

RULES AND REGULATIONS

Title 12—COMMERCE, TRADE AND LOCAL GOVERNMENT

DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

[12 PA. CODE CH. 151]

Local Earned Income Tax

The Department of Community and Economic Development (Department), under the authority of Chapter 5 of The Local Tax Enabling Act (act) (53 P.S. §§ 6924.501—6924.517), adopts Chapter 151 (relating to local earned income tax) to read as set forth in Annex A.

Purpose

The purpose of Chapter 151 is to interpret and make specific the provisions in Chapter 5 of the act. Chapter 5 of the act provides for the consolidated collection of local earned income taxes. Chapter 5 of the act provides that the Department shall address the following areas by regulations:

- The filing of adjusted declarations of estimated net profits.
- The criteria under which the tax officer may waive the quarterly return and payment of income tax.
- The procedures for mandatory and voluntary mediation.
- The establishment of new county tax collection committees when political subdivisions have withdrawn from an established tax collection committee.
- The establishment of tax officer qualifications and requirements, including continuing education.
- The creation of standardized forms, reports, notices, returns and schedules in consultation with the Department of Revenue.

The proposed rulemaking was published at 46 Pa.B. 4179 (July 30, 2016). The public comment period closed on August 29, 2016. Public comments were received from three commentators. The Independent Regulatory Review Commission (IRRC) also provided comments. IRRC's sixth and seventh comments to the proposed rulemaking encompassed those of the public to the proposed rulemaking and thus responses to all comments are included in the responses to IRRC's comments as follows.

Comments

Comments were received from IRRC, the Pennsylvania State Association of Boroughs (PSAB), the Pennsylvania Institute of Certified Public Accountants (PICPA) and the Pennsylvania State Association of Township Supervisors. A comment was also received outside the comment period from Keystone Collections Group. All comments, including the late comment, are addressed as follows.

Comment # 1: § 151.1. Definitions—Clarity

Out-of-State employer

“Out-of-State employer” was defined in the proposed rulemaking as “an employer that does not have a place of business in this Commonwealth.” IRRC asked if the

regulations need to also address an out-of-State employer that does have a place of business in this Commonwealth? Do the definition and regulation adequately address residents in this Commonwealth who work for an out-of-State employer at a place of business outside of this Commonwealth? IRRC asked the Department to review this definition and explain how the regulation adequately covers all possible employment circumstances.

Response # 1:

The Department revised the definition of “out-of-State employer” to make clear that an employer is not an out-of-State employer if the employer has a place of business in this Commonwealth even if the employer's primary business operations occur out of State. Additionally, the Department revised § 151.12 (relating to voluntary withholding for resident employees employed outside of a tax collection district) to make the following clear that: 1) an out-of-State employer (an employer that does not have a place of business in this Commonwealth) does not need to withhold earned income tax for residents in this Commonwealth working at the employer's out-of-State place of business; and 2) an employer having a place of business in this Commonwealth and employing one or more persons (other than domestic servants) shall withhold the greater of an employee's resident tax or the employee's nonresident tax.

Comment # 2: Proposed § 151.5. Publication of a Policy and Procedure Manual—Clarity

This section discusses material that will be placed on the Department's web site. IRRC suggested including the web site address so that the reader can easily locate the documents.

Response # 2:

The Department agrees that a link to the Department's web site would be easier for readers and has added a link. This section is renumbered in this final-form rulemaking as § 151.6.

Comment # 3: § 151.11. Registration of employers—Clarity

Subsection (a)

This subsection references and reflects section 512(1) of the act (53 P.S. § 6924.512(1)). IRRC noted the act includes a time limit of “. . . within 15 days after becoming an employer. . . .” The regulation should include the 15-day time limit.

Subsection (b)

The second sentence of this subsection states “On or after January 1, 2012. . . .” IRRC questioned whether the date of January 1, 2012, is still needed. The Department should review this subsection and consider deleting this date.

Response # 3:

The Department agrees with this comment. The 15-day time limit has been added to subsection (a). Additionally, the Department agrees that the January 1, 2012, date is no longer needed and deleted it.

Comment # 4: § 151.21. Mandatory education for tax officers—Clarity

Subsections (a) and (b) require the person to “achieve a passing grade” on the respective certification exams. The

regulation is not clear on what constitutes a passing grade. IRRC recommended including in the regulation the specific grade required to pass the certification exams in both subsections.

Response # 4:

The Department agrees that a passing grade should be specified and revised § 151.21(a) and (b) (relating to mandatory education for tax officers) to indicate that a passing grade of 70% or higher is required on the certification exams.

Comment # 5: § 151.22. Minimum number of persons required to receive mandatory education and meet the qualifications and requirements for tax officers—Clarity

Minimum number of persons

This section requires a tax officer to designate at least one person for every five counties to satisfy the mandatory education requirements. Can the tax officer designate itself so that the minimum would be one or is the tax officer required to designate a second person?

Example

The beginning of this section requires the tax officer to designate at least one person for every five counties to satisfy certain education requirements whereas the example requires at least 4 employees. Could there be a circumstance when the tax officer itself and three employees could satisfy this requirement in the example? IRRC recommended reviewing the example to be sure it accurately reflects the stated requirement.

Response # 5:

A tax officer can designate itself so that the minimum number of persons needed to be designated for mandatory education requirements would be one person which could be the tax officer. This section has been revised to clarify this. This section has also been revised to clarify that, if the tax officer is an entity rather than a natural person, the tax officer shall appoint one natural person employed by the tax officer for every five counties served by the tax officer. The natural person so appointed would be required to satisfy the mandatory education requirements on behalf of the appointing tax officer. There could be a circumstance when the tax officer itself and three employees could satisfy the requirement in the example. The Department agrees that the example could cause confusion and has deleted the example from this section.

Comment # 6: § 151.23. Duties of a tax collection committee in selecting a tax officer.—Consistency with statute; Need; Economic impact—Clarity

Paragraph (1)(i)

Section 508(f)(1) of the act (53 P.S. § 6924.508(f)(1)) states “The Department shall, by regulation, establish the qualifications and requirements a tax officer must meet prior to being appointed and must meet for continuing appointment.” (Emphasis added.) IRRC recommended deleting paragraph (1)(i) because it relies on the Department’s Policy and Procedure Manual to set qualifications for tax officers. To be consistent with the act, the Department should establish the qualifications and requirements a tax officer shall meet in the regulation.

Paragraph (1)(ii)

There are two concerns with paragraph (1)(ii). First, paragraph (1)(ii) requires a written statement prepared by an “accountant professional.” PICPA commented that

“accountant professional” should be replaced by “Certified Public Accountant or Public Accountant.” IRRC agreed.

Second, PICPA believes that “exists as a solvent entity” is inconsistent with the act and the American Institute of Certified Public Accountants Code of Professional Conduct. IRRC recommended that the Department review this phrase in consultation with PICPA to establish an acceptable standard.

Paragraph (1)(iii)

This subparagraph requires a Statement on Standards for Attestation Engagements (SSAE) 16 audit “or other fiscal control audit.” It is not clear what would meet the alternative of the “other fiscal control audit.” IRRC recommended deleting this phrase or, if needed, replacing it with a clear alternative standard.

Reappointment of a tax officer

PSAB commented that paragraph (2), requiring at least five references, and paragraph (3), requiring an onsite visit, are not needed if the same tax officer is being reappointed by the tax collection committee. PSAB recommends bifurcating the appointing and reappointing requirements. The Department should consider amending the requirements in the circumstance that the tax committee reappoints the same tax officer.

Response # 6:

Paragraph (1)(i): The Department agrees that the tax officer qualifications are to be set by regulation. The Department deleted the reference to the Department’s Policy and Procedure Manual from this section Qualifications for tax officers are in paragraph (1)(i)—(viii).

Paragraph (1)(ii): The Department spoke with representatives from PICPA and discussed the prohibition against a public accountant attesting as to the solvency of an entity. After this discussion and independent research, the Department agrees that a public accountant is ethically prohibited under the AICPA Code of Professional Conduct from attesting to solvency. The Department removed this requirement. After further discussion, the Department and a PICPA representative reached the conclusion that, although there was a substitution for the attestation (“an agreed upon procedures engagement letter”), the substitute would not add much, if anything, more than a site visit combined with a fiscal audit (both of which are required by the regulation when choosing a tax officer). Because a substitution would increase costs without providing a benefit, the Department has chosen to delete the attestation requirement. Although the Department agrees with IRRC and PICPA that the reference in paragraph (1)(ii) to “accountant professional” should be replaced by the phrase “Certified Public Accountant or Public Accountant,” the Department deleted paragraph (1)(ii) so this comment is addressed by the removal.

Paragraph (1)(iii): The Department added the parenthetical language to add flexibility in the event that there is a new industry auditing standard or more than one standard is widely used and accepted. The Department did confirm with a PICPA representative that the SSAE 16 audit is the current industry standard. In response to this comment and in an effort to preserve flexibility, the Department revised the language to be “or other fiscal control audit meeting or exceeding SSAE 16 audit standards and approved by the Department in writing.”

Reappointment of a tax officer: The Department considered bifurcating the appointing and reappointing requirements for tax officers and considered amending the

requirements in the circumstance that the tax committee reappoints the same tax officer. However, the Department chose not to bifurcate the appointing and reappointing requirements. The Department believes that site visits and references are necessary, even for reappointment, given the elimination of solvency verification of the tax officer. Site visits, in particular, are an important means of verifying the existence of continuing operations of the tax officer. Additionally, as the membership of a tax collection committee changes, the Department believes that site visits and references are valuable tools for the new members of the tax collection committee who may be unfamiliar with the tax officer seeking reappointment. Similarly, references are important for reappointment to ensure that the tax officer seeking reappointment is still recommended to continue in the position.

Comment # 7: § 151.41. Rules for mediation—Statutory authority, Legislative intent; Reasonableness

\$500 filing fee for mediation

Under paragraph (1)(iv), the Department proposed to charge a \$500 filing fee for mediation. The \$500 filing fee is also mentioned in paragraph (3)(i). PSAB “adamantly opposes” the fee and questions the statutory authority for the fee. The Pennsylvania State Association of Township Supervisors also expressed concerns with the fee.

Section 505(k)(2)(viii) of the act (53 P.S. § 6924.505(k)(2)(viii)) provides that “Costs incurred by the department for mandatory mediation under this section shall be equitably assessed by the department against the parties to the mediation.” While the act provides a mechanism for the Department to recover costs incurred, the Department has not established how a flat fee would meet the act. Additionally, the Department has not established how a flat fee meets the statutory requirement to equitably assess its costs against the parties to the mediation. IRRC recommended deleting the \$500 flat fee from paragraphs (1)(iv) and (3)(i). The Department should also explain in the preamble to the final-form rulemaking how it will otherwise equitably assess the costs against the parties.

Timeline

Section 505(2)(iii) of the act states, in part, that the “mediation efforts shall be completed no later than 30 days following the notice that the dispute has met the threshold requirement. . . unless the time period is extended by mutual agreement of the parties to the mediation.” (Emphasis added.) Paragraphs (4) and (5) establish a timeline to complete the mediation “within 20 days but no later than 30 days following the Department’s determination” and rely on a mediator appointed by the Office of General Counsel. IRRC had three concerns.

First, the act provides the ability to extend the time period by mutual agreement, but this is not included in paragraphs (4) and (5). IRRC recommended adding the option to extend the time period to paragraphs (4) and (5).

Second, the Department provides written notice of its determination to all parties under paragraph (3)(iii), which by statute begins the 30-day period. However, paragraphs (4) and (5) differ from the act by stating “no later than 30 days following the Department’s determination.” To be consistent with the act, paragraphs (4) and (5) should state no longer than 30 days following the Department’s written notice provided in paragraph (3)(iii).

Third, the Department should explain how the regulation will accomplish the statutory requirement to com-

plete the mediation in 30 days, unless the time period is extended by mutual agreement.

Response # 7:

\$500 filing fee for mediation

In response to these comments, the Department deleted the \$500 filing fee. In its place, the Department will assess a fee for the costs it incurs in reviewing the notice of mediation and the written statements filed in response to the notice. The Department will equitably apportion the costs among the affected parties by assessing an affected party only for the costs incurred by the Department when reviewing that particular affected party’s notice and written statements. If two or more affected parties file a joint statement or notice, the costs incurred by the Department will be equally divided among those jointly-filing affected parties. The Department will notify each party of its assessed amount. The parties would be responsible for paying the assessed fee within 30 days of notification of the fee from the Department. The fee would be nonappealable. This section has been revised to reflect this change.

Timeline

The Department agrees that paragraphs (4) and (5) should be revised to add the option of extending the time period. The regulation has been revised accordingly.

The Department also agrees that to be consistent with the act, paragraph (4) should state “no longer than 30 days following the Department’s written notice provided in paragraph (3)(iii)” rather than “no longer than 30 days following the Department’s determination.” This section has been revised accordingly.

The Department disagrees that voluntary mediation must be completed no later than 30 days following the Department’s written notice provided in paragraph (3)(iii). Section 505(k)(2)(iii) of the act states, in part, that the “mediation efforts shall be completed no later than 30 days following the notice that the dispute has met the threshold requirement. . . unless the time period is extended by mutual agreement of the parties to the mediation.” Disputes requiring mandatory mediation are those meeting the threshold requirement while disputes falling short of that threshold may be subject to voluntary mediation as set forth in section 505(k)(1) of the act. Only those disputes meeting the threshold for mandatory mediation are subject to the 30-day timeline. However, recognizing the legislative intent for a speedy mediation process, the Department has retained the 30-day timeline for disputes subject to voluntary mediation but has the 30 days starting from the point the parties agree to voluntary mediation rather than from the Department’s written notice provided in paragraph (3)(iii). If the 30-day timeline started upon notification by the Department that the dispute did not meet the threshold, up to 5 days of those 30 days could be used by the parties, not for the mediation process itself, but for deciding whether to mediate. To preserve the full 30 days for the mediation process, the Department believes the timeline should begin when the parties agree to mediate. The Department did consult with the Office of General Counsel Dispute Resolution Program Office and it agreed with the Department’s proposed approach noting that the mediation timeline is tight even with this approach.

The Department recognizes that the statutorily-mandated 30-day timeline for completion of the mediation is an aggressive timeframe. Given this timeframe, the Department revised this section to require the Depart-

ment to turn disputes subject to mandatory mediation over to the Pennsylvania Office of General Counsel Dispute Resolution Coordinator on the same day the Department provides written notice rather than within 5 days of the notification. This revision results in the full 30-day period being used for the mediation process. Additionally, the mediator will seek the parties' mutual agreement to extend the time period for mediation if the mediator and the Department believe that such extension may be necessary. However, in adherence with the statutory timeline, the mediator will complete the mandatory mediation within 30 days of the Department's written notice provided in paragraph (3)(iii) unless the parties agree to extend the time. If a settlement is not reached within the 30-day period and the parties have not agreed to an extension, the mediation will be considered to be complete and unsuccessful.

For disputes subject to voluntary mediation, the parties have 30 days beginning from the time the parties agreed to mediate. Although 30 days is aggressive, it correlates with the timeframe established by the General Assembly for mandatory mediation and incentivizes the parties to resolve the dispute quickly. However, the parties may mutually agree to extend the 30-day deadline and parties who have agreed to voluntarily mediate are likely to agree to an extension if necessary.

The Department chose to mediate disputes through the Pennsylvania Office of General Counsel Dispute Resolution Program (Program) because the Program, established in June 2002, has a proven track record of efficiently resolving disputes resulting in savings of time and costs. A variety of agencies have utilized the Program successfully. The Program's success stories are detailed at <http://www.ogc.pa.gov/Services%20to%20Agencies/Mediation/Pages/SuccessStories.aspx>.

Comment # 8: § 151.61. Withdrawal and establishment of a new tax collection committee—Clarity

The second sentence of subsection (d) discusses election of the chairperson, vice chairperson and secretary, and also discusses duly appointed voting delegates. The section is not clear regarding whether the secretary is a duly appointed voting delegate. The Department should amend this subsection to clarify whether the secretary is a voting delegate or not.

Response # 8:

The Department agrees that this section is not clear and revised it to permit but not require the secretary to serve as a voting delegate. In adopting this approach, the Department consulted with tax collection servicers and found that some tax collection committees had their secretaries serve as voting delegates while others did not. To provide flexibility to the tax collection committees, the Department settled on this approach.

Comment # 9: Miscellaneous—Clarity

Section 151.41(3) (relating to rules for mediation) refers to "the threshold conditions for mandatory mediation." IRRRC recommended adding a cross-reference in paragraph (3) to paragraph (1)(iii) to clarify the threshold conditions to be met.

Section 151.51 (relating to rules for mediation) consists of a single paragraph, but includes the phrase "unless otherwise specified in this section." IRRRC recommended deleting this phrase.

Response # 9:

The Department agrees with these comments and added a cross-reference in § 151.41(3) to § 151.41(1)(iii) to clarify the threshold conditions to be met and has deleted "unless otherwise specified in this section" from § 151.51.

Comment # 10: § 151.23(5). Contract termination

Keystone Collection Group suggested deleting § 151.23(5) (relating to Duties of a tax collection committee in selecting a tax officer) for the following reasons: 1) it is contrary to general contract law; 2) it nullifies the terms of fair negotiation because many tax collection services costs, rates and commissions are calculated upon a term of years; 3) many professional services, including bonding and insurance, are tied to the length of the tax collection service contract and are based on a multiyear guaranteed contract term; and 4) the commission rate offered by tax collectors is usually closely tied to the length of the contract.

Response # 10:

The Department agrees with this comment and deleted § 151.23(5). The Department believes that § 151.23(4) sufficiently protects the public by requiring termination of the contract, after a 30-day cure period, if the tax officer fails to meet the requirements of § 151.23.

Overview

The Department made certain changes to the filing dates in §§ 151.2 and 151.3 (relating to procedures for filing adjusted declarations of estimated net profits; and procedures for filing taxable income not subject to withholding) to reflect changes made to the filing dates of section 502(c)(2)(i) and (ii) and (3) of the act (53 P.S. § 6924.502(c)(2)(ii) and (iii) and (3)) by the act of November 4, 2016 (P.L. 1154, No 150) (Act 150). Similarly, final-form § 151.4 (relating to filing of estimated tax by taxpayers whose major source of gross income is from farming) is added in this final-form rulemaking to reflect the addition of this provision in section 502(d) of the act under Act 150. Also, a change in the filing deadline was made in § 151.3 to reflect the same change made to section 512(a)(5) of the act under Act 150.

With respect to § 151.23(2), the Department also revised the language regarding references to permit tax officers to provide the tax collection committee with a list of references for the tax officer although the tax collection committee is still tasked with independently verifying the references. The Department made this revision because applicants for positions are generally permitted to provide their own list of references. Additionally, this approach is more efficient than the tax collection committee attempting to determine on its own who should serve as a reference for the tax officer. Because the tax collection committee must independently verify the references, the integrity of the references (although the references are provided by the tax officer) is not materially comprised.

With respect to § 151.26 (relating to bond amount for tax officers), the Department deleted the reference to the Department's Policy and Procedure Manual. The Department wants it to be clear that the requirements for the bond amount for tax officers is set by regulation and not set by the Department's Policy and Procedure Manual. The Department believes that this revision is similar to the change requested by IRRRC in comment # 6.

With respect to §§ 151.11 and 151.13 (relating to registration of employers; and elective filing and remit-

tance by multiwork location employers), the Department corrected citation references. In § 151.61(b)(1) and (2) (relating to withdrawal and establishment of a new tax collection committee), the Department added “as” to correct an inadvertent omission. In § 151.61(d), the Department deleted “his” and added “chief executive” to keep the gender neutrality of the subsection.

With respect to § 151.61(g), the Department added “30” after September to clarify the date by which a new tax collection committee shall establish an appeals board under section 505(j) of the act.

Section 151.1 (relating to definitions) sets forth definitions for words used in Chapter 151.

Section 151.2 sets forth the procedures and deadlines for taxpayers to file adjusted declarations of estimated net profits.

Section 151.3 sets forth the procedures and deadlines for taxpayers to file returns for taxable income not subject to withholding.

Final-form § 151.4 sets forth the procedures and deadlines for taxpayers whose major source of gross income is from farming to file a declaration of estimated tax.

Final-form § 151.5 (proposed § 151.4) (relating to refunds) addresses the refunding of tax overpayments.

Final-form § 151.6 (proposed § 151.5) (relating to publication of a Policy and Procedure Manual) requires the Department to develop and annually update a Policy and Procedure Manual to be posted on the Department’s web site. The Department’s web site includes a library of standardized forms, reports, notices, returns and schedules developed in consultation with the Department of Revenue.

Section 151.11 outlines which employers shall withhold taxes and file returns for their employees and specifies that employers shall require new employees to complete a Local Earned Income Taxpayer Residency Certification form. It also requires employers to keep the Local Earned Income Taxpayer Residency Certification form on file and identifies who has access to this information.

Section 151.12 indicates that out-of-State employers are not required to withhold income taxes for employees residing in this Commonwealth but employed outside this Commonwealth. It also provides for voluntary withholding.

Section 151.13 deals with the elective filing and remittance of taxes withheld by multiwork location employers. Under this section, an employer with more than one place of business in more than one tax collection district may elect to file one single combined return for all of its employees at all of its work locations in this Commonwealth.

Section 151.21 establishes the mandatory education requirement for initial certification and continuing certification of tax officers.

Section 151.22 (relating to minimum number of persons required to receive mandatory education and meet the qualifications and requirements for tax officers) establishes the minimum number of persons required to receive mandatory education and meet the qualifications and requirements for tax officers.

Section 151.23 delineates the requirements a tax officer shall meet and establishes that it is a duty of a tax collection committee to verify that the proposed tax officer meets those requirements.

Section 151.24 (relating to duties of an appointed tax officer) lists the duties of an appointed tax officer.

Section 151.25 (relating to point of contact for a tax collection committee) establishes that each tax collection committee shall provide a point of contact to the Department.

Section 151.26 addresses the bond amount for tax officers.

Section 151.41 explains the mediation process under the act.

Section 151.51 addresses the method of procurement for goods and services needed by tax collection committees.

Section 151.61 sets forth the timing and procedures to follow if a political subdivision desires to withdraw from governance by a specific tax collection committee.

Fiscal Impact

Commonwealth

The Department has incurred additional administrative costs in the implementation and operation of the act. However, these costs have been absorbed into the normal operating budget. The Department does not anticipate additional costs as a result of implementation of this final-form rulemaking.

Political subdivisions and the public

A report from the Legislative Budget and Finance Committee dated October 2016 estimates that revenue collections have increased by about \$173 million annually since 2012, the first full year of implementation of Chapter 5 of the act. This report, “The Impact of Act 32 on the Collection of Local Earned Income Taxes,” notes that implementation has simplified and increased the amount of earned income taxes collected. Municipalities, school districts and taxpayers have benefitted from the increased revenue generated by the enhanced collection efficiencies. The report recommends that the Department continue with its efforts to promulgate this final-form rulemaking because the regulations address certain areas of concerns noted in the report, namely auditing of tax officers, bonding requirements, and development of a policy and procedures manual by the Department.

Paperwork

New Statewide forms have been created to replace the forms created by each tax collector. These new forms are not more burdensome than the previous forms. Due to the uniformity and standardization of the forms, the paperwork burden has been reduced.

Effective Date

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

Sunset Date

A sunset date is not applicable as act under which Chapter 151 is authorized does not specify a sunset date.

Contact Person

For an explanation of this final-form rulemaking, contact Sean Sanderson, Local Government Policy Manager, Department of Community and Economic Development, Governor’s Center for Local Government Services, Commonwealth Keystone Building, 400 North Street, 4th Floor, Harrisburg, PA 17120.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on July 20, 2016, the Department submitted a copy of the notice of proposed rulemaking, published at 46 Pa.B. 4179, to IRRC and the Chairpersons of the House Commerce Committee and Senate Committee on Community, Economic and Recreational Development for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the House and Senate Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing this final-form rulemaking, the Board 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 July 18, 2018, this 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 July 19, 2018, and approved this final-form rulemaking.

Findings

The Department 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, 1 Pa. Code §§ 7.1 and 7.2.

(2) The regulation is necessary and appropriate for the implementation of Chapter 5 of the act.

Order

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

(a) The regulations of the Department, 12 Pa. Code, are amended by adding §§ 151.1—151.6, 151.11—151.13, 151.21—151.26, 151.41, 151.51 and 151.61 to read as set forth in Annex A.

(Editor's Note: Final-form § 151.4 was not included in the proposed rulemaking. Proposed §§ 151.4 and 151.5 are renumbered as §§ 151.5 and 151.6, respectively, in this final-form rulemaking.)

(b) The Department shall submit this order, Annex A and the Regulatory Analysis Form to IRRC, the House Commerce Committee, the Senate Community, Economic and Recreational Development Committee, the Office of Attorney General and the Office of General Counsel as required by law.

(c) This order shall become effective upon publication in the *Pennsylvania Bulletin*.

DENNIS M. DAVIN,
Secretary

(Editor's Note: See 48 Pa.B. 4752 (August 4, 2018) for IRRC's approval order.)

Fiscal Note: Fiscal Note 4-97 remains valid for the final adoption of the subject regulations.

Annex A**TITLE 12. COMMERCE, TRADE AND LOCAL GOVERNMENT****PART V. COMMUNITY AFFAIRS AND DEVELOPMENT****Subpart D. LOCAL EARNED INCOME TAX**

Chap.
151.

LOCAL EARNED INCOME TAX**CHAPTER 151. LOCAL EARNED INCOME TAX****GENERAL PROVISIONS**

- 151.1. Definitions.
- 151.2. Procedures for filing adjusted declarations of estimated net profits.
- 151.3. Procedures for filing taxable income not subject to withholding.
- 151.4. Filing of estimated tax by taxpayers whose major source of gross income is from farming.
- 151.5. Refunds.
- 151.6. Publication of a Policy and Procedure Manual.

WITHHOLDING

- 151.11. Registration of employers.
- 151.12. Voluntary withholding for resident employees employed outside of a tax collection district.
- 151.13. Elective filing and remittance by multiwork location employers.

TAX OFFICER

- 151.21. Mandatory education for tax officers.
- 151.22. Minimum number of persons required to receive mandatory education and meet the qualifications and requirements for tax officers.
- 151.23. Duties of a tax collection committee in selecting a tax officer.
- 151.24. Duties of an appointed tax officer.
- 151.25. Point of contact for a tax collection committee.
- 151.26. Bond amount for tax officers.

MEDIATION

- 151.41. Rules for mediation.

PROCUREMENT

- 151.51. Procurement of goods and services—general rule.

WITHDRAWAL AND ESTABLISHMENT OF A NEW TAX COLLECTION COMMITTEE

- 151.61. Withdrawal and establishment of a new tax collection committee.

GENERAL PROVISIONS**§ 151.1. Definitions.**

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

Act—The Local Tax Enabling Act (53 P.S. §§ 6924.101—6924.901).

Out-of-State employer—An employer that does not have a place of business in this Commonwealth. An employer is not an out-of-State employer if the employer has a place of business in this Commonwealth even if the employer's primary business operations occur out of State.

§ 151.2. Procedures for filing adjusted declarations of estimated net profits.

Under section 502(c)(2)(iv) of the act (53 P.S. § 6924.502(c)(2)(iv)), every taxpayer who has filed the declaration of taxpayer's estimated net profits required under section 502(c) of the act and who anticipates additional net profits not previously declared or has overestimated anticipated net profits shall file, on or before April 15 of the current year, July 15 of the current year, October 15 of the current year or January 15 of the succeeding year, whichever date next follows the date on which the taxpayer first anticipates the change in antici-

pated net profits, an adjusted declaration of estimated net profits and pay to the resident tax officer on or before the quarterly payment dates that remain after the filing of the adjusted declaration, beginning with the quarterly payment date in which the adjusted declaration is filed, equal installments of the tax due as reported on the adjusted declaration of estimated net profits.

§ 151.3. Procedures for filing taxable income not subject to withholding.

Under section 502(c)(3) of the act (53 P.S. § 6924.502(c)(3)), every taxpayer who receives other taxable income not subject to withholding under section 512(3) of the act (53 P.S. § 6924.512(3)) shall make and file with the resident tax officer a quarterly return on or before April 15 of the current year, July 15 of the current year, October 15 of the current year and January 15 of the succeeding year setting forth the aggregate amount of actual or estimated taxable income not subject to withholding attributable to the taxpayer during the 3-month periods ending March 31 of the current year, June 30 of the current year, September 30 of the current year and December 31 of the current year, respectively, and subject to income tax, together with the source, nature, anticipated frequency and location of the taxable income. Every taxpayer filing a return shall, at the time of filing the return, pay to the resident tax officer the amount of income tax due or estimated to be due. The tax officer may waive the requirement to file a quarterly return and payment of income tax when the taxable income is received on less than a quarterly frequency or is anticipated to be an aggregate amount of less than \$12,000 annually.

§ 151.4. Filing of estimated tax by taxpayers whose major source of gross income is from farming.

Under section 502(d) of the act (53 P.S. § 6924.502(d)), a declaration of estimated tax of an individual having an estimated gross income from farming for the taxable year which is at least 2/3 of the individual's total estimated gross income for the taxable year may be filed at any time on or before January 15 of the succeeding year, but if the individual files a final return and pays the entire tax by March 1, the return may be considered as the individual's declaration due on or before January 15.

§ 151.5. Refunds.

A tax officer shall refund overpayment of taxes to the taxpayer in accordance with 53 Pa.C.S. §§ 8421—8438 (relating to Local Taxpayers Bill of Rights Act).

§ 151.6. Publication of a Policy and Procedure Manual.

The Department will develop and post on its web site a Policy and Procedure Manual. The Department will update the Policy and Procedure Manual on an annual basis. The Department's web site includes a library of standardized forms, reports, notices, returns and schedules developed in consultation with the Department of Revenue to be utilized by the local governments and the regulated community. The Department's previously-referenced web site is available at <http://dced.pa.gov/local-government/local-income-tax-information>.

WITHHOLDING

§ 151.11. Registration of employers.

(a) Under section 512(a)(1) of the act (53 P.S. § 6924.512(a)(1)), if an employer has a place of business within a tax collection district and employs one or more persons, other than domestic servants, for compensation,

the employer shall register with the tax officer for that tax collection district within 15 days after becoming an employer.

(b) An employer shall collect and maintain the information as required under section 512 of the act. An employer shall require each new employee to complete a Local Earned Income Taxpayer Residency Certification form as provided by the Department to help identify the political subdivision where an employee is domiciled and employed. Additionally, an employer shall require each current employee who establishes a new address or domicile to complete the Local Earned Income Taxpayer Residency Certification form. The employer shall retain residency information provided by the employee and, upon request, provide this information to the tax officer to reconcile, correct or otherwise confirm the political subdivision information for the employee.

§ 151.12. Voluntary withholding for resident employees employed outside of a tax collection district.

Under section 512 of the act (53 P.S. § 6924.512), an out-of-State employer who employs a resident of this Commonwealth at a work location outside of this Commonwealth is not required to withhold the local earned income tax. An out-of-State employer may voluntarily agree with the employee to withhold and remit the tax along with the appropriate forms to the tax officer of the tax collection district in which the employee resides. Every employer having a place of business within a tax collection district and employing one or more persons, other than domestic servants, shall withhold the greater of the employee's resident tax or the employee's nonresident tax.

§ 151.13. Elective filing and remittance by multi-work location employers.

Under section 512(a)(5) of the act (53 P.S. § 6924.512(a)(5)), an employer with more than one place of business in more than one tax collection district may elect to remit the tax withheld from all of its employees in all of its work locations in this Commonwealth for the preceding month and file, on or before the last day of the month succeeding the month for which the return under section 512(a)(4) of the act is due, one single combined monthly return as follows:

(1) To be eligible to file combined returns and make combined payments, the employer shall file:

(i) A notice of its intention to file combined returns and make combined payments with the tax officer for each place of employment at least 1 month prior to filing its first combined return or making its first combined payment.

(ii) Its combined return and remit its combined payment electronically on a monthly, rather than quarterly, basis.

(2) An employer with payroll operations located within one tax collection district shall file the combined return and remittance of earned income taxes withheld to the tax officer in that tax collection district. An employer with payroll operations located within more than one tax collection district shall file the combined return and remittance of earned income taxes withheld to the tax officer of any tax collection district in which any of the employer's payroll operations are located. If the tax officer declines in writing to receive the combined filing, the employer may choose to file a combined return with

any tax officer in a tax collection district where the employer maintains a place of business employing one or more employees.

(3) An eligible employer's election to file combined returns and make combined payments does not alter an employee's workplace for purposes of nonresident tax liability.

(4) An employer may not select a tax officer to receive combined tax returns and remittances more frequently than on a tax year basis. The selection of a tax officer shall be made at the time of filing the tax return.

(5) If an employer outsources payroll functions to a payroll processing company, the employer's place of business that forwards payroll data to the company is deemed the employer's payroll operations location. The location of the payroll processing company is not the employer's payroll operations location.

TAX OFFICER

§ 151.21. Mandatory education for tax officers.

(a) *Initial certification.* Persons and entities seeking appointment as tax officers shall take and achieve a passing grade of 70% or above on the initial certification exam given by or on behalf of the Department.

(b) *Continuing certification.* Persons and entities seeking to maintain appointments as tax officers shall take and achieve a passing grade of 70% or above on the annual continuing certification exam given by or on behalf of the Department.

§ 151.22. Minimum number of persons required to receive mandatory education and meet the qualifications and requirements for tax officers.

A tax officer or a person or entity seeking appointment as a tax officer shall designate at least one person for every five counties for which the tax officer has been named a tax officer to satisfy the mandatory education requirements under section 508(e) of the act (53 P.S. § 6924.508(e)) and meet the qualifications and requirements for tax officers under this chapter. A tax officer may designate itself to satisfy this requirement. If the tax officer is an entity rather than a natural person, the tax officer shall appoint one natural person employed by the tax officer for every five counties served by the tax officer.

§ 151.23. Duties of a tax collection committee in selecting a tax officer.

Before appointing or reappointing a tax officer for any tax collection district, a tax collection committee shall:

(1) Verify that the proposed tax officer meets the following requirements:

(i) Has undergone a SSAE 16 audit (or other fiscal control audit meeting or exceeding SSAE 16 audit standards and approved by the Department in writing) at least once in the last 2 years.

(ii) Has certified with the tax collection committee that it does not use a third party to process employer or individual taxpayer tax returns.

(iii) Has demonstrated timely earned income tax distributions if the tax officer already serves as a tax officer for another tax collection committee.

(iv) Has disclosed in writing any claim, including, but not limited to, litigation filed in either state or Federal court, brought by a municipality, school district, tax

collection committee or other tax officer against the tax officer or its insurer regarding the collection or distribution of earned income taxes.

(v) Meets the requirements of §§ 151.21 and 151.22 (relating to mandatory education for tax officers; and minimum number of persons required to receive mandatory education and meet the qualifications and requirements for tax officers).

(vi) Has not been convicted of a felony involving fraud, extortion or dishonesty in any jurisdiction.

(vii) Has not engaged in conduct which significantly adversely reflects on the proposed tax officer's credibility, honesty or integrity.

(viii) Is able to attain the bond required under section 509(d) of the act (53 P.S. § 6924.509(d)).

(2) Receive a minimum of five positive references for the tax officer. The references shall be contacted independently by the tax collection committee and may be provided by the tax officer.

(3) Conduct at least one onsite visit to the office of the tax officer prior to selecting the tax officer. A minimum of three tax collection committee delegates shall attend the onsite visit.

(4) Include in the agreement between the tax collection committee and the tax officer a termination clause that allows the tax collection committee to terminate the agreement if the tax officer fails to meet the requirements of this section. The termination clause must provide that the tax collection committee shall terminate the agreement no later than 30 days after it provides written notice to the tax officer that the tax officer has failed to comply with the requirements of this section and the tax officer has failed to cure the noncompliance within the 30-day notice period.

§ 151.24. Duties of an appointed tax officer.

A tax officer shall notify the Department and all the tax collection committees for which it collects taxes if it fails to continually meet the requirements of §§ 151.21—151.23 (relating to mandatory education for tax officers; minimum number of persons required to receive mandatory education and meet the qualifications and requirements for tax officers; and duties of a tax collection committee in selecting a tax officer). Failure of the tax officer to comply with this section may result in the tax officer losing its certification.

§ 151.25. Point of contact for a tax collection committee.

Each tax collection committee shall identify to the Department a point of contact who is available during normal business hours. The point of contact does not need to be a delegate of the tax collection committee. Each tax collection committee shall provide the point of contact's phone number, e-mail address and physical address. The tax collection committee shall notify the Department if the point of contact changes.

§ 151.26. Bond amount for tax officers.

(a) Section 509(d) of the act (53 P.S. § 6924.509(d)) requires that tax collection committee shall fix the amount of the bond in an amount equal to the maximum amount of taxes that may be held in the possession of the tax officer at any given time or an amount sufficient, in combination with fiscal controls, insurance, and other risk

management and loss prevention measures used by the tax collection district, to secure the financial responsibility of the tax officer.

(b) When a tax collection committee agrees to a bond amount less than the maximum amount of taxes that may be held in the possession of the tax officer at any given time, the tax collection committee shall do so by resolution. The tax collection committee shall expressly indicate in the resolution the reasons why it has agreed to a lesser bond amount.

MEDIATION

§ 151.41. Rules for mediation.

The following practices and procedures for mediation apply.

(1) One or more affected political subdivisions shall give written notice to the tax collection committee and the Department of the desire to submit the disputed matter to mediation by the Department. Thereafter, the political subdivision, tax collection committee and tax officer shall mediate in accordance with this section.

(i) Only a political subdivision may initiate a mediation request.

(ii) A political subdivision shall send the notice by regular mail.

(iii) The notice must include a statement indicating whether or not the dispute is subject to mandatory mediation. If a dispute involves a 10% or greater deviation from taxes received in the previous tax year, the parties are subject to mandatory mediation. If a dispute involves less than the 10% threshold, the parties may agree to undergo voluntary mediation in accordance with this section.

(2) Upon receipt of the notice, the Department will provide a copy of the notice to the tax officer. Within 20 days of the submission of the notice, the political subdivision, tax collection committee and tax officer shall each submit a written statement, not exceeding five pages, to the Department and the affected parties stating their positions as to the disputed and undisputed facts and issues in the case and whether prior settlement negotiations have occurred. The Department may decline to consider any information within a statement filed after the 20-day deadline.

(3) Within 30 days of the Department's receipt of the notice, the Department will determine whether the dispute meets the threshold conditions for mandatory mediation set forth in paragraph (1)(iii).

(i) If the issue being mediated is the same for more than one political subdivision, the political subdivisions shall combine their notices into one notice, which may not exceed five pages.

(ii) The Department's determination is final and not subject to appeal.

(iii) The Department will provide written notice of its determination to all affected parties within 5 days of its determination. The Department may provide the notice by e-mail, if available.

(iv) The Department will assess a fee to cover costs incurred by the Department in reviewing the mediation notice submitted by the political subdivision and the responses thereto. The Department will equitably apportion the costs among the affected parties by assessing each affected party only for the costs incurred by the

Department when reviewing that particular affected party's notice and written statements. If two or more affected parties file a joint statement or notice, the costs incurred by the Department for reviewing the joint filing will be equally divided among those jointly-filing affected parties. The Department will notify the parties in writing of the fee assessment. The fee is not refundable and not subject to appeal. The parties shall pay their assessed portion of the fee by check within 30 days of notification of assessment by the Department.

(4) If the Department determines that the dispute requires mandatory mediation, the Department will refer the matter to the Pennsylvania Office of General Counsel Dispute Resolution Coordinator simultaneously with the written notice provided under paragraph (3)(iii). The coordinator will appoint an Office of General Counsel mediator to mediate the dispute. The selection of the mediator is final and not subject to appeal. The mediator will seek the parties' mutual agreement to extend the time period for mediation if the mediator and the Department believe that the extension may be necessary. The mediator will complete the mediation no later than 30 days following the Department's written notice provided in paragraph (3)(iii) unless the time period is extended by the mutual agreement of the parties to the mediation. Except as otherwise provided in this section, the mediation will be conducted under the rules in the Office of General Counsel Mediation Handbook. If the mediator incurs costs or imposes other mediation fees upon the parties, the costs or fees, or both, will be equitably assessed. The assessment is final and not subject to appeal.

(i) The parties shall participate in the mediation in good faith. The parties shall have an official authorized to settle the matter on their behalf available at the mediation. The mediator may require a party that fails to participate in good faith to pay all the costs of the mediation.

(ii) The mediator may request that Department personnel be present for all or a portion of the mediation.

(5) If the Department determines that the dispute involves voluntary mediation, all parties involved in the mediation, including the Department, may agree to mediate the issue through the Pennsylvania Office of General Counsel Dispute Resolution Program. The agreement to voluntarily mediate shall be made within 5 days of the Department's written notice provided in paragraph (3)(iii). Upon agreement by the parties to voluntary mediation, the Department will immediately refer the matter to the Office of General Counsel Dispute Resolution Coordinator. The coordinator will appoint a mediator to mediate the matter. The selection of the mediator is final and not subject to appeal. The mediator will seek the parties' mutual agreement to extend the time period for mediation if the mediator and the Department believe that the extension may be necessary. The mediator will complete the mediation no later than 30 days following the agreement by the parties to mediate the issue unless the time period is extended by the mutual agreement of the parties to the mediation. Except as otherwise provided in this section, the mediation will be conducted under the rules in the Office of General Counsel Mediation Handbook. If the mediator incurs costs or imposes other mediation fees upon the affected parties, the costs or fees, or both, will be equitably assessed. The cost assessment is final and not subject to appeal.

(i) The parties shall participate in the mediation in good faith. The parties shall have an official authorized to

settle the matter on their behalf available at the mediation. The mediator may require a party that fails to participate in good faith to pay all the costs of the mediation.

(ii) The mediator may request that Department personnel be present for all or a portion of the mediation.

(6) Mediation sessions are closed to the public and are not subject to the requirements of 65 Pa.C.S. Chapter 7 (relating to Sunshine Act).

(7) Offers or settlements made in a mediation session, excluding the final written settlement agreement, are not admissible as evidence in subsequent judicial or administrative proceedings in accordance with 42 Pa.C.S. § 5949 (relating to confidential mediation communications and documents).

(8) If a settlement is reached during the mediation, the Department will prepare a written settlement agreement and obtain all necessary signatures within 30 days of the agreement of the parties to settle the issue. The settlement agreement is binding upon the parties to the agreement. The settlement agreement is subject to the Right-to-Know Law (65 P.S. §§ 67.101—67.3104). The agreement is admissible as evidence in subsequent judicial or administrative proceedings in accordance with the Pennsylvania Rules of Court, the Pennsylvania Rules of Evidence and 42 Pa.C.S. § 5949.

(9) If the mediation does not result in a written agreement signed by the parties as provided in paragraph (8), the mediation is deemed unsuccessful unless all parties and the Department agree in writing to extend the mediation. The mediator may determine that the mediation is unsuccessful and terminate the mediation if the parties have not executed a settlement agreement by the ending date of the extension or of any further extension agreed upon by the affected parties and the mediator.

PROCUREMENT

§ 151.51. Procurement of goods and services—general rule.

Tax collection committees shall procure goods and services in accordance with section 1802 of The County Code (16 P.S. § 1802) through competitive sealed bids. References in section 1802 of The County Code to county officials shall be deemed to refer to a designated procurement officer of the tax collection committee.

WITHDRAWAL AND ESTABLISHMENT OF A NEW TAX COLLECTION COMMITTEE

§ 151.61. Withdrawal and establishment of a new tax collection committee.

(a) *Resolution to withdraw.* Under section 505(m) of the act (53 P.S. § 6924.505(m)), a political subdivision governed by a tax collection committee established under section 505(m) of the act may, within the 90-day period ending November 15, 2013, and November 15 every fourth year thereafter, adopt and file with the Department and the tax collection committee a resolution evidencing its desire to withdraw from governance by the tax collection committee as of January 1 of the second succeeding calendar year. If a majority of the governing bodies of the political subdivisions adopt resolutions evidencing a desire to withdraw, a new tax collection committee shall be established in accordance with the following:

(1) The establishment of a new tax collection committee may not alter the geographic boundaries or the political subdivisions of the tax collection district.

(2) The old tax collection committee shall stay in effect through December 31 of the first succeeding calendar year after the November 15 date to adopt resolutions evidencing a desire to withdraw.

(3) The new tax collection committee shall become effective as of January 1 of the second succeeding calendar year after the November 15 date to adopt resolutions evidencing a desire to withdraw.

(4) Other than the timing requirements as provided for in this section, the new tax collection committee shall have all the obligations, duties and powers and be subject to the quorum and voting rights provisions provided for in Chapter 5 of the act (53 P.S. §§ 6924.501—6924.517) and this chapter.

(b) *Delegates.*

(1) The governing body of each political subdivision within the tax collection district that imposed an income tax prior to July 1 of the same year the November 15 date to adopt resolutions evidencing a desire to withdraw occurs shall appoint one voting delegate and one or more alternates to represent the political subdivision on the new tax collection committee by September 15 of the succeeding calendar year after the November 15 date to adopt resolutions evidencing a desire to withdraw. The governing body of each political subdivision that after June 30 of the same year as the November 15 date to adopt resolutions evidencing a desire to withdraw occurs imposes an income tax for the first time shall appoint one voting delegate and one or more alternates to represent the political subdivision on the tax collection committee. A voting delegate or alternate shall serve at the pleasure of the governing body of the political subdivision.

(2) The governing body of each political subdivision within the tax collection district that prior to July 1 of the same year as the November 15 date to adopt resolutions evidencing a desire to withdraw occurs does not impose an income tax may appoint one nonvoting delegate and one or more alternates to represent the political subdivision on the tax collection committee. If after June 30 of the same year as the November 15 date to adopt resolutions evidencing a desire to withdraw occurs the political subdivision imposes an income tax, the nonvoting delegate shall become a voting delegate to represent the political subdivision on the tax collection committee.

(c) *First meeting.* The first meeting of the tax collection committee in the tax collection district shall be on or before May 15 of the year subsequent to the November 15 date to adopt resolutions evidencing a desire to withdraw. The chair of the county commissioners or the chief executive of the county in which the tax collection district is primarily located or the chair's designee shall schedule the first meeting of the tax collection committee and provide, at least 21 days before the meeting, public notice, as required under 65 Pa.C.S. § 703 (relating to definitions), and notice by first class mail by March 15 of the year subsequent to the November 15 date to adopt resolutions evidencing a desire to withdraw to the Department and to the governing body of each political subdivision located in the tax collection district.

(d) *Establishment of tax collection committee.* The chair of the county commissioners or the chair's designee or the chief executive of the county or the chief executive's

designee shall convene the first meeting of the tax collection committee, conduct the meeting and record all votes until a chairperson, vice chairperson and secretary are elected by the tax collection committee. The voting delegates of the tax collection committee shall elect a chairperson and a vice chairperson, each of whom shall be duly appointed voting delegates, and a secretary who may be a duly appointed voting delegate. If the secretary is a duly appointed voting delegate, this shall be noted on the record at all meetings. The chairperson shall schedule meetings, set the agenda, conduct meetings, record votes and perform other duties as determined by the tax collection committee. The secretary shall maintain the minutes and records of the tax collection committee and provide notices to each delegate and alternate appointed to the tax collection committee.

(e) *Bylaws.* Before July 16 of the year subsequent to the November 15 date to adopt resolutions evidencing a desire to withdraw, the delegates of the new tax collection committee shall adopt bylaws to govern the tax collection committee and notify the Department within 30 days of adoption. The Department will provide sample bylaws to the tax collection committee. The tax collection committee shall provide written notice to each delegate and alternate delegate informing each delegate and alternate delegate that the adoption or amendment of bylaws will be considered at a meeting. The written notice must include copies of the proposed bylaws or amendments. The bylaws for each tax collection committee must include:

- (1) Rules of procedure, quorum requirements, voting rights and provisions for managing the affairs of the tax collection committee.
- (2) A list of officers, their terms and powers, and a process for their election.
- (3) Meetings, including special meetings.
- (4) The process for adopting and amending bylaws.
- (5) The procedure for the addition of new political subdivisions to the tax collection committee.

(f) *Election of officers.* Upon the election of any new officers, the tax collection committee shall notify the Department within 30 days and shall provide the Department with the name and address of each officer.

(g) *Appeals board.* By September 30 of the year subsequent to the November 15 date to adopt resolutions evidencing a desire to withdraw, the new tax collection committee shall establish an appeals board under section 505(j) of the act and this chapter.

[Pa.B. Doc. No. 18-1347. Filed for public inspection August 31, 2018, 9:00 a.m.]

Title 58—RECREATION
FISH AND BOAT COMMISSION
[58 PA. CODE CH. 53]
Commission Property

The Fish and Boat Commission (Commission) amends Chapter 53 (relating to Commission property) to read as set forth in Annex A. The Commission is publishing this final-form rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code).

A. Effective Date

This final-form rulemaking will go into effect upon publication in the *Pennsylvania Bulletin*.

B. Contact Person

For further information on this final-form rulemaking, contact Wayne Melnick, Esq., P.O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This final-form rulemaking is available on the Commission's web site at www.fish.state.pa.us.

C. Statutory Authority

The amendments to § 53.11 (relating to Off-highway vehicles, snowmobiles and mobility devices) are published under the statutory authority of section 741 of the code (relating to control of property).

D. Purpose and Background

This final-form rulemaking is designed to simplify and improve the Commission's property regulations. The specific purpose of the amendments is described in more detail under the summary of changes.

E. Summary of Changes

Section 53.11(c) currently allows persons who are exempt from the fishing license requirement under section 2709(b) of the code (relating to exemptions from license requirements) and persons who are deprived of the use of a leg or both legs in a manner that significantly limits mobility to apply for a permit to use an off-road motorized vehicle on Commission property for the purpose of gaining access to fishing or boating opportunities. A recent review of this section and the Commission's application disclosed that both are in need of updating so that they meet current requirements of the Americans with Disabilities Act of 1990 (ADA) (42 U.S.C.A. §§ 12101—12213) and United States Department of Justice regulations implementing the requirements of the ADA. In addition, to give the Commission more flexibility in adapting to future changes in the law, the Commission proposes deleting certain language from § 53.11 and relying on the application form and the conditions in the permit. The Commission also proposes housekeeping changes to subsection (a).

The Commission amends § 53.11 to read as set forth set forth in Annex A.

F. Paperwork

This final-form rulemaking will not increase paperwork and will not create new paperwork requirements.

G. Fiscal Impact

This final-form rulemaking will not have adverse fiscal impacts on the Commonwealth or its political subdivisions. This final-form rulemaking will not impose new costs on the private sector or the general public.

H. Public Involvement

Notice of proposed rulemaking was published at 48 Pa.B. 2655 (May 5, 2018). The Commission did not receive public comments regarding the proposed rulemaking.

Findings

The Commission finds that:

- (1) Public notice of intention to adopt the amendments adopted by this order has been 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 promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided, and no public comments were received.

(3) The adoption of the amendments of the Commission in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statutes.

Order

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

(a) The regulations of the Commission, 58 Pa. Code Chapter 53, are amended by amending § 53.11 in Annex A.

(b) The Executive Director will submit this order and Annex A to the Office of Attorney General for approval as to legality and form as required by law.

(c) The Executive Director shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

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

JOHN A. ARWAY,
Executive Director

Fiscal Note: Fiscal Note 48A-280 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart A. GENERAL PROVISIONS

CHAPTER 53. COMMISSION PROPERTY

§ 53.11. Off-highway vehicles, snowmobiles and mobility devices.

(a) *General rule.* Except as provided in subsection (c), the use of off-road motorized vehicles is prohibited on Commission-owned or -controlled property. As used in this subsection, “off-road motorized vehicle” means a motorized vehicle specifically designed for this use. The term includes trail bikes, Tote Gotes, all-terrain vehicles, air cushioned vehicles, track vehicles and hydrofoils. The term does not include a vehicle licensed or registered for on-road use, such as a 4 by 4 sport utility vehicle, and the like.

(b) *Snowmobiles.* It is unlawful to operate a snowmobile on Commission-owned or -controlled property except in areas designated for use by the Executive Director and so posted. The Commission will maintain a list of areas when use is permitted. In those areas where use of snowmobiles is permitted, the following conditions apply:

(1) Snowmobiles may be loaded or unloaded in Commission parking areas unless otherwise posted.

(2) Snowmobiles may be operated in parking areas only for the purpose of direct access and egress to other areas where operation is permitted. Parking areas may not be used for general snowmobile operation.

(3) The operation of snowmobiles on Commission-owned and -controlled property is at the sole risk of the operator. The Commission assumes no responsibility for the operations and makes no representations as to the suitability of trails or areas for their use.

(4) The operation of snowmobiles on frozen lakes, ponds, rivers and streams is prohibited.

(c) *Persons with disabilities.*

(1) *Motorized wheelchairs.* A person whose disability requires him to use a motorized wheelchair or similar device powered by an electric motor may use the device on Commission property. The Commission does not represent that Commission properties except those specifically marked and designated for access by persons with disabilities are suitable for this use.

(2) *Other power-driven mobility devices.* The Executive Director or a designee may permit persons who have a disability for which they need to use other power-driven mobility devices to use them on Commission property for the purpose of gaining access to fishing or boating opportunities under all of the following conditions:

(i) The person applies in writing for permission on the form provided by the Commission and sends the application to the Director, Bureau of Law Enforcement, Pennsylvania Fish and Boat Commission, Post Office Box 67000, Harrisburg, Pennsylvania 17106-7000.

(ii) The person who has received permission under subparagraph (i) complies with the written conditions of the permit.

(iii) For purposes of this paragraph, “other power-driven mobility devices” means any mobility device, other than a wheelchair, powered by battery, fuel or other engine that is used by persons with a mobility disability for the purpose of locomotion. The term includes golf carts and electronic personal assistance mobility devices such as a Segway or any mobility device designed to operate in areas without defined pedestrian routes, regardless of whether it is designed primarily for use by persons with a mobility disability.

[Pa.B. Doc. No. 18-1348. Filed for public inspection August 31, 2018, 9:00 a.m.]

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 65]

Fishing; Special Fishing Regulations

The Fish and Boat Commission (Commission) amends Chapter 65 (relating to special fishing regulations). The Commission is publishing this final-form rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code).

A. *Effective Date*

This final-form rulemaking will go into effect upon publication in the *Pennsylvania Bulletin*.

B. *Contact Person*

For further information on this final-form rulemaking, contact Wayne Melnick, Esq., P.O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This final-form rulemaking is available on the Commission’s web site at www.fish.state.pa.us.

C. Statutory Authority

The amendments to § 65.24 (relating to miscellaneous special regulations) are published under the statutory authority of section 2307 of the code (relating to waters limited to specific purposes).

D. Purpose and Background

This final-form rulemaking is designed to improve, enhance and update the Commission's fishing regulations. The specific purpose of the amendments is described in more detail under the summary of changes.

E. Summary of Changes

In 2011 and 2012, the Commission applied two black bass angling regulation changes to the Susquehanna River from Sunbury downriver to York Haven (middle Susquehanna River), the Susquehanna River from York Haven downriver to Holtwood Dam (lower Susquehanna River) and the Juniata River from Port Royal downriver to the mouth (lower Juniata River). In 2011, the Commission removed these river sections from the Big Bass Program and a year-round catch-and-immediate release regulation was enacted. In 2012, the Commission adjusted this regulation to include a closed season for black bass from May 1 to the opening day of bass season in mid-June, with a catch and immediate release regulation remaining for the rest of the year. Bass tournaments were limited to catch-measure-immediate release only, with no weigh-in tournaments allowed.

The regulations implemented during 2011 and 2012 to protect Smallmouth Bass residing in the middle and lower Susquehanna River and the lower Juniata River were not intended to be permanent. Additionally, the Commission has received a number of complaints since these regulations went into effect stating that anglers are violating the closed season and the regulation is largely unenforceable. Further, recent changes in population characteristics of Smallmouth Bass in the middle Susquehanna River, lower Susquehanna River and lower Juniata River warrant a review of the current regulations to determine whether they are continuing to serve their intended role as part of managing this fishery.

The Commission uses an adaptive management approach to remove and reinstitute, if necessary, closed season regulations currently applied to these river reaches. By establishing a set of population recovery benchmarks, Commission staff developed guidance on when to remove current closed season regulations as well as when to reinstitute them should conditions change negatively in the future. A secondary benefit of this approach is public transparency as benchmark values for different metrics will be disseminated and annual evaluations will allow for up-to-date comparisons against benchmarks. This approach may streamline and expedite future regulatory action.

Commission staff developed a series of metrics to assess changes to the Smallmouth Bass population that could warrant removal as well as the application of closed season regulations based upon population characteristics. These data and literature-derived values set benchmarks for amending existing regulations as well as provide guidance for reinstitution should conditions change negatively in the future. These benchmarks are scientifically based using available data and literature and are set at a standard to reflect the world-class fishery for which these waters are renowned. The application of the benchmarks will be similar to adaptive management strategies utilized by the Atlantic States Marine Fisheries Commission and the Great Lakes Fishery Commission. These metrics focus on a combination of measures of relative abundance and size composition of the population.

Commission staff recommend a review period of at least 5 years be used for evaluation based on the inherent variability in the factors controlling the population, variability in data collection and longevity of Smallmouth Bass. For these same reasons, staff propose that benchmarks must be met for minimum time periods (for example, 3 of 5 years) rather than for definitive time periods (for example, consecutive years) given natural variability in healthy fish populations. Additionally, staff suggest that benchmarks be achieved for two of the three metrics for each reach for a five-survey evaluation period.

Review of the most contemporary survey data revealed that all three of the subject reaches met the recovery benchmarks to allow removal of closed season regulations beginning in the 2017 season. Staff will continue to survey population characteristics moving forward to guide future regulatory actions should population characteristics change.

Based on the foregoing, the Commission proposes that the closed bass (Smallmouth Bass and Largemouth Bass) season be removed from May 1 to mid-June (with dates described by the usual formula) and no tournaments be permitted during this period. Catch and release restrictions will continue to be applied to those portions of the Susquehanna River and Juniata River currently included under this miscellaneous special regulation (Figure 1). Bass tournaments occurring outside of the mid-April to mid-June period will continue to be restricted to catch-measure-immediate release only as will all bass angling. Some of the public comments received upon publication of the proposed rulemaking expressed concerns regarding anglers fishing over spawning bass. The Commission adds the following language to § 65.24 in this final-form rulemaking: "It is unlawful for an angler to repeatedly cast into a clearly visible bass spawning nest or bed in an effort to catch or take bass. A bass caught and immediately returned unharmed to the waters from which taken will not be considered a violation of this section."

The Commission amends § 65.24 to read as set forth in Annex A.

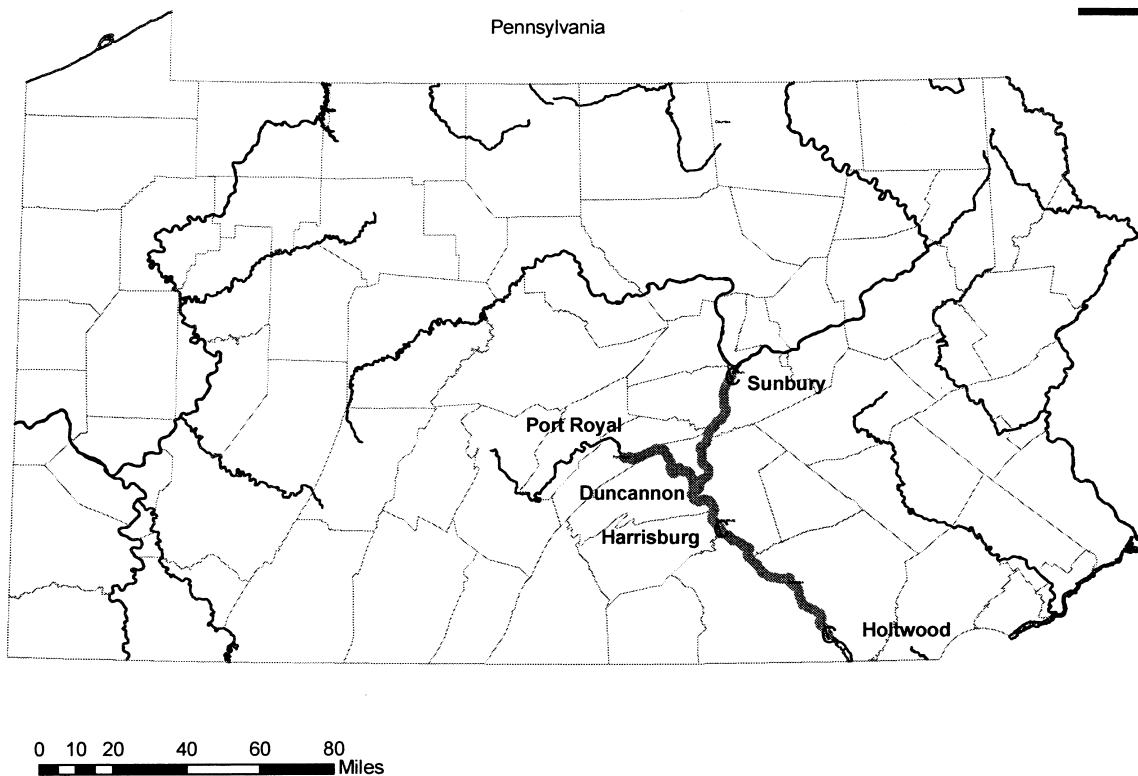


Figure 1. Location on the lower Susquehanna River and lower Juniata River where a closed bass season with no tournaments permitted will be removed. Year-round black bass catch and immediate release regulations will continue to apply to these locations. No tournaments will be permitted during the mid-April to mid-June closed season consistent with other waters in this Commonwealth. Catch-measure-immediate release tournaments will be permitted at other times of year.

Commission staff also recommend that in the future the lower Susquehanna River reach be treated independently while the middle Susquehanna River and lower Juniata River reaches be treated jointly for removal or application of closed season regulations. Unrestricted movement of fish between the two systems would complicate treatment of each exclusively. The joint treatment of those reaches would defer to the most conservative option for either reach based upon their data relative to benchmarks.

F. Paperwork

This final-form rulemaking will not increase paperwork and will not create new paperwork requirements.

G. Fiscal Impact

This final-form rulemaking will not have adverse fiscal impacts on the Commonwealth or its political subdivisions. This final-form rulemaking will not impose new costs on the private sector or the general public.

H. Public Comments

Notice of proposed rulemaking was published at 47 Pa.B. 1469 (March 11, 2017), with a 60-day public comment period. The Commission held three public infor-

mational sessions on April 17, 2017, in Harrisburg, April 18, 2017, in Columbia, and April 19, 2017, in Selinsgrove. During these sessions, the Commission solicited public input using comment cards that asked the public to address two issues, namely opinions about the adaptive management approach for black bass regulations moving forward and opinions regarding the proposed rulemaking.

The Commission received a total of 179 public comments—27 were received prior to the formal comment period, 149 were received during and 3 were received after the comment period ended. Of the 179 comments, 67 commentators supported the proposed amendments, 90 opposed them and 22 provided comments that could not be categorized as either supporting or opposing the proposed amendments. Copies of the public comments were provided to the Commissioners. Some of the comments also expressed concerns regarding anglers fishing over spawning bass. The Commission added the following language to § 65.24 in this final-form rulemaking: “It is unlawful for an angler to repeatedly cast into a clearly visible bass spawning nest or bed in an effort to catch or take bass. A bass caught and immediately returned unharmed to the waters from which taken will not be considered a violation of this section.”

Findings

The Commission finds that:

(1) Public notice of intention to adopt the amendments adopted by this order has been 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 promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided, and the public comments that were received were considered.

(3) The adoption of the amendments of the Commission in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statutes.

Order

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

(a) The regulations of the Commission, 58 Pa. Code Chapter 65, are amended by amending § 65.24 to read as set forth at Annex A.

(b) The Executive Director will submit this order and Annex A to the Office of Attorney General for approval as to legality and form as required by law.

(c) The Executive Director shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

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

JOHN A. ARWAY,
Executive Director

Fiscal Note: Fiscal Note 48A-274 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 65. SPECIAL FISHING REGULATIONS

§ 65.24. Miscellaneous special regulations.

The following waters are subject to the following miscellaneous special regulations:

<i>County</i>	<i>Name of Water</i>	<i>Special Regulations</i>
* * * * *		
Cumberland, Dauphin, Juniata, Lancaster, Northumberland, Perry, Snyder, York	Susquehanna River (98.0 miles) from the inflatable dam near Sunbury downstream to Holtwood Dam, including all tributaries to a point 1/2 mile upstream from the confluence	<p>Bass (Smallmouth and Largemouth)—No harvest year-round—catch and immediate release only.</p> <p>From 12:01 a.m. the first Saturday after April 11 to 12:01 a.m. the first Saturday after June 11—No Bass tournaments.</p> <p>Remainder of the year—Catch-measure-immediate release tournaments only.</p> <p>It is unlawful for an angler to repeatedly cast into a clearly visible bass spawning nest or bed in an effort to catch or take bass. A bass caught and immediately returned unharmed to the waters from which taken will not be considered a violation of this section.</p>
Dauphin, Juniata, Perry	Juniata River (31.7 miles) from SR0075 bridge at Port Royal downstream to the mouth, including all tributaries to a point 1/2 mile upstream from the confluence	<p>Bass (Smallmouth and Largemouth)—No harvest year-round—catch and immediate release only.</p> <p>From 12:01 a.m. the first Saturday after April 11 to 12:01 a.m. the first Saturday after June 11—No Bass tournaments.</p> <p>Remainder of the year—Catch-measure-immediate release tournaments only.</p> <p>It is unlawful for an angler to repeatedly cast into a clearly visible bass spawning nest or bed in an effort to catch or take bass. A bass caught and immediately returned unharmed to the waters from which taken will not be considered a violation of this section.</p>
* * * * *		

[Pa.B. Doc. No. 18-1349. Filed for public inspection August 31, 2018, 9:00 a.m.]

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CHS. 99a AND 111]

Boating; Capacity Plates; Special Regulations Counties

The Fish and Boat Commission (Commission) adds Chapter 99a (relating to capacity plates) and amends Chapter 111 (relating to special regulations counties). The Commission is publishing this final-form rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code).

A. *Effective Date*

This final-form rulemaking will go into effect upon publication in the *Pennsylvania Bulletin*.

B. *Contact Person*

For further information on this final-form rulemaking, contact Wayne Melnick, Esq., P.O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This final-form rulemaking is available on the Commission's web site at www.fish.state.pa.us.

C. *Statutory Authority*

Chapter 99a is adopted under the statutory authority of section 5122 of the code (relating to registrations, licenses, permits, plates and statistics). The amendments to §§ 111.3 and 111.16 (relating to Armstrong County; and Clarion County) are published under the statutory authority of section 5124 of the code (relating to particular areas of water).

D. *Purpose and Background*

This final-form rulemaking is designed to simplify and improve the Commission's boating regulations. The specific purpose of the amendments is described in more detail under the summary of changes. On December 7, 2017, the Commission's Boating Advisory Board considered the proposed amendments and recommended that the Commission approve the publication of the proposed rulemaking.

E. *Summary of Changes*

(1) Prior to January 1, 2013, the Commission issued capacity plates for certain boats that were operated or offered for sale in this Commonwealth. During an audit of the Commission's Recreational Boating Safety Program in 2011, the United States Coast Guard identified this practice as a violation of Federal regulation and directed the Commission to stop issuing the plates. In response to this direction, the Commission rescinded Chapter 99. At the time, this decision was thought to be the best way to handle the issue. However, it has since been determined that the best change would have been to rescind only those sections dealing with the Commission's issuance of capacity plates and not to rescind other sections that extended the Federal standard to Commonwealth waters. Commission staff examined what other states have done regarding capacity plates and recommend that certain sections of the former regulations be reinstated.

The Commission therefore adds Chapter 99a to read as set forth in the proposed rulemaking published at 48 Pa.B. 2654 (May 5, 2018).

(2) Keystone Lake is a 1,000-acre impoundment in Armstrong County that provides water to the Keystone Generation Station, Chief Keystone Power, LLC. The

property is leased to the Commission for fishery and aquatic resource management, and recreational fishing and boating purposes. Under a prior agreement, a horsepower restriction for motorboats was set at 10 horsepower. The Commission adopted this restriction in § 111.3(b).

In March 2017, the lease agreement for this property was renewed. As part of that renewal, Chief Keystone Power requested that the 10 horsepower restriction be raised to 20 horsepower. The Commission therefore amends § 111.3 to read as set forth in the proposed rulemaking.

(3) At the September 2017 Commission meeting, Jeffrey Pfister approached the Commission on behalf of several landowners adjacent to Redbank Creek, Clarion County. The landowners are concerned about boating safety because the creek traditionally had been locally treated as a slow, no wake (SNW) zone without an official designation.

In recent years, the amount of boating traffic entering Redbank Creek from Pool 9 on the Allegheny River has increased substantially. This traffic goes above SNW even where the creek narrows to less than 200 feet across, creating a safety hazard. The landowners petitioned the Commission for Redbank Creek to be designated as a SNW zone.

The Commission's Bureau of Law Enforcement staff from the Northwest Region were tasked with exploring the issue and to offer an opinion. Upon investigation, they determined that the creek does narrow and the entrance from the river quickly becomes congested with boats. The presence of an old railroad bridge also adds to the congestion as boats have to traverse under and between the bridge abutments to navigate safely.

Allegheny Land Trust (Trust), the owner of the bridge that is now part of a rail to trails, is concerned about erosion damage to the shore line and the bridge itself due to the excessive wake in a confined area. If the proposed amendment is adopted, the Trust has agreed to allow signage to be posted on the bridge structure for the SNW zone.

The Commission therefore amends § 111.16 to read as set forth in the proposed rulemaking.

F. *Paperwork*

This final-form rulemaking will not increase paperwork and will not create new paperwork requirements.

G. *Fiscal Impact*

This final-form rulemaking will not have adverse fiscal impact on the Commonwealth or its political subdivisions. This final-form rulemaking will not impose new costs on the private sector or the general public.

H. *Public Involvement*

Notice of proposed rulemaking was published at 48 Pa.B. 2654. This Commission did not receive any comments regarding proposed Chapter 99a and the proposed amendments to § 111.16. Regarding the proposed amendment to § 111.3, the Commission received six public comments, all supporting the proposal.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the amendments adopted by this order has been 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 promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided and the public comments that were received were considered.

(3) The adoption of the amendments of the Commission in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statutes.

Order

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

(a) The regulations of the Commission, 58 Pa. Code, are amended by adding §§ 99a.1—99a.4 and amending §§ 111.3 and 111.16 to read as set forth at 48 Pa.B. 2654.

(b) The Executive Director will submit this order and 48 Pa.B. 2654 to the Office of Attorney General for approval as to legality and form as required by law.

(c) The Executive Director shall certify this order and 48 Pa.B. 2654 and deposit them with the Legislative Reference Bureau as required by law.

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

JOHN A. ARWAY,
Executive Director

Fiscal Note: Fiscal Note 48A-279 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 18-1350. Filed for public inspection August 31, 2018, 9:00 a.m.]
