “purchased gas cost” from the proposed regulation as we determined that the definition was sufficient.

In its additional comments, EAPA states that the definition of price to compare (PTC) that is set forth in the revised regulation should be further revised so that the term “natural gas procurement costs” is deleted from the definition because it would allow unavoidable natural gas procurement costs to be included in the PTC. EAPA ANOFR Comments at 4. Additionally, in its additional comments, NFG stated that the definition should be further revised by deleting the term “line item” and replacing it with the term “single commodity rate.” NFG ANOFR Comments at 2. NFG states that this further revision would provide clarification to IRRC as to whether the PTC is a rate or cost and noted that this term was used by us in the body of the ANOFR Order. Id.

In its additional comments, Equitable states that the definition of gas procurement charge (GPC) in the revised regulation should be further revised so that the word “total” should be removed from the definition to avoid cross-subsidization between shopping and non-shopping customers. Equitable ANOFR Order, Appendix A at 2. In its additional comments, NFG noted that this definition contained a minor typographical error. Id.

NFG also requests that the definition of SOLR should be modified by deleting all language after the phrase in parenthesis. NFG states that this would make this definition consistent with the other definitional terms in that it would simply reference the Act. Id.

In its additional comments, the OCA states that the Commission should remove the term “natural gas supply service” and replace it with the term “basic natural gas supply service.” OCA ANOFR Comments at 17-18. The OCA states that making this replacement and including a definition of “basic natural gas supply service charges” will bring clarity as to what should be included in a POR program. Id. The OCA further states that a precise definition of what is and is not included in basic natural gas supply service charge will avoid any unnecessary confusion as the POR programs proceed into the future. Id. The OCA states that ancillary costs, such as charges to carbon neutral products, appliance maintenance services, security deposits and other products and services not related to the physical delivery of natural gas are not includable in the POR programs.

IRRC’s Clarification Comment and Supplemental Comments

In its clarification comments, IRRC Staff noted that the definition of GPC set forth in the Final Rulemaking Order included the term “base rate” but no definition of that term is set forth in the proposed regulation. IRRC states that since a definition of “base rate” is not defined, the definition of GPC may not be clear to the affected parties. Additionally, IRRC noted that our definition of SOLR in the Final Rulemaking Order is inconsistent with its statutory definition set forth in 66 Pa.C.S. § 2207(a).

EAPA states in its supplemental comments to the Final Rulemaking Order that proposed Section 62.222 contains terms and definitions which are either undefined or which differ from existing terms and definitions found in other sections of the *Pennsylvania Code* (the Code). EAPA notes that Section 62.72 of the Code defines “basic services” and “non-basic services” as well as “natural gas supply charges”, but nothing in the Code defines the term “basic supply service” which is set forth in proposed Section 62.222.

Moreover, EAPA notes that other definitions contained within the proposed Section 62.22 of the Final Rulemaking Order expressly contradict those found in other sections of the Code. EAPA states that the proposed definition for “price to compare” contained within Section 62.222 conflicts with the existing definition contained in Section 62.80 of the Code. Likewise, EAPA states that the term “supplier of last resort” in proposed Section 62.222 is defined in a manner that differs from its existing definition in Section 62.101 of the Code. EAPA suggests that for consistency sake only when an existing term is not already defined in current regulations should a new definition be created.

Resolution

We agree with all of the comments concerning the definitional section of the regulation. Accordingly, in the final-form regulation, we will revise the definitions of the terms “GPC” and “PTC” in accordance with the comments. We will delete the definitional terms “gas procurement reduction rate” and “net gas procurement adjustment” and “purchased gas cost” from the final-form regulation as they are no longer necessary in light of the revisions made to the definition of PTC. Additionally, we will include a definition of “merchant function charge” to explain its elements and revise the definition of “gas procurement charge” to identify specifically the natural gas procurement costs to be included. Furthermore, we will include a definition of the term “base rate” so as to make the definition of “GPC” clearer.

We agree with the OCA that natural gas supply costs should be limited to those “directly related to the physical delivery of natural gas to a retail customer” and not include ancillary costs or other products and services not related to the physical delivery of natural gas. However, we believe that instead of using OCA’s proposed undefined term “basic natural gas supply service” the existing term “basic services” as already defined in Section 62.72 of the Code is sufficient and will bring clarification as to what is includable in the POR programs. Moreover, as stated by EAPA, we believe that the same definitions set forth in the current regulations should be used in this final-form regulation. Accordingly, the definition of the terms “NGDC,” “PTC” and “SOLR” in the final-form regulation will be consistent with the current definitions set forth in Sections 62.72, 62.80 and 62.101 of the Code, respectively.

Lastly, IRRC suggested that we provide descriptions or examples of the costs to be included under the definition of “purchased gas cost.” However, this suggestion is now moot since we have deleted the term “purchased gas cost” from the final form regulation.

Section 62.223—PTC

Proposed Rulemaking Order Comments

IRRC noted that in the order, we state that we are requiring NGDCs to adjust their purchased gas costs monthly to better reflect market fluctuations. IRRC further noted that several commenters, such as the OCA and

UGI, do not believe that this proposed regulation complies with 66 Pa.C.S. § 1307(f)(1)(ii) which states, in part:

“In the event that the natural gas distribution company adjusts rates more frequently than quarterly, it shall offer retail gas customers a fixed-rate option which recovers natural gas costs over a 12-month period, subject to a reconciliation . . .”

IRRC suggested that we should explain how the proposed regulation complies with this statutory section. The OCA and UGI share similar concerns in their comments. See OCA Comments, p. 5; UGI Comments, pp. 5-8.

Further, IRRC stated that under 66 Pa.C.S. §§ 2206(c) and (d), we are required to establish customer information “to enable retail gas customers to make informed choices” and guidelines for consumer education to “provide retail gas customers with information necessary to help them make appropriate choices as to their natural gas service.” IRRC stated that it agreed that accurate comparisons are needed, but it questioned whether monthly adjustments would result in further confusion for customers.

IRRC further stated that price comparison is critical to competition and notes that establishing a mechanism to provide valid comparisons of rates is a very difficult proposition given the fluctuations in gas market prices. IRRC recommended that we revisit monthly comparisons to determine the best way to fulfill the Act’s requirements relating to customer information and consumer education. The EAPA also raised similar concerns regarding whether monthly adjustments were the best mechanism to provide valid price comparisons in its comments. EAP Comments, pp. 4-5.

Additionally, IRRC noted that the Act requires that there be a “supplier of last resort.” 66 Pa.C.S. § 2207. IRRC stated that the readiness and availability of a SOLR requires that there be adequate procurement. IRRC noted that Vice Chairman Christy’s statement accompanying the Proposed Rulemaking Order and the OCA’s comments both raised similar concerns that “non-shopping consumers” will be forced to pay higher costs that in effect subsidize consumers who shop. IRRC stated that it is not clear in the proposed regulation that all customers will share in the cost of the SOLR, even though a SOLR would have to be available to most customers. IRRC stated that the Commission should explain how this proposed regulation will insure that procurement costs for SOLRs are distributed equitably among all consumers who may have to rely on a SOLR at some point.

The EAPA made a similar assessment and stated that the process as currently established in the regulation is complicated, will foster litigation, and does not recognize that expenses related to the NGDC SOLR function are not borne by the suppliers. EAPA Initial Comments at 4-5. Moreover, NFG, the OCA, PECO and T.W. Phillips assert that directing the removal of all fuel procurement costs, even unavoidable SOLR costs, from an NGDC’s base rates and charging those SOLR costs only to NGDC sales customers, i.e. non-shopping customers, will shift those costs to a smaller subset of customers and possibly conflict with the non-discriminatory language set forth in 66 Pa.C.S. § 2203(5).

Further, NFG claimed that the gas procurement costs incurred by NGS and by the NGDC, as the SOLR, are not the same. NFG also claimed that the SOLR costs will remain more of a fixed cost of the NGDC’s service that cannot be shown as a PTC. NFG suggested that the PTC

should be limited to the kind of avoidable costs incurred by an NGS. In its comments, NFG supported the establishment of a Merchant Function Charge (MFC). NFG noted that a MFC removes the costs of uncollectible expense associated with current gas costs from delivery rates and includes them in the PTC. Accordingly, NFG proposed language regarding the MFC for inclusion in the regulation.

Lastly, IRRC stated that the proposed subsection lacks clarity. IRRC stated that the Commission should modify it so that it clearly sets forth what the PTC is, how the PTC is established, what the underlying formulas are and what must be filed with the Commission. IRRC made the following suggestions which they believe would assist in making this section of the proposed regulation more clear:

- Separate the filing requirements of 66 Pa.C.S. §§ 1307(f) and 1308(d) from the description of the components in this subsection.
- Establish whether a Section 1307(f) filing would continue to be required after a Section 1308(d) filing.
- Clarify the development of the PTC in this subsection.
- Explain the phrase set forth in Subsection (a) so that it is either replaced by the defined term PGC, which it tracks verbatim, or is differentiated from the defined term.
- Determine whether Subsection (b) is written in reverse order.
- Combine language discussing the GPC into one subsection. Language discussing the GPC is scattered throughout five different subsections.
- Combine Subsections (c) and (d). Both of these sections address the NGPA.
- Re-write Subsections (e) and (f) so that the intent of both sections is clarified and supported by the revised language.

ANOFRR Order Comments

In the ANOFRR Order, we stated that the purpose of this section of the proposed regulation is to make the PTC rate on the NGDC bill reflect, to the extent practicable, the same type of commodity costs which are incurred and charged to customers by the NGSs, and to allow consumers to make an improved “apples to apples” comparison when shopping for natural gas supply. In the ANOFRR Order, we determined that we would require NGDCs to remove all of their total gas procurement costs from base rates and added a Merchant Function Charge to address concerns regarding cross-subsidization between shopping and non-shopping customers and among customer classes. Additionally, we determined that the new components of the PTC can be best determined in the context of a Section 1308(a) tariff proceeding so as not to impose any additional costs on customers in the name of competition. We believed that those revisions would allow customers to simply use the corresponding PTC as a means to compare the commodity prices of the SOLR and NGSs and make an informed decision regarding shopping for natural gas supply service.

In its additional comments, EAPA states the changes proposed in the ANOFRR Order regarding the PTC have simplified the process somewhat of establishing the PTC, but also states that the proposed revisions fail to recognize that the NGDC’s SOLR function provides benefits to both shopping and non-shopping customers and that those unavoidable procurement costs are fixed costs that

are not appropriate for inclusion in the PTC. EAPA ANOFRR Comments at 4. Consequently, EAPA maintains that only those SOLR gas procurement costs intended solely for the benefit of sales customers should be included in the PTC, essentially eliminating the gas procurement costs from the PTC. Id.

Additionally, NFG states that due to the revisions made to the PTC, it is concerned that the Commission is not recognizing the distinction between SOLR activities and the associated costs with gas procurement function activities that are incurred solely for the benefit of sales customers. NFG ANOFRR Comments at 2-5. NFG states that these two functions are mutually exclusive. Id. Further, NFG asserts that the SOLR function provides benefits to both shopping and non-shopping customers. NFG asserts that since the SOLR function is mutually beneficial to both shopping and non-shopping customers, it is inappropriate to place all SOLR gas procurement costs in the PTC. Id. NFG states that such cost shifting would cause discrimination against one customer class for the benefit of another in violation of 66 Pa.C.S. § 2203. In order to resolve this so-called inequity, NFG states that the Commission should clarify in its regulation that the procurement costs to be included in the PTC are only those procurement costs incurred solely for the benefit of sales customers and should only include the avoidable procurement costs. Equitable agrees with this assessment and states that only those procurement costs that are avoidable should be reflected in the GPC. Id.

In its additional comments, the OCA also states that the proposal to create a gas procurement charge (GPC) that includes all procurement costs is flawed. OCA ANOFRR Comments at 6-10. As it had stated in its initial comments, the OCA asserts that if the GPC component is bypassable, as proposed in the regulation, then only the avoidable costs associated with procurement activity should be included in these costs. Id. The OCA states that it is only avoidable costs of procurement that are “bypassed” or not incurred when a customer shops. The OCA further states that the proposal to include all procurement related costs in the GPC, rather than just avoidable costs, will result in non-shopping customers subsidizing shopping customers. Id.

IRRC’s Clarification Comment and Supplemental Comments

IRRC notes that the term “PGC” in the Final Rulemaking Order is defined as “natural gas costs which are collected . . . under 66 Pa.C.S. § 1307(f).” However, proposed paragraph 62.223(a)(1) uses the term “gas commodity rate” determined in the NGDC’s 1307(f) proceeding. IRRC questions why the defined term “PGC” was not used in paragraph 62.223(a)(1) and also questions whether the term “gas commodity rate” is defined in the enabling statute or another regulation in Title 52 of the Code.

IRRC further notes that the definition of MFC in the Final Rulemaking Order states it “reflects the costs of uncollectibles associated with an NGDC’s *SOLR costs*.” [Emphasis added] However, proposed Section 62.223(c) states “. . . the MFC rider must remove the cost of uncollectibles applicable to *current gas cost rates* from its delivery rates . . .” [Emphasis added]. IRRC states that it appears that the SOLR costs and current gas costs are not the same thing and requests us to explain how the definition of MFC and proposed Section 62.223(c) are compatible. EAPA made a similar observation in its supplemental comments to the Final Rulemaking Order.

Lastly, IRRC notes that paragraph 62.223(b)(2) requires the NGDC to update costs in its next “base rate case.” IRRC raises the question what specific filing does this provision contemplate. IRRC states that the regulation should reference the specific filings provision in the statute rather than using the phrase “base rate case.” IRRC also raises a question in reference to proposed Section 62.223(e). IRRC questions what does it mean when we state that the GPC and MFC “may not be subject to reconciliation.”

In its supplemental comments to the Final Rulemaking Order, EAPA notes that while the Preamble states the “regulations do not provide for the unbundling of pipeline and storage procurement” the specific language of the proposed regulations fail to include any reference to these exclusions. Therefore, EAPA states that accounting for the administration of pipeline and storage release to NGSs is not a moot issue as implied by the Final Rulemaking Order.

Resolution

The Commission has made a number of changes to the PTC section of the proposed regulation throughout this proceeding in order to create a mechanism that allows for the removal of natural gas procurement costs now included in NGDC delivery rates. The inclusion of gas procurement costs in delivery rates understates and masks the full cost of the commodity. The Commission believes that the PTC lies at the heart of retail choice and should be an easily understandable means by which consumers can compare the price offered by competitive NGS firms to the rates for default supply service charged by incumbent NGDCs. Accordingly, with that goal in mind, we again have made revisions to Section 62.223 in order to make it easier for consumers to compare NGDC rates for gas supply with the offers to be made by NGS firms.

A. Gas Procurement Costs

The first issue that we shall discuss is shifting gas procurement costs from the NGDC’s base rates to the PTC. In accordance with our directive that the PTC reflect the same type of commodity costs incurred and charged to customers by the NGSs, we proposed the removal of all fuel related procurement charges from each NGDC’s individual base rates by means of a gas procurement reduction rate. We acknowledge, however, that our initial approach to the PTC set forth in the proposed form regulation was overly complex and, accordingly, we revised the mechanics of the PTC to make the removal of gas procurement costs more transparent and easier to understand for consumers.

In the ANOFR, we listed specific, limited, and well-defined gas procurement related costs to be shifted from the distribution rates, where all customers were required to pay for these costs, to the SOLR charges paid by utility customers availing themselves of SOLR service, pursuant to a Gas Procurement Charge (GPC), which is designed to be revenue neutral, thus removing this subsidy previously paid by shopping customers, yet allowing for the fair cost recovery for all prudently incurred utility procurement costs. We agree with the comments of NEMA that the removal of all commodity-related costs, including gas procurement costs is essential to yield a PTC that better reflects the full commodity costs incurred by NGS firms seeking to sell natural gas to retail consumers. NEMA Initial Comments at 5-6. As noted by the NEMA, the PTC as proposed will provide consumers with a more meaningful basis upon which to compare utility commodity offer-

ings and competitive supply offerings because it will bear a greater resemblance to market conditions and more fully reflect the utilities’ full costs of providing commodity service.

EAPA and others argued that a sub-set of natural gas procurement costs of the NGDC, particularly the costs incurred to provide SOLR, are unavoidable and will continue to be incurred by the NGDC. A common criticism by many utilities was that SOLR service benefits both shopping and non-shopping customers, therefore these SOLR costs should be socialized and paid for by all customers. However, these same arguments can be espoused for competitive offers to non-SOLR customers. All customers benefit from the robust availability of competitive offers. As with SOLR service, customers can choose to avail themselves of these opportunities, or pass.

Several parties also argued that, since some SOLR costs are often relatively fixed over the year and thus “unavoidable,” such costs should be socialized. See EAPA ANOFR Comments at 4; Equitable ANOFR Comments, Appendix A at 2; NFG ANOFR Comments at 4-5; OCA ANOFR Comments at 7. This position ignores competitive equity, since NGSs may also have fixed costs for participating in a market, yet such costs are not socialized. Moreover, whether or not a cost is fixed is not relevant to the designation of who benefits from the service. Clearly, those who use the service should pay for it. Moreover, if, in the future, the NGDC’s SOLR function decreases to such an extent that its gas procurement costs recovered through SOLR rates are not adequate to support its residual gas procurement role, that situation can be addressed by future rate changes or designation of an alternative SOLR supplier under the provisions of Section 2207(a)(1). 66 Pa.C.S. § 2207(a)(1).

In its comments, Columbia argues that NGDCs incur costs that are solely related to NGSs’ service, but fails to demonstrate adequately that these costs are unique to NGS service. Columbia contends that, even if they left the merchant function, these costs would continue to be incurred. However, Columbia fails to note that many of these same costs are needed to provide both SOLR and competitive service. Moreover, none of these costs is included in the list of specific and limited costs which the Commission has proposed to unbundle from distribution service. Lastly, Columbia asserts that we are proposing to shift all procurement costs, which is not true. As an example, procurement costs related to storage and transportation capacity, which is used for SOLR service or assigned to NGSs serving their shopping customers, has not been unbundled.

NFG makes an argument similar to Columbia’s, noting that SOLR staff needs to administer pipeline and storage releases to NGSs. However, this point is moot, since the regulations do not provide for the unbundling of pipeline and storage procurement. Indeed, this order recognizes the importance of transportation and storage for both shopping and non-shopping customers.

NFG comments further that NGDCs must stand ready to serve all customers, while NGSs have the ability to “pick and choose” their customer base. NFG ANOFR Comments at 4. NFG argues that this obligation to stand ready justifies charging all customers for their procurement related costs, regardless of whether they provide supply to the customer. This argument also ignores competitive equity. Moreover, as fully detailed below, NGSs must accept all customers responding to an offer, regardless of credit, under the NGDC’s POR program. Therefore, NGSs also stand ready to serve substantially

all customers covered by the NGDC's POR program, within a NGS's targeted rate class of customers.

In summary, it is a level playing field for all market competitors that we seek. As noted by NEMA, in the absence of full rate unbundling, shopping customers are penalized with a double payment of commodity-related costs—those paid to the competitive supplier from which they are currently receiving service and to the utility from which they are no longer receiving commodity service. Unbundling of utility rates avoids this inequitable result. See NEMA ANOFR Comments at 6. Lastly, this level of unbundling for gas procurement costs is consistent with our balanced approach implemented in Pennsylvania's electricity markets. See Final Policy Statement, Docket M-00072009, (§ 69.1808 relating to default service cost elements).

In addition, to reduce litigation and uncertainty as to the scope of gas procurement cost to be shifted from the delivery rates to commodity rates, we have provided a more focused definition of "procurement costs" to better define and limit the functions that must be identified, quantified and moved out of distribution service rates and into the Price to Compare. The final form regulation specifies the management, contracting, scheduling, administrative and other costs that are directly associated with the NGDC's natural gas procurement function. These costs will include the following items.

1. Natural gas supply service management and acquisition costs, including natural gas supply bidding, contracting, hedging, credit, risk management costs, and working capital.
2. Administrative, legal regulatory and general expenses related to those natural gas procurement activities, excluding those related to the administration of firm storage and transportation capacity.

We continue to believe that the identification of these procurement related costs and their magnitude are best determined in the context of a rate filing under 1308(a), not in a Section 1307(f) proceeding. Accordingly, in the final-form regulation, the Commission will direct NGDCs to identify and remove, from delivery rates, their natural gas procurement costs in a Section 1308(a) proposed tariff filing; once those costs are determined, and after notice and opportunity to be heard, those same costs will be included, synchronized and recovered as part of the PTC or commodity rate on a per MCF or DTF revenue neutral basis. The Section 1308(a) tariff filings to remove these gas procurement costs from delivery rates shall be filed beginning 90 days after the effective date of these regulations pursuant to a schedule to be established by the Commission, or in the NGDC's next base rate case, whichever occurs first.

Lastly, since these costs will be identified and shifted from delivery rates to commodity rates on a revenue neutral basis, this avoids the prospect of single-issue ratemaking in which the utility seeks increased rates for a single element of increased expenses without examination of other expenses that may have decreased. Also, because these are costs that are being moved from base rates to the NGDC's PTC or commodity rate, these costs shall not be subject to reconciliation. As such, the gas procurement costs to be recovered in the PTC, on a per MCF or DTH⁸ basis, shall remain constant until reviewed and updated, after notice and opportunity to be heard, in

⁸ A unit of heat equal to 1,000,000 Btus (1MMBtu); the thermal equivalent of 1,000 cubic feet of gas with a heat content of 1,000 Btus per cubic foot.

the NGDC's next base rate case in order to ensure that the NDGC's rate continues to reflect and recover its gas procurement costs.

B. Quarterly Adjustments

In the ANOFR Order, the Commission noted the concerns of some of the commenters regarding the use of monthly adjustments to the PTC. Therefore, the Commission determined that quarterly rate adjustments would adequately reflect changes in market rates over time. Additionally, the Commission determined that the use of quarterly adjustments would avoid added complexity and, further, the legal issue of requiring NGDCs to offer a fixed rate option. Accordingly, in the ANOFR Order, we deleted the monthly adjustment subsection from the regulation and proposed quarterly adjustments of the PTC.

At the same time, we stated in the ANOFR Order that in order to avoid the potential for large positive or negative reconciliation adjustments (e-factor) when a customer switches to an alternative supplier, we would direct NGDCs to file tariff revisions that provide for quarterly reconciliation adjustments to their gas cost rates as well. In its comments, NEMA supports this proposal as a means to make the PTC more reflective of current market conditions and provide consumers with a better basis of comparison of marketing offerings. NEMA states that the NGDC's ability to charge interest on under-collections, and be charged a percentage penalty for over-collections, provides a strong incentive for the NGDC to underestimate its GCR rate. NEMA asserts that by doing this, the NGDC has acted to understate the PTC against which consumers have been making comparisons and creating a faulty perception that marketer offers are more expensive than the artificially understated NGDC rates. Also, the Joint Commenters are in agreement with NEMA's observation and stated that including the e-factor as part of the gas cost rate portion of the PTC allows for a more accurate comparison between competitive supplier offers and the rates for default service.

Conversely, the OSBA, PECO, Equitable and Dominion Peoples state that in order to reflect a more accurate price signal, the Commission should not include the e-factor reconciliation adjustments. In its comments, Equitable states that this reconciliation component should be removed from the PTC. Equitable explains that the reconciliation is a cost component arising from a prior period and not properly included in the estimation of the current cost of gas, nor applicable to customers returning to SOLR service for one year consistent with all NGDCs' migration riders which were approved by the Commission during restructuring proceedings. In its comments, PECO explains that the e-factor results from a past accumulation of over and under recoveries of the procurement cost of gas supply that will be charged or credited to customers over a twelve month period. Therefore, this charge will follow a customer that switches to a supplier for a twelve month period (per migration riders). Thus, these parties agree the PTC will not be reflective of the cost of NGDC supply that a customer would avoid (or pay) when the customer chooses to shop (or to return to NGDC service).

We understand the arguments on both sides; nevertheless, we will continue to direct that the e-factor be included as part of the gas cost rate portion of the PTC as it will allow for a more accurate comparison between competitive supplier offers and the current rates charged by NGDCs for default service. While the e-factor does relate to prior period costs, these are nonetheless gas

commodity costs charged by the incumbent NGDC, paid by each default service customer and, thus, includable in the PTC.

The NGSs also support increasing the frequency of the reconciliation of over/under collection as a way of reducing the negative impact of the migration rider. However, in its comments, UGI asserts that pursuant to Sections 1307(f)(3)—(5) and 1318, 66 Pa.C.S. §§ 1307(f)(3)—(5), 1318, the Commission can only direct that gas cost reconciliations be performed on an annual basis, and only after the Commission makes certain specific findings after the gas cost hearing process. UGI Comments at 13-14. Thus, UGI asserts that quarterly reconciliations would not be possible absent changes to these sections of the Public Utility Code.

We disagree with UGI's interpretation of those sections. Our existing regulations at Pa. Code § 53.64(b) and (i)(5)(i)—(v) already require and direct NGDCs to make quarterly filings when there is a change in the gas costs rates. In particular, the regulation requires NGDCs to make quarterly filings that disclose projected versus actual costs, and to update its gas cost rate in order to reflect actual gas costs if "the recalculated rate differs from the currently effective rate by more than 2%" 52 Pa. Code § 53.64(i)(5)(iii). The quarterly filings and supporting information are reviewed by the Commission and interested parties that were involved in the 1307(f) proceeding in which the initial rate was established and become effective on 1 days' notice unless otherwise ordered by the Commission. 52 Pa. Code § 53.64(i)(5)(iv).

Accordingly, since quarterly filings for gas costs rates and the e-factor component have already been addressed in our existing regulations, we will not incorporate quarterly adjustments to gas costs and the e-factor in the instant final-form regulation. We believe that the quarterly adjustments already provided for in existing regulations will adequately mitigate large reconciliation swings due to the seasonal nature of gas sales and that any over/under collection balance will remain relatively small by comparison to overall gas costs. Additionally, the Commission also determines that through the utilization of more frequent reconciliations, the period of time over which the migration rider is collected might possibly be reduced. The Commission believes that if the reconciliation is done on a quarterly basis, then the migration rider should reflect the reconciliation and should only be imposed for one quarter. In other words, the migration rider should be consistent with the 90 day reconciliation adjustments.

Accordingly, the Commission invites NGDCs to file shortened migration riders [i.e., a 90-day migration rider, as opposed to the current annual migration rider] and requests that they include such a modification to their respective migration riders when they file their compliance tariff filing 90 days after the effective date of these regulations.

C. Implementation of a Merchant Function Charge

In the ANOFR Order, the Commission implemented a Merchant Function Charge (MFC). In lieu of a fully allocated cost of service study, the MFC was proposed as a mechanism to identify and remove from distribution rates the cost of uncollectible expenses associated with natural gas procurement and include them in the PTC.

The Commission determined that implementation of the MFC, as a component of the PTC or commodity rate, was reasonable and would allow the PTC to be a better approximation of the costs incurred by NGS firms to

provide commodity service. Implementation of the MFC will unbundle supply-related uncollectible costs from base rates, specifically, distribution rates, and add them to the price to compare on a revenue neutral basis. Moreover, for non-shopping customers, the MFC mechanism will be revenue neutral because the same write-off rate used to remove costs from base rates will be used to calculate the MFC as part of the PTC for commodity rates.

In conjunction with the ANOFR Order, Vice Chairman Christy issued a statement in which he requested comments regarding whether the MFC violated Section 1408 of the Code, 66 Pa.C.S. § 1408. In its comments, NFG states that the MFC does not violate section 1408 because it is not tracking specific uncollectible costs, reconciling them, and surcharging for any difference between costs incurred and revenues collected for that purpose. In other words, the MFC is a rate that is re-established in base rate proceedings on a going-forward basis, like all other base rates; there is no reconciliation of prior rates and costs. The MFC adjusts with changes in gas costs, and not with changing the NGDC's uncollectibles expense as a gross dollar amount. The Commission agrees with NFG's characterization of the MFC.

Accordingly, the final-form regulation will include the MFC provisions recommended by NFG in its initial comments with some clarifying language to recognize class differences in uncollectible rates and revenue neutrality. Also, as with gas procurement costs, because these are costs that are being moved from distribution rates to an NGDC's PTC or commodity rate, these costs are fixed and shall not be subject to reconciliation. The final-form regulation provides that the NGDC shall file an updated MFC rate, with its quarterly gas cost rate adjustments, to make sure that the rate continues to reflect and recover its supply-related uncollectible costs at the same write-off rate determined in the NGDC's last base rate case. However, the underlying write-off factor shall remain constant until it is reviewed and updated, after notice and opportunity to be heard, in the NGDC's next base rate case.

In sum, the PTC or commodity rate will be adjusted on a quarterly basis and will consist of the following elements on a per MCF or DTH basis: the gas cost rate determined in the NGDC's Section 1307(f) proceeding; the e-factor reconciliation for over and under collections in accordance with Section 1307(f); the NGDC's natural gas procurement costs which do not include administrative costs related to transportation and storage (determined via a Section 1308(a) tariff filing); and the Merchant Function Charge (determined via a Section 1308(a) tariff filing or prior rate case). These elements shall be the components of a single PTC rate on the customer's bill. Finally, we note here that because NGDCs use a portfolio approach for their natural gas purchases, the PTC will likely never track exactly the current market prices for natural gas. However, the changes we have directed in these regulations to the PTC will, in our judgment, result in an improved ability for customers to know the commodity costs charge by the NGDC for default service and, on that basis, to make informed choices from among the offers to be made by competitive suppliers.

In terms of responding to the clarification-related comments regarding Section 62.223 for the PTC, we have provided a more narrow and focused definition of natural gas procurement costs, excluded costs related to the administration of firm storage and transportation capacity, provided an improved description of how GPC and MFC costs are to be removed from distribution rates and

recovered as part of the PTC, and clarified that any over or under collections of GPC or MFC costs from prior periods are not subject to reconciliation.⁹

Finally, although the Commission had considered a clarification to the Final Rulemaking Order, as suggested by IRRG staff, to simply refer to the previously defined term Purchase Gas Cost (PGC) in Section 62.223(a)(1), the EAPA and NFG comments point out that, in practice, the PGC may include costs other than commodity related costs such as “balancing service and demand or capacity charges.” NFG recommends, in particular, that we simply use the term “natural gas supply charge determined in the NGDC’s Section 1307(f) proceeding” in the final form regulation in lieu of “PGC”, the previously defined term. Upon review, we shall accept EAPA’s comments and rationale and, accordingly, we shall adopt NFG’s recommended language. Therefore, the term “PGC” in Sections 62.223(a)(1), (c)(1) and (c)(3) shall be deleted from the final form regulation and replaced by the phrase “natural gas supply charge determined in the NGDC’s Section 1307(f) proceeding.”

Section 62.224—POR Programs

Proposed Rulemaking Order Comments

This section of the proposed rules establishes rules for POR programs. IRRG stated that it has three general questions and concerns relating to POR programs and the potential positive and negative effects. First, IRRG stated that the Commission should explain further why it is proper for the NGDC to collect unregulated NGS charges. Second, IRRG raised the question of how the NGDC will separate its operating costs from those related to collecting revenues for an unregulated entity. Additionally, in a more specific manner, IRRG stated that paragraph 10 of Subsection (a) sets forth the requirement that an NGDC “track its POR program purchases and collections.” IRRG also stated that this requirement is vague because it is not clear how an NGDC is to comply with it. IRRG suggested that the regulation should state a purpose for the tracking, specify what information is required and how long the information must be kept.

IRRG also questioned how the costs and revenues from a POR program will be considered in the filings envisioned in this rulemaking, including a base rate filing.

Lastly, IRRG questioned why the provision relating to licensure requirement is placed under this section. IRRG suggested that the Commission delete this provision or explain why it is needed under this particular section.

Columbia, T.W. Phillips, UGI, EAP and PECO all expressed concerns regarding our decision not to require NGSs participating in PORs programs to use only NGDC consolidated billing services. In particular, T.W. Phillips stated that the lack of consolidated billing is likely to create significant confusion among utility customers used to receiving a single bill and constitute a substantial burden on the NGDC. T.W. Phillips Comments at 4. Additionally, PECO stated that consolidated billing from the NGDC will minimize uncollectibles since the NGDC will have an existing customer account that it can monitor to track any delinquency the moment it occurs. PECO Comments at 5. PECO stated that the proposed regulation shifts uncollectible supplier risk to the NGDCs. Id. Furthermore, UGI states that uncollectible expenses could arise if NGSs do not engage in aggressive collection processes with customers that become delinquent in paying their gas bill. UGI Comments at 9-10.

⁹ We note that the comments of the Pennsylvania Energy Marketers Coalition and the NGS Parties strongly support these clarification-related revisions to the final-form regulation.

In its comments, NFG stated that under the model purportedly set forth by our regulations, an NGS essentially would be able to pick and choose which receivables are sold to the NGDC performing a consolidated billing service, and which receivables are not sold to the NGDC. NFG Comments at 14. Additionally, the system requirements for operating a dual POR and non-POR billing system would be costly and time consuming to implement, given the different consumer protections and shut-off procedures that would presumably apply to the separate customer groups. Id.

In their comments, Equitable, Dominion Peoples, OSBA, NFG and UGI also addressed the discount rate offered for accounts receivables. All of these comments reference the fact that the differences between NGSs customer bases could warrant differences in the discount rate between marketers within a POR program. Further, both EAPA and NFG stated that there is an inconsistency in the proposed regulation regarding the potential discount at which an NGDC will purchase receivables from an NGS. NFG Comments at 14-15. EAPA Comments at 6. In particular, both commenters noted that Section 62.224(a)(3) references a standardized discount while Section 62.224(a)(4) states that the NGDC will establish a negotiated discount on a case-by-case basis. Id.

In their comments, the OCA and PECO stated that an NGDC should be allowed to offer discounts so as to recover the NGS’ uncollectible expenses and the implementation, operating, administrative, and incremental costs associated with the POR. NFG further stated that the regulation should provide for a “risk factor” component to the discount rate established by the NGDC. Id. NFG asserted a discount is always applied to the risk the purchasing entity takes with respect to uncollectibles. NFG further explained that among the risks an NGDC would take in implementing a POR program are the risk of uncollectible accounts and the uncertainty of program implementation costs.

Also, in their comments, the OCA and NFG noted that the POR program regulation as proposed does not provide appropriate customer protections. NFG stated that the wording of proposed Subsection 62.224(b)(4) is confusing and misleading and suggests a rewording of this section to make its intent clear. NFG Comments at 15. The OCA also proposed several modifications to the proposed regulations to incorporate necessary customer protections. OCA Comments at 17-23. In particular, the OCA stated that the “right” to terminate must be limited to the portion of the NGS receivables that are equal to or less than the amount the customer would have been billed for commodity service if the customer had received SOLR services from the NGDC during the non-payment period. Id. OCA also had concerns regarding a customer’s right to reconnection of service. Id. Lastly, OCA stated that as a condition of the POR program, the NGS should be required to agree not to reject a new customer based on credit-related issues. As a result, the NGS is not permitted to seek a separate security deposit. Id.

The OSBA and the OCA were also opposed to the requirement that the NGDC must agree to share with distribution customers the amount by which the discount exceeds the uncollectible costs. OSBA Comments at 13; OCA Comments at 24. The OSBA stated that this concept is inconsistent with the principle of the NGDC recovering the costs of acquiring gas for non-shopping customers through the GCR and the stated principle of Chapter 14 of the Code. OSBA Comments at 5. Additionally, the OCA stated that Chapter 22 of the Code, 66 Pa.C.S.

§ 2205(c)(5), protects ratepayers from having to bear the cost of uncollectible expense associated with unregulated supply charges by ensuring that the NGDC does not have to make payments to the NGS before receiving payment from the customer. OCA Comments at 25.

Lastly, the EAP and NFG suggested that the Commission strike the provision of the proposed regulation that allows NGS accounts receivable to be used to satisfy the security requirement for NGS licensing at 66 Pa.C.S. § 2208(c)(1). Both commenters stated that this concept is being addressed in another rulemaking proceeding regarding NGS licensing and security issues at Docket No. L-2008-2069115.

ANOFR Order Comments

Based upon the comments we received to this section of the proposed regulation, we determined, in the ANOFR Order, that the use of POR programs can promote efficiencies, reduce costs to consumers and reduce barriers to market entry by alternative natural gas suppliers. We further determined that the existence or non-existence of a POR program is an extremely important factor that an NGS will consider in deciding whether to commit to offering service in an NGDC's service territory, especially with respect to the residential/small business customer market. Accordingly, we determined that the implementation of POR programs, which allow the unregulated NGSs' accounts receivables for natural gas costs to be purchased and collected by the regulated NGDC and which allow NGDCs to be fully compensated for the risks and costs, is essential to facilitate effective competition in Pennsylvania's retail natural gas supply services market consistent with our obligations under the Act.

In the ANOFR Order, we agreed with the commenters who stated that requiring NGSs participating in POR programs to use consolidated billing from the NGDC is a prudent and necessary step. Thus, we revised the proposed regulations to require that an NGS use consolidated billing in order to qualify for participation in a POR program. Nevertheless, in the proposed regulation, we also established two circumstances in which an NGS does not have to use the consolidated billing of the NGDC. Those instances are when the NGS is providing a service or product to customers that an NGDC's consolidating billing system cannot accommodate or when the NGS wants to offer products that are bundled with non-basic services, the NGS may be permitted to issue a separate bill for such service or product for that customer. See generally *Petition of PECO Energy Company for approval of its Revised Electric Purchase of Receivables Program*, Docket No. P-2009-2143607 (Order entered June 16, 2010).

In its additional comments, EAPA agrees that the implementation of a voluntary POR program can offer one of the best means to increase NGS participation in the retail natural gas supply market. However, EAPA requests that the Commission strike the language in the ANOFR version of the regulation found at 62.224(a)(2)(i) and (ii) which appears to exempt NGSs from participating in the consolidated billing function in two distinct circumstances. In its comments, Columbia states that these two exceptions are confusing and should be deleted.

Additionally, in the ANOFR Order, we noted NFG's concerns about allowing NGSs to "cherry pick" customers, based on credit risk, to benefit the NGS at the expense of the NGDC and its customers. Thus, we determined that we would set forth in the regulation that an NGS must

include all of its accounts receivable related to commodity sales in the POR program to deter any "cherry picking" of best accounts for itself and worst accounts to the POR program. Also, we stated that we would incorporate in the regulation that an NGS would be required to accept all customers without using a credit check or requiring an additional security deposit.

In its additional comments, the OCA notes that the Commission had inadvertently omitted from the ANOFR version of the regulation the POR consumer protection relating to the requirement that an NGS participating in a POR program accept all customers without using a credit check or requiring an additional security deposit. Columbia also notes this omission and also noted that the Commission had not included the provision requiring an NGS to include all of its receivables related to commodity sales in the POR program in the ANOFR version of the regulation.

In the ANOFR Order, we further determined that the discount rate applied to purchase receivables should allow for the recovery of the reasonably anticipated risk of uncollectibles expenses associated with NGS's customers, as well as the cost of implementing and operating the POR program. Thus, in that version of the regulation, we stated that the NGDC should be fully compensated both for the reasonably projected risk of non-payment and the costs of administering the POR by the discount rate that is applied to the purchased receivables.¹⁰ However, consistent with our prior decision in the proceeding, *Petition of National Fuel Gas Distribution Corporation Requesting Approval of a Program for Purchase of Natural Gas Supplier Accounts Receivable*, Docket No. P-2009-299182, (Order adopted June 3, 2010), we did not allow NGDCs to incorporate a further generic "risk factor" for the recovery of risks over and above those associated with uncollectible expenses. We determined that the discount rate should only reflect the NGDC's actual uncollectible rate.

Additionally, in the Proposed Rulemaking Order, we had required the same discount rate to be applied to the purchase of all accounts receivables an NGDC purchases from an NGS, regardless of customer class. However, in the ANOFR Order, we agreed that a successful POR program will offer a discount rate that can vary by customer class. Accordingly, we revised the regulation by deleting the provision that required the same discount rate be applied to the purchase of all accounts receivables and amended it so that the NGDC is allowed to offer discount rates that vary by class if substantial risk and costs differences exist.

We also deleted proposed Section 62.224(a)(9) of the regulation, which allowed the NGDC to recover or collect losses from distribution customers if the discount exceeds the uncollectibles costs. We determined that the ratepayers should not be guarantors of the business risk of an NGS. Variations between projected and actual uncollectible expenses can be addressed by tariff updates to the POR program.

Further, we revised the proposed regulation so that appropriate customer protections would be included. We wanted to ensure in the proposed regulation that NGDCs continued to follow Chapter 14 and Chapter 56 requirements when terminating natural gas service to shopping customers. We believed that this policy promoted equity and fairness between shopping and non-shopping customers and reduced the cost of NGDCs. Additionally, this

¹⁰ The Commission anticipates that, in practice, the "reasonably projected risk" of non-payment for the accounts receivables will be based on the NGDC's most recently updated uncollectibles rate for each customer class.

approach permitted an NGDC to terminate a customer for non-payment of NGS charges. We believed that permitting the NGDC to terminate for non-payment will increase collection rates and reduce the overall uncollectible expense experienced by the NGDC resulting in a lower discount rate for the POR program and thus lower competitive supply offers for customers.

Another concern we recognized was how an NGDC would separate its operating costs from those related to collecting revenues for an unregulated entity. Thus, we specified in the regulation that each NGDC track the costs of implementing and administering its POR program including uncollectibles, so that the NGDC can make sure that its POR discount rate covers its program costs. However, we did not set forth a limited timeframe in the regulation for an NGDC to retain records of these costs beyond what is required by normal business practices.

Furthermore, in the ANOFR Order, we addressed whether we had the legal authority to mandate that all NGDCs establish a POR program that will conform with the permanent rules we are establishing in these final regulations. We note that some commenters had argued that the Commission cannot mandate the implementation of POR programs. These commenters referenced 66 Pa.C.S. § 2205(c)(5) of the Code as support for their assertion.

Upon our analysis and consideration of this legislative language, we determined, in the ANOFR Order, that Section 2205(c)(5) only directs the mechanics of customer billing on behalf of suppliers, i.e., the NGDC must be paid first before it is required to forward payment to the NGS in situations where the NGS has chosen to use the billing services of the NGDC. We determined that it does not address POR programs in which the NGDC purchases, at the outset, the NGS accounts receivable and becomes the new creditor for the customer accounts. In that situation, the NGS customer's debt is now owed directly to the NGDC and, just like any other NGDC customer, failure to pay the amount due will subject the NGS customer to termination of service pursuant to Chapter 14 of the Code and the Commission's service termination regulations at Chapter 56. We determined that Section 2205(c)(5) appears to address the situation where there is a business arrangement in which the NGDC is the billing agent for the NGS, not when the NGDC becomes the new creditor for the debt owed by the NGS customer. Nevertheless, we continued the current policy in the proposed regulation to make POR programs voluntary.

In his statement that was released along with the ANOFR Order, Vice Chairman Christy requested comments on whether the Commission had the authority to mandate that NGDCs implement POR programs. NFG states that the first sentence of Section 2205(c)(5), 66 Pa.C.S. § 2205(c)(5), clearly requires that an NGDC must be paid first when the NGS has chosen to use the billing services of the NGDC. NFG further states that this statutory provision also precludes the Commission from forcing an NGDC to make payments to an NGS where the NGDC has not yet received payment from the customer(s). The OCA states that the Commission's legal interpretation in the proceeding Petition of PPL Utilities Corporation Requesting Approval of a Voluntary Purchase of Receivables Program and Merchant Function Charge, Docket No. P-2009-2129502 (Order entered November 19, 2009) is the proper interpretation of the Commission's legal authority to mandate POR programs. In that proceeding, the Commission held that it lacked the authority

to mandate the implementation of POR programs based on identical language set forth in Section 2807(c)(3) concerning electric distribution companies.

Lastly, in the ANOFR Order, we set forth a timeframe for NGDCs to comply with the POR rules. We stated that if the NGDC has already implemented a POR program that has a specific term, expressed in years or months, the Commission-approved POR program will be allowed to continue, but the NGDC should file a tariff that is consistent with the final regulations to commence after the initial term of the POR program expires. Alternatively, if the NGDC has implemented a Commission-approved POR program with no specific term limit, the NGDC should update its POR plan within 24 months of the effective date of the final regulations.

Resolution

The Commission continues to believe that POR programs offer the best means to increase supplier participation in the retail natural gas supply market, compensate NGDCs for their risks and costs, and are in the public interest. As we stated in the ANOFR Order, the existence or non-existence of a POR program is an extremely important factor that an NGS will consider in deciding whether to commit to offering service in an NGDC's service territory, especially with respect to the residential/small business customer market.

In the ANOFR Order, we determined that we had the legal authority to mandate that all NGDCs establish a POR program that will conform with the permanent rules we are establishing in the regulation. As set forth above, NFG and the OCA argue that the Commission cannot mandate the implementation of POR programs. These commenters reference 66 Pa.C.S. § 2205(c)(5) of the Code as support for their assertion. We acknowledge that in addressing PPL's purchase of receivables program, we addressed similar language applicable to the electric industry and determined that Section 2807(c)(3) operated to prohibit the imposition of mandatory PORs. See Petition of PPL Utilities Corporation Requesting Approval of a Voluntary Purchase of Receivables Program and Merchant Function Charge, Docket No. P-2009-2129502 (Order entered November 19, 2009).

Nevertheless, we reaffirm the legal interpretation and analysis of Section 2205(c)(5) that was set forth in the ANOFR Order. We believe that this statutory language is only directed to the mechanics of customer billing on behalf of suppliers, i.e., the NGDC must be paid first before it is required to forward payment to the NGS in situations where the NGS has chosen to use the billing services of the NGDC. It does not address POR programs in which the NGDC purchases, at the outset, the NGS accounts receivable and becomes the new creditor for the customer accounts.

However, notwithstanding the above analysis regarding our legal authority to mandate POR programs for NGDCs, we again shall continue our current policy, in the final-form regulation, to make POR programs voluntary. Thus, even if our legal interpretation concerning Section 2205(c)(3) is incorrect, the final-form regulation, as noted by NFG in its comments, does not rise to the level of violating the statute because we are maintaining POR programs as voluntary rather than mandating them.

In the proposed regulation, the Commission departed from the requirement that NGSs participating in POR programs must use only NGDC consolidated billing services. Nevertheless, in regards to the initial comments we received on this issue, we agreed with the commenters

that requiring NGSs participating in POR programs to use consolidated billing from the NGDC is a prudent and necessary step. We believe that consolidated billing eases an NGDC's costs and operations. We note that POR programs are normally provided in conjunction with consolidated billing in which the utility issues a single bill to the end user that contains the utility's delivery charges and the NGS's supply charges. Thus, in the final-form regulation, at Section 62.224(a)(4), we will continue to require that an NGS use consolidated billing in order to qualify for participation in a POR program.

However, in the ANOFR Order, we created two exemptions to this consolidated billing requirement: (1) the NGDC's billing system cannot accommodate the NGS bill for basic supply service; and (2) the NGS is providing a service or product that does not meet the definition of basic natural gas supply. As to the second exception, rather than placing that as an exception to consolidated billing, the principle that an NGS may bill on its own for non-basic natural gas products and services will be added as a new Subsection 62.224(a)(12) in the final-form regulation. We will continue to retain the first exception in the final-form regulation to account for NGDC billing systems that may not be able to provide consolidated billing for NGS basic supply service.

Furthermore, we acknowledge the NGDCs' concerns regarding the omission about allowing NGSs to "cherry pick" customers, based on credit risk, to benefit the NGS at the expense of the NGDC and its customers. Thus, in our final-form regulations at 62.224(a)(2), we will direct that an NGS must include all of its accounts receivables related to commodity sales in the POR program, to deter any "cherry picking" of best accounts for itself and worst accounts to the POR program. Also, as recommended by the OCA, we will set forth in the final-form regulation at 62.224(a)(13) that an NGS will be required to accept all customers without using a credit check or requiring an additional security deposit.

A POR program involves the utility purchasing the receivables of an NGS at a discount rate. We believe that the discount rate applied to purchase receivables should allow for the recovery of the reasonably anticipated risk of uncollectibles expenses associated with supply service customers, as well as the cost of implementing and operating the POR program. We believe that an NGDC should be fully compensated both for the reasonably projected risk of non-payment and the costs of administering the POR by the discount rate that is applied to the purchased receivables.¹¹

The discount rate should reflect the NGDC's actual uncollectible rate for supply service customers, consistent with the uncollectible rate used in the determination of the MFC. Moreover, an NGDC can track its uncollectible expenses and administrative costs and adjust its discount rate accordingly in any future POR program update. Accordingly, in the final-form regulation at 62.224(a)(5), we will direct that the discount rate applied to purchased receivables shall reflect the NGDC's actual uncollectible rate for supply service customers, consistent with the write-off rate used in the determination of the MFC, and the cost of implementing and operating the POR program.

Additionally, in the ANOFR Order, we determined that we should allow for differences in the discount rate offered by the NGDC to be reflected on a customer class basis, as recommended by the OSBA. Upon further

consideration, the OSBA position regarding the POR discount rate is well taken and, to avoid cross-subsidization among customer classes, we shall require that the POR discount rate account for risk and cost differences among customer classes in the final-form regulation at 62.224(a)(6).

In the final-form regulation, we will delete proposed Section 62.224(a)(9), which allows the NGDC to recover or collect losses from distribution customers if the discount exceeds the uncollectibles costs. We believe that if an NGDC offers a POR program, the increased uncollectible expense it incurs should not be borne by ratepayers. See 66 Pa.C.S. § 1402. The ratepayers should not be guarantors of the business risk of an NGS. Variations between projected and actual uncollectible expenses can be addressed by tariff updates to the POR program.

Additionally, in the final-form regulation at 62.224(a)(8), we will allow an NGDC to terminate a customer for non-payment of NGS charges. We believe that there is no authority that restricts the ability of NGDCs to terminate service to POR customers based upon non-payment of an amount equal to the customer's default service. Additionally, permitting the NGDC to terminate for non-payment will increase collection rates and reduce the overall uncollectible expense experienced by the NGDC resulting in a lower discount rate for the POR program and thus lower competitive supply offers for customers. See Petition of PPL Utilities Corporation Requesting Approval of a Voluntary Purchase of Receivables Program and Merchant Function Charge, Docket No. P-2009-2129502 (Order entered November 19, 2009). We believe that since the NGDC has purchased an NGS's accounts receivables, the NGDC would own those accounts and should have all of the suspension and termination tools available for those customers as it has for its default service customers.

Nevertheless, while an NGDC should not be prevented from terminating service to customers for failure to pay NGS charges purchased by the NGDC or prevent it from requiring full payment of purchased NGS accounts receivable before reconnecting natural gas service to a customer, termination of service can be done only in accordance with Chapter 14 of the Code and Chapter 56 of the Commission's regulations. Accordingly, in the final-form regulation at Subsection (b) of Section 62.224, we will set forth appropriate customer protections.

We note that the Pennsylvania General Assembly sought to continue the consumer protections outlined in the Code and Chapter 56 of the Commission's regulations in the introduction of competition in the natural gas industry. See 66 Pa.C.S. § 2206(a). Thus, we will ensure in the final-form regulation at 62.224(b)(1)–(6) that NGDCs continue to follow Chapter 14 and Chapter 56 requirements when terminating natural gas service to shopping customers. We believe that this policy promotes equity and fairness between shopping and non-shopping customers and helps reduce the cost of NGDCs.

Another concern regarding the implementation of POR programs is how an NGDC would separate its operating costs from those related to collecting revenues for an unregulated entity. We will specify in the final-form regulation at Section 62.224(a)(11) that each NGDC track the costs of implementing and administering its POR program including uncollectibles, so that the NGDC can make sure that its POR discount rate covers its program costs. At the same time, because the NGDC will be compensated for the costs associated with POR uncollectibles in the discount rate, those costs are not recover-

¹¹ The Commission anticipates that, in practice, the "reasonably projected risk" of non-payment for the accounts receivables will be based on the NGDC's most recently updated uncollectibles rate for each customer class.

able from base rates. However, we will not set forth a limited timeframe in the regulation for an NGDC to retain records of these costs beyond what is required by normal business practices.

We acknowledge that some NGDCs have Commission-approved voluntary POR programs in place. We appreciate that the NGDC and other parties have negotiated these POR programs and, accordingly, that they have settled expectations in the terms and conditions of those POR programs. In the final-form regulation at 62.224(c), we shall establish a reasonable transition plan for NGDCs with existing PORs to conform to the final-form POR regulations. In particular, we adopt the OCA's alternative suggestion that, for POR programs with no defined term, we allow at least 36 months experience under a previously approved POR program before the NGDC is required to file for any changes that may be needed to conform to this regulation. See OCA Comments at 22.

Section 62.225—Release, assignment or transfer of capacity.

Proposed Rulemaking Order Comments

We noted in our Action Plan that it might be helpful to the development of the gas retail markets if the ability of an NGDC to control its capacity on interstate natural gas pipelines was not as strong. This section was created in order to give NGDCs and NGSs guidance and to ensure that the requirements for the release, assignment and transfer of capacity by an NGDC shall be on a nondiscriminatory basis and shall be at the applicable contract rate for such capacity.

In its comments, IRRRC states that this section is very similar to the Act at 66 Pa.C.S. § 2204(d). IRRRC notes that there is no explanation for repeating the statute in the proposed regulation. IRRRC states that the Commission should either explain the need for this section or delete it in its entirety. In its comments, UGI expresses the same concern. UGI Comments, p. 12.

ANOFr Order Comments

In the ANOFr Order, we revised this section to require mandatory capacity release. In its comments, EAPA states that this section now directly conflicts with the provisions of the Public Utility Code. Specifically, EAPA states that the flexibility afforded NGDCs in their management assignments under Section 2204(d)(1) and (5) of the Code is not provided for in the ANOFr version of the regulation. EAPA states that the Commission cannot change the discretionary nature of mandatory assignment by regulation as this is contradictory to the clear language of its enabling statute.

In its comments, NFG echoes EAPA's sentiments. NFG states that mandatory capacity release in all circumstances is in direct opposition to the statute. NFG states that the statute does not go so far as to mandate capacity release but instead requires it be offered. NFG further states that the Commission does not have the authority to go beyond the directives of the General Assembly and impose a more stringent rule via regulation. Likewise, Equitable, the Joint Commenters, PGW and Columbia state that the revision to this section has altered the statutory plain language set forth in 66 Pa.C.S. § 2204(d)(1).

In their comments, the NGSs state that capacity "should follow the customer" but note that this concept is not set forth in the revised regulation. The NGSs also note that we discussed this concept in the body of the

ANOFr, but did not incorporate it into the revised regulation. The NGSs state that one aspect of the regulation is to ensure competitively neutral administration of the utilities' capacity release and storage programs and strongly suggest that this concept of "capacity following the customer" be incorporated into the regulation.

Resolution

As we stated in the ANOFr Order, utility operated natural gas capacity release and storage programs in Pennsylvania must be administered in a non-discriminatory and competitive neutral manner. Accordingly, we attempted to give both NGDCs and NGSs some guidance and to ensure that requirements regarding the release, assignment or transfer of capacity by an NGDC shall be on a non-discriminatory basis as to both functionality and price.

However, upon further review, it appears the underlying statutory provisions of Sections 2204(d) and 2204(e) of the Code regarding capacity release were conflated in drafting Subsection 62.225(a) of the regulation for the ANOFr Order, which has led to considerable confusion for the NGDCs. Accordingly, we will make revisions to this section so that the final-form regulation will be in harmony with the existing law and tracks Section 2204 of the Code as we had originally intended.

Nevertheless, it remains a central principle of natural gas restructuring and the efficacy of natural gas retail choice that the assets of gas pipeline and transportation and storage capacity should be made available and follows the shopping customers of each utility, regardless of where they purchase their natural gas supply, subject only to the NGDC's valid system reliability and FERC constraints. This understanding will be incorporated into the final-form regulation at Subsection 62.225(a)(2).

Additionally, we want to ensure that useable capacity is released to marketers at fair and equitable rates, not the most expensive and least usable capacity. However, we want to ensure that such capacity release is priced at a rate so that shopping and non-shopping customers are treated equally and that NGDCs have the flexibility to meet this goal based upon their respective capacity portfolios. For example, NFG proposed that, when capacity is released, it have the flexibility to price the capacity at a rate equal to its weighted average cost of capacity, whether or not the capacity contract rate is higher or lower than the release rate. As explained in its comments, "releases at the weighted average cost of capacity are the most practical means to ensure that shopping and non-shopping customers are treated equally." NFG ANOFr Comments at 13-14. The Commission agrees with this concept and believes that it should be incorporated in the final-form regulation. Accordingly, the Commission will insert the words "based upon" within Section 62.225(a)(3) so that it gives flexibility to the regulation while still requiring that the method selected by the NGDC be founded upon the applicable contract rate.

Section 62.226—NGDC costs of competition related activities.

Proposed Rulemaking Order Comments

In the Proposed Rulemaking Order, the Commission concluded that NGDCs "should be able to recover reasonable costs that are prudently incurred in connection with the implementation of any changes designed to promote the development of effective competition in the retail market." We determined that we would allow NGDCs to

recover these costs through a surcharge with an automatic adjustment mechanism and set forth such a mechanism in this section.

In its comments to the proposed regulations, IRRC noted that since the cost of “competition related activities” is not established or defined in this section, it is not possible to determine the components, limits, or impact of this provision. IRRC stated that without direction from the Commission, the subjective nature of determining costs related to competition may expose customers to paying costs that may not be in their best interest, their responsibility, spent effectively or that are redundant to advertising costs already reflected in the NGDC base rates. IRRC stated that the Commission must provide guidance in the regulation on what specifically are NGDC costs of competitive related activities.

Also, IRRC stated that it has concerns relating directly to 66 Pa.C.S. § 2203(5)(a), under which the Commission must “require that restructuring of the natural gas industry be implemented in a manner that does not reasonably discriminate against one customer class for the benefit of another.” IRRC stated that it is not clear how the profits produced by the advertising will be considered by this statutory section.

IRRC stated that the Commission should either delete the section in its entirety or amend the regulation to strictly interpret what costs may be claimed and to protect customers from paying imprudent costs, redundant costs or costs borne by one customer class for the benefit of another.

ANOFR Order Comments

Based on comments we received concerning this section of the proposed regulation, specifically IRRC’s comments, we decided, in the ANOFR Order, to delete this section from the proposed regulation. We agreed with IRRC that the cost of “competition related activities” is not defined and is too broad and vague of a term. We also believe that these costs are already a part of the NGDC’s base rates and are neither large in magnitude in comparison to the utility’s base rates nor volatile in nature. As such, we determined that a separate automatic adjustment clause for this type of item would not be appropriate and, indeed, would be subject to claims of impermissible single issue ratemaking. See *Pennsylvania Industrial Energy Coalition v. Pa. PUC*, 653 A.2d 1336 (Pa. Cmwlth. 1995).

In its additional comments, NFG states that it disagrees with the Commission’s decision to delete this proposed section of the regulation. NFG states that our determination that “these costs are already a part of NGDC’s base rates and are neither large in magnitude in comparison to the utility’s base rates nor volatile in nature” is theoretical. NFG asserts that the costs incurred to promote competition will vary in nature from company to company and to make a broad statement that they are neither large nor volatile is presumptuous.

In their additional comments, the Joint Commenters state that to the extent that NGDCs are required to make changes to their operations and systems to accommodate the requirements in this rulemaking in order to enhance competition, the NGDCs should be able to recover those costs. Joint Commenters’ Comments at 11. The Joint Commenters suggest if the Commission does not allow NGDCs to recover incremental costs through a surcharge mechanism, the NGDCs should be permitted to defer those costs on their books and recover them in a ratemaking context as a regulatory asset or in some other manner that allows full recovery.

Resolution

Notwithstanding NFG’s assertions, we continue to believe that a separate automatic adjustment clause for this type of item would not be appropriate and, indeed, would be subject to claims of impermissible single issue ratemaking. See *Pennsylvania Industrial Energy Coalition v. Pa. PUC*, 653 A.2d 1336 (Pa. Cmwlth). Accordingly, this section will remain deleted from the final-form regulation. Nevertheless, we agree with the Joint Commenters that if an NGDC makes changes to its operations and systems as a result of this rulemaking, it may request from the Commission the authority to defer those costs on their books and to seek recovery of those alleged costs in a litigated base rate case.

Section 62.227—Regulatory assessments

Proposed Rulemaking Order Comments

This section of the proposed regulation created a surcharge to allow NGDCs to recover the costs of their annual regulatory assessment to fund the Commission, the OCA and OSBA.

In its comments, IRRC noted that a commentator raised serious questions regarding the inclusion of this section in the proposed regulation. IRRC stated that commenters questioned the need for this assessment stating that the costs associated with the regulatory assessment are not large expenses that would require special ratemaking treatment. Thus, IRRC questioned the need for any change in the practice of having NGDCs recover these costs through their base rates. Additionally, IRRC stated that the section is unclear because it does not appear to have any relationship to or impact upon the “price to compare” or competition. Lastly, IRRC stated that the Commission provides no justification for the additional expense that NGDCs would incur as a result of making filings and separating these costs from their base rates. IRRC stated that the Commission should delete the section in its entirety or provide rationale for its inclusion.

ANOFR Order Comments

In the ANOFR Order, based on comments we received concerning this section, we deleted this section from the proposed regulation. We agreed with IRRC and the OCA that the regulatory assessment is not a large or volatile expense that would warrant special ratemaking treatment. We also determined that these costs were already a part of the NGDC’s base rates and did not believe that there were adequate legal or policy justifications for singling out this minor cost item as a separate surcharge.

No parties filed additional comments regarding the deletion of this section from the proposed regulation.

Resolution

We continue to believe that a surcharge for this type of item would not be appropriate and, indeed, would be subject to claims of impermissible single issue ratemaking. See *Pennsylvania Industrial Energy Coalition v. Pa. PUC*, 653 A.2d 1336 (Pa. Cmwlth). Accordingly, this section will remain deleted from the final-form regulation.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 26, 2009, the Commission submitted a copy of the notice of proposed rulemaking, published at 39 Pa.B. 3461 (July 11, 2009), to IRRC and the Chairpersons of the House Committee on Consumer Affairs and the Senate Committee on Consumer Protection and Professional Licensure for review and comment.

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

Under section 7(d) of the Regulatory Review Act (71 P. S. § 745.7(d)), the final-form rulemaking was deemed approved by the House and Senate Committees. Under the Regulatory Review Act, IRRC met on August 25, 2011, and November 3, 2011, and disapproved the final-form rulemaking.

Conclusion

Consistent with our authority and obligations under the Act, particularly, Chapter 22 of the Public Utility Code, 66 Pa.C.S. §§ 2201—12, the Commission is establishing rules and regulations that will bring the benefits of natural gas competition and customer choice to retail consumers. The purpose of the regulations is to eliminate barriers to supplier entry and participation in the marketplace. Accordingly, under Sections 501 and 1501 of the Public Utility Code (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, 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 at 4 Pa. Code §§ 7.231—7.235, we find that the regulations for establishing a competitive retail natural gas supply market as set forth in Annex A should be approved; *Therefore,*

It Is Ordered That:

1. The regulations of the Commission, 52 Pa. Code Chapter 62, are amended by adding §§ 62.221—62.225 to read as set forth in Annex A.

(Editor's Note: Proposed §§ 62.226 and 62.227 included in the proposed rulemaking at 39 Pa.B. 3461 have been withdrawn by the Commission.)

2. The Secretary shall serve a copy of this order and Annex A on all jurisdictional natural gas distribution companies, natural gas suppliers, the Office of Consumer Advocate, the Office of Small Business Advocate and all other parties that filed comments at Docket No. L-2008-2069114, Natural Gas Distribution Companies and the Promotion of Competitive Retail Markets.

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

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

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

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

7. The final regulations become effective upon publication in the *Pennsylvania Bulletin*.

8. NGDCs shall file, within 90 days of the effective date of these regulations, the tariff revisions required by

Section 62.223 (relating to PTC), in accordance with a filing schedule to be issued by the Commission.

9. The contact persons for this final-form rulemaking are David E. Screven, Assistant Counsel, (717) 787-2126 (legal) and Richard Wallace, (717) 787-7236 (technical). Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Sherri DelBiondo, Regulatory Coordinator, Law Bureau, (717) 772-4597.

ROSEMARY CHIAVETTA,
Secretary

(Editor's Note: For the text of the orders of the Independent Regulatory Review Commission relating to this document, see 41 Pa.B. 5136 (September 24, 2011) and 41 Pa.B. 6470 (December 3, 2011).)

Fiscal Note: Fiscal Note 57-269 remains valid for the final adoption of the subject regulations.

Statement of Vice Chairperson John F. Coleman, Jr.

Prior to joining my staff, Matthew Totino was employed by a law firm that served as counsel to a party in the above-captioned proceeding. Therefore, to avoid any appearance of impropriety arising from his previous employment, I wish to note that I have not been advised by Matthew Totino regarding this matter.

JOHN F. COLEMAN, Jr.,
Vice Chairperson

Statement of Commissioner Wayne E. Gardner

Before the Commission is the Final Rulemaking Order which finalizes regulations meant to promote competition in the retail natural gas market. One issue of note concerns the price to compare (PTC) and whether the cost of providing supplier of last resort (SOLR) service should be included. Currently, the cost for procuring natural gas supply is included in distribution rates and paid for by both shopping and non-shopping customers. Each natural gas distribution company (NGDC) is required to provide SOLR service; each company must stand ready to provide natural gas supply to every customer in its distribution territory whether that customer currently receives supply from an alternative supplier or from the NGDC. Because SOLR service exists for the benefit of every customer, SOLR procurement costs should remain in distribution rates where every customer is required to pay for it. Additionally, because each NGDC is required to provide SOLR service, the associated costs are unavoidable and should be excluded from the PTC.

Today the majority votes to remove SOLR costs from distribution rates and put them into the gas procurement charge which will be paid for by non-shopping customers only and will be included in the PTC. The result of this is that customers who choose to stay with the default supplier will subsidize shopping customers who also benefit from the availability of SOLR service. Additionally, the true cost of the NGDCs providing a required service will not be reflected in the PTC. Therefore, I respectfully dissent from the majority's action and I support the recommendation made by Commission staff in this matter.

WAYNE E. GARDNER,
Commissioner

Statement of Commissioner Tyrone J. Christy

Before the Commission for consideration is the Revised Final Rulemaking Order, promulgating regulations to encourage increased natural gas supply competition among our jurisdictional Natural Gas Distribution Com-

panies (NGDCs) and licensed Natural Gas Suppliers (NGSs). The genesis of this rulemaking is the Commission's Report to the General Assembly on Pennsylvania's Retail Natural Gas Supply Market that was released in October 2005. In that report, the Commission determined that effective competition did not exist in Pennsylvania's retail natural gas market, and reconvened the stakeholders in the natural gas industry to identify existing barriers to competition. In our SEARCH Final Order and Action Plan issued on September 11, 2008, the Commission identified several initiatives to eliminate these barriers to competition.

After analysis of all the comments presented to the Commission in response to a Proposed Rulemaking Order issued on March 27, 2009 (March 27 Order), the Commission issued an Advance Notice of Final Rulemaking (ANOFR) on August 10, 2010 (August 10 Order), requesting further comment on the many revisions it had made to the proposed regulations. By order entered February 23, 2011, the Commission issued a Final Rulemaking Order, from which I partially dissented and on which I issued a Statement very similar to the Statement that I am issuing today. The Commission subsequently withdrew the Final Rulemaking Order in response to questions from the staff of the Independent Regulatory Review Commission (IRRC), and issued some proposed clarification amendments for comment via a Secretarial Letter on June 9, 2011. The revised final regulations before us today are the result of the comments on the ANOFR submitted by fifteen different parties, as well as the comments on the clarification amendments submitted by eight parties on June 16, 2011. I wish to thank each of the commenters for providing the excellent comments received.

This Revised Final Rulemaking Order is an extremely important rulemaking for this Commission to enhance the competitive natural gas market in Pennsylvania. While the revised final regulations reflect an improvement to the regulations as originally proposed, I continue to have some concerns that the regulations will result in increased costs to non-shopping customers of NGDCs, as well as cost shifting among customers that shop and those that decide to stay with the local NGDC. It is important to realize that the Commission is bound by certain standards in its efforts to enhance competition in the retail natural gas market. These standards are set out in 66 Pa.C.S. § 2203, Standards for restructuring of natural gas utility industry. Two of these standards are particularly appropriate in the context of these regulations. For example, 66 Pa.C.S. § 2203(3) states:

(3) The commission shall require natural gas distribution companies to unbundle natural gas supply services such that separate charges for the services can be set forth in tariffs and on retail gas customers' bills. In its restructuring filing, the natural gas distribution company shall establish system reliability standards and capacity contract mitigation parameters and address the unbundling of commodity, capacity, storage, balancing and aggregator services. *The commission may address the unbundling of other services only through a rulemaking. In conducting the rulemaking, the commission shall consider the impact of such unbundling on the labor force, the creation of stranded costs, safety, reliability, consumer protections, universal service and the potential for unbundling to offer savings, new products and additional choices or services to retail gas customers.* The commission's decisions shall assure that standards and procedures for safety and reliability, consumer protec-

tions and universal service are maintained at levels consistent with this chapter. (emphasis added)

Furthermore, 66 Pa.C.S. § 2203(5) states:

5) The commission shall require that restructuring of the natural gas utility industry be implemented in a manner that does not unreasonably discriminate against one customer class for the benefit of another.

My overriding concern with these regulations is that they may violate the aforementioned standards that this Commission is bound to uphold. For this reason, I am partially dissenting on the revised final regulations that are being adopted today, specifically with regard to the following issues:

Section 62.223 Price to Compare—Gas Procurement Charge

The draft final regulations would have required each NGDC to identify and remove the avoidable natural gas procurement costs included in base rates in the context of a 1308(a) tariff filing, and include these costs in a new rider to be called the Gas Procurement Charge (GPC) Rider. The GPC Rider was to be designed to remove non-SOLR avoidable costs from base rates, and to include those costs as a part of the PTC on a revenue neutral basis. I wholeheartedly support that approach as it would serve to level the playing field between NGDCs and alternative natural gas suppliers. This would have represented a significant improvement to the regulations originally proposed. However, the majority has determined to eliminate the concept of avoidable gas procurement costs from the GPC Rider. In my opinion, it is only the avoidable gas costs which are properly included within the PTC. If unavoidable costs are included in the PTC, shopping customers will be improperly subsidized by those customers that choose to remain under the regulated SOLR service.

The Natural Gas Choice and Competition Act at 66 Pa.C.S. § 2207(a) required that the NGDC serve as the supplier of last resort for residential, small commercial, small industrial and essential human needs customers until such time as the Commission approves an alternative SOLR. As of today, an alternative SOLR has not been approved by the Commission for any NGDC. NGDCs shoulder this regulatory requirement. SOLR service benefits both shopping and non-shopping customers and the costs to provide this service should not be avoided by customers when purchasing alternative supply from an NGS. SOLR related costs should be paid by all customers. Furthermore, as I mentioned in my prior statements in this proceeding, if these costs are not avoidable and are included within the PTC, then they may not be recovered by the NGDCs. Unavoidable costs, regardless of whether 50,000 customers or 500 customers shop, do not go away. Inclusion of such unavoidable costs in its PTC will inflate the PTC and could result in more customers leaving the NGDC, thereby placing the unrecoverable gas procurement-related costs on an even smaller customer base. Such an unbundling of unavoidable expenses could result in stranded costs, which is an impact we must consider pursuant to 66 Pa.C.S. § 2203(3).

I also am concerned that the attempt to identify the amount of the costs to be included within the GPC in the context of a 1307(a) tariff filing will be difficult and controversial. The quantification of gas procurement related costs presently embedded in base rates should be accomplished within a base rate proceeding. There are significant factual and legal hurdles associated with removing costs from base rates outside of a base rate

proceeding. This is especially significant since the majority of recent base rate proceedings have not been fully litigated and instead have been approved based on a total allowable revenue increase pursuant to a "black-box" settlement. In such settlements, the individual components of the various cost components are not established and are not readily quantified. I am concerned that that the process established under these regulations will lead to confusion and excessive litigation, and potentially result in an inefficient and unwise use of the Commission's resources as well as the resources of the affected parties. Simply stated, are the desired benefits to be achieved worth the potential costs of these additional proceedings?

Section 62.223 Price to Compare—Inclusion of the Reconciliation for Over and Under Collections

The revised final regulations provide that the reconciliation for over and under collections, i.e. the E-factor, be included as a component of the PTC because this will purportedly provide a more accurate indication of the current cost of SOLR service when comparing offers from alternative suppliers. I disagree because this results in consumers comparing an NGS offer to a NGDC rate adjusted for prior period over/under collections. The latter is not the current gas cost of the NGDCs. The result is not an apples to apples cost comparison. Furthermore, any cost that is included within the PTC should be avoidable when a customer shops. The E-factor is not an avoidable cost as shopping customers are subject to the E-factor charge or credit within the context of the migration riders for a one-year period after switching to an alternative NGS. Including the E-factor in the PTC is doing a disservice to consumers as it is misleading and misinforms them of the current market prices of natural gas. Inappropriate pricing signals are going to be given to consumers as a result. Also, consider that when a shopping customer returns to SOLR service that customer is not subject to the E-factor for one full year. Consumers need clear pricing signals, not more confusion.

Section 62.224 Purchase of Receivables Programs

The ANOPR Order contained a lengthy discussion of whether the Commission possesses the legal authority to mandate that NGDCs implement purchase of receivables programs. The debate centers around 66 Pa.C.S. § 2205(c)(5) of the Code, which reads as follows:

No natural gas distribution company shall be required to forward payment to entities providing services to customers and on whose behalf the natural gas distribution company is billing those customers before the natural gas distribution company has received payment for those services from customers. The commission shall issue guidelines addressing the application of partial payments.

The Revised Final Rulemaking Order finds that the Commission does possess legal authority to mandate POR programs for NGDCs despite the above section of the Code, yet maintains the current policy of making POR programs voluntary. While I agree with the commenters that challenged the Commission's legal analysis on this issue, the regulations do not rely upon this analysis to mandate the implementation of NGDC POR programs. I support this end result, but agree with the commenters who argued that the Commission's legal analysis is flawed.

Section 62.226 NGDC Costs of Competition Related Activities

The March 27 Order proposed the creation of a surcharge mechanism to allow NGDCs to recover the reasonable and prudently incurred costs of implementing and promoting natural gas competition in this Commonwealth. For various reasons, this entire section has been eliminated entirely. The Revised Final Rulemaking Order does state that, if an NGDC makes changes to its operations and systems as a result of this rulemaking, it may request from the Commission the authority to defer those costs on its books and to seek recovery of those alleged costs in a litigated base rate case. While I am sympathetic to the concerns of various parties that the creation of the proposed surcharge would be subject to claims of impermissible single issue ratemaking, I believe that there should be some type of mechanism to allow a more timely recovery of the costs incurred to comply with this rulemaking by our incumbent NGDCs. It seems to me that by not providing this recovery, there is an inherent disincentive for NGDCs to promote competition in Pennsylvania.

Customer Information

In my statements issued in response to the Commission's March 27 Proposed Rulemaking Order and in response to the August 10 ANOFR, I expressed my concern that natural gas consumers lack the necessary information to make an informed decision as to whether they should switch to an alternative supplier. They currently receive an offer from an NGS, know what the currently effective PTC is for their NGDC and possess little more information. For example, consider a NGDC customer that receives a one-year fixed price offer from an NGS. Other than knowing the current PTC, this customer has no information on the effect of forecasted gas prices on the NGDC's PTC for the coming year. Thus, the customer makes a decision in a vacuum while the NGS is well aware of projected market conditions. Worse yet, with the adoption of today's decision to include a historic E-factor within the PTC, comparing fixed price offers from NGSs to the NGDC PTC will be like comparing apples to oranges to pears.

I had suggested that consumers be provided some form of a monthly projection of natural gas prices based upon the best available market information and requested parties to address this proposal or offer other proposals that would inform Pennsylvania consumers. Several commenters submitted responses to this request.

In its comments, the Office of Consumer Advocate stated that customers would benefit from additional information, but that it is not clear how this information can be provided in a timely and accurate manner. In their Joint Comments, the NGS parties stated that, while forecasts are unreliable, customers should be provided with a historical record of gas costs on a past 12-month or 24-month basis. Columbia Gas averred that this information should be provided by the Commission, but that the appropriate format could be addressed in a future proceeding.

The Revised Final Regulations before us today do not address this issue, but I strongly believe this information is critical to permitting natural gas consumers to make educated decisions in a more competitive natural gas market. Absent this necessary information, and considering that NGDC costs are changed quarterly, consumers are making decisions based on incomplete information. While this rulemaking may not be the proper vehicle to

address this concern, I would request that the Commission, in the future, consider how best to further educate consumers and provide them with the additional resources needed to make informed decisions.

TYRONE J. CHRISTY,
Commissioner

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 62. NATURAL GAS SUPPLY CUSTOMER CHOICE

Subchapter G. NATURAL GAS DISTRIBUTION COMPANIES AND COMPETITION

Sec.	
62.221.	Purpose.
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62.224.	POR programs.
62.225.	Release, assignment or transfer of capacity.

§ 62.221. Purpose.

To foster a competitive retail marketplace for natural gas service to customers eligible for SOLR Service, which is a class of customer that consists largely of residential and small business customers, it is essential that these consumers are able to compare the price of gas purchased from their incumbent NGDCs with that offered for sale by NGSs. This subchapter sets forth a number of regulatory changes which promote competition for natural gas supplies.

§ 62.222. Definitions.

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

Act—66 Pa.C.S. §§ 2201—2212 (relating to Natural Gas Choice and Competition Act).

Base rate—The customer charge, distribution charge and other rates that are established in a Section 1308 proceeding under 66 Pa.C.S. § 1308 (relating to voluntary changes in rates).

Basic services—As defined in § 62.72 (relating to definitions).

GPC—*Gas procurement charge*—An element of the PTC, expressed on a per MCF or dekatherms (Dth) basis, that reflects an NGDC's natural gas procurement costs and removed from the NGDC's base rate and recovered through a separate charge.

MFC—*Merchant function charge*—An element of the PTC, expressed on a per MCF or Dth basis, that reflects the cost of uncollectibles associated with an NGDC's natural gas costs.

NGDC—*Natural gas distribution company*—As defined in section 2202 of the act (relating to definitions).

NGS—*Natural gas supplier*—As defined in section 2202 of the act.

POR—*Purchase of receivables*—A program by which an NGDC purchases the accounts receivable of NGSs.

PTC—*Price to compare*—As defined in § 62.80 (relating to common natural gas competition terms).

SOLR—*Supplier of last resort*—As defined in § 62.101 (relating to definitions).

Small business customer—As defined in § 62.72.

§ 62.223. PTC.

(a) The PTC rate must be expressed on a per MCF or dekatherms (Dth) basis and consist of the following elements:

(1) The natural gas supply charge determined in the NGDC'S Section 1307(f) proceeding, including the reconciliation for over and under collections.

(2) The GPC.

(3) The MFC.

(b) An NGDC shall file a tariff change under 66 Pa.C.S. § 1308(a) (relating to voluntary changes in rates) to identify the natural gas procurement costs included in its base rate and propose tariff revisions designed to remove those costs from its base rate and to recover those annual costs as part of the PTC (the GPC portion) on a revenue neutral basis.

(1) Natural gas procurement costs must include the following elements:

(i) Natural gas supply service, acquisition and management costs, including natural gas supply bidding, contracting, hedging, credit, risk management costs and working capital.

(ii) Administrative, legal, regulatory and general expenses related to those natural gas procurement activities, excluding those related to the administration of firm storage and transportation capacity.

(2) An NGDC's natural gas procurement costs shall be updated in its next base rate case.

(c) An NGDC shall file an MFC rider. The MFC rider must remove the cost of uncollectibles applicable to natural gas costs from its distribution rates and recover those annual costs as part of the PTC on a revenue neutral basis.

(1) A write-off factor for each customer class is determined by dividing the uncollectible expense by revenues. This factor applied to the natural gas supply charge determined in the NGDC's Section 1307(f) proceeding is the implementation MFC amount that must be removed from distribution rates on a revenue neutral basis.

(2) After implementation, unbundled distribution charges may not be adjusted for the write-off factor outside of a base rate case.

(3) The MFC for each customer class must be equal to the write-off factor times the natural gas supply charge determined in the NGDC's Section 1307(f) proceeding and shall be updated quarterly to reflect new natural gas supply charges effective with each 1307(f) filing.

(4) The write-off factor shall be updated in an NGDC's next base rate case.

(d) The GPC and MFC tariff riders must identify:

(1) How the surcharges are calculated.

(2) Which costs shall be recovered through the surcharge by:

(i) Customer class.

(ii) Federal Energy Regulatory Commission account number, including the specific subaccounts used to recover eligible procurement costs.

(e) The GPC and MFC are not subject to reconciliation for a prior period over or under collections.

§ 62.224. POR programs.

(a) *Program design.*

(1) An NGDC may purchase accounts receivable from licensed NGSs which operate on the NGDC system and who wish to sell their receivables.

(2) An NGS electing to sell its receivables to an NGDC shall include its accounts receivables related to choice residential and small business basic services in the POR program.

(3) An NGS shall only sell receivables associated with basic services and may not sell other receivables related to products and services sold in relation to basic services or in addition to basic services to the NGDC's POR program. The NGS shall certify that charges do not include receivables for other products or services.

(4) To qualify for participation in an NGDC's POR program, an NGS shall use consolidated billing from the NGDC unless the NGDC's consolidated billing system cannot reasonably accommodate the NGS's billings for basic services.

(5) An NGDC's POR program shall use a discount rate designed to reflect the NGDC's actual uncollectible rate for supply service customers and the incremental costs associated with the development, implementation and administration of the POR program.

(6) The POR discount rate must account for risk and cost differences among the NGDC's customer classes.

(7) POR programs must, at a minimum, include receivables on residential and small business customer accounts.

(8) When an NGDC purchases accounts receivables from an NGS through a Commission-approved POR program and the accounts receivables are comprised only of charges for basic services, the NGDC may terminate service to customers for failure to pay NGS gas supply charges.

(9) To ensure that an NGDC's affiliated suppliers do not receive an advantage over nonaffiliated suppliers, a POR program shall be designed and implemented in accordance with §§ 62.141 and 62.142 (relating to standards of conduct).

(10) An NGDC POR program must be included in a supplier coordination tariff, as defined by Commission rules, regulations and orders, and approved by the Commission prior to implementation.

(11) To ensure that the POR discount rate accurately reflects its program costs, an NGDC shall track its POR program costs and NGS basic service collections experience. If the discount rate no longer reasonably compensates the NGDC for its POR program costs and collections experience, the NGDC shall file an update to the POR discount rate with the Commission.

(12) An NGS participating in an NGDC's POR program may separately bill a customer for a specific service or product if that service or product does not meet the definition of basic natural gas supply service.

(13) An NGS participating in an NGDC's POR program shall accept the customers responding to an offer included in the POR program without performing a credit check or requiring an additional security deposit from the customer.

(b) *Customer care.*

(1) An NGS shall follow Commission regulations relating to customer service including Chapter 56 and §§ 62.71—62.80 and 62.114 (relating to standards and billing practices for residential utility service; customer information disclosure; and standards of conduct and disclosure for licensees).

(2) An NGS shall respond to customer complaints regarding rate disputes in less than 30 days consistent with §§ 56.141, 56.151 and 62.79 (relating to dispute procedures; general rule; and complaint handling process).

(3) An NGDC shall follow 66 Pa.C.S. Chapter 14 (relating to responsible utility customer protection) and Chapter 56 when terminating service to a customer for failure to pay the NGS's basic natural gas supply charges purchased under the POR program. An NGDC may terminate service to an NGS customer only for the customer's failure to pay the portion of the accounts receivables purchased under the POR program that is comprised of charges for basic services.

(4) Reconnection of service to NGS customers following termination shall be made in accordance with 66 Pa.C.S. Chapter 14 and applicable regulations in Chapter 56.

(5) An NGDC shall agree to inform customers that service may be terminated for failure to pay NGS basic services charges by a separate bill insert that specifically describes the policy for termination of service.

(6) An enrollment letter issued by an NGDC at the time of selection of the NGS must inform customers that service may be terminated for failure to pay charges for basic services.

(c) *Transition plan for existing POR programs.*

(1) If the NGDC has an existing Commission-approved POR program that has a specific length of term, expressed in years or months, the Commission-approved POR program may continue until that term expires.

(2) The Commission will apply the POR program requirements in this section in its review of a new or updated POR program proposed by the NGDC.

(3) If the NGDC has an existing Commission-approved POR program without a defined term length, the NGDC shall update its POR program by April 14, 2015, to be consistent with this section.

§ 62.225. Release, assignment or transfer of capacity.

(a) An NGDC holding contracts for firm storage or transportation capacity, including gas supply contracts with Commonwealth producers, or a city natural gas distribution operation, may release, assign or transfer the capacity or Commonwealth supply, in whole or in part, associated with those contracts to licensed NGSs or large commercial or industrial customers on its system.

(1) A release, assignment or transfer must be made on a nondiscriminatory basis as to price, reliability and functionality.

(2) A release of an NGDC's pipeline and storage capacity assets must follow the customers for which the NGDC has procured the capacity, subject only to the NGDC's valid system reliability and Federal Energy Regulatory Commission constraints.

(3) A release, assignment or transfer must be based upon the applicable contract rate for capacity or Pennsylvania supply and be subject to applicable contractual arrangements and tariffs.

(4) The amount released, assigned or transferred must be sufficient to serve the level of the customers' requirements for which the NGDC has procured the capacity determined in accordance with the NGDC's tariff or procedures approved in its restructuring proceedings.

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