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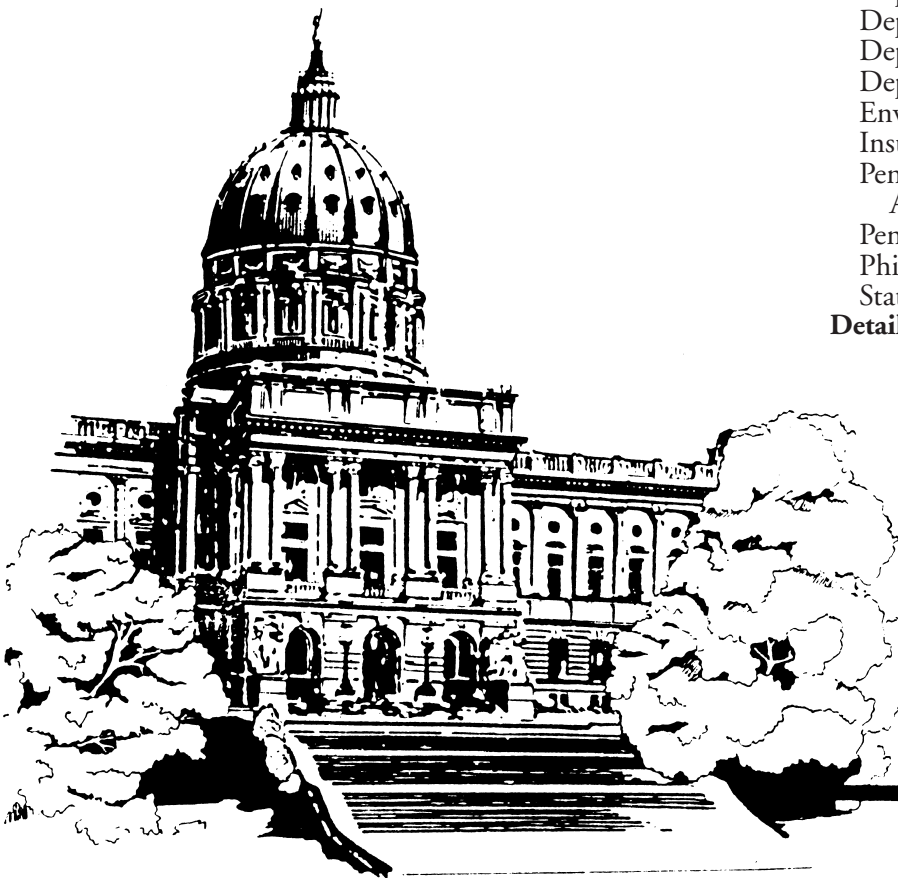
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**Latest Pennsylvania Code Reporter
(Master Transmittal Sheet):**

No. 500, July 2016

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READER'S GUIDE TO THE *PENNSYLVANIA BULLETIN* AND THE *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 the history of regulations. 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/cfdocs/legis/CH/Public/pcde_index.cfm.

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 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. A fiscal note provides 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 5 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 5 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 2016.

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THE COURTS

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 5]

Order Revising the Comment to Rule 523 of the Rules of Criminal Procedure; No. 475 Criminal Procedural Rules Doc.

Order

Per Curiam

And Now, this 15th day of June, 2016, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 45 Pa.B. 7288 (December 26, 2015), and in the *Atlantic Reporter* (Third Series Advance Sheets, Vol. 126), and a Final Report to be published with this *Order*:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the revision of the Comment to Pennsylvania Rule of Criminal Procedure 523 is approved in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective October 1, 2016.

Annex A

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

PART C(1). Release Procedures

Rule 523. Release Criteria.

* * * * *

Comment

This rule clarifies present practice, and does not substantively alter the criteria utilized by the bail authority to determine the type of release on bail or the conditions of release reasonably necessary, in the bail authority's discretion, to ensure the defendant's appearance at subsequent proceedings and compliance with the conditions of the bail bond.

When deciding whether to release a defendant on bail and what conditions of release to impose, the bail authority must consider all the criteria provided in this rule, rather than considering, for example, only the designation of the offense or the fact that the defendant is a nonresident. **Nothing in this rule prohibits the use of a pretrial risk assessment tool as one of the means of evaluating the factors to be considered under paragraph (A). However, a risk assessment tool must not be the only means of reaching the bail determination.**

In addition to the release criteria set forth in this rule, in domestic violence cases under Section 2711 of the Crimes Code, 18 Pa.C.S. § 2711, the bail authority must also consider whether the defendant poses a threat of danger to the victim.

When a defendant who has been released on bail and is awaiting trial is arrested on a second or subsequent

charge, the bail authority may consider that factor in conjunction with other release criteria in setting bail for the new charge.

Official Note: Previous Rule 4002, formerly Rule 4003, adopted November 22, 1965, effective June 1, 1966; renumbered Rule 4002 and amended July 23, 1973, effective 60 days hence; Comment revised January 28, 1983, effective July 1, 1983; rescinded September 13, 1995, effective January 1, 1996, and not replaced. Present Rule 4002 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; the April 1, 1996 effective dates extended to July 1, 1996; amended September 3, 1999, effective immediately; renumbered Rule 523 and Comment revised March 1, 2000, effective April 1, 2001; **Comment revised June 15, 2016, effective October 1, 2016.**

Committee Explanatory Reports:

* * * * *

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

Final Report explaining the June 15, 2016 Comment revisions regarding the use of risk assessment tools published with the Court's Order at 46 Pa.B. 3414 (July 2, 2016).

FINAL REPORT¹

Revision to the Comment to Pa.R.Crim.P. 523 Risk Assessment Tools

On June 15, 2016, effective October 1, 2016, upon the recommendation of the Criminal Procedural Rules Committee, the Court approved the revision of the Comment to Rule of Criminal Procedure 523 (Release Criteria) to recognize the use of risk assessment tools as one factor permitted to be considered in bail determination.

Recently, representatives of the First Judicial District (FJD) in Philadelphia had requested that the Committee consider clarifying that risk assessment tools may be used as part of the determination when setting bail. The FJD is in the process of developing a risk tool to assist Arraignment Court Magistrates and Judges in determining whether defendants at the time of their arrest should be held in custody, released under House Arrest/Electronic Monitoring, released under special conditions, or released on their own recognizance.

This effort in the FJD is consistent with a national trend in moving from a "cash-based release system," which is believed to be more burdensome on lower income defendants, to a "risk-based release system," that attempts to assess the likely danger of non-appearance or other misconduct. In particular, risk assessment tools are intended to use quantifiable statistics in an attempt to determine the potential risk that the defendant may pose and then use that as a basis for determining what conditions should be placed on release. The ultimate goal is to try to add more objectivity to the bail decision.

Simply put, a risk assessment tool is developed by studying cases in the past in which the defendants have committed misconduct while on pretrial bail and determining what factors, such as drug addiction, unemployment, or prior criminal history, are present. Usually, some

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

type of point system is then developed from this data that will be used to “score” a new defendant as a means of predicting whether the defendant will commit misconduct while on bail.

The risk assessment tool being implemented in Philadelphia is a good example of how such an analysis is developed. It is based on data of defendants in Philadelphia from 2007-2014 who were arrested and released on pretrial status. The data was analyzed to determine which defendants committed new crimes and the types of characteristics these defendants who were arrested for new crimes possess. The types of new crimes for which these defendants were arrested while on pretrial status were also analyzed. Over 200,000 defendants’ cases were studied. The factors studied included a defendant’s criminal history, age at time of first adult arrest, previous time in jail, current and new charges, and length of previous time in jail.

Risk assessment tools are already in use in a number of jurisdictions, such as Colorado and Kentucky. Even within Pennsylvania, Allegheny County has used a risk assessment tool for bail determination since 2006. Use of risk assessment tools is also encouraged in the ABA’s Standard on Pretrial Release 10-1.10(i) that urges each jurisdiction, *inter alia*, to:

- (i) develop and operate an accurate information management system to support prompt identification, information collection and presentation, risk assessment, release conditions selection, compliance monitoring and detention review functions essential to an effective pretrial services agency; . . .

The Committee also considered whether the rule should provide standards for the type of risk assessment tools that would be permitted. Ultimately, the Committee concluded that the validity of the individual risk tool’s methodology was a substantive matter requiring factual determination on a case by case basis.

In light of these considerations, the Committee concluded that currently nothing in the rules precludes the use of such a tool so long as it is not the exclusive means of making the assessment regarding bail. However, the Committee believes that a clarification on this point would be helpful. Therefore, the Comment to Rule 523 has been revised to state that the rule does not forbid the use of a risk assessment tool but that the tool must not be the only means of reaching the bail decision.

[Pa.B. Doc. No. 16-1122. Filed for public inspection July 1, 2016, 9:00 a.m.]

Title 237—JUVENILE RULES

PART I. RULES

[237 PA. CODE CH. 16]

Order Approving the Amendment of Rule 1608 of the Rules of Juvenile Court Procedure; No. 697 Supreme Court Rules Doc.

Order

Per Curiam

And Now, this 14th day of June, 2016, upon the recommendation of the Juvenile Court Procedural Rules Committee, the proposal having been submitted without publication pursuant to Pa.R.J.A. No. 103(a)(3):

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 1608 of the Pennsylvania Rules of Juvenile Court Procedure is revised in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective on August 1, 2016.

Annex A

TITLE 237. JUVENILE RULES

PART I. RULES

Subpart B. DEPENDENCY MATTERS

CHAPTER 16. POST-DISPOSITIONAL PROCEDURES

PART B(2). PERMANENCY HEARING

Rule 1608. Permanency Hearing.

* * * * *

D. Court’s findings.

1) *Findings at all six-month hearings.* At each permanency hearing, the court shall enter its findings and conclusions of law into the record and enter an order pursuant to Rule 1609. On the record in open court, the court shall state:

* * * * *

o) whether sufficient steps have been taken by the county agency to ensure the caregiver is exercising the reasonable and prudent parent standard; [**and**]

p) whether sufficient steps have been taken by the county agency to ensure the child has been provided regular, ongoing opportunities to engage in age-appropriate or developmentally-appropriate activities, including:

i) consulting the child in an age-appropriate or developmentally-appropriate manner about the opportunities to participate in activities; and

ii) identifying and addressing any barriers to participation[.] ; **and**

q) **whether the visitation schedule for the child with the child’s guardian is adequate, unless a finding is made that visitation is contrary to the safety or well-being of the child.**

2) *Another Planned Permanent Living Arrangement (APPLA) for Children Sixteen Years of Age or Older.* APPLA shall not be utilized for any child under the age of sixteen. At each permanency hearing for a child who is sixteen years or older and has a permanency goal of APPLA, the following additional considerations, inquiry, and findings shall be made by the court:

* * * * *

c) *Court’s APPLA Findings.* After making all the findings of paragraph (D)(1) and before assigning the permanency goal of APPLA, at each subsequent permanency hearing, based upon the considerations and inquiry provided in paragraph (D)(2)(a) & (b) and any other evidence deemed appropriate by the court, the court shall state in open court on the record the following:

i) reasons why APPLA continues to be the best permanency plan for the child; and

ii) compelling reasons why it continues not to be in the best interests of the child to:

- A) return home;
- B) be placed for adoption;
- C) be placed with a legal guardian; [and]
- D) be placed with a fit and willing relative[.]; and

iii) the full name of at least one identified supportive adult with whom the child has significant connections.

3) *Additional findings for fifteen of last twenty-two months.* If the child has been in placement for fifteen of the last twenty-two months, the court may direct the county agency to file a petition to terminate parental rights.

* * * * *

Comment

See 42 Pa.C.S. §§ 6341, 6351.

Permanency planning is a concept whereby children are not relegated to the limbo of spending their childhood in foster homes, but instead, dedicated effort is made by the court and the county agency to rehabilitate and reunite the family in a reasonable time, and failing in this, to free the child for adoption. *In re M.B.*, 674 A.2d 702, 704 (Pa. Super. [Ct.] 1996) (*quoting In re Quick*, 559 A.2d 42 (Pa. 1989)).

* * * * *

After all the requirements of paragraph (D)(1) and (D)(2)(a) and (b) have been made, the court is to state in open court on the record the specific reasons why APPLA continues to be the best permanency plan for the child [and], the compelling reasons why it continues not to be in the best interests of the child to return home or be placed for adoption, with a legal guardian, or with a fit and willing relative, **and the full name of at least one identified supportive adult with whom the child has significant connections.** See paragraph (D)(2)(c). The standards of this rule make choosing the plan of APPLA difficult to ensure that it is the last alternative available for the child. Additionally, this rule requires the court to state its finding in open court on the record. If the court takes a case under advisement, it is to continue the hearing until it is ready to make these findings. The time requirements of the Rules are to be followed when taking a case under advisement.

* * * * *

Official Note: Rule 1608 adopted August 21, 2006, effective February 1, 2007. Amended December 18, 2009, effective immediately. Amended April 21, 2011, effective July 1, 2011. Amended April 29, 2011, effective July 1, 2011. Amended October 21, 2013, effective December 1, 2013. Amended July 13, 2015, effective October 1, 2015. Amended December 9, 2015, effective January 1, 2016. **Amended June 14, 2016, effective August 1, 2016.**

Committee Explanatory Reports:

* * * * *

Final Report explaining the amendments to Rule 1608 published with the Court’s Order at 45 Pa.B. 7289 (December 26, 2015).

Final Report explaining the amendments to Rule 1608 published with the Court’s Order at 46 Pa.B. 3416 (July 2, 2016).

**FINAL REPORT¹
Amendment of Pa.R.J.C.P. 1608**

On December 9, 2015, the Court amended Juvenile Court Procedural Rule 1608 concerning permanency hearings for children with a permanency plan of another planned permanent living arrangement (“APPLA”), services for independent living, and corresponding definitions, due to new federal requirements of the Preventing Sex Trafficking and Strengthening Families Act (“PSTSFA”), (P.L. 113-183), 42 U.S.C. §§ 675 & 675a.

After the rule amendment, the Governor signed the Act of Dec. 28, 2015, P.L. 559, which added to the federal requirements of 42 U.S.C. § 675a(a)(2)(B) to now require that the court “make findings that the significant connection is identified in the permanency plan or that efforts have been made to identify a supportive adult, if no one is currently identified.” See 42 Pa.C.S. § 6351(F.1)(5)(iv)(D), *as amended*.

As presently constructed, Rule 1608 requires the court to consider evidence concerning “the full name of at least one identified supportive adult with whom the child has significant connections.” Pa.R.J.C.P. 1608(D)(2)(a)(iii); *see also* Pa.R.J.C.P. 1149 (Family Finding). However, the rule does not require a finding of identification. Therefore, to conform the rule to the new state legislative requirement, Rule 1608 is amended to add paragraph (D)(2)(c)(iii) to require supportive adult identification as another judicial finding.

Rule 1608 is further amended to require the court at a permanency hearing to address the child’s visitation with the guardian. Presently, this is required at the shelter care hearing, adjudicatory hearing, and dispositional hearing, *see* Pa.R.J.C.P. 1242(E)(7), 1409(C)(2)(b), 1512(D)(1)(k). Rule 1608 mentions visitation, but only in the context of siblings. *See* Pa.R.J.C.P. 1608(D)(1)(n). Rule 1609 (Permanency Hearing Orders) mentions “temporary visitation rights of parents,” but only when the court transfers custody of the child. *See* Pa.R.J.C.P. 1609(C)(3). Therefore, Rule 1608 is amended to require the court to consider the adequacy of the visitation schedule for the child with the child’s guardian.

[Pa.B. Doc. No. 16-1123. Filed for public inspection July 1, 2016, 9:00 a.m.]

**Title 249—PHILADELPHIA
RULES**

PHILADELPHIA COUNTY

**Democratic National Convention—July 25, 2016—
July 28, 2016; No. 02 of 2016**

Order

And now, this 14th day of June, 2016, in order to address questions posed regarding the operations of the First Judicial District of Pennsylvania (“District”) and all Courts and Departments of the Philadelphia Courts (“Philadelphia Courts”) during the Democratic National

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

Convention, which will be held in Philadelphia from Monday July 25, 2016 to Thursday July 28, 2016, *It Is Hereby Ordered and Decreed* as follows:

(1) The First Judicial District of Pennsylvania (“District”) and all Courts and Departments of the Philadelphia Courts (“Philadelphia Courts”) will be open for business as usual. The filing offices of the Philadelphia Courts will also remain open pursuant to their established schedules.

(2) All Municipal Court and Court of Common Pleas cases (civil, criminal, juvenile, dependency, domestic relations, and Orphans’ Court cases) will be heard as scheduled unless continued on or before their scheduled date.

(3) Continuance requests in dependency and delinquency proceedings are governed by Pa.Rs.J.C.P. 122 and 1122. Continuance requests in criminal cases are governed by Pa.R.Crim.P. 106. In the event a continuance is granted, the judge shall indicate to which party the period of delay caused by the continuance shall be attributed and whether the time will be included in or excluded from the computation of time within which trial must commence in accordance with Rule 600.

(4) The District has been informed that in light of the anticipated attendance at the various Democratic National Convention sponsored events, the Police Department will re-deploy most if not all of the police witnesses scheduled to testify in connection with scheduled juvenile, dependency, criminal and other matters to the Democratic National Convention detail. Given the importance of ensuring that victims and others are not subjected to the inconvenience of being called for cases that cannot be heard, the Court requests the prosecution and defense bar to actively collaborate to identify cases, as far in advance of July 25, 2016 as possible, that could be continued until after July 28, 2016 without prejudicing the rights of the involved parties.

(5) To the extent the prosecution, defense counsel and unrepresented defendants cannot agree to the continuance of impacted cases, continuance requests must be made by the District Attorney’s Office, the defendant’s attorney of record, or the defendant (if not represented) on a case by case basis and will be determined by the appropriate judge on a case by case basis.

This Order shall be filed with the Office of Judicial Records in a Docket maintained for orders issued by the Administrative Governing Board of the First Judicial District of Pennsylvania, and shall be submitted to the *Pennsylvania Bulletin* for publication. Copies of the order shall be submitted to the Administrative Office of Pennsylvania Courts, American Lawyer Media, *The Legal Intelligencer*, Jenkins Memorial Law Library, and the Law Library for the First Judicial District of Pennsylvania, and shall be posted on the website of the First Judicial District of Pennsylvania: <http://www.courts.phila.gov/regis>.

By the Court

HONORABLE SHEILA WOODS-SKIPPER,
*Chair, Administrative Governing Board
First Judicial District of Pennsylvania
President Judge, Court of Common Pleas
Philadelphia County*

[Pa.B. Doc. No. 16-1124. Filed for public inspection July 1, 2016, 9:00 a.m.]

Title 25—LOCAL COURT RULES

DELAWARE COUNTY

**A.R.D. Administrative Procedure 80124-98; DUI
Cases; Doc. No. MD 29-2016**

Administrative Order

And Now, this 19th day of May, 2016, it is hereby *Ordered and Decreed* that A.R.D. Administrative Guidelines procedure 80124-98 is hereby vacated and repealed. This rule is hereby replaced with the following procedures and requirements effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

1) Each person charged with a Driving Under the Influence Offense in the County of Delaware is required to complete the Court Reporting Network (CRN) Evaluation under the direction of Court Diagnostic Services exclusively in the County of Delaware on each and every DUI Offense.

2) Each defendant convicted of Driving Under the Influence in the County of Delaware or admitted to the A.R.D. Program is required to complete the Community Services Hours, if ordered, and the Track 1 or Track 2 Alcohol Highway Safety Educational Classes (1st and 2nd offenses) in the County of Delaware. Defendants, who reside outside of the Philadelphia Metropolitan Area, may be allowed to complete the above requirements in their home county, provided documentation is provided by the supervising county to the County of Delaware attesting to the successful completion thereof. The Philadelphia Metropolitan Area is defined as Philadelphia, Chester, Montgomery, and New Castle Counties.

3) Each defendant who is required to complete DUI outpatient treatment may complete the treatment at a licensed drug and alcohol treatment facility in his or her home county or state, as long as the defendant executes the appropriate HIPAA releases to allow the treatment facility to provide admittance and completion requirements prior to registration and updated treatment information where required by the County of Delaware Office of Probation and Parole.

By the Court

CHAD F. KENNEY,
President Judge

[Pa.B. Doc. No. 16-1125. Filed for public inspection July 1, 2016, 9:00 a.m.]

LYCOMING COUNTY

**2016 Amendments to the Rules of Civil Procedure;
Doc. No. 16-00006**

Order

And Now, this 8th day of June, 2016, it is hereby *Ordered and Directed* as follows:

1. Lycoming County Rules of Civil Procedure L205.2 and L1910.12 shall be amended as follows. (Bold is new language; bracketed bold is removed language.)

2. The Prothonotary is directed to:

a. File one (1) certified copy of this order with the Administrative Office of the Pennsylvania Courts.

b. Forward two (2) certified copies of this order and a computer disk containing the text of the local rule to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

c. Forward one (1) certified copy of this order to the Pennsylvania Civil Procedural Rules Committee by mail and also email a copy of the rule to the Committee at civil.rules@pacourts.us.

d. Forward one (1) certified copy of this order to the Pennsylvania Domestic Relations Procedural Rules Committee by mail.

e. Forward one (1) copy of this order to the chairman of the Lycoming County Customs and Rules Committee.

3. The revisions shall become effective 30 days after the publication of this order in the *Pennsylvania Bulletin*.

By the Court

NANCY L. BUTTS,
President Judge

L205.2. Filing Legal Papers with the Prothonotary.

(a) * * *

(b) Required cover sheets.

A. * * *

B. *Motion Cover Sheet*. The procedure set forth in this section shall apply to every request for relief and/or application to the court for an order, whether by petition, motion, preliminary objection, exception, or stipulation, that the filing party desires to bring before the court or family court hearing officer, except a motion for a continuance (see rule [**L205.2(b)c**] L216 regarding continuance) [**and exceptions to a Family Court Order (see Rule L1910.12 regarding exceptions)**].

L1910.12. Exceptions Procedure.

A. This procedure shall apply to:

1. all exceptions to the report and recommendation entered with respect to claims filed in or collected through the domestic relations office; and,

2. all exceptions to the report and recommendation entered with respect to claims raised in a divorce action and which have not been filed in or collected through the domestic relations office.

B. The exceptions and [**two copies**] **one copy** shall be filed with the prothonotary, **and shall have attached to them a copy of the order to which the exceptions have been taken. A rule L205.2(b)B motion cover sheet is required. The cover sheet shall indicate whether or not a transcript of the Family Court hearing is required.**

C. *Hearing Date*.

1. Upon the filing of exceptions under subparagraph A.1, above, a date for argument will be scheduled on the first available domestic relations hearing date occurring 21 days or more following the date of mailing of the temporary order.

2. Upon the filing of exceptions under subparagraph A.2, above, a date for argument will be scheduled on the first available miscellaneous date 21 days or more following the date of mailing of the temporary order.

[**D. At the argument, the parties will be required to stipulate on the record to all relevant facts which are not in dispute. If all of the facts necessary for resolution of the exceptions cannot be presented by way of stipulation, the court will direct preparation of a complete transcript of the proceedings held before the hearing officer, and require the posting of a deposit within a certain time period for preparation of the transcript by the party filing exceptions, or by both parties if cross-exceptions are filed, excepting any party who may have been granted leave to proceed in forma pauperis. The judge may also direct that further argument be held after the transcript is filed.**

E. Upon completion and filing of any transcript ordered, the exceptions will be resolved based upon the argument previously presented to the court and the transcript, along with any exhibits previously entered into the record. Unless directed by the court, no further proceedings will be scheduled. Final allocation of the cost of the transcript, including any payment by a party who was previously excused from posting a deposit, will be ordered upon resolution of the exceptions.

F. If the deposit for the transcript is not paid as directed under sub-paragraph D, above, all exceptions may be decided by the court based upon the findings of fact made by the family court hearing officer.]

[Pa.B. Doc. No. 16-1126. Filed for public inspection July 1, 2016, 9:00 a.m.]

WASHINGTON COUNTY

Establishing Uniform Rules Regarding Taking of Photographs, Video or Motion Pictures of Judicial Proceedings in the Hearing Room, Courtroom or Its Environs; Wireless Internet Access in the Courtrooms; No. 2016-1

Administrative Order

And Now, this 13th day of June, 2016, it is hereby *Ordered* and *Decreed* that the following order shall govern the use of media devices in and around the courtrooms, hearing rooms, or its environs. The Administrative Order of April 9, 2014, concerning this matter is vacated.

1. No sound recording, photograph, video recording, or motion picture may be made or taken of any judicial proceeding or in any hearing room or courtroom, without the prior permission of the President Judge, the presiding judge, or the Court Administrator.

2. All electronic devices, including cell phones, tablets, laptops, and cameras, shall be powered off (not simply muted or on vibrate) in all hearing rooms and courtrooms, unless permission to activate such device has been first obtained from the presiding judge, the presiding hearing officer, or the designee of the presiding judge or the presiding hearing officer.

3. No photograph, video recording, or motion picture of any witness, juror, or member of law enforcement connected to a pending judicial proceeding may be taken or made in the courthouse or in any building housing a courtroom or hearing room, whether or not the court is actually in session, without the prior permission of the President Judge or the presiding judge.

4. The transmission of any conversation or testimony taken by any electronic means during any judicial proceeding without the prior permission of the presiding judge, the presiding hearing officer, or the Court Administrator is strictly prohibited. This prohibition includes live blogging, tweeting, and/or posting quotations via social media.

5. The presiding judge, or the presiding hearing officer or his/her designee, are authorized to enforce this Order, including taking immediate possession of any offending device.

6. Any device confiscated pursuant to this Order that is not claimed by its lawful owner within seven (7) business days of such confiscation shall be deemed forfeited to the County of Washington.

7. The District Attorney and Public Defender's Office shall be permitted to access case information by use of electronic means in the courtrooms or hearing rooms pursuant to a policy developed and implemented by the Court Administrator.

8. This Order does not preclude:

a. The use of electronic devices by counsel and/or their agents and employees in the presentation of their case as otherwise authorized by law;

b. The use of electronic devices in non-legal proceedings such as ceremonial proceedings, mock trials, or other similar proceedings. It is the responsibility of the recording party to obtain any necessary release from the participants;

c. The use of cameras or other equipment utilized by court personnel or the Washington County Sheriff's Department for the purpose of providing courtroom security, or otherwise monitoring proceedings.

9. Nothing contained herein shall be construed as conflicting with or otherwise superseding the provisions of Pa.R.Crim.P. 112 and 542(B)(5), and/or Pa.R.J.A. 1910.

10. Violation of this Order may constitute contempt of court and result in the removal of the individual, confiscation of the device, the deletion of any offending data or material on such device, the imposition of a fine of up to \$1,000.00, and/or imprisonment of up to six (6) months.

It is *Ordered* that this Administrative Order shall be effective thirty (30) days after the publication thereof in the *Pennsylvania Bulletin*.

It is further *Ordered* that, in accordance with Pa.R.Crim.P. 105, the District Court Administrator shall:

(a) File one (1) certified copy hereof with the Administrative Office of the Pennsylvania Courts;

(b) Distribute two (2) certified copies hereof to and one (1) CD-ROM copy that complies with the requirement of Pa. Code § 13.11(b), to the Legislative Reference Bureau for publication in *Pennsylvania Bulletin*;

(c) File one (1) certified copy hereof with the Criminal Procedural Rules Committee;

(d) File one (1) certified copy with the Clerk of Courts;

(e) Cause a copy hereof to be published in the *Washington County Bar Journal* once a week for two successive weeks at the expense of the County of Washington; and

(f) Supervise the distribution hereof to all Judges of this Court and the Magisterial District Judges of the County of Washington.

By the Court

KATHERINE B. EMERY,
President Judge

[Pa.B. Doc. No. 16-1127. Filed for public inspection July 1, 2016, 9:00 a.m.]

PROPOSED RULEMAKING

DEPARTMENT OF BANKING AND SECURITIES

[10 PA. CODE CHS. 1, 102, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 301, 302, 303, 304, 305, 401, 404, 501, 504, 513, 601, 602, 603, 604, 605, 606, 609, 610, 701, 901 AND 1001]

Securities Regulations Omnibus Amendments

The Department of Banking and Securities (Department) proposes to amend Chapters 1, 102, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 301, 302, 303, 304, 305, 401, 404, 501, 504, 513, 601, 602, 603, 604, 605, 606, 609, 610, 701, 901 and 1001 to read as set forth in Annex A. This rulemaking is proposed under the authority of section 202.C of the Department of Banking and Securities Code (71 P.S. § 733-202.C), section 609(a) of the Pennsylvania Securities Act of 1972 (1972 Act) (70 P.S. § 1-609(a)) and section 9(b) of the Takeover Disclosure Law (70 P.S. § 79(b)).

Purpose

This proposed rulemaking will: replace terminology made obsolete by the 2012 merger of the former Securities Commission into the former Department of Banking (2012 merger); correct formatting and word choice issues; delete statements of policy; reduce compliance requirements; permit electronic format submissions and electronic filing; and align the language of the regulations with the North American Securities Administrators Association (NASAA) model rules and the Securities and Exchange Commission rules and regulations in 17 CFR 230.100—230.1001 (relating to general rules and regulations, Securities Act of 1933), 17 CFR 240.0-1—240.36a1-2 (relating to general rules and regulations, Securities Exchange Act of 1934) and 17 CFR 275.0-2—275.222-2 (relating to rules and regulations, Investment Advisers Act of 1940)).

Explanation of Proposed Amendments

Part I. General Provisions

Chapter 1. Preliminary Provisions

Section 1.1 (relating to definitions) is proposed to be amended to add the definition of “Commission” to subsection (a) by referencing the statutes pertaining to the Banking and Securities Commission in sections 1121-A and 1122-A in the Department of Banking and Securities Code (71 P.S. §§ 733-1121-A and 1122-A).

Part VII. Securities

Part VII (relating to securities) is proposed to be amended to: replace references to “Commission” relating to the former Pennsylvania Securities Commission with “Department” as a reflection of the 2012 merger; replace references to the “United States Securities and Exchange Commission” or “SEC” with “Securities and Exchange Commission” for consistency; delete references to “order of” to remove the requirement that the Department take actions through the format of an order; and replace “the National Association of Securities Dealers, Inc. (NASD)” with “FINRA” because the NASD merged with the regulatory arm of the New York Stock Exchange to form the Financial Industry Regulatory Authority, Inc. as a regulatory body.

Subpart A. Definitions

Chapter 102. Definitions

Proposed § 102.021 (relating to definitions) organizes the terms currently defined throughout the regulations into one section for readability and to add additional terms for clarity purposes. The proposed rulemaking amends and moves the following existing defined terms into proposed § 102.021 from other regulations: “203(d) restricted securities,” “accountant’s report,” “advertisement,” “agent,” “agricultural cooperative association,” “amount,” “any credit union,” “audit,” “bank,” “bank holding company,” “bond,” “broker-dealer,” “client,” “compensation,” “comparative financial statement,” “control,” “convicted,” “cooperative business association,” “custody,” “customer,” “date of filing,” “development stage company,” “engaged in agriculture,” “entity,” “equity security,” “equity securityholder,” “examination,” “exchange,” “executive officer,” “experienced private placement investor,” “feasibility study,” “financial forecast,” “financial institution,” “financial projection,” “fiscal year,” “franchise,” “going concern disclosure,” “guarantor,” “guaranty,” “hypothetical assumption,” “independent,” “independent party,” “individuals controlling,” “industrial loan association,” “industrial loan business,” “insolvent, insolvency,” “institutional investor,” “insurance holding company,” “investment adviser representative,” “investment supervisory services,” “majority-owned subsidiary,” “most recent audited financial statements,” “net capital,” “net worth,” “networking arrangement or brokerage affiliate arrangement,” “note or footnote,” “office of supervisory jurisdiction,” “parent,” “pooled investment vehicle,” “principal,” “prime quality,” “principal place of business,” “private placement offering of securities,” “pro rata,” “promotional securities,” “publish,” “purchase of securities by an experienced private placement investor,” “qualified custodian,” “registrant,” “related,” “related parties,” “rental pool arrangement,” “review,” “review report,” “security or securities,” “share,” “side-by-side fund,” “significant subsidiary,” “solicitor,” “sponsor,” “standby commission,” “subsidiary of a specified person,” “tangible book value of a company’s common shares,” “tangible net worth,” “totally-held subsidiary,” “trade or professional association,” “trustee for the bondholders,” “voting shares,” “wholly-owned subsidiary” and “wrap fee program.”

The proposed rulemaking adds the following terms to proposed § 102.021: “3(c)(1) fund,” “accredited investor,” “agricultural cooperative association member,” “beneficial ownership,” “bona fide distribution,” “bona fide pledgee,” “branch office,” “CRD,” “class of a series,” “confidential information,” “discretionary power,” “FINRA,” “fair value,” “firm member,” “IARD,” “impersonal investment advisory services,” “independent certified public accountant,” “independent representative,” “NASAA,” “nonbranch office,” “portfolio management,” “private fund adviser,” “professional corporation,” “prospective financial statement,” “qualifying private fund,” “related person,” “Securities and Exchange Commission,” “securities issued by a credit union,” “securities issued by an industrial loan association” and “venture capital fund.”

Section 102.031 (relating to agent registration) is proposed to be deleted as agent registration is included in the definition of “agent” in proposed § 102.021.

Section 102.041 (relating to bank holding companies; banks in organization) is proposed to be deleted as the definitions of “bank holding company” and “bank” are in proposed § 102.021.

Section 102.050 (relating to transfer agents and registrars) is proposed to be deleted as transfer agents and registrars are included in the definitions of “agent” and “broker-dealer” in proposed § 102.021.

Section 102.060 (relating to Commission) is proposed to be deleted as the definition of “Commission” is included in § 1.1.

Section 102.111 (relating to institutional investor) is proposed to be deleted as the definition of “institutional investor” is in proposed § 102.021.

Section 102.112 (relating to SEPs, IRAs and KEOGHS as institutional investors) is proposed to be deleted as retirement and pension plans, SEPS, IRAs and KEOGHS are addressed in the definition of “institutional investor” in proposed § 102.021.

Section 102.201 (relating to franchises) is proposed to be deleted as franchises are included in the definition of “security” in proposed § 102.021.

Section 102.202 (relating to real property) is proposed to be deleted as real property is addressed in the definition of “security” in proposed § 102.021.

Section 102.241 (relating to exchange) is proposed to be deleted as the definition of “exchange” is in proposed § 102.021.

Subpart B. Registration of Securities

Chapter 202. Exempt Securities

Section 202.010 (relating to securities issued by a governmental unit) is proposed to be amended to include format and language choice changes for readability.

Section 202.030 (relating to commercial paper) is proposed to be amended to: delete the definition of “prime quality” as it is in proposed § 102.021; add “general solicitation through” and “Internet, or other means” to subsection (d) for consistency with the 2004 amendment to section 203(d) of the 1972 Act (70 P.S. § 1-203(d)); and make format and word choice changes for readability.

Section 202.041 (relating to credit union and industrial loan association securities) is proposed to be deleted as credit unions and industrial loan association securities are included in the definition of “any credit union” in proposed § 102.021.

Section 202.052 (relating to trade or professional association) is proposed to be deleted as the definition of “trade or professional association” is in proposed § 102.021.

Section 202.091 (relating to shares of professional corporations) is proposed to be amended to: delete the definition of “professional corporation” as it is in proposed § 102.021; and make format and word choice changes for readability.

Section 202.092 (relating to guaranties of certain debt securities exempt) is proposed to be amended to: delete “as that term is defined in § 609.032(a)” from subsection (c); delete subsection (d) as the definitions are in proposed § 102.021; delete cross-references to subsection (d); and make format and word choice changes for readability.

Section 202.093 (relating to charitable contributions to pooled income funds exempt) is proposed to be amended to: delete “of 1954” from subsection (a)(2); replace the

“Charitable Organization Reform Act (10 P.S. §§ 161.1—161.19)” with “Solicitation of Funds for Charitable Purposes Act (10 P.S. §§ 162.1—162.23)” in subsection (a)(3) for citation accuracy; and make format and word choice changes for readability.

Sections 202.094 and 202.095 (relating to world class issuer exemption; and charitable gift annuities) are proposed to be amended to make format and word choice changes for readability.

Chapter 203. Exempt Transactions

Section 203.011 (relating to nonissuer transactions) is proposed to be amended to add “or an affiliate” after “the issuer” for consistency within the section and with 1972 Act. Format and word choice changes are proposed for readability.

Section 203.041 (relating to limited offerings) is proposed to be amended for format and word choice changes for readability.

Section 203.091 (relating to equity securities issued by reporting company) is proposed to be deleted as the definition of “equity security” is in proposed § 102.021.

Section 203.101 (relating to mortgages) is proposed to be amended to: delete “market” and “as defined under § 609.032” from subsection (a)(3) for consistency with the Financial Accounting Standards Board Accounting Standard Codification Topic 820 referenced in the definition of “fair value” in proposed § 102.021; add “general solicitation through” and “Internet or other means” to subsection (a)(4) for consistency with the 2004 amendment to section 203(d) of the 1972 Act; delete “is used” and “made or other form of general solicitation is utilized” for consistency with the 2004 amendment to section 203(d) of the 1972 Act; delete “of Banking and Securities” after “Department” in subsection (a)(6) to reflect the 2012 merger; replace “70 P.S. § 1-417” with “70 P.S. §§ 1-401—409” for accuracy; and make format and word choice changes for readability.

Section 203.131 (relating to bona fide pledgee) is proposed to be deleted as the definition of “bona fide pledgee” is in proposed § 102.021.

Section 203.141 (relating to sales to existing equity securityholders) is proposed to be amended to: add “equity” before “securityholder” throughout for consistency with section 203(n) of the 1972 Act; delete the definition of “securityholder” as this term, now referenced as “equity securityholder,” is in proposed § 102.021; delete the definitions of “class,” “standby commission” and “pro rata” as these terms are in proposed § 102.021; and make format and word choice changes for readability.

Sections 203.151, 203.161, 203.185 and 203.192 are proposed to be amended to make format and word choice changes for readability.

Section 203.171 (relating to liquidations, dividends and distributions) is proposed to be deleted as the definition of “bona fide distribution” is in proposed § 102.021.

Section 203.183 (relating to agricultural cooperative associations) is proposed to be amended: to delete the definitions of “agricultural cooperative association,” “members,” “securities” and “engaged in agriculture” as these terms are in proposed § 102.021; and to make format and word choice changes for readability.

Section 203.184 (relating to offers and sales to principals) is proposed to be amended to: delete the definition of “principal” as this term is in proposed § 102.021; and make format and word choice changes for readability.

Section 203.186 (relating to employee takeovers) is proposed to be amended to: delete “as that term is defined in § 609.010 (relating to use of prospective financial statements)” as the definition of “prospective financial statements” is in proposed § 102.021; and make format and word choice changes for readability.

Section 203.187 (relating to small issuer exemption) is proposed to be amended to: align with the language of the 2004 amendment to section 203(d) of the 1972 Act by adding “[g]eneral solicitation through” and “Internet or other means does not occur” to subsection (a)(5); delete “is used or” and “is made” from subsection (a)(5); and make format and word choice changes for readability.

Section 203.188 (relating to Cooperative Business Associations Exemption) is proposed to be amended to: delete subsection (b) as the definitions of “cooperative business association” and “securities” are in proposed § 102.021; and make format and word choice changes for readability.

Section 203.189 (relating to isolated transaction exemption) is proposed to be amended to: add “[g]eneral solicitation through” and “Internet or other means does not occur” to subsection (a)(5) for consistency with the 2004 amendment to section 203(d) of the 1972 Act; delete “is used or” and “is made” for consistency with the Securities and Exchange Commission; and make format and word choice changes for readability.

Section 203.191 (relating to Rule 505 offerings) is proposed to be amended to: add “1-” to the citation in subsection (a) for accuracy; delete the definitions of “compensation” and “beneficial ownership” as these terms are in proposed § 102.021; and make format and word choice changes for readability.

Section 203.201 (relating to accredited investor exemption) is proposed to be amended to: replace the citation “70 P.S. § 203(t)(i)” with “70 P.S. § 1-203(t)(ii)” in subsection (a) for accuracy; add “1-” before “606(c)” in subsection (b) for accuracy; delete subsections (c) and (d) as the terms “compensation” and “beneficial ownership” are in proposed § 102.021; and make format and word choice changes for readability.

Sections 203.202 and 203.203 (relating to certain transactions with persons from Canada exempt; and certain Rule 144A exchange transactions exempt) are proposed to be amended to make format and word choice changes for readability.

Chapter 204. Exemption Proceedings

Section 204.010 (relating to increasing the number of purchasers and offerees) is proposed to be amended to: add “exemption” before “notice filing” in subsection (b)(2) to clarify the type of notice referred to by the subsection; delete subsection (d) and cross-references to subsection (d) as the definitions of “experienced private placement investor,” “private placement offering of securities” and “purchase of securities by an experienced private placement investor” are in proposed § 102.021; and make format and word choice changes for readability.

Section 204.011 (relating to waivers of the 12-month holding period) is proposed to be amended to: delete subsection (b) as the terms “restricted securities” (now referred to as “203(d) restricted securities”) and “insolvent” are in proposed § 102.021; and make format and word choice changes for readability.

Section 204.012 (relating to waivers for pre-effective offers under section 203(h)) is proposed to be amended to make format and word choice changes for readability.

Chapter 205. Registration by Coordination

Section 205.021 (relating to registration by coordination) is proposed to be amended to: add “or otherwise equivalent form” to subsection (c)(2) to eliminate the need to amend this paragraph if the Securities and Exchange Commission chooses to renumber its forms; and make format and word choice changes for readability.

Section 205.040 (relating to series of unit investment trusts as separate issuers) is proposed to be amended to: add “of the act” for consistency within the section; and to make format and word choice changes for readability.

Chapter 206. Registration by Qualification

Section 206.010 (relating to registration by qualification) is proposed to be amended to make format and word choice changes for readability.

Section 206.020 (relating to tax opinion in offerings of limited partnership interests) is proposed to be deleted because the requirement that the regulated community incur a substantial cost to obtain a tax opinion when that information, when applicable, will be included in the filing in some other format.

Chapter 207. General Registration Provisions

Sections 207.050, 207.072, 207.091, 207.101 and 207.130 are proposed to be amended to make format and word choice changes for readability.

Section 207.071 (relating to escrow of promotional securities) is proposed to be amended to: delete subsection (b) as the definition of “promotional securities” is in proposed § 102.021; and make format and word choice changes for readability.

Section 207.140 (relating to signatures on electronic filings) is proposed to be deleted as this topic is addressed in other sections of the regulations.

Chapter 208. Denial for Abandonment

Proposed § 208.010 (relating to denial for abandonment) relocates the denial for abandonment language regarding corporate finance in § 602.022 (relating to denial for abandonment) into this section.

Chapter 209. Books, Records and Accounts

Section 209.010 (relating to required records; report on sales of securities and use of proceeds) is proposed to be amended to: add “on sales of securities” and “Form 209” to subsection (b)(1) to eliminate the need for subsection (c); delete subsection (c) and cross-references to subsection (c); and make format and word choice changes for readability.

Chapter 210. Retroactive Registration

Section 210.010 (relating to retroactive registration) is proposed to be amended to: delete “of certain investment company securities” from the section heading; delete the existing language of subsection (a) to be consistent with the 2014 amendment to section 210 of the 1972 Act (70 P.S. § 1-210) permitting retroactive registration for issuers with effective registration statements thereby reducing the filing burden on the regulated community; and make format and word choice changes for readability.

Chapter 211. Federally Covered Securities

Section 211.010 (relating to notice filings for Federally covered securities) is proposed to be amended to: add subsection (d), including “or any notice filing form that has been adopted by the Department” to cover the recent Securities and Exchange Commission final rule in Regulation A, which made Tier 2 offerings covered securities; and make format and word choice changes for readability.

Subpart C. Registration of Broker-Dealers, Agents, Investment Advisers and Investment Adviser Representatives and Notice Filings by Federally Covered Advisers

Chapter 301. Registration Requirement

Section 301.020 (relating to agent transfers) is proposed to be amended to make format and word choice changes for readability.

Chapter 302. Exemptions

Section 302.060 (relating to dual registration of agents in certain instances) is proposed to be deleted as this section is no longer applicable to the industry because it applies to one individual.

Section 302.061 (relating to auctioneers exemption from broker-dealer and agent registration) is proposed to be amended to: replace the "Auctioneers License Act" with "Auctioneer Licensing and Trading Assistant Registration Act" for accuracy; and make format and word choice changes for readability.

Section 302.063 (relating to financial institutions exempt from broker-dealer and agent registration) is proposed to be amended to: delete subsection (b) as the definitions of "financial institution" and "networking arrangement or brokerage affiliate arrangement" are in proposed § 102.021; and make format and word choice changes for readability.

Section 302.064 (relating to Stock Exchange exemption from agent registration) is proposed to be amended to: add "[a] currently effective" to paragraph (3)(ii) for consistency within the section; and make format and word choice changes for readability.

Section 302.065 (relating to Canadian broker-dealer exempt) is proposed to be amended to make format and word choice changes for readability.

Sections 302.070 and 302.071 (relating to registration exemption for investment advisers to private funds; and registration exemption for solicitors) are proposed to be added for consistency with the NASAA Registration Exemption for Investment Advisers to Private Funds Model Rule adopted in December 2011 and amended in 2013.

Chapter 303. Registration Procedure

Sections 303.011, 303.013, 303.014, 303.015, 303.031 and 303.032 are proposed to be amended to make format and word choice changes for readability.

Section 303.012 (relating to investment adviser registration procedure) is proposed to be amended to: add language to align with the language of the Securities and Exchange Commission and the NASAA Custody Requirements for Investment Advisers Model Rule 102(e)(1)-1 (NASAA IA Custody Model Rule); delete the definition of "principal place of business" as the definition is in proposed § 102.021; and make format and word choice changes for readability.

Proposed § 303.016 (relating to considered as abandoned) relocates the denial for abandonment language regarding licensing currently in § 602.022 into this section.

Section 303.021 (relating to registration and notice filing procedures for successors to a broker-dealer, investment adviser or Federally covered adviser) is proposed to be amended to: delete "SEC" before "Rule 15b1-3(a)" in subsection (a)(1) because the regulated community identifies this Securities and Exchange Commission rule through the citation; replace "may" with "shall" in subsection (b)(1) to reflect that the successor investment adviser

shall adhere to the requirements of that subsection; and make format and word choice changes for readability.

Section 303.041 (relating to broker-dealer capital requirements) is proposed to be amended to: delete subsection (c) as the definition of "customer" is in proposed § 102.021; and make format and word choice changes for readability.

Section 303.042 (relating to investment adviser capital requirements) is proposed to be amended to: replace "of \$25,000" with "required under Rule 15c3-1 (17 CFR 240.15c3-1)" in subsection (a)(2); add "maintained by a qualified custodian" to subsection (a)(3)(i); add subsection (a)(3)(i)(D) and (ii)(B)(III) and delete subsection (a)(3)(iii) to align with the language of the NASAA IA Custody Model Rule; delete the definitions of "custody," "independent party," "net capital," "net worth," "pooled investment vehicle," "principal place of business" and "qualified custodian" as those definitions are in proposed § 102.021; and make format and word choice changes for readability.

Section 303.051 (relating to surety bonds) is proposed to be amended to: delete the definition of "principal place of business" as this definition is in proposed § 102.021; and make format and word choice changes for readability.

Chapter 304. Postregistration Provisions

Section 304.011, 304.021 and 304.051 (relating to broker-dealer required records; broker-dealer required financial reports; and broker-dealer compensation) are proposed to be amended to make format and word choice changes for readability.

Section 304.012 (relating to investment adviser required records) is proposed to be amended to: delete "as the term is defined in § 303.042(c) or possession of securities or funds of any client," and the definitions of "investment adviser," "control," "solicitor," "client," "investment supervisory services" and "custody" as those definitions are in proposed § 102.021; add subsections (a)(21)—(24) and (b)(5)—(8) and update the cross-reference in proposed subsection (f)(5)(i) by adding "(22)—(24)" to be consistent with the NASAA IA Custody Model Rule; and make format and word choice changes for readability.

Section 304.022 (relating to investment adviser required financial reports) is proposed to be amended to: require sole proprietors to file an affirmative statement at the end of its fiscal year; delete subsections (a)—(d) as the appropriate information is included in proposed subsections (a)—(f) or addressed in the definition of "custody" and in § 209.010; add subsection (e) to limit the application of custody to exclude investment advisers in compliance with proposed § 303.012(c)(3) with custody solely because of the authority to deduct fees from client accounts or solely because of service as a general partner to private funds; and add subsection (f) to include an exemption to proposed subsection (d).

Section 304.041 (relating to examinations of broker-dealers and investment advisers) is proposed to be amended to: replace "or" with "and" in subsection (b) to require broker-dealers and investment advisers to maintain files in accordance with both the rules of the Securities and Exchange Commission and any National Securities Exchange or National securities association registered with the Securities and Exchange Commission; and make format and word choice changes for readability.

Section 304.061 (relating to free credit balances) is proposed to be amended to: delete "[f]or the purpose of this section, the term 'customer' means every person other than the broker-dealer" as the definition of "cus-

tomers” is in proposed § 102.021; and make format and word choice changes for readability.

Proposed § 304.071 (relating to business continuity and succession planning) requires investment advisers to implement succession plans.

Chapter 305. Denial, Suspension, Revocation and Conditioning of Registration

Sections 305.011 and 305.061 (relating to supervision of agents, investment adviser representatives and employees; and withdrawal of registration or notice filing) are proposed to be amended to make format and word choice changes for readability.

Section 305.012 (relating to convicted) is proposed to be deleted as the definition of “convicted” is in proposed § 102.021.

Section 305.019 (relating to dishonest and unethical practices) is proposed to be amended to: delete “provision of the Rules of Fair Practice of the National Association of Securities Dealers or an applicable” from subsection (c)(1)(xxi) to reference that the Securities and Exchange Commission is the appropriate regulatory body; add “or affiliated person” to subsection (c)(3)(xi)(B) to remove the possibility of duplicative fees; delete “affairs or” and add “or other financial information” to subsection (c)(3)(xiv) as “affairs” is too vague; replace “§ 404.013” with “§ 404.014” in subsection (c)(3)(xv) for consistency with the proposed deletion of § 404.013 (relating to investment adviser custody or possession of funds or securities of clients) and the proposed addition of § 404.014 (relating to custody requirement for investment advisers); and make format and word choice changes for readability.

Section 305.020 (relating to use of senior specific certifications and professional designations) is proposed to be added for consistency with the NASAA Model Rule on the Use of Senior-Specific Certifications and Professional Designations adopted March 20, 2008, and with Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub.L. No. 111-203, 124 Stat. 1367).

Subpart D. Fraudulent and Prohibited Practices

Chapter 401. Sales and Purchases

Section 401.020 (relating to professional responsibility) is proposed to be amended to make format and word choice changes for readability.

Chapter 404. Prohibited Activities; Investment Advisers and Investment Adviser Representatives

Section 404.010 (relating to advertisements by investment advisers and investment adviser representatives) is proposed to be amended to: delete “by any customer” from subsection (a)(1) to be consistent with the NASAA Unethical Business Practices of Investment Advisers, Investment Adviser Representatives, and Federal Covered Advisers Model Rule 102(a)(4)-1; delete subsections (b) and (c) as the definitions of “advertisement” and “clients” are in proposed § 102.021; and make format and word choice changes for readability.

Section 404.011 (relating to investment adviser brochure disclosure) is proposed to be amended to: delete subsection (k) as the definitions of “client,” “portfolio manager,” “sponsor” and “wrap fee program” are in proposed § 102.021; and make format and word choice changes for readability.

Section 404.012 (relating to cash payment for client solicitation) is proposed to be amended to: add “or other economic benefit” to subsection (b) and (b)(3) to be consistent with the NASAA Regulations Regarding Solici-

tors Model Rule 404(a)-(2); replace “, unless exempted, is registered under the act” with “is registered as an investment adviser representative or is exempt from registration under § 302.071 (relating to registration exemption for solicitors) or qualifies for another exemption under the act” in subsection (b)(2) to permit the individual exemption included in § 302.071 to apply to firms; add “prospective” before “client” in subsection (b)(4)(iii), (4)(iii)(B)(VI) and (5) to clarify that it applies to a “prospective” client; replace “(b)(4)” with “(b)(5)” in subsection (c) to cross-reference the proper subsection; add “investment advisory” in subsection (c)(1) for language consistency within the section; delete subsection (e) as the definitions of “client,” “impersonal advisory services” and “solicitor” are in proposed § 102.021; and make format and word choice changes for readability.

Section 404.013 is proposed to be deleted and replaced by § 404.014.

Section 404.014 is proposed to be added for consistency with the NASAA IA Custody Model Rule.

Subpart E. Enforcement

Chapter 501. Civil Liabilities

Section 501.011 (relating to criminal referrals) is proposed to be amended to include format only changes for readability.

Chapter 504. Time Limitations on Rights of Action

Section 504.060 (relating to rescission offers) is proposed to be amended to: replace “required by” with “materials prepared to satisfy” to clarify that although section 401(b) of the 1972 Act (70 P.S. § 1-401(b)) is the antifraud section it does not refer to a specific disclosure requirement; add language to create an actual duty; provide the documents to each rescission offeree; add “[a]dvice the Department of the results of the rescission offer within 15 calendar days after the expiration of the rescission offer period” to subsection (f)(1) to incorporate the timing requirement already in the form into this section; delete the definition of “executive officer” as it is in proposed § 102.021; delete the definition of “general partner” as this is no longer a defined term; and make format and word choice changes for readability.

Chapter 513. Rescission Orders

Section 513.010 (relating to rescission orders) is proposed to be amended to make format and word choice changes for readability.

Subpart F. Administration

Chapter 601. Administration

Sections 601.010 and 601.020 (relating to Commission quorum; action; disqualification; and Secretary, Assistant secretaries) are proposed to be deleted as the 2012 merger rendered these sections inapplicable to the administration of the Department.

Proposed § 601.030 (relating to access to confidential information) addresses the dissemination of confidential information and conforms the meaning of “necessary or appropriate” in section 601(c) of the 1972 Act (70 P.S. § 1-601(c)) with Securities and Exchange Commission Rule 240.24c-1.

Chapter 602. Fees

Section 602.022 is proposed to be deleted as the denial of abandonment regarding corporate finance is more properly addressed in Chapter 208 (relating to denial for abandonment) and denial of abandonment regarding li-

censing is more properly addressed in Chapter 303 (relating to registration procedure).

Section 602.060 (relating to charges for Commission publications) is proposed to be deleted as the 2012 merger rendered this section inapplicable to the administration of the Department.

Chapter 603. Administrative files

Section 603.011 (relating to filing requirements) is proposed to be amended to: update the filing address in subsection (e) due to the 2012 merger and to allow for future address changes without the need for amendment; add “or any successor address” to subsection (f)(1)(ii) to allow for future address changes of the NASAA/FINRA Central Registration Depository without the need for amendment; replace “www.psc.state.pa.us” with “www.dobs.pa.gov” in subsection (h) to update the web site of the Department; and make format and word choice changes for readability.

Section 603.031 (relating to public inspection of records) is proposed to be amended to: replace “1 of the act of June 21, 1957 (P.L. 390, No. 212) (65 P.S. § 66.1(2)), known as the Right-to-Know Law” with “102 of the Right-to-Know Law (65 P.S. § 67.102), and any successor statute” in subsection (b) to update the citation to the Right-to-Know Law (65 P.S. §§ 67.101—67.3104); add “or examination” to subsection (d)(1) as “investigation” alone does not address the examination activities of the Department; replace “1(2)” with “102” in subsection (f) for accuracy; delete “[f]or purposes of this section, the term ‘principal’ has the meaning as set forth in § 303.012(e)” in subsection (f)(3) as the definition of “principal” is in proposed § 102.021; delete “and home address” from subsection (f)(1)—(3) to reflect the requirements of the Right-to-Know Law; and make format and word choice changes for readability.

Section 603.040 (relating to charges for Department services) is proposed to be amended to make format and word choice changes for readability.

Chapter 604. Interpretative Opinions of Commission—Statement of Policy

Sections 604.010, 604.016, 604.020 and 604.023 are proposed to be deleted as the information in these sections will be moved to the Department’s web site.

Section 604.011 (relating to filings of copies—by facsimile or otherwise—of submittals, pleadings and other nonoriginal documents—statement of policy) is proposed to be deleted as the information in this section is either irrelevant after the 2012 merger or covered elsewhere in this proposed rulemaking.

Section 604.012 (relating to nonresponse or affirmative rejection of offers made under section 504(d) or (e) of the act and § 504.060 (relating to rescission offers—statement of policy) is proposed to be deleted as subsection (b) is in proposed § 504.060(e) and subsection (a) is no longer necessary.

Section 604.017 (relating to guidelines concerning the continuance of hearings by hearing officers—statement of policy) is proposed to be deleted as the information in this section is no longer relevant because hearing procedures are covered solely by 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) since the 2012 merger.

Section 604.018 (relating to imposition of administrative assessments under section 602.1(c)—statement of policy) is proposed to be deleted as the information in this

section is no longer relevant because the 2012 merger put new adjudicatory processes in place.

Section 604.019 (relating to requests for oral argument—statement of policy) is proposed to be deleted as the information in this section is no longer relevant because hearing procedures are covered solely by 1 Pa. Code Part II since the 2012 merger.

Section 604.021 (relating to denial of allegations—statement of policy) is proposed to be deleted as the information in this section is no longer relevant because as of the 2012 merger the Banking and Securities Commission only serves in an adjudicatory capacity after the appointment of a hearing officer.

Section 604.022 (relating to offers of settlement and consent injunctions—criminal referrals and investigations—statement of policy) is proposed to be deleted as the information in this section is no longer relevant due to the 2012 merger because the Banking and Securities Commission only serves in an adjudicatory capacity and referrals are now covered under sections 302 and 404 of the Department of Banking and Securities Code (71 P.S. §§ 733-302 and 733-404).

Chapter 605. Department Employees; Relationship with Licensed Persons or Qualified Organizations

Section 605.020 (relating to conflict of interest) is proposed to be amended to: delete “or” from subsection (a)(1); add subsection (a)(3) to permit the holding or purchasing of securities by a Department employee when the employee is not involved in the review of the application for registration, or an investigation, audit or examination, of a broker-dealer, agent, investment adviser or investment adviser representative; and make format and word choice changes for readability.

Chapter 606. Miscellaneous Powers of the Department

Section 606.011 (relating to financial reports to securityholders) is proposed to be amended to make format and word choice changes for readability.

Section 606.031 (relating to advertising literature) is proposed to be amended to: delete subsection (g) as the definitions of “advertisement” and “publish” are in proposed § 102.021; and make format and word choice changes for readability.

Section 606.041 (relating to delegation and substitution) is proposed to be deleted as the 2012 merger rendered this section inapplicable and corresponding section 606(d) of the 1972 Act (70 P.S. § 1-606(d)) was deleted, effective August 9, 2014.

Chapter 609. Regulations, Forms and Orders

Section 609.010 (relating to use of prospective financial statements) is proposed to be amended to: delete the definitions of “feasibility study,” “financial forecast,” “financial projection,” “hypothetical assumption,” “independent” and “prospective financial statement” as those terms are in proposed § 102.021 when applicable; delete “as that term is defined in § 204.010(d)(1) (relating to increasing the number of purchasers and offerees)” from proposed subsection (b)(3) as the definition of “experienced private placement investors” is in proposed § 102.021; replace “Statement of Accounts’ Services on Prospective Financial Information” with “Statement of Standards for Attestation Engagements” in proposed subsection (d) to conform with current terminology; replace “AICPA” with “SSAE” in proposed subsection (d) to con-

form with current abbreviations; and make format and word choice changes for readability.

Section 609.011, 609.031 and 609.037 (relating to amendments to filings with Department; application; and foreign financial statements) are proposed to be amended to make format and word choice changes for readability.

Section 609.012 (relating to computing the number of offerees, purchasers and clients) is proposed to be amended to: delete subsection (a)(3) as the definition of "entity" is in proposed § 102.021; and make format and word choice changes for readability.

Section 609.032 (relating to definitions) is proposed to be deleted as definitions for the terms in this section, except "fifty-percent, owned person," "material" and "principal holder of equity securities," are in proposed § 102.021. The phrases "fifty-percent, owned person" and "principal holder of equity securities" are no longer used in this proposed rulemaking. "Material" is no longer a defined term.

Section 609.033 (relating to accountants) is proposed to be amended to: add "or the auditing standards promulgated by the Public Company Accounting Oversight Board as required under law" to subsection (b)(1) to permit another option regarding auditing standards for brokerages as the Securities and Exchange Commission permits this option; replace "Accounting and Review Services" with "Attestation Engagements" in subsection (b)(2) and (3) to conform to current terminology; and make format and word choice changes for readability.

Section 609.034 (relating to financial statements) is proposed to be amended to: delete ", except that issuers offering interests in a direct participation program and any corporation which has or intends to have significant oil and gas operations must file the statements for each of 3 fiscal years" from proposed subsection (c)(2) to reduce the filing burden for issuers to the standard 2 fiscal years in this paragraph; and make format and word choice changes for readability.

Section 609.036 (relating to financial statements; annual reports) is proposed to be amended to: replace "and its parent or" with "and" in subsection (a)(1)(ii) to delete the requirement that the parent also file the documents; and make format and word choice changes for readability.

Chapter 610. Destruction of Documents and Records

Section 610.010 (relating to destruction of documents and records) is proposed to be deleted as the destruction of documents and records is governed by the Commonwealth record retention rules and section 610 of the 1972 Act has been repealed.

Subpart G. General Provisions

Chapter 701. Administrative Provisions

Proposed § 701.010 (relating to filing of registration forms) addresses the Department's requirements for the filing of registration forms because format requirements are currently covered in multiple subsections of the regulations and the addition of this section and deletion of those subsections will provide clearer guidance for the regulated community.

Proposed § 701.011 (relating to filing of exemption forms) addresses the Department's requirements for the filing of exemption forms because format requirements are currently covered in multiple subsections of the regulations and the addition of this section and deletion of those subsections will provide clearer guidance for the regulated community.

Proposed § 701.020 (relating to electronic filing) addresses the Department's requirements for electronic filing because electronic filing requirements are currently covered in multiple subsections of the regulations and the addition of this section and deletion of those subsections will provide clearer guidance for the regulated community.

Proposed § 701.030 (relating to fees) addresses the requirements for the payments of fees to the Department.

Subpart H. Practice and Procedure

Chapter 901. Special Rules of Administrative Practice and Procedure

Section 901.011 (relating to applicability of general rules) is proposed to be deleted as this topic is addressed by section 607(e) of the 1972 Act (70 P.S. § 1-607(e)).

Subpart H. Takeover Offerors

Chapter 1001. Takeover Disclosures

Section 1001.010 (relating to takeover offeror report regarding participating broker-dealers) is proposed to be amended to make word choice changes for accuracy.

Affected Parties

This proposed rulemaking will affect the regulated community of broker-dealers, investment advisers and investment adviser representatives. This proposed rulemaking will secondarily impact the customers of the regulated community.

Fiscal Impact

State government

This proposed rulemaking will have a de minimus impact on the Department. The Department is proposing minor changes to a regulatory structure which already exists. This proposed rulemaking will not have impact on the Commonwealth and its political subdivisions.

Regulated community

This proposed rulemaking will have a de minimus impact on the regulated community. Some of the proposed amendments will reduce costs to the regulated community through simplification of filing requirements.

Paperwork

This proposed rulemaking will have a de minimus impact on paperwork for the regulated community and the Department. The proposed rulemaking includes provisions which permit electronic filing and electronic recordkeeping instead of paper filing and paper records to reduce paperwork for the regulated community and the Department.

Effectiveness Date and Sunset Date

This proposed rulemaking will become effective upon final-form publication in the *Pennsylvania Bulletin*. The regulations does not have a sunset date because the Department will periodically review the effectiveness of the regulations.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on June 9, 2016, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Commerce Committee and the Senate Banking and Insurance Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey 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 in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) 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.

Public Comments

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to the Office of Chief Counsel, Department of Banking and Securities, Attention: Public Comment on Regulation 3-54, 17 N. Second Street, Suite 1300, Harrisburg, PA 17101-2290, fax (717) 783-5122, ra-pabankreg@pa.gov within 30 days after publication in the *Pennsylvania Bulletin*.

ROBIN L. WIESSMANN,
Secretary

Fiscal Note: 3-54. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 10. BANKING AND SECURITIES

PART I. GENERAL PROVISIONS

CHAPTER 1. PRELIMINARY PROVISIONS

§ 1.1. Definitions.

(a) The following words and terms, when used in this title, have the following meanings, unless the context clearly indicates otherwise:

Banking Code—Act of November 30, 1965 (P.L. 847, No. 356) (7 P.S. §§ 101—2204).

Commission—The Banking and Securities Commission of the Commonwealth, as established under sections 1121-A and 1122-A of the Department of Banking and Securities Code (71 P.S. §§ 733-1121-A and 733-1122-A).

Department—The Department of Banking and Securities of the Commonwealth.

* * * * *

PART VII. SECURITIES

Subpart A. DEFINITIONS

CHAPTER 102. DEFINITIONS

(*Editor's Note:* The following section is new and printed in regular type to enhance readability.)

§ 102.021. Definitions.

(a) The following words and terms, when used in this part, have the following meanings, unless the context clearly indicates otherwise:

3(c)(1) fund—A qualifying private fund that is eligible for exclusion from the definition of “investment company” in section 3(c)(1) of the Investment Company Act of 1940 (15 U.S.C.A. § 80a-3(c)(1)).

203(d) restricted securities—Securities purchased under section 203(d) of the act (70 P.S. § 1-203(d)) if the purchaser is subject to the restriction not to resell the security for 12 months after the date of the purchase.

Accountant's report—A document prepared by an independent certified public accountant indicating the scope of the audit with either:

(i) An opinion regarding the financial statements taken as a whole.

(ii) An assertion that an overall opinion cannot be expressed and the reason why.

Accredited investor—As defined in Rule 501 of Regulation D (17 CFR 230.501) (relating to definitions and terms used in Regulation D).

Act—The Pennsylvania Securities Act of 1972 (70 P.S. §§ 1-101—1-703.1).

Advertisement—

(i) As defined in section 102(a) of the act (70 P.S. § 1-102(a)):

(A) Communication includes, without limitation, letters, brochures, pamphlets, displays, sales literature and any form of electronic communication, including e-mail, which is used in connection with a sale or purchase, or an offer to sell or purchase a security.

(B) Publicly disseminated refers to communication directed to or communicated to more than 50 persons in this Commonwealth.

(ii) For purposes of § 404.010 (relating to advertisements by investment advisers and investment adviser representatives), any notice, circular, letter or other written communication addressed to more than one person, or any notice or other announcement in any publication, by radio or television, or by electronic means, which offers:

(A) An analysis, report or publication concerning securities, or which is to be used in making any determination as to when to buy or sell any security, or which security to buy or sell.

(B) A graph, chart, formula or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell.

(C) Other investment advisory service with regard to securities.

Agent—As defined in section 102(c) of the act:

(i) Including a person considered an officer, director, partner or employee of an issuer, or an individual occupying a similar status or performing similar functions, if the designation is applied for the purpose of avoiding registration as an agent under the act.

(ii) Excluding persons acting as transfer agents and registrars on behalf of issuers or performing only ministerial duties in handling securities and maintaining lists of securityholders.

Agricultural cooperative association—

(i) An association which admits to membership only persons engaged in agriculture and is organized and operated to engage in a cooperative activity for persons engaged in agriculture in connection with:

(A) Producing, assembling, marketing, buying, selling, bargaining or contracting for agricultural products; harvesting, preserving, drying, processing, manufacturing, blending, canning, packing, ginning, grading, storing, warehousing, handling, transporting, shipping or utilizing the products; or manufacturing or marketing the by-products of agriculture.

(B) Manufacturing, processing, storing, transporting, delivering, handling, or buying for or furnishing supplies to its members and patrons.

(C) Performing or furnishing business, educational, recreational or other services, including the services of labor,

buildings, machinery, equipment, trucks, trailers and tankers, or other services connected with the purposes in this subparagraph and subparagraph (ii) on a cooperative basis.

(ii) A federation of individual agricultural cooperative associations if the federation does not possess greater powers or purposes and engages in operations no more extensive than an individual agricultural cooperative association.

Agricultural cooperative association member—A patron, to the extent that the organic law or another law to which the agricultural cooperative association is subject requires the patron to be treated as a member.

Amount—A quantity, which for the purpose of:

- (i) Evidence of indebtedness is the principal amount.
- (ii) Shares is the number of shares.
- (iii) Any other kind of security is the number of units.

Any credit union—An institution organized as a credit union under the applicable laws of the Commonwealth, the business of which is:

(i) Confined substantially to the credit union business (the receipt of deposits from and the making of loans to bona fide members of the credit union).

(ii) Supervised and examined as a credit union by the appropriate Commonwealth authorities having supervision over that institution.

Audit—The examination of historical financial statements by an independent certified public accountant in accordance with generally accepted auditing standards for the purpose of expressing an opinion thereon.

Bank—

- (i) As defined in section 102(d) of the act.
- (ii) The term does not include:

(A) A holding company for a bank.

(B) A bank-in-organization as determined by the primary regulatory authority responsible for administration of the banking laws under which the entity is being formed or with which it shall otherwise comply.

Bank holding company—A person engaged, either directly or indirectly, primarily in the business of owning securities of one or more banks for the purpose, and with the effect, of exercising control.

Beneficial ownership—

(i) For purposes of § 203.191 (relating to Rule 505 offerings) and section 203(t)(v) of the act, as defined in 17 CFR 240.13d-3 (relating to determination of beneficial owner).

(ii) For purposes of §§ 304.012 and 305.019 (relating to investment adviser required records; and dishonest and unethical practices), as defined in 17 CFR 275.204A-1 (relating to investment adviser codes of ethics).

Bona fide distribution—A distribution not made solely to avoid the registration provisions of section 201 of the act (70 P.S. § 1-201).

Bona fide pledge—

(i) A secured party who takes securities in pledge to secure a bona fide debt.

(ii) The term does not include a secured party who takes securities in pledge under either of the following circumstances:

(A) Without any intention or expectation that they will be redeemed but merely as a step in the distribution to the public.

(B) Without having secured knowledge, in the exercise of reasonable diligence, before the consummation of the pledge that the securities taken in pledge are lawfully owned by the party making the pledge.

Bond—

(i) A debt obligation.

(ii) For purposes of § 202.092 (relating to guaranties of certain debt securities exempt), an exempt security under section 3(a)(2) of the Securities Act of 1933 (15 U.S.C.A. § 77c(a)(2)) when either of the following applies:

(A) The issuer of the security is located in this Commonwealth.

(B) The guaranty issued in connection with the bond, note, debenture or other evidence of indebtedness is considered to be a separate security under Securities and Exchange Commission Rule 131 (17 CFR 230.131) (relating to definition of security issued under governmental obligations).

Branch office—As defined in FINRA Rule 3110(e) or any successor rule.

Broker-dealer—

- (i) As defined in section 102(e) of the act.
- (ii) The term does not include persons:

(A) Acting as transfer agents and registrars on behalf of issuers.

(B) Performing only ministerial duties in handling securities and maintaining lists of securityholders.

CRD—The Central Registration Depository operated by FINRA.

Class of a series—Equity securities of an issuer of substantially similar character, the holders of which enjoy substantially similar rights and privileges.

Client—

(i) A person to whom an investment adviser or investment adviser representative has provided investment advice for which the investment adviser or investment adviser representative received compensation.

(ii) For purposes of § 404.012 (relating to cash payment for client solicitation), includes a prospective client.

Comparative financial statement—A document which includes financial statements for 2 years or more presented in adjacent columnar form.

Compensation—A form of payment or consideration, whether direct or in the form of cash or other benefits.

Confidential information—Records and other information in the Department's possession which are not available for public inspection and copying under the Right-to-Know Law (65 P.S. §§ 67.101—67.3104) or section 603(c) of the act (70 P.S. § 1-603(c)).

Control—

(i) As defined in section 102(g) of the act.

(ii) For purposes of § 304.012 and § 404.014 (relating to custody requirements for investment advisers), the term also includes the power, directly or indirectly, to direct the management or policies of a person whether through ownership of securities, by contract, or otherwise, including the following presumptions:

(A) Each of the investment adviser's officers, partners or directors exercising executive responsibility (or persons having similar status or functions) is presumed to control the investment adviser.

(B) A person is presumed to control a corporation if either of the following apply:

(I) The person directly or indirectly has the right to vote 25% or more of a class of the corporation's voting securities.

(II) The person has the power to sell or direct the sale of 25% or more of a class of the corporation's voting securities.

(C) A person is presumed to control a partnership if the person has the right to receive on dissolution, or has contributed, 25% or more of the capital of the partnership.

(D) A person is presumed to control a limited liability company if any of the following apply:

(I) The person directly or indirectly has the right to vote 25% or more of a class of the interests of the limited liability company.

(II) The person has the right to receive on dissolution, or has contributed, 25% or more of the capital of the limited liability company.

(III) The person is an elected manager of the limited liability company.

(E) A person is presumed to control a trust if the person is a trustee or managing agent of the trust.

Convicted—A verdict, judgment or plea of guilty, or a finding of guilt on a plea of nolo contendere if the verdict, judgment, plea or finding has not been reversed, set aside or withdrawn, whether or not a sentence has been imposed.

Cooperative business association—A person organized exclusively as a retail or wholesale cooperative which admits to membership only persons that legitimately engage, in whole or in part, in the line of business for which the cooperative was organized.

Custody—

(i) For purposes of a person, directly or indirectly holding client funds or securities, with authority to obtain possession of them or the ability to appropriate them.

(ii) For purposes of an investment adviser, if a related person holds directly or indirectly, client funds or securities, or has authority to obtain possession of them, in connection with advisory services the investment adviser provides to clients.

(iii) For purposes of subparagraphs (i) and (ii), the term includes:

(A) Possession of client funds or securities, unless the investment adviser receives them inadvertently and returns them to the sender promptly but in any case within 3 business days of receiving them.

(B) Any arrangement (including a general power of attorney) under which the investment adviser is authorized or permitted to withdraw client funds or securities maintained with a custodian on the investment adviser's instruction to the custodian.

(C) Any capacity (such as general partner of a limited partnership, managing member of a limited liability company or a comparable position or another type of pooled investment vehicle, or trustee of a trust) that gives

the investment adviser or its supervised person legal ownership of or access to client funds or securities.

(iv) For purposes of subparagraphs (i) and (ii), the term does not include:

(A) An investment adviser that has inadvertently held or obtained a client's securities or funds and returned them to the client within 3 business days or has forwarded third-party checks within 24 hours, provided that the adviser keeps a ledger or other listing of all securities or funds held or obtained in this manner as required under § 304.012(a)(22).

(B) An investment adviser acting as a trustee for a beneficial trust in which the beneficial owners of the trust are a parent, step-parent, grandparent, step-grandparent, spouse, brother, step-brother, sister, step-sister, grandchild or step-grandchild of the investment adviser if the investment adviser maintains the records required under § 304.012(c)(8).

Customer—

(i) As defined in 17 CFR 240.15c3-3 (relating to customer protection—reserves and custody of securities).

(ii) For the purpose of §§ 303.041 and 304.061 (relating to broker-dealer capital requirements; and free credit balances), every person other than the broker-dealer.

Date of filing—The date on which an application, registration statement, notice filing, financial statements, reports, correspondence or other documents filed or required to be filed directly with the Department, or any material amendment thereto, are received in the Harrisburg office of the Department.

Development stage company—A company devoting substantially all of its efforts to establishing a new business if planned principal operations have not commenced, or have commenced, but there has not been significant revenue therefrom.

Discretionary power—Effecting a transaction or placing a trade order without specific authorization from the client, not including discretion as to the price at which or the time when a transaction is or is to be effected, if, before the order is given by the investment adviser, the client has directed or approved the purchase or sale of a definite amount of the particular security.

Engaged in agriculture—Farming, dairying, livestock raising, poultry raising, floriculture, mushroom growing, beekeeping, horticulture and allied occupations.

Entity—A corporation, partnership, association, joint stock company, limited liability company, trust, estate or unincorporated association.

Equity security—

(i) A stock or similar security (including interests in a limited liability company).

(ii) A security convertible, with or without consideration, into a stock or similar security, or carrying a warrant or right to subscribe to or purchase a security described in subparagraph (i); or a warrant or right.

(iii) For purposes of § 203.091, includes:

(A) Common stock, preferred stock and nondebt securities convertible into common or preferred stock.

(B) Nontransferable warrants to purchase any of the foregoing.

(C) Transferable warrants exercisable within not more than 90 days of issuance to purchase any of the foregoing.

Equity securityholder—

(i) Persons who at the time of offers and sales under the exemption in section 203(n) of the act are holders of equity securities.

(ii) The term does not include persons who are holders of equity securities issued in violation of or without compliance with the act and the regulations adopted under the act.

Examination—When used in regard to financial information, the review or verification of financial and other information by an independent certified public accountant for the purpose of expressing an opinion thereon.

Exchange—A National securities exchange registered with the Securities and Exchange Commission under section 6 of the Securities Exchange Act of 1934 (15 U.S.C.A. § 78f) or a National quotation system operated by a National securities association registered with the Securities and Exchange Commission under section 15A of the Securities Exchange Act of 1934 (15 U.S.C.A. § 78o-3).

Executive officer—Each person serving as chief executive officer, chief operating officer or chief financial officer of a person.

Experienced private placement investor—An individual, or spouse purchasing as a joint tenant or tenant by the entirety, who purchased a minimum of \$450,000 of securities within the past 3 years in private placement offerings exclusive of the purchase of securities of an issuer of which the individual, or spouse, was an affiliate at the time of purchase.

FINRA—The Financial Industry Regulatory Authority, Inc.

Fair value—The price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date, as set forth and interpreted in Financial Accounting Standards Board Accounting Standards Codification Topic 820.

Feasibility study—An analysis of a proposed investment or course of action which may involve the preparation of a financial forecast or a financial projection.

Financial forecast—A prospective financial statement which:

(i) Presents, to the best of the responsible party's knowledge and belief, an entity's expected financial position, results of operations and changes in financial position.

(ii) Is based on the responsible party's assumptions reflecting conditions it expects to exist and the course of action it expects to take.

Financial institution—A Federal or State chartered bank, savings and loan association, savings bank or credit union, and any service corporation affiliated with these entities.

Financial projection—A prospective financial statement which:

(i) Presents, to the best of the responsible party's knowledge and belief, an entity's expected financial position, results of operations and changes in financial position.

(ii) Is based on the responsible party's assumptions reflecting conditions it expects would exist and the course of action it expects would be taken, given one or more hypothetical assumptions.

Firm member—All partners and principals in the firm and all professional employees participating in an audit or located in an office of the firm participating in a significant part of an audit.

Fiscal year—

(i) The annual accounting period when a closing date is adopted.

(ii) The calendar year ending on December 31 when a closing date is not adopted.

Franchise—An agreement involving a continuing commercial relationship by which a person (franchisee) is permitted by another person (franchisor) the right to offer the goods manufactured, processed or distributed by the franchisor, or the right to offer services established, organized, directed or approved by the franchisor, under circumstances when the franchisor continues to exert any control over the method of operation of the franchisee, particularly, but not exclusively, through trademark, trade name or service mark licensing, or structural or physical layout of the business of the franchisee.

Going concern disclosure—The disclosure of substantial doubt in the auditor's report, based on the criteria in the Statement on Auditing Standards 126 promulgated by the American Institute of Certified Public Accountants, regarding the ability of the issuer to continue as a going concern during the ensuing fiscal year.

Guarantor—A person who executes a guaranty.

Guaranty—A duly executed written agreement, which cannot be bought, sold or traded as a security or otherwise realized on by a bondholder separately from the bondholder's interest in the bonds, wherein a person, not the issuer, in connection with offer and sale of bonds in this Commonwealth, guarantees the prompt payment of the principal of, and interest on, the bonds whether at the stated maturity, at redemption before maturity or otherwise, and premium, if any, when and as the principal and interest shall become due.

Hypothetical assumption—An assumption used in a financial projection to present a condition or course of action that is not necessarily expected to occur, but is consistent with the purpose of the projection.

IARD—The Internet-based Investment Adviser Registration Depository operated by FINRA.

Impersonal investment advisory services—As defined in 17 CFR 275.206(4)-3(d)(3) (relating to cash payments for client solicitations).

Independent—As defined in Rule 101 of the Code of Professional Ethics of the American Institute of Certified Public Accountants, Inc. or the interpretations adopted thereunder, regardless of whether the person is a certified public accountant or not.

Independent certified public accountant—As set forth in section 2-01(b) and (c) of Regulation S-X (17 CFR 210.2-01(b) and (c)) (relating to qualifications of accountants).

Independent party—A person who:

(i) Is engaged by an investment adviser with respect to payment of fees, expenses or capital withdrawals from a pooled investment vehicle in which the investment adviser has custody solely as a result of serving as a general partner, manager of a limited liability company or a person occupying a similar status or performing a similar function which gives the investment adviser or its supervised person legal ownership or access to client funds or securities.

(ii) Does not control, is not controlled by and is not under common control with the investment adviser.

(iii) Did not derive 5% or more of its gross revenues from the investment adviser who hired the person to be an independent party, including the amount to be received from the investment adviser under the terms of the independent party engagement, within the preceding consecutive 12-month period.

Independent representative—A person who:

(i) Acts as agent for an advisory client, including in the case of a pooled investment vehicle, for limited partners or a limited partnership, members of a limited liability company, or other beneficial owners of another type of pooled investment vehicle and by law or contract is obliged to act in the best interest of the advisory client or the limited partners, members or other beneficial owners.

(ii) Does not control, is not controlled by and is not under common control with investment adviser.

(iii) Does not have, and has not had within the past 2 years, a material business relationship with the investment adviser.

Individuals controlling—A general partner and, in the case of a corporation, the president and other officers responsible for making investment decisions with respect to the purchase of the securities described in subparagraph (iv) of the definition of “institutional investor,” if the person is currently engaged in that capacity.

Industrial loan association—For purposes of section 202(d) of the act (70 P.S. § 1-202(d)), an institution organized as an industrial loan association under the applicable laws of the Commonwealth, the business of which is:

(i) Substantially confined to the industrial loan business.

(ii) Examined and supervised as an industrial loan association by the appropriate Commonwealth authorities having supervision over the institution.

Industrial loan business—The making and discounting of secured and unsecured loans to bona fide members of the association.

Insolvent or insolvency—Except in the case of entities required under law or regulation to submit an auditor’s report if the auditor’s report does not contain a going concern disclosure, the terms mean either of the following:

(i) The inability to pay debts as they fall due in the person’s usual course of business.

(ii) Liabilities in excess of the fair value of the person’s assets.

Institutional investor—As defined in section 102(k) of the act, including the following:

(i) A corporation, partnership, trust, estate or other entity (excluding individuals), or a wholly-owned subsidiary of the entity, which has been in existence for at least 18 months and which had a tangible net worth on a consolidated basis of \$25 million or more.

(ii) A college, university or other public or private institution which has received exempt status under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C.A. § 501(c)(3)) and which has a total endowment or trust funds, including annuity and life income funds, of \$5 million or more according to its most recent audited financial statements; provided that the aggregate dollar

amount of securities being sold to the person under the exemption in section 203(c) of the act and this title may not exceed 5% of the endowment or trust funds.

(iii) A wholly-owned subsidiary of a bank as defined in section 102(d) of the act.

(iv) A person, except an individual or an entity whose securityholders consist entirely of one individual or group of individuals who are related, which is organized primarily to purchase, in nonpublic offerings, securities of corporations or issuers engaged in research and development activities in conjunction with a corporation and which complies with one of the following:

(A) Has purchased \$5 million or more of the securities excluding both of the following:

(I) A purchase of securities of a corporation in which the person directly or beneficially owns more than 50% of the corporation’s voting securities, unless the purchase occurred under a leveraged buyout financing in which the person does not intend to provide direct management to the issuer.

(II) A dollar amount of a purchase of securities of a corporation which investment represents more than 20% of the person’s net worth.

(B) Is capitalized at \$2.5 million or more and is controlled by a person which meets the criteria in clause (A).

(C) Is capitalized at \$10 million or more and has purchased \$500,000 or more of the securities, excluding a purchase of securities of a corporation in which the person directly or beneficially owns more than 50% of the corporation’s voting securities.

(D) Is capitalized at \$250,000 or more and is a side-by-side fund.

(v) A small business investment company as the term is defined in section 103 of the Small Business Investment Act of 1958 (15 U.S.C.A. § 662) which either:

(A) Has a total capital of \$1 million or more.

(B) Is controlled by institutional investors as defined in section 102(k) of the act or this section.

(vi) A seed capital fund as defined in section 2 and authorized in section 6 of the Small Business Incubators Act (73 P.S. §§ 395.2 and 395.6).

(vii) A business development credit corporation as authorized by the Business Development Credit Corporation Law (7 P.S. §§ 6040-1—6040-16).

(viii) A person whose securityholders consist solely of institutional investors or broker-dealers.

(ix) A person as to which the issuer reasonably believed qualified as an institutional investor under this section at the time of the offer or sale of the securities on the basis of written representations made to the issuer by the purchaser.

(x) A qualified institutional buyer as defined in 17 CFR 230.144A (relating to private resales of securities to institutions) or any successor rule.

(xi) A qualified pension and profit sharing and stock bonus plan under section 401 of the Internal Revenue Code of 1986 (26 U.S.C.A. § 401) and all plans under section 408 of the Internal Revenue Code of 1986 (26 U.S.C.A. § 408) if the plan has either of the following:

(A) Plan assets of \$5 million or more.

(B) Investments of \$500,000 or more in securities and retained, on an ongoing basis, the services of an investment adviser registered under section 301 of the act (70 P.S. § 1-301) or a Federally covered adviser to give professional investment management advice.

Insurance holding company—A person engaged, either directly or indirectly, primarily in the business of owning securities of one or more insurance companies for the purpose and with the effect of exercising control.

Investment adviser representative—

(i) As defined in section 102(j.1) of the act.

(ii) For purposes of § 304.012(a)(12), includes:

(A) A partner, officer or director of the investment adviser.

(B) An employee who participates in any way in the determination of which recommendations shall be made.

(C) An employee of the investment adviser who, in connection with assigned duties, obtains information concerning which securities are being recommended before the effective dissemination of the recommendations.

(D) Any of the following individuals who obtain information concerning securities recommendations being made by the investment adviser before the effective dissemination of the recommendations:

(I) An individual in a control relationship to the investment adviser.

(II) An affiliated individual of a controlling person.

(III) An affiliated individual of an affiliated person.

(iii) For purposes of § 304.012(a)(13), when used in connection with a company primarily engaged in a business or businesses other than advising investment advisory clients:

(A) A partner, officer, director or employee of the investment adviser who participates in any way in the determination of which recommendations shall be made.

(B) An employee who, in connection with assigned duties, obtains information concerning which securities are being recommended before the effective dissemination of the recommendations.

(C) Any of the following individuals who obtain information concerning securities recommendations being made by the investment adviser before the effective dissemination of the recommendations as follows:

(I) An individual in a control relationship to the investment adviser.

(II) An affiliated individual of a controlling person.

(III) An affiliated individual of an affiliated person.

Investment supervisory services—The giving of continuous advice as to the investment of funds on the basis of the individual needs of each client.

Majority-owned subsidiary—A subsidiary more than 50% of whose outstanding voting shares is owned by its parent or the parent's other majority owned subsidiaries, or both.

Most recent audited financial statements—Audited financial statements dated not more than 16 months before the date of the transaction in which the person proposed to purchase securities in reliance on the exemption in section 203(c) of the act.

NASAA—The North American Securities Administrators Association, Inc.

Net capital—As defined in 17 CFR 240.15c3-1 (relating to net capital requirements for brokers or dealers), promulgated under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78pp).

Net worth—The excess of assets over liabilities as determined by generally accepted accounting principles reduced by:

(i) Prepaid expenses except items properly classified as current assets under generally accepted accounting principles.

(ii) Deferred charges.

(iii) Goodwill, franchises, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense, and all other intangible assets.

(iv) Home furnishings, automobiles and any other personal items not readily marketable in the case of an individual.

(v) Advances or loans to:

(A) Stockholders and officers in the case of a corporation.

(B) Members and managers in the case of a limited liability company.

(C) Partners in the case of a partnership.

(vi) Receivables from any affiliate, unless enforceable by contract.

Networking arrangement or brokerage affiliate arrangement—A contractual agreement between a broker-dealer registered under section 301 of the act and a financial institution by which the broker-dealer effects transactions in securities for the account of customers of the financial institution and the general public which transactions are effected on, or emanate from, the premises of a financial institution.

Nonbranch office—A location at which a broker-dealer is conducting a securities business that does not come within the definition of "office of supervisory jurisdiction" or "branch office."

Note or footnote—A clear and concise disclosure of information, including information necessary to make an item or entry in the financial statement not misleading, cross-referenced specifically, if practicable, to an item or entry in a financial statement.

Office of supervisory jurisdiction—As defined in FINRA Rule 3110(e) or any successor thereto.

Parent—An affiliate controlling a specified person directly or indirectly through one or more intermediaries.

Pooled investment vehicle—

(i) A limited partnership, limited liability company or an entity with a similar legal status and performing similar functions.

(ii) The term does not include an investment company that has filed a registration statement under the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1—80a-64).

Portfolio management—The process of determining or recommending securities transactions for any part of a client's portfolio.

Prime quality—A description for commercial paper rated in one of the top three rating categories by a Nationally recognized statistical rating organization.

Principal—

(i) The chairperson, president, chief executive officer, general manager, chief operating officer, chief financial officer, vice president or other officer in charge of a principal business function (including sales, administration, finance, marketing, research and credit), secretary, treasurer, controller and any other natural person who performs similar functions of one of the following:

- (A) The issuer.
- (B) A wholly-owned subsidiary of the issuer.

(C) A corporation, partnership or other entity which owns the voting stock or other voting equity interest of the issuer.

(D) A corporation, partnership or other entity which serves as a general partner of the issuer.

(ii) A director, general partner or comparable person charged by law with the management of one of the following:

- (A) The issuer.
- (B) A wholly-owned subsidiary of the issuer.

(C) A corporation, partnership or other entity which owns the voting stock or other voting equity interest of the issuer.

(D) A corporation, partnership or other entity which serves as a general partner of the issuer.

(iii) A beneficial owner of 10% or more of an outstanding class of voting stock or other voting equity interest of one of the following:

- (A) The issuer.
- (B) A corporation, partnership or other entity which serves as a general partner of the issuer.
- (C) A promoter of the issuer as defined in section 102(o) of the act.
- (D) A relative of a person specified in clauses (A)—(C), if “relative” means one of the following:
 - (I) A spouse.
 - (II) A parent.
 - (III) A grandparent.

(IV) An aunt, uncle, child, child of a spouse, sibling, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law or daughter-in-law.

Principal place of business—As defined in 17 CFR 275.203A-3(c) (relating to definitions) promulgated under the Investment Advisers Act of 1940 (15 U.S.C.A. §§ 80b-1—80b-21).

Private fund adviser—An investment adviser who provides advice solely to one or more qualifying private funds.

Private placement offering of securities—An offering of securities made in reliance on an exemption from the registration provisions of section 5 of the Securities Act of 1933 (15 U.S.C.A. § 77e) under section 3(b) of the Securities Act of 1933 or section 4(a)(2) of the Securities Act of 1933 (15 U.S.C.A. § 77d(a)(2)).

Pro rata—

(i) An offering made in this Commonwealth proportionately on the basis of the number of shares owned by the existing equity securityholder or the equity securityholder’s percentage ownership interest in the issuer.

(ii) The term includes the issuer offering:

(A) Its existing equity securityholder an opportunity to purchase one new share of stock for each five shares owned as of a record date.

(B) An existing equity securityholder owning 3% of the issuer’s stock as of a record date the opportunity to purchase 3% of the issuer’s current offering.

Professional corporation—

(i) The term includes either of the following:

(A) A corporation incorporated under the 15 Pa.C.S. Part II, Subpart B (relating to Business Corporation Law of 1988) or a corporation included within the scope of that act by virtue of 15 Pa.C.S. § 2904 or § 2905 (relating to election of an existing business corporation to become a professional corporation; and election of professional associations to become professional corporations).

(B) A professional association organized under the 15 Pa.C.S. Chapter 93 (relating to Professional Association Act of 1988), if “shares” includes the interest of an associate in a professional association.

(ii) The term does not include an entity which has as a principal purpose, object or activity, whether expressed in its articles of incorporation or other organic documents, that is other than the rendition of the professional services for which the professional corporation is organized and activities which are in fact incidental thereto.

Promotional securities—The term includes any of the following:

(i) Securities issued:

(A) Within the 5-year period immediately preceding the date of the filing of a registration statement for a consideration substantially different from the proposed public offering price and for which price differential there is no commensurate change in the earnings or financial position of the issuer.

(B) In consideration for services.

(C) In consideration for tangible or intangible property, such as patents, copyrights, licenses or goodwill.

(D) Within the 5-year period immediately preceding the date of the filing of a registration statement to a promoter or proposed to be issued to a promoter at a price substantially lower than or on terms and conditions substantially more favorable than those on which securities of the same or a similar class or series have been or are to be sold to public investors.

(ii) Securities subject to an order by the Department finding that the securities are promotional securities.

Prospective financial statement—A financial forecast or financial projection, including the summaries of significant assumptions and accounting policies.

Publish—As defined in section 102(p) of the act, together with any form of electronic communication, including Internet and e-mail.

Purchase of securities by an experienced private placement investor—The sale of securities for cash or for an unconditional obligation to pay cash which obligation is to

be discharged within 5 years from the date of the sale of the securities to the experienced private placement investor.

Qualified custodian—The term includes:

(i) A bank as that term is defined in section 102(d) of the act.

(ii) A Federally covered adviser as that term is defined in section 102(f.1) of the act.

(iii) A broker-dealer registered with the Securities and Exchange Commission and the Department under section 301 of the act.

(iv) A futures commission merchant registered under section 4f(a) of the Commodity Exchange Act (7 U.S.C.A. § 6f(a)), holding the client assets in customer accounts, but only with respect to clients' funds and security futures, or other securities incidental to transactions in contracts for the purchase or sale of a commodity for future delivery and options thereon.

(v) A foreign financial institution that customarily holds financial assets for its customers, provided that the foreign financial institution keeps the advisory clients' assets in customer accounts segregated from its proprietary assets.

Qualifying private fund—A private fund as defined in section 202(a)(29) of the Investment Advisers Act of 1940 (15 U.S.C.A. § 80b-2(a)(29)) that meets the definition of "qualifying private fund" in Securities and Exchange Commission Rule 203(m)-1 (17 CFR 275.203(m)-1) (relating to private fund adviser exemption).

Registrant—The issuer of the securities for which an application, a registration statement or a report is filed.

Related—A relative by marriage residing in the same household or a blood relative.

Related parties—

(i) The registrant and its affiliates, principal owners (the owners of record or known beneficial owners of more than 10% of the voting interests of the reporting entity), management (a person having responsibility for achieving the objectives of the organization and the concomitant authority to establish the policies and to make the decisions by which the objectives are to be pursued) and members of their immediate families.

(ii) Entities for which investments are accounted for by the equity method.

(iii) Any other party with which the reporting entity may deal when one party has the ability to significantly influence the management or operating policies of the other to the extent that one of the transacting parties might be prevented from fully pursuing its own separate interests.

(iv) Another entity with the ability to significantly influence the management or operating policies of the transacting parties.

(v) Another entity with an ownership interest in one of the transacting parties and the ability to significantly influence the other to the extent that one or more of the transacting parties might be prevented from fully pursuing its own separate interests.

Related person—A person that is an affiliate of an investment adviser.

Rental pool arrangement—The term includes:

(i) A device by which a person, whether or not the seller, undertakes to rent the property on behalf of the owner during periods of time when the property is not in use by its owner, the rents received from all properties participating in the pool and the expenses attributable to the rents being combined with each property owner receiving a ratable share of the rental proceeds regardless of whether his particular property actually was rented.

(ii) Other devices having like attributes.

Review—An analysis of the financial statements by a certified public accountant in accordance with the Statements on Standards for Attestation Engagements promulgated by the American Institute of Certified Public Accountants.

Review report—An accountant's document in which the certified public accountant indicates that a review has been performed and, on the basis of that review, the accountant is not aware of any material modifications that should be made to the financial statements for the financial statements to be in conformity with generally accepted accounting principles, except for those modifications, if any, described in the review report.

Securities and Exchange Commission—The United States Securities and Exchange Commission.

Securities issued by a credit union—For the purpose of section 202(d) of the act, securities issued by a credit union means only those securities which are issued by an entity directly engaged in the credit union business and may not include securities issued by a credit union holding company or other similar entity.

Securities issued by an industrial loan association—

(i) Securities issued by an entity directly engaged in the industrial loan business.

(ii) The term does not include securities issued by an industrial loan holding company or other similar entity.

Security or securities—

(i) As defined in section 102(t) of the act, including:

(A) The offer and sale of real property if any of the following exists:

(I) The purchaser of the property is required under the terms of the purchase or by reason of acquiring title to do either of the following:

(-a-) Use the seller to perform services in connection with a sale, lease or license of the property purchased.

(-b-) Hold the property available to persons other than the purchaser for the other person's lease, license or other use for a specified period of time or for a period of time when the property is not in use by the owner.

(II) The purchaser is required under the terms of the purchase or by reason of acquiring title to participate in a rental pool arrangement.

(B) A franchise where the arrangement between the franchisor and the franchisee:

(I) Is such that the right to engage in the business of offering, selling or distributing goods or services is exercised under a marketing plan or system prescribed in substantial part by the franchisor.

(II) Is such that the franchisee is not required to make significant managerial efforts in the operation of the business that may be expected to affect the success or failure of the franchisee's business.

(III) Arises as a result of an investment of money, notes or other things of value by or on behalf of the franchisee.

(ii) For purposes of § 203.183 (relating to agricultural cooperative associations), membership agreements, capital stock, membership certificates and an instrument or form of advice which evidences either of the following:

(A) A member's equity in a fund, capital investment or other asset of the agricultural cooperative association.

(B) The apportionment, distribution or payment to a member or patron of the net proceeds or savings of the agricultural cooperative association.

(iii) For purposes of § 203.188 (relating to Cooperative Business Associations Exemption), an equity or debt security, membership agreement, membership certificate, patronage dividend or form of advice which evidences either of the following:

(A) A member's interest in a fund, capital investment or other asset of a cooperative business association.

(B) The apportionment, distribution or payment to a member of the net proceeds or savings of a cooperative business association.

Share—Stock in a corporation or unit of interest in an unincorporated person.

Side-by-side fund—A person which is:

(i) Promoted and controlled by individuals controlling a person meeting the criteria in subparagraph (iv)(A), (B) or (C) of the definition of "institutional investor."

(ii) Formed exclusively to purchase securities of issuers in various amounts and on the same terms and conditions as the person described in subparagraph (i).

Significant subsidiary—A subsidiary, or a subsidiary and its subsidiaries meeting any of the conditions in subparagraphs (i)—(iii) based on the most recent annual financial statements including consolidated financial statements of the subsidiary which would be required to be filed if the subsidiary were a registrant and the most recent annual consolidated financial statements of the registrant being filed.

(i) The parent's and its other subsidiaries' investments in and advances to, or their proportionate share based on their equity interests of the total assets of, the subsidiary exceed 10% of the total assets of the parent and its consolidated subsidiaries.

(ii) The parent's and its other subsidiaries' proportionate share based on their equity interests of the total sales and revenues, after intercompany eliminations, of the subsidiary exceeds 10% of the total sales and revenues of the parent and its consolidated subsidiaries.

(iii) The parent's and its other subsidiaries' equity in the income before income taxes and extraordinary items of the subsidiary exceeds 10% of the income of the parent and its consolidated subsidiaries. If the income of the parent and its consolidated subsidiaries is at least 10% lower than the average of the income for the last 5 fiscal years, the average income may be substituted in the determination.

Solicitor—A person or entity who receives direct or indirect compensation for soliciting a client for, or referring a client to, an investment adviser.

Sponsor—An investment adviser that is compensated under a wrap fee program for either of the following:

(i) Administering, organizing or sponsoring the program.

(ii) Selecting or providing advice to clients regarding the selection of other investment advisers in the program.

Standby commission—The commission payable to a broker-dealer registered under the act for its firm commitment to purchase securities offered to existing securityholders which are not purchased by the securityholders.

Subsidiary of a specified person—An affiliate controlled by the person directly or indirectly through one or more intermediaries.

Supervised person—As defined in section 202(a)(25) of the Investment Advisers Act of 1940.

Tangible book value of a company's common shares—The excess of total assets over total liabilities as determined by generally accepted accounting principles of the company reduced by the following:

(i) Liquidating value, including any premium of excess over par or stated value, payable on involuntary liquidation, of any capital obligations, preferred shares or shares having a seniority in rank, or any degree of preference or priority over the issue of common shares for which book value is being computed, including accrued and unpaid dividends to the extent entitled to recognition and preference in the event of liquidation.

(ii) An amount equal to any appraisal capital from revaluation of properties or any similar account title to the extent that the appraisal increase has not been fully depreciated in the accounts.

(iii) Deferred charges including debt issue costs.

(iv) Prepaid expenses except as to items properly classified as current assets under generally accepted accounting principles.

(v) All other intangible assets including, goodwill, patents, copyrights, franchises, distribution rights, intellectual property rights, leasehold improvements, licensing agreements, noncompete covenants, customer lists, trade names, trademarks and organization costs.

Tangible net worth—Net worth less the amount of all items of goodwill, preoperating, deferred or development expenses, patents, trademarks, licenses or other similar accounts.

Totally-held subsidiary—A subsidiary:

(i) Whose parent or the parent's other totally-held subsidiaries, or both, owns substantially all of the subsidiary's outstanding equity securities.

(ii) Not indebted to any person other than its parent or the parent's other totally-held subsidiaries, or both, in an amount which is material in relation to the particular subsidiary, excluding indebtedness:

(A) Incurred in the ordinary course of business which is not overdue and which matures within 1 year from the date of its creation, whether evidenced by securities or not.

(B) Secured by its parent by guarantee, pledge, assignment or otherwise.

Trade or professional association—

(i) For purposes of section 202(e) of the act, an association of persons having some common business or profes-

sional interest, the purpose of which is to promote, on behalf of the association's members generally, the common interest and not to engage in a regular business or profession of a kind ordinarily carried on for profit.

(ii) The term:

(A) Includes an association where the activities of the association are specifically directed to the improvement, on behalf of the association's members generally, of business or professional conditions of one or more lines of business or professions as distinguished from the performance of particular services for individuals or entities.

(B) Does not include an association whose purpose is to engage in a regular business of a kind ordinarily carried on for profit, even though the business is conducted on a cooperative basis or produces only sufficient income to be self-sustaining.

Trustee for the bondholders—The person designated in the trust indenture, mortgage, deed of trust or similar agreement to act as trustee for the bonds.

Venture capital fund—A private fund meeting the definition of "venture capital fund" in Securities and Exchange Commission Rule 203(l)-1 (17 CFR 275.203(l)-1) (relating to venture capital fund defined).

Voting shares—The sum of either of the following:

(i) All rights, other than as affected by events of default, to vote for election of directors of an incorporated person.

(ii) All interests in an unincorporated person.

Wholly-owned subsidiary—A subsidiary substantially all of whose outstanding voting shares are owned by its parent or the parent's other wholly-owned subsidiaries, or both.

Wrap fee program—A program under which a client is charged a specified fee or fees not based directly on transactions in a client's account for investment advisory services (which may include portfolio management or advice concerning the selection of other investment advisers) and execution of client transactions.

(b) Words and terms not otherwise defined in this part have the meanings specified in the act.

(Editor's Note: As part of this proposed rulemaking, the Department is proposing to rescind the following sections of Chapter 102 which appear in 10 Pa. Code pages 102-1—120-7, serial pages (364653)—(364659).)

§ 102.031. (Reserved).

§ 102.041. (Reserved).

§ 102.050. (Reserved).

§ 102.060. (Reserved).

§ 102.111. (Reserved).

§ 102.112. (Reserved).

§ 102.201. (Reserved).

§ 102.202. (Reserved).

§ 102.241. (Reserved).

Subpart B. REGISTRATION OF SECURITIES

CHAPTER 202. EXEMPT SECURITIES

§ 202.010. Securities issued by a governmental unit.

(a) The exemption contained in section 202(a) of the act (70 P.S. § 1-202(a)) is available for [**any**] a security described in that section which is an exempt security

under section 3(a)(2) of the Securities Act of 1933 [**(15 U.S.C.A. § 77c(2)) except for**] (15 U.S.C.A. § 77c(a)(2)).

(b) The exemption in paragraph (a) does not apply to any part of an obligation evidenced by a bond, note, debenture or other evidence of indebtedness issued by [**any**] a governmental unit specified in section 3(a)(2) of the Securities Act of 1933 that is [**deemed**] considered to be a separate security under [**United States**] Securities and Exchange Commission Rule 131 (17 CFR 230.131) (relating to definition of security issued under governmental obligations)[] .

§ 202.030. Commercial paper.

(a) The exemption contained in section 202(c) of the act (70 P.S. § 1-202(c)) is available for any security which is a [**Federally-covered**] **Federally covered** security by reason of being an exempt security under section 3(a)(3) of the Securities Act of 1933 (15 U.S.C.A. § [**77c(3)**] **77c(a)(3)**) as interpreted by Release 33-4412 (26 FR 9158 (September 20, 1961)) issued by the [**United States**] Securities and Exchange Commission which provides that:

(1) The commercial paper [**shall be**] is prime quality of a type not ordinarily purchased by the general public.

(2) The commercial paper is of a type eligible for discounting by banks which are members of the Federal Reserve System.

(3) The commercial paper is not payable on demand and does not contain a provision for an automatic "roll-over."

(4) The commercial paper is issued to facilitate current operational business requirements.

(5) The **commercial paper** proceeds [**of the commercial paper**] are not used to:

(i) Discharge existing indebtedness unless the indebtedness is itself exempt under section 3(a)(3) of the Securities Act of 1933.

(ii) Purchase or construct a plant facility.

(iii) Purchase durable machinery or equipment.

(iv) Fund commercial real estate development or financing.

(v) Purchase real estate mortgages or other securities.

(vi) Finance mobile homes or home improvements.

(vii) Purchase or establish a business enterprise.

[**(b) For purposes of this section, "prime quality" means that the commercial paper has been rated in one of the top three rating categories by a Nationally recognized statistical rating organization.**

(c) When] (b) If commercial paper is being issued by a holding company for a bank, as that term is defined in section 102(d) of the act (70 P.S. § 1-102(d)), the commercial paper [**shall**] **must** bear a prominent legend in bold face type of at least 12 points in size indicating that the commercial paper:

(1) Has not been issued by the bank for which the issuer is the holding company.

(2) Is not a deposit of the bank covered by Federal deposit insurance.

[(d) No] (c) General solicitation through public media advertisement [or mass mailing may be made], mass mailing, the Internet or other means in connection with soliciting offers or sales of commercial paper is prohibited; provided, that [nothing in this section limits] this section does not limit mailings to institutional investors or broker-dealers, as those terms are defined in the act and this subpart.

§ 202.041. [Credit union and industrial loan association securities] (Reserved).

[(a) For the purpose of section 202(d) of the act (70 P.S. § 1-202(d)), the term, “any credit union” shall mean an institution organized as a credit union under the applicable laws of this Commonwealth:

(1) the business of which is substantially confined to the credit union business; and

(2) supervised and examined as a credit union by the appropriate Commonwealth authorities having supervision over any such institution. For the purpose of this section the “credit union business” shall be deemed to be exclusively the receipt of deposits from and the making of loans to bona fide members of the credit union. For the purpose of this section, securities issued by a credit union shall mean only those securities which are issued by an entity directly engaged in the credit union business as that term is used herein and shall not include securities issued by a credit union holding company or other similar entity.

(b) For the purpose of section 202(d) of the act, the term “industrial loan association” shall mean an institution organized as an industrial loan association under the applicable laws of this Commonwealth:

(1) the business of which is substantially confined to the industrial loan business; and

(2) examined and supervised as an industrial loan association by the appropriate Commonwealth authorities having supervision over any such institution.

(c) For the purpose of this section, the “industrial loan business” shall be deemed to be the making and discounting of secured and unsecured loans to bona fide members of the association. For the purpose of this section, securities issued by an industrial loan association shall mean only those securities which are issued by an entity directly engaged in the industrial loan business as that term is used herein and shall not include securities issued by an industrial loan holding company or other similar entity.]

§ 202.052. [Trade or professional association] (Reserved).

[(a) For the purpose of section 202(e) of the act (70 P.S. § 1-202(e)), the term “trade or professional association” shall mean an association of persons having some common business or professional interest, the purpose of which is to promote, on behalf of the association’s members generally, such common interest and not to engage in a regular business or profession of a kind ordinarily carried on for profit.

(b) For example, the activities of a “trade association,” as that term is used in section 202(e) of the act (70 P.S. § 1-202(e)), must be specifically directed to the improvement, on behalf of the association’s members generally, of business conditions of one or more lines of business as distinguished from the performance of particular services for individuals or entities. Similarly, the activities of a “professional association,” as that term is used in section 202(e) of the act (70 P.S. § 1-202(e)), must be specifically directed to the improvement, on behalf of the association’s members generally, of professional conditions of one or more professions as distinguished from the performance of particular services for individuals or entities. Therefore, an association whose purpose is to engage in a regular business of a kind ordinarily carried on for profit, even though the business is conducted on a cooperative basis or produces only sufficient income to be self-sustaining, is not a “trade or professional association” as that term is used in section 202(e) of the act (70 P.S. § 1-202(e)).]

§ 202.091. Shares of professional corporations.

(a) [Pursuant to] Under the authority contained in section 202(i) of the act (70 P.S. § 1-202(i)), the [Commission] Department finds that it is not in the public interest or necessary for the protection of investors to require the registration under section 201 of the act (70 P.S. § 1-201) of shares issued by a professional corporation.

[(b) The meaning of “professional corporation” for this section shall be as follows:

(1) Except as provided in paragraph (2), the term “professional corporation,” means one of the following:

(i) A corporation incorporated under 15 Pa.C.S. Subpart B (relating to Business Corporation Law of 1988) or a corporation included within the scope of the act by virtue of 15 Pa.C.S. § 2904 or 2905 (relating to election of an existing business corporation to become a professional corporation; and election of professional associations to become professional corporations).

(ii) A professional association organized under 15 Pa.C.S. Chapter 93 (relating to Professional Association Act of 1988). The reference in this section to “shares” shall include the interest of an associate in a professional association.

(2) For the purpose of this section, the term “professional corporation” may not include an entity which has as a principal purpose, object or activity, whether or not expressed in its articles of incorporation or other organic documents, a purpose, object or activity other than the rendition of the professional services for which the professional corporation is organized and activities which are in fact incidental thereto.

(c)] (b) The exemption contained in this section may not [be available for a transaction whose primary purpose is avoidance of] apply to a transaction entered into primarily to avoid the provisions of section 201 of the act [(70 P.S. § 1-201) or a transaction] or made in violation of the antifraud provisions in

sections 401—409 of the act (70 P.S. §§ 1-401—1-409) and Subpart D (relating to fraudulent and prohibited practices).

§ 202.092. Guaranties of certain debt securities exempt.

(a) The exemption established by this section applies to a guaranty of a bond [, as those terms are defined in subsection (d)(1) and (2),] that is offered or sold in this Commonwealth.

(b) Under the authority contained in section 202(i) of the act (70 P.S. § 1-202(i)), the [Commission] Department finds that it is not in the public interest [nor] or necessary for the protection of investors to require the registration under section 201 of the act (70 P.S. § 1-201) of the guaranty of a bond if all of the following conditions are met:

(1) The official statement or other disclosure document being [utilized] used in connection with the offer and sale of the bonds contains either of the following:

(i) An audited balance sheet and statement of income of the guarantor dated within 120 days [prior to] before the commencement of the offering in this Commonwealth.

(ii) Both of the following:

(A) An audited balance sheet and statement of income of the guarantor for [the] either of the following:

(I) The most recent completed fiscal year [; or].

(II) The previous most recent completed fiscal year if the fiscal year of the guarantor ended within 90 days [prior to] before the commencement of the offering in this Commonwealth [, an audited balance sheet and statement of income for the prior most recent completed fiscal year].

(B) A statement by a certified public accountant or the guarantor [as to whether there have been] detailing any adverse material changes in the financial condition of the guarantor which occurred from the date of the audited balance sheet submitted in compliance with clause (A) within 5 days [prior to] of the commencement of the offering in this Commonwealth.

(2) The proceeds from the sale of the bonds are to be [utilized] used for the benefit of a facility which is owned or operated [—user—] by either of the following:

(i) A nonprofit corporation or other nonprofit entity which has been determined by the Internal Revenue Service to be an exempt organization described in section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C.A. § 501(c)(3)) or has received an opinion of counsel that it is so exempt, and [where] the combined net assets of the user and guarantor [is] are not less than 25% of the amount of the securities being offered.

(ii) An organization which has not been determined by the Internal Revenue Service or by an opinion of counsel to be an exempt organization under [26 U.S.C.A. § 501(c)(3)] section 501(c)(3) of the Internal Revenue Code of 1986, and [where] the combined net worth of the user and guarantor is not less than 50% of the amount of securities being offered.

(3) [Under the guaranty, the guarantor is required] The guaranty requires the guarantor to do the following:

(i) File with the trustee for the bondholders a copy of its audited balance sheet and statement of income within 120 days after the completion of its fiscal year.

(ii) Be responsible for expenses incurred by the trustee for the bondholders in complying with paragraph (4)(ii) and (iii) unless there are specific provisions to the contrary in the relevant financing documents.

(iii) Notify the trustee for the bondholders within 24 hours after it becomes insolvent [as that term is defined in subsection (d)(4)].

(4) [Under the] The trust indenture, mortgage, deed of trust or other similar agreement [,] requires the trustee for the bondholders [, as that term is defined in subsection (d)(5), is required] to do the following:

(i) Maintain a current list of the names and addresses of all of the bondholders.

(ii) Provide, to a bondholder, within 30 days of receipt of a written request from a bondholder, a copy of the guarantor's most recent audited balance sheet and statement of income.

(iii) Notify the bondholders of the occurrence of any of the following events no later than 30 days after an occurrence and inform the bondholders that a copy of the bondholders list described in subparagraph (i) will be provided within 30 days of receipt of a written request for the list:

(A) The date the guarantor failed to comply with [subsection (b)(3)(i)] paragraph (3)(i).

(B) The date the trustee receives a copy of the auditor's report to the guarantor containing going concern disclosure [as that term is defined in § 609.032(a) (relating to definitions)].

(C) The date on which the trustee is informed that the guarantor is insolvent [as that term is defined in subsection (d)(4)]. There is no independent duty [on the part of] by the trustee to determine the insolvency of the guarantor.

(c) If the guarantor is a natural person, the guarantor may satisfy the requirements of this section relating to audited balance sheets and statements of income by providing a Statement of Financial Condition prepared utilizing the criteria contained in the Personal Financial Statements Guide promulgated by the American Institute of Certified Public Accountants and accompanied by a Review Report [as that term is defined in § 609.032(a)].

[(d) The following terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

(1) **Bond**—This includes only the following:

(i) A bond, note, debenture or other evidence of indebtedness that is an exempt security under section 3(a)(2) of the Securities Act of 1933 (15 U.S.C.A. § 77c(2)) when the issuer of the security is located in this Commonwealth.

(ii) A bond, note, debenture or other evidence of indebtedness that is an exempt security under section 3(a)(2) of the Securities Act of 1933 (15 U.S.C.A. § 77c(2)) but when the guaranty issued in

connection with the bond, note, debenture or other evidence of indebtedness is deemed to be a separate security pursuant to United States Securities and Exchange Commission Rule 131 (17 CFR 230.131 (relating to definition of security issued under governmental obligations)).

(2) **Guaranty**—A duly executed written agreement wherein a person, not the issuer, in connection with offer and sale of bonds in this Commonwealth, guarantees the prompt payment of the principal of, and interest on, the bonds whether at the stated maturity, at redemption prior to maturity or otherwise, and premium, if any, when and as the principal and interest shall become due and the guaranty cannot be bought, sold or traded as a security or otherwise realized upon by a bondholder separately from the bondholder's interest in the bonds.

(3) **Guarantor**—A person who executes a guaranty.

(4) **Insolvent**—The inability of a guarantor to pay debts as they fall due in the usual course of business, or having liabilities in excess of the fair market value of assets. For purposes of this paragraph, a guarantor may not be considered insolvent if the auditor's report to the guarantor's audited balance sheet and statement of income did not contain a going concern disclosure as that term is defined in § 609.032(b).

(5) **Trustee for the bondholders**—The person designated in the trust indenture, mortgage, deed of trust or similar agreement to act as trustee for the bonds.]

§ 202.093. Charitable contributions to pooled income funds exempt.

(a) Under the authority contained in section 202(i) of the act (70 P.S. § 1-202(i)), the [**Commission**] **Department** finds that it is not in the public interest [**nor**] or necessary for the protection of investors to require registration under section 201 of the act (70 P.S. § 1-201) of any securities issued or created in connection with contributions or transfers of property to, or certificates of interest or participation in, pooled income funds if the following conditions are met:

(1) A pooled income fund (Fund) as defined in section 642(c)(5) of the Internal Revenue Code [**of 1954**] **of 1986** (26 U.S.C.A. § 642(c)(5)) [,] is established [**for the purpose of permitting**] to permit donors to make irrevocable remainder interest gifts to the Fund.

(2) The Fund is afforded a tax deduction under section [**642(a)(3)**] **642(c)(3)** of the Internal Revenue Code [**of 1954**] **of 1986**.

(3) [**The Fund is in compliance with the Charitable Organization Reform Act (10 P.S. §§ 161.1—161.19) and amendments and successor statutes thereto.**] **The Fund is in compliance with the Solicitation of Funds for Charitable Purposes Act (10 P.S. §§ 162.1—162.23) and amendments and successor statutes.**

(4) [**Each**] **A** prospective donor is provided written disclosure which fully and fairly describes [**the**]:

(i) **The** consequences of a contribution or transfer of property to the Fund [**and the**].

(ii) **The** nature, operation and financial condition of the Fund.

(5) [**None of those persons**] **A** person responsible for solicitation of contributions to the Fund will **not** receive commissions or other special compensation based [**upon**] **on** the amount of property transferred except that this prohibition does not apply if the person receiving the commissions or special compensation is registered with the [**Commission**] **Department** as a broker-dealer under section 301 of the act (70 P.S. § 1-301) or is registered with the [**Commission**] **Department** under section 301 of the act as an agent of the broker-dealer.

(6) [**Any person who, for compensation, advises**] **A** person receiving compensation for advising the charitable organization as to the advisability of investing in, purchasing or selling securities, including interests in the Fund, or otherwise [**performs**] **performing** as an investment adviser is [**either an**] **either of the following**:

(i) **An** investment adviser registered with the [**Commission**] **Department** under section 301 of the act [**or is a Federally-covered**].

(ii) **A Federally covered** adviser that is in compliance with section 303(a) of the act (70 P.S. § 1-303(a)).

(b) If permitted by § 606.031 (relating to advertising literature), advertising literature may be used by the Fund in connection with the solicitation of contributions [**but is**] subject to the antifraud provisions of sections 401—409 of the act (70 P.S. §§ 1-401—1-409) and Subpart D (relating to fraudulent and prohibited practices).

§ 202.094. World class issuer exemption.

Under the authority in section 202(i) of the act (70 P.S. § 1-202(i)), the [**Commission**] **Department** finds that it is not in the public interest [**nor**] or necessary for the protection of investors to require registration under section 201 of the act (70 P.S. § 1-201) of any security meeting the following conditions:

(1) The securities are one of the following:

(i) Equity securities except options, warrants, preferred stock, subscription rights, securities convertible into equity securities or any right to subscribe to or purchase the options, warrants, convertible securities or preferred stock.

(ii) Units consisting of equity securities permitted by subparagraph (i) and warrants to purchase the same equity security being offered in the unit.

(iii) Nonconvertible debt securities that are rated in one of the four highest rating categories of Standard and Poor's, Moody's, Dominion Bond Rating Services or Canadian Bond Rating Services or another rating organization designated by [**order of the Commission**] **the Department**. For purposes of this subsection, nonconvertible debt securities means securities that cannot be converted for at least 1 year from the date of issuance and then only into equity shares of the issuer or its parent.

(iv) American Depository Receipts representing securities described in subparagraphs (i)—(iii).

(2) The issuer is not organized under the laws of the United States, or of any state, territory or possession of the United States, or of the District of Columbia or Puerto Rico.

(3) The issuer [, at] **meets the following conditions:**

(i) **At the time an offer or sale is made in reliance on this section, the issuer** has been a going concern engaged in continuous business operations for the immediate past 5 years [**and during that period,**].

(ii) **During the 5-year period, the issuer** has not been the subject of a proceeding relating to insolvency, bankruptcy, involuntary administration, receivership or similar proceeding.

[**For**] (iii) **If an issuer otherwise meets the conditions of subparagraphs (i) and (ii), the issuer may, for purposes of this paragraph, use the operating history of any predecessor that represented more than 50% of the value of the assets of the issuer [that otherwise would have met the conditions of this section may be used]** toward the 5-year requirement.

(4) The issuer, at the time an offer or sale is made in reliance on this section, has a public float of \$1 billion or more. For purposes of this paragraph:

(i) Public float means the market value of all outstanding equity shares owned by nonaffiliates.

(ii) Equity shares means common shares, nonvoting equity shares and subordinated or restricted voting equity shares but does not include preferred shares.

(iii) An affiliate of a person is anyone who beneficially owns, directly or indirectly, or exercises control or direction over, more than 10% of the outstanding equity shares of the person.

(5) The market value of the issuer's equity shares, **as defined in paragraph (4)(ii)**, at the time an offer or sale is made in reliance on this section, is \$3 billion or more. [**For purposes of this subsection, equity shares mean common shares, nonvoting equity shares and subordinated or restricted voting shares but does not include preferred shares.**]

(6) The issuer, at the time an offer or sale is made in reliance on this section, has a class of equity securities listed for trading on or through the facilities of a foreign securities exchange or recognized foreign securities market included in 17 CFR [**230.901(a)(1)**] **230.901** (relating to general statement) or successor rule promulgated under the Securities Act of 1933 (15 U.S.C.A. §§ 77a—77aa) or designated by the [**United States**] Securities and Exchange Commission under 17 CFR 230.902(a)(2) (relating to definitions) promulgated under the Securities Act of 1933.

§ 202.095. Charitable gift annuities.

(a) Under the authority contained in section 202(i) of the act (70 P.S. § 1-202(i)), the [**Commission**] **Department** finds that it is not in the public interest [**nor**] or necessary for the protection of investors to require registration under section 201 of the act (70 P.S. § 1-201) of securities issued or created in connection with the offer or sale of charitable gift annuities if the following conditions are met:

(1) The charitable gift annuity (**annuity**) meets the terms and conditions of being exempt from the laws of [**this**] **the Commonwealth** regulating insurance under the Charitable Gift Annuity Exemption Act (10 P.S. §§ 361—364) [(**annuity**)].

(2) [**Each**] A prospective annuitant is provided written disclosure which fully and fairly describes the consequences of a contribution or transfer of property to the qualified charity, as that term is defined in the Charitable Gift Annuity Exemption Act [(**qualified charity**)].

(3) [**None of the**] **The** persons responsible for solicitation of purchasers of annuities will **not** receive commissions or other special compensation based [**upon**] **on** the amount of the annuity purchased [**except that this prohibition does not apply if**] **unless** the person receiving the commissions or special compensation is registered with the [**Commission**] **Department** as a broker-dealer under section 301 of the act (70 P.S. § 1-301) or is registered with the [**Commission**] **Department** under section 301 of the act as an agent of the broker-dealer.

(4) A person [**who, for compensation, advises**] **receiving compensation for advising** the qualified charity as to the advisability of investing in, purchasing or selling securities, including annuities, or otherwise [**performs**] **performing** as an investment adviser is either [**an**] **of the following:**

(i) **An** investment adviser registered with the [**Commission**] **Department** under section 301 of the act [(**70 P.S. § 1-301**) or is a].

(ii) **A** Federally covered adviser that is in compliance with section 303(a) of the act (70 P.S. § 1-303(a)).

(b) If permitted by § 606.031(a) (relating to advertising literature), advertising literature may be used by the qualified charity in connection with the solicitation of contributions [**but is**] subject to the antifraud provisions of sections 401—409 of the act (70 P.S. §§ 1-401—1-409) and Subpart D (relating to fraudulent and prohibited practices).

CHAPTER 203. EXEMPT TRANSACTIONS

§ 203.011. Nonissuer transactions.

(a) The exemption contained in section 203(a) of the act (70 P.S. § 1-203(a)) [**shall be**] **is** available for transactions in a security which are not directly or indirectly for the benefit of the issuer or an affiliate of the issuer of the subject security. By way of illustration, an offering of securities is indirectly for the benefit of the issuer **or an affiliate** if any [**portion**] **part** of the proceeds of the transaction will be received indirectly by the issuer **or an affiliate**.

(b) A transaction that is part of a single plan of distribution which involves a distribution by an issuer of its securities to the public will not be [**deemed**] **considered** a nonissuer transaction for purposes of section 203(a) of the act [(**70 P.S. § 1-203(a)**)].

§ 203.041. Limited offerings.

(a) The notice required [**by**] **under** section 203(d) of the act (70 P.S. § 1-203(d)) shall be filed with the [**Commission**] **Department** within the time period specified [**by that section on the form, designated by the Commission as**] **on** Form E in accordance with the General Instructions [**thereto**].

(b) The [**Commission**] **Department** will not consider [**that**] the requirement of section 203(d)(i) of the

act [is met unless the following steps have been taken by] to be met unless the issuer:

(1) [A written agreement is entered into whereby] Enters into a written agreement by which the purchaser agrees not to sell the securities purchased under the exemption within 12 months after the date of purchase, except in accordance with § 204.011 (relating to waivers of the 12-month holding period), and a copy of the agreement to be signed has been filed with the [Commission] Department.

(2) [A legend is placed] Places a legend on the security restricting its transferability for 12 months after the date of purchase except in accordance with § 204.011.

(3) [The issuer instructs] Instructs its transfer agent, if any, that no transfer of the securities [shall be] is permitted except in accordance with section 203(d) of the act, § 204.011 and this section.

(c) Except [where] if the promoters, as defined in section 102(o) of the act (70 P.S. § 1-102(o)), are registered under section 301 of the act (70 P.S. § 1-301), the condition contained in section 203(d)(iii) of the act [shall be deemed to be met only if a promoter receives no] is met only if a promoter does not receive an underwriting, selling or finder's fee or commission or other remuneration directly or indirectly for the sale of securities under the exemption.

(1) A promoter [shall be deemed] is considered to have received indirect remuneration if money or property is paid to an affiliate of a promoter as compensation for the sale of securities.

(2) The fact that the value of a promoter's investment in the issuer is increased as a result of the offering or that the promoter will receive remuneration from the issuer for services [rendered] given to the issuer in the ordinary course of its business or for the sale of property to it does not, of itself, preclude the availability of the exemption.

(d) During the period of the offering, the issuer shall take steps necessary to ensure that the material information contained in its notice remains current and accurate in all material respects. If a material statement made in the notice, or an attachment thereto, becomes materially incorrect or inaccurate, the issuer shall file an amendment with the [Commission] Department in accordance with § 609.011 (relating to amendments to filings with [Commission] Department) within 5 business days of the occurrence of the event which required the filing of the amendment.

§ 203.091. [Equity securities issued by reporting company] (Reserved).

[For purposes of this section and the availability of the exemption contained in section 203(i.1) of the act (70 P.S. § 1-203(i.1)), the term "equity security" includes:

(1) Common stock, preferred stock and nondebt securities convertible into common or preferred stock.

(2) Nontransferable warrants to purchase any of the foregoing.

(3) Transferable warrants exercisable within not more than 90 days of issuance to purchase any of the foregoing.]

§ 203.101. Mortgages.

(a) For the purpose of section 203(j) of the act (70 P.S. § 1-203(j)), the exemption [shall be] is available only if:

(1) The entire bond or other evidence of indebtedness, together with the real or chattel mortgage, deed of trust, agreement of sale or other instrument securing the same is offered and sold as one unit.

(2) The purchaser of the unit is not offered, as part of the offer of the unit or in connection therewith, a property interest that would itself be [deemed] considered to be a security under section 102(t) of the act (70 P.S. § 1-102(t)) or under other regulations adopted under the act.

(3) The outstanding principal amount of all bonds or other evidences of indebtedness that are secured by the real or chattel mortgage, deed of trust or agreement of sale on the same property (including bonds and other evidences of indebtedness issued in the transaction) does not exceed the fair [market] value of the property at the time of the transaction.

(4) [No] General solicitation through public media advertisement [is used, mass mailing made or other form of general solicitation is utilized], mass mailing, the Internet or other means does not occur in connection with soliciting the transaction.

(5) [No compensation is] Compensation is not paid or given directly or indirectly for soliciting any person in this Commonwealth in connection with the transaction.

(6) The issuer, at the time of the transaction, is in compliance with any applicable licensing requirements of the Department [of Banking and Securities].

(b) The exemption contained in section 203(j) of the act may not be available for a transaction [whose primary purpose is avoidance of] entered into primarily to avoid the provisions of section 201 of the act (70 P.S. § 1-201) or [a transaction] made in violation of the [anti-fraud provisions of the act (70 P.S. § 1-407)] antifraud provisions of sections 401—409 of the act (70 P.S. §§ 1-401—1-409).

§ 203.131. [Bona fide pledgee] (Reserved).

[The phrase "bona fide pledgee" as used in subsection (m) of section 203 (70 P.S. § 1-203(m)) shall include a secured party who takes securities in pledge to secure a bona fide debt. Such phrase shall not include a secured party who takes securities in pledge either:

(1) Without any intention or expectation that they will be redeemed but merely as a step in the distribution thereof to the public.

(2) Without having secured knowledge, in the exercise of reasonable diligence, prior to the consummation of the pledge that the securities taken in pledge are lawfully owned by the party making the pledge.]

§ 203.141. Sales to existing equity securityholders.

(a) The exemption contained in section 203(n) of the act (70 P.S. § 1-203(n)) [shall only be] is only available for the offer and sale of equity securities when the following exist:

(1) The offer is made to existing **equity** securityholders of a class of a series of the issuer's issued and outstanding equity securities, although the offer **[need not be] does not need to be** made to all the classes or series.

(2) The offer is made pro rata to all **[such security holders] the equity securityholders** who are, of record, residents of this Commonwealth.

(3) **[No] The solicitation of an equity securityholder in this Commonwealth does not result in the payment of a commission or other remuneration, other than a standby commission[, is paid or given, directly or indirectly, for soliciting a securityholder in this Commonwealth]**.

(b) The exemption contained in section 203(n) of the act **[(70 P.S. § 1-203(n)) shall only be] is only** available for the offer and sale of debt securities when the following exists:

(1) The offer is made to existing **equity** securityholders of a class of a series of the issuer's issued and outstanding equity securities, although the offer **[need not be] does not need to be** made to all the classes or series.

(2) **[No] The solicitation of an equity securityholder in this Commonwealth does not result in the payment of a commission or other remuneration, other than a standby commission[, is paid or given, directly or indirectly, for soliciting a securityholder in this Commonwealth]**.

(c) For purposes of subsection (a)(2), an offer will be **[deemed] considered** to have been made pro rata when the following exists:

(1) The initial offer is made pro rata**[; and]**.

(2) After the expiration of a reasonable period of time following the initial offer, an **[identified] identified equity** securityholder acquires securities in an amount exceeding a pro rata share on terms and conditions fully disclosed to the affected **equity** securityholders.

[(d) For purposes of this section, the term "securityholder" is limited to persons who at the time of offers and sales under the exemption contained in section 203(n) of the act (70 P.S. § 1-203(n)) are holders of equity securities, including by way of illustration, holders of: common stock, preferred stock, securities convertible into common or preferred stock; nontransferable warrants to purchase any of the foregoing, and transferable warrants exercisable within not more than 90 days of their issuance, to purchase any of the foregoing; provided, that the term "securityholder" shall not include persons who are holders of equity securities issued in violation of or without compliance with the act and the rules and regulations adopted thereunder.

(e) For purposes of this section, the term "class" includes equity securities of an issuer which are of substantially similar character, the holders of which enjoy substantially similar rights and privileges.

(f) For purposes of this section, the term "standby commission" means the commission payable to a broker-dealer registered under the act for its firm commitment to purchase securities offered to existing securityholders which are not purchased by the securityholders.

(g) For purposes of this section, the term "pro rata" means the offering will be made in this Commonwealth proportionately on the basis of the number of shares owned by the existing securityholder or the securityholder's percentage ownership interest in the issuer. By way of illustration, an offering will be deemed to have been made on a pro rata basis where the issuer offers its existing securityholder an opportunity to purchase one new share of stock for each five shares owned as of a record date or when the issuer offers an existing securityholder owning 3% of the issuer's stock as of a record date, the opportunity to purchase 3% of the issuer's current offering.]

§ 203.151. Proxy materials.

(a) Except as provided in subsection (b), in a transaction requiring the filing of proxy materials with the **[Commission] Department** for review under section 203(o) of the act (70 P.S. § 1-203(o)), the materials **[shall] must** conform to **[SEC] Rule 14A, 17 CFR 240.14a-1—[240.14b-1] 240.14b-2** (relating to **[solicitation] solicitations** of proxies) promulgated under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—**[78mm] 78pp**).

(b) In a transaction subject to the filing requirements of section 203(o) of the act, filing is not required if the number of persons to whom securities are offered and sold in this Commonwealth does not exceed 25, exclusive of principals**[—as that term is defined in § 203.184 (relating to offers and sales to principals)—]**of the entities whose securityholders are voting or providing written consent.

(c) Except for transactions described in subsection (b), notice shall be given to the **[Commission] Department** for a transaction requiring the filing of proxy materials with the **[Commission] Department** under section 203(o) of the act by filing **[the form designated by the Commission as Form 203-O in accordance with the General Instructions thereto together with the]**:

(1) **Form 203-O in accordance with the General Instructions.**

(2) **The** exemption filing fee specified in section 602(b.1)(v) of the act (70 P.S. § 1-602(b.1)(v)).

(d) Proxy materials filed under this section may not be distributed to securityholders until the **[Commission has determined] Department determines** that the materials are in compliance with this section and **[has communicated] communicates** that determination to the person who filed the proxy materials.

§ 203.161. Debt securities of nonprofit organizations.

(a) A person proposing to offer debt securities under section 203(p) of the act (70 P.S. § 1-203(p)) shall **[complete]**:

(1) **Complete** and file with the **[Commission] Department** two copies of **[the form, designated by the Commission as] Form 203-P** in accordance with the General Instructions **[thereto]**.

(2) **File Form 203-P** not later than 5 business days before **the earlier of either** the issuer **[receives] receiving** from any person **[an]**:

(i) **An** executed subscription agreement or other contract to purchase the securities being offered **[or the issuer receives consideration from any person therefor, whichever is earlier]**.

(ii) **Consideration for the subscription agreement or other contract to purchase the securities being offered.**

(b) Except **[in cases when]** if the delivery of an offering document is not required by **[order of the Commission] the Department**, every offering of debt securities **[pursuant to] under** section 203(p) of the act shall be made by an offering document containing all material information about the securities being offered and the issuer.

(1) An offering document will be **[deemed] considered** to meet the requirements of this section if it includes the information that is elicited by Part VII of the Statement of Policy Regarding Church Bonds adopted April 14, 2002, by **[the North American Securities Administrators Association, Inc.] NASAA** and any successor policy thereto (NASAA Guidelines) and is in the format set forth therein.

(2) A copy of the offering document and any offering literature to be used in connection with the offer or sale of securities under section 203(p) of the act shall be filed with the **[Commission] Department** at the same time the notice required **[by] under** subsection (a) must be filed.

(c) The offering document required **[by] under** subsection (b) **[shall] must** meet the following conditions:

(1) Contain a notice of a right to withdraw that complies with § 207.130 (relating to notice to purchasers under section 207(m)).

(2) Contain financial statements of the issuer that comply with § 609.034(b) (relating to financial statements).

(3) Demonstrate compliance with the trust indenture standards and trustee qualification standards and associated disclosure requirements as set forth in Parts V and VI of the NASAA Guidelines if the total amount of securities to be offered exceeds \$250,000.

(4) Include whatever data may be necessary to establish that:

(i) **The** investors will receive a first lien on real estate of the issuer **[, that the]**.

(ii) **The** issuer has not defaulted on prior obligations **[and that the]**.

(iii) **The** total amount of securities offered does not exceed 75% of the current fair market value of the real property covered by the securities.

§ 203.171. **[Liquidations, dividends and distributions] (Reserved).**

[The phrase “bona fide distribution” as used in section 203(q) of the act (70 P.S. § 1-203(q)) does not include a dividend or other distribution made for the purpose of avoiding the registration provisions of section 201 of the act (70 P.S. § 1-201).]

§ 203.183. **Agricultural cooperative associations.**

[(a) Pursuant to] Under the authority contained in section 203(r) of the act (70 P.S. § 1-203(r)), the **[Com-**

mission] Department finds that it is not in the public interest or necessary for the protection of investors to require the registration under section 201 of the act (70 P.S. § 1-201) of securities issued by an agricultural cooperative association in transactions **[where] when** all of the following conditions are met:

(1) **[Such] The** securities are issued by the agricultural cooperative association.

(2) **[Such] The** securities are offered and sold only to persons who are, at the time of **[any such] an** offer and sale, **[members of the]** agricultural cooperative association **members** or to persons who, **[upon] on** sale of **[such]** securities to them, thereby become members of the agricultural cooperative association.

(3) The transfer of **[such] the** securities for value is restricted to **[members of the]** agricultural cooperative association **members**.

(4) **[No person receives] A person does not receive** any commission or other compensation as a result of or based **[upon] on** the sale of **[such] the** securities other than in connection with the solicitation of nonmembers for membership in the agricultural cooperative association.

[(b) The following words and terms, have, for the purposes of this section, the following meanings:

(1) **Agricultural cooperative association—An association which admits to membership only persons who are engaged in agriculture and which is organized and operated for the purpose of engaging in any cooperative activity for persons engaged in agriculture in connection with:**

(i) **Producing, assembling, marketing, buying, selling, bargaining or contracting for agricultural products; harvesting, preserving, drying, processing, manufacturing, blending, canning, packing, ginning, grading, storing, warehousing, handling, transporting, shipping or utilizing the products; or manufacturing or marketing the by-products thereof.**

(ii) **Manufacturing, processing, storing, transporting, delivering, handling, buying for or furnishing supplies to its members and patrons.**

(iii) **Performing or furnishing business, educational, recreational or other services, including the services of labor, buildings, machinery, equipment, trucks, trailers and tankers, or other services connected with the purposes set forth in clauses (i) and (ii) on a cooperative basis. The term agricultural cooperative association shall also include a federation of agricultural cooperative associations if the federation possesses no greater powers or purposes and engages in operations no more extensive than an individual agricultural cooperative association.**

(2) **Members—For purposes of subsection (a)(2) only, includes patrons to the extent that the organic law or another law to which the agricultural cooperative association is subject requires the patrons to be treated as members.**

(3) **Securities—Membership agreements, capital stock, membership certificates and an instrument or form of advice which evidences:**

(i) A member's equity in a fund, capital investment or other asset of the agricultural cooperative association.

(ii) The apportionment, distribution or payment to a member or patron of the net proceeds or savings of the agricultural cooperative association.

(4) Engaged in agriculture—Persons engaged in farming, dairying, livestock raising, poultry raising, floriculture, mushroom growing, beekeeping, horticulture and allied occupations shall be deemed to be engaged in agriculture.]

§ 203.184. Offers and sales to principals.

(a) Under the authority contained in section 203(r) of the act (70 P.S. § 1-203(r)), the [**Commission**] **Department** finds that it is not in the public interest or necessary for the protection of investors to require the registration under section 201 of the act (70 P.S. § 1-201) of securities offered and sold by an issuer to:

- (1) A principal.
- (2) A corporation, the outstanding voting stock of which is beneficially owned by one or more principals.
- (3) A general partnership or a limited partnership, the interest in which is beneficially owned by one or more principals.
- (4) A trust, the trustees of which are principals.
- (5) Any other person, the interest in which is beneficially owned by one or more principals.

[(b) For purposes of this section, the term "principal," means the following:

(1) The chairperson, president, chief executive officer, general manager, chief operating officer, chief financial officer, vice president or other officer in charge of a principal business function (including sales, administration, finance, marketing, research and credit), secretary, treasurer, controller and any other natural person who performs similar functions, of one of the following:

- (i) The issuer.
- (ii) A wholly-owned subsidiary of the issuer.
- (iii) A corporation, partnership or other entity which owns the voting stock or other voting equity interest of the issuer.
- (iv) A corporation, partnership or other entity which serves as a general partner of the issuer.

(2) A director, general partner or comparable person charged by law with the management of one of the following:

- (i) The issuer.
- (ii) A wholly-owned subsidiary of the issuer.
- (iii) A corporation, partnership or other entity which owns the voting stock or other voting equity interest of the issuer.

(iv) A corporation, partnership or other entity which serves as a general partner of the issuer.

(3) A beneficial owner of 10% or more of an outstanding class of voting stock or other voting equity interest of one of the following:

- (i) The issuer.
- (ii) A corporation, partnership or other entity which serves as a general partner of the issuer.

(4) A promoter of the issuer as defined in section 102(o) of the act (70 P.S. § 1-102(o)).

(5) A relative of a person specified in paragraphs (1)—(4). For purposes of this subsection, the term "relative" means one of the following:

- (i) A spouse.
- (ii) A parent.
- (iii) A grandparent.
- (iv) An aunt, uncle, child, child of a spouse, sibling, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law or daughter-in-law.

(e)] (b) For purposes of this section, whether a person is a beneficial owner of a security or other interest will be determined in accordance with the Securities and Exchange Commission Rule 13d-3 (17 CFR 240.13d-3) (**relating to determination of beneficial owner**).

[(d)] (c) The exemption set forth in this section [**is not applicable**] **does not apply** to any offer or sale to a person who has been appointed or elected a principal [**for the primary purpose of obtaining**] **primarily to obtain** the exemption or to an offer or sale to a relative of this person.

(d) A person who is appointed or elected a principal in good faith for a purpose other than [**the purpose of obtaining**] **to obtain** the exemption set forth in this section to whom, or to whose relative, securities are sold without registration following the designation or election in reliance [**upon**] **on** the exemption set forth in this section will not be [**deemed**] **considered** to have been designated or elected a principal [**for the primary purpose of obtaining**] **primarily to obtain** the exemption set forth in this section.

§ 203.185. Offers [**prior to**] **before** effectiveness of registration by qualification exempt.

(a) Under section 203(r) of the act (70 P.S. § 1-203(r)), the [**Commission**] **Department** finds that it is not in the public interest [**nor**] **or** necessary for the protection of investors to require the registration under section 201 of the act (70 P.S. § 1-201) for securities to be offered but not sold [**of**] **to** an applicant filing a registration statement for its securities under section 206 of the act (70 P.S. § 1-206) [**prior to**] **before** the effectiveness of [**such**] **the** registration statement if the [**applicant meets all of the**] following criteria **are met**:

- (1) The applicant has done all of the following:
 - (i) Filed a registration statement under section 206 of the act [(70 P.S. § 1-206)] to register the securities for which offers will be made.
 - (ii) Filed a written opinion of management which states that [**all**] the following conditions apply to the applicant:
 - (A) The business, including any predecessor, is an existing business which possesses a history of operations of 4 years or more.
 - (B) The business, including any predecessor, maintains and will continue to maintain a place of business in this Commonwealth which employs at least 25 persons.
 - (C) The business, including any predecessor, has averaged annual gross revenues of at least \$500,000 for the past 2 years.

(D) The business, including any predecessor, possesses at least **[four] 4** years of historical financial information.

(iii) Filed an intention to comply with **[paragraphs (4)—(7)] paragraph (3) and subsections (b)—(d)**.

(2) The minimum amount of the proceeds from the securities to be sold under the registration statement described in paragraph (1)(i) is \$500,000.

[(3) Receipt by the applicant of a nonbinding subscription agreement which is subject to the withdrawal provisions of paragraph (4) shall not constitute a “sale” of a security. Neither shall moneys deposited under paragraph (5) constitute the “sale” of a security.

(4)] (3) There is a withdrawal procedure as follows:

(i) Nonbinding subscription agreements received in connection with the offer but not sale of securities made under this section **[shall] must** contain withdrawal rights which permit the investor to withdraw moneys tendered under **[such] the** nonbinding subscription agreements with accrued interest under one of the following circumstances:

(A) Investors may withdraw moneys tendered under a nonbinding subscription agreement with accrued interest at any time **[prior to] before** the effectiveness of the registration statement described in paragraph (1)(i).

(B) Investors may withdraw moneys tendered under a nonbinding subscription agreement with accrued interest within **[two] 2** business days from the date of receipt of notification of effectiveness of the registration statement described in paragraph (1)(i), as set forth in **[paragraph (7)] subsection (d)**.

(ii) Investors **[shall be deemed] are considered** automatically to have withdrawn any moneys tendered under a nonbinding subscription agreement and **[such] the** moneys with accrued interest shall be returned to the investors **[upon] on** the occurrence of any of the following:

(A) The registration statement described in paragraph (1)(i) does not become effective within 150 days from the date of filing with the **[Commission] Department, unless extended by order of the Commission] Department, unless extended by the Department**.

(B) The registration statement described in paragraph (1)(i) is withdrawn by the applicant.

(C) The **[Commission] Department** denies the registration statement described in **paragraph (1)(i)**, regardless of whether **[such] the** denial was a result of a hearing or rehearing requested by the applicant unless the **[Commission] Department** permits, in its Denial Order, that the moneys remain in escrow pending any request for a rehearing on the Denial Order.

[(5)] (b) Moneys tendered under nonbinding subscription agreements as a result of offers made under this section shall be placed in interest-bearing escrow accounts in a bank and **[shall be] are** subject to the investor withdrawal rights set forth in paragraph **[(4)] (3)**.

(1) If, **[prior to] before** the effectiveness of the registration statement described in paragraph (1)(i), the

nonbinding subscription agreement is withdrawn under paragraph **[(4)] (3)**, the deposit and accrued interest **[shall be] is** payable to the investor.

(2) After the effectiveness of the registration statement described in paragraph (1)(i), the deposit plus accrued interest **[shall be] is** payable to the applicant except **[where] if** the investor withdraws under **[paragraph (7)] subsection (d)**, in which event the investor shall receive the deposit plus accrued interest.

[(6)] (c) All offers for securities made under this section **[shall be] must be** accompanied by the delivery of a preliminary prospectus which has been prepared and filed to satisfy the requirements of section 206(b) of the act **[(70 P.S. § 1-206(b))]** and § 206.010(c) (relating to registration by qualification).

[(7)] (d) All persons whose moneys have been placed in escrow as a result of the making of offers for the securities that are the subject of the registration statement described in paragraph (1)(i) shall **[be]**:

(1) **Be** notified of the effectiveness of **[such] the** registration statement either by certified mail or by direct delivery of **[such] the** information.

[Concurrent with the notification of the effectiveness of such registration statement, all persons shall receive] (2) Receive a copy of the final prospectus **concurrent with the notification of the effectiveness of the registration statement** unless the **[Commission, by order,] Department** permits a supplement to the preliminary prospectus setting forth all changes and modifications to be **[utilized] used** for these purposes.

(e) The following do not constitute the sale of a security:

(1) **Receipt by the applicant of a nonbinding subscription agreement which is subject to the withdrawal provision of subsection (a)(3).**

(2) **Deposit of moneys under subsection (b).**

[(b)] (f) The exemption contained in this section may not be available for a transaction **[whose primary purpose is avoidance of] entered into primarily to avoid** the provisions of section 201 of the act **[(70 P.S. § 1-201)]**.

§ 203.186. Employee takeovers.

(a) Under section 203(r) of the act (70 P.S. § 1-203(r)), the **[Commission] Department** finds that it is not in the public interest or necessary for the protection of investors to require the registration under section 201 of the act (70 P.S. § 1-201) of securities issued under an investment plan for employees of an existing person designed to purchase securities of a newly created person in transactions **if**:

(1) **[Where the] The** proceeds from the sale of the securities will be used to purchase assets and operations of the existing person.

(2) **[Where these] The** employees will preserve their jobs through their employment with the newly created person.

(3) [**When compulsory**] **The employees' participation in the investment plan [by the employee] is not required as a condition of employment [is not required]**.

(4) [**When employees**] **The employees** being solicited to purchase securities under the investment plan receive, at least 7 days [**prior to**] **before** entering into a binding obligation to purchase or subscribe for the purchase of securities issued or to be issued under the investment plan [**, written**]:

(i) **Written** offering materials that fully and adequately disclose all material facts about the investment plan, including detailed risk factors explaining the potential loss of their investment [**, and an**].

(ii) **An** opinion of counsel that the security, when sold, will be legally issued, fully paid and nonassessable and, if a debt security, a binding obligation of the issuer.

(5) [**When any**] **The** prospective financial statements [**, as that term is defined in § 609.010 (relating to use of prospective financial statements),**] used in connection with soliciting the purchase of securities under the investment plan comply with § 609.010(d) (relating to use of prospective financial statements).

(b) The exemption contained in this section may not be available for a transaction [**whose primary purpose is avoidance of**] **entered into primarily to avoid** the provisions of section 201 of the act.

§ 203.187. Small issuer exemption.

(a) **General rule.** Under section 203(r) of the act (70 P.S. § 1-203(r)), the [**Commission**] **Department** finds that it is [**neither**] **not** in the public interest [**nor**] **or** necessary for the protection of investors to require registration under section 201 of the act (70 P.S. § 1-201) for the offer and sale of securities by an issuer [**when**] **if**:

(1) The issuer has not sold securities in or out of this Commonwealth to more than ten persons.

(2) The issuer, in connection with offers made for the sale of securities under this section, has not made offers to sell securities to more than 90 persons in this Commonwealth in a period of 12 consecutive months.

(3) The issuer is either organized under the laws of the Commonwealth or has its principal place of business in this Commonwealth.

(4) [**Neither the issuer nor**] **The issuer or a promoter, officer or director of the issuer is not** subject to the disqualifications in § 204.010(b) (relating to increasing the number of purchasers and offerees).

(5) [**No**] **General solicitation through** public media advertisement [**is used or mass mailing is made**], **mass mailing, the Internet or other means does not occur** in connection with the offers and sales under this section.

(6) [**No cash**] **Cash** or securities are **not** given or paid, directly or indirectly, to a person as compensation in connection with a sale under this section unless [**the**]:

(i) **The** compensation is given or paid in connection with a sale made by a broker-dealer who either is registered under section 301 of the act (70 P.S. § 1-301)

or exempt from registration under section 302(a) of the act (70 P.S. § 1-302(a)) [**and a**].

(ii) **The** person receiving compensation is either the broker-dealer or an agent of the broker-dealer who either is registered under section 301 of the act or exempt from registration under section 302(b) of the act.

(b) *Integration.*

(1) Offers and sales made by the issuer under this section [**shall be**] **are** counted as offers and sales under applicable numerical limitations set forth in § 204.010(a)(1) and (2) if offers and sales under § 204.010 occur within a period of 12 consecutive months of an offer or sale made under this section.

(2) Offers and sales made by the issuer under this section [**shall be**] **are** counted as offers and sales under the applicable numerical limitations in section 203(s) of the act [**(70 P.S. § 1-203(s))**] if offers and sales under section 203(s) **of the act** occur within a period of 6 consecutive months of an offer or sale made under this section.

(c) *Computation.* Section 609.012 (relating to computing the number of offerees, purchasers and clients) applies to offers and sales of securities made under this section.

§ 203.188. Cooperative Business Associations Exemption.

(a) Under section 203(r) of the act (70 P.S. § 1-203(r)), the [**Commission**] **Department** finds that it is not in the public interest or necessary for the protection of investors to require registration of securities transactions under section 201 of the act (70 P.S. § 1-201) [**where**] **if** the following conditions are met:

(1) The issuance, offer and sale of securities of a cooperative business association is made only to persons who are members of the cooperative business association or, [**upon**] **on** the purchase of the security offered, will become members of a cooperative business association.

(2) The transfer of the securities for value is restricted to the cooperative business association, members of the cooperative business association or a successor in interest of a transferor who qualifies for membership, as may be further limited by the articles of incorporation of the cooperative business association, if certificates evidencing the securities bear a legend setting forth the restrictions.

(3) [**No person receives**] **A person does not receive** a commission or other compensation directly or indirectly as a result of or based [**upon**] **on** the sale of securities of a cooperative business association other than in connection with the solicitation of nonmembers for membership.

[**(b) When used in this section, the following terms have the following meanings:**

Cooperative business association—A person which is organized exclusively as a retail or wholesale cooperative and admits to membership only persons which bona fide engage, in whole or in part, in the line of business for which the cooperative was organized.

Securities—An equity or debt security, membership agreement, membership certificate, patronage dividend or form of advice which evidences a member's interest in a fund, capital investment or

other asset of a cooperative business association or the apportionment, distribution or payment to a member of the net proceeds or savings of a cooperative business association.

(c) (b) Section 209.010(b) (relating to required records; report on sales of securities and use of proceeds) **[is not applicable] does not apply** to the offer and sale of securities without registration under this section.

§ 203.189. Isolated transaction exemption.

(a) *General.* Under section 203(r) of the act (70 P.S. § 1-203(r)), the **[Commission finds it neither necessary nor] Department finds that it is not necessary or** appropriate for the protection of investors to require registration under section 201 of the act (70 P.S. § 1-201) for the offer and sale of securities by an issuer if:

(1) Sales made under this section do not result in the issuer having made sales of its securities to more than two persons in this Commonwealth during a period of **[12-consecutive] 12 consecutive** months. Only sales described in subsection (c) will be counted as sales for purposes of the numerical limitations contained in this paragraph.

(2) Offers made under this section do not result in the issuer having made offers to sell its securities to more than 90 persons in this Commonwealth during a period of **[12-consecutive] 12 consecutive** months. Only offers described in subsection (c) will be counted as offers for purposes of the numerical limitations contained in this paragraph.

(3) The issuer either is organized under the laws of the Commonwealth or has its principal place of business in this Commonwealth.

(4) **[Neither the issuer nor] The issuer or a promoter, officer or director of the issuer [is] are not** subject to the disqualifications in § 204.010(b) (relating to increasing the number of purchasers and offerees).

(5) **[No] General solicitation through public media advertisement [is used or mass mailing is made], mass mailing, the Internet or other means does not occur** in connection with offers and sales made under this section.

(6) Cash or securities are not given or paid, directly or indirectly, to a person as compensation in connection with a sale under this section unless **[the]:**

(i) **The compensation is given or paid in connection with a sale made by a broker-dealer who is either [is registered]:**

(A) **Registered** under section 301 of the act (70 P.S. § 1-301) **[or exempt]**.

(B) **Exempt** from registration under section 302(a) of the act (70 P.S. § 1-302(a)) **[and a]**.

(ii) A person receiving compensation is either the broker-dealer or an agent of the broker-dealer who is either **[is registered]:**

(A) **Registered** under section 301 of the act **[or exempt]**.

(B) **Exempt** from registration under section 302(b) of the act.

(b) *Waivers.*

(1) Subsection (a)(2), (3) and (5) **[do] does** not apply if the following criteria are met:

(i) The securities to be sold in reliance on this section are registered with the **[United States]** Securities and Exchange Commission under section 5 of the Securities Act of 1933 (1933 Act) (15 U.S.C.A. § 77e) or exempt from registration under Regulation A adopted under section 3(b) of the 1933 Act (15 U.S.C.A. § **[77(c)(b)] 77c(b)**).

(ii) The issuer has complied with section 203(h) of the act.

(2) Subsection (a)(3) does not apply if the following criteria are met:

(i) The offers and sales of securities made in reliance on this section would qualify for an exemption from registration under section 5 of the 1933 Act under Rule 505 or Rule 506 of Regulation D (17 CFR 230.505 **[and] or 230.506**) (relating to exemption for limited offers and sales of securities not exceeding **[\$5 million] \$5,000,000**; and exemption for limited offers and sales without regard to dollar amount of offering[)] promulgated under **[sections 3(b) and 4(2) of the 1933 Act] section 3(b) of the 1933 Act and section 4(a)(2) of the 1933 Act (15 U.S.C.A. § 77d(a)(2))**.

(ii) The offers made in this Commonwealth in reliance on this section are made only to accredited investors as that term is defined in Rule 501(a) of Regulation D promulgated by the **[United States]** Securities and Exchange Commission (17 CFR 230.501(a)) (relating to definitions and terms used in Regulation D).

(iii) The sales made in this Commonwealth in reliance on this section are made only to accredited investors as that term is defined in Rule 501(a) of Regulation D promulgated by the **[United States]** Securities and Exchange Commission (17 CFR 230.501(a)).

(c) *Inclusion of prior offers and sales.* Offers and sales which occurred within the preceding 12 months from the date of an offer or sale to be made under this section that were made in reliance **[upon] on** section 203(d), (f) or (s) of the act, **[§§ 203.187 and 204.010(a)(1) and (2) (relating to small issuer exemption; and increasing the number of purchasers and offerees), SEC] § 203.187 (relating to small issuer exemption), § 204.010(a)(1) and (2)**, Rule 506 (17 CFR 230.506) or this section **[shall be] are** counted against the numerical limitations in subsection (a)(1) and (2).

(d) *Integration.*

(1) Offers and sales made by the issuer under this section **[shall be] are** counted as offers and sales under the applicable numerical limitations in § 204.010(a)(1) and (2) if offers and sales under § 204.010 occur within **[12-consecutive] 12 consecutive** months of an offer or sale made under this section.

(2) Offers and sales made by the issuer under this section **[shall be] are** counted as offers and sales under the applicable numerical limitations in section 203(s) of the act **[(70 P.S. § 1-203(s)]** if offers and sales under section 203(s) **of the act** occur within **[6-consecutive] 6 consecutive** months of an offer or sale made under this section.

(e) *Counting of offerees and purchasers.* Section 609.012 (relating to computing the number of offerees, purchasers and clients) applies to offers and sales of securities made under this section.

§ 203.190. Certain Internet offers exempt.

(a) Under section 203(r) of the act (70 P.S. § [**1-203-(r)**], the [**Commission finds it neither necessary nor**] **Department finds it not necessary or** appropriate for the protection of investors to require registration under section 201 of the act (70 P.S. § 1-201) for offers of securities by an issuer which are communicated electronically by means of a proprietary or common carrier electronic delivery system, the Internet, the World Wide Web or similar media (Internet Offer) [**when**] if the issuer does not intend to offer and sell the securities in this Commonwealth and meets the following conditions:

(1) The Internet Offer indicates, directly or indirectly, that the securities are not to be offered to persons in this Commonwealth.

(2) An offer is not otherwise specifically directed to any person in this Commonwealth, by or on behalf of the issuer.

(3) [**No sales of the**] **The** issuer's securities are [**made**] **not sold** in this Commonwealth as a result of the Internet Offer.

(b) [**Nothing in this section prohibits**] **This section does not prohibit**, in connection with an Internet Offer, the availability of another exemption which otherwise does not prohibit general solicitation.

§ 203.191. [SEC] Rule 505 offerings.

(a) *Filing requirement.* The notice required [**by**] **under** section 203(s)(i) of the act (70 P.S. § [**203(s)(i)**] **1-203(s)(i)**) shall be filed with the [**Commission**] **Department** within the time period specified [**in that section on Commission**] **on** Form E as set forth in § 203.041 (relating to limited offerings).

[(b) *Compensation.* The term "compensation," as used in section 203(s)(iv) of the act, is not limited to receipt of monetary consideration.

(c)] (b) *Integration.* Offers and sales made under this section [**shall be**] **are** counted as offers and sales under the applicable numerical limitations in section 203(d) and (f) of the act [(70 P.S. § 1-203(d) and (f))] and § 204.010 (relating to increasing the number of purchasers and offerees).

[(d) *Beneficial ownership.* For purposes of section 203(s)(v) of the act, whether a person is a beneficial owner of a security shall be determined in accordance with SEC Rule 13d-3 (17 CFR 240.13d-3 (relating to determination of beneficial owner)).

(e)] (c) *Amendments.* During the period of the offering, the issuer shall take steps necessary to [**insure**] **ensure** that all material information contained in the notice remains current and accurate in all material respects. If a material statement made in the notice, or an attachment thereto, becomes materially incorrect or inaccurate, the issuer shall file an amendment with the [**Commission**] **Department** in accordance with § 609.011 (relating to amendments to filings with [**Com-**

mission] **Department**) within 5 business days of the occurrence of the event which required the filing of the amendment.

§ 203.192. [SEC] Rule 801 and 802 offerings exempt.

Under section 203(r) of the act (70 P.S. § 1-203(r)), the [**Commission finds it neither necessary nor**] **Department finds it not necessary or** appropriate for the protection of investors to require registration under section 201 of the act (70 P.S. § 1-201) for the offer and sale of securities by an issuer which are exempt from registration under the Securities Act of 1933 (15 U.S.C.A. §§ 77a—77aa) [**pursuant to**] **under** Rule 801 or 802 promulgated by the [**United States**] Securities and Exchange Commission (17 CFR 230.801 or 230.802) (relating to exemption in connection with a rights offering; and exemption for offerings in connection with an exchange offer or business combination for the securities of foreign private issuers).

§ 203.201. Accredited investor exemption.

(a) *Filing requirement.* The notice required [**by section 203(t)(i) of the act (70 P.S. § 203(t)(i)) shall be filed with the Commission**] **under section 203(t)(ii) of the act (70 P.S. § 1-203(t)(ii)) shall be filed with the Department** within the time period specified [**in that section on Commission**] **on** Form E as set forth in § 203.041 (relating to limited offerings).

(b) *General solicitation.* Use of general solicitation in a manner permitted by section 203(t) of the act will not be considered to be an advertisement subject to section 606(c) of the act (70 P.S. § [**606(c)**] **1-606(c)**) and § 606.031 (relating to advertising literature) [**but is**] **subject to the antifraud provisions in sections 401—409 of the act (70 P.S. §§ 1-401—1-409) and Subpart D (relating to fraudulent and prohibited practices).**

[(c) *Compensation.* The term "compensation," as used in section 203(t)(iv) of the act, is not limited to receipt of monetary consideration.

(d) *Beneficial ownership.* For purposes of section 203(t)(v) of the act, whether a person is a beneficial owner of a security shall be determined in accordance with SEC Rule 13d-3 (17 CFR 240.13d-3) (relating to determination of beneficial owner).

(e)] (c) *Amendments.* During the period of the offering, the issuer shall take steps necessary to [**insure**] **ensure** that all material information contained in the notice remains current and accurate in all material respects. If a material statement made in the notice, or an attachment thereto, becomes materially incorrect or inaccurate, the issuer shall file an amendment with the [**Commission**] **Department** in accordance with § 609.011 (relating to amendments to filings with [**Commission**] **Department**) within 5 business days of the occurrence of the event which required the filing of the amendment.

§ 203.202. Certain transactions with persons from Canada exempt.

Under section 203(r) of the act (70 P.S. § 1-203(r)), the [**Commission finds it neither necessary nor**] **Department finds it not necessary or** appropriate for the protection of investors to require registration under section 201 of the act (70 P.S. § 1-201) for the offer or sale of a security if the following requirements are met:

(1) The security is offered or sold in this Commonwealth only to a person described in § 302.065(1) (relating to Canadian broker-dealer exempt).

(2) The transaction is effected in this Commonwealth solely by a Canadian broker-dealer or agent of a Canadian broker-dealer described in § 302.065(2).

§ 203.203. Certain Rule 144A exchange transactions exempt.

Under section 203(r) of the act (70 P.S. § [1-203] 1-203(r)), the [Commission finds that it is neither necessary nor] Department finds that it is not necessary or appropriate for the protection of investors to require registration under section 201 of the act (70 P.S. § 1-201) for the offer or sale of a security in a transaction if the following requirements are met:

(1) A person who owns outstanding debt securities [(and any related guarantees)], and related guarantees, exchanges those securities for debt securities [(and any related guarantees)], and related guarantees of the same issuer which are the subject of an effective registration statement filed with the [United States] Securities and Exchange Commission [(SEC)] under section 5 of the Securities Act of 1933 (15 U.S.C.A. [§§ 77(e)] § 77e) (exchange transaction).

(2) The outstanding debt securities [(and any related guarantees)], and related guarantees, are [“]restricted securities[”] as that term is defined in 17 CFR 230.144(a)(3) (relating to persons deemed not to be engaged in a distribution and therefore not underwriters).

(3) [No consideration is paid by the] The owner of the outstanding debt securities [(and any related guarantees)], and related guarantees, does not pay consideration in connection with the exchange transaction.

(4) There are no material differences in the terms of the outstanding debt securities [(and any related guarantees) and the debt securities (and any related guarantees)], and related guarantees, which are the subject of the exchange transaction.

CHAPTER 204. EXEMPTION PROCEEDINGS

§ 204.010. Increasing the number of purchasers and offerees.

(a) *Increases in purchasers and offerees.* Under section 204(a) of the act (70 P.S. § 1-204(a)), the number of purchasers and offerees permitted under section 203(d) and (e) of the act, respectively (70 P.S. [§§] § 1-203(d) and (e)) [shall be] are increased as follows, if the issuer complies with all the conditions described in subsection (b):

(1) The total number of persons to whom securities may be offered in this Commonwealth during [12-consecutive] 12 consecutive months under section 203(e) [shall be] of the act is 90 persons, except that offers made to experienced private placement investors, [as that term is defined in subsection (d),] who actually purchase the securities being offered are not included in the limitation established by this paragraph.

(2) The total number of persons to whom securities may be sold in this Commonwealth during [12-consecutive] 12 consecutive months under section 203(d) [shall be] of the act is 35 persons, except that

sales made to experienced private placement investors, [as that term is defined in subsection (d)] are not included in the numerical limitation established by this paragraph.

(b) *Conditions.*

(1) *Disqualification.* The issuer or a person who is an officer, director, principal, partner [(other than a limited partner)] other than a limited partner, promoter, or controlling person of the issuer or a person occupying a similar status or performing a similar function on behalf of the issuer, has not been convicted of a crime, made the subject of a sanction or otherwise found to have met any of the criteria described in section 305(a)(ii)—(xiii) of the act (70 P.S. § 1-305(a)(ii)—(xiii)) unless the person subject to this disqualification is registered under section 301 of the act (70 P.S. § 1-301).

(2) [Notice] *Exemption notice filing.* With respect to reliance on subsection (a)(2), the issuer files with the [Commission the notice required by] Department the notice required under section 203(d) of the act and § 203.041 (relating to limited offerings) and pays the filing fee required [by] under section 602(b.1)(viii) of the act (70 P.S. § 1-602(b.1)(viii)).

(3) *Broker-dealer requirement.*

(i) All offers and sales made to persons in reliance on section 203(d) and (e) of the act, including the increased number of offerees and purchasers permitted by subsection (a), are effected by a broker-dealer registered under section 301 of the act [, except that this condition].

(ii) *Subparagraph (i)* does not apply if the issuer either is organized under the laws of the Commonwealth or has its principal place of business in this Commonwealth.

(4) *Statutory requirement.* With respect to all offers and sales made to persons permitted under this section, the issuer shall comply with all conditions imposed by section 203(d) and (e) of the act, respectively.

(c) *Exceptions.*

(1) Subsection (b)(1) does not apply if [the] either of the following conditions exist:

(i) The person subject to the disqualification enumerated therein is licensed or registered to conduct securities related business in the state in which the administrative order or judgment was entered against the person [or if the].

(ii) The broker-dealer employing the person is licensed or registered in this Commonwealth and disclosed the order, conviction, judgment or decree relating to the person in the Form BD filed with the [Commission has disclosed the order, conviction, judgment or decree relating to this person. Nothing in this paragraph shall be construed to] Department.

(2) Paragraph (1) does not allow a person disqualified under subsection (b)(1)[,] to act in a capacity other than that for which the person is registered.

[(2)] (3) A disqualification created under this section is automatically waived if the state securities administrator or agency of the state which created the basis for disqualification determines [upon] on a showing of good cause that it is not necessary under the circumstances that the exemption be denied.

[(d) *Definitions.* For purposes of this section, the following terms have the following meanings:

(1) *Experienced private placement investor.* An individual—and spouse when purchasing as joint tenants or as tenants by the entirety—who previously has purchased a minimum of \$450,000 of securities within the past 3 years in private placement offerings exclusive of the purchase of securities of an issuer of which the individual, or spouse, was an affiliate at the time of purchase.

(2) *Private placement offering of securities.* An offering of securities made in reliance on an exemption from the registration provisions of section 5 of the Securities Act of 1933 (15 U.S.C.A. § 77) under section 3(b) or 4(2) of that act (15 U.S.C.A. §§ 77c(b) and 77d(2)).

(3) *Purchase of securities by an experienced private placement investor.* The sale of securities for cash or for an unconditional obligation to pay cash which obligation is to be discharged within 5 years from the date of the sale of the securities to the experienced private placement investor.

(e)] (d) *Due diligence obligation.*

(1) A broker-dealer registered under section 301 of the act [(70 P.S. § 1-301)] that sells a security to an experienced private placement investor in reliance on subsection (a) [**must receive**] **meets the due diligence obligation if the broker-dealer:**

(i) **Obtains from the purchaser** a written representation that the purchaser meets the definition of “experienced private placement investor” in [**subsection (d)(1) and must have**] § 102.021 (relating to definitions).

(ii) **Has** reasonable grounds to believe, after reasonable inquiry, that the written representation is correct.

(2) An issuer that either is organized under the laws of the Commonwealth or has its principal place of business in this Commonwealth and sells its securities to experienced private placement investors in reliance on subsection (a) [**must receive**] **meets the due diligence obligation if the issuer:**

(i) **Obtains from the purchaser** a written representation that the purchaser meets the definition of “experienced private placement investor” in [**subsection (d)(1) and must have**] § 102.021.

(ii) **Has** reasonable grounds to believe, after reasonable inquiry, that the written representation is correct.

[(f)] (e) *Statutory basis for offers and sales under this section.* All offers and sales made to persons permitted by this section are [**deemed**] **considered** to be offers and sales made under section 203(d) and (e) of the act and all conditions imposed by those sections of the act [**are applicable**] **apply** to offers and sales to persons permitted by this section.

§ 204.011. **Waivers of the 12-month holding period.**

(a) *Automatic waiver.* Under section 204(a) of the act (70 P.S. § 1-204(a)), the restriction under section 203(d)(i) of the act (70 P.S. § 1-203(d)(i)) not to sell securities purchased under that section for 12 months after the date of purchase automatically is waived if:

(1) The 203(d) restricted securities are registered under the act, the Securities Act of 1933 (15 U.S.C.A. §§ 77a—77aa) or the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—[78kk] 78pp) [**subsequent to a**

notice filed with the Commission] **after a notice is filed with the Department** under section 203(d) of the act and § 203.041 (relating to limited offerings).

(2) The purchaser dies or becomes disabled or incompetent and a legal guardian for the purchaser is appointed.

(3) The purchaser undergoes liquidation or dissolution if the action is not undertaken [**for the purpose of avoiding**] **to avoid** registration.

(4) The purchaser becomes insolvent.

(5) The issuer is merged into another entity and new securities are exchanged for the 203(d) restricted securities, if the merger is not undertaken [**for the purpose of avoiding**] **to avoid** registration of the 203(d) restricted security.

(6) The 203(d) restricted securities are sold in a transaction in which an offer to purchase on the same terms is made to all securityholders of that class of the issuer’s securities.

(7) A rescission offer is made in connection with a potential violation of State or Federal securities laws.

(8) The 203(d) restricted securities are subject to repurchase under a buy-sell agreement that is conditioned with terms of employment or other commercial, as opposed to, mere investment relationship.

(9) The 203(d) restricted securities are to be exchanged for other securities of the issuer in a transaction exempt from registration under [**sections 202 or 203 of the act (70 P.S. §§ 1-202 and 1-203)**] **section 202 of the act (70 P.S. § 1-202) or section 203 of the act**, if the exchange is not undertaken [**for the purpose of avoiding**] **to avoid** registration.

[(b) For purposes of this section, the following terms, have the following meanings:

(1) *Restricted securities*—Securities purchased under section 203(d) of the act where the purchaser is subject to the restriction not to resell the security for 12 months after the date of purchase.

(2) *Insolvent*—The inability of the purchaser to pay debts as they fall due in the usual course of business or having liabilities in excess of the fair market value of assets.

(c)] (b) *Resale agreement.* For transactions undertaken in reliance on waivers provided in [**subsections**] **subsection (a)(3) and (4)**, the person acquiring the restricted securities **and the issuer** shall agree [**with the issuer**] in writing at the time of sale not to resell the restricted securities [**prior to**] **before** the expiration of the original 12-month holding period.

[(d)] (c) *Discretionary waiver.*

(1) In addition to the automatic waivers set forth in subsection (a), persons may make application to the [**Commission**] **Department** under section 204(a) of the act for a discretionary order to waive the 12-month holding period for a restricted security in a proposed specified transaction [**in which the**] .

(2) **The applicant shall demonstrate in the application** that the sale of the restricted security is not being undertaken [**for the purpose of avoiding**] **to avoid** registration or otherwise [**would constitute a distribution**] **to distribute** in violation of the act.

§ 204.012. Waivers for pre-effective offers under section 203(h).

Under section 204(a) of the act (70 P.S. § 1-204(a)), the [**Commission**] **Department** waives the requirement in section 203(h) of the act (70 P.S. § 1-203(h)) that a registration statement, including a prospectus, be filed with the [**Commission**] **Department** to make offers, but not sales, of securities in this Commonwealth if the issuer of the securities to be offered under the exemption in section 203(h) of the act has filed a registration statement with the [**United States**] Securities and Exchange Commission under the Securities Act of 1933 (15 U.S.C.A. §§ 77a—77aa) [**prior to**] **before** the time offers are made in this Commonwealth in reliance on section 203(h) of the act.

CHAPTER 205. REGISTRATION BY COORDINATION

§ 205.021. Registration by coordination.

(a) Except as specified in subsection (b), registration by coordination may be initiated by filing with the [**Commission**] **Department** within the specified time period:

(1) A registration statement and other materials required under section 205 of the act (70 P.S. § 1-205).

(2) A properly executed Uniform Application to Register Securities (Form U-1) and relevant exhibits thereto.

(3) Additional information the [**Commission**] **Department** may by regulation or order require under section 205(b)(iii) of the act [**(70 P.S. § 1-205(b)(iii))**].

(b) In addition to filing the information and form required [**in**] **under** subsection (a), [**insurers**] **issuers** in offerings being made in reliance on [**SEC**] Regulation A promulgated under section 3(b) of the Securities Act of 1933 (15 U.S.C.A. § 77c(b)) shall execute and file with the [**Commission**] **Department** within the specified time [**period the form, designated by the Commission as**] Form R in accordance with the General Instructions [**thereto**].

(c) The 10-day registration statement filing requirement in section 205(c)(2)(ii) of the act [**(70 P.S. § 1-205(c)(2)(ii)) shall be**] **is** reduced to 5 days for the following:

(1) An offering for which a registration statement has been filed with the [**Commission**] **Department** designated as Form S-2 or S-3 by the [**SEC**] **Securities and Exchange Commission**.

(2) An offering for which a registration statement has been filed with the [**Commission**] **Department** designated as Form F-7, F-8, F-9 or F-10, **or otherwise equivalent form**, by the [**SEC**] **Securities and Exchange Commission**.

(3) An offering for pass-through certificates evidencing undivided interests in trusts consisting of, or debt securities secured by, specific categories of receivables which securities, as a condition of issuance, are to be rated in one of the top three rating categories by one or more Nationally recognized statistical rating organizations.

(d) During the period of the offering, the issuer shall take steps necessary to ensure that all material information contained in its Form R remains current and accurate in all material respects. If a material statement

made in the form, or any attachment thereto, becomes materially incorrect or inaccurate, the issuer shall file an amendment with the [**Commission**] **Department** in accordance with § 609.011 (relating to amendments [**filed with the Commission**] **to filings with Department**) within 5 business days of the occurrence of the event which required the filing of the amendment.

§ 205.040. Series of unit investment trusts as separate issuers.

[**For purposes of complying**] **To comply** with the requirements of sections 201 and 211(a) of the act (70 P.S. §§ 1-201 and 1-211(a)), each series underlying a unit investment trust, as that person is classified in the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1—80a-64), constitutes a separate and distinct issuer under the act and shall [**be required to**] make a separate filing with the [**Commission**] **Department** under section 211(a) of the act.

CHAPTER 206. REGISTRATION BY QUALIFICATION

§ 206.010. Registration by qualification.

(a) Except as specified in subsection (b), registration by qualification shall be initiated by filing with the [**Commission**] **Department**:

(1) A registration statement and other materials required under section 206(b)(1)—(16) of the act (70 P.S. § [**1-206(1)—(16)**] **1-206(b)(1)—(16)**).

(2) A properly executed Uniform Application to Register Securities (Form U-1) and relevant exhibits.

(3) Additional information the [**Commission**] **Department** may by regulation or order require under section 206(b)(17) of the act.

(b) In addition to the information and form required [**in**] **under** subsection (a), issuers in the following offerings shall execute and file with the [**Commission**] **Department** Form R as set forth in § 205.021 (relating to registration by coordination):

(1) Offerings made in reliance on section 3(a)(4) of the Securities Act of 1933 (15 U.S.C.A. § 77c(a)(4)).

(2) Offerings made in reliance on section 3(a)(11) of the Securities Act of 1933.

(3) Offerings made in reliance on Rule 504 of [**SEC**] Regulation D promulgated under section 3(b) of the Securities Act of 1933.

(4) Offerings made in reliance on [**SEC**] Regulation A promulgated under section 3(b) of the Securities Act of 1933.

(c) Financial statements used in connection with an offering under section 206 [**shall**] **of the act must** meet the requirements of section 609(c) of the act (70 P.S. § [**609(c)**] **1-609(c)**) and Chapter 609 (relating to regulations, forms and orders) or as the [**Commission shall, by order, require**] **Department requires**.

(d) During the period of the offering, the issuer required to file Form R shall take steps necessary to ensure that all material information contained in its Form R remains current and accurate. If a material statement made in the form or any attachment thereto becomes incorrect or inaccurate, the issuer shall file an amendment with the [**Commission**] **Department** in accord-

ance with § 609.011 (relating to amendments [filed with the Commission] to filings with Department) within 5 business days of the occurrence of the event which required the filing of the amendment.

§ 206.020. [Tax opinion in offerings of limited partnership interests] (Reserved).

[(a) Under the authority contained in section 206(b)(17) and (d) of the act (70 P.S. § 1-206(b)(17) and (d)), the Commission has determined that it is necessary:

(1) To require that a registration statement filed under section 206 of the act for the registration of limited partnership interests contain a tax opinion or discussion of tax aspects prepared or reviewed under subsection (c).

(2) To require as a condition for the registration of limited partnership interests under section 206 of the act that the prospectus include tax opinion or tax aspects contained in the registration statement and a statement identifying the preparer or reviewer of the tax opinion or discussion of tax aspects.

(b) Material tax issues in relation to the facts, including but not limited to, whether the limited partnership will be treated as a partnership for Internal Revenue Code tax purposes under 26 CFR 301.7701-2 shall be addressed in the registration statement.

(c) The tax opinion or discussion of tax aspects shall be prepared or reviewed by an independent attorney, certified public accountant or other qualified professional who shall be identified in the registration statement.

(d) For purposes of this section, an attorney, certified public accountant, or other qualified professional may not be considered to be "independent" if the professional or a member of the professional's firm is either:

(1) A promoter, underwriter, general partner or employe of the issuer.

(2) An affiliate of a promoter, underwriter, general partner or employe of the issuer.

(e) The requirement of subsection (c) does not apply where the limited partnership has received a favorable ruling from the Internal Revenue Service on all of the tax issues addressed in the tax opinion or discussion of tax aspects contained in the registration statement.]

CHAPTER 207. GENERAL REGISTRATION PROVISIONS

§ 207.050. Reports by engineers, appraisers and others.

(a) The [Commission] Department may, under section 207(e) of the act (70 P.S. § 1-207(e))[, by order], require as a condition of registration that the issuer or other person seeking to register securities for sale submit a technical report[,].

(1) The report must be prepared and certified by an engineer, appraiser, accountant or other professional person with respect to the value of an asset held by the issuer or other material matter [deemed by it] consid-

ered by the Department to be reasonably related to the conduct of the issuer's business.

(2) The cost of preparation of the report will be borne by the applicant for registration.

[(b) The Commission may require that the report referred to in subsection (a) be prepared by an employee of the Commonwealth. In such event the Commission will notify the applicant for registration of the approximate cost of preparing the report, including travel and living expenses. Prior to commencement of preparation of the report, the applicant shall deposit with the Commission funds sufficient to cover costs with instructions authorizing disbursement of such funds as expenses are incurred. If it appears additional costs will be incurred in preparing the report, the applicant will be notified and required to deposit with the Commission the additional moneys necessary to permit completion of the work.]

(b) The Department may require that an employee of the Commonwealth prepare the report referred to in subsection (a). If this report is required, the Department will:

(1) Notify the applicant for registration of the approximate cost of preparing the report, including travel and living expenses.

(2) Require the applicant to deposit with the Department funds sufficient to cover costs with instructions authorizing disbursement of the funds as expenses are incurred before the commencement of preparation of the report.

(3) Notify the applicant if it appears additional costs will be incurred in the preparation of the report and require the applicant to deposit with the Department the additional moneys necessary to permit completion of the work.

(c) A person who prepares for submission or submits a technical report to the [Commission] Department in response to the [Commission's] Department request, and a person who prepares for submission or submits a technical report intended to be included or referred to in any part of the registration statement, shall attach to the report [a]:

(1) A statement as to the person's qualifications and experience [and a further].

(2) A statement as to a material relationship or other factor which would bear [upon] on the person's independence with respect to the subject matter to which or the person to whom the report relates.

§ 207.071. Escrow of promotional securities.

(a) The [Commission will, where it deems] Department will, if it considers necessary for the protection of investors, or in the public interest, and subject to the limitation of section 207(g) of the act (70 P.S. § 1-207(g)), require as a condition to the registration of securities, whether to be sold by the issuer or another person, that promotional securities be placed in escrow.

(b) The escrow depository shall be a bank or trust company approved by the [Commission, provided, that, if] Department.

(c) If the escrow depository does not maintain an office in this Commonwealth, the depository shall file with the

[Commission] Department an irrevocable consent to service of process with respect to actions arising out of its duties as escrow depository.

[(b) For the purposes of this section, the term "promotional securities" includes securities which are:

(1) Issued within the 5-year period immediately preceding the date of the filing of a registration statement for a consideration substantially different from the proposed public offering price and for which price differential there is no commensurate change in the earnings or financial position of the issuer.

(2) Issued in consideration for services.

(3) Issued in consideration for tangible or intangible property, such as patents, copyrights, licenses or goodwill.

(4) Issued within the 5-year period immediately preceding the date of the filing of a registration statement to a promoter or proposed to be issued to a promoter at a price substantially lower than or on terms and conditions substantially more favorable than those on which securities of the same or a similar class or series have been or are to be sold to public investors.

(5) The subject of an order by the Commission which includes findings that the securities are promotional securities.

(c) [(d) The escrow of promotional securities [shall] must be covered by an agreement which [shall be] is subject to the approval of the [Commission. One] Department.

(e) The issuer shall file one manually signed copy of the agreement [shall be filed] with the [Commission prior to] Department before the effectiveness of a registration of the issuer's securities.

§ 207.072. Escrow of proceeds.

(a) The [Commission, when it deems] Department, if it considers it necessary for the protection of investors, and subject to the limitation of section 207(g) of the act (70 P.S. § 1-207(g)), may require as a condition to the registration of securities, whether to be sold by the issuer or another person, that the proceeds [from]:

(1) From the sale of the registered security in this Commonwealth be escrowed until the issuer receives a specified amount from the sale of the security either in this Commonwealth or elsewhere[; or that the proceeds from].

(2) From the sale of the registered security be escrowed for a specific use as set forth in the prospectus.

(b) The escrow depository shall be a bank or trust company [acceptable to the Commission] approved by the Department.

[(b)] (c) The escrow of proceeds [shall] must be covered by an agreement [acceptable to the Commission] approved by the Department which, at a minimum, meets the following conditions:

(1) The specified amount of proceeds shall be deposited in an interest bearing escrow or trust account, the terms of which are consistent with this subsection, particularly paragraph [(7)] (6).

(2) The escrow depository [may not be] is not affiliated with the issuer or any officer, director, promoter or affiliate of the issuer or the underwriter of the securities which are the subject of the escrow or trust account.

(3) The [agreement shall provide that the] escrowed proceeds are not subject to claims by creditors of the issuer, affiliates of the issuer or underwriters until the proceeds have been released to the issuer [pursuant to] under the terms of the agreement.

[(4) A manually signed copy of the agreement shall be filed with the Commission and shall become part of the registration statement.

(5) The agreement shall be signed by an [(4) An authorized officer of the issuer, an authorized officer of the underwriter, if applicable, and an authorized officer of the escrow depository sign the agreement.

[(6)] (5) A summary of the principal terms of the agreement [shall be] are included in the prospectus.

[(7)] (6) If the minimum amount of proceeds is not raised within the specified time period or for the specific purpose set forth in the prospectus, the escrowed proceeds shall be released and returned directly to investors by the escrow depository by first class mail together with interest earned and without deductions for expenses (including commissions, fees or salaries), except that payment of interest shall be waived on proceeds held in escrow for less than 90 days.

(d) A manually signed copy of the agreement shall be filed with the Department and become part of the registration statement.

§ 207.091. Subscription contracts.

[(a)] With respect to securities proposed to be sold under one of the following registration statements, a copy of a subscription or sale contract proposed to be used shall be filed with the [Commission] Department, as an exhibit, [prior to] before its use in this Commonwealth:

(1) A registration statement filed under section 205 of the act (70 P.S. § 1-205) [when] if the securities to be sold are exempt from registration under section 5 of the Securities Act of 1933 (15 U.S.C.A. § 77e) under Regulation A promulgated under section 3(b) of the Securities Act of 1933 (15 U.S.C.A. § 77c(b)).

(2) A registration statement filed under section 206 of the act (70 P.S. § 1-206) [when] if the securities to be sold are exempt from registration under section 5 of the Securities Act of 1933, under section 3(a)(4) or (11) of the Securities Act of 1933, Regulation A promulgated under section 3(b) of the Securities Act of 1933[,] or Rule 504 of Regulation D promulgated under section 3(b) of the Securities Act of 1933.

(3) A registration statement filed under section 205 or 206 of the act [where] if the securities to be sold are interests in a direct public participation program.

§ 207.101. Effective period of registration statement.

(a) A registration statement [which has become] that is effective under section 205(c) of the act (70 P.S. § 1-205(c)) shall continue in effect until the earliest of the following events:

(1) Twelve months after the effective date of the registration statement under the act, except as provided in subsection (d).

(2) Securities included in the registration statement have been sold or the distribution [**terminated**] ended in this Commonwealth, or both.

(3) The [**Commission**] **Department** issues an order under section 208 of the act (70 P.S. § 1-208) denying, suspending or revoking effectiveness of the registration statement.

(b) A registration statement [**which has become**] **that is** effective by order of the [**Commission**] **Department** under section 206 of the act (70 P.S. § 1-206) shall continue in effect until the earliest of the following events:

(1) Twelve months after the effective date of the registration statement under the act.

(2) Securities included in the registration statement are sold or the distribution [**terminated**] ended in this Commonwealth, or both.

(3) The [**Commission**] **Department** issues an order under section 208 of the act denying, suspending or revoking effectiveness of the registration statement.

(c) If the [**Commission**] **Department** has required more than one filing for a registration statement, a separate Form 207-J is required for each filing.

(d) Except with respect to an open-end or closed-end investment company, face amount certificate company or unit investment trust, as those persons are classified in the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1—80a-64), the effective period of a section 205 registration statement may be extended beyond the initial 1-year effectiveness period specified in subsection (a)(1) in increments of 1-year periods up to a maximum of 3 years from the initial effectiveness date of the registration statement in this Commonwealth by filing the form designated as Form 207-J in accordance with the General Instructions thereto with the [**Commission prior to**] **Department before** the expiration of the currently effective period of registration.

(e) The provisions of [**this section**] **subsection (d)** are not available if the issuer, during the [**3 year**] **3-year** period from the initial effectiveness date of the registration statement in this Commonwealth, is required to file a new registration statement with Securities and Exchange Commission.

§ 207.130. Notice to purchasers under section 207(m).

(a) This section applies to offerings of securities which are registered under section 206 of the act (70 P.S. § 1-206) and to securities transactions which are exempt from registration under [**sections**] **section 203(d)** and (p) of the act (70 P.S. § 1-203(d) and (p)) and, if required [**by rule of the Commission**] **under rule of the Department**, section 203(r) of the act.

(b) The notice to purchasers required [**by**] **under** section 207(m)(1) of the act (70 P.S. § 1-207(m)(1)) [**shall be given in accordance with all of the following**] **is in compliance with the act if the notice meets the following requirements:**

(1) [**It shall be**] **The notice is** in writing.

(2) [**Reference to the notice shall be made on the**] **The** cover page of the prospectus used in connection with the offer and sale of the securities **references the notice.**

(3) An explanation of the right of withdrawal contained in section 207(m)(1) of the act, including the procedure to be followed in exercising the right, [**shall be given**] **is** in the text of the prospectus.

(4) [**Reference to the right of withdrawal shall be made in any**] **A** subscription agreement used **references the right of withdrawal.**

(5) The reference to the right of withdrawal described in paragraph [**(2) shall be**] **(3) is** conspicuous, by setting it apart from other text and by underlining or capitalization.

(c) The notice to purchasers required [**by**] **under** section 207(m)(2) of the act [**shall be given in accordance with all of**] **is in compliance with the act if the notice meets the following requirements:**

(1) [**It shall be**] **The notice is** in writing.

(2) An explanation of the right of withdrawal contained in section 207(m)(2) **of the act**, including the procedure to be followed in exercising the right, [**shall be**] **is** given.

(3) The explanation of the right of withdrawal [**shall be**] **is** conspicuous, by setting it apart from other text and by underlining or capitalization.

(d) [**Timely notice of withdrawal of the purchase shall be deemed to have been given by a purchaser**] **A purchaser's notice of withdrawal from the purchase will be considered timely given** within the 2-business day period set forth in section 207(m) of the act if, during the 2-business day period[, **a written notice to withdraw from the purchase**]:

(1) **The purchaser drafts a written notice of withdrawal from the purchase.**

(2) **One of the following applies to the written notice, the notice is:**

[**(1) Is actually**] (i) **Actually** received by the issuer or its affiliate.

[**(2) Is sent**] (ii) **Sent** electronically, including by [**E-mail**] **e-mail** or facsimile.

[**(3) Is deposited**] (iii) **Deposited** in the United States Postal Service, sent registered or certified mail, and all applicable fees are paid by the sender.

[**(4) Is delivered**] (iv) **Delivered** to a messenger or courier service for delivery with applicable fees paid by the sender.

(e) The following language illustrates a right of withdrawal notice which complies with section 207(m)(1) of the act.

"If you have accepted an offer to purchase these securities made pursuant to a prospectus which contains a written notice explaining your right to withdraw your acceptance [**pursuant to**] **under** section 207(m) of the Pennsylvania Securities Act of 1972, you may elect, within two business days after

the first time you have received this notice and a prospectus (which is not materially different from the final prospectus) to withdraw from your purchase agreement and receive a full refund of all moneys paid by you. Your withdrawal will be without any further liability to any person. To accomplish this withdrawal, you need only send a written notice (including a notice by facsimile or electronic mail) to the issuer (or underwriter if one is listed on the front page of the prospectus) indicating your intention to withdraw.”

(f) The following language illustrates a right of withdrawal which complies with section 207(m)(2) of the act:

“If you have accepted an offer to purchase these securities and have received a written notice explaining your right to withdraw your acceptance [**pursuant to**] under section 207(m)(2) of the Pennsylvania Securities Act of 1972, you may elect, within two business days from the date of receipt by the issuer of your binding contract of purchase or, in the case of a transaction in which there is no binding contract of purchase, within two business days after you make the initial payment for the securities being offered, to withdraw your acceptance and receive a full refund of all moneys paid by you. Your withdrawal of acceptance will be without any further liability to any person. To accomplish this withdrawal, you need only send a written notice (including a notice by facsimile or electronic mail) to the issuer (or placement agent if one is listed on the front page of the offering memorandum) indicating your intention to withdraw.”

§ 207.140. [**Signatures on electronic filings**] (Reserved).

[**Under section 207(n) of the act (70 P.S. § 1-207(n)), the Commission authorizes the acceptance of a typed signature in lieu of any requirement for a manual signature on any notice required to be filed with the Commission under section 211 of the act (70 P.S. § 1-211) which is filed with the Commission electronically through its home page on the World Wide Web.**]

CHAPTER 208. DENIAL FOR ABANDONMENT

(*Editor’s Note:* The following section is new and printed in regular type to enhance readability.)

§ 208.010. **Denial for abandonment.**

(a) *General rule.* The Department may deny as abandoned an application for registration of securities which has been on file with the Department for a minimum of 12 consecutive months if the applicant failed to do any of the following:

(1) Respond to the Department’s notice of abandonment sent by first class mail to the applicant’s last known address in the Department’s files within 60 calendar days after the date the notification was mailed by the Department.

(2) Respond to a request for additional information required under the act.

(3) Otherwise complete the showing required for action on the application.

(b) *Voluntary withdrawal.* An applicant may withdraw an application at any time with the consent of the Department.

(c) *No refund of fee.* On denial for abandonment, the Department will not refund any filing fees paid before the date of abandonment or withdrawal.

CHAPTER 209. BOOKS, RECORDS AND ACCOUNTS

§ 209.010. **Required records; report on sales of securities and use of proceeds.**

(a) An issuer who sells securities for their own account, directly or through an underwriter, in an offering registered or required to be registered under section 205 or 206 of the act (70 P.S. §§ 1-205 [**or**] and 1-206) or in an offering exempt from registration under [**sections**] **section** 202(e)[,] or 203(d), (p) or (r) of the act (70 P.S. §§ 1-202(e)[,] and 1-203(d), (p) [**or**] and (r)) shall preserve the following records during the period of the offering and for a period of 3 years following the last sale of securities in this Commonwealth or 1 year after the disposition of all proceeds, whichever is longer:

(1) Ledgers, journals or other records showing payments received from the sale of securities, including date of receipt, amount and from whom received; and disbursements of the payments, including date paid, purpose, amount and to whom made.

(2) A record showing money borrowed and money loaned together with a record of the collateral [**therefor**] for both.

(3) Checkbooks, bank statements, copies of deposit slips, cancelled checks and bank record reconciliations.

(4) Minute books and stock ledgers, including stock transfer records.

(5) A copy of filings with the [**Commission,**] **Department,** and related correspondence and exhibits [**related thereto**].

(6) Copies of communications sent or originated by the issuer pertaining to the offer, sale or transfer of securities, including subscription agreements, purchase contracts and confirmations.

(7) A list of the names and addresses of persons to whom the securities were offered or sold[; **the**] with the following information included:

(i) **The** type and amount of securities sold to each[; **the**].

(ii) **The** consideration paid or promised by each[; **the**].

(iii) **The** method of payment, that is, cash, check, property, services, note or other[; **and the**].

(iv) **The** name of the broker-dealer or other persons who represented the issuer in effecting each sale.

(b) Except as set forth in paragraph (3), **report on sales of securities** filing requirements are as follows:

(1) [**Issuers which have**] **An issuer which has** an effective registration for the offer and sale of securities in this Commonwealth under section 206 of the act, except for open-end or closed-end investment companies, face amount certificate companies or unit investment trusts, as those persons are classified in the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1—80a-64), shall file a report **on sales of securities** with the [**Commission**] **Department** by completing Parts I and II of [**the form in subsection (c)**] **Form 209** within 55 days after 1 year from the effective date of the registration statement filed under section 206 of the act.

(2) An issuer which is an open-end or closed-end investment company, face amount certificate company or unit investment trust, as those persons are classified in the Investment Company Act of 1940, shall file with the [Commission] Department an annual report on sales of securities in this Commonwealth on Form NF adopted by [the North American Securities Administrators Association, Inc. (or a successor form thereto)] NASAA, or successor form, within the following time periods:

(i) [With respect to an open-end or closed-end investment company or face amount certificate company, the report required by this subsection shall be filed with the Commission within 120 days after its fiscal year end.] 120 days after an open-end or closed-end investment company's or face amount certificate company's fiscal year end.

(ii) [With respect to a unit investment trust, the report required by this subsection shall be filed with the Commission within] 60 days after 1 year from the date the registration statement relating to the securities sold in this Commonwealth became effective with the [United States] Securities and Exchange Commission with respect to a unit investment trust.

(3) The following issuers are not required to file [the form in subsection (c)] Form 209 or Form NF [or successor form thereto], or successor form:

(i) Issuers which are open-end or closed-end investment companies, face amount certificate companies or unit investment trusts, as those persons are classified in the Investment Company Act of 1940, that have paid the maximum fee specified in section 602(b.1)(iv) of the act (70 P.S. § 1-602(b.1)(iv)).

(ii) Issuers with an effective registration statement for the offer and sale of securities in this Commonwealth under section 206 of the act which also have an effective registration statement under section 5 of the Securities Act of 1933 (15 U.S.C.A. § 77e) and have paid the maximum fee specified in section 602(b.1)(iii) of the act.

(iii) Issuers with an effective registration statement for the offer and sale of securities in this Commonwealth under section 206 of the act which also have paid the maximum fee specified in section 602(b.1)(iii) of the act.

[(c) The form for reports required in subsection (b), except for subsection (b)(2), shall be filed with the Commission on the form, designated by the Commission as Form 209 in accordance with the General Instructions thereto.]

CHAPTER 210. RETROACTIVE REGISTRATION

§ 210.010. Retroactive registration [of certain investment company securities].

[(a) An open-end or closed-end investment company, face amount certificate company or unit investment trust, as those persons are classified in the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1—80b-21), which, during the effective period of registration under section 205 or 206 of the act (70 P.S. §§ 1-205 and 1-206) sold securities in this Commonwealth in excess of the aggregate amount registered for sale in this Commonwealth under section 205 or 206, may apply to the Commission on Form 210 in accordance with the General Instruc-

tions thereto to register the securities retroactive to the date of the initial registration.

(b) No application filed on Form 210 may be granted if, at the time the application is filed with the Commission, a civil, criminal or administrative proceeding is pending alleging violations of section 201 of the act (70 P.S. § 1-201) for the sale of the securities in this Commonwealth or the securities were sold more than 24 months prior to the date Form 210 was filed with the Commission.]

(a) Either of the following may apply to the Department on Form 210 in accordance with the General Instructions to register the securities retroactive to the date of the initial registration or to amend the notice filing retroactive to the date of the initial notice filing:

(1) An issuer that has an effective registration statement under section 205 or 206 of the act (70 P.S. §§ 1-205 and 1-206) if an effective registration statement is on file with the Securities and Exchange Commission for the same securities.

(2) An open-end or closed-end investment company, face amount certificate company or unit investment trust, as those persons are classified in sections 1—21 of the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1—80b-21), which, during the effective period of registration under section 205 or 206 of the act or the effective period of a notice filing sold securities in this Commonwealth in excess of the aggregate amount registered for sale in this Commonwealth under section 205 or 206 of the act or covered by the notice filing.

(b) The Department will not grant an application filed on Form 210 if, at the time the application is filed with the Department, either of the following conditions exist:

(1) A civil, criminal or administrative proceeding is pending alleging violations of section 201 of the act (70 P.S. § 1-201) for the sale of securities in this Commonwealth.

(2) The securities were sold more than 24 months before the date Form 210 was filed with the Department.

(c) An application filed on Form 210 shall be accompanied by a check made payable to the "Commonwealth of Pennsylvania" in an amount which equals the applicable oversale assessment in section 602.1(d) of the act (70 P.S. § 1-602.1(d)).

CHAPTER 211. FEDERALLY COVERED SECURITIES

§ 211.010. Notice filings for Federally covered securities.

(a) *211(a) notice.* The notices required under section 211(a) of the act (70 P.S. § 211(a)) to be filed by an open-end or closed-end investment company, unit investment trust or face amount certificate company, as those persons are classified in the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1—[80a-65] 80a-64) (investment companies) [shall be made on] must be:

(1) **Completed by using** the Uniform Investment Company Notice Filing Form (Form NF) [**and shall be accompanied**].

(2) **Accompanied** by the applicable filing fees and administrative assessments in sections 602(b.1)(iv) and 602.1(a)(5) of the act (70 P.S. §§ 1-602(b.1)(iv) and 1-602.1(a)(5)).

[(b) **No documents filed by Investment Companies with the SEC need be filed with the notice described in subsection (a) except for those documents filed with the SEC relating to mergers, acquisitions or reorganizations. In that case, copies of registration statements, prospectuses or posteffective amendments filed with the SEC are required to be filed with the Commission at the time the notice required by subsection (a) is filed.**

(c) **The notice required by section 211(b) of the act shall be filed with the Commission on Form D promulgated by the SEC and effective as of September 1, 1996, not later than 15-calendar days after the first sale of the Federally covered security in this Commonwealth and shall be accompanied by the filing fee in section 602(b.1)(vii) of the act.]**

(b) *Exceptions.*

(1) The documents filed by an investment company with the Securities and Exchange Commission do not need to be filed with the notice described in subsection (a) except for those documents filed with the Securities and Exchange Commission relating to mergers, acquisitions or reorganizations.

(2) If paragraph (1) requires the filing of documents, then an investment company shall file copies of the registration statements, prospectuses or posteffective amendments filed with the Securities and Exchange Commission with the Department at the time the notice required under subsection (a) is filed.

(c) *211(b) notice.* The notice required under section 211(b) of the act must be:

(1) Filed with the Department on Form D promulgated by the Securities and Exchange Commission and effective as of September 1, 1996.

(2) Filed not later than 15-calendar days after the first sale of the Federally covered security in this Commonwealth.

(3) Accompanied by the filing fee in section 602(b.1)(vii) of the act.

(d) *Department orders.* The Department may issue an order requiring the following with respect to a Federally covered security under section 18(b)(3) of the Securities Act of 1933 (15 U.S.C.A. § 77r(b)(3)):

(1) The filing of documents filed with the Securities and Exchange Commission under the Securities Act of 1933 (15 U.S.C.A. §§ 77a—77aa) or any notice filing form that has been adopted by the Department.

(2) The payment of fees prescribed to section 602(b.1) of the act.

Subpart C. REGISTRATION OF BROKER-DEALERS, AGENTS, INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES AND NOTICE FILINGS BY [**FEDERALLY COVERED**] **FEDERALLY COVERED ADVISERS**

CHAPTER 301. REGISTRATION REQUIREMENT

§ 301.020. **Agent transfers.**

An agent who wishes to [**terminate**] end employment with one registered broker-dealer and thereafter [**commence**] begin employment with another registered broker-dealer may do so without causing a suspension in the agent's registration with the [**Commission**] **Department** if all of the following conditions are met:

(1) Both the terminating and employing broker-dealers are members of [**the National Association of Securities Dealers, Inc.**] **FINRA.**

(2) The transfer is effected in accordance with the terms, conditions and execution of Item 15 of the Uniform Application for Securities Industry Registration or Transfer (Form U-4).

CHAPTER 302. EXEMPTIONS

§ 302.060. [**Dual registration of agents in certain instances**] (Reserved).

[**A controlling person of two otherwise unaffiliated, registered broker-dealers simultaneously may be an agent of both the broker-dealers; provided that, during the period in which the person simultaneously is an agent:**

(1) **The person's functions and activities on behalf of one broker-dealer are limited exclusively to dealings and transactions with issuers and involve no function or activity in any sales or offers of sales to investors of any securities.**

(2) **Neither the person's functions and activities on behalf of the other broker-dealer nor the activities of the other broker-dealer involve the sale or offer of sale of a security of an issuer for whom the first broker-dealer conducted, or participated in the conduct of, a transaction at a time when the controlling person was the agent of the first broker-dealer.]**

§ 302.061. **Auctioneers exemption from broker-dealer and agent registration.**

(a) Under the authority contained in section 302(f) of the act (70 P.S. § 1-302(f)), the [**Commission deems**] **Department considers** it appropriate and in the public interest to exempt persons from the broker-dealer and agent registration provisions of section 301 of the act (70 P.S. § 1-301) if all of the following conditions are met:

(1) The person meets one of the following conditions:

(i) Is licensed as an auctioneer, apprentice auctioneer, auction company or auction house under the [**Auctioneers and Auction Licensing Act (AALA)**] **Auctioneer Licensing and Trading Assistant Registration Act (ALTARA)** (63 P.S. §§ 734.1—734.34).

(ii) Is exempt from registration under section 3(h) of the [**AALA**] **ALTARA** (63 P.S. § 734.3(h)).

(iii) Holds a special license to conduct an auction under section 3(i) of the [**AALA**] **ALTARA.**

(2) The person effects transactions in securities solely at an “auction” or at a “sale at auction” as these terms are defined in the [AALA] ALTARA.

(3) The person engages only in effecting transactions in securities at an auction or for sale at auction which constitute a “nonissuer transaction” as that term is defined in section 102(m) of the act (70 P.S. § 1-102(m)).

(4) The person does not effect transactions in securities at an auction or for sale at auction more than three times in any consecutive period of 24 months.

(5) The person and any affiliate of the person currently is not subject or, within the past 10 years, was not subject to any of the following:

(i) An order described in section 305(a)(iv) of the act (70 P.S. § 1-305(a)(iv)).

(ii) An injunction described in section 305(a)(iii) of the act.

(iii) A criminal conviction described in section 305(a)(ii) of the act.

(iv) An order of the [Commission] Department issued under section 512 of the act (70 P.S. § 1-512).

(v) A court order finding civil contempt under section 509(c) of the act (70 P.S. § 1-509(c)).

(vi) An order of the [Commission] Department imposing an administrative assessment under section 602.1 of the act (70 P.S. § 1-602.1) which has not been paid in full.

(b) [Solely for purposes of subsection (a)(3), a transaction where a bank, as that term is defined in section 102(d) of the act (70 P.S. § 1-102(d)), acting as a fiduciary under a trust agreement, estate administration or other similar relationship, causes the bank’s securities to be offered and sold at auction from such accounts shall be deemed to be a nonissuer transaction.] For the purposes of subsection (a)(3), a transaction is considered a nonissuer transaction if a bank, as that term is defined in section 102(d) of the act, does the following:

(1) Acts as a fiduciary under a trust agreement, estate administration or other similar relationship.

(2) Causes the bank’s securities to be offered and sold at action from the accounts described in subsection (b)(1).

§ 302.063. Financial institutions exempt from broker-dealer and agent registration.

[(a)] Under section 302(f) of the act (70 P.S. § 1-302(f)), the [Commission deems] Department considers it appropriate and in the public interest to exempt financial institutions and individuals representing financial institutions from the broker-dealer and agent registration provisions of section 301 of the act (70 P.S. § 1-301), if the activities of the financial institution and individuals representing the financial institutions are conducted under a networking arrangement or brokerage affiliate arrangement.

[(b) For purposes of this section, the following terms have the following meanings:

Financial institution—A Federal or State chartered bank, savings and loan association, savings bank or credit union and any service corporation affiliated with these entities.

Networking arrangement or brokerage affiliate arrangement—A contractual arrangement between a broker-dealer registered under section 301 of the act and a financial institution whereby the broker-dealer effects transactions in securities for the account of customers of the financial institution and the general public which transactions are effected on, or emanate from, the premises of a financial institution.]

§ 302.064. Stock Exchange exemption from agent registration.

Under the authority contained in section 302(f) of the act (70 P.S. § 1-302(f)), the [Commission deems] Department considers it appropriate and in the public interest to exempt agents from the registration provisions of section 301 of the act (70 P.S. § 1-301), if all the following requirements are met:

(1) The agent is representing a broker-dealer which [meets the following requirements] is:

(i) Registered under section 301 of the act.

(ii) A member of a National securities exchange registered with the [United States] Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—[78kk] 78pp).

(2) The agent’s only customers are broker-dealers registered with the [United States] Securities and Exchange Commission under the Securities Exchange Act of 1934 or section 301 of the act.

(3) The agent is not subject to [a] either of the following:

(i) A currently effective order under section 305 of the act (70 P.S. § 1-305) denying, suspending, conditioning or revoking registration [or an order of the Commission].

(ii) A currently effective order of the Department issued under section 512 of the act (70 P.S. § 1-512).

§ 302.065. Canadian broker-dealer exempt.

Under section 302(f) of the act (70 P.S. § 1-302(f)), the [Commission deems] Department considers it appropriate and in the public interest to exempt Canadian broker-dealers and agents representing Canadian broker-dealers from the broker-dealer and agent registration provisions of section 301 of the act (70 P.S. § 1-301) when effecting transactions in securities in this Commonwealth with persons described in paragraph (1), if the broker-dealer meets the conditions of paragraph (2).

(1) The customer is one of the following:

(i) A person from Canada who temporarily is present in this Commonwealth with whom the Canadian broker-dealer had a bona fide business-customer relationship before the person entered this Commonwealth.

(ii) A person from Canada who is present in this Commonwealth whose only transactions with a Canadian broker-dealer in this Commonwealth relate to a self-directed, tax advantaged retirement plan in Canada as to which the person is the holder or contributor.

(2) The Canadian broker-dealer meets the following conditions:

(i) Is a member in good standing of a self-regulatory organization or stock exchange in Canada at the time it is effecting transactions into this Commonwealth in reliance on this section.

(ii) Is registered as a broker or dealer in good standing in the [**Province or Territory**] **province or territory** of Canada from which it is effecting transactions into this Commonwealth in reliance on this section.

(iii) Discloses to its customers in this Commonwealth at the time of a transaction made in reliance on this section that it is not registered under the act.

(*Editor's Note:* Sections 302.070 and 302.071 are new and printed in regular type to enhance readability.)

§ 302.070. Registration exemption for investment advisers to private funds.

(a) *Exemption for private fund advisers.* Subject to the additional requirements of subsection (b), a private fund adviser is exempt from the registration requirements of section 301(c) of the act (70 P.S. § 1-301(c)) if the private fund adviser satisfies the following conditions:

(1) The private fund adviser and any of its advisory affiliates are not subject to a disqualification as described in Rule 262 of Securities and Exchange Commission Regulation A (17 CFR 230.262) (relating to disqualification provisions).

(2) The private fund adviser files with the Department each report and amendment that an exempt reporting adviser is required to file with the Securities and Exchange Commission under Securities and Exchange Commission Rule 204-4 (17 CFR 275.204-4) (relating to reporting by exempt reporting advisers).

(b) *Additional requirements for private fund advisers to certain 3(c)(1) funds.* To qualify for the exemption described in subsection (a), a private fund adviser who advises at least one (3)(c)(1) fund that is not a venture capital fund shall also:

(1) Advise only those 3(c)(1) funds, other than venture capital funds, whose outstanding securities other than short-term paper are beneficially owned entirely by persons who would each meet the definition of "qualified client" in Securities and Exchange Commission Rule 205-3 (17 CFR 275.205-3) (relating to exemption from the compensation prohibition of section 205(a)(1) for investment advisers), at the time the securities are purchased from the issuer.

(2) Disclose, at the time of purchase, the following in writing to each beneficial owner of a 3(c)(1) fund that is not a venture capital fund:

(i) Services, if any, to be provided to individual beneficial owners.

(ii) Duties, if any, the investment adviser owes to the beneficial owners.

(iii) Any other material information affecting the rights or responsibilities of the beneficial owners.

(3) Obtain on an annual basis audited financial statements of each 3(c)(1) fund that is not a venture capital fund and deliver a copy of the audited financial statements to each beneficial owner of the fund.

(c) *Federally covered investment advisers.* If a private fund adviser is registered with the Securities and Exchange Commission, the adviser is not eligible for this exemption and shall comply with the State notice filing requirements applicable to Federally covered investment advisers in section 303(a)(iii) of the act (70 P.S. § 1-303(a)(iii)).

(d) *Investment adviser representatives.* A person is exempt from the registration requirements of section 301(c) of the act if the person:

(1) Is employed by or associated with an investment adviser that is exempt from registration in this Commonwealth under this section.

(2) Does not otherwise act as an investment adviser representative.

(e) *Electronic filing.*

(1) A private fund adviser shall file the report filings described in subsection (a)(2) electronically through the IARD.

(2) The Department will consider a report filed when the report and the fee required under section 602.1 of the act (70 P.S. § 1-602.1) are filed and accepted by the IARD on the Department's behalf.

(f) *Transition.* If an investment adviser becomes ineligible for the exemption provided in this section, the investment adviser shall comply with all applicable laws and rules requiring registration or notice filing within 90 days from the date the investment adviser's eligibility for this exemption ceases.

(g) *Grandfathering for investment advisers to 3(c)(1) funds with nonqualified clients.* An investment adviser to a 3(c)(1) fund, other than a venture capital fund, that has one or more beneficial owners who are not qualified clients as described in subsection (b)(1) is eligible for the exemption contained in subsection (a) if the following conditions are satisfied:

(1) The subject fund existed before the effective date of this section.

(2) The subject fund ceases to accept beneficial owners who are not qualified clients, as described in subsection (b)(1), as of the effective date of this section.

(3) The investment adviser discloses in writing the information described in subsection (b)(2) to all beneficial owners of the fund.

(4) The investment adviser delivers audited financial statements as required under subsection (b)(3) as of the effective date of this section.

(h) *Scope.* This section does not supersede an applicable exclusion from the definition of "investment adviser" or "exemption from registration for an investment adviser" in the act.

§ 302.071. Registration exemption for solicitors.

A solicitor does not need to register as an investment adviser or investment adviser representative if the solicitor:

(1) Is in compliance with all requirements of § 404.012 (relating to cash payment for client solicitation).

(2) Provides impersonal investment advisory services.

(3) Is not subject to any order, judgment or decree described in section 305(a)(ii)—(vi) of the act (70 P.S. § 1-305(a)(ii)—(vi)).

CHAPTER 303. REGISTRATION PROCEDURE

§ 303.011. Broker-dealer registration procedures.

[**(a) An application for initial registration as a broker-dealer shall contain the information requested in and shall be made on Uniform Application for Broker-Dealer Registration (Form BD), or a successor form, and shall be made in the following manner:**

(1) An applicant which is not a member of the National Association of Securities Dealers, Inc.

(NASD) or a member of a National securities exchange registered with the United States Securities and Exchange Commission (SEC) under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78kk) shall complete and file one copy of Form BD with the Commission accompanied by the requisite filing fee required by section 602(d.1) of the act (70 P.S. § 1-602(d.1)), the compliance assessment required by section 602.1(a)(3) of the act (70 P.S. § 1-602.1(a)(3)), and financial statements in the form required by subsections (b) and (c).

(2) An applicant which is not a member of the NASD but is a member of a National securities exchange registered with the SEC under the Securities Exchange Act of 1934 shall complete and file one copy of Form BD with the Commission accompanied by the requisite filing fee required by section 602(d.1) of the act and the compliance assessment required by section 602.1(a)(3) of the act.

(3) An applicant which is a member of NASD shall file Form BD in the manner set forth in § 603.011(f) (relating to filing requirements) accompanied by the filing fee required by section 602(d.1) of the act and the compliance assessment required by section 602.1(a)(3) of the act.

(b) Except for applicants described in subsections (a)(2) and (3), every application shall be accompanied by a statement of the financial condition of the applicant prepared in accordance with generally accepted accounting principles and accompanied by an auditor's report containing an unqualified opinion of an independent certified public accountant. The audited statement of financial condition shall be as of the end of the applicant's most recent fiscal year, or the preceding fiscal year if the statement of financial condition for the most recently ended fiscal year is unavailable and if the application is filed within 14 months of the end of the preceding fiscal year. If the date of the most recent audited statement of financial condition is more than 45 days prior to the date of filing, the applicant also shall file an unaudited statement of financial condition as of a date within 45 days of the date of filing. As a part of the statement, the Commission may require the filing of separate schedules:

(1) Listing the securities owned by the applicant valued at the market.

(2) Stating material contractual commitments of the applicant not otherwise reflected in the statements.

(c) Except for applicants described in subsections (a)(2) and (3), an applicant that has commenced to act as a broker-dealer, the audited statement of financial condition shall be accompanied by an audited statement of income as of the end of the applicant's most recent fiscal year, or the preceding fiscal year if the statement of income for the most recently ended fiscal year is unavailable and if the application is filed within 14 months of the end of the preceding fiscal year.

(d) An applicant described in subsection (a)(2) or (3) shall provide the Commission, within 5 days of receipt of a written or electronic request, a copy of any financial statement or financial information required by SEC rules or the rules of a National

securities association or National securities exchange registered with the SEC of which the applicant is a member.

(e) A broker-dealer registered under the act shall take steps necessary to ensure that material information contained in its Form BD remains current and accurate. If a material statement made in Form BD becomes incorrect or inaccurate, the broker-dealer shall file with the Commission an amendment on Form BD within 30 days of the occurrence of the event which required the filing of the amendment.]

(a) An applicant for initial registration as a broker-dealer shall complete a Uniform Application for Broker-Dealer Registration (Form BD), or a successor form.

(b) An applicant which is not a member of FINRA or a member of a National securities exchange registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78pp) shall complete and file with the Department:

(1) A copy of Form BD.

(2) The filing fee required under section 602(d.1) of the act (70 P.S. § 1-602(d.1)).

(3) The compliance assessment required under section 602.1(a)(3) of the act (70 P.S. § 1-602.1(a)(3)).

(4) Financial statements in the form required under subsections (e), (f) and (g).

(c) An applicant which is not a member of FINRA but is a member of a National securities exchange registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 shall complete and file with the Department:

(1) A copy of Form BD.

(2) The filing fee required under section 602(d.1) of the act.

(3) The compliance assessment required under section 602.1(a)(3) of the act.

(d) An applicant which is a member of FINRA shall file with the Department:

(1) Form BD in the manner set forth in § 603.011(f) (relating to filing requirements).

(2) The filing fee required under section 602(d.1) of the act.

(3) The compliance assessment required under section 602.1(a)(3) of the act.

(e) Except for applicants described in subsections (c) and (d), applicants shall file a statement of the financial condition of the applicant which meets the following conditions:

(1) The statement is prepared in accordance with generally accepted accounting principles.

(2) The statement is accompanied by an auditor's report containing an unqualified opinion of an independent certified public accountant, which is as of either of the following:

(i) The end of the applicant's most recent fiscal year.

(ii) The preceding fiscal year if:

(A) The statement of financial condition for the most recently ended fiscal year is unavailable.

(B) The application is filed within 14 months of the end of the preceding fiscal year.

(f) Except for applicants described in subsections (c) and (d), if the date of the most recent audited statement of financial condition is more than 45 days before the date of filing, the applicant also shall file an unaudited statement of financial condition as of a date within 45 days of the date of filing which the Department may require include the filing of separate schedules:

(1) Listing the securities owned by the applicant valued at the market.

(2) Stating material contractual commitments of the applicant not otherwise reflected in the statements.

(g) Except for applicants described in subsections (c) and (d), if an applicant has commenced to act as a broker-dealer, the audited statement of financial condition shall be accompanied by an audited statement of income which is as of either of the following:

(1) The end of the applicant's most recent fiscal year.

(2) The preceding fiscal year if:

(i) The statement of income for the most recently ended fiscal year is unavailable.

(ii) The application is filed within 14 months of the end of the preceding fiscal year.

(h) An applicant described in subsections (c) and (d) shall provide to the Department, within 5 days of receipt of a written or electronic request, a copy of any financial statement or financial information required under the Securities and Exchange Commission rules or the rules of a National securities association or National securities exchange registered with the Securities and Exchange Commission of which the applicant is a member.

(i) A broker-dealer registered under the act shall take steps necessary to ensure that material information contained in its Form BD remains current and accurate. If a material statement made in Form BD becomes incorrect or inaccurate, the broker-dealer shall file with the Department an amendment on Form BD within 30 days of the occurrence of the event which required the filing of the amendment.

§ 303.012. Investment adviser registration procedure.

(a) An [application] applicant for initial registration as an investment adviser shall [contain the information requested in and shall be made on the] complete a Uniform Application for Investment Adviser Registration (Form ADV), or a successor form.

(b) The applicant shall complete and file with the [Commission] Department or with an investment adviser registration depository designated by [order of the Commission one copy of the form accompanied by the filing fee in] the Department:

(1) Form ADV.

(2) The filing fee required under section 602(d.1) of the act (70 P.S. § 1-602(d.1)) [, the].

(3) The compliance assessment in section 602.1(a)(4) of the act [and any exhibits required by this section].

(4) Any exhibits required under this section.

[(b)] (c) Except as set forth in subsection [(f), the following statements of financial condition shall accompany an application for initial registration as an investment adviser:] (j), an applicant having custody of client funds or securities or requiring payment of advisory fees 6 months or more in advance and in excess of \$1,200 per client shall file:

(1) An [applicant that has custody of client funds or securities or an applicant that requires payment of advisory fees 6 months or more in advance and in excess of \$1,200 per client shall file an] audited balance sheet of the applicant prepared in accordance with generally accepted accounting principles [and accompanied by a] which is as of the end of the applicant's most recent fiscal year.

(2) A standard audit report containing an unqualified opinion of an independent certified public accountant [. The] within which the accountant shall submit, as a supplementary opinion, comments based [upon] on the audit as to [material] the:

(i) Material inadequacies found to exist in the accounting system [, the internal accounting controls and the procedures].

(ii) Internal accounting controls.

(iii) Procedures for safeguarding securities and funds [and shall indicate] with an indication of corrective action taken or proposed. [The balance sheet required by this paragraph shall be as of the end of the applicant's most recent fiscal year. If that balance sheet is as of a date more than 45 days prior to the date of filing the application, the applicant also shall file a subsequent balance sheet prepared in accordance with generally accepted accounting principles as of a date within 45 days of the date of filing. This balance sheet may be unaudited and may be prepared by management of the applicant.

(2) An applicant that has discretionary authority over client funds or securities, but not custody, shall file a balance sheet which need not be audited but shall be prepared in accordance with generally accepted accounting principles. The balance sheet required by this paragraph shall be as of the end of the applicant's most recent fiscal year. If that balance sheet is as of a date more than 45 days prior to the date of filing the application, the applicant also shall file a subsequent balance sheet, which must be prepared in accordance with generally accepted accounting principles as of a date within 45 days of filing the application. Each balance sheet required by this paragraph may be unaudited and prepared by management of the applicant. Each balance sheet required by this paragraph also shall contain a representation by the applicant that the balance sheet is true and accurate.

(3) An applicant whose proposed activities do not come within paragraph (1) or (2) need not file a statement of financial condition.]

(3) A subsequent balance sheet, if the balance sheet required under paragraph (1) is of a date more than 45 days before the filing date of the application:

(i) The subsequent balance sheet must be:

(A) Prepared in accordance with generally accepted accounting principles.

(B) Dated as of a date within 45 days of the filing date of the application.

(ii) The subsequent balance sheet may be unaudited and prepared by management of the applicant.

(d) The balance sheet required under subsection (c) does not need to be filed if the investment adviser has custody of client funds or securities solely as a result of either of the following:

(1) The investment adviser receives fees directly deducted from clients' funds or securities in compliance with § 303.042(a)(3)(i) (relating to investment adviser capital requirements).

(2) The investment adviser serves as a general partner, manager of a limited liability company or occupies a similar status or performs a similar function which gives the investment adviser or its supervised person legal ownership or access to client funds or securities, if the investment adviser is in compliance with § 303.042(a)(3)(ii).

(e) Except as set forth in subsection (j), an applicant that has discretionary authority over client funds or securities, but not custody, shall file:

(1) A balance sheet prepared in accordance with generally accepted accounting principles which is as of the end of the applicant's most recent fiscal year.

(2) A subsequent balance sheet prepared in accordance with generally accepted accounting principles and dated within 45 days of the filing date if the balance sheet required under paragraph (1) is dated more than 45 days before the filing date of the application.

(f) The balance sheets required under subsection (e)(1) and (2):

(1) May be unaudited and prepared by management of the applicant.

(2) Shall contain a representation by the applicant that the balance sheet is true and accurate.

(g) Except as set forth in subsection (j), an applicant whose proposed activities do not come within subsection (c) or (e) does not need to file a statement of financial condition.

[(c)] (h) As part of the requirements relating to the statements of financial condition set forth in [subsection (b), the Commission] subsections (c) and (e), the Department may require the following:

(1) A list of the securities reflected in the statement of financial condition of the applicant valued at the market.

(2) A description of material contractual commitments of the applicant not otherwise reflected in the statement of financial condition.

(3) [In the case of a sole proprietor, whose statement of financial condition includes only those assets and liabilities used in the applicant's investment adviser business, an] An affirmative statement by the applicant that its liabilities which have not been incurred in the course of business as an investment adviser are not greater than the applicant's assets not used in its investment adviser business **if the applicant is a sole proprietor, whose statement of financial condition includes only those assets and liabilities used in the applicant's investment adviser business.**

[(d)] (i) An investment adviser registered under the act shall take steps necessary to ensure that material information contained in its Form ADV and exhibits remains current and accurate. If a material statement made in Form ADV and exhibits becomes incorrect or inaccurate the investment adviser shall file with the [Commission] Department an amendment on Form ADV within 30 days of the occurrence of the event which requires the filing of the amendment.

[(e) For purposes of this section, the following terms have the following meanings:

Principal place of business—The meaning set forth in 17 CFR 275.203A-3(c) (relating to definitions) promulgated under the Investment Advisers Act of 1940 (15 U.S.C.A. §§ 80b-1—80b-21).

(f)] (j) An applicant that maintains its principal place of business in a state other than this Commonwealth [need not comply with subsection (b) if the applicant meets the following] does not need to comply with subsections (c) and (e) if the applicant:

(1) Is registered as an investment adviser in the state in which it maintains its principal place of business.

(2) Is in compliance with the financial reporting requirements of the state in which it maintains its principal place of business.

(3) Has not taken custody of the assets of any client residing in this Commonwealth at any time during the preceding 12-month period.

§ 303.013. Agent registration procedures.

(a) An [application] applicant for initial registration as an agent of a broker-dealer or issuer shall [contain the information requested in and shall be made on] complete a Uniform Application for Securities Industry Registration or Transfer (Form U-4) or a successor form. [Except as provided in subsection (b), the agent and the broker-dealer or issuer shall complete and file with the Commission one copy of Form U-4 and exhibits thereto accompanied by the filing fee required by section 602(d.1) of the act (70 P.S. § 1-602(d.1)), the compliance assessment required by section 602.1(a)(1) of the act (70 P.S. § 1-602.1(a)(1)) and evidence of passage of the examinations required by § 303.031 (relating to examination requirements for agents).]

(b) Except as provided in subsection (c), the agent and the broker-dealer or issuer shall complete and file with the Department:

(1) Form U-4 and exhibits.

(2) The filing fee required under section 602(d.1) of the act (70 P.S. § 1-602(d.1)).

(3) The compliance assessment required under section 602.1(a)(1) of the act (70 P.S. § 1-602.1(a)(1)).

(4) Evidence of passage of the examinations required under § 303.031 (relating to examination requirement for agents).

[(b)] (c) An applicant for registration as an agent of a broker-dealer which is a member firm of [the National Association of Securities Dealers (NASD)] FINRA shall file the following items in the manner set forth in § 603.011(f) (relating to filing requirements):

(1) A completed and executed Form U-4 and exhibits [thereto].

(2) The filing fee required [by] under section 602(d.1) of the act.

(3) The compliance assessment required [by] under section 602.1(a)(1) of the act.

(4) Evidence of passage of the examinations required [by] under § 303.031.

[(c)] (d) An agent and broker-dealer or issuer shall take necessary steps to ensure that material information contained in Form U-4 remains current and accurate. If a material statement made in the Form U-4 becomes incorrect or inaccurate, the agent and broker-dealer or issuer shall file with the [Commission] Department an amendment to Form U-4 within 30 days of the occurrence of the event which requires the filing of the amendment.

§ 303.014. Investment adviser representative registration procedures.

(a) An [application] applicant for initial registration as an investment adviser representative of an investment adviser or [Federally-covered adviser shall contain the information requested in and shall be made on the] Federally covered adviser shall complete a Uniform Application for Securities Industry Registration or Transfer Form (Form U-4), or a successor form.

(b) The investment adviser representative and the investment adviser or Federally covered adviser shall complete and file with the [Commission] Department or with an investment adviser registration depository designated by [order of the Commission one copy of Form U-4 and exhibits thereto accompanied by the filing fee required by section 602(d.1) of the act (70 P.S. § 1-602(d.1)), the compliance assessment required by section 602.1(a)(1) of the act (70 P.S. § 1-602.1(a)(1)) and the results evidencing passage of the examinations required by § 303.032 (relating to qualification of and examination requirement for investment advisers and investment adviser representatives).] the Department:

(1) Form U-4 and exhibits.

(2) The filing fee required under section 602(d.1) of the act (70 P.S. § 1-602(d.1)).

(3) The compliance assessment required under section 602.1(a)(1) of the act (70 P.S. § 1-602.1(a)(1)).

(4) The results evidencing passage of the examinations required under § 303.032 (relating to examination requirements for investment advisers and investment adviser representatives).

[(b)] (c) An investment adviser representative and an investment adviser or [Federally-covered] Federally covered adviser shall take necessary steps to ensure that material information contained in Form U-4 remains current and accurate. If a material statement made in the Form U-4 becomes incorrect or incomplete, the investment adviser representative and the investment adviser or [Federally-covered] Federally covered adviser shall file with the [Commission] Department an amendment to Form U-4 within 30 days of the occurrence of the event which requires the filing of the amendment.

§ 303.015. Notice filing for [Federally-covered] Federally covered advisers.

[(a) *Initial filing.* The notice required to be filed by Federally-covered advisers under section 303(a)(iii) of the act (70 P.S. § 1-303(a)(iii)) shall be the uniform application for investment adviser registration (Form ADV) or successor form thereto as filed with the United States Securities and Exchange Commission. Prior to the Federally-covered adviser conducting advisory business in this Commonwealth, a completed Form ADV accompanied by the notice filing fee required by section 602(d.1) of the act (70 P.S. § 1-602(d.1)) shall be filed with the Commission or with an investment adviser registration depository designated by order of the Commission.

(b) *Renewals.* Every Federally-covered adviser conducting advisory business in this Commonwealth annually shall pay a notice filing fee set forth in section 602(d.1) of the act. Payment of the notice filing fee should be made directly with the Commission or with an investment adviser registration depository designated by order of the Commission.]

(a) *Format.* Federally covered advisers required to file notice under section 303(a)(iii) of the act (70 P.S. § 1-303(a)(iii)) shall file the uniform application for investment adviser registration, Form ADV or successor form as filed with the Securities and Exchange Commission.

(b) *Initial filing.* Before the Federally covered adviser conducts advisory business in this Commonwealth, the Federally covered adviser shall file a completed Form ADV accompanied by the notice filing fee required under section 602(d.1) of the act (70 P.S. § 1-602(d.1)) with the Department or with an investment adviser registration depository designated by the Department.

(c) *Renewals.* Every Federally covered adviser conducting advisory business in this Commonwealth annually shall pay a notice filing fee set forth in section 602(d.1) of the act to the Department or to an investment adviser registration depository designated by the Department.

(Editor's Note: The following section is new and printed in regular type to enhance readability.)

§ 303.016. Considered as abandoned.

(a) *General rule.* The Department may consider as abandoned an application for registration as a broker-dealer, agent, investment advisor or investment advisor

representative which has been on file with the Department for a minimum of 6 consecutive months if the applicant failed to do any of the following:

(1) Respond within 60 days after written notice sent by first class mail to the applicant's last known address in the Department's files warning the applicant that the application will be considered abandoned.

(2) Respond to any request for additional information required under the act.

(3) Complete the showing required for action on the application.

(b) *Voluntary withdrawal.* An applicant may, with the consent of the Department, withdraw an application at any time.

(c) *No refund of fee.* On abandonment or voluntary withdrawal, there will not be a refund for any filing fee paid before the date of the abandonment or withdrawal.

§ 303.021. Registration and notice filing procedures for successors to a broker-dealer, investment adviser or [**Federally-covered**] **Federally covered** adviser.

[(a) The following apply with respect to broker-dealers:

(1) When a broker-dealer is formed or proposed to be formed for the purpose of succeeding to, and continuing the business of, a broker-dealer registered under section 301 of the act (70 P.S. § 1-301) and as a broker or dealer under section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C.A. § 77o(b)) (successor broker-dealer) based solely on a change in the predecessor's date or state of incorporation, form of organization or composition of a partnership, the successor broker-dealer shall comply with the requirements of SEC Rule 15b1-3(a) promulgated under the Securities Exchange Act of 1934, except that the successor broker-dealer shall file the amendments to Form BD with the Commission.

(2) When a broker-dealer is formed or proposed to be formed for the purpose of succeeding to, and continuing the business of, a broker-dealer registered under section 301 of the act and as a broker or dealer under section 15(b) of the Securities Exchange Act of 1934 (successor broker-dealer) for reasons other than a change in the predecessor's date or state of incorporation, form of organization or composition of a partnership, the successor broker-dealer shall comply with the requirements of SEC Rule 15b1-3(b) promulgated under the Securities Exchange Act of 1934, except that the successor shall file Form BD with the Commission.

(b) The following shall apply to investment advisers:

(1) When an investment adviser is formed or proposed to be formed for the purpose of succeeding to, and continuing the business of, an investment adviser registered under section 301 of the act (successor investment adviser) based solely on a change in the predecessor's date or state of incorporation, form of organization or composition of a partnership, the successor investment adviser may file an initial application for registration by amending Form ADV of the predecessor and, under section 303(b) of the act (70 P.S. § 1-303(b)), succeed to the unexpired portion of the predecessor's term of registration.

(2) When an investment adviser is formed or proposed to be formed for the purpose of succeeding to, and continuing the business of, an investment adviser registered under section 301 of the act for reasons other than a change in the predecessor's date or state of incorporation, form of organization or composition of a partnership, the successor investment adviser shall file Form ADV with the Commission. Upon registration, the successor investment adviser, under section 303(b) of the act, shall succeed to the unexpired portion of the predecessor's term of registration.

(c) When a Federally covered adviser is formed or proposed to be formed for the purpose of succeeding to, and continuing the business of, a registered investment adviser or of another Federally-covered adviser (successor Federally-covered adviser), the successor Federally-covered adviser shall file with the Commission either Form ADV or an amendment to Form ADV as required under SEC Release No. IA-1357 (December 28, 1992) and, under section 303(b) of the act, shall succeed to the unexpired portion of the predecessor's notice period.]

(a) If a broker-dealer is formed or proposed to be formed to succeed to, and continue the business of, a broker-dealer registered under section 301 of the act (70 P.S. § 1-301) and as a broker or dealer under section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C.A. § 77o(b)) (successor broker-dealer), and the decision is for either of the following reasons:

(1) Based solely on a change in the predecessor's date or state of incorporation, form of organization or composition of a partnership, the successor broker-dealer shall comply with the requirements of Rule 15b1-3(a) promulgated under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78pp), except that the successor broker-dealer shall file the amendments to Form BD with the Department.

(2) For reasons other than a change in the predecessor's date or state of incorporation, form of organization or composition of a partnership, the successor broker-dealer shall comply with the requirements of Rule 15b1-3(b) promulgated under the Securities Exchange Act of 1934, except that the successor shall file Form BD with the Department.

(b) If an investment adviser is formed or proposed to be formed to succeed to, and continue the business of, an investment adviser registered under section 301 of the act (successor investment adviser), and the decision is for either of the following reasons:

(1) Based solely on a change in the predecessor's date or state of incorporation, form of organization or composition of a partnership, the successor investment adviser shall:

(i) File an initial application for registration by amending Form ADV of the predecessor.

(ii) Succeed to the unexpired part of the predecessor's term of registration under section 303(b) of the act (70 P.S. § 1-303(b)).

(2) For reasons other than a change in the predecessor's date or state of incorporation, form of organization or composition of a partnership, the successor investment adviser shall:

(i) File Form ADV with the Department.

(ii) Succeed to the unexpired part of the predecessor's term of registration, after registration under section 303(b) of the act.

(c) If a Federally covered adviser is formed or proposed to be formed to succeed to, and continue the business of, a registered investment adviser or of another Federally covered adviser, the successor Federally covered adviser shall:

(1) File with the Department either Form ADV or an amendment to Form ADV as required under Securities and Exchange Commission Release No. IA-1357 (December 28, 1992) and, under section 303(b) of the act.

(2) Succeed to the unexpired part of the predecessor's notice period.

§ 303.031. Examination requirement for agents.

(a) An individual may not be registered as an agent under the act unless the individual [has met] meets the requirements of subsections (b) and (c).

(b) The applicant [has received] receives a passing grade on the securities examination for principals or registered representatives administered by [the National Association of Securities Dealers, Inc., the New York Stock Exchange or the United States] FINRA or the Securities and Exchange Commission within 2 years [prior to] before the date of filing an application for registration. [An applicant will be deemed to have met the requirements] The Department considers the requirements of this subsection met if any of the following apply:

[(i)] (1) The applicant previously has passed the examination and has not had a lapse in employment with a broker-dealer for a period exceeding 2 years.

[(ii)] (2) The applicant has received a waiver of the examination requirement by [the NASD] FINRA.

[(iii)] (3) The applicant has received [a Commission order] notice from the Department waiving the examination requirement.

(c) The applicant [has received] receives a passing grade on the Uniform Securities Agent State Law Examination (Series 63) or [, alternatively,] the Uniform Combined State Law Examination (Series 66) and the General Securities Representative Examination (Series 7) or successor examination administered by [the NASD within 2 years prior to] FINRA within 2 years before the date of filing an application for registration. [An applicant will be deemed to have met] The Department considers the requirements of this subsection met if any of the following apply:

[(i)] (1) The applicant previously has passed the Series 63 or [, alternatively,] the Series 66 and Series 7, and has not had a lapse in employment with a broker-dealer for a period exceeding 2 years.

[(ii)] (2) The applicant has received [a Commission order] notice from the Department waiving the requirement to take the Series 63 or [, alternatively,] the Series 66 and Series 7.

§ 303.032. Examination requirements for investment advisers and investment adviser representatives.

(a) *Examination requirements.* [An individual may not] To be registered as an investment adviser or investment adviser representative under the act [unless the person has met one of the following qualifications], an individual shall meet one of the following examination requirements:

(1) [Received] The individual, on or after January 1, 2000, and within 2 years immediately [prior to] before the date of filing an application with the [Commission,] Department, received a passing grade on The Uniform Investment Adviser Law Examination (Series 65), or successor examination.

(2) [Received] The individual, on or after January 1, 2000, and within 2 years immediately [prior to] before the date of filing an application with the [Commission,] Department, received a passing grade on the:

(i) General Securities Representative Examination (Series 7) administered by [the National Association of Securities Dealers, Inc. and the] FINRA.

(ii) Uniform Combined State Law Examination (Series 66) or successor examinations.

(3) [Received] The individual, on or after January 1, 2000 [,]:

(i) Received a passing grade on either the Series 65 examination or passing grades on both the Series 7 and Series 66 examinations [and has] .

(ii) Has not had a lapse in registration as an investment adviser or investment adviser representative in any state other than this Commonwealth for a period exceeding 2 years immediately [prior to] before the date of filing an application with the [Commission] Department.

(b) *Grandfathering.*

(1) Compliance with subsection (a) is waived if the individual meets the following [qualifications] conditions:

(i) [Prior to January 1, 2000, the individual had] The individual, before January 1, 2000, received a passing grade on the Series 2, 7, 8 or 24 examination for registered representatives or supervisors administered by [the National Association of Securities Dealers, Inc.] FINRA and the Series 65 or Series 66 examinations.

(ii) The individual has not had a lapse in employment as an investment adviser, investment adviser representative, or principal or agent of a broker-dealer for any consecutive period exceeding 2 years immediately preceding the date of filing an application with the [Commission] Department.

(2) [An individual need not comply] Compliance with subsection (a) is waived if the individual meets the following [qualifications] conditions:

(i) [Prior to January 1, 2000, the individual] The individual, before January 1, 2000, was registered as

an investment adviser or investment adviser representative in any state requiring the licensing, registration or qualification of investment advisers or investment adviser representatives.

(ii) The individual has not had a lapse in registration as an investment adviser or investment adviser representative in another state for any consecutive period exceeding 2 years immediately preceding the date of filing an application with the [**Commission**] **Department**.

(c) *Waivers of exam requirements.* Compliance with subsection (a) is waived if:

(1) The individual meets the following [**qualifications**] **conditions**:

(i) [**Has no**] **The individual does not have a** disciplinary history which requires an affirmative response to Items 23A-E or Item 23H of The Uniform Application for Securities Industry Registration or Transfer (Form U-4) or successor items thereto.

(ii) [**Has**] **The individual has** been awarded any of the following designations which, at the time of filing of the application with the [**Commission**] **Department**, is current and in good standing:

(A) Certified Financial Planner (CFP) awarded by the Certified Financial Planner Board of Standards, Inc.

(B) Chartered Financial Consultant (ChFC) or Master of Science and Financial Services (MSFS) awarded by the American College, Bryn Mawr, Pennsylvania.

(C) Chartered Financial Analyst (CFA) awarded by the Institute of Chartered Financial Analysts.

(D) Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants.

(E) Chartered Investment Counselor (CIC) awarded by the Investment Counsel Association of America, Inc.

(2) The individual is licensed as a certified public accountant, is currently in good standing and [**has no**] **does not have a** disciplinary history that requires an affirmative response to Items 14A-E or Item 14H of Form U-4 or successor items thereto, and has notified the [**Commission**] **Department** that the individual is eligible for a waiver of the examination requirement imposed by subsection (a).

(3) The individual is licensed as an attorney, is currently in good standing and [**has no**] **does not have a** disciplinary history that requires an affirmative response to Items 14A-E or Item 14H of Form U-4 or successor items thereto, and has notified the [**Commission**] **Department** that the individual is eligible for a waiver of the examination requirement imposed by subsection (a).

(4) The individual has received [**an order from the Commission waiving**] **a waiver from the Department regarding** compliance with subsection (a).

§ 303.041. Broker-dealer capital requirements.

(a) Except as set forth in subsection (e), every broker-dealer registered under section 301 of the act (70 P.S. § 1-301) shall maintain net capital of \$25,000[. **The**] **with an** aggregate indebtedness [**of a registered broker-dealer may not exceed**] **not exceeding** 1500% of its net capital. For purposes of this section, the terms "net capital" and "aggregated indebtedness" have the meanings set forth in Rule 15c3-1 (17 CFR

240.15c3-1) (relating to net capital requirements for brokers [**and**] **or** dealers) promulgated under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—[**78mm**] **78pp**).

(b) As a condition of the right to continue to transact business, every broker-dealer registered under the act that is not registered as a broker-dealer with the [**United States**] Securities and Exchange Commission [**(SEC)**] under the Securities Exchange Act of 1934 immediately shall notify the [**Commission**] **Department** if the broker-dealer's aggregate indebtedness exceeds 1500% of its net capital or if its total net capital is less than the minimum required.

(c) Within 24 hours after transmitting the notice **required under subsection (b)**, the broker-dealer shall file a report of its financial condition with the [**Commission**] **Department** including the following:

(1) A proof of money balances of ledger accounts in the form of a trial balance.

(2) A computation of net capital and aggregate indebtedness as those terms are used in this section and a computation of the ratio of aggregate indebtedness to net capital.

(3) An analysis of the aggregate market value of fully paid securities in customers' security accounts which are not segregated.

(4) A proof of ledger net credit balances of moneys borrowed from banks, trust companies and from other financial institutions, and from others, which are fully or partially secured by securities carried for the account of a customer.

(5) A computation of the aggregate amount of customers' ledger debit balances.

(6) A computation of the aggregate amount of customers' ledger credit balances.

(7) A statement as to the approximate number of customer accounts.

[**(c) The term "customer" of a broker-dealer as used in this subsection includes every person except the broker-dealer.**

[**(d) The Commission may by order**] **(d) The Department may** permit an applicant for registration as a broker-dealer under section 301 of the act which is not registered or has not applied for registration as a broker or dealer with the [**SEC**] **Securities and Exchange Commission** to file, execute and maintain a surety bond in compliance with § 303.051 (relating to surety bonds).

(e) [**Every**] **A** broker-dealer registered under section 301 of the act that is registered as a broker or dealer with the [**SEC**] **Securities and Exchange Commission** shall maintain minimum net capital and comply with the aggregate indebtedness requirements as set forth in Rule 15c3-1 (17 CFR 240.15c3-1) [**(relating to net capital requirements for brokers and dealers)**] promulgated under the Securities Exchange Act of 1934.

§ 303.042. Investment adviser capital requirements.

[**(a) Every investment adviser registered under section 301 of the act (70 P.S. § 1-301) shall maintain at all times the following net worth requirements:**

(1) The following applies when an investment adviser has its principal place of business in a state other than this Commonwealth.

(i) If the investment adviser currently is licensed as an investment adviser in the state in which it maintains its principal place of business and is in compliance with that state's net worth requirements, the net worth required by this section shall be the same as the net worth requirement imposed by that state.]

(a) *Net worth requirements.*

(1) An investment adviser registered under section 301 of the act (70 P.S. § 1-301) with its principal place of business in a state other than this Commonwealth shall meet the following net worth requirements:

(i) The same as imposed by that state if the investment adviser is:

(A) Currently licensed as an investment adviser in the state in which it maintains its principal place of business.

(B) In compliance with that state's net worth requirements.

(ii) If the investment adviser currently is not licensed as an investment adviser in the state in which it maintains its principal place of business, the net worth required [**by**] under this section [**shall be**] is the same as if the investment adviser had its principal place of business in this Commonwealth.

(2) Except as provided in subsection [(e)] (d), an investment adviser registered as a broker-dealer under section 301 of the act that has its principal place of business in this Commonwealth [**and also is registered as a broker-dealer under section 301 of the act**] shall maintain [**at all times**] a minimum net capital [**of \$25,000**] required under Rule 15c3-1 (17 CFR 240.15c3-1) (relating to net capital requirements for brokers or dealers).

(3) An investment adviser registered under section 301 of the act that has its principal place of business in this Commonwealth and has custody of client funds or securities shall maintain [**at all times**] a minimum net worth of \$35,000 unless the investment adviser [**meets any**] has custody solely as the result of one of the following:

(i) [**The investment adviser has custody solely as a result of receiving fees directly deducted from clients' funds or securities if**] Holding the authority to make withdrawals from client accounts maintained by a qualified custodian to pay its advisory fee and the investment adviser:

(A) Possesses written authorization from the client to deduct advisory fees from an account held by a qualified custodian.

(B) Sends the qualified custodian written notice of the amount of the fee to be deducted from the client's account.

(C) Sends the client a written invoice itemizing the fee, including any formulae used to calculate the fee, the time period covered by the fee and the amount of assets under management on which the fee was based.

(D) Notifies the Department in writing on Form ADV that the investment adviser intends to use the safeguards provided in subsection clauses (A)—(C).

(ii) [**The investment adviser has custody solely as a result of serving**] Serving as a general partner, manager of a limited liability company or a person occupying a similar status or performing a similar function which gives the investment adviser or its supervised person legal ownership or access to client funds or securities [**if**] and the following conditions are met:

(A) The pooled investment vehicle is subject to audit at least annually and distributes its audited financial statements which have been prepared by an independent certified public accountant in accordance with generally accepted accounting principles to all limited partners, members or beneficial owners within 120 days of the end of its fiscal year.

(B) The investment adviser:

(I) Hires an independent party to review all fees, expenses and capital withdrawals from the accounts included in the pooled investment vehicle [**prior to**] before forwarding them to the qualified custodian with the independent party's approval for payment.

(II) Sends written invoices or receipts to the independent party [**which describe the amount of the fees (including any formulae used to calculate the fees, the time period covered by the fees and the amount of assets under management on which the fees were based),**] describing:

(-a-) **The amount of the fees, including any formulae used to calculate the fees, the time period covered by the fees and the amount of assets under management on which the fees were based.**

(-b-) **The expenses or capital withdrawals for the independent party to verify that payment of the fees, expenses or capital withdrawals is in accordance with the documents governing the operation of the pooled investment vehicle and any statutory requirements applicable thereto.**

[(iii) **The investment adviser has custody solely as a result of acting as trustee for a beneficial trust in which the beneficial owners of the trust are a parent or step-parent; grandparent or step-grandparent; spouse, brother or step-brother, sister or step-sister; or grandchild or step-grandchild of the investment adviser.**]

(III) Notifies the Department in writing on Form ADV that the investment adviser intends to employ the use of the audit safeguards in subclauses (I) and (II).

(4) An investment adviser that has its principal place of business in this Commonwealth and has discretionary authority over client funds or securities but does not have custody of client funds or securities shall maintain [**at all times**] a minimum net worth of \$10,000 [**. An**], unless the investment adviser [**will not be deemed to be exercising discretion and subject to the requirements of this paragraph when it**] places trade orders with a broker-dealer under a third-party trading agreement [**if**] and the following conditions are met:

(i) The investment adviser [**has executed**] executes a separate investment adviser contract exclusively with

its clients that acknowledges that a third-party agreement will be executed to allow the investment adviser to effect securities transactions for the client in the client's broker-dealer account.

(ii) The investment adviser contract specifically states that the client does not grant discretionary authority to the investment adviser and the investment adviser, in fact, does not exercise discretion with respect to the account.

(iii) [**A third-party trading agreement is executed between the**] The investment adviser, the client and the broker-dealer **execute a third-party trading agreement** which specifically limits the investment adviser's authority in the client's broker-dealer account to the placement of trade orders and deduction of investment adviser fees.

(5) An investment adviser that has its principal place of business in this Commonwealth and accepts prepayment of advisory fees of more than 6 months in advance and more than \$1,200 per client shall maintain [**at all times**] a positive net worth.

(b) *Notice to the Department.*

(1) As a condition of the right to continue to transact business in this Commonwealth, an investment adviser registered under the act shall notify [,] **the Department** by the close of business on the next business day [, **the Commission**] if the investment adviser's total net worth is less than the minimum required net worth.

(2) Within 24 hours after transmitting the notice, the investment adviser shall file a report of its financial condition including the following:

[(1)] (i) A proof of money balances of ledger accounts in the form of a trial balance.

[(2)] (ii) A computation of net worth.

[(3)] (iii) An analysis of clients' securities and funds which are not segregated.

[(4)] (iv) A computation of the aggregate amount of clients' ledger debit balances.

[(5)] (v) A computation of the aggregate amount of clients' ledger credit balances.

[(6)] (vi) A statement as to the number of client accounts.

[(c) For the purpose of this section, the following terms have the following meanings:

Custody—A person is deemed to have custody of client funds or securities if the person directly or indirectly holds clients funds or securities, has any authority to obtain possession of them or has the ability to appropriate them.

Independent party—A person who meets all of the following requirements:

(i) Is engaged by an investment adviser with respect to payment of fees, expenses or capital withdrawals from a pooled investment vehicle in which the investment adviser has custody solely as a result of serving as a general partner, manager of a limited liability company or a person occupying a similar status or performing a similar function

which gives the investment adviser or its supervised person legal ownership or access to client funds or securities.

(ii) Does not control, is not controlled by and is not under common control with the investment adviser.

(iii) Within the preceding consecutive 12 month period, did not derive 5% or more of its gross revenues from the investment adviser who hired the person to be an independent party, including the amount to be received from the investment adviser under the terms of the independent party engagement.

Net capital—The meaning set forth in 17 CFR 240.15c3-1 (relating to net capital requirements for brokers or dealers), promulgated under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78kk).

Net worth—The excess of assets over liabilities as determined by generally accepted accounting principles reduced by the following:

(i) Prepaid expenses except items properly classified as current assets under generally accepted accounting principles.

(ii) Deferred charges.

(iii) Goodwill, franchises, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense and all other assets of an intangible nature.

(iv) Home furnishings, automobiles and any other personal items not readily marketable in the case of an individual.

(v) Advances or loans to stockholders and officers in the case of a corporation; members and managers in the case of a limited liability company; and advances or loans to partners in the case of a partnership.

Pooled investment vehicle—

(i) A limited partnership, limited liability company or an entity with a similar legal status and performing similar functions.

(ii) The term does not include an investment company that has filed a registration statement under the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1—80a-64).

Principal place of business—The meaning set forth in 17 CFR 275.203A-3(c) (relating to definitions) promulgated under the Investment Advisers Act of 1940 (15 U.S.C.A. §§ 80b-1—80b-21).

Qualified custodian—The following shall be considered qualified custodians for purposes of this section:

(i) A bank as that term is defined in section 102(d) of the act (70 P.S. § 1-102(d)).

(ii) A Federally covered adviser as that term is defined in section 102(f.1) of the act.

(iii) A broker dealer registered with the Commission under section 301 of the act (70 P.S. § 1-301).

Supervised person—A person who meets the definition in section 202(a)(25) of the Investment Advisers Act of 1940 (15 U.S.C.A. § 80b-2(a)(25)).

(d) (c) **Appraisals.** For investment advisers registered or required to be registered under the act, the [Commission] Department may require that a current appraisal be submitted to establish the worth of an asset being calculated under the net worth formulation.

(e) (d) **Exception.** The requirements of subsection (a)(2) do not apply to an investment adviser that has its principal place of business in this Commonwealth and [also] is registered as a broker-dealer under section 15 of the Securities Exchange Act of 1934 (15 U.S.C.A. § 77o) if the broker-dealer is one of the following:

(1) Subject to, and in compliance with, [SEC] Rule 15c3-1.

(2) A member of a National Securities Exchange whose members are exempt from [SEC] Rule 15c3-1 under subsection (b)(2) [thereof] and the broker-dealer is in compliance with all rules and practices of the exchange imposing requirements with respect to financial responsibility and the segregation of funds or securities carried for the account of customers.

§ 303.051. Surety bonds.

(a) [The following applies with respect to the filing of a surety bond with the Commission by an investment adviser] A surety bond shall be:

(1) [An investment adviser that has its principal place of business in this Commonwealth and does not meet the minimum net worth requirements of § 303.042 (relating to investment adviser capital requirements) may, by order of the Commission, have and maintain a surety bond in the amount of the net worth deficiency rounded up to the nearest \$5,000. The surety bond shall be filed with the Commission] Filed with the Department on Uniform Surety Bond Form (Form U-SB) or successor form [thereto; shall be subject to the claims of all clients of the investment adviser regardless of the client's state of residence; and shall be issued].

(2) Subject to the claims of all clients regardless of the client's state of residence.

(3) Issued by a person licensed to issue surety bonds in this Commonwealth.

(2) (b) An investment adviser that has its principal place of business in a state other than this Commonwealth shall comply with [paragraph (1)] subsection (a) unless the investment adviser [meets the following qualifications] is:

(i) Is registered (1) Registered as an investment adviser in that state.

(ii) Is in (2) In compliance with the applicable net worth and bonding requirements of the state in which it maintains its principal place of business.

(3) For purposes of this section, the term "principal place of business" has the same meaning as set forth in 17 CFR 275.203A-3(c) (relating to definitions) promulgated under the Investment Advisers Act of 1940 (15 U.S.C.A. §§ 80b-1—80b-21).]

(c) An investment adviser that has its principal place of business in this Commonwealth and does not meet the minimum net worth requirements of § 303.042 (relating to investment adviser capital

requirements) shall, if required by the Department, have and maintain a surety bond in the amount of the net worth deficiency rounded up to the nearest \$5,000.

(b) (d) A broker-dealer registered under the act but not registered as a broker or dealer under the Securities Exchange Act of 1934 [(15 U.S.C.A. §§ 78a—78kk) may, by order of the Commission] (15 U.S.C.A. §§ 78a—78pp) shall, as required by the Department, be permitted to have and maintain for the registration period a surety bond in the amount of the net capital deficiency rounded up to the nearest \$5,000. [The surety bond shall:

(1) Be filed with the Commission on Form U-SB or successor form thereto.

(2) Be subject to the claims of all clients of the broker-dealer regardless of the client's state of residence.

(3) Be issued by a person licensed to issue surety bonds in this Commonwealth.

(c) Upon request of the Commission (e) On request of the Department, a broker-dealer or investment adviser shall provide evidence of the existence of a surety bond.

CHAPTER 304. POSTREGISTRATION PROVISIONS

§ 304.011. Broker-dealer required records.

(a) Every broker-dealer registered under section 301 of the act (70 P.S. § 1-301) shall make and keep the records required to be maintained as described in Rule 17a-3 (17 CFR 240.17a-3) (relating to records to be made by certain exchange members, brokers and dealers) adopted under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78kk).]

(a) Books and records.

(1) Every broker-dealer registered under section 301 of the act (70 P.S. § 1-301) shall make and keep the records required to be maintained as described in Rule 17a-3 (17 CFR 240.17a-3) (relating to records to be made by certain exchange members, brokers and dealers) adopted under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78pp).

(2) If a broker-dealer registered under the act and not registered as a broker or dealer with the Securities and Exchange Commission fails to make and keep current the books and records required under this section, the broker-dealer shall:

(i) Notify the Department immediately.

(ii) File a report with the Department, within 24 hours after filing the notice with the Department, stating what steps have been taken and are being taken to fully comply with this section.

(c) (b) Records of complaints.

(1) Every broker-dealer registered under the act shall make, keep and preserve [either a] one of the following:

(i) A separate file of written complaints of customers and actions taken by the broker-dealer in response [thereto, or a].

(ii) A separate record of the complaints and a clear reference to the files containing the correspondence con-

nected with the complaint maintained by the broker-dealer. [A “complaint” shall be deemed to include]

(2) For purposes of this section, a complaint includes a written statement of a customer or a person acting on behalf of a customer or a written notation of verbal communication alleging a grievance involving the purchase or sale of securities, the solicitation or execution of a transaction or the disposition of securities or funds of the customer.

(3) A registered broker-dealer that also is registered as a broker or dealer with the [SEC shall be deemed to be] Securities and Exchange Commission is considered in compliance with the requirements of this subsection if it maintains records of customer complaints as [prescribed by applicable SEC] required under applicable Securities and Exchange Commission rules.

[(d) The records required to be maintained under this section shall be retained and preserved for the period of time designated in Rule 17a-4 (17 CFR 240.17a-4) (relating to records to be preserved by certain exchange members, brokers and dealers) promulgated under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78kk) and made easily accessible for inspection by the Commission or its representatives. The retention and preservation of records as required in this section may be upon microfilm, microfiche, or any similar medium; electronic or digital storage medium; computer disks or tapes or other similar recording process if adequate facilities are maintained for the examination of the facsimiles and if enlargements or paper copies of the facsimiles can be provided promptly upon reasonable request of the Commission or its representatives.]

(c) *Retention.* The records required to be maintained under this section:

(1) Shall be retained and preserved for the period of time designated in Rule 17a-4 (17 CFR 240.17a-4) (relating to records to be preserved by certain exchange members, brokers and dealers) promulgated under the Securities Exchange Act of 1934.

(2) Shall be made easily accessible for inspection by the Department or its representatives.

(3) May be retained and preserved as:

(i) Microfilm, microfiche or any similar medium.

(ii) Electronic or digital storage medium.

(iii) Computer disks or tapes, or other similar recording process if adequate facilities are maintained for the examination of the facsimiles and if enlargements or paper copies of the facsimiles can be provided promptly on reasonable request of the Department or its representatives.

§ 304.012. Investment adviser required records.

(a) Except as provided in subsection (j), every investment adviser registered under the act shall make and keep true, accurate and current the following books, ledgers and records:

(1) A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger.

(2) General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts.

(3) A memorandum of each order given by the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser from the client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of [any such] the order or instruction. [The memoranda shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed the order; and shall show the account for which entered, the date of entry, and the bank, broker-dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated.] The memorandum must:

(i) Show the terms and conditions of the order, instruction, modification or cancellation.

(ii) Identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed the order.

(iii) Show the account for which entered, the date of entry and the bank, broker-dealer by or through whom executed, if appropriate.

(iv) Designate orders entered under the exercise of discretionary power.

(4) [All check] Check books, bank statements, canceled checks and cash reconciliations of the investment adviser.

(5) [All bills] Bills or statements (or copies of), paid or unpaid, relating to the investment adviser’s business as an investment adviser.

(6) [All trial] Trial balances, financial statements, net worth computation[,] and internal audit working papers relating to the investment adviser’s business as an investment adviser.

(i) For purposes of this subsection, “financial statements” [shall mean] means a balance sheet prepared in accordance with generally accepted accounting principles, an income statement and a cash flow statement.

(ii) The net worth computation means the net worth required [by] under § 303.042 (relating to investment adviser capital requirements), if any.

(7) Originals of [all] written communications received and copies of [all] written communications sent by the investment adviser relating to one or more of the following:

(i) [Any] A recommendation made or proposed to be made and any advice given or proposed to be given.

(ii) [Any] A receipt, disbursement or delivery of funds or securities.

(iii) The placing or execution of [any] an order to purchase or sell any security, except that an investment adviser:

(A) Is not required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser.

(B) With respect to [any] a notice, circular or other advertisement offering any report, analysis, publication or

other investment advisory service sent by the investment adviser to more than [10] ten persons (including transmission by electronic means), the following apply:

(I) The investment adviser is not required to keep a record of the names and addresses of the persons to whom it was sent [except, that if].

(II) If the notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of the notice, circular or advertisement a memorandum describing the list and its source.

(8) A list or other record of all accounts which list identifies the accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transactions of any client.

(9) A copy of all powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser.

(10) A copy in writing of each agreement entered into by the investment adviser with [any] a client, and all other written agreements otherwise relating to the investment adviser's business as an investment adviser.

[(11) A file containing a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media that the investment adviser circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment adviser), and if the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media recommends the purchase or sale of a specific security and does not state the reasons for the recommendation, a memorandum of the investment adviser indicating the reasons for the recommendation.]

(11) A file containing:

(i) A copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication including by electronic media that the investment adviser circulates or distributes, directly or indirectly, to two or more persons, other than persons connected with the investment adviser.

(ii) A memorandum of the investment adviser indicating the reasons for the recommendation if the notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication including by electronic media recommends the purchase or sale of a specific security and does not state the reasons for the recommendation.

(12) Records of transactions as follows:

(i) A record of every transaction in a security in which the investment adviser or investment adviser representative of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership except:

(A) Transactions effected in any account over which [neither] the investment adviser [nor any] or an investment adviser representative of the investment adviser [has any] does not have direct or indirect influence or control.

(B) Transactions in securities which are direct obligations of the United States. The record [shall] must state:

(I) The title and amount of the security involved; the date and nature of the transaction (that is, purchase, sale or other acquisition or disposition).

(II) The price at which it was effected.

(III) The name of the broker-dealer or bank with or through whom the transaction was effected.

(ii) The record may also contain a statement declaring that the reporting or recording of any transaction will not be construed as an admission that the investment adviser or investment adviser representative has any direct or indirect beneficial ownership in the security.

(iii) A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

[(iv) For purposes of this paragraph, the following terms have the following meanings:

(A) *Investment adviser representative*—A partner, officer or director of the investment adviser; any employe who participates in any way in the determination of which recommendations shall be made; any employe of the investment adviser who, in connection with assigned duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of the recommendations:

(I) Any person in a control relationship to the investment adviser.

(II) Any affiliated person of a controlling person.

(III) Any affiliated person of an affiliated person.

(B) *Control*—The power to exercise a controlling influence over the management or policies of a company, unless the power is solely the result of an official position with the company. A person who owns beneficially, either directly or through one or more controlled companies, more than 25% of the voting securities of a company shall be presumed to control the company.

(v)] (iv) An investment adviser shall implement adequate procedures and use reasonable diligence to obtain promptly reports of all transactions required to be recorded.

(13) Records of transactions by investment advisers primarily engaged in a business other than advising clients as follows:

(i) Notwithstanding paragraph (12), [when] if the investment adviser is primarily engaged in a business or businesses other than advising investment advisory clients, a record shall be maintained of every transaction in a security in which the investment adviser or any investment adviser representative of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except transactions:

(A) Effected in [any] an account over which [neither] the investment adviser [nor any] or an invest-

ment adviser representative of the investment adviser **[has any] does not have** direct or indirect influence or control.

(B) In securities which are direct obligations of the United States. The record **[shall] must** state:

(I) The title and amount of the security involved.

(II) The date and nature of the transaction (that is, purchase, sale, or other acquisition or disposition).

(III) The price at which it was effected, and the name of the broker-dealer or bank with or through whom the transaction was effected.

(ii) The record may also contain a statement declaring that the reporting or recording of any transaction will not be construed as an admission that the investment adviser or investment adviser representative has any direct or indirect beneficial ownership in the security.

[(iii) A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

(iv) An investment adviser is "primarily engaged in a business or businesses other than advising investment advisory clients" when, for each of its most recent 3 fiscal years or for the period of time since organization, whichever is lesser, the investment adviser derived, on an unconsolidated basis, more than 50% of the following:

(A) Its total sales and revenues.

(B) Its income (or loss) before income taxes and extraordinary items, from other business or businesses.

(v) For purposes of this paragraph, the following terms have the following meanings:

(A) Investment adviser representative—When used in connection with a company primarily engaged in a business or businesses other than advising investment advisory clients, the term means any partner, officer, director or employe of the investment adviser who participates in any way in the determination of which recommendations shall be made; any employe who, in connection with assigned duties, obtains information concerning which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of the recommendations as follows:

(I) Any person in a control relationship to the investment adviser.

(II) Any affiliated person of a controlling person.

(III) Any affiliated person of an affiliated person.

(B) Control—The power to exercise a controlling influence over the management or policies of a company, unless the power is solely the result of an official position with the company. A person who owns beneficially, either directly or through one or more controlled companies, more than 25% of the voting securities of a company shall be presumed to control the company.

(vi)] (iii) An investment adviser shall implement adequate procedures and use reasonable diligence to promptly obtain reports of all transactions required to be recorded.

(14) A copy of **[each] the** written statement and **[each] the** amendment or revision, given or sent to **[any] a** client or prospective client of the investment adviser under § 404.011 (relating to investment adviser brochure disclosure), and a record of the dates that **[each] the** written statement, and **[each] the** amendment or revision, was given, or offered to be given, to **[any] a** client or prospective client who subsequently becomes a client.

(15) [For each client that was obtained by the adviser by means of a solicitor to whom a cash fee was paid by the adviser shall maintain the following] If the adviser obtained a client by means of a solicitor to whom the adviser paid a cash fee:

(i) Evidence of a written agreement to which the adviser is a party related to the payment of the fee.

(ii) A signed and dated acknowledgment of receipt from the client evidencing the client's receipt of the investment adviser's disclosure statement and a written disclosure statement of the solicitor.

(iii) A copy of the solicitor's written disclosure statement if required **[by] under** § 404.012 (relating to cash payment for client solicitation).

[(iv) For purposes of this paragraph, the term "solicitor" means any person or entity who, for compensation, directly or indirectly solicits any client for, or refers any client to, an investment adviser.]

(16) [All accounts] Accounts, books, internal working papers, and any other records or documents **[that are necessary]** to form the basis for, or demonstrate the calculation of, the performance or rate of return of all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin[,] or other communication[, **including but not limited to,]:**

(i) Includes electronic media that the investment adviser circulates or distributes, directly or indirectly, to two or more persons **[(other than persons connected with the investment adviser) except], other than persons connected with the investment adviser.**

(ii) Except that, with respect to the performance of managed accounts, the retention of all account statements, if they reflect all debits, credits[,] and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts **[shall be deemed] will be considered** to satisfy the requirements of this paragraph.

(17) A file containing a copy of **[all] the** written communications received or sent regarding any litigation involving the investment adviser or **[any] an** investment adviser representative or employe, and regarding **[any] the** written customer or client complaint.

(18) Written information about **[each] an** investment advisory client that is the basis for making **[any] a** recommendation or providing **[any] investment** advice to the client.

(19) Written procedures to supervise the activities of **[employes] employees** and investment adviser repre-

sentatives that are reasonably designed to achieve compliance with applicable securities laws and regulations.

(20) A file containing a copy of [each document (other than any notices of general dissemination) that was] the documents, other than notices of general dissemination, that were filed with or received from [any] a state or Federal agency or self-regulatory organization and that pertains to the registrant or its investment adviser representatives as that term is defined in [paragraph (12)] § 102.021(a) (relating to definitions), which file [should contain, but is not limited to,] may include all applications, amendments, renewal filings and correspondence.

(21) A copy, with original signatures of the investment adviser's appropriate signatory and the investment adviser representative, of the initial Form U-4 and the amendment to Disclosure Reporting Pages (DRPs U-4) shall be retained by the investment adviser filing on behalf of the investment adviser representative and made available for inspection on regulatory request.

(22) A ledger or other listing of all securities or funds held or obtained in this manner if the adviser has inadvertently held or obtained a client's securities or funds and returned them to the client within 3 business days or has forwarded third-party checks within 24 hours under the definition of "custody" in § 102.021(a), which ledger or other listing includes the following information:

- (i) The issuer.
- (ii) The type of security and series.
- (iii) The date of issue.
- (iv) The denomination, interest rate and maturity date for debt instruments.
- (v) The certificate number, including alphabetical prefix or suffix.
- (vi) The name in which the security is registered.
- (vii) The date given to the adviser.
- (viii) The date sent to client or sender.
- (ix) The form of delivery to client or sender, or copy of the form of delivery to client or sender.
- (x) The mail confirmation number, if applicable, or confirmation by client or sender of the fund's or security's return.

(23) Written acknowledgements of receipts obtained from clients under § 404.012(b)(5) and copies of the disclosure documents provided to clients by solicitors under § 404.012(b)(4).

(24) Written procedures relating to the business and continuity plan required under § 304.071 (relating to business continuity and succession planning).

(b) For purposes of subsection (a)(12) and (13):

(1) A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

(2) An investment adviser is "primarily engaged in a business or businesses other than advising investment advisory clients" when, for each of its most recent 3 fiscal years or for the time since organization, whichever is less, the investment ad-

viser derived, on an unconsolidated basis, more than 50% of the following from other business or businesses:

(i) Total sales and revenues.

(ii) Income, or loss, before income taxes and extraordinary items.

(3) An investment adviser shall implement adequate procedures and use reasonable diligence to promptly obtain reports of all transactions required to be recorded.

[(b)] (c) If an investment adviser subject to subsection (a) has custody [or possession of securities or funds of any client], the records required to be made and kept [by] under subsection (a) also [shall] include:

(1) A journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for all accounts and all other debits and credits to the accounts.

(2) A separate ledger account for each client showing all purchases, sales, receipts and deliveries of securities, the date and price of each purchase and sale, and all debits and credits.

(3) [Copies] A copy of confirmations of all transactions effected by or for the account of any client.

(4) A record for each security in which any client has a position, which record shall show the name of each client having any interest in each security, the amount or interest of each client, and the location of each security.

(5) A copy of documents executed by the client, including a limited power of attorney, under which the adviser is authorized or permitted to withdraw a client's funds or securities maintained with a custodian on the adviser's instruction to the qualified custodian.

(6) A copy of each of the client's quarterly account statements, as generated and delivered by the qualified custodian. If the adviser also generates a statement that is delivered to the client, the adviser shall also maintain copies of the statements along with the date the statements were sent to the clients.

(7) If an investment adviser has custody because it advises a pooled investment vehicle and is relying on the exception from the minimum net worth requirement in § 303.042(a)(3)(ii), the adviser shall also keep:

(i) True, accurate and current account statements.

(ii) Documentation of the date of the audit.

(iii) A copy of the audited financial statements.

(iv) Evidence of the mailing of the audited financial to all limited partners, members or other beneficial owners within 120 days of the end of its fiscal year.

(8) Records relating to the adviser's appointment as trustee and the identities of the beneficial owners of the trust if an investment adviser acts as trustee for a beneficial trust under § 102.021(a).

[(c) Every] (d) An investment adviser subject to subsection (a) that [renders any] gives investment supervisory or management service to [any] a client

shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, make and keep true, accurate and current:

(1) **[Records showing separately] A separate record** for each client **showing** the securities purchased and sold, and the date, amount and price of each purchase and sale.

(2) For each security in which any client has a current position, information from which the investment adviser can promptly furnish the name of each client, and the current amount or interest of the client.

[(d)] (e) Books or records required **[by] under** this section may be maintained by the investment adviser so that the identity of **[any] a** client to whom the investment adviser **[renders] gives** investment supervisory services is indicated by numerical or alphabetical code or some similar designation.

[(e) Every] (f) An investment adviser subject to subsection (a) shall **[preserve the following records in the manner prescribed] maintain**:

(1) **[The books] Books** and records required to be made under subsections (a), (b) and (c)(1) (except for books and records required to be made under subsection (a)(11) and **[(a)(16)), shall be maintained and preserved] (16)),** in an easily accessible place for at least 5 years from the end of the fiscal year during which the last entry was made on record, the first 2 years being in the principal office of the investment adviser.

(2) Partnership articles and any amendments, articles of incorporation, charters, minute books, and stock certificate books of the investment adviser and of any predecessor, **[shall be maintained]** in the principal office of the investment adviser **[and preserved until]** for at least 3 years after termination of the enterprise.

(3) Books and records required to be made under subsection (a)(11) and **[(18) shall be maintained and preserved] (16)** in an easily accessible place for at least 5 years, the first 2 years being in the principal office of the investment adviser, from the end of the fiscal year during which the investment adviser last published or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication including by electronic media.

[(4) Books and records required to be made under subsection (a)(19) and (22) shall be maintained and preserved in an easily accessible place for at least 5 years, the first 2 years being in the principal office of the investment adviser, from the end of the fiscal year during which the investment adviser last published or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication including by electronic media.

(5)] (4) Notwithstanding other record preservation requirements of this section, the following records or copies **[shall be required to be maintained]** at the business location of the investment adviser from which the customer or client is being provided or has been provided with investment advisory services:

(i) Records required to be preserved under subsections (a)(3), (7)—(10), (14)**[—], (15), (17)—(19) and (22)—(24),** (b) and (c).

(ii) Records or copies required under subsection (a)(11) and (16) which records or related records identify the name of the investment adviser representative providing investment advice from that business location, or which identify the business **[locations'] location's** physical address, mailing address, **[electronic mailing] e-mail** address or telephone number.

[(f)] (g) An investment adviser subject to subsection (a), before ceasing to do business as an investment adviser, shall **[arrange]:**

(1) **Arrange** and be responsible for the preservation of the books and records required to be maintained and preserved under this section for the remainder of the period specified in this section**[, and shall notify the Commission].**

(2) **Notify the Department** in writing of the exact address where the books and records will be maintained during the period.

[(g) The requirements for the storage of records are as follows:

(1) **Records required to be maintained and preserved under this section may be immediately produced or reproduced by photograph on film or, as provided in paragraph (2) on magnetic disk, tape or other computer storage medium, and be maintained and preserved for the required time in that form. If records are produced or reproduced by photographic film or computer storage medium, the investment adviser shall:**

(i) **Arrange the records and index the films or computer storage medium so as to permit the immediate location of any particular record.**

(ii) **Be ready at all times to provide, and promptly provide, any facsimile enlargement of film or computer printout or copy of the computer storage medium which the Commission by its examiners or other representatives may request.**

(iii) **Store separately from the original one other copy of the film or computer storage medium for the time required.**

(iv) **With respect to records stored on computer storage medium, maintain procedures for maintenance and preservation of, and access to, records so as to reasonably safeguard records from loss, alteration or destruction.**

(v) **With respect to records stored on photographic film, at all times have available for the Commission's examination of its records under section 304(a) of the act (70 P.S. § 1-304(a)) facilities for immediate, easily readable projection of the film and for producing easily readable facsimile enlargements.**

(2) **An investment adviser may maintain and preserve on computer tape or disk or other computer storage medium records which, in the ordinary course of the adviser's business, are created by the adviser on electronic media or are received by the adviser solely on electronic media or by electronic data transmission.**

(h) For purposes of this section, the following terms have the following meanings:

Client—Any person to whom the investment adviser has given investment advice for which the investment adviser has received compensation.

Investment supervisory services—The giving of continuous advice as to the investment of funds on the basis of the individual needs of each client. Discretionary power does not include discretion as to the price at which or the time when a transaction is or is to be effected, if, before the order is given by the investment adviser, the client has directed or approved the purchase or sale of a definite amount of the particular security.

Principal place of business—The meaning set forth in 17 CFR 275.203A-3(c) (relating to definitions) promulgated under the Investment Advisers Act of 1940 (15 U.S.C.A. §§ 80b-1—80b-21).]

(h) Record storage requirements are as follows:

(1) Records required to be maintained and preserved for the required time by this section shall:

(i) Be able to be immediately produced or reproduced.

(ii) Be maintained and preserved in at least one of the following manners:

(A) Paper or hard copy form, as those records are kept in their original form.

(B) Micrographic media, including microfilm, microfiche or any similar medium.

(C) Electronic storage media, including any digital storage medium or system that meets the terms of this section.

(2) The investment adviser shall:

(i) Arrange and index the records in a way that permits easy location, access and retrieval of any particular record.

(ii) Provide promptly any of the following which the Department by its examiners or other representatives may request:

(A) A legible, true and complete copy of the record in the medium and format in which it is stored.

(B) A legible, true and complete printout of the record.

(C) A means to access, view and print the records.

(iii) Store separately from the original a copy of the record for the time required for preservation of the original record.

(3) For records created or maintained on electronic storage media, the investment advisor shall establish and maintain procedures to:

(i) Maintain and preserve the records to reasonably safeguard them from loss, alteration or destruction.

(ii) Limit access to the records to properly authorized personnel and the Department, including its examiners and other representatives.

(iii) Reasonably ensure that any reproduction of a nonelectronic original record on electronic storage media is complete, true and legible when retrieved.

(i) [Any] A book or other record made, kept, maintained and preserved in compliance with Rules 17a-3 (17 CFR 240.17a-3) (relating to records to be made by certain exchange members, brokers and dealers) and 17a-4 (17 CFR 240.17a-4) (relating to records to be preserved by certain exchange members, brokers and dealers) under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—[78kk] 78pp), which is substantially the same as the book or other record required to be made, kept, maintained and preserved under this section, [shall be deemed] is considered to be made, kept, maintained and preserved in compliance with this section.

(j) The requirements of this section do not apply to an investment adviser registered under section 301 of the act (70 P.S. § 1-301) that meets the following conditions:

(1) Has its principal place of business in a state other than this Commonwealth.

(2) Is licensed as an investment adviser in the state where it has its principal place of business.

(3) Is in compliance with the recordkeeping requirements of the state in which it has its principal place of business.

§ 304.021. Broker-dealer required financial reports.

(a) [Every] A broker-dealer registered under the act [which is] but not registered as a broker or dealer with the [United States] Securities and Exchange Commission [(SEC)] under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—[78kk] 78pp) shall file annually with the [Commission] Department a report [consisting of] which includes a statement of financial condition as of the end of its fiscal year and an income statement for the year then ended.

(b) The annual report of financial condition filed under this section shall be prepared in accordance with generally accepted accounting principles and accompanied by an auditor's report containing an unqualified opinion of an independent certified public accountant. The accountant shall submit as a supplementary opinion comments, based [upon] on the audit, as to material inadequacies found to exist in the accounting system, the internal accounting controls and procedures taken for safeguarding securities and shall indicate corrective action taken or proposed.

(c) A broker-dealer registered under the act [which also is] and registered as a broker or dealer with the [SEC] Securities and Exchange Commission shall provide the [Commission] Department, within 5 days of receipt of a written or electronic request, a copy of any financial statement, financial report or other financial information required [by SEC] under Securities and Exchange Commission rules or the rules of a National securities association or National securities exchange registered with the [SEC] Securities and Exchange Commission of which the applicant is a member.

(d) The report required [by this section] under subsection (a) shall be filed within 120 days following the end of the broker-dealer's fiscal year.

§ 304.022. Investment adviser required financial reports.

[(a) Except as provided in subsections (b) and (c), the following investment advisers registered under section 301 of the act (70 P.S. § 1-301) shall file the following reports of financial condition with the Commission within 120 days of the investment adviser's fiscal year end:

(1) An investment adviser that has custody of client funds or securities or requires prepayment of advisory fees 6 months or more in advance and in excess of \$1,200 per client shall file with the Commission an audited balance sheet as of the end of its fiscal year. The balance sheet shall be prepared in accordance with generally accepted accounting principles and contain an unqualified opinion of an independent certified public accountant. The accountant shall submit, as a supplementary opinion, comments based on the audit as to material inadequacies found to exist in the accounting system, the internal accounting controls and procedures for safeguarding securities and funds, and shall indicate corrective action taken or proposed.

(2) An investment adviser who has discretionary authority over client funds or securities, but not custody, shall file with the Commission a balance sheet as of the end of its fiscal year. The balance sheet need not be audited but shall be prepared in accordance with generally accepted accounting principles. The balance sheet shall contain a representation by the investment adviser that it is true and accurate.

(b) The requirements of subsection (a) do not apply to an investment adviser registered under section 301 of the act whose principal place of business is in a state other than this Commonwealth if the investment adviser meets the following conditions:

(1) Is registered in the state in which it maintains its principal place of business.

(2) Is in compliance with the financial reporting requirements of the state in which it maintains its principal place of business.

(3) Has not taken custody of assets of any client residing in this Commonwealth at any time during the preceding 12 month period.

(c) When an investment adviser registered under section 301 of the act inadvertently held or obtained a client's securities or funds and returned them to the client within 3 business days or has forwarded third party checks within 24 hours, the investment adviser will not be deemed to have custody and subject to the requirements of subsection (a) if the investment adviser maintains records which contains the following information about the securities or funds returned to the client:

(1) If a security:

(i) The name of the issuer.

(ii) The type of security.

(iii) The date of issuance.

(iv) A certificate number or other identifying information.

(v) The denomination, interest rate and maturity date applicable to a debt security.

(vi) The name in which the securities are registered.

(2) If funds:

(i) The name of the payee or beneficial owner.

(ii) The check number, transmittal number, payor name and address and any other identifying information.

(3) The date on which the funds or securities were received by the investment adviser.

(4) The date on which the funds or securities were sent by the investment adviser to the client.

(5) The form of delivery used by the investment adviser to transmit the funds or securities to the client and a copy of written confirmation of receipt of the funds or securities by the client.

(d) For purposes of this section, the following term has the following meaning:

Principal place of business—The meaning set forth in 17 CFR 275-203A-3(c) (relating to definitions) promulgated under the Investment Advisers Act of 1940 (15 U.S.C.A. §§ 80b-1—80b-21).]

(a) An investment adviser registered under section 301 of the act (70 P.S. § 1-301) that has custody of client funds or securities or requires prepayment of advisory fees 6 months or more in advance and in excess of \$1,200 per client shall file with the Department an audited balance sheet as of the end of its fiscal year with the following conditions:

(1) The balance sheet shall be prepared in accordance with generally accepted accounting principles and contain an unqualified opinion of an independent certified public accountant.

(2) The accountant shall submit, as a supplementary opinion, comments based on the audit as to material inadequacies found to exist in the accounting system, the internal accounting controls and procedures for safeguarding securities and funds, and shall indicate corrective action taken or proposed.

(b) An investment adviser registered under section 301 of the act that has discretionary authority over client funds or securities, but not custody, shall file with the Department a balance sheet as of the end of its fiscal year with the following conditions:

(1) The balance sheet is not required to be audited but shall be prepared in accordance with generally accepted accounting principles.

(2) The balance sheet must contain a representation by the investment adviser that it is true and accurate.

(c) A sole proprietor registered under section 301 of the act required to file an affirmative statement under § 303.012(c)(3) (relating to investment adviser registration procedure) shall file with the Department an affirmative statement as of the end of its fiscal year.

(d) Except as provided in subsections (e) and (f), investment advisers required to file the reports of financial condition set forth in subsections (a)—(c) shall file the reports with the Department within 120 days of the investment adviser's fiscal year end.

(e) The requirements of subsection (d) do not apply to an investment adviser registered under section 301 of the act whose principal place of business is in a state other than this Commonwealth if the investment adviser:

(1) Is registered in the state in which it maintains its principal place of business.

(2) Is in compliance with the financial reporting requirements of the state in which it maintains its principal place of business.

(3) Has not taken custody of assets of any client residing in this Commonwealth at any time during the preceding 12-month period.

(f) The requirements of subsection (d) do not apply to an investment adviser registered under section 301 of the act who:

(1) Has custody of client funds or securities solely as a result of activities set forth in § 303.042(a)(3) (relating to investment adviser capital requirements).

(2) Is in compliance with the requirements set forth in § 303.042(a)(3).

§ 304.041. Examinations of broker-dealers and investment advisers.

(a) In the conduct of an examination authorized under section 304(d) of the act (70 P.S. § 1-304(d)), every broker-dealer and investment adviser registered under the act [shall]:

(1) Shall honor all requests by representatives of the [Commission] Department to have physical access to all areas of the office which is the subject of the examination [and, upon request, shall permit them].

(2) Shall permit the Department to review and examine the files in the physical place where the files routinely are maintained on request.

[In complying with a request,] (3) May accompany the representatives of the Department themselves or through a representative of the broker-dealer or investment adviser [may accompany the representatives of the Commission].

(b) Files referred to in subsection (a) include[, but are not limited to,] books, ledgers, accounts, records[,] and electronic files required to be kept by broker-dealers and investment advisers in accordance with this chapter, rules of the [United States] Securities and Exchange Commission [or] and rules of a National Securities Exchange or National securities association registered with the [United States] Securities and Exchange Commission, and any document reasonably related to these required records.

§ 304.051. Broker-dealer compensation.

[No] (a) A broker-dealer registered under the act may not charge or receive commissions or other compensation in connection with the purchase or sale of securities [unless the compensation is fair and reasonable and is determined on an equitable basis, adequately disclosed to each customer in writing at or prior to final confirmation].

(b) The prohibition contained in subsection (a) does not apply if the compensation is:

(1) Fair and reasonable.

(2) Determined on an equitable basis.

(3) Adequately disclosed to each customer in writing at or before final confirmation.

(c) Compensation which complies with the Conduct Rules of [the National Association of Securities Dealers, Inc. shall be deemed] FINRA will be considered fair and reasonable and, unless otherwise required to be disclosed in writing by the Conduct Rules, [need not be] does not need to be disclosed in writing.

§ 304.061. Free credit balances.

[No broker-dealer registered or required to register under the act may use funds arising out of a free credit balance carried for the account of a customer in connection with the operation of the business of the broker-dealer unless the broker-dealer has established adequate procedures under which each customer for whom a free credit balance is carried will be given or sent, together with or as a part of the customer's statement of account, whenever sent but not less frequently than once every 3 months, a written statement informing the customer of the amount due to the customer by the broker-dealer on the date of the statement and containing a written notice that:

(1) Funds are not segregated and may be used in the business of the broker-dealer.

(2) Funds are payable on the demand of the customer.

For the purpose of this section, the term "customer" means every person other than the broker-dealer.]

(a) A broker-dealer registered or required to register under the act may not use funds arising out of a free credit balance carried for the account of a customer in connection with the operation of the business of the broker-dealer.

(b) The prohibition contained in subsection (a) does not apply if the broker-dealer has established adequate procedures under which each customer for whom a free credit balance is carried will be given or sent a written statement which:

(1) Informs the customer of the amount due to the customer by the broker-dealer on the date of the statement.

(2) Contains a written notice that:

(i) Funds are not segregated and may be used in the business of the broker-dealer.

(ii) Funds are payable on the demand of the customer.

(iii) Is sent no less than once every 3 months together with or as a part of the customer's statement of account.

(Editor's Note: The following section is new and printed in regular type to enhance readability.)

§ 304.071. Business continuity and succession planning.

(a) An investment adviser shall establish, implement and maintain written procedures relating to a business continuity and succession plan.

(b) The investment adviser shall base the business continuity and succession plan on the facts and circumstances of the investment adviser's business model including the size of the firm, type of services provided and the number of locations of the investment adviser.

(c) The business continuity and succession plan must provide for at least the following:

(1) Protection, backup and recovery of books and records.

(2) Alternate means of communicating notice to customers, key personnel, employees, vendors, regulators and service providers, including third-party custodians, about issues such as:

(i) A significant business interruption.

(ii) The death or unavailability of key personnel.

(iii) Other disruptions or cessation of business activities.

(3) Office relocation if a temporary or permanent loss of a principal place of business occurs.

(4) Assignment of duties to a qualified responsible person if the death or unavailability of key personnel occurs.

(5) Otherwise minimizing service disruptions and client harm that could result from a sudden significant business interruption.

CHAPTER 305. DENIAL, SUSPENSION, REVOCATION AND CONDITIONING OF REGISTRATION

§ 305.011. Supervision of agents, investment adviser representatives and employees.

(a) Every broker-dealer and investment adviser registered under section 301 of the act (70 P.S. § 1-301) shall exercise diligent supervision over the securities activities and securities related activities of its agents, investment adviser representatives and employees[.] by:

(1) [**Each broker-dealer and investment adviser, in exercising diligent supervision, shall establish and maintain**] **Establishing and maintaining** written procedures and a system for applying and enforcing those written procedures which are reasonably designed to [**achieve**]:

(i) **Achieve** compliance with the act and this title [**and to detect**].

(ii) **Detect** and prevent any violations of statutes, rules, regulations or orders described in [**section**] **any of the following**:

(A) **Section** 305(a)(v) and (ix) of the act (70 P.S. § 1-305(a)(v) and (ix))[, **the Conduct Rules of the National Association of Securities Dealers, Inc., or any**].

(B) **The Conduct Rules of FINRA.**

(C) **An** applicable fair practice or ethical standard promulgated by the [**United States**] Securities and Exchange Commission or by a National Securities Exchange registered under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—[**78kk**] **78pp**).

(2) [**Final**] **Accepting final** responsibility for proper supervision [**shall rest with the broker-dealer and investment adviser**].

(b) Every issuer who employs agents registered under section 301 of the act shall be subject to the supervision requirements of subsection (a) with respect to those agents.

(c) As evidence of compliance with the supervisory obligations imposed by this section, [**every**] a broker-dealer [**and**] or investment adviser shall [**implement**]:

(1) **Implement** written procedures, a copy of which shall be kept in each location at which the broker-dealer or investment adviser conducts business[, **and shall establish**].

(2) **Establish**, maintain and enforce those written procedures designed to achieve compliance with the act and this title and to detect and prevent violations described in subsection (a).

[**These**] (d) **The** written procedures **required under subsection (c)**, at a minimum, [**shall**] **must** address:

(1) The supervision of every agent, investment adviser representative, employee and supervisor by a designated qualified supervisor.

(2) [**Methods**] **The methods** to be used to determine that all supervisory personnel are qualified by virtue of character, experience and training to carry out their assigned responsibilities.

(3) [**Methods**] **The methods** to be used to determine the good character, business repute, qualifications[,] and experience of any person [**prior to**] **before** making application for registration of that person with the [**Commission**] **Department** and hiring that person.

(4) The review and written approval by the designated supervisor of the opening of each new customer account.

(5) The frequent examination of customer accounts to detect and prevent violations, irregularities or abuses.

(6) The prompt review and written approval of the handling of customer complaints.

(7) The prompt review and written approval by the designated supervisor of all securities transactions and all correspondence pertaining to the solicitation or execution of all securities transactions.

(8) The review and written approval by the designated supervisor of the delegation by a customer of discretionary authority with respect to the customer's account and frequent examination of discretionary accounts to prevent violations, irregularities or abuses.

(9) The participation of each agent and investment adviser representative either individually or collectively, no less than annually, in an interview or meeting conducted by persons designated by the broker-dealer or investment adviser at which compliance matters relevant to the activities of the agents and investment adviser representatives are discussed. Written records shall be maintained reflecting the interview or meeting.

(10) The periodic inspection of each location in this Commonwealth from which business is conducted to ensure that the written procedures and systems are enforced. [**In establishing an inspection cycle, the broker-dealer and investment adviser shall give consideration to the nature and complexity of the securities activities for which the location is responsible, the volume of business done and the**

number of agents or investment adviser representatives assigned to the location. The obligation of diligent supervision required by this section may require that one or more locations of a broker-dealer or investment adviser in this Commonwealth receive more inspections or be on a periodic inspection cycle different than other locations of the broker-dealer or investment adviser in this Commonwealth and that inspections be unannounced. In acquitting their obligations under this section, registrants are to consult NASD Notice to Members 98-38 (May 1998) and SEC Release No. 34-38174 (January 15, 1997). In accordance with NASD Notice to Members 98-38, unannounced visits may be appropriate when there are indicators of misconduct such as receipt of significant customer complaints; personnel with disciplinary records; or excessive trade corrections, extensions, liquidations, or variable contract replacements.

(i) An office of supervisory jurisdiction of a broker-dealer shall be inspected at least annually. Branch offices and nonbranch locations of a broker-dealer shall be inspected in accordance with an inspection cycle established in the broker-dealer's written supervisory procedures.

(ii) It is the responsibility of the broker-dealer or investment adviser to ensure through inspections of each location in this Commonwealth that the written procedures and systems are enforced and the supervisory obligations imposed by this section are being honored.

(iii) Written records shall be maintained reflecting each inspection conducted.

(iv) For purposes of this section, the terms "office of supervisory jurisdiction" and "branch office" shall have the same meaning as those terms are defined in NASD Conduct Rule 3010(g) or any successor thereto. The term "nonbranch location" means any location at which a broker-dealer is conducting a securities business that does not come within the definition of "office of supervisory jurisdiction" or "branch office."

(d) Records required to be maintained under this section shall be maintained for 5 years, the first 2 years being in an easily accessible place. The retention and preservation of records may be on microfilm, computer disks or tapes or other electronic medium if adequate facilities are maintained for examination of facsimiles.]

(e) The periodic inspections referenced in subsection (d)(10) shall occur according to the following time frames:

(1) At least annually for an office of supervisory jurisdiction of a broker-dealer.

(2) In accordance with an inspection cycle established in the broker-dealer's written supervisory procedures for branch offices and nonbranch locations of a broker-dealer.

(i) In establishing an inspection cycle, the broker-dealer and investment adviser shall give consideration to the nature and complexity of the securities activities for which the location is responsible, the volume of business done and the number of agents or investment adviser representatives assigned to the location.

(ii) The obligation of diligent supervision required under this section may require that one or more locations of a broker-dealer or investment adviser in this Commonwealth receive more inspections or be on a periodic inspection cycle different than other locations of the broker-dealer or investment adviser in this Commonwealth and that inspections be unannounced.

(f) It is the responsibility of the broker-dealer or investment adviser to ensure through inspections of each location in this Commonwealth that the written procedures and systems are enforced and the supervisory obligations imposed by this section are being honored.

(g) Written records shall be maintained reflecting each inspection conducted.

(h) In acquitting their obligations under this section, registrants are to consult FINRA Notice to Members 98-38 (May 1998) and Securities and Exchange Commission Release No. 34-38174 (January 15, 1997).

(i) In accordance with FINRA Notice to Members 98-38, unannounced visits may be appropriate if there are indicators of misconduct including any of the following:

- (1) Significant customer complaints.
- (2) Personnel with disciplinary records.
- (3) Excessive trade corrections, extensions, liquidations or variable contract replacements.

(j) Records required under this section:

- (1) Shall be maintained for 5 years.
- (2) Shall be maintained in an easily accessible place for the first 2 years.
- (3) May be retained and preserved on microfilm, computer disks or tapes, or other electronic medium if adequate facilities are maintained for examination of facsimiles.

[(e)] (k) To the extent that this section imposes any recordkeeping requirement on an investment adviser registered under section 301 of the act [(70 P.S. § 1-301)], the recordkeeping requirement does not apply if the investment adviser meets the following conditions:

- (1) Has its principal place of business in a state other than this Commonwealth.
- (2) Is licensed as an investment adviser in the state where it has its principal place of business.
- (3) Is in compliance with the recordkeeping requirements of the state in which it has its principal place of business.

§ 305.012. [Convicted] (Reserved).

[The term "convicted," as used in section 305(a)(ii) of the act (70 P.S. § 1-305(a)(ii)), includes a verdict, judgment or plea of guilty, or a finding of guilt on a plea of nolo contendere if the verdict, judgment, plea or finding has not been reversed, set aside or withdrawn, whether or not sentence has been imposed.]

§ 305.019. Dishonest and unethical practices.

(a) Every person registered under section 301 of the act (70 P.S. § 1-301) is a fiduciary and [has a duty to act] shall:

(1) Act primarily for the benefit of its customers.

[Further, these persons shall observe] (2) Observe high standards of commercial honor and just and equitable principals of trade in the conduct of their business.

(b) Under section 305(a)(ix) of the act (70 P.S. § 1-305(a)(ix)), the **[Commission] Department** may deny, suspend, condition or revoke a broker-dealer, agent, investment adviser or investment adviser representative registration or censure a broker-dealer, agent, investment adviser or investment adviser representative registrant if the registrant or applicant, or in the case of any broker-dealer or investment adviser, any affiliate **[thereof]**, has engaged in dishonest or unethical practices in the securities business or has taken unfair advantage of a customer.

(c) The **[Commission] Department**, for purposes of section 305(a)(ix) of the act, will consider **[the actions] actions such as those** in paragraphs (1)—(3) to constitute dishonest or unethical practices in the securities business or taking unfair advantage of a customer. **[The conduct described in paragraphs (1)—(3) is not exclusive. Engaging in other conduct inconsistent with the standards in subsection (a), such as forgery, embezzlement, nondisclosure, incomplete disclosure or misstatement of material facts, or manipulative or deceptive practices or taking unfair advantage of a customer or former customer in any aspect of a tender offer also constitute grounds for denial, suspension, conditioning or revocation of any registration or application for registration of a broker-dealer, agent, investment adviser or investment adviser representative.]**

(1) *Broker-dealers.* Includes the following actions:

(i) Engaging in a pattern of unreasonable and unjustifiable delays in the delivery of securities purchased by any of its customers or in the payment **[upon] on** request of free credit balances reflecting completed transactions of any of its customers.

(ii) Inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account.

(iii) Recommending to a customer the purchase, sale or exchange of a security without reasonable grounds to believe that the transaction or recommendation is suitable for the customer based **[upon] on** reasonable inquiry concerning the customer's investment objectives, financial situation and needs and other relevant information known by the broker-dealer.

(iv) Executing a transaction on behalf of a customer without authorization to do so.

(v) Exercising discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time or price, or both, for the execution of orders.

(vi) Executing a transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account.

(vii) Failing to segregate customers' free securities or securities held in safekeeping.

(viii) Hypothecating a customer's securities without having a lien thereon unless the broker-dealer secures from the customer a properly executed written consent promptly after the initial transaction, except as permitted by rules of the Securities and Exchange Commission.

(ix) Entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit.

(x) Failing to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which together include information set forth in the final prospectus.

(xi) Charging unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of moneys due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping or custody of securities and other services related to its securities business.

(xii) Offering to buy from or sell to a person at a stated price unless the broker-dealer is prepared to purchase or sell at a price and under the conditions that are stated at the time of the offer to buy or sell.

(xiii) Representing that a security is being offered to a customer "at the market" or a price relevant to the market price unless the broker-dealer knows or has reasonable grounds to believe that a market for the security exists other than that made, created or controlled by the broker-dealer, or by a person for whom the broker-dealer is acting or with whom is associated in the distribution, or a person controlled by, controlling or under common control with the broker-dealer.

(xiv) Effecting a transaction in, or inducing the purchase or sale of, a security by means of a manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance, which may include:

(A) Effecting a transaction in a security which involves no change in the beneficial ownership **[thereof]**.

(B) Entering an order for the purchase or sale of a security with the knowledge that an order of substantially the same size, at substantially the same time and substantially the same price, for the sale of the security, has been or will be entered by or for the same or different parties **[for the purpose of creating] to create** a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security. **[Nothing in this subsection prohibits] This subsection does not prohibit** a broker-dealer from entering bona fide agency cross transactions for its customers.

(C) Effecting, along or with one or more other persons, a series of transactions in a security creating actual or apparent active trading in the security or raising or depressing the price of the security, **[for the purpose of inducing] to induce** the purchase or sale of the security by others.

(xv) Guaranteeing a customer against loss in a securities account of the customer carried by the broker-dealer or in a securities transaction effected by the broker-dealer with or for the customer.

(xvi) Publishing or circulating, or causing to be published or circulated, a notice, circular, advertisement,

newspaper article, investment service or communication of any kind which purports to report a transaction as a purchase or sale of a security unless the broker-dealer believes that the transaction was a bona fide purchase or sale of the security; or which purports to quote the bid price or asked price for a security, unless the broker-dealer believes that the quotation represents a bona fide bid for, or offer of, the security.

(xvii) Using advertising or sales presentation in [**such**] a fashion as to be deceptive or misleading. An example of this practice would be a distribution of nonfactual data, material or presentation based on conjecture, unfounded or unrealistic claims or assertions in a brochure, flyer or display by words, pictures, graphs or otherwise designed to supplement, detract from, supersede or defeat the purpose or effect of a prospectus or disclosure.

(xviii) Failing to disclose that the broker-dealer is controlled by, controlling, affiliated with or under common control with the issuer of a security before entering into a contract with or for a customer for the purchase or sale of the security, the existence of the control to the customer, and if the disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction.

(xix) Failing to make a bona fide public offering of all of the securities allotted to a broker-dealer for distribution, whether acquired as an underwriter, a selling group member or from a member participating in the distribution as an underwriter or selling group member.

(xx) [**Failure or refusal**] **Failing or refusing** to furnish a customer, [**upon**] **on** reasonable request, information to which he is entitled, or to respond to a formal written request or complaint.

(xxi) Failing to comply with an applicable [**provision of the Rules of Fair Practice of the National Association of Securities Dealers or an applicable**] fair practice or ethical standard promulgated by the Securities and Exchange Commission or by a self-regulatory organization approved by the Securities and Exchange Commission.

(xxii) Failing to comply with investor suitability standards imposed as a condition of the registration of securities under section 205 or 206 of the act (70 P.S. [**§ 1-205 or § 1-206**] §§ **1-205 and 1-206**) in connection with the offer, sale or purchase of a security in this Commonwealth.

(2) *Agents*. Includes the following actions:

(i) Engaging in the practice of lending or borrowing money or securities from a customer, or acting as a custodian for money, securities or an executed stock power of a customer.

(ii) Effecting securities transactions not recorded on the regular books or records of the broker-dealer which the agent represents, unless the transactions are authorized in writing by the broker-dealer [**prior to**] **before** execution of the transaction.

(iii) Establishing or maintaining an account containing fictitious information [**in order**] to execute transactions which would otherwise be prohibited.

(iv) Sharing directly or indirectly in profits or losses in the account of a customer without the written authorization of the customer and the broker-dealer which the agent represents.

(v) Dividing or otherwise splitting the agent's commissions, profits or other compensation from the purchase or sale of securities with a person not also registered as an agent for the same broker-dealer, or for a broker-dealer under direct or indirect common control.

(vi) Engaging in conduct specified in paragraph (1)(ii)—(vi), (ix), (x), (xiv)—(xvii), (xxi) and (xxii).

(3) *Investment advisers and investment adviser representatives*. Includes the following actions:

(i) Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of a security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser or investment adviser representative.

(ii) Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within 10 business days after the date of the first transaction placed under oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.

(iii) Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account.

(iv) Placing an order to purchase or sell a security for the account of a client without authority to do so.

(v) Placing an order to purchase or sell a security for the account of a client [**upon**] **on** instruction of a third party without first having obtained a written third-party trading authorization from the client.

(vi) Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser [,] or a financial institution engaged in the business of loaning funds.

(vii) Loaning money to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser.

(viii) Misrepresenting to an advisory client, or prospective advisory client, the qualifications of the investment adviser, investment adviser representative or an employee of the investment adviser or misrepresenting the nature of the advisory services being offered or fees to be charged for the service, or to omit to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading.

(ix) Providing a report or recommendation to an advisory client prepared by someone other than the investment adviser or investment adviser representative without disclosing that fact. This prohibition does not apply to a situation where the investment adviser or investment adviser representative uses published research reports or statistical analyses to [**render**] **give** advice or where an investment adviser or investment adviser representative orders the report in the normal course of providing advice.

- (x) Charging a client an unreasonable advisory fee.
- (xi) Failing to disclose to [**clients**] a **client** in writing, before advice is [**rendered**] **given**, a material conflict of interest relating to the investment adviser, the investment adviser representative or an employee of the investment adviser which could reasonably be expected to impair the [**rendering**] **giving** of unbiased and objective advice including:
- (A) [**Compensation arrangements**] A **compensation arrangement** connected with advisory services to [**clients which are**] a **client which is** in addition to compensation from the [**clients**] **client** for the services.
- (B) [**Charging a client an advisory fee for rendering**] An **advisory fee charged to a client for giving** advice when a commission for executing securities transactions [**pursuant to**] **under** the advice will be received by the investment adviser, the investment adviser representative or an employee **or affiliated person** of the investment adviser.
- (xii) Guaranteeing a client that a specific result will be achieved [**—gain or no loss—**], **either a gain or no loss**, with advice which will be [**rendered**] **given**.
- (xiii) Publishing, circulating or distributing an advertisement which does not comply with Rule 206(4)-1 under the Investment Advisers Act of 1940 (15 U.S.C.A. §§ 80b-1—80b-21).
- (xiv) Disclosing the identity, [**affairs or**] **investments or other financial information** of a client unless required [**by**] **under** law to do so, or unless consented to by the client.
- (xv) Taking an action, directly or indirectly, with respect to those securities or funds in which a client has a beneficial interest, where the investment adviser has custody or possession of the securities or funds when the adviser's action is subject to, and does not comply with, the requirements of [§ 404.013 (relating to investment adviser custody or possession of funds or securities of clients)] § 404.014 (relating to custody requirements for investment advisers).
- (xvi) Entering into, extending or renewing an investment advisory contract unless the contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of a prepaid fee to be returned in the event of contract termination or nonperformance, whether the contract grants discretionary power to the adviser and that no assignment of the contract shall be made by the investment adviser without the consent of the other party to the contract.
- (xvii) Failing to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information contrary to the provisions of section 204a of the Investment Advisers Act of 1940 (15 U.S.C.A. § 80b-4a) and the rules and regulations of the [**United States**] Securities and Exchange Commission promulgated thereunder.
- (xviii) Entering into, extending, or renewing any advisory contract contrary to the provisions of section 205 of the Investment Advisers Act of 1940 (15 U.S.C.A. § 80b-5) and the rules and regulations of the [**United States**] Securities and Exchange Commission promulgated thereunder. This applies to all investment advisers

and investment adviser representatives registered under section 301 of the act [(70 P.S. § 1-301)] notwithstanding whether the investment adviser is exempt from registration with the [**United States**] Securities and Exchange Commission under section 203(b) of the Investment Advisers Act of 1940 (15 U.S.C.A. § [**80b-3**] **80b-3(b)**).

(xix) [**To indicate**] **Indicating**, in an advisory contract, any condition, stipulation or provision binding any person to waive compliance with any provision of the act.

(xx) Engaging in any act, practice or course of business which is fraudulent, deceptive or manipulative or contrary to the provisions of section 206(4) of the Investment Advisers Act of 1940 (15 U.S.C.A. § 80b-6(4)) and the rules and regulations of the [**United States**] Securities and Exchange Commission promulgated thereunder. This applies to all investment advisers and investment adviser representatives registered under section 301 of the act notwithstanding whether the investment adviser is exempt from registration with the United States Securities and Exchange Commission under section 203(b) of the Investment Advisers Act of 1940.

(xxi) Engaging in conduct or committing any act, directly, indirectly or through or by another person, which would be unlawful for the person to do directly under [**the provisions of this**] **the** act or any rule, regulation or order issued thereunder.

[**(d) This section does not apply to Federally-covered advisers unless the conduct otherwise is actionable under section 401(a) or (c) or 404 of the act (70 P.S. § 1-401(a) or (c) or 1-404).**]

(d) In addition to the conduct described in paragraphs (1)—(3), the Department may deny, suspend, condition or revoke a registration or application for registration of a broker-dealer, agent, investment adviser or investment adviser representative for conduct inconsistent with the standards in subsection (a), including any of the following:

- (1) Forgery.
- (2) Embezzlement.
- (3) Nondisclosure, incomplete disclosure or misstatement of material facts.
- (4) Manipulative or deceptive practices.
- (5) Taking unfair advantage of a customer or former customer in any aspect of a tender offer.

(e) This section does not apply to Federally covered advisers unless the conduct otherwise is actionable under section 401(a) or (c) or 404 of the act (70 P.S. §§ 1-401(a) and (c) and 1-404).

(Editor's Note: The following section is new and printed in regular type to enhance readability.)

§ 305.020. Use of senior specific certifications and professional designations.

(a) *General rule.* The use of a senior specific certification or designation by a person in connection with the offer, sale or purchase of securities, or the provision of advice as to the value of or the advisability of investing in, purchasing or selling securities, either directly or indirectly or through publications or writings, or by issuing or promulgating analyses or reports relating to securities, that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees, in a way as to mislead any person is a dishonest and unethical practice in the

securities business within the meaning of section 305(a)(ix) of the act (70 P.S. § 1-305(a)(ix)).

(b) *Prohibitions.* The prohibited use of senior specific certification or professional designation includes the use of:

(1) A certification or professional designation by a person who has not actually earned or is otherwise ineligible to use the certification or designation.

(2) A nonexistent or self-conferred certification or professional designation.

(3) A certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training or experience that the person using the certification or professional designation does not have.

(4) A certification or professional designation that was obtained from a designating or certifying organization to which any of the following apply:

(i) Is primarily engaged in the business of instruction in sales or marketing, or both.

(ii) Does not have reasonable standards or procedures for assuring the competency of its designees or certificants.

(iii) Does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct.

(iv) Does not have reasonable continuing education requirements for its designees or certificants to maintain the designation or certificate.

(c) *Rebuttable presumption.* There is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of subsection (b)(4) when the organization has been accredited by any of the following:

(1) The American National Standards Institute.

(2) The National Commission for Certifying Agencies.

(3) An organization that is on the United States Department of Education's "Accrediting Agencies Recognized for Title IV Purposes" list and the designation or credential issued therefrom does not primarily apply to sales or marketing, or both.

(d) *Factors to be considered.* In determining whether a combination of words, or an acronym standing for a combination of words, constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, the Department will consider the following factors:

(1) Use of one or more words such as "senior," "retirement," "elder" or like words, combined with one or more words such as "certified," "registered," "chartered," "adviser," "specialist," "consultant," "planner" or like words, in the name of the certification or professional designation.

(2) How those words are combined.

(e) *Exception.* For purposes of this section, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or Federal financial services regulatory agency, including an agency that regulates broker-dealers, investment advisers or investment companies as defined under the Investment Company Act of 1940 (15 U.S.C.A. §§ 80-1—80-64), when that job title does either of the following:

(1) Indicates seniority or standing within the organization.

(2) Specifies an individual's area of specialization within the organization.

(f) *No limitation on Department enforcement.* This section does not limit the Department's authority to enforce existing provisions of law.

§ 305.061. Withdrawal of registration or notice filing.

(a) **[The following applies to investment advisers that want to] *Investment adviser.* To withdraw from registration as an investment adviser registered under section 301 of the act (70 P.S. § 1-301) because the investment adviser has:**

(1) **[For an investment adviser that seeks to withdraw from registration under section 301 of the act because the investment adviser has become a Federally-covered] *Become a Federally covered* adviser subject to exclusive registration with the [United States] Securities and Exchange Commission, the investment adviser shall file an amendment to the uniform application for investment adviser registration (Form ADV) or successor form thereto with the [Commission] Department or with an investment adviser registration depository designated by [order of the Commission] the Department.**

(2) **[For an investment adviser that seeks to withdraw from registration under section 301 of the act because the investment adviser no longer transacts] *Stopped transacting* business in this Commonwealth as an investment adviser, the investment adviser shall file a notice of withdrawal from registration as an investment adviser form (Form ADV-W)[,] or a successor form with the [Commission] Department or with an investment adviser registration depository designated by [order of the Commission] the Department.**

(b) **[An application to] *Broker-dealer.* To withdraw from registration as a broker-dealer [shall contain the information requested in and shall be made on], the broker-dealer shall file a completed Uniform Request for Withdrawal from Registration as a Broker-Dealer Form (Form BDW) or a successor form with the Department.**

(c) *Investment adviser representative.* To withdraw from registration as investment adviser representative, the investment adviser or Federally covered adviser for whom the investment adviser representative was employed shall file the Uniform Termination Notice for Securities/Futures Industry Registration (Form U-5) or a successor form [thereto] with the [Commission] Department or with an investment adviser registration depository designated by [order of the Commission] the Department within 30 days from the date of termination.

(d) *Agent of a broker-dealer or an issuer.* To withdraw from registration as an agent of a broker-dealer or an issuer, the broker-dealer or issuer shall file Form U-5 or successor form [thereto with the Commission] with the Department within 30 days from the date of termination.

(e) **Federally covered adviser.** To withdraw a notice filing, a [**Federally-covered**] **Federally covered** adviser shall file a notice with the [**Commission**] **Department** or with an investment adviser registration depository designated by [**order of the Commission**] **the Department**.

Subpart D. FRAUDULENT AND PROHIBITED PRACTICES

CHAPTER 401. SALES AND PURCHASES

§ 401.020. Professional responsibility.

For the purposes of any action or proceeding initiated by the [**Commission**] **Department**, under 2 Pa.C.S. § 503 (relating to discipline), 1 Pa. Code § 31.28 (relating to suspension and disbarment) or under any other applicable rules of practice adopted by the [**Commission**] **Department**, the phrase “act, practice or course of business” as used in this chapter shall include a statement, opinion, report or service by an attorney, accountant, engineer, appraiser or other professional person who examines, [**renders**] **gives** or produces a statement, opinion, report or service if [**such**] **the** professional person knew or in the exercise of reasonable care should have known that [**such**] **the** statement, opinion, report or service materially aided or abetted a violation of the act or the regulations adopted thereunder.

CHAPTER 404. PROHIBITED ACTIVITIES; INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

§ 404.010. Advertisements by investment advisers and investment adviser representatives.

(a) [**It shall constitute a fraudulent, deceptive or manipulative act, practice or course of conduct within the meaning of section 404 of the act (70 P.S. § 1-404), for any investment adviser or investment adviser representative, directly or indirectly, to publish, circulate or distribute any advertisement:] **The Department will consider the direct or indirect publication, circulation or distribution of an advertisement by an investment adviser or investment adviser representative to be a fraudulent, deceptive or manipulative act, practice or course of conduct within the meaning of section 404 of the act (70 P.S. § 1-404) if the advertisement:****

(1) [**Which refers**] **Refers**, directly or indirectly, to any testimonial of any kind [**by any customer**] concerning the investment adviser or investment adviser representative concerning any advice, analysis, report or other service [**rendered**] **given** to the customer by the investment adviser or investment adviser representative.

(2) [**Which refers**] **Refers**, directly or indirectly, to past specific recommendations of the investment adviser or investment adviser representative which were or would have been profitable to any person[**; provided, however, that this does not prohibit an advertisement which sets forth or offers**] **except that an advertisement setting forth or offering** to furnish a list of all recommendations made by the investment adviser or investment adviser representative for the 12-month period immediately preceding the date of the publication of the advertisement[**, and which**] **is not prohibited if the advertisement:**

(i) Includes the name of each [**such**] security recommended, the date and nature of each [**such**] recommen-

dation [**(for example, whether to buy, sell or hold)**] **including whether to buy sell or hold**, the market price at the time, the price at which the recommendation was to be acted [**upon**] **on**, and the current market price of each [**such**] security.

(ii) Contains the following cautionary legend prominently displayed on the first page [**thereof**] in print or type as large as the largest print or type used in the body or text stating: “IT SHOULD NOT BE ASSUMED THAT RECOMMENDATIONS MADE IN THE FUTURE WILL BE PROFITABLE OR WILL EQUAL THE PERFORMANCE OF THE SECURITIES IN THIS LIST.”

(3) [**Which represents**] **Represents**, directly or indirectly, that any graph, chart, formula or other device being offered [**can**]:

(i) **Can** in and of itself be used to determine which securities to buy or sell, or when to buy or sell them[**; or which represents, directly or indirectly, that any graph, chart, formula or other device being offered will**].

(ii) **Will** assist any person in making decisions as to which securities to buy or sell, or when to buy or sell them, without prominently disclosing in the advertisement the limitations [**thereof**] and the difficulties with respect to its use.

(4) [**Which contains**] **Contains** any statement [**to the effect**] that any report, analysis or other service will be furnished free or without charge, unless the report, analysis or other service actually is or will be furnished absolutely without condition or obligation.

(5) [**Which contains**] **Contains** any untrue statement of a material fact, or which is otherwise false or misleading in any material respect, including the failure to disclose compensation [**(including free or discounted securities)**], **including free or discounted securities**, received directly or indirectly in connection with making a recommendation concerning a specific security.

(6) [**Which recommends**] **Recommends** the purchase or sale of any security unless the investment adviser or investment adviser representative simultaneously offers to furnish to any person [**upon**] **on** request a tabular presentation of:

(i) The total number of shares or other units of the security held by the investment adviser or investment adviser representative for its own account or for the account of officers, directors, trustees, partners or affiliates of the investment adviser or for discretionary accounts of the investment adviser or investment adviser representative maintained for clients.

(ii) The price or price range at which the securities listed in subparagraph (i) were purchased.

(iii) The date or range of dates during which the securities listed in response to subparagraph (i) were purchased.

[**(b) For the purpose of this section, the term “advertisement” includes any notice, circular, letter or other written communication addressed to more than one person or any notice or other announce-**

ment in any publication, by radio or television, or by electronic means, which offers:

(1) Any analysis, report or publication concerning securities, or which is to be used in making any determination as to when to buy or sell any security, or which security to buy or sell.

(2) Any graph, chart, formula or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell.

(3) Any other investment advisory service with regard to securities.

(c) For the purpose of this section, the term "client" means any person to whom the investment adviser or investment adviser representative has given investment advice for which the investment adviser or investment adviser representative has received compensation.

(d) [(b) This section does not apply to Federally covered advisers unless the conduct otherwise is actionable under section 401(a) or (c) of the act (70 P.S. § 1-401(a) and (c)) or section 404 of the act [(70 P.S. § 1-401(a) or (c) or 1-404)].

§ 404.011. Investment adviser brochure disclosure.

(a) [Failure of an investment adviser to provide each] An investment adviser's failure to provide an advisory client or prospective advisory client with the disclosure required [by] under this section shall constitute a fraudulent, deceptive or manipulative act, practice or course of business, within the meaning of section 404 of the act (70 P.S. § 1-404).

(b) An investment adviser registered under section 301 of the act (70 P.S. § 1-301) shall offer and deliver to each client and prospective client a current firm brochure and one or more supplements as required [by this section. The brochure and supplements shall] under this section which must contain the information required [by] under Part 2 of Form ADV (17 CFR 279.1) (relating to Form ADV, for application for registration of investment adviser and for amendments to such registration statement).

(c) An investment adviser shall deliver to each client and prospective client all of the following:

(1) A current firm brochure.

(2) [Current] The current brochure supplements for each investment adviser representative who will provide advisory services to a client.

(d) The firm brochure and one or more supplements required [by] under this section shall be delivered in compliance with one of the following:

(1) Not less than 48 hours [prior to] before entering into any investment advisory contract with the client or prospective client.

(2) At the time of entering into a contract, if the advisory client has a right to [terminate] end the contract without penalty within 5 business days after entering into the contract.

(e) An investment adviser shall [, at least once a year, without charge, deliver]:

(1) Deliver or offer in writing to deliver to each of its clients the current brochure and any current brochure supplements required [by] under subsection (b) without charge at least once a year.

[If a client accepts a written offer, the investment adviser shall send to that client] (2) Send to a client that accepts a written offer the current brochure and supplements within 7 days after the investment adviser is notified of the acceptance.

(f) If, as an investment adviser, the adviser is the general partner of a limited partnership, the manager of a limited liability company, or the trustee of a trust, then for purposes of this section the investment adviser shall treat each of the partnership's limited partners, the company's members or the trust's beneficial owners as a client. For the purposes of this section, a limited liability partnership or limited liability limited partnership is a "limited partnership."

(g) If an investment adviser [renders] gives substantially different types of investment advisory services to different clients, the investment adviser may [provide them] do the following:

(1) Provide the clients with different brochures, so long as each client receives all applicable information about services and fees.

[The] (2) Omit from the brochure delivered to a client [may omit] any information required [by] under Part 2A of Form ADV if the information [is applicable] applies only to a type of investment advisory service or fee which is not [rendered] given or charged, or proposed to be [rendered] given or charged, to that client or prospective client.

(h) Except as provided by paragraph (1), if the investment adviser is a sponsor of a wrap fee program, the brochure required to be delivered by subsection (b) to a client or prospective client of the wrap fee program [shall] must be a wrap fee brochure containing all the information required [by] under Form ADV. [Any additional information in a wrap fee brochure shall be limited to information applicable to wrap fee programs that the investment adviser sponsors.]

(1) The investment adviser does not have to offer or deliver a wrap fee brochure if another sponsor of the wrap fee program offers or delivers to the client or prospective client of the wrap fee program a wrap fee program brochure containing all the information specified in Part 2A Appendix 1 to Form ADV.

(2) A wrap fee brochure does not take the place of any brochure supplements that the investment adviser is required to deliver under this section.

(3) Additional information in a wrap fee brochure must be limited to information applicable to wrap fee programs that the investment adviser sponsors.

(i) In accordance with Part 2 of Form ADV, if information contained in the brochure or brochure supplement becomes materially inaccurate, the investment adviser shall [amend]:

(1) Amend its brochure and any brochure supplement [and deliver].

(2) Deliver the amendments to clients promptly [when any information contained in the brochure

or brochure supplement becomes materially inaccurate]. [The amendments shall be promptly filed with the Commission or with an investment adviser registration depository designated by the Commission.]

(3) Promptly file the amendments with the Department or with an investment adviser registration depository designated by the Department.

(j) Delivering a brochure or supplement in compliance with this section does not relieve the investment adviser of any other disclosure obligations which the investment adviser may have to its clients or prospective clients under the act or this title.

[(k) For the purposes of this section, the following terms have the following meanings:

(1) *Client*—A person to whom the investment adviser has given investment advice and for which the investment adviser has received compensation.

(2) *Entering into*—In reference to an investment advisory contract, the term does not include an extension or renewal without material change of the contract which is in effect immediately prior to the extension or renewal.

(3) *Portfolio manager*—The process of determining or recommending securities transactions for any portion of a client's portfolio.

(4) *Sponsor*—An investment adviser that is compensated under a wrap fee program for administering, organizing or sponsoring the program, or for selecting or providing advice to clients regarding the selection of other investment advisers in the program.

(5) *Wrap fee program*—A program under which a client is charged a specified fee or fees not based directly on transactions in a client's account for investment advisory services (which may include portfolio management or advice concerning the selection of other investment advisers) and execution of client transactions.]

(k) The delivery requirement set forth in subsection (d) does not apply to the extension or renewal of an investment advisory contract without material changes of the contract which is in effect immediately prior to the extension or renewal.

§ 404.012. Cash payment for client solicitation.

(a) [**Failure of an investment adviser**] An investment adviser's failure to comply with the requirements of this section concerning cash payments for client solicitation constitutes a fraudulent, deceptive or manipulative act, practice or course of business, within the meaning of section 404 of the act (70 P.S. § 1-404).

(b) An investment adviser may not pay a cash fee or other economic benefit, directly or indirectly, to a solicitor with respect to solicitation activities unless:

- (1) The investment adviser is registered under the act.
- (2) The solicitor[, unless exempted, is registered under the act] is registered as an investment adviser representative or is exempt from registration under § 302.071 (relating to registration exemption for solicitors) or qualifies for another exemption under the act.

(3) The cash fee or other economic benefit is paid [pursuant to] under a written agreement to which the investment adviser is a party.

(4) The written agreement required [by] under paragraph (3) [shall]:

(i) [**Describe**] **Describes** the solicitation activities to be engaged in by the solicitor on behalf of the investment adviser and the compensation to be received therefor.

(ii) [**Contain**] **Contains** an undertaking by the solicitor to perform its duties under the agreement in a manner consistent with the instructions of the investment adviser and the provisions of the act and the rules thereunder.

(iii) [**Require**] **Requires** that the solicitor, at the time of any solicitation activities for which compensation is paid or to be paid by the investment adviser, provide the **prospective** client with a current copy of the following:

(A) The investment adviser's written disclosure statement required [by] under § 404.011 (relating to investment adviser brochure disclosure).

(B) A separate written disclosure document which contains the following:

(I) The name of the solicitor.

(II) The name of the investment adviser.

(III) The nature of the relationship, including any affiliation, between the solicitor and the investment adviser.

(IV) A statement that the solicitor will be compensated for the solicitation services by the investment adviser.

(V) The terms of the compensation arrangement, including a description of the compensation paid or to be paid to the solicitor.

(VI) The amount, if any, for the cost of obtaining his account the **prospective** client will be charged in addition to the advisory fee, and the differential, if any, among clients with respect to the amount or level of the advisory fees charged by the investment adviser if the differential is attributable to the existence of any arrangement [pursuant to] under which the investment adviser has agreed to compensate the solicitor for soliciting **prospective** clients for, or referring **prospective** clients to, the investment adviser.

(5) The investment adviser receives from the **prospective** client [prior to] before, or at the time of, entering into any written or oral investment advisory contract with the **prospective** client, a signed and dated acknowledgment of receipt of the investment adviser's written disclosure statement required [by] under § 404.011 and the solicitor's written disclosure document required [by] under paragraph (4)(iii)(B).

(c) For purposes of subsection [(b)(4)] (b)(5), this section does not apply to an investment adviser [when the cash fee is paid to a solicitor] as follows:

(1) [**With**] **If the cash fee is paid to a solicitor with** respect to solicitation activities for the provision of impersonal **investment** advisory services only.

(2) [**A**] **If the cash fee is paid to a solicitor who is [one] either** of the following:

(i) A partner, officer, director or [**employee**] **employee** of the investment adviser.

(ii) A partner, officer, director or [**employee**] **employee** of a person which controls, is controlled by, or is under common control with the investment adviser if the status of the solicitor as a partner, officer, director or [**employee**] **employee** of the investment adviser or other person, is disclosed to the client at the time of the solicitation or referral.

(d) [**Nothing in this section relieves**] **This section does not relieve** a person of a fiduciary or other obligation to which the person may be subject under the law.

[(e) For purposes of this section, the following terms have the following meanings:

(1) *Client*—Any prospective client.

(2) *Impersonal advisory services*—Investment advisory services provided solely by means of one of the following:

(i) Written materials or oral statements which do not purport to meet the objectives or needs of the specific client.

(ii) Statistical information containing no expressions of opinions as to the investment merits of particular securities.

(iii) Any combination of the foregoing services.

(3) *Solicitor*—A person or entity who, for compensation, directly or indirectly, solicits a client for, or refers a client to, an investment adviser.]

§ 404.013. [Investment adviser custody or possession of funds or securities of clients] (Reserved).

[(a) Failure of an investment adviser not registered as a broker dealer that has custody or possession of funds or securities in which any client has a beneficial interest to comply with the requirements of this section shall constitute a fraudulent, deceptive or manipulative act, practice or course of business, within the meaning of section 404 of the act (70 P.S. § 1-404).

(b) An investment adviser registered under section 301 of the act (70 P.S. § 1-301) that has custody or possession of funds or securities in which any client has any beneficial interest shall:

(1) Notify the Commission in writing that the investment adviser has or may have custody. The notification shall be given on Form ADV.

(2) Segregate the securities of each client marked to identify the particular client having the beneficial interest therein and held in safekeeping in some place reasonably free from risk of destruction or other loss.

(3) Deposit all client funds, in one or more bank accounts containing only clients funds.

(4) Maintain the accounts described in paragraph (3) in the name of the investment adviser as agent or trustee for the clients.

(5) Maintain a separate record for each account described in paragraph (3) showing the name and address of the bank where the account is maintained, the dates and amounts of deposits in and

withdrawals from the account, and the exact amount of each client's beneficial interest in the account.

(6) Immediately after accepting custody or possession of funds or securities from a client, notify the client in writing of the place where and the manner in which the funds and securities will be maintained and subsequently, if and when there is a change in the place where or the manner in which the funds or securities are maintained, the investment adviser gives written notice thereof to the client.

(7) At least once every 3 months, send each client or the client's authorized representative as defined in this section an itemized statement showing the funds and securities in the investment adviser's custody at the end of each period and all debits, credits and transactions in the client's account during that period or have a reasonable basis for believing that a qualified custodian will send an itemized statement to each client or the client's authorized representative during the same time interval containing substantially the same information.

(8) At least once every calendar year, engage an independent certified public accountant to verify all client funds and securities by actual examination at a time chosen by the accountant without prior notice to the investment adviser. A report stating that an accountant has made an examination of the client funds and securities, and describing the nature and extent of the examination, must be filed with the Commission within 30 days after each examination.

(c) When an independent certified public accountant makes an examination described in subsection (b)(8) and, upon examination, finds material discrepancies, the accountant shall notify the Commission within 1 business day of the finding by means of facsimile transmission or electronic mail, followed by first class mail, directed to the Commission's Division of Licensing.

(d) For purposes of this section, a person will be deemed to have custody if the person directly or indirectly holds client funds or securities, has any authority to obtain possession of them, or has the ability to appropriate them.

(e) For the purpose of this section, the following terms have the following meanings:

Authorized representative—The person specified in a written authorization which the client has signed and filed with the investment adviser or qualified custodian authorizing the investment adviser or qualified custodian to deliver the client's account statements to that person.

Qualified custodian—The following will be considered qualified custodians for purposes of this section:

(i) A bank as that term is defined in section 102(d) of the act (70 P.S. § 1-102(d)).

(ii) A Federally covered adviser as that term is defined in section 102(f.1) of the act.

(iii) A broker dealer registered with the Commission under section 301 of the act.]

(Editor's Note: The following section is new and printed in regular type to enhance readability.)

§ 404.014. Custody requirements for investment advisers.

(a) *Safekeeping required.* It is unlawful and considered to be a fraudulent, deceptive or manipulative act, practice or course of business, within the meaning of section 404 of the act (70 P.S. § 1-404), for an investment adviser, registered or required to be registered under section 301 of the act (70 P.S. § 1-301), to have custody of client funds or securities unless:

(1) The investment adviser notifies the Department promptly in writing on Form ADV that the investment adviser has or may have custody.

(2) A qualified custodian maintains those funds and securities in one of the following:

(i) A separate account for each client under that client's name.

(ii) Accounts that contain only the investment adviser's clients' funds and securities under the investment adviser's name as agent or trustee for the clients or, in the case of a pooled investment vehicle that the investment adviser manages, in the name of the pooled investment vehicle.

(3) The investment adviser meets the following conditions:

(i) If the investment adviser opens an account with a qualified custodian on its client's behalf, under the client's name, under the name of the investment adviser as agent, or under the name of a pooled investment vehicle, the investment adviser shall notify the client in writing of the qualified custodian's name, address and how the funds or securities are maintained, promptly when the account is opened and following any changes to this information.

(ii) If the investment adviser sends account statements to a client to which the investment adviser is required to provide the notice in subparagraph (i), the investment adviser shall include in the notification provided to that client and in any subsequent account statement the investment adviser sends that client a statement urging the client to compare the account statements from the custodian with those from the investment adviser.

(4) The investment adviser meets the following conditions:

(i) The investment adviser has a reasonable basis, after due inquiry, for believing that the qualified custodian sends an account statement, at least quarterly, to each client for which it maintains funds or securities and the account statement:

(A) Identifies the amount of funds in the account.

(B) Identifies the amount of each security in the account at the end of the period.

(C) Sets forth all transactions in the account during that period.

(ii) If the investment adviser or a related person is a general partner of a limited partnership (or managing member of a limited liability company, or holds a comparable position for another type of pooled investment vehicle), the account statements required under paragraph (3) shall be sent to each limited partner (or member or other beneficial owner).

(5) The investment adviser meets the following conditions:

(i) The client funds and securities of which the investment adviser has custody are verified by actual examination at least once during each calendar year, by an independent certified public accountant, under a written agreement between the investment adviser and the independent certified public accountant, at a time that is chosen by the independent certified public accountant without previous notice or announcement to the investment adviser and that is irregular from year to year.

(ii) The written agreement provides for the first examination to occur within 6 months of becoming subject to this paragraph, except that, if the investment adviser maintains certified public accountants under this section as a qualified custodian, the agreement must provide for the first examination to occur no later than 6 months after obtaining the internal control report.

(iii) The written agreement must require the independent certified public accountant to:

(A) File a certificate on Form ADV-E with the Department within 120 days of the time chosen by the independent certified public accountant in this paragraph, stating that it has examined the funds and securities and describing the nature and extent of the examination.

(B) Notify the Department within 1 business day of the finding, by means of a facsimile transmission or e-mail, followed by first class mail, directed to the attention of the Department on finding any material discrepancies during the course of the examination.

(C) File Form ADV-E within 4 business days of the resignation or dismissal from, or other termination of, the engagement or removing itself or being removed from consideration for being reappointed, accompanied by a statement that includes:

(I) The date of resignation, dismissal, removal or other termination, and the name, address and contact information of the independent certified public accountant.

(II) An explanation of any problems relating to examination scope or procedure that contributed to resignation, dismissal, removal or other termination.

(6) If the investment adviser has custody because a related person maintains client funds or securities under this section as a qualified custodian in connection with advisory services the investment adviser provides to clients, the investment adviser shall obtain, or receive from its related person, within 6 months of becoming subject to this paragraph and thereafter no less frequently than once each calendar year a written internal control report prepared by an independent certified public accountant that performs the independent verification required under paragraph (5) that complies with the following:

(i) The internal control report must include an opinion of an independent certified public accountant as to whether controls have been placed in operation as of a specific date, and are suitably designed and are operating effectively to meet control objectives relating to custodial services, including the safeguarding of funds and securities held by either the investment adviser or a related person on behalf of the investment advisers clients, during the year.

(ii) The independent certified public accountant shall verify that the funds and securities are reconciled to a

custodian other than the investment adviser or the investment advisers related person.

(7) A client may designate an independent representative to receive, on his behalf, notices and account statements as required under paragraphs (3) and (4).

(b) *Exceptions.*

(1) *Shares of mutual funds.* With respect to shares of an open-end company as defined in section 5(a)(1) of the Investment Company Act of 1940 (15 U.S.C.A. § 80a-5(a)(1)) (mutual fund), the investment adviser may use the mutual fund's transfer agent instead of a qualified custodian to comply with subsection (a).

(2) *Certain privately offered securities.*

(i) The investment adviser does not need to comply with subsection (a)(2) with respect to securities that are:

(A) Acquired from the issuer in a transaction or chain of transactions not involving any public offering.

(B) Uncertificated and ownership is recorded only on the books of the issuer or its transfer agent in the name of the client.

(C) Transferable only with previous consent of the issuer or holders of the outstanding securities of the issuer.

(ii) Notwithstanding subparagraph (i), the provisions of this paragraph are available with respect to securities held for the account of a pooled investment vehicle only if the pooled investment vehicle is audited, and the audited financial statements are distributed, in accordance with § 303.042(a)(3)(ii) (relating to investment adviser capital requirements) and the investment adviser notifies the Department in writing on Form ADV that the investment adviser intends to provide audited financial statements, as described in this subparagraph.

(3) *Fee deduction.* Notwithstanding subsection (a)(5), an investment adviser does not need to obtain an independent verification of client funds and securities maintained by a qualified custodian if the investment adviser is in compliance with § 303.042(a)(3)(i).

(4) *Limited partnerships subject to annual audit.* An investment adviser does not need to comply with subsection (a)(3) and (4) and will be considered to have complied with subsection (a)(5) with respect to the account of a pooled investment vehicle that is subject to audit and is in compliance with § 303.042(a)(3)(ii).

(5) *Registered investment companies.* The investment adviser does not need to comply with this section with respect to the account of an investment company registered under the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1—80a-64).

(c) *Delivery to related persons.* Sending an account statement under subsection (a)(4) or distributing audited financial statements under subsection (b)(4) does not satisfy the requirements of this section if the account statements or financial statements are sent solely to limited partners (or members or other beneficial owners) that themselves are limited partnerships (or limited liability companies, or another type of pooled investment vehicle) and are related persons of the investment adviser.

(d) *Department authority.* An investment adviser who cannot comply with one or more of the specific provisions in this section may request that the Department waive the specific provisions if the investment adviser can establish that undue hardship would be placed on the

investment adviser and that investment adviser can establish sufficient alternative safeguards.

Subpart E. ENFORCEMENT

CHAPTER 501. CIVIL LIABILITIES

§ 501.011. Criminal referrals.

(a) The [Commission] Department may [take such action as it deems]:

(1) **Take action as it considers** necessary to institute a prosecution or obtain a conviction for offenses as set forth in section 511 of the act (70 P.S. § 1-511).

[The Commission may refer such] (2) **Refer the** evidence as is available concerning any violation of the act or of any rule or order thereunder or any other applicable statute to the appropriate authorities, Federal and State, who may, with or without [such a] the reference, institute appropriate criminal proceedings.

(b) [Neither the act nor the rules and regulations adopted thereunder shall in any way] **The act, and this part, do not** limit the power of the Commonwealth to punish [any a person for any] a person for conduct which constitutes a crime under any other statute.

CHAPTER 504. TIME LIMITATIONS ON RIGHTS OF ACTION

§ 504.060. Rescission offers.

(a) A person proposing to make an offer under section 504(d) or (e) of the act (70 P.S. § 1-504(d) [or] and (e)) shall follow the procedure for the registration of securities by qualification, as described in sections 206 and 207 of the act (70 P.S. §§ 1-206 and 1-207).

(1) The forms required to be filed and time periods for [Commission] Department action [shall be] are those applicable to registration by qualification[, except that it shall be noted] and a person shall note at the top of Form R that the offer is a rescission offer.

(2) The [Commission may, upon] Department may, on petition by the proposed offeror, waive or modify any requirement for the registration if it finds the requirement burdensome and not necessary for the protection of investors.

(b) [Compliance] The Department may waive compliance with the procedures in subsection (a) [is waived : (1) For] for a person making a rescission offer for possible violations of the act if the securities which are the subject of the rescission offer were sold to and purchased by no more than 35 persons in this Commonwealth during 12 consecutive months[.] and the following conditions are met:

(1) The person making the rescission offer [shall file] files the form designated by the [Commission] Department as Form RO in accordance with the General Instructions requesting waiver of the procedures in subsection (a) accompanied by disclosure materials prepared to satisfy the antifraud provisions of section 401(b) of the act (70 P.S. § 1-401(b)) [which will be given to each rescission offeree, and the waiver request is not denied within one of the following time periods]:

(2) The person making the rescission offer gives the documents specified in paragraph (1) to each rescission offeree.

(3) The Department does not deny the waiver request within either of the following time periods:

(i) Five business days from the date a **complete** filing is made with the **[Commission which contains the items required in this paragraph] Department** if the issuer is making the rescission offer for possible violations of section 201 of the act (70 P.S. § 1-201) and **[neither]** the issuer **[nor]** or a promoter, general partner **of a limited partnership, managing general partner of a limited partnership**, executive officer or director of the issuer **[is]** **are not** subject to the disqualifications in § 204.010(b) (relating to increasing the number of purchasers and offerees).

(ii) Ten business days from the date a **complete** filing is made with the **[Commission which contains the items required in this paragraph] Department** for all other rescission offers made under this subparagraph.

(4) If a rescission offer is being made under section 504(e) of the act **[(70 P.S. § 1-504(e))]**, the offeror shall comply with section 201 of the act as section 102(r)(vi) of the act (70 P.S. § 1-102(r)(vi)) states that an offer of rescission made under section 504(e) of the act involves an offer and sale.

[(2) For] (c) The Department may waive compliance with the procedures in subsection (a) for a person making a rescission offer for possible violations of section 301 or sections 401—409 of the act (70 P.S. §§ 1-301 and 1-401—1-409) if the following apply:

[(i)] (1) The transactions subject to the rescission offer were effected in compliance with section 202 or 203 of the act (70 P.S. §§ 1-202 and 1-203) which did not require any filing to be made with the [Commission] Department.

[(ii)] (2) The rescission offer is not being made to more than five investors in this Commonwealth, exclusive of investors which purchased under section 203(c) of the act [(70 P.S. § 1-203(c))].

[(iii) Neither the] (3) The person making the rescission offer [nor], and if the person is the issuer, a general partner of a limited partnership, managing general partner of a limited partnership, promoter, executive officer or director of the issuer [is] are not subject to the disqualifications in § 204.010(b).

[(iv)] (4) The rescission offer is being made under section 504(d) of the act [(70 P.S. § 1-504(d))] or if a rescission offer is being made under section 504(e) of the act, the offeror [shall comply] complies with section 201 of the act in that section 102(r)(vi) of the act states that an offer of rescission made under section 504(e) of the act involves an offer and sale.

[(v) No public] (5) Public media advertising or general solicitation [was utilized] were not used in connection with the offer or sale of the securities subject to the rescission offer.

[(vi) No mass mailings were utilized] (6) Mass mailings were not used in connection with the offer or sale of the securities subject to the rescission offer, except

in offerings made in good faith reliance on Rule 505 or 506 of **[SEC] Regulation D.**

[(vii)] (7) The person making the rescission offer provides to each offeree [the] disclosure [required by the anti-fraud] materials prepared to satisfy the antifraud provisions of section 401(b) of the act [(70 P.S. § 1-401(b))].

[(viii)] (8) The person making the rescission offer provides a letter offering rescission to each rescission offeree which contains only the information set forth in Item 14 of the General Instructions to [Commission Form RO] Department Form RO which will be given to each rescission offeree.

[(3) For] (d) The Department may waive compliance with the procedures in subsection (a) for an issuer which, after offering rescission for possible violations of section 201 of the act under this [paragraph] subsection, will not have made rescission offers to more than five investors in this Commonwealth within the past 24 months, exclusive of investors which purchased under section 203(c) of the act and the following apply:

[(i) No person directly or indirectly received commissions] (1) A person did not receive commissions directly or indirectly for the sale of the securities subject to the rescission offer.

[(ii) Neither the issuer nor] (2) The issuer or a promoter, general partner, executive officer or director of the issuer is not subject to the disqualifications in § 204.010(b).

[(iii)] (3) The issuer provides a letter offering rescission to each rescission offeree which contains only the information set forth in Item 14 of the General Instructions to [Commission Form RO] Department Form RO which will be given to each rescission offeree.

[(iv)] (4) The issuer provides to each offeree [the disclosure required by the anti-fraud] disclosure materials prepared to satisfy the antifraud provisions of section 401(b) of the act.

[(v) No public] (5) Public media advertising or general solicitation [was utilized] were not used in connection with the offer or sale of the securities subject to the rescission offer.

[(vi) No mass mailings were utilized] (6) Mass mailings were not used in connection with the offer or sale of the securities subject to the rescission offer, except in offerings made in good faith reliance on Rule 505 or 506 of **[SEC] Regulation D.**

(e) If an offer is made under section 504(d) or (e) of the act and this section, an offeree's right to remedy under the act is terminated by either of the following:

(1) A nonresponse to the offer within 30 days of receipt of the offer.

(2) An affirmative rejection of the offer within 30 days of receipt of the offer.

[(c)] (f) A person making a rescission offer under this section [shall keep and maintain] shall:

(1) Advise the Department of the results of the rescission offer within 15 calendar days after the expiration of the rescission offer period.

(2) **Keep and maintain for 3 years following the expiration of each rescission offer period** a complete set of books, records and accounts of the rescission offers made [—] including [**copies**]:

(i) **Copies** of the rescission offers given or mailed to rescission offerees in this Commonwealth [, **records**].

(ii) **Records** of acceptances and rejections and records of cash disbursements to offerees who accepted the rescission offer [—for 3 years following the expiration of each rescission offer period].

[**Records**] (3) **Promptly furnish to the Department on request records** concerning a rescission offer made in this Commonwealth under this section [**shall be furnished promptly to the Commission upon request**].

[(d) **For purposes of this section, the following terms have the following applications:**

(1) The term “**executive officer**” applies to, and includes, each person who serves as chief executive officer, chief operating officer or chief financial officer of a person.

(2) The term “**general partner**” applies to one of the following:

(i) A person who, under the terms of the limited partnership agreement, is designated a general partner of a limited partnership.

(ii) A person who, under the terms of the limited partnership agreement, is designated as a managing general partner of a limited partnership.

(e) This section also applies if rescission offers are being made as follows:]

(g) **The requirements of this section also apply if the following rescission offers are made:**

(1) The purchaser of securities which are the subject of a rescission offer under this section no longer owns the securities [**prior to**] **before** receipt of the rescission offer and, under section 504(d)(i) of the act, is being offered an amount in cash equal to damages, if any, as computed in accordance with section 501(a) of the act (70 P.S. § 1-501(a)).

(2) A person who purchased a security in violation of the act no longer owns the security and, under section 504(e)(ii) of the act, offers to pay the seller an amount in cash equal to damages, if any, computed in accordance with section 501(b) of the act.

CHAPTER 513. RESCISSION ORDERS

§ 513.010. **Rescission orders.**

When the [**Commission**] **Department**, under section 513 of the act (70 P.S. § 1-513), orders an issuer or control person of an issuer to effect a rescission offer, the rescission offer shall be effected in accordance with § 504.060(a) (relating to rescission offers) unless the [**Commission**] **Department**, by order, otherwise [**prescribes**] **requires**.

Subpart F. ADMINISTRATION

CHAPTER 601. ADMINISTRATION

§ 601.010. [**Commission quorum; action; disqualification**] (Reserved).

[(a) **For the purpose of computing the quorum required for actions, determinations or dispositions**

by the Commission: when a single Commissioner has disqualified himself or is otherwise not available, a quorum shall consist of the two remaining Commissioners; when two Commissioners have disqualified themselves, a quorum shall consist of the single remaining Commissioner; where all three members of the Commission have disqualified themselves, a hearing examiner shall be designated by the Commission and the hearing examiner’s findings, conclusions and recommended order, determination or disposition shall be adopted by the Commission.

(b) **Hearings shall be held before the Commission, a member or members thereof, or a Hearing Examiner as provided in this chapter; Commission action, determinations or dispositions as a result of any hearing shall be made at any meeting of the Commission at which a quorum, determined as set forth in subsection (a) is present. Where a hearing has been conducted before less than the full three-member Commission, all Commissioners not present at any such hearing shall render their decision on the basis of a review of all pleadings, briefs and other papers filed in the matter and on the basis of the transcript and exhibits produced at such hearing.**

(c) **Commissioners may disqualify themselves from participating in any hearing or decision thereon or in any other action, determination or disposition on grounds of prejudice and bias in a particular matter, or for other good cause.]**

§ 601.020. [**Secretary, Assistant secretaries**] (Reserved).

[(a) **The Secretary of the Commission shall attend all meetings of the Commission; keep the minutes of such meetings in one or more books provided for that purpose; be custodian of the public records of the Commission and of all orders or other documents and instruments, the execution of which on behalf of the Commission under its seal is duly authorized in accordance with the provisions of the act and this part, sign orders, subpoenas, other documents and instruments the issuance and execution of which on behalf of the Commission shall have been duly authorized in accordance with the provisions of the act and the regulations adopted thereunder or as provided in an order, approval or other direction of the Commission; have general charge of the public files and public records of the Commission; and in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned by the Commission. The Secretary shall keep in safe custody the seal of the Commission.**

(b) **The Assistant Secretaries as thereunto authorized by the Commission may sign (under seal) orders, subpoenas and other documents and instruments the issuance and execution of which on behalf of the Commission is duly authorized in accordance with the provisions of the act and the regulations adopted thereunder or as provided in any order, approval, or other direction of the Commission.]**

(*Editor’s Note: The following section is new and printed in regular type to enhance readability.*)

§ 601.030. Access to confidential information.

(a) *General rule.* The Department may, on a showing that the information is needed, provide confidential information in its possession to any of the following persons if the person receiving the confidential information provides assurances of confidentiality as the Department considers appropriate:

(1) A Federal, state, local or foreign government or any political subdivision, authority, agency or instrumentality of the government.

(2) A self-regulatory organization.

(3) A foreign financial regulatory authority as defined in section 3(a)(52) of the Securities Exchange Act of 1934 (15 U.S.C.A. § 78c(a)(52)).

(4) The Securities Investor Protection Corporation or any trustee or counsel for a trustee appointed under section 5(b) of the Securities Investor Protection Act of 1970 (15 U.S.C.A. § 78eee(b)).

(5) A trustee in bankruptcy.

(6) A trustee, receiver, master, special counsel or other person that is appointed by a court of competent jurisdiction or as a result of an agreement between the parties in connection with litigation or an administrative proceeding involving allegations of violations of the act, if the trustee, receiver, master, special counsel or other person is specifically designated to perform particular functions with respect to, or as a result of, the litigation or proceeding or in connection with the administration and enforcement by the Department of the act.

(7) A duly authorized agent, employee or representative of any of the above persons.

(b) *Nonapplicability.* This section does not affect the Department's authority or discretion to provide access to, or copies of, nonpublic information in its possession in accordance with the other authority or discretion as the Department possesses by statute, regulation or statement of policy.

CHAPTER 602. FEES

§ 602.022. [Denial for abandonment] (Reserved).

[The Commission may order an application for registration of securities or an application for registration as a broker-dealer, investment adviser, agent or investment adviser representative denied upon the failure of the applicant, within 60 days after written notice warning the applicant that an application will be denied and deemed abandoned, to respond to any request for additional information required under the act or the provisions thereunder or otherwise to complete the showing required for action upon the application; or the applicant may with the consent of the Commission withdraw the application. Upon denial for abandonment, there shall be no refund of any filing fee paid prior to the date of abandonment.]

§ 602.060. [Charges for Commission publications] (Reserved).

[Under section 602(f) of the act (70 P.S. § 1-602(f)), the Commission has fixed the following charges for publications, issued under its authority:

(1) Compendium of Commission and Staff Positions, Summary of Significant Commission Orders and Compilation of Staff No-Action Letters (Com-

pendium), including annual supplement service for the calendar year in which Compendium was purchased: \$95.

(2) Compendium Annual Supplement Service: \$20 per annual subscription.

(3) Orders for specific Compendium Supplements: \$10 per Supplement.]

CHAPTER 603. ADMINISTRATIVE FILES

§ 603.011. Filing requirements.

(a) Except as set forth in subsection (f), documents and other communications to be filed with the [Commission] Department shall be filed in the Harrisburg office of the [Commission] Department.

(b) If mailed, all documents and communications [should] shall be sent registered or certified mail, postage prepaid, return receipt requested.

[(c) A document or communication, if complete and properly executed in all material respects, will be deemed filed when it is received by the Commission.

(d) No notice, statement, form or other document will be accepted for filing; no request for copies of documents will be granted; and no action will be taken by the Commission unless the filings and request are accompanied by the required fees or charges as provided by the act and this section.

(e) Except as set forth in subsection (f), checks for payment of fees and charges shall be made payable to the order of "Commonwealth of Pennsylvania" and delivered or mailed to: Secretary, Pennsylvania Securities Commission; 1010 N. Seventh Street, Harrisburg, Pennsylvania 17102-1410.

(f) The Uniform Application for Broker-Dealer Registration (Form BD), the Uniform Request for Withdrawal from Registration as a Broker-Dealer (Form BDW), or successor forms, and amendments thereto required to be filed with the Commission by a member firm of the National Association of Securities Dealers, Inc. (NASD) with respect to an initial registration, renewal, amendment or withdrawal from registration as a broker-dealer shall be made solely with the Central Registration Depository (CRD) maintained by the NASD under an agreement and guidelines established by the North American Securities Administrators Association, Inc. and shall be mailed to: NASAA/NASD Central Registration Depository; Post Office Box 9401, Gaithersburg, Maryland 20898-9401. Documents and other communications required to be filed with the Securities Commission by a member firm of the NASD with respect to the initial registration, renewal, transfer or withdrawal from registration as an agent shall be made solely with the CRD at this address. Checks for payment of fees required by sections 602(d) and 602.1(a) of the act (70 P.S. §§ 1-602(d) and 1-602.1(a)) for the filing of a document described in this subsection shall be made payable to the order of "National Association of Securities Dealers, Inc." and mailed with the documents to the address listed in this subsection. Filings made with the CRD under this subsection will be deemed as filed with the Commission.

(g) In connection with notice filings relating to a Federally-covered security under section 211 of the

act (70 P.S. § 1-211), notice forms may be filed electronically with the Commission as permitted by order of the Commission. In conjunction with an electronic filing, fees or assessments required under sections 602 or 602.1 of the act (70 P.S. §§ 1-602 and 1-602.1) shall be paid by means of an Automated Clearing House transfer of funds to the Commission's depository bank.

(h) Required forms will be available on the Commission's website at www.psc.state.pa.us. In addition, forms are available in paper format from the Commission.]

(c) The Department will consider a completed and properly executed document or communication to be filed on receipt.

(d) Unless the filings and request are accompanied by the required fees or charges as provided by the act and this section, the Department will not:

(1) Accept for filing a notice, statement, form or other document.

(2) Grant a request for copies of documents.

(3) Take action.

(e) Except as set forth in subsection (f), checks for payment of fees and charges shall be:

(1) Made payable to the order of "Commonwealth of Pennsylvania."

(2) Delivered or mailed to the Department of Banking and Securities, 17 North Second Street, Suite 1300, Harrisburg, Pennsylvania 17101, or other address as the Department may designate.

(f) Required documents shall be filed in the following manner:

(1) *Broker-dealer.* The Uniform Application for Broker-Dealer Registration (Form BD), the Uniform Request for Withdrawal from Registration as a Broker-Dealer (Form BDW), or successor forms, and amendments thereto required to be filed with the Department by a member firm of FINRA with respect to an initial registration, renewal, amendment or withdrawal from registration as a broker-dealer shall be:

(i) Made solely with the CRD maintained by FINRA under an agreement and guidelines established by NASAA.

(ii) Mailed to NASAA/FINRA Central Registration Depository, Post Office Box 9401, Gaithersburg, Maryland 20898-9401 or any successor address.

(2) *Agent.*

(i) Documents and other communications required to be filed with the Department by a member firm of FINRA with respect to the initial registration, renewal, transfer or withdrawal from registration as an agent shall be made solely with the CRD to the address in paragraph (1)(ii).

(ii) Checks for payment of fees required under sections 602(d) and 602.1(a) of the act (70 P.S. §§ 1-602(d) and 1-602.1(a)) for the filing of a document described in this subsection shall be made payable to the order of "FINRA" and mailed with the documents to the address listed in paragraph (1)(ii).

(g) The Department will consider filings made with the CRD under subsection (f) as filed with the Department.

(h) Required forms will be available on the Department's website at www.dobs.pa.gov and in paper format from the Department.

§ 603.031. Public inspection of records.

(a) During the regular business hours of the [Commission] Department, members of the public may, [upon] on written request to do so, inspect at the [Commission's Harrisburg Office those] Department's Harrisburg office documents which are public records. The written request required [by] under this subsection shall set forth the public records to be inspected.

(b) The [Commission] Department may withhold from public inspection those records which it determines are excluded from the definition of "public records" in section [1 of the act of June 21, 1957 (P.L. 390, No. 212) (65 P.S. § 66.1(2)), known as the Right-to-Know Law] 102 of the Right-to-Know Law (65 P.S. § 67.102), and any successor statute.

(c) A request for the confidential treatment of information contained in a statement, application, notice or report submitted to the [Commission] Department may accompany the statement, application, notice or report and specify the reasons for the request [; the material].

(1) Material which is the subject of the request should be separated from other parts of the filing.

[Upon] (2) On proper showing, the [Commission] Department will treat as confidential the material which is the subject of the request.

(d) [Nothing in this section may be deemed to] This section does not make available for public inspection [books,] the following:

(1) Books, papers, correspondence, memoranda, agreements or other documents or records contained in an investigative or examination file maintained by the [Commission] Department.

[In addition, no minutes,] (2) Minutes, documents or other memoranda of the [Commission] Department or of the staff which deal with or concern the institution, maintenance or termination of an investigation [may be available for public inspection].

(e) Except as set forth in paragraphs (1) and (2), financial statements required to be filed under §§ 303.011, 303.012, 304.021 and 304.022 [shall be] are public.

(1) Statements of income required to be filed under §§ 303.011 and 304.021 (relating to broker-dealer registration procedures; and broker-dealer required financial reports) and nonrequired statements of income filed under §§ 303.011, 303.012, 304.021 and 304.022 [shall be] are confidential if the income statements are bound separately from the accountant's report, the statement of financial condition and the accompanying notes.

(2) Financial statements which are [deemed] considered confidential under paragraph (1) [shall be] are available for official use by [an]:

(i) An official or [**employe**] **employee** of the government of the United States or a state[, **by a**] .

(ii) A National Securities Exchange or registered National securities association of which the person filing the financial statements is a member[, **and by other**] .

(iii) **Other** persons whom the [**Commission**] **Department** authorizes disclosure of the information as being in the public interest.

[**Nothing in this subsection may be deemed to be**] (3) **This section is not** in derogation of the rules of a registered National Securities Exchange or registered National securities association which give customers of a member broker or dealer the right, [**upon**] **on** request to the member broker or dealer, to obtain information relative to its financial condition.

(f) The [**Commission has determined to treat confidential**] **Department** will treat the following information [**which will**] **as confidential and** not be available for public inspection under any provision of the act and [**which the Commission deems**] **considers the information** excluded from the definition of "public records" in section [**1(2)**] **102** of the Right-to-Know Law:

(1) The Social Security number[,] **and** date of birth [**and home address**] of an individual registered or applying for registration as an agent or an investment adviser representative that appears on the uniform application for securities industry registration or transfer [**(Form U-4) or successor form thereto**], **Form U-4 or successor form**, required to be filed with the [**Commission**] **Department** under § 303.013 or § 303.014 (relating to agent registration procedures; and investment adviser representative registration procedures).

(2) The Social Security number[,] **and** date of birth [**and home address**] of an individual registered or applying for registration as an investment adviser or filing a notice as a Federally covered adviser that appears on the uniform application for investment adviser registration [**(Form ADV) or successor form thereto**], **Form ADV or successor form**, required to be filed with the [**Commission**] **Department** or an investment adviser registration depository designated by [**order of the Commission**] **the Department** under § 303.012 or § 303.015 (relating to investment adviser registration procedure; and notice filing for Federally covered advisers).

(3) The Social Security number[,] **and** date of birth [**and home address**] of an individual who is a principal of a person registered or applying for registration as a broker-dealer or investment adviser or filing a notice as a Federally covered adviser that appears on the uniform application for broker-dealer registration [**(Form BD) or Form ADV or successor forms thereto**], **Form BD, Form ADV or successor forms**. [**For purposes of this section, the term "principal" has the meaning as set forth in § 303.012(e).**]

§ 603.040. Charges for [**Commission**] **Department** services.

The following fees will be charged by the [**Commission**] **Department** and remitted to the General Fund of the Commonwealth:

(1) Photocopies of documents on file with the [**Commission—\$50**] **Department—50¢** per page.

(2) Certification of documents on file with the [**Commission**] **Department—\$5** per certification.

(3) Facsimile transmission of copies of documents on file with the [**Commission**] **Department—\$2** per page.

CHAPTER 604. [**INTERPRETATIVE OPINIONS OF COMMISSION—STATEMENT OF POLICY**]
(Reserved)

(*Editor's Note:* As part of this proposed rulemaking, the Department is proposing to rescind Chapter 604 which appears in 10 Pa. Code pages 604-1—604-14, serial pages (364811)—(364824).)

§§ 604.010—604.012. (Reserved).

§§ 604.016—604.023. (Reserved).

CHAPTER 605. [**COMMISSIONERS AND COMMISSION**] **DEPARTMENT EMPLOYEES; RELATIONSHIP WITH LICENSED PERSONS OR QUALIFIED ORGANIZATIONS**

§ 605.020. **Conflict of interest.**

(a) [**For the purpose of protecting**] **To protect** the public interest and [**avoiding**] **avoid** conflicts of interest, the [**Commission**] **Department** has determined, [**pursuant to**] **under** section 605(b) of the act (70 P.S. § 1-605(b)), that the provisions of section 605(a) of the act [**(70 P.S. § 1-605(a)) shall**] **do not prohibit** the holding or purchasing of any securities by any [**employe of the Commission if**] **employee of the Department if one of the following applies:**

(1) [**the employe**] **The employee** did not perform a principal review of the application for the registration of [**such**] **the securities or any other securities of the same issuer registered with the [Commission under sections] Department under section 205 or 206 of the act (70 P.S. §§ 1-205 [or] and 1-206) or was not involved in an investigation, audit[,] or examination of the registration[; or] .**

(2) [**the**] **The securities to be held or purchased are those of an open-end or closed-end investment company, face amount certificate company, or unit investment trust, as those terms are defined in section 2 of the Investment Company Act of 1940 (15 [U.S.C.] U.S.C.A. § 80a-2) which have been registered with the [Commission under sections 205 or 206 of the act (70 P.S. §§ 1-205 or 1-206)] Department under section 205 or 206 of the act.**

(3) **The employee did not perform a principal review of the application for licensure or registration of a broker-dealer, agent, investment adviser or investment adviser representative filed with the Department under section 303 of the act (70 P.S. § 1-303) or was not involved in an investigation, audit or examination of the licensee or registrant.**

(b) If, under section 605(a) and (b) of the act, there may be a conflict of interest with an [**employe of the Commission**] **employee of the Department which is not permitted by subsection (a), [such employe] the employee may present a formal request to the [Com-**

mission] Department for permission to hold or purchase **[such] the** securities.

[Such a] (1) The request **[shall] must** set forth the type and amount of securities to be held or purchased, the issuer of the securities, any other relationship between the **[employe] employee** and the issuer, the functions which the **[employe] employee** performed relative to the registration of the issuer^[,] and all other pertinent reasons as to why the **[employe feels the Commission should grant the employe's request] employee feels the Department should grant the employe's request**.

(2) The **[Commission] Department** may grant the **[employe's] employee's** request if it finds that in doing so it would be protecting the public interest and avoiding conflicts of interest.

(c) **[No employe of the Commission shall] An employee of the Department may not** hold or purchase a security which would otherwise be permitted by subsections (a) and (b) if the holding and purchasing of **[such] the** security would **[be violative of] violate** any other applicable **[conflict-of-interest] conflict of interest** statute or regulation.

CHAPTER 606. MISCELLANEOUS POWERS OF [COMMISSION] THE DEPARTMENT

§ 606.011. Financial reports to securityholders.

(a) In the case of securities issued under section 203(d) or (p) of the act (70 P.S. § 1-203(d) **[or] and (p)**), or registered under **[sections] section** 205 or 206 of the act (70 P.S. §§ 1-205 and 1-206), the issuer shall, so long as the securities are held of record by a Commonwealth resident, deliver its financial statements to each holder at least annually and within 120 days after the close of the fiscal year of the issuer.

(b) The financial statements **[shall] must** comply with section 609(c) of the act (70 P.S. § 1-609(c)) and the rules and regulations adopted thereunder, except that, if the securities were issued in a transaction subject to this section wherein **[none of] the** financial statements delivered to offerees were **not** required to be audited or if **[no] the** financial statements were **not** required to be given to the offerees, the financial statements **[need not] do not need to** be audited.

(c) This section does not apply if, on the date of the close of the issuer's fiscal year, the issuer is subject to section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78m and 78o(d)) and, within 120 days of that date, has made a filing with the **[United States] Securities and Exchange Commission** in accordance with either of those sections.

§ 606.031. Advertising literature.

(a) *Advertisements.* Except as permitted by section 606(c) of the act (70 P.S. § 1-606(c)), a person may not publish **[any] an** advertisement concerning **[any] a** security in this Commonwealth unless all of the following are met:

(1) The advertisement is either **of the following**:

(i) Permitted by this section and complies with any requirements imposed by this section.

(ii) Specifically excluded from application of this section by subsection (f).

(2) The character and composition of the statements and graphics contained in the advertisement do not exaggerate the investment opportunity, overemphasize any aspect of the offering, minimize the risks of the enterprise or predict revenues, profits or payment of dividends **[() , including financial projections or forecasts[]]**.

(3) The advertisement does not contain any statement that is false or misleading in any material respect or omits to make any material statement necessary **[in order]** to make the statements made, in the light of the circumstances under which they are made, not misleading.

(b) *Registered offerings: permitted advertisements after filing but [prior to] before effectiveness.* The following apply with respect to publication of advertisements in this Commonwealth in connection with an offering of securities in this Commonwealth for which a registration statement has been filed with the **[Commission] Department** under section 205 or 206 of the act (70 P.S. **[§ 1-205 or § 1-206] §§ 1-205 and 1-206**) that has not yet become effective.

(1) In connection with a registration statement filed with the **[Commission] Department** under section 205 or 206 of the act for the sale of securities in this Commonwealth which also are the subject of a registration statement filed under section 5 of the Securities Act of 1933 (15 U.S.C.A. § 77e), a person may publish any of the following in this Commonwealth **[prior to] before** effectiveness of the registration statement under the act:

(i) Advertisements which comply with section 2(a)(10)(b) of the Securities Act of 1933 (15 U.S.C.A. § 77b(a)(10)(b)).

(ii) Advertisements which comply with Rule 134 (17 CFR 230.134) (relating to communications not deemed a prospectus) promulgated by the **[United States] Securities and Exchange Commission [(SEC)]**.

(iii) A preliminary prospectus which is part of a registration statement that has been filed with the **[SEC] Securities and Exchange Commission** under section 5 of the Securities Act of 1933 **[which] and** complies with Rule 430 (17 CFR 230.430) (relating to prospectus for use prior to effective date) promulgated by the **[SEC] Securities and Exchange Commission**.

(iv) A summary prospectus which is part of a registration statement that has been filed with the **[SEC] Securities and Exchange Commission** under section 5 of the Securities Act of 1933 **[which] and** complies with Rule 431 (17 CFR 230.431) (relating to summary **[prospectus] prospectuses**) promulgated by the **[SEC] Securities and Exchange Commission**.

(2) In connection with an offering circular for the offer and sale of securities in this Commonwealth filed with the **[SEC] Securities and Exchange Commission** under Regulation A (17 CFR 230.251—230.263)^[,] (relating to conditional small issues exemption), promulgated under section 3(b) of the Securities Act of 1933 (15 U.S.C.A. § 77c(b)) and with the **[Commission] Department** under section 205 or 206 of the act, a person may publish an advertisement in this Commonwealth that

complies with Rule 251(d)(1)(ii)(C) (17 CFR 230.251(d)(1)(ii)(C)) (relating to scope of exemption) promulgated by the [**SEC prior to**] **Securities and Exchange Commission** before effectiveness of the offering circular under the act if the **following conditions are met**:

(i) **The advertisement is filed with the [Commission] Department 10 days before publication in this Commonwealth [and, prior to the expiration of the 10-day period, the Commission does not issue a letter disallowing its publication in this Commonwealth]**.

(ii) **The Department does not issue a letter disallowing its publication in this Commonwealth before the expiration of the 10-day period.**

(3) In connection with a registration statement filed with the [**Commission**] **Department** under section 206 of the act for the offer and sale of securities in this Commonwealth for which no registration statement has been filed with the [**SEC**] **Securities and Exchange Commission** in reliance on section 3(a)(4) or (11) of the Securities Act of 1933 and regulations promulgated thereunder or Rule 504 (17 CFR 230.504) (relating to exemption for limited offerings and sales of securities not exceeding \$1,000,000) promulgated by the [**SEC**] **Securities and Exchange Commission** under section 3(b) of the Securities Act of 1933, a person may publish an advertisement in this Commonwealth [**prior to**] before effectiveness of the registration statement under the act if all of the following are met:

(i) The advertisement contains no more than the following:

(A) The name and address of the issuer of the security.

(B) The title of the security, the number of securities being offered, the total dollar amount of securities being offered, yield[,] and the per unit offering price to the public.

(C) A brief, generic description of the issuer's business.

(D) A statement, if applicable, that completion of the offering is subject to receipt of subscriptions meeting a stated minimum offering amount.

(E) A statement providing the name and address of the underwriter or where a prospectus may be obtained.

(F) A statement in the following form: "A registration statement has been filed with the Pennsylvania [**Securities Commission**] **Department of Banking and Securities** but has not yet become effective. These securities may not be sold nor may offers to buy be accepted [**prior to**] before the time the registration statement becomes effective. This advertisement does not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in the Commonwealth of Pennsylvania [**prior to**] before registration of the securities under the Pennsylvania Securities Act of 1972."

(ii) **The advertisement is filed with the [Commission] Department 10 days before publication in this Commonwealth [and, prior to the expiration of the 10-day period, the Commission does not issue a letter disallowing its publication in this Commonwealth]**.

(iii) **The Department does not issue a letter disallowing its publication in this Commonwealth before the expiration of the 10-day period.**

(c) *Registered offerings: permitted advertisements after effectiveness.* The following apply with respect to publication of advertisements in this Commonwealth in connection with an offering of securities in this Commonwealth for which a registration statement has become effective under section 205 or 206 of the act.

(1) In connection with a registration statement filed with the [**Commission**] **Department** under section 205 or 206 of the act for the offer and sale of securities in this Commonwealth which also are the subject of a registration statement filed under section 5 of the Securities Act of 1933 which has become effective, a person may publish an advertisement in this Commonwealth if it is preceded or accompanied by a copy of the final prospectus.

(2) In connection with an offering circular for the offer and sale of securities in this Commonwealth that has been filed with the [**SEC**] **Securities and Exchange Commission** under Regulation A (17 CFR 230.251—230.263) promulgated under section 3(b) of the Securities Act of 1933 and with the [**Commission**] **Department** under section 205 or 206 of the act and has been qualified by the [**SEC**] **Securities and Exchange Commission** under Regulation A and has become effective under section 205 or 206 of the act, a person may publish an advertisement in this Commonwealth if the advertisement is accompanied or preceded by a copy of the final offering circular.

(3) In connection with a registration statement filed with the [**Commission**] **Department** under section 206 of the act for the offer and sale of securities in this Commonwealth for which no registration statement has been filed with the [**SEC**] **Securities and Exchange Commission** in reliance on section 3(a)(4) or [**3(a)(11)**] (11) of the Securities Act of 1933 and regulations promulgated thereunder or Rule 504 (17 CFR 230.504) promulgated by the [**SEC**] **Securities and Exchange Commission** under section 3(b) of the Securities Act of 1933 that has become effective under the act, a person may publish in this Commonwealth an advertisement if all of the following are met:

(i) The advertisement contains no more than the following:

(A) The name and address of the issuer of the security.

(B) The title of the security, the number of securities being offered, the total dollar amount of securities being offered, yield[,] and the per unit offering price to the public.

(C) A brief, generic description of the issuer's business.

(D) A statement, if applicable, that completion of the offering is subject to receipt of subscriptions meeting a stated minimum offering amount.

(E) A statement, if applicable, that funds accompanying the subscription agreement are subject to escrow and the terms of the escrow.

(F) The name and address where the final prospectus may be obtained if delivery of the final prospectus does not precede or accompany the advertisement.

(G) A statement in the following form: "This advertisement does not constitute an offer to sell nor a solicitation

of an offer to buy any of the securities. The offering is made only by the prospectus.”

(ii) The advertisement is filed with the [**Commission**] Department 5 days before publication in this Commonwealth [**and, prior to the expiration of the 5-day period, the Commission does not issue a letter disallowing publication in this Commonwealth**].

(iii) **The Department does not issue a letter disallowing publication in this Commonwealth before the expiration of the 5-day period.**

(4) A person may not publish an advertisement in this Commonwealth in connection with the offer and sale of any security registered under section 205 or 206 of the act at any time after the expiration of the effective period of the registration statement relating to that security as determined by section 207 of the act (70 P.S. § 1-207).

(d) *Exempt securities.* The following apply:

(1) *Exempt securities other than sections 202(a) and 202(i).* Except as provided in paragraphs (2) and (3), a person may publish an advertisement in this Commonwealth in connection with the offer or sale of a security in this Commonwealth which is exempt under section 202 of the act (70 P.S. § 1-202).

(2) *Section 202(a).* In connection with the offer or sale of any security in this Commonwealth made in reliance on section 202(a) of the act which is issued by the Commonwealth, any political subdivision, or any agency or corporate or instrumentality [**thereof**] of the **Commonwealth** and which security represents less than a general obligation of the issuer, a legend adequately describing the limited nature of the obligation [**shall**] **must** appear prominently in bold face type of at least 12 points in size on the face page of any preliminary offering statement, official offering statement or advertisement published in this Commonwealth.

(3) *Section 202(i).* A person may publish an advertisement in this Commonwealth in connection with the offer or sale of a security in this Commonwealth which is exempt under section 202(i) of the act except [**where the Commission**] **if the Department**, by rule or order, has prohibited use of advertisements as a condition of the availability of the exemption.

(e) *Exempt transactions.* The following apply:

(1) *Advertisements permitted.* Except as provided in paragraph (2), a person may publish any advertisement in this Commonwealth in connection with a securities transaction in this Commonwealth which is exempt from registration under section 203 of the act (70 P.S. § 1-203).

(2) *Advertisements prohibited.* A person may not publish any advertisement in this Commonwealth in connection with the following securities transactions which are effected in this Commonwealth:

(i) A sale of a security made in reliance on section 203(d) of the act.

(ii) An offer of a security made in reliance on section 203(e) of the act which results in a sale under section 203(d) of the act.

(iii) An offer or sale of a security made in reliance on section 203(j) of the act.

(iv) An offer or sale of a security made in reliance on section 203(s) of the act.

(v) An offer or sale of a security made in reliance on § 203.187 (relating to small issuer exemption).

(vi) An offer or sale of a security made in reliance on § 203.189 (relating to isolated transaction exemption).

(vii) An offer or sale of a security which is exempt under section 203(r) of the act when the [**Commission**] **Department**, by rule or order, has prohibited use of advertisements as a condition of the availability of the exemption.

(f) *Excluded advertisements.* The following apply[.]:

(1) This section does not apply to advertisements described in paragraph (2) if all of the following are met:

(i) The character and composition of the statements and graphics contained in the advertisement do not exaggerate the investment opportunity, overemphasize any aspect of the offering, minimize the risks of the enterprise or predict revenues, profits or payment of dividends [(), including financial projections or forecasts] .

(ii) The advertisement does not contain any statement that is false or misleading in any material respect or omits to make any material statement necessary to make the statements made, in the light of the circumstances under which they are made, not misleading.

(2) The following advertisements are excluded from the provisions of this section if the requirements of paragraph (1) have been met:

(i) [**The use of general**] **General** solicitation in connection with the offer or sale of a security in reliance on section 203(t) of the act.

(ii) Advertisements which comply with Rule 135 promulgated by the [**SEC**] **Securities and Exchange Commission** (17 CFR 230.135) (relating to notice of proposed registered [**offering**] offerings).

(iii) Advertisements which comply with Rule 135c promulgated by the [**SEC**] **Securities and Exchange Commission** (17 CFR 230.135c) (relating to notice of certain proposed [**unregistered**] offerings).

(iv) Advertisements in connection with an offer of a security in reliance on § 203.190 (relating to certain Internet offers exempt) which comply with the legend requirement of § 203.190(a)(1).

(v) **Advertisements in connection with the offer or sale of Federally covered securities under section 18(b)(4)(E) and (F) of the Securities Act of 1933 (15 U.S.C.A. § 77r(b)(4)(E) and (F)) where the issuer relies upon and is in compliance with Rule 506(c) of Regulation D (17 CFR 230.506) (relating to exemption for limited offers and sales without regard to dollar amount of offering).**

[(g) *Definitions.* For purposes of this chapter, the following terms have the following meanings:

Advertisement—The meaning in section 102(a) of the act (70 P.S. § 1-102(a)). The term “communication” as used in that definition includes, without limitation, letters, brochures, pamphlets, displays, sales literature and any form of electronic communication, including e-mail, which is used in connection with a sale or purchase or an offer to sell or purchase a security. The term “publicly dissemi-

nated” as used in that definition means that the communication has been directed to or, in fact, communicated to more than 50 persons in this Commonwealth.

Publish—The meaning in section 102(p) of the act and includes any form of electronic communication, including Internet and e-mail.

(h) **SEC**] (g) **Securities and Exchange Commission** *interpretive advice on use of electronic media.* A person who uses electronic media to publish an advertisement in this Commonwealth in connection with a security which is the subject of a registration statement filed with the [**Commission**] **Department** under section 205 or 206 of the act and with the [**SEC**] **Securities and Exchange Commission** under section 5 of the Securities Act of 1933 [(15 U.S.C.A. § 77e)] may rely on the interpretive advice of the [**SEC**] **Securities and Exchange Commission** in [**SEC**] Release No. 33-7856 (April 28, 2000) and subsequent advice given [pursuant to] under that release. To the extent that the interpretive advice contradicts any requirement in subsection (a)(1) or (b)(1), the [**Commission**] **Department** will not take any enforcement action if the person complies with the interpretive advice.

§ 606.041. [**Delegation and substitution**] (Reserved).

[(a) The Commission delegates to the Director and Assistant Directors of the Division of Enforcement, Litigation and Compliance:

(1) The powers in section 510(a)(i)—(iii), (b), except for hearings, and (c) of the act (70 P.S. § 1-510(a)(i)—(iii), (b) and (c)) and the authority to close, vacate, modify or amend an action authorized under this paragraph.

(2) The power to commence an administrative proceeding against a person under 1 Pa. Code §§ 35.14 and 35.37 (relating to orders to show cause; and answers to orders to show cause) and the authority to vacate, modify or amend an order to show cause issued under this paragraph. A hearing will not be held, nor will a remedial or disciplinary order issue following upon the institution of the proceedings, except upon the express order of the Commission.

(3) The power exercisable by the Commission under section 606(c) of the act (70 P.S. § 1-606(c)) to issue a summary order to cease advertising and the authority to vacate, modify or amend a summary order to cease advertising issued under this paragraph.

(4) The power exercisable under section 606(c.1) of the act to issue a cease and desist order against a registered broker-dealer or investment adviser when the registrant is engaging in an act or practice which constitutes a violation of § 304.011(e) or § 304.012(e) (relating to broker-dealer required records; and investment adviser required records) by refusing to make available for inspection by Commission staff acting under the examination authority in section 304(d) of the act (70 P.S. § 1-304(d)), the records specified in §§ 304.011 or 304.012.

(5) The power to institute a proceeding under sections 512—514 of the act (70 P.S. §§ 1-512—1-514) to do one of the following:

(i) Impose a statutory bar under section 512 of the act (70 P.S. § 1-514).

(ii) Mandate a rescission offer under section 513 of the act (70 P.S. § 1-513).

(iii) Compel the return of sales commissions under section 514 of the act (70 P.S. § 1-514).

(b) The Commission delegates to the Director of the Division of Licensing:

(1) The power exercisable under section 303(a)(ii) of the act (70 P.S. § 1-303(a)(ii)) to order applications for registration filed under section 303 of the act to become effective on any day earlier than the 45th day after the filing of the application or material amendment thereto as the Director may determine. For purposes of this paragraph, the term “application” means an application for either an initial or renewal license.

(2) The power exercisable under section 609(a) of the act (70 P.S. § 1-609(a)) to waive the provisions of §§ 303.031 and 303.032 (relating to examination requirement for agents; and examination requirements for investment advisers and investment adviser representatives).

(3) The power exercisable under section 305(f) of the act (70 P.S. § 1-305(f)) to order applications to withdraw from the status of a registered broker-dealer, agent, investment adviser or investment adviser representative to become effective on any day earlier than the 30th day after the filing of the application.

(4) The power exercisable under 1 Pa. Code § 33.42(a) (relating to withdrawal or termination) for proceedings under section 303 of the act.

(5) The power exercisable under section 609(f) of the act (70 P.S. § 1-609(f)) with respect to applications for registration of a broker-dealer, agent, investment adviser or investment adviser representative. For purposes of this paragraph, the term “application” means an application for either an initial or renewal license.

(6) The power exercisable under section 303(a)(i) of the act to grant a waiver of any requirement imposed under section 303(a)(i) of the act or section 304 of the act (70 P.S. § 1-304) or any regulation promulgated thereunder and impose conditions on, or limit the scope of, an initial or renewal license of a broker-dealer, agent, investment adviser or investment adviser representative.

(7) The power exercisable under section 603(c) of the act (70 P.S. § 1-603(c)) and § 603.031(c) (relating to public inspection of records) to treat documents filed with the Division of Licensing as temporarily confidential until the close of the Commission meeting at which the request for confidentiality is acted upon by the Commission.

(8) The power exercisable under section 609(a) of the act to order a broker-dealer, agent, investment adviser or investment adviser representative registered under section 301 of the act (70 P.S. § 1-301) to furnish material information reasonably related to the registration.

(9) The power exercisable under sections 303(a)(i) and 609(a) of the act to order an applicant for registration as a broker-dealer, agent, investment adviser or investment adviser representative under

section 301 of the act to furnish material information reasonably related to the application.

(10) The power exercisable under § 303.051(a) and (b) (relating to surety bonds).

(11) The power exercisable under section 305(d) of the act to issue a summary order with respect to an application for registration.

(c) The Commission delegates to the Director of the Division of Corporation Finance:

(1) The power exercisable under section 206(c) of the act (70 P.S. § 1-206(c)) to order effective a registration statement filed under section 206 of the act for securities that have met the requirements for registration under the Mid-Atlantic Regional Review Protocol for Small Corporate Offering Registrations.

(2) The power exercisable under section 204(b) of the act (70 P.S. § 1-204(b)) to:

(i) Issue summary orders denying or revoking exemptions from registration under section 202 or 203 of the act (70 P.S. § 1-202 or § 1-203).

(ii) Modify or vacate the summary orders.

(3) The power exercisable under section 609(f) of the act (70 P.S. 1-609(f)) with respect to applications for registration of securities.

(4) The power exercisable by the Commission to waive the provisions of § 504.060(a) and (b) (relating to rescission offers) when:

(i) The securities which are the subject of the rescission offer being made in this Commonwealth were sold to and purchased by no more than 35 persons during 12 consecutive months.

(ii) Disclosure satisfying the anti-fraud provisions of section 401(b) of the act (70 P.S. § 1-401(b)) will be given to a rescission offeree.

(5) The power exercisable under section 206(c) of the act to order effective a registration statement filed under section 206 of the act for securities of an issuer which meets all of the following:

(i) The issuer is an entity described in section 202(e)(i) of the act (70 P.S. § 1-202(e)(i)).

(ii) The issuer has not registered the securities with the United States Securities and Exchange Commission under section 5 of the Securities Act of 1933 (15 U.S.C.A. § 77e) in good faith reliance on section 3(a)(4) thereof (15 U.S.C.A. § 77c(4)).

(iii) The issuer, within the immediately preceding 18 months, had an effective registration statement with the Commission for similar securities.

(iv) The registration statement complies with the Statement of Policy Regarding General Obligation Financing by Religious Denominations adopted by the North American Securities Administrators Association (April 17, 1994) or any successor statement of policy.

(v) The issuer has not requested a waiver of any provision of the act or rule or order thereunder that otherwise would apply to the registration statement.

(vi) The issuer or any affiliate of the person currently is not subject or, within the past 10 years, was not subject to any of the following:

(A) An order described in section 305(a)(iv) of the act.

(B) An injunction described in section 305(a)(iii) of the act.

(C) A criminal conviction described in section 305(a)(ii) of the act.

(D) An order of the Commission issued under section 512 of the act (70 P.S. § 1-512).

(E) A court order finding civil contempt under section 509(c) of the act (70 P.S. § 1-509(c)).

(F) An order of the Commission imposing an administrative assessment under section 602.1 of the act (70 P.S. § 1-602.1) which has not been paid in full.

(6) The power exercisable under section 210 of the act (70 P.S. § 1-210) to grant effectiveness to an application filed under § 210.010 (relating to retroactive registration of certain investment company securities).

(7) The power exercisable under 1 Pa. Code § 33.42(a) (relating to withdrawal or termination) for proceedings under section 202, 203, 205 or 206 of the act.

(8) The power exercisable under section 603(c) of the act and § 603.031(c) to treat documents filed with the Division of Corporation Finance as temporarily confidential until the close of the Commission meeting at which the request for confidentiality is acted upon by the Commission.

(9) The power exercisable under section 206(c) of the act to order effective a registration statement filed with the Commission under section 206 of the act by an issuer which also has a currently effective registration statement for the same securities on file with the SEC.

(10) The power exercisable under section 211 of the act (70 P.S. § 1-211) to:

(i) Issue a stop order suspending the offer or sale of any security described in section 211(b) or (c).

(ii) Modify or vacate a stop order.

(11) The power exercisable under section 207(l) of the act (70 P.S. § 1-207(l)) to declare effective an amendment to any currently effective registration statement relating to the increase in the specified amount of securities proposed to be offered in this Commonwealth, if the applicable filing fee, if any, required by section 602(b.1) of the act (70 P.S. § 1-602(b.1)) has been paid.

(12) The power, exercisable under § 606.031(b)(2), (3)(ii) and (c)(3)(ii) (relating to advertising literature) to issue a letter disallowing publication of an advertisement in this Commonwealth in connection with the offer or sale of a security in this Commonwealth.

(d) The Commission delegates to the Chief Accountant the power to waive, in a filing with the Commission, a nonmaterial technical financial statement noncompliance with a provision relating to the form and content of financial statements.

(e) The Commission authorizes the following:

(1) The Chief Counsel, Deputy Chief Counsel or the Assistant Director of the Division of Corporation Finance may exercise the delegations given in

this section in the absence of the Director of the Division of Corporation Finance.

(2) The Chief Counsel and Deputy Chief Counsel may exercise the delegations given in this section in the absence of the Director of the Division of Licensing.]

CHAPTER 609. REGULATIONS, FORMS AND ORDERS

§ 609.010. Use of prospective financial statements.

[(a) The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

Feasibility study—An analysis of a proposed investment or course of action which may involve the preparation of a financial forecast or a financial projection.

Financial forecast—A prospective financial statement that presents, to the best of the responsible party's knowledge and belief, an entity's expected financial position, results of operations and changes in financial position. A financial forecast is based on the responsible party's assumptions reflecting conditions it expects to exist and the course of action it expects to take.

Financial projection—A prospective financial statement that presents, to the best of the responsible party's knowledge and belief, given one or more hypothetical assumptions, an entity's expected financial position, results of operations and changes in financial position. A financial projection is sometimes prepared to present one or more hypothetical courses of action for evaluation, as in response to questions such as "What would happen if...?" A financial projection is based on the responsible party's assumptions reflecting conditions it expects would exist and the course of action it expects would be taken, given one or more hypothetical assumptions.

Hypothetical assumption—An assumption used in a financial projection to present a condition or course of action that is not necessarily expected to occur, but is consistent with the purpose of the projection.

Independent—A person—regardless of whether the person is a Certified Public Accountant—may not be considered independent if the person is not independent under Rule 101 of the Code of Professional Ethics of the American Institute of Certified Public Accountants, Inc. or under the interpretations adopted thereunder.

Prospective financial statement—A financial forecast or financial projection including the summaries of significant assumptions and accounting policies.

(b)] (a) Except as set forth in subsection [(c)] (b), the use of prospective financial statements, including those contained in feasibility studies, [are] is prohibited in connection with offerings registered under sections 205 and 206 of the act (70 P.S. §§ 1-205 and 1-206) or in offerings exempt from registration under section 202(a) or 203(d) of the act (70 P.S. [§ 1-202(a) or 1-203(d)] §§ 1-202(a) and 1-203(d)), unless the prospective financial statements [utilized] used or distributed comply with the act and this section.

[(c)] (b) The use or distribution of prospective financial statements in connection with the following securities offerings is permissible if it complies with section 401 of the act (70 P.S. § 1-401):

(1) Offers or sales of securities of reporting companies as the term is defined in section 102(q) of the act (70 P.S. § 1-102(q)).

(2) Offers and sales of securities made under an exemption not set forth in subsection (b).

(3) Offers and sales of securities made to experienced private placement investors [as that term is defined in § 204.010(d)(1) (relating to increasing the number of purchasers and offerees)].

(4) Offers and sales of securities to an individual [—], and spouse when purchasing as joint tenants or as tenants by the entirety [—where], if the minimum amount of securities to be purchased in the offering by the individual is \$500,000 or more and the purchase of the securities is for cash or an unconditional obligation to pay cash which obligation is to be discharged within 5 years from the date of sale of the securities.

(5) Offers and sales of securities to a person which is organized primarily [for the purpose of purchasing] to purchase, in nonpublic offerings, securities of corporations or issuers engaged in research and development activities in conjunction with a corporation and one of the following exists:

(i) The person has purchased \$450,000 or more of the securities for cash or for an unconditional obligation to pay cash which obligation is to be discharged within 5 years from the date of sale of the securities, excluding a purchase of securities of a corporation in which the affiliates of the person directly or beneficially own more than 50% of the corporation's voting securities.

(ii) The person is purchasing \$500,000 or more of the securities being offered for cash or an unconditional obligation to pay cash which obligation is to be discharged within 5 years from the date of sale of the securities being purchased.

(6) Offers and sales of securities made to accredited investors as that term is defined in Rule 501(a) (17 CFR 230.501(a)) (relating to definitions and terms used in Regulation D)[] in Regulation D of the Securities Act of 1933 (15 U.S.C.A. §§ 77a—[77z-3] 77aa).

[(d)] (c) Except as set forth in subsections [(e) and (f)] (d) and (e), prospective financial statements [utilized] used or distributed in connection with the securities offerings described in subsection [(b) shall] (a) must comply with the following requirements:

(1) *Assumptions*. Assumptions include:

(i) Prospective financial statements [shall be based upon] must be based on reasonable assumptions and [shall] clearly set forth the assumptions made with respect to all material features of the presentation.

(ii) With respect to financial projections, the hypothetical assumptions used [shall] must be clearly identified and [shall] be consistent with the purpose of the presentation. With respect to multiple presentations there [shall] must be a preponderance of information to suitably support the amount presented being within the range of the hypothetical assumptions.

(2) *Preparation.* Preparation includes:

(i) Prospective financial statements shall either be prepared by an independent qualified person-preparer [—] or reviewed by an independent qualified person [—] reviewer. The preparer or reviewer may rely on another preparer or reviewer for the preparation or review of the underlying assumptions or other aspects of the prospective financial statement if the report complies with paragraph (3).

(ii) The [**Commission**] **Department** will not recognize a person as a qualified independent reviewer or preparer unless that person can demonstrate [**that the person has**] adequate knowledge of the industry and the accounting principles and practices of the industry portrayed in the prospective financial statements.

(3) *Report.* [**Report shall**] **The report must** include:

(i) Prospective financial statements [**shall be**] accompanied by a report of each preparer or reviewer of the following:

(A) The prospective financial statements.

(B) The underlying assumptions.

(C) Other material aspects of the prospective financial statements.

(ii) With respect to prospective financial statements, the preparer or reviewer's report [**shall**]:

(A) **Must** include a statement of the work performed [**—which shall include**], **including** a review of the assumptions.

[**The report may**] (B) **May** not contain a disclaimer with respect to the reasonableness of the assumptions or the reasonableness of the prospective financial statements.

[**The report may**] (C) **May** not contain language that suggests or implies that the preparer or reviewer vouches for the achievability of the prospective financial statements.

(iii) A report on the preparation or review of the financial projections [**should explicitly describe**] **explicitly describing** the hypothetical assumptions on which the projection is based, for example, "assuming the granting of the requested loan [**for the purpose of expanding**] **to expand** the Company's plant as described in the summary of significant assumption(s)."

(4) *Contents of reports with more than one preparer or reviewer.* Collectively, the reports described in paragraph (3) [**shall**] **must** include a statement of the work performed by each preparer or reviewer and the degree of responsibility each is taking.

(5) *Professional responsibility.* A preparer or reviewer of a prospective financial statement or of the underlying assumptions shall [**be mindful of**] **follow the requirements of** § 401.020 (relating to professional responsibility).

(6) *Fair presentation.* Prospective financial statements [**shall**] **must** include material information necessary for a fair presentation including [, **by way of illustration**], if applicable:

(i) Sales or gross revenue by sources for each period presented.

(ii) Expenses by classifications for each period presented.

(iii) Provision for income taxes for each period presented.

(iv) Net income for each period presented.

(v) Primary and fully diluted earnings per share of common stock for each period presented.

(vi) A cash flow analysis or a statement of significant changes in financial position for each period presented, including the sources and uses of cash.

(vii) Balance sheets at the beginning and end of the entire period for which prospective financial statements are presented.

(viii) Forecasted or projected annual taxable income or loss with a discussion of the assumptions affecting tax benefits and, if appropriate, alternative forecasted or projected results based on alternative tax treatment.

(ix) Significant accounting principles and policies followed.

(7) *Minimum period.* Prospective financial statements shall [**ordinarily**] cover a minimum period of 3 years. The period [**shall be extended where**] **must be extended if** appropriate to evaluate properly the investment consequences.

(8) *Explanatory notes.* Prospective financial statements [**shall**] **must** be accompanied by explanatory notes describing significant assumptions made and, if appropriate, referenced to tabular and numerical data and risk factors.

(9) *Conspicuous statement.* Prospective financial statements [**shall**] **must** be clearly distinguished from historical financial statements and [**shall**] contain a conspicuous statement indicating that it is based on assumptions of the future.

[(e) **Prospective**] (d) **The Department will consider prospective** financial statements examined in accordance with the [**Statement of Standards for Accountants' Services on Prospective Financial Information**] **Statement of Standards for Attestation Engagements** promulgated by the American Institute of Certified Public Accountants, Inc. ([**AICPA**] **SSAE Statement**) [**shall be deemed**] to comply with this section [**where**] **if** a standard report on an examination prepared in accordance with the [**AICPA**] **SSAE Statement**[,] is issued by an independent person.

[(f)] (e) The primary responsibility for prospective financial statements [**utilized**] **used** or distributed under this section rests with management.

§ 609.011. Amendments to filings with [**Commission**] **Department.**

[**Whenever an application, notice, statement, report or any other document (Document) has been filed with the Commission and the person who filed the Document wishes to amend or otherwise ensure that the Document is current and accurate in all material respects, the person shall make a filing with the Commission constituting the amendment which also shall identify the Document being amended including, with respect to an amendment to a form promulgated by the Commission, the name of the form, the date the form originally was**

filed with the Commission and the items or schedules of the form which are being amended.]

A person wishing to amend or otherwise ensure that a previously filed application, notice, statement, report or any other document is current and accurate in all material respects shall file with the Department an amendment which meets the following conditions:

(1) The amendment must identify the previously filed document being amended.

(2) If amending a form promulgated by the Department, the amendment must identify the:

(i) Name of the form.

(ii) Date the form originally was filed with the Department.

(iii) Items or schedules of the form which are being amended.

§ 609.012. Computing the number of offerees, purchasers and clients.

(a) Under section 609(a) of the act (70 P.S. § 1-609(a)), the [**Commission, for the purpose of providing**] Department, to provide a consistent method of computing the number of offerees, purchasers and clients under relevant provisions of the act and regulations promulgated thereunder, has determined that the following apply:

(1) A person who is offered or purchases securities or becomes a client [**shall count**] is counted as a separate offeree, purchaser or client, unless the person is otherwise specifically excluded under this section.

(2) [**Where**] If more than one person, related by blood or marriage, are offerees, purchasers or clients, the persons [**shall be**] are counted as one offeree, purchaser or client if they either:

(i) Reside in the same household.

(ii) Are under the age of 18.

[(3) As used in this section, the term "entity" means a corporation, partnership, association, joint stock company, trust, estate or unincorporated association.

(4)] (3) An entity [**shall be**] is counted as one person, and a direct or beneficial owner of equity interests or equity securities in the entity [**shall not be**] is not counted as an offeree, purchaser or client, unless one of the following applies:

(i) With respect to computing offerees and purchasers, the entity was organized [**for the specific purpose of acquiring**] to specifically acquire the securities being offered or purchased.

(ii) With respect to computing clients, [**where**] if the services provided by the person effecting transactions in securities for the account of the entity or providing investment advice to the entity are based [**upon**] on the investment decisions of the direct or beneficial owners rather than [**upon**] on the investment objectives of the entity.

[(5)] (4) Notwithstanding the provisions of paragraph [(4)(i), in] (3)(i):

(i) In the case of a trust [**where**], if the settlor and the beneficiaries are related by blood or marriage, the trust and the trustee [—], when acting on behalf of the trust or simultaneously on his own behalf [—**shall count**], is counted only as one offeree, purchaser or client.

(ii) Multiple trusts [**shall be**] are counted as one offeree, purchaser or client if all of the beneficiaries are related by blood or marriage.

[(6)] (5) Notwithstanding the provisions of paragraph [(4)(i)] (3)(i) in an entity in which all owners of equity interests or equity securities, excluding contingent interests and director's qualifying shares, are persons related by blood or marriage residing in the same household, the following apply:

(i) The entity [**shall be**] is counted as one person [**and the**].

(ii) The owners of the interests or securities in the entity [**shall not be**] is not counted as offerees, purchasers and clients.

(b) This section does not apply if a section of the act or a regulation promulgated thereunder sets forth another method of computing offerees, purchasers or clients.

§ 609.031. Application.

(a) This chapter, [**together with the**] and constructions and interpretations [**hereof as the Commission may issue from time to time, sets**] issued by the Department, set forth the minimum requirements for financial statements included, under the act, as part of the following:

(1) Registration Statements under section 206 of the act (70 P.S. § 1-206).

(2) Registration Statements under section 205 of the act (70 P.S. § 1-205) which are exempt under section 3(b) of the Securities Act of 1933 (15 U.S.C.A. § 77c(b)).

(3) Proxy materials under section 203(o) of the act (70 P.S. § 1-203(o)).

(4) Reports distributed to securityholders under section 606(a) of the act (70 P.S. § 1-606(a)).

(5) Broker-Dealer and Investment Adviser Financial Reports.

(6) Exempt transactions under section 203(p) of the act [(70 P.S. § 1-203(p))].

(b) Offerings of securities registered under the Securities Act of 1933 (15 U.S.C.A. §§ 77a—[**77z-3**] **77aa**), or filings of proxy materials under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—[**78mm**] **78pp**) which meet the requirements of Reg. S-X, 17 CFR 210.8-01—210.8-03 (relating to preliminary notes to Article 8; annual financial statements; and interim financial statements) (1974), adopted by the [**United States**] Securities and Exchange Commission [("**S-X**")] or broker-dealer reports filed under the Securities Exchange Act of 1934 under regulations adopted thereunder [**shall be**] are exempted from this chapter, except [**where**] if otherwise indicated.

(c) References to "registration" under the Securities Act of 1933 are to be construed strictly. By way of illustration the procedure of "notification" under the Regulation ["**A**"

of that act] A (17 CFR 230.251—230.263) (relating to conditional small issues exemption) will not be recognized as “registration.”

§ 609.032. [Definitions] (Reserved).

[(a) Unless the context otherwise requires, or unless specific language otherwise controls, the following terms apply any time financial information is required to be filed under the act or under this title:

Accountant’s report—A document in which an independent certified public accountant indicates the scope of the audit the accountant has made and sets forth the accountant’s opinion regarding the financial statements taken as a whole, or an assertion to the effect that an overall opinion cannot be expressed. When an overall opinion cannot be expressed, the reasons therefor shall be stated.

Amount—When used in regard to securities, the principal amount if relating to evidence of indebtedness, the number of shares if relating to shares and the number of units if relating to any other kind of security.

Audit—Audited and reported upon with an opinion expressed by an independent certified public accountant.

Audit or examination—An audit of the statements by a certified public accountant in accordance with generally accepted auditing standards for the purpose of expressing an opinion thereon.

Bank holding company—A person which is engaged, either directly or indirectly, primarily in the business of owning securities of one or more banks for the purpose, and with the effect, of exercising control.

Comparative financial statements—Financial statements in which data for 2 or more years are presented in adjacent columnar form.

Date of filing—The date on which the financial statements or any material amendment thereto are received in the Harrisburg office of the Commission.

Development stage company—A company devoting substantially all of its efforts to establishing a new business with either of the following conditions existing: planned principal operations have not commenced, or planned principal operations have commenced but there has been no significant revenue therefrom.

Equity security—Any stock or similar security (including interests in a limited liability company); or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right.

Fifty-percent, owned person—In relation to a specified person, a person approximately 50% of whose outstanding voting shares is owned by the specified person either directly or indirectly through one or more intermediaries.

Fiscal year—The annual accounting period, or if no closing date has been adopted, the calendar year ending on December 31.

Going concern disclosure—The disclosure of substantial doubt about the ability of the issuer to continue as a going concern during the ensuing fiscal year contained in the auditor’s report based upon the criteria contained in the Statement on Auditing Standard 59 promulgated by the American Institute of Certified Public Accountants.

Insurance holding company—A person who is engaged, either directly or indirectly, primarily in the business of owning securities of one or more insurance companies for the purpose and with the effect of exercising control.

Majority-owned subsidiary—A subsidiary more than 50% of whose outstanding voting shares is owned by its parent or the parent’s other majority-owned subsidiaries, or both.

Material—When used to qualify a requirement for the furnishing of information as to any subject, means or refers to the magnitude of an omission or misstatement of information that, in the light of surrounding circumstances, makes it probable that the judgement of an average prudent investor would have been changed or influenced by the omission or misstatement.

Note or footnote—When used in regard to financial statements, a clear and concise disclosure of information, including information necessary to make any item or entry contained in a financial statement not misleading, cross referenced specifically, if practicable, to an item or entry in a financial statement. A note shall be prepared in conformity with generally accepted accounting principles and practices.

Parent—An affiliate controlling a specified person directly or indirectly through one or more intermediaries.

Principal holder of equity securities—When used in respect of a registrant or other person named in a particular statement or report, a holder of record or a known beneficial owner of more than 10% of any class of equity securities of the registrant or other person, respectively, as of the date of the related balance sheet filed.

Registrant—The issuer of the securities for which an application, a registration statement, or a report is filed.

Related parties—The registrant; its affiliates; principal owners, management, and members of their immediate families; entities for which investments are accounted for by the equity method; and any other party with which the reporting entity may deal when one party has the ability to significantly influence the management or operating policies of the other to the extent that one of the transacting parties might be prevented from fully pursuing its own separate interests. Related parties also exist when another entity has the ability to significantly influence the management or operating policies of the transacting parties or when another entity has an ownership interest in one of the transacting parties and the ability to significantly influence the other to the extent that one or more of the transacting parties might be prevented from fully pursuing its own separate interests. For purposes of this definition, “principal owner” means the owners of record or known beneficial owners of more than 10% of the voting interests of

the reporting entity, and “management” means a person having responsibility for achieving the objectives of the organization and the concomitant authority to establish the policies and to make the decisions by which the objectives are to be pursued.

Review—A review of the statements by a certified public accountant in accordance with the Statements on Standards for Accounting and Review Services promulgated by the American Institute of Certified Public Accountants, and on the basis of that review, the accountant is not aware of any material modifications that should be made to the financial statements for the financial statements to be in conformity with generally accepted accounting principles, except for those modifications, if any, described in the review report.

Review report—An accountant’s review report, which is a document in which the certified public accountant indicates that a review has been performed, and on the basis of that review, the accountant is not aware of any material modifications that should be made to the financial statements for the financial statements to be in conformity with generally accepted accounting principles, except for those modifications, if any, described in the review report.

Share—A share of stock in a corporation or unit of interest in an unincorporated person.

Significant subsidiary—A subsidiary, or a subsidiary and its subsidiaries, which meet any of the conditions described in this definition based on the most recent annual financial statements, including consolidated financial statements, of the subsidiary which would be required to be filed if the subsidiary were a registrant and the most recent annual consolidated financial statements of the registrant being filed:

(i) The parent’s and its other subsidiaries’ investments in and advances to, or their proportionate share (based on their equity interests) of the total assets of, the subsidiary exceed 10% of the total assets of the parent and its consolidated subsidiaries.

(ii) The parent’s and its other subsidiaries’ proportionate share (based on their equity interests) of the total sales and revenues (after intercompany eliminations) of the subsidiary exceeds 10% of the total sales and revenues of the parent and its consolidated subsidiaries.

(iii) The parent’s and its other subsidiaries’ equity in the income before income taxes and extraordinary items of the subsidiary exceeds 10% of the income of the parent and its consolidated subsidiaries; however, if the income of the parent and its consolidated subsidiaries is at least 10% lower than the average of the income for the last five fiscal years, the average income may be substituted in the determination.

Subsidiary of a specified person—An affiliate controlled by the person directly or indirectly through one or more intermediaries.

Tangible book value of a company’s common shares—The excess of total assets over total liabilities as determined by generally accepted accounting principles of the company reduced by the following:

(i) Liquidating value, including any premium of excess over par or stated value, payable upon involuntary liquidation, of any capital obligations, preferred shares or shares having a seniority in rank, or any degree of preference or priority over the issue of common shares for which book value is being computed, including accrued and unpaid dividends to the extent entitled to recognition and preference in the event of liquidation.

(ii) An amount equal to any appraisal capital from revaluation of properties or any similar account title to the extent that the appraisal increase has not been fully depreciated in the accounts.

(iii) Deferred charges including debt issue costs.

(iv) Prepaid expenses except as to items properly classified as current assets under generally accepted accounting principals.

(v) All other assets of an intangible nature including, but not limited to, goodwill, patents, copyrights, franchises, distribution rights, intellectual property rights, leasehold improvements, licensing agreements, noncompete covenants, customer lists, trade names, trademarks and organization costs.

Totally-held subsidiary—A subsidiary substantially all of whose outstanding equity securities are owned by its parent or the parent’s other totally-held subsidiaries or both, and which is not indebted to any person other than its parent or the parent’s other totally-held subsidiaries or both, in an amount which is material in relation to the particular subsidiary, excepting indebtedness incurred in the ordinary course of business which is not overdue and which matures within one year from the date of its creation, whether evidenced by securities or not, and excluding indebtedness of a subsidiary which is secured by its parent by guarantee, pledge, assignment or otherwise.

Voting shares—The sum of all rights, other than as affected by events of default, to vote for election of directors or the sum of all interests in an unincorporated person.

Wholly-owned subsidiary—A subsidiary substantially all of whose outstanding voting shares are owned by its parent or the parent’s other wholly-owned subsidiaries, or both.]

§ 609.033. Accountants.

(a) [Qualifications of accountants shall be in accordance with the following:] *Qualification of accountants.*

(1) The [Commission will not recognize any person as] Department will not recognize a person:

(i) As a certified public accountant who is not registered and in good standing [as such] under the laws of the place of [such] the person’s residence or principal office.

[The Commission will not recognize any person as] (ii) As a public accountant who is not in good standing and entitled to practice [as such] under the laws of the place of [his] the individual’s residence or principal office.

(2) The [Commission] Department will not recognize [any] a certified public accountant or public ac-

countant as independent who is not in fact independent. For example, an accountant will be considered not independent with respect to **[any]** a person, or any of its parents, its subsidiaries or other affiliates in which **[, during the period of his]** either of the following applies:

(i) **During the period of the accountant's** professional engagement to examine the financial statements being reported on or at the date of his report, **[he or his firm or a member thereof]** the accountant or accountant's firm or a firm member had, or was committed to acquire, **[any]** a direct financial interest or **[any]** a material indirect financial interest **[; or with which, during the period of his]**.

(ii) **During the period of the accountant's** professional engagement to examine the financial statements being reported on, at the date of his report or during the period covered by the financial statements, **[he or his firm or a member thereof]** the accountant or accountant's firm or a firm member was connected as a promoter, underwriter, voting trustee, director, officer or employee **[, except that a firm will not be deemed not]**.

(3) **A firm will be considered** independent in regard to a particular person if a former officer or **[employe of such]** employe of the person is employed by the firm and **[such]** the individual has completely disassociated himself from the person and its affiliates and does not participate in auditing financial statements of the person or its affiliates covering any period of **[his]** the individual's employment by the person. **[For the purposes of this subsection the term "member" means all partners and principals in the firm; and all professional employes participating in the audit or located in an office of the firm participating in a significant portion of the audit.**

(3) **[(4) In determining whether an accountant is in fact independent with respect to a particular registrant, the [Commission] Department will give appropriate consideration to all relevant circumstances including evidence bearing on all relationships between the accountant and [that] the registrant or any affiliate [thereof] of the registrant, and will not confine itself to the relationships existing in connection with the filing of reports with the [Commission] Department.**

(b) **[Accountant's reports shall be in accordance with the following:]** *Accountant's reports.*

(1) *Auditor's report format.* The format of the auditor's report **[shall]** **must** be in accordance with the reporting standards established by generally accepted auditing standards including Statements on Auditing Standards promulgated by the Auditing Standards Board of the American Institute of Certified Public Accountants **or the auditing standards promulgated by the Public Company Accounting Oversight Board as required under law.**

(2) *Accountant's review report format.* The format of the accountant's review report **[shall]** **must** be in accordance with the reporting standards established by Statements on Standards for **[Accounting and Review Services]** Attestation Engagements promulgated by the American Institute of Certified Public Accountants.

(3) *Accountant's compilation report format.* The format of the accountant's compilation report **[shall]** **must** be in accordance with the reporting standards established by Statements on Standards for **[Accounting and Review Services]** Attestation Engagements promulgated by the American Institute of Certified Public Accountants.

(4) *Certain accountant's reports.* Auditor's reports, accountant's review reports or accountant's compilation reports issued by public accountants are not permitted for reports required **[by]** under § 609.034 (relating to financial statements).

§ 609.034. Financial statements.

[(a) When an issuer proposes to register its securities for sale under section 205 or section 206 of the act (70 P.S. §§ 1-205 and 1-206), and for which a registration statement has been filed with the United States Securities and Exchange Commission (SEC) under section 5 of the Securities Act of 1933 (15 U.S.C.A. § 77e), the issuer shall comply with the financial statement requirements as set forth in the rules and regulations of the SEC (17 CFR 210.1-01—210.12-29), all of which shall be prepared in accordance with generally accepted accounting principles and presented in comparative form.]

(a) **If an issuer proposes to register its securities for sale under section 205 or 206 of the act (70 P.S. §§ 1-205 and 1-206), and for which securities a registration statement has been filed with the Securities and Exchange Commission under section 5 of the Securities Act of 1933 (15 U.S.C.A. § 77e), the issuer shall:**

(1) **Comply with the financial statement requirements as set forth in the rules and regulations of the Securities and Exchange Commission (17 CFR 210.1-01—210.12-29) (relating to form and content of and requirements for financial statements, Securities Act of 1933, Securities Exchange Act of 1934, Investment Company Act of 1940, Investment Advisers Act of 1940, and Energy Policy and Conservation Act of 1975).**

(2) **Prepare the financial statements in accordance with generally accepted accounting principles.**

(3) **Present the financial statements in comparative form.**

(b) **Except as provided in subsection [(c), when an] (d), an issuer shall file the financial statements listed in subsection (c) if one of the following conditions apply:**

(1) **The issuer proposes to register its securities for sale under section 206 of the act [, when an].**

(2) **The issuer proposes to sell its securities under the exemption contained in Regulation A promulgated under section 3(b) of the Securities Act of 1933 (15 U.S.C.A. § 77c(b)) and proposes to register the securities under section 205 of the act [, or when an].**

(3) **The issuer proposes to sell its securities under the exemption contained in section 203(p) of the act (70 P.S. § 1-203(p)) [, or when an].**

(4) **The issuer is required to file proxy materials under section 203(o) of the act [(70 P.S. § 1-203(o)), it].**

(c) **If required under subsection (b), the issuer shall file the following financial statements, [all of**

which shall be] prepared in accordance with generally accepted accounting principles and presented in comparative form:

(1) A balance sheet of the issuer, dated within 120 days of the date of filing with the [Commission. If the balance sheet is not audited, there shall be filed, in addition, an audited balance sheet as of the issuer's last fiscal year, unless the last fiscal year ended within 90 days of the date of filing, in which case there shall be filed an audited balance sheet as of the end of the issuer's next preceding fiscal year.] Department and comply with either of the following requirements if the balance sheet is not audited:

(i) The issuer shall also file an audited balance sheet as of the issuer's last fiscal year.

(ii) The issuer shall also file an audited balance sheet as of the end of the issuer's next preceding fiscal year if the issuer's last fiscal year ended within 90 days of the date of filing.

(2) Statements of income, stockholders' equity and cash flows for each of 2 fiscal years or less, if the issuer and its predecessors have been in existence for less than 2 years preceding the date of the latest balance sheet filed, and for the period, if any, between the close of the latest of the fiscal years and the date of the latest balance sheet filed[, except that issuers offering interests in a direct participation program and any corporation which has or intends to have significant oil and gas operations must file the statements for each of 3 fiscal years] .

(i) These statements shall be audited up to the date of the latest audited balance sheet filed.

[However, if] (ii) If changes in stockholders' equity accounts are set forth in a note to the financial statements, a separate statement of stockholders' equity [need not] does not need to be filed.

(3) Consolidated balance sheets, statements of income, stockholders' equity[,] and cash flows complying with the audit requirements in paragraphs (1) and (2) [should] must be filed for the issuer and its subsidiaries in accordance with this section.

(4) [If the issuer is about to undergo a reorganization which will effect substantial changes in its assets, liabilities or capital accounts, include a balance sheet of the issuer prior to] A balance sheet of the issuer before the reorganization, a column showing the changes to be effected in the reorganization, and a pro forma balance sheet after the reorganization if the issuer is about to undergo a reorganization which will effect substantial changes in its assets, liabilities or capital accounts.

[Explain] (i) The issuer shall explain in a footnote the adjustments made.

(ii) If a reorganization has taken place at any time covered by the statements of income filed, the issuer shall explain in a footnote the effect [thereof] of the reorganization.

(5) [If the issuer has succeeded, or is about to succeed, to one or more businesses, by merger, consolidation or otherwise, describe the plan of succession, show,] A description of the plan of

succession, showing in columnar form, the balance sheets of the parties to the transaction, the changes effected or to be effected and the balance sheet of the issuer as a result of the transaction, and statements of income for each of the businesses for the periods covered by paragraph (2), to include a consolidating pro forma statement of income if the issuer has succeeded, or is about to succeed, to one or more businesses, by merger, consolidation or otherwise. This paragraph does not apply to the issuer's succession to the business of any totally-held subsidiary or to the acquisition of subsidiaries not constituting, in the aggregate, a significant subsidiary.

(6) [If the issuer acquired any business (or the securities of any person giving the issuer control over such person) after the date of its latest balance sheet filed pursuant to paragraph (1), or if the issuer proposes to acquire such a business or securities, include financial statements for such business as would be required if it were an issuer.] Financial statements for the business as would be required if it were an issuer if the issuer has acquired any business (or the securities of any person giving the issuer control over the person) after the date of its latest balance sheet filed under paragraph (1), or if the issuer proposes to acquire those types of business or securities.

[There shall also be filed] (i) The issuer shall also file pro forma statements of income in columnar form.

(ii) The acquisition of securities which will extend the issuer's control over another person [shall be deemed] is considered the acquisition of a business if the securities being registered under section 206 of the act [(70 P.S. § 1-206)] are to be offered for the securities to be acquired, or if the purpose of the proxy statement is to effectuate [such] the acquisition.

[No financial statements need] (iii) Financial statements do not need to be filed under this paragraph for any acquisition from a totally-held subsidiary.

(iv) Statements of businesses may be omitted if, considered in the aggregate as a single subsidiary, they would not constitute a significant subsidiary, except that [such] the statements may not be omitted when the securities being registered under section 206 of the act [(70 P.S. § 1-206)] are to be offered in exchange for the securities to be acquired, or if the purpose of the proxy statement is to effectuate [such] the acquisition.

(7) [For an issuer proposing to register its securities under section 206 of the act, the registration statement shall contain] The registration statement with summary statements for each of the 3 most recent fiscal years and for the period from the date of the end of the latest fiscal year to the date of the latest balance sheet filed if an issuer proposes to register its securities under section 206 of the act. The summary statements of income required in this paragraph are in addition to the financial statements required under paragraph (2).

[(c) When] (d) If an issuer proposes to register its equity securities for sale under section 206 of the act, which securities are exempt from registration under section 5 of the Securities Act of 1933 under an exemption contained in section 3(a)(11) of the Securities Act of 1933,

or Regulation A or Rule 504 of Regulation D promulgated under section 3(b) of the Securities Act of 1933, the issuer shall file the financial statements required [**by subsection (b)**] **under subsection (c)** except that the financial statements may be reviewed by an independent certified public accountant in accordance with the standards established by the American Institute of Certified Public Accountants or the Canadian equivalent if:

(1) The amount of the present offering does not exceed \$1 million.

(2) The issuer previously has not sold securities through an offering involving the general solicitation of prospective investors by means of advertising, mass mailings, public meetings, "cold call" telephone solicitation or any other method directed toward the public.

(3) The issuer previously has not been required under Federal, State, provincial or territorial securities laws to provide audited financial statements in connection with any sale of its securities.

(4) The aggregate amount of all previous sales of securities by the issuer (exclusive of debt financing with banks and similar commercial lenders) does not exceed \$1 million.

[**(d)**] **(e)** The financial statements required [**by subsections (b) and (c) shall**] **under subsections (c) and (d) must** be included in the prospectus or offering circular distributed to offerees in this Commonwealth.

[**(e)**] **(f)** For purposes of this subsection, **the Department used** the corporate form of financial statement title [**has been used. Financial**], **but because financial** statement title terminology may differ for other types of accounting entities, including [**not-for-profit**] **non-profit organizations**[**. In this case**], **those entities shall include** the analogous financial statements [**of those entities should be included**].

[**(f) When**] **(g)** If consistent with the protection of investors, the [**Commission**] **Department** may [**permit**]:

(1) **Permit** the omission of one or more of the financial statements required [**by**] **under** this section or the filing in substitution [**therefor**] of appropriate statements of comparable character.

[**The Commission, by order, also may require**] **(2) Require** the filing of other financial statements in addition to, or in substitution for, the financial statements required [**by**] **under** this section or when the financial statements are necessary for an adequate presentation of the financial condition of the issuer.

§ 609.036. Financial statements; annual reports.

(a) *Distribution and auditing.*

(1) [**When**] If an issuer is required under the act and this title to distribute financial information to securityholders, it shall include the following financial statements [**as a part thereof**]:

(i) [**Financial statements to include balance**] **Balance** sheets, statements of income, stockholders' equity and cash flows all in comparative form, for the issuer's last 2 fiscal years.

(ii) Consolidated financial statements of the issuer [**and its parent or**] **and** its subsidiaries, or both, in comparative form, for the issuer's last 2 fiscal years.

(2) The financial statements shall be audited and prepared in conformity with generally accepted accounting principles applied consistently with past periods or noting any changes[**. The financial statements need not be audited when the issuer is permitted by this title or by order of the Commission**], **except that the financial statements do not need to be audited if the issuer is permitted by this title or by the Department** to distribute unaudited financial information to securityholders.

(b) *Form of financial statement.* For purposes of this section, **the Department used** the corporate form of financial statement title [**is used. Financial**], **but because financial** statement title terminology may differ for other types of accounting entities, including [**not-for-profit organizations. In this case,**] **nonprofit organizations, those entities shall include** the analogous financial statements [**of those entities should be included**].

§ 609.037. Foreign financial statements.

(a) Under section 609(c) of the act (70 P.S. § 1-609(c)), [**the Commission has determined that**] financial statements and financial information [**which have been**] prepared in accordance with Canadian generally accepted accounting principles, consistently applied, may be distributed to the public if **a registration statement designated as Form F-7, F-8, F-9 or F-10 by the Securities and Exchange Commission has been filed with the Department under section 205 or 206 of the act (70 P.S. §§ 1-205 and 1-206) and the following apply:**

[**(1) A registration statement has been filed with the Commission under section 205 or 206 of the act (70 P.S. §§ 1-205 and 1-206) which registration statement has been designated as Form F-7, F-8, F-9 or F-10 by the United States Securities and Exchange Commission (SEC).**

(2)] **(1)** The securities which are the subject of the registration statement designated as Form F-9 by the [**SEC**] **Securities and Exchange Commission** are either nonconvertible preferred stock or nonconvertible debt which are to be rated in one of the four highest rating categories by one or more [**nationally**] **Nationally** recognized statistical rating organizations.

[**(3)**] **(2)** The securities which are the subject of a registration statement designated as Form F-7 by the [**SEC**] **Securities and Exchange Commission** are offered for cash [**upon**] **on** the exercise of rights granted to existing securityholders.

[**(4)**] **(3)** The securities which are the subject of a registration statement designated as Form F-8 by the [**SEC**] **Securities and Exchange Commission** are securities to be issued in an exchange offer.

[**(5)**] **(4)** The securities which are the subject of a registration statement designated as Form F-10 by the [**SEC**] **Securities and Exchange Commission** are offered and sold pursuant to a prospectus in which the [**SEC**] **Securities and Exchange Commission** has not required a reconciliation to United States generally accepted accounting principles with respect to the financial information presented therein.

(b) For purposes of this section, preferred stock and debt securities which are not convertible for at least 1

year from the date of effectiveness of the registration statement will be [**deemed**] **considered** to meet the requirement of subsection [(a)(2)] (a)(1).

CHAPTER 610. [**DESTRUCTION OF DOCUMENTS AND RECORDS**] (Reserved)

§ 610.010. [**Destruction of documents and records**] (Reserved).

(a) The Commission may destroy registration filings, exemption filings, notices or statements and correspondence and exhibits related thereto in a manner consistent with a records retention schedule adopted by order of the Commission which conforms to the requirements of relevant Management Directives issued by the Office of Administration, except that the Commission shall retain as a permanent record the information required by section 603(b) of the act (70 P.S. § 1-603(b)) and any Commission action taken related to these filings.

(b) The Commission may destroy an application for registration of broker-dealers, investment advisers, agents or investment adviser representatives and correspondence and exhibits related thereto in a manner consistent with a records retention schedule adopted by order of the Commission which conforms to the requirements of relevant Management Directives issued by the Office of Administration, except that the Commission shall retain as a permanent record the information required by section 603(b) of the act and any Commission action taken related to these filings.

(c) Documents relating to investigations, hearings and proceedings shall be retained in a manner consistent with a records retention schedule adopted by order of the Commission which conforms to the requirements of relevant Management Directives issued by the Office of Administration, except that the Commission shall retain as a permanent record any Commission action relating to investigations, hearings and proceedings, transcripts of hearings and summary information relating to investigations authorized under section 510 of the act (70 P.S. § 1-510).

(d) Information required to be retained by the Commission under this section may be maintained in paper, microfilm or electronic format. Copies of destroyed documents retained in a microfilm or electronic format shall be accepted as original documents when certified by the Secretary of the Commission.]

Subpart G. GENERAL PROVISIONS

CHAPTER 701. [**SERVICE OF PROCESS**]
ADMINISTRATIVE PROVISIONS

(Editor's Note: Sections 701.010a, 701.011, 701.020 and 701.030 are new and printed in regular type to enhance readability.)

§ 701.010a. **Filing of registration forms.**

(a) The Department will provide links to all forms and General Instructions on the Department's web site.

(b) Forms filed with the Department must be in the format prescribed by the Bureau in the General Instructions.

(c) All references to forms mean paper forms or an electronic format prescribed by the Bureau or the Securities and Exchange Commission, NASAA or successors.

(d) The use of an electronic signature has the same force and effect as a manual signature.

§ 701.011. **Filing of exemption forms.**

(a) The Department will provide links to all forms and General Instructions on the Department's web site.

(b) All forms and accompanying documents filed with the Department must be in the format prescribed by the Department in the General Instructions.

(c) All references to forms mean paper forms or an electronic format prescribed by the Department or the Securities and Exchange Commission or successors.

(d) The use of an electronic signature has the same force and effect as a manual signature.

§ 701.020. **Electronic filing.**

Unless the Department orders otherwise, all documents shall be filed with the Department in the manner prescribed in the accompanying General Instructions.

§ 701.030. **Fees.**

Issuers filing registration or exemption forms by electronic means shall include the payment of fees or assessments required under section 602 or 602.1 of the act (70 P.S. §§ 1-602 and 1-602.1) by one of the following means:

(1) Automated Clearing House transfer of funds to the Department's designated depository.

(2) As otherwise required by the Department in the General Instructions.

Subpart H. PRACTICE AND PROCEDURE

CHAPTER 901. [**SPECIAL RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE**]
(Reserved)

§ 901.011. [**Applicability of general rules**] (Reserved).

[Under 1 Pa. Code § 31.1 (relating to scope of part), 1 Pa. Code, Part II (relating to general rules of administrative practice and procedure), is applicable to the activities of and proceedings before the Securities Commission.]

Subpart I. TAKEOVER OFFERORS

CHAPTER 1001. TAKEOVER DISCLOSURES

§ 1001.010. **Takeover offeror report regarding participating broker-dealers.**

[(a)] The [**Commission**] Department has determined that, to carry out the purposes of the Takeover Disclosure Law (**law**) (70 P.S. §§ 71—85), it is necessary to require the offeror to file, as an exhibit to the registration statement filed under section 4 of the law (70 P.S. § 74), [**Commission**] Department Form TDL-1 in accordance with the General Instructions thereto.

[Pa.B. Doc. No. 16-1128. Filed for public inspection July 1, 2016, 9:00 a.m.]

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CHS. 218 AND 240]

Radiological Health and Radon Certification Fees; Pennsylvania Radon Mitigation System Tag and Fee

The Environmental Quality Board (Board) proposes to amend Chapters 218 and 240 (relating to fees; and radon certification) to read as set forth in Annex A. The proposed amendments to Chapter 218 increase the annual fees for radioactive material licenses and increase the hourly rate professional fee associated with certain full cost recovery licenses. The proposed amendments to Chapter 240 increase the application fees for certification of radon services and add a new requirement and fee for a Pennsylvania Radon Mitigation System Tag for new mitigation systems installed.

This proposed rulemaking was adopted by the Board at its meeting on April 19, 2016.

A. *Effective Date*

This proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

B. *Contact Persons*

For further information, contact Joseph Melnic, Chief, Division of Radiation Control, P.O. Box 8469, Rachel Carson State Office Building, Harrisburg, PA 17105-8469, (717) 783-9730; or Keith Salador, Assistant Counsel, Bureau of Regulatory Counsel, P.O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 783-8075. Information regarding submitting comments on this proposed rulemaking appears in Section J of this preamble. Persons with a disability may use the Pennsylvania AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposed rulemaking is available electronically through the Department of Environmental Protection's (Department) web site at www.dep.pa.gov (select "Public Participation," then "eComment").

C. *Statutory Authority*

The proposed amendments to Chapter 218 are authorized under the sections 301, 302 and 401 of the Radiation Protection Act (35 P.S. §§ 7110.301, 7110.302 and 7110.401) and section 1920-A of The Administrative Code of 1929 (71 P.S. § 510-20).

The proposed amendments to § 240.303 (relating to reporting of information) are authorized under sections 301, 302 and 401 of the Radiation Protection Act, section 1920-A of The Administrative Code of 1929 and the Radon Certification Act (63 P.S. §§ 2001—2014).

Proposed § 240.309 (relating to Pennsylvania Radon Mitigation System Tag) and the proposed amendments to § 240.3 (relating to definitions) and Chapter 240, Appendix A (relating to radon certification fee schedule) are authorized under sections 12 and 13 of the Radon Certification Act (63 P.S. §§ 2012 and 2013), section 302 of the Radiation Protection Act and section 1920-A of The Administrative Code of 1929.

D. *Background and Purpose*

The Radiation Protection Act (35 P.S. §§ 7110.101—7110.703) requires the Board to review the radiation protection fee structure every 3 years. On August 19,

2014, the Department presented its Three-Year Regulatory Fee and Program Cost Analysis Report (Report) to the Board. The Report indicated that, despite substantial increases in personnel and program costs, the Chapter 218 fees, which support the licensing and inspection of radioactive materials, and the Chapter 240 radon fees have not been revised since 2009. As a result, the Radiation Protection Fund is decreasing annually in operating reserves. Without a fee increase, the Department will be required to curtail spending for needed equipment, infrastructure upgrades, and training and hiring of qualified personnel. This rulemaking addresses these problems by proposing to increase the fees in Chapters 218 and 240 to meet Radiation Protection Act and Radon Certification Act requirements to adequately fund the licensing and inspection of radioactive materials and the certification of individuals who perform radon-related activities.

In March 2008, then-Governor Rendell signed an agreement with the Chairperson of the United States Nuclear Regulatory Commission (NRC) for the Commonwealth to become an Agreement State. This allows the Commonwealth to oversee and regulate licensure of radioactive materials for entities in this Commonwealth. These duties are funded through the Chapter 218 license fees and include registration and inspection of X-ray facilities, licensing and inspection of accelerators, registration of radiation-producing machine service providers, and licensing and inspection of radioactive material users. As part of the agreement, the Commonwealth committed to implementing a radiation protection program comparable to NRC's program and ensured that Commonwealth regulations would be compatible with NRC regulations.

The proposed amendments to the Chapter 218 fees for radioactive material licenses are necessary to assure adequate funding is available for the Commonwealth to carry out its duties under the Agreement State program. There are approximately 850 licenses issued for radioactive material users that have associated annual fees. The professional hourly rate fee that supports required full cost recovery for unique services that cannot be standardized is an important component to the Chapter 218 fees. Examples of the professional hourly rate fee include the evaluation, inspection and licensing of high-energy accelerators and decommissioning activities at contaminated sites. If the Commonwealth were forced to cede its authority to regulate radioactive materials back to the NRC, the regulated community would experience higher costs per NRC's fee regulations.

The Chapter 240 fees collected biennially are used by the Department to ensure that contractors and firms performing radon testing and remedial work are qualified to perform those services. The Chapter 240 fees are also used to perform outreach and to provide public service announcements to encourage homeowners to test for and mitigate radon contamination. Currently, the Chapter 240 fee revenue does not fully cover the Department's Radon Program costs. Without a fee increase, it will be difficult to provide effective quality assurance for the Statewide radon program, data reporting and quality of radon mitigation. There are about 720 certified radon service providers that are subject to the certification fees.

The proposed amendments to the radiological health regulations in Chapters 215—240 (relating to radiological health) are reviewed by the Department's Radiation Protection Advisory Committee (RPAC). RPAC represents various stakeholders, including radioactive materials licensees and radon service providers, as well as the

general public. The Department discussed the need for fee revisions to Chapters 218 and 240 with RPAC on June 12, 2014, and presented the draft proposed regulation to RPAC on October 16, 2014. At the October 16, 2014, meeting, RPAC endorsed moving forward with the proposed rulemaking.

E. Summary of Regulatory Requirements

The following discussion describes the proposed amendments.

Chapter 218, Appendix A. Fees for radioactive material licenses

The materials fees were initially based upon the NRC's fee schedule for Fiscal Year 2010 to cover the Department's costs of implementing the new Agreement State program as required under the Radiation Protection Act. The Board now needs to adjust those radioactive materials fees.

With one exception, the Board is proposing to increase fees for radioactive material licenses by 50% based on the findings of the Report to assure adequate funding is available for the Commonwealth to carry out its duties under the Agreement State program. The exception is for license category 2A(2)(c)—Source Material—metal extraction, which is proposed to be reduced by 50%. There are not currently licensees in this Commonwealth in that Source Material category, and expected regulatory oversight required for this license activity is significantly less than anticipated at the time this fee was established.

RPAC requested that the Department review and compare the workload associated with the broad scope licensees in the 7B category versus comparable license categories. The Department is conducting this review and the Board is asking for public comment on this license category.

The professional hourly rate fee, identified by the asterisk in this proposed rulemaking, is proposed for increase from \$150 per hour to \$225 per hour, which is below the NRC's current Fiscal Year 2015 hourly rate of \$268 per hour. This hourly rate is applicable to fee categories 4A (Waste Storage, Processing or Disposal), 5B (Well Logging Field Flood Tracer Studies) and 14 (Decontamination, Decommissioning, Reclamation or Site Restoration).

§ 240.3. Definitions

The Board is proposing to add definitions for "active radon mitigation system" and "passive radon mitigation system" to support proposed § 240.309.

§ 240.303. Reporting of information

The Board is proposing to add the serial number of the Pennsylvania Radon Mitigation System Tag affixed to each system to the reporting requirements in this section.

§ 240.309. Pennsylvania Radon Mitigation System Tag

The Board is proposing a new Pennsylvania Radon Mitigation System Tag and associated fee based on the findings of the Report to ensure that Chapter 240 fee revenue covers the Department's Radon Program costs. Under the proposed rulemaking, a Pennsylvania Radon Mitigation System Tag will be required for each activation of an active or passive radon mitigation system in this Commonwealth. This proposed section details the operational requirements of implementing the new tag and associated fee.

Chapter 240, Appendix A. Radon certification fee schedule

The Board is proposing to increase radon certification fees based on the findings of the Report to assure that

Chapter 240 fee revenue covers the Department's Radon Program costs. The proposed rulemaking requires a \$50 fee for each Pennsylvania Radon Mitigation System Tag, and it requires that tags are purchased in multiples of five or more per transaction. Also included is a fee waiver provision for local government employees or school employees performing unit installations in a school or local government building if the installation is pursuant to his official duties and the employee is not compensated for this service except through the employee's salary.

F. Benefits, Costs and Compliance

Benefits

The proposed Chapter 218 fees for radioactive material licenses are necessary to ensure that adequate funding is available for the Commonwealth to carry out its duties under the Agreement State program and the Radiation Protection Act. If the Commonwealth were forced to cede its authority to regulate radioactive materials back to the NRC, the regulated community would be subject to higher NRC fees. Radioactive material controls under the Agreement State program guard against the potential for unnecessary public radiation exposure from the use of radioactive material. With regard to Chapter 240, the Radon Program ensures that the public receives services from qualified individuals when dealing with radon, the largest controllable source of unnecessary radiation exposure in this Commonwealth. The proposed Chapter 240 fee increases further that responsibility and will allow the Department to maintain a comprehensive database of radon levels in this Commonwealth. Likewise, the proposed new Pennsylvania Radon Mitigation System Tag and associated fee helps assure the quality of radon services.

Compliance costs

This proposed rulemaking calls for increases in fees of approximately 50% for existing licensees and certified radon service providers, with the exception of license category 2A(2)(c)—Source Material—metal extraction, which is proposed to be reduced by 50%. The proposed increases are in line with inflation and are not unexpected. Other than the increase in fees, there are not additional costs associated with the radioactive materials license categories under Chapter 218 for maintaining compliance with this proposed rulemaking. Also, there are provisions for reduced materials fees for small businesses.

With respect to Chapter 240, there would be an additional charge of \$50 for each radon mitigation performed as a result of the proposed requirement for a Pennsylvania Radon Mitigation System Tag. There are roughly 8,000 to 10,000 new radon mitigation system activations in this Commonwealth each year and approximately 132 mitigators who would be affected by the proposed \$50 fee. A typical mitigation system costs between \$500 and \$2,000.

Compliance assistance plan

The Department will notify the regulated community to expect higher fees by informing RPAC, issuing an Information Notice to relevant licensees and publication in the *Pennsylvania Bulletin*.

Paperwork requirements

The proposed rulemaking does not require additional recordkeeping or reporting requirements as a result of the fee increases in Chapters 218 and 240. The proposed amendments to Chapter 240 would require the individual certified to mitigate radon to report to the Department the serial number of the proposed Pennsylvania Radon

Mitigation System Tag affixed to a newly activated mitigation system. This would occur simultaneously with current reporting requirements under § 240.303.

G. *Pollution Prevention*

The Pollution Prevention Act of 1990 (42 U.S.C.A. §§ 13101—13109) established a National policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally friendly materials, more efficient use of raw materials and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance.

The proposed rulemaking is designed to support the safe and effective use of licensed radioactive materials and promote proper radon testing and mitigation procedures to protect the health and safety of residents in this Commonwealth. Failure to increase fees may have a direct effect on the Department's ability to implement radiological pollution prevention.

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(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on June 16, 2016, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Environmental Resources and Energy Committees. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommenda-

tions or objections must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) 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.

J. *Public Comments*

Interested persons are invited to submit written comments, suggestions, support or objections regarding the proposed rulemaking to the Board. Comments, suggestions, support or objections must be received by the Board by August 30, 2016. In addition to the submission of comments, interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by the Board by August 30, 2016. The one-page summary will be distributed to the Board and available publicly prior to the meeting when the final-form rulemaking will be considered.

Comments including the submission of a one-page summary of comments may be submitted to the Board online, by e-mail, by mail or express mail as follows.

Comments may be submitted to the Board by accessing eComment at <http://www.ahs.dep.pa.gov/eComment>.

Comments may be submitted to the Board by e-mail at RegComments@pa.gov. A subject heading of the proposed rulemaking and a return name and address must be included in each transmission.

If an acknowledgement of comments submitted online or by e-mail is not received by the sender within 2 working days, the comments should be retransmitted to the Board to ensure receipt. Comments submitted by facsimile will not be accepted.

Written comments should be mailed to the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477. Express mail should be sent to the Environmental Quality Board, Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301.

PATRICK McDONNELL,
Acting Chairperson

Fiscal Note: 7-498. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION
PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION
Subpart D. ENVIRONMENTAL HEALTH AND SAFETY
ARTICLE V. RADIOLOGICAL HEALTH
CHAPTER 218. FEES
APPENDIX A
Fees for Radioactive Material Licenses

<i>Fee Category^{5,6}</i>	<i>Description</i>	<i>Annual Fee (\$)^{1,2,3,4,7}</i>
1C	Special Nuclear Material Sealed Source Gauges (X-Ray Fluorescence)	[2,100] 3,150
1D	Special Nuclear Material—Other	[5,800] 8,700
2A(2)(c)	Source Material—metal extraction	[90,200] 45,100
2A5	Removal of Radioactive Contaminants from Drinking Water	[11,200] 16,800
2B	Source Material as Shielding	[750] 1,125

<i>Fee Category^{5,6}</i>	<i>Description</i>	<i>Annual Fee (\$)^{1,2,3,4,7}</i>
2C	Source Material—Other (not 11e2)	[13,400] 20,100
3A	Manufacturing & Distribution Commercial Broad Scope—10 CFR 30, 33	[29,100] 43,650
3B	Manufacturing, Refurbishing & Distribution Commercial Specific License—10 CFR 30	[8,300] 12,450
3C	Manufacturing & Distribution Pharmaceuticals—10 CFR 32.72—32.74	[11,900] 17,850
3D	Pharmaceuticals—Distribution Only—10 CFR 32.7x	[6,800] 10,200
3E	Irradiator—Shielded Source	[4,200] 6,300
3F	Irradiator—Unshielded < 10kCi	[7,800] 11,700
3G	Irradiator—Unshielded >= 10kCi	[31,200] 46,800
3I	Distribution As Exempt—No Review of Device	[10,700] 16,050
3J	Distribution—SSD Devices to Part 31 GLs	[2,500] 3,750
3K	Distribution—No Review-Exempt Sealed Source	[1,900] 2,850
3L	Research & Development Broad Scope	[15,100] 22,650
3M	Research & Development	[5,600] 8,400
3N	Services other than Leak Testing, Waste Disposal or Calibration	[8,500] 12,750
3O	Radiography	[14,100] 21,150
3P	Other Byproduct Material	[2,700] 4,050
3Q	Generally licensed devices under § 217.143 (relating to certain measuring, gauging or controlling devices)	[320] 480
3R1	Greater than the General License Limits in 10 CFR 31.12(a)(3), (4) or (5) but not more than ten times those Limits	[2,100] 3,150
3R2	Greater than ten times the General License Limits in 10 CFR 31.12(a)(3), (4) or (5)	[2,700] 4,050
3S	Manufacturing & Distribution Pharmaceuticals—Accelerator Produced Only	[11,800] 17,700
4A	Waste Storage, Processing or Disposal	Full Cost *
4B	Waste Packaging or Repackaging	[12,000] 18,000
4C	Waste Receipt of Prepackaged for Disposal	[9,200] 13,800
5A	Well Logging & Non Field Flood Tracers	[4,400] 6,600
5B	Well Logging Field Flood Tracer Studies	Full Cost *
6A	Nuclear Laundry	[28,800] 43,200
7A	Human Use—Teletherapy	[13,700] 20,550
7B	Human Use—Broad Scope (except Teletherapy)	[29,000] 36,250
7C	Human Use—Specific License (except Teletherapy)	[4,900] 7,350
8A	Specifically licensed sources used in static eliminators, nonexempt smoke detectors, fixed gauges, dew pointers, calibration sources, civil defense uses or in temporary (2 years or less) storage	[2,100] 3,150
14	Decontamination, Decommissioning, Reclamation or Site Restoration	Full Cost *
16	Reciprocity (180 days/year)	[1,500] 2,250
SB1 ⁵	Small Business— Category 1	[2,300] 3,450
SB2 ⁶	Small Business— Category 2	[500] 750

* * * * *

* Full cost recovery consists of a professional fee, to cover the activities and support of Department personnel, and any other additional incidental charges incurred, such as related contracted services or laboratory costs. The professional fee component (Hourly Rate) is [\$150] \$225 per hour. Other costs are recovered at 100% of actual cost. Invoices shall be issued by the Department at regular intervals but at least quarterly when net costs are incurred.

CHAPTER 240. RADON CERTIFICATION

Subchapter A. GENERAL PROVISIONS

§ 240.3. Definitions.

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

Act—The Radon Certification Act (63 P.S. §§ 2001—2014).

Active radon mitigation system—A radon mitigation system with an electric vent fan.

Acts—The Radon Certification Act and the Radiation Protection Act (35 P.S. §§ 7110.101—7110.703).

Firm—A person, other than an individual.

Laboratory analysis—The act of determining radon concentrations in air, water, soil or passive radon testing devices.

Mitigate—To repair or alter a building or building design for the purpose in whole or in part of reducing the concentration of radon in the indoor atmosphere.

Passive radon mitigation system—A radon mitigation system without an electric vent fan.

Person—An individual, corporation, partnership, association, trust, estate, public or private institution, group, agency or political subdivision of this Commonwealth, another state or political subdivision or agency thereof, and a legal successor, representative, agency or agency of the entities listed in this definition.

* * * * *

Subchapter D. OPERATION REQUIREMENTS

§ 240.303. Reporting of information.

(a) Within 45 days after testing, mitigation or other radon-related service is provided, the person providing the service shall submit to the Department in a format approved by the Department the results of testing, including screening measurements, follow-up measurements, premitigation measurements, postmitigation measurements and the method used to mitigate against radon contamination. If no testing, mitigation or radon-related service has been provided during this 45-day period, that person shall inform the Department of same in writing. Anyone required to provide this 45-day reporting who does not report within 90 days of the completion of the activity will be subject to the Late 45-Day Reporting Fee as set forth in Appendix A (relating to radon certification fee schedule). At a minimum, these results will be retained for 2 years. The information must include:

* * * * *

(6) The type and price of mitigation system installed.

(7) The serial number of the Pennsylvania Radon Mitigation System Tag installed on the system.

(b) Within 45 days after testing, mitigation or other radon-related service is provided, the person providing radon-related services shall report in writing to the owner or occupier of the building the results in picocuries per liter and when appropriate in working levels of radon measurements taken in the building. If a person provides the service through a certified intermediary, it is the responsibility of the intermediary to report the results.

* * * * *

(Editor’s Note: The following section is new and printed in regular type to enhance readability.)

§ 240.309. Pennsylvania Radon Mitigation System Tag.

(a) Upon activation of a new active radon mitigation system in this Commonwealth or upon activation of a passive radon mitigation system in this Commonwealth, the person conducting radon mitigation shall place a Pennsylvania Radon Mitigation System Tag on the vent pipe next to the manometer. If there is not a visible vent pipe, the person conducting radon mitigation shall place the tag on the electric utility panel. The person conducting radon mitigation shall record the following information on the Pennsylvania Radon Mitigation System Tag:

(1) The name, phone number and certification number of the individual who is certified to mitigate. If the radon mitigation is conducted by a firm, the name, phone number, the certification number of the individual who is certified to mitigate radon and the responsible charge of the firm’s mitigation activities shall be recorded.

(2) The date of the radon mitigation system activation.

(b) Upon postmitigation testing of an active radon mitigation system, the person conducting the postmitigation radon testing shall record the end date of the postmitigation test on the Pennsylvania Radon Mitigation System Tag.

(c) A Pennsylvania Radon Mitigation System Tag shall be purchased from the Department as set forth in Appendix A (relating to radon certification fee schedule).

(1) Only an individual who is certified to mitigate radon may purchase a Pennsylvania Radon Mitigation System Tag from the Department.

(2) A Pennsylvania Radon Mitigation System Tag may only be transferred with prior written approval from the Department.

(d) The Department will assign each Pennsylvania Radon Mitigation System Tag a unique serial number.

APPENDIX A

Radon Certification Fee Schedule

Testing Individual	[\$350] \$525 every 2 years
Testing Employee	[\$100] \$150 every 2 years
Testing Firm	[\$700] \$1,050 every 2 years
Mitigation Individual	[\$300] \$450 every 2 years
Mitigation Firm	[\$700] \$1,050 every 2 years
Laboratory Individual	[\$400] \$600 every 2 years
Laboratory Firm	[\$750] \$1,125 every 2 years
Primary Testing Device Listing	[\$100] \$150 every 2 years (1)
Course Provider	[\$375] \$565 every 2 years (2)
Late Application Renewal	[\$100] \$150
Late 45-Day Reporting	[\$100] \$150 (3)
Pennsylvania Radon Mitigation System Tag	\$50 per tag (4)

The Department will review the adequacy of the fees established in this schedule at least once every 3 years and provide a written report to the EQB. The report must identify any disparity between the amount of program income generated by the fees and the costs to administer these programs, and must contain recommendations to

increase fees to eliminate the disparity, including recommendations for regulatory amendments to increase program fees.

(1) Primary radon testers shall submit the Primary Testing Device Fee as specified in the Radon Certification Fee Schedule for each device they read or analyze, or both.

(2) A person approved by the Department to provide initial or continuing, or both, education courses shall submit the Course Provider Fee as specified in this appendix.

(3) Anyone not submitting the required 45-day testing or mitigation, or both, reporting within 90 days of the completion of the testing or mitigation, or both, activity (or if no activities have been performed during this period

of informing the Department of same in writing) will be subject to the Late 45-Day Reporting Fee as specified in this appendix.

(4) Pennsylvania Radon Mitigation System Tags shall be purchased in amounts of five or more per transaction. The Department will waive the fee for a local government employee or school employee who installs an active radon mitigation system in a school or local government building or activates a passive radon mitigation system in a school or local government building if the employee installs or activates the system pursuant to his official duties and the employee is not compensated for this service except through the employee's salary.

[Pa.B. Doc. No. 16-1129. Filed for public inspection July 1, 2016, 9:00 a.m.]

NOTICES

DEPARTMENT OF AGRICULTURE

Addendum to the Order of Quarantine; Spotted Lanternfly

Recitals

A. Spotted lanternfly, *Lycorma delicatula*, is a new pest to the United States and has been detected in the Commonwealth. This is a dangerous insect to forests, ornamental trees, orchards and grapes and not widely prevalent or distributed within or throughout the Commonwealth or the United States. Spotted lanternfly has been detected in the Commonwealth and has the potential to spread to uninfested areas by natural means or through the movement of infested articles.

B. The Plant Pest Act (Act) (3 P.S. §§ 258.1—258.27) empowers The Department of Agriculture (Department) to take various measures to detect, contain and eradicate plant pests. A plant pest is defined as an organism, including other plants, causing or capable of causing injury or damage to plants or plant products (3 P.S. § 258.2). These powers include the authority, set forth at section 258.21 of the Act (3 P.S. § 258.21), to establish quarantines to prevent the spread of plant pests within this Commonwealth.

C. Under the authority of section 258.20 of the Act (3 P.S. § 258.20) the Department may declare a pest to be a public nuisance when the Department determines a plant pest to be dangerous or destructive to the agriculture, horticulture or forests of this Commonwealth. For the reasons set forth in Paragraph A above, the Department declares Spotted lanternfly, *Lycorma delicatula*, to be a public nuisance.

D. Consistent with the Order of Quarantine published at 44 Pa.B. 6947 issued Saturday, November 1, 2014, where the Department detects or confirms any of the plant pests established in this Order of Quarantine—Spotted lanternfly, *Lycorma delicatula*—the place or area in which any of these plant pests are detected or con-

firmed shall be subject to the provisions of that Order of Quarantine published at 44 Pa.B. 6947 issued Saturday, November 1, 2014.

E. The place or area in which the plant pest is detected or confirmed shall be added to the Order of Quarantine, published at 44 Pa.B. 6947 issued Saturday, November 1, 2014, through an addendum delineating the specific location and geographic parameters of the area or place. Such Addendum shall be published in the *Pennsylvania Bulletin* and enforcement of the Addendum to the Order of Quarantine, published at 44 Pa.B. 6947 issued Saturday, November 1, 2014, with regard to that place or area shall become effective immediately.

Order

Under authority of section 21 of the act (3 P.S. § 258.21), and with the Recitals previously listed incorporated into and made a part hereof this Addendum to the Order of Quarantine published at 44 Pa.B. 6947 issued Saturday, November 1, 2014 by reference, the Department orders the following:

1. *Establishment of Quarantine.*

A quarantine is hereby established with respect to New Hanover Township, Montgomery County and Lower Macungie Township and Alburdis Borough and Macungie Borough, Lehigh County. This is in addition to, and does not replace, any townships and areas already subject to the Spotted Lanternfly Quarantine Order published at 44 Pa.B. 6947 issued Saturday, November 1, 2014, and any previous Addendums to that Quarantine Order.

2. *All Provisions Apply.*

All of the provisions established in the Spotted Lanternfly Quarantine Order published at 44 Pa.B. 6947 issued Saturday, November 1, 2014, are hereby incorporated herein and made a part hereof this Addendum as if fully set forth herein and shall hereby be made applicable to New Hanover Township, Montgomery County and Lower Macungie Township and Alburdis Borough and Macungie Borough, Lehigh County.

RUSSELL C. REDDING,
Secretary

[Pa.B. Doc. No. 16-1130. Filed for public inspection July 1, 2016, 9:00 a.m.]

DEPARTMENT OF BANKING AND SECURITIES

Actions on Applications

The Department of Banking and Securities (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 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 June 21, 2016.

Under section 503.E of the Department of Banking and Securities 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 and Securities, 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

Conversions

<i>Date</i>	<i>Name and Location of Applicant</i>	<i>Action</i>
6-17-2016	<i>From:</i> First National Community Bank Dunmore Lackawanna County <i>To:</i> FNCB Bank Dunmore Lackawanna County	Approved

Application for approval to convert from a National banking association to a Pennsylvania State-chartered bank.

Consolidations, Mergers and Absorptions

<i>Date</i>	<i>Name and Location of Applicant</i>	<i>Action</i>
6-17-2016	Wayne Bank Honesdale Wayne County	Approved

Application for approval to merge The National Bank of Delaware County, Walton, NY, with and into Wayne Bank, Honesdale.

Branch Applications

De Novo Branches

<i>Date</i>	<i>Name and Location of Applicant</i>	<i>Location of Branch</i>	<i>Action</i>
6-3-2016	Northwest Savings Bank Warren Warren County	3380 Washington Road Peters Township Washington County	Opened

Branch Discontinuances

<i>Date</i>	<i>Name and Location of Applicant</i>	<i>Location of Branch</i>	<i>Action</i>
5-12-2016	ESSA Bank & Trust Stroudsburg Monroe County	5020 Route 873 Schnecksville Lehigh County	Closed
5-4-2016	ESSA Bank & Trust Stroudsburg Monroe County	1500 North Cedar Crest Boulevard Allentown Lehigh County	Closed
6-2-2016	Northwest Bank Warren Warren County	2600 Old Washington Road Pittsburgh Allegheny County	Closed

CREDIT UNIONS

No activity.

The Department's web site at www.dobs.pa.gov includes public notices for more recently filed applications.

ROBIN L. WIESSMANN,
Secretary

[Pa.B. Doc. No. 16-1131. Filed for public inspection July 1, 2016, 9:00 a.m.]

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

Retention of Engineering/Construction Management Firms; Project Reference No. FDC-500-809

The Department of Conservation and Natural Resources (Department) will retain an engineering firm, or construction management firm, for a contract to perform construction inspection services on various projects located in State Forests and State Parks throughout this Commonwealth. The contract will include inspection of construction activities for rehabilitation and replacement

of bridges, roads and drainage, dams, swimming pools, sewage and water treatment systems, marinas and buildings including associated heating, plumbing and electrical work. The contract will be for a period of 1 year with a renewal option of up to 4 years. It is anticipated that up to eight construction inspectors may be needed to perform the required work and services at any given time. The work will be assigned by the Department on an as needed basis.

Letters of Interest for this project will only be accepted from individuals, firms or corporations duly authorized to engage in the practice of engineering. If an individual, firm or corporation not authorized to engage in the practice of engineering desires to submit a letter of interest, the individual, firm or corporation may do so as part of a joint venture with an individual, firm or

corporation which is permitted under State law to engage in the practice of engineering.

PART I GENERAL REQUIREMENTS

I-1. *Specific Requirements.* The firm will be required to attend a preconstruction conference and regular job conferences with the Department and the construction contractor for each project. Under the direction of the Department, the selected firms will be required to: keep records; document the construction work and provide site inspection to assure conformity with contract specifications; prepare current and final estimates for payment to the construction contractor; assist the Department in obtaining compliance with the labor standards, safety and accident prevention and equal opportunity provisions of the contract; and perform other duties as required. For all bridge construction projects, the selected firm will be required to assemble all pertinent construction data into a manual and submit two copies to the Department after the completion of construction.

The inspection staff must comply with at least one of the following requirements:

1. Be certified by the National Institute for Certification in Engineering Technologies in the field of Transportation Engineering Technology, subfield of Highway Construction, at Level 2 or higher.
2. Be registered as a Professional Engineer by the Commonwealth with 1 year of construction experience acceptable to the Department.
3. Be certified as an Engineer-in-Training by the Commonwealth with 2 years of construction acceptable to the Department.
4. Hold a Bachelor of Science in Civil Engineering with 2 years of construction experience acceptable to the Department, or a Bachelor of Science in Civil Engineering Technology with 2 years of construction experience acceptable to the Department.
5. Hold an Associate degree in Civil Engineering Technology with 3 years of construction experience acceptable to the Department.

I-2. *Addenda to the Request for Proposals (RFP).* If the Department deems it necessary to revise any part of this RFP before the proposal response date, the Issuing Office will post an addendum to the Department's web site at <http://www.dcnr.state.pa.us>. It is the Offeror's responsibility to periodically check the web site for any new information or addenda to the RFP. Answers to the questions asked during the Questions & Answers period also will be posted, as necessary, to the web site as an addendum to the RFP.

I-3. *Small Diverse Business (SDB) Information.* The Offering Firm must be a self-certified Small Business/SDB by the Department of General Services (DGS), Bureau of Small Business Opportunities.

An SDB is a DGS-verified minority-owned business, woman-owned business, veteran-owned business or service-disabled veteran-owned business.

A small business is a business in the United States which is independently owned, not dominant in its field of operation, employs no more than 100 full-time or full-time equivalent employees, and earns less than \$7 million in gross annual revenues for building design, \$20 million in gross annual revenues for sales and services and \$25 million in gross annual revenues for those businesses in the information technology sales or service business.

Questions regarding this program can be directed to the Department of General Services, Bureau of Small Business Opportunities, Room 611, North Office Building, Harrisburg, PA 17125, (717) 783-3119, fax (717) 787-7052, gs-bsbo@pa.gov.

The DGS' directory of Bureau of Small Business Owners (BSBO)-verified minority, women, veteran and service disabled veteran-owned businesses can be accessed by searching for "Small Diverse Businesses" at www.dgs.state.pa.us.

I-4. *Notification of Selection.* Offerors whose proposals are not selected will be notified when contract negotiations have been successfully completed and the Department has received the final negotiated contract signed by the selected Offeror.

I-5. *Type of Contract.* The type of contract as a result of this RFP shall be an open-end, requirements contract. Work shall be assigned on an as-needed basis as determined by the Department. The initial term of the agreement shall be 1 year and renewable for up to 4 subsequent years. Reimbursement for services shall be based upon hours of service and qualifying expenses. The reimbursement type shall be at the Department's discretion. The work shall be reviewed by the staff of the Bureau of Facility Design and Construction and when applicable, approved by the same staff.

PART II PROPOSAL REQUIREMENTS

Offerors must submit their proposals in the format, including heading descriptions, outlined as follows. To be considered, the proposal must respond to all requirements in this part of the RFP. Offerors should provide any other information thought to be relevant, but not applicable to the enumerated categories, as an appendix to the proposal.

II-1. *Letter of Interest.* Each Letter of Interest must include the firm's Federal identification number and the project reference number. The Letter of Interest shall also include a description of the firm's three most recently completed projects similar to the project proposed. The description shall include the client, contact person and phone number, the estimated or actual construction cost of the portion of the work which the firm designed, the project manager and the names of all personnel who made major contributions to the project. The Letter of Interest shall indicate the firm's capability of working on multiple small projects at the same time and understanding of the Department's needs. A standard DGS Form 150-ASP must accompany the Letter of Interest and shall indicate the individual in charge. The Form 150-ASP is available by downloading from the DGS' web site at <http://www.dgs.state.pa.us> (select "Businesses," then "Design & Construction," then "Design," then "Professional Selections Application Form (ASP-150)").

Form 150-ASP shall be submitted in hard copy format per Part II, II-2 of the RFP. The electronic submission instructions on the DGS web site are for the DGS' projects only. Additional information pertinent to this firm's qualifications to do the work of this contract may be included.

II-2. *Number of Copies.* Two copies of the SDB participation section bound and sealed separately from the remainder of the proposal and six copies of the complete set consisting of the Letter of Interest and the required forms must be received no later than 4 p.m. on July 30, 2016. The six copies shall be submitted in six complete sets that shall be spiral bound or in folders or secured by

binder clips. The assignment and services will be made to one or more of the firms responding to this notice. However, the Department reserves the right to reject all Letters of Interest submitted, cancel the solicitation requested under this notice or readvertise solicitation for this service, or both.

II-3. *SDB Participation Submittal.* The Offeror must include proof of Small Business/SDB qualification in the submittal of the proposal, as indicated:

A. Small Business/SDB verified by BSBO as a Small Business/SDB must provide a photocopy of the verification letter.

II-4. *Debriefing.* The Department will not offer a debriefing session to the unsuccessful firms. The Department disclaims any liability whatsoever to its review of the proposal submitted and in formulating a recommendation for selections. Recommendations made by the Department shall be final.

**PART III
CRITERIA FOR SELECTION**

III-1. *Selection Criteria.* The engineering consulting firm will be evaluated upon, but not limited to, the following criteria:

- A. Qualifications and experience of firm’s personnel.
- B. Particular capability to perform the required inspections.

C. Understanding the Department’s requirements, policies and specifications.

D. Available manpower to perform the services required.

E. Equitable distribution of contracts.

F. Offerer is a self-certified Small Business.

To be eligible for selection for this project the Offerer firm must be a self-certified Small Business/SDB verified by the DGS’, Bureau of Small Business Opportunities. Refer to Part I, 1-3.

III-2. *Number of Contracts.* The Department may select more than one firm.

**PART IV
MAILING AND CONTACT INFORMATION**

Firms interested in performing the required services for this project are invited to submit Letters of Interest to Alfred Uzokwe, PE, Director, Bureau of Facility Design and Construction, Rachel Carson State Office Building, 8th Floor, 400 Market Street, P.O. Box 8451, Harrisburg, PA 17105-8451. Contact Al Thomas at (717) 772-0650 for general information concerning this RFP.

CINDY ADAMS DUNN,
Secretary

[Pa.B. Doc. No. 16-1132. Filed for public inspection July 1, 2016, 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 POLLUTANT 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. In accordance with 25 Pa. Code § 92a.32(d), the proposed discharge of stormwater associated with construction activities will be managed in accordance with the requirements of 25 Pa. Code Chapter 102. 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

Southwest Regional Office: Regional Clean Water Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745. Phone: 412.442.4000.

NPDES No. (Type)	Facility Name & Address	County & Municipality	Stream Name (Watershed No.)	EPA Waived Y/N?
PA0034282 (Sewage)	Maple Grove Trailer Park STP 700 Maple Grove Road Bulger, PA 15019	Washington County Robinson Township	Unnamed Tributary of Saint Patrick Run (20-D)	Yes
PA0093955 (Sewage)	DeCarlo SRSTP 2800 Washington Boulevard McKeesport, PA 15037	Somerset County Middlecreek Township	UNT of Laurel Hill Creek (19-E)	Yes

Southcentral Region: Clean Water Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110. Phone: 717-705-4707.

NPDES No. (Type)	Facility Name & Address	County & Municipality	Stream Name (Watershed #)	EPA Waived Y/N?
PA0261653— SEW	James & Carolyn Jackson 151 Shatto Drive Carlisle, PA 17013	Cumberland County/ North Middleton Township	Conodoguinet Creek/7B	Y
PA0083691— IW	West Earl Township Water Dept 161 Turtle Hill Road Brownstown, PA 17508	Lancaster County West Earl Township	Conestoga River/7J	Y

Northwest Region: Clean Water Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481

NPDES No. (Type)	Facility Name & Address	County & Municipality	Stream Name (Watershed #)	EPA Waived Y/N
PA0238619 (Sewage)	Chestnut Grove Homeowners Association 100 Ridgemont Drive Butler, PA 16001-8386	Butler County Franklin Township	Mulligan Run (20-C)	Yes
PA0101737 (Sewage)	Wilderness MHP 108 Wilderness Park Clarendon, PA 16313	Warren County Pleasant Township	Unnamed Tributary to Morrison Run (16-B)	Yes

II. Applications for New or Expanded Facility Permits, Renewal of Major Permits and EPA Non-Waived Permit Applications

Southeast Region: Clean Water Program Manager, 2 East Main Street, Norristown, PA 19401. Telephone 484-250-5970.

PA0058866, Industrial, SIC Code 2066, **Blommer Chocolate Co.**, 1101 Blommer Drive, East Greenville, PA 18041-0045. Facility Name: Blommer Chocolate East Greenville Facility. This existing facility is located in Upper Hanover Township, **Montgomery County**.

Description of Existing Activity: The application is for a renewal of an NPDES permit for an existing discharge of treated Industrial Waste.

The receiving stream(s), Unnamed Tributary to Perkiomen Creek and Perkiomen Creek, is located in State Water Plan watershed 3-E and is classified for Migratory Fishes and Trout Stocking, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfalls 001, 002, 004 are based on a storm water event.

<i>Parameters</i>	<i>Mass Units (lbs/day)</i>			<i>Concentrations (mg/L)</i>		<i>Instant. Maximum</i>
	<i>Average Monthly</i>	<i>Average Weekly</i>	<i>Minimum</i>	<i>Average Monthly</i>	<i>Daily Maximum</i>	
pH (S.U.)	XXX	XXX	XXX	XXX	Report	XXX
Total Suspended Solids	XXX	XXX	XXX	XXX	Report	XXX
Oil and Grease	XXX	XXX	XXX	XXX	Report	XXX
Total Kjeldahl Nitrogen	XXX	XXX	XXX	XXX	Report	XXX
Iron, Total	XXX	XXX	XXX	XXX	Report	XXX

The proposed effluent limits for Outfall 003 are based on a design flow of 0.0225 MGD.

<i>Parameters</i>	<i>Mass Units (lbs/day)</i>			<i>Concentrations (mg/L)</i>		<i>Instant. Maximum</i>
	<i>Average Monthly</i>	<i>Daily Maximum</i>	<i>Instantaneous Minimum</i>	<i>Average Monthly</i>	<i>Daily Maximum</i>	
Flow (MGD)	Report	Report	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0	XXX	XXX	9.0
Temperature (deg F) (°F)	XXX	XXX	XXX	XXX	XXX	110
Total Suspended Solids	XXX	XXX	XXX	30	60	75
Total Dissolved Solids	Report	Report	XXX	Report	Report	XXX

In addition, the permit contains the following major special conditions:

- Obtain Necessary Property Rights
- Proper Sludge Disposal
- BAT/BCT Reopener
- Small Stream Discharge
- Chlorine Minimization
- Chemical Additives
- Stormwater Requirements

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 in effect.

PA0055751, Industrial, SIC Code 3465, **Delbar Products Inc.** Liquidating Trust, P O Box 212, Coopersburg, PA 18036. Facility Name: Delbar Products Inc. Perkasio Facility. This existing facility is located in Perkasio Borough, **Bucks County**.

Description of Existing Activity: The application is for a renewal of an NPDES permit for an existing discharge of treated Industrial Waste.

The receiving stream(s), Unnamed Tributary to East Branch Perkiomen Creek, is located in State Water Plan watershed 3-E 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 002 are based on a design flow of 0.0017 MGD.

<i>Parameters</i>	<i>Mass Units (lbs/day)</i>			<i>Concentrations (mg/L)</i>		<i>Instant. Maximum</i>
	<i>Average Monthly</i>	<i>Average Weekly</i>	<i>Minimum</i>	<i>Average Monthly</i>	<i>Daily Maximum</i>	
Flow (MGD)	Report	XXX	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0	XXX	XXX	9.0
Trichloroethylene	XXX	XXX	XXX	0.015	0.03	0.038

In addition, the permit contains the following major special conditions:

- Property Rights
- BAT/BCT
- TMDL/ WLA Analysis
- Small Stream Discharge

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 in effect.

Northwest Region: Clean Water Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

PA0264466, Sewage, SIC Code 8800, **Joseph Frugoli**, 145 New Road, Churchville, PA 18966-1445. Facility Name: Joseph Frugoli SRSTP. This proposed facility is located in Eldred Township, **McKean County**.

Description of Proposed Activity: The application is for a new NPDES permit for a new discharge of treated residential sewage.

The receiving stream is a drainage swale to Indian Creek, located in State Water Plan watershed 16-C and classified for Cold Water Fish, 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 Units (lbs/day)			Concentrations (mg/L)		Instant. Maximum
	Average Monthly	Average Weekly	Minimum	Average Monthly	Maximum	
Flow (MGD)	Report	XXX	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0	XXX	9.0	XXX
Total Residual Chlorine (TRC)	XXX	XXX	XXX	Report	XXX	XXX
Biochemical Oxygen Demand (BOD ₅)	XXX	XXX	XXX	10.0	XXX	20
Total Suspended Solids	XXX	XXX	XXX	10.0	XXX	20
Fecal Coliform (CFU/100 ml)	XXX	XXX	XXX	200 Geo Mean	XXX	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.

Southwest Regional Office: Regional Clean Water Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745. Phone: 412.442.4000.

PA0026506 A-1, Sewage, West Mifflin Sanitary Sewer Municipal Authority, 1302 Lower Bull Run Road, West Mifflin, PA 15122-2902. Facility Name: Thompson Run STP. This existing facility is located in West Mifflin Borough, Allegheny County.

Description of Existing Activity: The application is for an Amendment of an NPDES permit for an existing discharge of treated Sewage.

The receiving stream, Unnamed Tributary to Thompson Run, is located in State Water Plan watershed 19-A and is classified for Warm Water Fishes, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Temporary Outfall 001-T are based on a design flow of 4.0 MGD.

Parameters	Mass (lb/day)			Concentration (mg/l)		Instant. Maximum
	Average Monthly	Weekly Average	Minimum	Average Monthly	Weekly Average	
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	5.0	XXX	XXX	XXX
Total Residual Chlorine	XXX	XXX	XXX	.01	XXX	.03
CBOD ₅	834	1,251	XXX	25	37.5	50
BOD ₅						
Raw Sewage Influent	Report	Report Daily Max	XXX	Report	XXX	XXX
Total Suspended Solids						
Raw Sewage Influent	Report	Report Daily Max	XXX	Report	XXX	XXX
Total Suspended Solids	1,001	1,502	XXX	30	45	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
Ammonia-Nitrogen						
May 1 - Oct 31	67	100	XXX	2.0	3.0	4.0
Nov 1 - Apr 30	100	150	XXX	3.0	4.5	6.0

The EPA Waiver is not in effect.

PA0255106, Sewage, SIC Code 6035, First Federal Savings & Loan Association, 25 East High Street, Waynesburg, PA 15370. Facility Name: 650 Moore Road SRSTP. This proposed facility is located in South Franklin Township, Washington County.

Description of Proposed Activity: The application is for a new NPDES permit for a new discharge of treated SRSTP Sewage.

The receiving stream, Unnamed Tributary to Chartiers Creek, is located in State Water Plan watershed 20-F and is classified for Warm 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 Units (lbs/day)		Minimum	Concentrations (mg/L)		Instant. Maximum
	Average Monthly	Average Weekly		Average Monthly	Maximum	
Flow (MGD)	Report	XXX	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0	XXX	9.0	XXX
Biochemical Oxygen Demand (BOD ₅)	XXX	XXX	XXX	10.0	XXX	20
Total Suspended Solids	XXX	XXX	XXX	10.0	XXX	20
Fecal Coliform (CFU/100 ml)	XXX	XXX	XXX	200	XXX	XXX
				Geo Mean		

The EPA Waiver is in effect.

III. WQM Industrial Waste and Sewerage Applications under The Clean Streams Law

Southwest Regional Office: Regional Clean Water Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745. Phone: 412.442.4000.

WQM Permit No. 0216400, Sewage, **Allegheny County Park Department**, 542 Forbes Avenue, Pittsburgh, PA 15219-2904.

This proposed facility is located in Elizabeth Township, **Allegheny County**.

Description of Proposed Action/Activity: construction of a sewage treatment plant.

Southeast Region: Clean Water Program Manager, 2 East Main Street, Norristown, PA 19401, 484.250.5900.

WQM Permit No. 4698412, Sewage, Amendment, **Lower Perkiomen Valley Regional Sewer Authority**, 101 Station Road, P.O. Box 297, Oaks, PA 19456.

This proposed facility is located in Upper Providence Township, **Montgomery County**.

Description of Action/Activity: To increase the permitted maximum monthly average daily flow from 20 mgd to 26 mgd and also to increase the permitted maximum monthly organic loading from 17,192 lbs/day to 26,000 lbs/day.

WQM Permit No. WQG02151604, Sewage, **Willistown Township**, 688 Sugartown Road, Malvern, PA 19355-3302.

This proposed facility in Willistown Township, **Chester County**.

Description of Action/Activity: Construction of a pressure sewer extension to 13 properties.

Northwest Region: Clean Water Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

WQM Permit No. WQG01371601, Sewage, **Bryan Adams**, 644 West Poland Road, Bessemer, PA 16112.

This proposed facility is located in North Beaver Township, **Lawrence County**.

Description of Proposed Action/Activity: Single Residence Sewage Treatment Plant.

WQM Permit No. 3796201 A-5, Industrial, **Dairy Farmers of America Inc.**, 800 West Tampa Street, Springfield, MO 65802.

This existing facility is located in Wilmington Township, **Lawrence County**.

Description of Proposed Action/Activity: Upgrades and modifications to the existing WWTP aeration system.

WQM Permit No. WQG01251606, Sewage, **Samuel K. Ponsoll**, 12680 Fry Road, Edinboro, PA 16412.

This proposed facility is located in Washington Township, **Erie County**.

Description of Proposed Action/Activity: Single Residence Sewage Treatment Plant.

VI. NPDES Individual Permit Applications for Discharges of Stormwater Associated with Construction Activities

Southeast Region: Waterways & Wetlands Program Manager, 2 East Main Street, Norristown, PA 19401. Telephone 484-250-5160.

NPDES Permit No.	Applicant Name & Address	County	Municipality	Receiving Water/Use
PAI011516008	Thomas Sean O'Donnell Michelle Roberts O'Donnell 3362 Conestoga Road Glenmoore, PA 19343	Chester	East Nantmeal Township	Beaver Run EV Black Horse Creek HQ-TSF-MF
PAI011516016	West Pikeland Township 1645 Art School Road Chester Springs, PA 19425	Chester	West Pikeland Township	Pickering Creek HQ-TSF

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI011516012	Planebrook Partners, LLC 2298 Horseshoe Pike Honey Brook, PA 19344	Chester	East Whiteland Township	Tributary to Valley Creek EV

Southcentral Region: Waterways & Wetlands Program, 909 Elmerton Avenue, Harrisburg, PA 17110-8200, Nathan Crawford, Section Chief, 717.705.4802.

<i>Permit #</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI030614002	Oak Grove Partners, LLC 3335 Morgantown Road PO Box 7 Mohnton, PA 19540	Berks	Robeson Township	Hay Creek (EV-MF) UNT Hay Creek (EV-MF) UNT Hay Creek 63882 (CWF, MF) Wetlands (CWF, MF) Wetlands (EV)

Northcentral Region: Waterways & Wetlands Program Manager, 208 West Third Street, Williamsport, PA 17701

Centre County Conservation District: 414 Holmes Avenue, Suite 4, Bellefonte, PA 16823, (814) 355-6817

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI041410006(R)	S&A Homes, Inc. 2121 Old Gatesburg Road State College, PA 16803	Centre	College Township and Harris Township	Spring Creek HQ-CWF

Union County Conservation District: Union County Government Center, 155 North 15th Street, Lewisburg, PA 17837, (570) 524-3860

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI046016002	Dave Iddings 900 Chestnut Street Mifflinburg, PA 17844	Union	West Buffalo Township	UNT to Muddy Run, HQ-CWF

STATE CONSERVATION COMMISSION

PROPOSED NUTRIENT MANAGEMENT PLANS RELATED TO APPLICATIONS FOR NPDES PERMITS FOR CAFOs

This notice provides information about agricultural operations that have submitted nutrient management plans (NMPs) for approval under 3 Pa.C.S. Chapter 5 and that have or anticipate submitting applications for new, amended or renewed NPDES permits, or Notices of Intent (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.

Based upon preliminary reviews, the State Conservation Commission (SCC) or County Conservation Districts (CCD) working under a delegation agreement with the SCC have completed an administrative review of NMPs described. These NMPs are published as proposed plans for comment prior to taking final actions. The NMPs are available for review at the CCD office for the county where the agricultural operation is located. A list of CCD office locations is available at <http://www.nacdnet.org/about/districts/directory/pa.phtml> or can be obtained from the SCC at the office address listed or by calling (717) 787-8821.

Persons wishing to comment on an NMP are invited to submit a statement outlining their comments on the plan to the CCD, with a copy to the SCC for each NMP, within 30 days from the date of this public notice. Comments received within the respective comment periods will be considered in the final determinations regarding the NMPs. Comments should include the name, address and telephone number of the writer and a concise statement to inform the SCC of the exact basis of the comments and the relevant facts upon which they are based. Comments should be sent to the SCC, Agriculture Building, Room 310, 2301 North Cameron Street, Harrisburg, PA 17110.

Persons with a disability who require an auxiliary aid, service, including TDD users or other accommodations to seek additional information should contact the SCC through the Pennsylvania AT&T Relay Service at (800) 654-5984.

**APPLICATIONS
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>
Brian Blevins, Blevins Blue Mountain Finishing Farm 10315 Otterbein Church Road Newburg, PA 17240	Franklin	97, 56.1 acres available for manure	629.26	Swine	NA	Renewal

**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: Safe Drinking Water Supply Management Program Manager, 2 East Main Street, Norristown, PA 19401.

Permit No. 4616512, Public Water Supply.

Applicant	Horsham Water & Sewer Authority
Township	Horsham
County	Montgomery
Responsible Official	Tina A. Funky, P.E. 617 Horsham Road Horsham, PA 19044
Type of Facility	PWS

Consulting Engineer	Gilmore & Associates, Inc. 65 East Butler Avenue, Suite 100 New Britain, PA 18901
Application Received Date	June 13, 2016
Description of Action	Installation of activated carbon treatment systems at wells 2b and 40 for removal of PFC's.
Permit No. 0916509 , Public Water Supply.	
Applicant	Warrington Township Water & Sewer Department
Township	Warrington
County	Bucks
Responsible Official	Christian R. Jones Warrington Township Water & Sewer Department 852 East Road Warrington, PA 18976
Type of Facility	PWS
Consulting Engineer	Carroll Engineering 949 Easton Road Warrington, PA 18976
Application Received Date	June 6, 2016
Description of Action	Construction of a new treatment building, new GAC filtration, and underground backwash holding tank for the treatment and removal of perfluorchemicals in Well nos. 1, 2 & 6.

Southcentral Region: Safe Drinking Water Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

Permit No. 2116506 MA, Minor Amendment, Public Water Supply.

Applicant	Blue Mountain Heights MHP
Municipality	Lower Mifflin Township
County	Cumberland
Responsible Official	Robert C. Leiby, Owner PO Box 794 New Kingston, PA 17072
Type of Facility	Public Water Supply
Consulting Engineer	J Michael Hess, P.E. Dewberry Engineers, Inc. 101 Noble Boulevard Carlisle, PA 17013
Application Received:	6/10/2016

Description of Action Treatment facility upgrades including replacement of greensand filters and installation of additional contact tanks to achieve 4-log inactivation of viruses.

Northwest Region: Safe Drinking Water Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

Permit No. 3716502, Public Water Supply.

Applicant **Pennsylvania American Water Company**

Township or Borough New Beaver Borough & Wayne Township

County **Lawrence**

Responsible Official David Kaufman
Vice President—Engineering
Pennsylvania American Water Company
800 West Hershey Park Drive
Hershey, PA 17033

Type of Facility Public Water Supply

Consulting Engineer Dan Cargnel, P.E.
Buchart Horn, Inc.
3700 Koppers Street
Suite 540
Baltimore, MD 21227

Application Received Date June 10, 2016

Description of Action New 8 million gallons per day capacity water treatment plant, raw water facilities and finished water transmission main.

MINOR AMENDMENT

Applications Received Under the Pennsylvania Safe Drinking Water Act

Southwest Region: Water Supply Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

Application No. 3016505MA, Minor Amendment.

Applicant **Southwestern Pennsylvania Water Authority**
1442 Jefferson Road
PO Box 187
Jefferson, PA 15344

[Township or Borough] Cumberland Township

Responsible Official John W. Golding, Manager
Southwestern Pennsylvania Water Authority
1442 Jefferson Road
PO Box 187
Jefferson, PA 15344

Type of Facility Water system

Consulting Engineer Bankson Engineers, Inc.
267 Blue Run Road
Suite 200
Cheswick, PA 15024

Application Received Date June 15, 2016

Description of Action Painting of the water treatment plant clarifier walls.

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 Pennsylvania AT&T Relay Service at (800) 654-5984.

The Department has received the following Notices of Intent to Remediate:

Northcentral Region: Environmental Cleanup & Brownfields Program Manager, 208 West Third Street, Williamsport, PA 17701.

T & H Transport, LLC Project, Interstate 80 @ MM214.8W, Turbot Township, **Northumberland County**. Northridge Group, Inc., P.O. Box 231, Northumberland, PA 17857 on behalf of T & H Transport, LLC, 2865 135th St, Toledo, OH 43611, submitted a Notice of Intent to Remediate. The incident site was impacted with approximately 45-gallons of diesel fuel. The proposed future use of the property will remain a berm area located adjacent to the interstate highway. The proposed cleanup standard for the site is Statewide Health Standard. The Notice of Intent to Remediate was published in *The Daily Item* on May 18, 2016.

Southcentral Region: Environmental Cleanup and Brownfields Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110. Phone 717.705.4705.

Bare Development/Miller Chemical Company Fire, 275 Radio Road, Hanover, PA 17331, Hanover Borough, **Adams County**. Ramboll Environ US Corporation, 4350 North Fairfax Drive, Suite 300, Arlington, VA 22203, on behalf of Miller Chemical & Fertilizer, LLC, 120 Radio Road, Hanover, PA 17331, and Bare Development, L.P. & Radio Hanover, Inc., PO Box 234, Hanover, PA 17331 submitted a Notice of Intent to Remediate concerning remediation of site soils contaminated with Inorganics and Fertilizer Constituents during emergency response activities at a fire at the Miller Chemical Company. The site will be remediated to the Site Specific, Background, and Residential Statewide Health Standards and remain agricultural. The Notice of Intent to Remediate was published in *The Evening Sun* on April 7, 2016.

Northwest Region: Environmental Cleanup & Brownfields Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

Gustafson 6H Well Pad, 606 Granville Road, Snyder Township, **Jefferson County**. EnviroTrac, Ltd., 176 Thorn Hill Road, Warrendale, PA 15086, on behalf of EXCO Resources (PA), LLC, 260 Executive Drive, Suite 100, Cranberry Township, PA 16066, submitted a Notice of Intent to Remediate. Pondered water and elevated specific conductivity levels were identified within the sand cushion, located beneath the liner of the impoundment, during removal and reclamation of Impoundment B. The Site-Specific Standard has been selected for remediation. Intended future use of the property will be residential. The Notice of Intent to Remediate was published in the *Courier Express* on May 5, 2016.

Southwest Region: Environmental Cleanup & Brownfield Development Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

TMS International, LLC West Mifflin Facility (formerly Tube City), 516 Delwar Road, West Mifflin Borough, **Allegheny County**. Groundwater Sciences Corporation, 2601 Market Place, Suite 310, Harrisburg, PA 17110 on behalf of TMS International, LLC, 1155 Business Center Drive, Horsham, PA 19044 has submitted a Notice of Intent to Remediate to meet the Site Specific standard concerning site soil and groundwater contaminated with metals, chloride and sulfide. Future use of the property is non-residential. The NIR was published in the *Pittsburgh Post-Gazette* on May 13, 2016.

Southeast Regional Office: Regional Manager, Environmental Cleanup and Brownfields, 2 East Main Street, Norristown, PA 19401, Telephone 484.250.5960. Charline Bass.

Overbrook Plaza, 5610 Lancaster Avenue, City of Philadelphia, **Philadelphia County**. Vincent Pappalardo, Eikon Planning and Design, LLC, 221 High Street, Hackettstown, NJ 07840 on behalf of Jack Friedler, 5610 Associates, LLC, 2076 Flatbush Avenue, Marine Park, NY 11234 has submitted a Notice of Intent to Remediate. Soil and groundwater at the site has been impacted with the release of pah and spl. The property is currently developed with a multi-tenant facility used for commercial/retail purpose. The Notice of Intent to Remediate was published in the *Broadstreet* classified on June 24, 2016. PF619631.

Landis Residence, 668 Lower Road, Franconia Township, **Montgomery County**. Brian D. Sauls, Skelly and Loy, Inc., 449 Eisenhower Boulevard, Suite 300, Harrisburg, PA 17111, Angela Funk, Goodville Mutual Casualty, 635 West Main Street, New Holland, PA 17557 on behalf of Warren and Lydia Landis, 668 Lower Road, Souderton, PA 18964 has submitted a Notice of Intent to Remediate. Soil at the site has been impacted with the release of no. 2 fuel oil. The Landis property will remain residential. The Notice of Intent to Remediate was published in the *Intelligencer* on May 12, 20216. PF810305.

28 North Cannon Avenue, 28 North Cannon Avenue, Lansdale Borough, **Montgomery County**. Gilbert J. Marshall, Marshall Geoscience, Inc., 170 East First Avenue, Collegeville, PA 19426-2360 on behalf of Walter S. Smerconish, 120 Athens Avenue Associates, LLC, 1574 Easton Road, Warrington, PA 18976 has submitted a Notice of Intent to Remediate. Soil and groundwater at the site has been impacted with the release of petroleum and lead. The site will remain the same. The Notice of Intent to Remediate was published in the *Reporter* on May 20, 2016. PF784243.

Wawa Store no. 173, 310 Main Street, Borough of Collegeville, **Montgomery County**. Geoff Kristof, JK Environmental Services, LLC, P.O. Box 590, Lafayette Hill, PA 19444, Kenneth Kim, JK Environmental Services, Inc., LLC, P.O. Box 509, Lafayette Hill, PA 19444 on behalf of Joseph W. Standen Jr., Wawa Inc., 260 West Baltimore Pike, Wawa, PA 19063 has submitted a Notice of Intent to Remediate. Soil and groundwater at the site has been impacted with the release of petroleum. The intended future use of the property is a convenience store. The Notice of Intent to Remediate was published in the *Mercury* on May 25, 2016. PF810390.

Happ Contractors Inc., 260 West Ashland Street, Doylestown Borough, **Bucks County**. Sean Fuller, Compliance Management International, 1350 Welsh Road, Suite 200, North Wales, PA 19454 on behalf of Andy Happ, Happ Contractors, Inc., 260 West Ashland Street, Doylestown, PA 18901 has submitted a Notice of Intent to Remediate. Soil at the site has been impacted with the release of leaded gasoline. The proposed future use of the site will be for both residential and non-residential use. Then Notice of Intent to Remediate was published in the *Intelligencer* on May 19, 2016. PF810392.

Swank Residence, 1481 Forest Grove Road, Buckingham Township, **Bucks County**. William Gilchrist, Roux Associates, Inc., 402 Heron Drive, Logan Township, NJ 08085, Richard Strake, Roux Associates, Inc., 402 Heron Drive, Logan Township, NJ 08085, JR Evangelista, Active Remediation Services, 203 Main Street, Suite 332,

Flemington, NJ 08822 on behalf of William Swank, 1481 Forest Grove Road, Forest Grove, PA 18925 has submitted a Notice of Intent to Remediate. Soil and groundwater at the site has been impacted with the release of no. 2 heating oil. The intended future use of the property is residential. A Notice of Intent to Remediate was published in the *Intelligencer* on May 3, 2016. PF810391.

25 Wilkshire Road, 25 Wilkshire Road, Doylestown Township, **Bucks County**. Staci Cottone, J&J Environmental, P.O. Box 370, Blue Bell, PA 19422 on behalf of Frank S. Schmitzer, BrzyAcre Management Company, LLC, 130 Wilkshire Road, Doylestown, PA 18901 has submitted a Notice of Intent to Remediate. Soil at the site has been impacted with the release of no. 2 heating oil. The intended future use of the property will remain residential. A Notice of Intent to Remediate was published in the *Intelligencer* on May 9, 2016. PF808957.

HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES

Permit received, under the Solid Waste Management Act (35 P.S. §§ 6018.101—6018.1003) and Regulations to Operate a Hazardous Waste Treatment, Storage or Disposal Facility.

Southeast Region: Regional Solid Waste Manager, 2 East Main Street, Norristown, PA 19401.

PAD000738849. Safety Kleen System, Inc., 1140 Greenhill Road, West Chester, PA 19380. This application is for the 10-year renewal of the existing RCRA Hazardous Waste Part B Permit for the Safety-Kleen West Chester Service Center, a hazardous waste treatment, storage, and disposal (TSD) facility located in West Chester Borough, **Chester County**. Application was received by the Southeast Regional Office on June 14, 2016.

PAD987266715. Safety-Kleen System Inc., 77 Towpath Road, Fairless Hills, PA 18030. This application is for the 10-year renewal of the existing RCRA Hazardous Waste Part B Permit for the Safety-Kleen Fairless Hills Service Center, a hazardous waste treatment, storage and disposal (TSD) facility located in Falls Township, **Bucks County**. Application was received by the Southeast Regional Office on June 14, 2016.

DETERMINATION FOR APPLICABILITY FOR MUNICIPAL WASTE GENERAL PERMITS

Application(s) for Determination of Applicability for General Permit Under the Solid Waste Management Act; the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P.S. §§ 4000.101—4000.1904); and Municipal Waste Regulations for a General Permit to Operate Municipal Waste Processing Facilities and/or the Beneficial Use of Municipal Waste.

Central Office: Division of Municipal and Residual Waste, Rachel Carson State Office Building, 14th Floor, 400 Market Street, Harrisburg, PA 17105-8472.

General Permit Application No. WMGM050D001. New England Waste Services of ME, Inc. DBA Casella Organics, 110 Main Street, Suite 1308, Saco, ME, 04072. This general permit application authorizes the beneficial use of sewage sludge from approved Publicly Owned Treatment Works and a sludge drying facility capable of producing class A biosolids. These biosolids will be treated to significantly reduce pathogens, vectors and odors prior to transport into Pennsylvania where they will be used as alternative fuel in power plants approved

for operation through an Air Quality authorization issued by the Department. The application for determination of applicability was received in the bureau's central office on March 10, 2016 and was deemed administratively complete on June 6, 2016.

Persons interested in reviewing the application 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 AT&T Relay Service, (800) 654-5984.

AIR QUALITY

PLAN APPROVAL AND OPERATING PERMIT APPLICATIONS

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 general public. This approach allows the owner or operator of a facility to submit permitting documents relevant to its application for all sources related to a facility or a proposed project, affords an opportunity for public input, and provides for a decision on the issuance of the necessary permits.

The Department received applications for Plan Approvals or Operating Permits from the following facilities.

Copies of the application, the Department's analysis, all pertinent documents used in the evaluation of the application and subsequently prepared proposed plan approvals/operating permits are available for public review during normal business hours at the appropriate Department Regional Office. Appointments for scheduling a review must be made by calling the appropriate Department Regional Office. The address and phone number of the Regional Office is listed before the application notices.

Persons wishing to file a written protest or provide comments or additional information, which they believe should be considered prior to the issuance of a permit, may submit the information to the Department's Regional Office. A 30-day comment period from the date of this publication will exist for the submission of comments, protests and information. Each submission must contain the name, address and telephone number of the person submitting the comments, identification of the proposed Plan Approval/Operating Permit including the permit number and a concise statement regarding the relevancy of the information or objections to issuance of the permit.

A person wishing to request a hearing may do so during the 30-day comment period. A public hearing may be held, if the Department, in its discretion, decides that a hearing is warranted based on the information received. Persons submitting comments or requesting a hearing will be notified of the decision to hold a hearing by publication in the newspaper, the *Pennsylvania Bulletin* or by telephone, when the Department determines this type of notification is sufficient. Requests for a public hearing and any relevant information should be directed to the appropriate Department Regional Office.

Permits issued to the owners or operators of sources subject to 25 Pa. Code Chapter 127, Subchapter D or E, or located within a Title V facility or subject to 25 Pa. Code § 129.51(a) or permits issued for sources with limitations on their potential to emit used to avoid otherwise applicable Federal requirements may be sub-

mitted to the United States Environmental Protection Agency for review and approval as a revision to the State Implementation Plan. Final Plan Approvals and Operating Permits will contain terms and conditions to ensure that the sources are constructed and operating in compliance with applicable requirements in the Air Pollution Control Act (35 P.S. §§ 4001—4015), 25 Pa. Code Chapters 121—145, the Federal Clean Air Act (42 U.S.C.A. §§ 7401—7671q) and regulations adopted under the Federal Clean Air Act.

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.

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.

Northeast Region: Air Quality Program, 2 Public Square, Wilkes Barre, PA 18711-0790.

Contact: Raymond Kempa, New Source Review Chief—Telephone: 570-826-2507.

48-00076C: Calpine Bethlehem LLC (500 Delaware Avenue, Suite 600, Wilmington, DE 19801) for increase in operational hours from their existing turbines at their facility located in Bethlehem, **Northampton 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.

08-00010K: Global Tungsten & Powders Corporation (1 Hawes Street, Towanda, PA 18848) for the construction of a Niro model DR-300 hard metal grade spray dryer equipped with a 1.3 MMBtu/hr, natural gas-fired burner and for the installation of a Henlex, Inc. model CHE-1000 cyclone and Nomex model DR-300 fabric collector, in series, at its existing facility in Towanda Borough and North Towanda Township, **Bradford County**.

The Department of Environmental Protection's (Department) review of the information submitted by Global Tungsten & Powders Corporation indicates that the air contamination source to be constructed will comply with all regulatory requirements, including monitoring, recordkeeping, and reporting requirements, and pertaining to air contamination sources and the emission of air contaminants including 25 Pa. Code Chapter 123 and the best available technology requirement (BAT) of 25 Pa. Code §§ 127.1 and 127.12. Based on this finding, the Department proposes to issue a plan approval for the proposed construction.

The emissions from the proposed dryer will not exceed the following limits: 0.28 TPY NO_x, 0.47 TPY CO, 0.03 TPY VOCs, 0.003 TPY SO_x, 0.0001 gr/dscf and 0.01 TPY PM/PM₁₀/PM_{2.5}, 0.02 TPY HAPs, 671 TPY CO_{2e}; no visible emissions equal to or greater than 10% for a period or periods aggregating more than three minutes in any 1 hour and equal to or greater than 30% at any time.

In addition to the emission limitations, the following is a brief description of the types of conditions the Department intends to place in the plan approval in order to ensure compliance with all applicable air quality regulatory requirements: the air contaminant emissions from the Niro dryer shall at all times be controlled by the Henlex cyclone and Nomex fabric collector, in series; both air cleaning devices shall be equipped with pressure drop gauges; the permittee shall maintain a sufficient quantity of spare fabric collector bags; any compressor used to supply cleaning air to the fabric collector shall have an air dryer and oil trap.

The facility is a State Only facility. If the Department determines that the source is constructed and operated in compliance with the plan approval conditions and the specifications of the application for Plan Approval 08-00010K, the requirements established in the plan approval will be incorporated into State Only (Synthetic Minor) Operating Permit 08-00010 pursuant to the administrative amendment provisions of 25 Pa. Code § 127.450.

All pertinent documents used in the evaluation of the application are available for public review during normal business hours at the Department's Northcentral Regional office, 208 West Third Street, Suite 101, Williamsport, PA 17701. Appointments for scheduling a review must be made by calling 570-327-0550.

57-00006A: Dwight Lewis Lumber Company (P.O. Box A, Hillsgrove, PA 18619) for the construction of a 6.04 MMBtu/hr Advanced Engineered Systems (AES) model AES-125-15-WF, underfeed stoker, biomass-fired boiler and for the installation of a Zurn MTSA-9CYT-6 multiple cyclone at their facility located in Hillsgrove Township, **Sullivan County**.

The Department of Environmental Protection's (Department's) review of the information submitted by Dwight Lewis Lumber Company indicates that the air contamination sources will comply with all regulatory requirements, including monitoring, recordkeeping, and reporting requirements, and pertaining to air contamination sources and the emission of air contaminants including the National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers Area Sources, 40 CFR Sections 63.11193—63.11237, 25 Pa. Code Chapter 123 and the best available technology requirement (BAT) of 25 Pa. Code §§ 127.1 and 127.12. Based on this finding, the Department proposes to issue a plan approval for the construction.

The emissions from the biomass-fired boiler will not exceed the following limits: 0.22 lb/MMBtu and 5.82 TPY NO_x, 0.16 lb/MMBtu and 4.23 TPY CO, 0.013 lb/MMBtu and 0.45 TPY VOCs, 0.025 lb/MMBtu and 0.66 TPY SO_x, 0.20 lb/MMBtu and 5.29 TPY PM/PM₁₀/PM_{2.5}.

In addition to the emission limitations, the following is a brief description of the types of conditions the Department intends to place in the plan approval in order to ensure compliance with all applicable air quality regulatory requirements: the biomass-fired boiler shall be fired only on virgin wood wastes; the boiler shall be equipped with a steam master controller that monitors steam

pressure and furnace temperature and modulates the fuel feed rate, and combustion overfire and underfire air to ensure good combustion; the boiler and multiple cyclone shall be operated in accordance with the manufacturers' specifications and good air pollution control practices; the multiple cyclone shall be equipped with instrumentation to monitor the pressure drop across the unit; the conveyance of biomass fuel and the removal of ash shall be conducted to prevent fugitive emissions.

The facility is a State Only facility. If the Department determines that the sources are constructed and operated in compliance with the plan approval conditions and the specifications of the application for Plan Approval 57-00006A, the applicant will subsequently apply for a State Only Operating Permit in accordance with 25 Pa. Code Subchapter F.

All pertinent documents used in the evaluation of the application are available for public review during normal business hours at the Department's Northcentral Regional office, 208 West Third Street, Suite 101, Williamsport, PA 17701. Appointments for scheduling a review must be made by calling 570-327-0550.

OPERATING PERMITS

Intent to Issue Title V Operating Permits under the Air Pollution Control Act and 25 Pa. Code Chapter 127, Subchapter G.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110.

Contact: Thomas Hanlon, Facilities Permitting Chief, 717-705-4862, Virendra Trivedi, New Source Review Chief, 717-705-4863, or William Weaver, Regional Air Quality Manager, 717-705-4702.

06-05085: New Morgan Landfill (420 Quarry Road, P.O. Box 128, Morgantown, PA 19543-0128) for operation of their municipal waste landfill in New Morgan Borough, **Berks County**. Actual emissions from the facility in 2014 were estimated at 16.26 tons CO, 8.87 tons NO_x, 30.39 tons PM₁₀, 8.23 tons PM_{2.5}, 4.55 tons SO_x, 11.91 tons VOC, 3.01 tons of a single HAP (tetrachloroethylene), and 10.58 tons of combined HAPs. The Title V 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. Among other items, the conditions include provisions derived from 40 CFR 60, Subpart WWW—Standards of Performance for Municipal Solid Waste Landfills, 40 CFR 63 Subpart AAAA—National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills, 40 CFR 60, Subpart IIII—Standards of Performance for Stationary Compression Ignition Internal Combustion Engines, and 40 CFR 63, Subpart ZZZZ—National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines.

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 19401.

Contact: Janine Tulloch-Reid, Facilities Permitting Chief—Telephone: 484-250-5920.

09-00121: Philadelphia Macaroni Co. (40 Jacksonville Road, Warminster, PA 18974) for a non Title-V (State-only), Natural Minor, Operating Permit Renewal.

The facility is located in Warminster Township, **Bucks County**. This facility manufactures pasta products. The major sources of air emissions are the pneumatic conveying system controlled by five dust collectors and two boilers. The renewal will include monitoring, recordkeeping and reporting requirements 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 Hanlon, Facilities Permitting Chief, 717-705-4862, Virendra Trivedi, New Source Review Chief, 717-705-4863, or William Weaver, Regional Air Quality Manager, 717-705-4702.

28-05019: New Enterprise Stone & Lime Co., Inc. (P.O. Box 2009, Chambersburg, PA 17201) to issue a State Only Operating Permit for the Chambersburg Blacktop Plant located in Guilford Township, **Franklin County**. The actual emissions from the facility in 2015 are estimated at 25.0 tons CO; 1.6 ton NO_x; 1.7 ton PM₁₀; 0.5 ton PM_{2.5}; 0.5 ton VOC; 0.3 ton SO_x; and 0.5 ton total HAPs. The Operating Permit will include emission limits and work practice standards along with testing, monitoring, recordkeeping and reporting requirements to ensure the facility complies with the applicable air quality regulations. Among other items, the conditions include provisions derived from 40 CFR Part 60, Subpart I—Standards of Performance for Hot Mix Asphalt Facilities (Source IDs 001 and 002A).

38-05027: Pennsy Supply Inc./Millard Asphalt (155 Syner Road, Annville, PA 17003) to issue a State Only Operating Permit for the asphalt plant located in North Annville Township, **Lebanon County**. The actual emissions from the facility in 2015 year are estimated at 14.75 tpy of CO, 0.93 tpy of NO_x, 0.17 tpy of SO_x, 1.00 tpy of PM₁₀, 0.30 tpy of VOCs and 0.28 tpy of HAPs. 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. Among other items, the conditions include provisions derived from 40 CFR Part 60 Subpart I—Standards of Performance for Hot Mix Asphalt Facilities.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701.

Contact: Muhammad Q. Zaman, Environmental Program Manager—Telephone: 570-327-3648.

41-00029: Chemcoat, Inc. (PO Box 188, Montoursville, PA 17754) to issue a renewal state only "synthetic minor" operating permit for their Paint Manufacturing Plant located in Loyalsock Township, **Lycoming County**. The facility is currently operating under State Only Operating Permit 41-00029. The significant emissions source at the facility is the Paint Manufacturing Process. The facility has potential emissions of 0.8 ton per year of carbon monoxide, 1.4 ton per year of nitrogen oxides, 0.5 ton per year of sulfur oxides, 32.8 tons per year of particulate matter, 49.9 tons per year of volatile organic compounds, 2.4 tons per year of total Hazardous Air Pollutants, and 1,211 tons per year of carbon dioxide equivalents (greenhouse gases). The emission limits, throughput limitations and work practice standards along with testing, monitoring, record keeping and reporting requirements have been included in the operating permit to ensure the facility complies with all applicable Federal and State air quality regulations. These operating permit conditions have been derived from the applicable requirements of 25 Pa. Code

Chapters 121—145 and 40 CFR Parts 60 and 63. All pertinent documents used in the evaluation of the application are available for public review during normal business hours at the Department's Northcentral Regional office, 208 West Third Street, Suite 101, Williamsport, PA 17701. Appointments for scheduling a review must be made by calling 570-327-0550.

Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

Contact: Tom Joseph, Permitting Chief—Telephone: 412-442-4336.

OP-11-00433: GapVax Inc. (575 Central Avenue, Johnstown, PA 15902-2600), In accordance with 25 Pa. Code §§ 127.424, 127.425 and 127.521, the Department of Environmental Protection (DEP) is providing notice that it intends to issue a renewal State Only Operating Permit (SOOP-11-00433) to GapVax Inc. to authorize the continued operation of the "Johnstown Plant" located in Johnstown City, **Cambria County**.

The facility's air contamination sources consist of one (1) existing paint booth, three (3) new Col-Met Spray Booths; one for interior coating, second for priming, and third for exterior/top coating, and one (1) natural gas fired Boiler rated at 3.0 MMBtus/hr. Paint is sprayed by 12 HVLP paint guns each having 65% transfer efficiency. Paint fumes and fugitive emissions from "Johnstown Plant" are controlled by two (2) baghouses each rated at 19,000 ACFM and 10,000 ACFM; and vent inside the building.

Potential emissions from the facility are restricted to 99.0 tons CO, 99.0 tons NO_x, 99.0 ton SO_x, 99.0 tons PM₁₀, 49.0 tons VOC, 9.0 tons single HAP, and 24.0 tons all HAPs for any consecutive 12-month period of operation. The facility is subject to the applicable requirements of 25 Pa. Code Chapters 121—145. Other PA requirements for fugitive emissions, particulate limits, and malodors have been included. The permit includes emission limitations, and operational, monitoring, reporting, and recordkeeping requirements for the facility.

GapVax Inc. State Only Operating Permit renewal application, the Department's Air Quality Review Memorandum, and the proposed Air Quality State Only Operating Permit for this project are available for review by any interested party at the Pennsylvania Department of Environmental Protection, Southwest Regional Office, 400 Waterfront Drive, Pittsburgh, PA 15222. To request a review of the State Only Operating Permit renewal application, to receive an electronic copy of the Department's Air Quality Review Memorandum, or to receive an electronic copy of the Department's proposed Air Quality State Only Operating Permit for this project, a person may contact Phil Bouse at pbouse@pa.gov or 412.442.4000.

Any person may submit comments, requests for the department to hold a public hearing, or protests to the operating permit or a proposed condition thereof, by filing such submissions in writing to the Department at the Southwest Regional Office. A 30-day comment period from the date of this publication will exist for the submission of comments.

All comments, requests for a public hearing, and protests to a proposed action, shall be filed with the Department within 30 days of the date that notice of the proposed action was published under 25 Pa. Code § 127.424 (relating to public notice). Comments, requests for a public hearing, and protests must include the name, address and telephone number of the person filing the

protest, identification of the proposed permit issuance being opposed (State Only Operating Permit 11-00433) and a concise statement of the objections to the permit issuance and the relevant facts upon which the objections are based.

A public hearing may be held in accordance with 25 Pa. Code § 127.429, if the Department, in its discretion, decides that such a hearing is warranted based on the information received. If a public hearing is held, all persons who have properly filed a protest under 25 Pa. Code § 127.426 may appear and give testimony. The applicant, the protestant and other participants will be notified of the decision to hold a hearing (and the time, place and purpose of such hearing) by publication in the newspaper or by the *Pennsylvania Bulletin*, or by telephone, where the Department determines such notification by telephone is sufficient.

Comments, protests and requests for a public hearing should be directed to Jesse S. Parihar, Air Quality Engineering Specialist, Department of Environmental Protection, Southwest Regional Office, 400 Waterfront Drive, Pittsburgh, PA 15222. (jparihar@pa.gov, Fax 412.442.4194).

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481.

Contact: Dave Balog, New Source Review Chief—Telephone: 814-332-6940.

10-00288: Bear Metallurgical Manufacturing (679 East Butler Road, Butler, PA 16002-9127) for renewal of the State Only Operating Permit for the ferroalloy production facility located in Summit Township, **Butler County**. The sources at the facility include the ferroalloy product line controlled by a baghouse, the ferroalloy co-product line controlled by a baghouse, a remote reservoir parts cleaner, and additional trivial sources. The facility is a natural minor. The potential particulate emissions from the facility after control are 1.02 TPY. The potential VOC emissions from the facility are 0.32 TPY. The renewal permit contains the requirements of plan approval 10-307-041A and 10-288A, emission restrictions, recordkeeping, work practice, and additional requirements to ensure compliance with the Clean Air Act and the Air Pollution Control Act.

33-00107: Beverage Air Corporation (119 Progress Street, Brookville, PA 15825) for intent to issue a renewal of the State Only Operating Permit for the commercial refrigeration equipment manufacturing facility located in Brookville Borough, **Jefferson County**. The sources at the facility include dip coating metallic parts (Source 107), wipe down of sheet metal and metal parts with solvent (Source 101), powder coatings which are baked onto the part in a natural gas-fired curing oven (Source 102), miscellaneous gas usage (Source 031) and an emergency natural gas fired generator (Source 103). The facility is a natural minor. The emergency generator is subject to the requirements of 40 CFR 60 Subpart JJJJ—Standards of Performance for Stationary Spark Ignition Internal Combustion Engines. The renewal permit contains the requirements of plan approval 33-107A, emission restrictions, recordkeeping, work practice, and additional requirements to ensure compliance with the Clean Air Act and the Air Pollution Control Act.

42-00175: Federal Correctional Institution, McKean, (PO Box 5000, Bradford, PA 16701) to renew a State Only Operating Permit for the operation of boilers and emergency generators at the facility located in Lafayette Township, **McKean County**. The facility is a Natu-

ral Minor. Potential Emissions for all criteria pollutants are less than the major source thresholds. The sources at the facility include 3 natural gas fueled boilers, all used for building heat, each rated at 16.8 million Btus/hr and 2 diesel-fueled emergency generators, each rated at 1,135 hp. The boilers are capable of being operated on # 2 fuel oil as a back-up fuel source and are subject to an operating restriction that allows only 1 boiler to be operated at a time. The boilers are subject to 40 CFR Part 60 Subpart Dc, the Standards of Performance for Small Industrial, Commercial, Institutional Steam Generating Units. The emergency generators are subject to 40 CFR Part 63 Subpart ZZZZ, the National Emission Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines. The renewal permit contains emission restrictions, recordkeeping, work practice, and additional requirements to ensure compliance with the Clean Air Act and the Air Pollution Control Act.

42-00182: Allegheny Store Fixtures, Inc. (57 Holley Avenue, Bradford, PA 16701) to renew a State Only Operating Permit for surface coating operations in the City of Bradford, **McKean County**. The facility is a Natural Minor. The only criteria pollutant emitted in a quantity above 1 tpy is VOCs. Potential VOC emissions are 24.3 tons per year. Actual 2015 emissions of VOC were less than 3 tons. The sources at the facility include 3 paint booths. The renewal permit contains emission restrictions, recordkeeping, work practice, and additional requirements to ensure compliance with the Clean Air Act and the Air Pollution Control Act.

43-00359: GE Transportation, (660 Barkeyville Road, Grove City, PA 16127) to issue a new State Only Operating Permit for the engine re-build facility located in Pine Township, **Mercer County**. This facility is a Natural Minor. Potential emissions are as follows: 18.8 tpy VOC; 7.8 tpy NO_x; 9.3 tpy CO; 0.05 tpy SO_x; 1.35 tpy PM₁₀; 2.05 tpy all HAPs combined and 9,324 tpy CO_{2e}. The sources at the facility include a surface coating booth, a natural gas fueled emergency generator, miscellaneous solvent use for cleaning, sealing, coating, and lubrication of parts, and several natural gas fueled heaters for building heat and process use. The emergency engine is subject to 40 CFR Part 63 Subpart ZZZZ, National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines. The conditions from Plan Approval 43-359A are incorporated into the permit. The renewal permit contains emission restrictions, recordkeeping, work practice, and additional requirements to ensure compliance with the Clean Air Act and the Air Pollution Control Act.

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.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401.

Contact: Janine Tulloch-Reid, Facilities Permitting Chief—Telephone: 484-250-5920.

46-0292: League Collegiate Wear, Inc. (401 E. 4th St., Bldg. 8, Bridgeport, PA 19405) for the screen cleaning operation that consists of solvent-based cleaners and ink removers in Bridgeport Borough, **Montgomery County**.

As a result of potential emissions of VOCs, the facility is not a Title V facility. The Plan Approval will contain recordkeeping requirements and operating restrictions designed to keep the facility operating within all applicable air quality requirements.

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

Knox District Mining Office: P.O. Box 669, 310 Best Avenue, Knox, PA 16232-0669, 814-797-1191.

10150101 and NPDES Permit No. PA0259675. Ben Hal Mining, Inc. (389 Irishtown Road, Grove City, PA 16127) Commencement, operation and restoration of a bituminous surface mine in Marion Township, **Butler**

County, affecting 56.0 acres. Receiving streams: Three unnamed tributaries to Blacks Creek and Blacks Creek, classified for the following uses: CWF. There are no potable surface water supply intakes within 10 miles downstream. Application received: June 6, 2016.

Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, 814-342-8200.

17980104 and NPDES PA0237922. Swisher Contracting, Inc., (P.O. Box 1223, Clearfield, PA 16830). Revision to the permit boundary to include modification to NPDES treatment plan on a bituminous surface and auger mine located in Lawrence Township, **Clearfield County** affecting 84.0 acres. Receiving stream(s): Moose Creek classified for the following use(s): CWF, MF. There are no potable water supply intakes within 10 miles downstream. Application received: May 24, 2016.

New Stanton District Office: 131 Broadview Road, New Stanton, PA 15672, 724-925-5500.

65060101 and NPDES Permit No. PA0250856. Coal Loaders, Inc. (210 E. Main Street, Ligonier, PA 15658). Renewal application for reclamation only to an existing bituminous surface mine, located in South Huntingdon Township, **Westmoreland County**, affecting 23.2 acres. Receiving stream: unnamed tributary A, classified for the following use: WWF. There is no potable water supply intake within 10 miles downstream from the point of discharge. Renewal application received: June 3, 2016.

Noncoal Applications Received

Effluent Limits—The following effluent limits will apply to NPDES permits issued in conjunction with a noncoal mining permit:

<i>Parameter</i>	<i>Table 2</i>		
	<i>30-day Average</i>	<i>Daily Maximum</i>	<i>Instantaneous Maximum</i>
Suspended solids	10 to 35 mg/l	20 to 70 mg/l	25 to 90 mg/l
Alkalinity exceeding acidity* pH*		greater than 6.0; less than 9.0	

* The parameter is applicable at all times.

A settleable solids instantaneous maximum limit of 0.5 ml/l applied to surface runoff resulting from a precipitation event of less than or equal to a 10-year 24-hour event. If coal will be extracted incidental to the extraction of noncoal minerals, at a minimum, the technology-based effluent limitations identified under coal applications will apply to discharges of wastewater to streams.

Knox District Mining Office: P.O. Box 669, 310 Best Avenue, Knox, PA 16232-0669, 814-797-1191.

43080302. White Rock Silica Sand Company, Inc. (331 Methodist Road, Greenville, PA 16215) Revision to an existing large industrial minerals mine to add blasting in Hempfield Township, **Mercer County**, affecting 76.0 acres. Receiving streams: Unnamed tributaries to Shenango River and unnamed tributaries to Mathay Run, all classified for the following uses: WWF. There are no potable surface water supply intakes within 10 miles downstream. Application received: June 14, 2016.

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.

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 limits for noncoal mining activities as provided in 25 Pa. Code Chapter 77 are pH 6 to 9 and other parameters the Department may require.

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 563-2112-115, Developing National Pollutant Discharge Elimination System (NPDES) Permits for Mining Activities. 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 warranted. 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

Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, 814-472-1900

NPDES No. PA0597490 (Mining Permit No. 11850111), E.P. Bender Coal Company, Inc., P.O. Box 594, Carrolltown, PA 15722, renewal of an NPDES permit for continued discharge from an existing post-mining treatment system in Dean township, **Cambria County**, affecting 170.3 acres. Receiving stream: Brubaker Run classified for the following use: cold water fishes. This receiving stream is included in the Brubaker Run TMDL. Application received: June 6, 2016.

The outfall listed below discharges to Brubaker Run:

<i>Outfall No.</i>	<i>New Outfall (Y/N)</i>
005 (Treatment Facility)	N

The proposed effluent limits for the above listed outfall are as follows:

<i>Outfall: 005 Parameter</i>	<i>30-Day Average</i>	<i>Daily Maximum</i>	<i>Instant. Maximum</i>
Iron (mg/l)	3.0	6.0	7.0
Manganese (mg/l)	2.0	4.0	5.0
Aluminum (mg/l)	2.0	4.0	5.0
Total Suspended Solids (mg/l)	35.0	70.0	90.0
pH (S.U.): Must be between 6.0 and 10.5 standard units at all times			
Alkalinity must exceed acidity at all times			

Noncoal NPDES Draft Permits

Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, 814-472-1900

NPDES No. PA0279382 (Mining Permit No. 56122801), Shaffer Brothers Coal Company, Inc., 1 Jay Street, Windber, PA 15963, new NPDES permit for discharge of stormwater resulting from a small shale mining operation in Paint Township, **Somerset County**, affecting 4.9 acres. Receiving stream: Seese Run, classified for the following use: cold water fishes. This receiving stream is included in the Kiski-Conemaugh TMDL. Application received: June 7, 2016.

The outfalls listed below discharge to Seese Run:

<i>Outfall Nos.</i>	<i>New Outfall (Y/N)</i>
001 (Sediment Trap 1)	Y
002 (Sediment Trap 2)	Y

The proposed effluent limits for the above listed outfalls are as follows:

<i>Outfalls: 001 & 002 (Dry Weather Conditions)</i> <i>Parameter</i>	<i>30-Day Average</i>	<i>Daily Maximum</i>	<i>Instant. Maximum</i>
Total Suspended Solids (mg/l)	35.0	70.0	90.0
pH (S.U.): Must be between 6.0 and 9.0 standard units			
Alkalinity must exceed acidity			
<i>Outfalls: 001 & 002 (≤10-yr/24-hr Precip. Event)</i> <i>Parameter</i>	<i>30-Day Average</i>	<i>Daily Maximum</i>	<i>Instant. Maximum</i>
Total Settleable Solids (ml/l)	N/A	N/A	0.5
pH (S.U.): Must be between 6.0 and 9.0 standard units			
Alkalinity must exceed acidity			
<i>Outfalls: 001 & 002 (>10-yr/24-hr Precip. Event)</i> <i>Parameter</i>	<i>30-Day Average</i>	<i>Daily Maximum</i>	<i>Instant. Maximum</i>
pH (S.U.): Must be between 6.0 and 9.0 standard units			
Alkalinity must exceed acidity			

Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, 814-342-8200.

NPDES No. PA025791 (Mining Permit No. 41110301), Glenn O. Hawbaker, Inc., 1952 Waddle Road, State College, PA 16803, renewal of an NPDES permit for a Large Industrial Minerals Surface Mining Permit in McNett Township, **Lycoming County**, affecting 24.2 acres. Receiving stream(s): North Pleasant Stream, classified for the following use: HQ-CWF. Application received: May 5, 2016.

Unless otherwise noted for a specific outfall, the proposed effluent limits for all outfalls in this permit are the BAT limits described above for noncoal mining activities.

The outfalls listed below require a non-discharge alternative (North Pleasant Stream watershed):

<i>Outfall No.</i>	<i>New Outfall (Y/N)</i>
SP-01	N
SP-02	N
SP-03	N
SP-04	N

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, draw-

ings 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: Waterways and Wetlands Program Manager, 2 East Main Street, Norristown, PA 19401, Telephone 484-250-5900.

E15-872—AT&T Corporation, 3450 Riverwood Parkway, S.E., Room 162-11, Atlanta, GA 30339, Malvern, Tredyffrin Township, **Chester County**, ACOE Philadelphia District.

To perform the following water obstruction and encroachment activities associated with the relocating of approximately 2,840 linear feet of cables and their conduits about 20 to 70 feet north of the proposed Pennsylvania Turnpike widening and extension of Milepost A320 to

A326 thereby impacting a parcel of wetlands and underlying a segment of tributaries to Valley Creek (EV). Specific water obstructions and encroachment are:

1) To remove, replace and maintain approximately 2,305 linear feet of 4 inch diameter steel casing pipe carrying 2 pieces of 1.25 inch diameter HDPE inner ducts, indirectly impacting (by directional drill) approximately 0.021 acre of PEM wetlands and an unnamed tributary to Valley Creek (EV) to accommodate the widening of the Turnpike by an additional west bound lane.

2) The Construct temporary boring pits in the floodway at four locations impacting approximately 1,320 square feet to accommodate the directional drilling process.

The project site is located along and parallel to the PA Turnpike at approximate Milepost 322.96 immediately adjacent to the Northern right of way (ROW) limits in Tredyffrin Township, Chester County (Valley Forge PA USGS Quadrangle, Longitude 75° 28' 13.2" Latitude 40° 04' 13.2" in the approximate center of the UNT to Valley Creek).

Northeast Region: Waterways and Wetlands Program Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915, Telephone 570-826-2511.

E40-782. Pennsylvania Department of Transportation, Engineering District 4-0, 55 Keystone Industrial Park, Dunmore, PA 18512, in Bear Creek Township, **Luzerne County**, U.S. Army Corps of Engineers, Philadelphia District.

To remove the existing structure; and to construct and maintain a 28-foot wide road crossing of Red Run Creek (HQ-CWF, MF), consisting of a single 6-foot diameter concrete pipe depressed 1-foot below streambed elevation with end walls and riprap. The project is located along SR 2036, Section D52 Segment 00700 Offset 0000 (Pleasant View Summit, PA Quadrangle, Latitude: 41°14'39.3"; Longitude: -75°43'15.7").

Southcentral Region: Waterways & Wetlands Program, 909 Elmerton Avenue, Harrisburg, PA 17110, Ed Muzic, Section Chief, 717.705.4802.

E28-384: Shippensburg Borough Authority, 111 North Fayette Street, Shippensburg, Pennsylvania, 17257 in Southampton Township, **Franklin County**, U.S. Army Corps of Engineers Baltimore District.

To expand and maintain an existing well site small treatment facility permanently impacting 0.022 acre in the floodplains of Furnace Run and Shirley Run located in Southampton Township (Latitude: 40°00'2.05", Longitude: -77°30'30.25"). No wetlands will be impacted by the project.

Northcentral Region: Waterways & Wetlands Program Manager, 208 West Third Street, Williamsport, PA 17701, 570-327-3636.

E14-570. Plenary Walsh Keystone, 2000 Cliff Mine Road, Park West Two, 3rd Floor, Pittsburgh, PA 15275. JV # 029, SR 1002, Section A13 over UNT to Little Marsh Run in Boggs Township, **Centre County**, ACOE Baltimore District (Snow Shoe SE, PA Quadrangle N: 41.0092°; W: -77.7904°).

To replace a structurally deficient bridge over UNT to Little Marsh Creek. The existing structure is a single-span, steel I-beam bridge that spans 18.03 feet and is 37.5 feet wide. It will be replaced with a concrete box culvert that spans 20.0 feet, is 55.0 feet wide, and has concrete baffles. Due to the proximity of the stream to the structure, the applicant proposes to shift a portion of an upstream reach. This project proposes to: 1) temporarily impact 210 linear feet of an unnamed tributary to Little Marsh Creek and 0.031 acre of wetland, and 2) permanently impact 152 linear feet of an unnamed tributary to Little Marsh Creek and 0.039 acre of wetland, which are classified as Cold Water—Migratory Fishery.

Northwest Region: Waterways and Wetlands Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

E62-431, Plenary Walsh Keystone Partners, 2000 Cliff Mine Road, Park West Two, 3rd Floor, Pittsburgh, PA 15275. JV 019 State Route 0006 Segment 0390 Offset 0000 Section B11 over Mead Run, in Brokenstraw Township, **Warren County**, ACOE Pittsburgh District (Youngsville, PA Quadrangle N: 41.8471°, W: -79.3363°).

To remove the existing State Route 0006 structure over Mead Run and to construct and maintain a single-span, spread box beam bridge having a span of 45.0 feet, width of 42.17 feet, and an underclearance of 7.91 feet at a point approximately 800 feet east of the State Route 0006 and Mead Run Road intersection in Brokenstraw Township, Warren County.

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 AT&T 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 free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

I. NPDES Renewal Permit Actions

Southwest Regional Office: Regional Clean Water Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745. Phone: 412.442.4000.

<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>
PA0255076 (Sewage)	Richard Cowley SRSTP 1347 Springs Road Springs, PA 15562	Somerset County Elk Lick Township	Unnamed Tributary to Tub Mill Run (19-F)	Yes

Southeast Region: Clean Water Program Manager, 2 East Main Street, Norristown, PA 19401. Phone: 484.250.5970

<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>
PA0244066 (Sewage)	Bedminster Municipal Authority 432 Elephant Road Perkasie, PA 18944	Bucks County Bedminster Township	Deep Run (2-D)	Yes

Southcentral Region: Clean Water 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>
PA0008087— IW	The Hershey Company (Hershey Foods East Offices) 19 E. Chocolate Avenue Hershey, PA 17033-1314	Dauphin County/ Derry Township	Spring Creek/7-D	Y
PA0247499— SEW	Ruth Colledge 1180 East Graceville Road Breezewood, PA 15533	Bedford County/ East Providence Township	Tub Mill Run/11-D	Y
PA0088340— SEW	TJ's Restaurant, Inc. 2620 Susquehanna Trail Newport, PA 17045	Perry County/ Buffalo Township	Bucks Run/6-C	Y
PA0247464— SEW	East Hanover Township Munic Authority—Dairy Lane STP 8848 Jonestown Road Grantville, PA 17028	Dauphin County/ East Hanover Township	Bow Creek/7-D	Y
PA0082864— SEW	Jesus Ministries—Agape Farm 17512 Rapture Street Shirleysburg, PA 17260-9721	Huntingdon County/ Cromwell Township	Browns Gap Run/12-C	Y

II. New or Expanded Facility Permits, Renewal of Major Permits and EPA Nonwaived Permit Actions

Southwest Regional Office: Regional Clean Water Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745. Phone: 412.442.4000.

NPDES Permit No. PA0264121, Storm Water, SIC Code 3471, **Korns Galvanizing Co. Inc.**, 75 Bridge Street, Johnstown, PA 15902-2902.

This proposed facility is located in Johnstown City, **Cambria County**.

Description of Proposed Action/Activity: Issuance of an NPDES Permit for a new discharge of Storm Water.

Southeast Region: Water Management Program Manager, 2 East Main Street, Norristown, PA 19401.

NPDES Permit No. PA0053783, Sewage, Renewal, **Avon Grove School District**, 375 South Jennersville Road, West Grove, PA 19390-8401.

This proposed facility is located in New London Township, **Chester County**.

Description of Action/Activity: Issuance of an NPDES Permit for an existing discharge of treated sewage.

NPDES Permit No. PA0058467, Industrial, **Brandywine Realty Trust**, 555 E. Lancaster Avenue, Suite 100, Radnor, PA 19087-5166.

This proposed facility is located in Upper Merion Township, **Montgomery County**.

Description of Action/Activity: Issuance of an NPDES permit for an existing discharge of treated industrial wastewater.

Southcentral Region: Clean Water Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110. Phone: 717-705-4707.

NPDES Permit No. PA0080314, Amendment No. 1, Sewage, **Hampden Township**, 230 South Sporting Hill Road, Mechanicsburg, PA 17050-3097.

This proposed facility is located in Hampden Township, **Cumberland County**.

Description of Proposed Action/Activity: Authorization to discharge to Sears Run in Watershed 7-B.

NPDES Permit No. PA0023108, Sewage, **Elizabethtown Borough**, 600 South Hanover Street, Elizabethtown, PA 17022-2522.

This proposed facility is located in West Donegal Township, **Lancaster County**.

Description of Proposed Action/Activity: Authorization to discharge to Susquehanna River & Conoy Creek in Watershed 7-G.

NPDES Permit No. PA0246433, Amendment No. 1, Sewage, **Broad Top Township**, Hess Mobile Home Park, PO Box 57, 187 Municipal Road, Defiance, PA 16633-0057.

This proposed facility is located in Broad Top Township, **Bedford County**.

Description of Proposed Action/Activity: Authorization to discharge to UNT Sherman Valley Run in Watershed 11-D.

Northwest Region: Clean Water Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

NPDES Permit No. PA0046418, Sewage, SIC Code 4952, **Middleboro Municipal Authority Erie County**, P O Box 189, McKean, PA 16426-0189.

This existing facility is located in McKean Borough, **Erie County**.

Description of Existing Action/Activity: Issuance of an NPDES Permit Amendment for an existing discharge of treated Sewage.

III. WQM Industrial Waste and Sewerage Actions under The Clean Streams Law

Southwest Regional Office: Regional Clean Water Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745. Phone: 412.442.4000.

WQM Permit No. 5616401, Sewage, **Richard Cowley**, 1347 Springs Road, Springs, PA 15562.

This proposed facility is located in Elk Lick Township, **Somerset County**.

Description of Proposed Action/Activity: Installation of a SRSTP to replace a malfunctioning sand mound system.

Southeast Region: Clean Water Program Manager, 2 East Main Street, Norristown, PA 19401, 484.250.5900.

WQM Permit No. 0991423, Sewage, Transfer, **Ann Naragon Hett**, 1918 Swamp Road, Furlong, PA 18925.

This proposed facility is located in Buckingham Township, **Bucks County**.

Description of Action/Activity: Permit transferred from Mills to Naragon Hett.

WQM Permit No. 0991425, Sewage, Transfer, **Bubbas Pot Belly Stove**, 1485 North West End Boulevard, Quakertown, PA 18951.

This proposed facility is located in Springfield Township, **Bucks County**.

Description of Action/Activity: Permit transferred from Barryway Enterprises to Bubbas Pot Belly Stove.

WQM Permit No. 1505426, Sewage, Renewal, **New London Township**, P.O. Box 1002, New London, PA 19360.

This proposed facility is located in New London Township, **Chester County**.

Description of Action/Activity: Approval for renewal of continued operation of the Wheatland Farms pump station and wastewater treatment plant.

North Central Regional Office: Regional Clean Water Program Manager, 208 W Third Street, Suite 101, Williamsport, PA 17701-6448. Phone: 570.327.3636.

WQM Permit No. 1903405 A-2, Sewage, SIC Code 4952, **Hemlock Municipal Sewer Cooperative**, P.O. Box 243, Bloomsburg, PA 17815-0243.

This existing facility is located in Hemlock Township, **Columbia County**.

Description of Proposed Action/Activity: Replace existing sludge dewatering centrifuge with Volute Dewatering Press.

WQM Permit No. 1494401 A-2, Sewerage [4952], **Mountaintop Area Municipal Authority**, P.O. Box 275, Snow Shoe, PA 16874-0275.

This existing facility is located in Snow Shoe Township, **Centre County**.

Description of Proposed Action/Activity: Permit amendment issued authorizing the addition of a dechlorination system.

WQM Permit No. 1494402 A-2, Sewerage [4952], **Mountaintop Area Municipal Authority**, P.O. Box 275, Snow Shoe, PA 16874-0275.

This existing facility is located in Snow Shoe Township, **Centre County**.

Description of Proposed Action/Activity: Permit amendment issued authorizing the addition of a dechlorination system.

Northwest Region: Clean Water Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481

WQM Permit No. 6212403 A-1, Sewage, **Jill Petty**, 25 Elm Street, Youngsville, PA 16317.

This existing facility is located in Pittsfield Township, **Warren County**.

Description of Proposed Action/Activity: Amendment to install an aerobic unit instead of the existing permitted peat filter system.

WQM Permit No. WQG01431601, Sewage, **Oak Grove Church**, 10 Oak Grove Road, Mercer, PA 16137.

This proposed facility is located in Fairview Township, **Mercer County**.

Description of Proposed Action/Activity: Small Flow Treatment Facility.

WQM Permit No. 3316401, Sewage, SIC Code 4941, 4952, **Brookville Municipal Authority**, 18 Western Avenue Suite A, Brookville, PA 15825-1540.

This proposed facility is located in Brookville Borough, **Jefferson County**.

Description of Proposed Action/Activity: Replacement and rehabilitation of existing wastewater collection system sews and wastewater treatment facility upgrades in Brookville Borough and Pine Creek Township.

VI. NPDES Discharges of Stormwater Associated with Construction Activities Individual Permit Actions

Southcentral Region: Waterways & Wetlands Program, 909 Elmerton Avenue, Harrisburg, PA 17110, Nathan Crawford, Section Chief, Telephone 717.705.4802.

<i>Permit #</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI033614008 Issued	Eli K. Stoltzfus 370 Redwell Road New Holland, PA 17540	Lancaster	Leacock and Earl Townships	UNT Umbles Run (HQ-CWF, MF)
PAI032115003 Issued	Woodstock Watch, LLC 117 Stonehedge Drive Carlisle, PA 17015	Cumberland	South Middleton Township	Letort Spring Run (HQ-CWF, MF)
PAI033115001 Issued	Petersburg Borough Sewer Authority 316 King Street Petersburg, PA 16669	Huntingdon	Petersburg Borough and Logan Township	Juniata River (WWF, MF) Shaver Creek (HQ-CWF, MF)
PAI034415003 Issued	Pennsylvania Department of Conservation and Natural Resources Bureau of Facility Design and Construction 400 Market Street, 8th Floor Harrisburg, PA 17101	Mifflin	Armagh Township	Honey Creek (HQ-CWF, MF) UNT Honey Creek (HQ-CWF, MFV)
PAI030715001 Issued	Leonard Nolt 175 Mica Lane Williamsburg, PA 16693	Blair	Woodbury Township	UNT Clover Creek (HQ-CWF)
PAI032915003 Issued	New Enterprise Stone & Line Co. PO Box 77 New Enterprise, PA 16664	Fulton	Brush Creek Township	UNT Little Brush Creek (HQ-CWF, MF)

<i>Permit #</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI030714001 Issued	Reuban Newsanger 4532 Clover Creek Road Williamsburg, PA 16693	Blair	Huston Township	Clover Creek (HQ-CWF) UNT Clover Creek (HQ-CWF)

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>
PAI056315004	Washington County 100 West Beau Street Suite 702 Washington, PA 15301	Washington County	Hopewell Township	UNT to Cross Creek (HQ-WWF)

Northwest Region: Waterways and Wetlands Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

Crawford County Conservation District, Woodcock Creek Nature Center, 21742 German Road, Meadville, PA 16335

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI062015001	Meadville DPP LLC 9010 Overlook Blvd Brentwood, TN 37027	Crawford	Woodcock Township	Woodcock Creek HQ-CWF

VII. Approvals to Use NPDES and/or Other General Permits

The EPA Region III Administrator has waived the right to review or object to this permit action under the waiver provision 40 CFR 123.23(d).

List of NPDES and/or Other General Permit Types

PAG-1	General Permit for Discharges from Stripper Oil Well Facilities
PAG-2	General Permit for Discharges of Stormwater Associated With Construction Activities
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 Petroleum Product Contaminated Groundwater Remediation Systems
PAG-6	General Permit for Wet Weather Overflow Discharges from Combined Sewer Systems (CSO)
PAG-7	General Permit for Beneficial Use of Exceptional Quality Sewage Sludge by Land Application
PAG-8	General Permit for Beneficial Use of Non-Exceptional 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 Discharges from Hydrostatic Testing of Tanks and Pipelines
PAG-11	General Permit for Discharges from Aquatic Animal Production Facilities
PAG-12	Concentrated Animal Feeding Operations (CAFOs)
PAG-13	Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4)
PAG-14	(To Be Announced)
PAG-15	General Permit for Discharges from the Application of Pesticides

General Permit Type—PAG-02

Waterways & Wetlands Program Manager, 2 East Main Street, Norristown, PA 19401. Telephone 484-250-5160.

<i>Facility Location & Municipality</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
West Pottsgrove Township Montgomery County	PAG02004615081	Universal Concrete 400 Old Reading Pike Pottstown, PA 19464	Schuylkill River	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900

<i>Facility Location & Municipality</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
Lower Merion Township Montgomery County	PAG02004615091	Amerishop Suburban LP 1954 Greenspring Drive Suite 330 Timonium, MD 21093	Unnamed Tributary to Trout Run TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Hatboro Borough Montgomery County	PAG02004616007	Alliance HSP Station Park LP c/o Arcadia Land Company 114 Forrest Avenue Narberth, PA 19072	Pennypack Creek TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Whitemarsh Township Montgomery County	PAG02004616010	Germantown Academy 340 Morris Road Fort Washington, PA 19034	Wissahickon Creek TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Buckingham Township Bucks County	PAG02000916022	Zaveta Custom Homes, LLC 4030 Skyron Drive Doylestown, PA 18902	Pidcock Creek WWF-MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900

Northeast Region: Waterways and Wetlands Program Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915

<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>
Upper Saucon Township Lehigh County	PAG02003915018	Joe Posh Posh Properties 2216 Willow Park Road Bethlehem, PA 18020	UNT to Saucon Creek (CWF, MF)	Lehigh County Conservation District 610-391-9583
Yatesville Borough and Jenkins Township	PAG02004016010	HRI Incorporated Autumn Zander 1750 West College Avenue Suite 2 State College, PA 26801	UNT to Susquehanna River (WWF, MF)	Luzerne Conservation District 570-674-7991

Waterways & Wetlands Program, 909 Elmerton Avenue, Harrisburg, PA 17110-8200, Nathan Crawford, Section Chief, 717.705.4802.

<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>
Union Township Lebanon County	PAG02003809011R(28)	Rick Weber Bldg 0-10 Chapel Rd FTIG Annville, PA 17003	Aires Run (WWF/MF)	Lebanon County Conservation District 2120 Cornwall Road Lebanon, PA 17042-9788 717.277.5275
Bern Township Berks County	PAG02000616016	Berkshire Country Club 1637 Bernville Road Reading, PA 19601	Tulpehocken Creek and Schuylkill River (WWF, MF)	Berks County Conservation District 1238 Country Welfare Road Suite 200 Leesport, PA 19533-9710
Cumru Township Berks County	PAG02000616014	Barwis Construction, LLC PO Box 97 Limekiln, PA 19535	UNT Schuylkill River (WWF)	Berks County Conservation District 1238 Country Welfare Road Suite 200 Leesport, PA 19533-9710

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*Facility Location:
Municipality &
County*

Permit No.

*Applicant Name &
Address*

*Receiving
Water/Use*

*Contact Office &
Phone No.*

Caernarvon Township Berks County	PAG02000616015	Kidjoy Company LLC 70 Thousand Oaks Boulevard Morgantown, PA 19543	East Branch Conestoga River (WWF, MF)	Berks County Conservation District 1238 Country Welfare Road Suite 200 Leesport, PA 19533-9710
Bethel Township Berks County	PAG02000615065	Vesper at Berks, LP 1100 Brynlawn Road Villanova, PA 19085	UNT Little Swatara Creek/UNT Crosskill Creek (CWF, MF)	Berks County Conservation District 1238 Country Welfare Road Suite 200 Leesport, PA 19533-9710

Southwest Region: Regional Waterways & Wetlands Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

*Facility Location and
Municipality*

Permit No.

*Applicant Name and
Address*

*Receiving
Water/Use*

*Contact Office and
Phone No.*

Cowanshannock Township	PAG02000316002	James R. and Michelle L. Barker 360 Adams Road Kittanning, PA 16201	UNTs to Cowanshannock Creek (WWF)	Armstrong Conservation District Armsdale Administration Building Suite B-2 124 Armsdale Road Kittanning, PA 16201 (724) 548-3425
City of Aliquippa, Center Township and Hopewell Township	PAG02000416011	Bettters Real Estate Holdings, LLC 3468 Broadhead Road Monaca, PA 15061	Ohio River (WWF-N)	Beaver County Conservation District 156 Cowpath Road Aliquippa, PA 15001 (724) 378-1701
City of Johnstown, East Taylor Township and Jackson Township	PAG02001116005	CPV Fairview, LLC 50 Braintree Hill Office Park Suite 300 Braintree, MA 02184-8739 Cambria Somerset Authority Central Park Complex 110 Franklin Street Suite 200 Johnstown, PA 15901	Hinckston Run (CWF) and UNTs to Hinckston Run (CWF)	Cambria County Conservation District 401 Candlelight Drive Suite 221 Ebensburg, PA 15931 (814) 472-2120
Brothersvalley Township	PAG02005616004	Keith and Denise Leydig 594 Cumberland Highway Berlin, PA 15530	UNTB to Swamp Creek (CWF)	Somerset County Conservation District Somerset County Ag Center 6024 Glades Pike Suite 103 Somerset, PA 15501 (814) 445-4652
Smith Township	PAG02006316012	Cast and Baker Corporation 2214 Washington Road Canonsburg, PA 15317	Raccoon Creek (WWF)	Washington County Conservation District Suite 105 2800 North Main Street Washington, PA 15301 (724) 705-7098

<i>Facility Location and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office and Phone No.</i>
Hempfield Township	PAG0200615038	Excelsa Health Ventures, LLC 532 West Pittsburgh Street Greensburg, PA 15601	Slate Creek (WWF)	Westmoreland Conservation District 218 Donohoe Road Greensburg, PA 15601 (724) 837-5271
Rostraver Township	PAG02006515041	Rostraver Mini Storage 983 Route 136 Belle Vernon, PA 15012	Beckets Run (WWF)	Westmoreland Conservation District 218 Donohoe Road Greensburg, PA 15601 (724) 837-5271
Hempfield Township	PAG02006516004	Municipal Authority of Westmoreland County 124 Park and Pool Road New Stanton, PA 15672	Jacks Run (WWF)	Westmoreland Conservation District 218 Donohoe Road Greensburg, PA 15601 (724) 837-5271
East Huntingdon Township	PAG02006516011	Golden Triangle Construction 8555 Old Steubenville Pike Imperial, PA 15126	Buffalo Run (WWF)	Westmoreland Conservation District 218 Donohoe Road Greensburg, PA 15601 (724) 837-5271
Mount Pleasant Township	PAG02006516014	PennDOT Engineering District 12-0 825 North Gallatin Avenue Extension Uniontown, PA 15401	Jacobs Creek (WWF)	Westmoreland Conservation District 218 Donohoe Road Greensburg, PA 15601 (724) 837-5271
Murrysville Municipality	PAG02006516015	West Penn Power 800 Cabin Hill Drive Greensburg, PA 15601	Turtle Creek (TSF)	Westmoreland Conservation District 218 Donohoe Road Greensburg, PA 15601 (724) 837-5271
Hempfield Township	PAG02006516019	Municipal Authority of Westmoreland County 124 Park and Pool Road New Stanton, PA 15672	UNT to Jacks Run (WWF)	Westmoreland Conservation District 218 Donohoe Road Greensburg, PA 15601 (724) 837-5271
North Huntingdon Township	PAG02006512038(1)	Cleaveland Price 14000 Route 993 Trafford, PA 15085	Brush Creek (TSF)	Westmoreland Conservation District 218 Donohoe Road Greensburg, PA 15601 (724) 837-5271

General Permit Type—PAG-03

<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>
London Grove Township Chester County	PAR500001	Southeastern Chester County Refuse Authority P.O. Box 221 Kennett Square, PA 19348	Unnamed Tributary to East Branch White Clay Creek 3F	Southeast Region Clean Water Program 2 E Main Street Norristown, PA 19401 484.250.5970

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<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>
Lawrence Township Clearfield County	PAR604847	Novey Recycling PO Box 485 Clearfield, PA 16830-0485	Moose Creek—8-B	DEP North Central Regional Office Clean Water Program 208 W Third Street Suite 101 Williamsport, PA 17701-6448 570.327.3636
Cranberry Township Butler County	PAR128310	Rolling Frito Lay Sales LP 7070 Samuel Morse Drive Suite 240 Columbia, MD 21046	Unnamed Tributary to Brush Creek—20-C	DEP Northwest Regional Office Clean Water Program 230 Chestnut Street Meadville, PA 16335-3481 814.332.6942
Cranberry Township Venango County	PAR128308	Rolling Frito Lay Sales LP 7070 Samuel Morse Drive Columbia, MD 21046	Unnamed Tributary to Lower Twomile Run—16-G	DEP Northwest Regional Office Clean Water Program 230 Chestnut Street Meadville, PA 16335-3481 814.332.6942
Nazareth Borough Northampton County	PAR322203	CF Martin & Co. Inc. 510 Sycamore Street Nazareth, PA 18064	Shoeneck Creek—1-F	DEP Northeast Regional Office Clean Water Program 2 Public Square Wilkes-Barre, PA 18701-1915 570.826.2511
Coopersburg Borough Lehigh County	PAR212204	HYK Construction Corporation dba Rahns Construction Material Company 430 Bridge Road Collegeville, PA 19426	Laurel Run—02C	DEP Northeast Regional Office Clean Water Program 2 Public Square Wilkes-Barre, PA 18701-1915 570.826.2511
Bethlehem City Lehigh County	PAR202242	Cera Met LLC 2175 Avenue C Bethlehem, PA 18017-2119	Unnamed Tributary to Catasauqua Creek—2-C	DEP Northeast Regional Office Clean Water Program 2 Public Square Wilkes-Barre, PA 18701-1915 570.826.2511

*General Permit Type—PAG-4**Northwest Region: Clean Water Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.*

<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>
Fairview Township Mercer County	PAG041205	Oak Grove Church 10 Oak Grove Road Mercer, PA 16137	Unnamed Tributary to Cool Spring Creek—20-A	DEP Northwest Regional Office Clean Water Program 230 Chestnut Street Meadville, PA 16335-3481 814.332.6942
Upper Saucon Township Lehigh County	PAG042238	Webster Youngs 5029 Vera Cruz Road Center Valley, PA 18034	Unnamed Tributary to Saucon Creek—CWF	DEP Northeast Regional Office Clean Water Program 2 Public Square Wilkes-Barre, PA 18701-1915 570.826.2511

General Permit Type—PAG-08

<i>Facility Location Municipality & County</i>		<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Site Name & Location</i>	<i>Contact Office & Phone No.</i>
Warminster Township Bucks County	PAG080018	Warminster Township Municipal Authority PO Box 2279 Warminster, PA 18974	1050 Log College Drive Warminster Township	Southeast Region Clean Water Program 2 E. Main Street Norristown, PA 19401 484.250.5970	
Green Lane Borough Montgomery County	PAG080022	Green Lane Marlborough Joint Sewer Authority PO Box 45 Green Lane, PA 18054	Green Lane Marlborough Joint Sewer Authority Gravel Road at Sunneystown Road	Southeast Region Clean Water Program 2 E. Main Street Norristown, PA 19401 484.250.5970	
Schuylkill Township Chester County	PAG080023	Valley Forge Sewer Authority Wastewater Treatment Plant 333 Pawling Road Phoenixville, PA 19460	Valley Forge Sewer Authority Wastewater Treatment Plant 333 Pawling Road Phoenixville, PA 19460	Southeast Region Clean Water Program 2 E. Main Street Norristown, PA 19401 484.250.5970	

General Permit Type—PAG-8 (SSN)

<i>Facility Location: Municipality & County</i>		<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Site Name & Location</i>	<i>Contact Office & Phone No.</i>
St. Thomas Township Franklin County	PAG083560	St. Thomas Township Municipal Authority 1075 St. Thomas— Edenville Road St. Thomas, PA 17252	St. Thomas Township Municipal Authority WWTP 4500 Garyway Chambersburg, PA 17201	DEP—SCRO—Clean Water Program 909 Elmerton Avenue Harrisburg, PA 17110-8200 717-705-4707	

General Permit Type—PAG-10

<i>Facility Location Municipality & County</i>		<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>		<i>Contact Office & Phone No.</i>
Washington	Chartiers North Strabane Nottingham Union	PAG106192	Sunoco Pipeline LP 535 Fritztown Road Sinking Spring, PA 19608	Arnold Hollow UNT to Chartiers Creek Peters Creek UNT to Froman Run	WWF WWF TSF TSF	DEP Southwest Regional Office Clean Water Program 400 Waterfront Drive Pittsburgh, PA 15222-4745 412.442.4000
Allegheny	Forward Elizabeth			UNT to Mingo Creek Froman Run	TSF TSF	
Westmoreland	South Huntington Sewickley Rostraver Hempfield Jeanette Penn Murrysville Salem Loyalhanna Derry			UNT to Monongahela River Monongahela River UNT to Beckets Run Gillespie Run Youghioghenny River Sewickley Creek UNT to Little Sewickley Creek Little Sewickley Creek UNT to Brush Creek Brush Creek	WWF WWF WWF WWF WWF WWF TSF TSF TSF TSF	

<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>	
Indiana	Burrell			Bushy Run	TSF	
	West Wheatfield			UNT to Bushy Run	TSF	
	East Wheatfield			Turtle Creek	TSF	
Cambria	Jackson			UNT to Turtle Creek	TSF	
	Cambria			Loyalhanna Lake	WWF	
	Munster			UNT to Conemaugh River	TSF	
	Cresson			UNT to Blacklick Creek	CWF	
	Washington				Blacklick Creek	TSF
					UNT to Weirs Run	CWF
					UNT to Conemaugh River	CWF
					UNT to W Branch Richards Run	CWF
					UNT to Hinckston Run	CWF
					UNT to N Branch Little Conemaugh River	CWF
				Little Conemaugh River	CWF	
			UNT to Little Conemaugh River	CWF		
			UNT to Bear Rock Run	CWF		
			Chartiers Run	WWF		
			Monongahela River	WWF		
			Youghiogheny River	WWF		
			Blacklick Creek	TSF		
			UNT to Bear Rock Run	CWF		

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 and 2 Pa.C.S. §§ 501—508 and 701—704 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—ACTIONS**

<i>Agricultural Operation Name and Address</i>	<i>County</i>	<i>Total Acres</i>	<i>AEU's</i>	<i>Animal Type</i>	<i>Special Protection Waters (HQ or EV or NA)</i>	<i>Approved or Disapproved</i>
Derrick Weaver 204 Farmers Lane Myerstown, PA 17067	Lebanon	24	321.68	Poultry	NA	Approved
Malcolm Sonnen 101 Sonnens Road Richland, PA 17087	Lebanon	8.5	239.69	Poultry	NA	Approved
Dwayne Nolt 58 East Stack Dr Myerstown, PA 17067	Lebanon	52	554.34	Swine and Beef	NA	Approved
Bivouac Sow Farm 15197 Great Cove Road McConnellsburg, PA 17233	Fulton	224	2,978.55	Swine Sow/Gilt	N/A	Approved

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 AT&T 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 free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

SAFE DRINKING WATER

Actions taken under the Pennsylvania Safe Drinking Water Act

Southeast Region: Water Supply Management Program Manager, 2 East Main Street, Norristown, PA 19401.

Permit No. 4616512	Public Water Supply
Applicant	Horsham Water & Sewer Authority
Township	Horsham

County	Montgomery
Responsible Official	Tina A. Funky, P.E. 617 Horsham Road Horsham, PA 19044
Type of Facility	PWS
Consulting Engineer	Gilmore & Associates, Inc. 65 East Butler Avenue, Suite 100 New Britain, PA 18901
Application Received Date	June 13, 2016
Description of Action	Installation of activated carbon treatment systems at wells 2b and 40 for removal of PFC's.
Permit No. 0916509	Public Water Supply
Applicant	Warrington Township Water & Sewer Department
Township	Warrington
County	Bucks
Responsible Official	Christian R. Jones Warrington Township Water & Sewer Department 852 East Road Warrington, PA 18976
Type of Facility	PWS
Consulting Engineer	Carroll Engineering 949 Easton Road Warrington, PA 18976
Application Received Date	June 6, 2016
Description of Action	Construction of a new treatment building, new GAC filtration, and underground backwash holding tank for the treatment and removal of perfluorchemicals in Well nos. 1, 2 & 6.

Northeast Region: Safe Drinking Water Program Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915.

Permit No.2359008, Operation Permit, Public Water Supply.

Applicant **Pennsylvania-American Water Company**
(Lake Scranton Water System)
800 West Hershey Park Drive
Hershey, PA 17033

Municipality Scranton City

County **Lackawanna**

Type of Facility PWS

Consulting Engineer Scott M. Thomas, P.E.
Pennsylvania-American Water Company
852 Wesley Drive
Mechanicsburg, PA 17055

Permit to Operate Issued June 14, 2016

Permit No.2640052, Operation Permit, Public Water Supply.

Applicant **Paradise Point Water Company**
82 Lakeview Drive
Lakeville, PA 18438

Municipality Paupack Township

County **Wayne**

Type of Facility PWS

Consulting Engineer Keith L. Corson, P.E.
Environmental Engineering & Management Associates, Inc.
P.O. Box 232
Kulpsville, PA 19443

Permit to Operate Issued June 15, 2016

Permit No.2409003, Operation Permit, Public Water Supply.

Applicant **Pennsylvania American Water Company**
(Crystal Lake Water System)
800 West Hershey Park Drive
Hershey, PA 17033

Municipality Bear Creek Township

County **Luzerne**

Type of Facility PWS

Consulting Engineer David M. Swisher, P.E.
Herbert, Rowland & Grubic, Inc.
369 East Park Drive
Harrisburg, PA 17111

Permit to Operate Issued June 13, 2016

Permit No.2640012, Operation Permit, Public Water Supply.

Applicant **GSP Management Co.**
(Canal Mobile Home Park)
P.O. Box 677
Morgantown, PA 19543

Municipality Texas Township

County **Wayne**

Type of Facility PWS

Consulting Engineer James A. Cieri, P.E.
914 N. Mountain Road
Harrisburg, PA 17112

Permit to Operate Issued June 10, 2016

Southcentral Region: Safe Drinking Water Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110

Permit No.2116504 MA, Minor Amendment, Public Water Supply.

Applicant **Shippensburg Borough Authority PA**

Municipality Shippensburg Borough

County **Cumberland**

Responsible Official Louis Larson, Water Foreman
PO Box 129
111 N Fayette Street
Shippensburg, PA 17257-0129

Type of Facility Rehabilitation of the Mainsville
250,000 gallon finished water
storage tank.

Consulting Engineer Donnell Duncan, P.E.
Utility Service Company Inc
1230 Peachtree Street NE
111 N Fayette Street
Atlanta, GA 30309

Permit to Construct Issued 6/15/2016

Permit No.0516501 MA, Minor Amendment, Public Water Supply.

Applicant **Defiance Water Association**

Municipality Broad Top Township

County **Bedford**

Responsible Official Jason Perry, President
PO Box 122
Defiance, PA 16633

Type of Facility Rehabilitation and improvement
of containment/catchment
facilities for four surface water
influenced springs.

Consulting Engineer Eric S. Lundy, P.E.
Nittany Engineering &
Associates, LLC
2836 Earlstown Road
Centre Hall, PA 16828-9162

Permit to Construct Issued 6/13/2016

Comprehensive Operation Permit No. 7386279 issued to: **Spring Meadow Ranch Spring (PWS ID No. 7386279)**, South Londonderry Township, **Lebanon County** on 6/14/2016 for the operation of facilities approved under Construction Permit No. 3816501.

Operation Permit No. 2215508 MA issued to: **United Water Pennsylvania, Inc. (PWS ID No. 7220015)**, Hummelstown Township, **Dauphin County** on 6/10/2016 for facilities approved under Construction Permit No. 2215508MA.

Operation Permit No. 5015507 issued to: **Liverpool Municipal Authority (PWS ID No. 7500014)**, Liverpool Borough, **Perry County** on 6/14/2015 for facilities approved under Construction Permit No. 5015507.

Operation Permit No. 0616504 MA issued to: **Oley Township Municipal Authority (PWS ID No. 3060053)**, Oley Township, **Berks County** on 6/15/2016 for facilities approved under Construction Permit No. 0616504MA.

Operation Permit No. 7366413 issued to: **H2O To Go, Inc (PWS ID No. 7366413)**, **Lancaster County** on 6/15/2016 for Addition of Entry Point 166 located at River Beverage, 6436 Lincoln Highway, Wrightsville, PA.

Northcentral Region: Safe Drinking Water Program Manager, 208 West Third Street, Suite 101, Williamsport, PA 17701-6448.

Permit No. 4116501-A1—Operation—Public Water Supply.

Applicant **Stallion Oilfield Construction, LLC**
 Township/Borough City of Williamsport
 County **Lycoming**
 Responsible Official Douglas E. Stewart
 Vice President & General Counsel
 Stallion Oilfield Construction, LLC
 950 Corbindale, Suite 300
 Houston, TX 77024
 Type of Facility Public Water Supply
 Consulting Engineer Richard F. Vanucci, Jr.
 Penn Environmental & Remediation, Inc.
 111 Ryan Court, Suite 100
 Pittsburgh, PA 15205
 Permit Issued June 16, 2016
 Description of Action This Operation Permit supersedes Operation Permit 4116501 issued March 2, 2016. This permit authorizes Stallion Oilfield Construction, LLC to haul potable water withdrawn from Towanda Municipal Authority's bulk water loading station located on Lindsey Road, which has been permitted by PA DEP as a potable bulk water loading station.

Permit No. 41489512-T1—Transfer—Public Water Supply.

Applicant **Hidden View Estates, LLC**
 Township/Borough Gregg Township
 County **Centre**
 Responsible Official Mr. Henry S. Beiler
 Hidden View Estates, LLC
 P.O. Box 97
 Aaronsburg, PA 16820
 Type of Facility Public Water Supply
 Consulting Engineer N/A
 Permit Issued June 20, 2016

Description of Action Authorize operation of the PWS system at Hidden View Estates, LLC in accordance with the three public water supply permits that were issued to Longview Mobile Home Park on January 3, 1990, May 31, 2000 and January 22, 2013, subject to all applicable special conditions.

Permit No. MA-5/31/2000-T1—Transfer—Public Water Supply.

Applicant **Hidden View Estates, LLC**
 Township/Borough Gregg Township
 County **Centre**
 Responsible Official Mr. Henry S. Beiler
 Hidden View Estates, LLC
 P.O. Box 97
 Aaronsburg, PA 16820

Type of Facility Public Water Supply
 Consulting Engineer N/A
 Permit Issued June 20, 2016

Description of Action Authorize operation of the PWS system at Hidden View Estates, LLC in accordance with the three public water supply permits that were issued to Longview Mobile Home Park on January 3, 1990, May 31, 2000 and January 22, 2013, subject to all applicable special conditions.

Permit No. MA-GWR-T1—Transfer—Public Water Supply.

Applicant **Hidden View Estates, LLC**
 Township/Borough Gregg Township
 County **Centre**
 Responsible Official Mr. Henry S. Beiler
 Hidden View Estates, LLC
 P.O. Box 97
 Aaronsburg, PA 16820

Type of Facility Public Water Supply
 Consulting Engineer N/A
 Permit Issued June 20, 2016

Description of Action Authorize operation of the PWS system at Hidden View Estates, LLC in accordance with the three public water supply permits that were issued to Longview Mobile Home Park on January 3, 1990, May 31, 2000 and January 22, 2013, subject to all applicable special conditions.

Permit No. 4916502MA—Operation—Public Water Supply.

Applicant **McEwensville Water System**
 Township/Borough McEwensville Borough
 County **Northumberland**

Responsible Official Mr. Scott L. Sharp
 Pennsylvania American Water
 Company
 105 Sodom Road
 Milton, PA 17842

Type of Facility Public Water Supply

Consulting Engineer N/A

Permit Issued June 21, 2016

Description of Action Operation of the new treatment
 building for Well No. 1, including
 sodium hypochlorite disinfection
 and 50 feet of 16-inch diameter
 ductile iron detention piping.

Bakercrest Personal Care Home (Public Water Supply) Rutland Township, **Tioga County**: On June 15, 2016, the Safe Drinking Water Program approved the Source Water Protection (SWP) plan for the Bakercrest Personal Care Home, Rutland Township, Tioga County. The personnel involved with the development of this SWP are to be commended for taking these proactive steps to protect these water sources for their community. Development of the SWP plan was funded by the Department of Environmental Protection (John C. Hamilton, P.E., (570) 327-3650).

Southwest Region: Water Supply Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745

Permit No. 3015514, Public Water Supply.

Applicant **Southwestern Pennsylvania Water Authority**
 1442 Jefferson Road
 PO Box 187
 Jefferson, PA 15344

[Borough or Township] Cumberland Township

County **Greene**

Type of Facility Water system

Consulting Engineer Bankson Engineers, Inc.
 267 Blue Run Road
 Suite 200
 Cheswick, PA 15024

Permit to Construct June 8, 2016
 Issued

Operations Permit issued to: **Moon Township Municipal Authority**, 1700 Beaver Grade Road, Suite 200, Moon Township, PA 15108, (**PWSID # 5020011**) Moon Township, **Allegheny County** on June 8, 2016 for the operation of facilities approved under Construction Permit # 0215514MA.

Operations Permit issued to: **East Deer Township**, 927 Freeport Road, Creighton, PA 15030, (**PWSID # 5020013**) East Deer Township, **Allegheny County** on June 8, 2016 for the operation of facilities approved under Construction Permit # 0216514MA.

Operations Permit issued to: **Pittsburgh Water & Sewer Authority**, Penn Liberty Plaza I, 1200 Penn Avenue, Pittsburgh, PA 15222, (**PWSID # 5020038**) City of Pittsburgh, **Allegheny County** on June 16, 2016 for the operation of facilities approved under Construction Permit # 0216512MA.

Permit No. Emergency, Minor Amendment. Public Water Supply.

Applicant **Fox Chapel Authority**
 255 Alpha Drive
 Pittsburgh, PA 15238

[Borough or Township] Fox Chapel Borough

County **Allegheny**

Type of Facility South Tank

Consulting Engineer Bankson Engineers, Inc.
 267 Blue Run Road
 Suite 200
 Cheswick, PA 15024

Permit to Construct June 15, 2016
 Issued

Permit No. 6316510-E, Minor Amendment. Public Water Supply.

Applicant **Tri-County Joint Municipal Authority**
 26 Monongahela Avenue
 Fredericktown, PA 15333

[Borough or Township] East Bethlehem Township

County **Washington**

Type of Facility Water system

Consulting Engineer KLH Engineers, Inc.
 5173 Campbells Run Road
 Pittsburgh, PA 15205

Permit to Construct June 17, 2016
 Issued

Permit No. 3216502MA, Minor Amendment. Public Water Supply.

Applicant **Indiana County Municipal Services Authority**
 602 Kolter Drive
 Indiana, PA 15701

[Borough or Township] Cherryhill Township

County **Indiana**

Type of Facility Water system

Consulting Engineer Gibson-Thomas Engineering Co., Inc.
 1004 Ligonier Street
 PO Box 853
 Latrobe, PA 15650

Permit to Construct June 8, 2016
 Issued

Northwest Region: Safe Drinking Water Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

Operation Permit issued to **North Warren Municipal Authority**, **PWSID No. 6620028**, Conewango Township, **Warren County**. Permit Number 6299502-MA1 issued June 14, 2016 for the decommissioning and removal of the existing water softening system.

Operation Permit issued to **Wesley Woods, Inc.**, **PWSID No. 6620372**, Eldred Township, **Warren County**. Permit Number 6216501 issued June 15, 2016 for the operation of the Wesley Woods Christian Education Center Public Water Supply system. This permit is issued in response to operation inspections conducted by the Department of Environmental Protection personnel on May 6, 2016 and May 11, 2016.

WATER ALLOCATIONS

Actions taken on applications received under the act of June 24, 1939 (P.L. 842, No.365) (35 P.S. §§ 631—641) relating to the acquisition of rights to divert waters of the Commonwealth.

Southwest Region: Water Supply Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

WA26-1004, Water Allocations. Pennsylvania American Water Company, 800 West Hersheypark Drive, Hershey, PA 17033, **Fayette County**. The right to purchase up to 2,600,000 gallons of water per day (peak month 30-day average) from the Municipal Authority of Westmoreland County.

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 Pennsylvania AT&T Relay Service at (800) 654-5984.

The Department has received the following plans and reports:

Northcentral Region: Environmental Cleanup & Brownfields Program Manager, 208 West Third Street, Williamsport, PA 17701.

T & H Transport, LLC Project, Interstate 80 at MM214.8W, Turbot Township, **Northumberland County**. Northridge Group, Inc., P.O. Box 231, Northumberland, PA 17857, on behalf of T & H Transport, LLC, 2865 135th St., Toledo, OH 43611, submitted a Final Report concerning remediation of site soil contaminated with diesel fuel. The report is intended to document remediation of the site to meet the Statewide Health Standard.

Northeast Region: Eric Supey, Environmental Cleanup & Brownfields Program Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915.

Arbor Business Center, 2125 28th Street SW, Allentown City, **Lehigh County**. Leidos, Inc., 6310 Allentown Boulevard, Harrisburg, PA 17112, on behalf of Air Products and Chemicals, Inc., 7201 Hamilton Boulevard, Allentown, PA 18195, submitted a Final Report concerning remediation of site groundwater contaminated with Tetrachloroethene, Trichloroethene, 1,1-Dichloroethene, cis/trans-1,2-Dichloroethene, 1,2-Dichloroethane, 1,1,1-Trichloroethane. The report is intended to document remediation of the site to meet the Background Standard.

Southcentral Region: Environmental Cleanup and Brownfields Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110. Phone 717.705.4705.

Growmark FS, LLC, 3150 Stoney Point Road, East Berlin, PA 17316, Latimore Township, **Adams County**. Groundwater Sciences Corporation, 2601 Market Place Street, Suite 310, Harrisburg, PA 17110-9340, on behalf of Growmark FS LLC, 308 NE Front Street, Milford, DE 19963, submitted a Remedial Investigation Report concerning site soils and groundwater contaminated with herbicides and fertilizers from the operation of an agrochemical business. The report is intended to document remediation of the site to meet the Nonresidential Statewide Health and Site Specific Standards.

Llewellyn's Manufactured Home Community Lot 69, 4550 Bull Road, Dover, PA 17315, Dover Township, **York County**. Independence Environmental Consulting, LLC, 1750 Kaylor Road, Hummelstown, PA 17036, on behalf of Llewellyn's Manufactured Home Community, Inc., 4550 Bull Road, Dover, PA 17315, submitted a Final Report concerning remediation of site soil contaminated with # 2 fuel oil. The Report is intended to document remediation of the site to meet the Residential Statewide Health Standard.

D.D. Freed Trucking Diesel Release, 2894 Oxford Road, New Oxford, PA 17350, Tyrone Township, **Adams County**. Environmental Products & Service of Vermont, Inc., 1539 Bobali Drive, Harrisburg, PA 17104, on behalf of D.D. Freed Trucking/Canal Insurance, 13958 Unionville Road, Mount Airy, MD 21771, and Robert and Linda Adams, 2894 Oxford Road, New Oxford, PA 17350 submitted a Final Report concerning remediation of site soils contaminated with diesel fuel and motor oil from a vehicular accident. The Report is intended to document remediation of the site to meet the Residential Statewide Health Standard.

Bare Development/Miller Chemical Company Fire, 275 Radio Road, Hanover, PA 17331, Hanover Borough, **Adams County**. Ramboll Environ US Corporation, 4350 North Fairfax Drive, Suite 300, Arlington, VA 22203, on behalf of Miller Chemical & Fertilizer, LLC, 120 Radio Road, Hanover, PA 17331, and Bare Development, L.P. & Radio Hanover, Inc., PO Box 234, Hanover, PA 17331, submitted a Final Report concerning remediation of site soils contaminated with Inorganics and Fertil-

izer Constituents. The report is intended to document remediation of the site to meet the Site Specific, Background, and Residential Statewide Health Standards.

Northwest Region: Environmental Cleanup & Brownfields Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

Marathon New Castle Site (MPC No. 3670), 718 East Washington Street, City of New Castle, **Lawrence County**. Arcadis U.S., Inc., 6041 Wallace Road Extension, Suite 300, Wexford, PA 15090 on behalf of Marathon Petroleum Company, LP, 539 South Main Street, Findlay, OH 45840, submitted a Remedial Investigation Report concerning the remediation of site soil contaminated with benzene and site groundwater contaminated with benzene, ethylbenzene, naphthalene, 1,2,4-trimethylbenzene, and 1,3,5-trimethylbenzene. The report is intended to document remediation of the site to meet the Site-Specific Standard.

Former ELG Metals Scrapyard Property, Intersection of Crestview Drive and 4th Street—Lot # 1 of GRDC Lot 6A Subdivision, Pymatuning Township, **Mercer County**. KU Resources, Inc., 22 South Linden Street, Duquesne, PA 15110, on behalf of Greenville-Reynolds Development Corporation, 301 Arlington Drive, Greenville, PA 16125, submitted a Remedial Investigation Report/Risk Assessment Report/Cleanup Plan concerning the remediation of site soil contaminated with antimony, chromium, cobalt, iron, lead, manganese, molybdenum, nickel, selenium and groundwater contaminated with arsenic, iron and manganese. The report is intended to document remediation of the site to meet the Site-Specific Standard.

Southwest Region: Environmental Cleanup & Brownfield Development Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

Vantage Energy Appalachia—Porter Street Well Pad Impoundment, 390 Fawn Valley Farm Road, Franklin Township, **Greene County**. SE Technologies, LLC, 98 Vanadium Road, Bridgeville, PA 15017 on behalf of Vantage Energy Appalachia, LLC, 116 Inverness Drive East, Suite 107, Englewood, CO 80112 has submitted a Remedial Investigation/Final Report (RI/FR) concerning site soils and groundwater contaminated with chloride, volatile and semi-volatile organic compounds (VOCs & SVOCs), metals, and strontium from leakage of the former impoundment. The RI/FR was published in the Greene County Messenger on February 26, 2016.

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 Pennsylvania AT&T Relay Service at (800) 654-5984.

The Department has received the following plans and reports:

Northcentral Region: Environmental Cleanup & Brownfields Program Manager, 208 West Third Street, Williamsport, PA 17701.

T & H Transport, LLC Project, Interstate 80 @ MM214.8W, Turbot Township, **Northumberland County**. Northridge Group, Inc., P.O. Box 231, Northumberland, PA 17857, on behalf of T & H Transport, LLC, 2865 135th St., Toledo, OH 43611, submitted a Final Report concerning the remediation of site soil contaminated with diesel fuel. The Final Report demonstrated attainment of the Statewide Health Standard, and was approved by the Department on June 14, 2016.

Sanfrey Freight Services Inc., US Route 322 E., Worth Township, **Centre County**. Northridge Group, Inc., P.O. Box 231, Northumberland, PA 17857, on behalf of Sanfrey Freight Services Inc., P.O. Box 1770, Warren, OH 44482, submitted a Final Report concerning the remediation of site soils contaminated with Diesel Fuel. The Final Report demonstrated attainment of the Statewide Health Standard, and was approved by the Department on June 16, 2016.

Southcentral Region: Environmental Cleanup and Brownfields Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110. Phone 717.705.4705.

Turkey Hill # 76 Minit Mart, 2101 New Danville Pike, Lancaster, PA 17603, Pequea Township, **Lancaster County**. Letterle & Associates, Inc., 2022 Axemann Road, Suite 201, Bellefonte, PA 16823, on behalf of Keystone Petroleum Equipment, Ltd, 981 Trindle Road West, Mechanicsburg, PA 17055, submitted a Final Report concerning remediation of site soils contaminated with unleaded gasoline. The Final Report did not demonstrate attainment of the Residential Statewide Health Standard, and was disapproved by the Department on June 15, 2016.

Northwest Region: Environmental Cleanup & Brownfields Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

Seneca Resources Corporation Pad D-08G, Approximate Latitude 41.626014 Longitude -78.416222, Norwich Township, **McKean County**. ARM Group, Inc., 1129 W. Governor Road, P.O. Box 797, Hershey, PA 17033-8605, on behalf of Seneca Resources Corporation, 5800 Corporate Boulevard, Suite 300, Pittsburgh, PA 15237, submitted a Final Report concerning the remediation of site soil contaminated with aluminum, barium, boron, iron, lithium, manganese, selenium, strontium, vanadium, zinc, chloride, and SPLP chloride. The Report was disapproved by the Department on June 21, 2016.

Southwest Region: Environmental Cleanup & Brownfield Development Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

Bakery Square 2.0 (Former Reizenstein Middle School), 129 Denniston Avenue, City of Pittsburgh, **Allegheny County**. American Geosciences, Inc., 3925 Reed Boulevard, Suite 400, Murrysville, PA 15668 on behalf of Walnut Capital Management, Inc., 5500 Walnut Street, Ste 300, Pittsburgh, PA 15232 submitted a Risk Assessment/Cleanup Plan (RA/CP) concerning the remediation of site soil contaminated with arsenic, and groundwater contaminated with tetrachlorethene and trichlorethene. The RA/CP was approved by the Department on June 16, 2016.

Westmoreland Land, LLC—431 Nichols Road Site, 431 Nichols Road, South Huntingdon Township, **Westmoreland County**. GAI Consultants, Inc., 385 East Waterfront Drive, Homestead, PA 15120 on behalf of Westmoreland Land, LLC, 14302 FNB Parkway, Omaha, Nebraska, 68154 submitted a Final Report concerning site soil contaminated by fuel oil from a home heating oil tank removal. The Final report demonstrated attainment of a residential Statewide Health standard for soils and was approved by the Department on June 17, 2016.

HAZARDOUS WASTE TRANSPORTER LICENSE

Actions on applications for Hazardous Waste Transporter License received under the Solid Waste Management Act (35 P.S. §§ 6018.101—6018.1003) and regulations to transport hazardous waste.

Central Office: Bureau of Land Recycling and Waste Management, Division of Hazardous Waste Management, PO Box 69170, Harrisburg, PA 17106-9170.

Hazardous Waste Transporter License Reissued

Radiac Research Corp., 261 Kent Avenue, Brooklyn, NY 11211. License No. PA-AH S007. Effective Jun 20, 2016

REGULATED MEDICAL AND CHEMOTHERAPEUTIC WASTE TRANSPORTER LICENSE

Actions on applications for Regulated Medical and Chemotherapeutic Waste Transporter License received under the Solid Waste Management Act and the act of June 28, 1988 (P.L. 525, No. 93) and regulations to transport regulated medical and chemotherapeutic waste.

Central Office: Bureau of Land Recycling and Waste Management, Division of Hazardous Waste Management, PO Box 69170, Harrisburg, PA 17106-9170.

Regulated Medical and Chemotherapeutic Waste Transporter Reissued

Accu Medical Waste Service, Inc., PO Box 797, Marietta, OH 45750. License No. PA-HC 0252. Effective June 20, 2016.

Renewal Applications Received

Accu Medical Waste Service, Inc., PO Box 797, Marietta, OH 45750. License No. PA-HC 0252. Effective June 14, 2016.

MUNICIPAL WASTE GENERAL PERMIT

Permit Issued under the Solid Waste Management Act; the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P.S. §§ 4000.101—4000.1904); and Municipal Waste Regulations for a General Permit to Operate Municipal Waste Processing Facilities and the Beneficial Use of Municipal Waste.

Central Office: Division of Municipal and Residual Waste, Rachel Carson State Office Building, 14th Floor, 400 Market Street, Harrisburg, PA 17106-9170.

General Permit Numbers: WMGM055SC001, WMGM055SC001A, WMGM055SC001B, WMGM055NC001C, WMGM055NE001D, WMGM055NC002E, and WMGM055SC001F.EPP Renewable Energy, LLC, 1650 N. Cedar Crest Boulevard, Suite 509, Allentown, PA 18104. For the processing and beneficial use of: (1) a substitute for high or medium Btu-LFG for natural gas or other fuel; (2) a substitute for natural gas or other fuel to be interconnected with another pipeline for consumer use; and (3) an alternative fuel for the electric generators to produce electricity. These general permits were issued by Central Office on June 15, 2016.

Persons interested in reviewing a general permit should be directed to Scott E. Walters at 717-787-7381, Chief, Permits Section, Division of Municipal and Residual Waste, Bureau of Waste Management, P.O. Box 69170, Harrisburg, PA 17106-9170. TDD users may contact the Department through the Pennsylvania AT&T Relay Service, (800) 654-5984.

RESIDUAL WASTE GENERAL PERMIT

Renewal of Residual Waste General Permit and Determination of Applicability Issued Under the Solid Waste Management Act; the Municipal Waste Planning, Recycling and Waste Reduction Act; 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

Southcentral Region: Regional Solid Waste Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

General Permit No. WMGR110 (WMGR110SC001A) and WMGR110SC001B. Nolt Services, LLC, 728 Rettew Mill Road, Lititz, PA 17543-9163.

The Southcentral Regional Office, Waste Management Program has issued a renewal of Residual Waste General Permit No. WMGM110 (WMGR110SC001A) and a determination of applicability (DOA), WMG R110SC001B, to Nolt Services, LLC for the beneficial use of: (a) residential septage, (b) food processing residuals and (c) restaurant grease trap waste, hereinafter referred to as "blended waste" materials, as a soil conditioner or a fertilizer for agricultural purposes. The blended waste shall be treated to non-exceptional quality biosolid values. This permit is for use at the Nolt Farm located at 728 Rettew Mill Road, Lititz, PA in Ephrata Township, **Lancaster County** and at Lititz Run Farm located at 57 Clay Road, Lititz, PA 17543-9163 in Warwick Township, Lancaster County. The renewal and DOA were issued on June 20, 2016.

Persons interested in obtaining more information about this determination of applicability may contact John Oren, P.E., Permitting Section Chief, Southcentral Regional Office, Waste Management Program at 717-705-4706. TDD users may contact the Department through the Pennsylvania AT&T Relay Service, (800) 654-5984.

OPERATE WASTE PROCESSING OR DISPOSAL AREA OR SITE

Permit(s) issued under the Solid Waste Management Act, the Municipal Waste Planning, Recycling and Waste Reduction Act and Regulations to Operate Solid Waste Processing or Disposal Area or Site.

Southwest Region: Regional Solid Waste Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745. Telephone 412-442-4000.

Permit No. 100081: Southern Alleghenies Landfill, Inc., P.O. Box 195, Luciusboro Road, Irwin, PA 15731. Southern Alleghenies Landfill, 843 Miller Picking Road, Davidsville, PA 15928. Permit renewal of a municipal waste landfill for a 10-year period, in Conemaugh Township, **Somerset County. The permit renewal was issued in the DEP Regional Office on June 15, 2016.**

Permits renewed under the Solid Waste Management Act, the Municipal Waste Planning, Recycling and Waste Reduction Act and Regulations to Operate Solid Waste Processing or Disposal Area or Site.

Southcentral Region: Regional Solid Waste Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

Permit No. 101642 Reading Materials, Inc. (Berky's Lot 9 Container & Transfer Facility) 15 Breezy Park Drive, Fleetwood, PA 19522. The permit for Berky's Lot 9 Container & Transfer Facility which expires on June 23, 2016, was renewed on June 20, 2016 until June 23, 2026 for Solid Waste Permit No. 101642, in accordance with Article V of the Solid Waste Management Act, 35 P.S. §§ 6018.101, et seq.

Compliance with the terms and conditions set forth in the permit is mandatory. You have the right to file an appeal as to these terms and conditions.

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.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401.

Contact: James Beach, New Source Review Chief—Telephone: 484-250-5920.

GP3-46-0136: Allient Recycling Company (1752 Limeklin Pike, Dresher, PA 19025) On June 20, 2016 for installation of a portable crusher in Montgomery Township, **Montgomery County.**

GP11-46-0079: Allied Recycling Company (1752 Limeklin Pike, Dresher, PA 19025) On June 20, 2016 for installation of a non-road engine in Montgomery Township, **Montgomery County.**

GP9-15-0024: Cephalon Incorporated (145 Brandywine Parkway, West Chester, PA 19380) On June 20, 2016 for two (2) MTU diesel powered emergency generators each rated at 986 bhp in West Goshen Township, **Chester County.**

Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790.

Contact: Raymond Kempa, New Source Review Chief—Telephone: 570-826-2531.

GP9-40-011A: The H&K Group, Inc. (PO Box 196, 2052 Lucon Road, Skippack, PA, 19474) on June 15, 2016, for the construction and operation of (3) Three ICI Engines at their Hazleton Materials, Weatherly, PA facility in Foster Township, **Luzerne County.**

GP3-40-011A: The H&K Group, Inc. (PO Box 196, 2052 Lucon Road, Skippack, PA, 19474) on June 15, 2016, for the construction and operation of a crushing operations at their Hazleton Materials, Weatherly, PA facility in Foster Township, **Luzerne County.**

GP11-45-006A: E.R. Linde Construction Company (9 Collan Park, Honesdale, PA, 18431) on June 16, 2016, for the construction and operation of (6) Six ICI Engines at their Cresco Quarr, Quarry Lane, Cresco, PA 18326 facility in Barrett Township, **Monroe County.**

GP3-45-006A: E.R. Linde Construction Company (9 Collan Park, Honesdale, PA, 18431) on June 16, 2016, for the construction and operation of a crushing operations at their Cresco Quarr, Quarry Lane, Cresco, PA 18326 facility in Barrett Township, **Monroe County.**

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110.

Contact: Thomas Hanlon, Facilities Permitting Chief, 717-705-4862, Virendra Trivedi, New Source Review Chief, 717-705-4863, or William Weaver, Regional Air Quality Manager, 717-705-4702.

GP7-67-03082D: The YGS Group (3650 West Market Street, York, PA 17404) on June 14, 2016, for one new and two existing sheet-fed offset lithographic printing presses, under GP7, at the printing facility in West Manchester Township, **York County.**

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701.

Contact: Muhammad Q. Zaman, Program Manager, 570-327-3648.

GP5-08-343B: Talisman Energy USA, Inc. (50 Penwood Place, Warrendale, PA 15086) on June 9, 2016, for the renewal to continue operation of twelve (12) Caterpillar model G3516B lean-burn natural gas-fired compressor engines each rated at 1,380 brake horsepower to be equipped with Miratech model IQ-26-12-EH1 oxidation catalyst, two (2) 60 MMscf/day NATCO dehydrators, two (2) storage tanks and one (1) 208 brake horsepower, Generac model QT130A, natural gas-fired emergency generator pursuant to the General Plan Approval and General Operating Permit for Natural Gas Production Facilities (BAQ-GPA/GP-5) at the Cole Compressor Station located in Columbia Township, **Bradford County**.

GP3-57-057A: Jack L. McClintock (15222 US Highway 220, Muncy Valley, PA 17758) on June 13, 2016, authorize the construction and operation of a portable nonmetallic mineral processing plant pursuant to the General Plan Approval and/or General Operating Permit For Portable Nonmetallic Mineral Processing Plants (BAQ-GPA/GP-3) at the Pit # 2 facility located in Shrewsbury Township, **Sullivan County**.

GP9-57-057A: Jack L. McClintock (15222 US Highway 220, Muncy Valley, PA 1758) on June 13, 2016, authorize the construction and operation of one (1) 250 brake horsepower (bhp) diesel-fired, Cummins model 46218424 engine, one (1) 440 bhp diesel-fired, Caterpillar model C13 engine, two (2) 129 bhp diesel-fired Caterpillar model C4.4 engines, one (1) 100 bhp diesel-fired Deutz model TCD2012L04 2V engine and a 49 bhp diesel-fired Kubota engine pursuant to the General Plan Approval and/or General Operating Permit for Diesel or No. 2 Fuel-fired Internal Combustion Engines (BAQ-GPA/GP9) at the Pit # 2 facility located in Shrewsbury Township, **Sullivan County**.

GP5-59-206D: Mainesburg Gathering System, LP (5613 DTC Parkway, Suite 310, Green Wood Village, CO 80111) on June 15, 2016, authorize the construction and operation of two (2) 1,340 bhp Caterpillar model 3516LE natural gas-fired compressor engines, one (1) 203 brake horsepower (bhp) Caterpillar model 3306TA natural gas-fired emergency generator and one (1) 30 MMSCFD dehydration unit with a 1.0 million Btu per hour reboiler and three (3) storage tanks pursuant to the General Plan Approval and/or General Operating Permit for Natural Gas Compression and/or Processing Facilities (BAQ-GPA/GP5) at the Mainesburg Compressor Station located in Sullivan Township, **Tioga County**.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481.

Contact: Dave Balog, New Source Review Chief—Telephone: 814-332-6940.

GP5-33-179D: Snyder Brothers, Inc., Himes Compressor Station (926 Swamp Run Road, Brookville, PA 15825) on June 6, 2016, for the authority to construct and/or operate a natural gas fired compressor engine, Caterpillar G3306NA (BAQ-GPA/GP-5) located in Knox Township, **Jefferson 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: Janine Tulloch-Reid, Facilities Permitting Chief—Telephone: 484-250-5920.

46-0172F: Gemalto, Inc. (101 Park Drive, Montgomeryville, PA 18936) On June 15, 2016 for the installation of a new Sakurai Screen Press replacing an old existing screen press & the installation of a VOC control system at an existing facility located in Montgomeryville, **Montgomery County**.

Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790.

Contact: Raymond Kempa, New Source Review Chief—Telephone: 570-826-2507.

58-00019A: Holdridge Energy, LLC (358 North Shore Drive, Suite 201, Pittsburgh, PA 15212) On June 17, 2016 for the installation and operation of 3 Rolls-Royce Bergen Natural gas fired engines with oxidation catalyst and SCR to control emissions at their facility in Herrick Township, **Susquehanna County**.

Southcentral Region: Air Quality Program, 909 Elmer-ton Avenue, Harrisburg, PA 17110.

Contact: Thomas Hanlon, Facilities Permitting Chief, 717-705-4862, Virendra Trivedi, New Source Review Chief, 717-705-4863, or William Weaver, Regional Air Quality Manager, 717-705-4702.

36-03005B: Intelligencer Printing Co., Inc. (330 Eden Road, Lancaster, PA 17601) on June 15, 2016, for installation of a new eight (8) station Manroland 700 HiPrint sheet-fed offset lithographic printing press at their facility located in Manheim Township, **Lancaster County**.

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: James A. Beach, New Source Review Chief—Telephone: 484-250-5920.

46-0288: Anderson Prints Inc. (601 General Washington Ave, Norristown, PA 19403-3662) On June 18, 2016 for the extension of the installation and operation of the two (2) rotary screen presses. The facility is located in West Norriton Township, **Montgomery County**.

46-0284: John Middleton Company (PO Box 85108, Richmond, VA 23285-5108) On June 20, 2016 to extend the temporary operation of the new cigar makes and new packaging equipment and the central baghouse. The facility is located in Limerick Township, **Montgomery County**.

23-0119A: Sunoco Partners Market & Term LP (100 Green Street, Marcus Hook, 19061-4800) On June 20, 2016 to extend the construction and operation of the deethanizer for the purpose of separating a liquid pipeline stream of mixed propane and ethane. The facility is located in Marcus Hook Borough, **Delaware County**.

46-0124A: Montgomery Chemical (901 Conshohocken, PA 19428-1054) On June 20, 2016 to extend the temporary operation of a scrubber system that controls the methanol emissions from an existing chemical process used in the formation of sodium borohydride. The facility is located in Plymouth Township, **Montgomery County**.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701.

Contact: Muhammad Q. Zaman, Environmental Program Manager—Telephone: 570-327-3648.

19-00002A: Foam Fabricators, Ltd (7050 Columbia Boulevard, 17 Industrial Drive, Bloomsburg, PA 17815) on June 12, 2016 to extend the authorization to operate the expandable polystyrene foam processing operation at their facility located in South Centre Township, **Columbia County** on a temporary basis to December 9, 2016. The plan approval has been extended.

Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

Contact: Edward Orris, P.E., Environmental Engineer Manager—Telephone: 412-442-4161.

PA-11-00433B: GapVax, Inc. (575 Central Avenue, Johnstown, PA 15902-2600) Plan Approval extension issuance date effective June 20, 2016, to grant an 180-day Plan Approval extension for operation of three (3) coating booths located at their existing GapVax facility in City of Johnstown, **Cambria County**.

PA-11-00497A: Gautier Steel Ltd. (80 Clinton Street, Johnstown, PA 15901-2200) plan approval modification issuance date June 17, 2016, to initiate temporary operation of two (2) 56" mill reheat furnaces, each rated at 8.0 MMBtus/hr at their Gautier Steel Plant located in City of Johnstown, **Cambria County**.

65-00629A: CBC Latrobe Acquisition, LLC (100 33rd Street, Latrobe, PA 15650-1474) on June 16, 2016, to extend the temporary operation period for the wastewater pretreatment system to allow additional shake-down of the new sources at the Latrobe Brewery located in in Latrobe Borough, **Westmoreland County**. The new expiration date is November 28, 2016.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481.

Contact: Dave Balog, New Source Review Chief—Telephone: 814-332-6328.

16-160A: Clarion Altela Environmental Services, LLC (3099 Piney Dam Road, Clarion, PA 16214) on June 17, 2016, effective June 30, 2016, has issued a plan approval extension for the construction of twelve additional AltelaRain 600 modules to process produced water and frac flow-back water generated by natural gas wells in Piney Township, **Clarion County**. This is a State Only facility.

Title V Operating Permits Issued under the Air Pollution Control Act and 25 Pa. Code

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481.

Contact: Dave Balog, New Source Review Chief—Telephone: 814-332-6940.

25-00920: Waste Management Disposal Service of PA for the Lakeview Landfill (851 Robison Road E., Erie, PA 16509-5339) on June 13, 2016, issued the renewal Title V Permit to operate the landfill in Summit Township, **Erie County**. The facility's major emission

sources include the landfill (controlled by an enclosed ground flare or two engine/generators), the leachate storage system, emergency generators, and parts washers. The facility is a major facility due to its potential to emit Carbon Monoxide (CO). The facility is subject to the Title V Operating Permit requirements adopted in 25 Pa. Code Chapter 127, Subchapter G. The landfill is subject to the New Source Performance Standards (NSPS) for Municipal Solid Waste Landfills (40 CFR 60, Subpart WWW) and the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Municipal Solid Waste Landfills (40 CFR 63, Subpart AAAA). The engines that control the landfill gas are existing 4 stroke lean burn engines rated greater than 500 hp which are located at a major source of hazardous air pollutants and are not subject to the NESHAP for Stationary Reciprocating Internal Combustion Engines (40 CFR 63, Subpart ZZZZ). The emergency generator for the landfill is subject to the work practice requirements of Subpart ZZZZ. The emergency generator at the scale house is subject to the NSPS for Stationary Combustion Ignition ICE (40 CFR 60 Subpart IIII). The facility reported the following emissions for 2015: CO—206.4 TPY; NO_x—49.9 TPY; PM₁₀—3.5 TPY; PM_{2.5} 2.8 TPY; SO_x—5.6 TPY; VOC 45.0 TPY; and formaldehyde—18.7 TPY.

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 19401.

Contact: Janine Tulloch-Reid, Facilities Permitting Chief—Telephone: 484-250-5920.

09-00184: Doylestown Hospital (595 West State Street, Doylestown, PA 18901) On June 20, 2016 for renewal of a State Only Operating Permit. The facility operates four (4) dual-fired boilers, one (1) natural gas fired electric generator for peak shaving purposes, four (4) emergency diesel electric generators, and two (2) emergency diesel fire pumps in Doylestown Township, **Bucks County**.

23-00030: Swarthmore College (500 College Avenue, Swarthmore, PA 19081), On June 7, 2016, a renewal of a Synthetic Minor Operating Permit. The facility's emission points include boilers and emergency generators located throughout the college campus located in Swarthmore Borough, **Delaware County**.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701.

Contact: Muhammad Q. Zaman, Environmental Program Manager—Telephone: 570-327-3648.

41-00047: Wildwood Cemetery Co. (1151 Cemetery St., Williamsport, PA 17701-1605) on June 15, 2016, was issued a revised State-Only operating permit to incorporate the terms and conditions of Plan Approval 41-00047A for their Wildwood Cemetery facility located in Loyalsock Township, **Lycoming County**. The revised State-Only operating permit contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

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.

Southcentral Region: Air Quality Program, 909 Elmer-ton Avenue, Harrisburg, PA 17110.

Contact: Thomas Hanlon, Facilities Permitting Chief, 717-705-4862, Virendra Trivedi, New Source Review Chief, 717-705-4863, or William Weaver, Regional Air Quality Manager, 717-705-4702.

38-05019: TC Ironwood, LLC (305 Prescott Road, Lebanon, PA 17042-9178) on June 15, 2016, for the electric generating facility located in South Lebanon Township, **Lebanon County**. The Title V permit was administratively amended in order to reflect a change of name.

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 Issued

California District Office: 25 Technology Drive, Coal Center, PA 15423, 724-769-1100.

30841317 and NPDES No. PA0213527. Consol Pennsylvania Coal Company LLC, (1000 Consol Energy Drive, Canonsburg, PA 15317). To revise the permit for the Enlow Fork Mine in Richhill Township, **Greene County** and Morris Township, **Washington County** and related NPDES permit for construction of the 2 East Mains Dewatering Borehole. Surface Acres Proposed 3.3. No additional discharges. The application was considered administratively complete on December 24, 2015. Application received August 3, 2015. Permit issued June 13, 2016.

Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, 814-472-1900.

Permit No. 56090111 and NPDES No. PA0262871, PBS Coals, Inc., 1576 Stoystown Road, P.O. Box 260, Friedens, PA 15541, renewal of an existing bituminous & auger surface mine in Quemahoning and Somerset Townships, **Somerset County**, affecting 233.6 acres. Receiving streams: unnamed tributaries to/and Wells Creek; Stonycreek River classified for the following use: cold water fishes. The first downstream potable water supply intake from the point of discharge is Hooversville Municipal Water Authority. Application Received: February 2, 2016. Permit issued: June 9, 2016.

Permit 32040106, NPDES No. PA0249653, Ridge Limestone, Inc., 3756 State Route 981, Saltsburg, PA 15681-1475, permit renewal for the continued operation and restoration of a bituminous surface mine in Young

Township, **Indiana County**, affecting 339 acres. Receiving streams: unnamed tributaries to/and Whisky Run to Blacklegs Creek classified for the following uses: cold water fishes. There are no potable water supply intakes within 10 miles downstream. Application received: December 21, 2015. Permit issued: June 13, 2016.

Knox District Mining Office: P.O. Box 669, 310 Best Avenue, Knox, PA 16232-0669, 814-797-1191.

16100105. Amerikohl Mining, Inc., (202 Sunset Drive, Butler, PA 16001). Renewal of an existing bituminous surface mine in Porter Township, **Clarion County**, affecting 53.7 acres. Receiving streams: Unnamed tributaries to Leatherwood Creek, unnamed tributary to Jacks Run. This renewal is issued for reclamation only. Application received: April 18, 2016. Permit Issued: June 9, 2016.

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, 570-621-3118.

Permit No. 13010201R3. Rossi Excavating Company, (RR 1, Box 189E, Beaver Meadows, PA 18216), renewal for Reclamation Activities Only of an existing anthracite coal refuse reprocessing operation in Banks Township, **Carbon County** affecting 580.0 acres, receiving stream: Wetzel Creek. Application received: March 22, 2016. Renewal issued: June 10, 2016.

Permit No. 13010201GP104R. Rossi Excavating Company, (RR 1, Box 189E, Beaver Meadows, PA 18216), renewal of General NPDES Stormwater Permit for stormwater discharges associated with mining activities on Surface Mining Permit No. 13010201 in Banks Township, **Carbon County**, receiving stream: Wetzel Creek. Application received: March 22, 2016. Renewal issued: June 10, 2016.

Noncoal Permits Issued

Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, 814-472-1900.

Permit No. 44930301 and NPDES No. PA 0595985, Glenn O. Hawbaker, Inc., 1952 Waddle Road, Suite 203, State College, PA 16803 transfer of an existing large noncoal (industrial minerals) operation from New Enterprise Stone and Lime Col, Inc. d.b.a. Eastern Industries, Inc., 3724 Crescent Court, Suite 200, Whitehall, PA 18052, located in Armagh Township, **Mifflin County** affecting 173.8 acres. Receiving streams: unnamed tributary to Honey Creek classified for the following use: high quality cold water fishes. There are no potable water supply intakes within 10 miles downstream. Application received: December 30, 2015. Permit issued: June 9, 2016.

Permit No. 6875SM3 and NPDES No. PA 0612383, Glenn O. Hawbaker, Inc., 1952 Waddle Road, Suite 203, State College, PA 16803 transfer of an existing large noncoal (industrial minerals) operation from New Enterprise Stone and Lime Col, Inc. d.b.a. Eastern Industries, Inc., 3724 Crescent Court, Suite 200, Whitehall, PA 18052, located in Armagh Township, **Mifflin County** affecting 114.7 acres. Receiving streams: unnamed tributary to Honey Creek classified for the following use: high quality cold water fishes. There are no potable water supply intakes within 10 miles downstream. Application received: December 30, 2015. Permit issued: June 9, 2016.

Permit No. 40A76SM9 and NPDES No. PA0212491, Keystone Lime Company, Inc., P.O. Box 278, Springs, PA 15562 revision of a large noncoal (industrial minerals) operation to change the land use from pastureland to light industrial, located in Elk Lick Township, **Somerset County**, affecting 3.5 acres. Receiving stream: Glades Run, classified for the following use: cold water fishes.

There are no potable water supply intakes within 10 miles downstream. Application received: February 12, 2016. Permit issued: June 13, 2016.

Knox District Mining Office: P.O. Box 669, 310 Best Avenue, Knox, PA 16232-0669, 814-797-1191.

33162802. Simpson Excavating, Inc. (848 Main Street, Box 204, Corsica, PA 15829) Commencement, operation and restoration of a small industrial minerals mine in Union Township, **Jefferson County**, affecting 5.0 acres. Receiving streams: Simpson Run. Application received: April 18, 2016. Permit Issued: June 13, 2016.

33162802-GP-104. Simpson Excavating, Inc. (848 Main Street, Box 204, Corsica, PA 15829) General NPDES Permit for stormwater discharges associated with mining activities on Surface Mining Permit No.33162802 in Union Township, **Jefferson County**. Receiving streams: Simpson Run. Application received: April 18, 2016. Permit Issued: June 13, 2016.

Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, 814-342-8200.

4977SM4GP-104. Daggett Sand & Gravel, Inc. (8056 Route 549, Millerton, PA 16936), hereby approves the Notice of Intent (NOI) submitted for coverage to discharge stormwater associated with NPDES Permit 4977SM4GP-104 to the following surface water(s) in Jackson Township, **Tioga County**. Receiving stream(s): Seeley Creek. Application received: January 4, 2016. Permit Issued: June 13, 2016.

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, 570-621-3118.

Permit No. 58152502. F.S. Lopke Contracting, Inc., (3430 State Route 434, Apalachin, NY 13732), Commencement, operation and restoration of a quarry operation in Lenox Township, **Susquehanna County** affecting 10.0 acres, receiving stream: East Branch Tunkhannock Creek to Tunkhannock Creek. Application received: August 19, 2015. Permit issued: June 8, 2016.

Permit No. 58152502GP104. F.S. Lopke Contracting, Inc., (3430 State Route 434, Apalachin, NY 13732), General NPDES Stormwater Permit for stormwater discharges associated with mining activities on Surface Mining Permit No. 58152502 in Lenox Township, **Susquehanna County**, receiving stream: East Branch Tunkhannock Creek to Tunkhannock Creek. Application received: August 19, 2015. Permit issued: June 8, 2016.

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 Issued

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, 570-621-3118

Permit No. 06164107. J Roy's, Inc., (P.O. Box 125, Bowmansville, PA 17507), construction blasting for 109 Stephen Road in Bern Township, **Berks County** with an expiration date of June 3, 2017. Permit issued: June 7, 2016.

Permit No. 09164104. Rock Work, Inc., (1257 DeKalb Pike, Blue Bell, PA 19422), construction blasting for Reeves Tract in Upper Makefield Township, **Bucks County** with an expiration date of June 30, 2016. Permit issued: June 7, 2016.

Permit No. 36164131. Keystone Blasting Service, (15 Hopeland Road, Lititz, PA 17543), construction blasting for Garden Spot Village in Earl Township, **Lancaster County** with an expiration date of May 30, 2017. Permit issued: June 7, 2016.

Permit No. 36164132. J Roy's, Inc., (P.O. Box 125, Bowmansville, PA 17507), construction blasting for Perdue Soybean Plant in Conoy Township, **Lancaster County** with an expiration date of June 7, 2017. Permit issued: June 7, 2016.

Permit No. 38164107. Keystone Blasting Service, (15 Hopeland Road, Lititz, PA 17543), construction blasting for Bob Copenhaver Manure Pit in North Cornwall Township, **Lebanon County** with an expiration date of July 30, 2016. Permit issued: June 7, 2016.

Permit No. 22164103. M & J Explosives, LLC, (P.O. Box 1248, Carlisle, PA 17013), construction blasting for Creekvale in West Hanover Township, **Dauphin County** with an expiration date of June 7, 2017. Permit issued: June 10, 2016.

Permit No. 38164108. Keystone Blasting Service, (15 Hopeland Road, Lititz, PA 17543), construction blasting for James Stoltzfus dwelling in Heidelberg Township, **Lebanon County** with an expiration date of July 30, 2016. Permit issued: June 10, 2016.

Permit No. 48164107. Maine Drilling & Blasting, Inc., (P.O. Box 1140, Gardiner, ME 04345), construction blasting for Conagra Mills in Upper and Lower Mt. Bethel Townships, **Northampton County** with an expiration date of February 3, 2017. Permit issued: June 10, 2016.

Permit No. 67164105. M & J Explosives, LLC, (P.O. Box 1248, Carlisle, PA 17013), construction blasting for Fairview Township Collection System in Fairview Township, **York County** with an expiration date of June 7, 2017. Permit issued: June 10, 2016.

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 AT&T 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 free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

Actions on applications for the following activities filed under the Dam Safety and Encroachments Act (32 P.S. §§ 693.1—693.27), section 302 of the Flood Plain Management Act (32 P.S. § 679.302) and The Clean Streams Law 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.

E53-439 (1). Galeton Borough Authority, 15 West Street, Galeton, PA 16922-1318. Wetmore Run and Right Branch, Wetmore Run Water Intake/Weir Modification and Infiltration Gallery Abandonment Project, West Branch Township, **Potter County**, ACOE Baltimore District Galeton, PA Quadrangle Latitude: 41° 42' 58.7"; Longitude: 77° 42' 50.2" (Wetmore) and Latitude: 41° 43' 11.5"; Longitude: 77° 42' 27.5" (Right Branch, Wetmore).

The Department is giving consent to a major permit amendment for the (1) abandon in-place previously constructed subsurface infiltration galleries beneath the channel of Wetmore Run and Right Branch, Wetmore Run, (2) modification to previously constructed monitoring weirs within the channel of Wetmore Run and Right Branch, Wetmore Run, and (3) construct, operate and maintain a public water supply intake structure within the channels of Wetmore and Right Branch, Wetmore Run. The projects are located along the northern right-of-way of SR 2002 with a restricted access road approximately 1,120-feet east of SR 2003 and 2002 intersection.

Southeast Region: Waterway and Wetlands Program Manager, 2 East Main Street, Norristown, PA 19401, Telephone 484-250-5900.

E09-1001. Warrington Township, 852 Easton Road, Warrington, PA 18976, Warrington Township, **Bucks County**, ACOE Philadelphia District.

To construct and maintain a 6-foot wide Steel pedestrian Bridge situated along the floodway/floodplain of the tributary B to Little Neshaminy Creek (WWF, MF) and measuring approximately 114 feet in length associated with the existing trail system in the Township. The

project also includes the walkway paths along east and west sides of the bridge within the floodplain to connect the existing trails.

The site is located approximately 700 feet southeast of Street Road and Elbow Lane intersection (Ambler, PA USGS Quadrangle, Latitude: 40.238382; Longitude: -75.154471).

The issuance of this permit also constitutes approval of a Water Quality Certification under Section 401 of the Federal Water Pollution Control Act [33 U.S.C.A.1341(a)].

Northeast Regional Office, Waterways and Wetlands Program, 2 Public Square, Wilkes-Barre, PA 18701-1915, Telephone 570-826-2511.

E66-162. Mr. Vincent Riggi, 1309 Elkview Drive, South Abington, PA 18411. Overfield Township, **Wyoming County**, Army Corps of Engineers Baltimore District.

To remove the existing boathouse and to construct and maintain a pile supported boathouse/dock in Lake Winola (CWF, MF) having 1,326 square-foot surface area over the lake (Factoryville, PA Quadrangle Latitude: 41°30'50"; Longitude: -75°50'56.4"). Subbasin: 4G.

Northcentral Region: Waterways & Wetlands Program Manager, 208 West Third Street, Williamsport, PA 17701, 570-327-3636.

E49-333A. Pennsylvania Department of Transportation, Engineering District 3-0, PO Box 218 Montoursville, PA 17754-0218. SR 0015 Section 088, Central Susquehanna Valley Transportation (CSVT) Project, West Chillisquaque and Point Townships, **Northumberland County**, Baltimore ACOE (Northumberland, PA Quadrangle N: 40° 54' 12"; W: -76° 50' 07").

General Description: The Central Susquehanna Valley Transportation (CSVT) Project is a four lane limited access freeway that will connect the end of the Selinsgrove Bypass (US Routes 11 & 15) in Snyder County to the southern end of the SR 147 freeway in Northumberland County. The project has been divided into two sections for final design and construction purposes. The Southern Section starts at the Selinsgrove Bypass and continues to just south of SR 1022, County Line Road. The Northern Section starts at SR 1022, crosses the West Branch of the Susquehanna River near Winfield and continues north to SR 147.

This project was previously permitted as E49-333. This advertisement is for the amendment of that permit to include the following

1. Unnamed Tributary to the Susquehanna River (Channel 43) The previously permitted Stream enclosure at Station 1045+00 will be changed from a 60 inch Corrugated Metal pipe to a 72 inch Reinforced Concrete pipe with a 66 inch Corrugated Metal pipe inserted inside the 72 Inch Reinforced Concrete Pipe. This will result in no changes to the temporary or permanent impacts to the stream.

2. Unnamed Tributary to the Susquehanna River (Channel 42) The previously permitted Stream enclosure at Station 1005+00 will be changed from a 75 x 45 inch Reinforced Concrete pipe to a 76 x 48 Reinforced Concrete pipe. This will result in no changes to the temporary or permanent impacts to the stream.

3. Several outfalls to Unnamed Tributaries to the Susquehanna River will be removed, combined, or relocated.

4. Unnamed Tributary to the Susquehanna River (Channel 39) The previously permitted Stream enclosure at Station 974+00 will decrease the permanent impact by 25 Ft. and increase the temporary impact by 78 Ft.

5. Unnamed Tributary to the Susquehanna River (Channel 40) The previously permitted Stream enclosure at Station 974+00 will increase the permanent impact by 34 Ft. and decrease the temporary impact by 19 Ft.

6. Chillisquaque Creek (Channel 44) The previously permitted Bridge structures at Station 1082+00 will increase the permanent impact by 23 Ft. and increase the temporary impact by 5 Ft.

The project will be mitigated through the Center and Vargo wetland banks. The Unnamed Tributaries to the Susquehanna River are classified as a Warm Water Fishery by Title 25, Chapter 93 Water Quality Standards. This permit also includes 401 Water Quality Certification.

E55-230A. Pennsylvania Department of Transportation, Engineering District 3-0, PO Box 218 Montoursville, PA 17754-0218. SR 0015 Section 088, Central Susquehanna Valley Transportation (CSVT) Project, Monroe Township, **Snyder County**, Baltimore ACOE (Northumberland, PA Quadrangle N: 40° 52' 54"; W: -76° 50' 36").

General Description: The Central Susquehanna Valley Transportation (CSVT) Project is a four lane limited access freeway that will connect the end of the Selinsgrove Bypass (US Routes 11 & 15) in Snyder County to the southern end of the SR 147 freeway in Northumberland County. The project has been divided into two sections for final design and construction purposes. The Southern Section starts at the Selinsgrove Bypass and continues to just south of SR 1022, County Line Road. The Northern Section starts at SR 1022, crosses the West Branch of the Susquehanna River near Winfield and continues north to SR 147.

This project was previously permitted as E55-230. This advertisement is for the amendment of that permit to include a change to the Unnamed Tributary to the Susquehanna River (Channel 08) stream enclosure at Station 846+75 from a 60 inch Corrugated Metal pipe to a 72 inch Reinforced Concrete pipe with a 66 inch Corrugated Metal pipe inserted inside the 72 Inch Reinforced Concrete Pipe. The structure type change will result in an additional 27 Ft. of Temporary impact and an additional 33 Ft. of Permanent impact to the Unnamed Tributary to the Susquehanna River.

The project will be mitigated through the Center and Vargo wetland banks. The Unnamed Tributary to the Susquehanna River (Channel 08) is classified as a Warm Water Fishery by Title 25, Chapter 93 Water Quality Standards. This permit also includes 401 Water Quality Certification.

Southwest Region: Waterways and Wetlands Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

E63-672, MV Affordable Housing, LLC, 9349 Waterstone Boulevard, Cincinnati, OH 45249, North Strabane and South Strabane Townships, **Washington County**, Pittsburgh ACOE District.

Has been given consent to:

1. Remove an existing 20' long, 12" diameter CMP culvert in an unnamed tributary (UNT) to Chartiers Creek (WWF) (aka Stream 001) and to construct and maintain a replacement 60" diameter x 45' long CMP

culvert, which will also impact a de minimus amount (0.007 ac) of PEM/PSS wetland (aka Wetland 001);

2. Install storm sewer and water line pipe across an unnamed tributary (UNT aka Stream 001) to Chartiers Creek;

3. Construct and maintain an 8" DIP sanitary utility line crossing within an approximately 30' right-of-way, and a temporary road crossing, across another UNT to Chartiers Creek (aka Stream 002);

4. Place and maintain fill within 115 linear feet of another UNT (aka Stream 003), along with a storm water utility line crossing;

5. Place and maintain fill within a de minimus amount (0.02 ac) of PEM wetland (aka Wetland 002);

For the purpose of constructing an affordable housing development, consisting of two (2) apartment buildings with associated parking lots, garages, a community clubhouse, greenspace and utilities. The project is located at the terminus of Burkett Lane (Washington East, PA USGS topographic quadrangle; Latitude: 40° 12' 40.31"; Longitude: -80° 11' 27.24"; Sub-basin: 20F; Pittsburgh Corps District), in North Strabane Township and South Strabane Township, Washington County.

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 AT&T 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 free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

Northcentral Region: Waterways & Wetlands Program Manager, 208 W Third Street, Williamsport, PA 17701.

ESCP 2 # ESG 0035 15 0001

On May 14, 2016, the Department of Environmental Protection (DEP) published notice of a permit application in the *Pennsylvania Bulletin*. That Notice was erroneously described and should have been described as notice of the issuance of the permit. This notice is a corrective notice of the DEP's issuance of the permit on April 29, 2016.

Applicant Name Transcontinental Gas Pipe Line Company, LLC
 Contact Person Timothy Powell
 Address 2800 Post Oak BLVD, Lvl 17
 City, State, Zip Houston, TX 77056
 County Clinton
 Township(s) Chapman Twp
 Receiving Stream(s) and Classification(s) Young Woman's Creek (EV), Post Hollow (EV), Mudlick Run (EV)

Northwest Region: Oil and Gas Program Manager, 230 Chestnut St., Meadville, PA 16335.

ESCGP-2 #ESG16-047-0001—E08-T
 Applicant Seneca Resources Corp
 Contact Doug Keplar
 Address 51 Zents Blvd.
 City Brookville State PA Zip Code 15825
 County Elk Township(s) Jones
 Receiving Stream(s) and Classification(s) UNT to Straight Creek (Ospeck Hollow is local name) (HQ-CWF—Designated Use, EV—Existing Use), Lukes Run and UNT to Lukes Run (HQ-CWF—Designated Use, EV—Existing Use)

ESCGP-2 #ESX15-019-0046—Allen John 10202 Well Site
 Applicant Range Resources Appalachia, LLC
 Contact Karl Marz
 Address 3000 Town Center Boulevard
 City Canonsburg State PA Zip Code 15317
 County Butler Township(s) Clinton
 Receiving Stream(s) and Classification(s) UNT to LardintownRun, TSF/Lower Allegheny River

ESCGP-2 # ESX15-019-0015A-Ballie Trust to Royal Oak Pipeline-Major Modification
 Applicant Markwest Liberty Bluestone LLC
 Contact Richard Lowry
 Address 4600 J. Barry Court, Suite 500
 City Canonsburg State PA Zip Code 15317
 County Butler Township(s) Jackson & Forward
 Receiving Stream(s) and Classification(s) Breakneck Creek, UNT's to Breakneck Creek and UNT's to Likens Run/Connoquenessing

Eastern Region: Oil & Gas Management Program Manager, 208 West Third Street, Williamsport, PA 17701.

ESCGP-2 # ESX29-015-16-0010
 Applicant Name Chesapeake Appalachia LLC
 Contact Person Eric Haskins
 Address 14 Chesapeake Lane
 City, State, Zip Sayre, PA 18840
 County Bradford
 Township(s) Ulster
 Receiving Stream(s) and Classification(s) UNT to Susquehanna River (WWF, MF); Cash Creek (WWF, MF)
 Secondary—Susquehanna River

ESCGP-2 # Esg29-115-14-0079(01)
 Applicant Name Cabot Oil & Gas Corp
 Contact Person Kenneth Marcum
 Address Five Penn Ctr West, Suite 401
 City, State, Zip Pittsburgh, PA 15276-0120
 County Susquehanna
 Township(s) Rush
 Receiving Stream(s) and Classification(s) Terry Creek (WWF)
 Secondary—Wyalusing Ck (WWF)

ESCGP-2 # ESX29-015-16-0011
 Applicant Name Chesapeake Appalachia LLC
 Contact Person Eric Haskins
 Address 14 Chesapeake Lane
 City, State, Zip Sayre, PA 18840
 County Bradford
 Township(s) Wyalusing
 Receiving Stream(s) and Classification(s) UNT to Susquehanna River (WWF, MF)
 Secondary—Susquehanna River

ESCGP-2 # ESX29-081-16-0006
 Applicant Name EXCO Resources PA LLC
 Contact Person Brian Rushe
 Address 260 Executive Dr, Suite 100
 City, State, Zip Cranberry Twp, PA 16066
 County Lycoming
 Township(s) Franklin
 Receiving Stream(s) and Classification(s) UNT to Little Indian Run (CWF)
 Secondary—Little Indian Run (CWF)

STORAGE TANKS SITE-SPECIFIC INSTALLATION PERMITS

The following Storage Tank Site-Specific Installation Permits, under the authority of the Storage Tank Spill Prevention Act (35 P.S. §§ 6021.304, 6021.504, 6021.1101—6021.1102) and under 25 Pa. Code Chapter 245, Subchapter C, have been issued by the Bureau of Environmental Cleanup and Brownfields, Director, PO Box 8763, Harrisburg, PA 17105-8763.

SSIP Permit No.	Applicant Name & Address	County	Municipality	Tank Type	Tank Capacity
16-67-012	Central Pennsylvania Transportation Authority d/b/a Rabbitransit 1230 Roosevelt Avenue York, PA 17404-2206 Attn: Richard Farr	York	West Manchester Township	2 ASTs storing petroleum products	24,000 gallons total

SPECIAL NOTICES

Municipal Waste Management Landfill Expansion Application # 101247-A142 Submitted by Keystone Sanitary Landfill, Inc.; Dunmore and Throop Boroughs, Lackawanna County; Public Hearing

The Department of Environmental Protection has scheduled a public hearing to accept comments on Municipal Waste Management Permit Application 101247-A142 for a proposed expansion of the Keystone Sanitary Landfill in Dunmore and Throop Boroughs, Lackawanna County. The application is currently under review.

The public hearing will be held on Monday, July 18, 2016 from 6 to 9:30 p.m. at the Mid Valley High School, 52 Underwood Road, Throop, PA 18512.

The major permit modification application was submitted to DEP in March 2014 and requests an expansion located within the current permit boundary. The expansion area involves joining or overtopping a series of former and active disposal areas at the existing landfill. The proposed expansion does not include a change in waste acceptance rates.

The Department requests that individuals wishing to testify at the hearing submit a written notice of intent to Colleen Connolly, Community Relations Coordinator, Keystone Sanitary Landfill Public Hearing, PA DEP, 2 Public Square, Wilkes-Barre, PA 18701-1915, or by email at coconnolly@pa.gov.

The Department will accept notices up to the day of the hearing. The written notice should include the person's name, address, telephone number and a brief statement as to the nature of their presentation. The Department requests that individuals limit their testimony to 5 minutes so that all individuals have the opportunity to testify.

Written copies of oral testimony are requested. Relinquishing of time to others will not be allowed. Individuals attending the hearing will have the opportunity to testify if they so desire; however, individuals who pre-register to testify will be given priority on the agenda. Persons unable to attend the hearing may submit written statements/comments to the Department on or before July 18, 2016.

Persons with a disability who wish to testify and require an auxiliary aid, service or other accommodation should contact Colleen Connolly, 570-826-2511 or through the Pennsylvania AT&T Relay Service at 800-654-5984 (TDD) to discuss how the Department can meet their needs.

The permit application is available for review at the Department's Northeast Regional Office, 2 Public Square, Wilkes-Barre. Contact the Northeast Regional Office at 570-826-2511 to schedule an appointment to review the application. The application is also available on the Department's website. Go to www.dep.state.pa.us, click on the Regional Resources page, click on the Northeast Regional Office tab, then click on Community Information, then Keystone Landfill Expansion.

For further information, contact Colleen Connolly, DEP Northeast Regional Office at 570-826-2511.

Proposed State Water Quality Certification Required by Section 401 of the Clean Water Act for the Allegheny Lock & Dam # 2 Hydroelectric Project

Southwest Region: Waterways & Wetlands Program, 400 Waterfront Drive, Pittsburgh, PA 15222, Rita A. Coleman, 412-442-4314.

WQ05-002, FFP Missouri 12, LLC (Applicant), 745 Atlantic Avenue, 8th Floor, Boston, MA 02111. Allegheny Lock & Dam # 2 Hydroelectric Project (Project). The proposed project is located at the existing Allegheny Lock & Dam # 2 facility, within the Allegheny River, at approximate river mile 6.7 (Pittsburgh East, PA USGS Topographic Quadrangle N: 40°, 29', 22"; W: -79°, 54', 49"), in Sharpsburg Borough and O'Hara Township, **Allegheny County**, Pittsburgh Corps District.

On February 3, 2014, Applicant filed an application with the Federal Energy Regulatory Commission (FERC), seeking a Hydropower License for its Project (FERC Docket No. P-13755). The FERC Environmental Assessment is still pending for the Project; however, the hydro-power license application for this project may be viewed on FERC's website at www.ferc.gov (search eLibrary; Docket Search; P-13755).

On December 22, 2015, Applicant requested a state water quality certification from the Pennsylvania Department of Environmental Protection (PADEP), as required by Section 401 of the Clean Water Act (33 U.S.C. § 1341), to ensure that the construction, operation and maintenance of the Project will protect water quality in Pennsylvania through compliance with State water quality standards and associated State law requirements, which are consistent with the requirements of the Clean Water Act.

The Project, as proposed, will modify the existing lock and dam to construct a new intake channel, trash rack, powerhouse, tailrace channel, spillway, retaining wall, access road, parking area, substation and transmission line, in association with constructing a new, 17.0 MWS hydroelectric facility, for the purpose of generating electricity. The Project, as proposed, will require approximately 7.44 acres of earth disturbance, and permanent impacts to approximately 250 linear feet of the Allegheny River (WWF, N). In addition, the confluence of Guyasuta Run (WWF) with the Allegheny River will be relocated, downstream, by extending an existing, approximately 10' high, concrete arch culvert, by constructing an approximately 170 feet long, corrugated metal pipe arch, with a 17' span and an 11'-2" rise. Approximately 2.85 acres of floodway, and approximately 2.24 acres of the floodway fringe will also be permanently impacted by this project.

PADEP anticipates issuing a state water quality certification to Applicant for the Project that will require compliance with the following State water quality permitting programs, criteria and conditions established pursuant to State law to ensure the Project does not violate applicable State water quality standards set forth in 25 Pa. Code Chapter 93:

1. *Discharge Permit*—Applicant shall obtain and comply with a PADEP National Pollutant Discharge Elimination System (NPDES) permit for the discharge of water from the hydrostatic testing of the pipeline pursuant to Pennsylvania's Clean Streams Law (35 P.S. §§ 691.1—691.1001), and all applicable implementing regulations (25 Pa. Code Chapter 92a).

2. *Erosion and Sediment Control Permit*—Applicant shall obtain and comply with PADEP's Chapter 102 Erosion and Sediment Control General Permit for Earth

Disturbance Associated with Oil and Gas Exploration, Production, Processing or Treatment issued pursuant to Pennsylvania's Clean Streams Law and Storm Water Management Act (32 P.S. §§ 680.1—680.17), and all applicable implementing regulations (25 Pa. Code Chapter 102).

3. *Water Obstruction and Encroachment Permits*—Applicant shall obtain and comply with a PADEP Chapter 105 Water Obstruction and Encroachment Permits for the construction, operation and maintenance of all water obstructions and encroachments associated with the project pursuant to Pennsylvania's Clean Streams Law, Dam Safety and Encroachments Act (32 P.S. §§ 673.1—693.27), and Flood Plain Management Act (32 P.S. §§ 679.101—679.601.), and all applicable implementing regulations (25 Pa. Code Chapter 105).

4. *Water Quality Monitoring*—PADEP retains the right to specify additional studies or monitoring to ensure that the receiving water quality is not adversely impacted by any operational and construction process that may be employed by Applicant.

5. *Operation*—Applicant shall at all times properly operate and maintain all Project facilities and systems of treatment and control (and related appurtenances) which are installed to achieve compliance with the terms and conditions of this State Water Quality Certification and all required permits, authorizations and approvals. Proper operation and maintenance includes adequate laboratory controls, appropriate quality assurance procedures, and the operation of backup or auxiliary facilities or similar systems installed by Applicant.

6. *Inspection*—The Project, including all relevant records, are subject to inspection at reasonable hours and intervals by an authorized representative of PADEP to determine compliance with this State Water Quality Certification, including all required State water quality permits and State water quality standards. A copy of this certification shall be available for inspection by the PADEP during such inspections of the Project.

7. *Transfer of Projects*—If Applicant intends to transfer any legal or equitable interest in the Project which is affected by this State Water Quality Certification, Applicant shall serve a copy of this certification upon the prospective transferee of the legal and equitable interest at least thirty (30) days prior to the contemplated transfer and shall simultaneously inform the PADEP Regional Office of such intent. Notice to PADEP shall include a transfer agreement signed by the existing and new owner containing a specific date for transfer of certification responsibility, coverage, and liability between them.

8. *Correspondence*—All correspondence with and submittals to PADEP concerning this State Water Quality Certification shall be addressed to the Department of Environmental Protection, Southwest Regional Office, Rita Coleman, Waterways and Wetlands Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

9. *Reservation of Rights*—PADEP may suspend or revoke this State Water Quality Certification if it determines that Applicant has not complied with the terms and conditions of this certification. PADEP may require additional measures to achieve compliance with applicable law, subject to Applicant's applicable procedural and substantive rights.

10. *Other Laws*—Nothing in this State Water Quality Certification shall be construed to preclude the institution of any legal action or relieve Applicant from any responsi-

bilities, liabilities, or penalties established pursuant to any applicable federal or state law or regulation.

11. *Severability*—The provisions of this State Water Quality Certification are severable and should any provision of this certification be declared invalid or unenforceable, the remainder of the certification shall not be affected thereby.

Prior to issuance of the final state water quality certification, PADEP will consider all relevant and timely comments, suggestions or objections submitted to PADEP within 30 days of this notice. Comments should be directed to Ms. Rita Coleman, Waterways and Wetlands Program Manager, at the above address or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD). Comments must be submitted in writing and contain the name, address and telephone number of the person commenting and a concise statement of comments, objections or suggestions on this proposal. No comments submitted by facsimile will be accepted.

[Pa.B. Doc. No. 16-1133. Filed for public inspection July 1, 2016, 9:00 a.m.]

Availability of the Non-Regulatory Agenda

In accordance with the Department of Environmental Protection's (Department) Policy for Development and Publication of Technical Guidance, the Department provides notice of the availability of the Non-Regulatory Agenda (Agenda). The Department will publish notice of availability of the Agenda twice a year in February and July.

The Agenda serves as a guide and resource to the regulated community, the public, Department staff and members of the Department's Advisory Committees regarding the focus of the Department's policy development for the coming year. The types of documents listed in the Agenda include policies and technical guidance documents that provide directives, guidance or other relevant compliance-related information.

The Agenda is available on the Department's eLibrary web site at www.elibrary.dep.state.pa.us/dsweb/HomePage (select "Publications," then "Office of Policy," then "DEP Non-Regulatory Agenda").

Questions regarding the Department's Agenda should be directed to Abbey Cadden, Technical Guidance Coordinator, Department of Environmental Protection, Policy Office, 400 Market Street, P.O. Box 2063, Harrisburg, PA 17105-2063 or ra-epthepolicyoffice@pa.gov.

Questions regarding the specific documents listed on the Agenda should be directed to the respective contact person listed on the Agenda.

PATRICK McDONNELL,
Acting Secretary

[Pa.B. Doc. No. 16-1134. Filed for public inspection July 1, 2016, 9:00 a.m.]

Bid Opportunity

OSM 40(4650)101.1, Abandoned Mine Reclamation Project, Eckley, Foster Township, Luzerne County. The principal items of work and approximate quantities include grading 376,000 cubic yards, drainage excavation 16,700 cubic yards, rock lining 8,250 square yards and seeding 62 acres.

This bid issues on July 15, 2016, and bids will be opened on August 16, 2016, at 2 p.m. Bid documents, including drawings in PDF format and Auto-Cad Map 3D format, may be downloaded for free beginning on the issue date from the Department of Environmental Protection's web site at www.dep.pa.gov/ConstructionContracts. Bid documents and drawings can also be obtained upon payment of \$22, plus \$8 for postage, which includes sales tax, by calling (717) 787-7820. Auto-Cad Map 3D format drawings can also be purchased on a compact disc (CD) for an additional \$5 per CD. Money will not be refunded. This project is financed by the Federal government under the authority given it by the Surface Mining Control and Reclamation Act of 1977 (act) (30 U.S.C.A. §§ 1201—1328) and is subject to the act and to the Federal grant for this project. Contact the Construction Contracts Section at (717) 787-7820 for more information on this bid.

PATRICK McDONNELL,
Acting Secretary

[Pa.B. Doc. No. 16-1135. Filed for public inspection July 1, 2016, 9:00 a.m.]

Planning Grant Award under Section 901 of the Municipal Waste Planning, Recycling and Waste Reduction Act, Act 101 of 1988

The Department of Environmental Protection (Department) announces the following grant to Berks County under section 901 of the Municipal Waste Planning, Recycling and Waste Reduction Act (act) (53 P.S. § 4000.901) and section 208 of the Small Business and Household Pollution Prevention Program Act (35 P.S. § 6029.208).

Planning grants are awarded to counties for 80% of approved costs for preparing municipal waste management plans as required by the act for carrying out related studies, surveys, investigations, inquiries, research and analysis, including those related to siting, environmental mediation, education programs on pollution prevention and household hazardous waste (HHW), and providing technical assistance to small businesses for pollution prevention. Grants may be awarded for feasibility studies and project development for municipal waste processing or disposal facilities, except for facilities for the combustion of municipal waste that are not proposed to be operated for the recovery of energy. All grant awards are predicated on the receipt of recycling fees required by sections 701 and 702 of the act (53 P.S. §§ 4000.701 and 4000.702), and the availability of funds in the Recycling Fund.

Inquiries regarding grant offerings should be directed to Mark Vottero, Department of Environmental Protection, Bureau of Waste Management, Division of Waste Minimization and Planning, P.O. Box 8472, Harrisburg, PA 17105-8472 at (717) 772-5719 or mvottero@pa.gov.

Act 101, Section 901 Planning Grant

Region	County	Applicant	Project	Grant
Southcentral	Berks	Berks County	HHW Education	\$59,614

PATRICK McDONNELL,
Acting Secretary

[Pa.B. Doc. No. 16-1136. Filed for public inspection July 1, 2016, 9:00 a.m.]

Technical Advisory Committee on Diesel-Powered Equipment Rescheduled Meeting

The Technical Advisory Committee on Diesel-Powered Equipment meeting scheduled for Wednesday, July 13, 2016, is rescheduled for Friday, July 22, 2016, at 10 a.m. at the Department of Environmental Protection, New Stanton Office Building, 131 Broadview Road, New Stanton, PA.

Questions concerning the meeting can be directed to Allison D. Gaida, Bureau of Mine Safety at (724) 404-3147 or agaida@pa.gov. The agenda and meeting materials will be available on the Department of Environmental Protection's (Department) web site at www.dep.pa.gov (select "Public Participation," then "Advisory Committees," then "Mining Advisory Committees," then "Technical Advisory Committee on Diesel Powered Equipment").

Persons in need of accommodations as provided for in the Americans with Disabilities Act of 1990 should contact Allison Gaida directly at (724) 404-3147 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD), or (800) 654-5988 (voice users) to discuss how the Department may accommodate their needs.

PATRICK McDONNELL,
Acting Secretary

[Pa.B. Doc. No. 16-1137. Filed for public inspection July 1, 2016, 9:00 a.m.]

DEPARTMENT OF HEALTH

Adoption of the 2012 Edition of the Life Safety Code

Under authority of the Health Care Facilities Act (act) (35 P.S. §§ 448.101—448.904b) and the health care facility licensure regulations promulgated under the act, specifically 28 Pa. Code §§ 153.1(c), 203.1 and 569.2 (relating to minimum standards; application of the *Life Safety Code*; and fire safety standards), the Department of Health (Department) will adopt the 2012 edition of the National Fire Protection Association's (NFPA) Life Safety Code (LSC), NFPA # 101, effective July 5, 2016. As of July 5, 2016, the Department will apply these new requirements to all plans for new construction or renovations of licensed health care facilities and for State licensure inspections of these facilities.

The Department has received inquiries regarding the implementation of the 2012 LSC and when the LSC would be enforced. The Department will not begin surveying facilities for compliance with the 2012 edition of the LSC until November 1, 2016, consistent with the most recent communication dated June 20, 2016 (S&C: 16-29-LSC) from the Centers for Medicare & Medicaid Services regarding the Federal final rule entitled "Medicare and Medicaid Programs; Fire Safety Requirements for Certain Health Care Facilities" published at 81 FR 26872 (May 4, 2016).

Persons interested in purchasing a copy of the 2012 LSC may submit an order to the NFPA at (800) 344-3555 or www.nfpacatalog.org.

Questions regarding this notice should be directed to Charles Schlegel, Director, Division of Safety Inspection at (717) 787-1911.

6514, or the Pennsylvania AT&T Relay Service at (800) 654-5984.

KAREN M. MURPHY, PhD, RN,
Secretary

[Pa.B. Doc. No. 16-1138. Filed for public inspection July 1, 2016, 9:00 a.m.]

Persons with a disability who require an alternative format of this notice (for example, large print, audiotope, Braille) should contact the Division of Safety Inspection at the previously referenced telephone number, or for speech and/or hearing impaired persons V/TT (717) 783-

Ambulatory Surgical Facilities; Requests for Exceptions

The following ambulatory surgical facility (ASF) has filed requests for exceptions under 28 Pa. Code § 51.33 (relating to requests for exceptions) with the Department of Health (Department), which has authority to license ASFs under the Health Care Facilities Act (35 P.S. §§ 448.101—448.904b). The following request for exception relates to regulations governing ASF licensure in 28 Pa. Code Chapters 51 and 551—571 (relating to general information; and ambulatory surgical facilities).

Facility Name

Regulation

PGC Endoscopy Center for Excellence, LLC

28 Pa. Code § 551.3 (relating to definitions), specifically subparagraph (ii) of the definition of “classification levels,” regarding Class B facilities and PS III patients

The request previously listed 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 (800) 654-5984 (TT).

KAREN M. MURPHY, PhD, RN,
Secretary

[Pa.B. Doc. No. 16-1139. Filed for public inspection July 1, 2016, 9:00 a.m.]

Hospitals; Requests for Exceptions

The following hospitals have filed requests for exceptions under 28 Pa. Code § 51.33 (relating to requests for exceptions) with the Department of Health (Department), which has authority to license hospitals under the Health Care Facilities Act (35 P.S. §§ 448.101—448.904b). The following requests for exception relate to regulations governing hospital licensure in 28 Pa. Code Chapters 51 and 101—158 (relating to general information; and general and specific hospitals), with the exception of 28 Pa. Code § 153.1 (relating to minimum standards). Exception requests related to 28 Pa. Code § 153.1 are listed separately in this notice.

Facility Name

Regulation

Einstein Medical Center Montgomery

28 Pa. Code § 109.2 (relating to director of nursing services)

St. Luke’s Hospital Bethlehem

28 Pa. Code § 107.61 (relating to written orders)

St. Luke’s Hospital Bethlehem—
Allentown campus

28 Pa. Code § 107.61

UPMC Northwest

28 Pa. Code § 107.61

The following hospital is requesting an exception under 28 Pa. Code § 153.1. Requests for exceptions under this section relate to minimum standards that hospitals must comply with under the *Guidelines for Design and Construction of Hospitals and Outpatient Facilities (Guidelines)*. The following list includes the citation to the section under the *Guidelines* that the hospital is seeking an exception, as well as the publication year of the applicable *Guidelines*.

<i>Facility Name</i>	<i>Guidelines Section</i>	<i>Relating to</i>	<i>Publication Year</i>
St. Luke’s Hospital Bethlehem	2.2-2.2.6.13	Examination rooms	2014

All requests previously listed 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 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 (800) 654-5984 (TT).

KAREN M. MURPHY, PhD, RN,
Secretary

[Pa.B. Doc. No. 16-1140. Filed for public inspection July 1, 2016, 9:00 a.m.]

Long-Term Care Nursing Facilities; Requests for Exception

The following long-term care nursing facility is seeking an exception to 28 Pa. Code § 201.22(e) (relating to prevention, control and surveillance of tuberculosis (TB)):

Susquehanna Health Skilled Nursing and Rehabilitation Center
12 East Water Street
Muncy, PA 17756
FAC ID # 134302

The following long-term care nursing facilities are seeking exceptions to 28 Pa. Code § 201.22(h):

Elm Terrace Gardens
660 North Broad Street
Lansdale, PA 19446
FAC ID # 310802

Vincentian Home
111 Perrymont Road
Pittsburgh, PA 15237
FAC ID # 221002

The following long-term care nursing facility is seeking an exception to 28 Pa. Code § 201.22(j):

Clarview Nursing and Rehabilitation Center
14663 Route 68
Sligo, PA 16255
FAC ID # 034502

The following long-term care nursing facility is seeking an exception to 28 Pa. Code § 205.19(b) (relating to windows and windowsills):

Renaissance Healthcare and Rehabilitation Center
4712 Chester Avenue
Philadelphia, PA 19143
FAC ID # 420302

The following long-term care nursing facility is seeking an exception to 28 Pa. Code § 211.9(g) (relating to pharmacy services):

Golden LivingCenter—Uniontown
129 Franklin Avenue
Uniontown, PA 15401
FAC ID # 062802

These requests are on file with the Department of Health (Department). Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Nursing Care Facilities, Room 526, Health and Welfare Building, Harrisburg, PA 17120, (717) 787-1816, 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 the 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 address or phone numbers listed previously, or for speech and/or hearing impaired persons V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Service (800) 654-5984 (TT).

KAREN M. MURPHY, PhD, RN,
Secretary

[Pa.B. Doc. No. 16-1141. Filed for public inspection July 1, 2016, 9:00 a.m.]

Renal Disease Advisory Committee Meeting

The Renal Disease Advisory Committee, established by section 4 of the act of June 23, 1970 (P.L. 419, No. 14) (35 P.S. § 6204), will hold its quarterly public meeting on Friday, July 15, 2016, from 10 a.m. to 1 p.m. in Conference Room 907, Health and Welfare Building, 625 Forster Street, Harrisburg, PA 17120. The purpose of the meeting is to discuss new and ongoing issues relating to treatment of chronic renal disease and the Department of Health's programs related to care and treatment.

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 Tara Landis, Director, Division of Child and Adult Health Services, 7th Floor East, Health and Welfare Building, 625 Forster Street, Harrisburg, PA 17120, (717) 772-2762, or for a speech and/or hearing impaired persons call V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Service at (800) 654-5984.

This meeting is subject to cancellation without notice.

KAREN M. MURPHY, PhD, RN,
Secretary

[Pa.B. Doc. No. 16-1142. Filed for public inspection July 1, 2016, 9:00 a.m.]

DEPARTMENT OF HUMAN SERVICES

Designated Exceptional Durable Medical Equipment

In accordance with the Department of Human Services' (Department) currently approved State Plan, the Department is required to publish an annual list of exceptional Durable Medical Equipment (DME) by notice in the *Pennsylvania Bulletin* in July of each year. Interested persons may petition the Department to consider additions to the exceptional DME list by submitting a written request to the Department. Requests received on or before December 31 will be considered in developing the list for the following July.

During calendar year 2015, the Department received no written requests to add or remove items of DME from the list of exceptional DME. Therefore, this notice makes no changes in either the acquisition cost or the list of qualifying DME.

"Exceptional DME" is defined as DME that has an acquisition cost of \$5,000 or more and is either Specially Adapted DME or other DME that is designated as exceptional DME by the Department annually by notice in the *Pennsylvania Bulletin*.

"Specially Adapted DME" is DME that is uniquely constructed or substantially adapted or modified in accordance with the written orders of a physician for the particular use of one resident, making its contemporaneous use by another resident unsuitable.

The list of exceptional DME that has been designated by the Department is as follows:

(1) *Air fluidized beds.* The pressure relief provided by this therapy uses a high rate of airflow to fluidize fine particulate material (for example, beads or sand) to produce a support medium that has characteristics similar to liquid. May have a Gortex cover.

(2) *Powered air flotation bed (low air loss therapy).* A semi-electric or total electric bed with a fully integrated powered pressure-reducing mattress which is characterized by all of the following:

(a) An air pump or blower with a series of interconnected woven fabric air pillows which provides sequential inflation and deflation of the air cells or a low interface pressure throughout the mattress allowing some air to escape through the support surface to the resident. May have a Gortex cover.

(b) Inflated cell height of the air cells through which air is being circulated is 5 inches or greater.

(c) Height of the air chambers, proximity of the air chambers to one another, frequency of air cycling (for alternating pressure mattresses) and air pressure provide adequate patient lift, reducing pressure and prevent bottoming out.

(d) A surface designed to reduce friction and shear.

(e) May be placed directly on a hospital bed frame.

(f) Automatically readjusts inflation pressures with change in position of bed (for example, head elevation, and the like).

(3) *Augmentative communication devices.* Used by residents who are unable to use natural oral speech as a primary means of communication. The specific device

requested must be appropriate for use by the resident and the resident must demonstrate the abilities or potential abilities to use the device selected. Portable devices need to supplement, aid or serve as an alternative to natural speech for residents with severe expressive communication disorders. Nonportable devices may be covered only if required for visual enhancement or physical access needs that cannot be accommodated by a portable device.

(4) *Ventilators (and related supplies).*

(a) Used by residents 21 years of age and older who require full ventilator support for a minimum of 8 hours per day to sustain life.

(b) Used by residents 20 years of age and younger who require ventilator support to sustain life (no minimum time requirement).

Effective Date

This notice is effective upon publication in the *Pennsylvania Bulletin*.

Public Comment

Interested persons are invited to submit petitions for the Department to consider additions to the exceptional DME list or written comments regarding this notice to the Department of Human Services, Office of Long-Term Living, Bureau of Policy and Regulatory Management, Attention: Marilyn Yocum, P.O. Box 8025, Harrisburg, PA 17105-8025. 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 by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

THEODORE DALLAS,
Secretary

Fiscal Note: 14-NOT-1036. No fiscal impact; (8) recommends adoption.

[Pa.B. Doc. No. 16-1143. Filed for public inspection July 1, 2016, 9:00 a.m.]

DEPARTMENT OF TRANSPORTATION

Proposed Disadvantaged Business Enterprise Goal for Participation in Federal Aviation Administration Assisted Block Grants for Federal Fiscal Years 2017—2019

The Department of Transportation (Department) is providing notice of its proposed goal for Disadvantaged Business Enterprise participation (expressed as a percentage of total Federal Aviation Administration (FAA) funding) for Federal Fiscal Years (FFY) 2017 through 2019. This goal applies to contracts in which FAA funding for FFY 2017 through 2019 is utilized.

The overall goal for Federally-assisted aviation block grants is 9.64%.

The proposed methodology used in determination of the goal is available for inspection during normal business hours at the Department of Transportation, Bureau of

Equal Opportunity, 400 North Street, 5th Floor, Harrisburg, PA 17120-0041, (717) 787-5891, (800) 468-4201, fax (717) 772-4026.

The documents can be viewed online at <http://www.padbgoals.org/>.

Documents will be available for inspection for 30 days from the date of this notice. The Department also will accept written comments on the methodology and proposed goal for 45 days from the date of this notice. Comments, questions or suggestions regarding this notice may be directed in writing to Dustin Hobaugh, Disadvantaged Business Enterprise/Title VI Division Chief at the previously listed address.

LESLIE S. RICHARDS,
Secretary

[Pa.B. Doc. No. 16-1144. Filed for public inspection July 1, 2016, 9:00 a.m.]

Receipt of Applications for Funding under the Section 5310 Program for Fiscal Year 2016-2017

The Department of Transportation, Bureau of Public Transportation, under the authority in section 1(d) of the Federal Transit Laws (49 U.S.C.A. § 5310), gives notice that it will receive applications for the State-administered Section 5310 Program (Program). The application is due by the close of business on Friday July 15, 2016. The application can be found at <https://spportal.dot.pa.gov/Planning/AppReg/BPT-5310/Pages/default.aspx>.

Under this Program, private nonprofit organizations and designated public bodies may apply for Federal capital assistance to pay up to 80% of the purchase cost of new wheelchair accessible small transit vehicles used to provide transportation services for senior citizens and persons with disabilities who cannot be reasonably accommodated by existing transportation providers.

Additional information can be obtained by calling John Levitsky, Bureau of Public Transportation, (717) 787-1206, jlevitsky@pa.gov.

LESLIE S. RICHARDS,
Secretary

[Pa.B. Doc. No. 16-1145. Filed for public inspection July 1, 2016, 9:00 a.m.]

INSURANCE DEPARTMENT

Alleged Violation of Insurance Laws; Metro Bucks Insurance Agency, LLC and Stephen I. Gottlieb; Doc. No. SC16-06-017

Notice is hereby given of the Order to Show Cause issued on June 22, 2016, by the Deputy Insurance Commissioner in the previously-referenced matter. Violation of the following is alleged: section 611-A(4), (17) and (20) of The Insurance Department Act of 1921 (40 P.S. § 310.11(4), (17) and (20)).

Respondent shall file a written answer to the Order to Show Cause within 30 days of the date of issue. If respondent files a timely answer, a formal administrative hearing shall be held in accordance with 2 Pa.C.S. §§ 501—508 (relating to Administrative Agency Law),

1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure), 31 Pa. Code §§ 56.1—56.3 (relating to Special Rules of Administrative Practice and Procedure) and other relevant procedural provisions of law.

Answers, motions preliminary to those at hearing, protests, petitions to intervene or notices of intervention, if any, must be filed in writing with the Hearings Administrator, Insurance Department, Administrative Hearings Office, 901 North 7th Street, Harrisburg, PA 17102.

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, contact Donna Fleischauer, Agency ADA Coordinator at (717) 705-4194.

TERESA D. MILLER,
Insurance Commissioner

[Pa.B. Doc. No. 16-1146. Filed for public inspection July 1, 2016, 9:00 a.m.]

Application and Request for a Certificate of Authority to Provide a Continuing Care Retirement Community by Juniper Village at Bensalem Operations, LLC

Juniper Village at Bensalem Operations, LLC has applied for a Certificate of Authority to operate a Continuing Care Retirement Community at Juniper Village at Bucks County in Bensalem, PA. The initial filing was received on April 28, 2016, 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 30 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, syerger@pa.gov.

TERESA D. MILLER,
Insurance Commissioner

[Pa.B. Doc. No. 16-1147. Filed for public inspection July 1, 2016, 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 (act) (40 P.S. § 1171.8) in connection with the company's termination of the insureds' homeowners policy. The hearing 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 hearing will be held in the Insurance Department's regional office in Pittsburgh, PA. Failure by the appellants to appear at the scheduled hearing may result in dismissal with prejudice.

The following hearing will be held in Hearing Room 2026, Piatt Building, 301 5th Avenue, Pittsburgh, PA 15222.

Appeal of David M. and Jean D. O'Donnell; File No. 16-119-197381; Encompass Insurance Company of America; Doc. No. P16-06-010; July 22, 2016, 10 a.m.

Parties may appear with or without counsel and offer relevant testimony or other relevant evidence, or both. 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.

TERESA D. MILLER,
Insurance Commissioner

[Pa.B. Doc. No. 16-1148. Filed for public inspection July 1, 2016, 9:00 a.m.]

PENNSYLVANIA INFRASTRUCTURE INVESTMENT AUTHORITY DEPARTMENT OF ENVIRONMENTAL PROTECTION

Clean Water and Drinking Water State Revolving Fund Programs; Federal Fiscal Year 2016 In- tended Use Plans; Public Meeting

The Pennsylvania Infrastructure Investment Authority (PENNVEST) and the Department of Environmental Protection (Department) have prepared the Federal Fiscal Year (FY) 2016 Intended Use Plans (IUP). These IUPs include a list of drinking water, wastewater treatment, nonpoint source and pollution abatement projects to be considered for a design and engineering or construction loan or grant from funds the Commonwealth expects to receive from the Federal FY 2016 Drinking Water State Revolving Fund (DWSRF) and Clean Water State Revolving Fund (CWSRF) programs.

In accordance with United States Environmental Protection Agency (EPA) guidelines on the development of the IUPs, a public meeting has been scheduled for July 19, 2016, at 1:30 p.m. in the 2nd Floor Auditorium, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA. This meeting is scheduled for the purpose of receiving comments from the public regarding the Federal FY 2016 IUPs. Interested persons are invited to express their views on the narrative portion of the IUPs, the DWSRF set-aside work plan or the priority rating or ranking of projects on the IUPs. Persons wishing to offer comments at the public meeting should contact the Division of Technical and Financial Assistance at the address or telephone number listed at the end of this notice or by e-mail to cblair@pa.gov by 4 p.m. on July 18, 2016. When written statements are prepared and will be submitted at the meeting, speakers will be asked to restrict the oral portion of the statement to a summary of the written comments.

The projects to be considered for a loan or grant from the DWSRF and CWSRF programs must meet the Federal requirements for funding in accordance with the Federal Safe Drinking Water Act (42 U.S.C.A. §§ 300f—300j-26) and the Federal Clean Water Act (33 U.S.C.A. §§ 1251—1388). Accordingly, the projects included in the IUPs are expected to meet the requirements applicable to the use of the DWSRF and CWSRF loan or grant funds. Projects listed in the FY 2016 IUPs are on the Commonwealth's Project Priority Lists (PPL) and are expected to proceed with design and engineering or construction within the next 2 years. A project must appear on a PENNVEST-approved IUP before it can receive a loan or grant from the State Revolving Fund programs. A project's readiness to proceed and the reasonable availability of alternative funds also have a bearing on project selection for the IUPs. Consequently, the rank ordered list of projects on the PPLs does not solely dictate the order in which projects will be chosen for inclusion in an IUP.

The DWSRF will be capitalized with approximately \$26.5 million in Federal funds and approximately \$5.3 million of State funds. Approximately \$7.2 million of these funds will be set aside for technical assistance to small systems, operator training and certification, and source water assessment and protection, as authorized under the Federal Safe Drinking Water Act. The DWSRF IUP also includes a narrative work plan that describes how these set-aside funds will be used. PENNVEST is also allocating an additional \$1.1 million for administrative purposes. Finally, an additional \$5.3 million must be set-aside for additional subsidization to disadvantaged communities. The FY 2016 DWSRF grant does not have a requirement to set-aside funding for green infrastructure projects. However, the Commonwealth will continue to promote them. These projects must meet the EPA criteria for green infrastructure and can fall into at least one of four categories: (1) water efficiency; (2) energy efficiency; (3) environmentally innovative; and (4) green stormwater infrastructure.

The CWSRF will be capitalized with approximately \$52.9 million of Federal funds and approximately \$10.6 million of State funds. While approximately \$2.1 million could be set-aside for program administration costs, this is not being proposed for this particular grant. Finally, up to \$15.8 million may be set-aside for additional subsidization to disadvantaged communities and \$5.3 million must be set-aside for green infrastructure projects that meet the EPA criteria for green infrastructure and that fall into one or more of the following categories: (1) water effi-

ciency; (2) energy efficiency; (3) environmentally innovative; and (4) green stormwater infrastructure.

It is not necessary to appear at the public meeting to present comments on the narrative portion of the IUPs, the set-aside work plan or the PPLs. Interested persons may also submit written comments to the Department through August 2, 2016. Commentators are encouraged to submit electronic comments using the Department's eComment site at www.ahs.dep.pa.gov/eComment. Written comments can be submitted by e-mail to ecomment@pa.gov or by mail to the Policy Office, Department of Environmental Protection, Rachel Carson State Office Building, P.O. Box 2063, Harrisburg, PA 17105-2063. Use "Clean Water and Drinking Water State Revolving Funds" as the subject line in written communication.

Persons in need of accommodations as provided for in the Americans with Disabilities Act of 1990 should contact Crystal Blair at (717) 772-4011 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users) to discuss how the Department may accommodate their needs.

A copy of the IUPs, ranking frameworks, the PPLs and the DWSRF set-aside work plan may be obtained by visiting the Department's web site at <http://www.dep.pa.gov/Business/Water/PointNonPointMgmt/InfrastructureFinance/>. The link to these documents is on the right hand side of the page under "State Revolving Fund Intended Use Plan" or may be obtained by contacting Crystal Blair, Division of Technical and Financial Assistance at (717) 772-4011.

Department of Environmental Protection
Bureau of Clean Water
Division of Technical and Financial Assistance
P.O. Box 8774
11th Floor, Rachel Carson State Office Building
400 Market Street
Harrisburg, PA 17101-8774
(717) 705-4090

PENNVEST
Forum Building
607 South Drive, Room 434
Harrisburg, PA 17120
(717) 787-8137

PATRICK McDONNELL,
Acting Secretary
Department of Environmental Protection
Acting Vice Chairperson
Pennsylvania Infrastructure Investment Authority
PAUL K. MARCHETTI,
Executive Director
Pennsylvania Infrastructure Investment Authority

[Pa.B. Doc. No. 16-1149. Filed for public inspection July 1, 2016, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Service of Notice of Motor Carrier Formal Complaints

Formal Complaints have been issued by the Pennsylvania Public Utility Commission. Answers must be filed in accordance with 52 Pa. Code (relating to public utilities).

Answers are due July 18, 2016, and must be made with the Secretary, Pennsylvania Public Utility Commission, P.O. Box 3265, Harrisburg, PA 17105-3265, with a copy to the First Deputy Chief Prosecutor, Pennsylvania Public Utility Commission.

VEHICLE INSPECTION BUREAU COMPLAINT FORM

**Pennsylvania Public Utility Commission; Bureau of
Investigation and Enforcement v. First Class Taxi
Cab Company, PUC # A-00120419;
Docket No. C-2016-2544678**

COMPLAINT

The Pennsylvania Public Utility 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 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:

First Class Taxi Cab Company
20 East Parkway Avenue
Chester, PA 19013

Inspection Information:
Location: 107 West 23rd Street, Chester, PA 19013
Date and Time: 05/11/2016 2:32 p.m.

Vehicle Information:
Year, Make, Model: 2007 Ford Crown Victoria
State, Tag: PA, TX48532
VIN: 2FAHP71W07X116052
DVCR #: 6436

Authorized Officer Performing Inspection: Freda Culver
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On the date and at the time described on page one of this Complaint, the following violation(s) was disclosed:

- 52. Pa. Code § 29.314(c)—Operated a taxi that had more than 350,000 miles on the odometer. The penalty for this violation is \$500.00.

Wherefore, the Bureau of Investigation and Enforcement hereby requests that the Commission fine respondent the sum of \$500.00 for the illegal activity described in this Complaint and order any other remedy as the Commission may deem appropriate.

Respectfully submitted,
David W. Loucks, Chief
Motor Carrier Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265

VERIFICATION

I, David W. Loucks, Chief of Motor Carrier Enforcement, 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 the 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: 5/12/2016

David W. Loucks, Chief
Motor Carrier Enforcement
Bureau of Investigation and Enforcement

NOTICE

You must file an Answer within twenty (20) 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 of the complaint proceeding. 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 by overnight delivery to:

400 North Street, 2nd Floor
Harrisburg, PA 17120

Additionally, please serve a copy on:

Michael L. Swindler, Prosecutor
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

If you fail to answer this Complaint within twenty (20) days, the Bureau of Investigation and Enforcement will request that the Commission issue a Secretarial Letter imposing the penalty proposed in the Complaint.

You may elect not to contest this Complaint by paying the fine proposed in the Complaint by certified check or money order. Payment must be made to the Commonwealth of Pennsylvania and should be forwarded to:

Rosemary Chiavetta, Secretary
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.

If you file an Answer which admits or fails to deny the allegations of the complaint, the Bureau of Investigation and Enforcement will request that the Commission issue a Secretarial Letter imposing the penalty proposed in the Complaint.

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 optional fine set forth in the Complaint.

Alternative formats of this material are available for persons with disabilities by contacting the Compliance Office at (717) 783-3846. Questions on how to respond to this Complaint may also be directed to the Compliance Office.

Pennsylvania Public Utility Commission; Bureau of Investigation and Enforcement v. Matthew Thomas, t/a Archer Trucking; Docket No. C-2016-2547124

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 all authority issued to Matthew Thomas, t/a Archer Trucking, (respondent) is under suspension effective April 28, 2016 for failure to maintain evidence of insurance on file with this Commission.

2. That respondent maintains a principal place of business at 196 Struthers Street, Warren, PA 16365.

3. That respondent was issued a Certificate of Public Convenience by this Commission on October 06, 2011, at A-2011-2249704.

4. That respondent has failed to maintain evidence of Liability insurance on file with this Commission. The Bureau of Investigation and Enforcement's proposed civil penalty for this violation is \$500 and cancellation of the Certificate of Public Convenience.

5. That respondent, by failing to maintain evidence of insurance on file with this Commission, violated 66 Pa.C.S. § 512, 52 Pa. Code § 32.2(c), and 52 Pa. Code § 32.11(a), § 32.12(a) or § 32.13(a).

Wherefore, unless respondent pays the penalty of \$500 or files an answer in compliance with the attached notice and/or causes its insurer to file evidence of insurance with this Commission within twenty (20) days of the date of service of this Complaint, the Bureau of Investigation and Enforcement will request that the Commission issue an Order which (1) cancels the Certificate of Public Convenience held by respondent at A-2011-2249704 for failure to maintain evidence of current insurance on file with the Commission, (2) fines Respondent the sum of five hundred dollars (\$500.00) for the illegal activity described in this Complaint, (3) orders such other remedy as the Commission may deem to be appropriate, which may include the suspension of a vehicle registration and (4) imposes an additional fine on the respondent should cancellation occur.

Respectfully submitted,
David W. Loucks, Chief
Motor Carrier Enforcement
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265

VERIFICATION

I, David W. Loucks, Chief, Motor Carrier Enforcement, 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: 5/25/2016

David W. Loucks, Chief
Motor Carrier Enforcement
Bureau of Investigation and Enforcement

NOTICE

A. You must file an Answer within 20 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 Letter. See 52 Pa. Code § 1.56(a). The Answer must raise all factual and legal arguments that you wish to claim in your defense, include the docket number of this Complaint, and be verified. You may file your Answer by mailing an original to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Or, you may eFile your Answer using the Commission's website at www.puc.pa.gov. The link to eFiling is located under the Filing & Resources tab on the homepage. If your Answer is 250 pages or less, you are not required to file a paper copy. If your Answer exceeds 250 pages, you must file a paper copy with the Secretary's Bureau.

Additionally, a copy should either be mailed to:

Michael L. Swindler, Deputy Chief Prosecutor
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265

Or, emailed to Mr. Swindler at: RA-PCCmplntResp@pa.gov

B. If you fail to answer this Complaint within 20 days, the Bureau of Investigation and Enforcement will request that the Commission issue an Order imposing the penalty.

C. You may elect not to contest this Complaint by causing your insurer to file proper evidence of current insurance in accordance with the Commission's regulations and by paying the fine proposed in this Complaint by certified check or money order within twenty (20) days of the date of service of this Complaint. Accord certificates of insurance and faxed form Es and Hs are unacceptable as evidence of insurance.

The proof of insurance must be filed with the:

Compliance Office, Bureau of Technical Utility Services
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Payment of the fine must be made to the Commonwealth of Pennsylvania and should be forwarded to:

Rosemary Chiavetta, Secretary
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 the evidence of insurance from your insurer, and 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 an Order imposing the penalty set forth in this Complaint.

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 the Complaint, and may impose additional and/or alternative penalties as appropriate.

F. If you are a corporation, you must be represented by legal counsel. 52 Pa. Code § 1.21.

Alternative formats of this material are available for persons with disabilities by contacting the Commission's ADA Coordinator at 717-787-8714. Do not call this number if you have questions as to why you received this complaint. For those questions you may call 717-783-3847.

ROSEMARY CHIAVETTA,
Secretary

[Pa.B. Doc. No. 16-1150. Filed for public inspection July 1, 2016, 9:00 a.m.]

Wastewater Facilities and Service

A-2016-2552403. The York Water Company (Wastewater). Application of The York Water Company (Wastewater) under 66 Pa.C.S. § 1102(a)(1) and (3) (relating to enumeration of acts requiring certificate) for approval of the right of The York Water Company—Wastewater to: (1) acquire certain public wastewater facilities from the West York Borough; and (2) begin to offer or furnish wastewater service to the public in West York Borough, York County.

Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities) on or before July 18, 2016. Filings must be made with the Secretary of the Pennsylvania Public Utility Commission, P.O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant. The documents filed in support of the application are available for inspection and copying at the Office of the Secretary between 8 a.m. and 4:30 p.m., Monday through Friday, on the Pennsylvania Public Utility Commission's web site at www.puc.pa.gov and at the applicant's business address.

Applicant: The York Water Company

Through and By Counsel: Michael W. Hassell, Esquire, Devin T. Ryan, Esquire, Post & Schell, PC, 17 North Second Street, 12th Floor, Harrisburg, PA 17101-1601

ROSEMARY CHIAVETTA,
Secretary

[Pa.B. Doc. No. 16-1151. Filed for public inspection July 1, 2016, 9:00 a.m.]

PHILADELPHIA PARKING AUTHORITY

Service of Notice of Motor Carrier Applications in the City of Philadelphia

The following permanent authority applications to render service as common carriers in the City of Philadelphia have been filed with the Philadelphia Parking Authority's (PPA) Taxicab and Limousine Division (TLD). Formal protests must be filed in accordance with 52 Pa. Code Part II (relating to Philadelphia Parking Authority) with the TLD's Office of the Clerk, 2415 South Swanson Street, Philadelphia, PA 19148 no later than July 18, 2016. The nonrefundable protest filing fee is \$5,000 payable to the PPA by certified check or money order. The applications are available for inspection at the TLD with Administrative Counsel between 9 a.m. and 4 p.m., Monday through Friday (contact Christine Kirlin, Esq. at (215) 683-9653 to make an appointment) or may be inspected at the business address of the respective applicant.

Doc. No. A-16-06-02. Vansh Trans, Inc. (106 Botanic Court, Upper Darby, PA 19082): An application for a medallion taxicab certificate of public convenience (CPC) 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. *Attorney:* Danielle Friedman, Esq., 2301 Church Street, Philadelphia, PA 19124.

Doc. No. A-16-06-03. Baz Cab, LLC (2438-40 Germantown Avenue, Philadelphia, PA 19133): An application for a medallion taxicab CPC 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. *Attorney:* David R. Alperstein, Esq., 1080 North Delaware Avenue, Suite 505, Philadelphia, PA 19125.

Doc. No. A-16-06-04. MMK Trans, Inc. (854 Andover Road, Lansdale, PA 19446): An application for a medallion taxicab CPC 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. *Attorney:* Danielle Friedman, Esq., 2301 Church Street, Philadelphia, PA 19124.

Doc. No. A-16-06-05. Zega Trans, Inc. (2024 Fairmount Avenue, Philadelphia, PA 19130): An application for a medallion taxicab CPC 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. *Attorney:* Danielle Friedman, Esq., 2301 Church Street, Philadelphia, PA 19124.

VINCENT J. FENERTY, Jr.,
Executive Director

[Pa.B. Doc. No. 16-1152. Filed for public inspection July 1, 2016, 9:00 a.m.]

STATE BOARD OF NURSING

Bureau of Professional and Occupational Affairs v. Alicia D. Gartner, RN; File No. 13-51-12732; Doc. No. 0757-51-2014

Notice to Alicia D. Gartner, RN:

And Now, this 21st day of June, 2016, the State Board of Nursing, upon consideration of the Commonwealth's Notice and Order to Show Cause which directed Respondent to file an Answer within 30 days of the date of the Order to Show Cause, no Answer having been filed, hereby *Orders*, pursuant to 1 Pa. Code § 35.37, that the Commonwealth's Motion be *Granted*, a Default *Entered*, and *Deems* the factual allegations in the Order to Show Cause *Admitted*. An Adjudication and Order will be issued in due course.

You may obtain a copy of the order by writing to Bridget K. Guilfoyle, Board Counsel, State Board of Nursing, P.O. Box 69523, Harrisburg, PA 17106-9523.

KRISTIN MALADY, BSN, RN,
Chairperson

[Pa.B. Doc. No. 16-1153. Filed for public inspection July 1, 2016, 9:00 a.m.]

Bureau of Professional and Occupational Affairs v. Ann Naugle Kelly, RN; File No. 13-51-08069; Doc. No. 1578-51-2015

Notice to Ann Naugle Kelly, RN:

And Now, this 21st day of June, 2016, the State Board of Nursing, upon consideration of the Commonwealth's Notice and Order to Show Cause which directed Respondent to file an Answer within 30 days of the date of the Order to Show Cause, no Answer having been filed, hereby *Orders*, pursuant to 1 Pa. Code § 35.37, that the Commonwealth's Motion be *Granted*, a Default *Entered*, and *Deems* the factual allegations in the Order to Show Cause *Admitted*. An Adjudication and Order will be issued in due course.

You may obtain a copy of the order by writing to Bridget K. Guilfoyle, Board Counsel, State Board of Nursing, P.O. Box 69523, Harrisburg, PA 17106-9523.

KRISTIN MALADY, BSN, RN,
Chairperson

[Pa.B. Doc. No. 16-1154. Filed for public inspection July 1, 2016, 9:00 a.m.]