

RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 78]

Emergency Response Planning at Unconventional Well Sites

The Environmental Quality Board (Board) amends §§ 78.1 and 78.55 (relating to definitions; and control and disposal planning; emergency response for unconventional well sites) to read as set forth in Annex A.

Notice of proposed rulemaking is omitted as provided under section 204(3) of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204(3)), known as the Commonwealth Documents Law (CDL). Section 204(3) of the CDL provides that an agency may omit notice of proposed rulemaking if the agency finds for good cause that the notice is contrary to the public interest. The proposed rulemaking procedure for this rulemaking is contrary to the public interest for the following reasons.

In addition, this is an emergency-certified regulation as provided under section 6(d) of the Regulatory Review Act (71 P. S. § 745.6(d)). Section 745.6(d) of the Regulatory Review Act provides for issuance of emergency regulations based on, among other things, a certification by the Governor that a final-omitted rulemaking is required to protect the public health, safety and welfare. In this case, the Governor issued a Certification of Need for Emergency Regulation on December 27, 2012, that this final-omitted rulemaking is required to protect the public health, safety and welfare. In addition, that Certification of Need for Emergency Regulation is consistent with the statute authorizing the regulation.

This order was adopted by the Board at its meeting of November 20, 2012.

A. *Effective Date*

This final-omitted rulemaking is effective upon publication, with the exception of § 78.55(f)(3)—(5). Section 78.55(f)(3) will be effective on February 25, 2013. Section 78.55(f)(4) will be on effective July 25, 2013. Section 78.55(f)(5) will be effective on April 26, 2013.

B. *Contact Persons*

For further information contact, Kurt Klapkowski, Director, Bureau of Oil and Gas Planning and Program Management, Rachel Carson State Office Building, 15th Floor, 400 Market Street, P. O. Box 8765, Harrisburg, PA 17105-8765, (717) 772-2199; or Douglas Brennan, Director, Bureau of Regulatory Counsel, Rachel Carson State Office Building, 9th Floor, 400 Market Street, P. O. Box 8461, Harrisburg, PA 17105-8461, (717) 787-7060. Persons with a disability may use the Pennsylvania AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final-omitted rulemaking is available on the Department of Environmental Protection's (Department) web site at www.dep.state.pa.us.

C. *Statutory Authority*

This final-omitted rulemaking is being made under the authority of act of February 2, 2012 (P. L. 67, No. 9) (Act 9), codified at 35 Pa.C.S. § 7321 (relating to unconventional well 911 emergency response information), which

requires the Department and the Pennsylvania Emergency Management Agency (PEMA) to adopt emergency regulations directing the operators of all unconventional wells within this Commonwealth to take certain actions for emergency response. The final-omitted rulemaking is also adopted under section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20), which authorizes the Board to adopt regulations necessary for the proper performance of the work of the Department.

D. *Background of the Final-Omitted Rulemaking*

Governor Tom Corbett called the Marcellus Shale natural gas play an "economic cornerstone" of this Commonwealth's recovery from the recession, which has impacted the Nation over the past 4 years. The development of vast natural gas resources trapped beneath more than half of this Commonwealth has created tens of thousands of new jobs, generated billions of dollars in tax and lease revenues for the Commonwealth and its citizens, infused billions of additional dollars in bonus lease and royalty payments to landowners and significantly expanded access to clean, affordable energy sources for residential, commercial and industrial customers.

Along with the economic and energy independence and security potential of the Marcellus Shale natural gas reserve comes a heightened awareness of and concern for the activity's impact on local communities within the shale development regions. While this Commonwealth has an extensive history of oil and natural gas development, particularly in its western region, natural gas development is relatively new to regions such as the Northern Tier and northeastern Pennsylvania. Additionally, the size, scale and accelerated pace of development of the Marcellus Shale natural gas reserve is a new phenomenon for this Commonwealth.

In 2011, Governor Corbett issued Executive Order 2011-01, codified at 4 Pa. Code Chapter 6, Subchapter II, to establish the Marcellus Shale Advisory Commission (Commission). The Governor charged it to identify, prioritize and craft recommendations regarding the safe, efficient and environmentally responsible extraction and use of unconventional natural gas reserves in this Commonwealth.

As outlined in Executive Order 2011-01, the Commission undertook a broad review of a multitude of issues regarding Marcellus Shale natural gas development. As part of this, the Commission formed a Local Impact & Emergency Response Work Group (Work Group). The Work Group closely examined emergency response issues, which included meeting with various experts and local government officials.

In the final Commission report to the Governor, the Commission noted that

... municipalities have a legal responsibility for planning for and responding to all types of emergencies. Drilling activity leads to the potential for many types of incidents for which response may be necessary including: fires, well blowouts, chemical and fuel spills, and traffic accidents attributed to an overall increase in vehicular traffic. Emergencies at drilling locations have occurred and until emergency specialists retained by drilling companies arrive on site, volunteer fire companies and other local first responders must secure a site and take appropriate action. . . . Responding to natural gas incidents re-

quires additional emergency management planning at the local, county, and regional levels and appropriate equipment and training, particularly with respect to natural gas well operations.

The Commission made two recommendations that relate to this final-omitted rulemaking:

9.3.1: Oil and gas well pads and related facilities should be assigned a 9-1-1 address for emergency response purposes, and oil and gas operators should be required to provide GPS coordinates for access roads and well pad sites, and post this information, along with appropriate emergency response contact information, in a conspicuous manner at the well pad site.

9.3.2: In coordination with PEMA and [the Department], emergency plans for responding to incidents on well development sites should be standardized across the Commonwealth to ensure an acceptable level of expectation for safety and response coordination. The emergency plan should be distributed to the county emergency management coordinator.

On February 2, 2012, Governor Corbett signed into law Act 9, which adopted these recommendations from the Commission. Act 9 provides that the Department and PEMA “shall adopt emergency regulations directing the operators of all unconventional wells within this Commonwealth” to register street and GPS addresses, post signs and develop and implement emergency response plans. The Department and PEMA have worked closely in developing this final-omitted rulemaking.

The Department presented this final-omitted rulemaking to its Oil and Gas Technical Advisory Board (TAB) at meetings on August 15 and September 17, 2012. Changes were made to this final-omitted rulemaking to reflect concerns raised by TAB.

E. Summary of Final-Omitted Rulemaking

This final-omitted rulemaking adds two definitions to § 78.1 and adds § 78.55(f). The Department is currently developing other changes to Chapter 78 (relating to oil and gas wells) to address a variety of topics, including changes needed to implement 58 Pa.C.S. §§ 3201—3274 (relating to development). As part of that effort, the Department expects that subsection (e) will be integrated into a more comprehensive § 78.55 in the future.

The new definitions in § 78.1 are for “unconventional formation” and “unconventional well,” which are taken verbatim from 58 Pa.C.S. § 3203 (relating to definitions).

Section 78.55(f)(2) contains definitions of terms used in Act 9 and others that are needed to clarify the requirements of the regulation. These definitions only apply to subsection (f). The definitions include several terms to ensure clarity of the requirements for signs (“access road,” “entrance,” “private road” and “public road”).

Section 78.55(f)(3) requires registration of street addresses and GPS coordinate addresses that are needed to assist emergency responders in locating well sites. This paragraph provides details on how those requirements apply in different scenarios.

Section 78.55(f)(4) contains signage requirements for the same purpose. The standards are largely borrowed from Department of Transportation regulations. An example sign is provided in Figure 1.

Section 78.55(f)(5) contains requirements for emergency response planning. Emergency response planning is a central part of ensuring that the impacts of emergencies

are minimized. The plan must utilize the concepts of the National Incident Management System to the maximum extent practicable. The key elements are described in this paragraph. The plan must contain a description of the procedure used to provide current information to emergency responders in the event of an emergency, including current Material Safety Data Sheets for materials located at the well site.

Emergency response plans may consist of a base plan common to all of an operator’s well sites, along with site-specific plans for each well site with information relevant to that site. The initial emergency response plan shall be submitted to PEMA, the Department, the county emergency management agency and the Public Safety Answering Point prior to drilling operations. Updates shall be submitted annually. If changes are not needed to the plan, the operator shall submit a statement to that effect.

Act 9 explicitly applies to both new and existing unconventional wells within this Commonwealth. In recognition of that fact, § 78.55(f)(6) contains a transition to allow for existing operations, and others, to meet the new requirements within a reasonable time period after the effective date of the final-omitted rulemaking. The transition allows for delayed effective dates for well sites containing a well that is being drilled or has been drilled, well sites for which a well permit has been issued but wells have not started drilling and well sites for which an administratively complete well permit application is pending.

G. Benefits and Costs

Benefits

The public will benefit from this final-omitted rulemaking because it enhances emergency response at unconventional well sites. This has a direct benefit to public health, safety and welfare. This is particularly beneficial to first responders and employees at the well sites, who are the people most vulnerable to injury when there is an emergency.

Local governments will benefit because this final-omitted rulemaking will enhance their ability to manage emergency response. They will have emergency response plans that meet a Statewide standard in hand when an emergency occurs. In addition, there will be signs that meet the same standard to direct their response personnel to the well site as quickly as possible.

The regulated community will also benefit because there will be clear and uniform Statewide requirements for emergency response planning and the use of signs and addresses to direct emergency responders to the well site.

Costs

This final-omitted rulemaking will not impose additional costs on the Department.

Industry will incur costs in preparing the emergency response plans and posting signs. However, responsible operators already do both. Therefore, the expense should not be significant. The Department estimates that for existing unconventional well sites the cost to industry to provide the required signage may run between \$250,000 and \$1.1 million, depending on the material used to manufacture the sign (\$150 per sign for fiberboard and \$600 per sign for aluminum).

Compliance assistance plan

A compliance assistance plan will be implemented, including regional training sessions by the Department

and PEMA on the new requirements. The training will be targeted to Department and PEMA staff, local governments, first responders and unconventional well operators.

Paperwork requirements

This final-omitted rulemaking will require operators to prepare written emergency response plans. They will also need to submit annual updates, although for the vast majority of well sites this will simply involve notification that the plans are still current.

H. Sunset Review

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

I. Regulatory Review

Under section 5.1(c) of the Regulatory Review Act (71 P. S. § 745.5a(c)), on November 29, 2012, the Department submitted a copy of the final-omitted rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission and to the Chairpersons of the House and Senate Environmental Resources and Energy Committees. On the same date, the regulations were submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506).

J. Findings

The Board finds that:

(1) Use of the final-omitted rulemaking procedure is appropriate because the proposed rulemaking procedure specified in sections 201 and 202 of the CDL (45 P. S. §§ 1201 and 1202) is, under the circumstances, contrary to the public interest.

(2) Use of proposed rulemaking procedures is contrary to the public interest because the subject of the regulations, emergency response, has a direct and immediate impact on human health and safety at unconventional well sites.

(3) Use of the emergency certified rulemaking procedure provided in section 6(d) of the Regulatory Review Act is appropriate because it is required to protect the public health, safety and welfare.

(4) Use of the emergency certified rulemaking procedure is required to protect the public health, safety and welfare based on the Governor's Certification of Need for Emergency Regulation dated December 27, 2012. This is also indicated by the underlying statute in which the General Assembly directed the Department and PEMA to issue an emergency regulation containing the explicit provisions in the regulations.

(5) The regulations are necessary and appropriate for administration of the authorizing acts identified in Section C of this preamble and in the public interest.

K. Order

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

(a) The regulations of the Department, 25 Pa. Code Chapter 78, are amended by amending §§ 78.1 and 78.55 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

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

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

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

(e) This order shall take effect immediately, with the exception of § 78.55(f)(3)—(5). Section 78.55(f)(3) shall take effect February 25, 2013. Section 78.55(f)(4) shall take effect July 25, 2013. Section 78.55(f)(5) shall take effect April 26, 2013.

MICHAEL L. KRANCER,
Chairperson

Fiscal Note: 7-479. No fiscal impact; (8) recommends adoption.

PENNSYLVANIA EMERGENCY MANAGEMENT AGENCY

Certification

As Director of the Pennsylvania Emergency Management Agency (PEMA), I fully endorse the regulation entitled "Emergency Response Planning at Unconventional Well Sites," amending 25 Pa. Code 78, which was approved by the Environmental Quality Board (EQB) on November 20, 2012. I attended the EQB meeting and jointly presented the regulation to the EQB along with Scott Perry, the Deputy Secretary for Oil and Gas Management at the Department of Environmental Protection (DEP).

I am aware of the statutory provision authorizing the regulation, contained in the Act of February 2, 2012, P. L. 67, Act 9 (Act 9), which provides that "[PEMA] and the Department of Environmental Protection shall adopt emergency regulations" such as the regulation approved by the EQB on November 20, 2012. PEMA and DEP worked together in concert to develop the regulation. I agree that the EQB should adopt the regulation because DEP inspectors will be responsible to enforce the well site requirements of the regulation.

November 29, 2012

GLENN M. CANNON, Esq.,
Director

GOVERNOR'S OFFICE

Certification of Need for Emergency Regulation

Whereas, the Commonwealth Department of Environmental Protection engages in the permitting, regulation and inspection of all unconventional well sites within this Commonwealth; and

Whereas, the Commonwealth Department of Environmental Protection, the Pennsylvania Emergency Management Agency and local political subdivisions engage in emergency response activities at unconventional well sites; and

Whereas, timely emergency response is fundamental to the safety of the public, unconventional well site employees, and emergency responders as well as to the protection of the environmental resources throughout Pennsylvania; and

Whereas, local first responders and emergency management officials have cited concerns that it may be difficult to find unconventional well sites should an emergency occur particularly in the vast, undeveloped regions of the

Commonwealth and that unconventional well site activities may pose unforeseen risks and hazards to response efforts; and

Whereas, many unconventional well sites lack adequate addressing and signage, which has the potential to delay emergency response, threatening the public, unconventional well site employees, and emergency responders in the event of an emergency; and

Whereas, no existing regulations of the Department of Environmental Protection or the Pennsylvania Emergency Management Agency require that unconventional well operators report their latitude and longitude or street address to the Department of Environmental Protection, the Pennsylvania Emergency Management Agency or local county Emergency Management Agencies; and

Whereas, the Act of February 2, 2012, P. L. 67, No. 9 requires the Department of Environmental Protection and the Pennsylvania Emergency Management Agency to adopt emergency regulations related to the emergency response at all unconventional well sites across this Commonwealth; and

Whereas, without immediate amendment of the regulations, emergency response activities may be severely hampered to the detriment of the safety of the public, unconventional well site workers, and emergency responders, and to the protection of the environmental resources of the Commonwealth; and

Now Therefore, I do hereby certify that the regulatory amendments to 25 Pa. Code, Chapter 78, following hereto as ANNEX A are required to meet the emergency conditions enumerated in the recitals above and to safeguard the public health, safety and welfare as described therein.

Further, I hereby authorize the Secretary of the Department of Environmental Protection to publish these amendments in the *Pennsylvania Bulletin* as an Emergency Final-Omitted Rulemaking consistent with the provisions of Section 6(d) of the Regulatory Review Act, as amended, 71 P. S. § 745.6(d).

Given under my hand and the Seal of the Governor, at the City of Harrisburg, on this 27th day of December in the year of our Lord two thousand and twelve, and of the Commonwealth the two hundred and thirty seventh.



Governor

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE I. LAND RESOURCES

CHAPTER 78. OIL AND GAS WELLS

Subchapter A. GENERAL PROVISIONS

§ 78.1. Definitions.

* * * * *

(b) The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise, or as otherwise provided in this chapter:

* * * * *

Tour—A workshift in drilling of a well.

Unconventional formation—A geological shale formation existing below the base of the Elk Sandstone or its geologic equivalent stratigraphic interval where natural gas generally cannot be produced at economic flow rates or in economic volumes except by vertical or horizontal well bores stimulated by hydraulic fracture treatments or by using multilateral well bores or other techniques to expose more of the formation to the well bore.

Unconventional well—A bore hole drilled or being drilled for the purpose of or to be used for the production of natural gas from an unconventional formation.

Vertical well—A well with a single vertical well bore.

* * * * *

Subchapter C. ENVIRONMENTAL PROTECTION PERFORMANCE STANDARDS

§ 78.55. Control and disposal planning; emergency response for unconventional well sites.

(a) *Preparation and implementation of plan.* Prior to generation of waste, the well operator shall prepare and implement a plan under § 91.34 (relating to activities utilizing pollutants) for the control and disposal of fluids, residual waste and drill cuttings, including tophole water, brines, drilling fluids, additives, drilling muds, stimulation fluids, well servicing fluids, oil, production fluids and drill cuttings from the drilling, alteration, production, plugging or other activity associated with oil and gas wells.

(b) *Requirements.* The plan must identify the control and disposal methods and practices utilized by the well operator and be consistent with the act, The Clean Streams Law (35 P. S. §§ 691.1—691.1001), the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003) and §§ 78.54, 78.56—78.58 and 78.60—78.63. The plan must also include a pressure barrier policy that identifies barriers to be used during identified operations.

(c) *Revisions.* The operator shall revise the plan prior to implementing a change to the practices identified in the plan.

(d) *Copies.* A copy of the plan shall be provided to the Department upon request and shall be available at the well site during drilling and completion activities for review.

(e) *Emergency contacts.* A list of emergency contact phone numbers for the area in which the well site is located must be included in the plan and be prominently displayed at the well site during drilling, completion or alteration activities.

(f) *Emergency response for unconventional well sites.*

(1) *Applicability.* This subsection applies to unconventional wells.

(2) *Definitions.* For the purposes of this subsection, the following definitions apply:

Access road—A road connecting a well site to the nearest public road, private named road, administrative road with a name and address range, or private unnamed road with an address range.

Address—A location, by reference to a road or a landmark, made by a county or municipality responsible for assigning addresses within its jurisdiction.

Administrative road—A road owned and maintained by the Commonwealth open to the public at the discretion of the Commonwealth that may or may not have a name and address range.

Emergency responder—Police, firefighters, emergency medical technicians, paramedics, emergency management personnel, public health personnel, State certified hazardous materials response teams, Department emergency personnel and other personnel authorized in the course of their occupations or duties, or as an authorized volunteer, to respond to an emergency.

Entrance—The point where the access road to a well site connects to the nearest public road, private named road, administrative road with a name and address range, or a private unnamed road with an address range.

GPS coordinates—The coordinates in latitude and longitude as expressed in degrees decimal to at least six digits after the decimal point based upon the World Geodetic System 1984 Datum or any other datum approved by the Department.

PEMA—The Pennsylvania Emergency Management Agency.

Private named road—A private road with a name and address range.

Private road—A road that is not a public road.

Private unnamed road—A private road that is not a private named road.

Public road—A road owned and maintained by the Commonwealth, a county within this Commonwealth, a municipality within the Commonwealth or any combination thereof that is open to the public.

Public safety answering point—An entity operating in cooperation with local municipalities and counties to receive 9-1-1 calls for a defined geographic area and process calls according to a specific operational policy.

Well site name—The name used to designate the well site by the operator on the well permit application submitted to the Department.

(3) *Registration of addresses.*

(i) Prior to construction of an access road to a well site, the operator of an unconventional well shall request a street address for the well site from the county or municipality responsible for assigning street addresses.

(ii) The operator shall determine the GPS coordinates for both the well site and the entrance to the well site. The GPS coordinates must have a horizontal accuracy of plus or minus 6.67 feet or better. If there is more than one well on a well site, one set of GPS coordinates must be used for the well site.

(iii) The operator shall register the following with PEMA, the Department, the Public Safety Answering Point and the county emergency management organization within the county where the well site is located:

- (A) The well site name.
- (B) The well site address.
- (C) The GPS coordinates for the entrance and the well site.

(iv) When there is a change of well site address, the operator shall register the new address as provided in subparagraph (iii).

(v) When there is a change of the entrance due to a change in the well site address or otherwise, the operator shall register the GPS coordinates for the entrance as provided in subparagraph (iii).

(vi) The following shall be retained at the well site for reference when contacting emergency responders:

- (A) The well site name.
- (B) The well site address.
- (C) The GPS coordinates for the entrance and the well site.
- (4) *Signage.*

(i) Prior to construction of the access road, the operator of an unconventional well shall display a reflective sign at the entrance.

(ii) The sign must meet the following requirements:

(A) The sign must be fabricated with approved retroreflective sheeting material meeting ASTM 4956 Type III.

(B) The sign must have a white background with a 2-inch red border and black numbers and letters. Signs for entrances on administrative roads may use other colors provided that the signs use contrasting colors between the background, border, numbers and letters.

(C) The sign must be of sufficient size to accommodate the required information described in this section. The minimum size of a sign must be 36 inches in height and 48 inches in width.

(D) The sign must follow the format of Figure 1 and contain:

(I) The address number for the well site displayed horizontally on the first line of the sign in text no smaller than 4 inches in height.

(II) The full address of the entrance, including the county and municipality in which the entrance is located.

(III) The well operator's company name.

(IV) The 24-hour contact telephone information for the operator of the well site.

(V) The GPS coordinates for the entrance.

(VI) The well site name.

(VII) The wording "In Case of Emergency Call 9-1-1."

(iii) The sign must be mounted independently from other signage.

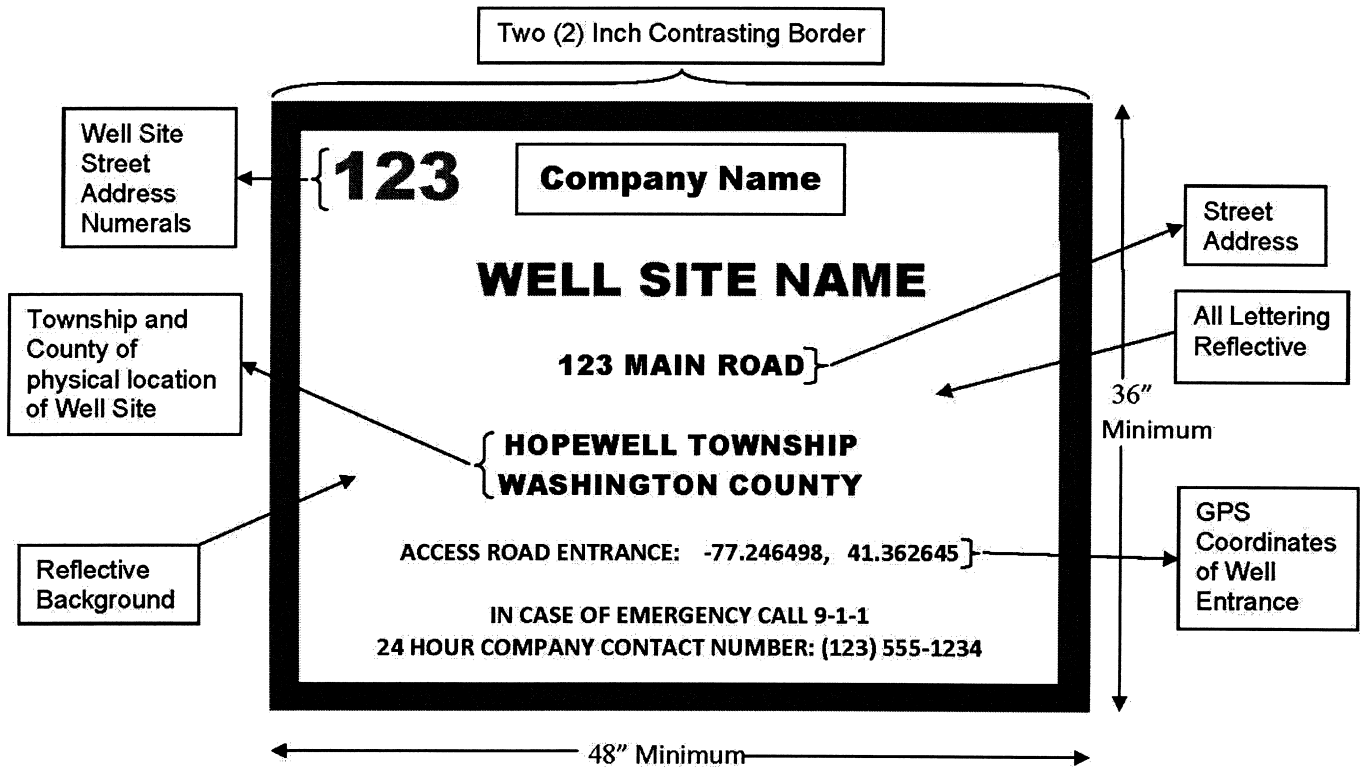
(iv) The bottom of the sign must be positioned a minimum of 3 feet above ground level.

(v) The sign may not contain other markings.

(vi) A sign, as viewed from the applicable road, may not be obstructed from view by vegetation, equipment, vehicles or other obstruction.

(vii) During drilling operations, the American Petroleum Institute (API) permit numbers of the wells at the site may be posted on a nonreflective sign below the principal sign. The API sign may be removed after the well is completed, provided that it is not otherwise required to be posted.

Figure 1. Sample Site Entrance Signage



(Not to scale)

(5) *Emergency response planning.*

(i) The operator of an unconventional well shall develop and implement an emergency response plan that provides for equipment, procedures, training and documentation to properly respond to emergencies that threaten human health and safety for each well site. The plan shall incorporate National Incident Management System planning standards, including the use of the Incident Command System, Incident Action Planning and Common Communications Plans. The plan must include:

(A) The emergency contact information, including phone numbers, for the well operator's local representative for the well site and the well operator's 24-hour emergency phone number.

(B) The emergency notification procedures that the operator shall utilize to contact emergency responders during an emergency.

(C) A description of the well site personnel's response to the following well site emergencies:

- (I) Fire.
- (II) Medical emergency.
- (III) Explosion or similar event.
- (IV) Spill.
- (V) Security breach or other security event.
- (VI) Any other incident that necessitates the presence of emergency responders.

(D) A description of the procedure to be used to provide the most current information to emergency responders in the event of an emergency, including the following:

- (I) The current Material Safety Data Sheet (MSDS) required under law to be present at the well site.
- (II) The location of the MSDSs at the well site.
- (III) The name of the position in the operator's organization responsible for providing the information in subclauses (I) and (II).

(E) A list containing the location of any fire suppression and spill control equipment maintained by the well operator at the well site.

(F) A description of any emergency equipment available to the operator that is located off of the well site.

(G) A summary of the risks and hazards to the public within 1/2 mile of the well site and the associated planning assumptions.

(H) An outline of the emergency response training plan that the operator has established.

(ii) The emergency response plan in subparagraph (i) may consist of two parts:

(A) A base plan common to all of the operator's well sites containing some of the elements described in subparagraph (i).

(B) A site-specific plan containing the remaining elements described in subparagraph (i).

(iii) The operator shall submit a copy of the current emergency response plan for that well site unless the permit provides otherwise. For plans using the approach in subparagraph (ii), the operator may submit one base plan provided that the site-specific plans are submitted for each well site.

(iv) The operator shall review the plan and submit an update annually on or before March 1 each year. In the event that updates are not made to the plan for that review period, the operator shall submit a statement indicating the review was completed and updates to the plan were not necessary.

(v) The plan and subsequent updates shall be submitted to:

- (A) PEMA.
- (B) The Department.
- (C) The county emergency management agency.

(D) The Public Safety Answering Point with jurisdiction over the well site.

(vi) A copy of the plan shall be available at the well site during all phases of operation.

(vii) The emergency response plan must address response actions for the following stages of operation at the well site:

- (A) Preparation of the access road and well site.
- (B) Drilling of the well.
- (C) Hydraulic fracturing and stimulation of the well.
- (D) Production.
- (E) Well site restoration.
- (F) Plugging of the well.

(viii) The requirements in subparagraphs (i)—(vii) may be met by implementing guidance issued by the Department in coordination with PEMA.

(6) *Transition.*

(i) This subsection is effective January 26, 2013, except as provided in subparagraph (ii).

(ii) For a well site containing a well that is being drilled or has been drilled as of January 26, 2013, or a well site for which a well permit has been issued but wells have not started drilling as of January 26, 2013, or a well site for which an administratively complete application is pending as of January 26, 2013, as provided in subparagraph (i), the following applies:

- (A) Paragraph (3) is effective on February 25, 2013.
- (B) Paragraph (4) is effective on July 25, 2013.
- (C) Paragraph (5) is effective on April 26, 2013.

[Pa.B. Doc. No. 13-132. Filed for public inspection January 25, 2013, 9:00 a.m.]

Title 61—REVENUE

DEPARTMENT OF REVENUE

[61 PA. CODE CHS. 7 AND 901]

Board of Appeals; Small Games of Chance

The Department of Revenue (Department), under authority in section 6 of The Fiscal Code (72 P.S. § 6) and section 306 of the Local Option Small Games of Chance Act (10 P.S. § 328.306), amends Chapters 7 and 901 (relating to Board of Appeals; and local option small games of chance).

Purpose of Final-Form Rulemaking

This final-form rulemaking consolidates administrative appeals under the jurisdiction of the Department's Board of Appeals (Board). Additionally, the final-form rulemaking streamlines the administrative appeals process by creating a uniform set of procedures for administrative appeals within the Department. The final-form rulemaking preserves the Board's jurisdiction over tax appeals.

Explanation of Regulatory Requirements

Sections 7.1—7.7 are rescinded.

Section 7.11 (relating to definitions) contains definitions of “administrative proceeding,” “appeal” and “Board,” which were previously defined in § 7.1.

Section 7.12 (relating to jurisdiction) explains that the Board's jurisdiction includes appeals and administrative proceedings as defined in § 7.11.

Section 7.13 (relating to manner of proceeding before the Board) explains that proceedings before the Board are initiated by the filing of a petition.

Section 7.14 (relating to petitions) contains the text formerly in § 7.3 with some minor modifications explained as follows.

Subsection (a) contains language in former § 7.3(a) stating that petitions should be filed with the Board.

Subsection (b) is an expansion of former § 7.3(a) regarding the time limits for filing a petition.

Subsection (c) is an expansion of former § 7.3(a) regarding receipt of a petition.

Subsection (d) is language that was formerly in § 7.3(b) and is expanded to include electronically filed petitions.

Subsection (e) contains language in former § 7.3(b)(1). This subsection explains the general requirements and contents of a petition and also additional requirements for an appeal petition.

Subsection (f) contains language that was in former § 7.3(c). It has been revised to explain the process of docketing petitions.

Subsection (g) contains language in former § 7.3(b)(1)(ix) regarding additional information.

Subsection (h) is new language and includes electronic signatures.

Section 7.15 (relating to Board practice and procedure) contains the language in former § 7.5 with minor modifications explained as follows.

Subsection (a)(1), which explains the burden of proof before the Board, is identical to former § 7.5(c)(2).

Subsection (a)(2) is nearly identical to former § 7.5(b) with minor rewording and describes the petitioner's right to have representation.

Subsection (a)(3) explains the Board's discretion to consolidate or sever multiple proceedings.

Subsection (a)(4) is made up primarily of the language in former § 7.5(c) and (d) regarding the conduct and procedures of hearings.

Subsection (a)(5) contains identical language in former § 7.5(e) regarding evidence.

Subsection (a)(6) is language from former § 7.5(f) regarding subpoenas with minor rewording.

Subsection (a)(7) is language from former § 7.5(h) regarding additional hearings and evidence.

Subsection (a)(8) contains language from former § 7.6 regarding the Board's decision and order.

Subsection (a)(9) is generally the language from former § 7.7 revised to clarify the Board's ability to issue corrected orders for clerical and computational errors.

Subsection (b) contains language from former §§ 7.3(b)(2)(ii), 7.5(c)(5) and (7) and 7.6(c).

Subsection (c) explains additional practices and procedures for administrative proceedings before the Board.

Section 7.16 (relating to security upon petition for review) outlines the requirements and procedures for taxpayers to file appropriate security with their petition for review filed in Commonwealth Court.

Section 901.1 (relating to definitions) is amended to change the definition of "Board" to mean the Board rather than the Small Games of Chance Board.

The last sentence of § 901.161 (relating to jurisdiction and purpose), regarding the Board's recommendation to the Secretary, is deleted to maintain consistency with other changes in this final-form rulemaking.

Sections 901.162 and 901.163 are rescinded.

Section 901.164 (relating to petitions) is amended to clarify the time frame for filing a petition challenging a decision of the Department. Subsections (b)—(e) have been deleted.

Section 901.165 (relating to Board practice and procedure) is amended by deleting former language and adding language that the regulations that govern the practice and procedures before the Board.

Sections 901.166 and 901.167 are rescinded.

Section 901.168(a) and (b) (relating to stay of appeal) is amended by updating language to be consistent with other changes in this final-form rulemaking.

Affected Parties

Pennsylvania taxpayers and tax practitioners may be affected by the final-form rulemaking.

Comment and Response Summary

Notice of proposed rulemaking was published at 42 Pa.B. 1222 (March 10, 2012). The Department did not receive comments from the public during the public comment period. Comments were not received from the House Finance Committee or the Senate Finance Committee. Due to content, the Department also served the proposed rulemaking on the House Gaming Oversight Committee, which did not comment. The only comments received on the proposed rulemaking were from the Independent Regulatory Review Commission (IRRC).

Explanations and amendments to the proposed rulemaking in response to IRRC's comments are as follows.

In response to IRRC's request to specifically and consistently identify the Department's statutory authority, the Department revised the citation in this preamble to reflect the specific statutory section that gives the Department regulatory authority. Further, the Department revised the response to Question 8 of the Regulatory Analysis Form (RAF) to mirror the citation in this preamble.

IRRC expressed concern regarding references to "statutes," "prescribed by statute" and "required by statute" in §§ 7.14 and 7.15. These references are general in nature and not intended to refer to a specific statute. There are too many applicable statutory sections to reference in this final-form rulemaking. Therefore, a change has not been made.

In response to IRRC's request for additional information on Question 10 of the RAF regarding how many people will benefit from the changes and quantify those benefits, the Department revised its response to Question 10 in the final-form RAF.

Section 7.14(b) is not intended to provide guidance on all possible filing deadlines. Other statutes and regulations also provide deadlines. The Department does not believe it is necessary to provide a cross reference in this subsection.

The Department revised §§ 7.14(b)(3) and 901.164 in this final-form rulemaking to provide that an appeal shall be filed within a specific time frame from the date of the Department's notice. This eliminates the need for determining when a taxpayer or person receives the notice and provides a definite time frame for filing.

In regard to § 7.14(c) and (d), IRRC suggested that the Department define "electronic." It is intended that this term has the general and common usage meaning and does not need to be defined in the final-form rulemaking. The term references any electronic method of filing permitted by the Department. Other Department publications and resources provide taxpayer guidance as to the available electronic filing methods accepted by the Department. Further, subsection (d) already provides that electronic filing can include "facsimile transmittal or through the Department's web site."

IRRC suggested that statutory language be added to § 7.14(c)(2). This subsection merely provides a cross reference. It would be redundant to reiterate an existing statute here. Reiterating the cross referenced statute would require a regulatory change if the cross referenced statute ever changes. Therefore, a change has not been made.

IRRC suggested that § 7.14(d) should specify how forms can be obtained or located. All Department forms are available to the public. The manners in which forms are available are subject to change based upon availability, budgetary constraints and technology. The Department believes the public understands that Department forms are available from the Department and that they obtain them by contacting the Department by writing, telephone or fax or from the Department's web site. It is not necessary for this subsection to describe the methods for contacting the Department.

In response to IRRC's comment that the last sentence of § 7.14(e)(2)(i) was ambiguous, the Department deleted it in this final-form rulemaking.

In this final-form rulemaking, the Department revised § 901.165 in response to IRRC's comment. The use of the phrase "this section" was incorrect. The Department corrected this mistake and changed the phrase to read "The provisions of this part regarding Board procedures."

Fiscal Impact

The Department determined that the final-form rulemaking will not have fiscal impact on the Commonwealth.

Paperwork

The final-form rulemaking will not create additional paperwork for the public or the Commonwealth.

Effectiveness/Sunset Date

This final-form rulemaking will become effective upon publication in the *Pennsylvania Bulletin*. The regulations are scheduled for review within 5 years of publication. A sunset date has not been assigned.

Contact Person

The contact person for an explanation of this final-form rulemaking is Mary R. Sprunk, Office of Chief Counsel, Department of Revenue, P. O. Box 281061, Harrisburg, PA 17128-1061.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 25, 2012, the Department submitted a copy of the notice of proposed rulemaking, published at 42 Pa.B. 1222, to IRRC and the Chairpersons of the House Committee on Finance and the Senate Committee 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 Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on November 30, 2012, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on December 13, 2012, and approved the final-form rulemaking.

Findings

The Department finds that:

(1) Public notice of intention to amend regulations has been duly given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The amendments are necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Department, acting under the authorizing statute, orders that:

(a) The regulations of the Department, 61 Pa. Code Chapters 7 and 901, are amended by adding §§ 7.11—7.13, 7.15 and 7.16, deleting §§ 7.1—7.7, 901.162, 901.163, 901.166 and 901.167 and amending §§ 901.1, 901.161 and 901.168 to read as set forth at 42 Pa.B. 1222; and by adding § 7.14 and amending §§ 901.164 and 901.165 to read as set forth in Annex A.

(b) The Secretary of the Department shall submit this order, 42 Pa.B. 1222 and Annex A to the Office of General Counsel and the Office of Attorney General for approval as to form and legality as required by law.

(c) The Secretary shall certify this order, 42 Pa.B. 1222 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

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

DANIEL MEUSER,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 42 Pa.B. 7877 (December 29, 2012).)

Fiscal Note: Fiscal Note 15-454 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 61. REVENUE

PART I. DEPARTMENT OF REVENUE

Subpart A. GENERAL PROVISIONS

CHAPTER 7. BOARD OF APPEALS

§ 7.14. Petitions.

(a) *Place.* Petitions shall be filed with the Board.

(b) *Time.*

(1) Petitions shall be filed within the time limits prescribed by statute, this title or other regulation. The burden is on the petitioner to present evidence sufficient to prove that a petition is timely filed.

(2) In the absence of a specific time limit for filing as prescribed in paragraph (1), a petition shall be filed no later than 90 days after the date of the Department's decision or action that is the subject of the petition.

(3) The date of a Department decision or action for purposes of the filing of a petition is the date of the notice of the decision or action.

(c) *Receipt.*

(1) *General rule.* A petition is filed with the Board on the date the Board receives it. A petition that is received by electronic means after the close of business is received on the date of transmission as long as the Board receives the transmission by 12 midnight.

(2) *Appeals.* Section 1102.1 of the FC (72 P. S. § 1102.1) and section 3003.6 of the TRC (72 P. S. § 10003.6) apply to appeals that are transmitted to the Department by mail.

(3) *Department personnel.* A petition that the Board receives after the date prescribed by statute or this title that is presented to other Department personnel prior to or on the date prescribed by statute or this title is deemed filed as of the date the other Department personnel receives it.

(d) *Manner and form.* A petition may be delivered to and filed with the Board by hand delivery, mail or electronically, including facsimile transmittal or through the Department's web site. A petition shall be in writing. A writing includes an electronic petition submitted through the Department's web site. The Department will prescribe the form for a petition.

(e) *Contents.* A petition must contain the information, documentation and attachments required by statute and the following:

(1) *General.* Petitions must contain the following:

(i) The petitioner's name, address and telephone number.

(ii) The name, address and telephone number of the petitioner's authorized representative, if any.

(iii) The petitioner's signature. If the petitioner is a corporation or association, an officer of the corporation or association shall sign the petition. If an authorized representative files the petition for the petitioner, the authorized representative may sign the petition on behalf of the petitioner.

(iv) A detailed statement in separate numbered paragraphs of the facts and grounds relied upon. If based upon a written document, a copy of the document, or material part thereof, shall be attached.

(v) A statement specifying the relief requested.

(vi) A statement indicating whether or not a hearing is requested.

(vii) A signed statement certifying that the facts in the petition are true and correct to the petitioner's knowledge and belief and that the petition is not made for purposes of delay.

(2) *Appeal petitions.* In addition to the requirements of paragraph (1), an appeal petition must contain the following:

(i) Designation of the tax, including the year or other period, and the amount involved.

(ii) The petitioner's license number, account number, employer identification number, Social Security number, claim number, file number, corporate box number or other appropriate identifying designation.

(iii) In the case of an Inheritance and Estate Tax protest, the petition must contain the decedent's name, last known address, the file number and the assessment control number, if applicable.

(f) *Docketing of petitions.*

(1) The Department will docket upon receipt a filing that purports to be a petition or which otherwise claims relief that may be sought through the filing of a petition. If a filing fails to satisfy any statutory requirement for the filing of a petition, the Board will notify the petitioner of the deficiency in the filing and give the petitioner an opportunity to correct the deficiency. The petitioner shall remedy the deficiency within 30 days of the Board's notice. If the petitioner fails to remedy the deficiencies, the Board will summarily dismiss the petition.

(2) For purposes of section 806.1(a)(4) of the FC (72 P. S. § 806.1(a)(4)), the administrative review procedure will be deemed to be initiated on the date the Board docketed the petition.

(g) *Additional information.* Upon written request, the Board may require a petitioner to furnish additional information that may be necessary to define the issues or to determine the case.

(h) *Signatures.* A signature includes an electronic signature issued by the Department to the petitioner.

PART VII. LOCAL OPTION SMALL GAMES OF CHANCE

CHAPTER 901. LOCAL OPTION SMALL GAMES OF CHANCE

Subchapter B. LICENSING AND REGISTRATION BOARD PROCEDURES

§ 901.164. Petitions.

A person challenging a Department decision shall file a petition within 15 days after the issue date of notice of the Department's decision.

§ 901.165. Board practice and procedure.

The provisions of this part regarding Board procedures and Chapter 7 (relating to Board of Appeals) govern practice and procedure before the Board.

[Pa.B. Doc. No. 13-133. Filed for public inspection January 25, 2013, 9:00 a.m.]

DEPARTMENT OF REVENUE

[61 PA. CODE CH. 117, 119 AND 121]

Personal Income Tax; Amended Returns

The Department of Revenue (Department), under authority in section 354 of the Tax Reform Code of 1971 (72 P. S. § 7354), amends Chapters 117, 119 and 121 (relating to return and payment of tax; liabilities and assessment—procedure and administration; and final returns).

Purpose of Final-Form Rulemaking

This final-form rulemaking clarifies the Department's policy on amended returns for Pennsylvania Personal Income Tax and replaces outdated language. In addition, the final-form rulemaking provides clear instructions for taxpayers regarding petitions for refunds.

Explanation of Regulatory Requirements

Amendments to §§ 117.1 and 117.7 (relating to general requirements of a return; and time for filing returns and paying tax) delete out-of-date language and add clarifying language.

Amendments to § 119.13 (relating to restrictions on refunds) delete outdated references to the Board of Finance and Revenue and replace them with an updated reference to Chapter 7 (relating to Board of Appeals). Amendments to subsection (b) delete minor language. Paragraphs (3)—(5) are added for more details on exceptions. Subsection (c) is deleted. The text in subsection (c)(3) is adopted in new § 119.13a (relating to refund claim filed by a legal representative or other fiduciary). The text in subsection (c)(4) is adopted in new § 119.13b (relating to checks in payment of claims).

Amendments to § 119.18 (relating to limitations on refund or credit) delete outdated references to the Board of Finance and Revenue and replace them with an updated reference to Chapter 7.

Section 121.1(g) (relating to filing tax return) is added. This language was formerly in § 121.25(b) (relating to amended return).

Amendments to § 121.25 delete outdated language, amend subsection (b) and add subsections (e)—(g) to provide uniformity and guidance on amended returns to Pennsylvania taxpayers. It is important to note the amendments to subsection (b)(1) explain that a Personal

Income Tax amended return may be filed within 3 years from the original or extended due date of the return. This marks a change in current policy and practice. The policy change will benefit taxpayers by giving additional time to file an amended return in cases when a taxpayer has been granted an extension to file the original return.

Affected Parties

Pennsylvania taxpayers and tax practitioners may be affected by this final-form rulemaking.

Comment and Response Summary

Notice of proposed rulemaking was published at 42 Pa.B. 2381 (May 5, 2012). The Department did not receive comments from the public during the public comment period. The Independent Regulatory Review Commission (IRRC) submitted a letter to the Department advising that objections, comments or recommendations were not offered on the proposed rulemaking. Comments were not received from the House Finance Committee or the Senate Finance Committee. Therefore, this final-form rulemaking is adopted as proposed.

Fiscal Impact

The Department determined that the final-form rulemaking will have minimal fiscal impact on the Commonwealth.

Paperwork

The final-form rulemaking will not create additional paperwork for the public or the Commonwealth.

Effectiveness/Sunset Date

This final-form rulemaking will become effective upon publication in the *Pennsylvania Bulletin*. The regulations are scheduled for review within 5 years of publication. A sunset date has not been assigned.

Contact Person

The contact person for an explanation of this final-form rulemaking is Mary R. Sprunk, Office of Chief Counsel, Department of Revenue, P. O. Box 281061, Harrisburg, PA 17128-1061.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 25, 2012, the Department submitted a copy of the notice of proposed rulemaking, published at 42 Pa.B. 2381, to IRRC and the Chairpersons of the House Committee on Finance and the Senate Committee 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 Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on November 30, 2012, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5(g) of the Regulatory Review Act, the final-form rulemaking was deemed approved by IRRC effective November 30, 2012.

Findings

The Department finds that:

(1) Public notice of intention to amend the regulations has been duly given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The amendments are necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Department, acting under the authorizing statute, orders that:

(a) The regulations of the Department, 61 Pa. Code Chapters 117, 119 and 121, are amended by adding §§ 119.13a and 119.13b and amending §§ 117.1, 117.7, 119.13, 119.18, 121.1 and 121.25 to read as set forth at 42 Pa.B. 2381.

(b) The Secretary of the Department shall submit this order and 42 Pa.B. 2381 to the Office of General Counsel and the Office of Attorney General for approval as to form and legality as required by law.

(c) The Secretary shall certify this order and 42 Pa.B. 2381 and deposit them with the Legislative Reference Bureau as required by law.

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

DANIEL MEUSER,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 42 Pa.B. 7877 (December 29, 2012).)

Fiscal Note: Fiscal Note 15-456 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 13-134. Filed for public inspection January 25, 2013, 9:00 a.m.]