

PENNSYLVANIA BULLETIN

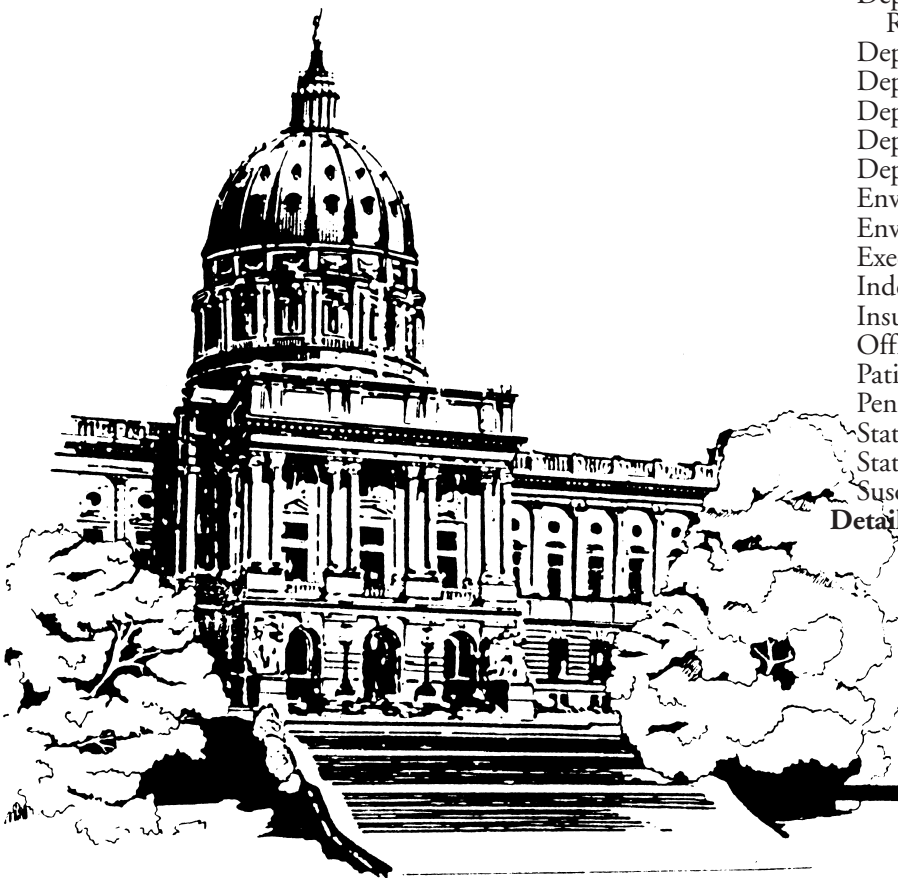
Volume 48
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Number 2
Pages 203—450

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Omnibus Amendments Rulemaking

Part I

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Department of Banking and Securities
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Resources
Department of Education
Department of Environmental Protection
Department of Health
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Department of Revenue
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Environmental Quality Board
Executive Board
Independent Regulatory Review Commission
Insurance Department
Office of Attorney General
Patient Safety Authority
Pennsylvania Public Utility Commission
State Board of Nursing
State Police
Susquehanna River Basin Commission
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**Latest Pennsylvania Code Reporter
(Master Transmittal Sheet):**

No. 518, January 2018

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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 weekly. A cumulative subject matter index is published quarterly.

The *Pennsylvania Bulletin* serves several purposes. It is the temporary supplement to the *Pennsylvania Code*, which is the official codification of agency rules and regulations, Statewide court rules, and other statutorily authorized documents. Changes in the codified text, whether by adoption, amendment, rescission, repeal or emergency action, must be published in the *Pennsylvania Bulletin*.

The following documents are published in the *Pennsylvania Bulletin*: Governor's Executive Orders; 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 rescind regulations must first publish in the *Pennsylvania Bulletin* a Proposed Rulemaking. There are limited instances when the agency may omit the proposal step; it still must publish the adopted version.

The 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. A Final Rulemaking must be published in the *Pennsylvania Bulletin* before the changes can take effect. If the agency wishes to adopt changes to the 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, Statewide court rules and other statutorily authorized documents. The *Pennsylvania Bulletin* is the temporary supplement to the *Pennsylvania Code*, printing changes when they are adopted. 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.

How to Find Rules and Regulations

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.

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

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Printing Format

Rules, Regulations and Statements of Policy in Titles 1—107 of the Pennsylvania Code

Text proposed to be added is printed in **underscored bold face**. Text proposed to be deleted is enclosed in brackets [] and printed in **bold face**.

Proposed new chapters and sections are printed in regular type to enhance readability. Final rulemakings and statements of policy are printed in regular type.

Ellipses, a series of five asterisks, indicate text that is not amended.

In Proposed Rulemakings and proposed Statements of Policy, existing text corresponds to the official codified text in the *Pennsylvania Code*.

Court Rules in Titles 201—246 of the Pennsylvania Code

Added text in proposed and adopted court rules is printed in **underscored bold face**. Deleted text in proposed and adopted court rules is enclosed in brackets [] and printed in **bold face**.

Proposed new chapters and rules are printed in regular type to enhance readability.

Ellipses, a series of five asterisks, indicate text that is not amended.

Fiscal Notes

Section 612 of The Administrative Code of 1929 (71 P. S. § 232) requires the Governor's Budget Office to prepare a fiscal note for regulatory actions and administrative procedures of the administrative departments, boards, commissions and authorities receiving money from the State Treasury. The fiscal note states whether the action or procedure causes a loss of revenue or an increase in the cost of programs for the Commonwealth or its political subdivisions. The fiscal note is required to be published in the *Pennsylvania Bulletin* at the same time as the 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; and (8) recommendation, if any, of the Secretary of the Budget and the reasons therefor.

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, 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 item (8) the recommendation, if any, made by the Secretary of the Budget is published with the fiscal note. "No fiscal impact" means no additional cost or revenue loss to the Commonwealth or its local political subdivision is intended. See 4 Pa. Code Chapter 7, Subchapter R (relating to fiscal notes).

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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 2018.

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THE GOVERNOR

Title 4—ADMINISTRATION

PART I. GOVERNOR'S OFFICE

[4 PA. CODE CH. 1]

[EXECUTIVE ORDER NO. 2017-04]

Intergovernmental Affairs

December 20, 2017

Whereas, the challenges facing Pennsylvania are complex and often require intergovernmental coordination; and

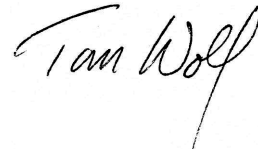
Whereas, there is a need to establish within state government the capability to effectively plan for and coordinate intergovernmental issues; and

Whereas, there is a need to provide assistance to citizens of the Commonwealth and its officials to improve services delivered through various channels; and

Whereas, robust citizen engagement is aided by effective interface with Commonwealth officials, including the Office of the Governor; and

Whereas, there is a need to provide a coordinated analysis and response to issues facing the citizens of Pennsylvania and decision-makers.

Now, Therefore, I, Tom Wolf, Governor of the Commonwealth of Pennsylvania, by virtue of the authority vested in me by the Constitution of the Commonwealth of Pennsylvania and other laws, do hereby establish within the Office of the Governor an Office of Intergovernmental Affairs, whose primary duties and responsibilities shall include the following.



Governor

Fiscal Note: GOV-2017-04. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 4. ADMINISTRATION

PART I. GOVERNOR'S OFFICE

CHAPTER 1. AGENCY OPERATION AND ORGANIZATION

Subchapter III. OFFICE OF INTERGOVERNMENTAL AFFAIRS

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1.881.	Primary duties and responsibilities.
1.882.	Secretary.
1.883.	Other offices within the Office of the Governor replaced.
1.884.	General provisions.
1.885.	Effective date.

§ 1.881. Primary duties and responsibilities.

(a) *Intergovernmental cooperation and coordination.* The Office of Intergovernmental Affairs (Office) shall:

(1) Coordinate interactions between the Commonwealth and Federal, State, county and local governments to inform the work of the Governor regarding intergovernmental issues.

(2) Act as the liaison between the Governor's regional offices, State agencies, county governments and local governments to improve coordination and interactions across all levels of government in this Commonwealth.

(3) Build new and maintain current relationships across county and local governments to better understand the opportunities within their communities and to better coordinate the engagement of intergovernmental assets.

(b) *Public engagement and constituent services.* The Office shall:

(1) Serve as the initial point of contact for constituents seeking information about State government to improve responses and service delivery.

(2) Respond to and report on questions and comments from the public that are submitted to the Governor's office by electronic, written and telephonic communication.

(3) Develop and strengthen relationships with issue-advocacy organizations, nonprofits, and other associations across the spectrum to better respond to government service inquiries and requests for information.

(c) *Public liaison services.* The Office shall:

(1) Manage, coordinate and process the Governor's appointments to boards and commissions throughout this Commonwealth.

(2) Perform the duties and responsibilities of the Governor's Offices of Public Liaison, Constituent Services, and Government Affairs and Outreach, which are transferred to the Office.

(d) *Other functions.* The Office shall perform other functions as necessary to accomplish its duties.

§ 1.882. Secretary.

The Governor will appoint a Secretary of the Office of Intergovernmental Affairs (Office) who shall determine the staffing requirements of the Office in accordance with policies of the Office of Administration and the Office of the Budget.

§ 1.883. Other offices within the Office of the Governor replaced.

The Offices of Public Liaison, Constituent Services, and Government Affairs and Outreach within the Office of the Governor are replaced by the Office of Intergovernmental Affairs.

§ 1.884. General provisions.

This subchapter will be implemented consistent with applicable law. This subchapter is not intended to, and does not create, any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the Commonwealth, its departments or agencies, or entities, its officers, employees or agents, or any other person.

§ 1.885. Effective date.

This subchapter takes effect immediately.

[Pa.B. Doc. No. 18-42. Filed for public inspection January 12, 2018, 9:00 a.m.]

Title 4—ADMINISTRATION
PART I. GOVERNOR'S OFFICE
[4 PA. CODE CH. 6]
[EXECUTIVE ORDER NO. 2017-07]
Governor's Invasive Species Council

December 20, 2017

Whereas, invasive species are a global problem that pose significant environmental and economic threats to the Commonwealth's natural resources; resource based industries, and agricultural economy, and may be detrimental to public health and safety; and

Whereas, invasive species pose a significant threat to biodiversity, which is essential for the Commonwealth's economic, environmental, and social well-being; and

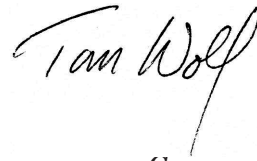
Whereas, preventing new introductions of invasive species and controlling the spread of established populations into uninfested areas is both environmentally responsible and economically beneficial; and

Whereas, federal Executive Order 13112, as amended, acknowledges that nonnative invasive species fail to recognize jurisdictional boundaries, thus creating a need for enhanced coordination between local, state, regional, and federal entities; and

Whereas, creation of a management plan, to include effective communication to those impacted by the invasive species has been an effective tool in reducing and eliminating the existence of invasive species in the past; and

Whereas, it has been determined that the Governor and the Commonwealth would benefit from the advice and counsel of an official representative body of natural resource managers, policymakers, and researchers engaged in cooperatively abating the introduction and spread of invasive species in Pennsylvania.

Now, Therefore, I, Tom Wolf, Governor of the Commonwealth of Pennsylvania, by virtue of the authority vested in me by the Constitution of the Commonwealth of Pennsylvania and other laws, do hereby reestablish the Governor's Invasive Species Council and do order and direct as follows.



Governor

Fiscal Note: GOV-2017-07. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 4. ADMINISTRATION
PART I. GOVERNOR'S OFFICE
CHAPTER 6. ADDITIONAL COUNCILS AND COMMITTEES
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6.666.	Cooperation by State agencies.
6.667.	Reports.

- 6.668. Effective date.
6.669. Termination date.
6.670. Rescission.

§ 6.661. Purpose.

(a) The Governor's Invasive Species Council (Council) shall provide a forum through which multiple State agencies and nongovernmental entities meet with a common purpose of identifying invasive species of concern that currently or could potentially threaten this Commonwealth's natural and agricultural resources and the industries they support.

(b) The Council shall:

(1) Advise the Governor on and direct the development and implementation of a State invasive species management plan.

(2) Provide guidance on prevention, control and rapid response initiatives.

(3) Facilitate coordination among Federal, regional, State and local efforts.

§ 6.662. Responsibilities.

The Governor's Invasive Species Council (Council) shall:

(1) Develop and implement a comprehensive invasive species management plan for the Commonwealth and revise the plan at regular 5-year intervals or as needed.

(2) Provide guidance on prevention and control of invasive species and rapid response to new infestations. The Council shall utilize scientific methods and procedures to assist in developing guidance. In providing guidance on whether control measures are necessary, the Council may consider the potential for wide-spread harm to public health, an ecological system or negative economic impact derived from a species.

(3) Facilitate coordination among Federal, regional, State and local initiatives and organizations engaged in the management of invasive species.

(4) Convene at least quarterly and at the call of the Chairperson of the Council.

(5) Adopt rules of procedures consistent with this subchapter.

§ 6.663. Composition.

(a) The members of the Governor's Invasive Species Council (Council) will be appointed by and serve at the pleasure of the Governor. The membership of the Council shall include agency heads of the Commonwealth or their designees responsible for the conservation of agricultural and natural resources and the protection of public health, including:

(1) Secretary of Agriculture, who will serve as Chairperson of the Council.

(2) Secretary of Conservation and Natural Resources.

(3) Secretary of Environmental Protection.

(4) Secretary of Health.

(5) Secretary of Transportation.

(6) Executive Director of the Fish and Boat Commission.

(7) Executive Director of the Game Commission.

(b) The Council will be staffed by an employee of the Department of Agriculture. The Council will have up to 14 members of the public representing agriculture, natural resource organizations, educational institutions conducting invasive species research and outreach, conservation districts, municipal and county government associations, and the transportation sector. The members of the public will be appointed by and serve at the pleasure of the Governor. A member of the public appointed to the Council under this subsection may have a designee act on the member's behalf if the member first provides the Chairperson a copy of the member's

written designation authorizing the designee to so act. The Governor will fill vacancies that may occur and may remove a member from the Council at his discretion.

§ 6.664. Terms of membership.

Governor's Invasive Species Council members appointed by the Governor and not serving by virtue of their official position with the Commonwealth will serve for a term of 4 years and continue to serve thereafter until their successor is appointed. A member may be reappointed for an additional term of 4 years.

§ 6.665. Compensation.

Members of the Governor's Invasive Species Council will not receive compensation for their service, except that members may, upon request, be reimbursed for travel and other related expenses in accordance with Commonwealth policy. See Chapter 40 (relating to travel and subsistence).

§ 6.666. Cooperation by State agencies.

Commonwealth agencies under the Governor's jurisdiction will cooperate with and provide assistance and support as needed to the Governor's Invasive Species Council to carry out its responsibilities as set forth in this subchapter.

§ 6.667. Reports.

In addition to the recommendations in §§ 6.661—6.666, the Governor's Invasive Species Council (Council) shall submit to the Governor a biennial report on the Council's activities.

§ 6.668. Effective date.

This subchapter takes effect immediately.

§ 6.669. Termination date.

This subchapter shall remain in effect unless amended or rescinded by the Governor.

§ 6.670. Rescission.

Executive Order 2004-01 is rescinded.

[Pa.B. Doc. No. 18-43. Filed for public inspection January 12, 2018, 9:00 a.m.]

Title 4—ADMINISTRATION

PART I. GOVERNOR'S OFFICE

[4 PA. CODE CH. 6]

[EXECUTIVE ORDER NO. 2017-05]

Pennsylvania Early Learning Investment Commission

December 20, 2017

Whereas, the early learning, development, and education of young children is of critical importance to Pennsylvania's families, education system, and employers; and

Whereas, in the last three years, the Commonwealth of Pennsylvania has increased its investment in early learning, development, and education programs, and has made steady progress to assure that more children receive quality early learning and development services; and

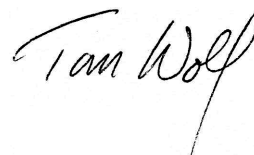
Whereas, the continued development of an effective sustainable system of early care and education is critical to Pennsylvania's future economic and workforce development; and

Whereas, the input, perspective, and support of business leaders is essential to the development of a successful early childhood system; and

Whereas, fostering public and private sector investment in continued economic growth by addressing the needs of and challenges faced by all families with children, especially the Commonwealth's low-income families with children, is essential to assure Pennsylvania's edge in the national and global marketplace; and

Whereas, connecting existing workforce development initiatives with early learning practices is educationally and economically beneficial for all people within Pennsylvania.

Now, Therefore, I, Tom Wolf, Governor of the Commonwealth of Pennsylvania, by the virtue of the authority vested in me by the Constitution of the Commonwealth of Pennsylvania and other laws of the Commonwealth do hereby establish the Pennsylvania Early Learning Investment Commission and order and direct as follows.



Governor

Fiscal Note: GOV-2017-05. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 4. ADMINISTRATION

PART I. GOVERNOR'S OFFICE

CHAPTER 6. ADDITIONAL COUNCILS AND COMMITTEES

Subchapter DD. (Reserved)

§§ 6.371—6.377. (Reserved).

Subchapter CCC. PENNSYLVANIA COMMISSION FOR WOMEN

Sec.	
6.651.	Purpose.
6.652.	Powers and duties.
6.653.	Composition.
6.654.	Term.
6.655.	Relationship with other agencies.
6.656.	Relationship with Team Pennsylvania Foundation.
6.657.	Effective date.
6.658.	Termination date.
6.659.	Rescission.

§ 6.651. Purpose.

The purpose of the Pennsylvania Early Learning Investment Commission is to secure support for public investment in early learning by focusing on practices that are educationally, economically and scientifically sound.

§ 6.652. Powers and duties.

The Pennsylvania Early Learning Investment Commission (Commission) will meet at least twice a year and have the following powers and duties:

(1) Recommend strategies for the Commonwealth to engage business and civic leaders and organizations in early learning planning and advocacy at the State and local level.

(2) Increase business, civic and public awareness of the importance of early childhood education.

(3) Make recommendations as to the planning, implementing and hosting of an Annual Economic Summit on Early Childhood Investment that will include outreach to business, civic, educational and governmental leaders.

(4) Make recommendations as to the planning and implementing of an annual meeting for legislators and legislative staff to understand the economic educational and social impact of investing in quality early childhood education.

(5) Develop and recommend updates to a multiyear plan for the expansion of effective early childhood services.

(6) Identify private sector financial support for early learning projects throughout this Commonwealth and match those funding sources with needs identified in the local community.

(7) Facilitate the creation of sustainable funding sources and early learning projects within a permanent sustainable network of private and public-sector funding streams.

(8) Consult or engage experts, economists, consultants, advisors or other personnel to assist with the Commission's mission, duties and responsibilities.

§ 6.653. Composition.

(a) The Pennsylvania Early Learning Investment Commission (Commission) shall consist of the following members, who collectively will be diverse and represent the Commonwealth's population:

- (1) Secretary of the Budget.
- (2) Secretary of Planning and Policy.
- (3) Secretary of Community and Economic Development.
- (4) Secretary of Corrections.
- (5) Secretary of Education.
- (6) Secretary of Human Services.

(7) Deputy Secretary of the Office of Child Development and Early Learning.

(8) High-level business executives representing the diversity of economic sectors and regions in this Commonwealth appointed by the Governor.

(9) The Chairperson and Co-Chairperson of the Early Learning Council.

(b) The Governor will designate a Chairperson and a Vice-Chairperson or may designate two persons as Co-Chairpersons from among Commission members. The Chairperson and Vice-Chairperson shall serve at the pleasure of the Governor. The Chairperson and Vice-Chairperson, or Co-Chairpersons as may be designated by the Governor, shall appoint members to a Nominating Committee, which will make recommendations to the Governor for Commission membership.

§ 6.654. Term.

Pennsylvania Early Learning Investment Commission (Commission) members appointed by the Governor and not serving by virtue of an official position with the Commonwealth will serve for a term of 3 years and continue to serve until a successor is appointed. Members will serve without compensation except for payment of necessary and actual expenses incurred in attending meetings and in performing their duties and responsibilities as Commission members. See Chapter 40 (relating to travel and subsistence).

§ 6.655. Relationship with other agencies.

Commonwealth agencies under the Governor's jurisdiction will cooperate with, provide assistance to and review the recommendations of the Pennsylvania Early Learning Investment Commission with respect to its purpose, powers and duties.

§ 6.656. Relationship with Team Pennsylvania Foundation.

The Pennsylvania Early Learning Investment Commission shall work jointly with Team Pennsylvania Foundation in furtherance of their common mission, duties and responsibilities to develop and sustain educational opportunities in this Commonwealth, particularly early learning, development and education of young children.

§ 6.657. Effective date.

This subchapter takes effect immediately.

§ 6.658. Termination date.

This subchapter remains in effect unless amended or rescinded by the Governor.

§ 6.659. Rescission.

Executive Order 2008-08 is rescinded

[Pa.B. Doc. No. 18-44. Filed for public inspection January 12, 2018, 9:00 a.m.]

Title 4—ADMINISTRATION

PART I. GOVERNOR'S OFFICE**[4 PA. CODE CH. 7a]****[EXECUTIVE ORDER NO. 2017-06]****Public Private Partnership**

December 20, 2017

Whereas, Pennsylvania is fortunate in having an abundance of world-class private sector resources and leaders who desire to better their communities and the commonwealth; and

Whereas, the commonwealth's economic development goals include developing an innovation-driven economy, ensuring that all Pennsylvania's children can achieve their full potential through access to a first-class education, increasing wealth-generating job opportunities for all citizens, encouraging small business growth, significantly reducing the burdens government places on businesses and citizens, expanding Pennsylvania-based business export opportunities, and harnessing Pennsylvania's energy potential; and

Whereas, successful, sustainable economic and workforce development is dependent upon a solid educational system that prepares students to compete in a global economy, to ensure an improved quality of life for Pennsylvania's people, its workforce and communities; and

Whereas, in the last three years, the Commonwealth of Pennsylvania has increased its investment in early learning, development, and education programs, and has made steady progress to assure that more children receive quality early learning and development services; and

Whereas, the input, perspective, and support of business leaders is essential to the development of a successful workforce and economic development system; and

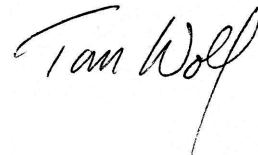
Whereas, it is essential to foster public and private sector investment to continue economic growth, which can be accomplished by addressing the needs of and challenges faced by all Pennsylvanians, including those with children, to assure the commonwealth's edge in the national and global marketplace; and

Whereas, the use of a public private partnership to convene business, workforce, and economic development leaders to provide input, perspective, and resources is essential to achieving our collective goals; and

Whereas, the use of a public private partnership to bring business, government, community, and education leaders together is essential to accomplishing these goals; and

Whereas, Team Pennsylvania Foundation is a dynamic resource for Pennsylvania, created as a nonprofit corporation incorporated in 1997, under 15 Pa.C.S. Subpart C (relating to Nonprofit Corporation Law of 1988), to assist the commonwealth in increasing job growth, retention and creation within Pennsylvania.

Now, Therefore, I, Tom Wolf, Governor of the Commonwealth of Pennsylvania, by virtue of the authority vested in me by the Constitution of the Commonwealth of Pennsylvania and other laws, do hereby recognize, affirm and celebrate the economic development partnership between the commonwealth and the Team Pennsylvania Foundation.



Governor

Fiscal Note: GOV-2017-06. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 4. ADMINISTRATION

PART I. GOVERNOR'S OFFICE

CHAPTER 7a. ADDITIONAL MISCELLANEOUS PROVISIONS

Subchapter I. (Reserved)

§§ 7a.101—7a.106. (Reserved).

Subchapter O. COMMONWEALTH PARTNERSHIP WITH TEAM PENNSYLVANIA FOUNDATION

Sec.	
7a.161.	Purpose.
7a.162.	Cooperation of State agencies.
7a.163.	Appointments.
7a.164.	Applicability.
7a.165.	Effective date.
7a.166.	Rescission.

§ 7a.161. Purpose.

The purpose of the affirmation of the partnership between the Commonwealth and Team Pennsylvania Foundation is to advance innovation, efficiency and transparency within Commonwealth government at State and local levels, stimulate business growth in this Commonwealth, ensure excellent, responsive and accessible education options, identify and leverage alternative private sector resources for public sector priorities, and help create domestic and international business opportunities for this Commonwealth's job creators.

§ 7a.162. Cooperation of State agencies.

Agencies under the Governor's jurisdiction shall recognize Team Pennsylvania Foundation as a unique and trusted partnership with the Commonwealth and cooperate with and support it to the extent permissible under applicable laws, policies and regulations to assist it in pursuing the common

mission of creating and expanding opportunities for businesses and individuals to succeed in this Commonwealth.

§ 7a.163. Appointments.

To help ensure private sector engagement and participation, the Governor will endeavor to include Team Pennsylvania Foundation leadership on all relevant commissions, boards and appointments to other bodies and positions, as appropriate.

§ 7a.164. Applicability.

This subchapter is intended to promote the attainment of the mission and goals of Team Pennsylvania Foundation insofar as they enhance the economic betterment of this Commonwealth, and is not intended to create any right or benefit, whether substantive or procedural, that is enforceable at law or equity by any party against the Commonwealth, its agencies, officers or employees, or against any other person.

§ 7a.165. Effective date.

This subchapter takes effect immediately.

§ 7a.166. Rescission.

Effective immediately, Executive Order 2011-03 is rescinded.

[Pa.B. Doc. No. 18-45. Filed for public inspection January 12, 2018, 9:00 a.m.]

THE GENERAL ASSEMBLY

THE GENERAL ASSEMBLY

Recent Actions during the 2017 Regular Session of the General Assembly

The following is a summary of recent actions of the General Assembly during the 2017 Regular Session:

<i>Doc. No.</i>	<i>Date of Action</i>	<i>Bill Number</i>	<i>Printer's Number</i>	<i>Effective Date</i>	<i>Subject Matter</i>
2017 General Acts of Regular Session Enacted—Act 058 through 082					
058	Dec 15	HB1388	PN1749	Immediately	Insurance Company Law of 1921—comprehensive health care for uninsured children and expiration
059	Dec 19	SB0446	PN1387	180 days	Administrative Code of 1929—drug and alcohol recovery houses and establishing Drug and Alcohol Recovery House Fund
060	Dec 20	HB1915	PN2735	Immediately	Unemployment Compensation Law—contributions by employees and Service and Infrastructure Improvement Fund
061	Dec 21	HB0290	PN2217	Immediately*	Storage Tank and Spill Prevention Act—Underground Storage Tank Indemnification Board, Underground Storage Tank Environmental Cleanup Program, Underground Storage Tank Pollution Prevention Program and investigation and closure costs
062	Dec 21	HB0425	PN0441	Immediately	State Lottery Law—determination of eligibility
063	Dec 21	HB1009	PN2697	Immediately	Project 70 lands—release of restrictions in Borough of West Newton, Westmoreland County, and Upper Uwchlan Township, Chester County
064	Dec 21	HB1019	PN2209	60 days	Burial Grounds (9 Pa.C.S.)—definitions, transfer of ownership of cemeteries and reasonable access to burial grounds
065	Dec 21	HB1490	PN2650	Immediately	Public Utilities (66 Pa.C.S.)—rates to be just and reasonable and water and sewer authorities in cities of the second class
066	Dec 22	HB0411	PN1014	60 days	Bingo Law—rules for licensing and operation and penalty
067	Dec 22	HB0561	PN0586	Immediately	Crimes Code (18 Pa.C.S.)—administrative subpoena
068	Dec 22	HB1139	PN2802	Immediately*	Crimes Code (18 Pa.C.S.)—omnibus amendments
069	Dec 22	HB1231	PN2158	60 days	Military and Veterans Code (51 Pa.C.S.)—veterans registry
070	Dec 22	HB1234	PN1461	60 days	Health Care Facilities Act—abrogating regulations
071	Dec 22	HB1420	PN1784	60 days	Solicitation of Funds for Charitable Purposes Act—registration of charitable organizations, financial reports, fees and failure to file
072	Dec 22	HB1421	PN1785	60 days	Solicitation of Funds for Charitable Purposes Act—omnibus amendments
073	Dec 22	HB1431	PN2411	60 days	Multiple designations in multiple counties—designations
074	Dec 22	HB1778	PN2405	60 days	Officer Gary Frank Skerski Memorial Bridge—designation

<i>Doc. No.</i>	<i>Date of Action</i>	<i>Bill Number</i>	<i>Printer's Number</i>	<i>Effective Date</i>	<i>Subject Matter</i>
075	Dec 22	HB1902	PN2786	Immediately	Liquor Code—enforcement, interlocking business prohibited, breweries, unlawful acts relative to malt or brewed beverages and licensees and unlawful acts relative to liquor, malt and brewed beverages and licensees
076	Dec 22	SB0252	PN0232	60 days	Municipalities (53 Pa.C.S.)—granting of interests and mixed-use projects for authorities in cities of the second class
077	Dec 22	SB0458	PN1362	60 days	Public Utilities (66 Pa.C.S.)—declaration of policy and definitions and unauthorized operation by carriers and brokers
078	Dec 22	SB0629	PN0709	60 days	Commerce and Trade (12 Pa.C.S.) and Domestic Relations Code (23 Pa.C.S.)—omnibus amendments
079	Dec 22	SB0728	PN1261	60 days	Achieving Better Care by Monitoring All Prescriptions Program (ABC-MAP) Act—requirements for prescribers
080	Dec 22	SB0736	PN0899	60 days	Vehicle Code (75 Pa.C.S.)—specific powers of department and local authorities
081	Dec 22	SB0751	PN0925	Immediately*	Banks and Banking (7 Pa.C.S.)—omnibus amendments
082	Dec 22	SB0921	PN1386	60 days	Conveyance—Commonwealth property in the City of Allentown and City of Bethlehem, Lehigh County, and Borough of Kane, McKean County
2017 Vetoes of Regular Session of Bills—Veto 003					
003	Dec 18	SB0003	PN0283		Crimes Code (18 Pa.C.S.)—medical consultation and judgement, offense of abortion on unborn child of 24 or more weeks gestational age, dismemberment abortion ban and reporting

* denotes an effective date with exceptions

Effective Dates of Statutes

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

Advance Copies of Statutes

Section 1106 of 1 Pa.C.S. (relating to prothonotaries to keep files of advance copies of statutes) provides that the prothonotaries of each county shall file advance copies of statutes in their offices for public inspection until the *Laws of Pennsylvania* are generally available.

One-time purchases of the advance copies of statutes can be purchased through the State Bookstore's web site at www.shoppaheritage.com.

VINCENT C. DeLIBERATO, Jr.,
Director
Legislative Reference Bureau

[Pa.B. Doc. No. 18-46. Filed for public inspection January 12, 2018, 9:00 a.m.]

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART II. GENERAL ADMINISTRATION

[204 PA. CODE CH. 29]

Promulgation of Financial Regulations Pursuant to Acts 40 and 44 of 2017; No. 492 Judicial Administration Doc.

Order

Per Curiam:

And Now, this 22nd day of December, 2017, it is Ordered, pursuant to Article V, Section 10(c) of the Constitution of Pennsylvania and 42 Pa.C.S. § 3502(a), that the Court Administrator of Pennsylvania is authorized to promulgate the attached Financial Regulations. The Financial Regulations are effective immediately.

To the extent that notice of proposed rulemaking may be required by Pa.R.J.A. No. 103(a), the immediate promulgation of the regulations is hereby found to be in the interests of efficient administration. See Pa.R.J.A. No. 103(a)(3).

This Order is to be processed in accordance with Pa.R.J.A. No. 103(b) and is effective immediately.

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART II. GENERAL ADMINISTRATION

CHAPTER 29. MISCELLANEOUS PROVISIONS

Subchapter I. BUDGET AND FINANCE

§ 29.351. Definitions.

(a) *Pennsylvania Supreme, Superior and Commonwealth Courts. Initial Filing.*

1. Except for the provisions of subsection (g)(1) below, for purposes of 42 Pa.C.S. §§ 3733(a.1) and 3733.1 and section 2802-E of The Administrative Code of 1929 (71 P.S. § 720.102) a statutory fee of seventeen dollars (\$17.00) shall be imposed on all items enumerated in the fee schedules of the Appellate Courts for which a filing and service fee is collected, excluding the following:

- i. Second and Subsequent Filings for Extension of Time;
- ii. Reargument/Reconsideration;
- iii. Services in Connection with Appeals to or Writs of Certiorari from the United States Supreme Court;
- iv. Miscellaneous Fees; and
- v. Subpoenas.

(b) *Court of Common Pleas. Prothonotary. Civil Actions and Legal Proceedings.*

1. Except for the provisions of subsection (g)(1) below, for purposes of 42 Pa.C.S. §§ 3733(a.1) and 3733.1 and section 2802-E of The Administrative Code of 1929 (71 P.S. § 720.102) a statutory fee of seventeen dollars (\$17.00) shall be imposed on a civil action or legal proceeding in a Court of Common Pleas whenever it is initiated upon the filing of the first legal paper therein of record with the prothonotary, which legal paper may be:

- i. Praecipe for a Writ of Summons;
- ii. Complaint;
- iii. Deleted;
- iv. Petition;
- v. Notice of Appeal from a court of limited jurisdiction; or,
- vi. Petition or grant of any other legal paper commencing an action or proceeding authorized by Act of Assembly or rule of court.

2. For purposes of these regulations, the initiation of a civil action or legal proceeding shall include, but is not limited to:

i. Actions governed by or authorized under the Pennsylvania Rules of Civil Procedure, such as Civil Action Ejectment, Equity, Ground Rent, Mandamus, Mortgage Foreclosure, Partition of Real Property, Quiet Title, Quo Warranto, Replevin, and the Prevention of Waste;

ii. Actions pertaining to Dependency, Annulments, Divorce, Custody, Partial Custody, Visitation of Minor Children, Support, and Paternity. With respect to Divorce actions, a separate statutory fee shall be imposed for each count in the complaint in addition to the count requesting divorce;

iii. Statutory actions such as Confirmation of Arbitration Awards, Conformation of Confessed Judgment, Declaratory Judgment, Opening or Striking Off a Judgment, Eminent Domain, Habeas Corpus, Proceedings on Liens (other than revival), Name Changes, Partition of Property Held by Husband and Wife as Tenants By the Entireties, Tax Sales of Real Property; or,

iv. Other actions not included in subsections (i), (ii) or (iii) such as: Appeals from Board of Elections, Appeals from Board of Viewers, Appeals from Zoning Boards, and Certiorari to Magisterial District Judges.

(c) *Court of Common Pleas. Orphans' Court Clerk, Register of Wills.*

1. Except for the provisions of subsection (g)(1) below, for purposes of 42 Pa.C.S. §§ 3733(a.1) and 3733.1 and section 2802-E of The Administrative Code of 1929 (71 P.S. § 720.102) a statutory fee of seventeen dollars (\$17.00) shall be imposed on all petitions for grant of letters, and first filings in petitions concerning adoptions, incapacitated persons' estates, minors' estates, and inter vivos trusts.

(d) *Court of Common Pleas. Clerk of Court.*

1. Except for the provisions of subsection (g)(1) below, for purposes of 42 Pa.C.S. §§ 3733(a.1) and 3733.1 and section 2802-E of The Administrative Code of 1929 (71 P.S. § 720.102) a statutory fee of seventeen dollars (\$17.00) shall be imposed upon conviction, guilty plea, or when a defendant is granted entry into an Accelerated Rehabilitative Disposition (ARD) or other pretrial diversionary program based upon the initiation of any criminal proceeding. The initiation of a criminal proceeding shall include:

i. Cases commenced at the magisterial district judge level resulting in the issuance of a numbered docket transcript form (OTN), and subsequently waived or held to court;

ii. the appeal of a summary conviction to the Court of Common Pleas;

iii. cases involving juvenile defendants where a petition alleging delinquency has been filed in the Court of Common Pleas;

iv. cases involving juvenile defendants certified to the Court of Common Pleas, resulting in the issuance of a numbered docket transcript form (OTN); and

v. cases involving the severance of charges into separate cases resulting in the issuance of one or more additional numbered docket transcripts (OTNs).

2. Except for the provisions of subsection (g)(1) below, for purposes of 42 Pa.C.S. §§ 3733(a.1) and 3733.1 and section 2802-E of The Administrative Code of 1929 (71 P.S. § 720.102) a statutory fee of seventeen dollars (\$17.00) shall be imposed for each filing of a deed, mortgage or property transfer for which a fee, charge or cost is now authorized. The documents identified as meeting the above conditions are listed below. The list is not exclusive; other filings for which a fee is imposed and that can be considered a property transfer are included, and the fee shall be imposed. Subject to later amendment, the following documents have been identified as meeting the statutory provisions:

- i. Deeds in any form;
- ii. Mortgages;
- iii. Mortgage assignments;
- iv. Mortgage releases;
- v. Mortgage satisfaction pieces;
- vi. Installment sales agreements;
- vii. Leases for a term of thirty (30) years or longer;
- viii. Easements; and
- ix. Rights of Way.

(e) *Minor Judiciary. Civil and Criminal Proceedings.*

1. For purposes of 42 Pa.C.S. §§ 3733(a.1) and 3733.1, and section 2802-E of The Administrative Code of 1929 (71 P.S. § 720.102) a statutory fee of seventeen dollars (\$17.00) shall be imposed on the initiation of a legal proceeding except as provided in subsection (iii). The initiation of a legal proceeding, in the following courts of the Minor Judiciary, shall include, but is not limited to, the following:

i. *Magisterial District Judge. Civil Actions.* Except for the provisions of subsection (g)(1) below, a statutory fee of seventeen dollars (\$17.00) shall be imposed in connection with the filing of a complaint in Trespass and Assumpsit or for the Recovery of Possession of Real Property (Landlord and Tenant Proceeding) or for any other Civil Action as provided in the Rules of Civil Procedure Governing Actions and Proceedings before Magisterial District Judges.

ii. *Magisterial District Judge. Criminal Actions.* Except for the provisions of subsection (g)(1) below, a statutory fee of seventeen dollars (\$17.00) shall be imposed upon a conviction, guilty plea or when a defendant is granted entry into an Accelerated Rehabilitative Disposition (ARD) or any other pretrial diversionary program based upon the filing of a criminal complaint or non-traffic citation charging an offense classified as misdemeanor or summary under a state statute or local ordinance as provided in the Pennsylvania Rules of Criminal Procedure.

iii. *Magisterial District Judge, Pittsburgh Municipal Court, and Philadelphia Municipal Court. Title 75 Summary Offenses Initiated by Traffic Citation.* Except for the provisions of subsection (g)(2) below, a statutory fee of ten dollars (\$10.00) shall be imposed upon a conviction or guilty plea based upon the filing of a traffic citation charging a violation of Title 75 (relating to vehicles) offense classified as summary under a state statute or local ordinance as provided in the Pennsylvania Rules of Criminal Procedure.

iv. *Pittsburgh Municipal Court. Civil Actions.* Except for the provisions of subsection (g)(1) below, a statutory fee of seventeen dollars (\$17.00) shall be imposed in connection with the filing of a civil complaint seeking recovery of fines and penalties imposed by an ordinance of the City of Pittsburgh or by any ordinance or regulation relating to housing and health administered and enforced by the county health department where the violation occurs within the City of Pittsburgh.

v. *Pittsburgh Municipal Court. Criminal Actions.* Except for the provisions of subsection (g)(1) below, a statutory fee of seventeen dollars (\$17.00) shall be imposed upon a conviction, guilty plea or when a defendant is granted entry into an Accelerated Rehabilitative Disposition (ARD) or any other pretrial diversionary program based upon the filing of a criminal complaint or non-traffic citation charging an offense classified as misdemeanor or summary under state statute or local ordinance as provided for in the Pennsylvania Rules of Criminal Procedure.

vi. *Philadelphia Municipal Court. Civil Actions.* Except for the provisions of subsection (g)(1) below, a statutory fee of seventeen dollars (\$17.00) shall be imposed in connection with the filing of a complaint for a Civil Action, as defined in the Philadelphia Municipal Court Rules of Civil Procedure.

vii. *Philadelphia Municipal Court. Criminal Actions.* Except for the provisions of subsection (g)(1) below, a statutory fee of seventeen dollars (\$17.00) shall be imposed upon conviction, guilty plea or when a defendant is granted entry into an Accelerated Rehabilitative Disposition (ARD) or any other pretrial diversionary program based upon the filing of a criminal complaint or non-traffic citation charging an offense classified as misdemeanor or summary under state statute or local ordinance as provided for in the Pennsylvania Rules of Criminal Procedure.

(f) *Recorders of Deeds.* Except for the provisions of subsection (g)(1) below, for purposes of 42 Pa.C.S. §§ 3733(a.1) and 3733.1, and section 2802-E of The Administrative Code of 1929 (71 P.S. § 720.102) a statutory fee of seventeen dollars (\$17.00) shall be imposed for each filing of a deed, mortgage or property transfer for which a fee, charge or cost is now authorized. The documents identified as meeting the above conditions are listed below. The list is not exclusive; other filings for which a fee is imposed and that can be considered a property transfer are included, and the fee shall be imposed. Subject to later amendment, the following documents have been identified as meeting the statutory provisions:

- i. Deeds in any form;
- ii. Mortgages;
- iii. Mortgage assignments;
- iv. Mortgage releases;
- v. Mortgage satisfaction pieces;

- vi. Installment sales agreements;
 - vii. Leases for a term of thirty (30) years or longer;
 - viii. Easements; and
 - ix. Rights of Way.
- (g) *Temporary Surcharge.*

1. Beginning October 30, 2017, and until December 31, 2020, for purposes of section 2802-E of The Administrative Code of 1929 (71 P.S. § 720.102) and section 1795.1-E of The Fiscal Code (72 P.S. § 1795.1-E) a temporary surcharge of twenty-three dollars and twenty-five cents (\$23.25) shall be collected by all collectors of the JCS/ATJ/CJEA fee to supplement the seventeen dollars (\$17.00) statutory fee described above. This temporary surcharge may not be imposed upon a conviction or guilty plea based upon the filing of a traffic citation charging a Title 75 (relating to vehicles) offense classified as summary under a state statute or local ordinance as provided in the Pennsylvania Rules of Criminal Procedure.

2. *Magisterial District Judge, Pittsburgh Municipal Court, and Philadelphia Municipal Court.* Title 75 Summary Offenses Initiated by Traffic Citation. Beginning October 30, 2017, and until December 31, 2020, for purposes of Section 1795.1-E of the Fiscal Code (72 P.S. § 1795.1-E) a temporary surcharge of twelve dollars (\$12.00) shall be collected to supplement the ten dollars (\$10.00) statutory fee imposed upon a conviction or guilty plea based upon the filing of a traffic citation charging a violation of Title 75 (relating to vehicles) offense classified as summary under a state statute or local ordinance as provided in the Pennsylvania Rules of Criminal Procedure.

[Pa.B. Doc. No. 18-47. Filed for public inspection January 12, 2018, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 200]

Damages for Delay

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 200. BUSINESS OF COURTS

Rule 238. Damages for Delay in an Action for Bodily Injury, Death or Property Damage.

* * * * *

Addendum to Explanatory Comment (2018)

The prime rate as set forth in the first edition of the *Wall Street Journal* for a particular year is the basis for calculating damages for delay under Pa.R.C.P. No. 238 as revised November 7, 1988. The prime rate published in the first edition of the *Wall Street Journal* for each of the years specified is as follows:

<i>Date of Publication</i>	<i>Prime Rate Percentage</i>
January 2, 2018	4 1/2
January 3, 2017	3 3/4

<i>Date of Publication</i>	<i>Prime Rate Percentage</i>
January 4, 2016	3 1/2
January 2, 2015	3 1/4
January 2, 2014	3 1/4
January 2, 2013	3 1/4
January 3, 2012	3 1/4
January 3, 2011	3 1/4
January 4, 2010	3 1/4
January 2, 2009	3 1/4
January 2, 2008	7 1/4
January 2, 2007	8 1/4
January 3, 2006	7 1/4
January 3, 2005	5 1/4
January 2, 2004	4
January 2, 2003	4 1/4
January 2, 2002	4 3/4
January 2, 2001	9 1/2
January 3, 2000	8 1/2
January 4, 1999	7 3/4
January 2, 1998	8 1/2

Official Note: The prime rate for the years 1980 through 1997 may be found in the Addendum to the Explanatory Comment published in the *Pennsylvania Bulletin*, volume 33, page 634 (2/1/03) and on the web site of the Civil Procedural Rules Committee at <http://www.pacourts.us>.

By the Civil Procedural Rules Committee

DAVID L. KWASS,
Chair

[Pa.B. Doc. No. 18-48. Filed for public inspection January 12, 2018, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 4]

Order Amending Rule 462 and Revising the Comment to Rule 460 of the Rules of Criminal Procedure; No. 498 Criminal Procedural Rules Doc.

Order

Per Curiam

And Now, this 29th day of December, 2017, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 47 Pa.B. 3959 (July 22, 2017), 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 Pennsylvania Rule of Criminal Procedure 462 is amended and the Comment to Pennsylvania Rule of Criminal Procedure 460 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 April 1, 2018.

Annex A

**TITLE 234. RULES OF CRIMINAL PROCEDURE
CHAPTER 4. PROCEDURES IN SUMMARY CASES**

**PART F. Procedures in Summary Cases for
Appealing to Court of Common Pleas for Trial
De Novo**

Rule 460. Notice of Appeal.

* * * *

Comment

This rule is derived from former Rule 86(A), (D), (E), (F), (H), and (I).

This rule applies to appeals in all summary proceedings, including appeals from prosecutions for violations of municipal ordinances [**which**] **that** provide for the possibility of imprisonment, and default hearings.

This rule was amended in 2000 to make it clear in a summary criminal case that the defendant may file an appeal for a trial *de novo* following the entry of a guilty plea.

Appeals from contempt adjudications are governed by Rule 141.

The narrow holding in *City of Easton v. Marra*, 326 A.2d 637 (Pa. Super. 1974), is not in conflict, since the record before the court did not indicate that imprisonment was possible under the ordinance there in question.

See Rule 461 for the procedures for executing a sentence of imprisonment when there is a stay.

“Entry,” as used in this rule, means the date on which the issuing authority enters or records the guilty plea, the conviction, or other order in the [**district justice**] **magisterial district judge** computer system.

When the only issues on appeal arise solely from an issuing authority’s determination after a default hearing pursuant to Rule 456, the matter must be heard *de novo* by the appropriate judge of the court of common pleas and only those issues arising from the default hearing are to be considered. It is not intended to reopen other issues not properly preserved for appeal. A determination after a default hearing would be a final order for purposes of these rules.

Paragraph (D) was amended in 2003 to align this rule with Rule 401(A), which permits the electronic transmission of parking violation information in lieu of filing a citation. Therefore, in electronically transmitted parking violation cases only, because there is no original citation, the issuing authority would file the summons with the clerk of courts pursuant to paragraph (D)(3).

Rule 462(D) provides for the dismissal of an appeal when the defendant fails to appear for the trial *de novo*.

See Rule 462(F) regarding the retention of a case at the court of common pleas when a petition to file an appeal nunc pro tunc has been denied.

Certiorari was abolished by the Criminal Rules in 1973 pursuant to Article V Schedule Section 26 of the Constitution of Pennsylvania, which specifically empowers the Supreme Court of Pennsylvania to do so by rule. This Schedule section is still viable, and the substance of this Schedule section has also been included in the Judicial Code, 42 Pa.C.S. § 934. The abolition of *certiorari* continues with this rule.

Official Note: Former Rule 86 adopted July 12, 1985, effective January 1, 1986; revised September 23, 1985, effective January 1, 1986; the January 1, 1986 effective dates extended to July 1, 1986; amended February 2, 1989, effective March 1, 1989; amended March 22, 1993, effective January 1, 1994; amended October 28, 1994, effective as to cases instituted on or after January 1, 1995; amended February 27, 1995, effective July 1, 1995; amended October 1, 1997, effective October 1, 1998; amended May 14, 1999, effective July 1, 1999; amended March 3, 2000, effective July 1, 2000; rescinded March 1, 2000, effective April 1, 2001, and paragraphs (A), (D), (E), (F), (H), and (I) replaced by Rule 460. New Rule 460 adopted March 1, 2000, effective April 1, 2001; amended February 6, 2003, effective July 1, 2003; Comment revised February 28, 2003, effective July 1, 2003; **Comment revised December 29, 2017, effective April 1, 2018.**

Committee Explanatory Reports:

* * * *

Final Report explaining the February 28, 2003 Comment revision cross-referencing Rule 461 published with the Court’s Order at 33 Pa.B. 1326 (March 15, 2003).

Final Report explaining the December 29, 2017 Comment revision cross-referencing Rule 462(F) published with the Court’s Order at 48 Pa.B. 226 (January 13, 2018).

Rule 462. Trial De Novo.

* * * *

(E) If the defendant withdraws the appeal, the trial judge shall enter judgment in the court of common pleas on the judgment of the issuing authority.

(F) If the defendant has petitioned the trial judge to permit the taking of an appeal nunc pro tunc and this petition is denied, the trial judge shall enter judgment in the court of common pleas on the judgment of the issuing authority.

[(F)] (G) The verdict and sentence, if any, shall be announced in open court immediately upon the conclusion of the trial, or, in cases in which the defendant may be sentenced to intermediate punishment, the trial judge may delay the proceedings pending confirmation of the defendant’s eligibility for intermediate punishment.

[(G)] (H) At the time of sentencing, the trial judge shall:

* * * *

(4) issue a written order imposing sentence, signed by the trial judge. The order shall include the information specified in paragraphs [(G)(1) through (G)(3)] (H)(1) through (H)(3), and a copy of the order shall be given to the defendant.

[(H)] (I) After sentence is imposed by the trial judge, the case shall remain in the court of common pleas for the execution of sentence, including the collection of any fine and restitution, and for the collection of any costs.

Comment

This rule is derived from former Rule 86(G) and former Rule 1117(c).

This rule was amended in 2000 to make it clear in a summary criminal case that the defendant may file an appeal for a trial *de novo* following the entry of a guilty plea.

“Entry,” as used in paragraph (A) of this rule, means the date on which the issuing authority enters or records the guilty plea, the conviction, or other order in the magisterial district judge computer system.

The procedures for conducting the trial *de novo* in the court of common pleas set forth in paragraphs (B), [(F), and] (G), and (H) are comparable to the summary case trial procedures in Rule 454 (Trial in Summary Cases).

Pursuant to paragraph (B), the decision whether to appear and assume control of the prosecution of the trial *de novo* is solely within the discretion of the attorney for the Commonwealth. When no attorney appears at the trial *de novo* on behalf of the Commonwealth or a municipality, the trial judge may ask questions of any witness who testifies, and the affiant may request the trial judge to ask specific questions. In the appropriate circumstances, the trial judge also may permit the affiant to question Commonwealth witnesses, cross-examine defense witnesses, and make recommendations about the case to the trial judge.

The provisions of paragraph (C) that permit the court to continue the case if there is good cause for the officer’s unavailability were added in response to *Commonwealth v. Hightower*, 652 A.2d 873 (Pa. Super. 1995).

Paragraph (D) makes it clear that the trial judge may dismiss a summary case appeal when the judge determines that the defendant is absent without cause from the trial *de novo*. If the appeal is dismissed, the trial judge should enter judgment and order execution of any sentence imposed by the issuing authority.

New paragraph (F) was added in 2017 to clarify that in a case in which a defendant seeks to file an appeal *nunc pro tunc*, and the common pleas judge denies that petition, the case will remain at the court of common pleas. This is consistent with the long-standing policy under the rules that once a case has moved from the minor judiciary to the court of common pleas, the case remains at common pleas.

Paragraph [(F)] (G) was amended in 2008 to permit a trial judge to delay imposition of sentence in order to investigate a defendant’s eligibility for intermediate punishment for certain offenses, including summary violations of 75 Pa.C.S. § 1543(b) (driving while license is under a DUI-related suspension), but only if he or she meets certain eligibility requirements, such as undergoing a drug and alcohol assessment. Potentially this information may not be available to the trial judge following a trial *de novo* at the time of sentencing.

Pursuant to paragraph [(G)] (H), if the defendant is convicted, the trial judge must impose sentence, and advise the defendant of the payment schedule, if any, and the defendant’s appeal rights. See Rule 704(A)(3) and Rule 720(D). No defendant may be sentenced to imprisonment or probation if the right to counsel was not afforded at trial. See *Alabama v. Shelton*, 535 U.S. 654 (2002), *Scott v. Illinois*, 440 U.S. 367 (1979), and *Argersinger v. Hamlin*, 407 U.S. 25 (1972).

Certain costs are mandatory and must be imposed. See, e.g., Section 1101 of the Crime Victims Act, 18 P.S. § 11.1101.

Once sentence is imposed, paragraph [(H)] (I) makes it clear that the case is to remain in the court of common pleas for execution of the sentence and collection of any costs, and the case may not be returned to the magiste-

rial district judge. The execution of sentence includes the collection of any fines and restitution.

For the procedures concerning sentences that include restitution in court cases, see Rule 705.1.

For the procedures for appeals from the Philadelphia Municipal Court Traffic Division, see Rule 1037.

Official Note: Former Rule 86 adopted July 12, 1985, effective January 1, 1986; revised September 23, 1985, effective January 1, 1986; the January 1, 1986 effective dates extended to July 1, 1986; amended February 2, 1989, effective March 1, 1989; amended March 22, 1993, effective January 1, 1994; amended October 28, 1994, effective as to cases instituted on or after January 1, 1995; amended February 27, 1995, effective July 1, 1995; amended October 1, 1997, effective October 1, 1998; amended May 14, 1999, effective July 1, 1999; rescinded March 1, 2000, effective April 1, 2001, and paragraph (G) replaced by Rule 462. New Rule 462 adopted March 1, 2000, effective April 1, 2001; amended March 3, 2000, effective July 1, 2000; amended February 28, 2003, effective July 1, 2003; Comment revised March 26, 2004, effective July 1, 2004; amended January 18, 2007, effective August 1, 2007; amended December 16, 2008, effective February 1, 2009; Comment revised October 16, 2009, effective February 1, 2010; Comment revised May 7, 2014, effective immediately; amended March 9, 2016, effective July 1, 2016; **amended December 29, 2017, effective April 1, 2018.**

Committee Explanatory Reports:

* * * * *

Final Report explaining the March 9, 2016 amendments to paragraph (G) concerning required elements of the sentence published with the Court’s Order at 46 Pa.B. 1540 (March 26, 2016).

Final Report explaining the December 29, 2017 amendments regarding appeals *nunc pro tunc* published with the Court’s Order at 48 Pa.B. 226 (January 13, 2018).

FINAL REPORT¹

Amendment of Pa.R.Crim.P. 462 Revision of the Comment to Pa.R.Crim.P. 460

Summary Appeal Remand

On December 29, 2017, effective April 1, 2018, upon the recommendation of the Criminal Procedural Rules Committee, the Court amended Rule 462 (Trial *De Novo*) and revised the Comment to Rule 460 (Notice of Appeal) to clarify that when a petition to file a summary appeal *nunc pro tunc* is denied at the court of common pleas, the case remains at the common pleas level, in keeping with the Court’s long-standing policy that once a case moves from a lower court to the court of common pleas, the case should remain at common pleas.

The Committee recently examined an issue that has come up regarding the “no-remand” policy in summary cases. A defendant is convicted of a summary offense before a magisterial district judge (MDJ) and then files a petition to be allowed to file a summary appeal *nunc pro tunc*. The common pleas court denies the petition and orders that the case be “remanded” to the MDJ office. The common pleas judge in these situations has taken the position that, because the common pleas court has never

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.

addressed the actual appeal, the case is not subject to the “no remand” provisions of Rule 462(H).

Under Rule 460(D), when an appeal is filed in a summary case, the case and associated documents are transferred from the MDJ to the clerk of courts and then adjudicated by a common pleas judge. Paragraph (H) of Rule 462 states:

(H) After sentence is imposed by the trial judge, the case shall remain in the court of common pleas for the execution of sentence, including the collection of any fine and restitution, and for the collection of any costs.

This provision is one part of the Court’s long-standing “no remands” policy that provides that once a case “goes up” from the minor judiciary to the court of common pleas, it should stay at common pleas. This policy has been articulated in rule changes that were adopted in 2003 (clarifying when an appeal for a trial *de novo* in a summary case or a contempt adjudication is taken, the case remains in the court of common pleas for the execution of any sentence and collection of any fines and restitution, and collection of any costs), in 2006 (clarifying the procedures for handling cases in which a summary offense is joined with misdemeanor, felony, or murder charges both when the case is before the issuing authority and after the case is held for court), and in 2010 (addressing three areas in which remands from the court of common pleas to the issuing authority still are occurring despite the Court’s policy that prohibits such remands: (1) the practice of remanding cases for a preliminary hearing where a defendant who was designated as “NEI” is apprehended; (2) use of remands as remedies for a waived preliminary hearing; and (3) the practice of remanding cases without court involvement when the district attorney withdraws felony/misdemeanor prior to the filing of the information).²

Additionally, Rule 462 contains paragraph (D), which provides that the case is retained at common pleas if a defendant fails to appear for the trial *de novo* and the MDJ sentence is entered at common pleas, and paragraph (E), which provides similarly when the defendant withdraws the appeal. As noted above, paragraph (H) provides that when a sentence has been entered by the common pleas judge, it remains at common pleas for execution of sentence. The rationale for this policy is to prevent cases from “bouncing back and forth” between the MDJ and common pleas courts. This could result in confusion and the potential repeated transfer of court records and case-associated money.

None of these amendments addressed the situation of the dismissal of a late-filed summary appeal. The Committee examined the above history of the no-remand policy and concluded that the underlying rationale of the policy would be applicable to the situation at issue. Since the common pleas court must make a decision on the petition, the case is transferred from the MDJ to the common pleas court. The same concerns about transferring the case record and money are present here as in other summary appeal situations. Additionally, the Committee noted the instances mentioned above where a case in which a full trial *de novo* has not been held, such as when a defendant fails to appear for the trial, still is retained at the common pleas court.

Therefore, a new paragraph (F) has been added to Rule 462 that would state specifically that a late-filed appeal

adjudicated at common pleas court would remain at common pleas court. Additionally, a cross-reference to this new provision has been added to the Comment to Rule 460 since that rule provides the procedures for filing appeals, including time limitations.

[Pa.B. Doc. No. 18-49. Filed for public inspection January 12, 2018, 9:00 a.m.]

Title 249—PHILADELPHIA RULES

PHILADELPHIA COUNTY

President Judge General Court Regulation No. 2006-04: Rescission of Phila.R.J.A. 5000.5

Order

And Now, this 22nd day of December, 2017, in light of the Pennsylvania Supreme Court’s adoption of Uniform Rules Governing Court Reporting and Transcripts, Pa.R.J.A. No. 4001 et seq., and the adoption of Phila.R.J.A. No. *4007 and *4008, governing requests for Transcripts and Transcript Costs by this Court by Order dated June 14, 2017, *It Is Hereby Ordered and Decreed* that Philadelphia Rule of Judicial Administration 5000.5 governing Requests for Transcripts, adopted by the Board of Judges on May 18, 2006 and promulgated by Order dated July 6, 2006 is rescinded.

By the Court

HONORABLE SHEILA WOODS-SKIPPER,
President Judge,
Court of Common Pleas of
Philadelphia County

[Pa.B. Doc. No. 18-50. Filed for public inspection January 12, 2018, 9:00 a.m.]

Title 255—LOCAL COURT RULES

BERKS COUNTY

Amendments to Local Rules; No. 17-381 Prothonotary; No. CP-06-AD-27-2017 Clerk of Courts

Order

And Now, this 15th day of December, 2017, the following amendments to Berks County Rules of Civil Procedure 205.2(a); 205.4; 211; 211.6; 211.9; 212.1; 239; 1028(c); 1034(a); 1035.2(a); 1305; 1306; 1910.4; 1910.5; 1910.10; 1910.12; 1910.32; 1910.33; 1915.3; 1915.5; 1915.7; 1915.8; 1915.15; 1915.18; 1915.26; 1915.27; 1915.32; 1915.33; 1920.31(a)(1); 1920.31(b); 1920.32; 1920.42; 1920.51; 1920.51.4; 1920.51.5; 1920.53; 1920.74; and 1940.11; new Berks County Rule of Civil Procedure 1012; 1910.19(1); 1910.19(2); 1910.34; 1915.17; 1920.3; 1930.5; and 4014; and new Berks County Rule of Judicial Administration 510 are hereby adopted and shall become effective thirty (30) days after publication in the *Pennsylvania Bulletin*, in accordance with Pa.R.J.A. No. 103(c)(5)(iii) and No. 103(d)(5)(iii).

(New text appears in underscored bold face, and removed language is shown in bold within brackets.)

The District Court Administrator is *Ordered* and *Directed* to:

² See 33 Pa.B. 1324 (March 15, 2003), 36 Pa.B. 1385 (March 25, 2006), and 40 Pa.B. 1068 (February 27, 2010).

1. Submit one (1) copy of this Order, including the newly adopted rules, to the appropriate Rules Committees of the Supreme Court of Pennsylvania for review.

2. Distribute two (2) copies of this Order, including the newly adopted rules, and one (1) disk copy with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3. File one (1) copy of this Order, including the newly adopted rules, with the Administrative Office of Pennsylvania Courts contemporaneously with publishing the local rule in the *Pennsylvania Bulletin*.

4. Compile the local rules within the complete set of local rules available on the Berks County Court website no later than 30 days following publication in the *Pennsylvania Bulletin*.

5. Distribute one (1) copy of this Order, including the newly adopted rules to each of the Berks County filing offices so they can keep them continuously available for public inspection and copying.

HONORABLE PAUL M. YATRON,
President Judge

RULES OF JUDICIAL ADMINISTRATION

Rule 510. Public Access Policy.

Pursuant to Sections 7 and 8 of the Public Access Policy of the Unified Judicial System of Pennsylvania; Case Records of the Appellate and Trial Courts, persons who file documents that contain personal information as defined by the Policy shall file a Confidential Information Form along with the redacted copy of the document and persons who file confidential documents as defined by the Policy shall file a Confidential Document Form along with the unredacted document. Parties are expressly prohibited from filing a redacted and an unredacted version of any document. The policy and forms are available on the Administrative Office of Pennsylvania Courts website www.pacourts.us as well as on the Berks County Court website www.co.berks.pa.us.

RULES OF CIVIL PROCEDURE

PETITIONS, MOTIONS AND ANSWERS

Rule 205.2(a). Physical Characteristics of Pleadings and Other Legal Papers.

(4) . . .

(5) All filings shall comply with the Public Access Policy of the Unified Judicial System of Pennsylvania; Case Records of the Appellate and Trial Courts which can be found at the Administrative Office of Pennsylvania Courts website www.pacourts.us as well as on the Berks County Court website www.co.berks.pa.us and with Berks County Rule of Judicial Administration 510.

The Prothonotary shall accept a party's pleadings, motions, affidavits and other legal papers for filing without regard to that party's failure to comply with any of the above requirements, as long as sufficient information is provided for the Prothonotary to identify the case to which the pleadings, motions, affidavits and other legal papers apply.

Rule 205.4. Electronic Filing and Service of Legal Papers.

(a)(1) Beginning on the date established by the President Judge by Administrative Order, parties shall file all

"legal papers" as defined by Pa.R.C.P. No. 205.4(a)(2), with the Prothonotary through the Berks County Electronic Filing System "EFS" as more specifically provided here and in Pa.R.C.P. No. 205.4.

Explanatory Note: The term "legal paper" as defined in Pa.R.C.P. No. 205.4(a)(2) encompasses all pleadings and other papers filed with the Prothonotary, including exhibits and attachments—even if the legal papers are not adversarial in nature and do not require the non-filing party or parties to respond.

(2) As used in this rule, the following words shall have the following meanings:

CMS (Case Management System): A Court case management system manages the receipt, processing, storage and retrieval of data associated with a case and performs actions on the data.

Electronic Filing (E-Filing): The electronic transmission, acceptance, and processing of a filing. A submission consists of data, one or more documents, and/or images. The definition of electronic filing does not apply to facsimile or e-mail.

[Electronic Service (E-Service): The electronic transmission of an original document to all other electronically-registered case participants via the electronic filing system. Upon the completion of any transmission to the electronic filing system, an electronic receipt shall be issued to the sender acknowledging receipt by the electronic filing system.]

(b)(1) *Authorized Electronic Format of Legal Papers Electronically Filed.* All legal papers shall be filed in a portable document format ("pdf") or other format as may from time to time be established for electronic filing. A paper presented for filing in hard copy or in a format other than [portable document] the required format shall be converted to [portable document] the required format and maintained by the Prothonotary in that format pursuant to Pa.R.C.P. No. 205.4(b)(1).

. . .

(c)(2) *Website. Access to the Website*

(i) *Website.* All legal papers shall be filed electronically through the Berks County Electronic Filing System "EFS" which shall be accessible through the County of Berks website, [www.countyofberks.com] www.co.berks.pa.us, or at such other website as may be designated from time to time.

. . .

(f)(4) *Electronic Filing Fees and Costs*

(i) The Prothonotary shall collect an electronic filing fee for each legal paper or exhibit filed as established by the Prothonotary with the approval of the President Judge of the Berks County Court of Common Pleas.

(ii) In addition to such electronic filing fee, the Prothonotary is authorized to charge a fee as set from time to time for each page of a legal paper or exhibit which is filed in hard copy format and which must be converted to [a portable document] the required format.

. . .

(f)(5) *Other Procedures Necessary to the Operation of a System of Electronic Filing*

(i) If a legal paper is accepted, it shall be deemed to have been filed as of the date and time it was received by

the Berks County Electronic Filing System; provided, however, that if a legal paper is submitted without the requisite fee, the legal paper shall be deemed to have been accepted for filing as of the date payment was received. The Prothonotary is authorized to refuse for filing a legal paper submitted without the requisite payment. If the pleading or legal paper other than original process is accepted for filing, it will be electronically served as authorized by Pa.R.C.P. No. 205.4(g)(1)(ii) and service shall be effectuated as provided in Pa.R.C.P. No. 205.4(g)(2)(ii).

(ii) *Termination Notice.* In addition to the procedures set forth in Pa.R.C.P. No. 230.2, in cases where a party is a registered user of the Berks County Electronic Filing System, notice of proposed termination may also be electronic.

(iii) An electronic filer is not required to file any paper copies unless specifically required by the court.

(iv) An electronic filer is not required to file multiple copies of documents or to file envelopes as specified elsewhere in these local rules. **[If documents are to be served electronically, the electronic filer is not required to provide envelopes as specified elsewhere in these local rules, except for those parties who are to receive the document by regular mail or other means of service as required by other rules.]**

(v) Electronic filing is permitted at all times when the EFS is available. If the EFS is unavailable at the time a registered user attempts to file a document, the registered user shall make reasonable efforts to file the document as soon as the unavailability ends.

(vi) If a registered user believes the unavailability of the EFS prevented a timely filing to the party's prejudice, the registered user may submit a motion to the court within ten (10) days of the registered user's unsuccessful attempt to file the document. The motion shall state the date and time of the first unsuccessful attempt to file the document electronically, the date(s) and time(s) of any subsequent attempts to file the document electronically, and why the delay was prejudicial.

(vii) The filing deadline for any document filed electronically is 11:59:59 p.m. EST/EDT.

(viii) *Documents with Attachments.* Attachments, including exhibits, that are part of any filing, shall be filed electronically at the same time as the document.

(ix) Pleadings seeking judicial action such as Proposed Orders or scheduling orders shall be filed as separate documents within the same electronic filing as the Motion or Petition they pertain to.

(x) An attachment or exhibit that exceeds the technical standards for the EFS or is unable to be electronically filed must be filed as ordered by the court. A Notice of Exhibit Attachment shall be filed in the EFS referencing such an exhibit with specificity and stating the reason why the exhibit was not filed electronically.

(xi) The Court may, on its own motion or for good cause shown, order a filing be made under seal. Filings requested to be made under seal shall be submitted to the Prothonotary's Office over the counter rather than through EFS.

(xii) Sealed or confidential documents may be submitted for electronic filing in a manner that maintains confidentiality under applicable law.

(xiii) All filings shall comply with the Public Access Policy of the Unified Judicial System of Penn-

sylvania; Case Records of the Appellate and Trial Courts which can be found at the Administrative Office of Pennsylvania Courts website www.pacourts.us as well as on the Berks County Court website www.co.berks.pa.us and with Berks County Rule of Judicial Administration 510. Confidential data may be collected on the EFS so that the data can be viewed by authorized personnel while being protected from public view.

(xiv) Family Court documents shall be confidential and shall not be viewable in CMS by the public without an Order of Court.

Note: Attorneys and litigants who file documents are required to comply with the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts.

...

(g)(2) *Service by Electronic Transmission*

[(iii) Service shall be made to registered users through the EFS and to all others as otherwise provided in the Pa.R.C.P. Service by the EFS is complete upon transmission except that, for purposes of calculating the time for filing a response, a transmission on a Saturday, a Sunday, a holiday recognized by Berks County, or after 5:00 p.m. EST/EDT, shall be considered complete on the next day that is not a Saturday, Sunday or recognized Berks County holiday.

(iv) **Other than original service, the electronic filer shall not be required to serve a paper copy of the electronic filing on the opposing party if the opposing party is a registered user on the EFS and the electronic filing has been served on them through the EFS.]**

(i) The electronic filing of a legal paper does not satisfy the filing party's obligation under the Pennsylvania Rules of Civil Procedure or the Berks County Rules of Civil Procedure to serve the legal paper on all parties to the litigation or on the Court.

(ii) Service of subsequent pleadings other than orders shall be made by the filing party to all other parties. Service of orders shall be made to registered EFS users by the Prothonotary's Office by e-mail notification or mail as elected by the EFS user and to all others by mail.

(h) Civil and Family Court Cover Sheets will not be required in EFS cases because any required data will be collected through the EFS for transmission to the Administrative Office of Pennsylvania Courts as required by Pa.R.C.P. No. 205.5(e).

Rule 211. Schedule for Arguments. Matters for Panel. Matters for Single Judge.

Civil Argument Court shall be held on the days as scheduled in the Court calendar for that year, subject to change by court order fixing special argument dates. As used throughout these rules, including B.R.C.P. 211.1 through 211.7 inclusive, and B.R.C.P. 1028(c), 1034(a), and 1035.2(a), the term "argument court date" shall mean one of the scheduled Civil Argument Court dates listed on the Court calendar, which calendar can be found on-line at [www.countyofberks.com/courts] www.co.berks.pa.us.

...

Rule 211.6. Assignment of Cases for Argument.

...

(b) Court Administration shall prepare a schedule of assignment of cases designating courtrooms, judges and times that arguments will be heard at argument court, and shall post such schedule by noon of the Thursday (or Wednesday if Thursday is a holiday) preceding argument court in the prothonotary's office and online at [www.countyofberks.com/courts] www.co.berks.pa.us, and shall post such schedule on argument court day in the first floor lobby at the Courthouse and County Services Center.

...

Rule 211.9. Argument Court Procedures for Support Argument.

(a) Instead of a praecipe as stated in B.R.C.P. Nos. 211.1 through 211.6, a party requesting that Support Argument be scheduled shall:

(1) File exceptions to the finding of fact and recommendations of the Support Hearing [**Master**] **Officer** with the Domestic Relations Section together with a request for transcript and the required fee.

...

Rule 212.1. Filing of Certificate of Readiness and Scheduling of Pretrial Conferences.

(a) The parties shall indicate their readiness for trial by filing the prescribed form of certificate of readiness (available from the prothonotary) in duplicate with the prothonotary signed by all parties or their attorneys of record. The forms are available in the Prothonotary's Office and online at [www.countyofberks.com/courts] www.co.berks.pa.us.

...

[Rule 239. Notice of Adoption. Copies Thereof.

(a) Except for the adoption of a comprehensive set of new Berks County Rules of Court, whenever any Berks County Rule of Court shall be adopted, amended or abrogated, the prothonotary shall forthwith cause the same to be published one (1) time in the Berks County Law Journal in suitable form so that the same may be placed as an additional or replacement page in the current binder of the Berks County Rules of Court. The prothonotary shall maintain a separate file containing the original orders of the court adopting, amending or abrogating the Berks County Rules of Court and shall maintain a current binder of the Berks County Rules of Court containing such additional or replacement pages.

(b) Upon request, the prothonotary shall furnish copies of the Berks County Rules of Court to any person requesting the same upon payment of such charge as may be determined from time to time by the court. They are also available at www.countyofberks.com/courts.]

Rule 1012. Entry of Appearance.

Every initial pleading or legal paper filed with the Prothonotary or the Domestic Relations Office by an attorney should be accompanied by a written entry of appearance. The written appearance will facilitate proper notification being given to all counsel of record. In the event an initial pleading or legal paper, including an initial responsive

pleading or legal paper, filed by an attorney is not accompanied by a written entry of appearance, the Prothonotary or the Domestic Relations Office shall enter the name of the attorney as counsel of record provided that the attorney's full name, signature, Supreme Court ID number and address are contained on the pleading.

Rule 1028(c). Preliminary Objections.

(a) A party filing preliminary objections which are not endorsed with a notice to plead, as they involve issues raised under Pa.R.C.P. Nos. 1028(a)(2), (3) or (4), shall file simultaneously with the Prothonotary an original and one copy of the preliminary objections, a praecipe for argument, an argument brief and a proposed order granting the relief requested, accompanied by a proof of service of copies of those documents upon counsel for all other parties and any unrepresented parties by first class mail. The praecipe shall order that the preliminary objections be listed for argument on the next argument court date that is at least twenty-four (24) days from the date of filing, or any later date that the party filing the praecipe certifies is agreeable to all parties and the assigned judge. Said argument court date must be in accordance with the Civil Argument Court calendar, which can be found online at [www.countyofberks.com/courts] www.co.berks.pa.us.

...

Rule 1034(a). Motion for Judgment on Pleadings.

(1) A party filing a motion for judgment on the pleadings shall file simultaneously with the Prothonotary a praecipe for argument and an argument brief, accompanied by a proof of service of copies of the motion, praecipe and brief of argument upon all other counsel and any unrepresented parties by first class mail, all in accordance with the Berks County Rules of Civil Procedure governing Civil Argument Court. The praecipe shall order that the motion be listed for argument on the next argument court date that is at least twenty-four (24) days from the date of filing, or any later date that the party filing the praecipe certifies is agreeable to all parties and the assigned judge. Said argument court date must be in accordance with the Civil Argument Court calendar, which can be found online at [www.countyofberks.com/courts] www.co.berks.pa.us.

...

Rule 1035.2(a). Motion for Summary Judgment.

...

(4) If the moving party files the praecipe for argument, an argument brief shall be filed therewith and the case shall be listed for the next argument court date that is at least twenty-four (24) days thereafter, or any later date that the party filing the praecipe certifies is agreeable to all parties and the assigned judge, accompanied by a proof of service of copies of the praecipe and argument brief upon counsel for all other parties and any unrepresented parties by first class mail. Said argument court date must be in accordance with the Civil Argument Court calendar, which can be found at [www.countyofberks.com/courts] www.co.berks.pa.us. The non-moving party shall thereafter file an argument brief on or before the Tuesday (or Monday, if Tuesday is a holiday) before the argument court date, accompanied by a proof of service of copies of the argument brief upon counsel for all other parties and any unrepresented parties by first class mail. When the argument date is by

agreement of the parties and the assigned judge, unless the assigned judge orders otherwise, the non-moving party shall file its argument brief no later than seven (7) days prior to the agreed upon argument date.

ARBITRATION

Rule 1305. Conduct of Hearing.

On the date fixed for the hearing, the chairperson and the members of the panel shall **[pick up the file and take their oaths of office before the Prothonotary] report to the designated location for the hearing** and shall organize for the hearing at least fifteen (15) minutes before the scheduled time. The panel shall conduct the hearing in accordance with Pa.R.C.P. 1302, 1304 and 1305 and in accordance with courtroom decorum **[including but not limited to, appearing in proper attire and refraining from smoking during hearings]**. The chairperson of the panel shall preside and see to the proper conduct of the hearing **[. He/she shall]**, announce all rulings of a majority of the panel pertaining to the law and/or the admissibility of evidence, and be responsible for the proper filing **[of the award]** with the Prothonotary of the completed oath and award.

Comment: It is the intention of these rules that the arbitration proceed in an expeditious fashion and that all parties will take full advantage of submitting documentation and tangible evidence pursuant to Pa.R.C.P. 1305 without the need for expert testimony unless extraordinary circumstances warrant.

Rule 1306. Award, Damages for Delay.

An award shall be **[entered] made** promptly upon termination of the hearing pursuant to Pa.R.C.P. 1306. If delay damages are an issue, the parties shall submit to the arbitrators in a sealed envelope a stipulation containing the following:

- (a) Whether an offer was made in writing;
- (b) The amount of the offer; and
- (c) The date of the offer.

It shall be the plaintiff's obligation to provide said stipulation to the arbitrators. If the parties are unable to stipulate to the above facts, a separate evidentiary hearing will be scheduled pursuant to B.R.C.P. 1305.1.

SUPPORT

[Rule 1910.4. Commencement of Action. Modification or Termination of Order.

All civil actions or proceedings brought in the Court of Common Pleas of Berks County to enforce a duty of support within the scope of Pa.R.C.P. 1910.1 shall be commenced by filing an original and three copies of a complaint with the Domestic Relations Section of the Court of Common Pleas. The form of the complaint shall be in strict compliance with the applicable Pa.R.C.P. Subsequent proceedings to modify or terminate a support order shall be initiated by filing a petition, together with three copies thereof with the Domestic Relations Section of the Court of Common Pleas. The form of the petition shall be in strict compliance with the applicable Pa.R.C.P.

Rule 1910.5. Order Directing Party to Appear at Conference. Service.

(a) An order shall be attached to the front of the complaint or petition directing the parties to ap-

pear before a conference officer at the time and place directed by the court.

(b) A certified copy of the complaint or petition with order shall be served upon the defendant or respondent as provided by Pa.R.C.P. 1930.4.]

Rule 1910.10. Office Conference and Hearing Procedure.

[The action shall proceed as prescribed by the alternative procedure of] Support proceedings shall be conducted in accordance with Pa.R.C.P. 1910.12.

Rule 1910.12. [Nonappearance Before Conference Officer or Support Master.] Office Conference. Hearing. Record. Exceptions. Transcripts. Failure to Appear.

(a) If either party fails to appear at the conference before the conference officer or at the hearing before the **[Support Master] hearing officer**, after notice **[thereof]** and without good cause shown, the conference or hearing may proceed without that party. If the plaintiff or moving party fails to appear at the support conference before the conference officer or at the support hearing before the **[Support Master] hearing officer**, after notice **[thereof]** and without good cause shown, the court may dismiss the action or petition and may place the costs on the party who failed to appear.

[(b) Either party may demand a hearing by filing a properly filed written demand for a hearing within ten (10) days from the date of the default order as set forth in Pa.R.C.P. 1910.12(b)(2).]

(b) If no agreement is reached at the time of the support conference, the case shall be scheduled for a hearing before a hearing officer without further request by a party. If a party who failed to appear at the conference and objects to the interim order recommended at the conference, the objecting party shall file a written demand for a hearing before a hearing officer within twenty (20) days from the date of mailing of the interim order, as set forth in Pa.R.C.P. 1910.12(b)(2). The filing deadline appears on the DRS notice which is sent with the interim order. If no hearing is requested by the filing deadline, the interim order shall become final.

(c) Parties choosing to file exceptions to the report and recommendation of the hearing officer shall comply with the written exceptions procedure (regarding filing, transcription of the record, and associated costs) and filing deadline, which is sent to each party and counsel of record with the report and recommendation. Upon filing of exceptions, the court shall issue an order scheduling the matter for argument, directing the party filing exceptions to obtain a hearing transcript, and setting a briefing schedule.

(d) The party filing exceptions is responsible for immediately requesting transcription of the record of the proceeding by filing a motion for transcription on the form which accompanies the written exceptions procedure. Failure to request or make payment for the transcript may result in the dismissal of the exceptions.

Comment: For requirement of physical presence of a non-resident party or intrastate petitioner in a

UIFSA (interstate) or IFSA (intrastate) case, see 23 Pa.C.S.A. § 7316(a) and 23 Pa.C.S.A. § 8311(a).

Rule 1910.19(1). Termination of Alimony Pendente Lite and Spousal Support Orders Upon Entry of Divorce Decree.

In any DRS case in which there is a current charging order of alimony pendent lite (APL) or spousal support, or an allocated order which includes APL or spousal support, the party filing to finalize the related divorce action shall promptly provide the DRS Docketing Division with a copy of the signed final divorce decree. The party filing to

finalize the divorce action shall include a proposed form of order to terminate APL or spousal support in substantially the form set forth below.

If APL or spousal support is included in an unallocated order of support, the party filing to finalize the divorce action shall also file a Petition to Modify the unallocated order of support to terminate the APL or spousal support obligation and recalculate the remaining child support obligation with the DRS Docketing Division along with the copy of the signed final divorce decree unless an agreed order is filed.

Plaintiff
Vs.

Defendant

: IN THE COURT OF COMMON PLEAS
: OF BERKS COUNTY, PENNSYLVANIA
: DOMESTIC RELATIONS SECTION
:
: DIVORCE DOCKET NO:
: SUPPORT DOCKET NO:
: PACSES CASE ID:
: ASSIGNED JUDGE

ORDER TO TERMINATE APL/SPOUSAL SUPPORT

AND NOW, this day of , 20 , it is hereby ORDERED that the alimony pendent lite or spousal support order is TERMINATED effective as of the entry of the decree of divorce in the parties' related divorce action. The party filing to finalize the divorce shall provide the Domestic Relations Section Docketing Division with a copy of the divorce decree in the related divorce action upon receipt of the signed decree. Arrears, if any, shall stand and remain payable at a rate of (\$ per month) or (at 25% of the amount of the monthly APL or spousal order to be terminated).

This order is entered without prejudice such that if an appeal is filed, the APL or spousal order may be reinstated. This order shall become final thirty (30) days from the entry of the divorce decree if no appeal has been filed or, if an appeal has been filed, when all appeals have been exhausted.

By the Court:

J.

Distribution:

Prothonotary
Domestic Relations Section
Plaintiff/Plaintiff's Attorney
Defendant/Defendant's Attorney

Rule 1910.19(2). Alimony-Only Orders Collected Through the Domestic Relations Section.

Parties seeking to have an alimony-only order paid through the Domestic Relations Section shall file a DRS alimony order, copy of signed divorce decree in the parties' related divorce action, and post-nuptial or property settlement agreement containing terms of the alimony in the Domestic Relations Section Docketing Division. The form of order for alimony payments through the DRS may be obtained in the DRS Docketing Division

or on the Berks County DRS website at <http://www.co.berks.pa.us/dr/>. The order for alimony payments through the DRS shall be in substantially the same form as is available through the DRS. The DRS order for alimony shall include a provision for payment of any arrears which may accrue. The arrears payment will not be collected unless arrears have accrued on the order. Alimony-only orders are subject to limited enforcement measures (wage attachment) by the DRS. Parties seeking modification, termination, enforcement or other relief related to an alimony-only order shall file the appropriate motion before the assigned judge or court.

Rule 1910.32. Subpoena.

The parties to a hearing before the [Support Master] hearing officer shall have the right to subpoena necessary witnesses and records as provided by the law for presentation at the hearing before the [Support Master] hearing officer. Application to enforce any such subpoenas shall be made to the court.

Rule 1910.34. Continuances.

Applications for continuance of a support proceeding (conference before a DRS establishment or compliance officer, hearing before a support hearing officer, Section Application for Continuance form. The form searing before a judge) shall be made by the attorney of record or a self-represented party on the Domestic Relations Section Application for Continuance form. The form may be obtained in the DRS Docketing Division or on the Berks County DRS website at <http://www.co.berks.pa.us/dr/> under Forms/Filing Requirements. Applications for a continuance shall be submitted at least 25 days prior to a scheduled proceeding or at the earliest possible opportunity. The applicant shall follow the instructions on the continuance form.

(a) An application for continuance for a matter scheduled before an establishment or compliance

conference officer shall be submitted to the DRS Docketing Division, to be forwarded to the appropriate unit manager for review and decision. Any party objecting to the decision may seek relief before the emergency family court judge.

(b) An application for continuance for a hearing before a hearing officer shall be submitted to the DRS Docketing Division, to be forwarded to the assigned hearing officer for review and decision. Any party objecting to the decision may seek relief before the emergency family court judge.

(c) An application for continuance for a hearing scheduled before a judge shall be submitted to the DRS Docketing Division, to be forwarded to the assigned judge for review and decision.

CHILD CUSTODY

Rule 1915.3. Commencement of Action; Filing.

(a) An action shall be commenced by filing a verified complaint and a copy for each party substantially in the form provided by Pa.R.C.P. 1915.15(a). If the complaint is filed electronically pursuant to B.R.C.P. 205.4, only the original shall be filed.

(b) [Scheduling Order shall be attached to the complaint substantially in the form provided by B.R.C.P. No. 1915.15(b).] A Custody Scheduling Order substantially in the form provided on the Berks County Family Court website www.co.berks.pa.us shall be filed as a separate document along with the complaint in (a), unless a stipulated custody agreement signed by all parties is being submitted simultaneously with the complaint.

(c)(1) In the event a claim for custody [, **partial custody or visitation**] is joined with an action for divorce, a form entitled "Notice to the Prothonotary", substantially in the form provided by B.R.C.P. No. 1915.15(a) shall be included.

(c)(2) If a claim for custody, [**partial custody or visitation**] is asserted in a divorce complaint, it shall receive a separate term and number as the divorce action. Such pleading shall contain the information required by Pa.R.C.P. No. 1915.15. If a custody count is filed as part of a divorce complaint or counterclaim to a divorce complaint, the filer must attach a stipulated custody agreement or custody scheduling order simultaneously with the filing. If the filer does not want the custody matter to proceed forward at the time the divorce complaint or counterclaim is being filed, the custody count may not be included with the divorce complaint or counterclaim. If a stipulated custody agreement or custody scheduling order is not attached when a custody count is filed as part of a divorce complaint or counterclaim, the custody count may be dismissed.

(d) An Order shall be attached to the complaint directing both parties to attend the "Children in the Middle" program, or other suitable alternative program, and pay the costs thereof. The Order shall be substantially in the form provided by B.R.C.P. 1915.15(b).

[(e) No attorney shall be permitted to represent a party in custody proceedings unless a written appearance of that attorney is first filed of record.]

(e) All custody actions shall contain a notation in the caption to identify it as a CHILD CUSTODY filing.

Rule 1915.5. Question of Jurisdiction and Venue.

All references to a hearing in the proposed Order required by B.R.C.P. 1915.3(b) shall be construed as referring to a conference before the Custody [**Master**] **Conciliator**. If a question of jurisdiction or venue is raised by timely preliminary objections, the conference shall be continued until decision by the Court.

Rule 1915.7. Consent Order.

If an agreement for custody, [**partial custody or visitation**] is reached prior to commencement of an action and the parties desire a consent Order to be entered, they shall submit to the Court a proposed Order bearing the written consent of the parties or counsel and shall file of record and serve a custody complaint, but shall not be required to file the proposed order otherwise required by B.R.C.P. 1915.3(b).

Rule 1915.8. Physical and Mental Examination of Persons.

(a) [**The Prothonotary**] **Court Administration** shall maintain a list of experts acceptable to the Court for conducting [**psychological and home study**] evaluations. The list shall be [**filed with the Prothonotary**] **on the Berks County Family Court website www.co.berks.pa.us** and shall be updated from time to time as the Court directs.

(b) In the event it is determined that [**a psychological or home study**] **an** evaluation shall be conducted, either party or the Custody [**Master**] **Conciliator** shall prepare a proposed Order directing the evaluation to be conducted and setting forth how the costs of the evaluation shall be paid. The form shall be substantially in the form prescribed by B.R.C.P. 1915.18.

(c) The contents of an expert report prepared pursuant to Pa.R.C.P. 1915.8 shall be disclosed to the parties, the Court, attorneys in the case and other experts involved in the case. Disclosure to an unauthorized person, including the child who is the subject of the action, may result in sanctions.

Rule 1915.15. Forms.

(a) In a divorce complaint containing a count for custody, the Notice to the Prothonotary shall be substantially in the following form:

NOTICE TO PROTHONOTARY

A claim for custody, [**partial custody or visitation**] is asserted in this pleading. [There have been no prior proceedings between the parties, or there has been a prior proceeding between the parties which is as follows:

(Include the caption and term number and the nature of such prior proceedings)]

(b) The **Custody** Scheduling Order shall be substantially in the form provided on the Court's website [**www.countyofberks.com/courts**] **www.co.berks.pa.us**.

Rule 1915.17. Relocation.

(f)(4) In addition to the documents required by Pa.R.C.P. 1915.17(f), the party proposing relocation shall also file a scheduling order for the court to designate a date and time for an expedited hearing.

(g)(3) In addition to the documents required by Pa.R.C.P. 1915.17(g), the non-relocating party shall also file a scheduling order for the court to designate a date and time for an expedited hearing.

(h)(3) In addition to the documents required by Pa.R.C.P. 1915.17(h), the non-relocating party shall also file a scheduling order for the court to designate a date and time for an expedited hearing.

[Rule 1915.18. Form of Order Directing Expert Examination and Report.

An Order of Court directing psychological or home study evaluations in a custody matter pursuant to B.R.C.P. No. 1915.8 shall be substantially in the form provided on the Court's website www.countyofberks.com/courts.]

Rule 1915.26. Conciliation Conference.

(a) The court shall refer all actions for custody, [**partial custody and visitation**] of minor children to a Custody [**Master**] **Conciliator** for purposes of a conciliation conference. Applicable Pennsylvania and local Mediation Rules shall be followed.

(b) The Custody [**Master**] **Conciliator** shall be an attorney of law authorized to practice before the Supreme Court of Pennsylvania and shall be appointed to such position by the Board of Judges of the Court of Common Pleas of Berks County. The Custody [**Master**] **Conciliator** shall not practice family law before a Judge, conference officer, **or** hearing officer [**or permanent or standing master**] employed in the same Judicial District.

(c) The Custody [**Master**] **Conciliator** shall attempt to mediate the differences between the parties, encourage amicable resolution of those differences and may recommend mediation, counseling services or physical and mental examinations of persons under Pa.R.C.P. 1915.8. The Custody [**Master**] **Conciliator** shall attempt to negotiate a settlement by stipulation in writing, signed by the parties and counsel, for approval and entry as an Order of the Court.

(d) The Custody [**Master**] **Conciliator** may conduct an informal hearing, take testimony of the parties under oath, and hear the position of the parties relative to custody, [**partial custody, and visitation**]. The Custody [**Master**] **Conciliator** shall have the right to conduct oral examination of the child who is the subject matter of the proceeding. No other witnesses shall be permitted, except in extreme cases, and at the discretion of the Custody [**Master**] **Conciliator**. The testimony shall not be recorded or transcribed. The Custody [**Master**] **Conciliator** shall not be bound by technical rules of evidence and all evidence of reasonably probative value may be received. The Custody [**Master**] **Conciliator** shall consider the Court-Ordered written evaluations of experts. The hearing shall not be considered a hearing of the type permitted by Pa.R.C.P. 1915.4-1 but shall be considered an extension of the conciliation process.

(e) The hearing shall be concluded on the date fixed for the hearing, except that the Custody [**Master**] **Conciliator** may continue the hearing to a date certain for good cause shown, or to obtain investigative or evaluative reports from a social service agency or private providers.

(f) Any investigative or evaluative reports ordered and obtained shall be considered by the Custody [**Master**] **Conciliator**.

(g) If a written settlement is not reached, by stipulation, the Custody [**Master**] **Conciliator** shall file a recommended order. At the discretion of the Custody

[**Master**] **Conciliator** the **Conciliator** may also file findings of fact, conclusions of law and a written report.

(h) Notice of the Custody [**Master**] **Conciliator's** findings of fact, conclusions of law and/or recommended order shall be served on counsel of record, parties without counsel of record, and on any other persons without counsel of record who were given notice of the hearing before the Custody [**Master**] **Conciliator**. The notice shall state that each party has twenty (20) days from the date of notice to file written exceptions with the Prothonotary to the findings of fact, conclusions of law or recommended order, and that upon failure to file such exceptions within twenty (20) days, the recommended order of the Custody [**Master**] **Conciliator** will be submitted to the Court for entry as an Order of Court.

Rule 1915.27. Nonappearance at Hearing before Custody [Master] Conciliator.

(a) If a [**plaintiff**] **plaintiff/petitioner** fails to appear, without proper cause shown, at the conciliation conference before the Custody [**Master**] **Conciliator**, and the Custody [**Master**] **Conciliator** is satisfied that proper notice of the order giving the date and time for the conciliation conference has been given to [**plaintiff**] **plaintiff/petitioner**, the Custody [**Master**] **Conciliator** shall recommend to the Court that an order be entered dismissing the complaint **or petition to modify** with respect to that party.

(b) If a [**defendant**] **defendant/respondent** or party joined in the case fails to appear, without proper cause shown, at the conciliation conference before the Custody [**Master**] **Conciliator**, and the Custody [**Master**] **Conciliator** is satisfied that proper service of the order has been given to the [**defendant**] **defendant/respondent** or non-appearing party, it shall be presumed that said party has agreed to a [**hearing**] **conciliation conference** in that party's absence, and the Custody [**Master**] **Conciliator** shall proceed [**to conduct a hearing and make findings of fact, conclusions of law,**] and recommend an order to be entered by the Court.

(c) If all parties fail to appear at a [**hearing**] **conciliation conference** before the Custody [**Master**] **Conciliator**, and the Custody [**Master**] **Conciliator** is satisfied that proper service has been given to all parties, the Custody [**Master**] **Conciliator** shall recommend to the Court that an Order be entered dismissing the complaint **or petition to modify**.

Rule 1915.28. Exceptions. Hearing by Judge.

(a) If there are exceptions to the recommended order, a pre-trial conference followed by a hearing de novo shall be held before the Judge assigned to the case.

(b) Any exceptions shall be filed in accordance with B.R.C.P. 207.1(a), including therewith a copy for the Custody [**Master**] **Conciliator**.

(c) The proposed Order to be submitted by the party filing the exceptions shall be in the following form:

ORDER

AND NOW, _____, exceptions having been filed to the Order recommended by the Berks County Custody [**Master**] **Conciliator**, a pre-trial conference is hereby scheduled for _____ at _____ in _____ of the Berks County Courthouse/Services Center. A pre-trial conference memorandum shall be filed in accordance with B.R.C.P. 212.2(a). The memorandum shall contain the following: (1) Summary Statement of Facts; (2) Witnesses Expected to be Called; (3) Expert Witnesses Expected to be Called; (4) Exhibits Expected to be Offered into Evidence; (5) Legal Issues Anticipated; and (6) Special Problems.

BY THE COURT:

J.

Rule 1915.32. Appendix.

Any Order for custody entered by the Court, either by stipulation or after hearing held, shall have affixed to it one or more appendixes that shall be made a part of the Court Order. The appendixes shall be substantially in the form provided on the Court's website [www.countyofberks.com/courts] www.co.berks.pa.us.

Rule 1915.33. Continuance Requests.

Continuance requests for custody conferences before the Custody [**Master**] **Conciliator** shall be faxed, mailed, e-mailed or personally delivered to the Custody Office in the form of a letter. The request shall include the docket number, the names of the parties, the date of the conference, the reason for the requested continuance, and an indication of whether or not the opposing party is in agreement with the request. The Custody Office shall notify the requesting party whether or not the request has been granted.

DIVORCE

Rule 1920.3. Caption.

All divorce actions shall contain a notation in the caption to identify it as a DIVORCE filing.

Rule 1920.31(a)(1). Filing Claims for Alimony Pendente Lite, Child Custody, [**Partial Custody or Visitation**,] Child Support or Paternity.

(A) A Confidential Family Court Cover Sheet shall be attached to any pleading under the Divorce Code, wherein a party asserts a claim for alimony pendente lite, child custody, [**partial custody or visitation**,] child support or paternity. The filing party shall certify the existence or non-existence of any former proceeding between the parties including the caption and term number thereof, and the nature of such prior proceeding on the Confidential Family Court Cover Sheet.

(B) If a claim for alimony pendente lite, child support or paternity, or pleadings responding to such claim, are filed in a divorce action, the party filing such pleading shall file such additional copies with the Domestic Relations Section as shall be required by the Berks County Rules pertaining to Support.

(C) If a claim for custody [**, partial custody or visitation**,] is asserted in a divorce complaint, it shall receive a separate term and number as the divorce action. Such pleading shall contain the information required by Pa.R.C.P. No. 1915.15. If a custody count is filed as part

of a divorce complaint or counterclaim to a divorce complaint, the filer must attach a stipulated custody agreement or custody scheduling order simultaneously with the filing. If the filer does not want the custody matter to proceed forward at the time the divorce complaint or counterclaim is being filed, the custody count may not be included with the divorce complaint or counterclaim. If a stipulated custody agreement or custody scheduling order is not attached when a custody count is filed as part of a divorce complaint or counterclaim, the custody count may be dismissed.

(D) Where pleadings under the Divorce Code asserting a claim for custody, [**partial custody or visitation**,] or pleadings responding to such claims, are filed, the party filing the same shall file such additional copies as shall be required by the Berks County [**Rules pertaining to child custody**] **Prothonotary Office**.

Rule 1920.31(b). Disposition of Alimony Pendente Lite, Child Support and Paternity Claims.

...

(2) Upon filing with the Domestic Relations Section as provided in subsection (1), the alimony pendente lite and/or child support claim shall proceed in accordance with the rules pertaining to Support **including B.R.C.P. 1910.19(1)**.

Rule 1920.32. Disposition of Child Custody Claim.

(a) All pleadings under the Divorce Code asserting or responding to a claim for child custody, [**partial custody or visitation**,] shall comply with and be governed by the rules pertaining to child custody, including, but not limited to, the filing of an Order pursuant to Pa.R.C.P. 1915.3(b) at the time of the divorce filing so that the custody matter can be promptly scheduled.

(b) Upon filing of a pleading under the Divorce Code containing a claim for child custody, [**partial custody or visitation**,] the prothonotary shall deliver a copy of said pleading to the Custody [**Master**] **Office**.

(c) [**Upon referral to the Custody Master as provided in subsection (b), the child custody, partial custody or visitation claim**] The child custody claim shall proceed in accordance with the rules pertaining to child custody.

Rule 1920.42. Filing of Praecepto to Transmit Record.

...

(d) [**The party filing the praecipe to transmit the record shall file therewith an original and two copies of the proposed decree and stamped envelopes addressed to each attorney of record and to any unrepresented party. The envelopes shall have the return address of the Prothonotary, Berks County Courthouse, Sixth and Court Streets, Reading, PA 19601, and shall be of adequate size and bear sufficient postage for any attachments to the proposed decree.**] **The party filing the praecipe to transmit the record shall also file a proposed divorce decree and a certificate of addresses.**

...

Rule 1920.51. Divorce Masters to be Appointed.

A Divorce Master shall be appointed by the court to hear testimony and make a report and recommendation as to divorce and annulment actions under the Divorce

Code (except claims for divorce under Section 3301(c) or Section 3301(d)(1)(i) of the Divorce Code), and as to related claims except claims for child custody [or visitation], child support or paternity.

Rule 1920.51.4. Motion and Order for Appointment of Divorce Master.

(a) When the action is at issue any party may file a motion for the appointment of a Divorce Master substantially in the form provided by Pa.R.C.P. No. 1920.74.

(b) In addition to the requirement for grounds for divorce to be established by the filing of the proper 3301(c) or 3301(d) documents prior to the appointment of a Divorce Master, the court may delay the appointment of a Divorce Master if:

(1) The filing party did not file their inventory pursuant to Pa.R.C.P. 1920.33(a) or the motion for appointment was filed less than thirty (30) days following the filing of their inventory.

(2) The defendant has failed to appear in the action and the affidavit of non-military service pursuant to Pa.R.C.P. 1920.46 was not filed.

(3) A copy of the notice pursuant to B.R.C.P. 1920.51.4(c) is not attached to the motion to appoint or the motion was filed less than twenty (20) days after the date of the notice.

(4) The motion does not indicate that discovery is complete for the claims for which the Divorce Master is requested.

(5) Either party has raised a claim for alimony, counsel fees, or costs and expenses and the filing party failed to file their Income and Expense Statements as required by Pa.R.C.P. 1910.27(c)(2)(B), copies of their pay stubs for the preceding six months and copies of their most recent federal income tax return as required by Pa.R.C.P. 1920.31.

[(b)] (c) The court shall appoint a Divorce Master, in accordance with the claims to be determined as set forth in the motion.

[(c)] (d) At least twenty days prior to filing the motion for the appointment of a Divorce Master, the moving party shall serve all counsel of record and any unrepresented party with a copy of said motion and written notice of intention to file the motion. Written objections, if any, shall be filed and served on all counsel of record and any unrepresented party prior to the filing date. A copy of the notice shall be attached to the motion for appointment when it is filed.

Rule 1920.51.5. Deposit of Costs to Accompany Motion for Appointment of Divorce Master.

Upon filing a motion for the appointment of a Divorce Master, the moving party shall pay an amount set by the President Judge through an Administrative Order. **The Divorce Master has the discretion to apportion the fee paid by the filing party in their report as appropriate by law.**

Rule 1920.53. Hearing by Divorce Master.

(a) The Divorce Master shall have the same powers, in reference to hearing witnesses and admitting testimony, as a judge sitting without a jury, subject to the direction of the court from time to time, upon motion of either party. When objection is made to the competency or relevancy of testimony, the Divorce Master shall rule upon its admissibility. The testimony before a Divorce

Master shall be recorded in the manner as from time to time approved by the court. The testimony shall be transcribed in the event a party files timely exceptions to the report of the Divorce Master, as set forth in B.R.C.P. [1920.55] 1920.55-2.

...

Rule 1920.74. Form of Motion for Appointment of Divorce Master.

The form of Motion for Appointment of Divorce Master shall be substantially as set forth in Pa.R.C.P. 1920.74 provided that the following shall be added:

I certify that the notice required by B.R.C.P. [1920.51.8(b)] 1920.51.4(c) was mailed on _____ and a copy is attached hereto.

Rule 1930.5. Designating a Support Case as Complex.

A party or parties seeking to have a support case designated as complex shall first proceed to a hearing before the assigned support hearing officer and request that the case be so designated. If appropriate, the hearing officer shall prepare a recommended order for the court which designates the case as complex and sets forth a discovery schedule which identifies with specificity the discovery to be conducted (other than the documents identified in the regular order to appear at the hearing), and dates by which the discovery shall be completed. If the parties agree to such designation, they shall appear at the first scheduled hearing and present a proposed order containing the above information. Thereafter, the DRS shall schedule a hearing before the hearing officer after the date on which all discovery is to be completed.

VOLUNTARY MEDIATION IN CUSTODY ACTIONS

[Rule 1940.11. Certificate of Compliance.

A certificate of compliance shall be filed by the mediator with the Prothonotary's Office, confirming compliance. Such certificate shall reflect only that such party or parties have complied with these Rules without further detail (see 42 Pa.C.S.A. § 5949).]

Rule 4014. Redaction of Confidential Information.

Unless otherwise ordered by the Court, court reporters and transcriptionists shall redact confidential information as defined by the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of Appellate and Trial Courts from transcripts and orders.

[Pa.B. Doc. No. 18-51. Filed for public inspection January 12, 2018, 9:00 a.m.]

Title 255—LOCAL COURT RULES

DELAWARE COUNTY

Local Rule of Judicial Administration; Public Access Policy; Civil Doc. No. 17-5120; Criminal Doc. No. MD-1545-17

Whereas, the Pennsylvania Supreme Court has adopted a new Public Access Policy (the "Policy") of the Unified Judicial System of Pennsylvania: Case Records of Appel-

late and Trial Courts, which applies to all court records, including civil, family, criminal and orphans' court matters; and

Whereas, the Policy establishes uniform standards for all appellate and trial courts in responding to requests from the public for case records; and

Whereas, the Policy is built upon the principle that court records are open for inspection by the public while maintaining appropriate boundaries for the protection of individuals who come into the court system; and

Whereas, the Policy provides access protocols for sensitive information which might be found in case files, including the following:

1. Certain types of information set forth in Section 7.00 Confidential Information, such as Social Security Numbers, cannot be included in court filings, but instead must be identified to the court on a separate form, called a Confidential Information Form (the "CIF") and attached to the filing. The CIF is not available to the public. Alternatively, a court may require a party to file two versions of every document—a redacted and unredacted version. The unredacted version is not available to the public. Following hereto as Exhibit "A" is the "CIF".

2. Certain documents set forth in Section 8.00 must be filed with a Confidential Document Form (the "CDF"), such as Financial Documents. While the CDF which describes the document is available to the public, the underlying document is not. The "CDF" form follows as Exhibit "B".

3. The forms shall be available in each filing office as well as on the Court and OJS websites at <http://www.co.delaware.pa.us/>.

4. Certain cases are not accessible to the public because there is no method to ensure that all of the sensitive information contained in the case file can be redacted before permitting public access.

5. Certain Information is only accessible at the courthouse and not online.

And Now, this 7th day of December, 2017, the following policy regarding access to case records, is hereby adopted effective January 6, 2018:

1. *Relationship to the Policy.*

This Local Rule of Judicial Administration shall be known as the Delaware County Public Access Policy Local Rule, and is intended to conform procedure and practice in the Courts operating within the 32nd Judicial District to the Public Access Policy adopted by the Unified Judicial System of Pennsylvania concerning case records in the Appellate and Trial Courts ("the Policy").

2. *Definitions.*

"Confidential Information" is all information identified in Section 7 of the Public Access Policy of the Unified Judicial System of Pennsylvania, and to conform with the schedule following hereto as Exhibit "C", which identifies Limits of Public Access to the Unified Judicial System Case Record of the Appellate and Trial Courts ("Limits of Public Access Matrix").

"Confidential Document" is all documents identified in Section 8 of the Public Access Policy of the Unified Judicial System of Pennsylvania.

3. *Compliance/Appropriate Sanctions.*

Compliance with the Delaware County Public Access Policy Local Rule including the Limits of Public Access Schedule is the responsibility of litigants and attorneys, each of whom shall be responsible for safeguarding Confidential Information and Confidential Documents. Those litigants and attorneys who are found to have failed to comply with this local rule shall be subject to the imposition of appropriate sanction.

4. *Orphans' Court Division.*

For all Orphans' Court matters, all "Confidential Information" as defined in Section 7.0 of the Policy which is to be filed with any Case Record, shall be set forth on the Confidential Information Form. Such policy is subject to change upon Order of Court, which could direct (among other things) that a redacted version of any document be produced.

5. *Civil Division and Family Division.*

For all Civil and Family matters, any filing containing Confidential Information shall be redacted and accompanied by a Confidential Information Form (CIF), and only the redacted version will be accessible by the public. Any filing of a Confidential Document shall be accompanied by a Confidential Document Form (CDF) and only the CDF will be accessible by the public. As to all Family matters, on-line remote access is limited to the Docket. The presiding judge, upon application of a litigant or attorney or acting sua sponte, retains the right to require filing in a redacted/unredacted form.

6. *Criminal Division.*

For all Criminal matters, any filing containing Confidential Information shall be redacted and accompanied by a Confidential Information Form (CIF), and only the redacted version will be accessible by the public. Any filing of a Confidential Document shall be accompanied by a Confidential Document Form (CDF), and only the CDF will be accessible by the public. Additionally, all confidentiality provisions regarding Juvenile Court proceedings shall continue to comply with the Juvenile Act. The presiding judge, upon application of a litigant or attorney or acting sua sponte, retains the right to require filing in a redacted/unredacted form.

7. *Motions to Seal Court Records.*

This Public Access Policy Local Rule in no way alters the ability and authority of the Court, upon application of a litigant or attorney or acting sua sponte, to seal a record or any portion of a record for reasons not inconsistent with the Policy of the Unified Judicial System of Pennsylvania.

8. *Public Accessibility to Case Records.*

Accessibility of all case record information by the public shall be governed by the attached Limits of Public Access Matrix. (Following hereto as Exhibit 'C'). Please note that certain case record information is inaccessible, while other case record information may be publicly accessible at the courthouse but not accessible online.

By the Court

KEVIN F. KELLY,
President Judge

THE COURTS

Exhibit A

**CONFIDENTIAL
INFORMATION
FORM**



**APPELLATE/TRIAL COURT
CASE RECORDS**

*Public Access Policy of the Unified Judicial System of Pennsylvania:
Case Records of the Appellate and Trial Courts
204 Pa. Code § 213.81
www.pacourts.us/public-records*

(Party name as displayed in case caption)

Docket/Case No.

Vs.

(Party name as displayed in case caption)

Court

This form is associated with the pleading titled _____, dated _____.

Pursuant to the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*, the Confidential Information Form shall accompany a filing where confidential information is **required by law, ordered by the court, or otherwise necessary to effect the disposition of a matter**. This form, and any additional pages, shall remain confidential, except that it shall be available to the parties, counsel of record, the court, and the custodian. This form, and any additional pages, must be served on all unrepresented parties and counsel of record.

This Information Pertains to:	Confidential Information:	References in Filing:
_____ (full name of adult) OR This information pertains to a minor with the initials of _____ and the full name of _____ _____ (full name of minor) and date of birth: _____	Social Security Number (SSN): _____ Financial Account Number (FAN): _____ Driver's License Number (DLN): _____ State of Issuance: _____ State Identification Number (SID): _____	Alternative Reference: SSN 1 Alternative Reference: FAN 1 Alternative Reference: DLN 1 Alternative Reference: SID 1
_____ (full name of adult) OR This information pertains to a minor with the initials of _____ and the full name of _____ _____ (full name of minor) and date of birth: _____	Social Security Number (SSN): _____ Financial Account Number (FAN): _____ Driver's License Number (DLN): _____ State of Issuance: _____ State Identification Number (SID): _____	Alternative Reference: SSN 2 Alternative Reference: FAN 2 Alternative Reference: DLN 2 Alternative Reference: SID 2

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**CONFIDENTIAL
INFORMATION
FORM**



**APPELLATE/TRIAL COURT
CASE RECORDS**

Additional page(s) attached. _____ total pages are attached to this filing.

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Signature of Attorney or Unrepresented Party

Date

Name: _____

Attorney Number: (if applicable) _____

Address: _____

Telephone: _____

Email: _____

NOTE: Parties and attorney of record in a case will have access to this Confidential Information Form. Confidentiality of this information must be maintained.

THIS FORM IS CONFIDENTIAL

**CONFIDENTIAL
INFORMATION
FORM**



**APPELLATE/TRIAL COURT
CASE RECORDS**

Additional page (if necessary)

This Information Pertains to:	Confidential Information:	References in Filing:
<p>_____</p> <p>(full name of adult)</p> <p>OR</p> <p>This information pertains to a minor with the initials of _____ and the full name of _____</p> <p>(full name of minor)</p> <p>and date of birth: _____</p>	<p>Social Security Number (SSN): _____</p> <p>Financial Account Number (FAN): _____</p> <p>Driver's License Number (DLN): _____</p> <p>State of Issuance: _____</p> <p>State Identification Number (SID): _____</p>	<p>Alternative Reference: SSN ____</p> <p>Alternative Reference: FAN ____</p> <p>Alternative Reference: DLN ____</p> <p>Alternative Reference: SID ____</p>
<p>_____</p> <p>(full name of adult)</p> <p>OR</p> <p>This information pertains to a minor with the initials of _____ and the full name of _____</p> <p>(full name of minor)</p> <p>and date of birth: _____</p>	<p>Social Security Number (SSN): _____</p> <p>Financial Account Number (FAN): _____</p> <p>Driver's License Number (DLN): _____</p> <p>State of Issuance: _____</p> <p>State Identification Number (SID): _____</p>	<p>Alternative Reference: SSN ____</p> <p>Alternative Reference: FAN ____</p> <p>Alternative Reference: DLN ____</p> <p>Alternative Reference: SID ____</p>

**CONFIDENTIAL
INFORMATION
FORM**



**APPELLATE/TRIAL COURT
CASE RECORDS**

Instructions for Completing the Confidential Information Form

The following information is confidential and shall not be included in any document filed with a court or custodian, except on a Confidential Information Form filed contemporaneously with the document:

1. Social Security Numbers
2. Financial Account Numbers, except an active financial account number may be identified by the last four digits when the financial account is the subject of the case and cannot otherwise be identified. "Financial Account Numbers" include financial institution account numbers, debit and credit card numbers, and methods of authentication used to secure accounts such as personal identification numbers, user names and passwords.
3. Driver License Numbers
4. State Identification (SID) Numbers
5. Minors' names and dates of birth except when a minor is charged as a defendant in a criminal matter (see 42 Pa.C.S. § 6355). "Minor" is a person under the age of eighteen.
6. Abuse victim's address and other contact information, including employer's name, address and work schedule, in family court actions as defined by Pa.R.C.P. No. 1931(a), except for victim's name. "Abuse Victim" is a person for whom a protection order has been granted by a court pursuant to Pa.R.C.P. No. 1901 et seq. and 23 Pa.C.S. § 6101 et seq. or Pa.R.C.P. No. 1951 et seq. and 42 Pa.C.S. § 62A01 et seq. **If necessary, this information must be provided on the separate Abuse Victim Addendum. Please note there are separate instructions for the completion of the Addendum located on the form.**

Please note this form does not need to be filed in types of cases that are sealed or exempted from public access pursuant to applicable authority (e.g. juvenile, adoption, etc.).

- **The best way to protect confidential information is not to provide it to the court. Therefore, only provide confidential information to the court when it is required by law, ordered by the court or is otherwise necessary to effect the disposition of a matter.**
- Do not include confidential information in any other document filed with the court under this docket.
- If you need to refer to a piece of confidential information in a document, use the alternate references. If you need to attach additional pages, sequentially number each alternate reference – i.e. SSN 3, SSN 4, etc.
- This form, and any additional pages, must be served on all unrepresented parties and counsel of record.

A court or custodian is not required to review or redact any filed document for compliance with *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*. A party's or attorney's failure to comply with this section shall not affect access to case records that are otherwise accessible.

If a filed document fails to comply with the requirements of the above referenced policy, a court may, upon motion or its own initiative, with or without a hearing, order the filed document sealed, redacted, amended or any combination thereof. A court may impose sanctions, including costs necessary to prepare a compliant document for filing in accordance with applicable authority.

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**CONFIDENTIAL
INFORMATION
FORM**



**APPELLATE/TRIAL COURT
CASE RECORDS**

Abuse Victim Addendum

Instructions for Completing the Abuse Victim Addendum: The Abuse Victim Addendum shall accompany a filing where confidential information is being provided by an abuse victim, as defined in this policy, in family court actions (see Pa.R.C.P. No. 1931(a)), as required by law, ordered by the court, or otherwise necessary to effect the disposition of a matter. This addendum, and any additional pages, shall only be provided to the court and shall remain confidential. The best way to protect confidential information is not to provide it to the court. Therefore, only provide confidential information to the court when it is required by law, ordered by the court or is otherwise necessary to effect the disposition of a matter.

Type of Family Court Action		
<input type="checkbox"/> Divorce, Annulment, Dissolution of Marriage	<input type="checkbox"/> Child Custody	
<input type="checkbox"/> Support	<input type="checkbox"/> Paternity	<input type="checkbox"/> Protection from Abuse
This Information Pertains to:	Confidential Information:	References in Filing:
_____	AV Address:	Alternative Reference: AV 1 Address
(full name of abuse victim)	_____	
	AV Employer's Name & Address:	Alternative Reference: AV 1 Employer's Name & Address
_____	_____	
Docket/Case No. of Protection Order	AV Work Schedule:	Alternative Reference: AV 1 Work Schedule

_____	AV Other contact information:	Alternative Reference: AV 1 Other contact information
Court/County	_____	

Attach additional page(s) if necessary.

**CONFIDENTIAL
INFORMATION
FORM**



**APPELLATE/TRIAL COURT
CASE RECORDS**

Abuse Victim Addendum
Additional page (if necessary)

Type of Family Court Action		
<input type="checkbox"/> Divorce, Annulment, Dissolution of Marriage		<input type="checkbox"/> Child Custody
<input type="checkbox"/> Support	<input type="checkbox"/> Paternity	<input type="checkbox"/> Protection from Abuse
This Information Pertains to:	Confidential Information:	References in Filing:
_____ (full name of abuse victim)	AV Address: _____	Alternative Reference: AV __ Address
_____ Docket/Case No. of Protection Order	AV Employer's Name & Address: _____	Alternative Reference: AV __ Employer's Name & Address
_____ Court/County	AV Work Schedule: _____	Alternative Reference: AV __ Work Schedule
	AV Other contact information: _____	Alternative Reference: AV __ Other contact information

Type of Family Court Action		
<input type="checkbox"/> Divorce, Annulment, Dissolution of Marriage		<input type="checkbox"/> Child Custody
<input type="checkbox"/> Support	<input type="checkbox"/> Paternity	<input type="checkbox"/> Protection from Abuse
This Information Pertains to:	Confidential Information:	References in Filing:
_____ (full name of abuse victim)	AV Address: _____	Alternative Reference: AV __ Address
_____ Docket/Case No. of Protection Order	AV Employer's Name & Address: _____	Alternative Reference: AV __ Employer's Name & Address
_____ Court/County	AV Work Schedule: _____	Alternative Reference: AV __ Work Schedule
	AV Other contact information: _____	Alternative Reference: AV __ Other contact information

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THE COURTS

Exhibit B

**CONFIDENTIAL
DOCUMENT FORM**



**APPELLATE/TRIAL COURT
CASE RECORDS**

*Public Access Policy of the Unified Judicial System of Pennsylvania:
Case Records of the Appellate and Trial Courts
204 Pa. Code § 213.81
www.pacourts.us/public-records*

(Party name as displayed in case caption)

Docket/Case No.

Vs.

(Party name as displayed in case caption)

Court

This form is associated with the pleading titled _____, dated _____.

Pursuant to the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*, the Confidential Document Form shall accompany a filing where a confidential document is required by law, ordered by the court, or is otherwise necessary to effect the disposition of a matter. This form shall be accessible to the public, however the documents attached will not be publicly accessible, except as ordered by a court. The documents attached will be available to the parties, counsel of record, the court, and the custodian. **Please only attach documents necessary for the purposes of this case.** Complete the entire form and check all that apply. This form and any additional pages must be served on all unrepresented parties and counsel of record.

Type of Confidential Document	Paragraph, page, etc. where the confidential document is referenced in the filing:
<input type="checkbox"/> Financial Source Documents	
<input type="checkbox"/> Tax Returns and schedules	
<input type="checkbox"/> W-2 forms and schedules including 1099 forms or similar documents	
<input type="checkbox"/> Wage stubs, earning statements, or other similar documents	
<input type="checkbox"/> Credit card statements	
<input type="checkbox"/> Financial institution statements (e.g., investment/bank statements)	
<input type="checkbox"/> Check registers	
<input type="checkbox"/> Checks or equivalent	
<input type="checkbox"/> Loan application documents	
<input type="checkbox"/> Minors' educational records	
<input type="checkbox"/> Medical/Psychological records	
<input type="checkbox"/> Children and Youth Services' records	
<input type="checkbox"/> Marital Property Inventory and Pre-Trial Statement as provided in Pa.R.C.P. No. 1920.33	
<input type="checkbox"/> Income and Expense Statement as provided in Pa.R.C.P. No. 1910.27(c)	
<input type="checkbox"/> Agreements between the parties as used in 23 Pa.C.S. §3105	

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Signature of Attorney or Unrepresented Party

Date

Name: _____

Attorney Number: (if applicable) _____

Address: _____

Telephone: _____

Email: _____

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**CONFIDENTIAL
DOCUMENT FORM**



**APPELLATE/TRIAL COURT
CASE RECORDS**

Instructions for Completing the Confidential Document Form

The following documents are confidential and shall be filed with a court or custodian with the “Confidential Document Form”:

1. Financial Source Documents as listed on the form
2. Minors’ educational records
3. Medical/Psychological records are defined as “records relating to the past, present, or future physical or mental health or condition of an individual”
4. Children and Youth Services’ records
5. Marital Property Inventory and Pre-Trial Statement as provided in Pa.R.C.P. No. 1920.33
6. Income and Expense Statement as provided in Pa.R.C.P. No. 1910.27(c)
7. Agreements between the parties as used in 23 Pa.C.S. §3105

For each confidential document, list the paragraph, page, etc. where the document is referenced in the filing. Please note, this form does not need to be filed in types of cases that are sealed or exempted from public access pursuant to applicable authority (e.g. juvenile, adoption, etc.)

- **Please only attach documents necessary for the purposes of this case.**
- Complete the entire form and check all that apply.
- This form, and any additional pages, must be served on all unrepresented parties and counsel of record.

A court or custodian is not required to review or redact any filed document for compliance with the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*. A party’s or attorney’s failure to comply shall not affect access to case records that are otherwise accessible.

If a filed document fails to comply with the above referenced policy, a court may, upon motion or its own initiative, with or without a hearing, order the filed document sealed, redacted, amended or any combination thereof. A court may impose sanctions, including costs necessary to prepare a compliant document for filing in accordance with applicable authority.

Rev. 09/2017

Exhibit C

LIMITS ON PUBLIC ACCESS TO UNIFIED JUDICIAL SYSTEM CASE RECORD OF THE APPELLATE AND TRIAL COURTS

<i>Subject Area</i>	<i>Record Description</i>	<i>Accessibility</i>	<i>Authority</i>
Civil	Jurors Notes.	No Public Access. Collected and destroyed post-trial.	Pa.R.C.P. No. 223.2.
Commonwealth Court	Child Line Registry Cases.	No Public Access to documents in the case except Orders and Opinions wherein the court shall use initials of the minor child involved rather than full name.	Admin. Order No. 126 Misc. Docket No. 3 (February 8, 2013).
Criminal	Juror's Address.	No Public Access.	<i>Commonwealth v. Long</i> , 922 A.2d 892 (Pa. 2007).
Criminal	Sealed affidavit of probable cause for a search warrant.	No Public Access while sealed. The affidavit may not be sealed for more than 60 days unless an extension is received. Extensions may not be longer than 30 days, but an unlimited number of extensions are available. Public may access the affidavit after it has been unsealed.	Pa.R.Crim.P. 211.
Criminal	Unexecuted Search Warrant.	No Public Access until warrant is executed.	Pa.R.Crim.P. 212(A).
Criminal	Arrest Warrant Information.	A court may delay public access for good cause for up to 72 hours. In addition, a court may seal arrest warrant information for a longer period of time.	Pa.R.Crim.P. 513(C), Pa.R.Crim.P. 513.1.
Criminal	Motion filed by attorney for the Commonwealth to present the matter to an indicting grand jury and subsequent order.	No Public Access—the motion and order are sealed.	Pa.R.Crim.P. 556.2.
Criminal	Sealed indictments.	No Public Access.	Pa.R.Crim.P. 556.11(E).
Criminal	Sealed records concerning mental health experts.	No Public Access.	Pa.R.Crim.P. 569.
Criminal	Sealed written statements pertaining to protective orders.	No Public Access. The entire text of the statement shall be sealed and preserved in the records of the court to be made available to the appellate court(s) in the event of an appeal.	Pa.R.Crim.P. 573(F).
Criminal	Sealed plea agreement.	No Public Access.	Pa.R.Crim.P. 590.
Criminal	Juror qualification forms.	No Public Access.	Pa.R.Crim.P. 625(A)(3).
Criminal	Juror information questionnaires.	No Public Access. Questionnaires are retained in a sealed file and shall be destroyed upon completion of the jurors' service, unless otherwise ordered by the trial judge.	Pa.R.Crim.P. 632.
Criminal	Sealed verdict.	No Public Access.	Pa.R.Crim.P. 649.
Criminal	Notes taken by jurors.	No Public Access.	Pa.R.Crim.P. 644(B)(7).

<i>Subject Area</i>	<i>Record Description</i>	<i>Accessibility</i>	<i>Authority</i>
Criminal	Pre-sentence reports and related psychiatric psychological reports.	No Public Access.	Pa.R.Crim.P. 703(A).
Criminal	Records revealing the names of human trafficking victims.	No Public Access, unless otherwise ordered by a court in a prosecution involving a victim of human trafficking.	18 Pa.C.S. § 3019(a).
Criminal	Wiretap applications, final reports and orders.	No Public Access except upon showing of good cause before a court of competent jurisdiction.	18 Pa.C.S. § 5715.
Criminal	Names of minor victims of sexual or physical abuse.	No Public Access. Records revealing a victim's name are sealed. A minor victim who is 18 years of age or older at the time of the commencement of the prosecution may waive this protection and allow the court to release the name of the minor victim.	42 Pa.C.S. § 5988.
Domestic Relations	Information regarding the registration, filing of a petition for, or issuance of a protection from abuse in either the issuing or enforcing State.	No Public Access via internet publication, if such publication would be likely to publically reveal the identity or location of the protected party.	18 U.S.C. § 2265(d)(3).
Domestic Relations	Social security number of any individual subject to a divorce decree, support order, paternity determination, or acknowledgement of paternity, which is required in all records of those matters.	No Public Access.	23 Pa.C.S. § 4304.1(a)(3).
Domestic Relations	Child Support Records	No Public Access, except for PACSES dockets, court orders and opinions.	42 U.S.C. §§ 654(26)(A), 654a(d)(1)(A); 45 CFR §§ 303.21(c)-(d), 307.13(a)(1); 23 Pa.C.S. § 4304.1(d); Sections 2.4 and 3.4 of the Cooperative Agreement.
Domestic Relations	(a) Subject to any inconsistent general rules and to the supervision and direction of the court, the domestic relations section shall have the power and duty to: . . . (10) Implement safeguards applicable to all confidential information received by the domestic relations section in order to protect the privacy rights of the parties, including: . . . (ii) prohibitions against the release of information on the whereabouts of one party or the child to another party against whom a protective order with respect to the former party or the child has been entered; and (iii) prohibitions against the release of information on the whereabouts of one party or the child to another person if the domestic relations section has reason to believe that the release of the information on the whereabouts of one party or the child to another person if the domestic relations section has reason to believe that the release of the information may result in physical or emotional harm to the party or the child.	No Public Access.	23 Pa.C.S. § 4305(a)(10)(ii)-(iii).

<i>Subject Area</i>	<i>Record Description</i>	<i>Accessibility</i>	<i>Authority</i>
Domestic Relations	List of weapons ordered to be relinquished by the defendant in an action for protection from abuse.	No Public Access, except (A) upon an order of the court granted upon cause shown; (B) as necessary, by law enforcement and court personnel; or (C) after redaction of information listing any firearm, other weapon or ammunition.	23 Pa.C.S. § 6108(a)(7)(v).
Domestic Relations	All records pertaining to a confidential address for individuals participating in the Office of Victim Advocate's Address Confidentiality Program.	No Public Access, except for the substitute address provided by the Office of Victim Advocates.	23 Pa.C.S. § 6703(d); see also 23 Pa.C.S. § 5336(b)(1).
Juvenile Court	Juvenile Dependency and Delinquency records.	No Public Access; except as set forth in 42 Pa.C.S. § 6307, Pa.Rs.J.C.P. 160 and/or 1160, including with leave of court.	42 Pa.C.S. § 6307; Pa.Rs.J.C.P. 160, 1160.
Orphans' Court	Proceedings related to appointment of guardianship for incapacitated persons.	Shall be closed to the public upon request of the alleged incapacitated person or his counsel. After the individual's death his/her estate may access the record of the guardianship proceedings.	20 Pa.C.S. § 5511(a); <i>In re Estate of duPont</i> , 2 A.3d 516 (Pa. 2010).
Orphans' Court	Records required for foreign adoption decrees.	No Public Access unless a court order is granted upon good cause.	23 Pa.C.S. § 2908(F); Pa.O.C.R. 15.7.
Orphans' Court	Adoption records.	No Public Access unless otherwise ordered.	23 Pa.C.S. § 2915; see also 23 Pa.C.S. § 2906; Pa.O.C.R. 15.7.
Orphans' Court (Family Court in Philadelphia County or Juvenile Court Section of Family Division in Allegheny County Pa.R.J.A. 2157)	Applications of a minor for judicial approval of decision to have an abortion, under the Abortion Control Act, as well as proceedings and the name of the minor.	No Public Access; sealed dockets, and documents shall be maintained in a closed file marked "confidential" and identified by case number only.	18 Pa.C.S. § 3206(f); Pa.O.C.R. 16.2 and 16.6. Note also Pa.R.J.A. No. 2157 and Pa.R.A.P. 3801.
General	For certain offenses graded as a misdemeanor of the second or third degree, any information relating to the conviction, arrest, indictment or other information leading to the conviction, arrest, indictment or other information.	No public access. The court shall not release the information to an individual, noncriminal justice agency or an internet website.	*Act 5 of 2016 effective November 14, 2016 which in part creates 18 Pa.C.S. § 9122.1 and amends 18 Pa.C.S. § 9121.
General	Records concerning persons in treatment under the Mental Health Procedures Act.	Limited Public Access in compliance with the Mental Health Procedures Act and controlling case law.	50 P.S. § 7111.
General	Court documents, rules, or orders in Gaming Law proceedings.	Any party may request proceeding and record to be sealed if in best interest of any person or Commonwealth.	4 Pa.C.S. § 1518.2(b).
General	Proceedings and records involving juveniles charged with a summary offense before the minor judiciary, the Philadelphia Municipal Court or a Court of Common Pleas.	No Public Access.	42 Pa.C.S. §§ 6303(c), 6307(c) and 6336(g).

*Note this may not be a complete listing; the public and court staff are directed to consult federal and state statutes, court rules or case law.

[Pa.B. Doc. No. 18-52. Filed for public inspection January 12, 2018, 9:00 a.m.]

Title 255—LOCAL COURT RULES

LUZERNE COUNTY

Order Adopting Local Rule of Judicial Procedure 510; No. 14316 of 2017

Order

And Now, this 18th day of December, 2017, it is hereby Ordered and Decreed as follows:

1. The Court of Common Pleas of Luzerne County, constitutionally the Eleventh Judicial District of the Commonwealth of Pennsylvania, hereby rescinds former Luzerne County Rule of Civil Procedure 205.2(a).

2. The Court of Common Pleas of Luzerne County promulgates and adopts Luzerne County Local Rule of Judicial Procedure (L.R.Jud.P.) 510 which follows hereto and incorporated herein by reference.

3. It is further Ordered and Decreed that the Court Administrator shall file via U.S. Mail one (1) certified copy of this Rule with the Administrative Office of Pennsylvania Courts, two (2) certified copies and an electronic document via e-mail saved in Microsoft Word format to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, one (1) certified copy to the Civil Procedural Rules Committee, one (1) certified copy to the Judicial Council of Pennsylvania Statewide Rules Committee, and one (1) copy to the *Luzerne Legal Register* for publication in the next issue.

4. It is further Ordered that the effective date of this order shall be thirty (30) days after the date of publication in the *Pennsylvania Bulletin*.

5. It is further Ordered that this local rule shall be kept continuously available for public inspection and copying in the Office of Judicial Services and Records of Luzerne County.

By the Court

RICHARD M. HUGHES, III,
President Judge

L.R.Jud.P. 510. Public Access Policy.

Pursuant to § 7 of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts, persons who file documents that contain confidential information as defined by the Policy shall use and file a Confidential Information Form (CIF) or a Confidential Document Form (CDF), as applicable, in order to comply with the Policy. Parties are expressly prohibited from filing two versions of any document, i.e., a redacted version and an unredacted version. The forms shall be available in each filing office as well as on the Public Records page of the UJS website at <http://www.pacourts.us/public-record-policies>.

This rule may be cited as L.R.Jud.P. 510.

[Pa.B. Doc. No. 18-53. Filed for public inspection January 12, 2018, 9:00 a.m.]

Title 255—LOCAL COURT RULES

POTTER COUNTY

Local Rules; No. 136 of 2017 Misc. Division

Order

And Now, this 14th day of December, 2017, the Court adopts the following Potter County Local Rule R.J.A. 40, which shall be effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

By the Court

STEPHEN P.B. MINOR,
President Judge

Rule R.J.A. 40. Filing of Documents Containing Confidential Information.

Pursuant to Section 7 of the Public Access Policy of the Unified Justice System of Pennsylvania: Case Records of the Appellate and Trial Courts, persons who file documents that contain confidential information as defined by the Policy shall use and file a Confidential Information Form in order to comply with the Policy. The form shall be available in each filing office as well as the Potter County Prothonotary/Clerk of Courts/Orphan's Court website at: <http://www.pottercountypa.net/post.php?pid=12>.

[Pa.B. Doc. No. 18-54. Filed for public inspection January 12, 2018, 9:00 a.m.]

Title 255—LOCAL COURT RULES

SUSQUEHANNA COUNTY

New Rules of Judicial Administration of the Court of Common Pleas; 2017-1304

Order

Now, this 4th day of December, 2017, it is ordered that Susquehanna County Rule of Judicial Administration Rule 510. Confidential Information Form., is adopted, effective January 6, 2018, as follows:

Rule 510. Confidential Information Form.

Pursuant to Section 7 of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts, persons who file documents that contain confidential information as defined by the Policy shall use and file a Confidential Information Form in order to comply with the Policy. The form shall be available in filing office as well as on the Susquehanna County website: susqco.com.

A full copy of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts and all related forms are

also available at: <http://www.pacourts.us/public-records/public-records-forms>.

By the Court

JASON J. LEGG,
President Judge

Rule 510. Confidential Information Form.

Pursuant to Section 7 of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts, persons who file documents that contain confidential information as defined by

the Policy shall use and file a Confidential Information Form in order to comply with the Policy. The form shall be available in filing office as well as on the Susquehanna County website: susqco.com.

A full copy of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts and all related forms are also available at: <http://www.pacourts.us/public-records/public-records-forms>.

[Pa.B. Doc. No. 18-55. Filed for public inspection January 12, 2018, 9:00 a.m.]

RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

BOARD OF COAL MINE SAFETY

[25 PA. CODE CH. 208]

Sensitive Ground Fault

The Board of Coal Mine Safety (Board) amends Chapter 208 (relating to underground coal mine safety) to read as set forth in Annex A. This final-form rulemaking adds a provision to require operators to equip certain circuits with sensitive ground fault protection, and adds related definitions. This protection will enhance miner safety with respect to electric cables.

This final-form rulemaking was adopted by the Board at its meeting of September 5, 2017.

A. *Effective Date*

This final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin*.

B. *Contact Persons*

For further information, contact Craig Carson, Director, Bureau of Mine Safety, 131 Broadview Road, New Stanton, PA 15672, (724) 404-3154 or cocarson@pa.gov; or Joseph Iole, Assistant Counsel, Bureau of Regulatory Counsel, Rachel Carson State Office Building, P.O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-9376 or jirole@pa.gov. Persons with a disability may use the Pennsylvania AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final-form rulemaking is available on the Department of Environmental Protection's (Department) web site at www.dep.pa.gov.

C. *Statutory Authority*

Sections 106 and 106.1 of the Bituminous Coal Mine Safety Act (BCMSA) (52 P.S. §§ 690-106 and 690-106.1) authorize the Board to adopt regulations necessary and appropriate to implement the BCMSA and to protect the health, safety and welfare of miners and other individuals in and about mines.

D. *Background and Purpose*

The BCMSA was enacted on July 7, 2008, and was the first significant update of the Commonwealth's underground bituminous coal mine safety laws since 1961. See section 103(a) of the BCMSA (52 P.S. § 690-103(a)). Section 334(c) of the BCMSA (52 P.S. § 690-334(c)) directed the mining industry to initiate studies into possible means of enhancing safety of underground cables, including through, among other things, "more sensitive ground fault limiting and detection." Section 334(c) of the BCMSA further required both laboratory and underground testing of these systems, and that the Board act on the industry's reports and recommendations.

To comply with this requirement, the Pennsylvania Coal Alliance (PCA) formed a committee with representatives from several coal mine operators to convene, manage the studies, and ultimately produce a report in March 2012 entitled "Pennsylvania Coal Association Bituminous Coal Mine Safety Act Section 334 Industry Studies Final Report" (Final Report). The Board, which includes three members representing mine workers, three members representing underground bituminous coal mine operators and the Secretary of the Department, who serves as the

Board's chairperson, conducted extensive deliberations of the Final Report for over 3 years.

This final-form rulemaking adds a provision to Chapter 208 to enhance miner safety by improving the sensitive ground fault mechanisms on certain electrical circuits powering machinery within the mines to prevent injury and electrocution. This final-form rulemaking requires operators to ensure that certain new and rebuilt power centers are equipped with these more sensitive ground fault protection devices (including sensing relays, limiting resistors and interrupting devices) thus enhancing the safety of persons working with or around the electric cables supplying power to certain machinery.

To improve miner safety consistent with the BCMSA, this final-form rulemaking includes requirements that are more stringent than Federal regulations in certain regards. The Federal Mine Safety and Health Administration (MSHA) regulation in 30 CFR 75.901(a) (relating to protection of low- and medium-voltage three-phase circuits used underground) requires a ground fault current limit (trip setting) of 25 amperes or less, and section 75.900 of the MSHA Program Policy Manual recommends that the device be adjusted to operate at not more than 50% of the current rating of the grounding resistor.

The Final Report indicates that a setting of 125 milli-amperes would be too low to functionally operate equipment at the mine, but concludes that 300 milli-amperes would be more protective than the current Federal regulatory requirement of 25 amperes. This final-form rulemaking requires a trip setting of 300 milli-amperes or less nominally, except in the case of circuits powering equipment using variable speed drives. If nuisance tripping of these circuits occurs at 300 milli-amperes, the operator may adjust the setting to no greater than the lower value of 500 milli-amperes or 1/2 of the neutral ground resistor's current rating, with the latter being consistent with the MSHA policy. These settings improve safety while maintaining mining operations.

A compelling public interest exists in ensuring that miners are safe in the workplace. Miners, their families, mining companies and others will benefit from electrical safety in underground mines. As a result of this final-form rulemaking, the risk of workplace injuries and deaths related to these electric cables will decline. This final-form rulemaking ensures that operations at underground bituminous coal mine sites are safely conducted and maintained.

E. *Summary of this Final-Form Rulemaking*

§ 208.1. *Definitions*

This final-form rulemaking adds the following terms: "crosscut," "inby" and "working section," which are used in § 208.600 (relating to sensitive ground fault); and "working face," which is used in the definition of "inby."

§ 208.600. *Sensitive ground fault*

This section requires that all three-phase electrically operated equipment operated on a working section inby the last open crosscut receive power from a circuit equipped with specified sensitive ground fault protection. This section also specifies the settings of the sensitive ground fault devices powering various machines; and sets an implementation schedule for utilizing these devices on new, rebuilt and existing power centers.

F. *Summary of Comments and Responses on the Proposed Rulemaking*

No public comments were submitted on the proposed rulemaking published at 47 Pa.B. 1636 (March 18, 2017). On May 17, 2017, the Independent Regulatory Review Commission (IRRC) submitted two comments based on criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b).

IRRC's first concern was whether giving operators 60 months to upgrade existing load centers in § 208.600(2) is in the best interest of miners if load centers "operating under the existing regulations present a potential hazard." To that end, IRRC requested that the Board explain its rationale for this 60-month phase-in and how it adequately protects the safety of miners.

During the Board's meeting on March 10, 2015, the Board deliberated on the implementation schedule and discussed e-mail correspondence from PCA to the Board. In the e-mail, available on the Board's webpage on the Department's web site, PCA explained that due to logistical barriers inherent to the rebuilding and retrofitting process (for example, cost, timing and halting of operations while equipment is rebuilt) it supported a 60-month implementation schedule for existing equipment. PCA further noted that its member operators have an average of 21 load centers per operator, and "to remove, rebuild and put these load centers back in service" would require an average of 3 months per unit. PCA averred that the 60-month schedule was sensitive to the regulated community's "need to maintain enough load centers underground to sustain operations." Although the Department's Bureau of Mine Safety also shared concerns regarding the 60-month time frame, the Board agreed with the 60-month implementation schedule because: the current level of protection complies with all existing Federal and Commonwealth statutes and regulations; the new sensitive ground fault requirements will improve upon that protection; and the operator's ability to remain operational through the process of becoming compliant, especially in light of the scale of the required upgrades, is an important consideration.

IRRC's second related concern is that § 208.600(2) requires load centers rebuilt at new mines to comply as of the effective date of this final-form rulemaking, whereas § 208.600(2) is silent regarding load centers rebuilt at existing mines, and recommends expanding the requirement for rebuilt load centers to apply at existing mines as well.

This final-form rulemaking is not silent on the compliance date for operators that will need to rebuild load centers at existing mines. For the reasons previously provided, the Board is giving these operators 60 months to comply with the new requirement. The implementation schedule requires compliance upon publication in the *Pennsylvania Bulletin* for all load centers purchased after the effective date of this final-form rulemaking at existing mines and all load centers at new mines, new or rebuilt. All other load centers, that is, load centers at existing mines that shall be rebuilt, are subject to the 60-month phase-in, a period which is tailored to the rebuilding and maintenance schedule the regulated community follows for this equipment. The Board anticipates that operators will comply with the requirements in this final-form rulemaking as load centers need to be rebuilt at existing mines over the next 5 years to avoid the cost and operational impact that would be associated with rebuilding all load centers at existing mines just prior to the deadline for compliance.

IRRC also inquired whether the definition of "working section" in § 208.1 (relating to definitions) should use "working face" rather than "face." The definition in § 208.1 is the same as the definition in section 104 of the BCMSA (52 P.S. § 690-104) and has simply been included in § 208.1 for the convenience of the regulated community.

G. *Benefits, Costs and Compliance*

Benefits

This final-form rulemaking enhances cable safety by requiring, on certain circuits, a sensitive ground fault protective device. Sensitive ground fault protective devices improve cable safety by shutting off electrical power through the circuit when it detects that a current is flowing along an unintended path, thereby reducing the risk of bodily harm from electrocution.

Compliance costs

This final-form rulemaking will cost the nine operators engaged in regulated activity in this Commonwealth approximately \$500,000 over 5 years. This cost reflects the purchase of new power centers equipped with the sensitive ground fault devices and the rebuilding of existing machines to include these devices.

Paperwork requirements

This final-form rulemaking does not generate additional paperwork.

H. *Pollution Prevention*

The Federal Pollution Prevention Act of 1990 (42 U.S.C.A. §§ 13101—13109) establishes 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. This final-form rulemaking has minimal impact on pollution prevention since it is focused on mine safety.

I. *Sunset Review*

The Board is not establishing a sunset date for these regulations, since they are needed for the Department to carry out its statutory authority. The Department will continue to closely monitor these regulations for their effectiveness and recommend updates to the Board as necessary.

J. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on March 3, 2017, the Department submitted a copy of the notice of proposed rulemaking, published at 47 Pa.B. 1636, to IRRC and the Chairpersons of the House and Senate Environmental Resources and Energy Committees for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on November 15, 2017, the final-form

rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on November 16, 2017, and approved the final-form rulemaking.

K. Findings

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law, and all comments were considered.

(3) This final-form rulemaking does not make changes to the proposed rulemaking published at 47 Pa.B. 1636.

(4) These regulations are necessary and appropriate for administration and enforcement of the authorizing act identified in Section C of this order.

L. Order

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

(a) The regulations of the Department, 25 Pa. Code Chapter 208, are amended by adding § 208.600 and amending § 208.1 to read as set forth in Annex A.

(b) The Chairperson of the Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as required by the Regulatory Review Act (71 P.S. §§ 745.1—745.14).

(c) The Chairperson of the Board shall submit this order and Annex A to IRRC and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act (71 P.S. §§ 745.1—745.14).

(d) Upon completion of review under the Regulatory Review Act, the Chairperson of the Board shall certify this order and Annex A, as approved to legality and form, and deposit them with the Legislative Reference Bureau, as required by law.

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

PATRICK McDONNELL,
Chairperson

(Editor's Note: See 47 Pa.B. 7402 (December 2, 2017) for IRRC's approval order.)

Fiscal Note: Fiscal Note 7-527 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION
PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION
Subpart D. ENVIRONMENTAL HEALTH AND SAFETY
ARTICLE IV. OCCUPATIONAL HEALTH AND SAFETY
CHAPTER 208. UNDERGROUND COAL MINE SAFETY
GENERAL PROVISIONS

§ 208.1. Definitions.

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

AED—Automated external defibrillator—A portable device that uses electric shock to restore a stable heart rhythm to an individual in cardiac arrest.

Act—The Bituminous Coal Mine Safety Act (52 P.S. §§ 690-101—690-708).

Approval or approved—The term as defined in section 104 of the act (52 P.S. § 690-104).

Barricaded—To obstruct passage of persons, vehicles or flying materials.

Berm—A pile or mound of material capable of restraining a vehicle.

Certified or registered—A person certified or registered by the state in which the coal mine is located to perform duties prescribed by 30 CFR Part 77 (relating to mandatory safety standards, surface coal mines and surface work areas of underground coal mines), except that, in a state where a program of certification or registration is not provided or when the program does not meet at least minimum Federal standards established by the Secretary of the United States Department of Labor, the certification or registration shall be by the Secretary of the United States Department of Labor.

Crosscut—A passageway driven between the entry and its parallel air course or air courses for ventilation purposes.

Flash point—The minimum temperature at which sufficient vapor is released by a liquid or solid to form a flammable vapor-air mixture at atmospheric pressure.

Inby—In the direction of the working face.

MSHA—The term as defined in section 104 of the act.

Miner—The term as defined in section 104 of the act.

NIOSH—The term as defined in section 104 of the act.

Operator—The term as defined in section 104 of the act.

Overpressure—The pressure over the background atmospheric pressure that could result from an explosion, which includes the impact of the pressure wave on an object.

psi—Pounds per square inch.

Qualified person—The term means either of the following as determined by the context of the regulation:

(i) An individual deemed qualified by the Secretary of the United States Department of Labor and designated by the operator to make tests and examinations required under 30 CFR Part 77.

(ii) An individual deemed, in accordance with the minimum requirements to be established by the Secretary of the United States Department of Labor, qualified by training, education and experience to perform electrical work, to maintain electrical equipment, and to conduct examinations and make tests of all electrical equipment.

Representative of the miners—The term as defined in section 104 of the act.

Roll protection—A framework, safety canopy or similar protection for the operator when equipment overturns.

SCSR—Self-contained self-rescue device—A type of closed-circuit, self-contained breathing apparatus approved by MSHA and NIOSH under 42 CFR Part 84 (relating to approval of respiratory protective devices) for escape only from underground mines.

Safety can—An approved container, of not over 5 gallons capacity, having a spring-closing lid and spout cover.

Trailing cable—The cable connecting portable and mobile equipment to a power source. A cable is not considered a trailing cable if it connects to equipment which is installed in a stationary location and is permanently wired.

Underground bituminous coal mine or mine—The term as defined in section 104 of the act.

Working face—Any place in a mine where coal is extracted during a mining cycle.

Working section—The area in a mine from the face extending back 1,000 feet.

CABLE SAFETY

§ 208.600. Sensitive ground fault.

All three-phase electrically operated equipment operated on a working section in by the last open crosscut must receive power from a circuit equipped with a sensitive ground fault protection as specified in this section.

(1) *Sensitive ground fault.*

(i) A sensitive ground fault protective device must be connected so that the associated circuit will be instantaneously interrupted upon the occurrence of a ground fault which may not exceed 300 milli-amperes nominally.

(ii) A sensitive ground fault protective device on these circuits on equipment utilizing variable speed drives must be connected so that the associated circuit will be instantaneously interrupted upon the occurrence of a ground fault which may not exceed 300 milli-amperes nominally. If nuisance tripping occurs on these circuits, the devices shall be permitted to be adjusted to the minimum setting necessary to prevent nuisance tripping. In no case shall a device be adjusted greater than the lower value of 500 milli-amperes or 1/2 of the neutral ground resistor's current rating.

(iii) The secondary main circuit breaker protecting any sensitive ground fault circuit subject to this section must also provide backup sensitive ground fault protection. Relay settings may include a short time delay (250mS) or a higher current setting, or both, to provide coordination. In no case shall a device be adjusted greater than the lower value of 500 milli-amperes or 1/2 of the neutral ground resistor's current rating.

(2) *Implementation schedule.* This section is effective January 13, 2018, for load centers that power equipment that operates in by the last open crosscut and that are purchased after January 13, 2018, and load centers that are rebuilt at new mines after January 13, 2018. For load centers that power equipment that operates in by the last open crosscut that are located in or at a mine on January 13, 2018, sensitive ground fault protection shall be installed by January 13, 2023.

[Pa.B. Doc. No. 18-56. Filed for public inspection January 12, 2018, 9:00 a.m.]

PROPOSED RULEMAKING

DELAWARE RIVER BASIN COMMISSION

[25 PA. CODE CH. 901—903]

Proposed Amendments to the Administrative Manual and Special Regulations Regarding Natural Gas Development Activities; Additional Clarifying Amendments; Public Hearing

Summary: The Commission will hold public hearings and accept written comment on a proposal to amend its *Special Regulations* by the addition of a section on hydraulic fracturing in shale and other rock formations, including: the prohibition of high volume hydraulic fracturing in such formations; provisions related to water use for hydraulic fracturing; and provisions related to the management of produced water from hydraulic fracturing. The Commission also proposes to amend its *Administrative Manual—Rules of Practice and Procedure* by the addition of project review classifications and fees related to the management of produced water from hydraulic fracturing of hydrocarbon bearing rock formations. Minor amendments to the project review classifications unrelated to hydraulic fracturing are also proposed.

Dates:

Written comments: Written comments will be accepted through 5 p.m. on March 30, 2018.

Public hearings:

1. January 23, 2018, 1 p.m. to 4:30 p.m., Waymart, Wayne County, PA
2. January 23, 2018, 6 p.m. to as late as 9:30 p.m., Waymart, Wayne County, PA
3. January 25, 2018, 1 p.m. to 4:30 p.m., Philadelphia, PA
4. January 25, 2018, 6 p.m. to as late as 9:30 p.m., Philadelphia, PA
5. February 22, 2018, 3 p.m. to as late as 7 p.m., Schnecksville, PA
6. March 6, 2018, 1:30 p.m. to 3:30 p.m., via telephone.

Registration to attend hearings: Online registration to attend hearings will remain open until 5 p.m. the day prior to the hearing. (On-site registration will also be available at in-person venues.) Registrants will be afforded opportunities to request speaking time.

Addresses:

Written submissions: Written comments will be accepted through the Commission's online public comment collection system at: <http://dockets.drbc.commentinput.com>. To request an exception to use of the online system based on lack of access to the Internet, please contact: Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628.

See SUPPLEMENTARY INFORMATION—Public Process, below, for important additional information concerning the submission of written comments.

The hearing locations are:

1. Ladore Camp, Retreat and Conference Center, 287 Owego Turnpike, Waymart, PA 18472 (Jan. 23)

2. DoubleTree by Hilton Hotel Philadelphia Airport, 4509 Island Avenue, Philadelphia, PA 19153 (Jan. 25)

3. LCCC Community Services Center, 4525 Education Park Drive, Schnecksville, PA 18078 (Feb. 22)

4. By telephone, 866-831-8713 (Mar. 6)

Where to register: To reduce uncertainty on the part of attendees about whether they will have a seat and an opportunity to speak at a public hearing, and to provide for a safe and orderly process, the Commission is requiring registration online or on-site to attend each public hearing. Use of the online, web-based registration system is encouraged, as this system will track and publish in real time the available capacity for each hearing. Key elements of the registration procedure are as follows:

- Online or on-site registration is required to attend each public hearing.
- Online registration to attend will remain open until 5 p.m. the day prior to each hearing.
- On-site registration will be available at all in-person hearing venues.
- Available capacity for each in-person hearing will be posted on the web-based registration system. When users access the system, they will see the number of seats still available or if the venue is at capacity.
- If capacity has been reached for a specific hearing, online registrants will be placed on a waiting list.
- Those who do not register to attend a hearing in advance are advised to check the availability of seats BEFORE planning travel to a hearing.
- Public hearing registrants will be afforded opportunities to request speaking time.
- If more people request to speak than time allows, those not assigned time will be placed on a waiting list.
- If fewer people request to speak than time allows, additional opportunities to request time will be provided on or before the hearing date.
- Elected government officials and their staff will have the opportunity to identify themselves when registering to attend a hearing.
- Written and oral comment will receive equal consideration.

The Commission appreciates the public's participation and input on this important matter. In order to provide as many individuals who wish to speak as possible with an opportunity to do so, each person will be limited to one time slot at one hearing location. Depending on the number who wish to be heard, speakers will be limited to two or three minutes. To ensure that scheduled public hearings meet the objectives of the Commission and the public in a safe and orderly process, it is essential that public hearing procedures are understood and followed. Participants are asked to review all DRBC public hearing procedures at: http://www.state.nj.us/drbc/library/documents/procedures_public-hearings050317.pdf. The Commission's policies related to speaker conduct, audience conduct, safety, security, signs, placards and banners will be in effect at these public hearings.

Updates or changes. Additional opportunities for comment or changes to the public input process will be published on the Commission's website, drbc.net and

through its Twitter account. Members of the public also may sign up through the Commission's website to receive direct notice via email of additions or changes to the information provided in this notice.

See SUPPLEMENTARY INFORMATION—Public Process for additional details concerning the subjects on which the Commission particularly seeks input and the form of written comments.

Supplementary Information:

The Delaware River Basin Commission (DRBC or "Commission") is a regional interstate and federal agency formed by concurrent compact legislation of the four basin states and the federal government in 1961 to manage the water resources of the Delaware River Basin without regard to political boundaries. Its members are, ex officio, the governors of the basin states (Delaware, New Jersey, New York, and Pennsylvania) and the commander of the U.S. Army Corps of Engineers North Atlantic Division, who represents the federal government. Most actions of the Commission, including the adoption of rules to effectuate, apply and enforce the compact, require a majority vote of the Commission's five members.

Background

On September 13, 2017, the Commissioners by a Resolution for the Minutes directed the Executive Director to prepare and publish for public comment a revised set of draft regulations, to include: "(a) prohibitions relating to the production of natural gas utilizing horizontal drilling and hydraulic fracturing within the basin; (b) provisions for ensuring the safe and protective storage, treatment, disposal and/or discharge of wastewater within the basin associated with horizontal drilling and hydraulic fracturing for the production of natural gas where permitted; and (c) regulation of the inter-basin transfer of water and wastewater for purposes of natural gas development where permitted."

In accordance with the Commissioners' September 13 directive, the Commission is proposing amendments to its regulations and comprehensive plan to better provide for the planning, conservation, utilization, development, management and control of the basin's water resources in connection with the hydraulic fracturing of shale and other hydrocarbon bearing formations to produce oil and gas. The Commission proposes to prohibit high volume hydraulic fracturing within the basin to effectuate the comprehensive plan for the immediate and long term development and use of the water resources of the basin, and to conserve, preserve and protect the quality and quantity of the basin's water resources for uses in accordance with the comprehensive plan.

Through a series of policies and regulations establishing and amending its comprehensive plan, the Commission over the past half-century has established in-stream water quality standards throughout the basin, prohibited degradation of groundwater, and provided special protection to the non-tidal segment of the Delaware River to preserve its exceptionally high water quality and water supply values. As the agency through which the five signatory parties to the Compact collectively manage the basin's water resources on a regional basis, the Commission has taken these steps to meet public and private needs for, among other things, drinking water, recreation, power generation, and industrial activity, and to accommodate large out-of-basin diversions by the City of New

York and the State of New Jersey that are authorized by the 1954 decree of the U.S. Supreme Court in the matter of *New Jersey v. New York*.¹

Portions of Pennsylvania and New York comprising about 40 percent of the basin's geographic area are underlain by the Marcellus and Utica shales, geologic strata known to contain natural gas. Although the presence of commercially viable natural gas from these formations within the basin is not known, in regions of Pennsylvania west of the basin divide, oil and natural gas are extracted from the Marcellus and Utica formations by means of directional drilling and hydraulic fracturing using large volumes of water in a process referred to commonly in the region as "high volume hydraulic fracturing" (HVHF).² The South Newark basin formation, which underlies portions of Pennsylvania and New Jersey, may also contain oil and gas deposits capable of development by HVHF. All of the basin areas underlain by the Marcellus and Utica shales, with the exception of a small area of Schuylkill County, Pennsylvania, drain to waters the Commission has designated as "Special Protection Waters", due to their exceptionally high scenic, recreational, ecological, and/or water supply values. The Commission's water quality management policy objective for Special Protection Waters is "that there be no measurable change [in the quality of these waters] except toward natural conditions."³

During hydraulic fracturing, hydraulic fracturing fluid consisting primarily of water and recycled wastewater mixed with chemicals is injected through a well bore into the target rock formation under pressures great enough to fracture the rock. The fracturing fluid typically includes proppants (usually sand), which hold open the newly created fractures, allowing the gas to flow back through them and up the well to the surface. After a well is "stimulated" through hydraulic fracturing, much of the injected fracturing fluid, together with brines that were trapped within the target formation, is conveyed to the surface, where these fluids are collected and managed. The returned fluids, known as "flowback" and "produced water," contain chemicals used in the fracturing mixture, as well as salts, metals, radionuclides, and hydrocarbons from the target rock formation. As discussed in greater detail below, in the Marcellus region in Pennsylvania, the median quantity of water required to stimulate a natural gas well exceeds 4 million gallons for each fracturing event.⁴ A single well may be fractured in multiple stages and/or multiple times,⁵ and as many as twelve wells may be installed on a single well pad.⁶ The volume of water

¹ See *New Jersey v. New York*, 347 U.S. 995 (1954).

² See generally, New York State Department of Environmental Conservation, Final Supplemental Generic Environmental Impact Statement on the Oil, Gas and Solution Mining Regulatory Program—Regulatory Program for Horizontal Drilling and High-Volume Hydraulic Fracturing to Develop the Marcellus Shale and Other Low-Permeability Gas Reservoirs, May 2015 (hereinafter, NYS Final SGEIS). Available at: <http://www.dec.ny.gov/energy/75370.html>

³ Delaware River Basin Water Code (hereinafter, "Water Code") (18 CFR Part 410), § 3.10.3 A.2.

⁴ James L. Richenderfer et al., *Water Use Associated with Natural Gas Development: An Assessment of Activities Managed by the Susquehanna River Basin Commission—July 2008—December 2013*, Pub. No. 299, April 2016 (hereinafter, "SRBC NG Water Use 2016"), p. 39. Available at: http://www.srbcc.net/pubinfo/techdocs/NaturalGasReport/docs/SRBC_Full_Gas_Report_fs306397v1_20160408.pdf

⁵ United States Environmental Protection Agency, *Hydraulic Fracturing for Oil and Gas: Impacts from the Hydraulic Fracturing Water Cycle on Drinking Water Resources in the United States*, Dec. 2016 (EPA-600-R-16-236Fa) (hereinafter, "EPA HF Study 2016"). Exec. Sum., p. 23, n.3 (explaining that in a multi-stage hydraulic fracturing operation, specific parts of the well are isolated and hydraulically fractured until the total desired length of the well has been hydraulically fractured.) Available at: <https://www.epa.gov/hfstudy>. Also see, 18 CFR 806.3 (SRBC regulations for review and approval of projects, defining "hydrocarbon development project" as including "all other activities and facilities associated with . . . the production, maintenance, operation, closure, plugging and restoration of [unconventional natural gas development] wells or drilling pad sites that require water for purposes including but not limited to, re-stimulation and/or re-completion of such wells. . . ." (emphasis added)).

⁶ See e.g., Alex K. Manda et al., *Evolution of multi-well pad development and influence of well pads on environmental violations and wastewater volumes in the*

and wastewater involved is thus significant.

The use of HVHF to extract oil and natural gas from tight shale formations presents risks, vulnerabilities and impacts to the quality and quantity of surface and ground water resources that have been documented extensively, including in comprehensive reports by the New York State Department of Environmental Conservation (NYSDEC)⁷ and the United States Environmental Protection Agency (EPA)⁸, among others. These reports identify the risks to water resources associated with each of the steps in the “hydraulic fracturing water cycle,”⁹ as summarized below. At times, these steps or portions thereof may be identified by the Commission as separate projects. In addition, an EPA technical background document describes industry processes, pollutants generated, risks, and available treatment technologies for produced water from oil and gas extraction.¹⁰ A significant number of data points in this document are provided for the Marcellus formation.

Water acquisition. The acquisition of water for use in HVHF may result in modifications to groundwater levels, surface water levels, and stream flows. The Susquehanna River Basin Commission (SRBC) has reported that for the period 2008 through 2013 an average of 4.3 million gallons of water were injected per fracturing event in natural gas wells within the Susquehanna basin.¹¹ During the same period, 84 percent of injected water was “fresh” water from surface water and groundwater sources, and the remaining 16 percent was recycled produced water or flowback water.¹² According to EPA, the median volume of water used per well fracturing event in Pennsylvania between January 2011 and February 2013 was 4.18 million gallons.¹³ EPA further reports that in at least 10 percent of cases, the water use in Pennsylvania during the same period was over 6.6 million gallons per well.¹⁴ EPA has reported that in the Marcellus formation in Pennsylvania, 82 to 90 percent of the base fluid used for hydraulic fracturing is fresh water that is naturally occurring and that the remaining base fluids (10 to 18 percent) are reused and recycled produced water.¹⁵ Advances in horizontal drilling technology are leading to longer drill paths and the need for more fracturing fluid volumes for each path. According to SRBC, when the industry began lengthening its lateral well bores in 2013, the average amount of water used per fracturing event increased to approximately 5.1 to 6.5 million gallons per fracturing event.¹⁶

Withdrawals from surface and ground water in the amounts required for HVHF may adversely affect aquatic ecosystems and river channel and riparian resources downstream, including wetlands, and may diminish the quantity of water stored in an aquifer or a stream’s capacity to assimilate pollutants. Because HVHF operations may significantly increase the volume of water

withdrawn in a localized area, they may ultimately upset the balance between the demand on water resources and the availability of those resources for uses protected by the Commission’s comprehensive plan, particularly during periods of low precipitation or drought.

Consumptive use. In contrast with most domestic and commercial water use, most water used for HVHF is used “consumptively,” meaning it is not returned to the basin’s usable ground or surface waters. According to the EPA, water accounts for 90 to 97 percent of all hydraulic fracturing fluids injected into a well for the purpose of extracting natural gas.¹⁷ EPA reports further that produced water, or water that flows from and through oil and gas wells to the surface as a by-product of oil and gas production over a ten-year operations period, makes up only 10 to 30 percent of the fluid injected. Accordingly, EPA estimates that 70 to 90 percent of the water used in high volume hydraulic fracturing is permanently removed from the water cycle.¹⁸ The SRBC’s estimate is higher. SRBC reports that approximately 96 percent of water withdrawn by the natural gas industry is consumptively used in the hydraulic fracturing process and that the balance of the water is consumptively used for other activities at the drilling pads, such as well drilling, preparation of drilling muds and grout, dust control, maintenance operations, and site reclamation.¹⁹ In contrast, the DRBC estimates that 90 percent of water withdrawn for domestic and commercial uses in the Delaware River Basin is returned to basin waters, either by infiltration into aquifers or by discharge to surface waters after treatment at a wastewater treatment facility.²⁰

Chemical use. Although chemical additives generally make up the smallest proportion of the overall composition of hydraulic fracturing fluids, they pose a comparatively high risk to ground and surface water quality relative to proppants and base fluids.²¹ Additives, which can be a single chemical or a mixture of chemicals, are combined with the base fluid to change its properties, including, for example, to adjust pH, increase fluid thickness, reduce friction, or limit bacterial growth. The EPA has identified 1,084 chemicals reported to have been added to hydraulic fracturing fluids between 2005 and 2013.²² The choice of which additives to use depends on the characteristics of the targeted rock formation, and in some cases chemical information is considered Confidential Business Information and not disclosed by the fracturing operator.²³ Based upon EPA’s analysis, the combination of activities and factors more likely than others to result in more frequent or more severe impacts to water resources are spills during the management of hydraulic fracturing fluids and chemicals that result in large volumes or high concentrations of chemicals reaching groundwater resources.²⁴ In May 2015, an EPA study compiled data on and characterized 457 hydraulic fracturing related spills that occurred between January 2006 and April 2012 in eleven states.²⁵ The study attributed these to equipment failure, human error, failure of con-

Marcellus shale (USA), J. Environ. Manage, Sep. 1, 2014, 142:36-45. Available at <https://www.ncbi.nlm.nih.gov/pubmed/24814546>

⁷ See NYS Final SGEIS 2016, supra n.1.

⁸ See EPA HF Study 2016, supra n.5.

⁹ The term “hydraulic fracturing water cycle” is used by the EPA to describe the five stages of this water-intensive activity: water acquisition, chemical mixing, well injection, produced water handling, wastewater disposal and reuse. EPA HF Study 2016, Exec. Sum., pp. 7–9. Extracted at: <https://www.epa.gov/hfstudy/hydraulic-fracturing-water-cycle>

¹⁰ See United States Environmental Protection Agency, Technical Development Document for the Effluent Limitations Guidelines and Standards for the Oil and Gas Extraction Point Source Category, June 2016 (EPA-820-R-16-003) (hereinafter “EPA TDD 2016”). Available at: https://www.epa.gov/sites/production/files/2016-06/documents/uog_oil-and-gas-extraction_tdd_2016.pdf

¹¹ SRBC NG Water Use 2016, p. 39.

¹² Id.

¹³ EPA HF Study 2016, Exec. Sum., p. 11 (Table ES-1).

¹⁴ Id.

¹⁵ EPA TDD 2016, p. 43 (Table C-1).

¹⁶ SRBC NG Water Use 2016, p. 43.

¹⁷ EPA HF Study 2016, Exec. Sum., p. 10.

¹⁸ Id., p. 12 (Fig. ES-4(a)).

¹⁹ SRBC NG Water Use 2016, p. 38.

²⁰ For comparison with climatically similar areas and the world, see Kimberly H. Schaffer and Donna L. Runkle, Consumptive Water-Use Coefficients for the Great Lakes basin and Climatically Similar Areas, U.S. Geological Survey Scientific Investigations Report 2007-5197, p. 13 (Fig. 7). Available at: <https://pubs.usgs.gov/sir/2007/5197/>

²¹ EPA HF Study 2016, Exec. Sum., p. 16

²² Id. A comprehensive review of chemical additives is provided in EPA TDD 2016, pp. 43-47 (Sec. 1.2).

²³ EPA HF Study 2016, p. 5-20 (Text Box 5-2).

²⁴ Id., Exec. Sum., p. 1.

²⁵ U.S. Environmental Protection Agency, Review of State and Industry Spill Data: Characterization of Hydraulic Fracturing-Related Spills, May 2015 (EPA/601/R-14/001)

tainer integrity, and other causes, including but not limited to well communication, weather and vandalism.²⁶ Storage, equipment, well or wellhead, hose or line, and “unknown” were among the identified sources.²⁷ Spills can affect both surface and groundwater resources, both locally and regionally, within the host state and in adjoining states. Pollution from spills and from hydraulic fracturing has occurred in parts of Pennsylvania outside the basin where high volume hydraulic fracturing is occurring.²⁸

Well drilling and construction. Well drilling, well construction and well stimulation associated with HVHF also carry risks for groundwater and surface water resources. These risks include turbidity or other disruptions in local ground water formations and local groundwater wells, and contamination of aquifers by fluids pumped into or flowing from rock formations penetrated by the drilling of the well, particularly in the event of a compromised well casing. Typically, the developable shale formations are vertically separated from potential freshwater aquifers by thousands of feet of sandstones and shales of moderate to low permeability. High-volume hydraulic fracturing is engineered to target the prospective hydrocarbon-producing zone. Although the induced fractures create a pathway to the intended wellbore, they typically do not create a discharge mechanism or pathway beyond the fractured zone where none existed before. However, because the well bore penetrates groundwater aquifers and can be a pathway for fluid movement to existing drinking water and other groundwater resources, the mechanical integrity of the well is an important factor that affects the frequency and severity of potential water resource impacts from pollutants. A well with insufficient mechanical integrity can increase the risk of impacts and allow unintended fluid movement, including into drinking water aquifers. Such defects can arise from inadequate well design or construction or can develop over the well's lifetime, including during hydraulic fracturing.²⁹ In particular, casing and cement can degrade over the life of the well because of exposure to corrosive chemicals, formation stresses, and operational stresses (e.g., pressure and temperature changes during hydraulic fracturing).³⁰ Gas migration can also potentially occur as a result of poor well construction (i.e., casing and cement problems), or through existing abandoned wells or faults, which may be intersected inadvertently by a new oil or natural gas well. The EPA examined these types of pathways for the migration of hydraulic fracturing fluids and liquids and/or gases that exist in the subsurface to affect the quality of subsurface drinking water resources and reported on failures and impacts to water resources in detail.³¹

Wastewater handling and disposal. “Produced water” (including “flowback” water) refers to any water or fluid returned to the surface through the production well as a waste product of hydraulic fracturing. This material may be stored in tanks or other containers on the pad site before it is transferred for off-site treatment and/or disposal. The composition of produced water depends on the composition of the injected hydraulic fracturing fluid and the composition of the target formation. In the Marcellus region, produced water is generated in large quantities and often contains high concentrations of total

dissolved solids (TDS or “salts”) and constituents that may be harmful to human health and the environment. Produced water from HVHF in the Marcellus formation has been found to contain:³²

- Salts, including chloride, bromide, sulfate, sodium, magnesium, and calcium;
- Metals, including barium, manganese, iron, and strontium;
- Naturally-occurring organic compounds, including benzene, toluene, ethylbenzene, xylenes(BTEX), and oil and grease;
- Radioactive materials, including radium; and
- Hydraulic fracturing chemicals and their chemical transformation products.

The disposal of produced water poses a significant risk to the water resources of the basin if the wastewater is not properly managed. The concentration of TDS in produced water can be high enough that if discharged untreated to surface water, the potential exists to adversely affect designated uses of surface water, including drinking water, aquatic life support, livestock watering, irrigation, and industrial use. Because produced water contains high TDS and dissolved inorganic constituents that most publicly owned treatment works and other municipal wastewater treatment facilities are not designed to remove, these constituents can be discharged untreated from such facilities; can disrupt treatment processes, for example by inhibiting biological treatment; can accumulate in biosolids (sewage sludge), limiting their beneficial use; and can facilitate the formation of harmful disinfection byproducts.³³ Where produced water has been discharged to domestic wastewater treatment facilities in the past, elevated concentrations of chloride and bromide have been documented in the receiving waters.³⁴ The discharge of bromide upstream of drinking water intakes has led in documented instances to the formation of carcinogenic disinfection by-products at drinking water utilities.³⁵

The EPA since 1979 has required zero discharge of pollutants to waters of the United States from onshore oil and gas extraction wastewater. In 2016 EPA finalized a rule establishing pretreatment standards for discharges of wastewater from onshore unconventional oil and gas extraction facilities to municipal sewage treatment plants (also known as “publicly owned treatment works” or POTWs).³⁶ The recent EPA rule will protect POTWs from disruptions in their operations that can be caused by these wastewaters. However, the rule does not extend to commercially owned treatment works that primarily treat domestic and commercial wastewater, and it does not address the discharge to POTWs of produced water that has been partially treated at centralized waste treatment facilities. Thus, significant risks associated with the treatment and discharge of produced water remain outside the scope of current federal regulations.

Siting and Landscapes. Certain water resources in the basin have high water resource value because of their

(hereinafter “EPA HF Spill Data 2015”), p. 1. Available at: <https://www.epa.gov/hfstudy/review-state-and-industry-spill-data-characterization-hydraulic-fracturing-related-spills-1>

²⁶ EPA HF Study 2016, p. 5-42

²⁷ Id.

²⁸ See generally, NYS Final SGEIS, Ch. X. Available at: http://www.dec.ny.gov/docs/materials_minerals_pdf/fsgeis2015ch10.pdf

²⁹ EPA HF Study 2016, Exec. Sum., p. 24.

³⁰ Id.

³¹ Id., pp. 23—29. Also see Main Report, Ch. 6.

³² See generally, EPA TDD 2016, pp. 59—81 (part C.3) for a comprehensive characterization of produced water that includes a significant number of data points for the Marcellus formation.

³³ United States Environmental Protection Agency, Effluent Limitations Guidelines and Standards for the Oil and Gas Extraction Point Source Category, Final Rule, 81 Fed. Reg. 41845, 41847c.

³⁴ William D. Burgos et al., Watershed-Scale Impacts from Surface Water Disposal of Oil and Gas Wastewater in Western Pennsylvania. *Environ. Sci. Technol.*, 2017, 51 (15), pp. 8851—8860. Available at: <http://pubs.acs.org/doi/abs/10.1021/acs.est.7b01696>

³⁵ Kimberly M. Parker et al., Enhanced formation of disinfection byproducts in shale gas wastewater-impacted drinking water supplies. *Environ Sci Technol*.2014 Oct 7; 48 (19), pp. 11161—9. Available at: <http://pubs.acs.org/doi/abs/10.1021/es5028184>

³⁶ Id., pp. 41485—41857.

excellent water quality or their exceptional ability to perform water supply, ecological, recreational or other water-related functions. The Commission has classified certain of these waters as Special Protection Waters through provisions of its Water Code incorporated in the comprehensive plan.³⁷ The Water Code seeks to maintain or improve the condition of these water resources through regulatory requirements such as prevention of measurable change to existing water quality, evaluation of natural wastewater treatment system alternatives, conditions or limitations on wastewater treatment facilities and control of non-point sources.³⁸

Many high value water resources are associated with and dependent on their surrounding landscapes. Special Protection Waters are located in the upper portion of the basin where forested headwater areas and riparian buffers slow the rate and volume of stormwater runoff, replenish groundwater that serves as a source of drinking water and sustains stream flow, and control the introduction of pollutants into streams. These landscape features are particularly effective at controlling non-point source pollution that may occur following precipitation events.

High volume hydraulic fracturing and the related alteration of landscapes required to support that activity pose risk to high value water resources. It is expected that practically all of the development and related disturbances from high volume hydraulic fracturing would occur in the drainage area of Special Protection Waters.³⁹ Approximately 70 percent of the basin area underlain by the Marcellus and Utica shales (largely in the drainage area of Special Protection Waters) is forested. The average total disturbance associated with a single well pad, including associated access roads and utility corridors, is estimated at 7.7 acres.⁴⁰ Off-site facilities such as gathering lines involve additional disturbances. These landscape changes will reduce forested areas and potentially vegetated buffers, increase non-point source pollution, diminish groundwater infiltration, and risk adversely affecting water quality and quantity in surface and groundwater. Because high volume hydraulic fracturing would most likely occur in headwater areas in the drainage area to Special Protection Waters, the risks of degrading water resources and impairing the effectuation of the comprehensive plan are of particular concern.

Uncertainty. The comprehensive EPA and New York DEC studies cited above report multiple instances of damage to water resources associated with all stages of the natural gas development process, and importantly, both sources emphasize the degree of uncertainty regarding potential future effects. The EPA report states:

“Cases of impacts were identified for all stages of the hydraulic fracturing water cycle. Identified impacts generally occurred near hydraulically fractured oil and gas production wells and ranged in severity, from temporary changes in water quality to contamination that made private drinking water wells unusable. . . However, significant data gaps and uncertainties in the available data prevented us from calculating or estimating the national frequency of impacts on drinking water resources from activities in the hydraulic fracturing water cycle. The data gaps and

uncertainties described in this report also precluded a full characterization of the severity of impacts.”⁴¹

The New York State DEC study asserts:

“. . . a broad range of experts from academia, industry, environmental organizations, municipalities, and the medical and public health professions commented and/or provided their analyses of high-volume hydraulic fracturing. The comments referenced an increasing number of ongoing scientific studies across a wide range of professional disciplines. These studies and expert comments evidence that significant uncertainty remains regarding the level of risk to public health and the environment that would result from permitting high-volume hydraulic fracturing in New York, and regarding the degree of effectiveness of proposed mitigation measures. In fact, the uncertainty regarding the potential significant adverse environmental and public health impacts has been growing over time.

. . . .

“Potential significant adverse impacts on water resources exist with regard to potential degradation of drinking water supplies; impacts to surface and underground water resources due to large water withdrawals for high-volume hydraulic fracturing; cumulative impacts; stormwater runoff; surface spills, leaks and pit or surface impoundment failures; groundwater impacts associated with well drilling and construction and seismic activity; [and] waste disposal. . . .”⁴²

Additional detail regarding damages to water resources and the risks, vulnerabilities and impacts to surface and ground water resources associated with HVHF can be found in the cited reports.

Related Statutory and Regulatory Provisions

The proposed rules regarding hydraulic fracturing arise from the following provisions, among others, of the Commission’s organic statute, the Delaware River Basin Compact (“Compact”),⁴³ and determinations that have been codified in the Delaware River Basin Water Code and incorporated into the Commission’s comprehensive plan:

- “The signatory parties [to the Compact] recognize the water and related resources of the Delaware River Basin as regional assets vested with local, state, and national interests, for which they have a joint responsibility.”⁴⁴
- Approximately 15 million people “. . . of the United States. . . [rely on water] from the Delaware River Basin. . . and the. . . economic development of the entire region and the health, safety, and general welfare of its population are and will continue to be vitally affected by the use, conservation, management, and control of the water and related resources of the Delaware River Basin.”⁴⁵
- “The commission may assume jurisdiction to control future pollution and abate existing pollution in the waters of the basin, whenever it determines after investigation and public hearing upon due notice that the effectuation of the comprehensive plan so requires.”⁴⁶

³⁷ See Water Code § 3.10.3 A.2, 18 CFR Part 410.
³⁸ *Id.*
³⁹ See DRBC map at: [http://www.nj.gov/drbc/library/documents/maps/SPW-Marcellus Shale.pdf](http://www.nj.gov/drbc/library/documents/maps/SPW-Marcellus%20Shale.pdf)
⁴⁰ E.T. Stonecker et al., *Landscape Consequences of Natural Gas Extraction in Allegheny and Susquehanna Counties, Pennsylvania, 2004–2010*; U.S. Department of the Interior U.S. Geological Survey, *Open-File Report 2013–1025*, p. 19 (Table 2) (converted to acres).

⁴¹ EPA HF Study 2016, Exec. Sum., p. 2.
⁴² NYS Final SGEIS 2016, pp. 1, 13.
⁴³ United States Public Law 87-328, Approved Sept. 27, 1961, 75 Statutes at Large 688; 53 Delaware Laws, Ch. 71, Approved May 26, 1961; New Jersey Laws of 1961, Ch. 13, Approved May 1, 1961; New York Laws of 1961, Ch. 148, Approved March 17, 1961; Pennsylvania Acts of 1961, Act. No. 268, Approved July 7, 1961.
⁴⁴ *Id.*, Part I, 1st Whereas clause.
⁴⁵ *Id.*, 8th Whereas clause.
⁴⁶ *Id.*, § 5.2.

- “The waters of the Delaware River Basin are limited in quantity and the basin is frequently subject to drought warnings and drought declarations due to limited water supply storage and streamflow during dry periods. Therefore, it shall be the policy of the Commission to discourage the exportation of water from the Delaware River Basin.”⁴⁷

- “[T]he basin waters have limited assimilative capacity and limited capacity to accept conservative substances without significant impacts. Accordingly, it also shall be the policy of the Commission to discourage the importation of wastewater into the Delaware River Basin that would significantly reduce the assimilative capacity of the receiving stream on the basis that the ability of Delaware River Basin streams to accept wastewater discharges should be reserved for users within the basin.”⁴⁸

- “It is the policy of the Commission that there be no measurable change in existing water quality except towards natural conditions in waters considered by the Commission to have exceptionally high scenic, recreational, ecological, and/or water supply values. Waters with exceptional values may be classified by the Commission as either Outstanding basin Waters or Significant Resource Waters.”⁴⁹

- “It is the policy of the Commission to give no credit toward meeting wastewater treatment requirements for wastewater imported into the Delaware basin.”⁵⁰

- “The underground water resources of the basin shall be used, conserved, developed, managed, and controlled in view of the need of present and future generations, and in view of the resources available to them. To that end, interference, impairment, penetration, or artificial recharge shall be subject to review and evaluation under the Compact.”⁵¹

- No substances or properties which are in harmful or toxic concentrations or that produce color, taste, or odor of the water shall be permitted or induced by the activities of man to become ground water.”⁵²

- “[T]he Commission may establish requirements, conditions, or prohibitions which, in its judgment, are necessary to protect ground water quality.”⁵³

- “The Commission has determined that allocations of the waste assimilative capacity of the Delaware River Estuary are necessary to maintain stream quality objectives in Zones 2, 3, 4 and 5 for the following pollutants: (a) acute toxicity; and (b) chronic toxicity.”⁵⁴

- “The Commission [has determined] that allocations of the waste assimilative capacity of the Delaware River Estuary are necessary to maintain stream quality objectives in Zones 2 and 3 for the following pollutants: (a) 1, 2 dichloroethane; (b) tetrachloroethane”⁵⁵

Summary of Proposed Rules

Prohibition. Section 5.2 of the Compact authorizes the Commission to “assume jurisdiction to control future pollution. . . in the waters of the basin, whenever it determines after investigation and public hearing upon due notice that the effectuation of the comprehensive plan so requires.” It further authorizes the Commission to control pollution from industrial or other waste originating

within a basin state so that the pollution does not “injuriously affect the waters of the basin as contemplated by the comprehensive plan.” The Commission may also adopt rules, regulations and standards to control future pollution. Considering the totality of the risks that HVHF poses to basin water resources, the Commission proposes in Section 440.3(b) of the draft rule to determine that controlling pollution by prohibiting high volume hydraulic fracturing in the basin is required to effectuate the comprehensive plan, avoid injury to the waters of the basin as contemplated by the comprehensive plan and protect the public health and preserve the waters of the basin for uses in accordance with the comprehensive plan.

Water exports. The transfer of surface water, groundwater, treated wastewater or mine drainage water, at any rate or volume, for utilization in hydraulic fracturing to produce oil and gas outside the Delaware River Basin is proposed to require Commission approval. Currently, exports of water from the basin of less than the daily average quantity of 100,000 gallons are deemed to have no substantial effect on the basin’s water resources and are thus not reviewed by the Commission under section 3.8 of the Compact. The Commission has a longstanding policy of discouraging exportations of water on the grounds that the availability of water to meet in-basin needs is limited and low-flow and drought conditions are frequent. Unlike regulated withdrawals for domestic, commercial and industrial water supplies, withdrawals of large quantities of water for hydraulic fracturing to produce oil and gas have the potential, if unregulated, to occur through de-centralized, periodic and transient means and thus to adversely affect headwater streams and minimum flows of surface and groundwater, and to impair uses protected by the Commission’s comprehensive plan. The proposed rule will make all proposed exports of water for oil and gas extraction subject to the requirement that alternatives involving no exportation be analyzed and that the water resource, economic and social impacts of the proposal be evaluated.

Wastewater. As set forth above, the data available on produced water (including flowback) from hydraulically fractured wells in the Marcellus formation indicate that this waste stream is unlike other industrial and domestic waste streams treated and discharged in the Delaware River Basin, and that it poses significant risks to human health and the environment if improperly handled. Under the proposed rules, the “produced water” from the hydrocarbon-bearing strata during oil and gas extraction is broadly defined to include untreated produced water, diluted produced water, and produced water mixed with other wastes. The rule provides that this material may not be transferred to, treated by or discharged from or to a new or existing wastewater treatment facility located within the Delaware River Basin, at any volume or rate, except in accordance with an approval in the form of a docket issued by the Commission to the owner or operator of the wastewater treatment facility or in accordance with a state permit issued pursuant to a duly adopted administrative agreement between the Commission and the host state. The rule further provides that produced water may not be treated within the basin except at a centralized waste treatment facility (CWT) as that term is defined by the EPA in 40 CFR part 437 and may not be discharged within the basin without treatment at a CWT. Because current EPA regulations governing treatment by CWTs do not include limitations for pollutants commonly found in produced water, such as total dissolved solids,

⁴⁷ Water Code, § 2.30.2.

⁴⁸ *Id.*

⁴⁹ *Id.*, § 3.10.3. A.2.

⁵⁰ *Id.*, § 2.30.6.

⁵¹ *Id.*, § 2.20.6.

⁵² *Id.*, § 3.40.5 B.1.

⁵³ *Id.*, § 3.40.5 B.3.

⁵⁴ DRBC Resolution No. 2000-4, “Be it resolved” par. 4.

⁵⁵ *Id.*, “Be it resolved” par. 1.

barium, bromide, radium and strontium,⁵⁶ the proposed rule also places conditions on the treatment and discharge of wastewater or effluent resulting from the treatment of produced water by a CWT (“CWT wastewater”) before the CWT wastewater can be discharged to basin waters or to another treatment facility within the basin.

The Commission already has in place a policy to discourage the importation of wastewater into the basin due to the limited capacity of the basin’s waters to assimilate waste. Proposals to import produced water and CWT wastewater into the basin will be subject to this policy and to the requirements that alternatives involving no importation be analyzed and that the water resource, economic and social impacts of the proposal be evaluated.

Under the proposed rules, projects involving the treatment and discharge of produced water within the basin must meet the more stringent of applicable federal, state and DRBC requirements. Additional effluent limitations are proposed to apply to such projects for TDS, whole effluent toxicity, and a set of “pollutants of concern” identified on the basis of produced water characterizations provided by EPA in a 2016 technical document.⁵⁷ The majority of the EPA’s primary and secondary drinking water standards are also proposed as treatment levels for produced water discharged to a receiving waterbody designated for use as a public water supply. Treatability studies will be required to ensure that pollutant loads from natural gas wastewater are thoroughly characterized and that treatment ensures these pollutants are effectively reduced or eliminated, such that applicable effluent limits, stream quality objectives, protected uses, and in the case of Special Protection Waters, the “no measurable change” objective, are attained. Because the proposed rule requires treatment to “background concentrations” for pollutants of concern in many instances, the Commission is simultaneously publishing draft guidance on acceptable methods for determining background concentrations of these pollutants.

Other changes. Revisions to the Commission’s thresholds for review set forth at 18 CFR 401.35 are proposed to establish that certain activities relating to hydraulic fracturing in hydrocarbon-bearing formations are deemed to constitute projects having a substantial effect on water resources of the basin and are thus subject to review under Section 3.8 of the Compact. These include: the importation, treatment, or discharge to basin land or water of “produced water” as defined by the rule; and the exportation of water from the basin for uses related to hydraulic fracturing. Although certain additional activities and facilities on a well pad site could be separately identified by the Commission as projects, in light of the proposed prohibition, no changes to existing rules are proposed in this regard at this time. Minor changes are concurrently proposed to existing thresholds for the Commission’s review of leachate discharges and wetlands.

To provide for appropriate fees to cover the cost of reviews of new classes of projects deemed to require the Commission’s approval, changes are also proposed to section 401.43 (regulatory program fees).

⁵⁶ United States Environmental Protection Agency, Final 2014 Effluent Guidelines Program Plan, July 2015 (EPA-821-R-15-002), p. 5-4 (sec. 5.3.2). Available at: https://www.epa.gov/sites/production/files/2015-09/documents/final-2014-effluent-guidelines-program-plan_july-2015.pdf. A detailed EPA study of the CWT industry focused on facilities accepting oil and gas extraction wastewaters is ongoing. See Preliminary 2016 Effluent Guidelines Program Plan, June 2016 (EPA-821-R-16-001), p. 6-1 (sec. 6.1).

⁵⁷ See EPA TDD 2016, pp. 59–81 (Part C.3).

Executive Director Determinations

The final regulations relating to natural gas development when adopted will supersede and replace the Executive Director’s Determinations issued on May 19, 2009, June 14, 2010 and July 23, 2010.

Public Process

Key dates and addresses for the public hearings and submission of written comments are set forth at the top of this notice, along with details regarding registration to attend public hearings. Additional information concerning the substance of comments and the format of written comments follows:

Substance of comments. The Commission expressly seeks comment on the effects the proposed rules may have within the basin on: water availability, the control and abatement of water pollution, economic development, the conservation and protection of drinking water supplies, the conservation and protection of aquatic life, the conservation and protection of water quality in Special Protection Waters, and the protection, maintenance and improvement of water quantity and quality basinwide. Comment is also requested on whether use of base fluids other than water for HVHF is practical within the basin and if so, how it should be addressed in these rules, and on any alternatives to the proposed rules that the commenters would like the Commission to consider, as well as on draft guidance published simultaneously with the rules for determining background concentrations of certain pollutants. The Commission welcomes and will consider any other comments that concern the potential effects of the draft rules on the conservation, utilization, development, management and control of the water and related resources of the Delaware River Basin. Comments on matters not within this scope may not be considered.

Submission of written comments. Written comments along with any attachments may be submitted through the Commission’s web-based comment system (<http://dockets.drbc.commentinput.com>) until 5:00 P.M. on March 30, 2018. All materials should be provided in searchable formats, preferably in .pdf searchable text. Non-digitized voluminous materials such as books, journals or collected letters/petitions will not be accepted. Digital submissions of these, as well as articles and websites, must be accompanied by a statement containing citations to the specific findings or conclusions the commenter wishes to reference. Notably, a picture scan of a document may not result in searchable text.

Requests for exceptions to the submission of comments using the web-based system will be granted based on lack of access to the Internet and may be addressed to: Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628. Comments received through a method other than the designated on-line method, including via email, fax, postal/delivery services or hand delivery, will be included in the rulemaking record if an express exception has been granted.

Additional information

Detailed information about the public process, including links to the proposed rule text and draft guidance are available on the Commission’s website, drbc.net.

For the reasons set forth in the preamble, the Delaware River Basin Commission proposes to amend title 18, chapter III of the *Code of Federal Regulations*, as set forth below. The amendments to 18 CFR part 401 are proposed to be incorporated by reference in the *Pennsylvania Code* at 25 Pa. Code Ch. 901. New part 440 is

proposed to be incorporated by reference as new chapter 903 of title 25 of the *Pennsylvania Code*. 25 Pa. Code 901.5 is proposed to be re-designated as chapter 902 of the *Pennsylvania Code*.

(Editor's Note: In the amendments to §§ 401.35 and 401.43 set forth below, new text appears in bold face with underscore, and text to be deleted appears in bold face within brackets. Because all of part 440 comprises proposed new rule text, boldface, brackets and underscore are not used to signify changes for that part.)

PART 401—RULES OF PRACTICE AND PROCEDURE

§ 401.35 Classification of projects for review under Section 3.8 of the Compact.

(a) Except as the [**Executive Director**] **Commission** may specially direct by notice to the project owner or sponsor, [**or as a state or federal agency may refer under paragraph (c) of this section,**] a project in any of the following classifications will be deemed not to have a substantial effect on the water resources of the basin and is not required to be submitted under Section 3.8 of the Compact:

* * * * *

(2) A withdrawal from ground water [**for any purpose**] when the daily average gross withdrawal during any 30 consecutive day period does not exceed 100,000 gallons;

* * * * *

(4) **Except as provided at paragraph (b)(18) of this section, [T]**the construction of new domestic sewage treatment facilities or alteration or addition to existing domestic sewage treatment facilities when the design capacity of such facilities is less than a daily average rate of 10,000 gallons per day in the drainage area to Outstanding basin Waters and Significant Resource Waters or less than 50,000 gallons per day elsewhere in the basin; and all local sewage collector systems and improvements discharging into authorized trunk sewage systems;

(5) **Except as provided at paragraph (b)(18) of this section, [T]**the construction of new facilities or alteration or addition to existing facilities for the direct discharge to surface or ground waters of industrial wastewater having design capacity of less than 10,000 gallons per day in the drainage area to Outstanding basin Waters and Significant Resource Waters or less than 50,000 gallons per day elsewhere in the basin; except where such wastewater contains toxic concentrations of waste materials;

* * * * *

(15) Draining, filling or otherwise altering marshes or wetlands when the area affected is less than 25 acres; provided; however, that areas less than 25 acres shall be subject to Commission review and action [(i)] where neither a state nor a federal level review and permit system is in effect; [**requiring action by the Commission, or (ii) when a Commissioner or the Executive Director determines that the final action of a state or federal permitting agency may not adequately reflect the Commission's policy as to wetlands of the basin. In the case of a project affecting less than 25 acres for which there has been issued a state or federal permit, a determination to undertake review and action by the Commission shall be**

made no later than 30 days following notification of the Commission of such permit action. The Executive Director, with the approval of the Chairman, may at any time within the 30-day period inform any permit holder, signatory party or other interested party that the Commission will decline to undertake review and action concerning any such project;]

(16) **Except as provided at paragraph (b)(19) of this section, [T]**the diversion or transfer of water from the Delaware River Basin (exportation) whenever the design capacity is less than a daily average rate of 100,000 gallons;

* * * * *

(18) **Except as provided at paragraph (b)(18) of this section, [T]**the diversion or transfer of wastewater into the Delaware River Basin (importation) whenever the design capacity is less than a daily average rate of 50,000 gallons; and

(19) **To the extent allowed in the basin (see prohibition at § 440.3(b) of this title), projects involving hydraulic fracturing, unless no state-level review and permit system is in effect;**

* * * * *

(b) * * *

[(14) **Regional wastewater treatment plans developed pursuant to the Federal Water Pollution Control Act;]**

(14[5]) **Leachate treatment and disposal projects associated with landfills and solid waste disposal facilities in the basin; [Landfills and solid waste disposal facilities affecting the water resources of the basin;]**

(15[6]) State and local standards of flood plain regulation;

(16[7]) Electric generating or cogenerating facilities designed to consumptively use in excess of 100,000 gallons per day of water during any 30-day period; and

(17[8]) Any other project that the [**Executive Director**] **Commission** may especially direct by notice to the project sponsor or land owner as having a potential substantial water quality impact on waters classified as Special Protection Waters.

(18) **The importation, treatment, or discharge to basin land or water of "produced water" or CWT wastewater as those terms are defined in § 440.2 of this chapter.**

(19) **The transfer, diversion or exportation of water from the basin at any volume or rate for uses related to "hydraulic fracturing" as that term is defined in § 440.2 of this chapter.**

(c) **Regardless of whether expressly excluded from review by paragraph (a) of this section, any project or class of projects that in the view of the Commission could have a substantial effect on the water resources of the basin may, upon special notice to the project sponsor or landowner, be subject to the requirement for review under section 3.8 of the Compact. [Whenever a state or federal agency determines that a project falling within an excluded classification (as defined in paragraph (a)**

of this section) may have a substantial effect on the water resources of the basin, such project may be referred by the state or federal agency to the Commission for action under these Rules.]

[(d) Except as otherwise provided by § 401.39 the sponsor shall submit an application for review and approval of a project included under paragraph B. above through the appropriate agency of a signatory party. Such agency will transmit the application or a summary thereof to the Executive Director, pursuant to Administrative Agreement, together with available supporting materials filed in accordance with the practice of the agency of the signatory party.]

* * * * *

§ 401.43 Regulatory program fees.

* * * * *

(b) * * *

(1) [**Docket a**] Application fee. Except as set forth in paragraph (b)(1)(iii) of this section, the [**docket**] application fee shall apply to:

* * * * *

(iii) Exemptions. The [**docket**] application fee shall not apply to:

* * * * *

(2) Annual monitoring and coordination fee.

(i) Except as provided in paragraph (b)(2)(ii) of this section, an annual monitoring and coordination fee shall apply to each active water allocation or wastewater discharge approval issued pursuant to the *Compact* and implementing regulations, regardless of whether the approval was issued by the Commission in the form of a

docket, permit or other instrument, or by a Signatory Party Agency under the One Permit Program rule (§ 401.42). [**The fee shall be based on the amount of a project's approved monthly water allocation and/or approved daily discharge capacity.**]

(3) * * *

(v) a project involves treatability studies for the discharge of wastewater.

(4) * * *

(iii) Modification of a DRBC approval. Following Commission action on a project, each project revision or modification that the Executive Director deems substantial shall require an additional [**docket**] application fee calculated in accordance with paragraph (e) of this section and subject to an alternative review fee in accordance with paragraph (b)(3) of this section.

* * * * *

(c) Indexed adjustment. On July 1 of every year, beginning July 1, 2017, all fees established by this section will increase commensurate with any increase in the annual April 12-month Consumer Price Index (CPI) for Philadelphia, published by the U.S. Bureau of Labor Statistics during that year.⁵⁸ In any year in which the April 12-month CPI for Philadelphia declines or shows no change, the [**docket**] application fee and annual monitoring and coordination fee will remain unchanged. Following any indexed adjustment made under this paragraph (c), a revised fee schedule will be published in the *Federal Register* by July 1 and posted on the Commission's website. Interested parties may also obtain the fee schedule by contacting the Commission directly during business hours.

* * * * *

(e) * * *

TABLE 1 TO § 401.43—[**DOCKET**] APPLICATION [**FILING**] FEES

<i>Project Type</i>	[Docket] <i>Application Fee</i>	<i>Fee Maximum</i>
Water Allocation	\$405 per million gallons/month of allocation ¹ , not to exceed \$15,190 ¹ . Fee is doubled for any portion to be exported from the basin.	Greater of: \$15,190 or Alternative Review Fee
Wastewater Discharge	Private projects: \$1,013 ¹ Public projects: \$506 ¹ <u>Projects involving wastewater treatability studies: \$5,000¹</u>	Alternative Review Fee
Other	0.4% of project cost up to \$10,000,000 plus 0.12% of project cost above \$10,000,000 (if applicable), not to exceed \$75,951 ¹	Greater of: \$75,951 ¹ or Alternative Review Fee

¹ Subject to an annual adjustment in accordance with paragraph (c) of this section.

⁵⁸ Consumer Price Index—U/Series ID: CWURA102SA0/Not Seasonally Adjusted/ Area: Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD/Item: All items/Base Period: 1982-84=100.

TABLE 2 TO § 401.43—ANNUAL MONITORING AND COORDINATION FEE

	<i>Annual Fee</i>	<i>Allocation</i>
Water Allocation	\$304 ¹	< 4.99 mgm
	\$456 ¹	5.00 to 49.99 mgm
	\$658 ¹	50.00 to 499.99 mgm
	\$835 ¹	500.00 to 9,999.99 mgm
	\$1,013 ¹	> or = to 10,000 mgm
	<i>Annual Fee</i>	<i>Discharge Design Capacity</i>
Wastewater Discharge	\$304 ¹	< 0.05 mgd
	\$618 ¹	0.05 to 0.99[1] mgd
	\$830 ¹	1 to 9.99[10] mgd
	\$1,013 ¹	> or = to [≥]10 mgd

¹ Subject to annual adjustment in accordance with paragraph (c) of this section.

* * * * *

(Editor’s Note: Because all of part 440 comprises new proposed rule text, boldface, brackets and underscore are not used in this part.)

SUBCHAPTER B—SPECIAL REGULATIONS

PART 440—HYDRAULIC FRACTURING IN SHALE AND OTHER FORMATIONS

- Sec. 440.1 Purpose, authority and relationship to other requirements
- 440.2 Definitions
- 440.3 High volume hydraulic fracturing
- 440.4 Exportation of water for hydraulic fracturing
- 440.5 Produced water

§ 440.1 Purpose, authority and relationship to other requirements.

(a) *Purpose.* The purpose of this part is to protect and conserve the water resources of the Delaware River Basin. To effectuate this purpose, this section establishes standards, requirements, conditions and restrictions to prevent or reduce depletion and degradation of surface and groundwater resources and to promote sound practices of water resource management.

(b) *Authority.* This part implements Sections 1.5, 3.6(b), 3.8, 4.1, 5.2, 7.1, 13.1 and 14.2(a) of the Delaware River Basin Compact.

(c) *Comprehensive plan.* The Commission has determined that the provisions of this part are required for the immediate and long range development and use of the water resources of the basin and are therefore incorporated into the Commission’s comprehensive plan.

(d) *Relationship to other Commission requirements.* The provisions of this part are in addition to all applicable requirements in other Commission regulations, dockets and permits.

Upon the effective date of this rule, the Executive Director Determinations dated May 19, 2009, June 14, 2010 and July 23, 2010, to the extent not already superseded by the Commission’s Resolution dated December 8, 2010, are no longer operative.

(e) *Severability.* The provisions of this part are severable. If any provision of this part or its application to any person or circumstances is held invalid, the invalidity will not affect other provisions or applications of this part, which can be given effect without the invalid provision or application.

(f) *Coordination and avoidance of duplication.* In accordance with and pursuant to section 1.5 of the Delaware River Basin Compact, to the fullest extent it finds feasible and advantageous the Commission may enter into an Administrative Agreement (Agreement) with any basin state or the federal government to coordinate functions and eliminate unnecessary duplication of effort. Such Agreements will be designed to: effectuate intergovernmental cooperation, minimize the efforts and duplication of state and Commission staff resources wherever possible, ensure compliance with Commission-approved requirements, enhance early notification of the general public and other interested parties regarding proposed activities in the basin, indicate where a host state’s requirements satisfy the Commission’s regulatory objectives and clarify the relationship and project review decision making processes of the states and the Commission for projects subject to review by the states under their state authorities and by the Commission under Section 3.8 and Articles 6, 7, 10 and 11 of the Compact.

§ 440.2 Definitions.

For purposes of this part, the following terms and phrases have the meanings provided. Some definitions differ from those provided in regulations of one or more agencies of the Commission’s member states and the federal government.

Basin—the area of drainage into the Delaware River and its tributaries, including Delaware Bay.

Centralized waste treatment (CWT) facility—as defined by EPA at 40 CFR 437.2(c), any facility that treats (for disposal, recycling or recovery of material) any hazardous or non-hazardous industrial wastes, hazardous or non-hazardous industrial wastewater, and/or used material received from off-site. “CWT facility” includes both a facility that treats waste received exclusively from off-site and a facility that treats wastes generated on-site as well as waste received from off-site.

Commission—the Delaware River Basin Commission (DRBC) created and constituted by the Delaware River Basin Compact.

Conservative Substances—pollutants that undergo no or minimal transformation or decay in a water body or groundwater, except by dilution.

CWT wastewater—For purposes of this part, “CWT wastewater” means any wastewater or effluent resulting from the treatment of produced water by a CWT.

Docket—a legal instrument issued by the Commission approving, or approving as modified, a project having a substantial effect on water resources of the basin. The approval may modify the project by imposing conditions to prevent the project from substantially impairing or conflicting with the Commission’s comprehensive plan.

Domestic wastewater—liquid waste that contains pollutants produced by a domestic residence or residences or by a non-residential facility that generates wastewater with the same characteristics as residential wastewater.

Executive Director—the Executive Director of the Delaware River Basin Commission.

Flowback—Fluids returned to the surface through an oil or gas well once hydraulic fracturing pressure is released. Flowback can also refer to the stage of well completion in which fluids are returned to the surface through the well after fracturing is performed.

Groundwater—includes all water beneath the surface of the ground.

High-volume hydraulic fracturing (HVHF)—hydraulic fracturing using a combined total of 300,000 or more gallons of water during all stages in a well completion, whether the well is vertical or directional, including horizontal, and whether the water is fresh or recycled and regardless of the chemicals or other additives mixed with the water.

Hydraulic Fracturing—a technique used to stimulate the production of oil and natural gas from a well by injecting fracturing fluids down the wellbore under pressure to create and maintain induced fractures in the hydrocarbon-bearing rock of the target geologic formation.

Fracturing fluid(s)—a mixture of water (whether fresh or recycled) and/or other fluids and chemicals or other additives, which are injected into the subsurface and which may include chemicals used to reduce friction, minimize biofouling of fractures, prevent corrosion of metal pipes or remove drilling mud damage within a wellbore area, and propping agents such as silica sand, which are deposited in the induced fractures.

Person—any natural person, corporation, partnership, association, company, trust, federal, state or local governmental unit, agency, or authority, or other entity, public or private.

Pollutants—any substance which when introduced into water resources, including surface water or groundwater, degrades natural or existing water quality, including but not limited to: dredge spoils, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemicals and chemical wastes, biological materials, radioactive materials, methane, heat, wrecked or discarded equipment, rock, sand, sediment, cellar dirt, and industrial, municipal or agricultural waste as well as any substance defined as a pollutant, contaminant or hazardous substance by any federal or state statute or regulation.

Pollutants of concern—conservative, radioactive, toxic or other substances that are potentially present in produced water, consisting of all parameters listed in the EPA Technical Development Document for the Effluent Limitations Guidelines and Standards for the Oil and Gas Extraction Point Source Category (June 2016), specifically all pollutants for produced water listed in Tables C-11, C-13, C-15, C-17, and C-19.

Produced water—the water that flows out of an oil or gas well, typically including other fluids and pollutants and other substances from the hydrocarbon-bearing strata. Produced water may contain “flowback” fluids, fracturing fluids and any chemicals injected during the stimulation process, formation water, and constituents leached from geologic formations. For purposes of §§ 401.35(b)(18) and 440.5, the term “produced water” encompasses untreated produced water, diluted produced water, and produced water mixed with other wastes.

Wastewater treatment facility—any facility treating and discharging wastewater.

Water resource(s)—water and related natural resources in, on, under, or above the ground, including related uses of land, which are subject to beneficial use, ownership or control within the hydrologic boundary of the Delaware River Basin.

§ 440.3 High volume hydraulic fracturing (HVHF)

(a) *Determination.* The Commission has determined that high volume hydraulic fracturing poses significant, immediate and long-term risks to the development, conservation, utilization, management, and preservation of the water resources of the Delaware River Basin and to Special Protection Waters of the basin, considered by the Commission to have exceptionally high scenic, recreational, ecological, and/or water supply values. Controlling future pollution by prohibiting such activity in the basin is required to effectuate the comprehensive plan, avoid injury to the waters of the basin as contemplated by the comprehensive plan and protect the public health and preserve the waters of the basin for uses in accordance with the comprehensive plan.

(b) *Prohibition.* High volume hydraulic fracturing in hydrocarbon bearing rock formations is prohibited within the Delaware River Basin.

§ 440.4 Exportation of water for hydraulic fracturing

As set forth in Section 2.30 of the Water Code (incorporated by reference at part 410 of this chapter), it is the policy of the Commission to discourage the exportation of water from the Delaware River Basin. Accordingly, the diversion, transfer or exportation of water from sources within the basin to support hydraulic fracturing outside the basin is discouraged. The transfer of surface water, groundwater, treated wastewater or mine drainage water, at any rate or volume, for utilization in hydraulic fracturing of hydrocarbon bearing rock formations outside the basin requires Commission approval in the form of a docket and shall be subject to the evaluation described by section 2.30.4 of the Water Code.

§ 440.4 Produced water

(a) *Related Commission Policies.*

(1) It is the policy of the Commission to discourage the importation of wastewater into the basin (see Section 2.30.2 of the Delaware River Basin Water Code, incorporated by reference at part 410 of this chapter).

(2) It is the policy of the Commission to give no credit toward meeting wastewater treatment requirements for wastewater imported into the basin (see Section 2.30.6 of the Delaware River Basin Water Code incorporated by reference at 18 CFR Part 410).

(3) The Commission has determined (see Resolution 2000-4) that allocations of the waste assimilative capacity of the Delaware River Estuary are necessary to maintain stream quality objectives for acute toxicity and chronic

toxicity in Water Quality Zones 2, 3, 4 and 5 and for 1,2 dichloroethane and tetrachloroethene in Water Quality Zones 2 and 3.

(4) It is the policy of the Commission that there be no measurable change in existing water quality except towards natural conditions in waters considered by the Commission to have exceptionally high scenic, recreational, ecological, and/or water supply values. Waters with exceptional values may be classified by the Commission as either Outstanding basin Waters or Significant Resource Waters. (See section 3.10.3.2 of the Delaware River Basin Water Code, incorporated by reference at part 410 of this chapter).

(5) Effluents shall not create a menace to public health or safety at the point of discharge. (See Section 3.10.4 of the Delaware River Basin Water Code, incorporated by reference at part 410 of this chapter).

(6) The underground water resources of the basin shall be used, conserved, developed, managed, and controlled in view of the needs of present and future generations, and in view of the resources available to them. To that end, interference, impairment, penetration, or artificial recharge shall be subject to review and evaluation under the Compact. (See section 2.20.6 of the Delaware River Basin Water Code, incorporated by reference at part 410 of this chapter).

(b) *Approval required.* Produced water and CWT wastewater as defined in this part may not be imported into the basin except by a new or existing wastewater treatment facility located within the basin, and may not be transferred to, treated by or discharged from or to a new or existing wastewater treatment facility located within the basin, at any volume or rate, except in accordance with an approval in the form of a docket issued by the Commission to the owner or operator of the wastewater treatment facility pursuant to Section 3.8 of the Compact or in accordance with a state permit issued pursuant to a duly adopted administrative agreement between the Commission and the host state.

(c) *Alternatives and impact assessment.* Any project involving the importation of produced water or CWT wastewater into the basin shall be subject to the requirement that alternatives involving no importation must be analyzed and the water resource, economic and social impacts of the project evaluated, as described in section 2.30.4 of the Commission's Water Code.

(d) *Compliance with existing rules.* In addition to the requirements in this part, all discharges within the basin of produced water and CWT wastewater as defined in this part must comply with applicable DRBC Water Quality Regulations (incorporated by reference at part 410 of this chapter), state regulations and federal regulations. If a conflict exists among the applicable regulations, the more stringent requirement shall apply to these discharges.

(e) *Treatment facilities.*

(1) Produced water as defined in this part

(i) may not be treated within the basin except at a centralized waste treatment facility (CWT) as that term is defined by the U.S. Environmental Protection Agency in 40 CFR part 437 (to convert it to CWT wastewater); and pursuant to an approval issued in accordance with section 440.5(b) of this part.

(ii) may not be discharged within the basin without treatment at a CWT.

(2) CWT wastewater as defined in this part may be discharged only:

(i) directly by the CWT pursuant to an approval issued in accordance with section 440.5(b) of this part; or

(ii) indirectly by a CWT to a wastewater treatment facility within the basin (via sewer, truck or other means) pursuant to an approval issued in accordance with section 440.5(b) of this part,

(iii) provided that the discharge meets the requirements of sections 440.5(f) through (h) of this part.

(f) *Treatability studies.* The Commission shall not issue any required docket or approval for the treatment of produced water or the discharge of CWT wastewater unless the project sponsor has identified each proposed source of the produced water or CWT wastewater and has submitted to the Commission a treatability study (or studies) prepared by a professional engineer licensed in the state(s) in which the treatment and discharge facilities are located, demonstrating that:

(1) an analysis, characterization and quantification of all pollutants of concern, as that term is defined in section 440.2 of this part, has been conducted and the results submitted to the Commission;

(2) the acute and chronic toxicity of the waste, measured as Whole Effluent Toxicity (WET), have been evaluated;

(3) the treatment technologies and applicable design criteria to be used to meet all requirements of section 440.5(g) of this part have been identified;

(4) the produced water (or CWT wastewater) will not pass through or interfere with the facility's treatment process, and the resulting effluent will meet all applicable limits;

(5) the classification, treatment and disposal of residuals from the facility, if any, will not be adversely affected; and

(6) the discharge will not cause or contribute to an exceedance of applicable water quality criteria or stream quality objectives or impair the existing or protected use of the receiving water.

(g) *Additional effluent requirements.* Except as provided in paragraph (h) of this section, the following requirements shall apply within the basin to effluent resulting from the treatment of produced water or CWT wastewater. In any instance in which these requirements are deemed to conflict, the more stringent shall apply:

(1) For total dissolved solids (TDS):

(i) the effluent shall not exceed background or 500 mg/l, whichever is less,

(ii) provided, however, that in waters that drain to Delaware River Water Quality Zones 4 through 6, the resulting effluent shall not exceed 1,000 mg/l, or a concentration established by the Commission that is compatible with designated water uses and stream quality objectives.

(iii) The Commission will publish guidance on acceptable methods for determining background TDS concentrations.

(2) For waters for which the protected or designated uses include "public water supplies" or "drinking water", the effluent shall not exceed the more stringent of EPA's or the host state's

(i) primary drinking water standards for inorganic chemicals, organic chemicals (excluding acrylamide and epichlorohydrin) and disinfection byproducts; and

(ii) secondary drinking water standards (excluding color, corrosivity, and odor).

(3) For whole effluent toxicity (WET), the effluent shall not exceed: 0.3 toxic units (acute) and 1.0 toxic units (chronic).

(4) For pollutants of concern as defined in Section 440.2 of this part:

(i) For waters that drain to Special Protection Waters, the effluent shall not exceed the background concentration of each pollutant in the receiving water.

(ii) For waters that do not drain to Special Protection Waters:

(A) If pollutant-specific numeric water quality criteria exist, the effluent concentration for the pollutant shall not exceed the numeric criteria.

(B) If pollutant-specific numeric water quality criteria do not exist, the effluent shall not exceed the background concentration of the pollutant in the receiving water or cause an exceedance or violation of any existing narrative criteria.

(C) The Commission will publish guidance on acceptable methods for determining background concentrations for pollutants of concern.

(5) The Commission may require the discharger to perform such monitoring and reporting as the Commission deems necessary to ensure compliance with established numeric effluent limits and to support the development of additional numeric limits if needed.

(h) *Point of compliance.*

(1) The effluent limitations are to be met at the point of discharge to basin waters.

(2) To ensure that all conditions, requirements and standards under this rule are met, the Commission may impose additional monitoring requirements or other conditions on any CWT within the basin that discharges CWT wastewater as defined in this part to another wastewater treatment facility in the basin.

(3) A mixing zone may be considered for any pollutant for which a mixing zone is permitted in the Delaware River Estuary by the DRBC Water Quality Regulations (incorporated by reference at part 410 of this chapter).

Dated: January 2, 2018

PAMELA M. BUSH, J.D., M.R.P.,
Secretary

Fiscal Note: 68-60. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART V. DELAWARE RIVER BASIN COMMISSION

CHAPTER 901. GENERAL PROVISIONS

§ 901.1. Rules of Practice and Procedure.

The rules of practice and procedure as set forth in 18 CFR Part 401 [(2017)] (2018) are hereby incorporated by reference and made a part of this title.

§ 901.5. [**Groundwater protection area, Southeastern Pennsylvania.**] (Reserved and renumbered).

[**The Basin Regulations, Groundwater Protection, Southeastern Pennsylvania, as set forth at 18**

CFR Part 430 (1999), are hereby incorporated by reference and made part of this title.]

(Editor's Note: Chapters 902 and 903 are proposed to be added and printed in regular type to enhance readability.)

CHAPTER 902. GROUNDWATER PROTECTION AREAS

Sec.

902.1. Groundwater protection area, Southeastern Pennsylvania.

§ 902.1. Groundwater protection area, Southeastern Pennsylvania.

The basin regulations, groundwater protection, Southeastern Pennsylvania, as set forth in 18 CFR Part 430 (2018), are hereby incorporated by reference and made part of this title.

CHAPTER 903. HYDRAULIC FRACTURING IN SHALE AND OTHER FORMATIONS

Sec.

903.1. Hydraulic fracturing in shale and other formation.

§ 903.1. Hydraulic fracturing in shale and other formation.

The hydraulic fracturing in shale and other formation regulations, as set forth in 18 CFR Part 440 (2018), are hereby incorporated by reference and made part of this title.

[Pa.B. Doc. No. 18-57. Filed for public inspection January 12, 2018, 9:00 a.m.]

OFFICE OF ATTORNEY GENERAL

[37 PA. CODE CHS. 301 AND 311]

Unfair Market Trade Practices; Automotive Industry Trade Practices

The Office of Attorney General (OAG), Public Protection Division, proposes to amend Chapter 301 (relating to automotive industry trade practices) and add Chapter 311 (relating to unfair market trade practices) to read as set forth in Annex A.

A. Effective Date

This proposed rulemaking will go into effect upon final-form publication in the *Pennsylvania Bulletin* and will be retroactive to January 1, 2000.

B. Contact Person

For further information on this proposed rulemaking, contact Tracy W. Wertz, Chief Deputy Attorney General, Antitrust Section, or Joseph S. Betsko, Senior Deputy Attorney General, Antitrust Section, Office of Attorney General, Strawberry Square, 14th Floor, Harrisburg, PA 17120, (717) 787-4530. This proposed rulemaking is available on the Office of Attorney General's web site at www.attorneygeneral.gov.

C. Statutory Authority

This rulemaking is proposed under the authority of section 3.1 of the Unfair Trade Practices and Consumer Protection Law (act) (73 P.S. § 201-3.1), regarding the statutory rulemaking authority of the OAG, section 506 of The Administrative Code of 1929 (71 P.S. § 186), regarding general rulemaking authority, and sections 918 and 919 of The Administrative Code of 1929 (71 P.S. §§ 307-2 and 307-3) read in pari materia with the act.

D. Purpose and Background

This proposed rulemaking is designed to improve, enhance and update the OAG's unfair methods of competition and unfair or deceptive acts or practices regulations. The specific purpose of this proposed rulemaking is described in more detail under the summary of proposal.

E. Summary of Proposal

The OAG enforces and administers the act. The OAG has determined that it is necessary for the enforcement and the administration of the act to amend the existing automotive industry trade practices regulations to provide adequate protections to consumers regarding the inspection of motor vehicles and the written disclosure of certain attributes of a motor vehicle's roadworthiness. The OAG has also determined that it is necessary for the enforcement and the administration of the act to add regulations concerning unfair market trade practices and to clarify false advertising.

The OAG has long taken the policy position that unfair market trade practices constitute unfair methods of competition and unfair or deceptive acts or practices in violation of the act in line with Federal jurisprudence interpreting section 5 of the Federal Trade Commission Act (FTCA) (15 U.S.C.A. § 45). During and following a public hearing on Senate Bill 848 from the 2013-14 session before the Senate Judiciary Committee on June 25, 2013, the OAG heard comments from Senate Judiciary Committee members and bill opponents that the proposed legislation would be redundant to the act and that the OAG should use the act to address the unfair market trade practices. After conducting extensive legal research, the OAG agrees with the comments.

Presently, consumers in this Commonwealth have been disadvantaged by the lack of a clear articulation of Commonwealth law that makes it easy to understand that consumers can recover regardless of whether they have dealt directly or indirectly with the defendant or defendants for injury resulting from anticompetitive conduct. For example, the *Relafen* court significantly discounted Pennsylvania consumer recovery in a settlement. *In re Relafen Antitrust Litigation*, 225 F.R.D. 14, 23-24 (D. Mass. 2004). The OAG has determined that a new regulation under the act will remedy this unfair vacuum in consumer protection.

Pennsylvania courts have held that section 5 of the FTCA is virtually the same as section 3 of the act (73 P.S. § 201-3) and that Pennsylvania courts may look to decisions under the FTCA for guidance in interpreting the act. *Com., by Creamer v. Monumental Properties, Inc.*, 459 Pa. 450, 462, 329 A.2d 812, 818 (1974); and *Pirozzi v. Penske Olds-Cadillac-GMC, Inc.*, 605 A.2d 373, 376 (Pa. Super. 1992). Pennsylvania courts have interpreted that a violation of Federal or State statutes aligned with the purpose of the FTCA and the act constitutes a violation of the act since the act is "broad enough to encompass all claims of unfair and deceptive acts or practices in the conduct of any trade or commerce." *Ash v. Continental Ins. Co.*, 593 Pa. 523, 530 (2007). Section 5(a)(1) of the FTCA provides that "[u]nfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful." The OAG determines that it logically follows that a violation of section 5 of the FTCA constitutes a violation of the act because this conclusion incontrovertibly falls within the scope of the General Assembly's basic policy choice in section 3 of the act that "[u]nfair methods

of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce...are hereby declared unlawful."

The United States Supreme Court has held that section 5 of the FTCA protects consumers from unfair competitive practices regardless of the effect on competition unlike the Federal antitrust laws. *FTC v. Sperry & Hutchinson Co.*, 405 U.S. 233, 239 (1972). Rulings under the FTCA have held antitrust violations to constitute an unfair and deceptive practice. *FTC v. Indiana Fed'n of Dentists*, 476 U.S. 447, 454, 106 S. Ct. 2009, 2016, 90 L. Ed. 2d 445 (1986); *FTC v. National Lead Co.*, 352 U.S. 419, 428-30 (1957); *FTC v. Cement Inst.*, 333 U.S. 683, 688, 68 S. Ct. 793, 797, 92 L. Ed. 1010 (1948); and *Ciardi v. F. Hoffman-La Roche, Ltd.*, 762 N.E.2d 303 (Mass. 2002).

The OAG has taken notice of *Lisa Hunt v. Bayer Corp.*, Feb. Term 2005, No. 1038 (Phila. Com. Pl.), where the court recognized price-fixing to be a violation of the act. The OAG has also taken notice of *In re Suboxone (Buprenorphine Hydrochloride & Naloxone) Antitrust Litig.*, 64 F.Supp.3d 665 (E.D. Pa. 2014), where the court held that anticompetitive schemes are redressable under the act. The OAG has also taken notice of *Commonwealth v. TAP Pharmaceutical Products, Inc.*, 885 A.2d 1127 (Pa. Cmwlth. 2005), where the court recognized that purchasers may recover monetarily regardless of whether the defendant or defendants were dealt with directly or indirectly. Further, the OAG has taken notice of *Com. ex rel. Zimmerman v. Nickel (Nickel)*, 26 Pa. D. & C. 3d 115, 120, where the court held that "an act or practice need not be deceptive in order to be declared 'unfair.'" The court in *Nickel* looked to *FTC v. Sperry and Hutchinson Co.*, 405 U.S. 233, 244-45 n. 5 (1972), for guidance on what constitutes unfairness.

The OAG is aware of the holding in *Commonwealth v. Golden Gate Nat'l Senior Care LLC (Golden Gate)*, 158 A.3d 203 (Pa. Cmwlth. 2017) where the court did not liberally construe the act and, in so doing, added pleading requirements which the General Assembly did not see fit to include. Specifically, the *Golden Gate* court emphasized the judicial shorthand of "false advertising" and engrafted a requirement of advertising which is not found in section 2(4)(v) of the act (73 P.S. § 201-2(4)(v)). The *Golden Gate* court imported language from section 43(a)(1)(B) of the Lanham Act (15 U.S.C.A. § 1125(a)(1)(B)), which expressly requires "commercial advertising or promotion." The General Assembly did not expressly require commercial advertising in section 2(4)(v) of the act. The *Golden Gate* court relied on the Lanham Act, the construction of which is shaped by the fact that only direct competitors, not consumers, have standing to sue. "Virtually all of the courts that have considered what categories of plaintiffs have standing under § 43(a) have recognized, indeed emphasized, that that section was intended to protect commercial interests." *Guarino v. Sun Co., Inc.*, 819 F.Supp. 405, 407 (D.N.J. 1993), *aff'd sub nom.* See also *Serbin v. Ziebart Int'l Corp., Inc.*, 11 F.3d 1163 (3d Cir. 1993).

The OAG notes *Kelly v. Penguin Putnam, Inc.*, 2000 WL 33711074, at *2 (Pa. Com. Pl. Nov. 29, 2000), which stated "'false advertising' is judicial shorthand for the practice that § 201(2)(4)(v) prohibits: falsely representing the characteristics of goods or services. The resolution of a § 201(2)(4)(v) claim does not depend on any other definition of advertisement." The OAG further notes that the Pennsylvania Supreme Court's affirmation of the elements for section 2(4)(v) of the act as set forth in *DiLucido v. Terminix Int'l, Inc. (DiLucido)*, 450 Pa. Super.

393, 401, 676 A.2d 1237, 1240—41 (1996), and *Com. v. Hush-Tone Indus., Inc. (Hush-Tone)*, 4 Pa. Cmwlth. 1, 21 (1971), is presently controlling authority for section 2(4)(v) of the act. *DiLucido*, 450 Pa. Super. at 1240. *Weinberg v. Sun Co., Inc. (Weinberg)*, 740 A.2d 1152, 1167 (Pa. Super. 1999), *aff'd in part, rev'd in part*, 565 Pa. 612, 777 A.2d 442 (2001) (Supreme Court reversed only as to its holding that reliance is required in a private action under the act). The courts in *DiLucido* and *Hush-Tone* modeled the elements for section 2(4)(v) of the act on FTCA jurisprudence. *Weinberg*, 740 A.2d at 1168; *Hush-Tone*, 4 Pa. Cmwlth. at 21-22.

There must be “some representation.” *FTC v. Patriot Alcohol Testers, Inc.*, 798 F.Supp. 851, 855 (D. Mass. 1992). “Most deception involves written or oral misrepresentations, or omissions of material information. Deception may also occur in other forms of conduct associated with a sales transaction. The entire advertisement, transaction or course of dealing will be considered. The issue is whether the act or practice is likely to mislead, rather than whether it causes actual deception.” *In re Cliffdale Associates, Inc.*, 103 F.T.C. 110, 1984 WL 565319, at *46 (1984). Considering that the Federal Trade Commission standard that is applied to false advertising or any act of representing in the context of section 2(4)(v)—(vii) of the act is consistent with the purpose of protecting the public interest, the OAG determines that this approach is the most appropriate model for the act.

The OAG proposes to codify these rulings and determinations, and to further define what constitutes unfair methods of competition and unfair or deceptive acts or practices under the act which are necessary for the enforcement and administration of the act. Because this proposed rulemaking codifies, in large part, conduct found to be in violation of the so-called catch-all provision of the act and section 5 of the FTCA and because of the compelling nature of the public interest in the remedial quality of the act, this proposed rulemaking, if approved on final-form rulemaking, will apply retroactively to January 1, 2000. This is tempered by the 6-year statute of limitations for private actions under the act. 42 Pa.C.S. § 5527(b) (relating to six year limitation); *Gabriel v. O'Hara*, 368 Pa. Super. 383, 396, 534 A.2d 488, 495 (1987).

The OAG proposes to define “rebate,” “person in interest” and “moneys or property, real or personal” as used in section 4.1 of the act (73 P.S. § 201-4.1). Based on practical experience, the OAG has observed that the payment of rebates do not negate the harm. Therefore, rebates do not constitute a defense to the award of a permanent injunction, payment of costs and restitution, and a civil penalty. The OAG also seeks to clarify the meaning of “person in interest” to reflect that the Commonwealth is not precluded to recover restoration under section 4.1 of the act to resolve confusion regarding the term inherent in *Golden Gate*. The Pennsylvania Supreme Court considered and issued opinions contemporaneously in *Com. v. TAP Pharmaceutical Products (TAP Pharma.)*, 626 Pa. 1, 94 A.3d 350 (2014), and *Meyer v. Cmty. Coll. of Beaver Cty.*, 625 Pa. 563, 568, 93 A.3d 806, 809 (2014) (*Meyer II*). Through these two cases, the Pennsylvania Supreme Court considered whether a governmental entity, namely the Commonwealth, could recover under section 4.1 of the act and whether a governmental entity could be liable under the act. The Pennsylvania Supreme Court held in *TAP Pharma.* that the Commonwealth was likely not harmed by the unfair or deceptive trade practice once rebates were considered and remanded the case back to the Commonwealth Court

to determine whether there was any financial harm to be restored after considering rebates. The Pennsylvania Supreme Court's protracted analysis on the rebate issue, to determine if there were any damages to award, establishes that the Pennsylvania Supreme Court necessarily considered the Commonwealth to be a “person in interest.” Otherwise, the remand would have been for nothing. As *TAP Pharma.* and *Meyer II* are two sides of the same coin, it is clear that the Pennsylvania Supreme Court passed at the opportunity to exclude governmental entities from restoration under section 4.1 of the act which is conclusively implicit in its *TAP Pharma.* holding. This proposed rulemaking clarifies the term to include the Commonwealth.

The OAG also proposes to define “fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding,” “deceptive conduct” and “unfair conduct” in line with the OAG's original arguments to the Pennsylvania Supreme Court that the catchall “was designed to cover generally all unfair and deceptive acts or practices in the conduct of trade or commerce” to which the Pennsylvania Supreme Court unambiguously stated “[w]e agree.” *Com., by Creamer v. Monumental Properties, Inc.*, 459 Pa. 450, 478, 329 A.2d 812, 826 (1974). Moreover, the definitions are in line with the original legislative intent from 1968 “that this package gives Pennsylvania the strongest consumer-protection laws in the States,” *Legislative Journal: House of Representatives*, 1968 Sess. vol. 1, no. 40, at 1231 (July 8, 1968). The Pennsylvania Supreme Court has consistently mandated that the act is to be liberally construed to effect its object of preventing unfair or deceptive practices. *Com., by Creamer v. Monumental Properties, Inc.*, 459 Pa. 450, 460 (Pa. 1974). Because the act is a statute that must be liberally construed to effectuate its objective to prevent unfair or deceptive business practices, the definition of “unfair methods of competition” and “unfair or deceptive acts or practices” as provided in section 2(4) of the act should not be considered exhaustive. See *Blizzard v. Floyd*, 149 Pa. Cmwlth. 503, 505-06, 613 A.2d 619, 621 (Pa. Commw. Ct. 1992). In other words, for a statute that must be liberally construed, a definition of a term and any enumeration therein should not be considered exhaustive. See *Blizzard v. Floyd*, 149 Pa. Cmwlth. 503, 505-06, 613 A.2d 619, 621 (Pa. Cmwlth. Ct. 1992).

The OAG further takes notice of the 1976 amendments to the act which deleted the very restrictive civil investigative demand authority and retained the definition of “documentary material” while granting the OAG rulemaking authority. A principle of statutory construction is to ascertain legislative intent and to give effect to all provisions of a statute. 1 Pa.C.S. § 1921 (relating to legislative intent controls); *Com., Dept. of Environmental Resources v. Butler County Mushroom Farm*, 499 Pa. 509, 513, 454 A.2d 1, 3 (1982); *Hospital Association of Pennsylvania v. MacLeod*, 487 Pa. 516, 524 (1980). Sections 918 and 919 of The Administrative Code of 1929, as supplemented by Section 204(d) of the Commonwealth Attorneys Act (CAA) (71 P.S. § 732-204(d)), authorize the OAG to issue subpoenas to investigate commercial and trade practices and to require the production of documentary material related to those practices. By reading The Administrative Code of 1929 and the act as one since both relate to protecting consumers from detrimental practices in the conduct of trade and commerce, this proposed rulemaking would give effect to the retained definition which is used nowhere else in the act. 1 Pa.C.S. § 1932 (relating to statutes in pari materia); *Com., Dept. of Environmental*

Resources v. Butler County Mushroom Farm, 499 Pa. 509, 517-20 (1982); and *Girard School District v. Pittenger*, 481 Pa. 91, 100 (1978).

The OAG further takes notice of *In re Lorazepam & Clorazepate Antitrust Litigation*, 205 F.R.D. 369, 386 (D.D.C. 2002), for the proposition that the OAG can release consumer claims under the act sounding in antitrust or unfair methods of competition under section 204(c) of the CAA. The Federal court found that the CAA granted the OAG the functional equivalent of parens patriae powers to permit the OAG to represent citizens and to settle and release their claims for violations of State and Federal antitrust law.

The heading of Part V is proposed to be amended to reflect that the OAG administers the consumer affairs program that was once administered by the formerly autonomous Pennsylvania Bureau of Consumer Protection. Consequently, the powers and duties in section 918 of The Administrative Code of 1929 are the powers and duties of the Attorney General under section 204(d) of the CAA. It logically follows that the Attorney General is authorized to investigate practices occurring in trade or commerce under section 918(1) of The Administrative Code of 1929 and to issue subpoenas under section 919(a) of The Administrative Code of 1929, once The Administrative Code of 1929 and the CAA are read together.

“The operative provision of the Unfair Trade Practices and Consumer Protection Law provides: ‘Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce...are hereby declared unlawful.’” *Gabriel v. O’Hara*, 368 Pa. Super. 383, 391, 534 A.2d 488, 492 (1987). The operative provision of the act provides the General Assembly’s basic policy choice which guides this proposed rulemaking. The OAG proposes to amend Chapter 301 and add Chapter 311 to read as set forth in Annex A.

Proposed § 301.2(6) (relating to advertising and sales presentation requirements) requires a motor vehicle dealer to inspect a motor vehicle not more than 30 days prior to the sale of the motor vehicle.

Proposed § 301.4(10) (relating to general provisions—motor vehicle dealer) clarifies that compliance with § 301.2(5) is still required notwithstanding any use of “AS IS” under § 301.4(9).

Proposed § 311.3(a) (relating to general provisions—unfair market trade practices) prohibits all contracts, combinations and conspiracies intended to impose resale price maintenance restraints.

Proposed § 311.3(b) prohibits all contracts, combinations and conspiracies between competitors for the purpose of price-fixing.

Proposed § 311.3(c) prohibits all contracts, combinations and conspiracies between competitors to allocate markets, reduce output or allocate customers.

Proposed § 311.3(d) prohibits all contracts, combinations and conspiracies intended to tie the sale of a commodity or service upon the purchase of another commodity or service.

Proposed § 311.3(e) prohibits all contracts, combinations and conspiracies for the purpose of reciprocal dealings.

Proposed § 311.3(f) prohibits all contracts, combinations and conspiracies to effectuate a group boycott.

Proposed § 311.3(g) prohibits actual monopolization.

Proposed § 311.3(h) prohibits attempted monopolization.

Proposed § 311.3(i) prohibits joint monopolization.

Proposed § 311.3(j) prohibits incipient conspiracies to monopolize.

Proposed § 311.3(k) codifies the holdings in *Ash v. Continental Ins. Co.*, 593 Pa. 523, 530 (2007), and *Com., by Creamer v. Monumental Properties, Inc.*, 459 Pa. 450, 478 (1974), that the general prohibition provision is intended to cover generally all unfair and deceptive acts or practices in the conduct of trade or commerce.

Proposed § 311.4 (relating to misrepresentation) realigns the construction of representing and advertising in line with FTCA jurisprudence and the plain language of the act.

Proposed § 311.5 (relating to catchall) codifies the holdings in *Ash v. Continental Ins. Co.*, 593 Pa. 523, 530 (2007), and *Com., by Creamer v. Monumental Properties, Inc.*, 459 Pa. 450, 478 (1974), that the catchall is to cover generally all unfair and deceptive acts or practices in the conduct of trade or commerce.

Proposed § 311.6 (relating to nonexhaustivity) codifies the holdings in *Ash v. Continental Ins. Co.*, 593 Pa. 523, 530 (2007), and *Com., by Creamer v. Monumental Properties, Inc.*, 459 Pa. 450, 478 (1974), that the general prohibition provision is intended to cover generally all unfair and deceptive acts or practices in the conduct of trade or commerce and that the per se violations, however enumerated, do not limit or otherwise circumscribe the basic policy choice in the general prohibition provision.

Proposed § 311.7 (relating to trade and commerce) codifies the holding in *Com. v. Percudani*, 844 A.2d 35, 48 (Pa. Cmwlth. 2004), as amended (Apr. 7, 2004), *opinion amended on reconsideration*, 851 A.2d 987 (Pa. Cmwlth. 2004), that a buyer-seller relationship is not relevant in the context of the definitions of “trade” and “commerce.”

Proposed § 311.8 (relating to enforcement) implements the inherent investigative function of enforcement to gather documentary material, as defined by the act, and made necessary to satisfy the “reason to believe” standing requirement under section 4 of the act (73 P.S. § 201-4).

Proposed § 311.9 (relating to payment of costs and restitution) reflects the economic reality that the payment of rebates do not reduce the amount to be restored to a person in interest under section 4.1 of the act.

Proposed § 311.10 (relating to direct or indirect recovery) is designed to be in accord with and based on the definitions of “trade” and “commerce” under the act and codify the holding of *TAP Pharma. and Valley Forge Towers South Condominium v. Ron-Ike Foam Insulators, Inc.*, 393 Pa. Super. 339, 574 A.2d 641, 645 (Pa. Super. 1990), *affirmed*, 605 A.2d 798 (Pa. 1992).

Proposed § 311.11 (relating to civil penalty) sets the amount of the civil penalty for a violation of the act within the statutory limit and is to be assessed for each violation in accord with 1 Pa.C.S. § 1930 (relating to penalties for each offense).

Proposed § 311.12 (relating to private action) limits private actions to actual harm.

Proposed § 311.13 (relating to interpretation) interprets section 204(c) of the CAA as providing the functional equivalent of parens patriae authority to settle on behalf of consumers for claims brought under the proposed

regulation and to interpret the powers and duties in The Administrative Code of 1929 as supplemented by the CAA.

Proposed § 311.14 (relating to retroactivity) applies Chapter 311 retroactively to January 1, 2000. Consumer claims are subject to a 6-year statute of limitations under 42 Pa.C.S. § 5527(b).

F. Paperwork

This proposed rulemaking will not increase paperwork and will not create new paperwork requirements.

G. Benefits, Costs and Compliance

Through this proposed rulemaking, consumers will be further protected from unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce by unscrupulous businesses. The clear articulation of the proposed unfair trade practices regulations will make the regulations easier to understand by the public and will facilitate compliance.

This proposed rulemaking will not have adverse fiscal impact on the Commonwealth or its political subdivisions. This proposed rulemaking will not impose new costs on the private sector or the general public.

H. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on December 27, 2017, the OAG 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 Judiciary 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, 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 OAG, the General Assembly and the Governor.

I. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about this proposed rulemaking to the Antitrust Section, Office of Attorney General, Strawberry Square, 14th Floor, Harrisburg, PA 17120 within 30 days after publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted by e-mail to antitrust@attorneygeneral.gov. If an acknowledgement of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt. Electronic comments submitted in any other manner will not be accepted.

J. Public Hearing

The OAG will hold a public hearing for the purpose of accepting comments on this proposed rulemaking at 10 a.m. on February 12, 2018, in the Large Conference Room, 14th Floor, Strawberry Square, Harrisburg, PA 17120.

Individuals wishing to present testimony at the hearing shall, at least 1 week in advance of the hearing, notify Lisa Long, Office of Attorney General, 14th Floor, Strawberry Square, Harrisburg, PA 17120, (717) 787-4530. Oral

testimony will be limited to 10 minutes for each witness. Witnesses shall submit three written copies of statements at the hearing. Each organization shall designate one witness to present testimony on its behalf.

Persons with a disability who wish to attend the hearing and require an auxiliary aid, service or other accommodation to participate should contact Lisa Long at (717) 787-4530 to discuss how their needs may be accommodated.

JOSH SHAPIRO,
Attorney General

Fiscal Note: 59-9. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 37. LAW

**PART V. [BUREAU OF CONSUMER PROTECTION]
OFFICE OF ATTORNEY GENERAL
CHAPTER 301. AUTOMOTIVE INDUSTRY TRADE
PRACTICES**

§ 301.1. Definitions.

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

Advertisement—An oral, written or graphic statement which offers for sale a particular motor vehicle or motor vehicle goods and services or which indicates the availability of a motor vehicle or motor vehicle goods and services, including a statement or representations made in a newspaper, periodical, pamphlet, circular, other publication or on radio or television; contained in a notice, handbill, sign, billboard, poster, bill, catalog or letter; **placed on a web site, in a mobile application, on a social media outlet or on any other electronic platform**; or printed on or contained in a tag or label which is attached to merchandise.

* * * * *

§ 301.2. Advertising and sales presentation requirements.

With respect to an advertisement or sales presentation offering or making available for sale a new or used motor vehicle or maintenance service or repair on a new or used motor vehicle, the following will be considered unfair methods of competition and unfair or deceptive acts or practices:

* * * * *

(5) The representation in an advertisement or sales presentation that a motor vehicle or motor vehicle goods or services are of a particular style, model, standard, quality or grade if they are of another or if the representation conflicts with a written notice or disclosure required under this chapter. For the purposes of this chapter, a motor vehicle which is offered for sale is represented to be roadworthy, and the advertiser or seller shall disclose **in writing** prior to sale the following conditions if the advertiser or seller knows or should know that the conditions exist in the motor vehicle:

- (i) Frame bent, cracked or twisted.
- (ii) Engine block or head cracked.
- (iii) Vehicle unable to pass State inspection.
- (iv) Transmission damaged, defective or so deteriorated as to require replacement.
- (v) Vehicle flood damaged.

(vi) Differential damaged, defective or so deteriorated as to require replacement.

(6) A motor vehicle dealer or advertiser may not offer a motor vehicle for sale unless a certified inspection mechanic designated by the motor vehicle dealer has inspected the motor vehicle in accordance with 67 Pa. Code Chapter 175 (relating to vehicle equipment and inspection). The inspection may not occur more than 30 days prior to the sale of the motor vehicle by the motor vehicle dealer.

[(6)] (7) The making of a representation or statement of a fact in an advertisement or sales presentation if the advertiser or salesperson knows or should know that the representation or statement is false and misleading or if the advertiser or salesperson does not have sufficient information upon which a reasonable belief in the truth of the representation could be based.

[(7)] (8) The advertising by a motor vehicle dealer or repair shop of a motor vehicle for sale or of a motor vehicle repair or maintenance service in which the advertisement does not disclose the business name and address of the advertiser or the word "dealer."

[(8)] (9) The advertising by a motor vehicle dealer or repair shop of the price or specific dollar amount of a motor vehicle or motor vehicle repair or maintenance service unless the price includes charges of any type which are necessary or usual prior to delivery of the vehicle or service to a purchaser, including but not limited to charges for freight, handling and vehicle preparation but excluding taxes and registration and licensing costs in the case of a new or used motor vehicle and including all parts and labor in the case of motor vehicle service. If a manufacturer advertises the price of a new motor vehicle and the name of a specific motor vehicle dealer is mentioned in the advertisement, the advertised price shall include charges for freight, handling and dealer preparation which charges are necessary or usual prior to delivery of the vehicle to a purchaser by the named motor vehicle dealer.

[(9)] (10) The advertising by a motor vehicle dealer of a motor vehicle for sale at a specified price if the price does not include equipment with which the models of motor vehicles are minimally equipped by the manufacturer unless the advertisement clearly and conspicuously discloses that the equipment is not included in the advertised price.

[(10)] (11) The use, by a motor vehicle dealer or manufacturer in an advertisement for the sale of motor vehicles, of such terms as "standard factory equipment" or "fully equipped" or words of similar meaning; except that an advertiser is not prohibited from identifying certain specified equipment as standard factory equipment if such is in fact true.

[(11)] (12) The advertising by a motor vehicle dealer or manufacturer of a motor vehicle for sale in which the year, make, model and series, if the advertised motor vehicle has a designated model or series, are not clearly disclosed.

[(12)] (13) The advertising by a motor vehicle manufacturer, dealer or repair shop in which the advertisement states directly or by implication that the price of the motor vehicle or motor vehicle maintenance or repairs advertised is a reduction from the usual price, including but not limited to those advertisements which contain

either a specific dollar amount of reduction or a percentage of reduction from usual selling price, unless the price from which a reduction is indicated is the usual price at which the advertised goods or services, or both, have been sold or offered for sale. For the purposes of this paragraph, the terms "sale," "discount," "price cut," "special," "savings," and other similar words or phrases shall be deemed to indicate a price reduction advertisement.

[(13)] (14) The advertising by a motor vehicle manufacturer, dealer or repair shop of a price reduction in the sale of a motor vehicle or motor vehicle maintenance or repair services unless the advertised sale price constitutes a bona fide substantial reduction from the usual selling price or the advertisement discloses the actual dollar amount of reduction or percentage of reduction.

[(14)] (15) The advertising by a motor vehicle manufacturer, dealer or repair shop of a price reduction in the cost of motor vehicles or motor vehicle maintenance or repair services for which the manufacturer, dealer or shop in whose name the advertisement is placed does not maintain records necessary to establish the usual selling price of the motor vehicles, goods or services upon which the price reduction is advertised. The records shall be maintained for a period of 60 days following the termination of the offer and shall be made available for inspection by the Bureau upon demand during business hours. The failure of a manufacturer, dealer or repair shop to substantiate the usual selling price through documentation shall constitute a presumption that the price reduction advertisement was not predicated upon a reduction from the usual selling price and that the claimed reduction was neither substantial nor bona fide as required in paragraph [(13)] (14).

[(15)] (16) The use, by a motor vehicle dealer in an advertisement for the sale of motor vehicles of such terms as "at wholesale" or other similar phrases.

[(16)] (17) The advertising by a motor vehicle dealer or repair shop of the immediate availability of a new motor vehicle or motor vehicle goods and services with the intent not to supply reasonably expectable public demand unless the advertisement discloses a specific limitation of quantity.

[(17)] (18) The advertising by a motor vehicle dealer of a specific motor vehicle offered for sale where no advertised vehicle is in the stock of the advertiser on the date of placing the advertisement unless the advertisement states "Not in Stock" or "Order Yours Now" or other phrases of similar import which will clearly indicate that the vehicles are not available for immediate delivery and the period of time in which delivery will be made.

[(18)] (19) The advertising by a motor vehicle manufacturer, dealer or repair shop of a sale or promotion in connection with the sale of a motor vehicle or motor vehicle maintenance or repair services unless the advertisement clearly and conspicuously discloses the expiration date, if any, and other conditions of the sale or promotion, including but not limited to whether the supply of vehicles or other sale goods is limited and, if so, in what manner.

[(19)] (20) The advertising or presenting for sale by a motor vehicle dealer of a motor vehicle previously used as an "executive" or "demonstrator", or with any prior usage which is required to be noted on a Pennsylvania Certificate of Title or which appears on the title of a state

through which the dealer has acquired ownership unless the advertiser or salesperson clearly and conspicuously discloses the prior usage.

[(20)] (21) The advertising by a motor vehicle dealer of a motor vehicle for sale at a price or price comparison which represents less than the total cash price to be paid by a retail purchaser unless the advertisement clearly and conspicuously discloses that the price is offered with reference to a trade-in or other method of price reduction and discloses the amount of such allowance. A set-off, discount, trade-in allowance, or other price reduction shall be shown as a specific dollar reduction from the advertised price required in this paragraph and shall be incorporated with the advertised price.

[(21)] (22) The advertising by a motor vehicle dealer of the price which will be paid by the dealer for trade-in vehicles unless the price of the motor vehicles offered for sale by the dealer to the owner of a trade-in vehicle is within the range of prices at which the dealer usually sells the vehicles and is not increased because of the amount offered for the trade-in vehicle.

[(22)] (23) The advertising by a motor vehicle dealer of a specific price to be paid by the dealer for trade-in vehicles unless either the advertised price will be paid for trade-in vehicles, regardless of their condition or age or unless the advertisement clearly and conspicuously discloses conditions which trade-in vehicles shall meet before the price is paid.

[(23)] (24) The advertising by a motor vehicle dealer that a range of prices, such as, "up to \$700" or "as much as \$700," will be paid by the dealer for trade-in vehicles unless the advertisement clearly and conspicuously discloses the criteria which the dealer uses to determine the amount to be paid for a particular vehicle.

[(24)] (25) The advertising or presenting for sale by a motor vehicle manufacturer, dealer or repair shop in which a warranty or guaranty is referred to or offered unless the manufacturer, dealer or repair shop complies with all requirements of the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act (15 U.S.C.A. §§ 2301—2312) and 16 CFR Parts 700—703 (relating to rules, regulations, statements and interpretations under the Magnuson-Moss Warranty Act).

[(25)] (26) The use in an advertisement or sales presentation by a motor vehicle manufacturer, dealer or repair shop of the term "satisfaction guaranteed or your money back," "free trial period," or other similar phrases when the advertiser or salesperson does not intend to promptly make a full refund or fails to make full refund within a reasonable period of time not to exceed 5 days. A reasonable conditions or limitations on such offer must be clearly and conspicuously disclosed at the time of making the offer.

[(26)] (27) The advertising by a motor vehicle dealer or repair shop that it will perform a "tune-up" on a motor vehicle unless the specific work to be performed is set forth and, if a price is advertised, unless the advertisement clearly and conspicuously discloses whether the advertised price includes parts or labor, or both.

§ 301.4. General provisions—motor vehicle dealer.

(a) With regard to a motor vehicle dealer, the following will be considered unfair methods of competition and unfair or deceptive acts or practices:

* * * * *

(9) Where no express warranty is given, attempting to exclude the implied warranties of merchantability and fitness for a particular purpose in the sale of a motor vehicle purchased primarily for personal, family or household purposes unless the following notice in at least 20-point bold type is prominently affixed to a window in the motor vehicle so as to be easily read from the outside and is brought to the attention of the prospective purchaser by the seller:

This vehicle is sold *without* any warranty. The purchaser will bear the *entire expense* of repairing or correcting any defects that presently exist and/or may occur in the motor vehicle unless the salesperson promises *in writing* to correct such defect or promises *in writing* that certain defects do not exist.

This paragraph prohibits the use of the term "AS IS" unless the sales contract, receipt, agreement or memorandum contains the following information in a clear, concise and conspicuous manner on the face of the document; the notice shall be in addition to the window statement required by this paragraph and may not contradict an oral or written statement, claim or representation made directly or by implication with regard to the quality, performance, reliability or lack of mechanical defects of a motor vehicle which is offered for sale:

AS IS

THIS MOTOR VEHICLE IS SOLD AS IS *WITHOUT ANY WARRANTY* EITHER EXPRESSED OR IMPLIED. THE PURCHASER WILL BEAR THE *ENTIRE EXPENSE* OF REPAIRING OR CORRECTING ANY DEFECTS THAT PRESENTLY EXIST OR THAT MAY OCCUR IN THE VEHICLE.

(10) When a motor vehicle is not roadworthy at the time the motor vehicle is offered for sale, using the term "AS IS" as set forth in this section does not satisfy the written disclosure requirement in § 301.2(5) (relating to advertising and sales presentation requirements).

[(10)] (11) Failing to forward to the proper Commonwealth agency amounts and forms tendered by a purchaser, such as sales tax and transfer and registration fees, within the time prescribed by law.

(b) If the sales presentation and agreement of sale has been effected in a language other than English, the written information, notice and disclosures required by subsection (a) shall be given in the principal language in which the sale was transacted as well as English.

(Editor's Note: The following chapter is proposed to be added and printed in regular type to enhance readability.)

CHAPTER 311. UNFAIR MARKET TRADE PRACTICES

Sec.	
311.1.	Scope.
311.2.	Definitions.
311.3.	General provisions—unfair market trade practices.
311.4.	Misrepresentation.
311.5.	Catchall.
311.6.	Nonexhaustivity.
311.7.	Trade and commerce.
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311.10.	Direct or indirect recovery.
311.11.	Civil penalty.
311.12.	Private action.
311.13.	Interpretation.
311.14.	Retroactivity.
311.15.	Waiver of rights.

§ 311.1. Scope.

This chapter establishes what are determined to be unfair methods of competition and unfair or deceptive acts or practices by a person engaged in trade or commerce, but may not be interpreted to limit the power of the Attorney General to determine that another practice is unlawful under the act.

§ 311.2. Definitions.

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

Act—Unfair Trade Practices and Consumer Protection Law (73 P.S. §§ 201-1—201-9.3).

Commodity—Real or personal property, or any other thing of value that is bought, leased or sold.

Communication—Every manner or means of disclosure, transfer or exchange, and every disclosure, transfer or exchange of ideas or information, whether orally, by document or electronically, or whether face to face, by telephone, mail, personal delivery, electronic transmission or otherwise.

Deceptive conduct—A method, act or practice including that which has the capacity or tendency to deceive.

Designee—An authorized deputy attorney general of the Office of Attorney General.

Documentary material—The original or a copy of designated documents, including writings, drawings, graphs, charts, photographs, electronically-created data and other compilations of data, in addition to the term as defined in section 2 of the act (73 P.S. § 201-2).

Market structure—The interrelationship of sellers and buyers at all levels of distribution of a commodity or service including manufacturers, suppliers, distributors, wholesalers and retailers.

Marketing—Process or technique of promoting, selling and distributing a commodity or service.

Person—The term as defined in section 2 of the act.

Puffery—Boastful claim which is:

(i) Transmitted or otherwise published over television, radio or Internet as a paid advertisement intended for mass distribution.

(ii) Expressly conveyed as not intended to be information material to a transaction decision.

(iii) Understood by the target audience as not intended to be information material to a transaction decision.

(iv) Characterized by broad, vague and commendatory language in the form of an opinion regarding a commodity or service as distinguished from claims asserting levels of service or measurable attributes of commodities.

Rebate—A partial refund of the cost of a commodity or service to incentivize the sale of that commodity or service.

Service—

(i) An activity, not covered by the definition of “commodity,” which is performed in whole or in part for the purpose of financial gain.

(ii) The term does not include labor performed by natural persons as employees of others.

Trade and commerce—The term as defined in section 2 of the act.

Transaction—The exchange or transfer of a commodity or service.

Unfair conduct—A method, act or practice, without necessarily having been previously considered unlawful, which violates public policy as established by any statute, common law, or otherwise within at least the penumbra of any common law, statutory, or other established concept of unfairness; or which causes substantial injury to a victim.

§ 311.3. General provisions—unfair market trade practices.

With respect to a person engaged in trade or commerce, all of the following are considered unfair methods of competition and unfair or deceptive acts or practices:

(1) A contract, combination or conspiracy between two or more persons at different levels of market structure to fix minimum prices for a commodity or service at one or more levels of market structure.

(2) A contract, combination or conspiracy between two or more persons at the same level of market structure to fix or otherwise stabilize prices for a commodity or service.

(3) A contract, combination or conspiracy between two or more persons at the same level of market structure to allocate marketing territories, to reduce output of commodities and services, or to allocate customers to whom commodities and services are, has been or will be marketed.

(4) A contract, combination or conspiracy between two or more persons to condition or to have the effect of conditioning the sale of one commodity or service upon the purchase of another commodity or service.

(5) A contract, combination or conspiracy between two or more persons when the sale of a commodity or service is conditioned upon the seller’s purchase of commodities or services produced or performed by the buyer.

(6) A contract, combination or conspiracy between two or more persons at the same level of market structure to persuade or to coerce suppliers or customers to refuse to deal with another person.

(7) Actual monopolization, in which a person acquires or retains actual monopoly power through competitively unreasonable practices.

(8) Attempted monopolization, in which a person not yet in possession of actual monopoly power, purposefully engages in competitively unreasonable practices that create a dangerous probability of monopoly power being achieved.

(9) Joint monopolization, in which two or more persons conspire to jointly retain or acquire monopoly power, when actual monopoly power is achieved through competitively unreasonable practices.

(10) Incipient conspiracies to monopolize, in which two or more persons not yet in possession of monopoly power, conspire to seize monopoly control of a market but where monopoly power has not yet actually been achieved.

(11) Any other unfair or deceptive conduct.

§ 311.4. Misrepresentation.

Under section 2(4) of the act (73 P.S. § 201-2(4)):

(1) “Representing” includes any communication which conveys an impression of a purported fact, excluding puffery, whether expressed, implied, omitted or otherwise concealed, which actually deceives or has a capacity or

tendency to deceive a substantial segment of its audience, and which is likely to make a difference in a transaction decision.

(2) "Advertising" includes any marketing communication which conveys an impression of a purported fact, excluding puffery, whether expressed, implied, omitted or otherwise concealed, which actually deceives or has a capacity or tendency to deceive a substantial segment of its audience, and which is likely to make a difference in a transaction decision.

§ 311.5. Catchall.

Under section 2(4) of the act (73 P.S. § 201-2(4)), "fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding" includes unfair or deceptive conduct.

§ 311.6. Nonexhaustivity.

Under section 2(4) of the act (73 P.S. § 201-2(4)), "unfair methods of competition and unfair or deceptive acts or practices" and any enumeration therein may not be construed to be exhaustive.

§ 311.7. Trade and commerce.

Under section 3 of the act (73 P.S. § 201-3):

(1) The role of a person as a buyer, seller or third party is not dispositive as to whether a transaction itself constitutes trade and commerce.

(2) "Trade" and "commerce" include, without exception, all classes of transactions involving any commodity or service.

§ 311.8. Enforcement.

Whenever the Attorney General requires documentary material to determine whether there is reason to believe that a person is using or about to use any method, act or practice declared unlawful under the act and determines it would be in the public interest, the Attorney General may authorize a designee to require the attendance and testimony of witnesses and the production of documentary material. For this purpose under section 919 of The Administrative Code of 1929 (71 P.S. § 307-3), a designee may:

(1) Issue subpoenas, examine witnesses and receive evidence necessary for all actions within the authority of the Attorney General under the act.

(2) Use the documentary material or copies thereof as the designee determines necessary in the enforcement of the act,

(i) Sharing the documentary material with any State or Federal agency, or with any person or entity that may be assisting in the investigation or prosecution of the subject matter of the subpoena.

(ii) Presenting the documentary material before any court.

(3) Invoke the aid of the Commonwealth Court or a court of record of this Commonwealth, in case of disobedience of a subpoena or the contumacy of a witness appearing before the Attorney General or a designee, to require the person subpoenaed to obey the subpoena or to give evidence or to produce documentary material relative to the matter in question.

§ 311.9. Payment of costs and restitution.

(a) If the court finds that the defendant or defendants are in violation of section 3 of the act (73 P.S. § 201-3), the payment of a rebate by the defendant or defendants

to a person in interest does not constitute a defense to the imposition of a permanent injunction or to the restoration of moneys or property, real or personal, to the person of interest under section 4.1 of the act (73 P.S. § 201-4.1).

(b) Under section 4.1 of the act:

(1) "Person in interest" includes a person, the Commonwealth, a Commonwealth agency, municipal authority or political subdivision.

(2) "Moneys or property, real or personal" includes something of value including restitution, disgorgement, attorneys' fees, expert fees, investigation and litigation costs, and court costs.

§ 311.10. Direct or indirect recovery.

(a) If the court orders payment of restitution and costs under section 4.1 of the act (73 P.S. § 201-4.1) or damages under section 9.2 of the act (73 P.S. § 201-9.2), the defendant or defendants shall restore to any person in interest any moneys or property, real or personal, which may have been acquired by means of any violation of the act, regardless of whether the person in interest dealt directly or indirectly with the defendant or defendants.

(b) Under section 9.2 of the act:

(1) "Ascertainable loss" means any loss which is quantifiable but not speculative.

(2) "As a result of" means cause-in-fact or but-for theory of causation, excluding any requirement under any reliance theory under common law fraud.

§ 311.11. Civil penalty.

(a) If the court finds that a person is willfully using or has willfully used a method, act or practice declared unlawful by section 3 of the act (73 P.S. § 201-3):

(1) The person will be assessed no less than \$1,000 for each violation.

(2) When the victim of the willful use of the method, act or practice is 60 years of age or older, the person will be assessed no less than \$3,000 for each violation.

(b) The Attorney General or the appropriate District Attorney, acting in the name of the Commonwealth of Pennsylvania, is vested with discretion under section 8(a) of the act (73 P.S. § 201-8(a)) to exercise the right to recover a civil penalty.

(c) A payment of a rebate to a victim of the willful use of a method, act or practice declared unlawful by section 3 of the act does not constitute a defense to an award of a civil penalty.

(d) An award of civil penalty shall be in addition to other relief which may be granted under sections 4 and 4.1 of the act (73 P.S. §§ 201-4 and 204-4.1).

§ 311.12. Private action.

A private plaintiff proceeding under section 9.2 of the act (73 P.S. § 201-9.2) shall prove actual harm, excluding any incipient, attempted or threatened harm.

§ 311.13. Interpretation.

(a) The act shall be liberally construed.

(b) The independent clause in the first sentence of section 3 of the act (73 P.S. § 201-3) shall be construed to be the general prohibition provision which covers all claims of unfair methods of competition and unfair or deceptive acts or practices, except as provided in the second sentence of section 3 of the act, and shall be in addition to and not circumscribed by the per se provisions in subsection (c).

(c) The definitions and regulations cited in the participle phrase in the middle of the independent clause of the first sentence of section 3 of the act shall be construed to be per se violations of the general prohibition provision in subsection (b).

(d) The Office of Attorney General may settle and release claims brought under § 311.3 (relating to general provisions—unfair market trade practices) under section 204(c) of the Commonwealth Attorneys Act (71 P.S. § 732-204(c)) on behalf of consumers.

(e) The powers and duties in section 918 of The Administrative Code of 1929 (71 P.S. § 307-2) are the powers and duties of the Attorney General under section 204(d) of the Commonwealth Attorneys Act.

(f) The Attorney General may delegate in whole or in part the powers and duties in section 918 of The Administrative Code of 1929 to any deputy including the director of the Bureau of Consumer Protection under section 201(c) of the Commonwealth Attorneys Act (71 P.S. § 732-201(c)).

(g) The Attorney General is authorized to enforce and to bring civil actions or other proceedings, under statute or common law, including the act, State antitrust law, Federal antitrust laws, the Steel Products Procurement Act (73 P.S. §§ 1881—1887) and the Institutions of Purely Public Charity Act (10 P.S. §§ 371—385), which are among other acts as may be incidental to the exercise of the powers and functions of the Attorney General under section 918(3) of The Administrative Code of 1929.

(h) The Attorney General is authorized to investigate practices occurring in trade or commerce under section 918(1) of The Administrative Code of 1929 and to issue subpoenas under section 919(a) of The Administrative Code of 1929 (71 P.S. § 307-3(a)).

(i) The Attorney General may share documentary material with any State or Federal agency, or with any person or entity that may be assisting in the investigation or prosecution of the subject matter of the subpoena and may present documentary material before any court as the Attorney General or a designee of the Attorney General determines necessary for the enforcement of laws under which the Attorney General has standing under sections 918(3) and 919(b) of The Administrative Code of 1929.

§ 311.14. Retroactivity.

This chapter takes effect on _____ (*Editor's Note:* The blank refers to the effective date of adoption of this proposed rulemaking.) and is retroactive to January 1, 2000.

§ 311.15. Waiver of rights.

A waiver of this chapter by a person prior to or at the time of a commission of a violation of § 311.3 (relating to general provisions—unfair market trade practices) or any other section of this chapter is contrary to public policy and is void. An attempt by any person to have another waive his rights under this chapter will be deemed to be a violation of the act.

[Pa.B. Doc. No. 18-58. Filed for public inspection January 12, 2018, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 53]

[L-2012-2317273]

Use of Fully Projected Future Test Year; Advanced Notice of Proposed Rulemaking

Public Meeting held
December 21, 2017

Commissioners Present: Gladys M. Brown, Chairperson;
Andrew G. Place, Vice Chairperson; Norman J. Ken-
nard; John F. Coleman, Jr.; David W. Sweet

*Use of Fully Projected Future Test Year—52 Pa. Code
Chapter 53; L-2012-2317273*

Advance Notice of Proposed Rulemaking Order

By the Commission:

This advance notice of proposed rulemaking (ANOPR) identifies proposed procedures and filing requirements for use of a fully projected future test year (FPFTY) by eligible utilities in base rate cases. Any new FPFTY procedures and filing requirements, if adopted, would comprise a new Exhibit E Fully Projected Future Test Year—All Jurisdictional Public Utilities and Other Regulated Entities Electing To Use a Fully Projected Future Test Year (FPFTY) Except Communications Utilities to Section 53.53 of Title 52 of the Pennsylvania Code. The Commission has jurisdiction to employ the concept of a FPFTY as authorized by Act 11 of 2012, which amended Section 315 of the Public Utility Code.

Additionally, this advance notice requests stakeholder input on proposed or alternative updates, as well as stakeholder suggestions for updates or alternatives, to the existing Exhibits A (generally natural gas), C (electric), and D (water and waste water) or other sections of the filing requirement regulations related to Sections 53.51—53.56 Information Furnished with the Filing of Rate Changes.

The Commission will convene a stakeholder meeting to review the comments regarding the ANOPR. Thereafter, the Commission intends to initiate a proposed rulemaking regarding FPFTY procedures and filing requirements and may convene additional stakeholder meetings to gather further input from stakeholders.

Background

On February 14, 2012, Governor Corbett signed into law Act 11 of 2012 (Act 11), which amended Chapters 3, 13, and 33 of the Pennsylvania Public Utility Code (Code). 66 Pa.C.S. §§ 308, 1307, 1311, 1327, and 1350—1360. Act 11, inter alia, authorizes water and wastewater utilities, electric distribution companies (EDCs), and natural gas distribution companies (NGDCs) or a city natural gas distribution operation to use a FPFTY in their Section 1308(d) base rate proceedings. See 66 Pa.C.S. § 1308(d) (relating to voluntary changes in rates). A new Exhibit E is contemplated for applicability to utilities choosing to use a FPFTY. The new Exhibit E would standardize the procedures and filing requirements for rate case data across the utility categories. Changes are being proposed to the introductory and explanatory text in Section 53.53(a)—(c), and a new section 53.53(d) is proposed.

The FPFTY is a ratemaking mechanism that allows a utility to project capital investment and correspondingly

to include that projected investment in the utility's claimed revenue requirement throughout the twelve-month period beginning with the first month that the new rates would be placed in effect. 66 Pa.C.S. §§ 315, 1350—1360; *Pa. Public Utility Commission v. Columbia Gas of PA Inc.*, Docket No. R-2012-2321748, 2013 WL 2420877 (Pa. PUC). A public utility can also use the FPPTY mechanism to project other revenue requirement and ratemaking components such as operating revenues, operating expenses, depreciation, interest expense, taxes, and return.

Act 11 additionally allows eligible water, wastewater, gas, and electric utilities to petition the Commission for approval of a distribution system improvement charge (DSIC) to recover the reasonable and prudently incurred costs related to the repair, improvement, and replacement of utility infrastructure. In conjunction with a DSIC, the utilities must file a long-term infrastructure improvement plan (LTIIP) which is a necessary component of a DSIC petition. 66 Pa.C.S. § 1353(b)(3). The purpose of a LTIIP is to ensure that utilities are planning and executing capital expenditures that will maintain and improve the efficiency, safety, adequacy, and reliability of existing distribution infrastructure at a faster pace than they have done historically. Water utilities with a previously-approved DSIC are not required to file a LTIIP unless otherwise directed by the Commission. See 66 Pa.C.S. § 1360. Further, Section 1356 of Act 11, 66 Pa.C.S. § 1356, requires a utility with an approved DSIC to file an Annual Asset Optimization Plan (AAO Plan). An AAO Plan is intended to provide the Commission and the public with an overall status report regarding a utility's progress in making infrastructure improvements pursuant to its Commission-approved LTIIP. See Review of LTIIP, Docket No. 2012-2317274 (May 23, 3014), establishing regulations at 52 Pa. Code §§ 121.1—121.8 (relating to LTIIPs).

We have addressed policy and tariff issues related to DSICs at Implementation of Act 11: DSIC, Docket No. M-2012-2293611. The purpose of this ANOPR is to solicit comments and input on the procedures and filing requirements for utilities that use a FPPTY.

Discussion

A. New Exhibit E Specifically Referencing FPPTY Requirements

Existing regulations for Section 1308 rate cases are set forth, in part, at Section 53.53 of our regulations, 52 Pa. Code § 53.53.¹ Exhibit A to that section addresses, inter alia, gas utilities. Exhibit C addresses electric utilities. Exhibit D addresses water and wastewater utilities. These three exhibits provide the initial requirements and framework for the provision of utility data in support of rate cases using historic and future test years. No changes are contemplated to Exhibits A, C, or D.²

The term “historic test year” (HTY) as currently used in Exhibits A, C, and D refers to:

[T]he test year chosen by the utility to support its filing, that is, presumably future test year data would be supplied in most cases. “Historic test year,” as referred to in Exhibit D, is defined as book figures for

¹ The provisions of Section 53.53 were adopted September 2, 1977, 7 Pa.B. 2527; amended through March 29, 1985, effective for rate increase requests filed on and after July 1, 1985. Those utilities meeting the filing requirements in the new regulations were permitted, upon request, to file under the new regulations at an earlier date, 15 Pa.B. 1178; amended October 23, 1987, effective November 23, 1987, 17 Pa.B. 4221; corrected May 13, 1994, effective December 3, 1983, 24 Pa.B. 2533; amended May 20, 2005, effective May 21, 2005, 35 Pa.B. 3024.

² Exhibit B is not at issue either as it refers to communications utilities, which are not affected by Act 11.

the base test year. The term “future test year.”(FTY)] as used in Exhibit D, refers to the adjusted historic test year for known and measurable changes 12 months beyond the book figures for the base year, or the utility's final claimed supporting data.

52 Pa. Code § 53.53(b) (last amended effective May 21, 2005, see 35 Pa.B. 3024). To the extent not otherwise indicated, the requirements of Exhibits A, B, C, and D are to be preserved relative to cases in which a utility is not using a FPPTY. A utility using a FPPTY would be required to provide the data and support required if using a HTY or a FTY in conjunction with providing the FPPTY data and support as indicated in the proposed Exhibit E. HTY and FTY data and support would not be submitted as separate components but rather submitted in proximity and association with the data and support relative to the FPPTY data.

We note that there are several points of divergence between the data and support required in the existing Exhibits A, C, and D for the various utility categories. Some of these differences would be preserved in a new Exhibit E. Some, however, seem to serve no particular purpose and will be proposed for deletion. A new Exhibit E would therefore, also, standardize many of the procedures and filing requirements for rate case data among the eligible utility categories while spelling out instances where differences will continue.

Changes would also be necessary to the introductory and explanatory text in Section 53.53(a)—(c), and a new section 53.53(d) would be proposed.

Thus, we anticipate proposing, in a future rulemaking, to establish a new exhibit, Exhibit E, for any utility which is eligible to use and which elects to use a FPPTY. The new Exhibit E would standardize the procedures and filing requirements for rate case data among the utility categories. By statute, “fully projected future test year” is defined as the 12-month period beginning with the first month that the new rates will be placed in effect after application of the full suspension period permitted under section 1308(d) (relating to voluntary changes in rates). Thus, the term “test year,” as used in Exhibit E, would refer to the FPPTY.

Based upon these considerations, the following changes to Section 53.53 and incorporation of a new Exhibit E are contemplated:

- *Section 53.53(a) & (b)*—Information to be furnished with proposed general rate increase filing in excess of \$1 million.

We would add a notation referring to the new “Exhibit E—all utilities electing Fully Projected Future Test Year (FPPTY),” to distinguish the differences in definitions of terms used in Exhibits A—D and in Exhibit E, and to define “FPPTY.”

- *Section 53.53, Exhibit E*—Fully Projected Future Test Year—All Jurisdictional Public Utilities and Other Regulated Entities Electing To Use A Fully Projected Future Test Year (FPPTY)—Except Communications Utilities.

Subsection I. We would add a definitions section for use in FPPTY filings.

Subsection II. We would add a general filings requirements section that delineates the following:

- A. Summary of the Filing.
- B. Description of Utility Operations.
- C. Rate Base.

- D. Rate of Return (ROR).
- E. Balance Sheet.
- F. Income Statement and Statement of Cash Flow.
- G. Operating Revenue.
- H. Operating Expenses.
- I. Employee Costs, including Related Costs such as Benefits and Retiree Costs.
- J. Depreciation.
- K. Taxes.
- L. Long Term Infrastructure Improvement Plan (LTIIP) and Annual Asset Optimization Plan (AAO Plan)
- M. Industry-specific data.

We are particularly interested in comments regarding existing data production requirements that exist in Exhibits A, C, and D but which are not contemplated herein for retention in a new Exhibit E. We also request stakeholders to comment on data productions requirements that could be added to Exhibit E to enhance decision making in cases involving FPFTY considerations. Further, we request comments on how much historical and current data should be covered by the various requests.

B. *Additional Section 53.53 Matters*

The contemplated new Exhibit E addresses data to be provided with the filing. To the extent that there are non-discovery questions related to use of a FPFTY that should be addressed in regulations, we shall address those matters in a new Subsection 53.53(d). Stakeholders are invited to comment on those issues and contemplated resolutions.

C. *Housekeeping Updates to Existing Regulations*

1. *52 Pa. Code § 5.423*—Section 5.423 is referenced in Exhibit D (water and wastewater), Section VII.25. Section 5.324 has, however, been replaced by 52 Pa. Code § 5.365 (relating to orders to limit availability of proprietary information), effective September 21, 2013, 43 Pa.B. 5593. We would update the cross reference.

2. *52 Pa. Code § 53.51(d)*—Section 53.51(d) provides that utilities filing for proposed rate changes shall serve a copy of the proposed rate changes and supporting data on the Office of Consumer Advocate (OCA). We would revise this provision consistent with the Commission's e-service procedures and to direct that the Office of Small Business Advocate (OSBA) and the Commission's Bureau of Investigation and Enforcement (I&E) also be served.

3. *52 Pa. Code § 53.52(a)*—Section 53.52(a)(7) uses the term "subsection" to refer to itself, and Section 53.52(a)(8) uses "paragraph" to refer to itself. We would use "paragraph" for both internal references.

4. *52 Pa. Code §§ 53.51—53.56*—We invite comments on any other provisions Sections 53.51—53.56 that would require similar updates.

D. *Comments Invited*

We invite interested parties to file comments on the anticipated changes to be proposed in a future rulemaking. Stakeholders are invited to identify other substantive, procedural, and housekeeping matters related to FPFTY rate case filings related to electric, water, wastewater, and natural gas.

Stakeholders are also invited to comment on the applicability of FPFTY regulations to municipal utilities subject to Commission jurisdiction.

E. *Stakeholder Meetings For The ANOPR*

We shall convene a stakeholder meeting within thirty (30) days of receipt of the comments regarding the ANOPR. Thereafter, we shall determine if further stakeholder meetings would be beneficial, and we will set an appropriate schedule accordingly. The Law Bureau, in consultation with the other Commission bureaus and offices and based on the stakeholder input from the ANOPR process, will prepare a recommendation regarding the FPFTY NOPR.

F. *NOPR*

Based on the staff recommendation, we shall commence a proposed rulemaking with a FPFTY proposal. We shall publish the NOPR and proposed procedures and filing requirements and establish comment and reply comment periods. We will schedule stakeholder meetings as appropriate.

Conclusion

Accordingly, under sections 501, 1350—1360 and 1501 of the Public Utility Code, 66 Pa.C.S. §§ 501, 1350—1360, and 1501 and the Commonwealth Documents Law, Act of July 31, 1968, P.L. 769, as amended, 45 P.S. §§ 1201, et seq., and the regulations promulgated thereunder, at 1 Pa. Code §§ 7.1—7.4, we contemplate adopting new regulations at 52 Pa. Code § 53.53 as set forth in Annex A. As noted herein, comments on the ANOPR are requested within 45 days of publication; *Therefore,*

It Is Ordered That:

1. Interested parties are requested to comment on this advance notice of proposed rulemaking regarding the procedures and filing requirements for utilities using a fully projected future test year, as set forth in Annex A.

2. The Law Bureau shall deposit this Order and Annex A with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*.

3. An original copy of any comments referencing the docket number of the proposed regulations set out in Annex A to this Order, be submitted within 45 days of publication in the *Pennsylvania Bulletin*, to Secretary Rosemary Chiavetta, Pennsylvania Public Utility Commission, 400 North Street, Harrisburg, PA 17120. Comments may be e-filed instead consistent with the Commission's e-filing instructions at: <http://www.puc.pa.gov/efiling/default.aspx>.

4. Electronic copies in Microsoft Word®-compatible format of all filings shall be provided via email to following Commission email account: RA-PC-FPFTY2317273E@pa.gov.

5. The contact person regarding legal issues for this rulemaking is Assistant Counsel Louise Fink Smith, Law Bureau, finksmith@pa.gov. The contact person for technical issues is Erin Laudenslager, Bureau of Technical Utility Services, elaudensla@pa.gov. Alternate formats of this document are available for persons with disabilities and may be obtained by contacting Alyson Zerbe, Regulatory Coordinator, alzerbe@pa.gov.

6. The Law Bureau in conjunction with the Bureau of Technical Services will convene a stakeholder meeting within thirty (30) days of receipt of comments regarding this advance notice of proposed rulemaking regarding the procedures and filing requirements for utilities using a fully projected future test year.

7. The Law Bureau in conjunction with the Bureau of Technical Services and other Commission bureaus will

prepare a recommendation regarding a fully projected future test year proposed rulemaking.

8. A copy of this Order and Annex A shall be served upon the Energy Association of Pennsylvania (EAP), the National Association of Water Companies (NWWC) all jurisdictional electric distribution companies, all jurisdictional natural gas distribution companies and city natural gas distribution companies, all jurisdictional water and wastewater utilities, all municipal utilities subject to Commission jurisdiction, other jurisdictional utilities except communication utilities, the Commission’s Bureau of Investigation and Enforcement, the Office of Consumer Advocate, and the Office of Small Business Advocate.

ROSEMARY CHIAVETTA,
Secretary

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 53. TARIFFS FOR NONCOMMON CARRIERS

INFORMATION FURNISHED WITH THE FILING OF RATE CHANGES

§ 53.51. General

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(d) Each utility filing a proposed rate change with the Commission shall serve a copy of the proposed rate change and supporting data required by this chapter upon the Office of the Consumer Advocate, the Office of the Small Business Advocate, the Commission’s Bureau of Investigation and Enforcement and the Commission’s Bureau of Technical Utility Services. [Verification of service of this information upon the Office of Consumer Advocate shall be filed with the Commission.] Additionally, the utility shall file verification of service of this information with the Commission. The utility may serve hard copies or comply with the Commission’s e-service requirements.

* * * * *

§ 53.53. Information to be furnished with proposed general rate increase filings in excess of \$1 million.

(a) When a public utility under the jurisdiction of the Commission, other than a canal, turnpike, tunnel, bridge or wharf company, files a tariff or tariff supplement seeking a general rate increase within the meaning of 66 Pa.C.S. § 1308(d) (relating to voluntary changes in rates), and the general rate increase exceeds \$1 million in gross annual revenues, in addition to the data required by other provisions of this chapter, the tariff or tariff supplement shall be accompanied by responses to the data requests contained in the following exhibits which apply to the utility types or specific test year, as indicated. Utilities not using the Fully Projected Future Test Year (FPFTY) method shall refer to Exhibits A, B, C or D, consistent with their utility type. Utilities using the FPFTY method shall refer to Exhibit E which is predicated on Exhibits A, C, and D but reflects adjustments required for consideration of a FPFTY proceeding. Information provided in conjunction with rate cases is subject to the act of February 14, 2008 (P.L. 6, No. 3) (65 P.S. §§ 101–3104), known as the Right to Know Law, 52

Pa. Code §§ 102.1–102.4 (relating to confidential security information), and 52 Pa. Code § 5.365 (relating to Orders to limit availability of proprietary information). The exhibits in this section are as follows:

- (1) Exhibit A—Utilities except communications, electric, water, and wastewater utilities.
- (2) Exhibit B—Communications utilities.
- (3) Exhibit C—Electric utilities.
- (4) Exhibit D—Water and wastewater utilities.

(5) Exhibit E—All jurisdictional public utilities and other regulated entities electing to use a Fully Projected Future Test Year (FPFTY) except Communications utilities.

(b) In providing responses to these data requests, if the requested data have been previously filed with the Commission, they may be incorporated by reference. Also, the term “historic test year” as used in these exhibits refers to the test year chosen by the utility to support its filing, that is, presumably future test year data would be supplied in most cases. **The term “test year” as used in Exhibits A–D refers to the test year chosen by the utility to support its filing.** “Historic test year,” as referred to in Exhibit D, is defined as book figures for the base test year. The term “future test year,” as used in Exhibit D, refers to the adjusted historic test year for known and measurable changes 12 months beyond the book figures for the base year, or the utility’s final claimed supporting data. **These terms may have different meanings when used in conjunction with a FPFTY. See Exhibit E for specific applicability of these and other terms to the FPFTY method.**

[(c) Initial utility direct testimony of a witness who shall testify in support of the utility’s position shall be provided as part of the filing materials. The testimony of the filing utility shall include a complete explanation and justification of claims which depart from the unadjusted test year results of operations, including the methodology and rationale. The testimony shall be accompanied by supporting worksheets, if necessary, and shall refer to supporting exhibits to which the testimony relates. The explanation and documentation of the proposed adjustments shall enable a reasonably informed party to determine how the amount was calculated and to understand why the amount is being claimed.]

(c) Testimony.

(1) Filed materials shall include the direct testimony of all utility witnesses who testified in support of the utility’s position. The utility witnesses’ testimony shall be accompanied by supporting worksheets, if necessary, and shall refer to supporting exhibits to which the testimony relates.

(2) If adjustments from the test year are proposed, the utility witnesses’ testimony shall also include a complete explanation and justification of any claims which depart from the unadjusted test year results of operations, including the methodology and rationale. The utility witnesses’ testimony, explanation and documentation of the proposed adjustments shall enable a reasonably informed party to determine how the amount was calculated and to understand why the amount is being claimed.

(d) The utility shall provide a summary table of the most recent approved long-term infrastructure improvement plan (LTIP) showing a list of eligible projects, year of anticipated construction, description of project and estimated cost of each project. If a proposed LTIP is pending, the utility also shall provide a summary table of the proposed LTIP. The utility shall provide docket numbers for approved or proposed LTIPs.

(e) The utility shall provide working electronic copies of schedules in Microsoft Excel or similar electronic spreadsheet format (with all formulas and links intact).

* * * * *

(Editor's Note: Exhibit E is anticipated proposed material and printed in regular type to enhance readability.)

Exhibit E

FULLY PROJECTED FUTURE TEST YEAR—ALL JURISDICTIONAL PUBLIC UTILITIES AND OTHER REGULATED ENTITIES ELECTING TO USE A FULLY PROJECTED FUTURE TEST YEAR (FPPTY) EXCEPT COMMUNICATIONS UTILITIES

Exhibit E sets forth definitions in Section I and common filing requirements in Subsections II.A. through II.L. for all utilities electing to use a FPPTY. Subsection II.M. sets forth further specific requirements unique to a particular industry if the utility elects to use a FPPTY.

I. Definitions.

Construction Work in Progress (CWIP)—A holding account for property costs not yet ready to be placed in service.

Distribution (of) Service/Infrastructure—Systems and facilities required to distribute utility services to the utility's customers, including the systems and facilities required to collect wastewater from a utility's customers.

Distribution System Improvement Charge (DSIC)—A ratemaking mechanism that may be approved by the Commission subsequent to or in conjunction with Commission approval of a utility's LTIP that allows for the recovery of prudently incurred costs related to the repair, improvement, and replacement of eligible utility infrastructure through a surcharge that is subject to reconciliation, audit, and other consumer protections.

Fully projected future test year (FPPTY)—A 12-consecutive-month period beginning with the first full month that the new rates will be in effect after the application of the full suspension period permitted under section 1308(d).

Future test year (FTY)—A 12-consecutive-month period beginning the day after the end of the HTY reflecting anticipated or projected results of operations.

Historic test year (HTY)—12-month period that reflects the actual (e.g., historic) results of operations.

Long-term infrastructure improvement plan (LTIP)—A utility's filed and approved plan to ensure that the utility is planning for and executing capital expenditures that will maintain and improve the efficiency, safety, adequacy, and reliability of its distribution (or collection) infrastructure at a faster pace than it has done historically, approval of which is a precondition or concurrent condition to Commission approval of a utility's DSIC.

Parent—Includes the municipality if the utility is a municipal utility or entity subject to Commission regulation.

Test year (TY)—12-consecutive-month period chosen by the utility to support its filing.

Uniform System of Accounts (USoA)—An accounting system prescribed by the Pennsylvania Public Utility Commission (Commission) and the Federal Energy Regulatory Commission (FERC) applicable to public utilities regulated by the Commission. The accounting system prescribes the manner and form by which such accounts shall be maintained.

II. General filing requirements of all jurisdictional utilities and other entities under the Commission's jurisdiction using the FPPTY method—except communications utilities

To the extent any of the information required is subject to a claim of confidentiality or proprietary nature, the utility shall so designate, with specificity, which information is claimed to be confidential or proprietary, and that claim shall be subject to review by the presiding officer. See 52 Pa. Code § 5.365.

A. Summary of filing

1. Provide a summary discussion of the rate change request, including the total requested increase in dollars, and specific reasons for each adjustment. Also provide a breakdown which identifies the revenue requirement value of the major items generating the requested rate change.

2. Identify the specific witnesses for all statements and schedules of revenues, expenses, taxes, cash flow, debt, debt coverage, property, valuation, etc., and provide direct testimony supporting the rate increase.

3. Provide a set of the following statements at Present Rates Income Statement, Cash Flow Statement, Debt Service Coverage schedule, and Balance Sheet showing columns for the following: Columns for each of the two years prior to the HTY, including book amounts for the base test year, a column for the HTY actuals, pro forma adjustments (between HTY and FTY, including the adjusted HTY for known and measurable changes twelve months beyond the book figures for the base test year), a column for FTY claims, pro forma adjustments between FTY and FPPTY, including twelve consecutive month period beginning with the first full month that new rates will be effect after the application of the full suspension period permitted under Section 1308(d) amounts, and a column for the FPPTY claim amounts. In each schedule, provide references in the pro forma adjustments column for each adjustment which ties to corresponding supporting schedule detailing and explaining each operating budget adjustment.

4. Provide a set of the following statements at Proposed Rates: Income Statement, Cash Flow Statement, Debt Service Coverage schedule, and Balance Sheet showing columns for the following: Columns for each of the two years prior to the HTY, the HTY actuals, pro forma adjustments between FTY and FPPTY claims, and FPPTY claim amounts. In each schedule provide references in the pro forma adjustments column for each adjustment which ties to corresponding supporting schedule detailing and explaining each operating budget adjustment.

5. Provide a schedule showing the number of customers by:

- Tariff subdivision, whose bills will be increased.
- Tariff subdivision, whose bills will be decreased.

6. Provide FERC and/or Commission orders or rulings applicable to the filing.

7. Provide a list of reports, data, or statements requested by and submitted to the Commission from one year prior to the HTY through the current date.

8. Submit a statement of past and anticipated changes, since the previous rate case, in major accounting procedures.

9. Provide an explanation of any differences between the basis or procedure used in allocations of revenues, expenses, depreciation, and taxes in the current rate case and that were used in the prior rate case. Also provide allocation of utility costs and allocation methods among affiliate companies.

10. Whenever major addition to plant or facilities are to be placed in operating service or removed from operating service, the utility shall so indicate in the summary of the filing. The supporting documentation shall indicate the effect of the plant addition or removal from service upon rate bases, revenue, expense, tax, income, and revenue requirement.

11. If the utility's present rates were established based upon data for a FPFTY, provide the following supplemental information:

a. The data for the HTY and the first year that new rates were in effect from the utility's last base rate case if the time periods for the data requested relative to the current base rate case do not include the HTY and first year under new rates from the utility's last base rate case.

b. A schedule listing the projected data used for operating revenue, operating expenses, depreciation, taxes, net income, and rate base in the FPFTY used to establish present rates and the actual data for those same rate-making components for the same test year.

c. Explain any differences in projections, techniques, and adjustments made for that prior base rate case as compared to the projections, techniques, and assumptions made relative to the current rate case.

d. Details of any reconciliations and adjustments made relative to the last base rate case. Explain whether (and now) they would be expected to be rolled into base rates in the current rate case or whether they are expected to be recovered in a surcharge or rider.

12. If more recent year-end information becomes available during the course of the rate case, supplement the filing with the most recent information.

B. *Description of utility operations*

1. Provide a corporate history (include the dates of original incorporation, subsequent mergers and/or acquisitions). Indicate all counties, cities, and other governmental subdivisions to which service is provided (including service areas outside this Commonwealth) and the total number of customers by customer class or billed units in the areas served.

2. Provide an overall system map, including and labeling all measuring and regulating stations, storage facilities, production facilities, transmission, and distribution facilities, by size, and all interconnections with other utilities and pipelines.

3. Attach a chart explaining utility's corporate relationship to its affiliates showing system structure.

4. Supply copies of the two most recent internal and independent audit reports, noting any exceptions and recommendations and disposition thereof.

5. Provide a working electronic copy in Microsoft Excel or similar electronic spreadsheet format (with all formulas intact) linking the amounts in the income statements, proof of revenue, expenses, cash flow statement, debt, and debt coverage schedules for the HTY, FTY and FPFTY.

6. Provide a working electronic copy in Microsoft Excel or similar electronic spreadsheet format (with all formulas intact) linking the cost of service study, the customer cost analysis, and supporting schedules for the FTY and FPFTY.

C. *Rate Base*

1. Provide a schedule showing the measures of value and the rates of return at the original cost. All claims made on this schedule should be cross-referenced to appropriate exhibits.

2. *Construction Work In Progress (CWIP)*—Provide an exhibit with a description of each project; a summary of all work orders; amount expended at the end of the HTY and the FTY and at the completion of the project; whether project will be funded by the Distribution System Improvement Charge (DSIC); and anticipated in-service dates. Include a list of items needed to complete each project subsequent to the date of filing. Indicate whether each project is revenue producing or non-revenue producing.

3. For a claim made for plant held for future use, supply the following:

a. A brief description of the plant or land site and its original cost.

b. Expected date of use for each item claimed.

c. Explain why it is necessary to acquire each item in advance of its date of use.

d. Date when each item was acquired.

e. Date when each item was placed in the plant held for future use account.

4. If a claim is made for materials and supplies or fuel inventory, provide a supporting schedule for each claim showing the most current actual 13 monthly balances and showing in the case of fuel inventory claims, the type of fuel, and location, as in station, and the quantity and price claimed.

5. If a claim is made for cash working capital, provide a supporting schedule setting forth the method and all data utilized to determine the cash working capital, requirement. If not provided in the support data, provide a lead-lag study of working capital, completed no more than 6 months prior to the rate increase filing.

6. If fuel stocks comprise part of the cash working capital claim, provide an exhibit showing the actual book balances, noting quantity and price for the fuel inventories by type of fuel, for the 13 months prior to the beginning of the HTY and for the HTY, the FTY, and the FPFTY, by location, station, etc. Explain the method of determining the claim if other than that described above.

7. Explain in detail by statement or exhibit the appropriateness of claiming any additional items, not previously mentioned, in the measures of value.

8. Provide schedules and data in support of the following working capital items:

a. Prepayments—list and identify all items.

- b. Federal Excise Tax accrued or prepaid.
- c. Federal Income Tax accrued or prepaid.
- d. Pennsylvania State Income Tax accrued or prepaid.
- e. Pennsylvania Gross Receipts Tax accrued or prepaid.
- f. Pennsylvania Capital Stock Tax accrued or prepaid.
- g. Pennsylvania Public Utility Realty Tax accrued or prepaid.
- h. State sales tax accrued or prepaid.
- i. Payroll taxes accrued or prepaid.
- j. Any adjustments related to the above items for ratemaking purposes.

9. Provide detailed calculations showing the derivation of the tax liability offset against gross cash working capital requirements.

10. Supply an exhibit supporting the claim for cash working capital requirement based on the lead-lag method.

a. Pro forma expenses and revenues are to be used in lieu of book data for computing lead-lag days.

b. The utility must either include sales for resale and related expenses in revenues and in expenses or exclude from revenues and expenses. Explain procedures followed.

11. Indicate if amortized expenses have been removed from the lead-lag study. If so, provide documentation showing such removal. If not, provide a list of such amortization expenses included.

12. Identify the fund's availability arrangements or terms which the utility has with its banks with respect to deposits of customer checks. For example, does the utility have same day or next day access to funds deposited?

13. In reference to materials and supplies:

a. What method of inventory valuation was used to develop the claim for materials and supplies?

b. Does the utility use a material and supply model to calculate needed material and supply levels? If so, provide the model. Supply an illustrative example of how the monthly balances are derived.

c. Provide the actual monthly value for the inventory of materials and supplies for the HTY. Supply as of the end of the HTY, a 13-month average, by month, for the material and supply account.

d. Provide the monthly level of materials and supplies for one prior year, the HTY, the FTY, and the FPFTY.

14. For each projected plant addition to cost the greater of \$100,000 or 0.5% of current rate base, included in the FPFTY, provide:

- a. Description of the project.
- b. Starting date of project.
- c. Amount expended to date.
- d. Percent of project currently complete.
- e. Original budgeted cost broken down by allowance for funds used during construction (AFUDC) and non-AFUDC components.
- f. Current budgeted cost broken by AFUDC and non-AFUDC components.
- g. Reason for any change in budgeted cost.
- h. Original estimated timeline and date(s) of completion and in service.

i. Current estimated timeline and date(s) of completion and in service.

j. Reason for any change in timeline and date(s) of completion and in service.

k. Anticipated retirement related to the plant addition.

l. The depreciation rate applicable.

m. Identify which projects are mandated by the Pennsylvania Department of Environmental Protection (PA DEP) or the Department Environmental Protection Agency (EPA) or other governmental entity.

15. Explain how the FTY and the FPFTY plant balances were projected and provide supporting workpapers and documentation.

16. Are all of the assets included in the plant-in-service claim used exclusively by the utility to provide jurisdictional service? If not, provide the estimated percentage that each shared asset is used by other entities or for non-jurisdictional service.

17. Identify all plant that will not be providing jurisdictional service and prepare a schedule listing those plant items identified by account. In addition, provide a narrative explaining the reason why such plant is not being used and the anticipated future disposition of the plant. If plant is used to provide more than one mode of jurisdictional service, so indicate.

18. Provide all workpapers and supporting documentation showing the derivation of the projected balances of contributions in aid of construction, customer and developer advances for construction and utility service line, and customer deposits for the FTY and the FPFTY.

19. Provide a schedule showing the HTY rate base and rates of return at original cost less accrued depreciation under present rates and under proposed rates. Claims made on this schedule should be cross-referenced to appropriate supporting schedules. Show pro forma for the FTY and the FPFTY.

D. *Rate of Return (ROR)*

1. Provide capitalization and capitalization ratios for the last 5-year period and projected through the FTY and the FPFTY (with short-term debt and without short-term debt) for the utility, parent, and consolidated system.

a. Provide most recent year-end interest coverage before and after taxes for the last 3 years and at the most current, including indenture and Securities and Exchange Commission (SEC) basis, for the company, parent, and consolidated system.

b. Provide most recent year-end preferred stock dividend coverages for the last 3 years and at most current date, including charter and SEC basis.

2. Provide most recent current quarterly financial report (utility and parent). As more recent quarterly information becomes available during the course of the rate case, supplement the filing with the most recent information.

3. Provide most recent Stockholder's Report (utility and parent).

4. Provide most current prospectus for the utility and the parent.

5. Supply projected capital requirements and sources of utility, parent, and consolidated system capital for the HTY, FTY, FPFTY, and each of the two years following the FPFTY.

6. Provide a schedule of debt and preferred stock of utility, parent, and consolidated system as of HTY year-end and most current date. Projected new issues, retirements, and other major changes from the comparable historical data should be clearly noted. The following details are required:

- a. Date of issue.
- b. Date of maturity.
- c. Amount issued.
- d. Amount outstanding.
- e. Amount retired.
- f. Amount required.
- g. Gain or loss on reacquisition.
- h. Coupon rate.
- i. Discount or premium at issuance.
- j. Issuance expenses.
- k. Net proceeds.
- l. Sinking fund requirements.
- m. Effective interest rate.
- n. Dividend rate.
- o. Effective cost rate.
- p. Total average weighted effective cost rate.

7. Provide details on utility or parent common stock offerings for the past 5 years to present as follows, including details of any planned issuance in the FTY and the FPFTY:

- a. Date of prospectus.
- b. Date of offering.
- c. Record date.
- d. Offering period including dates and number of days.
- e. Amount and number of shares of offering.
- f. Offering ratio, if rights offering.
- g. Percent subscribed.
- h. Offering price.
- i. Gross proceeds per share.
- j. Expenses per share.
- k. Net proceeds per share in (i.) and (j.) above.
- l. Market price per share.
 1. At record date.
 2. At offering date.
 3. One month after close of offering.
- m. Average market price during offering.
 1. Price per share.
 2. Rights per share-average value of rights.
- n. Most current reported earnings per share at time of offering.
 - o. Most current reported dividends at time of offering.
8. Provide complete support for claimed common equity.

9. Provide schedules of comparative financial data and ratios for the HTY and two prior years, the FTY, and the FPFTY for the utility. Changes in Moody's/S&P ratings, noted on these schedules, shall be accompanied by the Moody's/S&P write-up of such changes, if available. The

financial data and ratios shall be supplied for the utility's parent, where applicable, if not available for the utility. Show work and formulas.:

- a. Earnings-price ratio (average).
- b. Times interest earned ratio—pre- and post-tax basis.
- c. Preferred stock dividend coverage ratio—post-tax basis.
- d. Times fixed charges earned ratio—pre-tax basis.
- e. Dividend payout ratio.
- f. AFUDC as a percent of earnings available for common equity.
- g. Construction work in progress as a percent of net utility plant.
- h. Effective income tax rate.
- i. Internal cash generations as a percent of total capital requirements.
- j. Times fixed charges earned ratio-post-tax basis.
- k. Earnings per share.
- l. Dividend per share.
- m. Average dividend yield (52-week high/low common stock price).
- n. Average book value per share.
- o. Average market price per share.
- p. Market price-book value ratio.
- q. Earnings-book value ratio (per-share basis, average book value).

10. Provide AFUDC charged by utility at the end of the HTY, projected for the end of the FTY, and projected for the end of the FPFTY.

11. Provide a schedule that shows how the AFUDC was determined, explain the method by which the amounts were calculated in each test year (HTY, FTY, and FPFTY), and indicate where each is reflected in the filing.

12. Provide the following information concerning bank notes payable for the actual per book HTY year:

- a. Line of credit at each bank.
- b. Average daily balances of notes payable to each bank, by name of bank.
- c. Interest rate charged on each bank note (prime rate, formula).
- d. Purpose of each bank note (for example, construction, fuel storage, working capital, debt retirement, etc.).
- e. Prospective future need for this type of financing.

13. If a claim is made for a cost of debt that exceeds that shown in the preceding nominal cost schedule because of convertible features, sale with warrants, or any other reason, provide a full statement of the basis for each such claim.

14. If a claim is made for compensating bank balances, provide the following information:

- a. Name and address of each bank.
- b. Types of accounts with each bank—checking, savings, escrow, other services, and the like.
- c. Average daily balance in each account.
- d. Amount and percentage requirements for compensating bank balances at each bank.

e. Average daily compensating bank balance at each bank.

f. Documents from each bank explaining compensating bank balance requirements.

g. Interest earned on each type of account.

h. A calculation showing the average daily float for each bank.

15. Set forth amount of compensating bank balances required under each of the following rate case bases:

a. Annualized test year operations at pro forma present rates.

b. Operations under pro forma proposed rates.

16. Set forth provisions of utility's and parent's charter and indentures, if applicable, which describe coverage requirements, limits on proportions of types of capital outstanding, and restrictions on dividend payouts.

17. Attach copies of the summaries of the utility's projected revenues, expenses, and capital budgets for the FTY and the FPFTY.

18. Describe long-term debt reacquisition by issue by the utility and parent as follows:

a. Reacquisition by issue by year.

b. Total gain or loss on reacquisitions by issue by year.

c. Accounting for gain or loss for income tax and book purposes.

d. Proposed treatment of gain or loss on such reacquisition for ratemaking purposes.

19. Provide a schedule showing the major components of claimed capitalization, and the derivation of the weighted costs of capital for the rate case claim. This schedule shall include a descriptive statement concerning the major elements of changes in claimed capitalization, cost rates, and overall return from comparable historical data.

20. Provide a schedule in the same format as the schedule provided in 18 above, except for the omission of the descriptive statement, for the most immediate comparable annual historical period prior to the HTY and the two calendar years most immediately preceding the rate of return claim period. Regardless of whether the capitalization claimed on the schedule provided in 18 above, includes short-term debt, this schedule should reflect capital ratios with and without short-term debt.

21. Provide the capitalization data requested in 18 and 19 above, for the parent company and for the system—consolidated.

22. Supply copies of the following documents for the utility and, if applicable, its parent:

a. Most recent annual report to shareholders including any statistical supplements.

b. Most recent SEC form 10K.

c. All SEC form 10Q reports issued within the preceding 12 months of the date of submittal of the rate increase request.

23. Supply copies of the utility's balance sheets for each month for the HTY and the prior 2 years.

24. Provide the bond rating history for the utility and, if applicable, its parent from the major credit rating agencies for the most recent five years.

25. Provide copies of all bond ratings reports relating to the utility and, if applicable, its parent for the past 2 years.

26. Supply copies of all presentations and reports by the utility's and, if applicable, its parent's management and securities analysts made on behalf of the utility, or its parent if applicable, during the past 2 years, including presentations of financial projections.

27. Provide a listing of all securities issuances for the utility and, if applicable, its parent projected for the next 2 years. The response shall identify for each projected issuance the date, dollar amount, type of security, and effective cost rate.

28. Identify any plan by the utility to refinance high cost long-term debt or preferred stock.

29. If applicable, supply a listing of all common equity infusions from the parent to the utility during the HTY. Indicate any common equity infusions anticipated in the FTY and the FPFTY calculations. In each case, identify date and dollar amount.

30. If applicable, identify the utility's common dividend payments to its parent for each of the last 5 years.

31. Provide the most current year-by-year financial projections for the utility for the next 5 years. Also, indicate the date these projections were prepared, whether approved by management, and whether the projections have been submitted to bond rating agencies.

32. Provide the utility's 5-year construction budget. If the utility has a LTIIP or a DSIC rider, describe any variations between the LTIIP, the DSIC, and the construction budgets. Prepare a schedule indicating the sources of funding for projects included in the LTIIP.

33. Identify the utility's and, if applicable, its parent's capital structure targets (percentages of capital types) for the FTY and the FPFTY. Provide the complete basis for the capital structure targets. Provide a schedule showing targets and actuals for the HTY and prior two years.

34. For each month, of the most recent 24 months, supply the utility's:

a. Short-term debt balance.

b. Short-term debt interest rate.

c. Balance of construction work in progress.

d. Balance of construction work in progress which is eligible for AFUDC accrual.

35. Identify all debt, other than instruments traded in public markets, owed to all shareholders, corporate officers, or members of the board of directors, its affiliates, parent company, or subsidiaries.

36. Provide complete support for claimed common equity rate of return.

37. Provide a summary statement of all stock dividends, splits, or par value changes during the 2-year calendar period preceding the rate case filing.

38. Provide a schedule of utility or parent stock purchases or retirements during the 2-year calendar period preceding the rate case filing. Also provide the details of any planned purchases or retirements in the FTY and the FPFTY.

39. If a claim of the filing utility is based on utilization of the capital structure or capital costs of the parent company and consolidated system, state and support the reasons for such a claim.

40. List the amount of total cash (all cash accounts) on hand from balance sheets for the HTY, the FTY, and the FPPTY.

41. List details and sources of "Other Property and Investment", Temporary Cash Investments" and "Working Funds" on the HTY-, the FTY-, and the FPPTY-year-end balance sheets.

E. Balance Sheet

1. Provide most current available Balance Sheet for the utility, its parent, and the system (consolidated).

2. Provide a comparative balance sheet for the HTY and the preceding year which corresponds with the HTY dates. Provide pro forma balance sheets for the FTY and the FPPTY using present rates and proposed rates.

3. Provide a detail of other physical property, investments in affiliated companies and other investments. Provide a schedule showing any anticipated changes for the FTY and the FPPTY.

4. Supply the amounts and purpose of special cash accounts of all types, such as:

- a. Interest and dividend special deposits.
- b. Working funds other than general operating cash accounts.
- c. Other special cash accounts and amounts (e.g., temporary cash investments).

5. Describe the nature and/or origin and amounts of notes receivable, accounts receivable from affiliates, and any other receivables, other than customer accounts, which appear on the balance sheet. Identify receivables that are greater than 15% of total receivables and limit explanation to variances greater than \$10,000.

6. Provide the amount of accumulated reserve for uncollectible accounts, method and rate of accrual, amounts accrued, and amounts written-off in each of the last three years, including the HTY.

7. Provide a list of prepayments and give an explanation of special prepayments.

8. Explain in detail any other significant (in amount, i.e., greater than 5% of total current assets) current assets listed on the balance sheet.

9. Explain in detail, including the amount and purpose, the deferred asset accounts that currently operate to affect or will at a later date affect the operating account supplying:

- a. Origin of these accounts
- b. Probable changes to this account in the near future.
- c. Amortization of these accounts currently charged to operations or to be charged in the anticipated two years following the HTY.
- d. Method of determining yearly amortization for the following accounts:
 - i. Temporary Facilities
 - ii. Miscellaneous Deferred Debits
 - iii. Research and Development
 - iv. Property Losses
 - v. Any other deferred accounts that affect operating results

10. Explain the nature of accounts payable to affiliates. Provide a breakdown by category.

11. Provide the following detail for each deferred credit on the HTY, FTY, and FPPTY balance sheet:

- a. Origin of these accounts.
- b. Account number.
- c. Amount contained on the balance sheet.
- d. Disposition policy, (e.g., amortization).
- e. Probable changes to this account in the near future.

12. Provide details of other deferred credits as to their origin and disposition policy (e.g., amortization).

13. Supply the basis for injury and damages reserve and amortization shown on the HTY, FTY, and FPPTY balance sheets.

14. Provide details for any significant reserves, other than depreciation bad debt, injury and damages, appearing on HTY, FTY, or FPPTY balance sheets.

15. Provide an analysis of unappropriated retained earnings for the HTY and three preceding calendar years.

16. Describe the purpose of any advances made by the utility to its parent and describe all terms and conditions associated with such advances for the HTY and preceding two years including an estimate of future advances or repayments that are expected to occur in the FTY and the FPPTY.

F. Income Statement and Statement of Cash Flows

1. Provide most current available income statement for the utility, the parent, and the company as a whole (consolidated).

2. Prepare Summary Income Statements for the HTY, FTY, and FPPTY showing the following:

- a. Column 1—Book recorded statement for each test year.
- b. Column 2—Adjustments to annualize and normalize revenue and expenses under present rates.
- c. Column 3—Income statement under present rates after adjustments in Column 2.
- d. Column 4—Requested increase and corresponding changes with increase.
- e. Column 5—Income statement under proposed rates.
- f. Expenses may be summarized by the following expense classifications for purposes of this statement:

Operating Expenses (by category)

Depreciation

Amortization

Taxes

Other than Income Taxes

Federal Taxes

State Taxes

Deferred Federal

Deferred State

Income Tax Credits

Taxes Applicable to Other Income and Deductions

Other Credits and Charges, etc.

Interest Charges and all amortization of Premiums and/or Discounts and Expenses on Debt issues

Total Interest

g. Footnote each adjustment in any of the above statements with an explanation in sufficient clarifying detail.

3. Provide comparative operating statements for the FPFTY and the immediately preceding two years showing increases and decreases between the three periods. Revenues and expenses shall be summarized by the major account classifications for the applicable industries' Uniform System of Accounts (USoA). These statements should supply detailed explanation of causes of the major variances between the FPFTY and two preceding years detailed by account number. Major variances are greater than 15% of total variances and limit explanation to variances greater than \$10,000.

4. If the schedule provided in item 3 is based upon budgeted data for a FTY, provide a schedule similar to that required in item 3 which is based upon actual data for the HTY.

5. Expenses shall be summarized by the USoA expense classifications for purposes of the income statement.

6. If a utility has separate operating divisions, an income statement must be shown for each division, plus an income statement for the utility as a whole.

7. Provide operating income claims under:

- a. Present rates.
- b. Pro forma present rates.
- c. Pro forma proposed rates.

8. Provide rate of return on original cost under:

- a. Present rates.
- b. Pro forma present rates.
- c. Pro forma proposed rates.

9. Provide a statement of cash flows under present rates that sets forth all cash inflows from customer rates, depreciation, deferred taxes, external financing, investment income, and all other sources of cash, and all cash outflows to pay for utility operations, administrative and general expenses, taxes, capital investments, dividends, and other uses of funds.

10. Provide a statement of cash flows under proposed fully projected future test year rates that sets forth all cash inflows from customer rates, depreciation, deferred taxes, external financing, investment income, and all other sources of cash, and all cash outflows to pay for utility operations, administrative and general expenses, taxes, capital investments, dividends, and other uses of funds.

G. Operating Revenues

1. Prepare a summary of operating revenues for the FPFTY, the FTY, and the HTY, providing the following information for each classification of customers:

- a. Number of customers per class as of year-end;
- b. Total utility sales volume in customary units;
- c. Total utility revenues; and
- d. Customers' penalties and miscellaneous revenues.

2. Provide a summary of operating revenues for the HTY and adjustments anticipated for the FTY and the FPFTY, providing the following information for each classification of customers and for customers' penalties and miscellaneous revenues:

- a. Revenues;
- b. Annualizing and normalizing adjustments to arrive at adjusted operating revenues for ratemaking;
- c. Proposed increase in operating revenues;
- d. Percent increase in operating revenues; and
- e. Operating revenues under proposed rates.

3. State the manner in which revenues are being presented for ratemaking purposes and provide details using one of the following methods:

- a. Accrued Revenues.
- b. Billed Revenues.
- c. Cash Revenues.

4. If revenue accruing entries are made on the books at the end of each fiscal period, give entries made accordingly at the end of the HTY and at the beginning of the FTY. State whether they are reversed for ratemaking purposes and the impact on the FPFTY.

5. State whether any adjustments have been made to expenses in order to present such expenses on a basis comparable to the manner in which revenues are presented in this proceeding (i.e., accrued, billed, or cash).

6. Provide a schedule of present and proposed tariff rates showing dollar change and percent of change by rate class. Prepare comparative schedule of monthly (or quarterly where applicable) billings at existing and at proposed rates to demonstrate the impact of proposed rates over a range of usages. Include an explanation of any rate re-structure and the reason therefore. Provide a copy of the proposed tariff or tariff supplement on a red line basis to identify any changes.

7. Provide detailed computations of the determination of accrued revenues as of the HTY year-end and year-end immediately preceding the HTY, together with a detailed explanation of the procedures and methods used in developing accrued revenues and the impact on the FTY and the FPFTY.

8. Provide a detailed breakdown of miscellaneous revenues for the HTY and the two years immediately preceding the HTY. For the HTY, provide a monthly breakdown and an explanation of monthly variances greater than 15%. Detail any anticipated variances in the FTY and the FPFTY.

9. Provide for the HTY and the current year-to-date, the monthly usage for each classification of customers. Provide projections into the FTY and the FPFTY.

10. Provide by customer classification for the HTY and for the 2 prior years the number of customers and usage, the projected number of customers, and the projected usage for the 2 subsequent years.

11. Provide for the HTY and the 2 prior years usage and billings for the ten largest customers at current rates. Provide the HTY, the FTY, and the FPFTY usage priced at proposed rates.

12. If applicable, provide for the HTY and the 2 prior years' usage and billings for the ten largest sales for resale customers if such sales are not included in sales to the ten largest customers requested in G.11, above. Provide projections for the FTY and the FPFTY.

13. Provide growth patterns of usage and customer numbers per rate class, using historical and projected data.

14. Provide, for the FPFTY, a schedule by tariff rates and by service classifications showing proposed increase and percent of increase.

15. If a utility is affiliated with another utility, explain the effects, if any, upon allocations factors used in the rate filing of current or recent rate increases allowed to the other utility segment (or segments) of the company.

16. Provide supporting data detailing curtailment adjustments, procedures, and policies.

17. Provide details of the utility's attempts to recover uncollectible and delinquent accounts.

18. Describe the procedures involved in determining whether forfeited discounts or penalties are applied customer billing.

19. Provide annualization of revenues as a result of rate changes occurring during the test year, at the level of operations as of end of the test year.

20. Provide a detailed billing analysis supporting present and proposed rates by customer classification and/or tariff rate schedule.

21. Provide a schedule showing sales from all customer classes by unit per month for the HTY and three preceding 12-month periods. Provide also the projections for the FTY and the FPFTY.

22. Provide the following statements and schedules. The schedules and statements for the HTY should be reconciled with the summary operating statement. The schedule should also show number of customers and unit of sales, and should provide number of customers by service classification at beginning and end of HTY. Provide also projections for the FTY and the FPFTY.

a. An operating revenues summary for the HTY and the year preceding showing the following:

i. For each major classification of customers

A. Units sold.

B. Dollar Revenues.

C. Forfeited Discounts (Total if not available classification).

D. Other and Miscellaneous revenues that are to be taken into the utility operating account along with their related costs and expenses.

ii. A detailed explanation of all annualizing and normalizing adjustments showing method utilized and amounts and rates used in calculation to arrive at adjustment.

iii. Segregate, from recorded revenues from the HTY and prior year, the amount of revenues that are contained therein, by appropriate revenue categories, from:

A. Fuel or energy Adjustment Surcharge

B. State Tax Surcharge

C. Any other surcharge being used to collect revenues.

D. Provide explanation whether any of the surcharges are not applicable to the utility's operations.

23. Provide details of sales for resale, based on periods five years before and projections for five years after the FPFTY. List customers, units sold or projected to be sold, revenues received or projected to be received, source of units sold, contracted or spot sales, whether sales are to affiliated companies, and any other pertinent information.

H. Operating Expenses

1. Provide a summary of operating expenses by operating expense account for the HTY and the two preceding 12-month periods.

2. Provide a summary of claimed operating expenses for the HTY, including annualizing and normalizing adjustments to arrive at adjusted future operating expenses for ratemaking, including supporting data for the FTY and the FPFTY, where applicable.

3. List extraordinary property losses as a separate item, not included in operating expenses or depreciation and amortization (not included in cost of service when the gain or loss on this property has occurred or is likely to occur in the FTY or FPFTY. The proposed ratemaking treatment of extraordinary gains and losses must also be disclosed). Sufficient supporting data must be provided, such as explanation and breakdown of costs.

4. Concerning rate case expense:

a. Supply detailed calculations of normalized rate case expense, including supporting data for outside services rendered.

b. Provide justification for the Company's proposed normalization period for the current rate case.

c. Provide the details by category with related dollar amounts for each category of the rate case expense claim (include the actual billings or invoices, and contracts where applicable, in support of each category of rate case expense).

d. Provide the docket numbers and filing dates indicating fully litigated or settled, for the last three base rate cases filed with the Commission.

e. Provide the details by category with related dollar amounts for each comprising the actual expenses of the prior rate case.

5. Supply exhibits showing an analysis, by functional accounts, of the charges by affiliates (service corporations, etc.) for services rendered and included in claimed operating expenses of the filing company for the HTY, the 12-month period ended prior to the HTY, and claimed expenses for the FTY and the FPFTY:

a. Supply a copy of contracts, if applicable.

b. Explain the nature of the services provided.

c. Explain the basis on which charges are made.

d. If charges are allocated, identify allocation factors used for all parent/affiliate companies along with the filing company and also identify all parent/affiliate companies not receiving allocation with an explanation why not.

e. Supply the components and amounts comprising the expense in this account.

f. Provide details of initial source of charge and reason thereof.

6. Describe costs relative to leasing equipment, computer rentals, and office space, including terms and conditions of the lease (including but not limited to, beginning and end date(s) of lease(s), monthly or annual dollar amount of payment(s), etc. Explain the method of calculating monthly or annual payments. If allocated from the parent company, provide an explanation and supporting documentation for the method of allocation.

7. Submit detailed calculations (or best estimates) of the cost resulting from storm, climate or similar damage

in the HTY and claimed amounts for the FTY and the FPFTY. Fully explain the basis for any estimates.

8. Submit schedules for the HTY and for the 12-month prior periods showing by major components, if included in claimed test year expenses, the expenses incurred in each of the following expense categories. Explain major variances between the HTY expenses and those expenses for the prior two 12-month period. Additionally, provide similar schedules showing claimed above-the-line amounts for the FTY and the FPFTY.

- a. Miscellaneous general expenses.
- b. Outside service expense.
- c. Regulatory commission expenses.

d. Advertising expenses broken down by category for claimed amounts, including but not limited to advertising engaged in by trade associations whenever the utility has claimed a contribution to the trade association as a ratemaking claim.

e. Research and development expenses, provide a listing of major projects.

f. Charitable and civic contributions, by recipient and amount, showing types of social and service organization memberships paid for, the cost thereof, the accounting and tax treatment, and whether included in above-the-line claimed expenses.

g. Lobbying expenses, including but not limited to amounts that are a portion of membership dues.

I. *Employee Costs, Including Related Costs Such as Benefits And Retiree Costs*

1. Concerning employee numbers, using calendar-year-end counts.

a. Provide employee counts, total and by operational divisions and by managerial, nonunion, and union categories for the HTY, the FTY, and the FPFTY.

b. Indicate number of employee positions that have been eliminated since the commencement of the HTY or are expected to be eliminated during the FTY or FPFTY.

c. Indicate whether employment changes have happened due to, or are expected to happen as a result of, attrition, reductions in force, sale or acquisition of operations or facilities, mergers, etc., in the HTY, the FTY, and the FPFTY.

d. Provide a copy of all wage, salary, incentive compensation and bonus, benefit, leave, insurance, pension/thrift, and similar plan documents.

2. Submit detailed computation of adjustments to operating expenses for salary, wage, and fringe benefit increases (union and non-union merit, progression, promotion, and general, etc.) granted during the HTY, the FTY, and the FPFTY. Supply data for the HTY, the FTY, and the FPFTY claims showing:

a. Payroll expense (regular and overtime separately) by categories of operating expenses, i.e., maintenance, operating transmission, distribution, other (specify by type). Indicate management, non-union, and union.

b. Date, percentage increase and annual amount of each general payroll increase by category, i.e., maintenance, operating transmission, distribution, other. Indicate management, non-union, and union and provide supporting documentation for each increase.

c. Dates and annual amounts of merit, incentive plan, and/or bonus increases and management salary adjustments by category, i.e., maintenance, operating transmission, distribution, other.

d. Total annual payroll increases by date and percentage in the HTY and as anticipated for the FTY and the FPFTY.

e. Proof that the actual payroll plus the increases equal the payroll expense claimed in the supporting data (by categories of expenses) for the HTY. Provide assurance that similar verification will be conducted for the FTY and FPFTY and indicate procedures for addressing any material differences between estimated expenses and actual expenses for the FTY and FPFTY.

f. Detailed list of employee benefits and cost thereof for union and non-union personnel. Include specific benefits and costs for executives and officers.

g. Support the annualized pension cost figures.

h. If the pension cost figures include any unfunded pension costs, state the unfunded portion.

3. Provide the following payroll and employee benefit data—regular and overtime—separately for the HTY and for the 12-month period immediately prior to the HTY. Provide projections for the FTY and the FPFTY.

a. Average and year-end numbers of employees and the unadjusted annual payroll expense and employee benefit expense associated with contract and temporary employees.

b. Summary of employee benefit changes granted in HTY or to be granted in or anticipated for the FTY or FPFTY.

c. Claimed payroll expense in employee benefit expense.

d. Percentage of payroll expense and employee benefit expense applicable to operation and maintenance expenses and the basis thereof. Provide similar percentages for the HTY and the two immediately preceding years, and the claimed percentages for the FTY and the FPFTY.

e. Level of related bonus payments included in the cost of service. Provide information for the two years preceding the HTY and any changes since the last rate case. Provide projections for the FTY and the FPFTY.

f. Most recent insurance premiums for each type of insurance coverage, both employee benefit and those purchased for the utility, reflected in the utility's HTY. Provide estimated premiums for the FTY and the FPFTY and explain the basis for the estimates. Indicate whether utility is self-insured or third-party insured. Indicate any reserves for claims. Indicate extent to which employees contribute to such coverage.

g. Level of payments made to industry or professional organizations included in the cost of service along with a description of each payee organization and purpose for the HTY and provide projections for the FTY and the FPFTY, normalized for applicable year. That is, prepayments and late payments are to be adjusted to time period applicable.

h. Explanation of how the utility accounts for vacation, sick, military, and other off-the-job pay for book and ratemaking purposes. Quantity the amounts for each account for the HTY and provide projections for the FTY and the FPFTY.

4. Submit a schedule showing any deferred income and consultant fees, paid to both corporate officers and em-

ployees in the HTY and the two 12-month period ended prior to the HTY. Provide projections for the FTY and the FPFTY.

5. Pension Expenses and Other Post-Employment Benefits Expense (OPEB)

a. Provide the three most recent actuarial studies for both pension expense and post-employment benefits other than pensions (OPEBs). Indicate whether it is expected to fluctuate up or down and provide details of the plan to accommodate for anticipated increases in costs.

b. Identify the total pension expense understatement of the Statement of Accounting Standards (SFAS) No. 87 for the HTY and the portion charged to operation and maintenance (O&M) as well as other discreet cost centers. Include an analysis showing the contribution to the pension plan and the amount deferred or expensed for each of the HTY and preceding two years. Also provide any estimates for the FTY and the FPFTY providing supporting calculations and explanation of the basis for such estimates.

c. Provide an analysis of OPEBs showing the accrual amount under SFAS No. 106 and the pay-as-you-go expense (cash basis).

d. Reconcile the HTY and FTY test year SFAS No. 106 expense levels with the amount identified in the actuarial report.

e. Identify the actual or projected amounts contributed to SFAS No. 106 funds for the HTY, the FTY, and the FPFTY. Identify the actual or projected dates and amounts of the contributions.

f. Explain the funding options or plans which are being used for SFAS No. 106 costs. Identify the portion of costs which are eligible for tax preferred funding.

g. State whether the utility is studying or anticipating any changes to its postretirement benefits offered to employees as a result of SFAS No. 106 or for other reasons. If yes, provide the study and explain the anticipated changes.

h. State whether the HTY expenses reflect any accruals for postemployment benefits under SFAS No. 112. If yes, provide complete details including supporting documentation, assumptions, and funding mechanisms.

i. Support the annualized pension cost figures by addressing whether these figures include any unfunded pension costs and explain provisions to address any unfunded costs.

j. Provide a copy of the utility's pension funding policy.

6. Provide proof that the actual payroll plus the increases equal the payroll expenses claimed in the supporting data by categories of expenses for the HTY. Provide assurance that similar verification will be conducted for the FTY and the FPFTY and indicate procedures for addressing any material differences between estimated expenses and actual expenses for the FTY and the FPFTY. Provide the same analysis for other employee, former employee, and retiree costs and for claimed expenses.

7. Submit detailed computation of adjustments to operating expenses for salary, wage, and fringe benefit increases (union and nonunion merit, progression, promotion, and general) granted during the HTY. Supply data for the HTY and projections for the FTY and the FPFTY, showing:

a. Actual payroll expense (regular and overtime separately) by categories of operating expenses, i.e., maintenance, operating transmission, distribution, other.

b. Date, percentage increase and annual amount of each general payroll increase.

c. Dates and annual amounts of merit increases or management salary adjustments.

d. Total annual payroll increases in the HTY and the 12-month period ended prior to the HTY.

e. Detailed list of employee benefits and cost thereof for union and nonunion personnel. Specific benefits for executives and officers should be identified separately and costs thereof.

f. Support for the annualized pension cost figures by providing the following:

i. State whether these figures include any unfunded pension costs. Explain.

ii. Provide the most current and two prior actuarial studies used for determining pension accrual rates.

g. Schedule showing any deferred income and consultant fees, paid to corporate officers and employees in the HTY and the 12-month period ended prior to the HTY.

8. Provide the following payroll and employee benefit data—regular and overtime—separately for the HTY and for the two 12-month period immediately prior to the HTY. Provide also the projections for the FTY and the FPFTY.

a. The average and year-end number of employees and the unadjusted annual payroll expense and employee benefit expense associated with union personnel.

b. The average and year-end number of employees and the unadjusted annual payroll expense and employee benefit expense associated with non-union personnel.

c. The average and year-end numbers of employees and the unadjusted annual payroll expense and employee benefit expense associated with management employees, if different than Subsection II.1.8.b.

d. The summary of the wage rate, salary, and employee benefit changes granted or to be granted during the year.

e. The claimed test year payroll expense in employee benefit expense.

f. The percentage of payroll expense and employee benefit expense applicable to operation and maintenance expenses and the basis thereof.

9. If the utility has included any costs associated with canceled construction projects or obsolete inventory in requested rates, separately identify the items, provide the related amounts and explain the reason for the cancellation or obsolescence.

10. Provide a list of reports, data, or statements requested by and submitted to the Commission during and subsequent to the HTY.

11. Provide a detail analysis of Special Services pursuant to USoA.

12. List and explain all non-recurring abnormal or extraordinary expenses incurred in the HTY which will not be present in the FTY or the FPFTY.

13. List and explain all expenses included in the HTY, FTY, and FPFTY which do not occur yearly but are of a nature that they do occur over an extended period of years (e.g., non-yearly maintenance programs, etc.).

14. Using the adjusted year's expenses as adjusted under present rates as a base, give detail necessary for clarification of all expenses adjustments. Give clarifying detail for any such adjustments that occur due to changes in accounting procedure, such as charging a particular expense to a different account than was used previously. Explain any extraordinary declines in expense due to such change of account use.

15. Identify any anticipated change in expense resulting from addition or removal of utility plant. Provide the annualized expense impact of the change or changes for the HTY, the FTY, and the FPFTY and calculate the adjustment to the prior expense to reflect projected on-going expense.

16. Submit a statement of past and anticipated changes, since the previous rate case, in major accounting procedures.

17. Adjustments which are estimated shall be fully supported by basic information reasonable necessary.

18. Provide explanation, calculations and documentation of adjustments for projecting Operation Expenses for the FTY and the FPFTY.

19. If a utility's business extends into different states or jurisdictions, then statements must be shown listing Pennsylvania jurisdictional data, other state data and federal data separately and jointly (balance sheets and operating accounts).

J. Depreciation

1. Provide a description of the depreciation methods used to calculate annual depreciation amounts and depreciation reserves, together with a discussion of the factors which were considered in arriving at estimates of service life and dispersion by account. Supply a comprehensive statement of any changes made in method of depreciation, including the impact of DSIC projects on service lives. Provide dates of all field inspections and facilities visited.

2. Include an exhibit and charts depicting the original and estimated survivor curves and a table presenting of the original life table plotted on the chart for each account where the retirement rate method of analysis is utilized. If any utility plant was excluded from the measures of value because it was deemed not to be "used and useful" in the public service, supply a detailed description of each item of property and the associated cost.

3. Provide the surviving original cost at HTY year-end by vintage by account and include applicable depreciation reserves and accruals. These calculations should be provided for plant in service as well as other categories of plant, including contributions in aid of construction and customers' advances for construction, and anticipated retirements associated with any construction work in progress claims (if applicable).

4. Provide a comparison of the calculated depreciation reserve used for ratemaking purposes compared to the book reserve by account at the end of the HTY, the FTY, and the FPFTY, if they differ.

5. Supply a schedule by account and depreciable group showing the survivor curve and annual accrual rate estimated to be appropriate.

a. For the purposes of this filing.

b. For the purposes of the most recent rate increase filing prior to the current proceedings.

c. Supply an explanation for all changes in annual accrual rates by account or by depreciable group.

d. Supply a comprehensive statement of any changes made in method of depreciation and in the selection of average service lives and dispersion as a result of implementing the DSIC.

6. Provide an exhibit showing gross salvage, cost of removal, and net salvage for the three (3) most recent calendar or fiscal years by account.

7. Provide a table, showing the cumulative depreciated original cost by year of installation for utility plant in service at the end of the HTY. (depreciable plant only) as claimed in the measures of value, in the following form:

a. Year installed.

b. Original cost—the total surviving cost associated with each installation year from all plant accounts.

c. Calculation depreciation reserve—the calculated depreciation reserve associated with each installation year from all plant accounts.

d. Depreciated original cost—(Column B minus Column C).

e. Total—cumulation year by year of the figures from Column D.

f. Column E divided by the total of the figure in Column D.

8. If material and supplies comprise part of the cash working capital claim, attach an exhibit showing the actual book balances for materials and supplies by month for the thirteen months prior to the end of the HTY. Explain any abrupt or significant changes in monthly balances.

9. Regardless of whether claim for net negative or positive salvage is made, attach an exhibit showing gross salvage, cost of removal, and net salvage for the HTY and four previous years by account.

10. Explain in detail by statement or exhibit the appropriateness of claiming any additional items, not previously mentioned, in the measures of value.

K. Taxes

1. Provide a copy of the Corporate Federal Tax Returns and Corporate State Tax Returns, including supporting schedules for the most recent 3 years and, if applicable, any amended returns.

2. Provide a schedule of Federal and Pennsylvania taxes, other than income taxes, calculated on the basis of test year per book, pro forma at present rates, and pro forma at proposed rates, to include the following categories:

a. Social Security.

b. Unemployment.

c. Capital Stock.

d. Public Utility Realty.

e. PUC assessment.

f. Other property.

g. Sales and use tax.

h. Any other appropriate categories.

3. Provide a copy of the most current Pennsylvania Corporate Tax report and the most current Pennsylvania Corporate Tax Settlement.

4. Submit a schedule, if applicable, showing the Gross Receipts Tax base used in computing Pennsylvania Gross Receipts Tax adjustment.

5. Submit details of calculations for taxes, other than income, where a utility is assessed taxes for doing business in another state, or on its property located in another state.

6. State amount of the debt interest utilized for income tax calculations and details of debt interest computations under each of the following rate case bases:

a. Actual HTY.

b. Annualized HTY year-end.

c. Proposed FTY and FPPTY year-end, using present rates and proposed rates.

7. State amount of debt interest utilized for income tax calculations which has been allocated from the debt interest of an affiliate, and details of the allocation, under each of the following rate case bases:

a. Actual HTY.

b. Annualized HTY year-end.

c. Proposed FTY and FPPTY year-end, using present rates and proposed rates.

8. Provide the following income tax data:

a. Consolidated income tax adjustments, if applicable.

b. Interest for tax purposes (basis).

9. Submit a schedule showing for the last 3 years' income tax refunds, plus interest, net of taxes, received from the federal government due to prior year claims.

10. Provide detailed computations showing the deferred income taxes derived by using accelerated tax depreciation applicable to post-1969 utility property that increases productive capacity, and accelerated depreciation (ADR) rates on property (separate between state and federal; also, rate used). If based on the HTY, justify.

a. State whether tax depreciation is based on all rate base items claimed as of the end of the FTY, and whether it is the annual tax depreciation at the end of the FTY.

b. Reconcile any difference between the deferred tax balance, as shown as a reduction to measures of value (rate base), and the deferred tax balance as shown on the balance sheet.

c. Make appropriate adjustment and projections for the FPPTY.

11. Submit a schedule showing a breakdown of the deferred income taxes by federal and state per book, pro forma, existing rates, and under proposed rates.

12. Submit a schedule showing a breakdown of accumulated investment tax credits, (3%, 4%, 7%, 10%, and 11%), together with details of methods used to write-off the unamortized balances.

13. Submit a schedule showing the adjustments for taxable net income per book, including below-the-line items, and pro-forma under existing rates, together with an explanation of any difference between the adjustments. Indicate charitable donations and contributions in the tax calculation for ratemaking purposes.

14. Submit detailed calculations supporting taxable net income before federal and state income taxes where the income tax is subject to allocation due to operations in another state, or due to operation of other taxable utility or nonutility business, or by operating divisions or areas.

15. Submit detailed calculations showing the derivation of deferred income taxes for amortization of repair allowance if such policy is followed. Submit additional schedules if the utility has more than one accounting area.

16. State the utility's policy and practice on capitalization of repairs maintenance. If the utility has opted out of Treasury Regulations 1.162 to 1.263, submit depreciation/amortization schedule to reflect depreciation as taken over the useful life of the asset(s).

17. Provide details of the Federal Surtax Credit allocated to the Pennsylvania jurisdictional area, if applicable.

18. Furnish a breakdown of major items comprising prepaid and deferred income tax charges and other deferred income tax credits, reserves and associated reversals on liberalized depreciation.

19. Explain the reason for the use of cost of removal of any retired plant figures in the income tax calculations.

20. Submit the corresponding data applicable to Pennsylvania Corporate Income Tax deferral.

a. Show the amounts of straight line depreciation and accelerated tax depreciation, the difference between which gave rise to the normalizing tax charged back to the HTY operating statement.

b. Show normalization for both federal and state income taxes.

c. Show tax rates used to calculate tax deferral amount.

21. Provide the accelerated tax depreciation and the book depreciation used to calculate HTY deferrals in amounts segregated as follows:

a. Property installed prior to 1970.

b. Property installed subsequent to 1969 (indicate increasing capacity additions and non-increasing capacity additions).

22. State whether all tax savings due to accelerated depreciation on property installed prior to 1970 have been passed through to income. If not, explain.

23. Explain how the utility handled in the HTY the reduction in tax caused by the 2008 change in method for accounting for repairs. Explain the future impact of the change in accounting method on taxable income relative to the FTY and the FPPTY.

24. Show any income tax loss/gain carryovers from previous years that may affect the HTY income taxes or the FTY or the FPPTY Income Taxes. Show loss or gain carryovers by years of origin and amounts remaining by years at the end of the HTY.

25. State whether the utility eliminates tax savings by the payment of actual interest on construction work in progress not in rate base claim. If response is affirmative:

a. Set forth amount of construction claimed in this tax savings reduction and explain the basis for this amount.

b. Explain the manner in which the debt portion of this construction is determined for purposes of the deferral calculations.

c. State the interest rate used to calculate interest on this construction debt portion and the manner in which it is derived.

d. Provide details of calculation to determine tax savings reduction and state whether state taxes are increased to reflect the construction interest elimination.

26. Provide a detailed analysis of taxes accrued per books as of year-end for the HTY and as anticipated for the FTY and the FPFTY. Also supply the basis for the accrual and the amount of taxes accrued monthly.

27. For the HTY as recorded on the HTY's operating statement:

a. Supply the amount of federal income taxes actually paid.

b. Supply the amount of the federal income tax normalizing charge to tax expense due to excess of accelerated tax depreciation over book depreciation.

c. Supply the normalizing tax charge to federal income taxes for the 10% Job Development Credit during test year.

d. Provide the amount of the credit of federal income taxes due to the amortization or normalizing yearly debit to the reserve for the 10% Job Development Credit.

e. Provide the amount of the credit to federal income taxes for the normalizing of any 3% Investment Tax Credit Reserve that may remain on the utility books.

28. Provide the debit and credit in the HTY to the deferred taxes due to accelerated depreciation for federal income taxes and provide the debit and credit for that Job Development Credits for the HTY.

29. Reconcile all data given any answers to questions on income taxes charged on the HTY operating statement with regard income taxes paid, income taxes charged because of normalization and credits due to yearly write-offs of past years income tax deferrals and from normalization of investment tax and development credits. (Both federal and state income taxes).

30. With respect to determination of federal and state income taxes:

a. Show income tax results of the annualizing and normalizing adjustments to the HTY and FTY before any rate increase.

b. Show income taxes for the annualized and normalized HTY and FTY.

c. Show income tax effect of the rate increase requested.

d. Show income taxes for the normalized and annualized test year after application of the full rate increase.

e. Provide projections for the FPFTY.

31. In adjusting the HTY to an annualized year under present rates, explain any changes that may be due to book or tax depreciation change and to debits and credits to income tax expense due to accelerated depreciation, deferred taxes, job development credits, tax refunds, or other items.

32. State whether section 1552 of the Internal Revenue Code (26 U.S.C. § 1552) or 26 CFR 1.1552-1 (1983) apply to the utility and its parent. If these provisions are not applicable, state why they are not applicable. State whether the parent company has filed a consolidated income tax return for the group. Additionally, if the provisions are applicable:

a. State what option has been chosen by the group.

b. Provide, in summary form, the amount of tax liability that has been allocated to each of the participating members in the consolidated income tax return for the test year and the most recent 3 years for which data is available.

c. Provide a schedule, in summary form, of contributions, which were determined on the basis of separate tax return calculations, made by each of the participating members to the tax liability indicated in the consolidated group tax return. Provide total amounts of actual payments to the tax depository for the tax year, as computed on the basis of separate returns of members.

d. Provide the most recent annual income tax return for the group.

e. Provide details of the amount of the net operating losses of any member allocated to the income tax returns of each of the members of the consolidated group for the most recent years for which data is available, together with a summary of the actual tax payments for those years.

f. Provide details of the amount of net negative income taxes, after all tax credits are accounted for, of any member allocated to the income tax return on each of the members of the consolidated group for the 3 most recent years for which data is available, together with a summary of the actual tax payments for those years.

g. Explain any changes in accounting method under IRC Section 446 and 448 and the effects of such changes on the utility's federal taxable income for the HTY, FTY, and FPFTY.

L. *Long Term Infrastructure Improvement Plan (LTIIP) And Annual Asset Optimization Plan (AAO Plan)*

1. Provide a copy of the most recent Long Term Infrastructure Improvement Plan (LTIIP) approved by the Commission as well as any pending LTIIP filed by the utility.

2. Provide a copy of all of the AAO Plans approved since the most recent approved LTIIP as well as the any pending AAO Plans filed by the utility.

3. Document impact on service reliability, safety enhancements, and operational savings resulting from LTIIPs and AAO Plans such as reduced equipment-failure-related expenses, fewer field investigations for outages, fewer complaints, for example.

M. *Industry Specific Data—This subsection details additional information, based on specific utility type, that is required in a FPFTY filing.*

M.1. *GAS, STEAMHEAT, AND PIPELINE UTILITIES ONLY*

1. Provide a description of the property of the utility and an explanation of the system's operation using available projections if actual data is unavailable. This description should include, but not be limited to, the following:

a. If the utility has various gas service areas, indicate if they are integrated such that the gas supply is available to all customers.

b. Provide all pertinent information regarding utility policy related to the addition of new consumers in the utility's service area.

c. Explain how the utility obtains its gas supply, as follows:

i. Explain how the utility stores or manufactures gas; if applicable.

ii. State whether the utility has peak shaving facilities.

iii. Provide details of coal-gasification programs, if any.

iv. Describe the potential for emergency purchases of gas.

v. Provide the amount of gas in Mcf supplied by various suppliers in the test year (include a copy of all contracts).

vi. Provide the amount of gas in Mcf supplied from utility-owned wells during the test year.

d. Provide plans for future gas supply, as follows:

i. Supply details of anticipated gas supply from the utility's near-term development of gas wells, if any.

ii. Provide gas supply agreements and well development ventures and identify the parties thereto.

e. Indicate any anticipated curtailments and explain the reasons for the curtailments.

f. Provide current information on any FERC action or programs that may affect, or tend to affect, the natural gas supply to the gas utility.

2. Submit a schedule showing a reconciliation of the historic test year and two prior twelve-month periods showing a breakdown of City Gate Requirements, City Gate Source volumes, Mcf sales, and line losses. List all amounts of gas purchased, manufactured, used, transported, and sold.

3. Provide calculations substantiating the adjustment to revenues for annualization of changes in number of customers and annualization of changes in volume sold for all customers for the test year.

a. Break down changes in number of customers by rate schedules.

b. If an annualization adjustment for changes in customers and changes in volume sold is not submitted, explain why not.

4. Provide the three most recent Annual Unaccounted-for Gas (UFG) Reports filed with the Commission.

5. Provide the schedules included in the three most recent Purchased Gas Cost (PGC) filings that show the reconciliation of the calculation of UFG in the Annual UFG Report and the calculation of the UFG used to determine the Company's retainage rate.

6. Submit a schedule showing the sources of gas supply associated with annualized Mcf sales.

7. If the utility has a Fuel Adjustment Clause:

a. State the base fuel cost per Mcf chargeable against basic customers' rates during the test year. If there was any change in this basic fuel charge during the HTY, give details and explanation thereof.

b. State the amount in which the fuel adjustment clause cost per Mcf exceeds the fuel cost per Mcf charged in base rates at the end of the HTY.

c. If fuel cost deferment is used at the end of the HTY, give:

i. The amount of deferred fuel cost contained in the operating statement that was deferred from the 12-month operating period immediately preceding the HTY.

ii. The amount of deferred fuel cost that was removed from the HTY and deferred to the period immediately following the HTY.

d. State the amount of Fuel Adjustment Clause revenues credited to the HTY operating account.

e. State the amount of fuel cost charged to the operating expense account in the HTY which is the basis of Fuel

Adjustment Clause billings to customers in that year. Provide summary details of this charge.

f. From the recorded HTY operating account, remove the Fuel Adjustment Clause Revenues. Also remove from the HTY recorded operating account the excess of fuel cost over base rate fuel charges, which is the basis for the Fuel Adjustment charges. Explain any difference between FAC Revenues and excess fuel costs. This is intended to limit the operating account to existing customers' base rate revenues and expense deductions relative thereto.

g. Provide projections for the FTY and the FPFTY.

8. Submit a schedule showing fuel cost in excess of base compared to fuel cost recovery for the period two months prior to HTY and the HTY.

9. Supply a detailed analysis of Purchased Gas for the HTY and the prior twelve months. Provide projections for the FTP and the FPFTY.

10. Submit calculations supporting energy cost per Mcf and operating ratio used to determine increase in costs other than production to serve additional load.

11. Submit detailed calculations for bulk gas transmission service costs under supply and/or interconnection agreements.

12. Submit a schedule for gas producing units retired or scheduled for retirement subsequent to the HTY showing station, units, Mcf capacity, hours of operation during HTY, net output produced, cents/Mcf of maintenance, and fuel expenses.

13. Provide a statement explaining the details of firm gas purchase (long-term) contracts with affiliated and nonaffiliated utilities, including determination of costs, terms of contract, and other pertinent information.

14. Provide intrastate operations percentages by expense categories for two years prior to the HTY. Provide projections for the FTY and the FPFTY.

15. Provide a schedule showing suppliers, Mcf purchased, cost (small purchases from independent suppliers may be grouped), emergency purchases, listing same information; curtailments during the year; gas put into and taken out of storage; line loss, and any other gas input or output not in the ordinary course of business.

16. Provide a schedule showing the determination of the fuel costs included in the base cost of fuel.

17. Providing a schedule showing the calculation of any deferred fuel costs shown in Account 174. Also, explain the accounting, with supporting detail, for any associated income taxes.

18. Submit a schedule showing maintenance expenses, gross plant, and the relation of maintenance expense thereto as follows:

a. Gas Production Maintenance Expenses per Mcf production, per \$1,000 Mcf production and per \$1,000 of Gross Production Plant;

b. Transmission Maintenance Expenses per Mmcf mile and per \$1,000 of Gross Transmission Plant;

c. Distribution Maintenance Expense per customer and per \$1,000 of Gross Distribution Plant;

d. Storage Maintenance Expenses per Mmcf of Storage Capacity and \$1,000 of Gross Storage Plant. This schedule shall include three years prior to HTY and projections for the FTY and the FPFTY.

19. Prepare a five-column schedule of expenses, as described below, for the periods listed (supply sub-accounts, if significant, to clarify basic accounts). Provide the annual recorded expense by accounts claimed amounts. Include all accounts used but not specifically listed below:

- a. Columns 1 and 2—The two preceding years to the HTY.
- b. Column 3—HTY.
- c. Column 4—FTY.
- d. Column 5—FPPTY.

OPERATING EXPENSES

- Steam Production
- Manufactured Gas Production
- Raw Gas Material
- Other Storage Expenses
- Transmission Expense
- Distribution Expense
- Customer Accounts Expense
- Administrative and General Expenses
- Maintenance Expenses
- Total Operating Expenses

OTHER EXPENSES

- Depreciation Expenses
- Taxes Other than Income

INTEREST EXPENSE

TOTAL EXPENSES

20. Provide the most recent three-year monthly balances for current gas storage and notes, including the interest rate, financing such storage.

21. Provide a schedule that compares the dollar amount of mains and services projected in the last base rate case to be installed in the FTY with the actual dollar amount of mains and services installed in that FTY period. If the actual amounts were less than projected, explain why they were less.

22. Provide a schedule that compares the dollar amount of mains and services projected in the last base rate case to be installed in the FPPTY with the actual dollar amount of mains and services actually in that FPPTY. If the actual amounts were less than projected, explain why they were less.

23. State the amount of gas, in Mcf, obtained through various suppliers in past years.

24. In determining pro forma expense, exclude cost of gas adjustments applicable to fuel adjustment clause and exclude fuel adjustment clause revenues, so that the operating statement is on the basis of base rates only.

25. Identify utility's policy with respect to replacing customers lost through attrition.

26. Identify procedures developed to govern relationship between the utility and potential customers—e.g., expansion, alternate energy requirements, availability of distribution facilities, smart metering, and ownership of metering-related facilities.

27. If Unrecovered Fuel Cost policy is implemented, provide the following:

a. State manner in which amount of Unrecovered Fuel Cost on balance sheet at the end of the HTY was determined and the month in the HTY in which such fuel expense was actually incurred. Provide amount of adjustment made on the rate case operating account for the HTY year-end unrecovered fuel cost. (If different than balance sheet amount, explain.)

b. Provide amount of Unrecovered Fuel Cost that appeared on the balance sheet at the opening date of the HTY and the manner in which it was determined. State whether this amount is in the HTY operating account.

c. Provide projections for the FTY and the FPPTY.

28. Provide details of times and amounts comprising the accounting entries for Deferred Fuel Cost at the beginning and end of the HTY.

29. Submit the following simultaneously with any rate increase filing:

a. Provide a Cost of Service Study showing the rate of return under the present and proposed tariffs for all customer classifications. The study should include a summary of the allocated measures of value, operating revenues, operating expenses, and net return for each of the customer classifications at present and proposed rates for the FTY and FPPTY.

b. Provide a statement of testimony describing the complete methodology of the cost of service study.

c. Provide a complete description and back-up calculations for all allocation factors.

d. Provide an exhibit for each customer classification showing the following data for the HTY and the four previous years:

- i. The maximum coincident peak day demand.
- ii. The maximum coincident 3-day peak day demand.
- iii. The average monthly consumption in Mcf during the Primary Heating Season (November—March).
- iv. The average monthly consumption in Mcf during the Non-heating season (April—October).
- v. The average daily consumption in Mcf for each 12-month period.

30. Submit a Bill Frequency Analysis for each rate. The analysis should include the rate schedule and block interval, the number of bills at each interval, the cumulative number of bills at each interval, the Mcf or therms at each interval, the accumulation of Mcf or therms passing through each interval, and the revenue at each interval for both the present rate and the proposed rates. The analysis should show only those revenues collected from the basic tariff.

31. Supply a map showing the Gas System Facilities and Gas Service Areas. The map should include transmission lines, distribution lines, other companies' lines interconnecting with the interconnecting points clearly designated, major compressor stations, gas storage areas, and gas storage lines. The normal direction of gas flow within the transmission system should be indicated by arrows. Separate service areas within the system should be clearly designated.

32. Supply a cost analysis supporting minimum charges for all rate schedules.

33. Supply a cost analysis supporting demand charges for all tariffs which contain demand charges.

34. Supply the net fuel clause adjustment by month for the HTY. Provide projections for the FTY and the FPFTY.

35. Supply a tabulation of base rate bills for each rate schedule comparing the existing rates to proposed rates. The tabulation should show the dollar difference and the percent increase or decrease.

36. Submit the projected demands for all customer classes for both purchased and produced gas for the three years following the HTY filing.

37. Supply an exhibit showing the gas deliveries to each customer class for the most recent 24-month period. The exhibit should identify the source of the gas as “purchased” (pipeline), “production” (includes purchases from local producers), “storage withdrawal,” “propane/air,” and “unaccounted for.”

38. Describe how the net billing and gross billing is determined. For example, if the net billing is based on the rate blocks plus Fuel Cost Adjustment (FCA) and State Tax Adjustment (STA), and the gross billing is determined by a percentage increase (1, 3, or 5 percent), then state whether the percentage increase is being applied to all three items of revenue i.e., rate blocks plus FCA and STA.

39. Provide a schedule that shows the number of miles of distribution main replaced in the HTY and the projected amount to be replaced in the FTY and FPFTY.

40. For the ten longest main replacement projects completed in the HTY, provide the following information:

- a. Total cost of the project.
- b. Length of distribution main replaced.
- c. Total restoration costs.
- d. A breakdown of the restoration costs (permits, trench paving, street paving, curbing, sidewalks, landscaping).

41. For the ten longest main replacement projects to be completed in the FTY, provide the following information:

- a. Total cost of the project.
- b. Length of distribution main replaced.
- c. Total restoration costs.
- d. A breakdown of the restoration costs (permits, trench paving, street paving, curbing, sidewalks, landscaping).

42. For the ten longest main replacement projects to be completed in the FPFTY, provide the following information:

- a. Total cost of the project.
- b. Length of distribution main replaced.
- c. Total restoration costs.
- d. A breakdown of the restoration costs (permits, trench paving, street paving, curbing, sidewalks, landscaping).

M.2. *ELECTRIC UTILITIES ONLY*

1. Provide a description of the property of the utility and an explanation of the system’s operation using available projections if actual data is unavailable. This description should include, but not limited to the following:

- a. A schedule of generating capability showing for the HTY and for the two consecutive 12-month periods prior to the HTY, net dependable capacity in KW by unit, plant capacity factor by unit, and total fuel consumption by type and cost of each unit, if available, or for each station,

and operation and maintenance expenses by station. Provide projection for the FTY and the FPFTY.

b. A schedule showing for the HTY, and for the 12-month period immediately prior to the HTY, the scheduled and unscheduled outages (in excess of 48 hours), for each station, the equipment or unit involved, the date the outage occurred, duration of the outage, maintenance expenses incurred for each outage, if available, and amounts reimbursable from suppliers or insurance companies. Provide projections for the FTY and the FPFTY.

c. A schedule for each unit retired during the HTY or subsequent to the end of the HTY, which shows the unit’s KW capacity, hours of operation during the HTY, net output generated, cents/KWH of maintenance and fuel expenses, and date of retirement. Provide projections for the FTY and the FPFTY.

d. A schedule showing most current projections of capacity additions and retirements (costs and KW), and reserve capacity at the time of peak for at least 10 years beyond the HTY, including the in-service dates (actual or expected) and AFDC cutoff dates, if different from in-service dates, for all new generating units coming on line during or subsequent to the HTY, if claimed. Provide projections for the FTY and the FPFTY.

2. When a utility files a tariff stating a new rate based in whole or in part on the cost of construction, as defined in 66 Pa.C.S. § 1308(f) (relating to voluntary changes in rates), of an electric generating unit, the utility shall identify:

- a. The total cost of the generating unit.
- b. The following costs:
 - i. Cost and quantity of each category of major equipment, such as switchgear, pumps or diesel generators and the like.
 - ii. Cost and quantity of each category of bulk materials, such as concrete, cable, structural steel, and the like.
 - iii. Manual labor.
 - iv. Direct and indirect costs of architect/engineering services.
 - v. Direct and indirect costs of subcontracts or other contracts involving major components or systems such as turbines, generators, nuclear steam supply systems, major structures, and the like.
 - vi. Distributed costs.

c. A cost increase of \$5 million or more, including AFUDC, over the original utility estimates provided under 66 Pa.C.S. § 515(a) (relating to construction cost of electric generating units) and its causes.

d. Compliance with subsections (a) and (b) will be identical in format and substance as that provided under 52 Pa. Code § 57.103 (relating to estimate of construction costs) for original cost estimates submitted under 66 Pa.C.S. § 515(a).

3. Provide details regarding smart meter deployment, actual and/or projected operational savings, and what is being done to leverage the smart meter capabilities.

M.3. *WATER AND WASTEWATER UTILITIES ONLY*

1. Provide a breakdown of the number and size of private fire services for according to the general service class of customers. Include sprinkler systems serving municipal buildings.

2. List all public fire customers showing the number of public hydrants by size for each customer for the end of the HTY and projected for the FTY and the FPFTY.

3. Provide a calculation of the utility's base cost of water or wastewater per billing unit.

4. Furnish the name of each supplier, gallonage and expense for water purchased as recorded in the Water Purchased for Resale for the HTY and two preceding years. Provide projections for the FTY and the FPFTY.

5. Quality of Service

a. Indicate whether the utility is in violation of any provision of the Pennsylvania Safe Drinking Water Act (SDWA) or any rule, regulation or order, or any condition of any permit variance or exemption granted by the Pennsylvania Department of Environmental Protection (PA DEP), or its predecessor.

i. Provide information indicating whether the utility is in compliance with SDWA provisions at 25 Pa. Code § 109.407 regarding general public notification requirements:

A. Provide a copy of each public notification given in accordance with this section, since the last rate proceeding. [3]

B. Provide a detailed explanation of all actions taken to remedy an acute violation, and to comply with the requirements prescribed by a variance or exemption.

C. State whether any fines or penalties were assessed by PA DEP, and indicate the amounts paid by the utility.

ii. Provide the most recent copies of all annual consumer confidence reports issued pursuant to SDWA Amendments of 1996 since the last rate proceeding.

A. Provide any annual consumer confidence reports which reflect violations of State and Federal safe drinking water requirements.

B. Explain how these violations were resolved.

b. Indicate whether the utility is in compliance with 52 Pa. Code § 65.6(d) regarding pressure surveys at regular intervals.

i. Provide details on any water pressure problems lasting longer than 5 days which have occurred since the last rate proceeding in any part of the water transmission and distribution system.

ii. Describe any action taken on a temporary basis, and the long-term solutions developed to address any water pressure problems.

c. Provide support to demonstrate that water or wastewater service is being furnished on a continuous basis by supplying a summary of the utility's records of each service interruption greater than 24 hours since the last rate proceeding.

d. Indicate whether the utility is in compliance with 52 Pa. Code § 65.4(b) regarding complete and current mapping of the entire distribution or collection system. If not in compliance, indicate what needs to be done to get into compliance.

e. Provide a summary report demonstrating the utility's efforts in water conservation, since the last rate proceeding, pursuant to 52 Pa. Code § 65.20.

³ Request for specific stakeholder comment during the advance notice comment period: Should a DSIC (or CSIC) proceeding suffice if such a proceeding has concluded more recently than a general rate case?

f. Provide a discussion of the utility's policy, or provide a copy of the policy if in written form, on tracking and responding to customer complaints. [4]

g. Provide a summary report demonstrating the utility's compliance with 52 Pa. Code § 65.3 regarding the full and prompt investigation of service or facility complaints and the recordkeeping requirements of such complaints.

h. Provide a discussion of the utility's policy regarding meter requirements, replacements and testing. State if the utility's procedures are in compliance with 52 Pa. Code § 65.8(b).

i. Provide meter test records as required in 52 Pa. Code § 65.8(c) for the 50 meters most recently removed from service.

ii. Provide a discussion on the utility's policy and history of compliance with 52 Pa. Code § 65.9 regarding adjustments of bills for meter error with in the last year.

6. Cost of Service—Wastewater Utilities

a. Provide a cost of service allocation study if an interval of 5 years has passed between a previous cost of service study and the anticipated date of the start of the FPFTY. The cost of service study shall provide the necessary data to determine if the rate structure is fair and equitable to all customer classes. The study shall allocate cost driving factors such as volume, phosphorus (P), nitrogen (N), biological oxygen demand (BOD), and suspended solids (SS) equitably among the customer classes based on acceptable industry cost driving factors. The study shall use the FPFTY proposed revenue requirement. Summaries of conclusions and back-up calculations shall be made part of the submission of the allocation study and shall include the following:

i. A description of the allocation method and development of allocation factors used and a schedule of the allocated cost of service by class (and service area if applicable) at the present and proposed revenues.

ii. A comparative schedule showing the rate of return produced at present and proposed rates by customer class (and by service area if applicable.)

iii. Indicate if the method for calculating the allocation factors is consistent with the previous rate case study and explain the impact of any changes.

iv. Provide the average day, volume, P, N, BOD, and SS by the treatment plant for the HTY and 2 prior years.

v. Provide workpapers, calculations, and supporting documentation which develop the equivalent meters and equivalent service line weightings used in the utility's cost of service study.

vi. Provide a detailed cost analysis that supports the utility's customer charges, by meter or service line size, showing all direct and indirect costs included.

b. Provide a listing of negotiated special rate contracts and a comparison of revenues for special rate contracts and under tariff rates. Special rates are defined as rates not contained in the currently effective tariff.

M.4. PHILADELPHIA GAS WORKS (PGW) and any other city natural gas company or municipal authority under Commission jurisdiction

1. Attach copies of the Company's approved budget for the HTY, FTY, and FPFTY.

⁴ Request for specific stakeholder comment during the advance notice comment period: Relative to subsections f. through h.2., should similar inquiries regarding customer service be included for the energy utilities that elect to use a FPFTY? Relative to subsection h.2., is one year long enough?

2. Provide the most recent Customer Responsibility and Universal Service Program Plan and Evaluation detailing participation, cost, and recovery.

M.5. Pittsburgh Water and Sewer Authority (PWSA) and any other municipal or authority water/wastewater company under Commission jurisdiction

1. Attach copies of the Company's approved budget for the HTY, FTY, and FPFTY.

2. Provide the most recent Customer Responsibility and Universal Service Program Plan and Evaluation detailing participation, cost, and recovery.

[Pa.B. Doc. No. 18-59. Filed for public inspection January 12, 2018, 9:00 a.m.]

STATE POLICE

[37 PA. CODE CH. 33]

Procedures and Specifications for Firearm Record Forms under the Uniform Firearms Act

The State Police proposes to amend § 33.103 (relating to confidentiality) to read as set forth in Annex A.

Effective Date

This proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

Statutory Authority

This proposed rulemaking is authorized under 18 Pa.C.S. § 6111.5 (relating to rules and regulations). Section 111(b) of the Mental Health Procedures Act (MHPA) (50 P.S. § 7111(b)) authorizes disclosure of mental health records information by the State Police.

Background and Need for this Proposed Rulemaking

Under 18 Pa.C.S. § 6111.1(a) (relating to Pennsylvania State Police), the State Police is charged with the responsibility to administer 18 Pa.C.S. §§ 6101—6127 (relating to Pennsylvania Uniform Firearms Act of 1995) (act). This charge has been described as “broad authority” for the purpose of “ensur[ing] public safety and welfare by keeping firearms out of the hands of dangerous individuals.” *In re Expungements*, 938 A.2d 1075, 1080—82 (Pa. Super. Ct. 2007). Section 6105(a)(1) and (c)(4) of 18 Pa.C.S. (relating to persons not to possess, use, manufacture, control, sell or transfer firearms) prohibits an individual who has been adjudicated as an incompetent or who has been involuntarily committed to a mental health institution for inpatient care and treatment under the MHPA from possessing, using, controlling, selling or manufacturing a firearm or obtaining a license to possess, use, control, sell, transfer or maintain a firearm in this Commonwealth. Furthermore, the possession of a firearm by the mentally ill is regulated by section 902(g)(4) of the Gun Control Act of 1968 (18 U.S.C.A. § 922(g)(4)), and essentially every state in the country.

Records regarding mental health commitments under the MHPA are confidential and are generally not subject to disclosure except as provided by law. Section 111(a) of the MHPA provides that all documents regarding persons in treatment shall be kept confidential and may not be released or their contents disclosed without that individual's written consent. Section 111(b) of the MHPA provides an exception to this general rule that enables the State Police to obtain mental health records information, and

disclose this information to any person, to administer 18 Pa.C.S. § 6105(c)(4), which prohibits an individual who has been adjudicated as an incompetent or who has been involuntarily committed under the MHPA from, among other things, possessing a firearm. See *Commonwealth v. Emmil*, 866 A.2d 420, 422 (Pa. Super. Ct. 2005) (“[t]he MHPA permits the State Police to obtain specific mental health records in order to ensure that Section 6105 is not violated”). This exception allows the State Police to keep firearms out of the hands of individuals who have been adjudicated incompetent or involuntarily committed under the MHPA by allowing direct access to the mental health records information that evidence the prohibiting event.

The State Police obtains mental health records information because section 109(d) of the MHPA (50 P.S. § 7109(d)) and 18 Pa.C.S. § 6111.1(f) require judges and certain mental health officers and administrators to notify the State Police regarding an individual's involuntary commitment or incompetency adjudication within 7 days of its occurrence. This notice is a one-page form consisting of biographic information (not a copy of actual record of commitment or adjudication) and is used to create the State Police Mental Health Database for purposes of administering the firearm prohibition in 18 Pa.C.S. § 6105(c)(4).

The State Police's regulations do not clearly provide for the permitted use of the confidential information consistent with the authorized use in section 111(b) of the MHPA. Section 33.103(e), which concerns the confidentiality of mental health records information, only authorizes the mental health records information to be used by the State Police for the purpose of determining whether a person applying to obtain a firearm or license to carry a firearm is prohibited from possessing, using, controlling, selling, transferring or manufacturing a firearm. Section 111(b) of the MHPA, however, provides for a broader permissible use of this information and authorizes the State Police to disclose the information to any person to ensure compliance with 18 Pa.C.S. § 6105(c)(4). The lack of symmetry between § 33.103(e) and section 111(b) of the MHPA may be interpreted to prevent the State Police from using mental health record information for other purposes that are consistent with the act and the MHPA, but which are not seeking to obtain a firearm from a dealer or the issuance of a license to carry through the county sheriff.

The following are two examples for which the State Police would be using the information in the State Police Mental Health Database consistent with the authorization in section 111(b) of the MHPA, but which are not currently within the permitted use of this information under current § 33.103(e). First, it is consistent with section 111(b) of the MHPA for the State Police to query the State Police Mental Health Database in conducting a background check to determine whether local law enforcement officers, or candidates for those positions, are prohibited from possessing a firearm under 18 Pa.C.S. § 6105(c)(4). This is particularly important for a department prior to hiring an officer and issuing the officer a department-owned firearm. Allowing a police officer to possess a firearm when the officer has been adjudicated as incompetent, or involuntarily committed to a mental institution, has the potential to place residents in this Commonwealth at risk, not to mention allowing an individual to violate State or Federal firearms laws, or both.

Additionally, it is consistent with section 111(b) of the MHPA for the State Police to query the State Police

Mental Health Database to assist police officers who identify a specific investigative need, in the course of an investigation under the act, to determine if a person is prohibited from possessing a firearm due to being adjudicated as an incompetent or having been involuntarily committed under the MHPA. In many cases, officers are unable to conclusively determine if a person has been subject to a disqualifying adjudication or commitment, without checking the person against the State Police Mental Health Database, to find if a mental health prohibition exists. Over the past two decades, there have been many highly publicized incidents when individuals possessed firearms, even though they had a mental health history that would have otherwise prohibited possession. Without information confirming that a person is prohibited under the act from possessing firearms for mental health reasons, officers may be unable to take the necessary steps to seize firearms or make an arrest, or both.

The proposed amendments to § 33.103(e) provide clarity and allow the State Police to clearly and fully utilize its lawful authority under the MHPA to protect the public from individuals who are prohibited from possessing a firearm due to an adjudication of incompetency or an involuntary commitment to a mental health institution.

Description of this Proposed Rulemaking

This proposed rulemaking amends § 33.103(e) to bring it in line with the permitted use of mental health record information by the State Police under section 111(b) of the MHPA. As previously discussed, § 33.103(e) currently authorizes the mental health records information to be used by the State Police “only” for the purpose of determining whether a person applying to obtain a firearm or license to carry a firearm is prohibited from possessing, using, controlling, selling, transferring or manufacturing a firearm. Section 111(b) of the MHPA provides for a broader permissible use of this information and authorizes the State Police to disclose the information to any person to ensure compliance with 18 Pa.C.S. § 6105(c)(4).

Accordingly, the State Police is proposing to amend § 33.103(e) to provide for the permitted exceptions to the general rule of confidentiality for mental health records information maintained by the State Police under the MHPA and the act. Proposed § 33.103(e)(1) contains the current regulatory language concerning the permitted use for a person applying to obtain a firearm or license to carry a firearm; “only” is proposed to be deleted because these two uses are not the only exceptions provided by law. Proposed § 33.103(e)(2), which provides that the State Police may disclose the information in accordance with section 111(b) of the MHPA, creates consistency and aligns the regulation with the permitted use of mental health record information by the State Police under the MHPA. By directly tying the regulation to the MHPA, prior ambiguity caused by the interplay of the regulation and the MHPA as to the State Police’s ability to use the State Police Mental Health Database consistent with the MHPA will be removed.

Fiscal Impact and Paperwork Requirements

This proposed rulemaking will not have adverse fiscal impact on the Commonwealth or its political subdivisions. This proposed rulemaking will not impose additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on January 3, 2018, the State Police

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 Senate Law and Justice Committee and the House Judiciary 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 State Police, the General Assembly and the Governor.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to the Regulatory Coordinator, Legislative Affairs Office, State Police, 1800 Elmerton Avenue, Harrisburg, PA 17110, robailey@pa.gov within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference 17-85, Procedures and Specifications for Firearm Record Forms under the Uniform Firearms Act, when submitting comments.

COLONEL TYREE C. BLOCKER,
Commissioner

Fiscal Note: 17-85. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 37. LAW

PART I. STATE POLICE

CHAPTER 33. PROCEDURES AND SPECIFICATIONS FOR FIREARM RECORD FORMS UNDER THE UNIFORM FIREARMS ACT

GENERAL

§ 33.103. Confidentiality.

* * * * *

(e) Mental health records information received or maintained by the State Police under section 6111.1(b) and (f) of the act (relating to Pennsylvania State Police) [**shall be**] **and section 109(d) of the Mental Health Procedures Act (50 P.S. § 7109(d)) are confidential and not subject to [public] disclosure[.], except for all of the following:**

(1) The information [**shall**] **will** be available [**only**] to the State Police for the purposes of determining, under sections 6109(d) and 6111.1(b) of the act, if the potential applicant is prohibited from possessing, using, controlling, selling, transferring or manufacturing a firearm, or obtaining a license to possess, use, control, sell, transfer or manufacture a firearm in this Commonwealth, as defined under Federal or State law, and for the purpose of informing the licensee/sheriff making inquiry under sections 6109(d) and 6111.1(b)(iii) of the act.

(2) **The State Police may disclose the information in accordance with section 111(b) of the Mental Health Procedures Act (50 P.S. § 7111(b)).**

[Pa.B. Doc. No. 18-60. Filed for public inspection January 12, 2018, 9:00 a.m.]

STATEMENTS OF POLICY

Title 4—ADMINISTRATION

PART II. EXECUTIVE BOARD

[4 PA. CODE CH. 9]

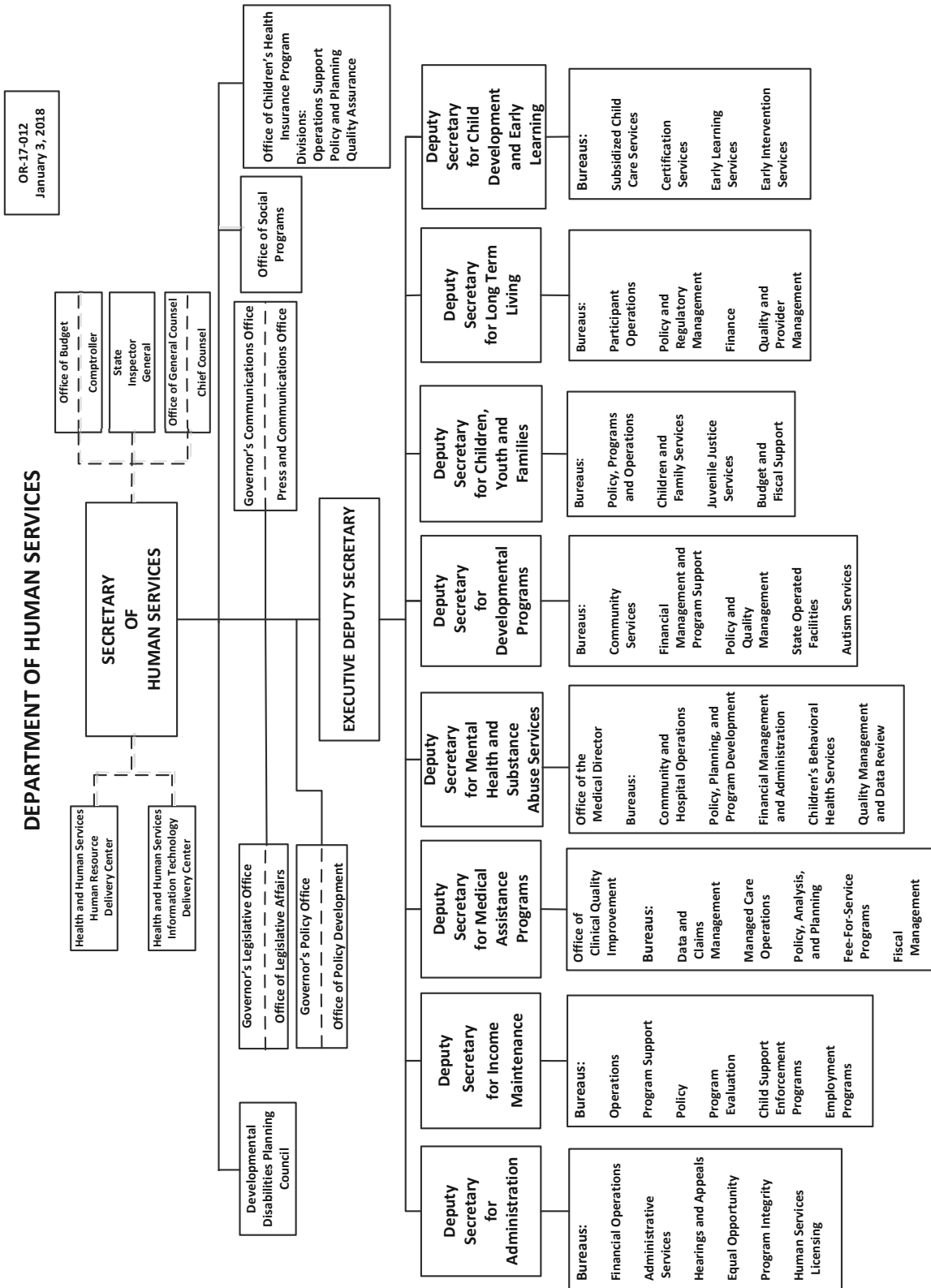
Reorganization of the Department of Human Services

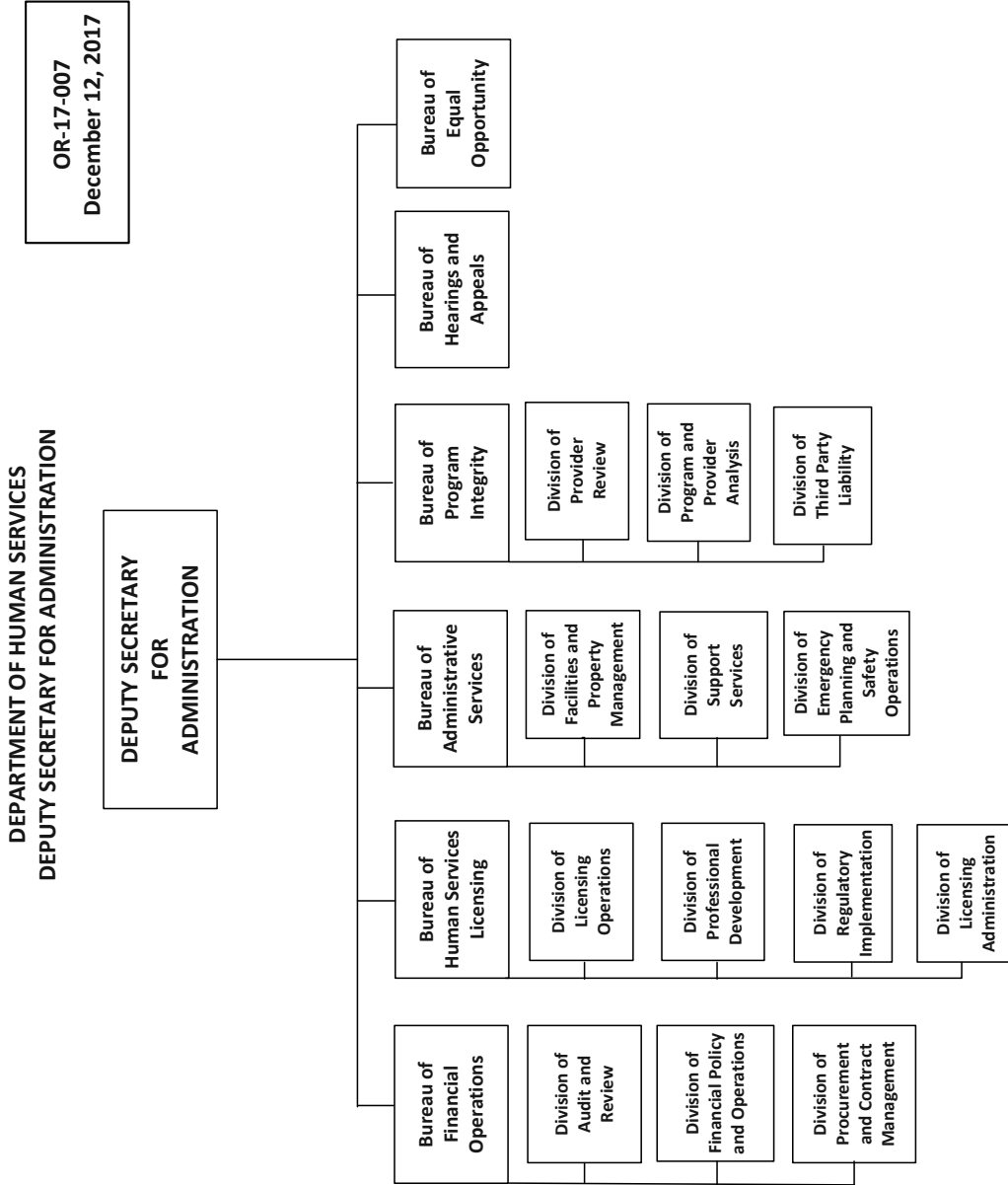
The Executive Board approved a reorganization of the Department of Human Services effective January 3, 2018.

The organization chart at 48 Pa.B. 300 (January 13, 2018) is published at the request of the Joint Committee on Documents under 1 Pa. Code § 3.1(a)(9) (relating to contents of *Code*).

(Editor's Note: The Joint Committee on Documents has found organization charts to be general and permanent in nature. This document meets the criteria of 45 Pa.C.S. § 702(7) (relating to contents of Pennsylvania Code) as a document general and permanent in nature which shall be codified in the Pennsylvania Code.)

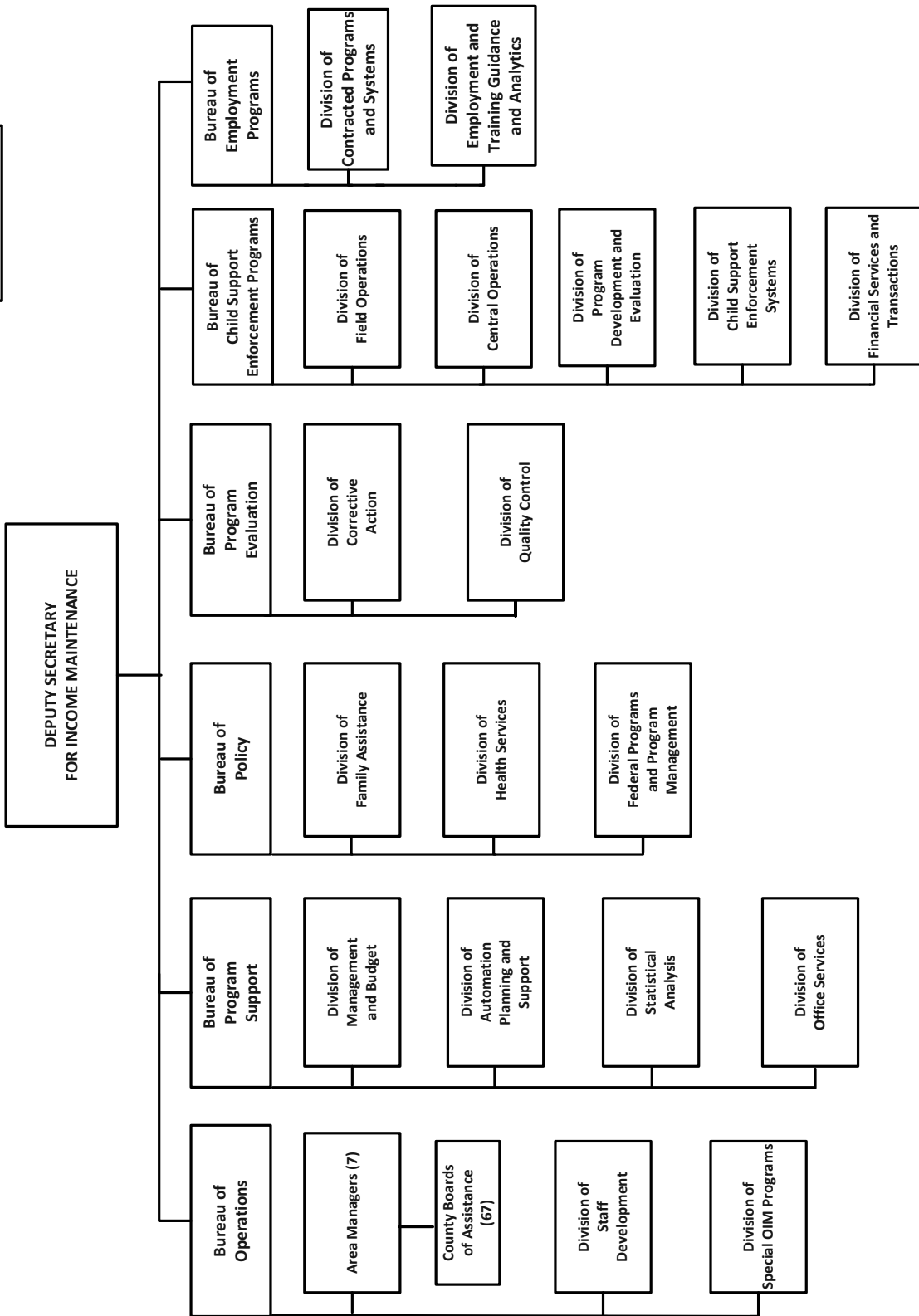
[Pa.B. Doc. No. 18-61. Filed for public inspection January 12, 2018, 9:00 a.m.]





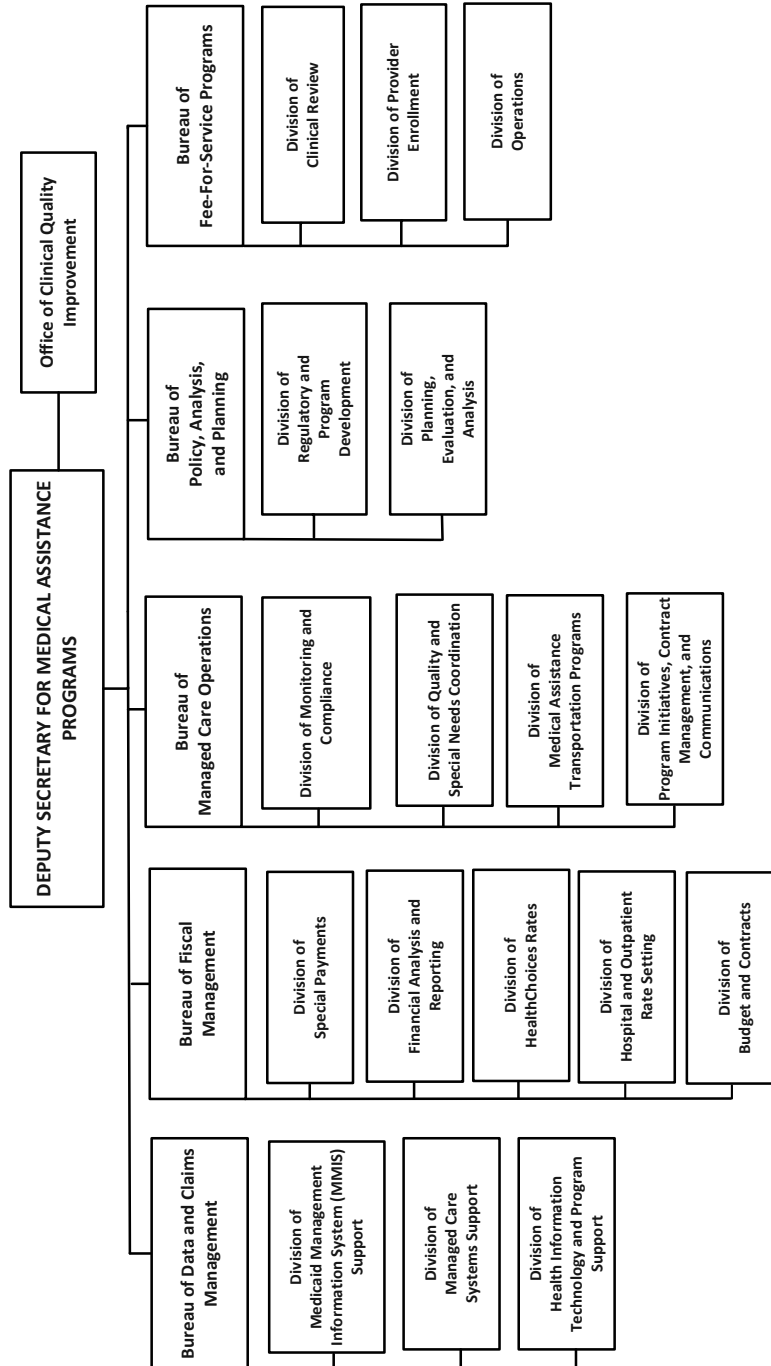
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OR-16-031
January 25, 2017



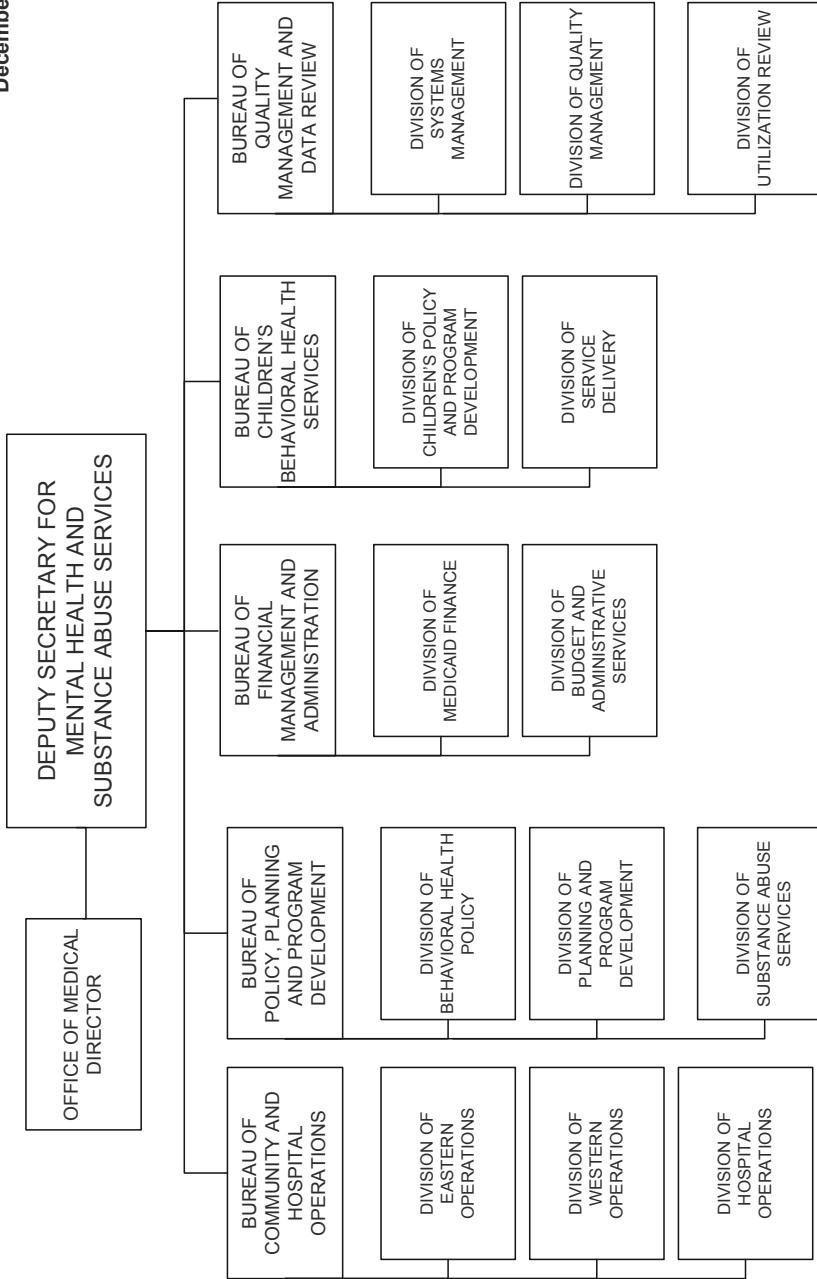
OR-16-022
August 3, 2016

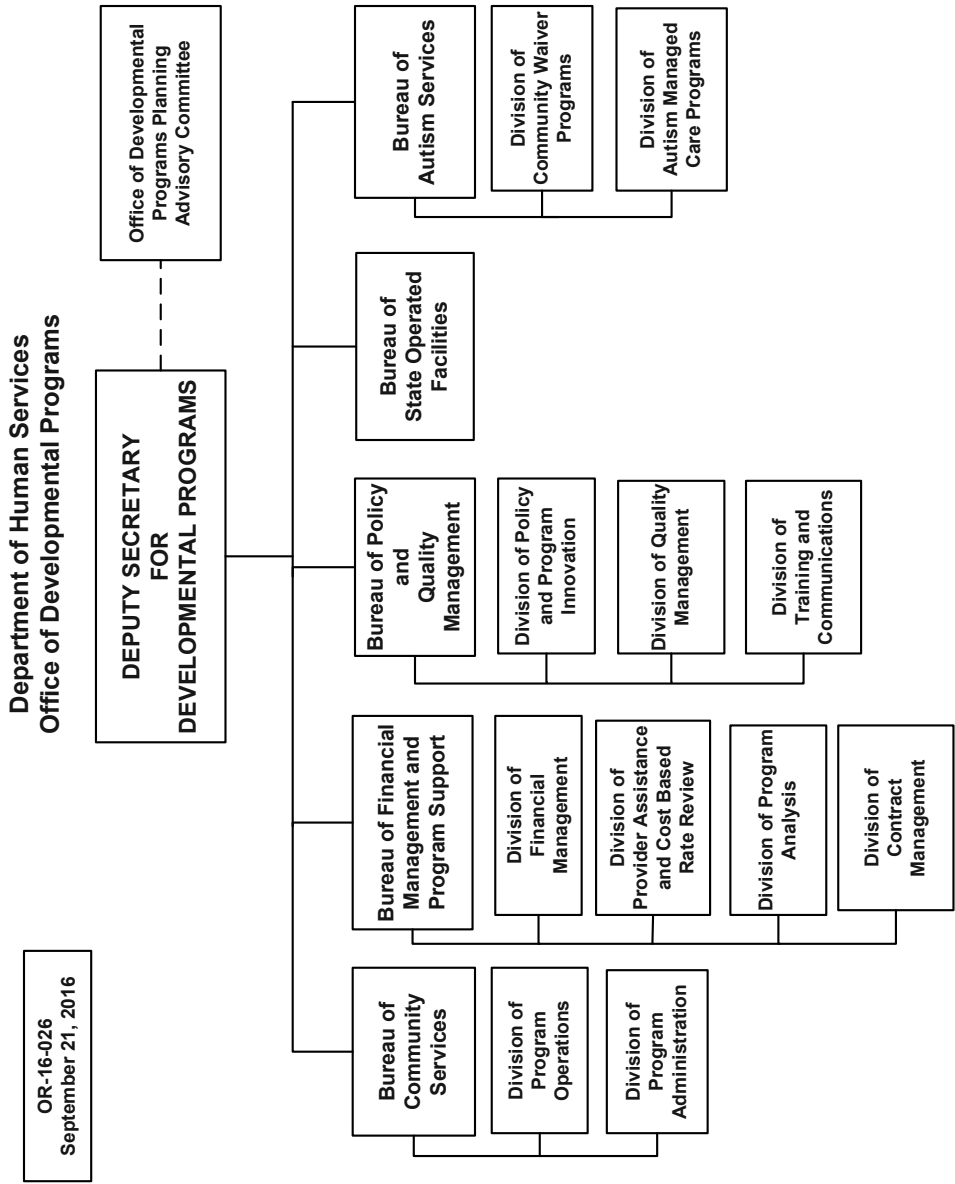
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DEPUTY SECRETARY FOR MEDICAL ASSISTANCE PROGRAMS



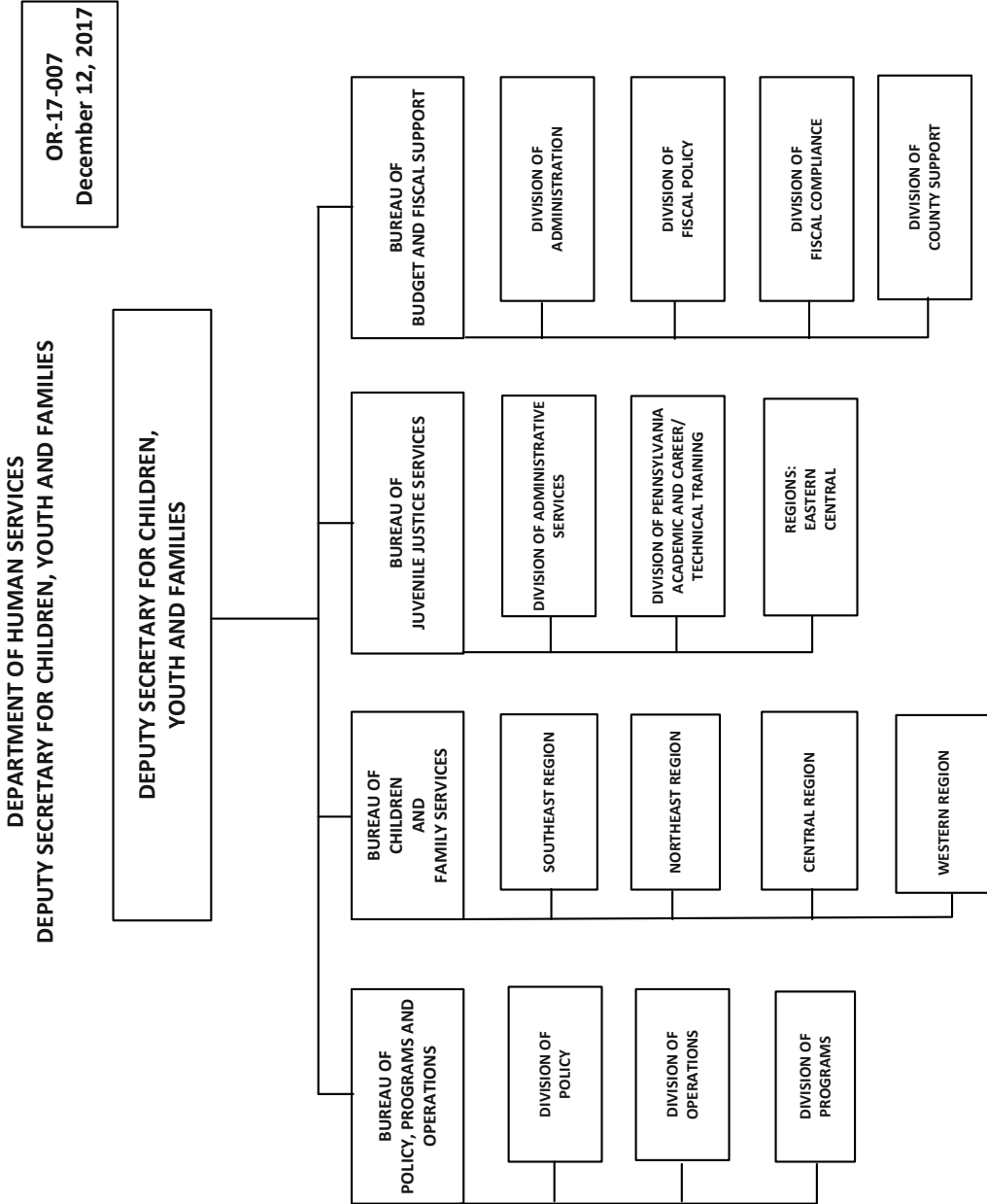
DEPARTMENT OF HUMAN SERVICES
DEPUTY SECRETARY FOR MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES

OR-14-027
December 4, 2014



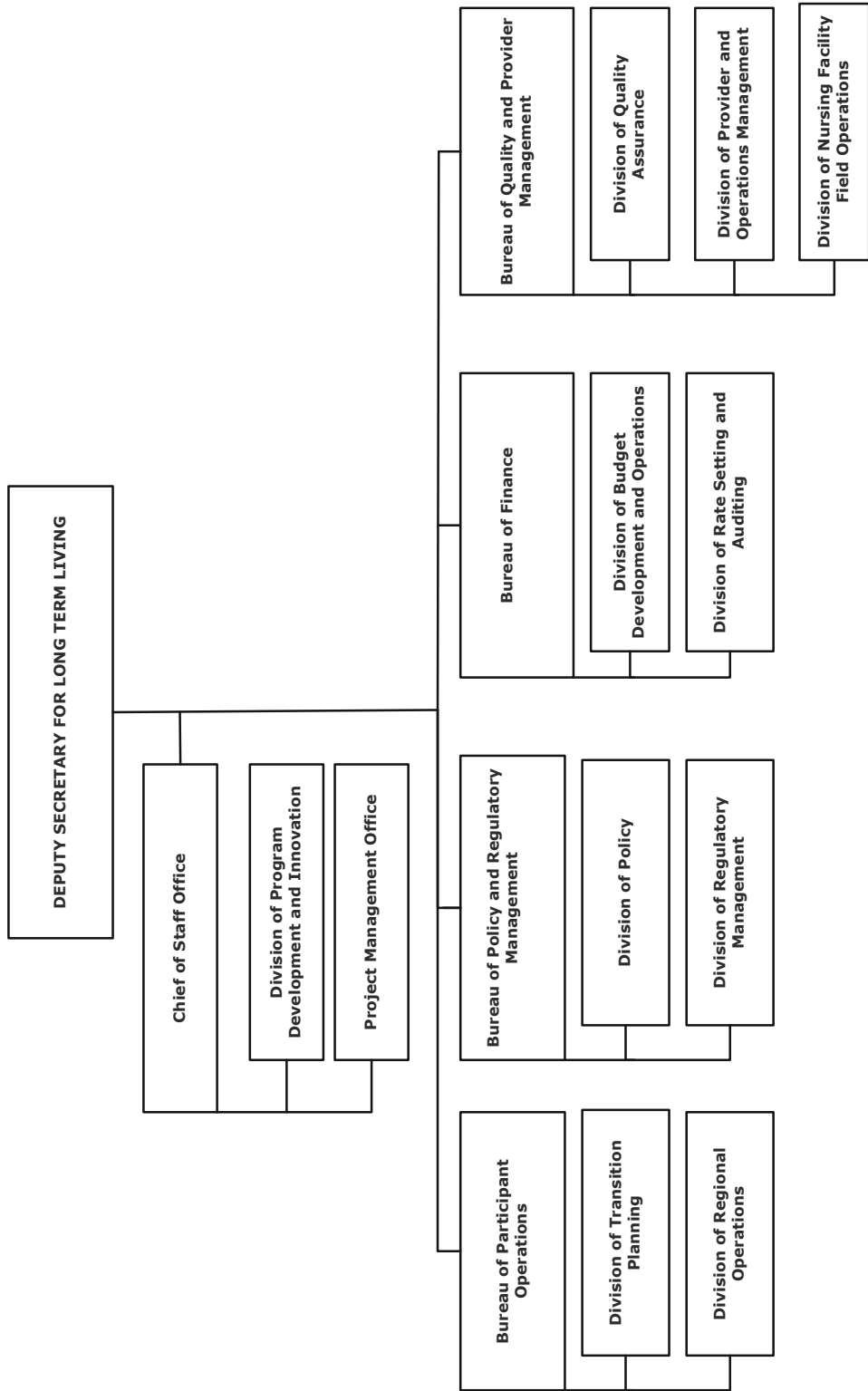


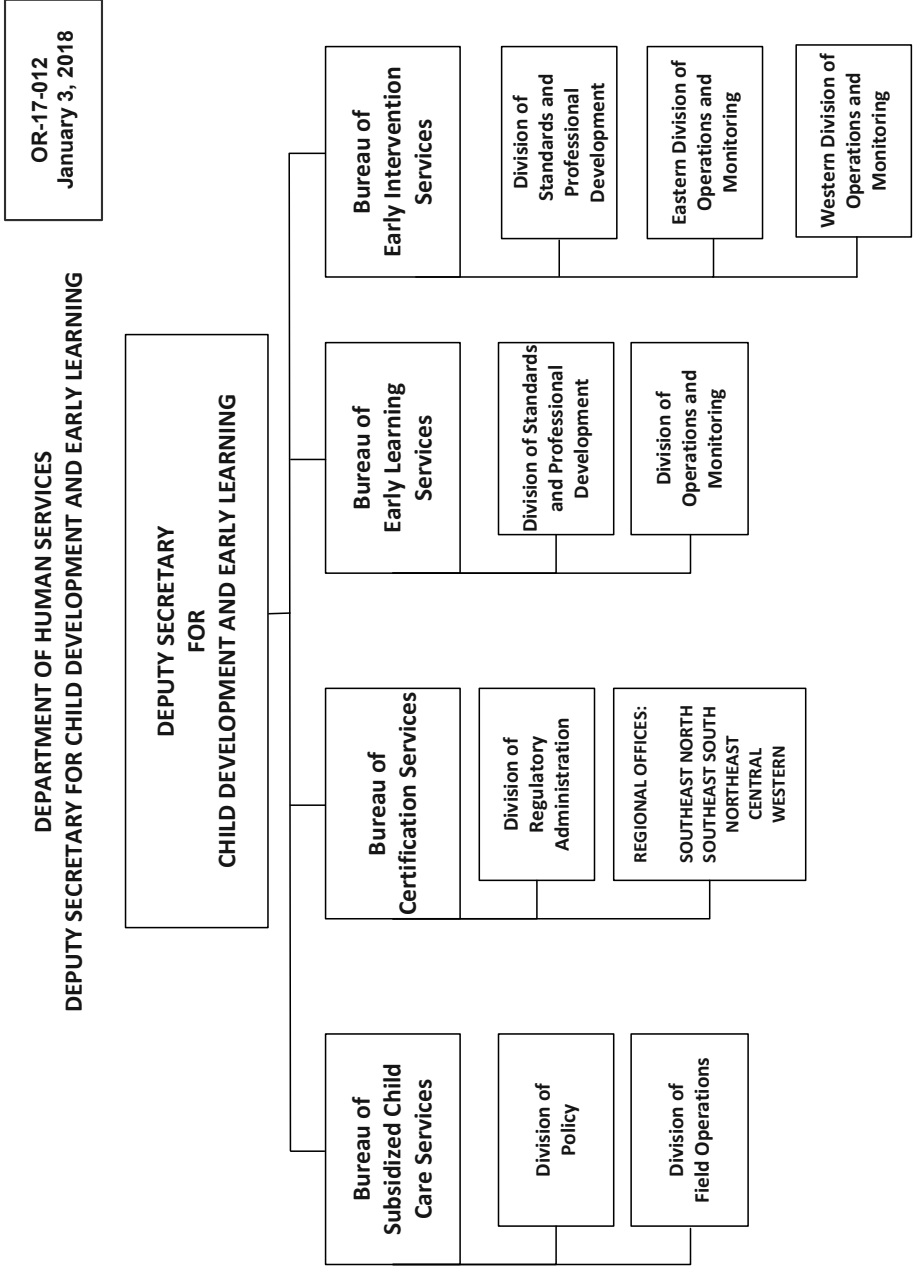
OR-16-026
September 21, 2016



**DEPARTMENT OF HUMAN SERVICES
DEPUTY SECRETARY FOR LONG TERM LIVING**

OR-14-027
December 4, 2014





NOTICES

DEPARTMENT OF BANKING AND SECURITIES

Actions on Applications

The Department of Banking and Securities (Department), under the authority in the Banking Code of 1965 (7 P.S. §§ 101—2204), the Department of Banking and Securities Code (71 P.S. §§ 733-1—733-1203) and 17 Pa.C.S. (relating to Credit Union Code), has taken the following actions on applications received for the week ending January 2, 2018.

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 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

Section 112 Acquisitions

<i>Date</i>	<i>Name and Location of Applicant</i>	<i>Action</i>
12-28-2017	Ronald M. Soldo Hilton Head Island, SC Application for approval to acquire up to 9.9% of the common stock of Hyperion Bank, Philadelphia.	Approved

Holding Company Acquisitions

<i>Date</i>	<i>Name and Location of Applicant</i>	<i>Action</i>
1-1-2018	Atlantic Community Bancshares, Inc. Camp Hill Cumberland County Application for approval to acquire 100% of BBN Financial Corp., Glastonbury, CT, and thereby indirectly acquire 100% of Bankers' Bank Northeast, Glastonbury, CT.	Effective

Consolidations, Mergers and Absorptions

<i>Date</i>	<i>Name and Location of Applicant</i>	<i>Action</i>
1-1-2018	Atlantic Community Bankers Bank Camp Hill Cumberland County Merger of Bankers' Bank Northeast, Glastonbury, CT, with and into Atlantic Community Bankers Bank, Camp Hill, PA. As a result of the merger, the sole office of Bankers' Bank Northeast, located at the following address, became a branch office of Atlantic Community Bankers Bank: 43 Western Boulevard Glastonbury Hartford County, CT	Effective

Branch Applications

De Novo Branches

<i>Date</i>	<i>Name and Location of Applicant</i>	<i>Location of Branch</i>	<i>Action</i>
12-18-2017	Jersey Shore State Bank Jersey Shore Lycoming County	3081 Route 405 Highway Muncy Lycoming County	Opened
12-29-2017	Citizens Bank of Pennsylvania Philadelphia Philadelphia County	1700 New Butler Road New Castle Lawrence County	Filed

Branch Relocations

<i>Date</i>	<i>Name and Location of Applicant</i>	<i>Location of Branch</i>	<i>Action</i>
12-18-2017	The Juniata Valley Bank Mifflintown Juniata County	<i>To:</i> 4076 William Penn Highway Mifflintown Juniata County <i>From:</i> 5294 West River Road Mifflintown Juniata County	Effective

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. 18-62. Filed for public inspection January 12, 2018, 9:00 a.m.]

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

Conservation and Natural Resources Advisory Council Meeting

The Conservation and Natural Resources Advisory Council to the Department of Conservation and Natural Resources (Department) will hold a meeting on Wednesday, January 24, 2018, at 10 a.m. in Room 105, Lobby Level, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA.

Questions concerning this meeting or agenda items can be directed to Gretchen Leslie at (717) 772-9084. Persons who wish to participate during the public comment section are encouraged to submit their comments in writing to Gretchen Leslie, Advisor, Conservation and Natural Resources Advisory Council, 400 Market Street, Harrisburg, PA 17101.

Persons in need of accommodations as provided for in the Americans with Disabilities Act of 1990 should contact Katie Woodbury directly at (717) 783-5878 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

CINDY ADAMS DUNN,
Secretary

[Pa.B. Doc. No. 18-63. Filed for public inspection January 12, 2018, 9:00 a.m.]

DEPARTMENT OF EDUCATION

Application by Marywood University to Amend Articles of Incorporation

Notice of Opportunity for Hearing and Invitation to Protest

Under 24 Pa.C.S. § 6503(e) (relating to certification of institutions), the Department of Education (Department) will consider the application for approval of a Certificate of Authority for Marywood University to amend its Articles of Incorporation to change the terms for members of the board of trustees.

In accordance with 24 Pa.C.S. § 6503(e), the Department will act upon the application without a hearing, unless within 30 days after the publication of this notice in the *Pennsylvania Bulletin* a written request for public hearing is filed with the Department, along with a notice of intervention, a petition to intervene or protest in accordance with 1 Pa. Code §§ 35.23 and 35.24 (relating to protests) or 1 Pa. Code §§ 35.27—35.32 (relating to intervention).

Petitions to intervene, protest and request for hearing shall be filed with the Division of Higher and Career Education, 333 Market Street, Harrisburg, PA 17126-0333 on or before the due date prescribed by this notice. Persons wishing to review the application should phone (717) 783-8228 or write to the previous address to schedule a time for a review.

Persons with a disability who wish to attend the hearing, if held, and require an auxiliary aid, service or other accommodation to participate should contact the Division of Higher and Career Education at (717) 783-8228 to discuss accommodations.

PEDRO A. RIVERA,
Secretary

[Pa.B. Doc. No. 18-64. Filed for public inspection January 12, 2018, 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.

<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>
PA0024686 (Sewage)	Mid Mon Valley WPCA PO Box 197 Allenport, PA 15412-0197	Washington County Allenport Borough	Monongahela River (19-D and 19-C)	Yes

Northwest Region: Clean Water Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N?</i>
PA0239321 (Sewage)	Robert Wahlmark SFTF PO Box 137 31970 Guys Mills Road Townville, PA 16360-0437	Crawford County Randolph Township	Unnamed Tributary of Muddy Creek (16-A)	Yes

II. Applications for New or Expanded Facility Permits, Renewal of Major Permits and EPA Non-Waived Permit Applications.

Northeast Regional Office: Regional Clean Water Program Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915, Telephone: 570.826.2511.

Application No. PA0276049, Concentrated Animal Feeding Operation (CAFO), **Pappy's Orchard (Pappy's Orchard)**, 2474 Urffers Road, Coopersburg, PA 18036-3807.

Pappy's Orchard has submitted an application for an Individual NPDES permit for a new CAFO known as Pappy's Orchard, located in Lower Milford Township, **Lehigh County**.

The CAFO is situated near Unnamed Tributary to Licking Creek in Watershed 3-E, which is classified for Migratory Fish and High Quality Waters—Trout Stocking. The CAFO is designed to maintain an animal population of approximately 569.17 animal equivalent units (AEUs) consisting of 55,000 Turkeys. Manure is handled as floor litter. A release or discharge to waters of the Commonwealth under normal operating conditions is not expected. Normal operating conditions are defined as conditions below a 25-year, 24-hour storm event.

The Department has conducted administrative and technical reviews of the application. Based on the preliminary review and application of lawful standards and regulations, the Department has made a tentative determination to issue an NPDES permit for the operation subject to the terms and conditions and monitoring and reporting requirements specified in the permit.

You may make an appointment to review the DEP files on this case by calling the File Review Coordinator at 570-826-5472.

The Environmental Protection Agency (EPA) permit waiver provision under 40 CFR 123.24(e) does not apply to this NPDES permit.

Northwest Region: Clean Water Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

PA0265535, Sewage, SIC Code 4952, 8800, **Mary Peace**, 302 Scranton Hollow Road, Warren, PA 16365. Facility Name: Mary Peace SRSTP. This proposed facility is located in Farmington Township, **Warren County**.

Description of Proposed Activity: The application is for a new NPDES permit for a new discharge of treated sewage.

The receiving stream s Mud Run, located in State Water Plan watershed 16-B 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 0.0005 MGD.—Limits.

<i>Parameters</i>	<i>Mass Units (lbs/day)</i>		<i>Concentrations (mg/L)</i>			<i>Maximum</i>
	<i>Average Monthly</i>	<i>Average Weekly</i>	<i>Minimum</i>	<i>Annual Average</i>	<i>Maximum Instant.</i>	
Flow (MGD)	Report Annl Avg	XXX	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0 Daily Min	XXX	9.0 Daily Max	XXX
Biochemical Oxygen Demand (BOD ₅)	XXX	XXX	XXX	10.0	XXX	20.0
Total Suspended Solids	XXX	XXX	XXX	10.0	XXX	20.0
Fecal Coliform (No./100 ml)	XXX	XXX	XXX	200	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.

PA0265331, Sewage, SIC Code 8800, **Jay Anderson**, 781 Quaker Hill Road, Warren, PA 16365. Facility Name: Jay Anderson SRSTP. This proposed facility is located in Glade Township, **Warren County**.

Description of Proposed Activity: The application is for a new NPDES permit for a new discharge of treated sewage from a single-family residence.

The receiving stream, an Unnamed Tributary to Conewango Creek, is located in State Water Plan watershed 16-B and is classified for cold water fishes, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.0005 MGD.

Parameters	Mass Units (lbs/day)		Minimum	Concentrations (mg/L)		Instant. Maximum
	Average Monthly	Average Weekly		Annual Average	Maximum	
Flow (GPD)	Report Annl Avg	XXX	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0 Inst Min	XXX	XXX	9.0
Biochemical Oxygen Demand (BOD ₅)	XXX	XXX	XXX	10.0	XXX	20
Total Suspended Solids	XXX	XXX	XXX	10.0	XXX	20
Fecal Coliform (No./100 ml)	XXX	XXX	XXX	200	XXX	XXX

In addition, the permit contains the following major special conditions:

- Requirement to submit an Annual Maintenance Report
- No stormwater admitted to the treatment system
- Aerobic tank pumping requirement
- Solids handling
- Abandonment of the treatment system (for public sewage)

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.

PA0265543, Sewage, SIC Code 4952, 8800, **James Lane**, 3229 Davison Road, Harborcreek, PA 16421. Facility Name: James Lane SRSTP. This proposed facility is located in Harborcreek Township, **Erie County**.

Description of Proposed Activity: The application is for a new NPDES permit for a new discharge of treated sewage.

The receiving stream is an unnamed tributary to Elliotts Run, located in State Water Plan watershed 15-A and classified for Cold Water and Migratory 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 0.0005 MGD.

Parameters	Mass Units (lbs/day)		Minimum	Concentrations (mg/L)		Instant. Maximum
	Average Monthly	Average Weekly		Annual Average	Maximum	
Flow (MGD)	Report Annl Avg	XXX	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0 Daily Min	XXX	9.0 Daily Max	XXX
Biochemical Oxygen Demand (BOD ₅)	XXX	XXX	XXX	10.0	XXX	20.0
Total Suspended Solids	XXX	XXX	XXX	10.0	XXX	20.0
Fecal Coliform (No./100 ml)	XXX	XXX	XXX	200	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.

DEP Bureau of Clean Water: Environmental Program Manager, NPDES Permitting Division, 400 Market Street, PO Box 8774, Harrisburg, PA 17105-8774, Telephone: 717-787-5017.

PA0001627, Industrial, SIC Code 4911, **NRG Power Midwest LP**, 121 Champion Way Suite 300, Canonsburg, PA 15317-5817. Facility Name: NRG Power Midwest LP— Cheswick Generating Station. This existing facility is located in Springdale Borough, **Allegheny County**.

Description of Existing Activity: The application is for a renewal of an NPDES permit for an existing discharge of treated Industrial Waste and stormwater.

The receiving stream(s), Little Deer Creek, Unnamed Tributary to Little Deer Creek, and Allegheny River, are located in State Water Plan watershed 18-A and are classified for Warm Water 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 Outfall 002 are based on a design flow of 12.4 MGD.

Parameters	Mass Units (lbs/day)		Minimum	Concentrations (mg/L)		Instant. Maximum
	Average Monthly	Daily Maximum		Average Monthly	Daily Maximum	
Flow (MGD)	Report	Report	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0	XXX	XXX	9.0
Total Residual Chlorine (TRC)	XXX	XXX	XXX	Report	Report	XXX
Total Suspended Solids	XXX	XXX	XXX	35	70	XXX
Total Dissolved Solids	Report	Report	XXX	Report	Report	XXX

<i>Parameters</i>	<i>Mass Units (lbs/day)</i>		<i>Minimum</i>	<i>Concentrations (mg/L)</i>		<i>Instant. Maximum</i>
	<i>Average Monthly</i>	<i>Daily Maximum</i>		<i>Average Monthly</i>	<i>Daily Maximum</i>	
Osmotic Pressure (mOs/kg)	XXX	XXX	XXX	50	100	XXX
Aluminum, Total	49.64	99.28	XXX	0.48	0.96	1.86
Antimony, Total	0.58	0.91	XXX	0.0056	0.0088	0.014
Arsenic, Total	1.04	1.62	XXX	0.01	0.016	0.025
Beryllium, Total	XXX	XXX	XXX	0.01	0.02	0.025
Cadmium, Total	XXX	XXX	XXX	0.0003	0.0006	0.00075
Chromium, Hexavalent	XXX	XXX	XXX	0.006	0.012	0.015
Copper, Total	XXX	XXX	XXX	0.009	0.018	0.023
Cyanide, Free	XXX	XXX	XXX	Report	Report	XXX
Iron, Total	155.24	310.25	XXX	1.5	3.0	3.75
Lead, Total	0.33	0.52	XXX	0.0032	0.005	0.008
Manganese, Total	103.42	179.95	XXX	0.87	1.74	2.18
Selenium, Total	XXX	XXX	XXX	0.005	0.01	0.0125
Silver, Total	XXX	XXX	XXX	0.003	0.006	0.0075
Sulfate, Total	Report	Report	XXX	Report	Report	XXX
Thallium, Total	XXX	XXX	XXX	0.002	0.004	0.005
Pentachlorophenol	XXX	XXX	XXX	0.0003	0.0006	0.00075
Benzo(a)Anthracene (µg/L)	0.00041	0.00062	XXX	0.004	0.006	0.01
Benzo(a)Pyrene (µg/L)	0.00041	0.00062	XXX	0.004	0.006	0.01
Benzo(k)Fluoranthene (µg/L)	0.00041	0.00062	XXX	0.004	0.006	0.01
3,4-Benzofluoranthene (µg/L)	0.00041	0.00062	XXX	0.004	0.006	0.01
Chloride	Report	Report	XXX	Report	Report	XXX
Bromide	Report	Report	XXX	Report	Report	XXX
Chrysene (µg/L)	0.00041	0.00062	XXX	0.004	0.006	0.01
Dibenzo(a,h)Anthracene (µg/L)	0.00041	0.00062	XXX	0.004	0.006	0.01
Hexachlorobutadiene (µg/L)	0.048	0.074	XXX	0.46	0.72	1.2
Indeno(1,2,3-cd)Pyrene (µg/L)	0.00041	0.00062	XXX	0.004	0.006	0.01
N-Nitrosodiphenylamine	0.36	0.56	XXX	0.035	0.054	0.088
Phenanthrene	0.103	0.16	XXX	0.001	0.0016	0.0025

The proposed effluent limits for Outfall 003 are based on a design flow of 376 MGD.

<i>Parameters</i>	<i>Mass Units (lbs/day)</i>		<i>Minimum</i>	<i>Concentrations (mg/L)</i>		<i>Instant. Maximum</i>
	<i>Average Monthly</i>	<i>Daily Maximum</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
Total Residual Chlorine (TRC)	XXX	XXX	XXX	XXX	XXX	0.2
Temperature (°F)	XXX	XXX	XXX	Report	Report	XXX
Temperature (°F)	XXX	XXX	XXX	Report	Report	XXX
Industrial Influent	XXX	XXX	XXX	Report	Report	XXX
Heat Rejection Rate (MBTUs/hr)	Report	2,960	XXX	XXX	XXX	XXX
Total Dissolved Solids	Report	Report	XXX	Report	Report	XXX
Nitrate-Nitrite as N	Report	Report	XXX	Report	Report	XXX
Arsenic, Total	Report	Report	XXX	Report	Report	XXX
Boron, Total	Report	Report	XXX	Report	Report	XXX
Lead, Total	XXX	XXX	XXX	Report	Report	XXX
Mercury, Total	Report	Report	XXX	Report	Report	XXX
Selenium, Total	Report	Report	XXX	Report	Report	XXX
Silver, Total	XXX	XXX	XXX	Report	Report	XXX
Sulfate, Total	Report	Report	XXX	Report	Report	XXX
Chloride	Report	Report	XXX	Report	Report	XXX
Bromide	Report	Report	XXX	Report	Report	XXX

The proposed effluent limits for Internal Monitoring Point 103 are based on a design flow of 0.4 MGD.

<i>Parameters</i>	<i>Mass Units (lbs/day)</i>		<i>Minimum</i>	<i>Concentrations (mg/L)</i>		<i>Instant. Maximum</i>
	<i>Average Monthly</i>	<i>Average Weekly</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
Total Suspended Solids	XXX	XXX	XXX	30.0	100.0	XXX
Oil and Grease	XXX	XXX	XXX	15.0	20.0	XXX
				Avg Qrtly		

The proposed effluent limits for Internal Monitoring Point 203 are based on a design flow of 1.2 MGD.

<i>Parameters</i>	<i>Mass Units (lbs/day)</i>		<i>Minimum</i>	<i>Concentrations (mg/L)</i>		<i>Instant. Maximum</i>
	<i>Average Monthly</i>	<i>Average Weekly</i>		<i>Average Monthly</i>	<i>Daily Maximum</i>	
Flow (MGD)	Report	Report Daily Max	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0	XXX	XXX	9.0
Total Suspended Solids	XXX	XXX	XXX	30.0	100.0	XXX
Oil and Grease	XXX	XXX	XXX	15.0	20.0	XXX
Avg Qrtly						

The proposed effluent limits for Internal Monitoring Point 303 are based on a design flow of 1.2 MGD.

<i>Parameters</i>	<i>Mass Units (lbs/day)</i>		<i>Minimum</i>	<i>Concentrations (mg/L)</i>		<i>Instant. Maximum</i>
	<i>Average Monthly</i>	<i>Average Weekly</i>		<i>Average Monthly</i>	<i>Daily Maximum</i>	
Flow (MGD)	Report	Report Daily Max	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0	XXX	XXX	9.0
Total Suspended Solids	XXX	XXX	XXX	30.0	100.0	XXX
Oil and Grease	XXX	XXX	XXX	15.0	20.0	XXX
Avg Qrtly						

The proposed effluent limits for Internal Monitoring Point 403 are based on a design flow of 1.23 MGD.

<i>Parameters</i>	<i>Mass Units (lbs/day)</i>		<i>Minimum</i>	<i>Concentrations (mg/L)</i>		<i>Instant. Maximum</i>
	<i>Average Monthly</i>	<i>Average Weekly</i>		<i>Average Monthly</i>	<i>Maximum</i>	
Flow (MGD)	Report	Report Daily Max	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0	XXX	XXX	9.0
Total Suspended Solids	XXX	XXX	XXX	XXX	XXX	50.0

The proposed Interim effluent limits for Internal Monitoring Point 503 are based on a design flow of 0.18 MGD.

<i>Parameters</i>	<i>Mass Units (lbs/day)</i>		<i>Minimum</i>	<i>Concentrations (mg/L)</i>		<i>Instant. Maximum</i>
	<i>Average Monthly</i>	<i>Daily Maximum</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
Total Suspended Solids	XXX	XXX	XXX	10.0	20.0	25
Total Dissolved Solids	Report	Report	XXX	Report	Report	XXX
Oil and Grease	XXX	XXX	XXX	15.0	20.0	XXX
Nitrate-Nitrite as N	Report	Report	XXX	Report	Report	XXX
Aluminum, Total	XXX	XXX	XXX	Report	Report	XXX
Arsenic, Total	Report	Report	XXX	Report	Report	XXX
Beryllium, Total	XXX	XXX	XXX	0.8	1.6	2
Boron, Total	Report	Report	XXX	Report	Report	XXX
Cadmium, Total	XXX	XXX	XXX	Report	Report	XXX
Chromium III, Total	XXX	XXX	XXX	Report	Report	XXX
Copper, Total	XXX	XXX	XXX	0.1	0.2	0.25
Iron, Dissolved	XXX	XXX	XXX	Report	Report	XXX
Iron, Total	XXX	XXX	XXX	Report	Report	XXX
Lead, Total	XXX	XXX	XXX	0.1	0.2	0.25
Manganese, Total	XXX	XXX	XXX	Report	Report	XXX
Mercury, Total	Report	Report	XXX	0.004	0.008	0.01
Nickel, Total	XXX	XXX	XXX	Report	Report	XXX
Selenium, Total	Report	Report	XXX	Report	Report	XXX
Selenium, Dissolved	XXX	XXX	XXX	Report	Report	XXX
Silver, Total	XXX	XXX	XXX	0.1	0.2	0.25
Sulfate, Total	Report	Report	XXX	Report	Report	XXX
Zinc, Total	XXX	XXX	XXX	Report	Report	XXX
Chloride	Report	Report	XXX	Report	Report	XXX
Bromide	Report	Report	XXX	Report	Report	XXX

The proposed Final effluent limits for Internal Monitoring Point 503 are based on a design flow of 0.18 MGD.

<i>Parameters</i>	<i>Mass Units (lbs/day)</i>		<i>Minimum</i>	<i>Concentrations (mg/L)</i>		<i>Instant. Maximum</i>
	<i>Average Monthly</i>	<i>Daily Maximum</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

<i>Parameters</i>	<i>Mass Units (lbs/day)</i>		<i>Minimum</i>	<i>Concentrations (mg/L)</i>		<i>Instant. Maximum</i>
	<i>Average Monthly</i>	<i>Daily Maximum</i>		<i>Average Monthly</i>	<i>Daily Maximum</i>	
Total Suspended Solids	XXX	XXX	XXX	10.0	20.0	25
Total Dissolved Solids	Report	Report	XXX	Report	Report	XXX
Oil and Grease	XXX	XXX	XXX	15.0	20.0	XXX
Nitrate-Nitrite as N	Report	Report	XXX	Report	Report	XXX
Aluminum, Total	XXX	XXX	XXX	Report	Report	XXX
Arsenic, Total	Report	Report	XXX	Report	Report	XXX
Beryllium, Total	XXX	XXX	XXX	0.8	1.6	2
Boron, Total	780.6	1,217.8	XXX	520	811	1,300
Cadmium, Total	XXX	XXX	XXX	Report	Report	XXX
Chromium III, Total	XXX	XXX	XXX	Report	Report	XXX
Copper, Total	XXX	XXX	XXX	0.1	0.2	0.25
Iron, Dissolved	XXX	XXX	XXX	Report	Report	XXX
Iron, Total	XXX	XXX	XXX	Report	Report	XXX
Lead, Total	XXX	XXX	XXX	0.1	0.2	0.25
Manganese, Total	XXX	XXX	XXX	Report	Report	XXX
Mercury, Total	Report	Report	XXX	0.004	0.008	0.01
Nickel, Total	XXX	XXX	XXX	Report	Report	XXX
Selenium, Total	Report	Report	XXX	Report	Report	XXX
Selenium, Dissolved	XXX	XXX	XXX	Report	Report	XXX
Silver, Total	XXX	XXX	XXX	0.1	0.2	0.25
Sulfate, Total	Report	Report	XXX	Report	Report	XXX
Zinc, Total	XXX	XXX	XXX	Report	Report	XXX
Chloride	Report	Report	XXX	Report	Report	XXX
Bromide	Report	Report	XXX	Report	Report	XXX

The proposed effluent limits for Internal Monitoring Point 603 are based on a design flow of 3.22 MGD.

<i>Parameters</i>	<i>Mass Units (lbs/day)</i>		<i>Minimum</i>	<i>Concentrations (mg/L)</i>		<i>Instant. Maximum</i>
	<i>Average Monthly</i>	<i>Average Weekly</i>		<i>Average Monthly</i>	<i>Daily Maximum</i>	
Flow (MGD)	Report	Report Daily Max	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0	XXX	XXX	9.0
Total Suspended Solids	XXX	XXX	XXX	30.0	100.0	XXX
Oil and Grease	XXX	XXX	XXX	15.0	20.0	XXX
Avg Qrtly						

The proposed effluent limits for Internal Monitoring Point 803 are based on a design flow of 5.35 MGD.

<i>Parameters</i>	<i>Mass Units (lbs/day)</i>		<i>Minimum</i>	<i>Concentrations (mg/L)</i>		<i>Instant. Maximum</i>
	<i>Average Monthly</i>	<i>Average Weekly</i>		<i>Average Monthly</i>	<i>Maximum</i>	
Flow (MGD)	Report	Report Daily Max	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0	XXX	XXX	9.0

The proposed effluent limits for Outfall 004 are based on a design flow of 0.85 MGD.

<i>Parameters</i>	<i>Mass Units (lbs/day)</i>		<i>Minimum</i>	<i>Concentrations (mg/L)</i>		<i>Instant. Maximum</i>
	<i>Average Monthly</i>	<i>Average Weekly</i>		<i>Average Monthly</i>	<i>Maximum</i>	
Flow (MGD)	Report	Report Daily Max	XXX	XXX	XXX	XXX

The proposed effluent limits for Outfall 005 are based on a design flow of 0 MGD (stormwater).

<i>Parameters</i>	<i>Mass Units (lbs/day)</i>		<i>Minimum</i>	<i>Concentrations (mg/L)</i>		<i>Instant. Maximum</i>
	<i>Average Monthly</i>	<i>Average Weekly</i>		<i>Average Monthly</i>	<i>Daily Maximum</i>	
pH (S.U.)	XXX	XXX	Report Inst Min	XXX	XXX	Report
Total Suspended Solids	XXX	XXX	XXX	Report	Report	XXX
Aluminum, Total	XXX	XXX	XXX	Report	Report	XXX
Iron, Total	XXX	XXX	XXX	Report	Report	XXX
Manganese, Total	XXX	XXX	XXX	Report	Report	XXX

The proposed effluent limits for Outfall 010 are based on a design flow of 0 MGD (stormwater).

<i>Parameters</i>	<i>Mass Units (lbs/day)</i>		<i>Minimum</i>	<i>Concentrations (mg/L)</i>		<i>Instant. Maximum</i>
	<i>Average Monthly</i>	<i>Average Weekly</i>		<i>Semi-Annual Average</i>	<i>Daily Maximum</i>	
Total Suspended Solids	XXX	XXX	XXX	Report	Report	XXX
Aluminum, Total	XXX	XXX	XXX	Report	Report	XXX
Iron, Total	XXX	XXX	XXX	Report	Report	XXX
Manganese, Total	XXX	XXX	XXX	Report	Report	XXX

The proposed effluent limits for Outfall 011 are based on a design flow of 0 MGD (stormwater).

<i>Parameters</i>	<i>Mass Units (lbs/day)</i>		<i>Minimum</i>	<i>Concentrations (mg/L)</i>		<i>Instant. Maximum</i>
	<i>Average Monthly</i>	<i>Average Weekly</i>		<i>Average Monthly</i>	<i>Daily Maximum</i>	
pH (S.U.)	XXX	XXX	Report Inst Min	XXX	XXX	Report
Chemical Oxygen Demand (COD)	XXX	XXX	XXX	Report	Report	XXX
Total Suspended Solids	XXX	XXX	XXX	Report	Report	XXX
Ammonia-Nitrogen	XXX	XXX	XXX	Report	Report	XXX
Aluminum, Total	XXX	XXX	XXX	Report	Report	XXX
Iron, Total	XXX	XXX	XXX	Report	Report	XXX
Manganese, Total	XXX	XXX	XXX	Report	Report	XXX

In addition, the permit contains the following major special conditions:

- Chemical Additives
- Toxics Reduction Evaluation (TRE)
- 316(a) Thermal Variance
- Cooling Water Intake Structures

The discharge at Internal Monitoring Points 203 & 303 will be subject to the effluent limitation guidelines (ELGs) for Best Available Technology (BAT) at 40 CFR 423.13(k)(1)(i) starting December 31, 2023 for bottom ash transport water. In the event the U.S. Environmental Protection Agency (EPA) publishes notice of the modification of the ELGs at 40 CFR 423.13(k)(1)(i) prior to December 31, 2023, the permittee shall achieve compliance with the modified ELGs as soon as possible but no later than the date established by Federal regulations. If EPA publishes notice of the rescission or revocation of the ELGs at 40 CFR 423.13(k)(1)(i) prior to December 31, 2023, the limitation will not be applicable.

The discharge at Internal Monitoring Point 503 will be subject to the ELGs for Best Available Technology (BAT) at 40 CFR 423.13(g)(1)(i) starting December 31, 2023 for flue gas desulfurization (FGD) wastewater. In the event EPA publishes notice of the modification of the ELGs at 40 CFR 423.13(g)(1)(i) prior to December 31, 2023, the permittee shall achieve compliance with the modified ELGs as soon as possible but no later than the date established by Federal regulations. If EPA publishes notice of the rescission or revocation of the ELGs at 40 CFR 423.13(g)(1)(i) prior to December 31, 2023, the limitation will not be applicable.

The discharge at Outfall 003 is subject to thermal effluent limits based on criteria for Warm Water Fisheries outlined in 25 Pa. Code § 93.7. The permittee has submitted a request under section 316(a) of the Clean Water Act (CWA) for less stringent effluent limits. The thermal effluent limits imposed on the discharge at Outfall 003 will be a Heat Rejection Rate of 2,960 MBTUs/hr.

The draft permit contains Water Quality-Based Effluent Limits for (WQBELs) and monitoring for several pollutants at Outfall 002, Internal Monitoring Point 203/303 and Internal Monitoring Point 603 solely due to the use of laboratory methods that were insufficiently sensitive. DEP may reduce or eliminate these requirements if additional sampling for these pollutants is performed and analyzed using more sensitive methods.

You may make an appointment to review the DEP files on this case by calling the File Review Coordinator at 717-787-5017.

The EPA Waiver is not 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. 1117406, Sewage, **City of Johnstown**, 401 Main Street, Johnstown, PA 15901.

This proposed facility is located in the City of Johnstown, **Cambria County**.

Description of Proposed Action/Activity: Proposed construction of sanitary sewer rehabilitation project to replace existing defective sewers in the Old Conemaugh Area of the City of Johnstown.

The Pennsylvania Infrastructure Investment Authority (PENNVEST) which administers Pennsylvania's State Revolving Fund has been identified as a potential funding source.

WQM Permit No. 5617403, Sewage, **Paint Borough**, 119 Hoffman Avenue, Windber, PA 15963.

This proposed facility is located in Paint Borough, **Somerset County**.

Description of Proposed Action/Activity: Proposed construction of Paint Borough Sanitary Sewer Rehabilitation Project to rehabilitate existing defective sewers.

The Pennsylvania Infrastructure Investment Authority (PENNVEST) which administers Pennsylvania's State Revolving Fund has been identified as a potential funding source.

WQM Permit No. WQG02111702, Sewage, **Blacklick Valley Municipal Authority**, PO Box 272, Twin Rocks, PA 15960.

This proposed facility is located in Blacklick Township, **Cambria County**.

Description of Proposed Action/Activity: Proposed construction of Route 422 Area Sanitary Sewer Extension Project to serve existing residences with on-lot septic systems.

The Pennsylvania Infrastructure Investment Authority (PENNVEST) which administers Pennsylvania's State Revolving Fund has been identified as a potential funding source.

Northwest Region: Clean Water Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

WQM Permit No. 2489202 A-9, Industrial, **Advanced Disposal Service Greentree Landfill LLC**, 635 Toby Road, Kersey, PA 15846-1033.

This existing facility is located in Fox Township, **Elk County**.

Description of Proposed Action/Activity: Addition of plate and frame filter press to dewater produced aluminum sludge.

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.

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAD090013	Toll PA XIV, L.P. 250 Gibraltar Road Horsham, PA 19044	Bucks	Warrington Township	Unnamed Tributary to Mill Creek TSF-MF

Southwest Region: Waterways & Wetlands Program, 400 Waterfront Drive, Pittsburgh, PA 15222, Dana Drake, Waterways and Wetlands Program Manager, 412-442-4000.

<i>Permit No.</i>	<i>Applicant & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Stream Name</i>
PAD650012	Franklin Regional School District	Westmoreland County	Murrysville Municipality	Haymaker Run (HQ-CWF) Pearson Run (HQ-CWF)

VII. List of NOIs for NPDES and/or Other General Permit Types.

PAG-12 CAFOs

MS4 Notices of Intent Received.

Southcentral Region: Clean Water Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110. Telephone: 717-705-4707.

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>Municipality/County</i>	<i>Waiver Application Submitted (Y/N)</i>	<i>Pollutant Reduction Plan Submitted (Y/N)</i>
PAG133615	Swatara Township Dauphin County 599 Eisenhower Boulevard Harrisburg, PA 17111	Swatara Township Dauphin County	N	Y
PAG133626	Lower Windsor Township York County 2425 Craley Road Wrightsville, PA 17368-8922	Lower Windsor Township York County	Y	Y
PAG133742	West Donegal Township Lancaster County One Municipal Drive Elizabethtown, PA 17022	West Donegal Township Lancaster County	N	Y

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>Municipality/County</i>	<i>Waiver Application Submitted (Y/N)</i>	<i>Pollutant Reduction Plan Submitted (Y/N)</i>
PAG133564	Rapho Township Lancaster County 971 N Colebrook Road Manheim, PA 17545-9680	Rapho Township Lancaster County	N	Y
PAG133530	Birdsboro Borough Berks County 202 E Main Street Birdsboro, PA 19508	Birdsboro Borough Berks County	N	Y

Southwest Region: Clean Water Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>Municipality, County</i>	<i>Waiver Application Submitted (Y/N)</i>	<i>Pollutant Reduction Plan Submitted (Y/N)</i>
PAG136341	East Taylor Township 2402 William Penn Avenue Johnstown, PA 15909-1201	East Taylor Township Cambria County	Y	N
PAG136321	Daisytown Borough 93 Baiker Street Johnstown, PA 15902-1604	Daisytown Borough Cambria County	Y	N
PAG136288	Lower Yoder Township 128 J Street Johnstown, PA 15906-2848	Lower Yoder Township Cambria County	Y	N
PAG136369	Adams Township PO Box 112 Sidman, PA 15955-0112	Adams Township Cambria County	Y	N
PAG136139	Conemaugh Township 142 Janie Street Johnstown, PA 15902-1210	Conemaugh Township Cambria County	Y	N
PAG136286	Ferndale Borough 109 Stanton Street Johnstown, PA 15905	Ferndale Borough Cambria County	Y	N
PAG136346	Eastvale Borough 510 2nd Avenue E Beaver Falls, PA 15010-4808	Eastvale Borough Beaver County	Y	N
PAG136293	East Rochester Borough 760 Spruce Avenue East Rochester, PA 15074	East Rochester Borough Beaver County	Y	N
PAG136334	Aliquippa City 160 Hopewell Avenue Aliquippa, PA 15001-3545	Aliquippa City Beaver County	N	Y
PAG136402	Twilight Borough 8 Chestnut Road Charleroi, PA 15022-2607	Twilight Borough Washington County	Y	N
PAG136245	Johnstown City 401 Main Street Johnstown, PA 15901	Johnstown City Cambria County	N	Y

Northwest Regional Office: Clean Water Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481. Phone: 814.332.6942.

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>Municipality, County</i>	<i>Waiver Application Submitted (Y/N)</i>	<i>Pollutant Reduction Plan Submitted (Y/N)</i>
PAG138342	Mahoning Township Lawrence County PO Box 99 Hillsville, PA 16132-0099	Mahoning Township Lawrence County	N	Y

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.

ACT 38
NUTRIENT MANAGEMENT PLANS
CAFO PUBLIC NOTICE SPREADSHEET—APPLICATIONS

<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>New or Renewal</i>
Hollywood Casino at Penn National Race Course (Mountain View Thoroughbred Racing Association) 777 Hollywood Blvd Grantville, PA 17028	Dauphin	630	1,265	Horses	NA	Renewal
Aaron Warner 7195 Old Plank Road Broad Top, PA 16621	Huntingdon	6	716.05	Finishing Swine	N/A	New
Hoffman Family Farm, LLC 243 Healy Road Shinglehouse, PA 16748	Potter	1,450	1,619.26	Dairy	Yes, HQ	Renewal
Hoffman Family Farm, LLC 243 Healy Road Shinglehouse, PA 16748	Potter	1,450	1,805.97	Dairy	Yes, HQ	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.

Southcentral Region: Safe Drinking Water Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

Permit No. 3815506, Public Water Supply.

Applicant United States Department of Veterans Affairs
Municipality South Lebanon Township
County Lebanon
Responsible Official Thaddeus Kocuba, Facility Manager
 1700 South Lincoln Avenue
 Lebanon, PA 17042-7529
Type of Facility Public Water Supply
Consulting Engineer James P. Cinelli, P.E.
 Liberty Environmental, Inc.
 50 North Street
 Reading, PA 19601
Application Received Date 12/28/2017
Withdrawn:
Description of Action Installation of two MIOX sodium hypochlorite generators for disinfection of water served to the facility.

Permit No. 0617520 MA, Minor Amendment, Public Water Supply.

Applicant The Caernarvon Township Authority
Municipality Caernarvon Township
County Berks
Responsible Official Robert L. Weaver, Chairman
 P O Box 188
 Morgantown, PA 19543
Type of Facility Public Water Supply
Consulting Engineer Eric D. McCracken, P.E.
 Great Valley Consultants
 75 Commerce Drive
 Wyomissing, PA 19610
Application Received Date 12/13/2017
Description of Action The Caernarvon Township Authority has submitted an application to receive a minor permit amendment for the replacement of an existing water softening system at the Well No. 6 site that is nearing the end of its usable life. The proposed softening system to be installed is a Culligan Hi-Flo HS-1504-4 Simplex 150 ASME softener.

Southwest Region: Safe Drinking Water Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

Permit No. 0217532—Return, Public Water Supply.

Applicant Pittsburgh Water & Sewer Authority
 1200 Penn Avenue
 Pittsburgh, PA 15222
[Township or Borough] City of Pittsburgh
Responsible Official Robert Weimer, Executive Director
 Pittsburgh Water & Sewer Authority
 1200 Penn Avenue
 Pittsburgh, PA 15222
Type of Facility Aspinwall Water Treatment Plant
Consulting Engineer AECOM
 Foster Plaza 6
 681 Andersen Drive
 Pittsburgh, PA 15220
Application Received Date March 17, 2017
Description of Action Use of EarthTec (aqueous copper).

Permit No. 6517533, Public Water Supply.

Applicant Municipal Authority of the Borough of Derry
 620 North Chestnut Street
 Derry, PA 15627
[Township or Borough] Derry Borough
Responsible Official Amy Forsha, Manager
 Municipal Authority of the Borough of Derry
 620 North Chestnut Street
 Derry, PA 15627
Type of Facility Water system
Consulting Engineer Gibson-Thomas Engineering Company, Inc.
 1004 Ligonier Street
 Box 853
 Latrobe, PA 15650
Application Received Date December 27, 2017
Description of Action Replacement of two high service pumps and the backwash pump in the water treatment plant.

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. 5617511GWR, Minor Amendment.

Applicant Borough of Garrett
 307 Municipal Road
 PO Box 218
 Garrett, PA 15542
[Township or Borough] Garrett Borough

Responsible Official Jeff McKenzie, Certified Operator
Borough of Garrett
307 Municipal Road
PO Box 218
Garrett, PA 15542

Type of Facility Water system

Consulting Engineer The EADS Group, Inc.
450 Aberdeen Drive
Somerset, PA 15501

Application Received Date December 21, 2017

Description of Action Demonstration of 4-Log Treatment of Viruses for Groundwater Sources.

Application No. 3216504GWR-A1, Minor Amendment.

Applicant **Green Township Municipal Authority**
PO Box 129
Commodore, PA 15729

[Township or Borough] Green Township

Responsible Official Charles Ishman, Water Plant Operator
Green Township Municipal Authority
PO Box 129
Commodore, PA 15729

Type of Facility Water system

Consulting Engineer G Force Engineering Services, LLC
1630 Philadelphia Street
Indiana, PA 15701

Application Received Date December 11, 2017

Description of Action Demonstration of 4-Log Treatment of Viruses for Groundwater Sources.

Application No. 0217556MA, Minor Amendment.

Applicant **Moon Township Municipal Authority**
1700 Beaver Grade Road
Suite 200
Moon Township, PA 15108

[Township or Borough] Moon Township

Responsible Official Debora A. Walker, P.E., Director of Engineering
Moon Township Municipal Authority
1700 Beaver Grade Road
Suite 200
Moon Township, PA 15108

Type of Facility Water system

Consulting Engineer Moon Township Municipal Authority
1700 Beaver Grade Road
Suite 200
Moon Township, PA 15108

Application Received Date December 28, 2017

Description of Action Installation of turbidimeters.

Application No. 0317509MA, Minor Amendment.

Applicant **Kittanning Suburban Joint Water Authority**
710 Tarrtown Road
Adrian, PA 16210

[Township or Borough] East Franklin Township

Responsible Official Ron Riesmeyer, Manager
Kittanning Suburban Joint Water Authority
710 Tarrtown Road
Adrian, PA 16210

Type of Facility Water system

Consulting Engineer Bankson Engineers, Inc.
267 Blue Run Road
Suite 200
Cheswick, PA 15024

Application Received Date December 26, 2017

Description of Action Installation of 12-inch diameter waterline (Adrian Road waterline replacement project).

WATER ALLOCATIONS

Applications received under the act of June 24, 1939 (P.L. 842, No. 365) (35 P.S. §§ 631—641) relating to the Acquisition of Rights to Divert Waters of the Commonwealth.

Southwest Region: Water Supply Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

WA26-1000C, Water Allocations. **Jefferson Township Authority**, PO Box 158, Fayette City, PA 15438, **Fayette County**. The applicant is requesting the right to purchase 150,000 gallons of water per day from the Newell Municipal Authority.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

**UNDER ACT 2, 1995
PREAMBLE 1**

Acknowledgment of Notices of Intent to Remediate Submitted under the Land Recycling and Environmental Remediation Standards Act (35 P.S. §§ 6026.101—6026.907).

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:

Southcentral Region: Environmental Cleanup and Brownfields Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110. Phone 717.705.4705.

Gramby Street Elementary School, North Hazel & East Gramby Streets, Manheim, PA 17545, Manheim Borough, **Lancaster County**. Reliance Environmental, 235 North Duke Street, Lancaster, PA 17602, on behalf of Manheim Central School District, 281 White Oak Road, Manheim, PA 17545, submitted a Notice of Intent to Remediate site soil contaminated with No. 2 fuel oil. The site will be remediated to the Residential Statewide Health Standard. Future use of the site is the newly constructed Gramby Street Elementary School. The Notice of Intent to Remediate was published in the *LNP* on December 18, 2017.

RESIDUAL WASTE GENERAL PERMITS

Renewal Application(s) Received under the Solid Waste Management Act (35 P.S. §§ 6018.101—6018.1003); the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P.S. §§ 4000.101—4000.1904); and Residual Waste Regulations for a General Permit to Operate Residual Waste Processing Facilities and/or the Beneficial Use of Residual Waste Other Than Coal Ash.

Southcentral Region: Regional Solid Waste Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

General Permit Application No. WMGR019D009. Unicast Company has submitted a general permit renewal application for its facility located at 241 North Washington Street, Boyertown, PA 19512-1114 in

Boyertown Borough, **Berks County**. This general permit authorizes the beneficial use of waste foundry sand and ferrous metal foundry system dust, slag and refractory for use as roadway construction material, a component or ingredient in the manufacturing of concrete or asphalt products, a soil additive or soil substitute, and non-roadway construction. The application for renewal was determined to be complete on January 3, 2018.

Persons interested in obtaining more information about this general permit renewal application may contact Mr. John Oren, P.E., Permits 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.

Application(s) Received 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 the Beneficial Use of Residual Waste other than Coal Ash.

Southwest Region: Regional Solid Waste Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745. Telephone 412-442-4000.

General Permit Application No. WMGR123SW010. Greene County Water Treatment, LLC, 401 Jefferson Road, Waynesburg, PA 15370. A request for modification of the registration for coverage under General Permit WMGR123 to install and operate a vapor compression and distillation unit at the Greene County Water Treatment facility located in Franklin Township, **Greene County**. The application was received by the Department on December 18, 2017 and deemed administratively complete by the Regional Office on January 2, 2018.

DETERMINATION OF APPLICABILITY FOR RESIDUAL WASTE GENERAL PERMITS

Application(s) for Determination of Applicability received 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 Application No. WMGR019SC003. Boyertown Foundry Company, 9th Street and Rothermel Drive, New Berlinville, PA 19545 in Boyertown Borough, **Berks County**. This general permit authorizes the beneficial use of waste foundry sand and ferrous metal foundry system dust, slag and refractory for use as roadway construction material, a component or ingredient in the manufacturing of concrete or asphalt products, a soil additive or soil substitute, and non-roadway construction. The application for Determination of Applicability under General Permit WMGR019 was determined to be complete on December 22, 2017.

Persons interested in obtaining more information about the general permit application may contact Mr. John Oren, P.E., Permits 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.

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 submitted 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.

OPERATING PERMITS

Intent to Issue Title V Operating Permits under the Air Pollution Control Act and 25 Pa. Code Chapter 127, Subchapter G.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401.

Contact: Janine Tulloch-Reid, Facilities Permitting Chief—Telephone: 484-250-5920.

09-00016: Exelon Generation Company, LLC/Croydon Generating Station (955 River Road, Croydon, PA 19020) for the modification of the Title V Operating Permit in Bristol Township, **Bucks County**. This modification incorporates the RACT II requirements into the existing operating permit in accordance with 25 Pa. Code § 129.99(a). Exelon is an electricity generating station consisting of eight (8) distillate oil-fired turbine-generator units rated at 64 MW each subject to RACT II rules. The facility is a major source for NO_x emissions. The facility has proposed the following NO_x RACT limits: Max. NO_x when burning No. 2 fuel oil—0.70 lb per MMBtu on a 30-day rolling average basis as the case by case RACT limit for each turbine. Exelon will also maintain the facility-wide NO_x limit of 1,296 tons per year and the hourly NO_x limit of 587 lbs/hr per turbine. The department will submit to the EPA the final RACT determinations once approved. This permit is being modified in accordance with 25 Pa. Code § 127.541. There is also a revision to RACT I State Implementation Plan for stack testing on the eight (8) combustion turbines. This change in the conditions of stack testing involves a reduction to only testing three of the eight combustion turbines in the duration of a single permit term and all combustion turbines tested at least once every three (3) permit terms. The modification of this operating permit does not authorize any increase in air emissions of any regulated pollutants above previously approved levels. The permit includes monitoring, recordkeeping, and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

Southcentral Region: Air Quality Program, 909 Elmerston 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.

06-05033: Approval of a Reasonably Available Control Technology 2 (RACT 2) plan to supersede the existing RACT I plan for the **Texas Eastern Transmission LP**, Bernville facility, located in the North Heidelberg Township, **Berks County** as a significant modification to their Title V operating permit.

In accordance with 25 Pa. Code §§ 129.91—129.100, the Department has made a preliminary determination to approve a RACT 2 plan, and to have it supersede the existing RACT 1 plan, to be submitted as part of the State Implementation Plan (SIP) for the Texas Eastern Transmission LP, Bernville natural gas compressor station.

The proposed SIP revision does not adopt any new regulations. It incorporates the provisions and requirements contained in the RACT 2 approval, and the RACT 1 plan supersedure approval for the facility, which are

intended to satisfy the requirements for the 1997 National Ambient Air Quality Standard (NAAQS) and the 2008 NAAQS for ozone.

The proposed RACT 2 plan and RACT 1 plan supersede, if approved by DEP, will be issued as a significant modification to the facility's Title V operating permit (06-05033). The relevant RACT 2 requirements will also be submitted to the U.S. Environmental Protection Agency (EPA) for approval and incorporation into Pennsylvania's State Implementation Plan. Requirements that are not part of the RACT 2 approval will be excluded from the SIP submittal.

The following is a summary of the proposed RACT 2 requirements for this facility that will be submitted to the EPA as part of the SIP:

RACT 2 Case-by-Case Requirements (to replace in their entirety the current RACT 1 requirements for the affected sources).

Source ID 101—Nat Gas Turbine 1 (32001) and Source ID 102—Nat Gas Turbine 2 (32002).

(a) The permittee shall not permit emissions of NO_x from the gas turbines in excess of the following. These emission limits apply at all times, including startup and shutdown periods.

General Electric Frame 5 MS 5001 NTMD (32001) and LAMD (32002) turbines.

(1) 120 ppm_{dv} each corrected to 15 percent oxygen.

(2) 463 tpy and 441 tpy, respectively, on a 12-month running total.

(b) For Source ID 101, the fuel consumption for the turbine shall not exceed 2,053.6 million standard cubic feet (MMSCF) of natural gas during any consecutive 12-month period.

(c) For Source ID 102, the fuel consumption for the turbine shall not exceed 1,956.8 million standard cubic feet (MMSCF) of natural gas during any consecutive 12-month period.

(d) For Source IDs 101 & 102, the permittee shall not operate each turbine more than 8,000 hours during any consecutive 12-month period.

(e) Once in each 5-year calendar period, the permittee shall conduct, on each of the sources in this group, a Department approved emissions source test for NO_x (as NO₂) emissions that meets the requirements of Chapter 139, Subchapter A (relating to sampling and testing methods and procedures). The test shall be conducted prior to expiration of this permit, or during the applicable heating season determined by the Department. During the four years of each permit cycle when a full source test is not required, the permittee shall annually conduct a portable analyzer compliance verification of NO_x emissions for each source in this group. Results from source tests or portable analyzer tests shall be submitted to DEP no later than 60 calendar days after completion of the on-site testing portion of the emission test program. Test results for NO_x shall be reported as follows: (1) ppm_{dv} as measured; (2) ppm_{dv} corrected to 15 percent oxygen; (3) lb/hr; (4) lb/MMBtu of heat input. All test results shall be retained by the permittee at the test location and provided annually with emission statements and at other times as requested by the Department.

(f) The permittee shall maintain comprehensive and accurate records of the following for each source in this group:

(1) The number of operating hours on both a monthly and 12-month rolling basis.

(2) The amount of fuel consumed on both a monthly and 12-month rolling basis.

(g) The permittee shall maintain records including sufficient data and calculations to demonstrate that the RACT emission limitations for nitrogen oxides are met for each source in this group.

(h) All records required by this source group shall be retained by the permittee for 5 years and made available to the Department upon request.

(i) The permittee will maintain and operate each of the sources in this group in accordance with the manufacturer's specifications and with good operating practices. The permittee shall follow a routine and preventive maintenance schedule. This includes inspection of the combustion system and hot gas path on an annual basis.

(j) Source IDs 101 & 102 shall be permanently shut down by no later than January 1, 2024.

Public Comment Details:

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 Thomas Hanlon, Environmental Engineering Manager, Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110. A 30-day comment period from the date of publication of this notice 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 RACT 2 condition, including the permit number and a concise statement regarding the relevancy of the information or objections to issuance of the RACT 2 approval.

Public hearing. A public hearing will be held on February 20, 2018, at 10:00 a.m. at the DEP Southcentral Regional Office, 909 Elmerton Avenue, Harrisburg, PA 17110, to accept oral comments on the proposed permit action and the proposed SIP revision. To register to speak at the hearing, please contact Thomas Hanlon at 717-705-4862. Speakers must pre-register in order to testify at the hearing. The last day to pre-register to speak at the hearing will be February 13, 2018.

Oral testimony at the hearing will be limited to a maximum of 5 minutes per individual and two written copies of the oral testimony are requested. Each organization is requested to designate one witness to present testimony on its behalf. Persons unable to attend the hearing, may submit three (3) copies of a written statement and exhibits within 10 days thereafter to Thomas Hanlon at 909 Elmerton Avenue, Harrisburg, PA 17110.

All pertinent documents are available for public review between 8 a.m. and 4 p.m. at the DEP Southcentral Regional Office at 909 Elmerton Avenue, Harrisburg, PA 17110. Appointments for scheduling a review may be made by calling Thomas Hanlon at 717-705-4862.

Individuals who are in need of an accommodation for the hearing as provided for in the Americans with Disabilities Act should contact Thomas Hanlon at 717-705-4862 or make accommodations through the Pennsylvania AT&T Relay Service at 1-800-654-5984 (TDD).

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.*

46-00054: Abington Memorial Hospital (1200 Old York Road, Abington, PA 19001-3720) for air emission sources at a hospital in Abington Township, **Montgomery County**. This is a renewal for an operating permit for a non-Title V (State-Only) facility. The current State-Only Operating Permit will expire on March 18, 2018. The renewed permit incorporates a previous Federally-enforceable potential to emit limit of 24.99 tons per year of nitrogen oxides (NO_x) for the entire facility. The permitted sources include four (4) dual fuel (natural gas and No. 2 fuel oil) boilers, thirteen (13) miscellaneous emergency generators with ratings ranging from 200-kW to 1,500-kW and a natural gas-fired cogeneration unit that is the facility's main source of steam.

The facility shall comply with all applicable requirements of 40 CFR Part 63, Subpart JJJJJ for the boilers, 40 CFR Part 63, Subpart ZZZZ for the emergency generators, and 40 CFR Part 60, Subpart KKKK for the cogeneration unit. The Operating Permit will contain monitoring, recordkeeping and operating restrictions designed to keep the facility operating within the allowable emissions and all applicable air quality requirements.

09-00135: Fybroc Division/CECO Environmental Corp. (700 Emlen Way, Telford, PA 18969-1773) located in Telford Borough, **Bucks County** for the renewal of a State Only (Natural Minor) Operating Permit No. 09-00135. Fybroc manufactures fiberglass reinforced plastic pumps and pumping equipment. The facility's air emission sources consist of two types of molding processes. The molding processes use styrene and have a restriction on the amount of styrene used so the facility can remain a natural minor facility for Volatile Organic Compounds (VOC). The VOC emissions from these sources will not exceed 3.50 tons per year. The operating permit also contains work practice standards, monitoring and recordkeeping requirements, and operating restrictions designed to keep the sources and facility operating within all applicable air quality requirements.

Southcentral Region: Air Quality Program, 909 Elmerston 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.*

38-03009: Regal Cast, Inc. (PO Box 1170, Lebanon, PA 17042) to issue a State Only Operating Permit for the steel foundry operations in the City of Lebanon, **Lebanon County**. The facility's potential emissions are 27.0 tpy of PM₁₀, 9.5 tpy of NO_x, 5.2 tpy of VOCs, 0.22 tpy of CO, and 0.04 tpy of SO_x. 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 permit includes conditions from 40 CFR Part 63, Subpart ZZZZZ-National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries Area Sources.

21-03101: Hoffman Roth Funeral Home & Crematory (2020 W. Trindle Road, Carlisle, PA 17013) for the operation of a human crematory facility in Carlisle Borough, **Cumberland County**. This is for renewal of the existing state-only permit. The facility potential emissions are estimated at 1.4 tpy carbon monoxide, 1.6 tpy of nitrogen oxides, and less than 1 tpy of all other criteria pollutants. The Operating Permit will include emission limits and work practice standards along with monitor-

ing, recordkeeping and reporting requirements to ensure the facility complies with the applicable air quality regulations.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701.

Contact: *Muhammad Q. Zaman, Environmental Program Manager—Telephone: 570-327-3648.*

41-00079: Eureka Resources, LLC (454 Pine Street, Williamsport, PA 17701-6200) to issue a State only operating permit for their Second Street facility located in Williamsport, **Lycoming County**. The facility is currently operating under State Only Operating Permit 41-00079. The facility's sources include two 2.5 million Btu per hour natural gas-fired boilers, a 6.69 million Btu per hour natural gas-fired boiler, two 896 horsepower four-stroke, rich-burn natural gas-fired compressor engines and a gas well wastewater treatment operation. The volatile organic compound emission limitation established for the two 896 horsepower compressor engines was increased from 0.03 gram to 0.10 gram per brake horsepower hour. The subject modification will result in a 1.24 ton per year increase in the facility-wide emission of volatile organic compounds. The facility has potential emissions of 16.29 tons per year of nitrogen oxides, 19.77 tons per year of carbon monoxide, 0.07 ton per year of sulfur oxides, 1.44 ton per year of particulate matter, 11.31 tons per year of volatile organic compounds and 3.80 tons per year of hazardous air pollutants.

The compressor engines are subject to 40 CFR Part 63, Subpart ZZZZ of the National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines. 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. 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: *Thomas Joseph, P.E., Facilities Permitting Chief—Telephone: 412-442-4336.*

03-00202: Peoples Natural Gas Company LLC (1201 Pitt Street, Pittsburgh, PA 15221-2029), in accordance with 25 Pa. Code §§ 127.424 and 127.425, the Department of Environmental Protection (DEP) is providing notice that it intends to issue a State Only Operating Permit SOOP renewal (OP-03-00202) to Peoples Natural Gas Company LLC ("PNG") to authorize the continued operation of the production, storage, and transmission of natural gas in Pennsylvania at their Roaring Run Compressor Station facility located in Kiskiminetas Township, **Armstrong County**.

The facility's air contamination sources consist of a natural gas-fired Cooper Bessemer compressor engine rated at 440 bhp for natural gas transmission, an auxiliary power generating Onan engine, a parts washer, and fugitive VOC emissions from the facility. Potential emissions from the facility are 60.0 tons NO_x, 8.0 tons CO, 9.0 tons VOC, 2.0 tons HAPs, and 1.0 ton PM₁₀ per year.

This facility is subject to the applicable requirements of 25 Pa. Code Chapters 121—145. The proposed SOOP includes conditions relating to applicable emission restrictions, monitoring, recordkeeping, reporting, and work practice standard requirements. The Cooper Bessemer compressor engine and emergency generator are subject to the applicable requirements of 40 CFR Part 60 Subpart ZZZZ.

PNG's State Only Operating Permit 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 Department of Environmental Protection, Southwest Regional Office, 400 Waterfront Drive, Pittsburgh, PA 15222. To request a review of the State Only Operating Permit 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 Thomas Kaminski at thkaminski@pa.gov or 412.442.4097.

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 03-00202) 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).

63-00643: Ametek, Inc. (1085 Route 519, Eighty Four, PA 15330) In accordance with 25 Pa. Code §§ 127.424 and 127.425 the Department of Environmental Protection (DEP) gives notice that they intend to issue a State Only Operating Permit (SOOP) renewal to Ametek, Inc. to authorize the operation of their metal powder manufacturing facility in North Strabane Township, **Washington County**.

The facility is comprised of metal melting furnaces, metal atomization systems, rotary dryers, an aluminum

grinder, processing tanks and cyclones and fabric filters to control particulate matter emissions from these operations. Annual potential emissions from the facility are estimated to be 6.2 tons of PM₁₀, 2.16 tons of NO_x, 0.12 ton of VOC and 1.82 ton of CO. The proposed SOOP contains emission restriction, testing, monitoring, recordkeeping, reporting and work practice standards derived from the applicable requirements of 25 Pa. Code Chapters 121—145 and 40 CFR Part 63 Subpart ZZZZ.

A person may oppose the proposed State Only Operating Permit by filing a written protest with the Department through Noor Nahar via mail to Department of Environmental Protection, 400 Waterfront Drive, Pittsburgh, PA 15222. Each protest or set of written comments must contain the name, address and telephone number of the person submitting the comments, identification of the proposed State Only Operating Permit (63-00643) and a concise statement of the objections to the Operating Permit issuance and the relevant facts upon which the objections are based.

Ametek, Inc. State Only Operating Permit application, the Department's Air Quality Review Memorandum, and the Proposed Air Quality Operating Permit for this facility are available for review by any interested party at the Department of Environmental Protection, Southwest Regional Office, 400 Waterfront Drive, Pittsburgh, PA 15222. To request a review of the Ametek, Inc. State Only Operating Permit 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 Operating Permit for this facility, a person may contact Noor Nahar at nnahar@pa.gov or 412.442.5225.

All comments must be received prior to the close of business 30 days after the date of this publication.

Department of Public Health, Air Management Services:
321 University Avenue, Philadelphia, PA 19104.

Contact: Edward Wiener, Chief—Telephone: 215-685-9426.

OP17-000055: The Washington (520 Walnut Street, Philadelphia, PA 19106) for operation of an office and retail facility in the City of Philadelphia, **Philadelphia County**. The facility's air emission sources include three (3) Cleaver Brooks boilers firing natural gas/No. 2 oil each rated at 6.0 MMBtu/hr, one (1) natural gas fired Cleaver Brooks boiler rated at 1.5 MMBtu/hr, two (2) diesel fired emergency generators each rated at 264 kW or less, and one (1) diesel fired Caterpillar fire pump rated at 196 hp.

OP17-000074: Parc Rittenhouse Condominium Association (225 S. 18th Street, Philadelphia, PA 19103) for operation of a condominium complex in the City of Philadelphia, **Philadelphia County**. The facility's air emission sources include two (2) natural gas fired Rock Mills boilers each rated at 130 hp, one (1) No. 4 oil fired Rock Mills boiler rated at 130 hp, one (1) diesel fired Caterpillar emergency generator rated at 200 kW, and one (1) diesel fired Clark fire pump rated at 200 hp.

The operating permit will be issued under 25 Pa. Code, Philadelphia Code Title 3 and Air Management Regulation XIII. Permit copies and other supporting information are available for public inspection at AMS, 321 University Avenue, Philadelphia, PA 19104. For further information, contact Edward Wiener at (215) 685-9426.

Persons wishing to file protest or comments on the previously listed operating permit must submit the protest or comments within 30 days from the date of this

notice. Any protests or comments filed with AMS must include a concise statement of the objections to the permit issuance and the relevant facts upon which the objections are based. Based upon the information received during the public comment period, AMS may modify the operating permit or schedule a public hearing. The hearing notice will be published in the *Pennsylvania Bulletin* and a local newspaper at least thirty days before the hearing.

OP17-000059: Roxborough Memorial Hospital (5800 Ridge Avenue, Philadelphia, PA 19128) for operation of a hospital in the City of Philadelphia, **Philadelphia County**. The facility's air emission sources include two (2) Cleaver Brooks boilers firing natural gas/No. 2 oil each rated 17.0 MMBtu/hr or less, and three (3) diesel fired emergency generators each rated 750 kW or less.

The operating permit will be issued under 25 Pa. Code, Philadelphia Code Title 3 and Air Management Regulation XIII. Permit copies and other supporting information are available for public inspection at AMS, 321 University Avenue, Philadelphia, PA 19104. For further information, contact Edward Wiener at (215) 685-9426.

Persons wishing to file protest or comments on the previously listed operating permit must submit the protest or comments within 30 days from the date of this notice. Any protests or comments filed with AMS must include a concise statement of the objections to the permit issuance and the relevant facts upon which the objections are based. Based upon the information received during the public comment period, AMS may modify the operating permit or schedule a public hearing. The hearing notice will be published in the *Pennsylvania Bulletin* and a local newspaper at least thirty days before the hearing.

COAL AND NONCOAL MINING ACTIVITY APPLICATIONS

Applications under the Surface Mining Conservation and Reclamation Act (52 P.S. §§ 1396.1—1396.19a); the Noncoal Surface Mining Conservation and Reclamation Act (52 P.S. §§ 3301—3326); The Clean Streams Law (35 P.S. §§ 691.1—691.1001); the Coal Refuse Disposal Control Act (52 P.S. §§ 30.51—30.66); and The Bituminous Mine Subsidence and Land Conservation Act (52 P.S. §§ 1406.1—1406.20a). Mining activity permits issued in response to such applications will also address the applicable permitting requirements of the following statutes: the Air Pollution Control Act (35 P.S. §§ 4001—4015); the Dam Safety and Encroachments Act (32 P.S. §§ 693.1—693.27); and the Solid Waste Management Act (35 P.S. §§ 6018.101—6018.1003).

The following permit applications to conduct mining activities have been received by the Department. A copy of the application is available for inspection at the district mining office indicated before each application. Notices of requests for 401 Water Quality Certifications are included in individual application notices, as noted.

Written comments or objections, or requests for an informal conference, or a public hearing, as applicable, on a mining permit application and request for Section 401 water quality certification application may be submitted by any person or any officer or head of any Federal, State or local government agency or authority to the Department at the address of the district mining office indicated before each application within 30 days of this publication, or within 30 days after the last publication of the applicant's newspaper advertisement as provided by 25 Pa. Code §§ 77.121—77.123 and 86.31—86.34.

Written comments or objections regarding a mining permit application should contain the name, address and

telephone number of persons submitting comments or objections, application number and a statement of sufficient detail to inform the Department on the basis of comment or objection and relevant facts upon which it is based.

A request for an informal conference or a public hearing, as applicable, on a mining permit application, as provided by 25 Pa. Code § 77.123 or § 86.34, must contain the name, address and telephone number of the requestor; the application number; a brief summary of the issues to be raised by the requestor at the conference; and a statement whether the requestor desires to have the conference conducted in the locality of the proposed mining activities.

When an NPDES number is listed, the mining activity permit application was accompanied by an application for an individual NPDES permit. A separate notice will be provided after the draft NPDES permit is prepared.

Coal Applications Received

California District Office: 25 Technology Drive, Coal Center, PA 15423, 724-769-1100

63091301 and NPDES No. PA0236004. Tunnel Ridge, LLC, (2596 Battle Run Road, Triadelphia, WV 26059). To revise the permit for the Tunnel Ridge Mine in Donegal and West Finley Townships, **Washington County** and related NPDES Permit to revise 1,206.43 previously permitted acres from development to longwall mining. No additional discharges. The application was considered administratively complete on December 22, 2017. Application received October 7, 2017.

Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, 814-472-1900.

Permit No. 56120117 and NPDES No. PA0269182. Wilson Creek Energy, LLC, 1576 Stoystown Road, P.O. Box 260, Friedens, PA 15541, permit renewal for reclamation only of a bituminous surface and auger mine in Jenner Township, **Somerset County**, affecting 241.6 acres. Receiving stream: Hoffman Run and unnamed tributaries to Quemahoning Creek classified for the following use: cold water fishes. The first downstream potable water supply intake from the point of discharge is Cambria—Somerset Water Authority. Application received: December 15, 2017.

Knox District Mining Office: P.O. Box 669, 310 Best Avenue, Knox, PA 16232-0669, 814-797-1191.

61120107 and NPDES Permit No. PA0259331. Ben Hal Mining Company (389 Irishtown Road, Grove City, PA 16127) Renewal of an existing bituminous surface mining mine and associated NPDES permit in Irwin Township, **Venango County**, affecting 62.7 acres. Receiving streams: Unnamed tributaries to Scrubgrass Creek, classified for the following uses: CWF. There are no potable surface water supply intakes within 10 miles downstream. Application received: December 22, 2017.

33080105 and NPDES Permit No. PA0258547. Original Fuels, Inc. (P.O. Box 343, Punxsutawney, PA 15767) Renewal of an existing bituminous surface mine and associated NPDES permit in Perry & Young Townships, **Jefferson County**, affecting 447.4 acres. Receiving streams: Unnamed tributaries to Mahoning Creek, classified for the following uses: CWF & WWF. There are no potable surface water supply intakes within 10 miles downstream. Application received: December 21, 2017.

33120102 and NPDES Permit No. PA0259268. Original Fuels, Inc. (P.O. Box 343, Punxsutawney, PA 15767) Renewal of an existing bituminous surface mine and associated NPDES permit in Perry Township, **Jeffer-**

son County, affecting 232.0 acres. Receiving streams: Unnamed tributaries to Mahoning Creek and Rose Run, classified for the following uses: CWF & WWF. There are no potable surface water supply intakes within 10 miles downstream. Application received: December 21, 2017.

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, 570-621-3118.

Permit No. 54803203T3 and NPDES Permit No. PA0123862. Rausch Creek Fuel, LLC, (978 Gap Street, Valley View, PA 17983), transfer of an existing anthracite coal refuse reprocessing operation and NPDES Permit for discharge of treated mine drainage from Rausch Creek Land, LP in Hegins Township, **Schuylkill County** affecting 76.0 acres, receiving stream: East Branch Rausch Creek, classified for the following use: cold water fishes. Application received: December 8, 2017.

Permit No. 54880203T4. Rausch Creek Fuel, LLC, (978 Gap Street, Valley View, PA 17983), transfer of an existing anthracite coal refuse reprocessing operation from Rausch Creek Land, LP in Tremont Township, **Schuylkill County** affecting 15.8 acres, receiving stream: Swatara Creek, classified for the following uses: cold water and migratory fishes. Application received: December 8, 2017.

Permit No. 54930102T5 and NPDES Permit No. PA0223492. Rausch Creek Anthracite Coal, LLC, (978 Gap Street, Valley View, PA 17983), transfer of an existing anthracite surface mine and NPDES Permit for discharge of treated mine drainage from Rausch Creek Land, LP in Porter Township, **Schuylkill County** affecting 594.0 acres, receiving stream: East Branch Rausch Creek, classified for the following use: cold water fishes. Application received: December 8, 2017.

Permit No. 54803004T3. Rausch Creek Mine Reclamation, LLC, (978 Gap Street, Valley View, PA 17983), transfer of an existing anthracite surface mine operation from Rausch Creek Land, LP in Hegins Township, **Schuylkill County** affecting 214.0 acres, receiving streams: East Branch Rausch Creek and Good Spring Creek, classified for the following use: cold water fishes. Application received: December 8, 2017.

Noncoal Applications Received

Effluent Limits—The following effluent limits will apply to NPDES permits issued in conjunction with a noncoal mining permit:

Parameter	Table 2		
	30-day Average	Daily Maximum	Instantaneous Maximum
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.

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, 570-621-3118.

Permit No. 66040805. Charles A. Kern, (1029 Lower Demunds Road, Dallas, PA 18612), Stage I & II bond release of a quarry operation in Tunkhannock Township, **Wyoming County** affecting 1.0 acre on property owned by Charles A. Kern. Application received: December 11, 2017.

Permit No. 35910301C and NPDES No. PA0595209. Scranton Materials, LLC, (P.O. Box 127, Meshoppen, PA 18630), renewal of NPDES Permit for discharge of treated mine drainage from a quarry operation in Newton and Ransom Townships, **Lackawanna County** affecting 249 acres, receiving stream: Keyser Creek, classified for the following use: cold water fishes. Application received: December 18, 2017.

Permit No. 58172515 and NPDES Permit No. PA0225801. Johnson Quarries, Inc., (P.O. Box 136, LeRaysville, PA 18829), commencement, operation and restoration of a bluestone quarry operation and NPDES permit for discharge of treated mine drainage in Apolacan Township, **Susquehanna County** affecting 5.0 acres, receiving stream: Bow Bridge Creek, classified for the following uses: high quality—cold water fishes and migratory fishes. Application received: December 20, 2017.

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. PA0234591 (Mining Permit No. 11970106), Laurel Sand and Stone, Inc., P.O. Box 556, Ligonier, PA 15658, renewal of an NPDES permit for bituminous surface mine in Jackson Township, **Cambria County**, affecting 81.9 acres. Receiving streams: unnamed tributary to South Branch of Blacklick Creek and unnamed tributary to Bracken Run, classified for the following use: cold water fishes. This receiving stream is included in the Kiski-Conemaugh TMDL. Application received: December 6, 2017.

Unless otherwise noted for a specific outfall, the proposed effluent limits for all outfalls in this permit are the BAT limits described previously for coal mining activities.

The following outfall discharges to unnamed tributary to South Branch of Blacklick Creek:

<i>Outfall Nos.</i>	<i>New Outfall (Y/N)</i>
006	N

The following outfall discharges to unnamed tributary to Bracken Run:

<i>Outfall Nos.</i>	<i>New Outfall (Y/N)</i>
007	N

The proposed effluent limits for the previously listed outfalls are as follows:

<i>Outfalls: 001, 006 and 007</i> <i>Parameter</i>	<i>30-Day</i> <i>Average</i>	<i>Daily</i> <i>Maximum</i>	<i>Instant.</i> <i>Maximum</i>
Iron (mg/l)	1.5	3.0	3.7
Manganese (mg/l)	1.0	2.0	2.5
Aluminum (mg/l)	0.75	1.5	1.8
Total Suspended Solids (mg/l)	35.0	70.0	90.0

pH (S.U.): Must be between 6.0 and 9.0 standard units at all times.

Alkalinity must exceed acidity at all times.

This proposed mine site also contains or is hydrologically connected to substandard discharges for which there is no responsible party. Pursuant to 25 Pa. Code § 87.201, effluent limits for those discharges will be based upon the existing baseline pollution load, or the standards found at 25 Pa. Code § 87.102(a) Group A, whichever is least stringent.

Noncoal NPDES Draft Permits

Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, 814-472-1900.

NPDES No. PA0234583 (Mining permit no. 31970301), U.S. Silica Company, 12942 Oriskany Road, Mapleton Depot, PA 17052, renewal of an NPDES permit for a sandstone quarry in Brady Township, **Huntingdon County**, affecting 307 acres. Receiving stream(s): Mill Creek and Saddler Run, classified for the following use(s): Trout Stocked Fishery. Application received: December 1, 2017.

Unless otherwise noted for a specific outfall, the proposed effluent limits for all outfalls in this permit are the BAT limits described previously for noncoal mining activities.

The following outfall discharges to: Mill Creek

<i>Outfall Nos.</i>	<i>New Outfall (Y/N)</i>
004	N

The following outfall discharges to: Saddler Run

<i>Outfall Nos.</i>	<i>New Outfall (Y/N)</i>
001	N

The proposed effluent limits for the previously listed outfall(s) are as follows:

<i>Outfalls: 001 and 004</i> <i>Parameter</i>	<i>30-Day</i> <i>Average</i>	<i>Daily</i> <i>Maximum</i>	<i>Instant.</i> <i>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 at all times.

Knox District Mining Office: P.O. Box 669, 310 Best Avenue, Knox, PA 16232-0669, 814-797-1191.

NPDES No. PA0227609 (Permit No. 16970301). Terra Works, Inc. (49 South Sheridan Road, Clarion, PA 16214) Renewal of an NPDES permit for a large industrial minerals surface mine in Beaver, Licking, and Richland Townships, **Clarion County**, affecting 125.7 acres. Receiving streams: Unnamed tributary to Turkey Run, classified for the following uses: HQ-CWF. TMDL: Lower Clarion River. Application received: November 21, 2017.

Unless otherwise noted for a specific outfall, the proposed effluent limits for all outfalls in this permit are the BAT limits described previously for noncoal mining activities.

The following outfall discharges to Unnamed tributary B to Turkey Run:

<i>Outfall No.</i>	<i>New Outfall (Y/N)</i>
TP1	N

The proposed effluent limits for the previously listed outfall(s) are as follows:

<i>Parameter</i>	<i>Minimum</i>	<i>30-Day</i> <i>Average</i>	<i>Daily</i> <i>Maximum</i>	<i>Instant.</i> <i>Maximum</i>
pH ¹ (S.U.)	6.0			9.0
Iron (mg/l)		2.5	5.0	6.25
Manganese (mg/l)		1.7	3.4	4.25
Aluminum (mg/l)		0.75	0.75	0.75
Alkalinity greater than acidity ¹				
Total Suspended Solids (mg/l)		35	70	90
Osmotic Pressure (milliosmoles/kg)				50

¹ The parameter is applicable at all times.

The following outfall discharges to Unnamed tributary B to Turkey Run:

<i>Outfall No.</i>	<i>New Outfall (Y/N)</i>
SP1	N

Outfall No.
SP2

New Outfall (Y/N)
N

The proposed effluent limits for the previously listed outfall(s) are as follows:

Parameter	Minimum	30-Day Average	Daily Maximum	Instant. Maximum
pH ¹ (S.U.)	6.0			9.0
Iron (mg/l)				7.0
Alkalinity greater than acidity ¹				
Total Settleable Solids (ml/l)				0.5

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, 570-621-3118.

NPDES Permit No. PA0595721 on Surface Mining Permit No. 7876SM1. New Enterprise Stone & Lime Co., Inc. d/b/a Eastern Industries, Inc., (3724 Crescent Court West, Suite 200, Whitehall, PA 18052), renewal of an NPDES Permit for a limestone quarry operation in Whitehall Township, **Lehigh County**, affecting 89.19 acres. Receiving stream: Coplay Creek, classified for the following use: cold water fishes. Application received: August 21, 2017.

Unless otherwise noted for a specific outfall, the proposed effluent limits for all outfalls in this permit are BAT limits described previously for noncoal mining activities.

The following outfall discharges to Coplay Creek.

Outfall No.	New Outfall Y/N	Type
001	No	Pit Sump/Stormwater

The proposed effluent limits for the previously listed outfall are as follows:

Parameter	Minimum	30-Day Average	Daily Maximum	Instantaneous Maximum
pH ¹ (S.U.)	6.0			9.0
Total Suspended Solids		35.0	70.0	90.0
Total Dissolved Solids (mg/l)		Monitor and Report		
Sulfates (mg/l)		Monitor and Report		

¹ The parameter is applicable at all times.

NPDES Permit No. PA0612880 on Surface Mining Permit No. 7874SM2. New Enterprise Stone & Lime Co., Inc. d/b/a Eastern Industries, Inc., (3724 Crescent Court West, Suite 200, Whitehall, PA 18052), renewal of an NPDES Permit for a limestone quarry operation in North Whitehall Township, **Lehigh County**, affecting 272.0 acres. Receiving stream: Coplay Creek, classified for the following use: cold water fishes. Application received: November 13, 2017.

Unless otherwise noted for a specific outfall, the proposed effluent limits for all outfalls in this permit are BAT limits described previously for noncoal mining activities.

The following outfall discharges to Coplay Creek.

Outfall No.	New Outfall Y/N	Type
01	No	Groundwater/Pit Sump

The proposed effluent limits for the previously listed outfall are as follows:

Parameter	Minimum	30-Day Average	Daily Maximum	Instantaneous Maximum
pH ¹ (S.U.)	6.0			9.0
Total Suspended Solids		35.0	70.0	90.0
Alkalinity Greater Than Acidity ¹				
Discharge 01		1.40 MGD		

¹ The parameter is applicable at all times.

FEDERAL WATER POLLUTION CONTROL ACT, SECTION 401

The following permit applications, requests for Environmental Assessment approval and requests for 401 Water Quality Certification have been received by the Department. Section 401 of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C.A. § 1341) requires the Commonwealth to certify that the involved projects will not violate the sections 301—303, 306 and 307 of the FWPCA (33 U.S.C.A. §§ 1311—1313, 1316 and 1317) as well as relevant State requirements. Persons objecting to approval of a request for certification under section 401 of the FWPCA, the issuance of a Dam Permit or Water Obstruction and Encroachment Permit or the approval of an Environmental Assessment shall submit comments,

suggestions or objections within 30 days of the date of this notice as well as any questions to the office noted before an application. Comments should contain the name, address and telephone number of the person commenting, identification of the certification request to which the comments or objections are addressed and a concise statement of comments, objections or suggestions including the relevant facts upon which they are based.

The Department may conduct a fact-finding hearing or an informal conference in response to comments if deemed necessary. Each individual will be notified, in writing, of the time and place of a scheduled hearing or conference concerning the certification request to which the comment, objection or suggestion relates. Maps, drawings and other data pertinent to the certification request are available for inspection between 8 a.m. and 4 p.m. on

working days at the office noted before the application.

Persons with a disability who wish to attend the hearing and require an auxiliary aid, service or other accommodation to participate in the proceedings should contact the specified program. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

Applications Received under the Dam Safety and Encroachments Act (32 P.S. §§ 693.1—693.27) and section 302 of the Flood Plain Management Act (32 P.S. § 679.302) and Requests for Certification under section 401(a) of the FWPCA.

WATER OBSTRUCTIONS AND ENCROACHMENTS

Northeast Region: Waterways and Wetlands Program Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915, Telephone 570-826-2511.

E45-612. DEPG Mosier Associates, L.P., 580 W. Germantown Pike, Suite 103, Plymouth Meeting, PA 19462, in Smithfield Township, **Monroe County**, U.S. Army Corps of Engineers, Philadelphia District.

To construct and maintain the following water obstructions and encroachments associated with the Smithfield Gateway Project.

1. A roadway crossing of a UNT to Brodhead Creek (CWF, MF) consisting of an 85-foot long 36-inch diameter HDPE pipe depressed 6-inches below the existing streambed elevation with concrete headwalls and R-7 rip rap apron.

2. To relocate approximately 200 linear feet of an existing UNT to Brodhead Creek (CWF, MF). The work consists of approximately 450 linear feet of a new watercourse channel lined with approximately 250-feet of R-5 rip rap, approximately 200-feet of permanent channel lining, and a rock filter of R-4 rip rap. Also included is a stream enclosure consisting of approximately 168-linear feet of 36-inch HDPE pipe and approximately 36-linear feet of 42-inch diameter HDPE pipe depressed 6-inches below the existing streambed elevation with two manholes, headwalls and R-7 rip rap apron.

3. An 18-inch HDPE stormwater line, 54-inch diameter HDPE stormwater line, 12-inch DIP water line, a 3-inch and 4-inch HDPE sanitary force main, 4-inch gas line, 2-inch telecommunications line and electrical line crossing the new 36-inch diameter pipe conveying the UNT to Brodhead Creek (CWF, MF) under impact # 2.

4. An outfall to a UNT to Brodhead Creek (CWF, MF) consisting of a 72-inch RCP, concrete headwall, concrete energy dissipator and R-6 rip rap apron.

5. To re-grade and line approximately 65 linear feet of a UNT to Brodhead Creek (CWF, MF) with R-8 rip rap.

The project is located at the intersection of S.R. 0209 and Music Center Drive (East Stroudsburg, PA Quadrangle Latitude: 41° 0.0' 15.97"; Longitude: -75° 8.0' 57.85").

Southwest Region: Waterways & Wetlands Program, 400 Waterfront Drive, Pittsburgh, PA 15222, Dana Drake, Waterways and Wetlands Program Manager, 412-442-4000.

E32-521, Burrell Township Sewer Authority, 49 Willow Street, Black Lick, PA 15716, Burrell Township, **Indiana County**, ACOE Pittsburgh District.

The applicant proposes to:

Improve the existing Black Lick Waste Water Treatment Plant (WWTP) by demolishing and removing the existing process tanks, buildings and equipment, remove existing fence, relocate an existing shed, relocate an existing forcemain, construct and maintain an effluent aeration tank, a WWTP building, wet well, new control building and plant office, stormwater management features and regrade and pave the site. The project is located in the floodplain of Blacklick Creek (TSF), on the east side of Route 119, approximately 1,900.0 feet northeast from the intersection of Route 119 and Cresson Alley (Bolivar, PA Quadrangle; N: 18.6 inches; W: 9.8 inches; Latitude: 40°-28'-39"; Longitude: 79°-11'-39") in Burrell Township, Indiana County.

Northwest Region: Waterways & Wetlands Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

E61-300, PA DOT District 1-0, 255 Elm Str., Oil City, PA 16301. SR 0038 SEG 0110, in Richland Township, **Venango County**, ACOE Pittsburgh District (Emlenton, PA Quadrangle N: 41°, 12', 41.29"; W: -79°, 39', 43.86").

To remove the existing structure and to install and maintain a 12.0-foot × 6.0-foot pre-cast, reinforced concrete box culvert carrying SR 0038 over Richey Run and to repair and extend an existing 2.0-foot concrete culvert carrying SR 0038 over a UNT to Richey Run in Richland Township, Venango County. The project will result in a de minimus permanent impact of approximately 290 square feet of palustrine scrub-shrub (PSS) wetland. Approximately 75 linear feet of Richey Run will be relocated upstream of the proposed box culvert to prevent road embankment erosion. The project is located on SR 0038 Segment 0110 Offset 0000 just north of its intersection with SR 2003 (Whitehall Road).

E24-266, Johnsonburg Borough Municipal Authority, 434 Center Street, Johnsonburg, PA 15845. Water Treatment Facility Intakes, in Johnsonburg Borough, **Elk County**, ACOE Pittsburgh District (Ridgway, PA Quadrangle N: 41.493998°, W: -78.672219°).

The Applicant proposes to construct, operate, and maintain a raw water intake structure within the East Branch of the Clarion River (HQ-CWF) at a point approximately 150 feet north of the Glen Avenue and 1st Avenue intersection for the purposes of supplying a yet to be constructed water treatment facility.

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

Northeast Region: Clean Water Program Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915. Phone: 570-826-2511.

<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>
PA0062472 (Sewage)	Blue Mountain View Estates WWTP 1716 West Lizard Creek Road Lehighton, PA 18235	Carbon County Lower Towamensing Township	Aquashicola Creek (2-B)	Yes
PA0032107 (Sewage)	Beltzville State Park STP 2950 Pohopoco Drive Lehighton, PA 18235-8905	Carbon County Franklin Township	Pohopoco Creek (2-B)	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>
PA0085669 SEW	Centerport Borough Municipal Authority PO Box 248 110 Callowhill Street Centerport, PA 19516-0248	Centerport Borough, Berks County	Irish Creek in Watershed(s) 3-B	Y
PA0088188 SEW	Gratz Borough Municipal Authority 125 N Center Street Gratz, PA 17030	Gratz Borough, Dauphin County	UNT to Wiconisco Creek in Watershed(s) 6-C	Y
PA0010375 IW	Lehigh White Cement Company 200 Hokes Mill Rd York, PA 17404-5540	West Manchester Township, York County	UNT to Codorus Creek in Watershed(s) 7-H	Y

NPDES No. (Type)	Facility Name & Address	County & Municipality	Stream Name (Watershed #)	EPA Waived Y/N?
PA0083984 SEW	Ltd Ranch House Family Inc. 133 Old Trail Road Duncannon, PA 17020-7120	Watts Township, Perry County	Watershed(s) 6-C	Y
PA0024902 SEW	Upper Allen Township 100 Gettysburg Pike Mechanicsburg, PA 17055-5604	Upper Allen Township, Cumberland County	Watershed(s) 7-E	N
PA0266540 CAFO	Clair Burkholder Poultry Farm 1050 Oregon Hollow Road Drumore, PA 17518	East Drumore Township, Lancaster County	Watershed(s) 7-K	N

Northcentral Regional Office: Clean Water Program Manager, 208 W Third Street, Suite 101, Williamsport, PA 17701-6448. Phone: 570.327.3636.

NPDES No. (Type)	Facility Name & Address	County & Municipality	Stream Name (Watershed No.)	EPA Waived Y/N?
PA0112411 (Sewage)	Hillside Acres Mobile Home Park 17 Hillside Acres Gillett, PA 16925-9621	Bradford County Ridgebury Township	Unnamed Tributary of Chemung River (4-B)	Yes
PA0111911 (Industrial)	Const Specialties PO Box 380 6696 Route 405 Highway Muncy, PA 17756-0380	Lycoming County Clinton Township	Turkey Run (10-C)	Yes

Southwest Regional Office: Regional Clean Water Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

NPDES No. (Type)	Facility Name & Address	County & Municipality	Stream Name (Watershed No.)	EPA Waived Y/N?
PA0204897 (Industrial)	Port Authority of Allegheny County—Collier Garage 345 Sixth Avenue Pittsburgh, PA 15222-2527	Allegheny County Collier Township	Painters Run & McLaughlin Run (20-F)	No
PA0093882 (Industrial)	Port Authority of Allegheny County—West Mifflin Fac. 345 Sixth Avenue, 3rd Flr. Pittsburgh, PA 15222-2527	Allegheny County West Mifflin Borough	Streets Run and Unnamed Trib. to Thompson Run (19-A)	No

Northwest Region: Clean Water Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

NPDES No. (Type)	Facility Name & Address	County & Municipality	Stream Name (Watershed No.)	EPA Waived Y/N?
PA0272639 (Sewage)	Gayle Marco & Lawrence Scanlon & Madeline Scanlon SRSTP 110 Shadow Lane Coraopolis, PA 15108-1140	Erie County Springfield Township	Unnamed Tributary to Raccoon Creek (15-A)	Yes
PA0100056 (Sewage)	Rose Point Park Campground 314 Rose Point Road New Castle, PA 16101-9358	Lawrence County Slippery Rock Township	Slippery Rock Creek (20-C)	Yes

II. New or Expanded Facility Permits, Renewal of Major Permits and EPA Nonwaived Permit Actions

Northwest Region: Clean Water Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

NPDES Permit No. PA0027367, Sewage, SIC Code 4952, **Greenville Borough Sanitary Authority Mercer County**, PO Box 604, Greenville, PA 16125-0604.

This existing facility is located in Greenville Borough, **Mercer County**.

Description of Existing Action/Activity: Issuance of an NPDES Permit for an existing discharge of treated Sewage.

III. WQM Industrial Waste and Sewerage Actions under The Clean Streams Law

Northeast Region: Clean Water Program Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915. Phone: 570-826-2511.

WQM Permit No. 3517406, Sewage, **PA American Water Co.**, 800 West Hershey Park Drive, Hershey, PA 17033.

This proposed facility is located in Scranton City, **Lackawanna County**.

Description of Proposed Action/Activity: Improvements to the existing combined sewer over flow sewage conveyance system CSO # 30 located at Prescott Avenue and Ridge Row. The improvement will consist of an additional 1.34 million-gallon storage tank and equalization facility for use during extreme rain events.

Northwest Region: Clean Water Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

WQM Permit No. 6183404 A-1, Sewage, **Aqua Pennsylvania Inc.**, 762 W Lancaster Avenue, Bryn Mawr, PA 19010-3402.

This existing facility is located in Salem Township, **Clarion County**.

Description of Proposed Action/Activity: Installation of tablet chlorinator/dechlorinator and coarse air bubble diffuser at Mariasville STP.

IV. NPDES Stormwater Discharges from MS4 Permit Actions

The following waiver applications have been approved for a 5-year period. The Department is issuing waivers for the MS4s listed below in lieu of NPDES permit coverage.

South West Regional Office: Clean Water Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745. Phone: 412.442.4000.

NPDES

<i>Waiver No.</i>	<i>Applicant Name & Address</i>	<i>Municipality, County</i>	<i>Receiving Water(s)/Use(s)</i>
PAG136261	Ingram Borough Allegheny County 40 W Prospect Avenue Pittsburgh, PA 15205-2241	Ingram Borough, Allegheny	Chartiers Creek/WWF
PAG136233	Scalp Level Borough Cambria County 422 Main Street Windber, PA 15963-1017	Scalp Level Borough, Cambria	Paint Creek, Unnamed Tributary to Little Paint Creek, and Little Paint Creek/TSF and CWF
PAG136119	Paint Borough Somerset County 119 Hoffman Avenue Windber, PA 15963-2358	Paint Township, Somerset	Paint Creek/TSF

V. NPDES Waiver Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4) Actions

The following waiver applications have been approved for a 5-year period. The Department is issuing waivers for the MS4s listed below in lieu of NPDES permit coverage.

North Central Regional Office: Clean Water Program Manager, 208 W Third Street, Suite 101, Williamsport, PA 17701-6448. Phone: 570.327.3636.

NPDES

<i>Waiver No.</i>	<i>Applicant Name & Address</i>	<i>Municipality, County</i>	<i>Receiving Water(s)/Use(s)</i>
PAG134825	Catawissa Borough Columbia County 307 Main Street Catawissa, PA 17820-1315	Catawissa Borough, Columbia	Catawissa Creek/TSF and MF
PAG134819	Cooper Township Montour County 19 Steltz Road Danville, PA 17821-9132	Cooper Township, Montour	Unnamed Tributary to Sechler Run/CWF and MF
PAG134827	Briar Creek Borough Columbia County 6029 Park Road Berwick, PA 18603-5710	Briar Creek Borough, Columbia	Briar Creek/CWF and MF
PAG134824	Catawissa Township Columbia County 153 Old Reading Road Catawissa, PA 17820-7937	Catawissa Township, Columbia	Unnamed Tributary to Catawissa Creek/CWF and MF
PAG134817	Briar Creek Township Columbia County 150 Municipal Road Berwick, PA 18603-5221	Briar Creek Township, Columbia	Glen Brook, Briar Creek, Unnamed Tributary to East Branch Briar Creek, and East Branch Briar Creek/CWF and MF

VI. NPDES Discharges of Stormwater Associated with Construction Activities Individual Permit Actions

Southeast Region: Waterways & Wetlands Program Manager, 2 East Main Street, Norristown, PA 19401. Telephone 484-250-5160.

NPDES

<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAD150060	The Hankin Group 707 Eagleview Boulevard Exton, PA 19341	Chester	Wallace Township	East Branch Brandywine Creek HQ-TSF Brandywine Creek MF
PAD150059	Malvern Hill Associates, L.P. 2701 Renaissance Boulevard 4th Floor King of Prussia, PA 19406-2781	Chester	East Whiteland Township	Little Valley Creek EV-MF
PAD090016	Bensalem Redevelopment, L.P. 2310 Terwood Drive Huntingdon Valley, PA 19006	Bucks	Bensalem Township	Delaware River WWF-MF
PAD150058	Longview Swinehart, L.P. 1055 Westlakes Drive Suite 170 Berwyn, PA 19312	Chester	West Brandywine Township	Beaver Creek CWF Culbertson Run HQ-TSF-MF
PAD230008	Middletown Township 27 North Pennel Road Lima, PA 19037	Delaware	Middletown Township	Chrome Run TSF-MF Spring Run HQ-TSF-MF
PAD150027	Marsh Creek Homes 170 Crawford Road Downingtown, PA 19335	Chester	East Brandywine Township	East Branch of Brandywine (POI No. 1) HQ-TSF-MF
PAD150040	Malvern Preparatory School 418 South Warren Avenue Malvern, PA 19355	Chester	Malvern Borough	Tributary to Crum Creek—Massacre Run HQ-CWF
PAD460009	Lansdale Multifamily Development, L.P. 301 Oxford Valley Road Yardley, PA 19067	Montgomery	Lansdale Borough	West Branch Neshaminy Creek WWF-MF

Southwest Region: Waterways & Wetlands Program, 400 Waterfront Drive, Pittsburgh, PA 15222, Dana Drake, Waterways and Wetlands Program Manager, 412-442-4000.

NPDES

<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAD630007	South Strabane Township Sanitary Authority 550 Washington Road Washington, PA 15301	Washington County	South Strabane Township	Little Chartiers Creek (HQ-WWF)
PAI056515003	Joseph M. Knapp 748 New Texas Road Pittsburgh, PA 15239	Westmoreland County	Municipality of Murrysville	UNT to Haymakers Run (HQ-CWF)

Northwest Region: Waterways & Wetlands Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

NPDES

<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAD250003	Riedman Acquisitions, LLC 45 East Avenue Rochester, NY 14604	Erie	Millcreek Township	Cascade Creek WWF, MF Walnut Creek CWF, MF
PAI061014001(1)	Anthony Gagliardi 120 Dittmer Road Herman, PA 16039	Butler	Summit Township	UNT Rough Run HQ-TSF

Individual Permit Type—PAD

Cambria District: Environmental Program Manager, 286 Industrial Park Road, Ebensburg, PA 15931-4119.

NPDES Permit

<i>No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAD680003	Attention: Patrick M. Webb Bureau of Abandoned Mine Reclamation Cambria Office 286 Industrial Park Road Ebensburg, PA 15931-4119 814-472-1800	Venango County	Irwin Township	Unnamed Tributary to South Sandy Creek (CWF) and Unnamed Tributary to Williams Run (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>
City of Philadelphia Philadelphia County	PAC510052	NewCourtland Elder Services 6970 Germantown Avenue Philadelphia, PA 19119-2114	Schuylkill River WWF-MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
City of Philadelphia Philadelphia County	PAC510048	Packer Park 1218 Green Street Philadelphia, PA 19123	Schuylkill River WWF	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>
Tunkhannock Twp, Monroe County	ESG00089170001	Transcontinental Pipeline Company, LLC Park Place Corporate Center Two 200 Commerce Dr Pittsburgh, PA 15275	Mud Pond Run (EV, MF) Mud Run (HQ-CWF) Tunkhannock Creek (EV, MF)	Monroe County Conservation District 570-629-3060
East Brunswick Twp, Schuylkill County	PAC540016	Miller Group Holdings, LP PO Box 472 Schuylkill Haven, PA 17972	Schuylkill River (CWF, MF)	Schuylkill County Conservation District 570-622-3742
West Brunswick Twp, Schuylkill County	PAC540009	Faron Breiner 278 Fort Lebanon Rd Auburn, PA 17922	Pine Creek (CWF, MF)	Schuylkill County Conservation District 570-622-3742
Choconut Twp	PAC580008	Friendsville Dollar General LLC 361 Summit Blvd, Ste 110 Birmingham, AL 35243	UNT to Choconut Creek (WWF, MF)	Susquehanna County Conservation District 570-278-4600

General Permit Type—PAC

Cambria District: Environmental Program Manager, 286 Industrial Park Road, Ebensburg, PA 15931-4119.

<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>
Jefferson Township, Washington County	PAC680010	Bureau of Abandoned Mine Reclamation Cambria Office 286 Industrial Park Road Ebensburg, PA 15931-4119	Harmon Creek (WWF), Unnamed Tributary to Harmon Creek (WWF)	Attention: Patrick M. Webb PA DEP Cambria Office 286 Industrial Park Road Ebensburg, PA 15931-4119 814-472-1800

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>
Pittsburgh City Allegheny County	PAR216167	Frank Bryan, Inc. 100 South 3rd Street Pittsburgh, PA 15219	Monongahela River—19-A	DEP South West Regional Office Clean Water Program 400 Waterfront Drive Pittsburgh, PA 15222-4745 412.442.4000
Allentown City Lehigh County	PAG032237	Harrys U Pull It 1213 North Plymouth Street Allentown, PA 18109	Unnamed Tributary to Lehigh River—2-C/CWF	DEP North East Regional Office Clean Water Program 2 Public Square Wilkes-Barre, PA 18701-1915 570.826.2511

General Permit Type—PAG-8

<i>Facility Location & County/Municipality</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Site Name & Location</i>	<i>Contact Office & Phone No.</i>
East Pennsboro Township Wastewater Treatment Plant 21 East Dulles Drive Camp Hill, PA 17011 East Pennsboro Township/ Cumberland County	PAG083515	East Pennsboro Township 98 South Enola Drive Enola, PA 17025	Same as Facility	DEP—SCRO—CW 909 Elmerton Avenue Harrisburg, PA 17110 717-705-4707

General Permit Type—PAG-12

<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>
East Hanover Township, Lebanon County	PAG123865	Ben Moyer 807 Ono Road Jonestown, PA 17038	Watershed 7-D	DEP—SCRO—CW 909 Elmerton Avenue Harrisburg, PA 17110 717-705-4707
Menno Township, Mifflin County	PAG123864	Marlin Hartzler 39 Hazel Lane Belleville, PA 17004	Watershed 12-A	DEP—SCRO—CW 909 Elmerton Avenue Harrisburg, PA 17110 717-705-4707
Lurgan Township, Franklin County	PAG123867	David Brenize 7201 Sunset Road Newburg, PA 17240	Watershed 7-B	DEP—SCRO—CW 909 Elmerton Avenue Harrisburg, PA 17110 717-705-4707
Chanceford Township, York County	PAG123701	Cathy & David Reifsnider 2596 New Bridgeville Road Felton, PA 17322-7705	Watershed 7-I	DEP—SCRO—CW 909 Elmerton Avenue Harrisburg, PA 17110 717-705-4707

General Permit Type—PAG-13

<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>
Churchill Borough Allegheny County	PAG136225	Churchill Borough Allegheny County 2300 William Penn Highway Pittsburgh, PA 15235-4952	Unnamed Tributary to Sawmill Run, Sawmill Run, Chalfant Run, and Unnamed Tributary of Chalfant Run—19-A	DEP South West Regional Office Clean Water Program 400 Waterfront Drive Pittsburgh, PA 15222-4745 412.442.4000
Emsworth Borough Allegheny County	PAG136314	Emsworth Borough Allegheny County 171 Center Avenue Emsworth, PA 15202-1507	Unnamed Tributary to Ohio River and Unnamed Tributary of Ohio River—20-G	DEP South West Regional Office Clean Water Program 400 Waterfront Drive Pittsburgh, PA 15222-4745 412.442.4000
Tarentum Borough Allegheny County	PAG136248	Tarentum Borough 304 Lock Street Tarentum, PA 15084	Bull Creek and Allegheny River—18-A (WWF, TSF, N)	DEP South West Regional Office Clean Water Program 400 Waterfront Drive Pittsburgh, PA 15222-4745 412.442.4000
Coplay Borough Lehigh County	PAG132201	Coplay Borough 98 S. 4th Street Coplay, PA 18037	Lehigh River—2-C (TSF/MF)	DEP North East Regional Office Clean Water Program 2 Public Square Wilkes-Barre, PA 18701-1915 570.826.2511

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>
Dwayne Brubacker 595 Brown Rd Myerstown, PA 17067	Berks	98.2	266.05	Poultry	NA	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.

Northeast Region: Safe Drinking Water Program Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915.

Permit No. 2350036, Public Water Supply.

Applicant	Aqua PA, Inc. 1 Aqua Way White Haven, PA 18661
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[Township or Borough]	South Abington Township, Lackawanna County
Responsible Official	Patrick R. Burke, Aqua PA, Inc. 1 Aqua Way White Haven, PA 18661
Type of Facility	PWS
Consulting Engineer	Jonathan Morris, PE GHD 1240 North Mountain Road Harrisburg, PA 17112 (717) 541-0622
Operation Permit Issued	12/01/2017
	<i>Southcentral Region: Safe Drinking Water Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.</i>
	Permit No. 5017504 MA, Minor Amendment , Public Water Supply.
Applicant	Millerstown Boro Water Works
Municipality	Millerstown Borough
County	Perry
Responsible Official	Billy M. Raush, President PO Box 739 Millerstown, PA 17062
Type of Facility	The Borough will be converting from chlorine gas disinfection to sodium hypochlorite disinfection.
Consulting Engineer	Jennifer Miller, P.E. Herbert Rowland & Grubic Inc 369 East Park Drive Harrisburg, PA 17111
Permit to Construct Issued	12/21/2017
	Permit No. 2117511 MA, Minor Amendment , Public Water Supply.
Applicant	State Correctional Institution at Camp Hill
Municipality	Lower Allen Township
County	Cumberland

Responsible Official	Laurel Harry, Superintendent 2500 Lisburn Road Camp Hill, PA 17001
Type of Facility	A poly-orthophosphate blend will be injected to sequester calcium and magnesium and reduce scaling on components in the distribution system.
Consulting Engineer	Carol A. Piontkowski, P.E. Department of Corrections Bureau of Operations 1920 Technology Parkway Camp Hill, PA 17001
Permit to Construct Issued	12/27/2017

Operation Permit No. 3060526 issued to: **Keystone Fire Company (PWS ID No. 3060526)**, Tulpehocken Township, **Berks County** on 12/20/2017 for facilities approved under Construction Permit No. 3060526.

Northcentral Region: Safe Drinking Water Program Manager, 208 West Third Street, Suite 101, Williamsport, PA 17701-6448.

Permit No. 4115505—Operation—Public Water Supply.

Applicant	Montgomery Water & Sewer Authority
Township/Borough	Clinton Township
County	Lycoming County
Responsible Official	Mr. John Lynch Montgomery Water and Sewer Authority 35 South Main Street Montgomery, PA 17752
Type of Facility	Public Water Supply
Consulting Engineer	Mr. Dave Walters, P.E. Larson Design Group 1000 Commerce Park Drive Suite 201 Williamsport, PA 17701
Permit Issued	December 27, 2017
Description of Action	Authorizes the use of Well No. 4 as an additional source of supply, including gas chlorine for disinfection, sodium hydroxide for pH adjustment, blended phosphate for corrosion control, and detention piping for 4-log inactivation of viruses. In addition, this permit approves operation of the upgrades to the SCADA system for Well Nos. 1 and 3 and a new submersible well pump in Well No. 3.

Watrous Water Association (Public Water Supply), Tioga County: On December 22, 2017, the Safe Drinking Water Program approved the Source Water Protection (SWP) plan Watrous Water Association. 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 (Mark R. Stephens, P.G., (570) 327-3422).

Permit No. 1717510MA—Construction—Public Water Supply.

Applicant	Aqua Pennsylvania—Treasure Lake Division
Township/Borough	Sandy Township
County	Clearfield County
Responsible Official	Mr. Patrick Burke, Operations Manager Aqua Pennsylvania—Treasure Lake Division 204 East Sunbury Street Shamokin, PA 17872
Type of Facility	Public Water Supply
Consulting Engineer	Mr. Robert Horvat Entech Engineering, Inc. 400 Rouser Road Building 2, Suite 200 Coraopolis, PA 15108
Permit Issued	January 2, 2018
Description of Action	Authorizes Aqua Pennsylvania, Inc. to install approximately 8,000 ft. of 8-inch diameter DI transmission main from connection to 8" x 12" cross joint near Bimini Well Station to metering vault near Acorn Lane cul-de-sac in Treasure Lake Pressure Zone.

Southwest Region: Water Supply Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

Operations Permit issued to: **Fox Chapel Authority**, 255 Alpha Drive, Pittsburgh, PA 15238, **(PWSID # 5020040)** Indiana Township, **Allegheny County** on December 27, 2017 for the operation of facilities approved under Construction Permit # 0216515MA.

Operations Permit issued to: **Fox Chapel Authority**, 255 Alpha Drive, Pittsburgh, PA 15238, **(PWSID # 5020040)** Indiana Township, **Allegheny County** on December 27, 2017 for the operation of facilities approved under Construction Permit # 0216517.

Operations Permit issued to: **Municipal Authority of Westmoreland County**, 124 Park & Pool Road, New Stanton, PA 15672, **(PWSID # 5260036)** Dunbar Township, **Fayette County** on December 27, 2017 for the operation of facilities approved under Construction Permit # 2617522.

Operations Permit issued to: **Pennsylvania American Water Company**, 800 West Hersheypark Drive, Hershey, PA 17033, **(PWSID # 5020039)** Robinson Township, **Washington County** on December 21, 2017 for the operation of facilities approved under Construction Permit # 0217506MA.

SEWAGE FACILITIES ACT PLAN APPROVAL

Plan Approvals Granted Under the Pennsylvania Sewage Facilities Act (35 P.S. § 750.5).

Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Brown Township	22 Brown Township Drive Reedsville, PA 17084	Mifflin

Plan Description: Approval is granted for an update to the Official Plan of Brown Township, Mifflin County. The project is known as the Brown Township Act 537 Sewage Facilities Plan Update (DEP Code No. A1-44905-ACT). The plan provides for the implementation of a township-wide on-lot sewage disposal system (OLDS) management program with a four-year septic tank inspection and pumping schedule. The plan also requires preliminary hydrogeologic studies in accordance with 25 Pa. Code § 71.62. The Department's review of the sewage facilities update revision has not identified any significant environmental impacts resulting from this proposal. Any required NPDES Permits or WQM Permits must be obtained in the name of the municipality or authority, as appropriate.

Northwest Region: Clean Water Program, 230 Chestnut Street, Meadville, PA 16335-3481.

Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Summit Township	502 Bonniebrook Road Butler, PA 16002	Butler

Plan Description: The approved plan focuses on the area in the vicinity of Herman Road from Schnur Road west to the Summit Township boundary and north to include portions of Geibel, Bonniebrook and Brinker Roads. It concludes with the construction of a collection and conveyance system that will drain to a sequencing batch reactor WWTP on the Sechan property, located along Herman Road near the Summit and Butler Township boundary. The WWTP will be designed for a hydraulic capacity of 122,250 gpd and handle an organic load of 208 ppd. It will initially serve 404 existing EDUs, including the Summit Academy. The Department's review of the sewage facilities update revision has not identified any significant environmental impacts resulting from this proposal. Any required NPDES Permits or WQM Permits must be obtained in the name of the municipality or authority as appropriate.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

UNDER ACT 2, 1995 PREAMBLE 2

The following plans and reports were submitted under the Land Recycling and Environmental Remediation Standards Act (35 P.S. §§ 6026.101—6026.907).

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:

Northeast Region: Environmental Cleanup & Brownfields Program Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915.

Anglin Property, 3656 Mountainview Avenue, Palmer Township, **Northampton County**. GeoWorx Consulting, 1802 Route 31 North, Clinton, NJ 08809, on behalf of James Bartolacci, 760 Newlins Road East, Easton, PA 18040, has submitted a Final Report concerning remediation of site soils contaminated with # 2 fuel oil. The report is intended to document remediation of the site to meet Statewide Health Standards.

Roman Range Unit 20 Well Pad, 5312 Three Lakes Road, **Susquehanna County**. Resource Environmental Management, 50 Maple Street, Montrose, PA 18801, on behalf of SWN Production Company, LLC, 917 State Route 92 North, Tunkhannock, PA 18657, has submitted a Final Report concerning remediation of site soils contaminated with brine. The report is intended to document remediation of the site to meet Statewide Health Standards.

Northcentral Region: Environmental Cleanup Program Manager, 208 West Third Street, Williamsport, PA 17701.

Roy Adams and Sons, Inc., Accident, Jordan Township, **Northumberland County**. Northridge Group, Inc., P.O. Box 231, Northumberland, PA 17857, on behalf of Roy Adams and Sons, Inc., 7347 State Route 147, Sunbury, PA 17801, has submitted a Final Report concerning remediation of site soil contaminated with diesel fuel and motor oil. The report is intended to document remediation of the site to meet the Statewide Health Standard requirements.

Intersection of PA State Route 287 and Dam Run Road, Mifflin Township, **Lycoming County**. DMS Environmental Services, LLC, 103 South Spring Street, Bellefonte, PA 16823, on behalf of Rev Hoopes Trucking, LLC, 1004 Empson Road, Ulysses, PA 16948, has submitted a Final Report concerning remediation of site soil contaminated with diesel fuel. The report is intended to document remediation of the site to meet the Statewide Health Standard requirements.

Gulf 40 Pad, Snow Shoe Township, **Centre County**. Mountain Research, LLC, 285 25th Street, Altoona, PA 16601, on behalf of Range Resources—Appalachia, LLC, Northern Marcellus Shale Division, 80 Health Drive, Lock Haven, PA 17745, has submitted a Final Report concerning remediation of site soil contaminated with produced water. The report is intended to document remediation of the site to meet the Statewide Health Standard requirements.

Northwest Region: Environmental Cleanup & Brownfields Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

Sheetz Store No. 136R, 105 North Erie Street, Borough of Mercer, **Mercer County**. EnviroTrac, Ltd., 176 Thorn Hill Road, Warrendale, PA 15086, on behalf of Sheetz, Inc., 351 Sheetz Way, Altoona, PA 16625, submitted a Final Report concerning the remediation of site soil contaminated with Benzene, Toluene, Ethylbenzene, Total Xylenes (BTEX), Methyl Tert-Butyl Ether, Isopropylbenzene (Cumene), Naphthalene, 1,2,4-Trimethylbenzene, and 1,3,5-Trimethylbenzene. The report is intended to document remediation of the site to meet the Statewide Health Standard.

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:

Northeast Region: Eric Supey, Environmental Cleanup & Brownfields Program Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915.

Circle of Seasons Charter School, 8380 Mohr Lane, Upper Macungie Township and Weisenberg Township, **Lehigh County**. Moonstone Environmental, 1150 Glenlivet Drive, Suite A23, Allentown, PA 18106, on behalf of Circle of Seasons Charter School, 8380 Mohr Lane, Fogelsville, PA 18051, submitted a Remedial Investigation Report, Risk Assessment, and Final Report concerning remediation of site soils contaminated with lead and arsenic. The report is intended to document remediation of the site to meet the Statewide Health and Site-Specific Standard. The combined Remedial Investigation Report, Risk Assessment and Final Report was approved by the Department on December 21, 2017.

Cramer's Cashway Property, 132 Scenic Drive (SR 534), Polk Township, **Monroe County**. Pennsylvania Tectonics, Inc., 723 Main Street, Archbald, PA 18403, on behalf of Cramer's Home Building Centers, 320 North Courtland Street, East Stroudsburg, PA 18301-2198, submitted a Final Report concerning remediation of site soils and groundwater contaminated with Benzene, Ethylbenzene, Naphthalene, Toluene, 1,2,4-TMB, 1,3,5-TMB, MTBE, and Cumene. The report is intended to document remediation of the site to meet the Statewide Health Standard and was approved by the Department on March 28, 2017.

601 North Main Street Property, Taylor Borough, **Lackawanna County**. Pennsylvania Tectonics, Inc., 723 Main Street, Archbald, PA 18403, on behalf of Brent Hudak, 601 North Main Street, Taylor, PA 18517, submitted a Site-Specific Remedial Investigation Report, Cleanup Plan, and Final Report concerning remediation of site soils contaminated with Chloroethane, 1,2-Dichloroethane (EDC), 1,1-Dichloroethene (1,1-DCE), Cis-1,2-Dichloroethene (Cis-1,2-DCE), Trans-1,2-Dichloroethene (Trans-1,2-DCE), Tetrachloroethene (PCE), 1,1,1-Trichloroethane (1,1,1-TCA), Trichloroethylene (TCE), and Vinyl Chloride. The report is intended to document remediation of the site to meet the Site-Specific Standard and was approved by the Department on August 3, 2017.

Nanticoke MGP, Arch and Walnut Streets, City of Nanticoke, **Luzerne County**. Stantec Consulting Services Inc., 400 David Drive, Suite 400, Plymouth Meeting, PA 19462, on behalf of UGI Penn Natural Gas, 2525 North 12th Street, Reading, PA 19612, submitted a Cleanup Plan concerning remediation of site soil and groundwater contaminated with SVOCs, arsenic, and lead. The report is intended to document remediation of the site to meet the Site-Specific Standard and was approved by the Department on September 25, 2015.

Silberline Manufacturing Company Inc., 201 East Dock Street, Lansford Borough, **Carbon County**, Michael S. Kozar, O'Brien & Gere Engineers Inc., has submitted an RIR (Remedial Investigation Report), on behalf of his client, Silberline Manufacturing Company Inc., concerning the remediation of soil and groundwater found to have been impacted by TCE, Vinyl Chloride (VC), and cis-1, 2-dichloroethene (cDCE) and the remediation of groundwater found to have been impacted by No. 6 fuel oil (naphthalene) as a result of historical operations at the site. The applicant proposes to remediate the site to meet the Site Specific Standard for soil and groundwater. The intended use of the site is continued commercial/industrial use. The Report was approved by the Department on June 19, 2015.

US Mini Mart-Childs Property, 511 Main Street, Carbondale Township, **Lackawanna County**. Pennsylvania Tectonics, Inc., 723 Main Street, Archbald, PA 18403, on behalf of Singh is King, LLC, 306 Glen Ridge Road, Tobyhanna, PA 18466, submitted a Final Report concerning remediation of site soils and groundwater contaminated with Benzene, Cumene, EDB, EDC, Ethylbenzene, MTBE, Naphthalene, Toluene, 1,2,4-TMB, 1,3,5-TMB, Total Xylenes, and Total Lead. The report is intended to document remediation of the site to meet the Statewide Health Standard and was approved by the Department on July 19, 2017.

Kleedorfer Residence, 117 East Aluta Mill Road, Bushkill Township, **Northampton County**. United Environmental Services, P.O. Box 701, Schuylkill Haven, PA 17972, on behalf of Union Fuel Company, 700 Bushkill Drive, Easton, PA 18042, has submitted a Final Report concerning remediation of site soils contaminated with # 2 fuel oil. The report is intended to document remediation of the site to meet Statewide Health Standards and was approved by the Department on December 26, 2017.

McGavin E WYO 6H, 1246 Briar Crest Road, **Wyoming County**. Leidos Inc., 6310 Allentown Boulevard, Suite 10, Harrisburg, PA 17112, on behalf of Chesapeake Appalachia, LLC, 300 North 2nd Street, Harrisburg, PA 17101, has submitted a Final Report concerning remediation of site soils contaminated with brine. The report is intended to document remediation of the site to meet a combination of Statewide Health and Background Standards and was approved by the Department on January 2, 2018.

Southcentral Region: Environmental Cleanup and Brownfields Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110. Phone 717.705.4705.

Brookside Mobile Home Park, 51 Manny Drive, Lower Swatara Township, **Dauphin County**. BL Companies, 4242 Carlisle Pike, Camp Hill, PA 17011, on behalf of Brookside Mobile Home Park, Inc., 1201 Eisenhower Boulevard, Middletown, PA 17057, submitted a Final Report concerning site soil contaminated with No. 2 fuel oil from an above-ground storage tank. The Final Report was administratively incomplete and was disapproved by the Department on December 27, 2017.

GlaxoSmithKline/Balmer Brothers Diesel Fuel Release, 325 North Bridge Street, Marietta, PA 17547, East Donegal Township, **Lancaster County**. Reliance Environmental, Inc., 235 North Duke Street, Lancaster, PA 17602, on behalf of Balmer Brothers, 1102 Brenneman Road, Manheim, PA 17545, and GlaxoSmithKline, 325 North Bridge Street, Marietta, PA 17547, submitted a Final Report concerning site soil contaminated with diesel fuel. The Final Report demonstrated attainment of the

Residential Statewide Health Standard, and was approved by the Department on December 28, 2017.

Sheetz # 10, 1330 Moore Street, Huntingdon, PA 16652, Huntingdon Borough, **Huntingdon County**. Juniata Geosciences, LLC, 6872 Willow Brook Road, Alexandria, PA 16611, on behalf of Bolger Brothers, Inc., 1028 Burns Avenue, Altoona, PA 16601, submitted Final Report concerning remediation of site soil contaminated with No. 2 fuel oil and used motor oil. The Final Report was administratively incomplete and was disapproved by the Department on December 28, 2017.

Northcentral Region: Environmental Cleanup Program Manager, 208 West Third Street, Williamsport, PA 17701.

U.S. Gypsum Company, Derry Township, **Montour County**. Northridge Group, Inc., P.O. Box 231, Northumberland, PA 17857, on behalf of U.S. Gypsum Company, 86 PPL Road, Danville, PA 17821, has submitted Final Report concerning remediation of the site soil contaminated with motor oil. The report demonstrated attainment of the Statewide Health Standard and was approved by the Department on December 26, 2017.

Volo Group Inc. Cleanup I-80 at MM 217E, East Chillisquaque Township, **Northumberland County**. Northridge Group, Inc., P.O. Box 231, Northumberland, PA 17857, on behalf of Volo Group, Inc., 1326 E. Algonquin Road, Apt. 3H, Schaumburg, IL 60173, has submitted a Final Report concerning remediation of site soil contaminated with diesel fuel. The report demonstrated attainment of the Statewide Health Standard and was approved by the Department on December 20, 2017.

Northwest Region: Environmental Cleanup & Brownfields Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

Former Metallurgical Company of America (METCOA) Site, 8347 Mercer Street, Pulaski Township, **Lawrence County**. R.A.R. Engineering Group, Inc., 1135 Butler Avenue, New Castle, PA 16101, on behalf of Pulaski Industrial Corporation, 8347 Mercer Street, Pulaski, PA 16143, submitted a Cleanup Plan/Final Report concerning the remediation of site soil contaminated with arsenic, cadmium, cobalt, lithium, manganese, mercury, nickel and site groundwater contaminated with antimony, arsenic, cadmium, chromium VI, cobalt, lead, lithium, manganese, molybdenum, nickel, silver, and vanadium. The Cleanup Plan/Final Report demonstrated attainment of the Site-Specific Standard and was approved by the Department on December 27, 2017.

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

S-J Transportation Co., Inc., 1176 US Route 40, Woodstown, NJ 08098. License No. PA-AH 0015. Effective Dec 28, 2017.

Renewal Applications Received

S-J Transportation Co., Inc., 1176 US Route 40, Woodstown, NJ 08098. License No. PA-AH 0015. Effective Dec 22, 2017.

DETERMINATION OF APPLICABILITY FOR RESIDUAL WASTE GENERAL PERMITS

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 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 Nos. WMGR081D017 and WMGR081D017B. Computer Recycler of Eastern PA (CREPA), LLC, 710A Johnston Street and 35 Queen Street, Sinking Spring, PA 19608-1137, Sinking Spring Borough, Berks County. Following reissuance of General Permit No. WMGR081D017B to EZPC Recycling, LLC, these permits issued to CREPA were revoked on December 19, 2017.

Persons with questions concerning the revocation of these permits may contact John Oren, P.E., Permits Section Chief, PA DEP—Southcentral Regional Office, Waste Management Program, 909 Elmerton Avenue, Harrisburg, PA 17110 or via phone at 717-705-4706. TDD users may contact the Department through the Pennsylvania AT&T Relay Service, (800) 654-5984.

Southwest Region: Regional Solid Waste Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745. Telephone 412-442-4000.

General Permit No. WMGR134. Homer City Generation, LP, 1750 Power Plant Road, Homer City, PA 15748. Modification to the authorization granted under General Permit No. WMGR134 for stabilized FGD-gypsum material generated in the Homer City Generating Station's Units # 1 and # 2 to be beneficially used at the Homer City Coal Refuse Disposal Site located in Center Township, **Indiana County.** Permit issued in the Regional Office on January 2, 2018.

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.

GP3-09: Richard E. Pierson Material Corp (P.O. Box 714, Bridgeport, NJ 08014) On December 27, 2017 for a portable non-metallic processing plant (crusher) in East Rockhill, **Bucks County.**

GP9-09: Richard E. Pierson Material Corp (P.O. Box 714, Bridgeport, NJ 08014) On December 27, 2017 for a diesel or No. 2 fuel-fired internal combustion engine in East Rockhill, **Bucks County.**

GP3-46-0151: Kehoe Construction Inc. (750 W. Washington Street, Norristown, PA 19401) On December 27th for a portable nonmetallic mineral processing plant (crusher) in Whitmarsh Township, **Montgomery County.**

GP9-46-0101: Kehoe Construction Inc. (750 W. Washington Street, Norristown, PA 19401) On December 27th for diesel or No. 2 fuel-fired internal combustion engine in Whitmarsh Township, **Montgomery County.**

Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790.

Contact: Norman Frederick, P.E., Environmental Engineer Manager—Telephone: 570-826-2409.

GP5-58-020A: Appalachia Midstream Services, LLC (Park Place Corporate Center 2, 200 Commerce Drive, Pittsburgh, PA 15275) on December 22, 2017 the general operating permit GP5 for the operation of Natural Gas Compression and Natural Gas Dehydration plant at the facility located in Auburn Township, **Susquehanna County.**

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701.

Contact: Muhammad Q. Zaman, Program Manager, 570-327-3648.

GP1-55-0002A: PA Department of Human Service (1000 Route 522, Selinsgrove, PA 17870-8707) on December 15, 2017, for authorization to construct and operate a gas-fired boiler pursuant to the 'General Plan Approval and/or General Operating Permit BAQ-GPA/GP-1: Small Gas & No. 2 Oil Fired Combustion Units' at their Selinsgrove Center facility, located in Penn Township, **Snyder County.**

Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

Contact: Alan Binder, P.E., Environmental Engineer Manager—Telephone: 412-442-4168.

GP5-30-00200A: Energy Corporation of America (101 Heritage Road, Suite 1, Indiana, PA 15701) on December 29, 2017, for the continued operation of the existing equipment of at the Vecchio Compressor Station located in Greene Township, **Greene 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.

09-0196L: Abington Reldan Metals, LLC (ARM) (550 Old Bordentown Rd, Fairless Hills, PA 19330) On December 29, 2017 for the installation of a replacement Baghouse in Falls Township, **Bucks County.**

Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790.

Contact: Norman Frederick, P.E., Environmental Engineer Manager—Telephone: 570-826-2409.

39-00006D: American Craft Brewery LLC (7880 Penn Drive, Breinigsville, PA 18031) issued on December 27, 2017 to increase production capacity, to provide additional brewing, blending, packaging flexibility and several changes to simplify recordkeeping at the facility located in Upper Macungie Twp., **Lehigh 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.

67-05140A: Bulk Dried Materials, LLC (900 N. Hartley Street, York, PA 17404) on December 21, 2017, for a Thermal Sand Dryer controlled by a baghouse, located in the City of York, **York County**.

Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

Contact: Alan Binder, P.E., Environmental Engineer Manager—Telephone: 412-442-4168.

30-00089D: Dominion Transmission, Inc. (5000 Dominion Boulevard—2NE, Glen Allen, VA 23060) on December 27, 2017, for installation of one Solar Taurus 60-7800S natural gas-fired compressor turbine rated at 7,684 HP at ISO conditions, controlled by an oxidation catalyst; one produced fluids storage tank, 2,500 gallon capacity; one lube oil tank, 1,000 gallon capacity; and piping components in natural gas service at the Crayne Compressor Station located in Franklin Township, **Greene 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.

46-0020J: Superior Tube Co. Inc. (3900 Germantown Pike, Collegeville, PA 19426-3112) On December 22, 2017 for an extension to operate the existing pickling and passivation operation with an increase in the Hydrogen Fluoride (HF) emissions limit in Lower Providence Township, **Montgomery County**.

15-0110B: Pepperidge Farm Inc. (421 Boot Road, Downingtown, PA 19335) On December 29, 2017 for an extension to operate two (2) 25-ton use bins for storage of the flour used in baking their products in Downingtown Borough, **Chester County**.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701.

Contact: Muhammad Q. Zaman, Environmental Program Manager—Telephone: 570-327-3648.

14-00002S: Graymont (PA), Inc. (965 East College Avenue, Pleasant Gap, PA 16823) on December 18, 2017, extended the authorization that permitted the natural gas fuel addition of Kilns No. 6 & 7 to June 16, 2018, pending the completion of compliance evaluations and issuance of an operating permit. These rotary kilns (Source IDs P408 and P413) are located at their Pleasant Gap plant located in Spring Township, **Centre County**. The plan approval has been extended.

18-00005E: Dominion Transmission, Inc. (925 White Oakes Boulevard, Bridgeport, WV 26330) on December 28, 2017, for the construction and operation of a 11,015 brake-horsepower (bhp) natural gas-fired turbine/compressor engine (Source P111) and a 791 bhp natural gas-fired emergency generator (Source P203) at their Finnefrock Compressor Station located in Leidy Township, **Clinton County**. The plan approval has been extended.

Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

Contact: Alan Binder, P.E., Environmental Engineer Manager—Telephone: 412-442-4168.

03-00246B: Bedrock Mines, LP (111 Freeport Rd., Pittsburgh, PA 15215-2943) Extension effective December 28, 2017, to extend the period of temporary operation for

an additional six months of a coal processing plant under plan approval PA-03-00246B at its Keystone East Facility located in Plumcreek Township, **Armstrong County**.

03-00263A: Allegheny Minerals Corporation (P.O. Box 1022, One Glade Park East, Kittanning, PA 16201-5022) Plan Approval Extension issuance date effective December 28, 2017, to authorize extension for the construction of Bison Mine limestone processing plant located in West Franklin Township, **Armstrong County**.

Title V Operating Permits Issued under the Air Pollution Control Act and 25 Pa. Code Chapter 127, Subchapter G.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401.

Contact: Janine Tulloch-Reid, Facilities Permitting Chief—Telephone: 484-250-5920.

46-00061: PA Dept. of Correction/Graterford SCI, (Route 29, Graterford, PA 19426) On December 28, 2017 for the renewal of the Title V operating permit in Skippack Township, **Montgomery 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.

44-05001: Standard Steel LLC (500 N. Walnut Street, Burnham, PA 17009-1644) on December 21, 2017, for the steel foundry located in Burnham Borough, **Mifflin County**. The Title V permit was renewed.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701.

Contact: Muhammad Q. Zaman, Environmental Program Manager—Telephone: 570-327-3648.

49-00007: Cherokee Pharmaceuticals (100 Avenue C, P.O. Box 367, Riverside, PA 17868) on December 19, 2017, was issued a significant modification to Title V operating permit 49-00007 to renew their volatile organic compound (VOC) Plantwide Applicability Limit (PAL), valid through December 19, 2027, for their Riverside Borough Plant located in Riverside Borough, **Northumberland County**. The Title V operating permit contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

41-00016: Plastic Development Company (PO Box 4007, Williamsport, PA 17701-0607) on December 29, 2017, for renewal of their Title V operating permit for their facility in Woodward Township, **Lycoming County**. The Title V operating permit contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

Operating Permits for Non-Title V Facilities Issued under the Air Pollution Control Act and 25 Pa. Code Chapter 127, Subchapter F.

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.

67-03094: Rocher, Inc. dba Del-Wood Kitchens, Inc. (1856 Dubs Church Road, Hanover, PA 17331-8581) on December 27, 2017 for the wood cabinet manufacturing facility located in Manheim Township, **York County**. The State-only permit was renewed.

Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

Contact: Tom Joseph, P.E., Facilities Permitting Chief—Telephone: 412-442-4336.

11-00436: Penn Cambria School District (201 6th Street, Cresson, PA 16630-1363) State Only Operating Permit renewal issuance date effective December 12, 2017, for their Penn Cambria School District/Middle School located in Gallitzin Borough, **Cambria County**.

04-00675: Aliquippa Terminal Inc. (100 Woodlawn Road, Aliquippa, PA 15001-5404) State Only Operating Permit renewal issuance date effective December 26, 2017, for their Aliquippa River Terminal located in Aliquippa City, **Beaver County**.

63-00632: PVS Steel Services, Inc (2 Wheeling Pittsburgh Steel Drive, Route 88 S, Allenport, PA 15412) on December 27, 2017, a State Only Operating Permit (SOOP) renewal to PVS Steel Services to authorize the continued operation of their waste pickle liquor treatment/recycling facility located in Allenport, **Washington County**.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481.

Contact: Matt Williams, Facilities Permitting Chief at Telephone: 814-332-6940.

10-00030: Concast Metal Products Co. (131 Myoma Rd, Mars, PA 16046-2227), on December 21, 2017, the Department issued the renewal of the State-Only Operating Permit of a foundry, located in Adams Township, **Butler County**, that produces continuous cast and wrought copper alloy products. Permitted sources at the facility are electric induction furnaces and associated casters, machining operations, a diesel emergency generator, and a natural gas-fired emergency generator. Added in this renewal, the natural gas-fired emergency generator, an EPA-certified generator set, is subject to 40 CFR 60 Subpart JJJJ pertaining to New Source Performance Standards (NSPS) for Stationary Spark Ignition Internal Combustion Engines. With PTEs of 32.01, 4.77, 2.30, 0.28, 0.10, and 0.026 for PM₁₀, NO_x, CO, VOC, SO_x, and HAPs, respectively, the facility is Natural Minor for permitting purposes.

42-00193: Allegheny Bradford Corporation (1522 South Ave., Lewis Run, PA 16738), on December 21, 2017, the Department issued the renewal of the State-Only Operating Permit of a facility located in Lewis Run Borough, **McKean County** that manufactures heat exchangers, filter housings, tanks, pressure vessels, and custom fabrication in stainless steel and high nickel alloys. Working with materials containing metal hazardous air pollutants (HAPs), operations on stainless steel polishing, tungsten inert gas welding, and bead blasting at the facility are all subject to 40 CFR 63 Subpart XXXXXX (6X), which pertains to National Emission Standards for HAPs (NESHAP) Area Source Standards for Nine Metal Fabrication and Finishing Source Categories. In this renewal, bead blasting and hand coating are added as permitted sources. Conducted in a totally enclosed and unvented chamber, bead blasting is not subject to visual determination of fugitive emissions, and associated reporting and recordkeeping requirements, of 40 CFR 63 Subpart 6X. With a very low paint usage, hand coating at the facility is exempt from State regulations on surface coating. Previously a permitted source, machining operations is no longer subject to 40 CFR 63 Subpart 6X and is now considered an insignificant activity for permitting purposes. With PTE of each regulated pollutant not exceeding 2.00 TPY, the facility is Natural Minor.

Philadelphia: Air Management Services, 321 University Avenue, Philadelphia, PA 19104-4543, Contact: Edward Wiener, Chief, Source Registration at 215-685-9476.

The City of Philadelphia, Air Management Services (AMS) has intended to issue a Minor State Only Operating Permit for the following facility:

OP17-000002: Philadelphia College of Osteopathic Medicine (4190 City Avenue, Philadelphia, PA 19131) for the operation of an educational institution in the City of Philadelphia, **Philadelphia County**. The facility's air emissions sources include three (3) each 999.999 BTU/hr boilers firing natural gas, two (2) 725,000 BTU/hr Bradford White Boilers firing No. 2 fuel oil and natural gas, three (3) York Absorbers each 626,000 BTU/hr firing natural gas, two (2) 60 kilowatt (kw) micro generators firing natural gas, one (1) 750 kw peak shaving generator, a Kohler 159 kw, a Caterpillar 150 kw, a Caterpillar 80 kw, and a Kohler 79 kw emergency generator each firing diesel fuel.

OP16-000008: James Abbott, Inc (2105 E. Wishart St., Philadelphia, PA 19134) for the operation of a chrome plating facility. The facility's air emission sources include two (2) trivalent chrome tanks, three (3) alkaline electro cleaners, one ultrasonic alkaline cleaner, three (3) alkaline soak cleaners, five (5) dilute acid salt baths, seventeen (17) water rinses, three (3) nickel tanks, and four (4) copper tanks.

OP17-000006: Philadelphia Tramrail Company (2207 East Ontario Street, Philadelphia, PA 19134) for the manufacturing of overhead cranes and hydraulic balers and compactors in the City of Philadelphia, **Philadelphia County**. The facility's air emission sources include includes one (1) 1.04 MMBtu/hr natural gas-fired boiler, one (1) 0.9988 MMBtu/hr natural gas-fired heater, one (1) 4.0 MMBtu/hr natural gas-fired heater, one (1) 1.75 MMBtu/hr No. 2 oil-fired space heater and three (3) painting stations with filters.

Operating Permit Revisions Issued including Administrative Amendments, Minor Modifications or Transfers of Ownership under the Air Pollution Control Act and 25 Pa. Code §§ 127.412, 127.450, 127.462 and 127.464.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401.

Contact: Janine Tulloch-Reid, Facilities Permitting Chief—Telephone: 484-250-5920.

46-00025: Johnson Matthey, Inc. (900 River Road, Conshohocken, PA 19428) On December 28, 2017, Title V Operating Permit Minor Modification issued under the Air Pollution Control Act (35 P.S. §§ 4001—4015) and 25 Pa. Code § 127.462. This permit was revised to take a facility-wide VOC limit of less than 50 tons per year to remain below the applicability threshold for RACT II requirement. The permit will include monitoring, recordkeeping, and reporting requirements designed to keep the facility within all applicable air quality requirements. This facility is located in Upper Merion Township, **Montgomery 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.

67-03018: Penn Mar Castings, Inc. (500 Broadway, Hanover, PA 17331-2001) on December 27, 2017 for the gray iron foundry located in Hanover Borough, **York**

County. The State-only permit was administratively amended in order to incorporate the requirements of Plan Approval No. 67-03018B.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701.

Contact: Muhammad Q. Zaman, Environmental Program Manager—Telephone: 570-327-3648.

19-00002: Foam Fabricators, Ltd (7050 Columbia Blvd, Bloomsburg, PA 17815) on December 20, 2017, for the significant modification to the Title V operating permit TVOP 19-00002 for the incorporation of Reasonable Available Control Technology (RACT II) requirements pursuant to 25 Pa. Code §§ 129.96—129.100 at the Bloomsburg facility located in South Centre Township, **Columbia County**. The revised Title V operating permit contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

53-00002: Transcontinental Gas Pipe Line Company, LLC (PO Box 1396, Houston, TX 77251-1396) on December 28, 2017, was issued a revised Title V operating permit for their Wharton Compressor Station located in Wharton Township, **Potter County** for incorporation of the applicable RACT2 requirements of 25 Pa. Code §§ 129.96—129.100. The facility's main sources include five natural gas-fired 4-stroke lean burn reciprocating compressor engines. The Title V operating permit contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

Contact: Thomas Joseph, P.E., Facilities Permitting Chief—Telephone: 412-442-4336.

32-00393: Prime Metals Acquisition LLC (101 Innovative Drive, Homer City, PA 15748) on December 27, 2017 an administrative amendment to change the name of the company from Prime Metals & Alloys, Inc. to Prime Metals Acquisition LLC in their State Only Operating Permit. The facility is located in Center Township, **Indiana County**.

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.

32061302 and NPDES No. PA0235768. Rosebud Mining Company, (301 Market Street, Kittanning, PA

16201). To revise the permit for the Knob Creek Mine in Young and Conemaugh Townships, **Indiana County** to relocate treatment ponds and outfalls 001 and 002, expand the coal handling area and add acreage to the underground mine permit and subsidence control plan permit areas. The request to amend the NPDES Permit to relocate outfalls 001 and 002 is still in process. Surface Acres Proposed 26.6, Underground Acres Proposed 4,818.0, Subsidence Control Plan Acres Proposed 4,902.0. No additional discharges. The application was considered administratively complete on April 17, 2014. Application received February 20, 2014. Permit issued December 18, 2017.

56121301 and NPDES No. PA0236152. AK Coal Resources, Inc., (1134 Stoystown Road, Friedens, PA 15541). To revise the permit for the North Fork Mine in Jenner and Quemahoning Townships, **Somerset County** and related NPDES Permit to add underground and subsidence control plan acres on the Middle Kittanning Coal Seam. Underground Acres Proposed 573.9, Subsidence Control Plan Acres Proposed 573.9. No additional discharges. The application was considered administratively complete on May 24, 2017. Application received February 7, 2017. Permit issued December 22, 2017.

30121301 and NPDES No. PA0236195. Consol Pennsylvania Coal Company LLC, (1000 Consol Energy Drive, Canonsburg, PA 15317). To revise the permit for the Harvey Mine in Richhill and Morris Townships, **Greene County** and related NPDES Permit to revise 2,380.0 underground and subsidence control acres from development to longwall mining. No additional discharges. The application was considered administratively complete on July 18, 2016. Application received November 10, 2015. Permit issued December 22, 2017.

Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, 814-472-1900.

Permit No. 56070109. Marquise Mining Corp., P.O. Box 338, Blairsville, PA 15717, permit renewal for reclamation only of a bituminous surface and auger mine in Shade Township, **Somerset County**, affecting 238.1 acres. Receiving streams: Dixie Run and Fallentimber Run classified for the following use: cold water fishes. There are no potable water supply intakes within 10 miles downstream. Application received: October 6, 2017.

Knox District Mining Office: P.O. Box 669, 310 Best Avenue, Knox, PA 16232-0669, 814-797-1191.

33110105 and NPDES Permit No. PA0259195. Strishock, LLC (P.O. Box 1006, DuBois, PA 15801) Renewal of an existing bituminous surface mine and associated NPDES permit in Pine Creek Township, **Jefferson County**, affecting 85.0 acres. Receiving streams: Unnamed tributaries to Mill Creek. Application received: October 6, 2017. Permit Issued: December 26, 2017.

New Stanton District Office: 131 Broadview Road, New Stanton, PA 15672, 724-925-5500.

26990301 and NPDES Permit No. PA0278220. Iron Mountain US, LLC (1 Pilarsky Way, Aliquippa, PA 15001-5958). Transfer of permit formerly issued to Vanderbilt Aggregates, LLC for continued operation and reclamation of a noncoal surface mining site located in Dunbar Township and Vanderbilt Borough, **Fayette County**, affecting 297 acres. Receiving streams: Dickerson Run and unnamed tributaries to Dickerson Run. Application received: March 16, 2016. Transfer Permit issued: December 21, 2017.

26990301 and NPDES Permit No. PA078220. Iron Mountain US, LLC (1 Pilarsky Way, Aliquippa, PA

15001-5958). Permit renewal issued for continued mining to an existing large noncoal surface mine, located in Dunbar Township and Vanderbilt Borough, **Fayette County**, affecting 297 acres. Receiving streams: Dickerson Run and unnamed tributaries to Dickerson Run. Application received: June 30, 2014. Renewal permit issued: December 21, 2017.

Noncoal Permits Issued

Knox District Mining Office: P.O. Box 669, 310 Best Avenue, Knox, PA 16232-0669, 814-797-1191.

PAM617050. Hillside Stone, LLC (228 Georgetown Road, Hadley, PA 16130) General NPDES Permit for stormwater discharges associated with mining activities on Mine Drainage Permit No. 20870305 in Troy Township, **Crawford County**. Receiving streams: Sugar Creek. Application received: November 30, 2017. Permit Issued: December 26, 2017.

3075SM14 and NPDES Permit No. PA0280500. West Ridge Gravel Company (3251 Fairplain Road, P.O. Box 181, Girard, PA 16417) Revision to an existing mine drainage permit to add an NPDES Permit in Girard Township, **Erie County**. Receiving streams: Unnamed tributary to Godfrey Run. Application received: October 20, 2017. Permit Issued: December 26, 2017.

New Stanton District Office: 131 Broadview Road, New Stanton, PA 15672, 724-925-5500.

26990301 and NPDES Permit No. PA0278220. Iron Mountain US, LLC (1 Pilarsky Way, Aliquippa, PA 15001-5958). Transfer of permit formerly issued to Vanderbilt Aggregates, LLC for continued operation and reclamation of a noncoal surface mining site located in Dunbar Township and Vanderbilt Borough, **Fayette County**, affecting 297 acres. Receiving streams: Dickerson Run and unnamed tributaries to Dickerson Run. Application received: March 16, 2016. Transfer Permit issued: December 21, 2017.

26990301 and NPDES Permit No. PA078220. Iron Mountain US, LLC (1 Pilarsky Way, Aliquippa, PA 15001-5958). Permit renewal issued for continued mining to an existing large noncoal surface mine, located in Dunbar Township and Vanderbilt Borough, **Fayette County**, affecting 297 acres. Receiving streams: Dickerson Run and unnamed tributaries to Dickerson Run. Application received: June 30, 2014. Renewal permit issued: December 21, 2017.

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

Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, 814-342-8200.

53174002. Demtech, LLC (470 Dutchtown Road, Butler, PA 16002). Blasting for demolition of Keating Summit Bridge located in Keating and Summit Townships, **Potter County** with an expiration date of March 30, 2018. Permit issued: December 20, 2017.

53174102. Meshoppen Blasting, Inc. (Frantz Road, P.O. Box 127, Meshoppen, PA 18630). Basting for tank pad on Headwaters Tank Farm located in Ulysses Town-

ship, **Potter County** with an expiration date of December 22, 2018. Permit issued: December 28, 2017.

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, 570-621-3118.

Permit No. 15174107. Brubacher Excavating, Inc. (825 Reading Road, Bowmansville, PA 17507), construction blasting for Byers Station in Upper Uwchlan Township, **Chester County** with an expiration date of December 14, 2018. Permit issued: December 21, 2017.

Permit No. 67174120. Keystone Blasting Service (15 Hopeland Road, Lititz, PA 17543), construction blasting for Stone Gate Commons in Conewago Township, **York County** with an expiration date of December 30, 2018. Permit issued: December 27, 2017.

Permit No. 48174003. Susquehanna Hauling & Drilling, LLC (249 Harland Street, Exeter, PA 18643), construction blasting for the Fed Ex Hub in Allen Township, **Northampton County** with an expiration date of December 31, 2018. Permit issued: December 28, 2017.

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

Southwest Region: Waterways & Wetlands Program, 400 Waterfront Drive, Pittsburgh, PA 15222, Dana Drake, Waterways and Wetlands Program Manager, 412-442-4000.

E02-1745, Township of Moon, 1000 Beaver Grade Road, Moon Township, **Allegheny County**, Pittsburgh ACOE District.

Has been given consent to:

Construct, operate, and maintain four pedestrian bridge crossings and three temporary stream crossings along Meeks Run (TSF) and two UNT's to Meeks Run (TSF) for the purpose of constructing a hiking trail that will connect Moon Park Trails to the Hollow Oak Land Trust trails. The project will cumulatively impact 40 LF of stream, and will temporarily impact 40 LF of stream. Mitigation for the impacts is restoration of the impacted areas. The project is located south of Downing Drive, in Moon Park (Quadrangle: Oakdale, PA; Latitude: 40° 29' 25"; Longitude: -80° 9' 42"; Sub-basin 20G; Chapter 93 Type: TSF), in Moon Township, Allegheny County.

E04-350, FirstEnergy Generation, LLC, 76 South Main Street, A-GO-13, Akron, OH 44308, Greene Township, **Beaver County**, Pittsburgh, ACOE District.

Has been given consent to:

Operate and maintain

1. A suction pump vault and a gravel pad within 0.05 acre of the floodway to an Unnamed tributary to Mill Creek (WWF);

2. A 27 foot wide, 5 LF thick gabion basket dam across the aforementioned UNT, which ponds water for 22 LF behind this dam, and has an appurtenant work consisting of a 6 ft long—24" diameter HDPE riser pipe that conveys stream flow to the aforementioned vault structure. This collection system indirectly impacts this UNT by dewatering approximately 380 LF of the watercourse;

3. Riprap along 24 LF of the left descending bank of the aforementioned UNT;

4. A 4" diameter, HDPE forecmain pipeline within the floodway of 820 LF of the aforementioned UNT;

And construct and maintain:

5. 4'-diameter, high-density-polyethylene (HDPE) sump in the aforementioned UNT below the aforementioned dam to convey any incidental seepage that gets by the aforementioned collection system;

For the purpose of collecting seepage water from the up-gradient Little Blue Run Impoundment and return it to the Impoundment. The project will cumulatively result in 407 lineal feet of permanent stream impact and 0.05 acre of permanent floodway impacts. Compensatory mitigation is proposed to offset the stream and floodway impacts by planting native vegetation along 400 LF of a second unnamed tributary of Mill Creek. The project is located south of the intersection of Georgetown Road and

Little Blue Hollow Road in Green Township (Quadrangle: Hookstown; Latitude: 40° 37' 22.90"; Longitude: -80° 29' 50.94"); in Beaver County.

E63-694, Plenary Walsh Keystone Partners, Park West Two, Third Floor, 2000 Cliff Mine Road, Pittsburgh, PA 15275, Amwell Township, **Washington County**, Pittsburgh ACOE District.

Has been given consent to:

1. Remove an existing single-span, concrete (in place), arch deck-closed bridge (Span 103 feet, Length 27.3 feet, Under-clearance 20.5 feet) over Tenmile Creek (TSF);

2. Construct and maintain a replacement single-span, P/S concrete spread box beam bridge (Span 127 feet, Length 38.2 feet, Under-clearance 18.2 feet) over Tenmile Creek (TSF) which will permanently impact 117 linear feet of perennial, Tenmile Creek (aka Stream 1) and temporarily impact 175 linear feet of Stream 1;

3. Temporarily impact 41 linear feet of an intermittent unnamed tributary to Tenmile Creek (aka Stream 2);

4. Relocate 256 linear feet of an intermittent, unnamed tributary to Tenmile Creek (aka Stream 3) to a new channel that will be 326 linear feet long and temporarily impact 78 linear feet of Stream 3;

5. Temporarily impact 31 linear feet of an intermittent, unnamed tributary to Tenmile Creek (aka Stream 4);

6. Temporarily impact two PEM wetlands (0.031 acre of Wetland 1 and 0.002 acre of Wetland 2);

7. Construct and maintain an outfall structure to Stream 1, an 18" RCP under the proposed driveway associated with the bridge replacement;

Cumulatively, the project proposes to permanently impact 373 linear feet of stream channel, temporarily impact 325 linear feet of stream channel, and temporarily impact 0.033 acre of PEM wetlands. Mitigation for the impacts will be a 326 LF channel relocation and restoration of temporary impacted streams and wetlands. The project is for the purpose of replacing the existing S.R. 0019 (Amity Ridge Road), Section 000 bridge, a structurally deficient structure over Tenmile Creek (TSF) which is located near the Amwell Township Ballpark (Amity, PA USGS Quadrangle, Latitude: 40° 1' 26"; Longitude: -80° 12' 19"; Sub-basin 19B; Pittsburgh ACOE District) in Amwell Township, Washington County.

E65-978, Plenary Walsh Keystone Partners, 2000 Cliff Mine Road, Park West Two, Third Floor, Pittsburgh, PA 15275, Fairfield Township, **Westmoreland County**, Pittsburgh ACOE District.

Has been given consent to:

1. To remove an existing single span, concrete encased steel, I beam bridge and construct and maintain a replacement single span composite prestressed adjacent box beam bridge, with a span of 43' and an under clearance of 6.37' over Hendricks Creek (TSF) (aka Stream 1),

2. Place and maintain fill within 83 linear feet of a back channel of Hendricks Creek (aka Stream 2) and relocate and maintain 83 linear feet of replacement channel to confluence with Hendricks Creek,

3. Place and maintain fill within 30 linear feet of an unnamed tributary of Hendricks Creek (TSF) (aka Stream 2),

4. Construct and maintain temporary access within 0.0003 acre of PEM wetland (Exceptional Value),

5. Place and maintain fill within 0.006 acre of PEM wetland (Exceptional Value).

For the purpose of replacing a structurally deficient bridge. The project will cumulatively result in 138 linear feet of temporary impact and 148 linear feet of permanent stream impacts to Hendricks Creek and a UNT to Hendricks Creek and 0.0003 acre of temporary wetland impact and 0.006 acre of permanent wetland impact. Mitigation consist of the design of the bridge and restoration of the impacted resources after construction. The project is located near the intersection of Love Hollow Road and Thatcher Road (Quadrangle: Wilpen; Latitude: 40° 19' 18.9"; Longitude: -79° 7' 49.8"); in Fairfield Township, Westmoreland 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.

Southwest District: Oil & Gas Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222.

ESCGP-2 # ESX12-125-0013 Renewal
Applicant Name Range Resources—Appalachia, LLC
Contact Person Karl Matz
Address 3000 Town Center Boulevard
City, State, Zip Canonsburg, PA 15317
County Washington County
Township(s) Canton Township
Receiving Stream(s) and Classification(s) UNT to Georges Run (WWF)

ESCGP-2 # ESG17-063-0005
Applicant Name CNX Gas Company, LLC
Contact Person Carol Phillips
Address 1000 Consol Energy Drive
City, State, Zip Canonsburg, PA 15317
County Indiana County
Township(s) North Mahoning Township
Receiving Stream(s) and Classification(s) UNTs to Mudlick Run (HQ-CWF), Mudlick Run (HQ-CWF), & UNTs to Dutch Run (CWF)

ESCGP-2 # ESX17-125-0037
Applicant Name Range Resources—Appalachia, LLC
Contact Person Karl Matz
Address 3000 Town Center Boulevard

City, State, Zip Canonsburg, PA 15317
County Washington County
Township(s) Mount Pleasant Township
Receiving Stream(s) and Classification(s) UNTs to Chartiers Creek (WWF)

ESCGP-2 # ESG17-125-0032
Applicant Name MarkWest Liberty Midstream & Resources LLC
Contact Person Rick Lowry
Address 4600 J. Barry Court, Suite 500
City, State, Zip Canonsburg, PA 15317
County Washington County
Township(s) Hopewell Township and Independence Township
Receiving Stream(s) and Classification(s) UNTs to Hanen Run (HQ-WWF) & Hanen Run (HQ-WWF)
Northwest Region: Oil and Gas Program Manager, 230 Chestnut St., Meadville, PA 16335.

ESCGP-2 # ESX17-073-0001—Patterson Well Site
Applicant R.E. Gas Development, LLC
Contact Mr. Michael Endler
Address 600 Cranberry Woods Drive, Suite 250
City Cranberry Township State PA Zip Code 16066
County Lawrence Township(s) Little Beaver
Receiving Stream(s) and Classification(s) UNT to Jenkins Run

ESCGP-2 # ESX17-019-0019
Applicant XTO Energy Inc
Contact Melissa Breitenbach
Address 190 Thorn Hill Road
City Warrendale State PA Zip Code 15086
County Butler Township(s) Butler
Receiving Stream(s) and Classification(s) UNT to Butcher Run (WWF), Butcher Run (WWF) and UNT to Thorn Creek (CWF)

Eastern Region: Oil & Gas Management Program Manager, 208 West Third Street, Williamsport, PA 17701.

ESCGP-2 # ESX29-015-17-0036
Applicant Name EOG Resources Inc
Contact Person Greg Shaffer
Address 2039 S Sixth St
City, State, Zip Indiana, PA 15701
County Bradford
Township(s) Springfield
Receiving Stream(s) and Classification(s) UNT to Bentley Ck (WWF, MF); UNT to Mill Ck (WWF, MF)
Secondary—Bentley Ck and Mill Ck

ESCGP-2 # Esx13-115-0138(01)
Applicant Name Chief Oil & Gas LLC
Contact Person Jeffrey Deegan
Address 1720 Sycamore Rd
City, State, Zip Montoursville, PA 17754-9303
County Susquehanna
Township(s) Harford & Lenox
Receiving Stream(s) and Classification(s) Sterling Brok (CWF-MF) & Nine Partners Ck (CWF-MF)

ESCGP-2 # ESX12-117-0019(03)
Applicant Name SWEPI LP
Contact Person Jason Shoemaker
Address 150 N Dairy Ashford, E1296-E
City, State, Zip Houston, TX 77079
County Tioga
Township(s) Shippen
Receiving Stream(s) and Classification(s) Darling Run (HQ-CWF)

ESCGP-2 # ESG29-081-17-0043
Applicant Name Range Resources Appalachia LLC

Contact Person Karl Matz
Address 3000 Town Center Blvd
City, State, Zip Canonsburg, PA 15317
County Lycoming

Township(s) Cogan House
Receiving Stream(s) and Classification(s) Little Gap Run
(HQ-CWF); Hoagland Run (HQ-CWF)
Secondary—Lycoming Ck (EV)

STORAGE TANKS CLOSURE-IN-PLACE VARIANCE

The following variance from closure requirements under the authority of the Storage Tank Spill Prevention Act (35 P.S. § 6021.501) and under 25 Pa. Code Chapter 245, Subchapter E, has been issued by the Bureau of Environmental Cleanup and Brownfields, PO Box 8762, Harrisburg, PA 17105-8762.

<i>Variance No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Tank Type</i>	<i>Tank Capacity</i>
U-17-0004	7 Eleven Incorporated PO Box 711 Dallas, Texas 75221-0711	Philadelphia	City of Philadelphia	Gasoline	15,000 gallons

The variance request asks that underground storage tank (UST) 001 be excluded from part of the UST closure requirements located in 25 Pa. Code § 245.452(b). Specifically, the variance requests that UST 001 be permanently closed without being removed from the ground or filled with a non-shrinking, inert solid material as required by regulation to facilitate the installation of a new, structurally independent, field-constructed UST built within UST 001. A variance was granted with the following conditions: (1) 7 Eleven Incorporated shall comply with all remaining applicable requirements of 25 Pa. Code Chapter 245 and shall not violate any applicable provision of the Storage Tank and Spill Prevention Act; (2) The new, structurally independent, field-constructed UST built within UST 001 shall be installed within one (1) year of performing the required site assessment of UST 001; (3) This Variance Approval will remain in effect until January 2, 2021, unless amended or revoked by the Department or terminated for any reason by 7 Eleven Incorporated or the Department.

SPECIAL NOTICES

Air Quality; Notice of Proposed Revision to the State Implementation Plan for Oxides of Nitrogen, Volatile Organic Compounds, Notice of Public Hearing, and Notice of Intent to Issue Air Quality Plan Approval No: 17-00001H

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701.

Contact: Muhammad Q. Zaman, Program Manager, (570) 327-3648.

Approval of a Reasonably Available Control Technology (RACT II) plan for **NRG REMA, LLC** located in Bradford Township, **Clearfield County**.

In accordance with 25 Pa. Code §§ 129.96—129.100, the Department of Environmental Protection (Department) has made a preliminary determination to approve a RACT II NO_x emission averaging plan and an amendment to the State Implementation Plan (SIP) for the Shawville Generating Station owned and operated by NRG REMA, LLC in Bradford Township, Clearfield County.

The proposed SIP revision does not adopt any new regulations. It incorporates the provisions and requirements contained in the amended RACT II approval for the facility, which are intended to satisfy the requirements for the 1997 National Ambient Air Quality Standard (NAAQS) and the 2008 NAAQS for ozone.

The proposed amendments to the RACT II determination, if finally approved, will be incorporated into a revised operating permit (17-00001) for the facility. The relevant RACT II requirements will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the Commonwealth's State Implementation Plan and will remain in effect until replaced pursuant to 40 CFR 51 and approval by the EPA. Requirements that are not part of the RACT II determination will be excluded from the SIP submittal includes the provisions of the Department's presumptive Reasonably Available Control Technology requirements of 25 Pa. Code § 129.97, as they apply to existing NO_x air contamination sources at this facility. The facility is not a major VOC emitting facility.

The following is a summary of the proposed amendments to the RACT II determination for this operation that will be submitted to the EPA as a SIP revision:

Source

Utility Boilers (Source IDs 031 through 034)

RACT II Requirement

The permittee shall utilize Department certified CEMS to calculate actual emission when determining compliance with the NO_x RACT averaging plan, or other monitoring as approved by the Department. The mass NO_x emissions from each source within the averaging plan shall be calculated for each hour of operation and expressed in pounds per hour, which will be used in calculations to determine compliance on a 30-day rolling average.

Source

Utility Boilers (Source IDs 031 through 034)

RACT II Requirement

The permittee shall utilize Department certified fuel flow monitors to calculate actual heat input when determining compliance with the NO_x RACT averaging plan. The actual heat input from each source shall be calculated for each hour of operation and expressed in million British thermal units per hour (MMBtu/hr), which will be used in calculations to determine compliance on a 30-day rolling average.

Utility Boilers (Source IDs 031 through 034)

The owner/operator of each Source ID 031, 032, 033 and 034 shall meet the applicable NO_x RACT emission limitation in 25 Pa. Code § 129.97 by averaging NO_x emissions on either a system-wide basis using a 30-day rolling average.

The owner and operator of the air contaminant sources included in a NO_x emissions averaging plan shall be liable for a violation of an applicable NO_x RACT emission limitation at each facility included in the system-wide NO_x emissions averaging plan if the sum of actual mass emissions exceeds sum of allowable mass emissions of the sources on a rolling 30 operating day basis

The sources at each facility containing in the applicable system-wide NO_x emissions averaging plan are, as follows: the combustion turbines, Source IDs 101, 201 and 301 in Title V Operating Permit No. 01-05029, located at the Hunterstown Generating Station in Straban Township, Adams County; the three (3) utility boilers, Source IDs 033, 034 and 035 in Title V Operating Permit No. 37-00023, located at the New Castle Generating Station in Taylor Township, Lawrence County; the four (4) utility boilers, Source IDs 031, 032, 033 and 034 in Title V Operating Permit No. 17-00001, located at the Shawville Generating Station in Bradford Township, Clearfield County; and the combustion turbine, Source ID 035 in Title V Permit No: 62-00012, located at the Warren Generating Station in Conewango Township, Warren County.

Compliance with the alternative NO_x RACT emissions limit of a NO_x emissions averaging plan shall be determined by comparing daily the sum of actual emissions from all the sources included in the plan to the alternative NO_x RACT emissions limit. The owner or operator shall calculate the alternative system-wide NO_x RACT emissions limitation using a 30-day rolling average for the air contamination sources included in the emission averaging plan by using the following equation to sum the emissions for all of the sources:

$$\sum_{i=1}^n E_{i\text{actual}} \leq \sum_{i=1}^n E_{i\text{allowable}}$$

Where:

\sum = Symbol used to denote summation of E_{iactual} (or E_{iallowables}) values, for “n” sources where “n” is the number of nonzero sources containing in the averaging plan, and “i” ranges from 1 to the last value “n”.

The symbol “≤” means “less than or equal to”, E_{iactual} = The actual NO_x mass emissions on a 30-day rolling basis for air contamination source i shall be expressed in pounds of NO_x, and must include emissions during start-ups, shutdowns and malfunctions.

E_{iallowable} = The allowable NO_x mass emissions computed using the allowable emission rate limitations for air contamination source i using actual heat input for air contamination source on a 30-day rolling basis specified in 25 Pa. Code § 129.97. If an air contamination source included in an averaging plan is subject to a numerical emission rate limit that is more stringent than the applicable allowable emission rate limitation set forth in 25 Pa. Code § 129.97, then the numerical emission rate limit shall be used for the calculation of the allowable NO_x mass emissions.

Source

Utility Boilers (Source IDs 031 through 034)

RACT II Requirement

[Authority for this permit condition is also derived from 25 Pa. Code §§ 129.98 and 129.100]

(a) The permittee shall not use an emission averaging plan in accordance with 25 Pa. Code § 129.98 for the demonstration of compliance with NO_x RACT emission limitation in 25 Pa. Code § 129.97, if the Department determines at any time each of the air contamination sources participating in the averaging plan can meet the NO_x RACT emission limitations.

Testing, Monitoring and Recordkeeping Requirements

The owner or operator for each source containing in the NO_x emission averaging plan shall conduct testing and monitoring to verify compliance with (a) of this condition, as follows in (1) and (2) of this condition:

(1) For all sources except the Warren Generating Station combustion turbine, continuously monitor NO_x emissions using Department certified CEMS to measure and record average NO_x emissions on an hourly, daily, and 30-operating day basis in units of lb/MMBtu or ppmvd at 15% O₂, as applicable; and

(2) Conduct NO_x and O₂ concentration measurements via periodic testing using EPA Reference Methods 7E and 3A on the Warren Generating Station combustion turbine in accordance with Appendix E to 40 CFR Part 75 and keep records of the NO_x measurements in units of ppmvd, corrected to 15% O₂.

Utility Boilers (Source IDs 031 through 034)

(a) The permittee shall keep records of the actual heat input, actual NO_x mass emissions, and allowable NO_x mass emissions under the averaging plan for all sources containing in the NO_x RACT averaging plan. The permittee shall also keep records of the actual heat input parameters necessary to calculate the allowable emissions, as well as the supporting Part 75-certified fuel flowmeter monitoring data. These records shall include all intermediate calculations.

(b) The permittee shall keep records necessary to demonstrate compliance with the NO_x RACT averaging plan on a rolling 30 operating day basis. These records shall be made available at each facility with sources contained in the NO_x RACT averaging plan.

Utility Boilers (Source IDs 031 through 034)

The permittee shall submit quarterly system-wide NO_x RACT averaging reports as part of the submission of the quarterly CEMS reports (e-submittal).

Utility Boilers (Source IDs 031 through 034)

If the decision to go back to using coal as fuel to operate Source ID 031 [032, 033 and 034] is made then the permittee shall submit as part of a significant operating permit modification application or plan approval application, if otherwise required, a written RACT proposal in accordance with the procedures in 25 Pa. Code § 129.92(a)(1)–(5) and (b) as well as satisfy all other applicable requirements as specified in 25 Pa. Code § 129.99(d)(3)–(7). In addition, Source ID 031 [032, 033 and 034] shall be prohibited to use any coal as fuel to operate until a source-specific RACT determination has been approved by the Department in writing through the issuance of a plan approval or significant operating permit modification in accordance with 25 Pa. Code § 129.99(e) and (f).

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 Muhammad Q. Zaman, Environmental Program Manager, Department of Environmental Protection, North Central Regional Office, 208 West Third Street, Suite 101, Williamsport, PA 17701-6448. A 30-day comment period will exist upon publication of this notice 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 RACT II Operating Permit including the permit number and a concise statement regarding the relevancy of the information or objections to issuance of the proposed RACT II Plan.

Public hearing. A public hearing will be held if requested within the 30-day comment period to accept oral comments on the proposed operating permit revision and the proposed SIP revision. The hearing will be held, if requested, on February, 23, 2018, at 10 a.m. at the Department North Central Regional Office, 208 West Third Street, Suite 101, Williamsport,

PA 17701-6448. To request a hearing, to register to speak at a hearing, or to inquire if a hearing will be held, contact Megan Lehman at (570) 327-3659. The last day to pre-register to speak at a hearing, if one is held, will be 30 days from the final publication date of this notice

Please note that any updates made to any aspect of the hearing, including whether or not a hearing will be held, will be posted online at <http://www.dep.pa.gov/About/Regional/North-central-Regional-Office/Pages/default.aspx>.

Contact Megan Lehman at (570) 327-3659 or monitor the web site previously listed to determine if a hearing will be held.

Persons wishing to present testimony at the hearing should contact Megan Lehman at (570) 327-3659 at least 1 week in advance of the hearing to reserve a time to present testimony. Oral testimony will be limited to a maximum of 10 minutes per individual and two written copies of the oral testimony are requested. Each organization is requested to designate one witness to present testimony on its behalf. Persons unable to attend the hearing, if it is held, may submit three copies of a written statement and exhibits within 10 days thereafter to Muhammad Q. Zaman, Environmental Program Manager, Department of Environmental Protection, North Central Regional Office, 208 West Third Street, Suite 101, Williamsport, PA 17701-6448.

All pertinent documents are available for public review between 8 a.m. and 4 p.m. at the Department North Central Regional Office, 208 West Third Street, Suite 101, Williamsport, PA 17701-6448. Appointments for scheduling a review may be made by calling the Department at (570) 327-0550.

Persons with a disability who wish to comment and require an auxiliary aid, service or other accommodations to do so should contact Megan Lehman at (570) 327-3659 or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

Notice of Certification to Perform Radon-Related Activities in Pennsylvania

In the month of December 2017 the Department of Environmental Protection of the Commonwealth of Pennsylvania, under the authority contained in the Radon Certification Act, act of July 9, 1987, P.L. 238, No. 43 (63 P.S. §§ 2001—2014) and regulations promulgated thereunder at 25 Pa. Code Chapter 240, has certified the following persons to perform radon-related activities in this Commonwealth. The period of certification is 2 years. (For a complete list of persons currently certified to perform radon-related activities in this Commonwealth and for information as to the specific testing devices that persons certified for testing or laboratory are certified to use, contact the Bureau of Radiation Protection, Radon Division, P.O. Box 8469, Harrisburg, PA 17105-8469, (1-800-23RADON).

<i>Name</i>	<i>Address</i>	<i>Type of Certification</i>
Ben Chamberlin	3 Stonehedge Way Carlisle, PA 17015	Testing
Reo Cheshire	32 Gold Smith Road Dallas, PA 18612	Testing
Michael Conroy	201 Faculty Road Duncannon, PA 17020	Testing
James DeBellis	2700 Cumberland Avenue Reading, PA 19606	Mitigation
Christopher Eslinger	421 Derstine Avenue Lansdale, PA 19446	Testing
Larry Grove Grove Home Inspection Services, Inc.	929 S. High Street, Suite 169 West Chester, PA 19382	Testing
Donald Hart	613 Zimmermans Hollow Road Sunbury, PA 17801	Testing & Mitigation
Michael Imperial	2646 Fallow Hill Lane Jamison, PA 18929	Testing
Richard D. Malin	2075 Haymaker Road Monroeville, PA 15146	Testing
John Mallon, Jr. Radon Detection and Control	P.O. Box 419 South Heights, PA 15081	Testing & Mitigation
Kenneth McDonald A-Z Solutions, Inc.	7681 Tim Avenue NW North Canton, OH 44720	Testing & Mitigation
Charles Morck, III	14501 George Carter Way Suite 110 Chantilly, VA 20151	Testing
Robert Raishart	778 Armel Hollow Road Latrobe, PA 15650	Testing
Jennifer Redinger	322 Mall Boulevard, Suite 303 Monroeville, PA 15146	Testing
John Rogers	1129 Old Eagle Road Lancaster, PA 17601	Testing

<i>Name</i>	<i>Address</i>	<i>Type of Certification</i>
Mark Schlott	347 Indian Manor Drive Leesport, PA 19533	Testing
Kenneth Schutter	P.O. Box 55 Kimberton, PA 19442	Testing
Thomas Sebald	4638 Highview Boulevard Erie, PA 16509	Testing
Steven Sipe	69 Million Dollar Road Halifax, PA 17032	Testing
Jeffrey Zappel Healthy Environments, LLC	60 Progress Avenue Cranberry Township, PA 16066	Mitigation

[Pa.B. Doc. No. 18-65. Filed for public inspection January 12, 2018, 9:00 a.m.]

DEPARTMENT OF ENVIRONMENTAL PROTECTION

2018 Mine Map Grant Program Application Announcement

Applications for the 2018 Mine Map Grant (MMG) program are now available from the Department of Environmental Protection (Department). The MMG is a competitive grant program to establish 3-year grants that will provide funding to learning institutions and incorporated nonprofit organizations located in this Commonwealth to inventory, scan, georeference and vectorize mine maps and data.

The MMG will be funded from two special State funds under the authority in section 18(j) of the Surface Mining Conservation and Reclamation Act (52 P.S. § 1396.18(j)) and the Coal and Clay Mine Subsidence Insurance Fund regulations in 25 Pa. Code § 401.51 (relating to loans and grants).

This announcement opens on January 15, 2018, and grant applications submitted to the Department must be postmarked by February 15, 2018. Grant applications will be evaluated upon receipt, and grant agreements will be made with selected grantees at the earliest date possible thereafter. Subject to the availability of funds, up to \$2.25 million in grants will be provided over the 3-year period with a minimum grant award of \$300,000. Individual grant amounts will be based on MMG application and the quality and reliability of work proposed, which are dependent on the use of adequate and experienced staff and equipment. As a result, grants will be awarded to grantees based not only upon cost considerations, but also upon their ability to adequately and reliably complete the projects they propose, as demonstrated in their applications.

Applications may be obtained by contacting the Department of Environmental Protection, Bureau of Mining Programs, P.O. Box 8461, Harrisburg, PA 17105-8461, (717) 787-5103. For additional information and to obtain the electronic copy of the MMG application, visit the Department's web site at www.dep.pa.gov (search term: MMG) or www.pamsi.org/MMG.html.

PATRICK McDONNELL,
Secretary

[Pa.B. Doc. No. 18-66. Filed for public inspection January 12, 2018, 9:00 a.m.]

DEPARTMENT OF HEALTH

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)):

Haven Skilled Rehabilitation and Nursing
24 Cree Drive
Lock Haven, PA 17745
FAC ID # 122202

The following long-term care nursing facility is seeking an exception to 28 Pa. Code § 205.36(h) (relating to bathing facilities):

Riverwoods
15 Ridgcrest Circle
Lewisburg, PA 17837
FAC ID # 121702

The following long-term care nursing facility is seeking an exception to 28 Pa. Code § 211.9(g) (relating to pharmacy services):

Christ's Home Retirement Community
1 Shepherd's Way
Suite 100
Warminster, PA 18974
FAC ID # 550202

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 previously listed address.

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 previously listed address or phone number, or for speech and/or hearing-impaired persons, call the Pennsylvania AT&T

Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

RACHEL L. LEVINE, MD,
Acting Secretary

[Pa.B. Doc. No. 18-67. Filed for public inspection January 12, 2018, 9:00 a.m.]

DEPARTMENT OF HEALTH

Pennsylvania Achieving Better Care by Monitoring All Prescriptions Board Meeting

The Pennsylvania Achieving Better Care by Monitoring All Prescriptions Board, established under the Achieving Better Care by Monitoring All Prescriptions Program (ABC-MAP) Act (35 P.S. §§ 872.1—872.40), will hold its next meeting on Tuesday, January 23, 2018, at 9:30 a.m. in Room 129, Health and Welfare Building, 625 Forster Street, Harrisburg, PA 17120. Items to be discussed at the meeting include program status updates, and current and upcoming activities.

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 should contact the Administrative Assistant of Prescription Drug Monitoring Program Office, Department of Health, Health and Welfare Building, 625 Forster Street, Harrisburg, PA 17120, (717) 547-3309, or for speech and/or hearing impaired persons, call the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

This meeting is subject to cancellation without notice.

RACHEL L. LEVINE, MD,
Acting Secretary

[Pa.B. Doc. No. 18-68. Filed for public inspection January 12, 2018, 9:00 a.m.]

DEPARTMENT OF HEALTH

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. 140) (35 P.S. § 6204), will hold its quarterly public meeting on Friday, January 26, 2018, from 10 a.m. to 1 p.m. 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. The meeting will be held in Conference Room 812, Health and Welfare Building, 625 Forster Street, Harrisburg, PA 17120.

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 Trego, 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 speech and/or hearing impaired persons, call the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

This meeting is subject to cancellation without notice.

RACHEL L. LEVINE, MD,
Acting Secretary

[Pa.B. Doc. No. 18-69. Filed for public inspection January 12, 2018, 9:00 a.m.]

DEPARTMENT OF HUMAN SERVICES

Payment for Nursing Facility Services Provided by Nonpublic Nursing Facilities; Medical Assistance Day One Incentive Payments to Nonpublic Nursing Facilities for Fiscal Year 2017-2018

This announcement provides advance notice that the Department of Human Services (Department) intends to continue to make Medical Assistance Day One Incentive (MDOI) payments to qualified nonpublic nursing facilities for Fiscal Year (FY) 2017-2018. The MDOI payments to nonpublic nursing facilities will provide incentives to nonpublic nursing facilities to provide services to individuals who are Medical Assistance (MA) eligible on the day of admission. The MDOI payments are intended to encourage nonpublic nursing facilities to increase access to care for the poor and indigent citizens of this Commonwealth.

Nonpublic Medical Assistance Day One Incentive Payments

The Department will use the Total Pennsylvania Medical Assistance (PA MA) days and Total Resident Days as reported by nonpublic nursing facilities under Article VIII-A of the Human Services Code (62 P.S. §§ 801-A—815-A), regarding nursing facility assessments, to determine eligibility and calculate payments.

To qualify for MDOI payments, the nursing facility must be a nonpublic nursing facility for the full Resident Day quarter prior to the applicable quarterly reporting due dates of October 31 and January 31. In addition, the nonpublic nursing facility shall have an overall occupancy rate of at least 85% and an MA occupancy rate of at least 65% during the applicable Resident Day quarter. A nursing facility's overall occupancy rate for these payments will be determined as follows: Overall occupancy rate = (Total Resident Days ÷ (licensed bed capacity at the end of the quarter × the number of calendar days in the quarter)). A nursing facility's MA occupancy rate for these payments will be determined as follows: MA occupancy rate = Total PA MA days ÷ Total Resident Days.

Each nursing facility may qualify for a maximum of two MDOI payments. Using the nursing facility assessment quarterly resident day reporting forms available on October 31 for the first payment and January 31 for the second payment, the Department will calculate each qualified nonpublic nursing facility's MDOI payments based on the following formula:

(i) A MDOI per diem for each of the two MDOI payments will be 1/2 of the total funds appropriated for the fiscal year divided by the Total PA MA days as reported by all qualifying nursing facilities for the applicable Resident Day Quarter.

(ii) Each MDOI per diem will then be multiplied by each qualified nursing facility's Total PA MA days, as reported, for the applicable Resident Day Quarter to determine its MDOI payment.

(iii) The State funds allocated for FY 2017-2018 are \$8 million.

The Department will not retroactively revise an MDOI payment amount based on a nursing facility's late submission or revision of its report related to the previously listed dates. The Department may recoup payments based on an audit of a nursing facility's report.

The Department will submit a Medicaid State Plan Amendment (SPA) to the Centers for Medicare & Medicaid Services (CMS). If CMS approves the SPA, the Department will have the authority to make MDOI payments to nonpublic nursing facilities for FY 2017-2018.

Fiscal Impact

The fiscal impact of this change is estimated at \$16.604 million (\$8.000 million in State funds) for FY 2017-2018.

Public Comment

Interested persons are invited to submit written comments regarding these payments 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 Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

TERESA D. MILLER,
Acting Secretary

Fiscal Note: 14-NOT-1201. (1) General Fund; (2) Implementing Year 2017-18 is \$8,000,000; (3) 1st Succeeding Year 2018-19 through 5th Succeeding Year 2022-23 are \$0; (4) 2016-17 Program—\$1,082,000,000; 2015-16 Program—\$968,083; 2014-15 Program—\$810,545,000; (7) Long-Term Care; (8) recommends adoption. Funds have been included in the budget to cover this increase.

[Pa.B. Doc. No. 18-70. Filed for public inspection January 12, 2018, 9:00 a.m.]

DEPARTMENT OF REVENUE

Pennsylvania 5X the Bucks Instant Lottery Game 1324

Under the State Lottery Law (72 P.S. §§ 3761-101—3761-314) and 61 Pa. Code § 819.203 (relating to notice of instant game rules), the Secretary of Revenue hereby provides public notice of the rules for the following instant lottery game:

1. *Name:* The name of the game is Pennsylvania 5X the Bucks (hereinafter referred to as “5X the Bucks”). The game number is PA-1324.

2. *Price:* The price of a 5X the Bucks instant lottery game ticket is \$1.

3. *Play Symbols:* Each 5X the Bucks instant lottery game ticket will contain one play area featuring a “WINNING NUMBER” area and a “YOUR NUMBERS” area. The play symbols and their captions located in the “WINNING NUMBER” area are: 1 (ONE), 2 (TWO), 3 (THREE), 4 (FOUR), 6 (SIX), 7 (SEVEN), 8 (EIGHT), 9 (NINE), 10 (TEN), 11 (ELEVN), 12 (TWLV), 13 (THRTN), 14 (FORTN), 16 (SIXTN), 17 (SVNTN), 18 (EGHTN), 19 (NINTN) and 20 (TWENT). The play symbols and their captions located in the “YOUR NUMBERS” area are: 1 (ONE), 2 (TWO), 3 (THREE), 4 (FOUR), 6 (SIX), 7 (SEVEN), 8 (EIGHT), 9 (NINE), 10 (TEN), 11 (ELEVN), 12 (TWLV), 13 (THRTN), 14 (FORTN), 16 (SIXTN), 17 (SVNTN), 18 (EGHTN), 19 (NINTN), 20 (TWENT) and a 5X (5TIMES) symbol.

4. *Prize Symbols:* The prize symbols and their captions located in the “YOUR NUMBERS” area are: FREE (TICKET), \$1⁰⁰ (ONE DOL), \$2⁰⁰ (TWO DOL), \$4⁰⁰ (FOR DOL), \$5⁰⁰ (FIV DOL), \$10⁰⁰ (TEN DOL), \$20⁰⁰ (TWENTY), \$25⁰⁰ (TWY FIV), \$50⁰⁰ (FIFTY), \$100 (ONE HUN), \$500 (FIV HUN), \$1,000 (ONE THO) and \$5,000 (FIV THO).

5. *Prizes:* The prizes that can be won in this game are: Free \$1 ticket, \$1, \$2, \$4, \$5, \$10, \$20, \$25, \$50, \$100, \$500, \$1,000 and \$5,000. A player can win up to 5 times on a ticket.

6. *Approximate Number of Tickets Printed For the Game:* Approximately 10,800,000 tickets will be printed for the 5X the Bucks instant lottery game.

7. Determination of Prize Winners:

(a) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches the “WINNING NUMBER” play symbol and a prize symbol of \$5,000 (FIV THO) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$5,000.

(b) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches the “WINNING NUMBER” play symbol and a prize symbol of \$1,000 (ONE THO) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$1,000.

(c) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches the “WINNING NUMBER” play symbol and a prize symbol of \$500 (FIV HUN) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$500.

(d) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a 5X (5TIMES) symbol and a prize symbol of \$100 (ONE HUN) appears in the “prize” area under that 5X (5TIMES) symbol, on a single ticket, shall be entitled to a prize of \$500.

(e) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a 5X (5TIMES) symbol and a prize symbol of \$50⁰⁰ (FIFTY) appears in the “prize” area under that 5X (5TIMES) symbol, on a single ticket, shall be entitled to a prize of \$250.

(f) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a 5X (5TIMES) symbol and a prize symbol of \$25⁰⁰ (TWY FIV) appears in the “prize” area under that 5X (5TIMES) symbol, on a single ticket, shall be entitled to a prize of \$125.

(g) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches the “WINNING NUMBER” play symbol and a prize symbol of \$100 (ONE HUN) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$100.

(h) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a 5X (5TIMES) symbol and a prize symbol of \$20⁰⁰ (TWENTY) appears in the “prize” area under that 5X (5TIMES) symbol, on a single ticket, shall be entitled to a prize of \$100.

(i) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches the “WINNING NUMBER” play symbol and a prize symbol of \$50⁰⁰ (FIFTY) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$50.

(j) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a 5X (5TIMES) symbol and a prize symbol of \$10⁰⁰ (TEN DOL) appears in the “prize” area under that 5X (5TIMES) symbol, on a single ticket, shall be entitled to a prize of \$50.

(k) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches the “WINNING NUMBER” play symbol and a prize symbol of \$25⁰⁰ (TWY FIV) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$25.

(l) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a 5X (5TIMES) symbol and a prize symbol of \$5⁰⁰ (FIV DOL) appears in the “prize” area under that 5X (5TIMES) symbol, on a single ticket, shall be entitled to a prize of \$25.

(m) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches the “WINNING NUMBER” play symbol and a prize symbol of \$20⁰⁰ (TWENTY) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$20.

(n) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a 5X (5TIMES) symbol and a prize symbol of \$4⁰⁰ (FOR DOL) appears in the “prize” area under that 5X (5TIMES) symbol, on a single ticket, shall be entitled to a prize of \$20.

(o) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches the “WINNING NUMBER” play symbol and a prize symbol of \$10⁰⁰ (TEN DOL) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$10.

(p) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a 5X (5TIMES) symbol and a prize symbol of \$2⁰⁰ (TWO DOL) appears in the “prize” area under that 5X (5TIMES) symbol, on a single ticket, shall be entitled to a prize of \$10.

(q) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches the “WIN-

NING NUMBER” play symbol and a prize symbol of \$5⁰⁰ (FIV DOL) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$5.

(r) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a 5X (5TIMES) symbol and a prize symbol of \$1⁰⁰ (ONE DOL) appears in the “prize” area under that 5X (5TIMES) symbol, on a single ticket, shall be entitled to a prize of \$5.

(s) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches the “WINNING NUMBER” play symbol and a prize symbol of \$4⁰⁰ (FOR DOL) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$4.

(t) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches the “WINNING NUMBER” play symbol and a prize symbol of \$2⁰⁰ (TWO DOL) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$2.

(u) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches the “WINNING NUMBER” play symbol and a prize symbol of \$1⁰⁰ (ONE DOL) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$1.

(v) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches the “WINNING NUMBER” play symbol and a prize symbol of FREE (TICKET) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of one 5X the Bucks instant lottery game ticket or one Pennsylvania Lottery instant lottery game ticket of equivalent sale price which is currently on sale.

8. *Number and Description of Prizes and Approximate Odds:* The following table sets forth the approximate number of winners, amounts of prizes, and approximate odds of winning:

<i>When Any Of Your Numbers Match The Winning Number; Win Prize Shown Under The Matching Number. Win With:</i>	<i>Win:</i>	<i>Approximate Odds Are 1 In:</i>	<i>Approximate No. Of Winners Per 10,800,000 Tickets</i>
FREE	FREE \$1 TICKET	9.68	1,116,000
\$1 x 2	\$2	33.33	324,000
\$2	\$2	33.33	324,000
\$1 x 4	\$4	300	36,000
\$2 x 2	\$4	300	36,000
\$4	\$4	300	36,000
\$1 x 5	\$5	1,500	7,200
\$1 w/ 5X	\$5	42.86	252,000
\$5	\$5	1,500	7,200
\$2 x 5	\$10	600	18,000
\$5 x 2	\$10	1,000	10,800
\$2 w/ 5X	\$10	150	72,000
\$10	\$10	1,500	7,200
\$4 x 5	\$20	3,000	3,600
\$5 x 4	\$20	3,000	3,600
\$10 x 2	\$20	3,000	3,600
(\$2 w/ 5X) x 2	\$20	1,500	7,200
\$4 w/ 5X	\$20	750	14,400
\$20	\$20	3,000	3,600
\$5 x 5	\$25	8,000	1,350
(\$10 x 2) + (\$1 w/ 5X)	\$25	3,429	3,150
\$5 w/ 5X	\$25	3,000	3,600

<i>When Any Of Your Numbers Match The Winning Number, Win Prize Shown Under The Matching Number. Win With:</i>	<i>Win:</i>	<i>Approximate Odds Are 1 In:</i>	<i>Approximate No. Of Winners Per 10,800,000 Tickets</i>
\$25	\$25	12,000	900
\$10 × 5	\$50	12,000	900
\$25 × 2	\$50	12,000	900
(\$5 w/ 5X) × 2	\$50	8,000	1,350
\$10 w/ 5X	\$50	6,000	1,800
\$50	\$50	12,000	900
\$20 × 5	\$100	48,000	225
\$25 × 4	\$100	24,000	450
\$50 × 2	\$100	24,000	450
(\$5 w/ 5X) × 4	\$100	24,000	450
(\$10 w/ 5X) × 2	\$100	24,000	450
\$20 w/ 5X	\$100	8,000	1,350
\$100	\$100	48,000	225
(\$25 w/ 5X) × 4	\$500	240,000	45
(\$50 w/ 5X) × 2	\$500	240,000	45
\$100 w/ 5X	\$500	240,000	45
\$500	\$500	240,000	45
\$500 × 2	\$1,000	1,080,000	10
(\$100 w/ 5X) × 2	\$1,000	1,080,000	10
\$1,000	\$1,000	1,080,000	10
\$5,000	\$5,000	1,080,000	10

Reveal a "5X" (5TIMES) symbol, win 5 times the prize shown under that symbol.

Prizes, including top prizes, are subject to availability at the time of purchase.

9. *Retailer Incentive Awards:* The Lottery may conduct a separate Retailer Incentive Program for retailers who sell 5X the Bucks instant lottery game tickets.

10. *Retailer Bonus:* The Lottery may offer a retailer bonus in connection with the sale of Pennsylvania instant lottery game tickets. If a retailer bonus is offered, a Lottery retailer shall be eligible for a bonus as described in this section. Lottery retailers who sell a winning ticket that entitles the ticket holder to a prize, either payable in a single installment or having a guaranteed minimum payout, of at least \$100,000 and not exceeding \$500,000 shall be paid a bonus of \$500. Lottery retailers who sell a winning ticket that entitles the ticket holder to a prize, either payable in a single installment or having a guaranteed minimum payout, of at least \$500,001 and not exceeding \$1,000,000 shall be paid a bonus of \$5,000. Lottery retailers who sell a winning ticket that entitles the ticket holder to a prize, either payable in a single installment or having a guaranteed minimum payout, of at least \$1,000,001 and not exceeding \$10,000,000 shall be paid a bonus of \$10,000. A Lottery retailer is entitled only to the largest bonus for which he qualifies on a winning ticket. A bonus will be initiated for payment after the instant ticket is claimed and validated. A bonus will not be awarded to a Lottery retailer that sells a non-winning Pennsylvania Lottery instant ticket used to enter a Pennsylvania Lottery second-chance drawing or promotion that is subsequently selected to win a prize.

11. *Unclaimed Prize Money:* For a period of 1 year from the announced close of 5X the Bucks, prize money from winning 5X the Bucks instant lottery game tickets will be retained by the Secretary for payment to the persons entitled thereto. If no claim is made within 1 year of the announced close of the 5X the Bucks instant lottery game, the right of a ticket holder to claim the prize represented by the ticket, if any, will expire and the prize money will be paid into the State Lottery Fund and used for purposes provided for by statute.

12. *Governing Law:* In purchasing a ticket, the customer agrees to comply with and abide by the State Lottery Law (72 P.S. §§ 3761-101—3761-314), 61 Pa. Code Part V (relating to State Lotteries) and the provisions contained in this notice.

13. *Termination of the Game:* The Secretary may announce a termination date, after which no further tickets from this game may be sold. The announcement will be disseminated through media used to advertise or promote 5X the Bucks or through normal communications methods.

C. DANIEL HASSELL,
Secretary

[Pa.B. Doc. No. 18-71. Filed for public inspection January 12, 2018, 9:00 a.m.]

DEPARTMENT OF REVENUE

Pennsylvania 10X the Bucks Instant Lottery Game 1323

Under the State Lottery Law (72 P.S. §§ 3761-101—3761-314) and 61 Pa. Code § 819.203 (relating to notice of instant game rules), the Secretary of Revenue hereby provides public notice of the rules for the following instant lottery game:

1. *Name:* The name of the game is Pennsylvania 10X the Bucks (hereinafter referred to as "10X the Bucks"). The game number is PA-1323.

2. *Price:* The price of a 10X the Bucks instant lottery game ticket is \$2.

3. *Play Symbols:* Each 10X the Bucks instant lottery game ticket will contain one play area featuring a "WINNING NUMBERS" area and a "YOUR NUMBERS" area. The play symbols and their captions located in the "WINNING NUMBERS" area are: 1 (ONE), 2 (TWO), 3

(THREE), 4 (FOUR), 5 (FIVE), 6 (SIX), 7 (SEVEN), 8 (EIGHT), 9 (NINE), 11 (ELEVN), 12 (TWLV), 13 (THRTN), 14 (FORTN), 15 (FIFTN), 16 (SIXTN), 17 (SVNTN), 18 (EGHTN), 19 (NINTN), 20 (TWENT), 21 (TWYONE), 22 (TWYTWO), 23 (TWYTHR), 24 (TWYFOR), 25 (TWYFIV), 26 (TWYSIX), 27 (TWYSVN), 28 (TWYEGT), 29 (TWYNIN), and 30 (THIRTY). The play symbols and their captions located in the "YOUR NUMBERS" area are: 1 (ONE), 2 (TWO), 3 (THREE), 4 (FOUR), 5 (FIVE), 6 (SIX), 7 (SEVEN), 8 (EIGHT), 9 (NINE), 11 (ELEVN), 12 (TWLV), 13 (THRTN), 14 (FORTN), 15 (FIFTN), 16 (SIXTN), 17 (SVNTN), 18 (EGHTN), 19 (NINTN), 20 (TWENT), 21 (TWYONE), 22 (TWYTWO), 23 (TWYTHR), 24 (TWYFOR), 25 (TWYFIV), 26 (TWYSIX), 27 (TWYSVN), 28 (TWYEGT), 29 (TWYNIN), 30 (THIRTY) and a 10X (10TIMES) symbol.

4. *Prize Symbols:* The prize symbols and their captions located in the "YOUR NUMBERS" areas are: \$2.⁰⁰ (TWO DOL), \$4.⁰⁰ (FOR DOL), \$5.⁰⁰ (FIV DOL), \$10.⁰⁰ (TEN DOL), \$20.⁰⁰ (TWENTY), \$40.⁰⁰ (FORTY), \$50.⁰⁰ (FIFTY), \$100 (ONE HUN), \$400 (FOR HUN), \$1,000 (ONE THO) and \$10,000 (TEN THO).

5. *Prizes:* The prizes that can be won in this game are: \$2, \$4, \$5, \$10, \$20, \$40, \$50, \$100, \$400, \$1,000 and \$10,000. The player can win up to 10 times on a ticket.

6. *Approximate Number of Tickets Printed For the Game:* Approximately 8,400,000 tickets will be printed for the 10X the Bucks instant lottery game.

7. *Determination of Prize Winners:*

(a) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches either of the "WINNING NUMBERS" play symbols and a prize symbol of \$10,000 (TEN THO) appears in the "prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$10,000.

(b) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches either of the "WINNING NUMBERS" play symbols and a prize symbol of \$1,000 (ONE THO) appears in the "prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$1,000.

(c) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a 10X (10TIMES) symbol and a prize symbol of \$100 (ONE HUN) appears in the "prize" area under that 10X (10TIMES) symbol, on a single ticket, shall be entitled to a prize of \$1,000.

(d) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches either of the "WINNING NUMBERS" play symbols and a prize symbol of \$400 (FOR HUN) appears in the "prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$400.

(e) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a 10X (10TIMES) symbol and a prize symbol of \$40.⁰⁰ (FORTY) appears in the "prize" area under that 10X (10TIMES) symbol, on a single ticket, shall be entitled to a prize of \$400.

(f) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches either of the "WINNING NUMBERS" play symbols and a prize symbol of \$100 (ONE HUN) appears in the "prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$100.

(g) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a 10X (10TIMES)

symbol and a prize symbol of \$10.⁰⁰ (TEN DOL) appears in the "prize" area under that 10X (10TIMES) symbol, on a single ticket, shall be entitled to a prize of \$100.

(h) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches either of the "WINNING NUMBERS" play symbols and a prize symbol of \$50.⁰⁰ (FIFTY) appears in the "prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$50.

(i) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a 10X (10TIMES) symbol and a prize symbol of \$5.⁰⁰ (FIV DOL) appears in the "prize" area under that 10X (10TIMES) symbol, on a single ticket, shall be entitled to a prize of \$50.

(j) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches either of the "WINNING NUMBERS" play symbols and a prize symbol of \$40.⁰⁰ (FORTY) appears in the "prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$40.

(k) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a 10X (10TIMES) symbol and a prize symbol of \$4.⁰⁰ (FOR DOL) appears in the "prize" area under that 10X (10TIMES) symbol, on a single ticket, shall be entitled to a prize of \$40.

(l) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches either of the "WINNING NUMBERS" play symbols and a prize symbol of \$20.⁰⁰ (TWENTY) appears in the "prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$20.

(m) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a 10X (10TIMES) symbol and a prize symbol of \$2.⁰⁰ (TWO DOL) appears in the "prize" area under that 10X (10TIMES) symbol, on a single ticket, shall be entitled to a prize of \$20.

(n) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches either of the "WINNING NUMBERS" play symbols and a prize symbol of \$10.⁰⁰ (TEN DOL) appears in the "prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$10.

(o) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches either of the "WINNING NUMBERS" play symbols and a prize symbol of \$5.⁰⁰ (FIV DOL) appears in the "prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$5.

(p) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches either of the "WINNING NUMBERS" play symbols and a prize symbol of \$4.⁰⁰ (FOR DOL) appears in the "prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$4.

(q) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches either of the "WINNING NUMBERS" play symbols and a prize symbol of \$2.⁰⁰ (TWO DOL) appears in the "prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$2.

8. *Number and Description of Prizes and Approximate Odds:* The following table sets forth the approximate number of winners, amounts of prizes, and approximate odds of winning:

<i>When Any Of Your Numbers Match Either Winning Number, Win Prize Shown Under The Matching Number. Win With:</i>	<i>Win:</i>	<i>Approximate Odds Are 1 In:</i>	<i>Approximate No. Of Winners Per 8,400,000 Tickets</i>
\$2	\$2	10	840,000
\$2 × 2	\$4	37.5	224,000
\$4	\$4	37.5	224,000
\$5	\$5	34.09	246,400
\$5 × 2	\$10	150	56,000
\$10	\$10	150	56,000
\$2 × 10	\$20	1,500	5,600
\$10 × 2	\$20	1,500	5,600
\$2 w/ 10X	\$20	68.18	123,200
\$20	\$20	1,500	5,600
\$4 × 10	\$40	2,400	3,500
\$10 × 4	\$40	6,000	1,400
\$20 × 2	\$40	6,000	1,400
\$4 w/ 10X	\$40	800	10,500
\$40	\$40	6,000	1,400
\$5 × 10	\$50	2,000	4,200
\$10 × 5	\$50	6,000	1,400
\$5 w/ 10X	\$50	1,200	7,000
\$50	\$50	6,000	1,400
\$10 × 10	\$100	4,000	2,100
\$50 × 2	\$100	12,000	700
\$10 w/ 10X	\$100	3,000	2,800
\$100	\$100	12,000	700
\$40 × 10	\$400	60,000	140
\$40 w/ 10X	\$400	40,000	210
\$400	\$400	120,000	70
\$100 w/ 10X	\$1,000	120,000	70
\$1,000	\$1,000	120,000	70
\$10,000	\$10,000	840,000	10

Reveal a "10X" (10TIMES) symbol, win 10 times the prize shown under that symbol.

Prizes, including top prizes, are subject to availability at the time of purchase.

9. *Retailer Incentive Awards:* The Lottery may conduct a separate Retailer Incentive Program for retailers who sell 10X the Bucks instant lottery game tickets.

10. *Retailer Bonus:* The Lottery may offer a retailer bonus in connection with the sale of Pennsylvania instant lottery game tickets. If a retailer bonus is offered, a Lottery retailer shall be eligible for a bonus as described in this section. Lottery retailers who sell a winning ticket that entitles the ticket holder to a prize, either payable in a single installment or having a guaranteed minimum payout, of at least \$100,000 and not exceeding \$500,000 shall be paid a bonus of \$500. Lottery retailers who sell a winning ticket that entitles the ticket holder to a prize, either payable in a single installment or having a guaranteed minimum payout, of at least \$500,001 and not exceeding \$1,000,000 shall be paid a bonus of \$5,000. Lottery retailers who sell a winning ticket that entitles the ticket holder to a prize, either payable in a single installment or having a guaranteed minimum payout, of at least \$1,000,001 and not exceeding \$10,000,000 shall be paid a bonus of \$10,000. A Lottery retailer is entitled only to the largest bonus for which he qualifies on a winning ticket. A bonus will be initiated for payment after the instant ticket is claimed and validated. A bonus will not be awarded to a Lottery retailer that sells a non-winning Pennsylvania Lottery instant ticket used to enter

a Pennsylvania Lottery second-chance drawing or promotion that is subsequently selected to win a prize.

11. *Unclaimed Prize Money:* For a period of 1 year from the announced close of 10X the Bucks, prize money from winning 10X the Bucks instant lottery game tickets will be retained by the Secretary for payment to the persons entitled thereto. If no claim is made within 1 year of the announced close of the 10X the Bucks instant lottery game, the right of a ticket holder to claim the prize represented by the ticket, if any, will expire and the prize money will be paid into the State Lottery Fund and used for purposes provided for by statute.

12. *Governing Law:* In purchasing a ticket, the customer agrees to comply with and abide by the State Lottery Law (72 P.S. §§ 3761-101—3761-314), 61 Pa. Code Part V (relating to State Lotteries) and the provisions contained in this notice.

13. *Termination of the Game:* The Secretary may announce a termination date, after which no further tickets from this game may be sold. The announcement will be disseminated through media used to advertise or promote 10X the Bucks or through normal communications methods.

C. DANIEL HASSELL,
Secretary

[Pa.B. Doc. No. 18-72. Filed for public inspection January 12, 2018, 9:00 a.m.]

DEPARTMENT OF REVENUE

Pennsylvania 20X the Bucks Instant Lottery Game 1321

Under the State Lottery Law (72 P.S. §§ 3761-101—3761-314) and 61 Pa. Code § 819.203 (relating to notice of instant game rules), the Secretary of Revenue hereby provides public notice of the rules for the following instant lottery game:

1. *Name:* The name of the game is Pennsylvania 20X the Bucks (hereinafter referred to as “20X the Bucks”). The game number is PA-1321.

2. *Price:* The price of a 20X the Bucks instant lottery game ticket is \$5.

3. *Play Symbols:* Each 20X the Bucks instant lottery game ticket will contain one play area featuring a “WINNING NUMBERS” area and a “YOUR NUMBERS” area. The play symbols and their captions located in the “WINNING NUMBERS” area are: 1 (ONE), 3 (THREE), 4 (FOUR), 5 (FIVE), 6 (SIX), 7 (SEVEN), 8 (EIGHT), 9 (NINE), 10 (TEN), 11 (ELEVN), 12 (TWLV), 13 (THRTN), 14 (FORTN), 15 (FIFTN), 16 (SIXTN), 17 (SVNTN), 18 (EGHTN), 19 (NINTN), 21 (TWYONE), 22 (TWYTWO), 23 (TWYTHR), 24 (TWYFOR), 25 (TWYFIV), 26 (TWYSIX), 27 (TWYSVN), 28 (TWYEGT), 29 (TWYNIN) and 30 (THIRTY). The play symbols and their captions located in the “YOUR NUMBERS” area are: 1 (ONE), 3 (THREE), 4 (FOUR), 5 (FIVE), 6 (SIX), 7 (SEVEN), 8 (EIGHT), 9 (NINE), 10 (TEN), 11 (ELEVN), 12 (TWLV), 13 (THRTN), 14 (FORTN), 15 (FIFTN), 16 (SIXTN), 17 (SVNTN), 18 (EGHTN), 19 (NINTN), 21 (TWYONE), 22 (TWYTWO), 23 (TWYTHR), 24 (TWYFOR), 25 (TWYFIV), 26 (TWYSIX), 27 (TWYSVN), 28 (TWYEGT), 29 (TWYNIN), 30 (THIRTY), 2X (DOUBLE) symbol and a 20X (20TIMES) symbol.

4. *Prize Symbols:* The prize symbols and their captions located in the “prize” areas are: \$5⁰⁰ (FIV DOL), \$10⁰⁰ (TEN DOL), \$20⁰⁰ (TWENTY), \$40⁰⁰ (FORTY), \$50⁰⁰ (FIFTY), \$100 (ONE HUN), \$200 (TWO HUN), \$500 (FIV HUN), \$1,000 (ONE THO), \$10,000 (TEN THO) and \$100,000 (ONEHUNTHO).

5. *Prizes:* The prizes that can be won in this game are: \$5, \$10, \$20, \$40, \$50, \$100, \$200, \$500, \$1,000, \$10,000 and \$100,000. The player can win up to 12 times on a ticket.

6. *Approximate Number of Tickets Printed For the Game:* Approximately 10,800,000 tickets will be printed for the 20X the Bucks instant lottery game.

7. *Determination of Prize Winners:*

(a) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$100,000 (ONEHUNTHO) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$100,000.

(b) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$10,000 (TEN THO) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$10,000.

(c) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a 20X (20TIMES) symbol and a prize symbol of \$500 (FIV HUN) appears in the “prize” area under that 20X (20TIMES) symbol, on a single ticket, shall be entitled to a prize of \$10,000.

(d) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$1,000 (ONE THO) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$1,000.

(e) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a 20X (20TIMES) symbol and a prize symbol of \$50⁰⁰ (FIFTY) appears in the “prize” area under that 20X (20TIMES) symbol, on a single ticket, shall be entitled to a prize of \$1,000.

(f) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a 2X (DOUBLE) symbol and a prize symbol of \$500 (FIV HUN) appears in the “prize” area under that 2X (DOUBLE) symbol, on a single ticket, shall be entitled to a prize of \$1,000.

(g) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$500 (FIV HUN) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$500.

(h) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a 20X (20TIMES) symbol and a prize symbol of \$20⁰⁰ (TWENTY) appears in the “prize” area under that 20X (20TIMES) symbol, on a single ticket, shall be entitled to a prize of \$400.

(i) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$200 (TWO HUN) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$200.

(j) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a 20X (20TIMES) symbol and a prize symbol of \$10⁰⁰ (TEN DOL) appears in the “prize” area under that 20X (20TIMES) symbol, on a single ticket, shall be entitled to a prize of \$200.

(k) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$100 (ONE HUN) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$100.

(l) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a 20X (20TIMES) symbol and a prize symbol of \$5⁰⁰ (FIV DOL) appears in the “prize” area under that 20X (20TIMES) symbol, on a single ticket, shall be entitled to a prize of \$100.

(m) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a 2X (DOUBLE) symbol and a prize symbol of \$50⁰⁰ (FIFTY) appears in the “prize” area under that 2X (DOUBLE) symbol, on a single ticket, shall be entitled to a prize of \$100.

(n) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$50⁰⁰ (FIFTY) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$50.

(o) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$40⁰⁰ (FORTY) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$40.

(p) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a 2X (DOUBLE) symbol and a prize symbol of \$20.⁰⁰ (TWENTY) appears in the “prize” area under that 2X (DOUBLE) symbol, on a single ticket, shall be entitled to a prize of \$40.

(q) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$20.⁰⁰ (TWENTY) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$20.

(r) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a 2X (DOUBLE) symbol and a prize symbol of \$10.⁰⁰ (TEN DOL) appears in the “prize” area under that 2X (DOUBLE) symbol, on a single ticket, shall be entitled to a prize of \$20.

(s) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol

of \$10.⁰⁰ (TEN DOL) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$10.

(t) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a 2X (DOUBLE) symbol and a prize symbol of \$5.⁰⁰ (FIV DOL) appears in the “prize” area under that 2X (DOUBLE) symbol, on a single ticket, shall be entitled to a prize of \$10.

(u) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$5.⁰⁰ (FIV DOL) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$5.

8. *Number and Description of Prizes and Approximate Odds:* The following table sets forth the approximate number of winners, amounts of prizes, and approximate odds of winning:

<i>When Any Of Your Numbers Match Any Winning Number, Win Prize Shown Under The Matching Number. Win With:</i>	<i>Win:</i>	<i>Approximate Odds Are 1 In:</i>	<i>Approximate No. Of Winners Per 10,800,000 Tickets</i>
\$5	\$5	7.5	1,440,000
\$5 × 2	\$10	150	72,000
\$5 w/ 2X	\$10	54.55	198,000
\$10	\$10	120	90,000
\$5 × 4	\$20	120	90,000
\$10 × 2	\$20	120	90,000
\$10 w/ 2X	\$20	40	270,000
\$20	\$20	120	90,000
\$5 × 8	\$40	600	18,000
\$10 × 4	\$40	600	18,000
\$20 w/ 2X	\$40	300	36,000
\$40	\$40	600	18,000
\$5 × 10	\$50	600	18,000
\$10 × 5	\$50	600	18,000
(\$20 w/ 2X) + (\$5 w/ 2X)	\$50	600	18,000
\$50	\$50	600	18,000
\$10 × 10	\$100	4,000	2,700
\$20 × 5	\$100	2,400	4,500
\$50 w/ 2X	\$100	2,400	4,500
\$5 w/ 20X	\$100	266.67	40,500
\$100	\$100	6,000	1,800
\$20 × 10	\$200	24,000	450
\$50 × 4	\$200	12,000	900
\$100 × 2	\$200	12,000	900
(\$50 × 2) + (\$10 × 10)	\$200	12,000	900
(\$50 w/ 2X) × 2	\$200	12,000	900
\$10 w/ 20X	\$200	12,000	900
\$200	\$200	24,000	450
\$50 × 10	\$500	120,000	90
\$100 × 5	\$500	120,000	90
(\$50 × 2) + (\$40 × 10)	\$500	120,000	90
(\$20 w/ 20X) + (\$10 × 10)	\$500	12,000	900
(\$20 w/ 20X) + (\$50 w/ 2X)	\$500	12,000	900
\$500	\$500	60,000	180
\$100 × 10	\$1,000	120,000	90
\$500 w/ 2X	\$1,000	120,000	90
\$50 w/ 20X	\$1,000	24,000	450
\$1,000	\$1,000	120,000	90
\$500 w/ 20X	\$10,000	1,080,000	10
\$10,000	\$10,000	1,080,000	10
\$100,000	\$100,000	1,080,000	10

Reveal a “2X” (DOUBLE) symbol, win double the prize shown under that symbol.

Reveal a “20X” (20TIMES) symbol, win 20 times the prize shown under that symbol.

Prizes, including top prizes, are subject to availability at the time of purchase.

9. *Retailer Incentive Awards:* The Lottery may conduct a separate Retailer Incentive Program for retailers who sell 20X the Bucks instant lottery game tickets.

10. *Retailer Bonus:* The Lottery may offer a retailer bonus in connection with the sale of Pennsylvania instant lottery game tickets. If a retailer bonus is offered, a Lottery retailer shall be eligible for a bonus as described in this section. Lottery retailers who sell a winning ticket that entitles the ticket holder to a prize, either payable in a single installment or having a guaranteed minimum payout, of at least \$100,000 and not exceeding \$500,000 shall be paid a bonus of \$500. Lottery retailers who sell a winning ticket that entitles the ticket holder to a prize, either payable in a single installment or having a guaranteed minimum payout, of at least \$500,001 and not exceeding \$1,000,000 shall be paid a bonus of \$5,000. Lottery retailers who sell a winning ticket that entitles the ticket holder to a prize, either payable in a single installment or having a guaranteed minimum payout, of at least \$1,000,001 and not exceeding \$10,000,000 shall be paid a bonus of \$10,000. A Lottery retailer is entitled only to the largest bonus for which he qualifies on a winning ticket. A bonus will be initiated for payment after the instant ticket is claimed and validated. A bonus will not be awarded to a Lottery retailer that sells a non-winning Pennsylvania Lottery instant ticket used to enter a Pennsylvania Lottery second-chance drawing or promotion that is subsequently selected to win a prize.

11. *Unclaimed Prize Money:* For a period of 1 year from the announced close of 20X the Bucks, prize money from winning 20X the Bucks instant lottery game tickets will be retained by the Secretary for payment to the persons entitled thereto. If no claim is made within 1 year of the announced close of the 20X the Bucks instant lottery game, the right of a ticket holder to claim the prize represented by the ticket, if any, will expire and the prize money will be paid into the State Lottery Fund and used for purposes provided for by statute.

12. *Governing Law:* In purchasing a ticket, the customer agrees to comply with and abide by the State Lottery Law (72 P.S. §§ 3761-101—3761-314), 61 Pa. Code Part V (relating to State Lotteries) and the provisions contained in this notice.

13. *Termination of the Game:* The Secretary may announce a termination date, after which no further tickets from this game may be sold. The announcement will be disseminated through media used to advertise or promote 20X the Bucks or through normal communications methods.

C. DANIEL HASSELL,
Secretary

[Pa.B. Doc. No. 18-73. Filed for public inspection January 12, 2018, 9:00 a.m.]

DEPARTMENT OF REVENUE

Pennsylvania 50X the Bucks Instant Lottery Game 1320

Under the State Lottery Law (72 P.S. §§ 3761-101—3761-314) and 61 Pa. Code § 819.203 (relating to notice of instant game rules), the Secretary of Revenue hereby provides public notice of the rules for the following instant lottery game:

1. *Name:* The name of the game is Pennsylvania 50X the Bucks (hereinafter referred to as “50X the Bucks”). The game number is PA-1320.

2. *Price:* The price of a 50X the Bucks instant lottery game ticket is \$10.

3. *Play Symbols:* Each 50X the Bucks instant lottery game ticket will contain one play area featuring a “WINNING NUMBERS” area and a “YOUR NUMBERS” area. The play symbols and their captions located in the “WINNING NUMBERS” area are: 1 (ONE), 2 (TWO), 3 (THREE), 4 (FOUR), 5 (FIVE), 6 (SIX), 7 (SEVEN), 8 (EIGHT), 9 (NINE), 10 (TEN), 11 (ELEVN), 12 (TWLV), 13 (THRTN), 14 (FORTN), 15 (FIFTN), 16 (SIXTN), 17 (SVNTN), 18 (EGHTN), 19 (NINTN), 20 (TWENT), 21 (TWYONE), 22 (TWY TWO), 23 (TWYTHR), 24 (TWYFOR), 25 (TWYFIV), 26 (TWYSIX), 27 (TWYSVN), 28 (TWYEGT), 29 (TWYNIN), 30 (THIRTY), 31 (THYONE), 32 (THYTWO), 33 (THYTHR), 34 (THYFOR), 35 (THYFIV), 36 (THYSIX), 37 (THYSVN), 38 (THYEGT), 39 (THYNIN) and 40 (FORTY). The play symbols and their captions located in the “YOUR NUMBERS” area are: 1 (ONE), 2 (TWO), 3 (THREE), 4 (FOUR), 5 (FIVE), 6 (SIX), 7 (SEVEN), 8 (EIGHT), 9 (NINE), 10 (TEN), 11 (ELEVN), 12 (TWLV), 13 (THRTN), 14 (FORTN), 15 (FIFTN), 16 (SIXTN), 17 (SVNTN), 18 (EGHTN), 19 (NINTN), 20 (TWENT), 21 (TWYONE), 22 (TWY TWO), 23 (TWYTHR), 24 (TWYFOR), 25 (TWYFIV), 26 (TWYSIX), 27 (TWYSVN), 28 (TWYEGT), 29 (TWYNIN), 30 (THIRTY), 31 (THYONE), 32 (THYTWO), 33 (THYTHR), 34 (THYFOR), 35 (THYFIV), 36 (THYSIX), 37 (THYSVN), 38 (THYEGT), 39 (THYNIN), 40 (FORTY), Moneyroll (MNYROLL) symbol, Bank (WIN50) symbol and a 50X (50TIMES) symbol.

4. *Prize Symbols:* The prize symbols and their captions located in the “YOUR NUMBERS” area are: \$10⁰⁰ (TEN DOL), \$15⁰⁰ (FIFTNDOL), \$20⁰⁰ (TWENTY), \$40⁰⁰ (FORTY), \$50⁰⁰ (FIFTY), \$100 (ONE HUN), \$150 (ONEHUNFTY), \$500 (FIV HUN), \$1,000 (ONE THO), \$5,000 (FIV THO), \$10,000 (TEN THO) and \$300,000 (THRHUNTHO).

5. *Prizes:* The prizes that can be won in this game are: \$10, \$15, \$20, \$40, \$50, \$100, \$150, \$500, \$1,000, \$5,000, \$10,000 and \$300,000. The player can win up to 15 times on a ticket.

6. *Approximate Number of Tickets Printed For the Game:* Approximately 9,600,000 tickets will be printed for the 50X the Bucks instant lottery game.

7. Determination of Prize Winners:

(a) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$300,000 (THRHUNTHO) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$300,000.

(b) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$10,000 (TEN THO) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$10,000.

(c) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$5,000 (FIV THO) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$5,000.

(d) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a 50X (50TIMES) symbol, and a prize symbol of \$100 (ONE HUN) appears in the "prize" area under that 50X (50TIMES) symbol, on a single ticket, shall be entitled to a prize of \$5,000.

(e) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$1,000 (ONE THO) appears in the "prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$1,000.

(f) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Moneyroll (MNYROLL) symbol, and a prize symbol of \$1,000 (ONE THO) appears in the "prize" area under that Moneyroll (MNYROLL) symbol, on a single ticket, shall be entitled to a prize of \$1,000.

(g) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a 50X (50TIMES) symbol, and a prize symbol of \$20⁰⁰ (TWENTY) appears in the "prize" area under that 50X (50TIMES) symbol, on a single ticket, shall be entitled to a prize of \$1,000.

(h) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$500 (FIV HUN) appears in the "prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$500.

(i) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Moneyroll (MNYROLL) symbol, and a prize symbol of \$500 (FIV HUN) appears in the "prize" area under that Moneyroll (MNYROLL) symbol, on a single ticket, shall be entitled to a prize of \$500.

(j) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a 50X (50TIMES) symbol, and a prize symbol of \$10⁰⁰ (TEN DOL) appears in the "prize" area under that 50X (50TIMES) symbol, on a single ticket, shall be entitled to a prize of \$500.

(k) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$150 (ONEHUNFTY) appears in the "prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$150.

(l) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Moneyroll (MNYROLL) symbol, and a prize symbol of \$150 (ONEHUNFTY) appears in the "prize" area under that Moneyroll (MNYROLL) symbol, on a single ticket, shall be entitled to a prize of \$150.

(m) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$100 (ONE HUN) appears in the "prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$100.

(n) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Moneyroll (MNYROLL) symbol, and a prize symbol of \$100 (ONE HUN) appears in the "prize" area under that Moneyroll (MNYROLL) symbol, on a single ticket, shall be entitled to a prize of \$100.

(o) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol

of \$50⁰⁰ (FIFTY) appears in the "prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$50.

(p) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Moneyroll (MNYROLL) symbol, and a prize symbol of \$50⁰⁰ (FIFTY) appears in the "prize" area under that Moneyroll (MNYROLL) symbol, on a single ticket, shall be entitled to a prize of \$50.

(q) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Bank (WIN50) symbol, and a prize symbol of \$50⁰⁰ (FIFTY) appears in the "prize" area under that Bank (WIN50) symbol, on a single ticket, shall be entitled to a prize of \$50.

(r) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$40⁰⁰ (FORTY) appears in the "prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$40.

(s) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Moneyroll (MNYROLL) symbol, and a prize symbol of \$40⁰⁰ (FORTY) appears in the "prize" area under that Moneyroll (MNYROLL) symbol, on a single ticket, shall be entitled to a prize of \$40.

(t) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$20⁰⁰ (TWENTY) appears in the "prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$20.

(u) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Moneyroll (MNYROLL) symbol, and a prize symbol of \$20⁰⁰ (TWENTY) appears in the "prize" area under that Moneyroll (MNYROLL) symbol, on a single ticket, shall be entitled to a prize of \$20.

(v) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$15⁰⁰ (FIFTNDOL) appears in the "prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$15.

(w) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Moneyroll (MNYROLL) symbol, and a prize symbol of \$15⁰⁰ (FIFTNDOL) appears in the "prize" area under that Moneyroll (MNYROLL) symbol, on a single ticket, shall be entitled to a prize of \$15.

(x) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$10⁰⁰ (TEN DOL) appears in the "prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$10.

(y) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Moneyroll (MNYROLL) symbol, and a prize symbol of \$10⁰⁰ (TEN DOL) appears in the "prize" area under that Moneyroll (MNYROLL) symbol, on a single ticket, shall be entitled to a prize of \$10.

8. *Number and Description of Prizes and Approximate Odds:* The following table sets forth the approximate number of winners, amounts of prizes, and approximate odds of winning:

<i>When Any Of Your Numbers Match Any Winning Number, Win Prize Shown Under The Matching Number. Win With:</i>	<i>Win:</i>	<i>Approximate Odds Are 1 In:</i>	<i>Approximate No. Of Winners Per 9,600,000 Tickets</i>
\$10 w/ MONEYROLL	\$10	17.65	544,000
\$10	\$10	17.14	560,000
\$15 w/ MONEYROLL	\$15	27.27	352,000
\$15	\$15	27.27	352,000
\$10 × 2	\$20	300	32,000
(\$10 w/ MONEYROLL) + \$10	\$20	75	128,000
\$20 w/ MONEYROLL	\$20	85.71	112,000
\$20	\$20	200	48,000
\$10 × 4	\$40	600	16,000
\$20 × 2	\$40	600	16,000
\$40 w/ MONEYROLL	\$40	300	32,000
\$40	\$40	600	16,000
\$10 × 5	\$50	600	16,000
\$50 w/ BANK	\$50	30	320,000
\$50 w/ MONEYROLL	\$50	300	32,000
\$50	\$50	300	32,000
\$10 × 10	\$100	930.23	10,320
\$20 × 5	\$100	1,200	8,000
(\$50 w/ BANK) × 2	\$100	600	16,000
\$100 w/ MONEYROLL	\$100	600	16,000
\$100	\$100	1,200	8,000
\$10 × 15	\$150	24,000	400
\$50 × 3	\$150	24,000	400
(((\$50 w/ BANK) × 2) + \$50	\$150	4,800	2,000
(\$50 w/ BANK) × 3	\$150	4,000	2,400
\$150 w/ MONEYROLL	\$150	24,000	400
\$150	\$150	24,000	400
\$50 × 10	\$500	24,000	400
(\$40 × 10) + (\$20 × 5)	\$500	24,000	400
(\$50 w/ BANK) × 10	\$500	24,000	400
\$10 w/ 50X	\$500	888.89	10,800
\$500 w/ MONEYROLL	\$500	24,000	400
\$500	\$500	24,000	400
\$500 × 2	\$1,000	60,000	160
(\$100 × 5) + (\$50 × 10)	\$1,000	40,000	240
(((\$50 w/ BANK) × 10) + \$500	\$1,000	24,000	400
\$20 w/ 50X	\$1,000	8,000	1,200
\$1,000 w/ MONEYROLL	\$1,000	60,000	160
\$1,000	\$1,000	40,000	240
\$500 × 10	\$5,000	960,000	10
\$100 w/ 50X	\$5,000	960,000	10
\$5,000	\$5,000	960,000	10
(\$100 w/ 50X) × 2	\$10,000	960,000	10
\$10,000	\$10,000	960,000	10
\$300,000	\$300,000	960,000	10

Reveal a "MONEYROLL" (MNYROLL) symbol, win prize shown under that symbol automatically.

Reveal a "BANK" (WIN50) symbol, win \$50 instantly.

Reveal a "50X" (50TIMES) symbol, win 50 times the prize shown under that symbol.

Prizes, including top prizes, are subject to availability at the time of purchase.

9. *Retailer Incentive Awards:* The Lottery may conduct a separate Retailer Incentive Program for retailers who sell 50X the Bucks instant lottery game tickets.

10. *Retailer Bonus:* The Lottery may offer a retailer bonus in connection with the sale of Pennsylvania instant lottery game tickets. If a retailer bonus is offered, a Lottery retailer shall be eligible for a bonus as described in this section. Lottery retailers who sell a winning ticket that entitles the ticket holder to a prize, either payable in a single installment or having a guaranteed minimum payout, of at least \$100,000 and not exceeding \$500,000 shall be paid a bonus of \$500. Lottery retailers who sell a

winning ticket that entitles the ticket holder to a prize, either payable in a single installment or having a guaranteed minimum payout, of at least \$500,001 and not exceeding \$1,000,000 shall be paid a bonus of \$5,000. Lottery retailers who sell a winning ticket that entitles the ticket holder to a prize, either payable in a single installment or having a guaranteed minimum payout, of at least \$1,000,001 and not exceeding \$10,000,000 shall be paid a bonus of \$10,000. A Lottery retailer is entitled only to the largest bonus for which he qualifies on a winning ticket. A bonus will be initiated for payment after the instant ticket is claimed and validated. A bonus will not be awarded to a Lottery retailer that sells a non-winning Pennsylvania Lottery instant ticket used to enter

a Pennsylvania Lottery second-chance drawing or promotion that is subsequently selected to win a prize.

11. *Unclaimed Prize Money:* For a period of 1 year from the announced close of 50X the Bucks, prize money from winning 50X the Bucks instant lottery game tickets will be retained by the Secretary for payment to the persons entitled thereto. If no claim is made within 1 year of the announced close of the 50X the Bucks instant lottery game, the right of a ticket holder to claim the prize represented by the ticket, if any, will expire and the prize money will be paid into the State Lottery Fund and used for purposes provided for by statute.

12. *Governing Law:* In purchasing a ticket, the customer agrees to comply with and abide by the State Lottery Law (72 P.S. §§ 3761-101—3761-314), 61 Pa. Code Part V (relating to State Lotteries) and the provisions contained in this notice.

13. *Termination of the Game:* The Secretary may announce a termination date, after which no further tickets from this game may be sold. The announcement will be disseminated through media used to advertise or promote 50X the Bucks or through normal communications methods.

C. DANIEL HASSELL,
Secretary

[Pa.B. Doc. No. 18-74. Filed for public inspection January 12, 2018, 9:00 a.m.]

DEPARTMENT OF REVENUE

Pennsylvania O'Lucky 7s Instant Lottery Game 1322

Under the State Lottery Law (72 P.S. §§ 3761-101—3761-314) and 61 Pa. Code § 819.203 (relating to notice of instant game rules), the Secretary of Revenue hereby provides public notice of the rules for the following instant lottery game:

1. *Name:* The name of the game is Pennsylvania O'Lucky 7s (hereinafter "O'Lucky 7s"). The game number is PA-1322.

2. *Price:* The price of an O'Lucky 7s instant lottery game ticket is \$5.

3. *Play Symbols:* Each O'Lucky 7s instant lottery game ticket will contain one play area featuring a "WINNING NUMBERS" area and a "YOUR NUMBERS" area. The play symbols and their captions located in the "WINNING NUMBERS" area are: 1 (ONE), 2 (TWO), 3 (THREE), 4 (FOUR), 5 (FIVE), 6 (SIX), 8 (EIGHT), 9 (NINE), 10 (TEN), 11 (ELEVN), 12 (TWLV), 13 (THRTN), 14 (FORTN), 15 (FIFTN), 16 (SIXTN), 18 (EGHTN), 19 (NINTN), 20 (TWENT), 21 (TWYONE), 22 (TWYTWO), 23 (TWYTHR), 24 (TWYFOR), 25 (TWYFIV), 26 (TWYSIX), 28 (TWYEGT), 29 (TWYNIN) and 30 (THIRTY). The play symbols and their captions located in the "YOUR NUMBERS" area are: 1 (ONE), 2 (TWO), 3 (THREE), 4 (FOUR), 5 (FIVE), 6 (SIX), 8 (EIGHT), 9 (NINE), 10 (TEN), 11 (ELEVN), 12 (TWLV), 13 (THRTN), 14 (FORTN), 15 (FIFTN), 16 (SIXTN), 18 (EGHTN), 19 (NINTN), 20 (TWENT), 21 (TWYONE), 22 (TWYTWO), 23 (TWYTHR), 24 (TWYFOR), 25 (TWYFIV), 26 (TWYSIX), 28 (TWYEGT), 29 (TWYNIN), 30 (THIRTY), 7 (SVN) symbol and a \$70 Symbol (WIN70) symbol.

4. *Prize Symbols:* The prize symbols and their captions located in the "YOUR NUMBERS" area are: \$5⁰⁰ (FIV

DOL), \$10⁰⁰ (TEN DOL), \$20⁰⁰ (TWENTY), \$25⁰⁰ (TWY FIV), \$30⁰⁰ (THIRTY), \$70⁰⁰ (SVNTY), \$100 (ONE HUN), \$300 (THR HUN), \$1,000 (ONE THO) and \$50,000 (FTY THO).

5. *Prizes:* The prizes that can be won in this game are: \$5, \$10, \$20, \$25, \$30, \$70, \$100, \$300, \$1,000 and \$50,000. The player can win up to 12 times on a ticket.

6. *Second-Chance Drawing:* The Pennsylvania Lottery will conduct a Lots O'Luck Second-Chance Drawing for which non-winning O'Lucky 7s instant lottery game tickets may be eligible as provided for in section 10.

7. *Approximate Number of Tickets Printed For the Game:* Approximately 6,000,000 tickets will be printed for the O'Lucky 7s instant lottery game.

8. Determination of Prize Winners:

(a) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$50,000 (FTY THO) appears in the "prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$50,000.

(b) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$1,000 (ONE THO) appears in the "prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$1,000.

(c) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$300 (THR HUN) appears in the "prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$300.

(d) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a 7 (SVN) symbol, and a prize symbol of \$300 (THR HUN) appears in the "prize" area under that 7 (SVN) symbol, on a single ticket, shall be entitled to a prize of \$300.

(e) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$100 (ONE HUN) appears in the "prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$100.

(f) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a 7 (SVN) symbol, and a prize symbol of \$100 (ONE HUN) appears in the "prize" area under that 7 (SVN) symbol, on a single ticket, shall be entitled to a prize of \$100.

(g) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$70⁰⁰ (SVNTY) appears in the "prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$70.

(h) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a 7 (SVN) symbol, and a prize symbol of \$70⁰⁰ (SVNTY) appears in the "prize" area under that 7 (SVN) symbol, on a single ticket, shall be entitled to a prize of \$70.

(i) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a \$70 Symbol (WIN70) symbol, and a prize symbol of \$70⁰⁰ (SVNTY) appears in the "prize" area under that \$70 Symbol (WIN70) symbol, on a single ticket, shall be entitled to a prize of \$70.

(j) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$30.⁰⁰ (THIRTY) appears in the "prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$30.

(k) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a 7 (SVN) symbol, and a prize symbol of \$30.⁰⁰ (THIRTY) appears in the "prize" area under that 7 (SVN) symbol, on a single ticket, shall be entitled to a prize of \$30.

(l) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$25.⁰⁰ (TWY FIV) appears in the "prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$25.

(m) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a 7 (SVN) symbol, and a prize symbol of \$25.⁰⁰ (TWY FIV) appears in the "prize" area under that 7 (SVN) symbol, on a single ticket, shall be entitled to a prize of \$25.

(n) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$20.⁰⁰ (TWENTY) appears in the "prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$20.

(o) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a 7 (SVN) symbol,

and a prize symbol of \$20.⁰⁰ (TWENTY) appears in the "prize" area under that 7 (SVN) symbol, on a single ticket, shall be entitled to a prize of \$20.

(p) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$10.⁰⁰ (TEN DOL) appears in the "prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$10.

(q) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a 7 (SVN) symbol, and a prize symbol of \$10.⁰⁰ (TEN DOL) appears in the "prize" area under that 7 (SVN) symbol, on a single ticket, shall be entitled to a prize of \$10.

(r) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$5.⁰⁰ (FIV DOL) appears in the "prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$5.

(s) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a 7 (SVN) symbol, and a prize symbol of \$5.⁰⁰ (FIV DOL) appears in the "prize" area under that 7 (SVN) symbol, on a single ticket, shall be entitled to a prize of \$5.

9. *Number and Description of Prizes and Approximate Odds:* The following table sets forth the approximate number of winners, amounts of prizes, and approximate odds of winning:

<i>When Any Of Your Numbers Match Any Winning Number, Win Prize Shown Under The Matching Number. Win With:</i>	<i>Win:</i>	<i>Approximate Odds Are 1 In:</i>	<i>Approximate No. Of Winners Per 6,000,000 Tickets</i>
\$5 w/ 7	\$5	30	200,000
\$5	\$5	20	300,000
\$5 × 2	\$10	40	150,000
(\$5 w/ 7) + \$5	\$10	120	50,000
(\$5 w/ 7) × 2	\$10	120	50,000
\$10 w/ 7	\$10	60	100,000
\$10	\$10	60	100,000
\$5 × 4	\$20	150	40,000
\$10 × 2	\$20	150	40,000
(((\$5 w/ 7) × 2) + (\$5 × 2))	\$20	300	20,000
(\$10 w/ 7) + \$10	\$20	300	20,000
\$20 w/ 7	\$20	150	40,000
\$20	\$20	150	40,000
\$5 × 5	\$25	200	30,000
(\$5 w/ 7) + (\$10 × 2)	\$25	200	30,000
(\$5 w/ 7) × 5	\$25	200	30,000
\$25 w/ 7	\$25	200	30,000
\$25	\$25	300	20,000
\$5 × 6	\$30	600	10,000
\$10 × 3	\$30	600	10,000
(\$10 w/ 7) × 3	\$30	600	10,000
\$30 w/ 7	\$30	600	10,000
\$30	\$30	600	10,000
\$10 × 7	\$70	2,400	2,500
(\$10 × 2) + (\$5 × 10)	\$70	2,400	2,500
\$70 w/ \$70 SYMBOL	\$70	160	37,500
(\$10 w/ 7) × 7	\$70	2,400	2,500
\$70 w/ 7	\$70	2,400	2,500
\$70	\$70	2,400	2,500
\$10 × 10	\$100	8,000	750
\$20 × 5	\$100	8,000	750

<i>When Any Of Your Numbers Match Any Winning Number, Win Prize Shown Under The Matching Number. Win With:</i>	<i>Win:</i>	<i>Approximate Odds Are 1 In:</i>	<i>Approximate No. Of Winners Per 6,000,000 Tickets</i>
(\$25 × 2) + (\$5 × 10)	\$100	4,000	1,500
(\$20 × 2) + (\$10 × 2) + (\$5 × 8)	\$100	4,000	1,500
(\$70 w/ \$70 SYMBOL) + (\$10 × 3)	\$100	4,000	1,500
(\$70 w/ \$70 SYMBOL) + \$30	\$100	4,000	1,500
\$100 w/ 7	\$100	8,000	750
\$100	\$100	8,000	750
\$30 × 10	\$300	40,000	150
\$100 × 3	\$300	40,000	150
(((\$70 w/ \$70 SYMBOL) × 4) + \$20	\$300	40,000	150
(\$100 w/ 7) × 3	\$300	40,000	150
\$300 w/ 7	\$300	40,000	150
\$300	\$300	40,000	150
\$100 × 10	\$1,000	600,000	10
(((\$70 w/ \$70 SYMBOL) × 10) + \$300	\$1,000	600,000	10
\$1,000	\$1,000	600,000	10
\$50,000	\$50,000	600,000	10

Reveal a "7" (SVN) symbol, win prize shown under that symbol automatically.

Reveal a "\$70 SYMBOL" (WIN70) symbol, win \$70 instantly!

Prizes, including top prizes, are subject to availability at the time of purchase.

10. *Second-Chance Drawing: Pennsylvania Lottery's Lots O'Luck Second-Chance Drawing (hereafter, the "Drawing"):*

(a) *Qualifying Tickets:* Non-winning PA-1322 O'Lucky 7s (\$5) instant lottery game tickets and non-winning PA-5024 Tic-Tac-Luck (\$1) Fast Play lottery game tickets ("Qualifying Tickets") are eligible for entry into the Drawing.

(b) *Participation and Entry:*

(1) Entrants must be members of the Pennsylvania Lottery VIP Players Club to participate in the Drawing. To join the VIP Players Club, visit <https://www.palottery.state.pa.us/Vip-players-club/Login.aspx>. Becoming a VIP Players Club member is free.

(2) To enter the Drawing, entrants must submit the identifying information from at least one Qualifying Ticket via the Drawing's promotional website, available at <http://www.palottery.com>, or the Pennsylvania Lottery's official mobile application, during the entry period. The identifying information from a Qualifying Ticket may be submitted only once in the Drawing. No other method of submission will be accepted. Entries submitted using any other method, including entries mailed or hand-delivered to the Pennsylvania Lottery, are not valid and will be disqualified.

(3) Each entry must be complete and the information supplied by the entrant must be accurate. Incomplete entries cannot be submitted.

(4) Only one claimant per entry allowed.

(5) Entrants must be 18 years of age or older.

(6) Players may submit the identifying information from an unlimited number of Qualifying Tickets.

(7) Once an entry has been submitted it cannot be withdrawn or changed.

(c) *Drawing Description:*

(1) The Lottery will conduct one Lots O'Luck Second-Chance Drawing. All time references are Eastern Prevailing Time.

(2) *Entry Periods.* PA-1322 O'Lucky 7s instant lottery tickets go on sale on January 22, 2018 and PA-5024 Tic-Tac-Luck Fast Play lottery tickets go on sale on February 6, 2018. Due to the differences in launch dates, the entry periods for each game will be different.

(i) All PA-1322 O'Lucky 7s instant lottery ticket Drawing entries received after 11:59:59 p.m. January 21, through 11:59:59 p.m. March 22, 2018, will be entered into the Drawing, held between March 23, 2018 and April 3, 2018.

(ii) All PA-5024 Tic-Tac-Luck Fast Play lottery ticket Drawing entries received after 11:59:59 p.m. February 5, 2018, through 11:59:59 p.m. March 22, 2018, will be entered into the Drawing, held between March 23, 2018 and April 3, 2018.

(3) The entry periods for the Drawing will be posted to the Pennsylvania Lottery's publicly accessible website.

(4) The number of entries an entrant will receive for the Drawing is determined by the purchase price of the Qualifying Ticket entered. The respective purchase prices and corresponding number of entries for Qualifying Tickets are as follows: PA-1322 O'Lucky 7s (\$5) = 5 entries; and PA-5024 Tic-Tac-Luck (\$1) = 1 entry.

(5) Players may review their entries for the Drawing via the Drawing's promotional website.

(d) *Prizes Available to be Won, Determination of Winners, and Odds of Winning:*

(1) The prize entitlements described below are subject to all restrictions and limitations described in section 4, or those mentioned anywhere else in these rules.

(2) The Lottery will conduct one Drawing from among all the entries received during the entry period as described in section 10(c).

(3) The first entry selected from the total number of entries entered in the Drawing will be a winning entry, and the entrant who submitted the winning entry shall be entitled to a prize of \$50,000.

(4) The second through the eleventh entries selected in the Drawing will be winning entries, and the entrants who submitted the winning entries shall each be entitled to a prize of \$5,000.

(5) The twelfth through the thirty-sixth entries selected in the Drawing will be winning entries, and the entrants who submitted the winning entries shall each be entitled to a prize of \$1,000.

(6) The number of winning entries to be selected for the Drawing will be posted to the Pennsylvania Lottery's publicly accessible website.

(7) The odds of an entry being selected in the Drawing depend upon the number of entries received for the Drawing.

(8) A computer generated randomizer will be used to select the winning entries for the Drawing.

(e) *Drawing Restrictions:*

(1) To be eligible to participate in the Drawing, entrants must have complied with the requirements of these rules.

(2) The Lottery is not responsible for late, lost or misdirected entries not entered into the Drawing. The Lottery is not responsible for entries that are not entered into the Drawing because of incompatible cellular telephones or internet browsers, mobile lottery application failure, or other technical issues. If a Drawing entry is selected as a winner and disqualified or otherwise rejected during or following the Drawing, the Lottery will select another entry to replace the disqualified or otherwise rejected entry in accordance with these rules and Lottery procedure.

(3) If any discrepancy exists between these rules and any material describing the Drawing, these rules shall govern.

(4) Employees of the Pennsylvania Lottery, MARC Advertising, MUSL, Scientific Games International, Inc., MDI Entertainment, LLC, and their subcontractors, or a spouse, child, brother, sister or parent residing as a member of the same household in the principle place of residence of any such person are not eligible to participate in the Drawing. Offer void where prohibited or restricted.

(5) The Pennsylvania Lottery reserves the right, in its sole discretion, to cancel or suspend the Drawing and change these rules if the Drawing cannot be conducted as planned due to errors in these rules or advertising, unauthorized intervention, tampering, fraud, technical errors, viruses, worms, bugs, or any other cause beyond the control of the Pennsylvania Lottery that, in the Pennsylvania Lottery's sole judgment, could corrupt or impair the administration, security, fairness, integrity, or proper conduct of the Drawing.

(6) All entries shall be subject to verification by the Pennsylvania Lottery.

(7) The Pennsylvania Lottery reserves the right, in its sole discretion, to disqualify an entrant found to be tampering with the operation of the Drawing or to be acting in violation of these rules or applicable law.

(8) The Drawing is governed by the laws of the Commonwealth of Pennsylvania. Applicable laws and regulations apply.

(9) Prizes must be claimed within 1 year of the drawing date of the drawing in which the prize was won. If no claim is made within 1 year of the drawing date of the drawing in which the prize was won, the right of an entrant to claim the prize won, if any, will expire and the prize money will be paid into the State Lottery Fund and used for purposes provided by statute.

(10) Final determination of winners will be made by the Secretary, whose judgment will be final and binding.

(11) The payment of a prize awarded in the Drawing to a person who dies before receiving the prize shall be paid according to 61 Pa. Code § 811.16 (relating to prizes payable after death of a prize winner).

(12) A winner is responsible for all taxes arising from or in connection with any prize won.

(13) A player may only win the prize for which the player is first selected in the Drawing. Subsequent entries, from the same individual, selected in the same drawing will be disqualified and a replacement entry will be selected.

(14) Prizes are not transferrable.

(15) Other restrictions may apply.

11. *Retailer Incentive Awards:* The Lottery may conduct a separate Retailer Incentive Program for retailers who sell O'Lucky 7s instant lottery game tickets.

12. *Retailer Bonus:* The Lottery may offer a retailer bonus in connection with the sale of Pennsylvania instant lottery game tickets. If a retailer bonus is offered, a Lottery retailer shall be eligible for a bonus as described in this section. Lottery retailers who sell a winning ticket that entitles the ticket holder to a prize, either payable in a single installment or having a guaranteed minimum payout, of at least \$100,000 and not exceeding \$500,000 shall be paid a bonus of \$500. Lottery retailers who sell a winning ticket that entitles the ticket holder to a prize, either payable in a single installment or having a guaranteed minimum payout, of at least \$500,001 and not exceeding \$1,000,000 shall be paid a bonus of \$5,000. Lottery retailers who sell a winning ticket that entitles the ticket holder to a prize, either payable in a single installment or having a guaranteed minimum payout, of at least \$1,000,001 and not exceeding \$10,000,000 shall be paid a bonus of \$10,000. A Lottery retailer is entitled only to the largest bonus for which he qualifies on a winning ticket. A bonus will be initiated for payment after the instant ticket is claimed and validated. A bonus will not be awarded to a Lottery retailer that sells a non-winning Pennsylvania Lottery instant ticket used to enter a Pennsylvania Lottery second-chance drawing or promotion that is subsequently selected to win a prize.

13. *Unclaimed Prize Money:* For a period of 1 year from the announced close of O'Lucky 7s, prize money from winning O'Lucky 7s instant lottery game tickets will be retained by the Secretary for payment to the persons entitled thereto. If no claim is made within 1 year of the announced close of the O'Lucky 7s instant lottery game, the right of a ticket holder to claim the prize represented by the ticket, if any, will expire and the prize money will be paid into the State Lottery Fund and used for purposes provided for by statute.

14. *Governing Law:* In purchasing a ticket, the customer agrees to comply with and abide by the State Lottery Law (72 P.S. §§ 3761-101—3761-314), 61 Pa. Code Part V (relating to State Lotteries) and the provisions contained in this notice.

15. *Termination of the Game:* The Secretary may announce a termination date, after which no further tickets from this game may be sold. The announcement will be disseminated through media used to advertise or promote O'Lucky 7s or through normal communications methods.

C. DANIEL HASSELL,
Secretary

[Pa.B. Doc. No. 18-75. Filed for public inspection January 12, 2018, 9:00 a.m.]

ENVIRONMENTAL HEARING BOARD

ArcelorMittal Pristine Resources, LLC v. Department of Environmental Protection; EHB Doc. No. 2017-117-R

ArcelorMittal Pristine Resources, LLC has appealed the renewal by the Department of Environmental Protection of an NPDES Permit No. PA0001317 to ArcelorMittal Pristine Resources, LLC for the Cambria Slope Mine No. 33 located in Cambria, Allegheny, Munster, Portage, Summerhill and Croyle Townships, Cambria County.

A date for the hearing on the appeal has not yet been scheduled.

The appeal is filed with the Environmental Hearing Board (Board) at its office on the Second Floor, Rachel Carson State Office Building, 400 Market Street, P.O. Box 8457, Harrisburg, PA 17105-8457, and may be reviewed by any interested party on request during normal business hours. If information concerning this notice is required in an alternative form contact the Secretary to the Board at (717) 787-3483. TDD users may telephone the Board through the Pennsylvania AT&T Relay Center at (800) 654-5984.

Petitions to intervene in the appeal may be filed with the Board by interested parties under 25 Pa. Code § 1021.81 (relating to intervention). Copies of the Board's

rules of practice and procedure are available upon request from the Board.

THOMAS W. RENWAND,
Chairperson

[Pa.B. Doc. No. 18-76. Filed for public inspection January 12, 2018, 9:00 a.m.]

ENVIRONMENTAL QUALITY BOARD

Meeting Cancellation

The January 16, 2018, meeting of the Environmental Quality Board (Board) is cancelled. The next regular meeting of the Board is scheduled for Tuesday, February 20, 2018, at 9 a.m. in Room 105, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA.

The agenda and meeting materials for the February 20, 2018, meeting will be available on the Department of Environmental Protection's (Department) web site at www.dep.pa.gov (select "Public Participation," then "Environmental Quality Board (EQB)"). Questions concerning the Board's next scheduled meeting may be directed to Laura Edinger at (717) 783-8727 or ledinger@pa.gov.

Persons in need of accommodations as provided for in the Americans with Disabilities Act of 1990 should contact Laura Edinger at (717) 783-8727 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

PATRICK McDONNELL,
Chairperson

[Pa.B. Doc. No. 18-77. Filed for public inspection January 12, 2018, 9:00 a.m.]

INDEPENDENT REGULATORY REVIEW COMMISSION

Notice of Comments Issued

Section 5(g) of the Regulatory Review Act (71 P.S. § 745.5(g)) provides that the Independent Regulatory Review Commission (Commission) may issue comments within 30 days of the close of the public comment period. The Commission comments are based upon the criteria contained in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b).

The Commission has issued comments on the following proposed regulation. The agency must consider these comments in preparing the final-form regulation. The final-form regulation must be submitted within 2 years of the close of the public comment period or it will be deemed withdrawn.

<i>Reg. No.</i>	<i>Agency/Title</i>	<i>Close of the Public Comment Period</i>	<i>IRRC Comments Issued</i>
15-459	Department of Revenue Withholding of Tax 47 Pa.B. 6726 (October 28, 2017)	11/27/17	12/27/17

**Department of Revenue Regulation # 15-459 (IRRC # 3183)
Withholding of Tax
December 27, 2017**

We submit for your consideration the following comments on the proposed rulemaking published in the October 28, 2017 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Department of Revenue (Department) to respond to all comments received from us or any other source.

1. Economic or fiscal impacts; Clarity, feasibility and reasonableness of requirements; Reasonableness of requirements, implementation procedures and timetables for compliance.

Section 5.2 of the RRA (71 P.S. § 745.5b) directs this Commission to determine whether a regulation is in the public interest. When making this determination, the Commission considers criteria such as economic or fiscal impact and reasonableness. To make that determination, the Commission must analyze the text of the proposed rulemaking and the reasons for the new or amended language. The Commission also considers the information

a promulgating agency is required to provide under Section 5(a) of the RRA (71 P.S. § 745.5(a)) in the Regulatory Analysis Form (RAF). Some of the information contained in the RAF submitted with this rulemaking is not sufficient to allow this Commission to determine if the regulation is in the public interest.

While we agree with the intent and purpose of the rulemaking, we raise the following issues:

- The Department estimates that 86,700 employers (with 10–249 employees) will be required to comply with electronic transmission requirements. The Department notes that this number may be overstated because some employers may already be compliant. (RAF # 16). The Department should, to the extent possible, provide more information about the number of employers that currently report electronically. This information will be beneficial to the Commission in determining whether the implementation procedures and timetables for compliance are reasonable.

- In RAF # 24, the Department reports the majority of employers (approximately 86,700) that will be subject to the regulation are considered small businesses. According to the Department, there are no significant projected reporting, recordkeeping and/or administrative costs required for compliance. Although the Pennsylvania Institute of Certified Public Accountants (PICPA) has no objections to the regulation as drafted, it shared some member concerns that lowering the threshold from 250 to 10 may prove to be a hardship for some small businesses. PICPA also asked the Department to clarify the penalties for noncompliance under the new requirements. The Department should address these concerns and continue to communicate with the regulated community as it develops the final-form rulemaking.

- In RAF # 22(b) the Department provides a link to REV1667R form. How does an employer use this form to comply with the new electronic reporting requirements? Is there an electronic version of this form through the state's Electronic Tax Information and Data Exchange System (e-TIDES)? How will employers be informed about the new threshold for electronic reporting? The Department should revise the instructions on the REV-1776R form to specify the new threshold for electronic reporting or explain why this information is not needed in the instructions.

- In RAF # 26, the Department states that there are no alternative regulatory provisions associated with the regulation. How did the Department determine the proposed threshold for electronic reporting? Did the Department consider and reject other thresholds for electronic reporting requirements? The Department should include this information in the RAF of the final-form regulation.

- In RAF # 29 the Department lists the expected delivery date of the final form regulation as the fourth quarter 2017. The effective date and expected date for compliance are "upon final publication." The Department should revise its response to reflect an updated delivery schedule for the final-form regulation. In addition, we ask the Department to ensure that the effective and compliance dates provide sufficient time for employers to comply with the new electronic reporting requirements.

2. Section 113.4. Time and place for filing reconciliation and withholding statements.—Clarity.

The new subsection (c) reads:

The annual withholding reconciliation statement and accompanying wage tax withholding statements as required under subsection (b) shall be forwarded to the Department by first class mail or electronic

transmission as specified in instructions of the Department. If an employer is required to furnish ten or more wage and tax withholding statements under subsection (a), the employer shall transmit electronically to the Department the annual withholding reconciliation statement and accompanying wage and tax withholding statements.

The new language includes two options for employers to forward the wage and tax withholding statements to the Department. However, new subsection (c) addresses only the electronic transmission requirements for those employers who are required to furnish ten or more wage and tax withholding statements to the Department. To improve clarity, the final-form regulation should explicitly state that employers who furnish less than ten wage and tax withholding statements may submit this information either via first class mail or electronic transmission.

The phrase "as specified in instruction of the Department" is vague. Where are these instructions located? The Department should specify where the instructions can be found.

The regulation does not define "electronic transmission." Does the term include email, fax or tele-file? How will the regulated community know which electronic transmission formats are acceptable? The Department should explain, in Preamble to the final rulemaking, how it will communicate with the regulated community in regards to acceptable formats of electronic transmission and define the term in the regulation.

3. Miscellaneous Clarity.

- New Section 113.4(c) reads "The annual withholding reconciliation statement and accompanying wage tax withholding statements as required under subsection (b) shall be forwarded to the Department. . . ." To be consistent, an "and" should be inserted between the words "wage" and "tax."

GEORGE D. BEDWICK,
Chairperson

[Pa.B. Doc. No. 18-78. Filed for public inspection January 12, 2018, 9:00 a.m.]

INSURANCE DEPARTMENT

Application for Approval to Acquire Control of Allegheny Surety Company

Anthony P. Lekse has filed an application for approval to acquire control of Allegheny Surety Company, a domestic stock casualty insurance company. The filing was made under the requirements of Article XIV of The Insurance Company Law of 1921 (40 P.S. §§ 991.1401–991.1413).

Persons wishing to comment on the acquisition 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 and relevant facts to inform the Department of the exact basis of the statement. Written statements should be directed to Steven L. Yerger, Company Licensing Division, Insurance

Department, 1345 Strawberry Square, Harrisburg, PA 17120, fax (717) 787-8557, syerger@pa.gov.

JESSICA K. ALTMAN,
Acting Insurance Commissioner

[Pa.B. Doc. No. 18-79. Filed for public inspection January 12, 2018, 9:00 a.m.]

INSURANCE DEPARTMENT

Application for Renewal of Designation as a Certified Reinsurer

Hiscox Insurance Company (Bermuda) Ltd. has applied for renewal of its designation as a certified reinsurer in this Commonwealth. The application was received on December 29, 2017, and was made under section 319.1(a) of The Insurance Company Law of 1921 (40 P.S. § 442.1(a)) and 31 Pa. Code § 161.3a (relating to requirements for certified reinsurers).

Persons who wish to comment on the application 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 and relevant facts to inform the Department of the exact basis of the statement. Written statements should be directed to Kimberly A. Rankin, Director, Bureau of Company Licensing and Financial Analysis, Insurance Department, 1345 Strawberry Square, Harrisburg, PA 17120, fax (717) 787-8557, krarkin@pa.gov. Comments received will be forwarded to the applicant for appropriate response.

JESSICA K. ALTMAN,
Acting Insurance Commissioner

[Pa.B. Doc. No. 18-80. Filed for public inspection January 12, 2018, 9:00 a.m.]

INSURANCE DEPARTMENT

Eligible Surplus Lines Insurer List

In accordance with section 1605(b) of The Insurance Company Law of 1921 (40 P.S. § 991.1605(b)), the Insurance Department publishes the most recent Eligible Surplus Lines Insurer List. This list replaces in its entirety the Eligible Surplus Lines Insurer List published at 47 Pa.B. 387 (January 21, 2017).

Persons with questions concerning this notice should contact Cressinda Bybee, Company Licensing Division, Insurance Department, 1345 Strawberry Square, Harrisburg, PA 17120, (717) 787-2735, cbybee@pa.gov.

Key#	Company Name	Statutory Home Address
10512	ADMIRAL INSURANCE COMPANY	1209 ORANGE STREET WILMINGTON, DE 19801
10513	ADRIATIC INSURANCE COMPANY	314 EAST THAYER AVENUE BISMARCK, ND 58501
39135	AGENT ALLIANCE INSURANCE COMPANY	3800 SOLLIE ROAD MOBILE, AL 36619
119792	AIG EUROPE LIMITED	AIG BUILDING 58 FENCHURCH STREET LONDON, United Kingdom EC3M 4AB
10521	AIG SPECIALTY INSURANCE COMPANY	500 WEST MADISON STREET SUITE 3000 CHICAGO, IL 60661
67489	AIX SPECIALTY INSURANCE COMPANY	1209 ORANGE STREET WILMINGTON, DE 19801-1120
48099	ALLIANZ GLOBAL CORPORATE & SPECIALTY SE	KONIGINASTRASSE 28 MUNICH, Germany D80802
10516	ALLIANZ UNDERWRITERS INSURANCE COMPANY	225 W. WASHINGTON STREET SUITE 1800 CHICAGO, IL 60606
10535	ALLIED WORLD ASSURANCE COMPANY (U.S.) INC.	251 LITTLE FALLS DRIVE SUITE 400 WILMINGTON, DE 19808
10600	ALLIED WORLD SURPLUS LINES INSURANCE COMPANY	425 WEST CAPITOL AVENUE SUITE 1800 LITTLE ROCK, AR 72201-3525
106563	ALLY INTERNATIONAL INSURANCE COMPANY LTD	VICTORIA HALL 11 VICTORIA STREET HAMILTON, Bermuda HM11
10519	AMERICAN EMPIRE SURPLUS LINES INSURANCE COMPANY	1209 ORANGE STREET WILMINGTON, DE 19801

<i>Key#</i>	<i>Company Name</i>	<i>Statutory Home Address</i>
10520	AMERICAN EQUITY INSURANCE COMPANY	20860 N TATUM BOULEVARD SUITE 400 PHOENIX, AZ 85050
63828	AMERICAN MODERN SURPLUS LINES INSURANCE COMPANY	7000 MIDLAND BLVD AMELIA, OH 45102-2607
107529	AMERICAN NATIONAL LLOYDS INSURANCE COMPANY	ONE MOODY PLAZA GALVESTON, TX 77550
104146	AMERICAN SAFETY INSURANCE COMPANY	3715 NORTHSIDE PARKWAY ATLANTA, GA 30327-2806
10522	AMERICAN WESTERN HOME INSURANCE COMPANY	600 BANK OF OKLAHOMA PLAZA OKLAHOMA CITY, OK 73102
83774	AMTRUST INTERNATIONAL UNDERWRITERS DAC	40 WESTLAND ROW DUBLIN, Ireland 2
10524	APPALACHIAN INSURANCE COMPANY	270 CENTRAL AVENUE JOHNSTON, RI 02919-4949
33748	ARCH EXCESS & SURPLUS INSURANCE COMPANY	2345 GRAND BOULEVARD SUITE 900 KANSAS CITY, MO 64108
97477	ARCH INSURANCE COMPANY (EUROPE) LIMITED	6TH FLOOR PLANTATION PLACE SOUTH 60 GREAT TOWER STREET LONDON, United Kingdom EC3R 5AZ
10587	ARCH SPECIALTY INSURANCE COMPANY	2345 GRAND BOULEVARD SUITE 900 KANSAS CITY, MO 64108
10588	ARROWOOD SURPLUS LINES INSURANCE COMPANY	2711 CENTERVILLE ROAD SUITE 400 WILMINGTON, DE 19808
51442	ASPEN INSURANCE UK LIMITED	30 FENCHURCH STREET LONDON, United Kingdom EC3M 3BD
35611	ASPEN SPECIALTY INSURANCE COMPANY	314 EAST THAYER AVENUE BISMARCK, ND 58501
22348	ASSICURAZIONI GENERALI S.P.A.	PIAZZA DUCA DEGLI ABRUZZI, 2 TRIESTE, Italy 34132
22349	ASSOCIATED ELECTRIC & GAS INSURANCE SERVICES LIMITED	THE MAXWELL ROBERTS BUILDING 4TH FLOOR ONE CHURCH STREET HAMILTON, Bermuda HM11
94396	ASSOCIATED INDUSTRIES INSURANCE COMPANY	903 N W 65TH STREET SUITE 300 BOCA RATON, FL 33487-2864
52712	ATAIN INSURANCE COMPANY	2301 E. LAMAR BOULEVARD 5TH FLOOR ARLINGTON, TX 76006
41586	ATLANTIC CASUALTY INSURANCE COMPANY	400 COMMERCE COURT GOLDSBORO, NC 27534
41562	AXA CORPORATE SOLUTIONS ASSURANCE	4 RUE JULES LEFEBVRE PARIS, France 75009
59554	AXIS SPECIALTY EUROPE SE	MOUNT HERBERT COURT 34 UPPER MOUNT STREET DUBLIN, Ireland 2
10592	AXIS SURPLUS INSURANCE COMPANY	111 SOUTH WACKER DRIVE SUITE 3500 CHICAGO, IL 60606
115461	BANKERS SPECIALTY INSURANCE COMPANY	3636 SOUTH I-10 SERVICE ROAD STE. 204 METAIRIE, LA 70001

<i>Key#</i>	<i>Company Name</i>	<i>Statutory Home Address</i>
10584	BERKLEY ASSURANCE COMPANY	11201 DOUGLAS AVENUE URBANDALE, IA 50322
75458	BERKLEY REGIONAL SPECIALTY INSURANCE COMPANY	1209 ORANGE STREET WILMINGTON, DE 19801-1120
63055	BERKSHIRE HATHAWAY INTERNATIONAL INSURANCE LIMITED	33 ST MARY AXE LONDON, United Kingdom EC3A 8LL
116246	BLUE HILL SPECIALTY INSURANCE COMPANY INC.	C/O CT CORPORATION SYSTEM 208 SOUTH LASALLE STREET SUITE 814 CHICAGO, IL 60604
8689	BURLINGTON INSURANCE COMPANY	238 INTERNATIONAL ROAD BURLINGTON, NC 27215-5129
10528	CANAL INDEMNITY COMPANY	400 EAST STONE AVENUE GREENVILLE, SC 29601
75544	CANOPIUS US INSURANCE, INC	C/O THE CORPORATION TRUST COMPANY 1209 ORANGE STREET WILMINGTON, DE 19801
48319	CAPITOL SPECIALTY INSURANCE CORPORATION	1600 ASPEN COMMONS MIDDLETON, WI 53562
64641	CATLIN INSURANCE COMPANY (UK) LIMITED	20 GRACECHURCH STREET LONDON, United Kingdom 3C3V OBG
63239	CATLIN SPECIALTY INSURANCE COMPANY	C/O THE CORPORATION TRUST COMPANY 1209 ORANGE STREET WILMINGTON, DE 19801
10529	CENTENNIAL CASUALTY COMPANY	2200 WOODCREST PLACE SUITE 200 BIRMINGHAM, AL 35209
10531	CENTURY SURETY COMPANY	550 POLARIS PARKWAY WESTERVILLE, OH 43082
10532	CHUBB CUSTOM INSURANCE COMPANY	202B HALL'S MILL ROAD WHITEHOUSE STATION, NJ 08889
48123	CHUBB EUROPEAN GROUP LIMITED	100 LEADENHALL STREET LONDON, United Kingdom EC3A 3BP
72782	CINCINNATI SPECIALTY UNDERWRITERS INSURANCE COMPANY (THE)	BRANDYWINE VILLAGE 1807 NORTH MARKET STREET WILMINGTON, DE 19802-4810
45736	CLEAR BLUE SPECIALTY INSURANCE COMPANY	6100 FAIRVIEW ROAD UNIT 103 CHARLOTTE, NC 28210
118669	CM VANTAGE SPECIALTY INSURANCE COMPANY	3000 SCHUSTER LANE MERRILL, WI 54452
10533	COLONY INSURANCE COMPANY	8720 STONY POINT PARKWAY SUITE 300 RICHMOND, VA 23235
10534	COLUMBIA CASUALTY COMPANY	333 S. WABASH, 43S CHICAGO, IL 60604
86914	CONIFER INSURANCE COMPANY	550 W. MERRILL STREET SUITE 200 BIRMINGHAM, MI 48009
115462	COVERYS SPECIALTY INSURANCE COMPANY	67 EAST PARK PLACE SUITE 703 MORRISTOWN, NJ 07960
96047	COVINGTON SPECIALTY INSURANCE COMPANY	c/o NIXON PEABODY LLP 900 ELM STREET MANCHESTER, NH 03101
37372	CRUM & FORSTER SPECIALTY INSURANCE COMPANY	2999 NORTH 44TH STREET SUITE 250 PHOENIX, AZ 85018

<i>Key#</i>	<i>Company Name</i>	<i>Statutory Home Address</i>
66658	CUMIS SPECIALTY INSURANCE COMPANY, INC.	2000 HERITAGE WAY WAVERLY, IA 50677
37001	DISCOVER SPECIALTY INSURANCE COMPANY	ONE TOWER SQUARE HARTFORD, CT 06183
10541	EMPIRE INDEMNITY INSURANCE COMPANY	BROADWAY EXECUTIVE PARK 9 200 NW 66TH STREET SUITE 965 OKLAHOMA CITY, OK 73116
63338	ENDURANCE AMERICAN SPECIALTY INSURANCE COMPANY	1209 ORANGE STREET WILMINGTON, DE 19801
94256	ENDURANCE SPECIALTY INSURANCE LTD	WATERLOO HOUSE 100 PITTS BAY ROAD PEMBROKE, Bermuda HM 08
111852	ENDURANCE WORLDWIDE INSURANCE LIMITED	1ST FLOOR, 2 MINSTER COURT MINCING LANE LONDON, United Kingdom EC3R 788
10543	EVANSTON INSURANCE COMPANY	TEN PARKWAY NORTH DEERFIELD, IL 60015
10544	EVEREST INDEMNITY INSURANCE COMPANY	CORPORATION TRUST CENTER 1209 ORANGE STREET WILMINGTON, DE 19801
10545	EXECUTIVE RISK SPECIALTY INSURANCE COMPANY	202B HALL'S MILL ROAD WHITEHOUSE STATION, NJ 08889
105001	FAIR AMERICAN SELECT INSURANCE COMPANY	80 PINE STREET NEW YORK, NY 10005
10549	FIRST MERCURY INSURANCE COMPANY	1209 ORANGE STREET WILMINGTON, DE 19801
10550	FIRST SPECIALTY INSURANCE CORPORATION	237 EAST HIGH STREET JEFFERSON CITY, MO 65101-3206
18477	GEMINI INSURANCE COMPANY	CORPORATION TRUST CENTER 1209 ORANGE STREET WILMINGTON, DE 19801
10552	GENERAL SECURITY INDEMNITY COMPANY OF ARIZONA	2338 W. ROYAL PALM ROAD SUITE J PHOENIX, AZ 85021
10554	GENERAL STAR INDEMNITY COMPANY	1209 ORANGE STREET WILMINGTON, DE 19801
58119	GEOVERA SPECIALTY INSURANCE COMPANY	251 LITTLE FALLS DRIVE WILMINGTON, DE 19808
73754	GNV CUSTOM INSURANCE COMPANY	200 MADISON AVENUE NEW YORK, NY 10016-3904
123319	GOLDEN BEAR INSURANCE COMPANY	1550 WEST FREMONT STREET 2ND FLOOR STOCKTON, CA 95203
10556	GOTHAM INSURANCE COMPANY	59 MAIDEN LANE 27TH FLOOR NEW YORK, NY 10038
10514	GREAT AMERICAN E & S INSURANCE COMPANY	THE CORPORATION TRUST COMPANY 1209 ORANGE STREET WILMINGTON, DE 19801
10518	GREAT AMERICAN FIDELITY INSURANCE COMPANY	THE CORPORATION TRUST COMPANY 1209 ORANGE STREET WILMINGTON, DE 19801
10540	GREAT AMERICAN PROTECTION INSURANCE COMPANY	301 EAST FOURTH STREET CINCINNATI, OH 45202
22412	GREAT LAKES INSURANCE SE	KONIGINSTR 107 MUNICH, Germany 80802

<i>Key#</i>	<i>Company Name</i>	<i>Statutory Home Address</i>
100854	GUIDEONE NATIONAL INSURANCE COMPANY	1111 ASHWORTH ROAD WEST DES MOINES, IA 50265-3538
36489	GUILFORD INSURANCE COMPANY	C/O HINSHAW & CULBERTSON, LLP 400 SOUTH NINTH STREET SUITE 200 SPRINGFIELD, IL 62701-1822
10557	GULF UNDERWRITERS INSURANCE COMPANY	ONE TOWER SQUARE HARTFORD, CT 06183
103324	HALLMARK SPECIALTY INSURANCE COMPANY	201 ROBERT S. KERR AVENUE SUITE 600 OKLAHOMA CITY, OK 73102
79945	HAMILTON SPECIALTY INSURANCE COMPANY	1209 ORANGE STREET WILMINGTON, DE 19801
66133	HCC SPECIALTY INSURANCE COMPANY	201 ROBERT S. KERR AVENUE OKLAHOMA, OK 73102-4267
123955	HDI SPECIALTY INSURANCE COMPANY	161 N. CLARK STREET 48TH FLOOR CHICAGO, IL 60601
121546	HELVETIA SWISS INSURANCE COMPANY IN LIECHTENSTEIN LTD.	HERRENGASSE 11 9490 VADUZ LIECHTENSTEIN, Lichtenstein
100960	HOMELAND INSURANCE COMPANY OF DELAWARE	1209 ORANGE STREET WILMINGTON, DE 19801
44169	HOMELAND INSURANCE COMPANY OF NEW YORK	1000 WOODBURY ROAD SUITE 403 WOODBURY, NY 11797
124435	HOUSING SPECIALTY INSURANCE COMPANY, INC.	148 COLLEGE STREET BURLINGTON, VT 05401
10559	HOUSTON CASUALTY COMPANY	13403 NORTHWEST FREEWAY HOUSTON, TX 77040
75182	HOUSTON SPECIALTY INSURANCE COMPANY	800 GESSNER SUITE 600 HOUSTON, TX 77024
102374	HSB SPECIALTY INSURANCE COMPANY	ONE STATE STREET HARTFORD, CT 06102-5024
106322	HUDSON EXCESS INSURANCE COMPANY	1209 ORANGE STREET WILMINGTON, DE 19801
37373	HUDSON SPECIALTY INSURANCE COMPANY	100 WILLIAM STREET 5TH FLR. NEW YORK, NY 10038
10560	ILLINOIS EMCASCO INSURANCE COMPANY	717 MULBERRY STREET DES MOINES, IA 50309-3872
10561	ILLINOIS UNION INSURANCE COMPANY	525 WEST MONROE STREET SUITE 700 CHICAGO, IL 60661
10547	INDEPENDENT SPECIALTY INSURANCE COMPANY	160 GREENTREE DRIVE SUITE 101 DOVER, DE 19904
10562	INDIAN HARBOR INSURANCE COMPANY	c/o THE CORPORATION TRUST CO. 1209 ORANGE STREET WILMINGTON, DE 19801
28076	INTERNATIONAL INSURANCE COMPANY OF HANNOVER SE	2ND FLOOR, 1 ARLINGTON SQUARE DOWNSHIRE WAY BERKSHIRE, United Kingdom RG12 1WA
10564	INTERSTATE FIRE & CASUALTY COMPANY	33 WEST MONROE CHICAGO, IL 60603

<i>Key#</i>	<i>Company Name</i>	<i>Statutory Home Address</i>
103749	IRONSHORE EUROPE DAC	33 SIR JOHN ROGERSON'S QUAY 2ND FLOOR DUBLIN, Ireland 2
70118	IRONSHORE INSURANCE LTD.	141 FRONT STREET HAMILTON, Bermuda HM19
10596	IRONSHORE SPECIALTY INSURANCE COMPANY	8601 NORTH SCOTTSDALE ROAD SUITE 300 SCOTTSDALE, AZ 85253
119790	ISMIE INDEMNITY COMPANY	20 NORTH MICHIGAN AVENUE SUITE 700 CHICAGO, IL 60602-4811
10546	JAMES RIVER INSURANCE COMPANY	52 EAST GAY STREET COLUMBUS, OH 43215
36855	KINSALE INSURANCE COMPANY	425 W. CAPITOL AVENUE SUITE 1800 LITTLE ROCK, AR 72201
108670	KNIGHT SPECIALTY INSURANCE COMPANY	BRANDYWINE VILLAGE 1807 NORTH MARKET STREET WILMINGTON, DE 19802-4810
80046	LANCASHIRE INSURANCE COMPANY (UK) LIMITED	20 FENCHURCH STREET 29TH FLR. LONDON, United Kingdom EC3M 3BY
75297	LANCASHIRE INSURANCE COMPANY LIMITED	POWERHOUSE 7 PAR-LA-VILLE ROAD HAMILTON, Bermuda HM 11
8967	LANDMARK AMERICAN INSURANCE COMPANY	201 ROBERT KERR AVENUE SUITE 600 OKLAHOMA CITY, OK 73102-4267
10569	LEXINGTON INSURANCE COMPANY	2711 CENTERVILLE ROAD SUITE 400 WILMINGTON, DE 19808
22415	LIBERTY MUTUAL INSURANCE EUROPE LIMITED	3RD FLOOR, TWO MINSTER COURT MINCING LANE LONDON, United Kingdom EC3R 7YE
18457	LIBERTY SURPLUS INSURANCE CORPORATION	175 BERKELEY STREET BOSTON, MA 02117
22416	LLOYD'S, LONDON (UNDERWRITERS AT)	ONE LIME STREET LONDON, United Kingdom EC3M7HA
92689	MAPFRE GLOBAL RISKS COMPANIA INTERNACIONAL DE SEGUROS Y REASEGUROS S A	CARRETERA POZUELO 52 EDIFICIO M-11 MADRID, Spain
22418	MARINE INSURANCE COMPANY LIMITED	ST MARKS COURT. CHART WAY HORSHAM, WEST SUSSEX ENGLAND, Great Britain RH 12 1XL
22455	MARKEL INTERNATIONAL INSURANCE COMPANY LIMITED	THE MARKEL BUILDING 49 LEADENHALL STREET LONDON, United Kingdom EC3A2EA
10527	MAXUM INDEMNITY COMPANY	ONE HARTFORD PLAZA HARTFORD, CT 06155
69016	MEDICAL MUTUAL LIABILITY INSURANCE SOCIETY OF MARYLAND	225 INTERNATIONAL CIRCLE HUNT VALLEY, MD 21030
104147	MEDICAL SECURITY INSURANCE COMPANY	700 SPRING FOREST ROAD SUITE 400 RALEIGH, NC 27609
75542	MERCHANTS NATIONAL INSURANCE COMPANY	5 BEDFORD FARMS SUITE 101 BEDFORD, NH 03110
10553	MESA UNDERWRITERS SPECIALTY INSURANCE COMPANY	40 WANTAGE AVENUE BRANCHVILLE, NJ 07890

<i>Key#</i>	<i>Company Name</i>	<i>Statutory Home Address</i>
96043	MID-CONTINENT EXCESS AND SURPLUS INSURANCE COMPANY	1209 ORANGE STREET WILMINGTON, DE 19801
75518	mitsui sumitomo insurance company (EUROPE) LIMITED	25 FENCHURCH AVENUE LONDON, United Kingdom EC3M 5AD
10571	MT. HAWLEY INSURANCE COMPANY	9025 N. LINDBERGH DRIVE PEORIA, IL 61615
10572	NAMIC INSURANCE COMPANY, INC.	3601 VINCENNES ROAD INDIANAPOLIS, IN 46268
10573	NATIONAL FIRE & MARINE INSURANCE COMPANY	1314 DOUGLAS STREET SUITE 1400 OMAHA, NE 68102-1944
10574	NAUTILUS INSURANCE COMPANY	7233 E. BUTHERUS DRIVE SCOTTSDALE, AZ 85260
10575	NAVIGATORS SPECIALTY INSURANCE COMPANY	ONE PENN PLAZA 32nd FLOOR NEW YORK, NY 10119-0002
10537	NOETIC SPECIALTY INSURANCE COMPANY	100 EAST STATE STREET MONTPELIER, VT 05602
10576	NORTH AMERICAN CAPACITY INSURANCE COMPANY	650 ELM STREET MANCHESTER, NH 03101-2524
79123	NORTH LIGHT SPECIALTY INSURANCE COMPANY	2775 SANDERS ROAD NORTHBROOK, IL 60062-7127
10577	NORTHFIELD INSURANCE COMPANY	505 5TH AVENUE SUITE 729 DES MOINES, IA 50309
10578	NUTMEG INSURANCE COMPANY	ONE HARTFORD PLAZA HARTFORD, CT 06155
22421	OCEAN MARINE INSURANCE COMPANY LIMITED	ST. HELEN'S 1 UNDERSHAFT LONDON, United Kingdom EC3P3DQ
10579	OLD REPUBLIC UNION INSURANCE COMPANY	307 NORTH MICHIGAN AVENUE CHICAGO, IL 60601
10566	PACIFIC INSURANCE COMPANY, LIMITED	ONE HARTFORD PLAZA HARTFORD, CT 06155
99478	PARTNERRE IRELAND INSURANCE DAC	5TH FLOOR, BLOCK 1, THE OVAL 160 SHELBOURNE ROAD BALLSBRIDGE DUBLIN, Ireland 4
10582	PELEUS INSURANCE COMPANY	8720 STONY POINT PARKWAY SUITE 300 RICHMOND, VA 23235
58179	PENN-PATRIOT INSURANCE COMPANY	526 KING STREET ALEXANDRIA, VA 22314
74667	PRIME INSURANCE COMPANY	303 WEST MADISON # 2075 CHICAGO, IL 60606
23150	PRINCETON EXCESS AND SURPLUS LINES INSURANCE COMPANY	2711 CENTERVILLE ROAD SUITE 400 WILMINGTON, DE 19808
44436	PROASSURANCE SPECIALTY INSURANCE COMPANY, INC.	100 BROOKWOOD PLACE SUITE 500 BIRMINGHAM, AL 35209
117812	PROFESSIONAL SECURITY INSURANCE COMPANY	C/O S. DAVID CHILDERS, KUTAK ROCK, LLP 8601 N. SCOTTSDALE ROAD SUITE 300 SCOTTSDALE, AZ 85253-2742
75543	PROTECTIVE SPECIALTY INSURANCE COMPANY	111 CONGRESSIONAL BLVD SUITE 500 CARMEL, IN 46032

<i>Key#</i>	<i>Company Name</i>	<i>Statutory Home Address</i>
22449	QBE INSURANCE (EUROPE) LIMITED	PLANTATION PLACE 30 FENCHURCH STREET LONDON, United Kingdom EC3M 3BD
47448	QBE SPECIALTY INSURANCE COMPANY	314 EAST THAYER AVENUE BISMARCK, ND 58501
117810	RADNOR SPECIALTY INSURANCE COMPANY	10330 REGENCY PARKWAY DRIVE SUITE 100 OMAHA, NE 68114
70898	REPUBLIC-VANGUARD INSURANCE COMPANY	2390 E. CAMELBACK ROAD PHOENIX, AZ 85016
10603	ROCKHILL INSURANCE COMPANY	8601 N. SCOTTSDALE ROAD SUITE 300 SCOTTSDALE, AZ 85253
122122	ROCKINGHAM INSURANCE COMPANY	633 EAST MARKET STREET HARRISONBURG, VA 22801
10589	SAFECO SURPLUS LINES INSURANCE COMPANY	62 MAPLE AVENUE KEENE, NH 03431
86970	SAFETY SPECIALTY INSURANCE COMPANY	1832 SCHUETZ ROAD ST. LOUIS, MO 63146
10590	SAVERS PROPERTY AND CASUALTY INSURANCE COMPANY	120 SOUTH CENTRAL AVENUE CLAYTON, MO 63105
94496	SCOR UK COMPANY LIMITED	10 LIME STREET LONDON, United Kingdom EC3M 7AA
10591	SCOTTSDALE INSURANCE COMPANY	ONE NATIONWIDE PLAZA COLUMBUS, OH 43215
107528	SCOTTSDALE SURPLUS LINES INSURANCE COMPANY	8877 N GAINNEY CENTER DRIVE SCOTTSDALE, AZ 85258-2108
44276	SENECA SPECIALTY INSURANCE COMPANY	2999 NORTH 44TH STREET SUITE 250 PHOENIX, AZ 85018-7256
33514	SIRIUS INTERNATIONAL INSURANCE CORPORATION	BIRGER JARISGATAN 57B STOCKHOLM, Sweden SE 113 96
10593	ST. PAUL SURPLUS LINES INSURANCE COMPANY	251 LITTLE FALLS DRIVE WILMINGTON, DE 19808
79898	STARR SURPLUS LINES INSURANCE COMPANY	500 WEST MONROE STREET 31ST FLOOR CHICAGO, IL 60661
98475	STARSTONE INSURANCE SE	ZOLLSTRASSE 82 9494 SCHAAN LIECHTENSTEIN, Lichtenstein
40659	STARSTONE SPECIALTY INSURANCE COMPANY	1209 ORANGE STREET WILMINGTON, DE 19801-1120
10594	STEADFAST INSURANCE COMPANY	251 LITTLE FALLS DRIVE WILMINGTON, DE 19808
22453	SWISS RE INTERNATIONAL SE	2A, RUE ALBERT BORSCHETTE KIRCHBERG, Luxembourg L1246
10583	TDC SPECIALTY INSURANCE COMPANY	1050 K STREET SUITE 400 WASHINGTON, DC 20001
22456	THROUGH TRANSPORT MUTUAL INSURANCE ASSOCIATION LIMITED	FIRST FLOOR CHEVRON HOUSE 11 CHURCH STREET HAMILTON, Bermuda HM11
73071	TOKIO MARINE KILN INSURANCE LIMITED	20 FENCHURCH STREET LONDON, United Kingdom EC3M 3BY
8705	TOKIO MARINE SPECIALTY INSURANCE COMPANY	1807 NORTH MARKET STREET WILMINGTON, DE 19802

Key#	Company Name	Statutory Home Address
10597	TRAVELERS EXCESS AND SURPLUS LINES COMPANY	ONE TOWER SQUARE HARTFORD, CT 06183
54486	TT CLUB MUTUAL INSURANCE LIMITED	90 FENCHURCH STREET LONDON, United Kingdom ECM 4ST
10598	TUDOR INSURANCE COMPANY	300 KIMBALL DRIVE SUITE 500 PARSIPPANY, NJ 07054
10599	U.S. UNDERWRITERS INSURANCE COMPANY	316 NORTH FIFTH STREET SIXTH FLOOR BISMARCK, ND 58501
64798	UNITED SPECIALTY INSURANCE COMPANY	160 GREENTREE DRIVE SUITE 101 DOVER, DE 19904
82097	UTICA SPECIALTY RISK INSURANCE COMPANY	2435 N CENTRAL EXPRESSWAY SUITE 400 RICHARDSON, TX 75080
10605	VOYAGER INDEMNITY INSURANCE COMPANY	260 INTERSTATE NORTH CIRCLE SE ATLANTA, GA 30339
99476	W. R. BERKLEY INSURANCE (EUROPE) LIMITED	2ND FLOOR 40 LIME STREET LONDON, United Kingdom EC3M 7AW
117811	WATFORD SPECIALTY INSURANCE COMPANY	445 SOUTH STREET SUITE 15824 P.O. BOX 1988 MORRISTOWN, NJ 07962-1988
10607	WESTCHESTER SURPLUS LINES INSURANCE COMPANY	11575 GREAT OAKS WAY SUITE 200 ALPHARETTA, GA 30022
10608	WESTERN HERITAGE INSURANCE COMPANY	9200 E. PIMA CENTER PKWY SUITE 350 SCOTTSDALE, AZ 85258
10610	WESTERN WORLD INSURANCE COMPANY	300 KIMBALL DRIVE SUITE 500 PARSIPPANY, NJ 07054
49219	WILSHIRE INSURANCE COMPANY	702 OBERLIN ROAD RALEIGH, NC 27605-0800
10604	XL SELECT INSURANCE COMPANY	1209 ORANGE STREET WILMINGTON, DE 19801

JESSICA K. ALTMAN,
Acting Insurance Commissioner

[Pa.B. Doc. No. 18-81. Filed for public inspection January 12, 2018, 9:00 a.m.]

PATIENT SAFETY AUTHORITY

Public Meeting

The Patient Safety Authority (Authority), established by section 303 of the Medical Care Availability and Reduction of Error (MCARE) Act (40 P.S. § 1303.303), announces a meeting of the Authority's Board to be held at the Conference Center, Central Penn College, 600 Valley Road, Summerdale, PA 17093 at 10 a.m. on Thursday, January 25, 2018.

Individuals with questions regarding this meeting, which is open to the public, should contact the Authority at (717) 346-0469.

REGINA M. HOFFMAN, RN, BSN, MBA, CPPS,
Executive Director

[Pa.B. Doc. No. 18-82. Filed for public inspection January 12, 2018, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Affiliated Interest Agreements and Certificate of Public Convenience

G-2016-2544455 and A-2017-2639994. Artesian Water Pennsylvania, Inc. Application of Artesian Water Pennsylvania, Inc. under 66 Pa.C.S. §§ 2101—2107 (relating to relations with affiliated interests) for approval of affiliated interest agreements, and application nunc pro tunc under 66 Pa.C.S. §§ 1101—1124 (relating to certificates of public convenience) for a certificate of public convenience and necessity approving transfer of property from Artesian Resources Corporation.

Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities) on or before March 14, 2018. Filings must be made

with the Secretary of the Pennsylvania Public Utility Commission, 400 North Street, Harrisburg, PA 17120, 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, at the Pennsylvania Public Utility Commission's web site at www.puc.pa.gov and at the applicant's business address.

Applicant: Artesian Water Pennsylvania Inc., 664 Churchmans Road, Newark, DE 19702

Through and By Counsel: Brian C. Wauhoh, Buchanan Ingersoll & Rooney, PC, 409 North Second Street, Suite 500, Harrisburg, PA 17101-1357, (717) 237-4800, fax (717) 233-0852, brian.wauhoh@bipc.com

ROSEMARY CHIAVETTA,
Secretary

[Pa.B. Doc. No. 18-83. Filed for public inspection January 12, 2018, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Service of Notice of Motor Carrier Applications

The following temporary authority and/or permanent authority applications for the right to render service as a common carrier or contract carrier in this Commonwealth have been filed with the Pennsylvania Public Utility Commission. Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities). A protest shall indicate whether it applies to the temporary authority application, the permanent authority application, or both. Filings must be made with the Secretary, Pennsylvania Public Utility Commission, P.O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant by January 29, 2018. Documents filed in support of the applications are available for inspection and copying at the Office of the Secretary between 8 a.m. and 4:30 p.m., Monday through Friday, and at the business address of the respective applicant.

Applications of the following for approval to begin operating as common carriers for transportation of persons as described under each application.

A-2017-2637115. Select Ambulance, Inc. (115 Little Rock Road, Unit A, Reading, Berks County, PA 19605) for the amended right to transport as a common carrier, by motor vehicle, persons in paratransit service, from points east of the Counties of Columbia, Franklin, Juniata, Luzerne, Mifflin, Montour, Northumberland, Susquehanna, Union and Wyoming, and return.

A-2017-2639334. Almond Tree Senior Solutions, LLC (207 North Wausau Road, Middleburg, Snyder County, PA 17842) for the amended right to transport as a common carrier, by motor vehicle, persons in paratransit service, from points in the Counties of Columbia, Juniata, Lycoming, Mifflin, Montour, Northumberland, Snyder and Union, to points in Pennsylvania, and return.

A-2017-2639472. Lazer Limousine Services, Inc. (P.O. Box 580, 112 East Broad Street, Trumbauersville, Bucks County, PA 18970) for the amended right to transport as a common carrier, by motor vehicle, persons in group and party service, in vehicles seating 11 to 15

passengers, including the driver, between points in Pennsylvania; excluding service that is under the jurisdiction of the Philadelphia Parking Authority. *Attorney:* Christopher M. Arfaa, Esquire, Hawke, McKeon & Sniscak, LLP, 100 North Tenth Street, Harrisburg, PA 17101.

A-2017-2640044. Made Menz Quality Transportation, LLC (327 Long Lane, Upper Darby, Delaware County, PA 19082) for the right to transport as a common carrier, by motor vehicle, persons in group and party service, in vehicles seating 11 to 15 passengers, including the driver, from points in Delaware County, to points in Pennsylvania, and return; excluding service that is under the jurisdiction of the Philadelphia Parking Authority.

Application of the following for approval of the beginning of the exercise of the right and privilege of operating motor vehicles as common carriers for the transportation of household goods as described under the application.

A-2017-2640264. Super Mover Bros., LLC (106 Marshall Drive, Renfrew, Butler County, PA 16053) for the right to begin to transport, as a common carrier, by motor vehicle, household goods in use, between points in the County of Butler.

ROSEMARY CHIAVETTA,
Secretary

[Pa.B. Doc. No. 18-84. Filed for public inspection January 12, 2018, 9:00 a.m.]

STATE BOARD OF NURSING

Bureau of Professional and Occupational Affairs v. Marlyn Morton, LPN; File No. 13-51-12666; Doc. No. 2282-51-15

On April 25, 2017, Marlyn Morton, LPN, Pennsylvania license No. PN281779, last known of Camden, NJ, had her practical nurse license reprimanded and was assessed a \$500 civil penalty based on receiving disciplinary action by the proper licensing authority of another state and failing to report same to the State Board of Nursing (Board).

Individuals may obtain a copy of the adjudication by writing to Judith Pachter Schuller, Board Counsel, State Board of Nursing, P.O. Box 69523, Harrisburg, PA 17106-9523.

This order represents the final Board decision in this matter. It may be appealed to the Commonwealth Court of Pennsylvania by the filing of a petition for review with that court in accordance with the Pennsylvania Rules of Appellate Procedure. Individuals who take an appeal to the Commonwealth Court must serve the Board with a copy of their petition for review. The Board contact for receiving service of appeals is the previously-named Board counsel.

LINDA L. KMETZ, PhD, RN,
Chairperson

[Pa.B. Doc. No. 18-85. Filed for public inspection January 12, 2018, 9:00 a.m.]

STATE BOARD OF NURSING

Commonwealth of Pennsylvania, Bureau of Professional and Occupational Affairs v. Linda Richardson Bigay, RN, Respondent; File No. 16-51-09963; Doc. No. 0012-51-17

Notice to Linda Richardson Bigay, RN:

On January 4, 2017, the Commonwealth of Pennsylvania, Department of State, Bureau of Professional and Occupational Affairs, instituted a formal administrative action against you by filing an Order to Show Cause, before the State Board of Nursing, alleging that you have violated certain provisions of the Pennsylvania Professional Nursing Law, Act of May 22, 1951, P.L. 317, ("Act"). Pursuant to 1 Pa. Code § 33.31 and Rule 430 of the Pennsylvania Rules of Civil Procedure, 231 Pa. Code Rule 430, providing for service of process upon you by publication.

Notice

Formal disciplinary action has been filed against you. You may lose your license, certificate, registration or permit to practice your profession or occupation. You may be subject to civil penalties of up to \$10,000 for each violation, and the imposition of costs of investigation.

If you wish to defend against the charges in the attached Order to Show Cause or to present evidence to mitigate any penalty that may be imposed, the procedures for doing so are explained in the Order to Show Cause. You may obtain a copy of the Order to Show Cause from the Prothonotary for the Department of State, 2601 North Third Street, P.O. Box 2649, Harrisburg, PA 17105, telephone number, (717) 772-2686.

You have the right to retain an attorney. Although you may represent yourself without an attorney, you are advised to seek the help of an attorney. You also have the right to have an interpreter provided should you request one.

All proceedings are conducted under the Administrative Agency Law and the General Rules of Administrative Practice and Procedures.

You are directed to respond to the charges by filing a written answer within thirty (30) days of this NOTICE. IF YOU DO NOT FILE AN ANSWER, DISCIPLINARY ACTION MAY BE TAKEN AGAINST YOU WITHOUT A HEARING. To file your answer, you must bring or send an original and three (3) copies of your answer and any pleadings or other documents related to this matter to the following address:

Prothonotary
Department of State
2601 North Third Street
P.O. Box 2649
Harrisburg, PA 17105

You must also send a separate copy of your answer and any other pleadings or documents related to this case to the prosecuting attorney named in the Order to Show Cause.

LINDA L. KMETZ, PhD, RN,
Chairperson

[Pa.B. Doc. No. 18-86. Filed for public inspection January 12, 2018, 9:00 a.m.]

STATE BOARD OF NURSING

Commonwealth of Pennsylvania, Bureau of Professional and Occupational Affairs v. Maria Margaret Matlock, RN, Respondent; File No. 15-51-02795; Doc. No. 0810-51-16

Notice to Maria Margaret Matlock, RN:

On April 20, 2016, the Commonwealth of Pennsylvania, Department of State, Bureau of Professional and Occupational Affairs, instituted a formal administrative action against you by filing a Petition for Appropriate Relief, before the State Board of Nursing, alleging that you have violated certain provisions of the Pennsylvania Professional Nurse Law, Act of May 22, 1951, P.L. 317, 63 P.S. §§ 211—226, ("Act"). This notice is being filed pursuant to 1 Pa. Code § 33.31 and Rule 430 of the Pennsylvania Rules of Civil Procedure, 231 Pa. Code Rule 430, providing for service of process upon you by publication.

Notice

Formal disciplinary action has been filed against you. You may lose your license, certificate, registration or permit to practice your profession or occupation. You may be subject to civil penalties of up to \$10,000 for each violation, and the imposition of costs of investigation.

If you wish to defend against the charges in the Petition for Appropriate Relief or to present evidence to mitigate any penalty that may be imposed, the procedures for doing so are explained in the Petition for Appropriate Relief. You may obtain a copy of the Order to Show Cause from the Prothonotary for the Department of State, 2601 North Third Street, P.O. Box 2649, Harrisburg, PA 17105, telephone number, (717) 772-2686.

You have the right to retain an attorney. Although you may represent yourself without an attorney, you are advised to seek the help of an attorney. You also have the right to have an interpreter provided should you request one.

All proceedings are conducted under the Administrative Agency Law and the General Rules of Administrative Practice and Procedures.

You are directed to respond to the charges by filing a written answer within thirty (30) days of this NOTICE. IF YOU DO NOT FILE AN ANSWER, DISCIPLINARY ACTION MAY BE TAKEN AGAINST YOU WITHOUT A HEARING. To file your answer, you must bring or send an original and three (3) copies of your answer and any pleadings or other documents related to this matter to the following address:

Prothonotary
Department of State
2601 North Third Street
P.O. Box 2649
Harrisburg, PA 17105

You must also send a separate copy of your answer and any other pleadings or documents related to this case to the prosecuting attorney named in the Order to Show Cause.

LINDA L. KMETZ, PhD, RN,
Chairperson

[Pa.B. Doc. No. 18-87. Filed for public inspection January 12, 2018, 9:00 a.m.]

SUSQUEHANNA RIVER BASIN COMMISSION

Public Hearing

The Susquehanna River Basin Commission (Commission) will hold a public hearing on February 1, 2018, at 2:30 p.m. at the Pennsylvania State Capitol, Room 8E-B, East Wing, Commonwealth Avenue, Harrisburg, PA. The public hearing will end at 5 p.m. or at the conclusion of public testimony, whichever is sooner. At this public hearing, the Commission will hear testimony on the projects listed in the Supplementary Information section of this notice. These projects are intended to be scheduled for Commission action at its next business meeting, tentatively scheduled for March 8, 2018, which will be noticed separately. The public should take note that this public hearing will be the only opportunity to offer oral comment to the Commission for the listed projects. The deadline for the submission of written comments is February 12, 2018.

For further information contact Jason Oyler, General Counsel, (717) 238-0423, Ext. 1312, fax (717) 238-2436.

Information concerning the applications for these projects is available at the Commission's Water Application and Approval Viewer at <http://mdw.srbc.net/waav>. Additional supporting documents are available to inspect and copy in accordance with the Commission's Access to Records Policy at www.srbc.net/pubinfo/docs/2009-02_Access_to_Records_Policy_20140115.pdf.

Supplementary Information

The public hearing will cover the following projects:

Projects Scheduled for Action

1. Project Sponsor and Facility: Brymac, Inc., d/b/a Mountain View Country Club (Pond 3/4), Harris Township, Centre County, PA. Application for surface water withdrawal of up to 0.240 mgd (peak day).
2. Project Sponsor and Facility: Cabot Oil & Gas Corporation (East Branch Tunkhannock Creek), Lenox Township, Susquehanna County, PA. Application for surface water withdrawal of up to 1.000 mgd (peak day).
3. Project Sponsor and Facility: Dillsburg Area Authority, Franklin Township, York County, PA. Modification to increase groundwater withdrawal by an additional 0.099 mgd (30-day average), for a total groundwater withdrawal of up to 0.200 mgd (30-day average) from Well 3 (Docket No. 20081207).
4. Project Sponsor and Facility: Lycoming Engines, a Division of Avco Corporation, City of Williamsport, Lycoming County, PA. Application for renewal of groundwater withdrawal of up to 0.980 mgd (30-day average) for groundwater remediation system (Docket No. 19880203).
5. Project Sponsor: Mayapple Real Estate Holdings. Project Facility: Mayapple Golf Links, South Middleton Township, Cumberland County, PA. Application for consumptive use of up to 0.200 mgd (peak day).

6. Project Sponsor: Mayapple Real Estate Holdings. Project Facility: Mayapple Golf Links, South Middleton Township, Cumberland County, PA. Application for groundwater withdrawal of up to 0.099 mgd (30-day average) from Well 1.

7. Project Sponsor and Facility: Repsol Oil & Gas USA, LLC (Fall Brook), Ward Township, Tioga County, PA. Application for renewal of surface water withdrawal of up to 0.999 mgd (peak day) (Docket No. 20140313).

8. Project Sponsor and Facility: Repsol Oil & Gas USA, LLC (Fellows Creek), Ward Township, Tioga County, PA. Application for renewal of surface water withdrawal of up to 0.999 mgd (Docket No. 20140314).

9. Project Sponsor and Facility: Seneca Resources Corporation (Arnot No. 5 Mine Discharge), Bloss Township, Tioga County, PA. Application for renewal of surface water withdrawal of up to 0.499 mgd (peak day) (Docket No. 20140311).

10. Project Sponsor and Facility: SWEPI, LP (Susquehanna River), Sheshequin Township, Bradford County, PA. Application for renewal of surface water withdrawal of up to 0.850 mgd (peak day) (Docket No. 20140312).

11. Project Sponsor and Facility: SWN Production Company, LLC (Susquehanna River), Great Bend Township, Susquehanna County, PA. Application for renewal of surface water withdrawal of up to 2.500 mgd (peak day) (Docket No. 20140302).

12. Project Sponsor and Facility: XTO Energy, Inc. (Little Muncy Creek), Moreland Township, Lycoming County, PA. Application for renewal of surface water withdrawal of up to 0.249 mgd (peak day) (Docket No. 20140315).

Opportunity to Appear and Comment

Interested parties may appear at the hearing to offer comments to the Commission on any project listed previously. The presiding officer reserves the right to limit oral statements in the interest of time and to otherwise control the course of the hearing. Guidelines for the public hearing will be posted on the Commission's web site, www.srbc.net, prior to the hearing for review. The presiding officer reserves the right to modify or supplement the guidelines at the hearing. Written comments on any project listed previously may also be mailed to Jason Oyler, General Counsel, Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110-1788, or submitted electronically through www.srbc.net/pubinfo/publicparticipation.htm. Comments mailed or electronically submitted must be received by the Commission on or before February 12, 2018, to be considered.

Authority: Pub.L. No. 91-575, 84 Stat. 1509 et seq., 18 CFR Parts 806—808

Dated: December 28, 2017

ANDREW D. DEHOFF,
Executive Director

[Pa.B. Doc. No. 18-88. Filed for public inspection January 12, 2018, 9:00 a.m.]

RULES AND REGULATIONS

Title 10—BANKING AND SECURITIES

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) amends 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 final-form rulemaking replaces terminology made obsolete by the 2012 merger of the former Securities Commission (Commission) with the former Department of Banking (2012 merger), corrects formatting and word choice issues, deletes statements of policy, reduces compliance requirements, permits electronic format submissions and electronic filings, and aligns the language of the regulations with the North American Securities Administrators Association (NASAA) model rules and the Securities and Exchange Commission (SEC) rules and regulations.

A. Effective Date

This final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin*.

B. Contact Persons

For further information, contact Scott A. Lane, Senior Deputy Chief Counsel, (717) 787-1471, slane@pa.gov, or Leo Pandeladis, Chief Counsel, (717) 787-1471, lepandelad@pa.gov.

C. Statutory Authority

This final-form rulemaking is authorized under 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)).

D. Background and Purpose

Replace terminology

This final-form rulemaking replaces references to “Commission” relating to the former Commission with “Department” to reflect the 2012 merger. A definition of “Commission” has been added to § 1.1 (relating to definitions) consistent with the adjudicatory role of the Banking and Securities Commission for the entire Department. References to “by order of” provide discretion for the Department as to how to act, such as by letter, which is consistent with the other areas of the Department. Sections 601.010, 601.020, 602.060, 606.041, 610.010 and 901.011, which indirectly referenced a procedure of the former Commission, are rescinded.

The terminology in the former securities regulations was inaccurate because it referred to the former Commission and its policies and procedures. The regulated community as a whole will benefit from this final-form rulemaking reflecting the Department’s incorporation of

the former Commission and the changes to policies and procedures as a result of the incorporation.

Conform to the Pennsylvania Code & Bulletin Style Manual

The former securities regulations were not drafted in a manner consistent with the *Pennsylvania Code & Bulletin Style Manual*, likely because of numerous amendments at different time periods. Because amendments are needed to most of the sections to reflect the 2012 merger, the Department also updated the formatting and word choice to conform to the *Pennsylvania Code & Bulletin Style Manual*. For example, this final-form rulemaking: 1) rescinds § 602.022, regarding denial for abandonment, and divides the former regulation into §§ 208.010 and 303.016 (relating to denial for abandonment; and considered as abandoned); and 2) relocates the definitions formerly throughout Part VII (relating to securities) into § 102.021 (relating to definitions) for ease of reading and to adhere to Independent Regulatory Review Commission (IRRC) and Legislative Reference Bureau (LRB) standards.

Amendments to formatting and word choice issues make the regulations more user friendly for the regulated community as intended by the *Pennsylvania Code & Bulletin Style Manual*. In addition, this final-form rulemaking deletes formatting and phrasing that could be read two different ways by the regulated community.

Rescind Chapter 604

The Department reviewed the statements of policy (SOP) in Chapter 604 and determined that all of the SOPs needed to be deleted as obsolete because of the merger, could be better reflected in other sections or should be placed on the Department’s web site as guidance rather than as SOPs. The former Commission adopted the SOPs. Upon review of the SOPs, the Department determined that the SOP format was not the best manner of disseminating the remaining relevant information to the regulated community. The regulated community will benefit from the Department consolidating information into either this final-form rulemaking or on the Department’s web site where appropriate.

Sections 604.011, 604.017 and 604.022 are rescinded as obsolete. Rescinded §§ 604.010, 604.016, 604.019, 604.020, 604.021 and 604.023 may be included on the Department’s web site or in a future rulemaking concerning rules of practice. Rescinded § 604.012 has been incorporated into § 504.060(e) (relating to rescission offers).

Reduce compliance requirements

This final-form rulemaking reduces compliance requirements on the regulated community by rescinding § 206.020, which removes the tax opinion requirement for limited partnership interests because the requirement only applied in narrow instances and was applied too broadly, and § 302.060, as this section is no longer applicable to the industry because since 1979 it applied to one individual. In addition, the Department amends §§ 210.010, 609.010 and 609.034 (relating to retroactive registration of certain investment company securities; use of prospective financial statements; and financial statements) to delete certain unnecessary filing requirements.

The Department and the regulated community will benefit from the reduction in compliance requirements.

The reduction will provide a minimal monetary benefit, reduce paperwork requirements and remove some compliance hurdles for the regulated community. The Department will benefit from the reduction in compliance checks that are no longer necessary.

Permit electronic format filing

Sections 701.010a, 701.011 and 701.020 (relating to filing of registration forms; filing of exemption forms; and electronic filing) are added to permit the Department to handle filings in a manner better reflecting technology used by the regulated community.

The Department and the regulated community will benefit from the inclusion of sections regulating electronic format and electronic filing. At this time, the Department has the technology to accept forms filed in electronic format. This reduces mailing fees and filing time frames for the regulated community. It also reduces paperwork being housed by the Department. The Department does not currently have a dedicated electronic filing platform, but considers it to be a future option. Including the electronic filing section will permit the Department to make that technology available to the regulated community in the future without requiring an additional rule-making.

Align language with NASAA and SEC

The Department works closely with NASAA and the SEC to develop consistent policies and procedures for the securities industry. Multiple amendments align the securities regulations with NASAA or the SEC, or both. This preamble details the NASAA or SEC rule after which the Department is modelling specific sections.

The regulated community will benefit from this final-form rulemaking. Consistency in regulatory treatment is important to the success of the industry as a whole because the securities industry frequently operates across states and countries.

E. Summary of Final-Form Rulemaking and Changes from Proposed to Final-Form Rulemaking

Notice of proposed rulemaking was published at 46 Pa.B. 3420 (July 2, 2016), with a 30-day public comment period. The Department received comments from trade associations representing the interests of certified public accountants (Pennsylvania Institute of Certified Public Accountants) and certain members from the independent financial services industry (Financial Services Institute). Both trade associations expressed general support. The Department received extensive comments from G. Philip Rutledge, Esq. (Attorney Rutledge), an attorney with Bybel Rutledge and the former Chief Counsel of the Commission. IRRC submitted comments. The House Commerce Committee and the Senate Banking and Insurance Committee did not submit comments.

The comments received from Attorney Rutledge and IRRC and the Department's responses to the comments are set forth in detail in a separate comment and response document. A summary of the comments and responses follows.

Definitions

The final-form rulemaking relocated all definitions formerly throughout Part VII to § 102.021 for ease of reading and to adhere to IRRC and LRB standards. The majority of the comments to the existing definitions, and the changes made in response, clarify either the language of a definition or the specific regulation to which it applies. For example, in the definition of "advertisement,"

"refers to" is revised to "means." Definitions for terms that include multiple requirements (such as "independent party") are revised to make clear that the person shall meet all of those requirements.

Definitions that refer to terms used in different contexts have been revised to clarify the different contexts. For example, the definition of "principal place of business" refers to both § 203.187 (relating to small issuer exemption) and the place of business of an investment adviser. The definition has been revised to refer to both contexts.

Likewise, "beneficial ownership" is used in §§ 203.184, 302.070, 304.012, 305.019, 404.011 and 609.012. This definition has been revised to address these sections.

Attorney Rutledge suggested multiple additional defined terms. IRRC's comments recommended many, but not all, of Attorney Rutledge's suggested definitions. Accordingly, the Department adds the following definitions suggested by Attorney Rutledge and IRRC: "aggregate indebtedness," "auditor's report," "commission," "direct participation program," "EFD," "financial statements," "Nationally recognized statistical rating organization," "PCAOB" and "self-regulatory organization." The Department also adds definitions of "National securities association" and "National securities exchange," which were included in the definition of "exchange," which has been deleted. In §§ 303.042(d)(2), 304.041(b), 305.011(a)(1)(i) and (ii) and (c) and 603.031(e)(3), the capitalization of "National securities exchange" is corrected to be consistent with the capitalization of this term throughout the regulations.

The Department did not add the following terms suggested by Attorney Rutledge but not by IRRC: "Form ADV," "Form ADV-W," "Form BD," "Form BD-W," "Form D," "Form NF," "Form U-1," "Form U-4," "Form U-5," "Form U-SB," "generally accepted accounting principles," "limited partnership" and "Series 7, 24, 63, 65, and 66," which refer to specific examinations. The Department asserts that any benefit from defining these terms would be outweighed by the confusion of having a large number of defined terms, particularly when many of these terms refer to the multitude of forms used by the Department and exams available to the securities industry.

While the Department agrees with Attorney Rutledge's comment to include "direct participation program" (DPP) as a defined term, the Department adds "real estate investment trusts" (REIT) as an example of a DPP. Attorney Rutledge's suggested definition is based upon Financial Industry Regulatory Authority (FINRA) Rule 2310, which excludes REITs from the definition. FINRA rules, which are essentially conduct rules for its membership consisting of broker-dealers, address REITs separately from DPPs.

In contrast, the only reference to DPPs is in § 207.091 (relating to subscription contracts), which requires the filing of subscription contracts proposed to be used in an offering pursuant to the registration of the securities. The regulations do not address REITs separately from DPPs, and practitioners consistently file subscription contracts for REIT offerings with the Department in compliance with § 207.091.

In addition, NASAA members, including the Department, participate in a coordinated review program for the registration of DPPs. According to the NASAA guidelines on the coordinated review program, it includes the review of REITs. See <http://www.coordinatedreview.org/cr-dpp/>.

Clarification of substantive provisions

Most of the amendments to substantive provisions are either the inclusion of the additional defined terms or stylistic changes to add clarity. For example, several sections have been amended to include “all of the following conditions” or similar language to make clear that compliance with all criteria is required to satisfy the exemption, including §§ 202.094, 203.041, 203.161, 203.188 and 203.203.

Other amendments to substantive provisions include the deletion of the requirement for private fund advisers exempt from investment adviser registration to pay a fee, as section 602.1 of the 1972 Act (70 P.S. § 1-602.1) does not authorize the Department to impose a filing fee for persons exempt from registration under section 301 of the 1972 Act (70 P.S. § 1-301).

In addition, in response to comments from Attorney Rutledge and IRRC, § 305.019(b) (relating to dishonest and unethical practices) has been revised to include “within the previous 10 years” to be consistent with the 10-year limitations period in section 305 of the 1972 Act (70 P.S. § 1-305).

Section 609.034(h) (relating to financial statements) is added in this final-form rulemaking to clarify that financial statement requirements regarding offerings made in reliance to Tier 2 of SEC Regulation A do not apply if the issuer is relying on section 203(u) of the 1972 Act (70 P.S. § 1-203(u)). Under a recent SEC rulemaking, state securities registration requirements are pre-empted for offerings under Tier 2 of Regulation A (offerings up to \$50 million).

Statements of policy

The Department reviewed the SOPs in Chapter 604 and determined that all of the SOPs needed to be deleted as obsolete because of the merger, could be better reflected in other sections or should be placed on the Department’s web site as guidance rather than as SOPs. The former Commission adopted the SOPs. Upon review of the SOPs, the Department determined that the SOP format was not the best manner of disseminating the remaining relevant information to the regulated community.

Attorney Rutledge’s comments included a general recommendation that the SOPs not be rescinded and specific comments regarding two SOPs.

SOP in former § 604.018

Former § 604.018 provided for the general policy of the original Commission to not impose monetary penalties when a respondent had already been assessed monetary penalties by FINRA or the SEC for the same conduct. This SOP did not preclude the Commission from issuing an order pursuant to a settlement that imposed a monetary penalty. The comment recommended that this SOP be retained, as it was originally raised by a senator when the Commission made its original request to be granted the authority to impose monetary penalties for violations of the 1972 Act.

The Department believes that this SOP is no longer relevant because the 2012 merger put new adjudicatory processes in place. Specifically, pre-merger Commission final orders were issued by the Commission comprised of the three Commissioners who acted as heads of the Commission. In the post-merger Department, final orders are issued by the Banking and Securities Commission, comprising of five individuals, four of whom are independent from the Department.

Additionally, while Department staff would take into consideration an SEC or FINRA penalty when recommending a sanction to the Hearing Officer and to the Banking and Securities Commission, the Department does not believe it is appropriate to limit the Department’s authority, even by way of a guideline. The evidence of a particular case may indeed warrant an administrative assessment in addition to a monetary fine or penalty imposed by the SEC or FINRA, or both.

It should be noted that neither the SEC nor FINRA have similar limitations in their respective rules.

SOP in former § 604.022

Former § 604.022 related to the fact that neither the Department nor its staff have authority or responsibility for instituting, conducting, settling or otherwise disposing of a criminal proceeding, and that a settlement entered into by the Department may not address any of these proceedings. In the proposed rulemaking the Department asserted that sections 302 and 404 of the Department of Banking and Securities Code (71 P.S. §§ 733-302 and 733-404) address this issue. Attorney Rutledge’s comment points out that the definition of “licensee” in section 2 of the Department of Banking and Securities Code (71 P.S. § 733-2) excludes persons licensed or registered under the 1972 Act.

While the Department agrees with the comment that sections 302 and 404 of the Department of Banking and Securities Code exclude persons licensed or registered under the 1972 Act, under the Commonwealth Attorneys Act (71 P.S. §§ 732-101—732-506) the Department does not have authority or responsibility to institute, conduct, settle or otherwise dispose of a criminal proceeding.

§ 211.010. Notice filings for Federally covered securities

Section 211.010 (relating to notice filings for Federally covered securities) relates to the notice filing of Federally covered securities. Federally covered securities are securities defined as “covered securities” under section 18(b) of the Securities Act of 1933 (15 U.S.C.A. § 77r(b)) for which state securities registration requirements are pre-empted. However, states are allowed to require short-form “notice” filings.

The Jumpstart Our Business Startups Act (JOBS Act) (Pub.L. No. 112-106) directed the SEC to issue a rule which exempts securities up to \$50 million under section 3(b)(2) of the Securities Act of 1933 (15 U.S.C.A. § 77c(b)(2)), under Regulation A. In anticipation of SEC rules regarding Regulation A, section 203(u) of the 1972 Act was added in 2014. Section 203(u) of the 1972 Act, which exempts an offer or sale which is in good faith reliance on section 3(b)(2) of the Securities Act of 1933 and the rules adopted thereunder, provides that the issuer files with the Department all documents filed with the SEC.

The SEC’s final rule under Regulation A provided for a two-tier system. The SEC determined that sales to offerees under Tier 2 are deemed to be transactions involving qualified purchasers, which are covered securities under section 18(b)(3) of the Securities Act of 1933, thereby pre-empting state registration requirements.

In response, the Department proposed adding § 211.010(d), which read as follows:

(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.

Attorney Rutledge raised two issues with proposed § 211.010(d). First, section 203(u) of the 1972 Act requires the filing of documents filed with the SEC. There is no specific authority for the Department to require a “notice” filing under section 211 of the 1972 Act (70 P.S. § 1-211). Second, section 602(b.1) of the 1972 Act (70 P.S. § 1-602(b.1)) does not address the payment of fees associated with 18(b)(3) covered securities.

The comment suggested the inclusion of an additional section in this final-form rulemaking which would waive the filing requirement under section 203(u) of the 1972 Act so long as the issuer files a notice with the Department. Attorney Rutledge’s suggested section also waives the filing under section 203(u) of the 1972 Act for offers which meet SEC Rule 251(d)(1) (no offers until the offering materials have been filed with the SEC) and SEC Rule 255 (solicitation of interest), and also would allow issuers to file a notice in Tier 1 offerings similar to Tier II offerings.

The Department does not agree with the suggestion that it does not have the authority to issue an order requiring the filing of documents filed with the SEC or, in the alternative, the filing of a notice form adopted by the Department.

Section 203(u) of the 1972 Act requires the filing of documents filed with the SEC, which would include, among other things, the filing of audited financial statements. Proposed § 211.010(d) merely added the less burdensome option of filing a notice filing instead. Further, NASAA has already adopted a Uniform Notice of Regulation A—Tier 2 Offering, a two-page form which includes the following statement: “The documents filed with the SEC under the file number for this offering indicated above are hereby incorporated by reference with this notice.”

The NASAA notice form does not request any information in addition to SEC requirements, and merely allows for an easier method of providing the information to the Department than that contemplated by section 203(u) of the 1972 Act. However, in response to this comment, the Department revised § 211.010(d) to reflect that the notice form, if ordered by the Department, may not request any information or documents in addition to SEC requirements.

The Department agrees with the comment with respect to the payment of fees under section 602(b)(1) of the 1972 Act.

The Department revised § 211.010(d) accordingly.

Additional IRRC comments

§ 102.201. Definitions

IRRC suggested that in the instances when proposed definitions referred to a term defined in section 102 of the 1972 Act (70 P.S. § 1-102) or Federal statutes or rules, those definitions be included in language added by the Department to assist a reader in understanding the full meaning of the definitions.

The Department appreciates this suggestion but believes that including the definition from the statute or Federal rule would not be appropriate for a number of

reasons. First, statutory and rule definitions are subject to change. This is particularly true with respect to Federal securities statutes and SEC rules. For example, in the past 6 years two major laws have been passed by Congress (the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub.L. No. 111-203) and the JOBS Act) that significantly impacted securities regulation and authorized (and in some cases mandated) SEC rulemaking. The Department’s final-form rulemaking uses citations when referring to Federal statutes and rules; accordingly, in the event the language is amended, the Department would not need to amend the regulation. If the entire statutory or rule definition is used in a definition, the definition would need to be amended every time there is an amendment to the Federal or State statutory definitions and Federal regulatory definitions.

Second, securities regulation in general is comprised of coordinated layers of state and Federal laws and regulations and FINRA rules. State securities laws are intended to be construed to be uniform, and their interpretation to be coordinated with related Federal legislation. See section 703(a) of the 1972 Act (70 P.S. § 1-703(a)). In furtherance of uniformity, state securities laws are adopted from either the model Uniform Securities Act of 1956 or 2002.

Rulemaking, on the other hand, is often consistent with model rules adopted by the NASAA. NASAA model rules, like securities regulations in general, use citations to refer to statutory definitions. See the NASAA Model Rule on the definition of an investment adviser representative (<http://www.nasaa.org/wp-content/uploads/2011/07/IA-Model-Rule-Definition-Under-2002-Act.pdf>) and the NASAA Model Exemption for Investment Advisers to Private Funds (<http://www.nasaa.org/wp-content/uploads/2011/07/NASAA-Registration-Exemption-for-Investment-Advisers-to-Private-Funds-Model-Rule-Amended-Oct.-8-2013.pdf>).

Lastly, there are already over 100 definitions in § 102.201, some of which are voluminous. The inclusion of statutory or Federal rule definitions, which are often extensive, would likely create confusion to the reader.

Chapter 701. Service of process administrative provisions

Sections 701.010a, 701.011, 701.020 and 701.030, regarding the filing of registration forms, exemption forms, electronic filing and fees, are adopted in this final-form rulemaking. IRRC’s comments included a concern with these sections because they do not include specific instructions for the filing of these forms. Instead, these sections refer to General Instructions included in forms available on the Department’s web site. IRRC believes that this approach circumvents the regulatory review process because it does not provide interested parties the opportunity to comment on the General Instructions, which would be equivalent to a regulation. The Department would be able to amend the General Instructions at any time without initiating a rulemaking. IRRC recommended that the final-form rulemaking be revised to include specific details.

The Department appreciates IRRC’s concern, but disagrees with the suggestion based on the nature and purpose of the General Instructions themselves. Securities offered and sold in this Commonwealth shall be registered with the Department, exempt from registration or Federally covered securities. The registration process can be by qualification, under section 205 of the 1972 Act (70 P.S. § 1-205), or by coordination with an SEC filing, under section 206 of the 1972 Act (70 P.S. § 1-206).

Exemptions from registration are numerous and include exemptions that must comply with Federal law. Offerings that are Federally covered securities must comply with specific Federal law. The Department's web site includes links to the numerous forms that are required for these types of offerings. The General Instructions section of each form includes standard filing procedures such as where to file, the number of copies to be filed and the filing fee specific to that form, and also includes references to other requirements in the 1972 Act and regulations, such as a requirement to attach a copy of the offering prospectus. The General Instructions do not include requirements that are not already in the 1972 Act and regulations, or under Federal law or regulations. No new forms are required under this final-form rulemaking and all of the Department's current forms are available at <http://www.dobs.pa.gov/Businesses/Securities/Pages/Securities-Offerings.aspx>.

Additionally, the inclusion of the General Instructions in the regulations would cause confusion given the large number of forms used by the Department and the length of the General Instructions for each. Further, similar to the discussion regarding definitions, including the General Instructions language in the regulations would necessitate an amendment to the regulations every time a Federal or State requirement changes for a particular offering.

Finally, it should be noted that § 2.12(a) of the *Pennsylvania Code & Bulletin Style Manual* (relating to forms) does not recommend the codification of forms.

F. Fiscal Impact

State government

This final-form rulemaking will have a de minimus impact on the Department, as this final-form rulemaking involves minor changes to a regulatory structure which already exists. This final-form rulemaking will not impact the Commonwealth and its political subdivisions.

Regulated community

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

Paperwork

The final-form rulemaking will have a de minimus impact on paperwork for the regulated community and the Department. The final-form 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. This final-form rulemaking does not require the submission of new forms and all current forms are available at <http://www.dobs.pa.gov/Businesses/Securities/Pages/Securities-Offerings.aspx>.

G. Sunset Review

This final-form rulemaking does not have a sunset date because the Department will periodically review the effectiveness of the regulations.

H. 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 the notice of proposed rulemaking, published at 46 Pa.B. 3420, to IRRC and the Chairpersons of the House Commerce Committee and the Senate Banking and Insurance Committee for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on October 11, 2017, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on October 12, 2017, and approved the final-form rulemaking.

I. Findings

The Department finds that:

(1) Public notice of the proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law, and all comments received during the public comment period were considered.

(3) This final-form rulemaking does not enlarge the purpose of the proposed rulemaking published at 46 Pa.B. 3420.

(4) This final-form rulemaking is necessary and appropriate for the administration and enforcement of the 1972 Act.

J. Order

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

(a) The regulations of the Department, 10 Pa. Code 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, are amended in Annex A as follows:

Adding §§ 102.021, 208.010, 302.070, 302.071, 303.016, 304.071, 305.020, 404.014, 601.030, 701.010a, 701.011, 701.020 and 701.030.

Deleting §§ 102.031, 102.041, 102.050, 102.060, 102.111, 102.112, 102.201, 102.202, 102.241, 202.041, 202.052, 203.091, 203.131, 203.171, 206.020, 207.140, 302.060, 305.012, 404.013, 601.010, 601.020, 602.022, 602.060, 604.010—604.012, 604.016—604.023, 606.041, 609.032, 610.010 and 901.011.

Amending §§ 1.1, 202.010, 202.030, 202.091, 202.092, 202.093, 202.094, 202.095, 203.011, 203.041, 203.101, 203.141, 203.151, 203.161, 203.183, 203.184, 203.185, 203.186, 203.187, 203.188, 203.189, 203.190, 203.191, 203.192, 203.201, 203.202, 203.203, 204.010, 204.011, 204.012, 205.021, 205.040, 206.010, 207.050, 207.071, 207.072, 207.091, 207.101, 207.130, 209.010, 210.010, 211.010, 301.020, 302.061, 302.063, 302.064, 302.065, 303.011, 303.012, 303.013, 303.014, 303.015, 303.021, 303.031, 303.032, 303.041, 303.042, 303.051, 304.011, 304.012, 304.021, 304.022, 304.041, 304.051, 304.061, 305.011, 305.019, 305.061, 401.020, 404.010, 404.011, 404.012, 501.011, 504.060, 513.010, 603.011, 603.031, 603.040, 605.020, 606.011, 606.031, 609.010, 609.011, 609.012, 609.031, 609.033, 609.034, 609.036, 609.037 and 1001.010.

(b) The Secretary of the Department shall submit this order and Annex A to the Office of General Counsel and

the Office of Attorney General for review and approval as to legality and form as required by law.

(c) The Secretary of the Department shall submit this order and Annex A to IRRC and the Senate and House Committees as required by the Regulatory Review Act (71 P.S. §§ 745.1—745.14).

(d) The Secretary of the Department shall certify this order and Annex A and deposit them with the LRB as required by law.

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

ROBIN L. WIESSMANN,
Secretary

(*Editor's Note:* See 47 Pa.B. 6790 (October 28, 2017) for IRRC's approval order.)

Fiscal Note: Fiscal Note 3-54 remains valid for the final adoption of the subject regulations.

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—The Banking Code of 1965 (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.

Secretary—The Secretary of the Department.

(b) Words and terms not otherwise defined in this title have the meanings specified in the Banking Code or the Department of Banking and Securities Code (71 P.S. §§ 733-1—733-1203).

PART VII. SECURITIES

Subpart A. DEFINITIONS

CHAPTER 102. DEFINITIONS

§ 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 of the following:

(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)) wherein the term:

(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 means 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.

Aggregate indebtedness—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—78qq).

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.

Auditor's report—A written report by an independent certified public accountant which contains either an expression of opinion on an entity's financial statements, taken as a whole, or an assertion that an opinion cannot be expressed.

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 if the state or Federal regulator with primary authority over the bank-in-organization determines that it is not a bank under the law governing that bank-in-organization.

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 §§ 203.184 and 609.012 (relating to offers and sales to principals; and computing the number of offerees, purchasers and clients) and section 203(s)(v) and (t)(v) of the act, as defined in 17 CFR 240.13d-3 (relating to determination of beneficial owner).

(ii) For purposes of § 302.070 (relating to registration exemption for investment advisers to private funds), as defined in 17 CFR 270.2a51-2 (relating to definitions of beneficial owner for certain purposes under sections 2(a)(51) and 3(c)(7) and determining indirect ownership interests).

(iii) For purposes of §§ 304.012, 305.019 and 404.011 (relating to investment adviser required records; dishonest and unethical practices; and investment adviser brochure disclosure), 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 pledgee—

(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, including a note, debenture or other evidence of indebtedness.

(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, and any successor thereto.

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), the term includes a prospective client.

(iii) For purposes of § 404.011, the term includes each limited partner of a limited partnership, each member of

a limited liability company and each beneficiary of a trust if the investment adviser is the general partner of the limited partnership, manager of the limited liability company or trustee of the trust.

Commission—Any form of compensation received by any person for effecting the purchase or sale of a security.

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

Compensation—Receipt, directly or indirectly, of any payment or consideration, whether or not in the form of cash, or any economic benefit.

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 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.

Direct participation program—A program which provides for flow-through tax consequences regardless of the

structure of the legal entity or vehicle for distribution including, but not limited to, oil and gas programs, real estate programs, real estate investment trusts, agricultural programs, cattle programs, condominium securities and all other programs of a similar nature, regardless of the industry represented by the program, or any combination thereof, except tax qualified pension and profit sharing plans under sections 401 and 403(a) of the Internal Revenue Code of 1986 (26 U.S.C.A. §§ 401 and 403(a)) and individual retirement plans under section 408 of the Internal Revenue Code of 1986 (26 U.S.C.A. § 408), tax sheltered annuities under section 403(b) of the Internal Revenue Code of 1986, and any company including separate accounts, registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1—80a-64).

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.

ESD—The electronic filing depository operated by NASAA, and any successor thereto.

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, the term 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.

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 entireties, 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., and any successor thereto.

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.

Financial statements—A balance sheet, statement of income, statement of stockholders' equity and statement of cash flow and accompanying notes.

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 Standard 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, and any successor thereto.

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 meets all of the following:

(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 and all plans under section 408 of the Internal Revenue Code of 1986 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), the term 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.

National securities association—An association of brokers and dealers registered with the Securities and Exchange Commission under section 15A of the Securities Exchange Act of 1934 (15 U.S.C.A. § 78o-3).

National securities exchange—Any exchange as defined in section 3(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C.A. § 78c) which is registered with the Securities and Exchange Commission under section 6 of the Securities Exchange Act of 1934 (15 U.S.C.A. § 78f).

Nationally recognized statistical rating organization—As defined in section 3(a)(62) of the Securities Exchange Act of 1934.

Net capital—As defined in 17 CFR 240.15c3-1, promulgated under the Securities Exchange Act of 1934.

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.

PCAOB—The Public Company Accounting Oversight Board, and 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.

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—The executive office of the business from which the officers, partners or managers of the business direct, control and coordinate the activities of the business.

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.

Self-regulatory organization—As defined in section 3(a)(26) of the Securities Exchange Act of 1934.

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 com-

mitment 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 professional 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 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.

(iii) The term 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).

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.

§ 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 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(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 a governmental unit specified in section 3(a)(2) of the Securities Act of 1933 that 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).

§ 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 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(a)(3)) as interpreted by Release 33-4412 (26 FR 9158 (September 20, 1961)) issued by the Securities and Exchange Commission which provides that:

(1) The commercial paper 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 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) 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 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.

(c) General solicitation through public media advertisement, mass mailing, the Internet or other means in connection with soliciting offers or sales of commercial paper is prohibited; provided that 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. (Reserved).

§ 202.052. (Reserved).

§ 202.091. Shares of professional corporations.

(a) Under the authority contained in section 202(i) of the act (70 P.S. § 1-202(i)), the 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 exemption contained in this section may not apply to a transaction entered into primarily to avoid the provisions of section 201 of the act 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 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 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 the guaranty of a bond if all of the following conditions are met:

(1) The official statement or other disclosure document being 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 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 either of the following:

(I) The most recent completed fiscal year.

(II) The previous most recent completed fiscal year if the fiscal year of the guarantor ended within 90 days before the commencement of the offering in this Commonwealth.

(B) A statement by a certified public accountant or the guarantor 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 of the commencement of the offering in this Commonwealth.

(2) The proceeds from the sale of the bonds are to be used for the benefit of a facility which is owned or operated 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 the combined net assets of the user and guarantor 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 section 501(c)(3) of the Internal Revenue Code of 1986, and the combined net worth of the user and guarantor is not less than 50% of the amount of securities being offered.

(3) 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.

(4) The trust indenture, mortgage, deed of trust or other similar agreement requires the trustee for the bondholders to do all of 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 paragraph (3)(i).

(B) The date the trustee receives a copy of the auditor's report to the guarantor containing going concern disclosure.

(C) The date on which the trustee is informed that the guarantor is insolvent. There is no independent duty 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.

§ 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 Department finds that it is not in the public interest 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 1986 (26 U.S.C.A. § 642(c)(5)) is established to permit donors to make irrevocable remainder interest gifts to the Fund.

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

(3) 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) A prospective donor is provided written disclosure which fully and fairly describes:

(i) The consequences of a contribution or transfer of property to the Fund.

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

(5) A person responsible for solicitation of contributions to the Fund will not receive commissions or other special compensation based 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 Department as a broker-dealer under section 301 of the act (70 P.S. § 1-301) or is registered with the Department under section 301 of the act as an agent of the broker-dealer.

(6) 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 performing as an investment adviser is either of the following:

(i) An investment adviser registered with the Department under section 301 of the act.

(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 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 contained in section 202(i) of the act (70 P.S. § 1-202(i)), the Department finds that it is not in the public interest 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 all of 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 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 meets all of 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.

(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.

(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 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.

(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 (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 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 Department finds that it is not in the public interest 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 the Commonwealth regulating insurance under the Charitable Gift Annuity Exemption Act (10 P.S. §§ 361—364).

(2) 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.

(3) The persons responsible for solicitation of purchasers of annuities will not receive commissions or other special compensation based on the amount of the annuity purchased unless the person receiving the commissions or special compensation is registered with the Department as a broker-dealer under section 301 of the act (70 P.S. § 1-301) or is registered with the Department under section 301 of the act as an agent of the broker-dealer.

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

(i) An investment adviser registered with the Department under section 301 of the act.

(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 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)) 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 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 considered a nonissuer transaction for purposes of section 203(a) of the act.

§ 203.041. Limited offerings.

(a) The notice required under section 203(d) of the act (70 P.S. § 1-203(d)) shall be filed with the Department within the time period specified on Form E in accordance with the General Instructions.

(b) The Department will not consider the requirement of section 203(d)(i) of the act to be met unless the issuer meets all of the following:

(1) 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 Department.

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

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

(c) Except 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 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 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 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 Department in accordance with § 609.011 (relating to amendments to filings with Department) within 5 business days of the occurrence of the event which required the filing of the amendment.

§ 203.091. (Reserved).

§ 203.101. Mortgages.

(a) For the purpose of section 203(j) of the act (70 P.S. § 1-203(j)), the exemption 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 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 value of the property at the time of the transaction.

(4) General solicitation through public media advertisement, mass mailing, the Internet or other means does not occur in connection with soliciting the transaction.

(5) 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.

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

§ 203.131. (Reserved).

§ 203.141. Sales to existing equity securityholders.

(a) The exemption contained in section 203(n) of the act (70 P.S. § 1-203(n)) is only available for the offer and sale of equity securities when all of 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 does not need to be made to all the classes or series.

(2) The offer is made pro rata to all the equity securityholders who are, of record, residents of this Commonwealth.

(3) 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.

(b) The exemption contained in section 203(n) of the act is only available for the offer and sale of debt securities when all of 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 does not need to be made to all the classes or series.

(2) 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.

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

(1) The initial offer is made pro rata.

(2) After the expiration of a reasonable period of time following the initial offer, an identified equity

securityholder acquires securities in an amount exceeding a pro rata share on terms and conditions fully disclosed to the affected equity securityholders.

§ 203.151. Proxy materials.

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

(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 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 Department for a transaction requiring the filing of proxy materials with the Department under section 203(o) of the act by filing:

(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 Department determines that the materials are in compliance with this section and 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:

(1) Complete and file with the Department two copies of Form 203-P in accordance with the General Instructions.

(2) File Form 203-P no later than 5 business days before the earlier of either the issuer receiving from any person:

(i) An executed subscription agreement or other contract to purchase the securities being offered.

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

(b) Except if the delivery of an offering document is not required by the Department, every offering of debt securities 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 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 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 Department at the same time the notice required under subsection (a) shall be filed.

(c) The offering document required under subsection (b) must meet all of 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 all of the following:

(i) The investors will receive a first lien on real estate of the issuer.

(ii) The issuer has not defaulted on prior obligations.

(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. (Reserved).

§ 203.183. Agricultural cooperative associations.

Under the authority contained in section 203(r) of the act (70 P.S. § 1-203(r)), the 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 when all of the following conditions are met:

(1) The securities are issued by the agricultural cooperative association.

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

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

(4) A person does not receive any commission or other compensation as a result of or based on the sale of the securities other than in connection with the solicitation of nonmembers for membership in the agricultural cooperative association.

§ 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 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) The exemption set forth in this section does not apply to any offer or sale to a person who has been

appointed or elected a principal primarily to obtain the exemption or to an offer or sale to a relative of this person.

(c) A person who is appointed or elected a principal in good faith for a purpose other than 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 on the exemption set forth in this section will not be considered to have been designated or elected a principal primarily to obtain the exemption set forth in this section.

§ 203.185. Offers before effectiveness of registration by qualification exempt.

(a) Under section 203(r) of the act (70 P.S. § 1-203(r)), the 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) for securities to be offered but not sold to an applicant filing a registration statement for its securities under section 206 of the act (70 P.S. § 1-206) before the effectiveness of the registration statement if 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 to register the securities for which offers will be made.

(ii) Filed a written opinion of management which states that all of 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 4 years of historical financial information.

(iii) Filed an intention to comply with 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) 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 must contain withdrawal rights which permit the investor to withdraw moneys tendered under 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 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 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 subsection (d).

(ii) Investors are considered automatically to have withdrawn any moneys tendered under a nonbinding subscription agreement and the moneys with accrued interest shall be returned to the investors 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 Department, unless extended by the Department.

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

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

(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 are subject to the investor withdrawal rights set forth in subsection (a)(3).

(1) If, before the effectiveness of the registration statement described in subsection (a)(1)(i), the nonbinding subscription agreement is withdrawn under subsection (a)(3), the deposit and accrued interest is payable to the investor.

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

(c) All offers for securities made under this section 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 and § 206.010(c) (relating to registration by qualification).

(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 subsection (a)(1)(i) shall:

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

(2) Receive a copy of the final prospectus concurrent with the notification of the effectiveness of the registration statement unless the Department permits a supplement to the preliminary prospectus setting forth all changes and modifications to be 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).

(f) The exemption contained in this section may not be available for a transaction entered into primarily to avoid the provisions of section 201 of the act.

§ 203.186. Employee takeovers.

(a) Under section 203(r) of the act (70 P.S. § 1-203(r)), the 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) The proceeds from the sale of the securities will be used to purchase assets and operations of the existing person.

(2) The employees will preserve their jobs through their employment with the newly created person.

(3) The employees' participation in the investment plan is not required as a condition of employment.

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

(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.

(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) The prospective financial statements used in connection with soliciting the purchase of securities under the investment plan comply with § 609.010(c) (relating to use of prospective financial statements).

(b) The exemption contained in this section may not be available for a transaction 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 Department finds that it is not in the public interest 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 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) 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) General solicitation through public media advertisement, mass mailing, the Internet or other means does not occur in connection with the offers and sales 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:

(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)).

(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 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 are counted as offers and sales under the applicable numerical limitations in section 203(s) of the act 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 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) if all of 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, 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) A person does not receive a commission or other compensation directly or indirectly as a result of or based on the sale of securities of a cooperative business association other than in connection with the solicitation of nonmembers for membership.

(b) Section 209.010(b) (relating to required records; report on sales of securities and use of proceeds) 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 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 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 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) The issuer or a promoter, officer or director of the issuer are not subject to the disqualifications in § 204.010(b) (relating to increasing the number of purchasers and offerees).

(5) General solicitation through public media advertisement, 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:

(i) The compensation is given or paid in connection with a sale made by a broker-dealer who is either:

(A) Registered under section 301 of the act (70 P.S. § 1-301).

(B) Exempt from registration under section 302(a) of the act (70 P.S. § 1-302(a)).

(ii) A person receiving compensation is either the broker-dealer or an agent of the broker-dealer who is either:

(A) Registered under section 301 of the act.

(B) Exempt from registration under section 302(b) of the act.

(b) *Waivers.*

(1) Subsection (a)(2), (3) and (5) does not apply if the following criteria are met:

(i) The securities to be sold in reliance on this section are registered with the 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. § 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 or 230.506) (relating to exemption for limited offers and sales of securities not exceeding \$5,000,000; and exemption for limited offers and sales without regard to dollar amount of offering) promulgated under 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 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 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 on section 203(d), (f) or (s) of the act, § 203.187 (relating to small issuer exemption), § 204.010(a)(1) and (2), Rule 506 (17 CFR 230.506) or this section 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 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 months of an offer or sale made under this section.

(2) Offers and sales made by the issuer under this section are counted as offers and sales under the applicable numerical limitations in section 203(s) of the act if offers and sales under section 203(s) of the act occur within 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 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) 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) The issuer's securities are not sold in this Commonwealth as a result of the Internet Offer.

(b) 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. Rule 505 offerings.

(a) *Filing requirement.* The notice required under section 203(s)(i) of the act (70 P.S. § 1-203(s)(i)) shall be filed with the Department within the time period specified on Form E as set forth in § 203.041 (relating to limited offerings).

(b) *Integration.* Offers and sales made under this section are counted as offers and sales under the applicable numerical limitations in section 203(d) and (f) of the act and § 204.010 (relating to increasing the number of purchasers and offerees).

(c) *Amendments.* During the period of the offering, the issuer shall take steps necessary to ensure that all material information contained in the notice remains current and accurate in all material respects. If a mate-

rial statement made in the notice, or an attachment thereto, becomes materially incorrect or inaccurate, the issuer shall file an amendment with the Department in accordance with § 609.011 (relating to amendments to filings with Department) within 5 business days of the occurrence of the event which required the filing of the amendment.

§ 203.192. Rule 801 and 802 offerings exempt.

Under section 203(r) of the act (70 P.S. § 1-203(r)), the 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) under Rule 801 or 802 promulgated by the 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 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 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. § 1-606(c)) and § 606.031 (relating to advertising literature) but will be 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) *Amendments.* During the period of the offering, the issuer shall take steps necessary to 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 Department in accordance with § 609.011 (relating to amendments to filings with 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 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(r)), the 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 all of the following requirements are met:

(1) A person who owns outstanding debt securities, and related guarantees, exchanges those securities for debt securities, and related guarantees of the same issuer which are the subject of an effective registration statement filed with the Securities and Exchange Commission under section 5 of the Securities Act of 1933 (15 U.S.C.A. § 77e) (exchange transaction).

(2) The outstanding debt securities, 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) The owner of the outstanding debt securities, 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 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 (70 P.S. § 1-203(d) and (e)), respectively, 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 months under section 203(e) of the act is 90 persons, except that offers made to experienced private placement investors 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 months under section 203(d) of the act is 35 persons, except that sales made to experienced private placement investors 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, 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) *Exemption notice filing.* With respect to reliance on subsection (a)(2), the issuer files with the Department the notice required under section 203(d) of the act and § 203.041 (relating to limited offerings) and pays the filing fee required 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.

(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 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.

(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 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.

(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 on a showing of good cause that it is not necessary under the circumstances that the exemption be denied.

(d) *Due diligence obligation.*

(1) A broker-dealer registered under section 301 of the act that sells a security to an experienced private placement investor in reliance on subsection (a) 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 § 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) 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 § 102.021.

(ii) Has reasonable grounds to believe, after reasonable inquiry, that the written representation is correct.

(e) *Statutory basis for offers and sales under this section.* All offers and sales made to persons permitted by this section are 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 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—78qq) 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 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 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 section 202 of the act (70 P.S. § 1-202) or section 203 of the act, if the exchange is not undertaken to avoid registration.

(b) *Resale agreement.* For transactions undertaken in reliance on waivers provided in subsection (a)(3) and (4), the person acquiring the restricted securities and the issuer shall agree in writing at the time of sale not to resell the restricted securities before the expiration of the original 12-month holding period.

(c) *Discretionary waiver.*

(1) In addition to the automatic waivers set forth in subsection (a), persons may make application to the 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.

(2) The applicant shall demonstrate in the application that the sale of the restricted security is not being undertaken to avoid registration or otherwise 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 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 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 Securities and Exchange Commission under the Securities Act of 1933 (15 U.S.C.A. §§ 77a—77aa) 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 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 Department may by regulation or order require under section 205(b)(iii) of the act.

(b) In addition to filing the information and form required under subsection (a), issuers in offerings being made in reliance on 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 Department within the specified time Form R in accordance with the General Instructions.

(c) The 10-day registration statement filing requirement in section 205(c) of the act is reduced to 5 days for all of the following:

(1) An offering for which a registration statement has been filed with the Department designated as Form S-2 or S-3 by the Securities and Exchange Commission.

(2) An offering for which a registration statement has been filed with the Department designated as Form F-7, F-8, F-9 or F-10, or otherwise equivalent form, by the 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 Department in accordance with § 609.011 (relating to amendments 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.

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 make a separate filing with the 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 all of the following with the Department:

(1) A registration statement and other materials required under section 206(b)(1)—(16) of the act (70 P.S. § 1-206(b)(1)—(16)).

(2) A properly executed Uniform Application to Register Securities (Form U-1) and relevant exhibits.

(3) Additional information the Department may by regulation or order require under section 206(b)(17) of the act.

(b) In addition to the information and form required under subsection (a), issuers in the following offerings shall execute and file with the 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 Regulation D promulgated under section 3(b) of the Securities Act of 1933.

(4) Offerings made in reliance on 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 of the act must meet the requirements of section 609(c) of the act (70 P.S. § 1-609(c)) and Chapter 609 (relating to regulations, forms and orders) or as the 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 Department in accordance with § 609.011 (relating to amendments to filings with Department) within 5 business days of the occurrence of the event which required the filing of the amendment.

§ 206.020. (Reserved).

CHAPTER 207. GENERAL REGISTRATION PROVISIONS

§ 207.050. Reports by engineers, appraisers and others.

(a) The Department may, under section 207(e) of the act (70 P.S. § 1-207(e)), 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 considered 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 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 Department in response to the 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:

(1) A statement as to the person's qualifications and experience.

(2) A statement as to a material relationship or other factor which would bear 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 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 Department.

(c) If the escrow depository does not maintain an office in this Commonwealth, the depository shall file with the Department an irrevocable consent to service of process with respect to actions arising out of its duties as escrow depository.

(d) The escrow of promotional securities must be covered by an agreement which is subject to the approval of the Department.

(e) The issuer shall file one manually signed copy of the agreement with the Department before the effectiveness of a registration of the issuer's securities.

§ 207.072. Escrow of proceeds.

(a) The 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:

(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.

(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 approved by the Department.

(c) The escrow of proceeds must be covered by an agreement approved by the Department which, at a minimum, meets all of 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 (6).

(2) The escrow depository 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 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 under the terms of the agreement.

(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.

(5) A summary of the principal terms of the agreement are included in the prospectus.

(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.

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 Department, as an exhibit, before its use in this Commonwealth:

(1) A registration statement filed under section 205 of the act (70 P.S. § 1-205) 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) 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 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 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 ended in this Commonwealth, or both.

(3) The 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 that is effective by order of the 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 ended in this Commonwealth, or both.

(3) The Department issues an order under section 208 of the act denying, suspending or revoking effectiveness of the registration statement.

(c) If the 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 Department before the expiration of the currently effective period of registration.

(e) The provisions of subsection (d) are not available if the issuer, during the 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 section 203(d) and (p) of the act (70 P.S. § 1-203(d) and (p)) and, if required under rule of the Department, section 203(r) of the act.

(b) The notice to purchasers required under section 207(m)(1) of the act (70 P.S. § 1-207(m)(1)) is in compliance with the act if the notice meets all of the following requirements:

(1) The notice is in writing.

(2) 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, is in the text of the prospectus.

(4) A subscription agreement used references the right of withdrawal.

(5) The reference to the right of withdrawal described in paragraph (3) is conspicuous, by setting it apart from other text and by underlining or capitalization.

(c) The notice to purchasers required under section 207(m)(2) of the act is in compliance with the act if the notice meets all of the following requirements:

(1) 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, is given.

(3) The explanation of the right of withdrawal is conspicuous, by setting it apart from other text and by underlining or capitalization.

(d) 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:

(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:

(i) Actually received by the issuer or its affiliate.

(ii) Sent electronically, including by e-mail or facsimile.

(iii) Deposited in the United States Postal Service, sent registered or certified mail, and all applicable fees are paid by the sender.

(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 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 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. (Reserved).

CHAPTER 208. DENIAL FOR ABANDONMENT

§ 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 his 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 and 1-206) or in an offering exempt from registration under section 202(e) or 203(d), (p) or (r) of the act (70 P.S. §§ 1-202(e) and 1-203(d), (p) and (r)) shall preserve all of 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 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 Department, and related correspondence and exhibits.

(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 with all of the following information included:

(i) The type and amount of securities sold to each.

(ii) The consideration paid or promised by each.

(iii) The method of payment, that is, cash, check, property, services, note or other.

(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) 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 Department by completing Parts I and II of

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 Department an annual report on sales of securities in this Commonwealth on Form NF adopted by NASAA, or successor form, within the following time periods:

(i) 120 days after an open-end or closed-end investment company's or face amount certificate company's fiscal year end.

(ii) 60 days after 1 year from the date the registration statement relating to the securities sold in this Commonwealth became effective with the Securities and Exchange Commission with respect to a unit investment trust.

(3) The following issuers are not required to file Form 209 or Form NF, 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.

CHAPTER 210. RETROACTIVE REGISTRATION

§ 210.010. Retroactive registration.

(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) and has an effective registration statement on file with the Securities and Exchange Commission for the same securities sold in this Commonwealth in excess of the aggregate amount registered for sale in this Commonwealth under section 205 or 206 of the act.

(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—80a-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-64) (investment companies) must be:

(1) Completed by using the Uniform Investment Company Notice Filing Form (Form NF).

(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) *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.

(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.* 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)), the Department may issue an order requiring 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 that does not require any information or documents in addition to that required by the Securities and Exchange Commission.

**Subpart C. REGISTRATION OF
BROKER-DEALERS, AGENTS, INVESTMENT
ADVISERS AND INVESTMENT ADVISER
REPRESENTATIVES AND NOTICE FILINGS BY
FEDERALLY COVERED ADVISERS**

CHAPTER 301. REGISTRATION REQUIREMENT

§ 301.020. Agent transfers.

An agent who wishes to end employment with one registered broker-dealer and thereafter begin employment with another registered broker-dealer may do so without causing a suspension in the agent's registration with the Department if all of the following conditions are met:

(1) Both the terminating and employing broker-dealers are members of 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. (Reserved).

§ 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 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 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 ALTARA (63 P.S. § 734.3(h)).

(iii) Holds a special license to conduct an auction under section 3(i) of the 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 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 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 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) For the purposes of subsection (a)(3), a transaction is considered a nonissuer transaction if a bank 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 paragraph (1).

§ 302.063. Financial institutions exempt from broker-dealer and agent registration.

Under section 302(f) of the act (70 P.S. § 1-302(f)), the 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.

§ 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 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 is:

(i) Registered under section 301 of the act.

(ii) A member of a National securities exchange.

(2) The agent's only customers are broker-dealers registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78qq) or section 301 of the act.

(3) The agent is not subject to 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.

(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 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 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.

§ 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 is 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 all of the following conditions are satisfied:

(1) The subject fund existed before January 13, 2018.

(2) The subject fund ceases to accept beneficial owners who are not qualified clients, as described in subsection (b)(1), as of January 13, 2018.

(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 January 13, 2018.

(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 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 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 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 all of 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 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 applicant for initial registration as an investment adviser shall complete a Uniform Application for Investment Adviser Registration (Form ADV), or a successor form.

(b) The applicant shall complete and file with the Department or with IARD:

(1) Form ADV.

(2) The filing fee required under section 602(d.1) of the act (70 P.S. § 1-602(d.1)).

(3) The compliance assessment in section 602.1(a)(4) of the act (70 P.S. § 1-602.1(a)(4)).

(4) Any exhibits required under this section.

(c) Except as set forth in subsection (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 all of the following:

(1) An audited balance sheet of the applicant prepared in accordance with generally accepted accounting principles which is as of the end of the applicant's most recent fiscal year.

(2) An audit report containing an unqualified opinion of an independent certified public accountant within which the accountant shall submit, as a supplementary opinion, comments based on the audit as to the:

(i) Material inadequacies found to exist in the accounting system.

(ii) Internal accounting controls.

(iii) Procedures for safeguarding securities and funds with an indication of corrective action taken or proposed.

(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 all of the following:

(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) Must 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.

(h) As part of the requirements relating to the statements of financial condition set forth in 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) 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.

(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 Department an amendment on Form ADV within 30 days of the occurrence of the event which requires the filing of the amendment.

(j) An applicant that maintains its principal place of business in a state other than this Commonwealth 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 applicant for initial registration as an agent of a broker-dealer or issuer shall complete a Uniform Application for Securities Industry Registration or Transfer (Form U-4) or a successor form.

(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).

(c) An applicant for registration as an agent of a broker-dealer which is a member firm of 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.

(2) The filing fee required under section 602(d.1) of the act.

(3) The compliance assessment required under section 602.1(a)(1) of the act.

(4) Evidence of passage of the examinations required under § 303.031.

(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 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 applicant for initial registration as an investment adviser representative of an investment adviser or 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 Department or with IARD:

(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).

(c) An investment adviser representative and an investment adviser or 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 adviser shall file with the 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 advisers.

(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 IARD.

(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 IARD.

§ 303.016. Considered as abandoned.

(a) *General rule.* The Department may consider as abandoned an application for registration as a broker-dealer, agent, investment adviser or investment adviser 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 adviser.

(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—78qq), 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 meets the requirements of subsections (b) and (c).

(b) The applicant receives a passing grade on the securities examination for principals or registered representatives administered by FINRA or the Securities and Exchange Commission within 2 years before the date of filing an application for registration. The Department considers the requirements of this subsection met if any of the following apply:

(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.

(2) The applicant has received a waiver of the examination requirement by FINRA.

(3) The applicant has received notice from the Department waiving the examination requirement.

(c) The applicant receives a passing grade on the Uniform Securities Agent State Law Examination (Series 63) or the Uniform Combined State Law Examination (Series 66) and the General Securities Representative Examination (Series 7) or successor examination administered by FINRA within 2 years before the date of filing an application for registration. The Department considers the requirements of this subsection met if any of the following apply:

(1) The applicant previously has passed the Series 63 or the Series 66 and Series 7, and has not had a lapse in employment with a broker-dealer for a period exceeding 2 years.

(2) The applicant has received notice from the Department waiving the requirement to take the Series 63 or the Series 66 and Series 7.

§ 303.032. Examination requirements for investment advisers and investment adviser representatives.

(a) *Examination requirements.* To be registered as an investment adviser or investment adviser representative under the act, an individual shall meet one of the following examination requirements:

(1) The individual, on or after January 1, 2000, and within 2 years immediately before the date of filing an application with the Department, received a passing grade on The Uniform Investment Adviser Law Examination (Series 65), or successor examination.

(2) The individual, on or after January 1, 2000, and within 2 years immediately before the date of filing an application with the Department, received a passing grade on the:

(i) General Securities Representative Examination (Series 7) administered by FINRA.

(ii) Uniform Combined State Law Examination (Series 66) or successor examinations.

(3) 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.

(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 before the date of filing an application with the Department.

(b) *Grandfathering.*

(1) Compliance with subsection (a) is waived if the individual meets the following conditions:

(i) 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 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 Department.

(2) Compliance with subsection (a) is waived if the individual meets the following conditions:

(i) 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 Department.

(c) *Waivers of exam requirements.* Compliance with subsection (a) is waived if:

(1) The individual meets the following conditions:

(i) 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) The individual has been awarded any of the following designations which, at the time of filing of the application with the 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 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 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 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 Department that the individual is eligible for a waiver of the examination requirement imposed by subsection (a).

(4) The individual has received 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 with an aggregate indebtedness not exceeding 1500% of its net capital.

(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 Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78qq) immediately shall notify the 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 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.

(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 Securities and Exchange Commission to file, execute and maintain a surety bond in compliance with § 303.051 (relating to surety bonds).

(e) A broker-dealer registered under section 301 of the act that is registered as a broker or dealer with the 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 or dealers) promulgated under the Securities Exchange Act of 1934.

§ 303.042. Investment adviser capital requirements.

(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 all of 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 under this section is the same as if the investment adviser had its principal place of business in this Commonwealth.

(2) Except as provided in subsection (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 shall maintain a minimum net capital 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 a minimum net worth of \$35,000 unless the investment adviser has custody solely as the result of one of the following:

(i) Has 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 clauses (A)—(C).

(ii) Serves 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 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 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 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) 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 a minimum net worth of \$10,000, unless the investment

adviser places trade orders with a broker-dealer under a third-party trading agreement and the following conditions are met:

(i) The investment adviser 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) 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 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 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 all of the following:

(i) A proof of money balances of ledger accounts in the form of a trial balance.

(ii) A computation of net worth.

(iii) An analysis of clients' securities and funds which are not segregated.

(iv) A computation of the aggregate amount of clients' ledger debit balances.

(v) A computation of the aggregate amount of clients' ledger credit balances.

(vi) A statement as to the number of client accounts.

(c) *Appraisals.* For investment advisers registered or required to be registered under the act, the Department may require that a current appraisal be submitted to establish the worth of an asset being calculated under the net worth formulation.

(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 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, Rule 15c3-1.

(2) A member of a National securities exchange whose members are exempt from Rule 15c3-1 under subsection (b)(2) 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) A surety bond shall be:

(1) Filed with the Department on Uniform Surety Bond Form (Form U-SB) or successor form.

(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.

(b) An investment adviser that has its principal place of business in a state other than this Commonwealth shall comply with subsection (a) unless the investment adviser is:

(1) Registered as an investment adviser in that state.

(2) In compliance with the applicable net worth and bonding requirements of the state in which it maintains its principal place of business.

(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.

(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—78qq) 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.

(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) *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—78qq).

(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.

(b) *Records of complaints.*

(1) Every broker-dealer registered under the act shall make, keep and preserve one of the following:

(i) A separate file of written complaints of customers and actions taken by the broker-dealer in response.

(ii) A separate record of the complaints and a clear reference to the files containing the correspondence connected with the complaint maintained by the broker-dealer.

(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 Securities and Exchange Commission is considered in compliance with the requirements of this subsection if it maintains records of customer complaints as required under applicable Securities and Exchange Commission rules.

(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 all of 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 the order or instruction. 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) Check books, bank statements, canceled checks and cash reconciliations of the investment adviser.

(5) Bills or statements (or copies of), paid or unpaid, relating to the investment adviser's business as an investment adviser.

(6) Trial balances, financial statements, net worth computation and internal audit working papers relating to the investment adviser's business as an investment adviser.

(7) Originals of written communications received and copies of written communications sent by the investment adviser relating to one or more of the following:

(i) A recommendation made or proposed to be made and any advice given or proposed to be given.

(ii) A receipt, disbursement or delivery of funds or securities.

(iii) The placing or execution of 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 a notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service sent by the investment adviser to more than 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.

(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 a client, and all other written agreements otherwise relating to the investment adviser's business as an investment adviser.

(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 the investment adviser or an investment adviser representative of the investment adviser does not have direct or indirect influence or control.

(B) Transactions in securities which are direct obligations of the United States. The record must state:

(I) The title and amount of the security involved, and 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) 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), 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 an account over which the investment adviser or an investment adviser representative of the investment adviser does not have direct or indirect influence or control.

(B) In securities which are direct obligations of the United States. The record 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) 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 the written statement and the amendment or revision, given or sent to 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 the written statement, and the amendment or revision, was given, or offered to be given, to a client or prospective client who subsequently becomes a client.

(15) 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 under § 404.012 (relating to cash payment for client solicitation).

(16) Accounts, books, internal working papers, and any other records or documents 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:

(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.

(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 will be considered to satisfy the requirements of this paragraph.

(17) A file containing a copy of the written communications received or sent regarding any litigation involving the investment adviser or an investment adviser representative or employee, and regarding the written customer or client complaint.

(18) Written information about an investment advisory client that is the basis for making a recommendation or providing investment advice to the client.

(19) Written procedures to supervise the activities of employees and investment adviser representatives that are reasonably designed to achieve compliance with applicable securities laws and regulations.

(20) A file containing a copy of the documents, other than notices of general dissemination, that were filed with or received from 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 § 102.021(a) (relating to definitions), which file 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 all of 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 adviser 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.

(c) If an investment adviser subject to subsection (a) has custody, the records required to be made and kept under subsection (a) also include all of the following:

(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) 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) (relating to investment adviser capital requirements), 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).

(d) An investment adviser subject to subsection (a) that gives investment supervisory or management service to 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) 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.

(e) Books or records required under this section may be maintained by the investment adviser so that the identity of a client to whom the investment adviser gives investment supervisory services is indicated by numerical or alphabetical code or some similar designation.

(f) An investment adviser subject to subsection (a) shall maintain all of the following:

(1) 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 (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, in the principal office of the investment adviser for at least 3 years after termination of the enterprise.

(3) Books and records required to be made under subsection (a)(11) and (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) Notwithstanding other record preservation requirements of this section, the following records or copies 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 location's physical address, mailing address, e-mail address or telephone number.

(g) An investment adviser subject to subsection (a), before ceasing to do business as an investment adviser, shall:

(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.

(2) Notify the Department in writing of the exact address where the books and records will be maintained during the period.

(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 adviser 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) 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—78qq), which is substantially the same as the book or other record required to be made, kept, maintained and preserved under this section, 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 all of 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) A broker-dealer registered under the act but not registered as a broker or dealer with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78qq) shall file annually with the Department a report 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 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 and registered as a broker or dealer with the Securities and Exchange Commission shall provide the 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 under Securities and Exchange Commission rules or the rules of a National securities association or National securities exchange of which the applicant is a member.

(d) The report required 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) 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:

(1) Shall honor all requests by representatives of the Department to have physical access to all areas of the office which is the subject of the examination.

(2) Shall permit the Department to review and examine the files in the physical place where the files routinely are maintained on request.

(3) May accompany the representatives of the Department themselves or through a representative of the broker-dealer or investment adviser.

(b) Files referred to in subsection (a) include 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 Securities and Exchange Commission and rules of a National securities exchange or National securities association, and any document reasonably related to these required records.

§ 304.051. Broker-dealer compensation.

(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.

(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 FINRA will be considered fair and reasonable and, unless otherwise required to be disclosed in writing by the Conduct Rules, does not need to be disclosed in writing.

§ 304.061. Free credit balances.

(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.

§ 304.071. Business continuity and succession planning.

(a) An investment adviser registered or required to be registered with the Department 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 includ-

ing 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) Establishing and maintaining written procedures and a system for applying and enforcing those written procedures which are reasonably designed to:

- (i) Achieve compliance with the act and this title.
- (ii) Detect and prevent any violations of statutes, rules, regulations or orders described in any of the following:

(A) Section 305(a)(v) and (ix) of the act (70 P.S. § 1-305(a)(v) and (ix)).

(B) The Conduct Rules of FINRA.

(C) An applicable fair practice or ethical standard promulgated by the Securities and Exchange Commission or by a National securities exchange.

(2) Accepting final responsibility for proper supervision.

(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, a broker-dealer or investment adviser shall:

(1) Implement written procedures, a copy of which shall be kept in each location at which the broker-dealer or investment adviser conducts business.

(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).

(d) The written procedures required under subsection (c), at a minimum, must address all of the following:

(1) The supervision of every agent, investment adviser representative, employee and supervisor by a designated qualified supervisor.

(2) 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) The methods to be used to determine the good character, business repute, qualifications and experience of any person before making application for registration of that person with the 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.

(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.

(k) To the extent that this section imposes any recordkeeping requirement on an investment adviser registered under section 301 of the act, 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. (Reserved).

§ 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 shall:

- (1) Act primarily for the benefit of its customers.
- (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 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, has engaged in dishonest or unethical practices in the securities business or has taken unfair advantage of a customer within the previous 10 years.

(c) The Department, for purposes of section 305(a)(ix) of the act, will consider 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.

(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 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 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.

(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 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. 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, 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 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) Failing or refusing to furnish a customer, 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 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 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 before execution of the transaction.

(iii) Establishing or maintaining an account containing fictitious information 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 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 when the investment adviser or investment adviser representative uses published research reports or statistical analyses to give advice or when 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 a client in writing, before advice is 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 giving of unbiased and objective advice including:

(A) A compensation arrangement connected with advisory services to a client which is in addition to compensation from the client for the services.

(B) An advisory fee charged to a client for giving advice when a commission for executing securities transactions 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, either a gain or no loss, with advice which will be 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, investments or other financial information of a client unless required 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, when 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 § 404.014 (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 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 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 Securities and Exchange Commission under section 203(b) of the Investment Advisers Act of 1940 (15 U.S.C.A. § 80b-3(b)).

(xix) 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 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 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 act or any rule, regulation or order issued thereunder.

(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).

§ 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 applies:

(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, invest-

ment advisers or investment companies as defined under the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1—80a-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) *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) Become a Federally covered adviser subject to exclusive registration with the 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 Department or with IARD.

(2) 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 Department or with IARD.

(b) *Broker-dealer.* To withdraw from registration as a broker-dealer, 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 with the Department or with IARD 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 with the Department within 30 days from the date of termination.

(e) *Federally covered adviser.* To withdraw a notice filing, a Federally covered adviser shall file a notice with the Department or with IARD.

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 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 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, gives or produces a statement, opinion, report or service if the professional person knew or in the exercise of reasonable care should have

known that 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) 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) Refers, directly or indirectly, to any testimonial of any kind concerning the investment adviser or investment adviser representative concerning any advice, analysis, report or other service given to the customer by the investment adviser or investment adviser representative.

(2) 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 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 is not prohibited if the advertisement:

(i) Includes the name of each security recommended, the date and nature of each recommendation including whether to buy sell or hold, the market price at the time, the price at which the recommendation was to be acted on, and the current market price of each security.

(ii) Contains the following cautionary legend prominently displayed on the first page 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) Represents, directly or indirectly, that any graph, chart, formula or other device being offered:

(i) Can in and of itself be used to determine which securities to buy or sell, or when to buy or sell them.

(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 and the difficulties with respect to its use.

(4) Contains any statement 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) 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, received directly or indirectly in connection with making a recommendation concerning a specific security.

(6) Recommends the purchase or sale of any security unless the investment adviser or investment adviser representative simultaneously offers to furnish to any person 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) 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.

§ 404.011. Investment adviser brochure disclosure.

(a) An investment adviser's failure to provide an advisory client or prospective advisory client with the disclosure required 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 under this section which must contain the information required 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) 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 under this section shall be delivered in compliance with one of the following:

(1) Not less than 48 hours 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 end the contract without penalty within 5 business days after entering into the contract.

(e) An investment adviser shall:

(1) Deliver or offer in writing to deliver to each of its clients the current brochure and any current brochure supplements required under subsection (b) without charge at least once a year.

(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 gives substantially different types of investment advisory services to different clients, the investment adviser may do the following:

(1) Provide the clients with different brochures, so long as each client receives all applicable information about services and fees.

(2) Omit from the brochure delivered to a client any information required under Part 2A of Form ADV if the information applies only to a type of investment advisory service or fee which is not given or charged, or proposed to be given or charged, to that client or prospective client.

(h) Except as provided in 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 must be a wrap fee brochure containing all the information required under Form ADV.

(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:

- (1) Amend its brochure and any brochure supplement.
- (2) Deliver the amendments to clients promptly.
- (3) Promptly file the amendments with the Department or with IARD.

(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) 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) 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 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 under a written agreement to which the investment adviser is a party.

(4) The written agreement required under paragraph (3):

(i) 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) 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) 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 under § 404.011 (relating to investment adviser brochure disclosure).

(B) A separate written disclosure document which contains all of 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 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 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 under § 404.011 and the solicitor's written disclosure document required under paragraph (4)(iii)(B).

(c) For purposes of subsection (b)(5), this section does not apply to an investment adviser as follows:

(1) If the cash fee is paid to a solicitor with respect to solicitation activities for the provision of impersonal investment advisory services only.

(2) If the cash fee is paid to a solicitor who is either of the following:

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

(ii) A partner, officer, director or 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 of the investment adviser or other person, is disclosed to the client at the time of the solicitation or referral.

(d) This section does not relieve a person of a fiduciary or other obligation to which the person may be subject under the law.

§ 404.013. (Reserved).

§ 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 client funds or securities 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 Department may:

(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).

(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 the reference, institute appropriate criminal proceedings.

(b) The act, and this part, do not limit the power of the Commonwealth to punish 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) 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 Department action are those applicable to registration by qualification and a person shall note at the top of Form R that the offer is a rescission offer.

(2) The 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) The Department may waive compliance with the procedures in subsection (a) 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 all of the following conditions are met:

(1) The person making the rescission offer files the form designated by the 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)).

(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 Department if the issuer is making the rescission offer for possible violations of section 201 of the act (70 P.S. § 1-201) and the issuer or a promoter, general partner of a limited partnership, managing general partner of a limited partnership, executive officer or director of the issuer 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 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, 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.

(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:

(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 Department.

(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.

(3) The person making the rescission offer, 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 are not subject to the disqualifications in § 204.010(b).

(4) The rescission offer is being made under section 504(d) of the act or if a rescission offer is being made under section 504(e) of the act, the offeror 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.

(5) Public media advertising or general solicitation were not used in connection with the offer or sale of the securities subject to the rescission offer.

(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 Regulation D.

(7) The person making the rescission offer provides to each offeree disclosure materials prepared to satisfy the antifraud provisions of section 401(b) of the act.

(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 Department Form RO which will be given to each rescission offeree.

(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 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:

(1) A person did not receive commissions directly or indirectly for the sale of the securities subject to the rescission offer.

(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).

(3) The issuer provides a letter offering rescission to each rescission offeree which contains only the informa-

tion set forth in Item 14 of the General Instructions to Department Form RO which will be given to each rescission offeree.

(4) The issuer provides to each offeree disclosure materials prepared to satisfy the antifraud provisions of section 401(b) of the act.

(5) Public media advertising or general solicitation were not used in connection with the offer or sale of the securities subject to the rescission offer.

(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 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.

(f) A person making a rescission offer under this section 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:

(i) Copies of the rescission offers given or mailed to rescission offerees in this Commonwealth.

(ii) Records of acceptances and rejections and records of cash disbursements to offerees who accepted the rescission offer.

(3) Promptly furnish to the Department on request records concerning a rescission offer made in this Commonwealth under this section.

(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 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 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 Department, by order, otherwise requires.

Subpart F. ADMINISTRATION
CHAPTER 601. ADMINISTRATION

§ 601.010. (Reserved).

§ 601.020. (Reserved).

§ 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 persons listed in this subsection.

(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. (Reserved)

§ 602.022. (Reserved).

§ 602.060. (Reserved).

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 Department shall be filed in the Harrisburg office of the Department.

(b) If mailed, all documents and communications shall be sent registered or certified mail, postage prepaid, return receipt requested.

(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 web site 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 Department, members of the public may, on written request to do so, inspect at the Department's Harrisburg office documents which are public records. The written request required under this subsection must set forth the public records to be inspected.

(b) The Department may withhold from public inspection those records which it determines are excluded from the definition of "public records" in section 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 Department may accompany the statement, application, notice or report and specify the reasons for the request.

(1) Material which is the subject of the request should be separated from other parts of the filing.

(2) On proper showing, the Department will treat as confidential the material which is the subject of the request.

(d) This section does not make available for public inspection the following:

(1) Books, papers, correspondence, memoranda, agreements or other documents or records contained in an investigative or examination file maintained by the Department.

(2) Minutes, documents or other memoranda of the Department or of the staff which deal with or concern the institution, maintenance or termination of an investigation.

(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 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 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 considered confidential under paragraph (1) are available for official use by persons described in § 601.030(a) (relating to access to confidential information).

(3) This section is not in derogation of the rules of a National securities exchange or National securities association which give customers of a member broker or dealer the right, on request to the member broker or dealer, to obtain information relative to its financial condition.

(f) The Department will treat all of the following information as confidential and not be available for public inspection under any provision of the act and considers the information excluded from the definition of "public records" in section 102 of the Right-to-Know Law:

(1) The Social Security number and date of birth 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, filed with the Department under § 303.013 (relating to agent registration procedures) or with IARD under § 303.014 (relating to investment adviser representative registration procedures).

(2) The Social Security number and date of birth 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 (Form ADV), filed with the Department or with IARD 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 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 successor form (Form BD) or Form ADV.

§ 603.040. Charges for Department services.

The following fees will be charged by the Department and remitted to the General Fund of the Commonwealth:

(1) Photocopies of documents on file with the Department—50¢ per page.

(2) Certification of documents on file with the Department—\$5 per certification.

(3) Facsimile transmission of copies of documents on file with the Department—\$2 per page.

CHAPTER 604. (Reserved)

§§ 604.010—604.012. (Reserved).

§§ 604.016—604.023. (Reserved).

CHAPTER 605. DEPARTMENT EMPLOYEES; RELATIONSHIP WITH LICENSED PERSONS OR QUALIFIED ORGANIZATIONS

§ 605.020. Conflict of interest.

(a) To protect the public interest and avoid conflicts of interest, the Department has determined, under section 605(b) of the act (70 P.S. § 1-605(b)), that the provisions of section 605(a) of the act do not prohibit the holding or purchasing of any securities by any employee of the Department if one of the following applies:

(1) The employee did not perform a principal review of the application for the registration of the securities or any other securities of the same issuer registered with the Department under section 205 or 206 of the act (70 P.S. §§ 1-205 and 1-206) or was not involved in an investigation, audit or examination of the registration.

(2) 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.A. § 80a-2) for which the issuer is registered or has filed a registration statement under the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1—80a-64).

(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 employee of the Department which is not permitted by subsection (a), the employee may present a formal request to the Department for permission to hold or purchase the securities.

(1) The request must set forth the type and amount of securities to be held or purchased, the issuer of the securities, any other relationship between the employee and the issuer, the functions which the employee performed relative to the registration of the issuer and all other pertinent reasons as to why the employee feels the Department should grant the employee's request.

(2) The Department may grant the employee's request if it finds that in doing so it would be protecting the public interest and avoiding conflicts of interest.

(c) 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 the security would violate any other applicable conflict of interest statute or regulation.

CHAPTER 606. MISCELLANEOUS POWERS OF 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) and (p)), or registered under 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 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 the financial statements delivered to offerees were not required to be audited or if the financial statements were not required to be given to the offerees, the financial statements 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 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 an advertisement concerning 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 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 Department under section 205 or 206 of the act (70 P.S. §§ 1-205 and 1-206) that has not yet become effective.

(1) In connection with a registration statement filed with the 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 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 Securities and Exchange Commission.

(iii) A preliminary prospectus which is part of a registration statement that has been filed with the Securities and Exchange Commission under section 5 of the Securities Act of 1933 and complies with Rule 430 (17 CFR 230.430) (relating to prospectus for use prior to effective date) promulgated by the Securities and Exchange Commission.

(iv) A summary prospectus which is part of a registration statement that has been filed with the Securities and Exchange Commission under section 5 of the Securities Act of 1933 and complies with Rule 431 (17 CFR 230.431) (relating to summary prospectuses) promulgated by the Securities and Exchange Commission.

(2) In connection with an offering circular for the offer and sale of securities in this Commonwealth filed with the 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 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 Securities and Exchange Commission before effectiveness of the offering circular under the act if all of the following conditions are met:

(i) The advertisement is filed with the Department 10 days before 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 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 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 \$5,000,000) promulgated by the Securities and Exchange Commission under section 3(b) of the Securities Act of 1933, a person may publish an advertisement in this Commonwealth 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 Department of Banking and Securities but has not yet become effective. These securities may not be sold nor may offers to buy be accepted 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 before registration of the securities under the Pennsylvania Securities Act of 1972."

(ii) The advertisement is filed with the Department 10 days before 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 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 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 Department under section 205 or 206 of the act and has been qualified by the 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 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 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) promulgated by the 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 Department 5 days before 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 (i) of the act.* 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) of the act.* 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 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 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) of the act.* 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 if the Department, by rule or order, has prohibited use of advertisements as a condition of the availability of the exemption.

(e) *Exempt transactions.* All of 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 Department, by rule or order, has prohibited use of advertisements as a condition of the availability of the exemption.

(f) *Excluded advertisements.* All of 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) 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 Securities and Exchange Commission (17 CFR 230.135) (relating to notice of proposed registered offerings).

(iii) Advertisements which comply with Rule 135c promulgated by the 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)(C) and (E) of the Securities Act of 1933 (15 U.S.C.A. § 77r(b)(4)(C) and (E)) when 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) or regulation crowdfunding.

(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 Department under section 205 or 206 of the act and with the Securities and Exchange Commission under section 5 of the Securities Act of 1933 may rely on the interpretive advice of the Securities and Exchange Commission in

Release No. 33-7856 (April 28, 2000) and subsequent advice given under that release. To the extent that the interpretive advice contradicts any requirement in subsection (a)(1) or (b)(1), the Department will not take any enforcement action if the person complies with the interpretive advice.

§ 606.041. (Reserved).

CHAPTER 609. REGULATIONS, FORMS AND ORDERS

§ 609.010. Use of prospective financial statements.

(a) Except as set forth in subsection (b), the use of prospective financial statements, including those contained in feasibility studies, 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) and 1-203(d)), unless the prospective financial statements used or distributed comply with the act and this section.

(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.

(4) Offers and sales of securities to an individual, and spouse when purchasing as joint tenants or as tenants by the entireties, 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 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—77aa).

(c) Except as set forth in subsection (d), prospective financial statements used or distributed in connection with the securities offerings described in subsection (a) must comply with the following requirements:

(1) *Assumptions.* Assumptions include:

(i) Prospective financial statements must be based on reasonable assumptions and 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 must be clearly identified and be consistent with the purpose of the presentation. With respect to multiple presentations there 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 Department will not recognize a person as a qualified independent reviewer or preparer unless that person can demonstrate adequate knowledge of the industry and the accounting principles and practices of the industry portrayed in the prospective financial statements.

(3) *Report.* The report must include:

(i) Prospective financial statements 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:

(A) Must include a statement of the work performed, including a review of the assumptions.

(B) May not contain a disclaimer with respect to the reasonableness of the assumptions or the reasonableness of the prospective financial statements.

(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 explicitly describing the hypothetical assumptions on which the projection is based, for example, "assuming the granting of the requested loan 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) 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 follow the requirements of § 401.020 (relating to professional responsibility).

(6) *Fair presentation.* Prospective financial statements must include material information necessary for a fair presentation including, 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 cover a minimum period of 3 years. The period must be extended if appropriate to evaluate properly the investment consequences.

(8) *Explanatory notes.* Prospective financial statements 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 must be clearly distinguished from historical financial statements and contain a conspicuous statement indicating that it is based on assumptions of the future.

(d) The Department will consider prospective financial statements examined in accordance with the Statement of Standards for Attestation Engagements promulgated by the American Institute of Certified Public Accountants, Inc. (SSAE Statement) to comply with this section if a standard report on an examination prepared in accordance with the SSAE Statement is issued by an independent person.

(e) The primary responsibility for prospective financial statements used or distributed under this section rests with management.

§ 609.011. Amendments to filings with Department.

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 all of 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 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 all of the following apply:

(1) A person who is offered or purchases securities or becomes a client is counted as a separate offeree, purchaser or client, unless the person is otherwise specifically excluded under this section.

(2) If more than one person, related by blood or marriage, are offerees, purchasers or clients, the persons are counted as one offeree, purchaser or client if they either:

- (i) Reside in the same household.
- (ii) Are under 18 years of age.

(3) An entity is counted as one person, and a direct or beneficial owner of equity interests or equity securities in the entity 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 to specifically acquire the securities being offered or purchased.

(ii) With respect to computing clients, 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 on the investment decisions of the direct or beneficial owners rather than on the investment objectives of the entity.

(4) Notwithstanding the provisions of paragraph (3)(i):

(i) In the case of a trust, 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, is counted only as one offeree, purchaser or client.

(ii) Multiple trusts are counted as one offeree, purchaser or client if all of the beneficiaries are related by blood or marriage.

(5) Notwithstanding the provisions of paragraph (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 is counted as one person.
 - (ii) The owners of the interests or securities in the entity are 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, and constructions and interpretations 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) Financial reports of broker-dealers or investment advisers required under Subpart C (relating to registration of broker-dealers, agents, investment advisers and investment adviser representatives and notice filings by Federally covered advisers).

(6) Exempt transactions under section 203(p) of the act.

(b) Offerings of securities registered under the Securities Act of 1933 (15 U.S.C.A. §§ 77a—77aa), or filings of proxy materials under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78qq) 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), adopted by the Securities and Exchange Commission or broker-dealer reports filed under the Securities Exchange Act of 1934 under regulations adopted thereunder are exempted from this chapter, except 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 (17 CFR 230.251—230.263) (relating to conditional small issues exemption) will not be recognized as “registration.”

§ 609.032. (Reserved).

§ 609.033. Accountants.

(a) *Qualification of accountants.*

(1) The Department will not recognize a person:

(i) As a certified public accountant who is not registered and in good standing under the laws of the place of the person's residence or principal office.

(ii) As a public accountant who is not in good standing and entitled to practice under the laws of the place of the individual's residence or principal office.

(2) The Department will not recognize a certified public accountant or public accountant as independent who is not in fact independent. For example, an accountant will be considered not independent with respect to a person, or any of its parents, its subsidiaries or other affiliates in which 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, the accountant or accountant's firm or a firm member had, or was committed to acquire, a direct financial interest or a material indirect financial interest.

(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, the accountant or accountant's firm or a firm member was connected as a promoter, underwriter, voting trustee, director, officer or employee.

(3) A firm will be considered independent in regard to a particular person if a former officer or employee of the person is employed by the firm and 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 the individual's employment by the person.

(4) In determining whether an accountant is in fact independent with respect to a particular registrant, the Department will give appropriate consideration to all relevant circumstances including evidence bearing on all relationships between the accountant and the registrant or any affiliate of the registrant, and will not confine itself to the relationships existing in connection with the filing of reports with the Department.

(b) *Accountant's reports.*

(1) *Auditor's report format.* The format of the auditor's report 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 must be in accordance with the reporting standards established by Statements on Standards for 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 must be in accordance with the reporting standards established by Statements on Standards for 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 under § 609.034 (relating to financial statements).

§ 609.034. Financial statements.

(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 (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.

(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.

(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)).

(4) The issuer is required to file proxy materials under section 203(o) of the act.

(c) If required under subsection (b), the issuer shall file the following financial statements, 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 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.

(i) These statements shall be audited up to the date of the latest audited balance sheet filed.

(ii) If changes in stockholders' equity accounts are set forth in a note to the financial statements, a separate statement of stockholders' equity 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) must be filed for the issuer and its subsidiaries in accordance with this section.

(4) 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.

(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 of the reorganization.

(5) 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) 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.

(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 is considered the acquisition of a business if the securities being registered under section 206 of the act are to be offered for the securities to be acquired, or if the purpose of the proxy statement is to effectuate the acquisition.

(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 the statements may not be omitted when the securities being registered under section 206 of the act are to be offered in exchange for the securities to be acquired, or if the purpose of the proxy statement is to effectuate the acquisition.

(7) 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).

(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 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.

(e) The financial statements required under subsections (c) and (d) must be included in the prospectus or offering circular distributed to offerees in this Commonwealth.

(f) For purposes of this subsection, the Department used the corporate form of financial statement title, but because financial statement title terminology may differ for other types of accounting entities, including nonprofit organizations, those entities shall include the analogous financial statements.

(g) If consistent with the protection of investors, the Department may:

(1) Permit the omission of one or more of the financial statements required under this section or the filing in substitution of appropriate statements of comparable character.

(2) Require the filing of other financial statements in addition to, or in substitution for, the financial statements required under this section or when the financial statements are necessary for an adequate presentation of the financial condition of the issuer.

(h) Subsections (b)(2) and (c) do not apply when an issuer offers or sells a security in an offering exempt from registration with the Securities and Exchange Commission under Tier 2 of regulation a adopted under the Securities Act of 1933 (15 U.S.C.A. §§ 77a—77aa) in good faith reliance on section 203(u) of the act.

§ 609.036. Financial statements; annual reports.

(a) *Distribution and auditing.*

(1) If an issuer is required under the act and this title to distribute financial information to securityholders, it must include all of the following financial statements:

(i) 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 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, 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, but because financial statement title terminology may differ for other types of accounting entities, including nonprofit organizations, those entities shall include the analogous financial statements.

§ 609.037. Foreign financial statements.

(a) Under section 609(c) of the act (70 P.S. § 1-609(c)), financial statements and financial information 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 all of the following apply:

(1) The securities which are the subject of the registration statement designated as Form F-9 by the 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 recognized statistical rating organizations.

(2) The securities which are the subject of a registration statement designated as Form F-7 by the Securities and Exchange Commission are offered for cash on the exercise of rights granted to existing securityholders.

(3) The securities which are the subject of a registration statement designated as Form F-8 by the Securities and Exchange Commission are securities to be issued in an exchange offer.

(4) The securities which are the subject of a registration statement designated as Form F-10 by the Securities and Exchange Commission are offered and sold pursuant to a prospectus in which the 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 considered to meet the requirement of subsection (a)(1).

CHAPTER 610. (Reserved)

§ 610.010. (Reserved).

Subpart G. GENERAL PROVISIONS

CHAPTER 701. ADMINISTRATIVE PROVISIONS

§ 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 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, 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. (Reserved)

§ 901.011. (Reserved).

Subpart I. TAKEOVER OFFERORS

CHAPTER 1001. TAKEOVER DISCLOSURES

§ 1001.010. Takeover offeror report regarding participating broker-dealers.

The 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), Department Form TDL-1 in accordance with the General Instructions thereto.

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